

REFORMING THE PUBLIC SERVICES THROUGH PUBLIC-PRIVATE PARTNERSHIP. THE ROMANIAN CASE

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Abstract:

In the context of creating a single market, Europe is trying to harmonize the concept of public service and public service management model and to align infrastructure and public services at unique standard. Our paper proposes introspection on the complex theme of public-private partnership, trying to explain the necessity to have qualitative public services. It is rooted idea that the public sector is responsible for delivering basic services, but this may change especially in the context of the public wishing to exploit the advantages offered by the private sector. Recourse to the private sector is increasingly necessary because of budgetary limitations faced by our country, but also because the state's role in economic development, from directly player at the referee and regulator.

Key words: *partnership, reform, contract, public services*

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In recent years, in the economy of developed countries, services have become the main dynamic element of economic competition. The importance and spectacular rise of the service economy have intensified concerns for the knowledge of this industry. Services have been a subject of "self-contained" relatively recently, in the second half of the twentieth century, with the explosive growth of the tertiary sector. Concerns of the specialists to overcome the relative lag theory to practice, focused, as was natural, on defining the concept of service, action extremely complex, given the heterogeneity of such activities, as many understandings of expression in everyday life. J. Nussbaumer defined public services as "useful activities designed to meet a social need" [J. Nussbaumer, 1983].

In the early twentieth century claimed a classic definition of public services, as the activity of interest performed only by a public sector (public moral person). In this sense the public service is "the work that governments are obliged to provide in the interest of the governed" as stated Duguit. In this sense, the definition of public service is by the legal nature of the body that performs it and someone must necessarily be public, ie state, local authority or other public institution. To these interpretations Marcel Haurion give the significance of public service through "nature" (and not the person who provided it) to oppose enlarging the area of public service to any business which it carries out the state authorities.

The notion of public service has different meanings depending on the state to which we refer, as in every state they are satisfied to varying degrees depending on the features recorded. Public service reforms and changes are subject to inherent administrative systems. Thus, the principle of decentralization that characterizes democratic states is the basic concept under which government authorities acquire discretionary decision-making power and intend to take a large part of state public services. It is important to argue the need for these services provided by local government to be quality, fair and cover a wide range of social needs. Is justifiable, as far as the public authority can interfere in the provision of public services, they are able to meet people in a way rational, fair and effective. Experience has demonstrated that

public authorities often subject to budgetary, technological, informational constraints and have no real opportunity to provide necessary public services. In practice this system prevails in public services management takeover from the hand state and to give them to private teaching. From a legal perspective, the acquisition of public service performance by a private person is not a voluntary surrender of public power available, but rather an effort to realize channeling of public affairs and support the expertise of the private partner.

The creation of the single European market requires harmonization of the concept of public service and public service management model and aligns public services and infrastructure at the unique standards. This new aspect of understanding the role of state in the economy, the player directly to the referee and regulator, required new guidelines in the direction to realize the public services. We cannot say if exists a single model of public service management and partnership between public persons and private enterprises. However, it is appropriate to consider the implications and effects of public-private partnership on the quality, speed and efficiency in delivering public services.

To discuss this complex issue, we must define the term public-private partnership. The literature offers a variety of interpretations to explain complex content of the phrase: the "public choice theory" (*public choice theory*) that affects economic efficiency of human activity and not exclude the political decision to correct it, a cost-benefit analysis where public economic variables are involved, before privatization as a modality to realize the specific public services by private partners. In this regard the transfer of ownership occurs, which is no longer a partnership.

Reinventing government, as defined by Lyons and Hamlin in 2001, is seen not only in terms of public choice, but in conjunction with the theories aimed at privatizing public services. According to the authors, reinventing government means first and foremost a worldwide movement of entrepreneurship.

The term European public - private partnership is not defined, but is used to mean a form of cooperation between public authorities and the private sector aimed at guaranteeing the financing, construction, renovation, management, maintenance of infrastructure and public services [European Commission, 2003]. However, the Community law there is no specific definition for public - private partnership, leaving the discretion to Member States in regulating its. Community law can be regarded as neutral, leaving to the public authorities the freedom to choose how to meet the public services, but comes into play only if the authorities decide to involve third parties through legislation on public procurement and concessions.

In international practice public - private partnerships take two forms: *public-private partnership contract* and *institutional public-private partnership*.

- a. *Public-private partnership contract* is based exclusively on contractual arrangements between the two parties, one being a public entity and the other a private entity. The most common model of public-private partnership contract is the concession contract by which the private entity provides a public service entity where the population in public, but under its control [European Commission, 2003]. According to a study conducted by Price Waterhouse Coopers, the European Union, approximately 60% of the projects type public - private partnership taking the form of concession contracts. In Romania, the concessions are regulated by the Government Emergency Ordinance no. 34/2006 on public procurement, the public works concession contracts and services concession contracts and public-private partnership by Law no. 178/2010 (published in the Official Gazette of Romania no. 676 dated October 5, 2010).

- b. *Public-private partnership* is a form of institutional cooperation between partners from public and private sectors who decide to set up a joint venture of public entities that work covers execution of public contracts or concessions. In this case, the private entity participating in the joint venture as equity, but also as an active agent necessary to perform the tasks set. This form of partnership is not regulated at Community level, but the European Commission published an Interpretative Communication of Community law on public-private institutional partnerships. This form of collaboration between public and private sector is used countries like Italy, Hungary, and the Czech Republic in the water supply companies.

We believe that the adoption of Romanian legislative act in the public-private partnership is appropriate and necessary, the legislative vacuum before being a serious impediment to attracting investment and providing efficient service and public works. One factor that has an impact on the management of public services through public-private partnership is the European fundraising and mobilizing them to invest in the public

The central aspect which must be considers is that the public authorities and public services should be outsourced to be met by the private partner. This analysis should consider the net benefits and value addition that would bring it every way that operates through the service. We must take into account both the benefits it would bring such a project and associated risks, aiming at providing services in terms of efficiency, effectiveness, efficiency and value for money (European principle that supports free movement of goods, services and persons within the single market). In line with these principles laid down by European rules, Romanian legislative act states that public-private partnership involving a contract, "a legal document that stipulates the rights and obligations of public and investor partner" [Law no. 178/2010, art. 4, paragraph g] throughout the duration of the project or in stages in accordance with the terms set and, in line with European principles are established and the governing partnership in our country: non-discrimination and equal treatment, transparency and proportionality, efficiency and accountability of funds.

Analyzing the previously stated we conclude that public-private partnership is a viable alternative for the management of public services in conditions in which each partner understands its objectives, are: public partner must meet the public interest by providing quality service and the private partner to carry out service public under the conditions required by the public partner in taking risks in order to profit.

At the European level have been identified a number of benefits that public-private partnership brings. These can be summarized as: the private partner provides additional capital and take a large financial risk, provide alternative public management and give value added of services to consumers through quality, promptitude and efficiency, provide better identification of needs and optimal use resources. In turn, it benefits from a long term investment opportunity being offered to them due to a relative certainty and security contract with the public partner.

Also, the benefits of partnership mean an accumulation of skills, expertise and power that, together, will lead to best results. Public actor is one who can ensure consensus among citizens by providing services in a fair and respecting the rights of national minorities. When public interest requires, the State may provide compensation to its citizens, so that the investment project can be implemented.

Partner of a private investment project is a good manager of financial resources, human, technical and technology available in accordance with the principles of efficiency and effectiveness in their use. There will always be pursued with maximum efficiency the use of all available resources, and competitiveness is a key element that

determines the action or inaction of the private partner. Attracting human capital is the expertise available to any private partner-oriented to benefit.

Public authorities can operate with a low cost investment to support their work by using a public-private partnership contract.

The risks assumed by the partners in the partnership can be summarized as: the public assume too many responsibilities, which it determined that financial risk is transferred to it, is necessary in this regard that risk sharing to be fair, and this cannot be achieved unless the contract terms are set out rights and obligations assumed by each partner. In our country experience of public-private partnership is very low. Motivations are likely to be found to explain its effect is not due to the lack of specific rules (to the Law no. 178, taking the form of partnership contracts and concessions were regulated exclusively by the rules of administrative law), lack of experience in the field human resources in public administration (planning, monitoring and evaluation of large projects), lack of clearly assigned responsibilities and inconsistency in decision-making institutions marked by a poor choice of decision-making level.

Nevertheless, public-private partnership benefits are undeniable if we analyze that local development projects should be supported by extensive investment and that most times, the local authority is subject to budgetary constraints. As a result, fund raising, in whole or in part from a private partner determined using a lesser extent public money. For our country this way of making investments is a new approach enables an early and public sector to benefit from private sector experience in running large projects.

Public services infrastructure, particularly roads, can be a good opportunity to have public-private agreements, because, for example, highways in Romania are almost nonexistent, they assuming a high financial burden from the state, but their construction can be financed with private partners. This form of exploitation has been applied successfully in many European Union countries like Spain, Portugal, Italy or France. According to statistics approximately 38% of motorways in Europe were built by concession, namely 21,998 km from 57,542 km. However, Romania needs of large projects in partnership, whose success should be publicly presented together with the obstacles encountered and how they were resolved through cooperation between public and private sector, in order to win the confidence of private investors. Although public-private partnership is used widely in Europe, they represent only 4% of the total public sector investment. Only in the UK, the proportion of public investment through public-private partnership and Private Finance Initiative in all public investment is higher reaching 10-15%.

Lead times and costs are better controlled by the private partner because he will always seek to maximize profit and return on investment. Minimizing compliance costs and lead times to make the best paper and rapid return on investment is a declared objective of private partners. This does not mean a reduction in quality of service delivery as the responsibility of private player will be given to controlling costs and maintaining them. The public sector is characterized by the fact that it uses public money that makes their management should not be based on grounds of economy and efficiency. The purpose of the public partner is to respond to social needs, making the benefits of the partnership to be divided: the private partner to learn good financial management practices used by private sector, while private sector will have to look beyond the financial aspects to the social nature which has direct effects and repercussions.

Eurostat has recommended that risk in the partnership agreements must to be given to the one who can manage. Risk is defined as any factor, event or influence that threatens the successful completion of a project in terms of time, cost or quality. This project risk is transferred to the private partner, which in addition to the risk of

construction may take longer depending on the specific project operating risk or the risk of availability. By transferring risk to the private sector to ensure the principle of predictability in the public budget, because some costs cannot be anticipated during construction and operation of a project are now transferred to the private partner.

One problem facing our country in terms of institutionalizing public-private partnership is the poor relationship between the public and private sector due to legal and institutional barriers. It is known that for a private investor "time is money". In this context, obtaining permits and authorizations by the private actor may lead to administrative authorities to give reasons as private partner very long periods in which the administrative action can be obtained. Not diminish the importance of checking documents to ensure their legality and appropriateness, but a prompt in providing documents necessary for the development of a project should be considered. We believe that the private sector benefit from the power of innovations, ideas that government needs. The partnership involves all before initiation, collaboration and participation. The regulation of public-private partnership brings into question the possibility that the private partner to take the initiative to develop partnerships with public environment. Unfortunately, the Romanian legislature has not considered this, which means a significant decrease of innovative solutions for public services. It could be a way for administration to become more dynamic and its reactions in conformity with the current realities and needs of citizens.

It stretches from a false start: the premise that public-private partnership model is better than traditional methods of operation of public services because it is not consumed by public funds. Even if initially a private partner makes the investment, the state will then pay a certain fee or by end users rather than pay a fee the state will pay the private partner. However, this should be viewed in the light of the fact that the state's role in the economy should be reduced, and the support of major projects require a substantial initial investment that would be reflected in a deficit and a substantial increase in public debt. It is also known that the most common projects, namely the infrastructure, the biggest costs are distributed mainly in the early years of construction, creating a negative cash flow that could hardly be supported by public sector . The constant payment of fees by private operators on public costs are distributed linearly over several years and are more easily borne by the public budget imbalances. Increasing public debt of a State or local authorities should be seen also in terms of existing legal constraints both at EU and national level. Where would call a public-private partnership contract, administration costs will be linear during the years of service and will not increase public debt. Thus, before deciding the form of running a public service, it is necessary to take into account all the related effects that would attract each variant of the project, and judged by a value must not be simplistic

In carrying out projects through public-private partnership should be taken into account exchange rate fluctuations. If the private partner has covered a high external debt, exchange rate fluctuations can have repercussions on the project. This occurs especially where the private partner to underestimate exchange rate risk, or are under construction and needs to import goods whose acquisition un-estimated lead to an increase in expenditures.

In our country the development of public-private partnership projects is still in its infancy, there are very few projects developed in this respect, much less large projects. Some projects are conducted at the Municipal Hospital of Timisoara with an investment estimated to reach 59 million Euros, at the University Hospital and Medical Center Union Elias. Public-private partnership in Romania is more in phase of the initiative, rather than as completed projects. We can say that our country is an unusual case because the public-private partnership is considered key to the Romanian Government's anti-crisis program, we have a facility to support public-private

partnership in the Finance Ministry, but we project to be developed and implemented practice through collaboration between the two sectors, the less quantifiable outcomes. Although the key objective of the government program is to attract more investment to develop local and national, however there is inertia in the use of these types of partnerships. Budgetary constraints are simply political statements in order to distract attention from the inability to effectively manage an issue that proved experience in other states, would be a success. For example, in France, moved to a new level, outsourcing of public services which were traditionally met by state benefits, as today it was mostly in the public services provided to the population to be conducted in public-private partnership. In Romania it fails to use any public-private partnership for infrastructure projects that are used in nineteenth-century in France. Romanian public authorities should find ways to attract private partners and, above all, to create a legal framework that would allow addressing the position of legal equality and not to create public favors actor. Attention should not put so much on how to name the law but on creating a coherent and stable framework. To win the confidence of private operators selection procedures should be made following the principles of transparency and competition and no cumbersome procedures, and often, confusing.

In recent years various partnership schemes have been adopted in the countries of Eastern Europe. If it was initially used as a successful model especially in infrastructure, the finding of an upward flow in other areas likes schools, hospitals or prisons. The transfer of private sector management concepts to the public sector economy is likely to diminish public shortcomings. The source of these shortcomings lies in the fact that public policy makers manage public money and thus do not assume any personal risk. They also are subject to certain external stimuli, many of them politically charged, administrative and even personal interests that lead to lower efficiency of resource allocation.

A very important direction in the administration and the economy is to increase collaboration between public and private sector to achieve common benefits. Must understand that not every form of partnership can be successful, it is important that the type of project investment and the results will be achieved. The justification for public-private partnerships are based on a specific perspective on public management, and the terms of these partnerships need to be modeled according to the specifics of each sector, as uncritically translate can attract unwanted consequences. We must keep in mind that the public private partnership is a risk and accountability for partners, equally divided, but also innovation and openness to the business sector for the public sector and for private sector social responsibility. These economic processes entail changes in public policy, cultural and legal system of modern government. High levels of trust are needed and such *agreements gentlemen's*, agreements on which are necessary to be base the partnerships.

We should not lose sight of that public administration is governed by the principle of social responsibility, and any decision unpopular, incorrect only attract public disapproval and withdrawal of their support.

In Romania public-private partnership is an effective way of attracting private investors. It is necessary to adopt consistent measures to enhance confidence of private partners through the adoption of fair business conduct, by creating a comprehensive legislative framework to ensure development of relations in terms of rationality and efficiency. We are lacking in terms of financial management and forecasting of risk, access to capital markets and contractual data privacy. European countries experience has shown that business ethics and openness to collaboration is the key to developing a public-private partnership.

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