



MedTOWN

Regulatory and legal framework for public procurement (PP) and specifically for co-production in public-private partnerships (PPP) with agents of the social and solidarity economy, Greece

MedTOWN Project

Co-production of social policies with social and solidarity economy actors to fight poverty, inequality and social exclusion.

QUESTIONNAIRE PROJECTS PHASES AND LOCAL PARTNERS. MEDTOWN PROJECT. 3rd LOT.

DEMOSTRATIVE ACTION. Name: MedTOWN PAGGAIO

MUNICIPALITY, REGION AND COUNTRY ACTION: Municipality of Paggaios, Region of Eastern Macedonia and Thrace

BRIEF DESCRIPTION OF CONTEXT:

ARRAY TO BE FILLED IN:

Nº	ASPECTS TO BE REPORTED	ACTIONS	OTHER ACTIONS/ DISCLAIMERS	OTHER DISCLAIMERS
1 ¹	Existing applicable legislation governing PP and PPPs	The institutionalization of PPPs took place with the passing of the Law 3389/2005 , which defines the broader institutional and legal framework for the operation of PPPs in Greece and delimits their scope. The law provides for the establishment of two administrative bodies, the Interministerial Committee for Public-Private Partnerships (DESDIT), with the main responsibilities of policy planning for the management of projects and the provision of services with the participation private entities. And the Special Secretariat for Public and Private Sector Partnerships (EGSDIT), with the main responsibility of assisting the	According to Article 2 of Law 3389/2005, activities which according to the Greek Constitution belong directly and exclusively to the State, in particular national defence, policing, the administration of justice and the execution of sentences imposed by the competent courts, cannot be the subject of a Partnership.	This law established the Interministerial Committee for Public-Private Partnerships, which is responsible for the implementation of the projects, as well as the Special Secretariat for Public-Private Partnerships, which has as its main target, among other things, the facilitation and support of Public Bodies in the award procedures.

¹ Especially related to the Social Solidarity Economy (SSE).

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		<p>Commission's work. The law includes the provisions and general principles that should be met during the process of awarding projects or providing services to private individuals, describes the negotiation and award process, and defines the criteria for excluding candidates from private entities. Finally, the contractual framework of the partnerships is outlined and the special arrangements of various legal, tax, etc., subjects are defined.</p> <p>According to Law 3483/2006, amendments are made to the financial instruments of the which can be used in the context of PPPs, with the aim of reducing dependency of public bodies from borrowing.</p> <p>Law 3894/2010 "Acceleration and transparency of the implementation of Strategic Investments", known as fast track, aims to improve the investment environment through the adoption of flexible procedures for the rapid issuance of licenses required for the implementation of investments. Obstacles that are a brake on large investments in Greece are bypassed, such as bureaucracy, the complexity of the legal and institutional framework that</p>		

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		<p>governs investments in our country, opacity, factors that discourage Greek and foreign investors.</p> <p>Laws 4412/2016 and 4413/2016 specialize even more in Public Contracts for Works, Supplies and Services, harmonizing Greek legislation with the European counterpart. Law 4412/2016, as modified and in force, is the prime public procurements' instrument for the public sector.</p> <p>Law 4635/2019 refines even further the Greek legislation on PPPs but gives more weight to the private sector and strategic investments, which accelerate licensing for private projects.</p> <p>Law 4864/2021 led to a significant upgrade and acceleration of PPP projects. Its biggest innovation is the fact that PPPs are included in the "Strategic Investments". It is an institutional change, aiming at making Greece attractive to investments, since PPPs are used as a tool of economic and developmental stimulation that works with multiplier benefits.</p> <p>Law 4342/2015, article 24 refers to update of the legislation about the Green Public Procurements (GPPs) and is accompanied with GPPs' action plan</p>		

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		(Government Gazette 466/B/8-February-2021).		
2	Purpose of the regulation	According to the explanatory memorandum of law 3389/2005, it is stated that the exploitation of the experience, know-how, resources and, in general, the capabilities of private entities through collaborations with the Public. It highlights as an appears to be a complementary solution for the effective execution of projects and the provision of quality services to citizens. Furthermore, the PPs highlight the transparency and the protection of competitiveness, with respect to public spending. PPPs regulation protects the interests of both entities (public and private).		
3 ²	Consideration-Theoretical Definition PP (According to regulation)	According to Greek laws, “public contracts” and “works, service and supply contracts” means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities/contracting entities, respectively, and having as their object the execution of works, the supply of goods or the provision of services. Depending on the subject-matter of the	The Single Independent Public Procurement Authority is responsible for compliance with the above, with the aim of developing and promoting the national strategy, policy and action in the field of PP, ensuring transparency, efficiency, coherence and harmonization of the procedures for the award and execution of public contracts with national and European law, the continuous improvement of the legal framework for public procurement and the monitoring of compliance with it by public	As stated previously.

² Necessary for making comparative terms of equivalent concepts

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		<p>contract to be awarded, the different types of public contracts are distinguished into:</p> <ul style="list-style-type: none"> - works contracts, - supply contracts, and - service contracts. The latter are divided into: <p>contracts for the preparation of studies and the provision of technical and other related scientific services.</p>	bodies and contracting authorities.	
4	Scope of application of PP legislation	In terms of administrative and geographical levels, PPs can be implemented at all levels (Supranational, State, Regional, Local).	Public	As mentioned above, the Greek Constitution prohibits the creation of cartels which have as their object activities which directly and exclusively belong to the Greek State.
5	Stakeholders Involved PP	<p>According to the 2005 Law, the stakeholders involved in PPs are:</p> <ol style="list-style-type: none"> 1. public 2. local authorities and local associations of municipalities, 3. legal persons governed by public law, 4. public limited liability companies whose entire share capital belongs to the above categories, 5. legal entities of the private sector. 	<p>The tendering procedures for the award and implementation of PPs are carried out through a special, competitive procedure, which is a mean of transparency and direct monitoring. Through process monitoring, the following are achieved:</p> <ol style="list-style-type: none"> 1. The biotic description of the project that is the subject of the Partnership and its technical characteristics. 2. Indicative budget. 3. Operating and maintenance costs. 4. Timetable for implementation. 	

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		Public and private entities co-sign the PPs.	5. Proposed form of partnership. 6. A value for money test that will justify the choice of the partnership in relation to the implementation of the project with public funding. 7. Other issues that may significantly affect the implementation of the project, such as, legal, environmental, etc.	
6	Administration - competent legislative body PP	<p>In addition to the Greek Government, regulatory responsibilities are held by the Interministerial Committee for Public-Private Partnerships, which consists of the Minister of Development and Investments, the Minister of Finance, the Minister of Environment and Energy, the Minister of Infrastructure and Transport and the Minister of State, responsible for the operational support of the Prime Minister in the applied programming of public policies. Its responsibilities are:</p> <ol style="list-style-type: none"> 1. approves the inclusion of consortiums under the provisions of this Law or withdraws such approvals; 2. decides on the inclusion in the Public Investment Program of the contractual consideration payable to private entities, 3. decides whether or not the State will participate in the financing of 	<p>The Greek Government is responsible for legislating the corresponding law framework. The Interministerial Committee for Public-Private Partnerships specializes in government policy for the execution of projects and the provision of services with the participation of private capital. The Single Independent Public Procurement Authority is responsible for the control of its observance by public bodies and contracting authorities.</p>	<p>The Single Independent Public Procurement Authority enjoys operational independence, administrative and financial autonomy and is not subject to control or supervision by governmental bodies or other independent or administrative authority. The Authority is subject to the control of the Hellenic Parliament.</p>

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		<p>the construction of the works or the provision of the services which are the subject of the consortium,</p> <p>4. takes any other relevant decision.</p> <p>Also, the Single Independent Public Procurement Authority, which ensures transparency, efficiency, coherence and harmonization of the procedures for the award and execution of public contracts with national and European law.</p>		
7	Administration - competent executive body PP	The Interministerial Committee for Public-Private Partnerships along with the Single Independent Public Procurement Authority.	The Interministerial Committee for Public-Private Partnerships defines the national policy and strategy while the Single Independent Public Procurement Author advises on the legality of any provision of draft law or regulatory act concerning public procurement and participates in the relevant legislative committees.	
8	Measures promoting or encouraging PP and PPPs	<ol style="list-style-type: none"> 1. Timely start of the payment of payments or fees paid by individuals. 2. Avoidance of cost increases, which are usually borne by the individual. 3. Possibility of risk-sharing also in the public sector and not only in private individuals. 	Everything is established and granted through the aforementioned Greek laws and the European legislation.	-

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		<p>4. Very carefully designed methodology of payback mode in PPPs, incorporating all those parameters that ensure the benefit for the public.</p> <p>5. Payment of additional funding, if needed.</p>		
9	Other PP and PPP related legislation	<p>Ministerial Decisions have been issued from time to time concerning PPP projects that are being implemented and PPs that have been signed. These Decisions refer to regulatory issues of their implementation, such as the amendment of their general terms or the establishment of an Evaluation Committee of PPPs and PPs. Also, decisions of Greek Courts and the Hellenic Court of Audit (ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ) have been issued, which concern individual issues, and serve as law precedents.</p>	<p>The issuance of these Decisions by the Greek Ministries and Courts, is part of the framework of maintaining the transparency of the procedures and the general and public interest. Therefore, they aim at the implementation of procedures and projects that serve the Greek society.</p>	
10	Possibility of creating new PP and PPP legislation	<p>Case-law of the courts has ratified many judgments which can be a harbinger of new legislation.</p>	-	
11	Possibility to amend existing legislation PP and PPP	<p>As mentioned previously.</p>	-	
12	Problem Identification/Regulatory implementation PP and PPPs	<p>Specific problems and gaps left by the current legislation in Greece, concerned the harmonization with European</p>	<p>The original Law, 3389/2005, acts as a framework law and does not exhaustively regulate all issues, nor does it implements</p>	<p>PPs are applied through the Law 4412/2016 as modified and in force. It</p>

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		<p>directives and European legislation. In this respect, Laws 2212/2016 and 4413/2016 were enacted, which established a single legislative framework on procedures for the award of works and services concessions by contracting authorities and contracting entities, but also brought into line with Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.</p>	<p>unified solutions to different projects and services. On the contrary, encourages the elaboration of ad hoc solutions that are adapted to the specific needs of each project given its uniqueness and specificity.</p>	<p>envisages use of electronic tendering and in order to avoid technical fragmentation and enhance competition, it usually “serves in favour” of larger companies, rather than local and smaller ones, no matter the quality. This issue is expected to be resolved through the new modification of the legislation which allows higher contracted amounts to be directly awarded to eligible legal entities.</p>
13	<p>PP, PPP and other regulations applicable to the Demonstration Action (Concrete Project)</p>	<p>-Not applicable</p>	<p>-</p>	
14	<p>Concession Regulations</p>	<p>- Concession is envisaged through the Law 4555/2018 (mobile assets and land/buildings can be provided to SSEs)</p>	<p>-</p>	
15	<p>Regulations Regulation of aid and subsidies</p>	<p>For the most part in Greece, PPPs are carried out for the creation of infrastructure and public utility projects, without there being any obvious involvement of the SSE in this process.</p>	<p>-</p>	

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16	Regulating other possible forms of PPPs	-	-	
17	Examples of public procurement of co-production public policies with PPPs and SSE actors	-KOISPE Kavallas takes advantage of special provisions of the Law 4412/2016 for KOISPE and inclusion SSEs to have open electronic tenders (PPs) addressed only to such entities, excluding the participation of private companies (articles 20 and 107-110 of the Law 4412/2016).	-	
18	Other issues to highlight	PPP largely transfer the investment risk, from the public to the private sector, as the private sector is called upon to ensure the availability of funds for the completion of the project, while in case this is not possible, then the intervention of the state is possible, in exchange for the transfer of part of the ownership of the project. This fact is linked to the impact of PPPs on the credibility of the state apparatus, and the financial capabilities of the state to intervene in case of facing challenges in the search for funds and funding from the private individual.		

CHALLENGES & RECOMMENDATIONS:

Challenges:



One of the most characteristic disadvantages of PPPs is the case of their application in critical social sectors and infrastructures, such as the health sector, as in this case the reactions of the social actors involved are increasing, while at the same time the prioritization of profitability on the part of the individual and the possible transformation of healthcare from a social good into a marketable product, creates negative impressions on the recipients of the services, resulting in a decrease in social trust in the service in question.

The participation of the private sector in the provision of social services can cause an increase in the cost of these services for the public sector, since in the case of the private sector not only the cost of providing the service is calculated, but also the profit **margin**. At the same time, when participating in PPPs, the private body is strengthened in negotiations vis-à-vis the state, especially during the implementation of large-scale projects that are necessary for social and economic activity. As a result, the cost of a PPP can be significantly increased compared to a simple public contract, as the timeframe for the implementation of the PPP may amount to the entire duration of the life cycle of the project, with the result that during its transfer to the public sector, the repayment of the agreed amount is required, and the investment of further funds for the renewal of the project.

In a PPP, as the private entity invests (when such funding is (usually) not available by the public) and gains from the proceeds of the investment, it is crucial to carefully calculate the payback mode and methodology. Such include investments in infrastructure, energy production and storing and energy saving projects, etc.

MEASURES TO BE IMPLEMENTED:

Mitigation of the economic impact of delays and renegotiations on PPPs' costs borne by the public partner.

The institutional and legal framework to be fully adapted to the needs of EU co-funded PPP projects.

OTHER INTERESTING SUGGESTIONS/NOTES:

The main benefits from PPPs for the public sector are:

- The possibility of implementing projects with a small financial contribution.
- The ability to speed up the implementation of the project.
- Potential tax benefits.
- Benefits that arise at the level of the economy from the implementation of large-scale projects.



- Social benefits of running the projects.
- Low investment risk factor.

IDENTIFIED CONFLICTING ISSUES (if any):

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EXAMPLES OF ACTIONS DEVELOPED IN THE FIELD OF SSE IN THE COUNTRY, REFERENCES AND HOW THEY HAVE BEEN DEVELOPED (if any):

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