

PPPs: a critique of the Green Paper

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1. Introduction

A Green Paper on PPPs was published by the EC (DG Markt) on 30 April 2004¹. It is related to a series of papers that seek to develop the Commission's position on how the private sector can operate in public services. These include reports from DG Markt, DG Regio and Eurostat (the statistical arm of the EC) that seek to encourage PPPs as a way of raising investment, through financial and administrative incentives, with the encouragement of private interests which stand to gain from PPPs. Other public interests concerns are not addressed by these approaches, but are of great importance, including the fundamental question of whether PPPs are a better way of financing investment public services than the public sector.

2. One-sided approach: promoting PPPs

The background to the Green Paper is a series of initiatives aimed at extending the role of the private sector in public services, promoting PPPs, and especially ensuring that PPPs have access to public funds. These initiatives have come from a number of divisions of the EC, with the support of the private sector. They are motivated by a wish to expand the internal market into public services, use PPPs as a way of avoiding fiscal restraints, and providing the private sector with more business.

2.1. Extending internal market into public services

The main origin of the paper is DG Markt's current strategy for developing the internal market of the EU, set out in May 2003, which prioritises public services as the next sectors for liberalisation². Part of that strategy is "to facilitate public-private partnerships", based on the belief that "The private sector will play an increasingly important role in financing infrastructure and in modernising our vital services and ensuring that they are affordable and of the highest possible quality." The strategy promised a Green Paper to "ensure that such partnerships are compatible with public procurement rules", as well as to clarify the relationship between PPPs and state aid rules, as part of a general commitment to review EU legislation in order to facilitate the greater role of the private sector in public services.³ The paper also addresses the issue of the current exemption from procurement rules of concessions, which are the oldest form of PPP: this has been the subject of previous communications from the EC.⁴

2.2. Promoting PPPs in accession countries: accessing EC funds

DG Regio has also published papers that are concerned to support and facilitate the use of PPPs, especially in new member states and accession countries, so that the grants for investment in environmental and transport infrastructure can be available to PPPs. The first DG Regio paper, in 2003, was a guide to "developing successful PPP projects in the candidate countries" so that they were compatible with the rules for providing ISPA funds, stating that "The European Commission has an interest in promoting and developing PPPs within the framework of the grants it provides"⁵. In June 2004 DG Regio published a collection of case studies intended to demonstrate that "it is possible to successfully manage these constraints [of ISPA and cohesion fund rules] and integrate the needs of all parties".⁶

¹ Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions. COM(2004) 327 final. Brussels 30.04.2004 .

http://europa.eu.int/comm/internal_market/publicprocurement/docs/ppp/greenpaper/com-2004-327_en.pdf

² Internal Market Strategy Priorities 2003 – 2006 . Communication From The Commission May 2003

http://www.europa.eu.int/comm/internal_market/en/update/strategy/index.htm

³ Speech by Commissioner Frits Bolkestein Member of the European Commission in charge of the Internal Market and Taxation , at the 3d annual Public-Private Partnership Global Summit Holland, Noordijk, 08 November 2002: "European Commission's current policy on public-private partnerships and its future projects"

http://europa.eu.int/comm/internal_market/en/speeches/021108-bolkestein_en.htm

⁴ Commission Interpretative Communication on Concessions in Community law, OJ C 121, 29.4.2000, p. 2.

http://europa.eu.int/eur-lex/en/archive/2000/c_12120000429en.html

⁵ Guide to Successful Public-Private Partnerships . DG Regio March 2003

http://europa.eu.int/comm/regional_policy/sources/docgener/guides/pppguide.htm

⁶ Resource Book On PPP Case Studies. DG Regio June 2004.

http://europa.eu.int/comm/regional_policy/sources/docgener/guides/pppguide.htm

2.3. Eurostat: easing conditions for fiscal exemption

A key motive for public authorities' interest in PPPs, as stated in the green paper, is that PPPs are seen as enabling governments, constrained by the EU's own fiscal rules, to make more investments in public services: *"In view of the budget constraints confronting Member States, it meets a need for private funding for the public sector..."*.

The problem however has been a lack of clarity over the circumstances in which PPPs are officially recognised as being outside the categories of public borrowing and public assets and debts that are constrained by the EU rules. This has been considerably eased, for supporters of PPPs, by a ruling by Eurostat, the Statistical Office of the EC, in February 2004, that the assets involved in a PPP should be classified as non-government assets, and therefore recorded off balance sheet for government, if the private partner bears the construction risk, and the private partner bears either availability or demand risk.⁷ This is an easy requirement – availability risk simply means that the private sector accepts responsibility if its own asset stops working at a time when it is needed.

2.4. EC support for PPP financing of international transport links

The EC itself is encouraging PPP schemes as a way of financing the large-scale capital investment needed for the planned trans-European networks. A report from the commission in 2003⁸ proposed that more use could be made of concessions for this purpose, referring to historical precedents. This report saw the purpose of the Green Paper on PPPs as being *"to launch a major public consultation regarding the rapid development of various forms of PPP and the legal regulation of public contracts through Community law."*

2.5. Private sector encouragement

The expansion of PPPs is naturally supported and encouraged by the private companies that gain from the growth in such projects, especially in sectors such as water and construction of transport links such as roads and tunnels. The market for the private sector grows as PPPs replace public sector investment and operation, and this is an especially attractive market where it can be combined with government guarantees that secure the returns on investment, and with access to EC level grants that increase the total value of schemes. A good summary of this market-seeking approach can be seen in the paper published by PriceWaterhouseCoopers in June 2004⁹, which sees PPPs as an important market, seeks greater certainty about EU rules on procurement and funding in relation to PPPs, and recommends that the EU funds the creation of special PPP units, and a central EU task force to assist member states *"tackle the issues involved in integrating EU funding and grant requirements with private sector finance and PPP approaches"*.

2.6. The other side: economic and social concerns with PPPs

This encouragement for PPPs however ignores a range of concerns about PPPs based on public interest considerations. Most fundamentally, there are questions about whether PPPs should be preferred to public sector investment and operation of services, and the need to evaluate the social and economic impact of the risks and future liabilities created by PPPs. There are a number of specific public interest concerns: about the way PPPs transfer the costs of paying for investment from present generation to future generations; about the dangers of fragmenting, casualising and worsening conditions of employment of public service workers employed in them; about the transparency of the processes by which PPPs are established, operated, and

⁷ New decision of Eurostat on deficit and debt Treatment of public-private partnerships 11/02/2004
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=STAT/04/18&format=HTML&aged=0&language=EN&guiLanguage=en>

⁸ Developing the trans-European transport network: Innovative funding solutions; Interoperability of electronic toll collection systems: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the widespread introduction and interoperability of electronic road toll systems in the Community. COMMUNICATION FROM THE COMMISSION Brussels, 23.4.2003. COM(2003) 132 final 2003/0081 (COD).
http://europa.eu.int/comm/transport/themes/network/doc/com_2003_0132_en.pdf

⁹ Developing Public Private Partnerships in New Europe. PriceWaterhouseCoopers. May 2004 .
http://www.pwcglobal.com/ie/eng/about/svcs/corp_finance/pwc_ppp04.pdf ; an executive summary is at
[http://www.pwcglobal.com/Extweb/service.nsf/docid/6FDD654BE69A4B3385256BDC00527C30/\\$file/pwc_PPP_Exec_Summ.pdf](http://www.pwcglobal.com/Extweb/service.nsf/docid/6FDD654BE69A4B3385256BDC00527C30/$file/pwc_PPP_Exec_Summ.pdf)

terminated, including the dangers of corruption; and about the comparative economic consequences of PPPs and public sector options.

2.7. Green Paper and beyond

This paper starts with some comments about the Green Paper itself and some of its recommendations, and then raises some key issues concerning PPPs, including the need for an assessment of how PPPs impact on public interests, and the ability of public authorities to come to the best decisions for the public interest.

3. The Green Paper

3.1. Missing the procurement directives

There is a general question about the relationship between the Green Paper (GP) and EC policy initiatives. The bulk of the paper is concerned with possible changes to the public procurement regime of the EU, yet it was published one month after the enactment of the new, comprehensively revised procurement directives 2004/17 and 2004/18.¹⁰ The Green Paper itself had been delayed 18 months from its originally announced date. The opportunity of including relevant provisions in the revised directives has thus been lost: any changes relating to PPPs would need a further revision to the directive.

3.2. Concessions

At present, concessions fall outside the scope of the procurement directives, which leaves many major contracts not subject to full rigours of competitive tendering. There is a public interest in such competition, however, to help avoid corruption and favouritism, and it is a serious anomaly that major contracts in water supply or toll roads should not be subject to these rules. It is therefore welcome that the GP argues that service concessions should be subject to tendering rules like other contracts, and suggests that EC legislation should impose this requirement (paras 31-36). Previous EC communications on concessions had been prepared to allow the current favoured regime to continue.

3.3. Structured selection methods and ‘competitive dialogue’

The GP also makes a strong statement of principle of the public interest in rigorous procurement procedures, even in relation to PPPs : “*structured selection methods should be protected in all circumstances, as these contribute to the objectivity and integrity of the procedure leading to the selection of an operator. This in turn guarantees the sound use of public funds, reduces the risk of practices that lack transparency and strengthens the legal certainty necessary for such projects.*” (para 26). Unfortunately, this is in the context of a discussion of the new ‘competitive dialogue’ procedure of the revised procurement directive (article 29), which does not exhibit many of these virtues: it allows confidential discussions with tenderers after the contract notice has been issued, and even after the best tender has been identified. The time for DG Markt to insist on rigour was before the introduction of this kind of ‘dialogue’ into the directive.

3.4. First movers: a recipe for corruption?

The Green Paper endorses proposals that ‘first movers’ should have some privileged treatment to maintain the incentive to initiate proposals for public spending on their projects. (paras 37-41). Such proposals have always been made by private companies in the hope of the proposer getting extra contracts, or less competitive contracts (not, as naively suggested in para 39 “*to develop or apply innovative technical solutions, suited to the particular needs of the contracting body*”). There are serious dangers in these initiatives, not least of corruption and higher costs from the resulting contracts precisely because they are less rigorously scrutinised and subjected to competition and evaluation of alternatives, as a recent World Bank paper warned, concluding: “*The many negative experiences with unsolicited proposals for private infrastructure*

¹⁰ DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts Official Journal of the European Union EN 30.4.2004 L 134/133 http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_134/l_13420040430en01140240.pdf

projects may lead some governments to see blanket refusals as the only way to safeguard against potential problems with corruption and lack of transparency.”¹¹ The GP should take heed of that advice.

3.5. Sub-contracting

The GP rightly raises the question of sub-contracting as creating potential problems (paras. 51-52). Sub-contracting in its various forms has led to worsening of conditions, loss of training and unreliable and dangerous work in many public services in many countries - the examples of the Hatfield train crash in the UK, and the recent collapse of the airport building at Charles de Gaulle airport in France, both illustrate the dangers of this practice. These problems are general to all sub-contracting, however, whereas the Green Paper considers them only in the context of whether a PPP partner can restrict sub-contracting to its own affiliates.

3.6. Proposal of compulsory tendering of public sector work

The Green Paper includes a paragraph (para 63) that claims that work has to be submitted to compulsory tendering before it can be assigned to arms-length public entities, referring to one of the cases heard by the ECJ that affects this issue. The para asserts that: *“Only entities that fulfil these two conditions at the same time [subject to the same kind of control as an in-house entity, and carrying out the essential part of its work for the authority] may be treated as equivalent to “in-house” entities in relation to the contracting body and have tasks entrusted to them without a competitive procedure.”*

If applied, this policy would seriously distort the choices available to public authorities. Inter-municipal companies, and similar arms-length corporatised public sector bodies, have often been developed to take advantage of perceived economies of scale, accounting and managerial disciplines analogous to the private sector, and an ability to borrow without being constrained by the EU limits on government borrowing and debt (which do not apply to public sector trading entities). The Green Paper’s policy would rule these out as policy options, as any such arms-length form would have to be subject to tender against commercial private operators able to make strategic bids and operate cross-subsidies between divisions (as was done by all major refuse collection contractors entering the UK market under the Thatcher compulsory tendering regime in 1989 (and, in the other direction, by Vivendi in 2000, when it loaded all the debts of its acquisitions in telecoms and media onto its existing concessions in water, waste and other public services). The development of the public sector would be strangled by removing such arms-length options.

The GP’s position threatens to force compulsory tendering on a high percentage of public sector operators, and is highly contentious: it has no place in a Green Paper that is supposed to be concerned with PPPs.

While this would be a welcome development from the point of view of private contractors seeking to capture business from the public sector, it is not a welcome development for public authorities, as it reduces their ability to choose the best option for public services.

3.7. Definitions

The PPPs Green Paper states that the term PPP is not defined at Community level, and then goes on to give a remarkably vague account of the elements normally characterising PPPs. However, a definition in the EC report on EMU in 2003 refers to more precise characteristics. The recent IMF paper also provides more technically specific definition, based on the elements of a Design, Build, Finance and Operation (DBFO) contract; a similar approach to an earlier PSIRU definition (see Annexe 1)

While it is correct that the term PPP is used to cover a wide variety of arrangements, any policy-oriented paper needs to provide itself with precise terms that define its subject matter and what it is acting upon. The definitions in paras 1 and 2 include the vague phrase: “forms of cooperation between public authorities and the world of business” with six alternative objectives. This is far too wide a definition, and would include for

¹¹ Unsolicited proposals : the issues for private infrastructure projects. John Hiodges. Public Policy for the Private Sector. Note no 257. http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2003/08/19/000160016_20030819180828/Rendered/PDF/263990PAPER0VP0no10257.pdf

example joint seminars. This is followed by a list of four elements, which are the “relatively” long duration – relative to what? Funding partly from the private sector “sometimes by means of complex arrangements”; the “important role” of the economic operator; and the “distribution of risks” – which is a feature of any contract.¹²

More precise definitions are already available, for example in the EC report Public finances in EMU 2003, or the IMF paper on PPPs, which defines the category as projects involving the private partner in DBFO of an asset, which constitutes a clear framework for discussion.

3.8. Private and public interests: encouraging PPPs and private ownership

The public interests in the subject are most fundamentally concerned with getting the best option for investment, and the best option for operating a service. There are also other public interests and policies, some specified in the treaty, such as the freedom for companies to compete with each other throughout the EU, but also the community objectives of quality public services, high employment etc.

There are also private interests at stake with PPPs. There is the natural interest of contractors in relevant sectors in maximising the size of the market available to them, which would be achieved by increasing the use of PPPs for public investment. There is a similar natural interest from financiers, who are interested in a potentially larger market for investment finance that may be secured by government guarantees. It is to be expected that these groups will seek to encourage the use of PPPs, on terms as favourable as possible to themselves.

Private interests are not the same as the public interest objective of fair competition. That objective can be sought whether there are 2 PPPs in Europe, or 2 million. There is no public interest in increasing the number of PPPs for their own sake. The Green Paper however acts as though this was the case: section 1.2 is headed “The challenge for the Internal Market: to facilitate the development of PPPs under conditions of effective competition and legal clarity.” : while it is a matter of public policy for the EC to aim for effective competition (and of course legal clarity), there is no public policy objective to facilitate the development of PPPs. The same mistake occurs elsewhere (paras 14,16, 19) which talk of “obstacles” to PPPs, “develop” PPPs, “remove barriers” to PPPs.

3.8.1. Not neutral on public or private

One reason why this matters is because of the importance of the Treaty’s principle of neutrality on public or private ownership (under article 295 of the Treaty). At one point the Green Paper claims that it does not make any “value judgment” on the decision whether or not to externalise services (para 17), arguing that the rules it is concerned with apply “downstream of the economic and organisational choice made by a local or national authority” on whether to use the private sector. But encouraging PPPs, removing obstacles to them, clearly implies discouraging the alternative, of using the public sector.

It also involves a preference for private ownership. The asset financed by a PPP needs to be classified as a private asset, off the public sector balance sheet, and so escapes the curbs on government debt. Encouraging PPPs entails encouraging the formation of privately owned assets over the alternative of publicly owned assets. This seems, in principle, a breach of the treaty’s neutrality.¹³

¹² This vagueness is consistent with an approach based on the private interest of expanding the market – to those interested in market opportunities, it does not matter much exactly what are the features of the contract.

¹³ This preference is also implicit in the fiscal rules of the growth and stability pact themselves.

4. Beyond the Green Paper: evaluating PPPs against public interest

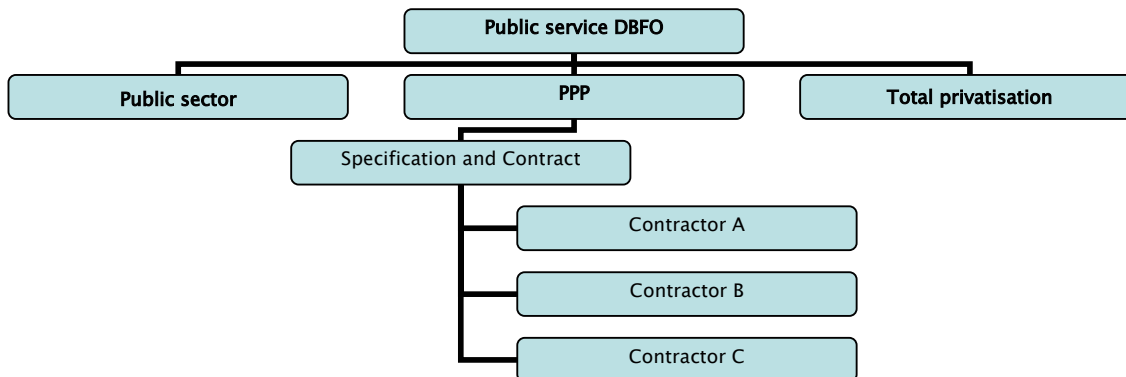
4.1. Two central comparative questions

The two elements of a PPP are normally (1) financing a public sector capital investment project through a private company; (2) a contract for services, usually operating the capital assets financed under (1). The two central questions on PPPs, for public authorities, are therefore:

- Is the PPP a better way of financing the capital investment involved than alternatives?
- Is the PPP a better way of operating the service than alternatives?

Both the IMF and the EC report on EMU 2003 agree that the key questions are these comparative ones. They stand at the peak of a decision-tree, where the public authority can evaluate options for carrying out a public service involving design, building, and financing some capital assets, and operating the service. (DBFO). Thus the key choice is between public sector provision and a PPP, or other variants on these options, as the IMF insists: “When considering the PPP option, the government has to compare the cost of public investment and government provision of services with the cost of services provided by a PPP” (PPPs, para 23).

Chart A: Different levels of decision on the best way to achieve public service objectives



DG Markt’s Green Paper however largely ignores these key questions, and assumes that a PPP has been chosen as the way forward. It acknowledges that “*recourse to PPPs cannot be presented as a miracle solution for a public sector facing budget constraints. Experience shows that, for each project, it is necessary to assess whether the partnership option offers real value added compared with other options...*” (para 5). However, it fails to discuss these other options, and does not elaborate at any point on how this assessment should be carried out, or on what principles such an evaluation should be made. Ignoring this top level choice is dangerously similar to assuming, with Mrs Thatcher, that “there is no alternative” (TINA).

As a result, the paper easily slips into claiming that the point is to encourage PPPs, and remove obstacles to them: but doing this may have the effect of distorting the higher level choice, for example by offering guarantees to entice private contractors.

This weakness can be seen in their discussion of risk. The comparative question addressed by others is whether the PPP option carries more risks (and benefits) than the alternatives of public sector provision (or other forms of contracting). So the question of guarantees for example is treated by the IMF as a comparative one e.g. “*it is also possible that the government overprices risk and overcompensates the private sector for taking it on, which would raise the cost of PPPs relative to direct public investment*”¹⁴. The Green Paper however ignores this comparison, and discusses the question of how risks are distributed

¹⁴ International Monetary Fund Public-Private Partnerships March 12, 2004 p.14
<http://www.imf.org/external/np/fad/2004/pifp/eng/031204.htm>

within a PPP, as a search for the ‘best’ allocation between the public and private partners: “*In this context, the appropriate assessment and optimum distribution of the risks between the public and the private sectors, according to their respective ability to assume these risks, is crucial.*” (para 45).

4.2. Making PPPs too easy

In the context of this choice it is important that PPPs are not made too easy or attractive, e.g. by offering exemption from fiscal restraint, or from procurement disciplines, or providing state-backed guarantees which are not properly costed. These inducements would distort any evaluation between a PPP and a public sector provision.

Thus the Eurostat ruling, which is noted by the Green Paper as helping make PPPs more attractive, should rather be criticised for making PPPs too easy. This is the view taken by the IMF, in March 2004, when it described the Eurostat decision as “*problematic*”¹⁵, and declared that the “*recent Eurostat decision on accounting for risk transfer gives considerable cause for concern, because it is likely to result in most PPPs being classified as private investment. ... Since most PPPs involve the private sector bearing construction and availability risk, they will probably be treated as private investment, even though the government bears substantial demand risk (e.g., when it guarantees to the private operator a minimum level of demand for the service provided through the PPP). ...the recent decision ... thus could provide an incentive for EU governments to resort to PPPs mainly to circumvent the Stability and Growth Pact (SGP) fiscal constraints.*”¹⁶

This echoed the general concern expressed in the EC’s own report on EMU in 2003 (produced before the Eurostat ruling): “*there is the risk that the recourse to PPPs is increasingly motivated instead by the purpose of putting capital spending outside government budgets, in order to bypass budgetary constraints. If this is the case, then it may happen that PPPs are carried out even when they are more costly than purely public investment.*” (summary of part III, p.102)¹⁷

These anxieties may be predictable on the part of fiscal authorities, but they form part of a wider debate about the appropriateness of those policies themselves. The EMU 2003 report devoted a whole section to the question of public investment, how it is affected by PPPs, and whether the fiscal rules of the EU are constraining public investment and, if so, whether they should be changed. The IMF papers of March 2004 have a similar agenda, and indeed the IMF has proposed a significant alteration in its own fiscal rules, precisely in order to facilitate public investment by public authorities and public sector operators.

If the fiscal rules of the EU (or the IMF) are preventing enough public investment from being made, or preventing it being made in the most efficient way – as both bodies acknowledge may be happening – then the rules themselves need to be reviewed and changed. Evading the rules by using PPPs, when they may be a more costly, more risky, less equitable and less effective option than public provision, does not solve the problem: it makes it worse.

4.3. Capital investment: private borrowing is more expensive

The Green Paper, as stated above, shares the view that PPPs are helpful because they allow public investment outside the fiscal guidelines. The report on EMU 2003 points out two crucial weaknesses in this position: the by-passing of better alternatives, and the failure to make a long-term assessment of the implications of PPPs: “*First, it does not address why PPPs should be preferred to alternative schemes to finance capital formation with public purposes that do not imply an increase in government borrowing (for*

¹⁵ International Monetary Fund Public-Private Partnerships March 12, 2004 para 38

<http://www.imf.org/external/np/fad/2004/pifp/eng/031204.htm>

¹⁶ International Monetary Fund Public Investment and Fiscal Policy March 12, 2004 para 36

<http://www.imf.org/external/np/fad/2004/pifp/eng/PIFP.pdf>

¹⁷ European Economy No 3 / 2003 Issn 0379-0991 European Commission Directorate-General For Economic And Financial Affairs. Public finances in EMU 2003

http://europa.eu.int/comm/economy_finance/publications/european_economy/2003/ee303en.pdf

example, classical privatisation [author's note: or borrowing through a corporatised public sector entity, which is also outside the EU definition of government borrowing]). *Second, even if the impact on current budget balances of PPP schemes is most likely to be smaller compared with the alternative of pure public procurement, the long-term impact of PPPs on public finances is to be assessed carefully.*"¹⁸ PPPs have to be demonstrated to be a better option than other ways of investing and delivering the same service.

PPPs have a fundamental disadvantage as a way of financing capital expenditure, compared with finance raised by government borrowing: governments can invariably borrow money more cheaply than any private company. As the IMF puts it; *"private sector borrowing generally costs more than government borrowing. This being the case, when PPPs result in private borrowing being substituted for government borrowing, financing costs will in most cases rise ..."*¹⁹ This means that the PPP has to demonstrate that there are significant efficiency gains from involving the private sector, in order to offset the borrowing costs. The EMU 2003 report agrees: *"The rationale for the use of PPP schemes is rather that of microeconomic efficiency."*

4.4. The efficiency argument

The Green Paper has nothing to say on the subject of efficiency. It assumes from the outset that the public sector will benefit *"from the know-how and working methods of the private sector."* (para 4) but does not at any stage justify this. But there is no systematic evidence that the private sector is more efficient than the public sector. The IMF, by contrast, is aware that the evidence does not support a general assumption of superior private sector efficiency: *"Much of the case for PPPs rests on the relative efficiency of the private sector. While there is an extensive literature on this subject, the theory is ambiguous and the empirical evidence is mixed."*²⁰

A good summary of this mixed evidence is contained in a review by Finnish economist Johann Willner of empirical evidence from comparative studies in a range of sectors. This shows that public ownership is at least as efficient in more than half of the studies, and developed a theoretical analysis that concludes that political intervention may actually produce better results in oligopolistic markets, even if it creates 'over-manning'.²¹ And in infrastructure sectors where monopoly is common and competition in the market is weak, there is little theoretical justification for the normal presumption that competition makes the private sector more efficient.

4.5. Long-term impact: guarantees and contingent liabilities

Both the IMF and the EMU 2003 report note the importance of assessing the real value of the contingent liabilities taken on by governments through the various guarantees commonly offered to PPPs. The EMU report notes that *"given the possible relevant debt impact of contingent liabilities, the inclusion of information (also quantitative when possible) on each provision giving rise to contingent liabilities in supplementary budgetary documents is recommended in international codes of fiscal transparency"* (5.3.3, p.131).

The use of government guarantees in PPPs is also an extra burden on the public authorities, which should be taken into account when comparing them with other possible options. The IMF paper notes that: *"...resort to guarantees to secure private financing can expose the government to hidden and often higher costs than traditional public financing..."* (PPPs para 40). The use of government guarantees is also an obvious potential source of corruption, if politicians or public officials are induced to provide guarantees that protect the private partner but offer no benefit to the public. To try and make guarantees more transparent, the IMF proposes that the public policy objectives and the intended beneficiaries of all guarantees should be stated: *"Good disclosure practice is to publish detailed information on guarantees. This should cover the public policy purpose of each guarantee or guarantee program, the total amount of the guarantee classified by sector*

¹⁸ EMU 2003 The economics of PPPs, p.129

¹⁹ IMF PPPs, para 22

²⁰ IMF PPPs, para 25

²¹ Johan Willner, "Ownership, efficiency, and political interference", in *European Journal of Political Economy*, vol.17, no. 4, (2001), pp.723-748

and duration, the intended beneficiaries, and the likelihood that the guarantee will be called. Information should also be provided on past calls of guarantees.”²² Both the IMF²³ and the OECD²⁴ have produced codes on fiscal transparency that require these liabilities to be clearly stated.

In 2002 the government of China took the decision not to offer any kind of guarantees in future to international companies operating in China. This poses a more fundamental question, as to why the EC, and European governments, in a supposedly more liberalised market, regard state guarantees for private operators as acceptable. It has been pointed out that in the UK, “future service payments under PFI contracts amount to an explicit off-balance-sheet liability totalling £100 billion which has significant implications for future borrowing or taxes.”²⁵

5. Long-term effects on provision of services

5.1. Uncertainty and incomplete contracts

A problem with all outsourcing is the uncertainty of the future, which means that contractual relations have to be renegotiated, limiting the range of options and flexibility of the public authority. The Green Paper takes the view that what happens after the contract can be determined by provisions in the contract itself, and in this way the allocation of risks can be defined and controlled: “*The success of a PPP depends to a large extent on a comprehensive contractual framework for the project, and on the optimum definition of the elements which will govern its implementation. In this context, the appropriate assessment and optimum distribution of the risks between the public and the private sectors, according to their respective ability to assume these risks, is crucial.*” (para 45)

There are two great weaknesses in this position. Firstly, it ignores the key ‘top-level’ choice between public provision or PPPs – the key question is not allocation of risk within PPPs, but the riskiness of PPPs compared with the alternative of public sector provision. Secondly, in reality it is impossible to specify everything in a contract, because unforeseen circumstances will arise.

This is a key reason why businesses are vertically integrated instead of outsourcing core activities, and by the same logic provides a reason for public ownership rather than use of PPPs: “*ownership does matter when contracts are incomplete: ... ownership gives the government special powers in the form of residual control rights.*”²⁶ This is especially important in the case of public services, because the state can never transfer responsibility for the public interest that the service is serving, and so entering into long-term PPP contracts limit the state’s ability to respond to uncertain future changes in the public interest – the state is reducing its own powers to act.²⁷

5.2. Renegotiation: unequal opportunities

The Green Paper’s belief in complete contracts is repeated when it addresses the question of contract revisions. “*In general, changes made in the course of the execution of a PPP, if not covered in the contract documents, usually have the effect of calling into question the principle of equality of treatment of economic operators. any substantial modification relating to the actual subject-matter of the contract must be considered equivalent to the conclusion of a new contract, requiring a new competition*” (para 49).

²² IMF PPPs , section VII, para 48, p.28

²³ The IMF’s *Code of Good Practices on Fiscal Transparency* and the related *Manual on Fiscal Transparency* require statements as part of the budget documentation that describe the nature and significance of all contingent liabilities.

²⁴ OECD *Best Practices for Budget Transparency; IPSAS 19, Provisions, Contingent Liabilities and Contingent Assets*, issued by IFAC; *GFSM 2001*.

²⁵ IMF, PPPs, para 78 and footnote 74, pp 38-39, referring to The Times, July 7, 2003

²⁶ Oliver Hart. Incomplete Contracts And Public Ownership: Remarks, And An Application To Public-Private Partnerships. The Economic Journal, 113 (March), C69–C76.

²⁷ Julie Froud, “The Private Finance Initiative: risk, uncertainty and the state”, *Accounting, Organizations and Society* 28 (2003) 567–589

This need for constant renegotiation is often seen as an opportunity for the private partner to improve the terms of their contract, but for the public partner it is normally disadvantageous, partly because of the greater knowledge and legal expertise of the private companies leads to contract revisions more favorable to the contractor. In France, which has the longest experience of such concessions to build roads, water works and other infrastructure, an official report observed that the system “*left elected councillors on their own, without support, to deal with conglomerates wielding immense political, economic and financial power*”²⁸

The Green Paper’s solution is hardly practicable however: if every substantive revision has to be retendered, then PPPs will become so uncertain that private companies will lose interest. This real problem should rather be addressed in a comparative evaluation of PPP proposals with other public sector option: the risk to the public authority of this kind of future deterioration in the terms of the contract has to be quantified.

5.3. Uncertainty of outcome: secrets, corruption, lies and mistrust

The uncertainty of the future is compounded because of strategic behaviour by the companies designed to improve their own position, and exploit omissions and failures by public authorities. There is real experience of these problems – none of them noted by the Green Paper.

PFI schemes in the UK show common exaggeration of costs or reduction in quality. An official audit report on PFI in schools warned that expected savings were not being delivered, and that “there is a strong case for changing capital funding incentives to enable options other than PFI to be pursued equally advantageously. This would open up the PFI mechanism itself to competition”²⁹: one PFI project to improve schools in north London resulted in an extra costs of £6.25m for the council, due to lack of provision for items like desks, chairs and cabling for computers.³⁰ With hospitals, the cost of PFI schemes has invariably been higher than originally forecast, requiring 30% cuts in bed capacity and 20% reductions in staff in hospitals financed through PFI.³¹

Corruption is a common problem with public sector contracts, and PPPs are at least as susceptible as others. The Portuguese hospital PPP, Amadora-Sintra has been the subject of allegations of over-charging, use of fraudulent expense claims (a state auditor in mid-2003 found over-charging of €75m, although an arbitration court controversially overturned this), and allegations of misuse of hospital property for private clinical services, reinforced by the fact that the contract with the hospital was signed in 1995 by the outgoing health minister, who, after the electoral defeat of the government, subsequently went to work for the de Mello Group which was the private partner in the hospital.³² In water, executives of the major groups Suez and Veolia have been convicted of corruption in Grenoble, Angouleme and Reunion (France) and in Milan (Italy).³³

The impact of strategic behaviour by companies has also been demonstrated in a global study of infrastructure construction contracts for railways. The study found that the actual final cost of these contracts was always consistently far higher than the original estimates: a statistical analysis confirmed that the one coherent explanation of this phenomenon is “systematic lying” on the part of the companies.³⁴

²⁸ “Cour des Comptes: La gestion des services publics locaux d’eau et d’assainissement”, in *Rapport public particulier*, (Janvier 1997), <http://www.ccomptes.fr/Cour-des-comptes/publications/rapports/eau/cdc72.htm>

²⁹ Audit Commission: PFI in Schools 30 Jan 2003

<http://www.audit-commission.gov.uk/subject.asp?CatID=ENGLISH^LG^SUBJECT^LG-EDU>

³⁰ A costly free lunch. Melanie McFadyean and David Rowland *The Guardian* Tuesday July 30, 2002

³¹ BMJ 2002;324:1205-1209 (18 May) Private finance and “value for money” in NHS hospitals: a policy in search of a rationale? Allyson M Pollock, Jean Shaoul, and Neil Vickers. This article contains references to many other detailed critiques of PFI.

³² Pravda online, 11 July 2003, “BLOCO EXIGE RESCISÃO DO CONTRATO DO AMADORA SINTRA”,

<http://port.pravda.ru/portugal/2003/07/11/2564.html>

³³ Private to Public: International lessons of water re-municipalisation in Grenoble, France. Lobina and Hall. PSIRU.

<http://www.psiru.org/reports/2001-08-W-Grenoble.doc>

³⁴ Underestimating costs in public works projects: Error or lie? by Bent Flyvbjerg; Journal of the American Planning Association; Summer 2002; Vol. 68, Issue 3; pg. 279

A recent study of the use of PPPs in defence in the UK concluded that PPPs do not necessarily lead to efficiency gains and that there are significant costs and disadvantages: *“The conclusion of the analysis is that the use of PPPs will not necessarily lead to improved economic efficiency in defence procurement and that considerable care will need to be taken both in terms of negotiating PPPs, monitoring their performance, and in their renewal. The UK defence sector illustrates that PPPs involve significant transaction costs which must be set against any benefits in terms of economic efficiency incentives”*³⁵.

5.4. Damage to staff: working conditions, morale and public service ethos

One effect of PPPs is often to damage the working conditions and morale of workers. A survey carried out by EPSU found that in a number of countries workers were displaced outside sectoral agreements on pay and conditions, or forced onto worse conditions.³⁶ The development of outsourcing in energy has displaced workers from mainstream energy companies to contractors who have an incentive to cut costs to retain the next contract: as a result there is a training crisis throughout Europe for energy workers.³⁷

Damaging effects on labour have been noted by a number of reports of experience with PPPs in the UK. A recent review of the impact of PPPs on labour in the UK observed that the tendering process, based on lowest price, had damaged the security and conditions of the workforce, especially of women, as well as the quality of service; in the case of prison service PFI schemes, the effect had been to reduce wages, increase hours, and increase staff turnover.³⁸ The study of UK defence contracts (see above) found that there had been damaging consequences for staff morale.³⁹ And a similar result emerged from a study of PPPs in the health and municipal services sectors in the UK: *“a vicious circle of monitoring and distrust between partner organizations, in place of the old faith in bureaucratic process”*. The study also concluded that PPPs present a significant threat to the ‘public service ethos’.⁴⁰

5.5. Eternal concessions

The Green Paper states that a fixed contract length has to be set to provide a form of guarantee for the private partner in PPPs – the longer the better, for the private partner: *“the period during which the private partner will undertake the performance of a work or a service must be fixed in terms of the need to guarantee the economic and financial stability of a project.”* (para 46). Certainly, public services and those that work in them benefit from security and stability, an environment that facilitates service delivery: public sector operations in general can provide this stability. However, fixing contract length in a PPP creates risks for the public sector that are not present if the work is done by the public sector itself.

<http://pqasb.pqarchiver.com/planning/128776261.html?did=128776261&FMT=ABS&FMFS=FT:TG:PAGE&desc=Un+derestimating+costs+in+public+works+projects:++Error+or+lie%3f>

³⁵ Transaction costs, relational contracting and public private partnerships: a case study of UK defence David Parker and Keith Hartley Journal of Purchasing and Supply Management Volume 9, Issue 3, May 2003, Pages 97-108

http://www.sciencedirect.com/science?_ob=JournalURL&_cdi=12893&_auth=y&_acct=C000027518&_version=1&_urlVersion=0&_userid=634187&md5=c5218be5e9f78f1fd27ddb01b951c843

³⁶ EPSU Survey on PPPs 2004

³⁷ Restructuring and outsourcing of electricity distribution in EU. Thomas and Hall. PSIRU

<http://www.psiru.org/reports/2003-05-E-distriboutsource.doc>

³⁸ Paying the cost? Public Private Partnerships and the public service workforce. By Sanjiv Sachdev. June 2004.

Catalyst. <http://www.catalystforum.org.uk/pdf/ppp.pdf>

³⁹ Transaction costs, relational contracting and public private partnerships: a case study of UK defence David Parker and Keith Hartley Journal of Purchasing and Supply Management Volume 9, Issue 3, May 2003, Pages 97-108

http://www.sciencedirect.com/science?_ob=JournalURL&_cdi=12893&_auth=y&_acct=C000027518&_version=1&_urlVersion=0&_userid=634187&md5=c5218be5e9f78f1fd27ddb01b951c843

⁴⁰ PPPs and the changing public sector ethos: case-study evidence from the health and local authority sectors. Gail Hebson, Damian Grimshaw, Manchester School of Management, Mick Marchington Work, employment and society Volume 17 n Number 3 n September 2003

One such risk, implicitly acknowledged in the Green Paper, is the risk of the private company having no incentive to work efficiently, because it will not be exposed to competition for a long time. The paper makes the obscure suggestion that “*An excessive duration is likely to be censured on the basis of the principles governing the internal market or the provisions of the Treaty governing competition*” (para 46), but does not say by whom it will be censured, or what sanctions will be applied. PPPs which are in effect eternal already exist in the EU: the Barcelona water concession has been running continuously for 136 years, without ever being retendered, and there is now no prospect of it being competitively tendered because the costs of compensation to the incumbent are too high. In the UK, all the private water companies hold monopoly concessions which now require 25 years notice of termination: it is very unlikely that in practice such notice can ever be given effectively.

A second risk is not noted in the Green Paper but is very real: the risk that terminating the contract early will be impossibly costly because of compensation claims. An example is the experience of the Hungarian city of Szeged, where water supply was privatized under a concession PPP involving the French multinational Veolia. After a few years the municipality re-evaluated the scheme, which had legal flaws, and found it would be cheaper and preferable to carry it out in-house. The change proved impossible however as Veolia brought a court case for compensation equivalent to all expected profits from the remainder of the contract. Szeged had to settle for renegotiation with Veolia.⁴¹

6. Summary and conclusion

There appears to be no coherent overview being taken of PPPs by the Commission. DG Economy is raising concerns about the dangers of PPPs, especially when used to avoid fiscal restraints, whereas DG Markt (and Eurostat) are encouraging them for exactly this purpose. DG Regio spends large amounts of time and energy explaining how PPPs can be arranged in central Europe and still be eligible for cohesion funds, while being more aware than most of the risks and problems involved. The Green Paper itself follows a rigorous tunnel vision principle: DG Markt is concerned with ensuring competition and extending the internal market in public services, and has no responsibility at all for the public services themselves, those who work within them, or the evaluation of public sector and PPP options.

Despite some helpful suggestions in relation to tendering of concessions, this is not the paper on PPPs that Europe needs. The Commission should find a way of producing a report that includes:

- the risks and problems experienced with PPPs
- the dangers for public authorities in entering into long-term deals with the private sector
- the need to protect public services and their workers from erosion of quality by commercial opportunism
- the economic and social case for public sector investment and provision of services.

⁴¹ Problems with private water concessions: a review of experience. Emanuele Lobina e.lobina@gre.ac.uk and David Hall d.j.hall@gre.ac.uk. June 2003. www.psiru.org/reports/2003-06-W-over.doc

7. Annexe: extracts from papers

7.1. Hart on contradictions with theory of firm

INCOMPLETE CONTRACTS AND PUBLIC OWNERSHIP: REMARKS, AND AN APPLICATION TO PUBLIC-PRIVATE PARTNERSHIPS Oliver Hart. *The Economic Journal*, 113 (March), C69–C76. _

“...the issues of vertical integration and privatisation have much more in common than not. Both are concerned with whether it is better to regulate a relationship via an arms-length contract or via a transfer of ownership. Given this, one might have expected the literatures to have developed along similar lines. However, this is not so. Whereas much of the recent literature on the theory of the firm takes an ‘incomplete’ contracting perspective, in which inefficiencies arise because it is hard to foresee and contract about the uncertain future, much of the privatisation literature has taken a ‘complete’ contracting perspective, in which imperfections arise solely because of moral hazard or asymmetric information.

..... this is unfortunate. One of the insights of the recent literature on the firm is that, if the only imperfections are those arising from moral hazard or asymmetric information, organisational form – including ownership and firm boundaries – does not matter: an owner has no special power or rights since everything is specified in an initial contract (at least among the things that can ever be specified). In contrast, ownership does matter when contracts are incomplete: the owner of an asset or firm can then make all decisions concerning the asset or firm that are not included in an initial contract (the owner has ‘residual control rights’).

Applying this insight to the privatisation context yields the conclusion that in a complete contracting world the government does not need to own a firm to control its behaviour: any goals – economic or otherwise – can be achieved via a detailed initial contract. However, if contracts are incomplete, as they are in practice, there is a case for the government to own an electricity company or prison since ownership gives the government special powers in the form of residual control rights.”

7.2. Parker and Hartley on risks and defence PPPs in UK

Transaction costs, relational contracting and public private partnerships: a case study of UK defence David Parker and Keith Hartley *Journal of Purchasing and Supply Management* Volume 9, Issue 3, May 2003, Pages 97-108

http://www.sciencedirect.com/science?_ob=JournalURL&_cdi=12893&_auth=y&_acct=C000027518&_version=1&_urlVersion=0&_userid=634187&md5=c5218be5e9f78f1fd27ddb01b951c843

Organisational boundaries are becoming much more fluid, involving networking, joint ventures, strategic alliances, partnership sourcing, and the like ([[Van Tulder \(1999\)](#)]). PPPs including in the UK PFIs are part of this new ‘relational contracting’ environment aimed at reducing costs, speeding up time to market, and promoting innovation. They involve a change in the boundary of government, blurring the distinction between public and private provision. Not surprisingly, the early entrants to PPP contracts in the UK ‘tendered on the basis that the political risks were high and construction costs were likely to overrun.....’ ([[Financial Times, 6 April 2000b](#)]).

PPP is a new policy initiative in need of economic analysis and evaluation. The paper has developed a framework for assessing PPPs drawing on transaction cost theory, supplemented by resource-based theory and an understanding of the roles of reputation and trust in contracting. The implications from this framework have been considered using a case study of the UK defence sector. The defence sector was chosen because it has been a leading user of PPP/PFI initiatives in recent years and, prima facie, involves a number of significant problems for long-term contracting given the uncertainties surrounding defence from both supply and demand perspectives.

PPPs involve agreeing long-term contracts characterised by incompleteness in their specification, asset specificity and scope for opportunism because of asymmetric information. The case study has highlighted a number of major potential transaction costs in defence procurement, arising from incomplete information, asset specificity and the resulting scope for opportunistic behaviour, which cannot be obviously offset by developing trust relationships. It has particularly illustrated the tensions between competition to reduce costs,

the need for contractors to generate profits, and the building of partnerships and trust. The study has also drawn attention to motivation in the public sector. PPPs can be distorted by the incentives within the Armed Forces; it does not necessarily follow that military personnel will behave efficiently. They neither share in any profits from efficient behaviour or experience losses from poor performance. Military personnel may pursue their own utility, shunning those schemes that adversely affect their own status.

The conclusion of the analysis is that the use of PPPs will not necessarily lead to improved economic efficiency in defence procurement and that considerable care will need to be taken both in terms of negotiating PPPs, monitoring their performance, and in their renewal. The UK defence sector illustrates that PPPs involve significant transaction costs which must be set against any benefits in terms of economic efficiency incentives. This conclusion has significance going beyond the defence sector to other forms of PPPs sharing the same sort of uncertainties, both in the UK and internationally. The study suggests that the costs and benefits of PPPs must be carefully balanced against the costs and benefits of more traditional forms of public sector procurement. Future research could usefully focus on better quantification of PPP costs and benefits and identification of the circumstances in which information asymmetry problems can be overcome by developing true partnership relationships.

7.3. Hebson et al on ethos

PPPs and the changing public sector ethos: case-study evidence from the health and local authority sectors .
Gail Hebson, Damian Grimshaw, Manchester School of Management, Mick Marchington
Work, employment and society Volume 17 n Number 3 n September 2003

ABSTRACT

This article explores the extent to which a new contractual approach to delivering public services, through public private partnerships (PPPs), is transforming the traditional values underpinning the public sector ethos among both managers and workers. Drawing on two detailed case studies of PPPs – a Private Finance Initiative in the health sector and the outsourcing of housing benefit claims in the local government sector – we identify a range of new pressures impacting on five key elements of a traditional notion of the public sector ethos. Our findings demonstrate that the contractual relations of PPPs have led to a clear weakening of traditional notions of managerial accountability and bureaucratic behaviour, reflecting both a shift to new lines of accountability (private sector shareholders) and a vicious circle of monitoring and distrust between partner organizations, in place of the old faith in bureaucratic process. Among workers, certain traditional values – especially a concern for working in the public interest – continue to inform the way they identify with, and understand, their work in delivering public services. However, the cost cutting and work intensification associated with PPPs present a significant threat to these values. The article identifies examples of short-term resilience of the traditional public sector ethos, as well as developments that threaten its long-term survival.

Discussion and conclusions

Our case-study evidence demonstrates that the contractual arrangements accompanying PPPs have exerted transformative pressures on the traditional public sector ethos. By exploring the five principles identified by Pratchett and Wingfield, this article isolates specific pressures that may challenge the public sector ethos as well as reasons why it may be more or less resilient to change. Interviews with managers reveal that principles of accountability and bureaucratic behaviour are threatened under PPPs. The transparency in decision-making that is the hallmark of accountability and bureaucratic behaviour, albeit often at the price of time-consuming structures, has been replaced with contract-led decision structures that are negotiated and fought over. Although managers may not have always agreed with decisions in the past, they were respected because they were made in accordance with impartial rules governing traditional public administration. Such respect for decisions has withered. Instead, decisions are openly questioned, with a view among managers that it is the most strategic (and, perhaps, opportunistic) partner that wins. Private and public sector managers have conflicting priorities, and this encourages manipulation and strategic behaviour. The contract limits the opportunities for high trust relationships, since one partner is responsible for monitoring the contract and this inevitably leads the other to use their expertise to evade this. There is also greater scope for managerial discretion, which facilitates an abuse of trust. In both case studies, there was an initial sense of mutual trust, but as this broke down public sector managers intensified monitoring

practices and adapted their behaviour in order to secure 'value for money'. Faced with this evidence, the optimistic view that private sector managers will learn from their public sector counterparts (OPSR, 2002) is misplaced. Instead public sector managers mimic private sector techniques and so threaten the traditional values of accountability and bureaucratic behaviour. Among non-managerial workers transferred to the private sector, the evidence is less clear-cut. One might expect the public sector ethos to erode as it has always been premised on a two-way relationship – the provision of certain working conditions in exchange for a specific form of commitment. Indeed, our evidence demonstrates that workers have experienced a decline in working conditions and there has been some weakening of values associated with a public sector ethos. In particular, notions of loyalty have changed, with greater emphasis on loyalty to 'the service' and less to either the public sector as former employer (now as client) or their new private sector employer. But workers' values of public interest and altruistic motivation seem relatively resilient. Emphasis on contractual performance targets often conflicts with workers' customary emphasis on working for the public interest. Examples of such conflicts, together with evidence that workers often negotiate ways around strict performance targets, suggests that the principle of public interest and altruistic motivation have not been eroded.

8. Annex: definitions of PPPs

8.1. EC DG Markt Green Paper 30 April 2004 :

“The “public-private partnership” phenomenon

1. The term public-private partnership ("PPP") is not defined at Community level. In general, the term refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.

2. The following elements normally characterise PPPs:

- The relatively long duration of the relationship, involving cooperation between the public partner and the private partner on different aspects of a planned project.
- The method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players. Nonetheless, public funds - in some cases rather substantial - may be added to the private funds.
- The important role of the economic operator, who participates at different stages in the project (design, completion, implementation, funding). The public partner concentrates primarily on defining the objectives to be attained in terms of public interest, quality of services provided and pricing policy, and it takes responsibility for monitoring compliance with these objectives.
- The distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. However, a PPP does not necessarily mean that the private partner assumes all the risks, or even the major share of the risks linked to the project. The precise distribution of risk is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with this risk.” (1.1, p.3)

8.2. EC DG ECONOMIC AND FINANCIAL AFFAIRS Public finances in EMU 2003

“There is no unambiguous definition of what constitutes a PPP. Broadly speaking, PPPs concern the transfer to the private sector of investment projects that traditionally have been executed or financed by the public sector (see, for example, Grout, 1997). Four elements, however, seem required to qualify PPPs:

- the project should concern the construction or the operation of physical assets in areas characterised by a strong public function (for example, transport, urban development, security, etc) and involve the public sector (general government) as the principal purchaser. Although PPPs are especially relevant in transport infrastructure, examples of public-private partnerships can be found in the provision of defence, health, education and cultural services, the building and operation of prisons or the area of water and waste management;

- the PPP must involve a corporation outside the general government (normally a private corporation) as the principal operator, that is, the agent that carries out the project;
- the principal finance of the project should not come from public debt but from other sources, such as private bonds;
- by way of the partnership, the way the project is executed must change compared with the alternative of pure public supply. This means that in PPPs, the private operator provides significant inputs in the design and conception of the project and bears a relevant amount of risk.” (5.3, p.128)

8.3. IMF: Public-Private Partnerships March 12, 2004

“9. A typical PPP takes the form of a design-build-finance-operate (DBFO) scheme.

Under such a scheme, the government specifies the services it wants the private sector to deliver, and then the private partner designs and builds a dedicated asset for that purpose, finances its construction, and subsequently operates the asset and provides the services deriving from it. This contrasts with traditional public investment where the government contracts with the private sector to build an asset but the design and financing is provided by the government. In most cases, the government then operates the asset once it is built. The difference between these two approaches reflects a belief that giving the private sector combined responsibility for designing, building, financing, and operating an asset is a source of the increased efficiency in service delivery that justifies PPPs.

10. **The government is in many cases the main purchaser of services provided under a PPP.** These services can be purchased either for the government’s own use, as an input to provide another service, or on behalf of final consumers; a prison, a school, and a free-access road would fall into these respective categories. Private operators also sell services directly to the public, as with a toll road or railway. Such an arrangement is often referred to as a concession, and the private operator of a concession (the concessionaire) pays the government a concession fee and/or a share of profits.” (3A, p.7)

8.4. PSIRU Terminology of Public-Private Partnerships (PPPs) March 2003

In terms of getting an overview and an international comparison, it is useful to divide the elements that can make up a PPP scheme into four parts: Construction, Operation, Finance and Ownership (see Table 1 below).

Outsourcing of services just involves a contract to operate a specific service, e.g. refuse collection, without any construction or financing of a capital investment. Under UK PFI schemes (private finance initiative) a private company designs and builds specific investments on the basis of finance provided by it, and recoups the money by a contract to provide services for a period of years, usually decades, while the asset itself remains owned by the public sector. Concessions e.g. in water are similar, but the finance is recouped through charges to the users. With leases (affermage in French) the company does not make its own investments but operates and maintains the system for the municipality, financed by charging users. Under BOT schemes (build, operate, transfer.), the investment asset is built and owned by the company for the period of operation, and later transferred to the public sector. ...” (section 2.1)

Table 1: Elements of different PPP schemes

| | | Out-sourcing | PFI | Concession | Lease | BOT |
|---------------------|---|---------------------|------------|-------------------|--------------|------------|
| Operation | Operation of service | X | X | X | X | X |
| Finance | Capital investment financed by private operator | | X | X | | X |
| | Recouped by user charges | | | X | X | |
| | Recouped by contract from municipality | X | X | | | X |
| Construction | Construction of asset by private company | | X | X | | X |
| Ownership | public during and after contract | X | X | X | X | |
| | private during contract, public after | | | X | | X |
| | Private indefinitely | | | | | |

9. Annex: extracts on PPPs from EMU report 2003

5.3 Public-private partnerships

5.3.1 Definition, taxonomy, and recent experiences The involvement of private sector corporations to build and operate public projects has become an increasingly widespread practice in EU countries. The rationale for the use of PPP schemes is rather that of microeconomic efficiency. Even assuming that competitive tenders for the selection of private counterparts are feasible and efficient, pure privatisation schemes may not be optimal when there are reasons that justify a form of control on the design of the project by the public sector. This is the case when the project concerns the delivery of pure public goods (e.g., a prison), when externalities are particularly relevant (e.g., when projects have a considerable environmental impact) or when the distributive consequences of the project are a major concern (e.g., the provision of health facilities). In those cases regulation mechanisms may not be sufficient to ensure that public objectives are satisfactorily met. The standard alternatives are direct public provision or public procurement through competitive tenders. In many instances public procurements (contracting out) guarantees higher cost efficiency than direct public provisions.¹²⁶ In both alternatives, however, it is the public sector that provides the financial funds to carry out the project and that exercise the control on the design of the asset. PPP schemes offer a third alternative. In such a case, the finance of the project is provided by the private sector, as in privatisation schemes, but the public sector plays a relevant role as client of the services provided by the asset. In particular, PPP contracts may specify that the private operator will be remunerated only if the actual supply of services is judged to be successful. The fact that the object of PPP contracts is the supply of services rather than the provision of the asset can make a major difference with respect to public procurement schemes. Specifying and monitoring the desired characteristics of services is normally easier than specifying and monitoring those of assets. Thus, contracts that have as their object the flow of services rather than the build of assets help to reduce the incentives that the private supplier may have to cut on quality, while preserving the incentives to contain costs (Grout, 1997).¹²⁷

5.3.3 Contingent liabilities normally arise when in PPP contracts governments offer a guarantee to the debt issued by the private operator to finance the project. Public guarantees do not constitute effective government liabilities because there is no certainty that they will translate into increased debt in the future. However, this may be the case if certain contingencies occur, i.e., in the case of default of the private counterpart. Since with public guarantees there is no certainty concerning the impact on public debt, they are recognised only under cash accounting, if and when the contingent event (the PPP counterpart default) actually occurs and payment is made.

¹²⁵ The conditions under which external constraints on budget deficits can effectively reduce public investment have been discussed in section 5.2.1. ¹²⁶ The reasons are well-known (see, e.g., Domberger and Jensen (1997) for a survey). In particular, bureaucracy theories suggest that government officials tend to focus on objectives different than that of cost minimization (e.g. maximising the size of their budget). ¹²⁷ Hart Shleifer and Vishny (1997) develop an incomplete contracts model of public procurement and show that, compared with direct public provisions, private operators will in general have higher incentives to keep costs low but lower incentives to keep quality high. They provide supporting evidence in the context of prisons in the US.

10. Annex: selected provisions of new procurement directive

DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts Official Journal of the European Union EN 30.4.2004 L 134/133 http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_134/l_13420040430en01140240.pdf

The coverage of the directive is defined by reference to two lists of services attached in the annexes. Article 20 says that services listed in the first annexe, IIA, (referred to in the Green Paper para 11 as “defined as having priority”) have to be subject to public tendering open to companies from all member states, governed by the rules in articles 23-55; those listed in the second annexe, IIB, (referred to in the Green Paper para 11

as “non-priority”) are subject only to the requirement of article 35(4) to report the contract. These lists and phrases are unchanged from the first directive on procurement of services, EC 92/50.

ANNEX II A (1)

- 1 Maintenance and repair services
- 2 Land transport services , including armoured car services, and courier services, except transport of mail
- 3 Air transport services of passengers and freight, except transport of mail
- 4 Transport of mail by land and by air
- 5 Telecommunications services
- 6 Financial services: (a) Insurance services (b) Banking and investment services
- 7 Computer and related services
- 8 Research and development services
- 9 Accounting, auditing and bookkeeping services
- 10 Market research and public opinion polling services
- 11 Management consulting services (6) and related services
- 12 Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services
- 13 Advertising services
- 14 Building-cleaning services and property management services
- 15 Publishing and printing services on a fee or contract basis
- 16 Sewage and refuse disposal services; sanitation and similar services

ANNEX II B

- 17 Hotel and restaurant services
- 18 Rail transport services
- 19 Water transport services
- 20 Supporting and auxiliary transport services
- 21 Legal services
- 22 Personnel placement and supply services
- 23 Investigation and security services, except armoured car services
- 24 Education and vocational education services
- 25 Health and social services
- 26 Recreational, cultural and sporting services
- 27 Other services (2) Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.