

**THE GOVERNMENT POLICY  
FOR THE DEVELOPMENT OF PPPs  
(POLAND)**

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## INTRODUCTION

Developing infrastructure and providing public services that meet society's expectations are key elements in the economic development of Poland and public-private partnerships (PPPs) are one tool that can be used to deliver them. To ensure the effective development of PPPs in Poland, the Polish Government will take a series of actions aimed at increasing the scale of infrastructure investment and, at the same time, ensuring their optimisation and benefits for the public interest. Actions also need to be taken to support public authorities in preparing and implementing PPP projects. The need to develop the use of PPP is emphasised in the "Strategy for Responsible Development". The *Strategy* identifies a need to involve private sector experience in managing and maintaining infrastructure and preparing and implementing projects, as well as private sector capital, in the delivery of public activities. The underlying context is that society expects wider availability, and an increasing quality, of services offered by the public sector.

PPPs offer an opportunity for the faster development of Poland, which must not be wasted. PPPs are one way of providing and financing high-quality public infrastructure. A private partner, when investing in the provision of public services, may provide resources that allow for the introduction of new management and organisational solutions, higher standards of services or technical and technological solutions aimed at reducing the cost of providing public services. PPPs may also contribute to more effective use of European Union (EU) funds, through the implementation of projects that combine EU funds and private sector financing.

An estimated PLN 1.5 trillion of capital investment is needed before 2030 in order to maintain the current pace of infrastructure development in Poland. Many key sectors of the economy have high investment needs. For example, the environment sector investment plan envisages the construction of 21,800 km of sewage networks, [including 16,900 km after 2015], and the modernisation of 4,200 km of the existing sewage network, [including 3,500 km after 2015]. In the railway sector, the reconstruction of 8,500 km of railway lines is planned. According to data available at the end of 2015, the construction of 0.5 million housing units is needed in order to address the existing deficit in the housing sector. Significant modernisation of inland waterways is also envisaged, costing between PLN 24.6 billion and PLN 90.6 billion. In addition, more than PLN 200 billion is needed to implement the National Road Construction Programme over the period 2014-2023.

Public budgets, including the state budget, are not sufficient to deliver projects in both economic infrastructure (e.g. transport, environment, energy) and social infrastructure (e.g. health, education, culture, sports and tourism). Sources of private financing are therefore needed in order to deliver infrastructure investment and provide public services.

At a regional level, projects that involve cooperation between the private and public sectors may also have a positive impact on the development of local enterprise and contribute to the creation of new jobs. From a macroeconomic perspective, the development of PPPs can contribute to the country's economic development through an increase in the number and value of infrastructure investment .

At a project level, PPP may bring measurable benefits to public authorities and service end-users, although it must be borne in mind that this always depends on specific conditions and circumstances. First and foremost, a proper partnership may result in greater cost savings in the provision of services in the long term. Being responsible not only for the construction, but also for the design, maintenance and management of infrastructure, incentivises the private partner to look for optimal solutions (including the latest technologies and materials and project management methods) which reduce operating costs. Another important benefit is the potential for improvement in the standard of services, incentivised through a system of penalties, at an agreed level for the long-term duration of the contract, where performance is measured against the delivery of ongoing contractual requirements and not merely on construction of the infrastructure. Bearing in mind that the traditional way of procuring public services entails risks for the public authority, a PPP makes it possible to transfer some of these risks to the private partner on the basis that it is better able to manage

them. It should, however, be stressed that transferring all of the risks to the private partner can distort the concept of partnership, increase project costs for the public authority and reduce private sector interest in the project.

From a financial management perspective and by offering an alternative to the traditional approach of funding public sector activities, PPP may make it possible for a public authority to proceed with infrastructure investment without significant involvement of public funds at the construction or renovation stage. This may also allow for more efficient planning of expenditure and the implementation of more infrastructure investment and public services at the same time.

PPPs can also provide much greater certainty of infrastructure projects being completed in accordance with agreed timetables and budgets than is the case with traditional public infrastructure projects. This is principally due to the fact that the private sector takes an integrated and systematic approach to project preparation and delivery. Moreover, the private partner is remunerated only once the construction of the infrastructure is complete and the services, that are required in order for it to be used, are provided in accordance with agreed quality standards. As international experience has shown, traditional procurement often carries a higher risk that a project will end up being more expensive, not delivered on time or, in extreme situations, interrupted or abandoned.

It should also be noted that the implementation of projects in the form of PPPs can also bring significant benefits for private sector entities: primarily being the stable sources of income from long-term agreements with the public sector that allow for better long-term business planning.

Finally, it should be stressed that the possibility of a PPP transaction being neutral in the public authority's balance sheet should not be the sole or prime motivator for adopting a PPP formula. Such a project may still fail due to being unaffordable or not achieving value added of a PPP formula in terms of increased efficiency, shorter delivery timescales or higher quality of services provided.

**The Polish Government is interested in a rapid increase in use PPPs for the construction of public infrastructure and provision of high quality public services. Public authorities should give PPPs equal consideration as an alternative to traditional methods of carrying out public activities, although in doing so the potential benefits that a PPP may bring to a specific project and to the public interest still need to be demonstrated.**

## 1. CHALLENGES TO THE DEVELOPMENT OF PPPS

### PPP MARKET IN POLAND

Before 2005, Poland had no statutory regulations dedicated to PPPs (apart from the concession procedure provided for in public procurement law). However, the PPP formula was still used occasionally by applying other legal regulations such as the Act of 20 December 1996 on municipal economy (Dz. U. (Journal of Laws) of 2016, item 573, as amended) or the Act of 27 October 1994 on toll highways and the National Road Fund (Dz. U. of 2015, item 641, as amended).

In 2005, the Act of 28 July 2005 on PPP (Dz. U. item 1420, as amended) came into force in Poland. However, due to its excessive restrictions and the heavy regulatory burden it imposed coupled with the long absence of necessary implementing regulations, no PPP contract was concluded while that Act was in force. In addition, the market was not yet ready to implement projects using such an approach. There was also insufficient funding available for carrying out the analysis required before a PPP contract is concluded and implemented

A new phase in Poland's PPP market started in 2009 with the introduction of the new Act of 19 December 2008 on PPP (Dz. U. of 2015, item 696, as amended) and the Act of 9 January 2009 on concessions for construction works or services (Dz. U. of 2015, item 113) (Concession Act), which was later repealed by the Act of 21 October 2016 on concession for construction works or services (Dz. U. item 1920). Since 2009, the number of tenders for selection of the private partner and of contracts concluded has been growing steadily.

However this growth is still not satisfactory and the effectiveness of launched tender procedures is still low: from 2009-2016 more than 460 tenders for the selection of a private partner or concessionaire were announced, but the number of contracts concluded was just over 110. The rate of effectiveness was therefore below 25%. Furthermore, even fewer projects raised the financing required for project delivery after the PPP contracts had been signed. Such a low percentage suggests either that the offers were unattractive to the private sector for some reason (e.g. inappropriate allocation of risks, private partner income not sufficiently covering expenditure, poorly prepared projects), or that the private sector lacked resources to deliver what the public sector expected.

In Poland, PPPs have been used predominantly by local government authorities (including subordinated entities), who have initiated more than 90% of the PPP tenders initiated. At the national (Government/State) level, only one PPP contract is currently being delivered in Poland (excluding highway projects that are implemented pursuant to the Act of 27 October 1994 on toll highways and on the National Road Fund). The private partners for most smaller concession projects are local small and medium-sized enterprises (SMEs).

SMEs, however, often struggle with not having appropriate organisational capacity, particularly for implementing larger PPP projects. They are often unable to acquire appropriate financing for projects that financial institutions consider more risky or to mobilise sufficient funds themselves. Moreover, there is insufficient support from the public sector for SMEs seeking to deliver PPPs.

Prior to the EU 2014-2020 financial framework, the implementation of PPP projects that combine EU funding and private sources of financing (hybrid PPP projects) was not well supported by the prevailing rules. Therefore despite the wide availability of the EU funds, few such projects were implemented in Poland. However, the Regulation of the European Parliament and of the Council (EU) No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ EU L 347, 20.12.2013, pp. 320-469, as amended), together with the Act

of 11 July 2014 on the principles of implementation of the cohesion policy programmes financed under the 2014-2020 financial framework (Dz. U. of 2016, item 217, as amended), finally introduced a series of measures in this regard for public authorities interested in implementing such projects.

To date, the majority of PPP contracts, by number, have been signed using the procedure specified in the Concession Act. This is due, *inter alia*, to the fact that this assumes that the majority of the economic risk of a project transfers to the private party. However, it should be noted that the value of such contracts is lower than the value of PPP contracts which have been signed under the Act of 29 January 2004 – Public Procurement Law (Dz. U. of 2015, item 2164, as amended) (PPL Act).

The Polish PPP market is characterised by a wide diversity of sectors. Since 2009, under the PPL and Concession Acts, most contracts have been signed in the sports and recreational sector (approximately 20% of all contracts), broadband sector (approximately 15%), sewage and water sector (approximately 10%), energy efficiency (approximately 10%) and public utility buildings sector (approximately 10%). In addition, there are projects for the construction and maintenance of car parks, urban regeneration, transport, energy and hospital equipment. However, in terms of the value of contracts, the largest share is represented by the waste management sector, mainly due to one project with a value of PLN 925 million (this does not include highway construction projects, given that these were implemented before 2009).

Approximately 20% of contracts have a value of up to PLN 1 million and 57% have a value of between PLN 1 million and 100 million. Only 13 concluded contracts have been for projects with a value of more than PLN 100 million. It should be noted that, when deciding to use a PPP, the public parties (mostly local government authorities) have usually chosen the concession model, as this has the least impact on its budget. The concession model was usually used for the lowest contract value projects. A key motivation for this is the desire to transfer to the private partner not only the construction risk, but, primarily, the demand and financing risk. So far, public authorities have used PPPs based on availability payments to a limited extent only.

## **BARRIERS TO THE PPP MARKET IN POLAND**

### Lack of a clear institutional structure and coordinated PPP development policy

So far, the development of PPPs at the national level has been fragmented and uncoordinated. The lack of a clear vision for the use of PPPs in Poland has hindered individual public authorities' plans to use them. Despite the existence of statutory regulations, no clear vision or unanimous support of the Government as regards the use of PPPs to deliver infrastructure projects and public services have been stated.

In addition, the development of PPPs in Poland by various authorities has been carried out without appropriate distinction of the various functions: planning or political support, programming/monitoring or certification) quality assurance) Consequently, the activities of various authorities have lacked coordination, with some being carried out excessively or even duplicated and others being carried out too slowly or not at all. In addition support for public authorities in preparing, assessing the validity of, and managing PPP contracts has been insufficient.

### Lack of optimal legal solutions

No legal barriers to the development of PPP projects in Poland have been identified *per se*. However, Polish legislation governing PPPs is perceived as not fully clear and inconsistent. The existing regulations have a number of shortcomings e.g. with regard to the appropriate procedures for selecting the private partner, taxation, financing and contract management. Consequently, some PPP projects have had no chance of success because of fear on the part of the public sector of making formal errors.

### No database of PPP investment plans

So far, Poland has had no reliable database of PPP investments plans at sectoral or regional levels. There has been no structuring or standardisation of tools for identifying and sharing investment plan databases with the market and no foreign models in this area have been used or adapted. As a result, the private sector and financial institutions have been unable to prepare, competently and comprehensively, for delivering and financing projects.

### Few large projects

A significant feature of the Polish PPP market to date has been the limited number of successfully delivered large, in particular Government/State level, projects. To date, public authorities have rather funded their largest investment needs from their own resources, from European Union funds or by using resources that they have themselves obtained from financing institutions. Therefore the opportunity and benefits of PPP have been overlooked at this level, sending a negative message to other public authorities faced with the need to provide appropriate public infrastructure and public services.

### No standardisation of legal models or documentation for PPP and concession contracts (standard documentation ready to use)

As only a small number of PPP contracts have been signed so far in Poland, common contractual standards have yet to be developed. However, it should be recognised that, due to the costs involved in preparing PPP projects, such standards would be desirable for the development of the PPP market in Poland.

### Gaps in the dissemination and examination of good practice for PPP projects

Due to the lack (or a small number) of pilot projects in some sectors in Poland, there is an insufficient database with examples of good practice. This is particularly true of successful Government/State level projects. Therefore there are no effective guidelines available on how to implement a project as a PPP in a given sector. There are also no effective means for disseminating good practice and guidelines in areas such as PPP project assessment, preparation, private partner selection and implementation.

### Limited knowledge of PPP and the principles of PPP implementation

A lack of knowledge and experience in preparing and implementing PPP projects leads to caution towards, or avoidance of, this more demanding project delivery method. This is the case for public authorities implementing projects, the institutions that control the activity of those authorities, the private sector and financing institutions.

### Lack of dedicated project teams and experience in implementing PPP projects in the public sector

The public party often fails to account for the fact that the preparation of a PPP project, and the private partner selection process, can be time consuming and expensive. The public authority therefore does not either appoint an external organisation to carry out the necessary tasks, or designate a team of people from within its existing structure with the proper competencies, capabilities and time available to be involved in the PPP project. The lack of, or inappropriate, organisation of the project team (for example, regarding the team's competencies, decision-making capacity or excessive burdening with other obligations), reduces the project's chances of success. In such situations not only is the project preparation phase prolonged but the length of the private partner selection process is significantly extended. This often affects the private sector's perception of and level of interest in the project, not to mention the overall cost of the project. It should also be emphasised that project teams play an important role not only during the project preparation and private partner selection stages, but also during the project implementation and contract management stages.

### Difficulties in preparing PPP projects and lack of diligent project preparation

The public party often neglects to carry out the appropriate level of analysis required before implementing a PPP project or fails to draw appropriate conclusions from such analysis. In many cases, there is no verification of the rationale for using a PPP for a particular project in terms of assessing the benefits of a PPP compared with the traditional method of project implementation. The reasons for this are, *inter alia*, that the public authorities do not have the funding needed to meet the costs of legal, technical and financial analysis during the project preparation stage or they do not understand the requirements of project preparation in the first place. This problem arises particularly on smaller projects, where the cost of such analysis can be disproportionately high in relation to the value of the intended project.

Often the problem is not only the lack of, or inadequate, PPP project preparation but also the lack of key tender documents at the start of the tendering procedure. This can lead to changes in the scope or design of the project during the private partner selection process which in turn can result in a prolonged tendering procedure, rising costs and sometimes the withdrawal of private entities from participating. In this situation the public authority also loses credibility.

When the main motivation of public authorities for implementing PPP projects is to avoid increasing the level of public debt, inappropriate PPP models are often chosen. For example, there might be an attempt to transfer the demand risk to the private partner even though there is no possibility of this leading to a commercially successful project. Failure to adapt the delivery model to the requirements of the market can lead to a lack of private sector interest in the PPP and, ultimately, the project not going ahead.

It is also the case that a lack of awareness on the part of the public party as to the cost of inappropriate risk allocation on a project (and particularly in transferring more risk to the private partner than is appropriate) can have a significant impact on the effectiveness of the PPP project and lead to its cancellation.

### Insufficient information for the public

Another significant problem often faced by public authorities is stakeholder resistance to a given infrastructure project and, particularly in the case of PPP projects, to the involvement of private entities in public sector activities. This can be due to policy makers and stakeholders not having sufficient understanding of PPP principles or information about the particular method for implementing the given project. The public authority often consults and provides information about the expected approach to project delivery too late or not at all, or does so only to a limited extent. As a result, due to a lack of information, the public resorts to legal and political measures aimed at stopping the project, making its implementation difficult and discouraging private partners from becoming involved.

### Problems with project financing

The majority of projects in Poland encounter problems in obtaining financing. Financing institutions usually become involved in a project at too late a stage, when there is either no or very limited opportunity to influence the shape of the PPP contract. This can lead to situations where financing is refused because the arrangements that have already been agreed between the public and private parties are unacceptable to the financial institutions.

On the other hand, financial institutions sometimes show no interest in being involved in a project at an early stage, discouraged from doing so by the relatively low percentage of tender announcements that result in signed PPP contracts.

There is also insufficient knowledge on the part of both parties to the PPP contract as regards possible project financing structures, sources of financing and security. There is also no system of guarantees for loans taken for implementing PPP projects and “non-banking” sources of financing in Poland are rarely used.

## 2. OBJECTIVES OF THE PPP POLICY

One of the Government's objectives, stated in its "Strategy for Responsible Development", is to encourage businesses and financial institutions to become involved in, and allocate their financial resources to, new investment projects in order to further economic development and improve the quality of public services.

PPPs are one of the tools for implementing the "Strategy for Responsible Development", particularly as part of the area – Capital for development, but only where the benefits of PPP outweigh the traditional approach to providing infrastructure and public services. More use of PPPs may lead to a sustained increase in the rate and quality of public investment in the long term.

**The purpose of this Government Policy for the Development of PPPs (the Policy) is to increase the scale and effectiveness of infrastructure projects using PPP** on the assumption that a PPP formula is selected for delivering public tasks and services where it maximises the economic and social benefits.

In addition to the above, the Policy should contribute to:

- **a better quality of services and public infrastructure,**
- **reducing the up-front investment burden on public budgets through the provision of private financing,**
- **increasing the effectiveness of using of existing public assets,**
- **implementing innovative solutions in construction, maintenance and public service delivery,**
- **establishing clear principles for using the PPP formula,**
- **increasing public sector awareness of PPP as an alternative method for providing infrastructure and high-quality public services,**
- **establishing the principle, in particular for large Government/State level projects, that PPP is one of the options to be considered when choosing the method for delivering infrastructure investment projects,**
- **increasing the number of economically feasible infrastructure investment projects (using traditional and PPP formula) funded from the state budget,**
- **supporting the local government sector in implementing PPP projects.**

### 3. SCOPE OF THIS POLICY

The Policy sets out key principles for implementing PPP projects, as well as the actions and responsibilities of the relevant institutions for developing the use of PPPs.

The Policy covers cooperation between public and private entities, within the meaning of the Act of 19 December 2008 on PPP (the PPL Act) and the Act of 21 October 2016 on concession for construction works or services. A private partner is selected in accordance with the procedure determined by the PPL Act or the Act on concession for construction works or services.

The object of a PPP is the provision and maintenance of infrastructure, or the management of infrastructure combined with the provision of services, for a defined period. PPPs are comprehensive in nature, involving the design, finance, construction (or renovation), maintenance and management of infrastructure or involving only the provision of services and management of infrastructure entrusted to the private partner.

PPP is not a method of privatisation; at the end of the contract, all of the PPP assets are transferred (returned) to the public authority, unless the contract provides otherwise. In PPP, the public authority is responsible to the public for the quality of services provided.

For the purposes of the Policy, it is assumed that PPP can be applied to all infrastructure and public services that public authorities are obliged to provide by law or statute. In particular, this includes economic and social infrastructure as well as infrastructure belonging to public administrations and universities.

#### PPP Models

The Policy applies to various forms of cooperation between the public and private sectors. One form of this cooperation takes the form of a contractual relationship between the public and private parties (a so-called “Contractual PPP”). In turn, depending on the mechanism used to remunerate the private partner, a distinction can be made between:

- A concession contract for the construction works or services, where the private partner is remunerated directly by consumers of the services/users of the infrastructure, possibly with additional payments from the public authority. Under a concession for construction works or services the contracting authority (the public party) entrusts the concessionaire (the private party) with carrying out construction works and subsequently managing them, or providing services, in return for the right to payment from consumers/users or in return for this right together with additional payment from the public authority. A key characteristic of a concession contract is this method by which the private partner is remunerated. In the case of a concession, this is mainly through charges paid by consumers/users, while in the other case (described below), the private partner is primarily remunerated through availability payments from the public authority (potentially supplemented with charges paid directly by consumers/users).
- A PPP contract concluded pursuant to the PPL Act envisages the private partner being remunerated mainly by the public authority, (through a so-called “availability payment”), which in some cases may be supplemented by charges paid directly by consumers/users for the services provided. The availability payment is a regular payment made in return for the private partner making the infrastructure available, and managing and maintaining it. The infrastructure is usually built (or renovated) and financed by the private partner. There are various procedures that can be used to procure a PPP contract under the PPL Act, but the unique nature and complexity of a PPP usually makes competitive dialogue the most appropriate procedure to use for selecting the private partner.

Co-operation in the form of a PPP can also be established through the creation of a special-purpose vehicle by public entity and private partner, a so-called “Institutional PPP”, and the remuneration for that vehicle can take similar forms to those used for a contractual PPP.

#### Size of projects

The Policy applies to both small and large projects. The high costs of preparing a PPP project may, however, exceed the benefits arising from the PPP project. In particular, this can be the case on smaller projects that are based on availability payments. The use of PPPs for small projects should be properly verified in advance by the public authorities implementing them. It is also recommended that smaller projects with common or similar features are either combined into larger groups or delivered as programmes to reduce their individual preparation costs and increase the effectiveness of their implementation.

#### Sectors

The Policy applies to all public services sectors. PPPs may be used, in particular, in sectors such as: environmental protection (water and wastewater management, waste management), transport (road, rail, urban, stations, logistics centres, ports), education (e.g., schools, kindergartens, nurseries, universities, scientific research institutes), urban infrastructure (e.g., regeneration, parking lots, housing), culture, sports, tourism and recreation, healthcare (infrastructure, equipment), administrative and public civic buildings (e.g. courts, city halls, ministerial buildings, museums, police headquarters, fire brigade facilities), telecommunications and IT infrastructure (e.g. broadband networks), energy efficiency (e.g. thermal insulation of buildings, modernisation of heating systems), and more.

#### Duration of the contract

The Policy applies to contracts of various durations. Each contract requires an individual assessment of its duration having regard to any relevant legal regulations. However, cooperation between the public and private parties in a PPP should, as a rule, be long-term, as only then will it be possible to realise the benefits expected from a PPP arrangement. In practice, PPP contracts are usually concluded for a period of between 10 and 30 years. The duration of the contract should not, however, be shorter than the period needed for the private partner’s payback.

#### Parties to the contract

The Policy applies to projects involving a public authority that is obliged to provide public services pursuant to relevant regulations and a private entity that pursues an economic activity that is independent of and not controlled by the public entity. Public entities include all public sector authorities, the Government/State sector, local government authorities, universities and other public sector entities.

#### **4. KEY PRINCIPLES OF IMPLEMENTING PPP PROJECTS**

##### Protecting the public interest

When deciding to deliver an infrastructure project, including deciding on the use of a PPP formula, the public authority should ensure that the project does not conflict with the general public interest. Therefore, when preparing the project, it is important to verify that it aligns with actual social needs and to determine the material and non-material benefits its implementation will bring to society. From the very early stages of identifying the project need and defining the objectives and scope of the PPP project, care must be taken to document and justify the actions taken and decisions made, for the purpose of subsequent evaluation and potential review.

##### Appropriate strategy for project implementation

When embarking on an investment in public infrastructure or public services, in addition to confirming the appropriateness and legitimacy of the underlying project itself, the public authority should verify the possibility and benefits of using a PPP formula compared to other methods of project delivery. This is the case in particular for large investment projects, including Government/State infrastructure projects. Over the project lifecycle a PPP can be a cheaper form of delivering a public investment project than traditional public procurement, generating savings throughout its life.

##### Proper structuring of the process – project implementation stages

Before implementing an infrastructure project, regardless of the approach selected, the public authority should carefully define the scope of the project, including the extent and timetable of actions that need to be taken. Public authorities implementing PPP projects should use the support of their own experts or external consultants to ensure that the scope and method of delivering their investment plans are appropriate and accurately specified. After specifying the scope of the project, it is recommended that the public authority verify whether the implementation of the project will be more effective using a traditional model or the PPP model and to verify the financial feasibility of the project. At this stage, it is also necessary to identify the proper allocation of risk and the proposed project financing model as well as the key provisions of the proposed PPP agreement. Such analysis should be supported by market tests that demonstrate the potential for involving a private entity, the optimal mechanism for its remuneration and the allocation of the responsibilities between the public and private partner. The scope of analysis should seek to determine the structure of the project so that, while the public interest as a priority, the project has the potential to attract interest from private entities and to receive financing. The next step should be to carry out the private partner selection procedure and to commit the budget required or to disregard the PPP approach. For these tasks, the public entity should use its own specialised PPP teams or external consultants (in particular, legal and financial as well as technical advisers).

##### Assessment of the effectiveness – value for money

The public authority should structure the project in such a way so as to obtain the maximum economic and social benefits from its implementation. The benefits should be calculated for the entire project lifecycle, taking into account the costs of design and construction, current provision of services, costs of maintenance and modernisation, and payment at the end of the project. These activities should reflect both the financial and social discount rate. Such analyses should be made on a basis of reliable data, as the adoption of rigid, unverified assumptions may lead to wrong conclusions. Such an assessment may also be based on qualitative indicators of efficiency.

A PPP should be used where, on the basis of forecast financial inputs, the PPP delivers greater benefits (e.g. increased efficiency, increased innovation of solutions, etc.) when compared to the traditional model

of implementing infrastructure projects. When estimating these benefits on the basis of value for money analyses, it is important to compare the same cost items, level of services and period for providing the services and to include costs arising from the acceptance of risks by the public and private entities as well as other, non-financial, benefits.

#### Focus on services rather than on the infrastructure

In preparing a PPP project, the public authority's focus should be on the quality and volume of services that the project will deliver. The objective of a PPP is not limited to the development of specific infrastructure, or to be used simply as a tool for avoiding of financing the infrastructure by the public sector. Thus the output of a PPP contract should be expressed in terms of the services provided as a result of the infrastructure that is to be made available.

A focus by the public authority on services therefore encourages actions that are better adapted to underlying needs, better use of the assets (either existing or developed) within the scope of the project, maximum effectiveness of the solutions adopted, and innovation. As early as during the design phase of the project, and not just during the operational stage when the services are being delivered, the private partner will be focused on selecting the best ways to provide the services.

#### Responsible allocation of risk

Risk analysis and risk management must always feature in the process for implementing PPP projects, as these:

- allow allocation of each risk to the party which is able to manage it best,
- influence the total cost of the project as well as play an important role in assessing the validity of using a PPP formula at various stages of the project preparation and implementation,
- allow determination of how the PPP impacts public debt and public deficit,
- influence the ability to obtain financing for the project,
- influence the private sector's appetite for delivering the PPP project,
- form the basis of the partnership and the provisions of the PPP contract that govern it.

#### Using private sector knowledge, innovation and skills

The private partner should be selected on the basis of its knowledge and experience. Therefore, the assessment of criteria such as the knowledge and innovation of the private sector, and the quality and creativity of proposed solutions, are of particular importance in the selection procedure.

#### Guaranteeing transparency and competitiveness

Transparency and competitiveness should be maintained during the private partner selection process, i.e. using an open, transparent, competitive tendering procedure. In practice, this is achieved by selection in accordance with relevant Polish law. Special attention must be paid to avoiding misuse or excessive use of limitations on transparency in the procedure (protection of trade secrets, confidentiality in the competitive dialogue). In addition, every effort should be made to ensure that the actions of the project team and decisions of the public authority are understood by potential private partners and the general public.

### Guaranteeing proper management of the PPP contract

PPP contracts, and shareholders' agreements in case of the institutional PPPs, are long-term in nature and require active management. In order to ensure effective management of a contract throughout the project lifecycle, it is necessary to determine the nature and quality of the services required and to define precisely the associated performance indicators.

The public authority should be aware that even though it is outsourcing certain services to a private partner or an institutional PPP, it retains ultimate legal responsibility for providing these services. It is therefore recommended that, during the project preparation stage, the expected quality of services, the indicators to be used to measure their quality as well as the frequency and form of measurement, are defined and indicated in the tendering documents and PPP contract.

It is necessary to identify dedicated units/teams responsible for implementing the tasks related to contract management and use of the project assets.

It is also advisable that the PPP contract is designed to be flexible so that it can adapt, within the limitations of the law, and its objectives can be achieved while accommodating economic or social changes.

### Communication with the public, users and other stakeholders

Effective communication, *inter alia*, creates market interest and reduces stakeholder opposition to a project. Open dialogue with stakeholders and careful consideration of their opinions and comments at an early stage increases the chances of successful project delivery. This process of dialogue should involve policy makers, financial institutions, potential private partners and future users/consumer. Effective communication is also facilitated by creating PPP strategies as part of general investment strategies, at both the Governmental/State level and local level.

### Involvement of financing institutions

Input from interested financial institutions and banks should be sought at an early stage of project preparation and can be done within the framework of market consultation or by way of individual interviews. This can reduce the risk of the public and private parties reaching agreements which later cannot be accepted by financial institutions and results in their refusal to finance the project. An additional benefit of this activity is the opportunity it provides for the public authority to familiarise itself with all aspects of the project, including possible financing structures, sources of financing and any available guarantee instruments.

### Project teams

The public authority's staff will influence the success of a PPP project. A stable project team with appropriate competencies, time and personnel resources, and that is dedicated to the task, facilitates the preparation and implementation of the PPP project as well as its management at the operational stage. It allows the public entity to keep control of the project and to manage it in a responsible manner. It also allows for effective cooperation with consultants and the private partner, allows experience and knowledge gained to be used in the subsequent phases of delivering the PPP project, and increases the chances of further projects being successfully delivered using this approach.

## 5. ACTIONS, ROLE AND RESPONSIBILITY OF INDIVIDUAL INSTITUTIONS

Establishing Government/State level structures and systems for managing and implementing the Policy is critical for the development of PPP. This will provide consistency and coordination of activities and clear responsibility for the effectiveness of the Policy and will avoid duplication of activities.

### Central PPP coordination and management unit

The Minister in charge of regional development will serve in a central organisational role (PPP Unit), responsible for the use of PPPs in Poland and for coordinating the activities of other government institutions in this regard. A dedicated department will act as the centre of knowledge on PPPs and will cooperate with other PPP units within the ministries, other public entities, bodies and teams at the Government/State level involved in PPP (e.g. Team for PPP, PPP Platform) and entities in the non-government sector (foundations, associations) involved in PPP activities. Its key tasks as a central coordination and management unit will include:

- *implementation* – in particular the development of a methodology for implementing the Policy and the use of PPP in order to pursue the Government’s socio-economic policy and the objective of providing public services,
- *coordination* – ensuring consistency in PPP-related activities across the Government/state administration,
- *monitoring* – identifying the number and structures, as well as outcomes, of implemented PPP projects (e.g. their effectiveness, meeting of objectives set at the assessment phase, fiscal implications),
- *analytical* – assessing the impact of legal and institutional regulations on PPP implementation processes and on the efficiency and effectiveness of implemented projects in meeting their objectives, as well as assessing transparent and proper application of the regulations,
- *legislative* – preparing the necessary amendments to legal and institutional regulations and processing their implementation,
- *educational* – organising training courses, workshops and other initiatives aimed at improving the knowledge and awareness of the public and private sector representatives of PPPs,
- *support* – providing substantive support to public authorities to prepare and implement PPP projects as well as developing guidelines, standards and reference documents to support the development of PPP,
- *evaluation* – at the request of public entities, evaluating the validity and quality of the preparation of PPP projects,
- *information* – maintaining a platform of cooperation and information exchange amongst, inter alia, public entities, representatives of business, banks, non-governmental organisations and international institutions, in order to support of the development of the PPP market in Poland.

### The roles of Government/State units, local government units and other public institutions in relation to PPP

It is recommended that individual ministries and central Government bodies consider establishing, within the framework of their existing structures, units to take responsibility for PPP development activities in their sector

or region and for cooperation with the central unit. Other public institutions, such as self-government units at different levels, universities, etc. are also advised to consider the creation of similar units.

#### Activities to support the further development of public-private partnership in Poland

The Policy identifies a series of activities, to be implemented within a period of not more than two years (except for long-term activities), needed in order to ensure the proper development and use of PPPs in Poland:

- 1. proposing the necessary legal amendments** (arising from a comprehensive review of the PPP legal environment) that are needed to eliminate inconsistencies and improve the development of PPP in Poland, and preparing and carrying out the legislative processes required to implement those amendments. The new regulations should be stable (to avoid exposing the relevant parties to the risk of legal uncertainty or frequent amendments). They should also take into account the interests of both the public and private party and provide the protection for each party.  
**- responsibility: Minister in charge of regional development;**
  
- 2. developing and monitoring a PPP project pipeline (a database of investment plans).** The market's need to know about future projects should be met through a public database of PPP project plans. This database will identify projects that are at the pre-contract stage (at least in the initial preparation stage but before contract signature) which have the potential to be developed as PPPs.  
**- responsibility: Minister in charge of regional development in cooperation with all public contracting authorities;**
  
- 3. keeping a database of signed PPP projects and monitoring their implementation and impact.** In order to assess the impact of PPP projects, ascertain the benefits of using a PPP formula and evaluate the effectiveness of actions taken within the framework of the Policy, a comprehensive public database of PPP projects (for which contracts have been signed) will be created. This database will serve as a basis for carrying out various types of routine analyses, *inter alia*, to specify further courses of action for developing PPP or to evaluate the costs of risk, and to use as the basis for analysing the value for money of PPP projects.  
**- responsible: Minister in charge of regional development in cooperation with all public contracting authorities;**
  
- 4. carrying out educational and information dissemination activities including the development and implementation of a communication strategy** to improve knowledge about the benefits of PPP and increase society's acceptance and support for implementing infrastructure projects using this approach. The Government will carry out a wide range of training activities for both the private and public sector, at basic and advanced levels, to prepare staff in public authorities for implementing PPP projects. These activities will include regional training and specialised training as well as specialist workshops. Training will be aimed at the employees of public institutions at local, regional and central levels, as well as regulatory bodies (Central Anti-Corruption Office, regional accounting chambers, tax offices, tax inspection offices, public prosecutor's offices, Supreme Audit Office). Study visits will also be carried out, with the aim of disseminating good practice in implementing PPP projects in Poland. It is important to strengthen the potential of public authorities by raising managerial competence and improving knowledge about PPP as a tool for implementing public infrastructure projects. In parallel, information activities are needed in order to build a positive attitude towards PPPs, primarily by promoting knowledge about the potential benefits of using PPPs. The objective of these activities is also to present PPPs as a reliable, transparent, alternative method of providing necessary infrastructure and public services, without leading to privatisation.  
**- responsible: Minister in charge of regional development;**

5. **developing and wide dissemination of guidelines, recommendations, good practice** relating to, for example, project preparation (including value for money assessment), carrying out the tendering procedure, standard contract clauses for various sectors, monitoring PPP projects, methodology for calculating the discount rate, return of assets to the public sector, management of PPP contracts and contract changes. The use of such documents will be mandatory for projects receiving Government advisory support, but otherwise can be used and applied voluntarily.

- **responsible: Minister in charge of regional development;**

6. **providing comprehensive advisory services to public bodies** at the preparation and tendering stages, when obtaining financing and at contract signature and its execution. It is necessary for the Government to provide advisory support for selected PPP projects. As part of this support, actions should be taken to provide substantive advisory services (financed by the Ministry of Economic Development) on a larger scale than before.

- **responsible: Minister in charge of regional development;**

7. **certification** (quality assurance/assessment). In order to increase confidence in the selection of the PPP formula, in particular the assessment of the benefits of the PPP project and the quality of analysis carried out prior to project implementation, it will be possible to verify by the central coordination and management unit (PPP Unit) the decision to implement an infrastructure project as PPP, as well as the adequacy of the PPP project preparation. Certification will be fully voluntary on the part of the public authority implementing the project and will be provided to projects once they have reached a suitably advanced. The certification will focus mainly on assessing the accuracy and completeness of the pre-implementation analysis of the project, the legal and organisational model proposed, the mechanism for remunerating the private entity as well as the proposed distribution of risks in the PPP arrangement.

Conclusions from the certification process will be used to determine whether it is appropriate to separate the project certification activities, as has been the case in other European countries, from the central coordination unit and transfer these to a specialised public advisory entity established specifically for this purpose.

- **responsible: Minister in charge of regional development;**

8. **developing and implementing an obligatory opinion on the formula to be used to implement large projects financed from the Government/State budget.** In the case of large projects (i.e. over PLN 300 million of investment from the Government/State budget) intended for traditional procurement, it is necessary to also assess the use of PPP. The institution responsible for the project should carry out an appropriate analysis and seek a non-binding opinion of the designated entity (e.g. Minister in charge of regional development) before making a decision on its approach to project delivery (a so-called "PPP test"). This opinion will confirm that implementing the project in question using the traditional approach is valid only if doing so will bring greater benefits throughout the project lifecycle than the PPP formula. These opinions will not apply to projects co-financed from the EU funds or non-repayable international financial instruments (e.g. Connecting Europe Facility (CEF)), projects in the defence sector, projects concerning supplies of sensitive equipment, sensitive services and construction works or projects that are already in preparation.

- **responsible: Minister in charge of regional development;**

- 9. analysing and establishing a system of warranties and guarantees for the public and private sectors** – creating a special fund for PPPs to allow for financing based on preferential terms and interest rates. The fund should support commercial banks to lend to more risky projects without requiring expensive security packages and imposing excessively strict conditions. In addition, an assessment will be carried as to the possibility of making available other products to reduce the costs of financing PPP projects. However, such forms of support must not distort competition in this regard and so careful analysis is required of the options for establishing such a fund and the rules under which it will function.
- **responsible: Minister in charge of public finance in cooperation with the Bank Gospodarstwa Krajowego (National Economy Bank) and Polish Development Fund;**
- 10. assessing opportunities to develop instruments** to co-finance the public sector's costs of preparing and implementing investment projects (e.g. preferential loans for public entities). This assessment should take account of both the needs and capacity of the state budget and the benefits which may be brought about by the increased level of investment.
- **responsible: Minister in charge of public finance in cooperation with Minister in charge of regional development, Bank Gospodarstwa Krajowego (National Economy Bank) and Polish Development Fund;**
- 11. support for micro, small and medium-sized enterprises** through training courses on preparing for participation in tendering procedures and advice on the planning, negotiation and delivery stages of PPP projects.
- **responsible: Polish Agency for Enterprise Development;**
- 12. taking into account the characteristics of PPP projects and the Act on concession for construction works or services** as part of ongoing training programmes on public procurement.
- **responsible: President of the Public Procurement Office in cooperation with Minister in charge of regional development;**
- 13. developing and implementing sectoral/regional strategies for PPP development**, as stand-alone documents or as a part of more extensive sectoral/regional investment strategies, including the preparation of sectoral/regional databases of investment plans. This approach will facilitate the organisation of investment priorities at the sectoral and local levels and will attract wider interest in PPP projects from private partners (optional activity).
- **responsible: interested ministries, central Government administration bodies and local government units.**

## 6. MONITORING AND EVALUATION OF THE PPP POLICY

The implementation of the activities provided for in this document, and their outcomes, needs to be monitored and evaluated. This evaluation will cover the period from 1 January 2017 until 31 December 2020. The evaluation results will be presented to the Council of Ministers by the Minister in charge of regional development.

The principal indicators against which the effectiveness of the Policy's activities will be assessed by 2020 are:

- **Increase in the number of implemented PPP investment projects** – conclusion of at least **100 new PPP contracts**.
- **Increased share of the value of signed PPP contracts, 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 contracts in relation to the number of tender opportunities announced** to 40%.

The evaluation should lead to conclusions concerning the continuation/strengthening or alternation of the activities described in the Policy and be used as a tool for designing any necessary changes to the Policy.

Data source:

own data of the Ministry of Economic Development; "Public-private partnership in Poland. Experiences and prospects for the future" – Sobieski Institute, 2016, PPP MARKET REPORT – Assessment of the current state and prospects of the financial involvement of the private and public sectors in the development of public-private partnership in Poland" – Ministry of the Economy, 2013; National Road Construction Programme for 2014-2023 (with a perspective to 2025); National Railway Programme by 2023; Resolution on the adoption of the "Assumptions for plans to develop inland waterways in Poland for the years 2016-2020 with a perspective to 2030; "Mieszkanie plus" programme; Update of the "National municipal wastewater treatment programme 2015".