Update on best international practices in PPP with regard to regional policy issues.

Peter Snelson / Hatem Chahbani, Project Development Group - Atkins

European Transport Conference Strasbourg - September 2006

INTRODUCTION

The review was based on desk research and was carried out using all resources available to Atkins including the web, Atkins library and phone interviews with PPP centres in a selected sample of countries. It was felt important that the sample of countries to be investigated should allow wide variations over the following three key characteristics, expected to play major catalyst roles on the delivery of PPP transactions at the local level, to allow the study of their impacts:

i) Legislative Environment, including the general law (Common vs. Civil), procurement and concession Laws;
ii) Structure of the Government: level of decentralisation from Central to Sub-national governments, including in policy, planning and fiscal areas, and whether a State vs. Federal structure has an impact;
iii) Experience in the use of PPPs both at the national and sub-national levels.

Consequently, a sample of countries was selected and organised in two categories. A first category (Group A) representing the most successful PPP experiences and includes variations among the first and second criteria above. The countries selected were:

♦ Australia;
♦ Hungary;
♦ Netherlands;
♦ Portugal; and
♦ UK

The first four of the above countries were investigated in detail representing the main sources of the knowledge from which best practices were drawn. The fifth, the UK, was used as a benchmark, given its particular legal structure, and was used for example only.

The second category (Group B) included countries at the early stages of implementing PPPs with a mixture of failing and successful experiences. It was felt that the following set of countries would be representative of those at early stages of PPP implementation; where regional/local authorities are involved in the process with no clear rules of decentralisation and share of responsibilities; and where PPP legislation still to be improved:

♦ Croatia;
♦ Czech Republic;
♦ Romania.
As Atkins has been involved in recent years as Government Advisors for the development and implementation of PPPs in the above countries, the review of their PPP experiences was carried out purely from Atkins Library and drawing on Atkins experts’ personal project experience.

For each of the countries from Group A and B, the review investigated the situation in the ground through reviewing past projects focusing on the possible impacts of the above three characteristics as well as other unanticipated aspects revealed during the review. A summary of the review of the effects of each characteristic is presented below.

**LEGISLATIVE ENVIRONMENT**

The two main features of the legal environment that are most relevant to PPP transactions are the type of country general law and the scope and effectiveness of the law on procurement including the specifically designed concession laws.

The important variation among general laws is on the civil versus common laws, where the former is a characteristic of centralised states with high control over the economic activities and where economic actors (individuals or companies) do not have the right to perform an activity unless specified in the legislation as possible. Conversely, in common law countries they are free to perform any activity unless it is forbidden by the law.

The direct impact of this on PPP transactions is that, in the case of civil laws the possibility of concessions needs to be specified in the law for it to be possible. And once this is the case it has to be scoped and structured according to the law, often very prescriptive. Such precautionary approach limits the opportunities for contract innovation among the procurers and for better private sector delivery. It also often leads to delays in the implementation due to the required amendments and dispensations to the incumbent law to enable PPP transactions to take place. On the other hand, having a predefined ‘rules of the game’, concession contracts in such countries are much simpler and easy to administer and implement as they are understandable to all parties and do not require much use of the expert advice, which reduces the costs of the transaction. The reverse is experienced in common law countries, where a greater flexibility of the law enabled the introduction of more innovation, better delivery of service and a reduction in projects’ costs, thus a better value for money (one of the main objectives of PPPs). However, such greater flexibility often led to the involvement of greater number of intermediate service providers (e.g. need for more expert advice for the procurer, the sponsor and the lenders), thus increasing the costs of transactions. Also, more complex and voluminous contracts are often difficult to monitor and comply with, offering more opportunities for over estimation of project costs, over promising in the delivery of services and higher profits to the private sector to the expense of the ex-chequer, which raises the question on the value for money virtue of PPPs.

In addition, often in civil laws concession laws are introduced to enable PPP transactions and to define their scope and areas of use (e.g. type of services that could be procured under PPPs).

Among the countries reviewed only Australia and UK have common laws. The remaining including Croatia, Czech Republic, Hungary, Netherlands, Portugal, Romania and all have civil laws.

Both Australia and UK have been pioneering in introducing PPPs and have implemented several successful schemes. However, in some cases where innovation was required and where accurate forecasts are difficult to make or where service specifications and the associated metrics and criteria are not robust, were open to abuse and resulted in under performance, e.g. franchise rail services in UK, characterised by high prices, low safety and reliability performance.
In civil law countries experiences have been a mixture of success and failure with Portugal being the most advanced, having the longest experience with the use of PPPs and Romania on the other end of the spectrum. Here civil laws do not seem to have had any effects on the level of success of PPPs other than the effects of the cautious approach and the consequent delays in implementing PPPs. Also the required amendments to the Law in some cases to enable PPP transactions, has resulted in a shorter experience and limited use of PPPs.

In conclusion it seems that the opportunities for innovation and for fast implementation of PPP schemes enabled by the freedom inherent to the structure of common laws, when properly used, have resulted in more use of PPPs’ potential as an access tool to private sector funding (off balance sheet accounting) and a better and cheaper delivery of services through innovation, cost control and transfer of risks to the private partner. Conversely, the greater flexibility in common law requires more safeguards, as it is open to misuses and less predictable consequences.

**STRUCTURE OF THE GOVERNMENT**

The review has found that this criterion is probably the most important in the successful delivery of PPP transactions at the sub-national level. Combined with the length of the experience in use of PPPs, provides a full explanation of the stories behind success and failures. The Federal versus State Government structure as well as the Common versus Civil law, do not seem to have much impact on the level of delegation of decision powers and fiscal autonomy in relation to PPPs. Rather, it seems that countries with tight fiscal policies focused on controlling the levels of debt and borrowing, have been successful in implementing PPPs without incurring major contingent liabilities, essentially thanks to better planning and allocation of budgetary resources to ensure that the required funding for the delivery of services at the Sub-national levels are met. Examples of those countries include Australia, UK and The Netherlands, where Sub-national Governments are strictly regulated.

Hungary and Czech Republic, both ex-socialist countries have evolved from very centralised economies into much decentralised ones, leading to an emergence of a large number of very small municipalities. The self-government of such small municipalities is very weak in financial and professional terms and has limited bargaining-power in relation to the Central Government as well as private sector developers. Given virtually unlimited freedom to manage assets and to conduct businesses, Local Government operational budgets and mandated activities are constantly under threat. The fiscal stress at the national level and the consequent short budgetary allocations have made several Local Governments at risk of either borrowing beyond their capacity for reimbursement, which jeopardises their future fiscal stability, or under perform the services under their remits. The need for subsidising most of the local services that are now at world prices, with low users’ purchase power, has contributed to the failure of some PPP initiatives in those countries.

Both countries have been exploring ways of controlling Local Governments borrowing with little success and any proposal to monitor or control Local Government activity is viewed with suspicion. In Hungary as Central Government allocations are never sufficient to perform all tasks under their remits, municipalities are entitled to freely decide on raising loans or issuing bonds. However, loan debts or bond issued can not be secured with the coverage of Government budgetary or grant contributions or by the principal municipal assets. Municipalities may incur an annual debt (including loans and interests, bond issues, guarantees and sureties given and leasing) not exceeding its adjusted independent current revenues. The municipal council makes decisions on raising loans and the State Audit Office subsequently verifies the lawfulness of the borrowing. However, the real due diligence is that of the Lenders who have the real control on borrowing.
European Models for Municipal Debt Control

Municipal Debt control mechanisms in effect in most OECD and Council of Europe (COE) member states allow local borrowing for capital investment purposes but require liquidity loans to be paid back within the year. Only few countries use stock-based municipal borrowing limits, even when the total stock of municipal debt is counted against the Maastricht criteria. Examples of these restrictions include:\[1\]:

1. Restrictions on volume of borrowing and debt service ratios:

   UK: Credit approval ceilings are given each year by the government, the government defines a maximum borrowing amount. All sources of repayment are directly or indirectly controlled by the central government. Even the level of local capital spending is “suggested” by the appropriate ministry.

   Denmark: No municipal borrowing is allowed at all with a few exceptions. Municipalities must finance all of their expenses, including capital expenses, through current revenues. Budgets must be balanced. Automatic permission is granted for fee-based borrowing for public utilities and other priority investments in social welfare facilities, energy conservation etc. In certain economic situations, the Interior Ministry gives permission for discretionary borrowing to stimulate local economies, sets borrowing limits for real estate and fee-supported infrastructure borrowing on an annual basis.

   Germany: Each Bundesland has its own volume of borrowing limits and explicit approval is needed from the Land. Most commonly used are the projected operational surpluses that are to exceed projected capital expenses, including a mandatory “transfer” from the current account to the capital account.

   Poland and Czech Republic: 15% of current revenues may be used to fund debt service.

   Croatia: 20% of own resources may be used for debt service and the MOF needs to approve each loan.

   Ireland: Each municipal borrowing must be approved by the Minister who determines whether they need the loan and whether they can pay it back

   Austria: Each Land has a different set of criteria for debt needing higher-level approval, and differing absolute or relative limits

   Spain: The current account surplus may be used to finance the capital account with the Finance Ministry’s approval. Total municipal debt may not exceed 110% of annual revenues.

   Norway: Borrowing is allowed for investment only. The current budget may have amortization expenses equal to the annual cost of interest and capital payments.

---

1 Sources of information used:
   “The risks arising from Local Authorities Financial Obligations,” Draft Report by the Steering Committee on Local and Regional Democracy, no. 76, Council of Europe Publishing, August, 2002;
   “Recovery of Local and Regional Authorities in Financial Difficulties,” Local and regional authorities in Europe, no. 77, Council of Europe Publishing, August, 2002;
France: Operational surpluses and savings from prior years must exceed the annual burden of capital repayment. No other restrictions apply.

Italy: Municipalities must have balanced capital and current accounts. Interest payments may not exceed 25% of current revenues. Loans must have terms of at least 10 years. The State Treasury sets the maximum legal interest rate.

2. Restrictions on municipal guarantees:
Guarantees to third parties are allowed and not counted against debt limits in UK, Sweden, Czech Republic, and Finland.

Municipal guarantees are restricted to public purpose organizations, non-profit organizations, communal enterprises, or enterprises and institutions with municipal majority ownership in Belgium, Norway, Denmark, and Croatia.

Guarantees to third parties are counted as municipal debt and included in the limits on debt volumes Croatia, Denmark, France, and Austria.

3. Restrictions on collateral:
UK: no municipal asset may be used to guarantee debt, only cash flow.

Property may be used to guarantee municipal loans in Ireland, Norway, Finland, and Denmark. By “Bundesland” permission only in Germany, assets may only be purchased for public purposes, and sold only if they do not serve a public purpose.

Public sector assets may not be used as collateral in Belgium, France, Italy, Spain, and Portugal.

No restrictions on the use of municipal assets as collateral in Czech Republic, Poland, and Croatia.

4. “Bankruptcy” or debt adjustment elsewhere

Of 27 COE member states, only 5 have some type of procedure similar to bankruptcy adjustment. Only two, Hungary and Latvia, have actual legislation on file. In 22 COE members it is legally impossible to have a bankruptcy on the local level. There are functional equivalents to bankruptcy procedures in Switzerland, some German states and UK, i.e. administrators or trustees may be appointed to oversee reorganization and repayment plan (do not provide “protection” from all creditors).

In other countries such as Poland and Czech Republic, local governments are able to run budget surpluses to fund capital investment and borrowing, so far. The Czech and Polish Governments have ignored the possibility of debt adjustment, and conflicts with banks and bondholders have been handled based on loan agreements, contracts and civil law. The Government of Estonia is considering a debt adjustment procedure of some type based upon the Hungarian model.

The Regional Fiscal Policy Dilemma

One of the main difficulties in setting an appropriate regional fiscal policy in line with the regional development policy objectives, emanate from the difficulty to define an optimal level of control that the central government should have on local governments expenditures.
A very cautious regional fiscal policy, characterised with strict and tight budgetary rules, has the benefit of introducing discipline and diligence and therefore reducing the risks of future contingent liabilities, budgetary shortfalls or underperformance of service delivery. On the other hand the over control undermines the abilities of the local authorities to better forecast development opportunities and accordingly plan the required investments to support them. It also limits the access to available financial tools to balance emerging needs and most importantly to undertake investments with long term returns. By doing so it limits the scope of local managers to that of administrators of funds (budgets) with no or little decision making power. Little risks…little rewards.

A more relaxed regional fiscal policy, entrusting the Local managers in taking investment decisions and incurring liabilities as required while Central Government playing the role of coordinator, insuring that major debts are not undertaken at the same time by the various municipalities (which may lead to the country’s non compliance with Maastricht criteria)> This could probably be done on the basis of a fair system, where those municipalities that can demonstrate more robust investment business cases, stand better chance to be granted the right to borrow above a predefined ceiling². Such approach has to consider both the socio-economic viability of the investment as well as its future impacts on municipal accounts, both appraised over the same period of time³. Such policy allows a highly decentralised decision making that better meets the local needs while ensuring overall solvency at the country level. Such approach is nevertheless difficult and costly to administer as it requires the Central Government review of all proposed municipal investments, to be able to prioritise them according to the criteria above. This however, could be eased through involving the different levels of government in filtering and prioritising the proposed investments, (e.g. at the regional, or agglomerations of municipalities levels). A second difficulty relates to the difficulty of long term budgetary forecasting. In particular, the difficulty of forecasting the municipalities’ long term revenue streams as well as forecasting the returns of the investment itself over the same period. This is necessary if the long term impacts of investments on municipal accounts are to be used as a prioritisation criterion.

**EXPERIENCE IN THE USE OF PPP AT THE LOCAL LEVEL**

Experience with PPPs at the Sub-national level varies, ranging from those at the very embryonic stage to the more advanced ones with longer experience.

The Australian PPP experience is generally considered to be successful, and is well advanced particularly in the Transport sector. As one of the pioneering countries in introducing PPP, Australia established a robust PPP legislation and policy frameworks from the outset which created a favourable environment for the private sector involvement particularly from the international major investors, thus providing the required level of competition to ensure best value for money.

One of the catalysts of success of the Australian PPP transactions at the local levels is the tight budgetary discipline leading to low debt levels among local authorities which led to their high credit worthiness and to high market confidence. However, to achieve this, central and local governments adopted minimum debt level policies favouring over many years fully privately finance schemes. This explains the concentration of PPP schemes in urban areas where high demand secures high and fast returns on investments. This approach may not be applicable to other countries where infrastructure is mostly supply driven, aimed at driving the local and regional economic development.

In Hungary municipalities have already experienced the use of BOT schemes in waste water management. The results were mixtures of success and failure. In general terms municipalities of bigger size, more stable sources of revenue and with highly skilled and knowledgeable public sector procurement officers in contract negotiation and management have carried out better deals than smaller municipalities lacking such skills.

---

² E.g. individual ceilings as a proportion of the municipalities’ annual budgetary revenues.
³ Defined as the time required for both financial and economic returns on investment to be achieved.

©Association for European Transport and contributors 2006
In legal terms, Hungarian municipalities may independently enter into PPP contracts without prior central government approval. In practice, there have been minor PPP projects initiated by municipalities, namely in public utility services, though these do not qualify as PPPs in the true sense (BOT). Not having the right of full sale of the utilities, municipalities often outsource the related services under a PPP contract to a service provider company, in which the municipality retains 49% of ownership.

In summary, traditional PPP projects are rare among Hungarian municipalities although there have been a number of initiatives in various areas of development aimed at getting the private sector involved in one form or another.

The Dutch experience with PPPs is very recent and was initiated with the creation of PPP centre in year 2000 to pave the way for government departments to use PPP as a method of achieving value for money services procurement. The Dutch Government has adopted a very precautionary approach to municipal involvement in borrowing to ensure control over the country overall debt and deficit levels. In practice municipalities can freely borrow in the open market, issue bonds and guarantees under the condition that the currency is Euro (requirement by law) and after approvals from the province or the central government. In addition, to guarantee a loan for an investment, the European state aid rules apply.

The Central Government intervenes to control municipal and provincial future debt levels, only if the national EMU-shortage is in danger. Information about the EMU-shortage of municipalities and provinces is regularly collected by the Central Bureau of Statistics. As a consequence, The Netherlands as well as its provinces and municipalities enjoy credit rating of triple A.

Such cautious approach, while ensuring local authorities’ solvency, have though limited their PPP experience to projects with highly predictable risk profiles requiring limited guarantees and thus limited risk transfer to the private partner.

In Portugal PPPs have become useful tools for the government to develop public infrastructure. Shadow toll road concession schemes were the first to be procured in this way. This allowed a rapid programme of road construction to be achieved at a time when public sector budgets for new capital investment were heavily constrained. The objective was not only to enhance the availability of the road infrastructure, but also to compensate for regional economic imbalances and generate employment opportunities, with the smallest possible initial financial contribution from the government.

After the success of these infrastructure projects, the focus switched to the construction of football stadiums mostly for the Euro 2004 games. Currently programmes for hospitals and rail infrastructure are underway. Further opportunities will also arise as the Lisbon Metro is being expanded to link in with various overland commuter lines and the Lisbon Airport.

At the local level, PPPs have already been used by Portuguese Municipalities for the provision of water supply, waste treatment, energy (wind farms) and urban public transport services. Other services are still provided through corporations, including local transport (metro, tram, bus companies), where the state holds the majority of shares. Though, given the social orientations, most of such corporations’ services are subsidised and rarely break even, where the subsidies are co-funded by the European Community.

The decision making is entirely carried out by Municipalities who have full freedom by Law to enter into PPP agreement with a private partner, as long as no Central Government contribution is required. The only restriction is on direct borrowing or guaranteeing loans on behalf of the private partner. These are regulated by rules provided in the Budget Law which issues a yearly ceiling on maximum borrowing as a function of the municipality previous year budget and the expected revenue streams for that year.

PPPs while supporting more efficient use of scarce public resources, their use have been in some cases abused in Portugal, leading to commitment of public sector budgets for a long period of time,
thus reducing future years’ budgeting flexibility, a major concern for a small country integrating a monetary zone, like Portugal, that regards fiscal policy as the sole stabilization policy under its control.

In **Czech Republic** the development of public infrastructures, is still carried out by the public sector with support from budgetary funding. The use of PPP as a procurement tool has so far been limited to concessions for the operation and maintenance of public services and facilities (waste collection, treatment and incineration, street lighting, sewage systems)

A legislative framework for PPP is being finalised, aiming defining the competences of the central and local governments and to create the required legislative base (Code of Commerce, Public Procurement, Concession Law, Bankruptcy Law).

In 2004 the Czech Government’s PPP Policy was officially approved, and a PPP legislation (Concession Act) has been submitted for approval to the Czech Parliament. At the municipal level, budgetary rules are still to be devised to allow PPP transactions to be carried out in full harmony with EU rules on public debt and budget deficit.

The Czech Republic is required to comply with the EU Maastricht Criteria. To do so it will need to monitor all PPP transactions as a source of debt and long term commitment of public funds. This is an issue facing many EU and non-EU countries with highly decentralised fiscal policy and there are no effective accounting rules to close loopholes. The main underlying reason is the uncertainties surrounding the year on year spending and the difficulty of long term budgeting. Meanwhile, PPPs continue to be used to bypass expenditure controls, and to move public investment off budget and debt off the government balance sheet. Moreover, resort to guarantees to secure private financing can expose the government to hidden and often higher costs, compared to traditional public financing.

**CONCLUSIONS**

In summary, the review of PPP frameworks, Local Government PPP experiences in Group A and B countries, concluded that there is no single approach to this. Our understanding of the PPP market worldwide supports this and therefore designing a one single ‘best practice’ recipe to all countries when discussing the possibility of implementing PPP, is simply not feasible.

The following general conclusions are, though, applicable to all environments:

- Central Government support to Sub-national Governments in structuring and implementing PPPs has often improved their deliverability. In general terms, it is most advantageous to combine the PPP experience at the Central Government with Local Government knowledge of the needs and priorities of its constituency. When funding options are considered, in particular when borrowing is involved, Central Governments should be consulted as subsequent future liabilities concern the whole nation.

- As a downside of tight fiscal policies, development opportunities and costs saving from private sector partnerships may be missed out by Local Governments, in favour of highly profitable schemes that do not require subsidy or with highly predictable risk profiles requiring limited Government guarantees. Thus limited risk transfer to the private partner and limited added value.

- The market performance seems to be one of the key motivator of private sector involvement. This is the result of the country credit worthiness, stable economy and experienced Procurer with PPPs. Thus, PPP are less likely to be used at early stage of country development (developing or early transition countries).

- In all countries reviewed, local taxation represents a marginal part of the Local Governments’ revenues, relying mostly on transfers from Central Governments. Thus local revenues are not sufficient to guarantee loans, and consequently full fiscal autonomy is not feasible and should not be given to Local Governments at the current set up.
The involvement of international investors has always improved the value for money of PPP transactions through bringing in international expertise in identifying risks and mitigating them up front, besides increasing competition and bringing more innovation. On the other hand the high interest from international investors often reflects the countries’ high credit rating as well as the adequateness of the legal and PPP frameworks in place and the capacity of the delivering authorities. Failing experiences were mostly attributed to unrealistic bids, weak business cases, and inappropriate assessment, mitigation or transfer (optimal distribution in line the rewards) of risks.

Appropriate allocation of risks between the public and private sector, underpins any successful partnership, and the identification of non-mitigated risks and their appropriate pricing is crucial to a fair and successful deal. Competition and transparency is the way to fairness, as estimating risks is subjective and therefore only the market perception (market value) can be relied upon.

Commercial risk (demand forecasting), remains one of the darkest areas, where more developments are required, often requiring Procurer commitment to support, through making arrangements, such as revenue deficiency facilities, as a critical step in ensuring the financial existence and viability of some Projects and in avoiding risk premia, which lenders and investors would otherwise require.

Experienced technical, traffic, financial and legal advisors is important to both the private sector and the Procurer, particularly at the Sub-national level in order to achieve satisfactory allocation of risks and appropriate mitigation measures put in place.

Notwithstanding the high economic and political priority of some Projects, the viability of the PPP were often undermined by underlying economics, which in practice does not bear out the commercial risks (optimistic revenue forecasts) at the time of decision to build schemes.

The development of a PPP market requires first the development of experience, which takes time and may require less focus on delivering high value for money for the very early PPP projects. The value for money criterion has not always proven to be a sufficiently strong driver of PPP programmes for two reasons: firstly, too much time and money is often spent in the early stages of potential projects on discussing the prospects for realising value for money and secondly, the benefits of PPP increase with the experience of public sector managers and private sector service providers. The value-for-money-criterion stimulates high focus on individual projects, while the development of a broad and deep market for PPPs require the creation of pipelines of projects. Learning costs in early projects is compensated by more value for money in later projects.

PPP has been used as an effective tool for a rapid development of infrastructure and the improvement of service to end-users. However, effectiveness is not enough and the real goal is economic efficiency through better value for money.

PPP projects with clearly defined outputs (service requirements) tend to present better results from the public sector viewpoint: shorter tender processes, better price conditions (figures lower than expected or presenting lower increases relative to other projects) and better meeting deadlines. It is spurious to include input specifications, which prevent private sector innovation and efficient management.

In some PPP schemes — such as hospitals, rail and tram — adequate sharing of risks induced a split of responsibilities and payments between two concessionaires: one that provides an infrastructure for a long term (typically 30 years) and one that provides a service (for a much shorter period) using that infrastructure. That is the model for hospital PPPs, as the contractual arrangements for clinical services can only be agreed for a period shorter than that needed for a whole-life-casting of the infrastructure. That is also the model for rail and tram PPPs, where infrastructure and rolling stock is subject to availability risk, and transport service is subject to demand risk (for shorter periods, as Government and Local authorities cannot commit themselves for long periods on some factors that affect the demand risk).
One of the key issues in many of the countries reviewed is the need for careful accounting of aggregate long-term Government commitments. Falling short of a genuine long-term budgeting, which no country has ever implemented, a specific appropriation process for PPPs has two direct effects:

i) It enables better evaluation of the affordability of every new project. In the cases where payments by end-users are not enough for achieving the long-term financial balance of the project, the characteristics of the PPP scheme should be defined taking into account the potential availability of public funding for the whole life of the project, or even some degree of public subsidy during the initial years.

ii) It reduces the concerns about eventual transfer of costs from current to future generations. The particular time schedule of investments and payments in PPP contracts — with payments typically starting only after the completion of infrastructure, several years after signature of contracts — implies that these contracts, if improperly dealt with, are a powerful instrument for keeping public expenses out of the books, for under-evaluating them and for biasing decisions in favour of PPP schemes that accelerate investment and delay payments by the public sector to the private partners. This creates the possibility of undertaking inefficient projects, or efficient projects that are too much of a burden for future generations to pay, future generations that were not included in the decision process.

The most common issues that have been encountered during the procurement and development of Public Private Partnership projects, which have often resulted in poorly structured contracts, lengthy and costly procurements, high bidding costs and reduced value for money, include:

i) Inappropriate levels of risk transfer (either too little or too much);

ii) Inappropriate legal codes;

iii) Poorly defined procurement methodologies and a lack of standardisation;

iv) Poor co-ordination between Government departments and agencies;

v) Insufficient consultation with key Stakeholders at an early stage;

vi) Reluctance to make appropriate use of professional advisers;

vii) Lack of public sector commitment to PPPs;

viii) Continued focus on input specifications rather than output specifications; and

ix) Over-optimism with regard to third party revenues.

The role of stakeholder consultation in the PPP development process is a fundamental process enabling policy makers to engage with their communities to ensure that the citizen's needs are 'placed at the centre of service delivery'. In some countries at early stages of implementing PPPs, there is often a lack of understanding over the concepts of 'service delivery performance' and 'technical standards' as applied to works. There is an assumption that rigorous application of technical standards would automatically deliver quality services without the need to measure the perceptions of Stakeholders and the ordinary users.

European countries are required to comply with the EU Maastricht Criteria, requiring the Governments to monitor all PPP transactions as a source of debt and long term commitment of public funds. This issue is particularly relevant to countries with highly decentralised fiscal policy, fostered by the uncertainties surrounding the year on year spending and the difficulty of long term budgeting. Meanwhile, PPPs continue to be used to bypass expenditure controls, and to move public investment off budget and debt off the government balance sheet. Moreover, resort to guarantees to secure private financing can expose the government to hidden and often higher costs than traditional public financing.

An internationally accepted accounting and reporting standard could promote transparency about the fiscal consequences of PPPs, and in the process make increased efficiency rather than a desire to meet fiscal targets as the main motivation. In any event, as PPPs become more commonplace, market analysts and rating agencies are developing the expertise to assess the fiscal risks they involve, and in particular the consistency of future commitments.
under PPPs and contingent liabilities with debt sustainability. Thus any misuse of PPPs is unlikely to escape market scrutiny for long.

♦ The issue of burden imposed on future budgets by the mandatory disbursements as well as the reduced flexibility in future budgeting has not been dealt with the latest EUROSTAT amendments nor there are any mechanism at present allowing for the monitoring or regulation of the acceptable levels of commitment of future budgets due to long-term agreements, such as in PPPs, leaving many transition Government unable of monitoring municipal debt levels and rendering difficult the compliance with EU Maastricht criteria.

♦ PPP regulations provide exemptions on public procurement rules, in situations where there are insufficient bidders to create a competition. This often led to superfluous negotiations, not to the best advantage of the Government.