

EPEC Private Sector Forum

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« FIEC perspective on PPP procurement »

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Maximizing the benefits from PPPs...

- Criticisms have been raised against PPPs over the past years, e.g.:
 - Lack of transparency
 - Lengthy negotiation procedures
 - Limited competition
 - Exclusion of SMEs from these contracts
 - Cost for public finances
- In the UK => reform of PFI system into « PF2 », 2012.
- However: many criticisms and errors come from a wrong consideration of PPPs
=> PPP is NOT a purely legal or financial instrument
- Economic approach needs to be promoted to the benefits of all!

... supposes following 5-step decision process

- Cumulative conditions for success:
 - Prior socio-economic evaluation to identify sustainable projects
(with high Internal Rate of Return)
 - Appropriate financing / funding mechanisms
 - Proper risks allocation according to each operator capacity
 - Appropriate procurement procedure
 - Management of the contract over life
- Let's focus on the procurement and renegotiation aspects.

Forthcoming new legislative framework

- EC public procurement package of December 2011:
 - PPPs: either dealt with as « public procurement » or as « concessions »
 - Procedures should be adapted depending on revenues and risks allocation
- For concessions, a light approach should ensure:
 - Transparency,
 - Fair competition,
 - Equal treatment (incl. vis-à-vis public entities!)
 - Confidentiality of technical and trade secrets.

Finding the appropriate definition

- Definition of « concession »:

There are some concerns about the concept and transfer of the « operating risk » - rather than demand and availability risks - to the concessionaire, as proposed by the EP.

- **In parallel, FIEC wonders whether this new definition proposed by the EP is acceptable and namely coherent with the criteria of the 2004 EUROSTAT decision on the accounting treatment of PPPs.**

Concerns about the scope of the directive

- Another matter of major concern for FIEC:

The imbalance between private operators and public authorities / entities

- **Art. 11 of the draft directive on public procurement and art. 15 of the draft directive on concessions on the cooperation between public authorities both endanger the spirit of the public procurement legislation and the activities of private operators!**

The necessary flexibility of contracts

- PPPs are long-term contracts, which means that:
 - Circumstances can change over their life-time
 - Contracts will need to be adapted accordingly
- Consequently, the legal framework must take into account:
 - Flexible award criteria (rather than the price only)
 - The possible modification of the contract during its term
=> where the value thereof is **below 10%** of the updated value of the original contract in the EP version of the legislative text or **below 15%** in the Council version (instead of 5% only)
 - And renegotiation clauses should be integrated in the initial contract and used in the common interest of:
 - The public authority / entity
 - The private operator
 - The users

The necessity to attract funds

- **Financial structure of projects**
= loans (banks or bonds), shareholders' loans, equity and grants
 - Asymmetry regarding how public authorities / entities and private operators can absorb financial risks
 - Allocation of financial risks must take into account this asymmetry and adjust grants and/or guarantees accordingly

RECOMMENDATIONS

- **Building on the capacity of EPEC:**

The EPEC has a major role to play in terms of capacity building of national administrations.

Moreover, FIEC is convinced that the EPEC is the appropriate entity to promote an **economic approach** of PPPs towards:

- National authorities, and
- EU institutions, as stated in the 2009 Communication on PPPs.

- **Having world-class infrastructure in the EU is a key element of our competitiveness!**

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