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Special Report

Public Private Partnerships in the EU: Widespread shortcomings and limited benefits

(pursuant to Article 287(4), second subparagraph, TFEU)



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CONTENTS

	Paragraph
Glossary	
Executive summary	I - V
Introduction	1 - 19
What is a PPP?	1 - 4
Reasons for implementing PPPs	5 - 6
The European PPP market	7 - 8
PPPs and EU funds	9 - 19
Audit Scope and Approach	20 - 23
Observations	24 - 76
The audited PPP projects enabled faster policy implementation and had the potential for good standards of operation and maintenance, but were not always effective in achieving their potential benefits	24 - 46
The PPP option allowed public authorities to procure large-scale infrastructure plans through a single procedure	25 - 27
Procurement of large PPP projects increased the risk of insufficient competition and was in some cases subject to considerable delays	28 - 32
Most of the audited projects were affected by significant construction delays and cost overruns	33 - 40
Most of the audited projects have the potential for keeping good standards of service and maintenance	41 - 43
PPPs have not protected the public partner from over-optimism regarding future demand and use of the planned infrastructure	44 - 46
Delays, cost increases and underuse were partly attributable to inadequate analyses and unsuitable approaches	47 - 59
For most of the audited projects, the PPP option was chosen without any prior comparative analysis, to demonstrate that it was the one maximising value-for-money	48 - 53
Risk allocation was often inappropriate, resulting in less incentive or excessive risk exposure for the private partner	54 - 56

Long-duration PPP contracts are poorly suited to the rapid pace of technological change	57 - 59
The institutional and legal framework is not yet adequate for EU supported PPP projects	60 - 76
Though familiar with PPPs, not all of the Member States we visited have well-developed institutional and legal frameworks	61 - 63
Despite the long-term implications of PPPs, the visited Member States have not developed a clear strategy for their use	64 - 68
Combining EU funding with PPPs entails additional requirements and uncertainties	69 - 71
The possibility of recording PPP projects as off balance sheet items risks to undermine transparency and value-for-money	72 - 76
Conclusions and recommendations	77 - 92
The audited PPP projects were not always effective in achieving their expected benefits	79 - 81
Delays, cost increases and underuse were partly attributable to inadequate analyses and unsuitable approaches	82 - 84
The institutional and legal framework is not yet adequate for EU supported PPP projects	85 - 92
 Annex I	- EU-supported PPPs for the period 2000-2014, in million euro, by country
Annex II	- Main difficulties in the use of blended PPPs, 2007-2013 period, and changes introduced to the Common Provisions Regulation for 2014-2020
Annex III	- Audited projects
Annex IV	- Public Private Partnership projects – Overview of potential benefits and risks compared to audit observations with regard to the audit scope
 The Commission's replies	

GLOSSARY

Blended project: A PPP project that combines EU funds with private financing resources.

Connecting Europe Facility (CEF): The Connecting Europe Facility (CEF) provides since 2014 financial aid to three sectors: energy, transport and information and communication technology (ICT). In these three areas, the CEF identifies investment priorities that should be implemented in the coming decade, such as electricity and gas corridors, use of renewable energy, interconnected transport corridors and cleaner transport modes, high speed broadband connections and digital networks.

Cohesion Fund (CF): The Cohesion Fund aims at strengthening economic and social cohesion within the European Union by financing environment and transport projects in Member States with a per capita GNP of less than 90 % of the EU average.

Common provisions regulation (CPR): Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006¹.

Contracting authorities: Contracting authorities are State, regional or local authorities or bodies governed by public law which have to apply the public procurement directives for public contracts and design contests.

European PPP Expertise Centre (EPEC): Supported by the EIB, works in collaboration with Member States to monitor sectorial and national PPP market development and provides support for institutional capacity building to deal with PPPs in national administrations.

¹ OJ L 347, 20.12.2013, p. 320.

European system of national and regional accounts (ESA): The ESA statistics are produced at a macro aggregated level for the general government sectors and are used as the reference framework for public finance policy, including the reporting of the Member States on their compliance with the Maastricht criteria on debt and deficit. In accordance with Council Regulation (EC) 549/2013 of 21 May 2013, ESA 2010 is applicable to all Member States as of September 2014.

European Fund for Strategic Investments (EFSI): The EFSI is the first pillar of the Commission's Investment Plan for Europe which is also referred to as the "Juncker Plan". It aims to mobilise over the period 2015 to 2017 at least 315 billion euro in private and public long-term investment across the EU. The EFSI is established within the European Investment Bank (EIB) as a trust fund with unlimited duration, to finance riskier parts of projects. A guarantee up to 16 billion euro backed by the EU budget will compensate the additional risk taken by the EIB. Member States can contribute to the EFSI. The EFSI may fund Projects of Common Interest (PCIs) or other interconnection projects. At the time of the audit, the adoption of a legislative proposal to extend the duration of the EFSI until the end of 2020 and to increase the EU budget guarantee to 26 billion euro and to reach an investment target of 500 billion euro was still pending.

European Regional Development Fund (ERDF): The European Regional Development Fund aims at reinforcing economic and social cohesion within the European Union by redressing the main regional imbalances through financial support for the creation of infrastructure and productive job-creating investment, mainly for businesses.

European Structural and Investment Funds (ESIF or ESI Funds): ESIF cover five separate funds that aim to reduce regional imbalances across the Union, with policy frameworks set for the seven-year MFF budgetary period. The funds include: European Regional Development Fund (ERDF); European Social Fund (ESF); Cohesion Fund (CF); European Agricultural Fund for Rural Development (EAFRD); and the European Maritime & Fisheries Fund (EMFF).

Financial instruments: Financial instruments are a generic term for contracts which provide their holder with a claim on an obligor. The EU provides support for three possible types of financial instruments: equity, loan and guarantee instruments. Equity or loan instruments

are contracts between an investor and an investee or between a lender and a borrower.

Guarantees are contracts where a guarantor guarantees the rights of an investor or a lender.

Financial close: The point at which, for a PPP, all financing agreements are signed and all the required conditions contained in them have been met. It enables financing and funding sources for the project (e.g. loans, equity, grants) to start flowing so that project implementation can start.

Grants: Direct financial contributions (donations) from the budget to finance action to help achieve an objective part of an EU policy or support the functioning of a body which pursues an aim of general European interest or has an objective forming part of an EU policy.

JESSICA: JESSICA is an initiative of the European Commission developed in co-operation with the EIB and the Council of Europe Development Bank (CEB). It supports sustainable urban development and regeneration through financial engineering instruments, provided for in Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund².

Leverage effect: In relation to financial instruments funded from the EU budget and national public funds, leverage is expressed in terms of how many euro of funding (public and private) have been effectively been available to provide financial support to final recipients for each euro of public funding (EU and national public funds) endowed to the instrument.

Major project: A project which comprises of an economically indivisible series of works fulfilling a precise technical function having clearly identified aims and whose total cost taken into account in determining the contribution of the funds exceeds 50 million euro or 75 million euro in the case of a transport project. The approval of the Commission is required at individual project level.

² OJ L 210, 31.7.2006, p. 25.

Managing authority: A Managing authority is a national, regional or local public authority (or any other public or private body), which has been designated by a Member State to manage an Operational Programme. Its tasks include selecting projects to be funded, monitoring how projects are implemented and reporting to the Commission on financial aspects and results achieved.

Operational programme (OP): An OP sets out a Member State's priorities and specific objectives and how the funding (EU and national public and private co-financing) will be used during a given period (generally 7 years) to finance projects. These projects must contribute to achieve a certain number of objectives specified at the level of the OP's priority axis. OPs can get funding from ERDF, CF and/or ESF. An OP is prepared by the Member State and has to be approved by the Commission before any payments from the EU budget can be made. OPs can only be modified during the period covered if both parties agree.

Programming period: The multi–annual framework within which Structural Funds and Cohesion Fund expenditure is planned and implemented.

Public procurement: Public procurement is the process by which national, regional and local public authorities, or bodies governed by public law, purchase products, services and public works such as roads and buildings. Private undertakings are also subject to public procurement rules and/or principles whenever they carry out procurements which are predominantly publicly funded.

Public Sector Comparator (PSC): A commonly used comparative tool, which tests whether a private investment proposal offers value-for-money in comparison with the traditional form of procurement.

Shared management: A method of implementing the EU budget in which the Commission delegates implementation tasks to the Member States, while retaining final responsibility.

Trans-European Transport Networks Transport (TEN-T): The Trans-European Transport Networks (TEN-T) are a planned set of road, rail, air and water transport networks in Europe. The infrastructure development of the TEN-T is closely linked with the implementation and

further advancement of EU transport policy. It includes the Core Network and the Comprehensive Network, which are required to be completed by 2030 and 2050 respectively.

EXECUTIVE SUMMARY

I. Public-Private Partnership (PPP) projects harness both the public and the private sector to provide goods and services which are conventionally supplied by the public sector, while easing the stringent budgetary constraints placed on public expenditure. Since the 1990s, 1 749 PPPs worth a total of 336 billion euro have reached financial close in the EU. Most PPPs have been implemented in the field of transport, which in 2016 accounted for one third of the entire year's investment, ahead of healthcare and education.

II. However, to date EU-funds have been little used for PPPs. Although the Commission's policy has been encouraging the use of PPPs for some years (e.g. the Europe 2020 strategy) as a potentially effective means of delivering projects, we identified that during the 2000-2014 period just 84 PPPs, with a total project cost of 29.2 billion euro, received 5.6 billion euro in funding from the EU. Structural and Cohesion Fund grants were the main EU source of funding, followed by financial instruments - often in cooperation with the European Investment Bank (EIB).

III. We examined 12 EU co-financed PPPs in France, Greece, Ireland and Spain in the fields of road transport and Information and Communication Technology (ICT). The visited Member States accounted for around 70 % of the total project cost (29.2 billion euro) of EU-supported PPPs. We assessed whether the audited projects were able to exploit the benefits PPPs are expected to deliver, whether they were based on sound analyses and suitable approaches and whether the overall institutional and legal frameworks within the visited Member States were adequate for the successful implementation of PPPs. Overall, we found that:

- PPPs allowed public authorities to procure large-scale infrastructures through a single procedure, but they increased the risk of insufficient competition and thus putting contracting authorities in a weaker negotiating position.
- Procuring PPPs typically requires negotiating on aspects that are usually not part of traditional procurement and therefore takes up more time than traditional projects. One third of the 12 audited projects were, with their procurement duration of 5-6.5 years, affected by considerable delays.

- Similarly to traditional projects, also the majority of the audited PPPs were subject to considerable inefficiencies in the form of delays during construction and major cost increases. Overall, seven out of the nine completed projects (with aggregate projects costs of 7.8 billion euro) faced delays ranging from two to 52 months. Moreover, an additional amount of almost 1.5 billion euro in public funds was necessary to complete the five motorways we audited in Greece and Spain, around 30 % of which was provided by the EU (corresponding to 422 million euro). We consider this amount to have been spent ineffectively in terms of achieving the potential benefits.
- More importantly, in Greece (which is by far the largest recipient of EU contributions with 59 % of the total EU-amount or 3.3 billion euro), the cost per km of three assessed motorways had increased by up to 69 %, while at the same time the project scopes were reduced by up to 55 %. This was mainly due to the financial crisis and to poorly prepared projects by the public partner, resulting in premature and insufficiently effective contracts with private concessionaires.
- The large scope, the high cost and the long duration of typical infrastructure PPPs require particular diligence. However, we found that prior analyses were based on over-optimistic scenarios regarding future demand and use of the planned infrastructure, resulting in project rates of use of up to 69 % (ICT) and 35 % (motorways) below forecasts. This does not take into account the pending risk of the heavily underused motorways in Greece after their completion.
- On a positive note, nine completed audited projects have shown good levels of service and maintenance and have the potential to keep these levels for the remaining project duration.
- For most of the audited projects, the PPP option was chosen without any prior comparative analysis of alternative options, such as Public Sector Comparator, thus failing to demonstrate that it was the one maximising value-for-money and protecting the public interest by ensuring a level playing field between PPPs and a traditional procurement.

- The risk allocation between public and private partners was often inappropriate, incoherent and ineffective, while high remuneration rates (up to 14 %) on the private partner's risk capital did not always reflect the risks borne. In addition, most of the six audited ICT projects were not easily compatible with long contract durations since they were subject to rapid technology changes.

IV. Implementing successful PPP projects requires considerable administrative capability that can be ensured only through suitable institutional and legal frameworks and long-lasting experience in the implementation of PPP projects. We found that these are currently available only in a limited number of EU Member States. Therefore, the situation does not match the EU's aim to implement greater part of EU-funds through blended projects, including PPPs.

V. Combining EU funding with PPPs entails additional requirements and uncertainties. Moreover, the possibility of recording PPP projects as off-balance-sheet items is an important consideration for the choice of the PPP option, but the practice also risks undermining value-for-money and transparency.

We therefore recommend the following:

- (a) not to promote a more intensive and widespread use of PPPs until the issues identified are addressed and the following recommendations successfully implemented;
- (b) to mitigate the financial impact of delays and re-negotiations on the cost of PPPs borne by the public partner;
- (c) to base the selection of the PPP option on sound comparative analyses on the best procurement option;
- (d) to establish clear PPP policies and strategies;
- (e) to improve the EU framework for better PPP project effectiveness.

INTRODUCTION

What is a PPP?

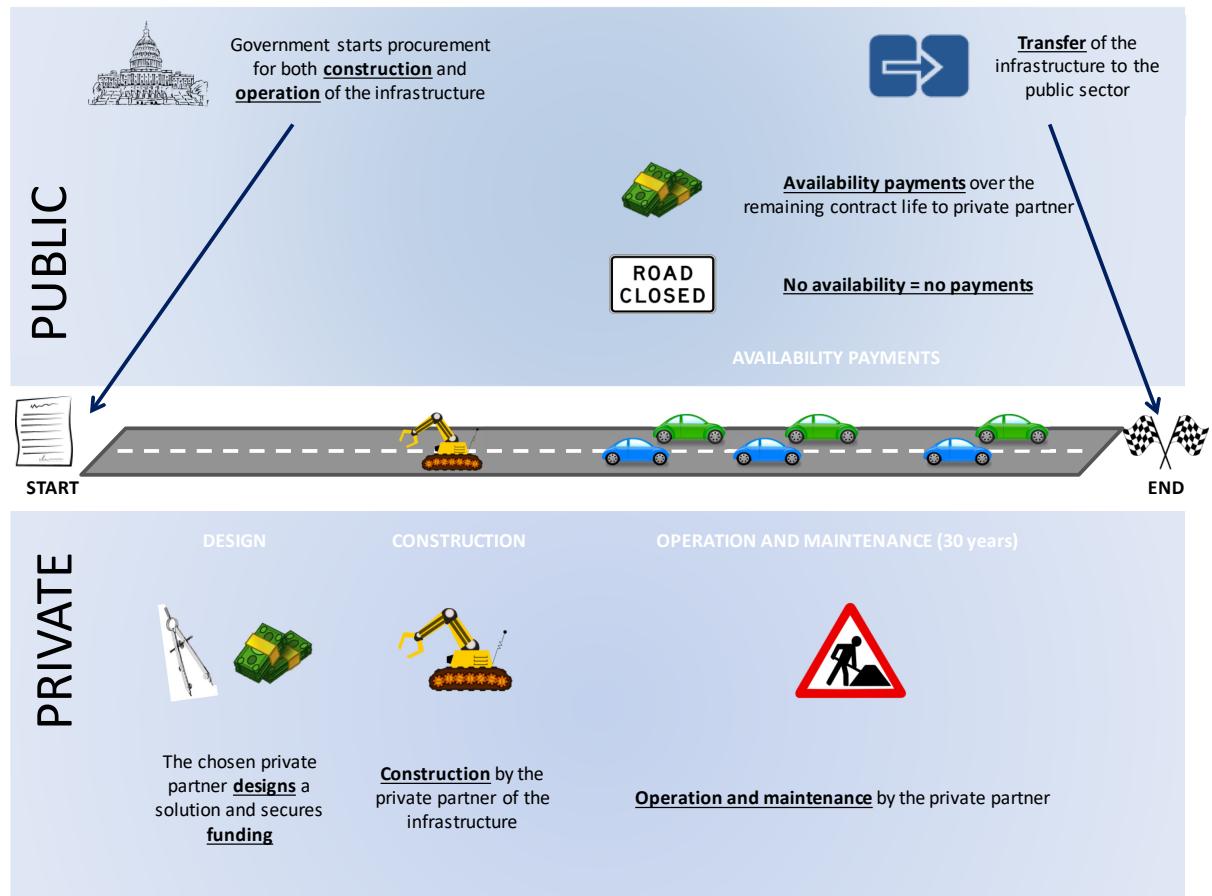
1. The Organisation for Economic Co-operation and Development (OECD) defines Public-Private Partnerships (PPPs) as “long term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks”³. This broad definition shows that PPPs can be designed to achieve a wide array of objectives in various sectors, such as transport, social housing and healthcare, and can be structured under different approaches.
2. PPPs are not different in nature and outcomes from traditionally procured projects, but they exhibit some differences as far as project and contract management are concerned. The main difference between PPPs and traditional projects is the risk-sharing between the public and private partner. In principle, risks in a PPP project should be allocated to the party which is best suited to manage them, the aim being to attain the optimum balance between risk shifting and compensation for the risk-bearing party. The private partner is often responsible for risks, associated with the design, construction, financing, operation and maintenance of the infrastructure, while the public partner usually takes on regulatory and political risks.
3. The most common form of PPP is the “Design-Build-Finance-Maintain-Operate” (DBFMO) contract⁴. Here, the private partner is entrusted with all project phases from design to construction, operation and maintenance of the infrastructure, including fundraising. This long-term perspective is known as the “whole life approach”.
4. ***Figure 1*** provides a graphical representation of the different phases of a DBFMO PPP, which are shown as responsibilities of, respectively, the public and the private partner. The public partner starts to pay the private party for the use of the service, once the construction

³ OECD, “Principles of Public Governance of Public-Private Partnerships”, 2012.

⁴ The three main PPP categories are: (a) concessions, where, typically, final users of the service pay the private partner directly, with no (or reduced) remuneration from the public sector; (b) joint-ventures, or institutional PPPs, where both the public and private sector become shareholders in a third company; (c) contractual PPPs, where the relationship between the parties is governed by a contract.

phase has been completed. The level of instalments usually varies according to the availability of the infrastructure (availability-based PPP) or to the extent to which the infrastructure is used (demand-based PPP) to ensure that the required quality standards are met over the life-time of the project.

Figure 1 - Scheme of a typical DBFMO availability-based⁵ PPP



Source: European Court of Auditors.

⁵ PPPs under which the public partner pays the private partner for the services provided.

Reasons for implementing PPPs

5. According to the relevant literature and research⁶, PPPs are mainly implemented in order to achieve potential benefits compared to traditional procurement methods. These include the following:
- (a) earlier delivery of a planned capital investment programme, as PPPs can provide an important additional funding to complement traditional budgetary envelopes;
 - (b) the possibility of efficiency gains in project implementation by completing individual projects faster;
 - (c) the possibility of sharing risks with the private partner and optimising costs throughout their life-time;
 - (d) the possibility of better maintenance and service levels than traditional projects through a whole life approach;
 - (e) the possibility of combining public and private expertise in the most effective manner to perform in-depth project assessment and achieve optimisation of the project scope.
6. Moreover, the EU accounting framework (ESA 2010)⁷ allows public involvement in PPPs, under certain conditions, to be registered as off-balance sheet items. This incentivises their use for enhanced compliance with the Euro Convergence Criteria, also known as the Maastricht criteria⁸.

⁶ See for instance the World Bank PPP Infrastructure Resource Centre; EPEC, “The Non-Financial Benefits of PPPs-A review of Concepts and methodology”, June 2011; OECD Journal on Budgeting Volume 2011/1, “How To Attain Value for Money: Comparing PPP and Traditional Infrastructure Public Procurement”; EPEC, “PPP Motivations and challenges for the Public Sector”, October 2015.

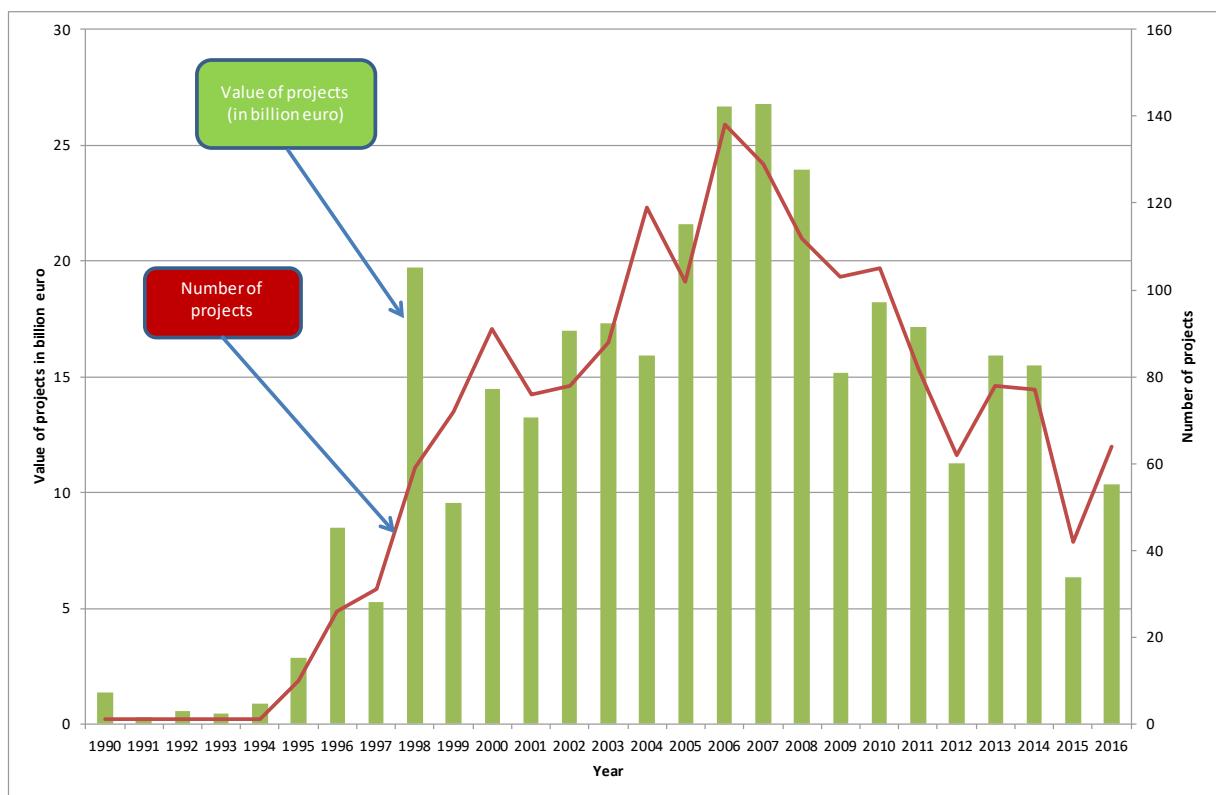
⁷ Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (ESA 2010) (OJ L 174, 26.6.2013, p. 1), applicable to all Member States as of September 2014.

⁸ The Euro Convergence Criteria – also known as ‘Maastricht Criteria’ – are based on Article 140 of the Treaty on the Functioning of the European Union. Member States are required to meet these criteria to enter the third stage of the Economic and Monetary Union and adopt the euro

The European PPP market

7. According to the European PPP Expertise Centre (EPEC), 1 749 PPP projects worth a total of 336 billion euro reached financial close in the EU PPP market between 1990 and 2016. Before the financial and economic crisis, the PPP market was experiencing a sharp increase in volume, but since 2008 the number of new PPP projects has decreased considerably (see **Figure 2**). In 2016, the aggregate value of the 64 PPP transactions that reached financial close in the EU market was 10.3 billion euro. Most projects were in the transport sector, which accounted in 2016 for one-third of all PPP investment, followed by the healthcare and education sectors.

Figure 2 - EU PPP market from 1990 to 2016

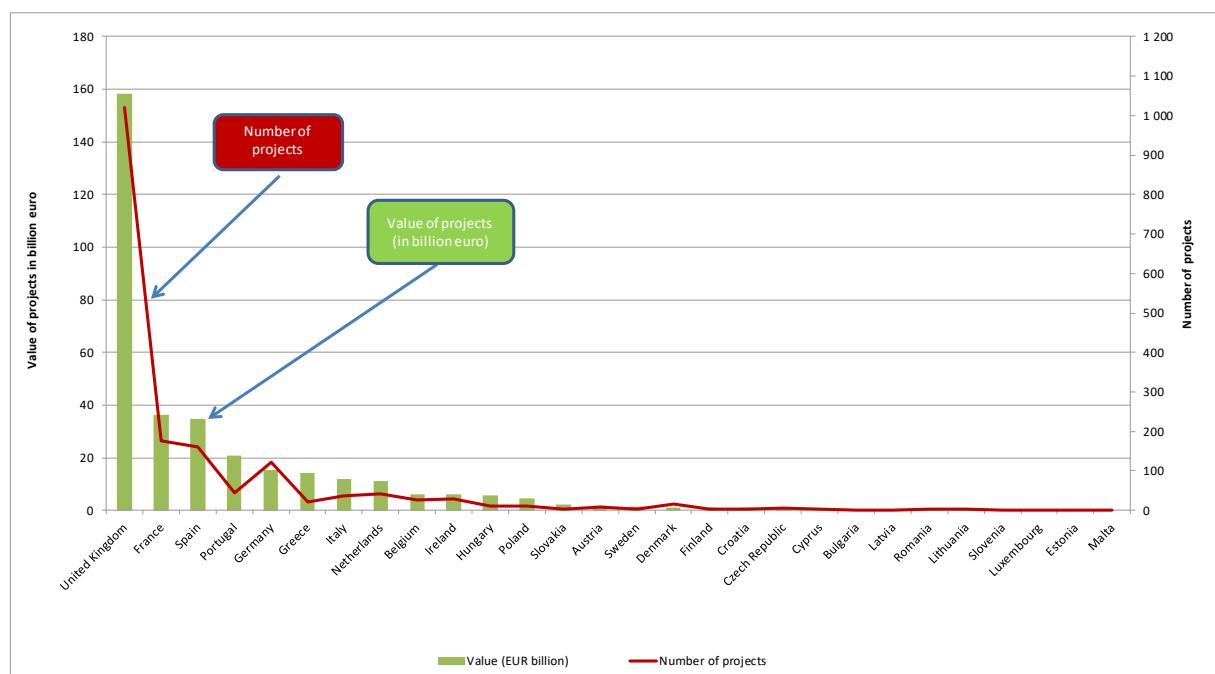


Source: European Court of Auditors based on information provided by EPEC.

as their currency. The fiscal criteria are that the ratio of the annual general government deficit must not exceed 3 % of GDP at market prices and that the government debt-to-GDP ratio must not exceed 60 % at the end of the fiscal year.

8. As shown in ***Figure 3***, the EU PPP market is mostly concentrated in the United Kingdom, France, Spain, Portugal and Germany which implemented projects worth 90 % of the entire market over the 1990-2016 period. While some Member States implemented numerous PPP projects, such as the United Kingdom with over 1 000 PPP projects worth almost 160 billion euro during the period followed by France with 175 PPPs worth almost 40 billion euro, 13 of the 28 Member States implemented fewer than five PPP projects.

Figure 3 - EU PPP market per Member State from 1990 to 2016



Source: ECA based on information provided by EPEC.

PPPs and EU funds

9. PPP projects that combine EU funds with private financing resources are called blended PPPs. By blending EU funds in a PPP, the public sector can make a project more affordable by lowering the required financing levels.

10. There has been a tendency towards a more intensive leverage of public funds with private finance through PPPs. For instance, the Europe 2020⁹ strategy highlights the importance of PPPs. According to the strategy, leveraging financial means by combining private and public finance and creating innovative instruments to finance the needed investments is one of the key aspects Europe must pursue in order to accomplish its objectives for Europe 2020.
11. The 2011 Commission White Paper on Transport¹⁰, amongst others, encourages Member States to use more PPPs, while recognising that not all projects are suitable for this mechanism. Furthermore, it recognises that financial instruments can support PPPs financing on a bigger scale.
12. In the 2014-2020 multi-annual financial framework the Commission has given increased consideration to the more intensive leverage of public funds with private funds and to the role, PPPs can play in that respect.
13. In both the Common Provisions Regulation (CPR) for the 2014-2020 period and the CEF regulation¹¹, PPPs are viewed as a potentially effective means of delivering infrastructure projects which ensure the achievement of public policy objectives by bringing together different forms of public and private resources.
14. The European Fund for Strategic Investments (EFSI) regulation adopted in 2015 also envisages the use of a wide range of financial products with a view to mobilise private investments. EFSI can also be used to support PPPs¹².

⁹ Communication from the Commission - EUROPE 2020 A strategy for smart, sustainable and inclusive growth - COM (2010) 2020 final.

¹⁰ COM(2011) 144 final of 28 March 2011, "White Paper: Roadmap to a Single European Transport Area- Towards a competitive and resource efficient transport system", p. 28.

¹¹ Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

¹² Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the

EU-supported projects until 2014

15. When collecting data on EU-supported PPPs for this audit (April 2016), we identified 84 blended PPP projects, with a total project cost of 29.2 billion euro and an EU contribution of 5.6 billion euro, for the 2000-2014 period. By far the largest recipient of EU contributions was Greece (59 % of the total or 3.3 billion euro). In 13 Member States there have been no EU-supported PPPs at all (see *Annex I*). As indicated in *Table 1*, the transport sector had the largest share in terms of total cost (88 %), while Information and Communication Technologies (ICT) accounted for around 5 % and all other sectors (leisure, water services, environment, etc.) accounted for 7 %.

Table 1 - Funds allocated to EU-supported PPP projects for the period 2000-2014, in million euro, by sector

Sectors	Number of projects	Total cost	%	EU contribution	%
Transport	24	25 538	87	4 555	81
ICT	28	1 740	6	472	8
All other sectors	32	1 964	7	613	11
Total	84	29 242	100	5 640	100

Source: ECA on the basis of data provided by the Commission, EPEC and selected Member States.

16. Structural and Cohesion Funds grants were the main EU source of PPP funding (67 of the 84 projects) during the 2000-2014 period. The Commission supported the other 17 PPPs through financial instruments, often in cooperation with the European Investment Bank (EIB):

- (a) Six PPP projects were supported by the Loan Guarantee Instrument for Trans-European Transport Network Projects (LGTT) and four by Project Bond Initiative (PBI)¹³

European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 – the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

¹³ Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks (OJ L 162, 22.6.2007, p. 1) as amended by Regulation (EU) No 670/2012 of the European Parliament and of the Council of 11 July 2012.

instruments, which were implemented and managed by the EIB under cooperation agreements established with the Commission.

- (b) Four PPP projects were funded under the Marguerite Fund¹⁴ - an initiative of the EIB, national promotional banks and the Commission to undertake equity investments in EU infrastructure projects.
- (c) Three PPP projects were funded using the Joint European Support for Sustainable Investment in City Areas (JESSICA).

17. According to the Commission¹⁵, financial instruments like the LGTT and direct EU investment in the Marguerite Fund (80 million euro) are expected to increase the rate and pace of deployment of TEN-T infrastructure and leverage the impact of TEN-T funds.

Latest developments

18. Later on, in 2015, the Commission and the EIB formally launched the CEF debt instrument, which followed and built on the portfolios previously developed by the LGTT and PBI. The CEF equity instrument, which aims at providing equity or quasi-equity financing to smaller and riskier projects, was under development at the time of the audit.

19. Since 2015 PPP projects have also been funded under the EFSI, which is a Commission-EIB joint initiative. 18 out of the total number of 224 projects approved as of June 2017 had been flagged as PPPs.

AUDIT SCOPE AND APPROACH

20. The main objective of our audit was to examine whether EU-funded PPP projects had been effectively managed and provided adequate value-for-money, account being taken of

¹⁴ Commission decision C(2010) 941 of 25 February 2010 on European Union participation in the 2020 European Fund for Energy, Climate Change and Infrastructure (the Marguerite Fund).

¹⁵ Commission decision C(2010) 796 final of 2010 establishing an annual work programme for granting financial aid in the field of trans-European Transport network (TEN-T) for 2010.

the trend towards more intensively leveraging public funds with private finance through PPPs. In particular, we examined whether:

- (a) the audited projects have been able to exploit the benefits PPPs are expected to deliver (see **paragraphs 24 to 46**);
- (b) the audited projects were based on sound analyses and suitable approaches (see **paragraphs 47 to 59**);
- (c) the overall institutional and legal frameworks within the audited Member States were adequate for the successful implementation of PPPs (see **paragraphs 60 to 76**).

21. The audit work was carried out between May-2016 and September-2017 both at the Commission (DGs MOVE, REGIO, ECFIN and ESTAT) and in four Member States: France, Ireland, Greece and Spain.

22. We examined the relevant policies, strategies, legislation and project documentation; held interviews with the Commission and with the public authorities and private partners in the four Member States, and performed on-the-spot checks of 12 EU co-financed PPP projects in the fields of road transport (six projects) and ICT (six projects¹⁶) (see **Figure 4** and **Annex III**) selected from the identified population of 84 EU-supported PPPs (see **paragraph 15**).

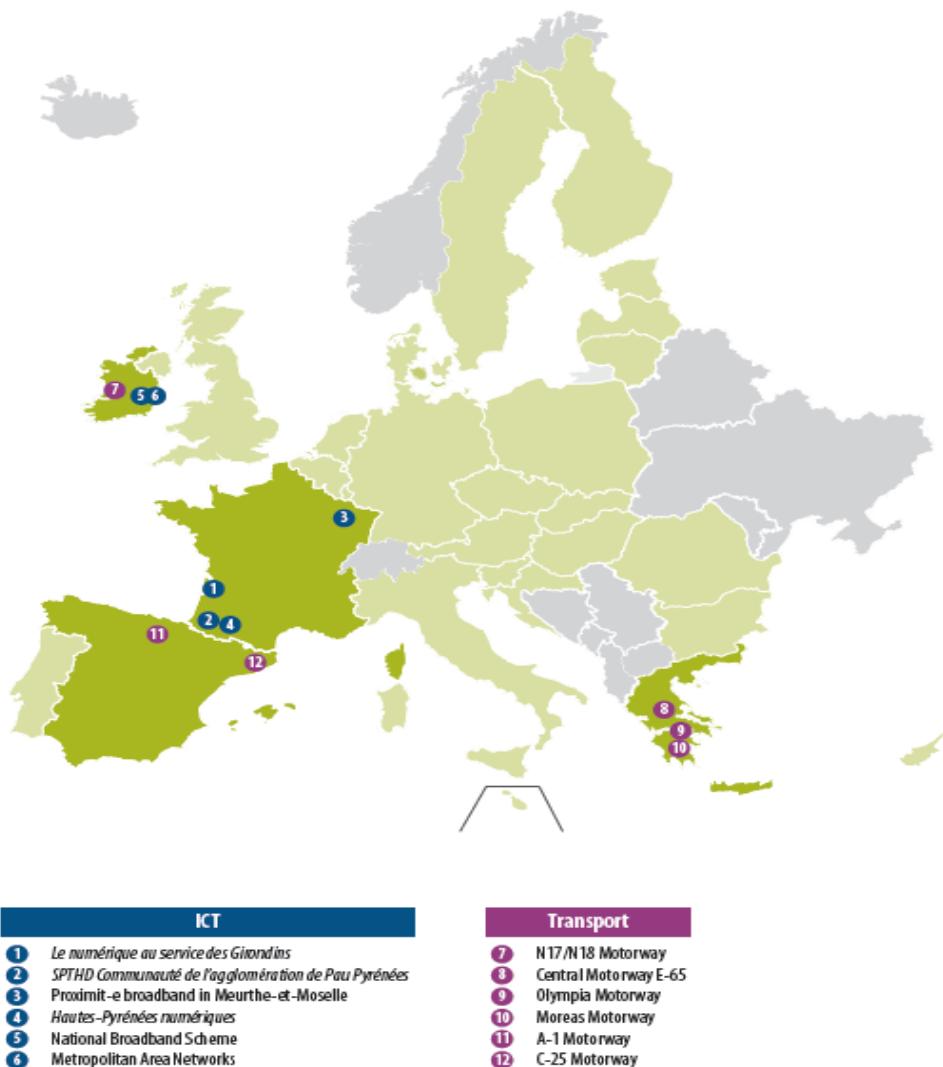
23. With this selection, the audit achieved the following coverage:

- (a) the selected Member States covered around 70 % of the total cost of EU-supported PPPs during 2000-2014 (20.4 out of 29.2 billion euro) and 71 % of the EU contribution to PPPs (4.0 out of 5.6 billion euro), see **Annex I**;

¹⁶ As different Member States have diverging interpretation and definition of what constitutes a PPP (e.g. concessions are considered PPPs in Greece but not in France), the audit team adopted a wider interpretation of PPP, including various forms of multiannual cooperation between public and private partners. Hence, we selected two ICT projects in Ireland, which were not formally considered and procured as PPPs by the Irish authorities, but entail certain PPP characteristics.

- (b) the Transport and ICT sectors accounted for 93 % of the total cost of EU-supported PPPs (27.3 out of 29.2 billion euro), see **Table 1**;
- (c) the selected projects represented a total cost of 9.6 billion euro and an EU contribution of 2.2 billion euro (see **Annex III**);
- (d) the selected projects were financed both by the Structural and Cohesion Funds and by financial instruments.

Figure 4 - 12 EU co-financed PPP projects assessed during this audit



Source: European Court of Auditors.

OBSERVATIONS

The audited PPP projects enabled faster policy implementation and had the potential for good standards of operation and maintenance, but were not always effective in achieving their potential benefits

24. We analysed whether the audited projects were able to exploit their potential benefits in terms of project delivery on time and on budget and the extent to which the built infrastructure was used.

The PPP option allowed public authorities to procure large-scale infrastructure plans through a single procedure

25. With traditional procurement, private companies engaged on large infrastructure projects are paid during the construction period, which usually lasts a limited number of years. Public authorities are therefore required to provide for sufficient budgetary resources to finance all construction in a relatively short period of time. Where funding is insufficient projects may be split into a number of different sections to be procured in different years as the budget allows, and this spreads construction of the complete infrastructure over larger number of years.

26. PPPs, on the other hand, typically require the private partner to finance all construction and then be reimbursed by the public partner or by users during the operational period of the contract, which usually lasts more than 20 years and can often be as long as 30. This enables the public partner immediately to commence construction of the entire infrastructure, and thus to hasten completion and the achievement of all benefits deriving from the infrastructure as a whole.

27. This was the case of the audited motorway projects in Ireland, Greece and Spain, which were each procured in a single exercise. For example, the Greek authorities chose the PPP option in order to obtain access to private financing, without which, in their view, the projects would not have been able to go forward. As a result, the construction and/or upgrade of 744 km of roads (174 km of the Central motorway, 365 km of Olympia Odos and 205 km of the Moreas) was procured through just three tender procedures, which is in stark

contrast to previous experience in the construction of traditionally procured motorways in Greece. For example, the two previously existing sections of the Olympia motorway, measuring a total of 82 km, took up to 20 years and 31 procurement procedures to build¹⁷. However, two of the audited projects in Greece were considerably reduced in scope during implementation (see ***Table 3***).

Procurement of large PPP projects increased the risk of insufficient competition and was in some cases subject to considerable delays

28. While traditional works projects can be split into lots in order to attract more bidders, PPP projects require a minimum size to justify the cost of procurement and facilitate the economies of scale that are needed for enhanced efficiency of operation and maintenance. However, the very large scope of a project can sometimes reduce the level of competition, as few companies generally have the financial wherewithal to submit bids. With very high-value contracts, only a small number of operators, perhaps as few as one, are able to offer all the products or services requested; this could place the contracting authority in a position of dependence.

29. There was evidence of this in, for example, the case of the Central Motorway in Greece, which had total planned costs of 2 375 million euro. Of the four companies invited to submit an offer, two did so, but only one offer was evaluated at the final stage of procurement. Evaluating at least two bidders would have put the public partner in a better negotiating position to achieve more advantageous contractual terms.

30. To award a PPP contract, it is necessary to identify and negotiate all aspects relating to project implementation, financing, operation and maintenance - including indicators and performance measurement systems that are usually not part of traditional project procurement and typically take up more time. Additional delays may also result, under a

¹⁷ The upgrade of the 64 km long Elefsina – Korinthos section to a motorway required 20 years (from 1986 to 2006) and was implemented through 21 traditional public procurement contracts. Similarly, the construction of the 18 km long Patra by-pass section as a motorway required 11 years (from 1991 to 2002) and was implemented through 10 traditional public procurement contracts.

PPP, from the private partner's need to raise funds for project financing. At five years, the procurement of the N17/N18 motorway in Ireland took considerably longer even than the average 15 months needed in Ireland for PPP projects. A lack of liquidity following the financial crisis increased the private partner's difficulty in finding sufficient sources of financing to reach a financial close, resulting in a delay of at least three years¹⁸.

31. Furthermore, the use of the PPP option had no beneficial effects on two of the most common reasons for delays, namely legal proceedings and incomplete preparatory studies, which we found to have affected not only many traditionally procured projects we have audited in the transport sector¹⁹, but also the three motorways procured as PPPs in Greece. The latter required an average of 6.5 years from the start of the procedure to the entry into force of the contracts. Moreover, 3.5 months of these delays were exclusively attributable to the choice of the PPP option, as the contracts had to be ratified by Parliament in the absence of, at the time, an appropriate legal framework for concessions at national and EU level.

32. The motorway projects in Spain were procured in a timely manner, but the contracts were re-negotiated soon afterwards (see **paragraph 34(a)**, which raises questions as to whether the procurement had been well managed. Despite the additional complexity of the PPP approach, the broadband projects in France and Ireland were generally procured in a timely manner, but they were smaller in scope than the audited motorway projects.

¹⁸ Contrary to traditional projects, where the private partner is remunerated during the infrastructure works, in the case of PPPs the private partner needs to finance the entire infrastructure cost before starting to be remunerated. Therefore, it needs to identify and contract third-party lenders in order to undertake the project.

¹⁹ See Special Report No 23/2016 "Maritime transport in the EU: in troubled waters — much ineffective and unsustainable investment" and Special Report No 4/2012 "Using Structural and Cohesion Funds to co-finance transport infrastructures in seaports: an effective investment?" (<http://eca.europa.eu>).

Most of the audited projects were affected by significant construction delays and cost overruns

Most of the audited projects were not completed on time and on budget

33. According to the relevant literature, infrastructure projects implemented through a PPP are more likely to achieve efficiency gains than traditional projects, by completing project construction on time and on budget²⁰. This is because the private partner will normally have a strong incentive to finish construction works as contracted so as to allow the timely start of availability payments or user fees and avoid cost increases for which it usually bears the risks.

34. However, we found that the potential benefits of PPPs often failed to materialise, as the infrastructure was not completed within the planned time and cost. In seven out of nine completed projects²¹, corresponding to 7.8 billion euro project cost, delays ranged from two to 52 months and the total cost increases were close to 1.5 billion euro, around 30 % of which was co-funded by the EU. In Greece, the cost increase was of 1.2 billion euro (borne by the public partner and co-funded at 36 % by the EU) and in Spain of 0.3 billion euro (borne by the public partner), whereas in France the cost increased by 13 million euro or 73 % - the highest cost increase in relative terms observed among the audited projects (see **Annex III** for details):

- (a) The Spanish motorway contracts were re-negotiated soon after contract signature due to required modifications in the planned works, leading to cost increases of around 300 million euro to be borne by the public partner. The cost of the A-1 motorway increased by 33 % (158 million euro), the project being delayed by two years, while the C-25 motorway saw a cost increase of 20.7 % (143.8 million euro, including 88.9 million euro in financial costs) and delays of 14 months.

²⁰ See for instance EPEC, “The Non-Financial Benefits of PPPs - A review of Concepts and Methodology”, June 2011.

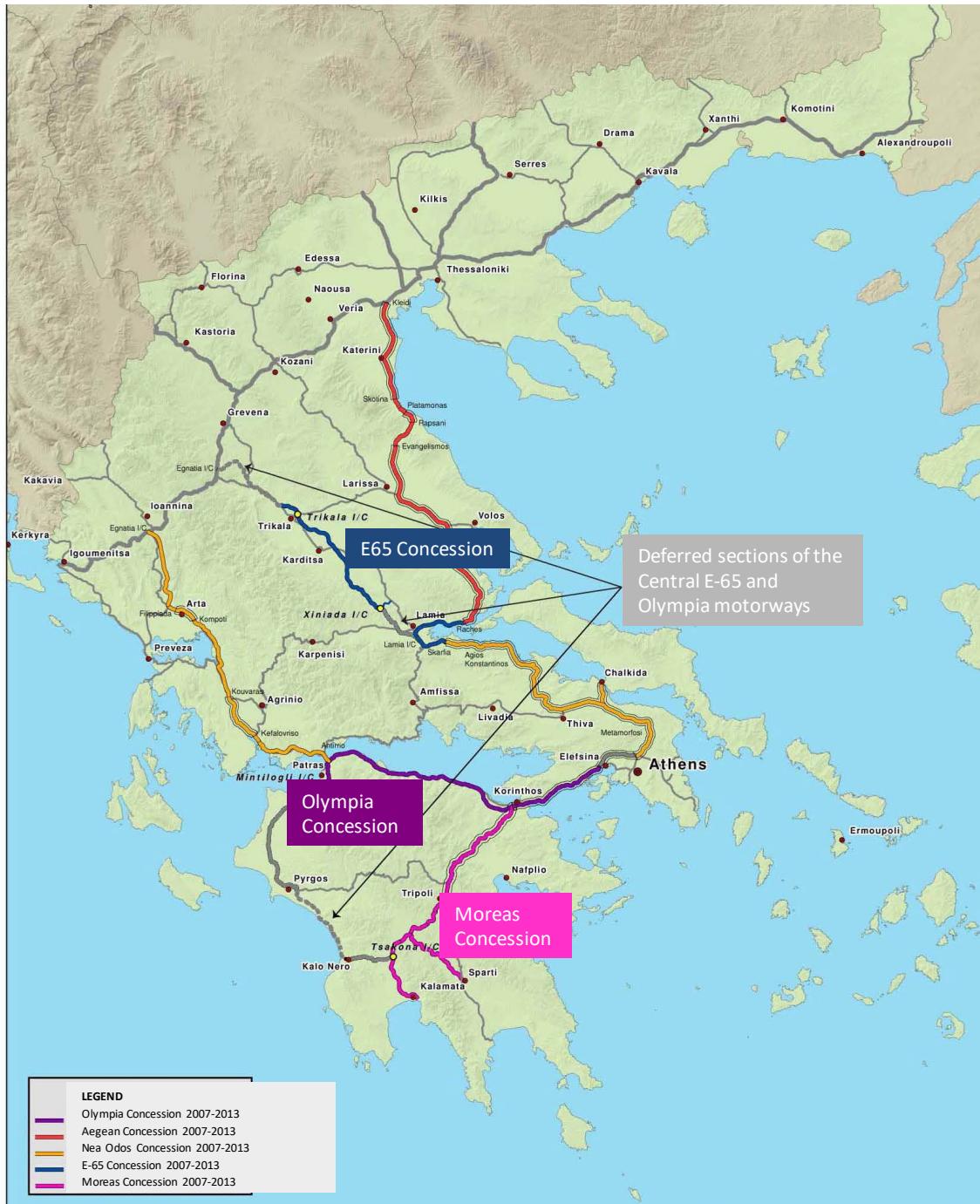
²¹ Greece 3 projects, Spain 2 projects, France 2 projects.

- (b) The cost for the Pau Pyrénées ICT project in France increased by 73 % (from 18 to 31 million euro) in order to comply with regulatory changes; although the infrastructure for the Girondins project was completed on time, commissioning of the project was delayed by 16 months for administrative reasons.
- (c) The construction phase of the Metropolitan Area Network (MAN) ICT project in Ireland was poorly planned, so that the entire project was subsequently downsized, with the result of realising fewer MANs (to 66 towns rather than 95) and 4.2 % (50 953 euro) cost increase per town.
- (d) The construction of the three motorways in Greece was significantly delayed (by four years on average) and renegotiation of the PPP meant substantial additional costs (1.2 billion euro) to be borne by the public partner, even though the scope of two projects was considerably reduced (see section below).

The Greek ‘reset’: What happens when things go wrong in a PPP and who pays the bill? Close to 1.2 billion additional euro paid by the public

35. The first wave of PPPs in Greece was awarded in the 1990s and included projects such as the Rion Antirion Bridge, the Athens ring road and the new Athens international airport. The second wave of PPPs was awarded in 2007-2008 and mainly comprised the construction of motorways (see ***Figure 5***). We audited three of those motorways.

Figure 5 - Concession motorways in Greece



Source: Greek Managing Authority of the OP Transport Infrastructure, Environment and Sustainable Development.

36. These projects were financed to a considerable extent by toll revenues along pre-defined motorway sections, which were operated by the private partner. However, the severe financial and economic crisis in Greece brought about a collapse in traffic volumes,

which fell by around 50 % below the most pessimistic scenarios²², and thus a sharp decline in both actual and estimated revenue for the three audited concessions. In particular, between 2011 and the ‘Reset’ (see ***paragraph 37***), the three audited motorways faced a considerable decline in revenue through the reduction of traffic by at least 63 % (Central Motorway), 49 % (Olympia Motorway) and 20 % (Moreas Motorway) compared to forecast²³. As the public authorities had largely transferred the demand (traffic) risk to the private partners (concessionaires) in the PPP contracts, the reduction in revenues seriously affected the contracts’ financial balance and induced lenders to cease funding the projects, as they no longer believed in their financial viability, resulting in the immediate suspension of works.

37. After having agreed to a contract clause (extended force majeure for the private partner in case of exceptional circumstances), the Greek authorities brought themselves in a situation where their only possibility was to:

- (a) either cease the construction of the motorways and expose themselves to legal disputes and possible payment of penalties and compensations;
- (b) or renegotiate the concession agreements with the concessionaires (and lenders), in order to restore their viability, but also at additional public cost.

The Greek authorities considered that the first scenario, i.e. stopping the construction of the motorways, was less favourable given the broader macroeconomic and social consequences that such a decision would entail. Therefore, after three years of negotiations, the contracts with the concessionaires were re-negotiated (‘reset’) in November 2013 (Olympia and Central E-65 motorways) and December 2015 (Moreas) (see ***Table 2***). This, as detailed below, entails that the public partner had to bear almost 1.2 billion euro additional costs (see ***paragraph 39***).

²² Before concluding the loan agreements, the projects lenders prepared stress scenarios, which assumed as a worst case a traffic drop of 20 % compared to the base scenario.

²³ See also State Aid Decisions C(2013) 9274 final, Subject: State aid SA.36893 (2013/N), C(2013) 9253 final, State aid SA.36878 (2013/N), C(2014)7798 final, State aid SA.39224 (2014/N).

Table 2 - Project implementation delays following the 'reset'

Implementation	Central	Olympia Odos	Moreas
Concession commencement date	31.03.2008	04.08.2008	03.03.2008
Initial completion date	30.09.2013	03.08.2014	31.08.2012
Date of suspension of works	26.06.2011	26.06.2011	30.11.2013
Revised expected completion after the reset	31.12.2015	31.12.2015	30.04.2015
Estimated/actual project completion date	31.08.2017	31.08.2017	31.12.2016
Expected delay in months compared to initial completion date	47	37	52

Source: ECA based on information provided by the Greek authorities.

38. With the 'reset', while the end date for the concessions remained unchanged, a decision was reached to defer the construction of significant stretches of motorway (45 % of the Olympia motorway and 55 % of the Central) and to extend the construction completion deadlines for all three projects, leading to shorter operating periods for the reimbursement of infrastructure costs. Delaying the projects and reducing them in scope had an impact on the objective of extending the Greek motorway network and a knock-on effect on the TEN-T as a whole. Furthermore, there is the pending risk that the Central Motorway and the Lefktro-Sparta section of the Moreas motorway projects are heavily underused, which is not in line with sound financial management criteria (see in particular **Box 1**).

39. In addition, the public partner was also required to take on almost 1.2 billion euro in additional costs (see **Table 3**). Following the above mentioned decision to renegotiate the contracts:

- (a) An additional financial contribution of 470 million euro (including 422 million euro in EU funds) was paid for the construction periods of the Olympia and Central motorways. This was to cover financing gaps created mainly by the decreased revenues deriving from the reduced traffic volumes and the significant increase in the projects' financial costs as consequence of the financial crisis, which seriously altered the contracts' financial balances.
- (b) Moreover, the public partner also had to pay additional 705 million euro to the concessionaires of the three motorways mainly due to agreements to accelerate works, which were not required by capacity needs and to the following delays attributable to the public partner:

- for clearing archaeological findings;
- for obtaining the required environmental permits;
- for finalising the necessary land expropriations.

The high amount of this payment was also due to poorly prepared projects, and especially to the fact that PPP contracts were signed before relevant issues were solved and because delays did not automatically result in a rescheduling of the end of the operations periods; instead the private partners had less time left to collect revenues and achieve the expected profitability.

Table 3 - Audited projects' costs before and after the 'Reset'

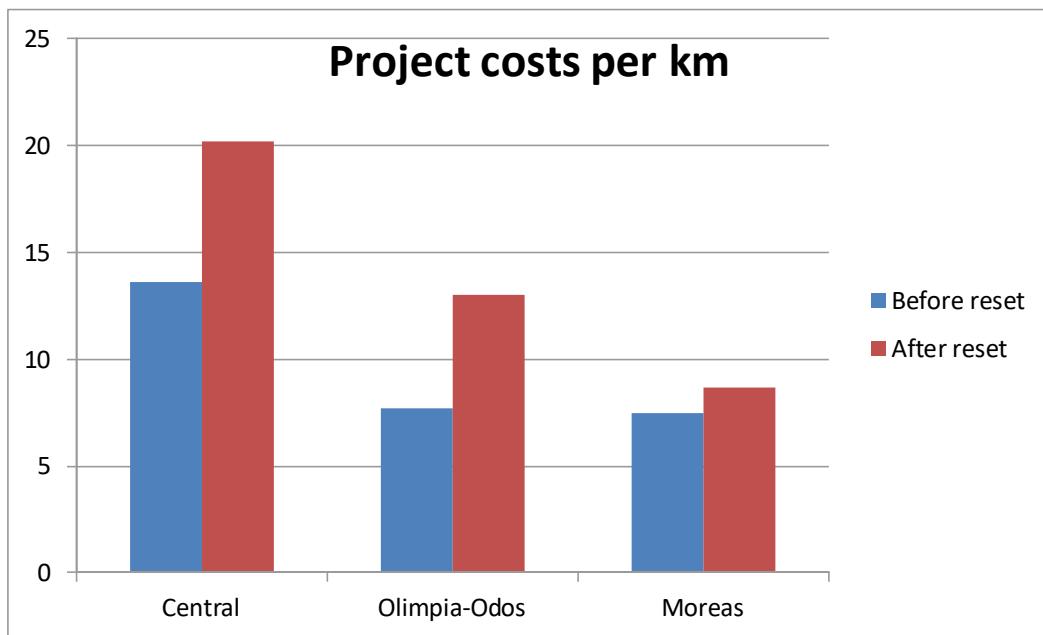
Costs	Motorways		
	Central	Olympia Odos	Moreas
Initially planned			
Road length in km	174.0	365.0	205.0
Total project costs in million euro	2 375.0	2 825.0	1 543.0
Total project cost in million euro per km	13.7	7.7	7.5
After reset			
Road length in km	79.0	202.0	205.0
Total project costs in million euro	1 594.0	2 619.0	1 791.0
Out of which:			
Additional State financial contribution: 469.9 million euro	231.4	238.5	-
(from which EU co-financed: 422.1 million euro)	203.6	218.5	-
State payments to concessionaires: 705.2 million euro	181.4	439.7	84.1
Total project cost in million euro per km	20.2	13.0	8.7

Source: ECA based on information provided by the Greek authorities.

40. As a result of the State payment to the concessionaires and the substantial increase in financial costs, the total project cost per km for the Olympia motorway increased by 69 % from 7.7 to 13.0 million euro, while the length of road to be constructed was shortened by 45 %. Similarly, the total project cost per km for the Central motorway increased by 47 % from the initial 13.7 to 20.2 million euro per km, while the road to be constructed was shortened by 55 % (see *Figure 6*). Overall, due to the reset, the total project cost of the three motorways increased by 36 % from 9.1 to 12.4 million euro per km, out of which, the EU

contribution for the total project cost per km increased by 95 % from 2.1 million euro per km to 4.1 million euro per km²⁴.

Figure 6 - Cost increase per km following the 'reset'



Source: ECA based on information provided by the Greek authorities.

Most of the audited projects have the potential for keeping good standards of service and maintenance

41. Another potential benefit of PPPs is the possibility of ensuring better maintenance and service levels than traditional projects through a whole life approach, as the private partner in charge of construction is also responsible for operating and maintaining the infrastructure for the entire project duration – far longer than the typical warranty period under traditional procurement rules. This will require the private partner to plan with a view to the long-term operation and maintenance costs it will have to bear and to the long-term delivery of the service levels it has committed to in the PPP contract; it will therefore have to pay particular attention to construction quality.

²⁴ 1.6 billion euro for 744 km relative to 2.0 billion euro for 486 km.

42. In addition, traditionally procured projects do not usually include the budgetary resources that are necessary for operating and maintaining the project infrastructure, as these aspects are contracted separately. As PPP contracts include provisions for operations and maintenance, they allow the necessary funds to be committed from the start of the construction period, thus ensuring that they are not subject to the discretion of the public authorities.

43. Most of the nine audited projects that had been completed at the time of our audit visits showed good standards of service and maintenance, such as structural integrity, horizontal and vertical signage for motorways and, for ICT, response time to customer requests for broadband and many other aspects. These projects have the potential for keeping good service and maintenance standards for the future duration of the contracts. This was traceable to contract incentives and penalties that could impact on the amount of annual payments. With the exception of the C-25 motorway in Spain and the three audited Greek motorways, where *ad hoc* procedures apply for penalties, annual payments can be automatically reduced in the event of poor maintenance or increased if maintenance and service levels are outstanding.

PPPs have not protected the public partner from over-optimism regarding future demand and use of the planned infrastructure

44. The possibility of combining public and private expertise when designing a PPP is generally thought to be beneficial for a realistic assessment of the future use of the planned infrastructure. However, the fact that payments can be spread over a period of 20-30 years reduces the pressure to optimise the project scope in accordance to the real needs and therefore increases the risk of public entities entering into bigger infrastructure projects than are needed or they would otherwise be able to afford²⁵. Together with over-optimistic scenarios regarding future demand and use of the planned infrastructure, this can lead to under-used projects with less value for money and fewer benefits than expected.

²⁵ This situation is often referred to as ‘affordability illusion’.

45. Such was the case for three of the audited motorway projects, which risk to be heavily underused, such as the Central Motorway (see **Box 1**) and the Lefktro-Sparta section of the Moreas motorway in Greece, and the completed motorway A-1 in Spain, which have been faced in this way with traffic levels 35 % lower than initially envisaged (20 463 vehicles instead of 31 719).

Box 1 - Example of a motorway in Greece that risks being heavily underused

Where the Central motorway E-65 project got underway in Greece, there was already little expectation that it would attract high levels of traffic (only 4 832 vehicles a day were anticipated for the first year of operation, which is insufficient traffic to justify a motorway according to sound financial management criteria). In 2013, the traffic estimate was reduced even further to 1 792 vehicles a day, i.e. more than 63 % below the initial estimate. It is very likely that the infrastructure will be heavily underused. Despite this, the motorway specifications were set without giving enough consideration for the possibility to construct a less costly alternative to a motorway²⁶. Moreover, the project scope has been considerably reduced, so that only the middle section (79 km) of the planned motorway is currently under construction (see **Figure 7**), not, however, the deferred northern and southern sections linking to other existing motorways. Without these links, future traffic levels are likely to be far lower even than the already low estimated traffic levels.

²⁶ According to ECA Special Report No 5/2013 "Are EU Cohesion Policy funds well spent on roads?" the choice of express roads could often result in an average 43 % savings when compared to motorways.

Figure 7 - Construction works at the E-65 Central Motorway in Greece



Source: European Court of Auditors.

46. Also the audited broadband projects in France and Ireland also experienced customer uptake that was lower, sometimes considerably lower, than anticipated. The project in Meurthe-et-Moselle (France) had revenues almost 50 % below expectations (see **Table 4**) and for the NBS project (Ireland) the actual customer uptake figures were 69 % less than forecast (42 004 customers instead of 135 948).

Table 4 - Customer uptake for French PPP projects in Gironde, Meurthe-et-Moselle and Hautes-Pyrénées

Project (start date)	Gironde (2009)	Meurthe-et-Moselle (2008)	Hautes-Pyrénées (2010)
Actual revenues by the end of 2015 (% of estimated revenues by the end of 2015)	7.8 million euro (83.9 %)	7.0 million euro (50.9 %)	9.2 million euro (89.6 %)

Delays, cost increases and underuse were partly attributable to inadequate analyses and unsuitable approaches

47. In order to identify the reasons for any possible weaknesses in project implementation (for an overview on the potential benefits and risks and the related audit observations, see Annex IV), we assessed whether there was sufficient prior analysis justifying the choice and scale of each and the choice of the PPP option. We also examined whether the chosen PPP approach was appropriate to the specific circumstances.

For most of the audited projects, the PPP option was chosen without any prior comparative analysis, to demonstrate that it was the one maximising value-for-money

48. As many countries do not require the full costs of PPPs to be budgeted for up front at the time the commitment is made, and annual charges are only recognised several years after project approval and the end of construction, any statement of costs of PPPs is greatly delayed and appears well after the key decisions are made. Decision-makers may scrutinise PPPs less carefully than they do traditional contracts, as capital costs for the latter are budgeted up front and they must compete with other projects for a limited pool of funding. Moreover, public partners often rely on the scrutiny made by lenders, whose objectives may be very different.

49. As PPPs have long-term implications for future generations, their selection requires especially robust analysis and justification. Good management practices envisage performing comparative analyses between different procurement options (e.g. traditional vs PPP) in order to select the one that offers best value for money. A commonly used tool is the Public Sector Comparator (PSC). If the PPP option is chosen without any comparative analysis to ensure a level playing field between different procurement methods, there can be no guarantee that it is the one that maximises value-for-money and best protects the public interest.

50. For three of the 12 audited projects, the national procedures did not envisage any comparative analysis, such as a PSC, to identify the most suitable procurement option, as these projects did not envisage direct payments by the public. However, the rationale followed for the selection of five out of the remaining nine audited projects (see Annex III) –

i.e. all audited motorway projects in Greece and Spain - was not based on any comparative analysis, which would have provided additional quantitative elements and value for money considerations as a basis for the decision on the procurement option (an example of the relevance of such analyses is provided in **Box 2**). In addition, for one of the nine projects, the Court has been refused access to the relevant documentation (see **paragraph 51**).

51. Although the Commission's investment in the Marguerite Fund falls under the TEN Regulation, which provides for the Court's audit rights even in case the beneficiary is a private partner²⁷, the Irish authorities refused to provide the Court the PSC and the tender dossier for the N17/18 motorway project, which were also not available at the Commission. Therefore the rationale in designing and procuring the project and in choosing the PPP option instead of alternative procurement methods (such as traditional procurement and concession) could not be assessed.

Box 2 - Relevance of Public Sector Comparators for infrastructure projects

Public Sector Comparators can prove particularly relevant when assessing the value-for-money of the PPP option for infrastructure projects. As private partners usually bear higher financial costs and require a high remuneration for their risk capital²⁸, they tend to minimise long-term maintenance costs by improving construction quality, which implies also higher construction costs. As a consequence, savings in maintenance costs need to be sufficient to compensate for the higher construction and financial costs. Therefore, it is important that Public Sector Comparators assess the

²⁷ The Commission's contribution to the Marguerite Fund was financed under Regulation No 680/2007 (TEN Regulation), which envisages, under Article 11, that Member States have certain obligations, such as to "implement the projects of common interest which receive Community financial aid granted under the TEN Regulation", "to undertake the technical monitoring and financial control of projects in close cooperation with the Commission" and to "certify the reality and the conformity of the expenditure incurred in respect of projects or parts of projects", without distinction between different forms of financing. It follows that as regards the implementation, monitoring and financial control of projects supported by the Marguerite Fund, the Court could ask directly the Member States to provide the relevant information for the purpose of the audit, including those concerning the national procedure carried out with a view to award PPP contracts.

²⁸ Private partners usually have access to more expensive lending conditions than State Governments and require a high remuneration for the risk capital that, for the audited projects, sometimes reached the rate of 14 % per year.

extent to which long-term savings can be achieved and whether a PPP is the right option for a given infrastructure. This is particularly relevant for infrastructure such as a road or a motorway, for which annual maintenance spending amounts to not more than 3 % of the cost of the infrastructure and that, therefore, leave only limited margins for long-term savings on maintenance²⁹.

52. While Public Sector Comparators were carried out for the three French availability-based PPPs examined, they were hindered by the lack of reliable data on costs and systematically anticipated over-optimistic revenue levels³⁰ that in most cases could not be matched by actual customer uptakes (see ***paragraph 46***), resulting in lower-than-planned effectiveness. In addition, the project at Pau-Pyrénées in France and the MAN project in Ireland also lacked an overall cost-benefit analysis, which hampered the identification of expected benefits and the optimisation of the projects' sizes and scopes. For the MAN project, it resulted in a reduction of project scope from 95 to 66 MANs and the cost per municipality served by the project increased by 4.2 % (see ***paragraph 34(c)***).

53. Our assessment of the audited PPP projects showed that certain aspects may considerably influence project performance and, therefore, could fall within the scope of a specific Commission assessment. Although the structuring, tendering and implementation of PPP projects fall exclusively within the competence of Member States, the Commission can play an important role when it has to approve major projects to be co-financed by EU resources. However, until the programming period 2007-2013, it had not put in place dedicated assessment tools (e.g. project evaluation criteria to demonstrate EU added value, value-for-money and compatibility with contracts of long duration) for analysing the impact of specific PPP features on individual major projects³¹.

²⁹ Financial models elaborated by us have shown that the more the infrastructure requires high maintenance costs and the lower difference in interest rates paid by the public and the private, the more it is likely that PPPs can achieve sufficient long-term savings.

³⁰ Weaknesses in the use of Public Sector Comparators were also observed by the French Court of Auditors in its audit report *Les partenariats public-privé des collectivités territoriales: des risques à maîtriser, Cour des comptes française, Rapport public annuel 2015*.

³¹ Under the ESIF programming period 2007-2013, out of the 968 major projects worth 155.2 billion euro approved by the European Commission, 28 consisted of PPP projects worth 11.8 billion euro with an EU contribution of 4.8 billion euro. Projects co-financed by the

Risk allocation was often inappropriate, resulting in less incentive or excessive risk exposure for the private partner

54. One reason for selecting the PPP option is the possibility of allocating risks (such as construction, demand, availability) according to the principle that they should be borne by the partner that is best suited to manage them.

55. The ability to identify and allocate project risks correctly, so to attain the optimum balance between the shifting of risk and compensation for the risk-bearing party, is a key factor for the success of a PPP. Failing to do so may have financial implications for the public partner and hamper the achievement of the project objectives. Suboptimal risk sharing arrangements may result in fewer incentives for the private partner or higher project costs and lower rewards for the public partner.

56. While we identified at least one good practice - the French broadband project in the Gironde took account of the attainment of the expected levels of service and provided for penalties if customer uptake was not in line with the financial models submitted in the procurement bid - we also found a number of cases in which risks were not allocated in a coherent manner. For example:

- (a) Risk allocation not coherent with the criteria for awarding the PPP contract: although bidders for the Meurthe-et-Moselle project in France were selected in accordance with award criteria that included the prospective private partners proposing financial models for the commercialisation of broadband services, commercial risks were borne not by them but by the public partner. This made the private partners un-accountable for their revenue forecasts at the bidding stage. During the audit we found that revenue was almost 50 % below expectations; a more coherent risk allocation would have provided stronger incentives to ensure the effective commercialisation of broadband services.
- (b) Risk allocation not coherent with private risk capital remuneration: In the case of a motorway project, the private partner bore the availability risk but not the demand risk.

As the former depends more on the maintenance levels achieved by the private partner than on exogenous factors, it exposes the private partner to fewer uncertainties and should therefore trigger lower remuneration rates for the private partner's capital than the demand risk. However, in this case the PPP contract provided for a rate of return of almost 14 % per year for the private partner's equity capital, which was among the highest rates observed among the audited projects.

- (c) Inappropriate risk allocation - excessive risks borne by the private partner: the audited projects in Greece showed that, where the private partner's share of risk is excessively high - as for instance with the Olympia motorway, where the public partner transferred the full demand risk to the private partner although it could in no way influence traffic demand -, major challenges may arise in the form of increased risk of bankruptcy for the private partner and thus additional costs and reduced value for money for the public partner (see **paragraphs 36 to 40**). A similar risk-allocation was envisaged also for the NBS project in Ireland, where the actual customer uptake turned out to be much lower than initially planned (see **paragraph 46**); had the private partner not been financially robust, the considerably lower revenues achieved would have put the entire project at risk.
- (d) Ineffective risk allocation: Under the A-1 motorway project in Spain (see **Figure 8**), both the demand risk and the availability risk were shifted to the private partner, as the project remuneration was based on shadow-tolls paid by the public partner adjusted to include bonuses or penalties for the quality of infrastructure maintenance. While traffic levels were considerably below expectations, the quality of maintenance (which was facilitated by the low traffic levels) generated bonuses that offset all the private partner's losses deriving from the demand risk. Therefore, even though all risks were borne by the private partner, in practice it suffered almost no financial disadvantage, whereas the public partner was contractually obliged to pay considerably higher amounts to ensure outstanding maintenance of an under-used motorway.

Figure 8 - A-1 Motorway in Spain



Source: European Court of Auditors.

Long-duration PPP contracts are poorly suited to the rapid pace of technological change

57. PPPs are commonly expected to aim at maximising their benefits by combining and building on the respective strengths of public and private expertise. In this way, they are expected to generate additional quality of infrastructure and services and provide incentives to identify innovative solutions in the delivery of public services³².

58. The audited broadband projects were implemented as PPPs mainly because the public partners considered that they did not have the technical capability to implement them in a traditional manner without running a high risk of technical interface problems. However, they came up against a common issue facing PPPs in the area of new technologies, where the choice of the most appropriate technological solutions is a key factor for the successful implementation of long term contracts. Committing to a given technology and given

³² See, for instance, EPEC, “The Non-Financial Benefits of PPPs - A review of Concepts and Methodology”, June 2011.

performance over the usually long duration of a PPP contract exposed the projects to considerable risk of technological obsolescence, which would inevitably mean decreased revenue as soon as a new technology becomes available.

59. For example, three of the four audited broadband PPP projects in France were set to run for 18 to 24 years and are based on a mix of technologies, including extensive use of wireless technologies that require costly updates every five or six years (see also **Box 3**). With the introduction of the French strategy on very high speed internet³³, in order to put the relevant infrastructure in place, it will be necessary to launch new procurement procedures to cover areas that have just been covered with wireless technology and for which there is already a PPP contract in place until 2030 and beyond. This is likely to result in two or more overlapping PPP contracts to cover the same area – one of them based on obsolete technology – as well as the possible re-negotiations of existing PPP contracts, cost increases and unforeseeable consequences for the whole network.

Box 3 - PPPs in the face of rapid technological change - the project in Meurthe-et-Moselle

The award criteria for the broadband project in Meurthe-et-Moselle emphasised the speed factor in achieving the desired geographical coverage, but no points were awarded for the quality of the technical solutions proposed by the tenderers. As a consequence, although 95 % of the households have been covered at 6 Mbps, in many cases this comes through satellite or Wifi-MAX, less durable and performing technologies that are not in line with the tendency to expand the coverage of households with fibre optic. Considerable additional resources have therefore had to be set aside for updating network quality on a regular basis, so that the cost of major infrastructure maintenance and renewal (32 million euro) accounts for 84.4 % of the total project investment cost of 37 million euro – a considerably higher proportion than in other broadband projects which use fibre optics more intensively.

³³ *Plan France Très Haut Débit 2013-2022* launched in February 2013, committed the Government itself to achieve 100 % coverage of broadband infrastructure with fibre optics by 2022.

The institutional and legal framework is not yet adequate for EU supported PPP projects

60. We assessed whether the legal and institutional frameworks in the EU are able to cope with higher numbers of PPP projects in all the Member States. Considerations include the availability of adequate PPP legislation, PPP advisory units to support the implementation of PPP projects through advice, standard contracts, models for comparative analyses and appropriate functioning mechanisms to facilitate the implementation of all these systems, as well as suitable strategies for the use of PPPs as part of overall investment policy.

Though familiar with PPPs, not all of the Member States we visited have well-developed institutional and legal frameworks

61. To be successful, PPPs require robust and comprehensive legal and institutional frameworks and processes. Furthermore, the successful delivery of PPPs also depends to a large extent on the administrative capacity of the responsible authorities.

62. We examined the institutional and legal frameworks of the four Member States we visited and identified certain shortcomings that hinder the successful implementation of PPPs:

- (a) In France and Ireland, the PPP framework operates only for specific types of PPPs at central level: In France, the comprehensive institutional framework operated mainly for the Contrats de Partenariat (CPs) – such as the common DBFMO availability-based PPP scheme - which are negotiated at national level. Other forms of PPPs, such as the ‘Délégation de Service Public’ (concession type PPPs) and CPs at regional level were not subject to similar arrangements. In Ireland, contractual arrangements such as those for the MAN project are not subject to the same scrutiny procedures and comparative analysis as availability-based PPPs, which could possibly have prevented poor planning in this instance (see **paragraph 34(c)**).
- (b) In Greece, the PPP framework operates only for projects with construction cost of less than 500 million euro, which excludes very large infrastructure projects such as the

three motorways selected for our audit³⁴ from the obligatory assessments laid down in the PPP law. This situation does not make it easy for the department responsible for PPPs to apply established procedures and consistently benefit from the experience of the PPP unit in the case of large –scale projects.

- (c) Spain had no dedicated department or PPP unit to support the implementation of the audited PPP projects: PPPs were therefore unable to benefit from standardised contract clauses, guidance and tools at central level. The Spanish PPP projects were not subject to comparative analysis with other procurement options (see **paragraph 50**), or any other specific value-for-money assessments tailored for PPP projects.

63. Moreover, we found that only few Member States have accumulated sufficient long-lasting experience and public sector expertise with the implementation of successful PPP projects (see **Figure 3**). Our analysis of the EFSI-funded PPP projects confirmed that they are concentrated in Member States that are most familiar with this procurement option: 14 of the 18 PPPs approved under the EFSI as of June 2017 were located in France, the United Kingdom, the Netherlands, Italy, Germany, Ireland and Greece. This is further confirmed by the Court's Opinion concerning the proposal to extend and expand the scope of the current EFSI Regulation³⁵, which drew attention to severe geographic imbalances and sectorial concentration, given that 63 % of EFSI financing under the Infrastructure and Innovation Window goes to the United Kingdom, Italy and Spain, mainly in the energy (46 %) and in the transport (19 %) sectors.

³⁴ Higher-cost PPP projects may be made subject to the PPP law upon a unanimous decision of the Inter-ministerial Committee on PPPs.

³⁵ Opinion No 2/2016 "EFSI: an early proposal to extend and expand" (<http://www.eca.europa.eu>).

Despite the long-term implications of PPPs, the visited Member States have not developed a clear strategy for their use

64. One of the potential benefits of PPP projects is the earlier delivery of a planned capital investment programme, as PPPs can provide an important additional source of funding to complement traditional budgetary envelopes.

65. However, financing large infrastructure projects and committing to yearly payments for their construction, operation and maintenance has long-term implications for Member States' budgets and political decisions-making, which would require Governments to develop a strategic approach to identify in which areas and circumstances the PPP option is most suitable and where it may be appropriate to commit to a budget in the long-term. We found that most of the Member States we visited had not a clear policy and strategy with regard to the use of PPPs:

- (a) In Ireland and Greece, PPPs were considered mainly as a source of additional funding, either in order to finance mainly supplementary investments, i.e. additional projects that could not be covered under the national capital budget, through PPPs (Ireland) or to attract private funds (Greece).
- (b) In France, there is no strategic approach to using PPPs. The Government has tried to incentivise the use of PPPs as an anti-cyclical measure to face down the financial and economic crisis, but has given no clear indications on the role PPPs should play in investment strategies. For example, the audited PPP projects in the broadband sector were implemented without having an overall strategy at national level in place to achieve the objective to ensure high speed internet access for all (see **paragraph 59**).
- (c) In Spain, PPP projects were identified on the basis of their maturity and not on the basis of their relevance, impact or value-for-money, which explains why, for example, a more mature project on a less traffic-intensive section of the A-1 motorway was implemented through a PPP.

66. From the European infrastructure policy perspective, the six audited broadband projects in France and Ireland addressed the EU's main ICT priorities. However, we found

that two thirds of the audited motorway projects³⁶ were part not of the high-priority TEN-T Core Network, which is intended to highlight the priority for completing the network by 2030, but of the comprehensive network expected to be completed by 2050 only. Although PPPs have the potential to contribute, as a further alternative to traditional procurement methods, to the completion of priority large infrastructure plans, it is questionable whether it was worth and justified to assume the additional elaborate requirements and risks linked to a PPP option for these projects, which are not part of the Core Network to be completed by 2030 and turned out to be particularly problematic as highlighted in this report.

67. The role that PPPs should play within wider investment strategies should be possibly based on of coherent strategic approaches. Of the four Member States visited, Ireland and, to a lesser extent, Greece gave thought to limiting the use of PPPs in order not to commit excessive amounts of future budgets by taking advantage of the lack of upfront budget recognition and controls. Ireland envisaged capping PPP expenditure at 10 % of the overall aggregate capital expenditure on an annual basis, whereas in Greece the total payments for PPPs under the PPP law framework should not exceed 10 % of the annual public investment programme and the total annual availability payments to private operators should not exceed 600 million euro³⁷.

68. In France and Spain, there is no ceiling on total annual payments for PPPs. The risk of reduced fiscal flexibility, due to the number of higher levels of capital than can be afforded given current and long-term budget constraints was particularly evident at regional level (see **Box 4**).

Box 4 - Example of reduced fiscal flexibility in the Region of Cataluña

The Region of Catalonia in Spain operates a substantial PPP investment programme, the economic rationale for which goes back to an optimistic outlook for public finances based on rapid economic growth before the economic and financial crisis. Indeed, in 2007, PPP projects accounted for

³⁶ The Irish N17/N18 Motorway in Ireland, the C-25 Motorway in Spain and the Central Motorway, the Moreas Motorway and the remaining sections of the Olympia Motorway in Greece.

³⁷ These provisions do not apply to the large-scale PPP projects above 500 million euro that fall outside the PPP framework.

expenditure of 178.8 million euro, 8.9 % of the annual budget (2 000 million euro) of the department responsible for transport infrastructure. The department considered that this financial burden would not jeopardise the sustainability of future budgets, as at that time the economy was growing at a considerable pace. Following the crisis, however, the department's yearly budget was cut to 300 million euro, with the result that PPP payments now represented the largest share thereof. This left very little room for fiscal flexibility and thus compromised the region's ability to adapt to emerging priorities or to fund urgent investments.

Combining EU funding with PPPs entails additional requirements and uncertainties

69. Only very few Member States have systematically implemented PPPs making use of EU support (see **paragraphs 9 to 19**). Our visits to Ireland, France, Spain and Greece confirmed that one of the main barriers to blended PPP projects is the more elaborate requirements imposed by the EU grant application process, in addition to the complex PPP procurement and management process. This situation may induce both partners to avoid the use of blended funds (PPPs) from the outset and instead to opt for traditional procurement or to implement PPPs without any form of EU support.

70. Alongside other factors, such as the effects of the financial and economic crisis, political preferences and limited public sector capacity to deal with PPPs, the very limited use of EU support in PPPs so far has been due to a certain extent to practical difficulties linked to the previous EU funding regulations. The Structural and Cohesion Funds regulations for the 2007-2013 programming period did not contain any PPP-specific provisions, as they were fundamentally tailored to work with grant approval and disbursement mechanisms that had been created for traditional forms of procurement.

71. The new CPR provisions for the 2014-2020 programming period introduced a dedicated chapter on PPPs to clarify the possibilities provided by the ESIF to support PPP projects and address some of the main practical difficulties. This led for instance to simplifications in the calculation of the funding gap and to the possibility of extending the grant disbursement period (see **Annex II** for more details). While these provisions may promote the wider use of EU-blended PPP projects, very few had been prepared at the time of the audit (September 2017).

The possibility of recording PPP projects as off balance sheet items risks to undermine transparency and value-for-money

72. We found that the statistical treatment of PPPs is an important consideration for public authorities when deciding whether to use this procurement option. According to ESA 2010 (see **paragraph 6**), PPPs should be allocated to the balance sheet of the economic owner of the asset, namely the party that bears the largest share of risks and has the right to most of the rewards associated with the asset. Depending on the risk/reward allocation between the public and private partners, the rules allow for two possibilities:

- (a) PPPs can be recorded on the government balance sheet in a similar way as traditionally procured projects. This option treats the PPP asset as a public investment that generates an increase in government debt in line with the investment and therefore has an impact on compliance with the Maastricht criteria;
- (b) PPPs can be recorded off the government balance sheet by shifting the investment costs from the capital budget to the annual operating budgets for future years. The advantage is that the share of debt relating to the PPP is not taken into account for purposes of compliance with the Maastricht criteria.

73. The risk allocation between the public and private partners is one of the key features of a PPP contract (see **paragraph 54**). As keeping PPPs off the government balance sheet means shifting most of the risks and benefits to the private partner, there is an inherent risk that the distribution arrangements will be influenced by the preferred statistical treatment rather than the principle that risks should be borne by the party that is better placed to manage them and maximise value for money. In general terms, recording a PPP asset on-balance can ensure a more level playing field between the different procurement options, leaving the choice solely to value-for-money considerations.

74. From the analysis of PPP policies, strategies and projects in the four Member States, it emerged that:

- (a) In Ireland, in addition to value for money as a key consideration, the possibility of keeping PPPs off the government balance sheet was an important factor in the selection

of the PPP option. Two of the audited projects with total cost of 1.2 billion euro were recorded off-balance and one on-balance;

- (b) In Greece, the key consideration when selecting the PPP option was the wish to attract private financing. Concerns about the statistical treatment also played a role, so that the three audited concessions, worth a total of 6.7 billion euro, were initially recorded off-balance. However, they were reclassified to on-balance after the contract conditions were renegotiated and substantially amended (see ***paragraphs 37 to 40***). None of the projects had been subject to comparative value-for-money assessments against other procurement options.
- (c) France systematically records its PPPs on the government balance sheet, which leaves the choice of the PPP option solely to value-for-money considerations. The four audited projects were recorded on-balance and, with the exception of the Pau Pyrénées project, there had been a comparative analysis of alternative procurement options.
- (d) Recording PPP projects off-balance was also a key consideration for the Spanish authorities. In general, PPPs which would have an impact on the government balance sheet were not promoted and the audited PPPs had not been assessed against the alternative options using value-for-money criteria. For example, the feasibility study for the A1 motorway project approached the risk allocation with the aim of keeping the project off the government balance sheet and thus retaining “one of the fundamental advantages of PPPs”³⁸. However, the National Accounting Office overruled, stating that the two audited projects had to be recorded on- balance because the private partner bore insufficient risks.

75. We found that for five of the 12 audited projects (with a total cost of 7.9 billion euro), important consideration was given to the possibility to record PPPs off-balance when selecting the PPP option. Such practises increase the risks of negative side-effects that may undermine value-for-money, such as a biased approach towards PPP projects even in cases

³⁸ *Estudio de viabilidad Económica Financiera Autovía A-1 Tramo 2 P.K. 101 a 247*, p. 15, March 2006.

where value-for-money considerations could lead to different choices, unbalanced risk-sharing arrangements and higher costs for the public partner.

76. Together with the lack of reliable publicly available databases on PPP projects³⁹ showing the public entities commitments for the years to come, keeping PPP projects off the governments' balance sheets reduces the level of transparent information provided to the wider public on the long-term PPP commitments and their associated liabilities and therefore on their impact on debt and deficit levels of the Member States concerned.

CONCLUSIONS AND RECOMMENDATIONS

77. We found that, although PPPs have the potential to deliver faster policy implementation and ensure good maintenance levels throughout their life-time, the audited EU-supported PPPs were not always effectively managed and did not provide adequate value-for-money. Potential benefits of the audited PPPs were often not achieved, as – similarly to traditionally procured projects - they were subject to delays, cost increases and under-use of project outcomes, resulting in 1.5 billion euro of inefficient and ineffective spending, out of which 0.4 billion euro EU funds.

78. In addition, there was a lack of adequate analyses about the potential for PPPs to deliver additional value-for-money, as well as a lack of adequate strategies on the use of PPPs and of institutional and legal frameworks. Since only a few Member States have an appropriate degree of experience and expertise in implementing successful PPP projects, there is a substantial risk that PPPs will not contribute to the aim – expressed *inter alia* in the White Paper on Transport, the current CEF and the EFSI regulations – of more intensive leverage of EU funds with private funds including PPPs.

³⁹ Member States are requested to send Eurostat every six months a list of the ten largest PPP projects, but this list is not made publicly available.

Recommendation 1 – Do not promote a more intensive and widespread use of PPPs until the issues identified are addressed and the following recommendations successfully implemented

The Commission and the Member States should not promote a more intensive and widespread use of PPPs until the issues identified in this report are addressed and the following recommendations are successfully implemented; in particular, improving the institutional and legal frameworks and project management and increasing assurance that the choice of the PPP option is the one that provides most value-for-money and that PPP projects are likely to be managed in a successful manner.

Target implementation date: immediately.

The audited PPP projects were not always effective in achieving their expected benefits

79. The relevant EU strategies and regulations provide for the use of PPPs as a potentially effective means of delivering infrastructure projects which ensure the achievement of public objectives by bringing together different forms of public and private resources. However, we found that implementing projects on a larger-than usual scale and merging project design, financing, construction, operation and maintenance into a single contract increased the risk of low competition – thus putting the public authority in a position of dependence – and the overall project complexity.

80. The choice of the PPP option for the majority of the audited projects did not bring about the expected benefits of PPPs in terms of on-time and on-budget project completion. As already observed by us for traditionally procured projects, also the majority of the audited PPP projects (seven out of twelve projects, corresponding to 7.8 billion euro project cost) were affected by inefficiencies, that included protracted procurement procedures (up to 6.5 years duration) and construction phases (delays ranging from two to 52 months). Indeed, the PPPs potential to achieve these benefits was limited, as some of these delays were caused by factors that the use of the PPP option could do nothing to influence (delays in obtaining relevant authorisations and permits, legal disputes concerning the procurement procedure or project renegotiations), but others were directly attributable to the choice of the PPP option (such as difficulties in reaching financial close and a greater vulnerability to

economic and financial downturns, which led to the withdrawal of lenders and considerable additional costs to be borne by the public partner (1.5 billion euro).

81. The possibility of financing large-scale projects over a longer period of time reduces the pressure to optimise the project size in accordance with the real needs and therefore increases the risk of public entities implementing bigger infrastructure projects than are needed. In the audited projects, the assessments made by public and private partners and lenders did not prevent the formulation of over-optimistic scenarios regarding future demand and use of the planned infrastructure. For example, the traffic estimates for some Greek and Spanish sections of motorway were far below potential capacity, and the actual customer uptake figures for the audited broadband projects in France and Ireland were well below forecasts (up to 69 %), thus providing less value-for-money and lower effectiveness than expected.

Recommendation 2 – Mitigate the financial impact of delays and re-negotiations on the cost of PPPs borne by the public partner

In order to better share the cost of delays and re-negotiations between the partners, with the aim to mitigate the financial impact of delays attributable to the public partner and contract re-negotiations on the final cost of PPPs borne by the public partner, we recommend that:

- (a) Member States identify and propose standard contractual provisions that limit the amounts of possible extra costs to be paid by the public partner.
- (b) Member States assess any early contract re-negotiation to ensure that consequent costs borne by the public partner are duly justified and in line with value-for-money principles.

Target implementation date: immediately.

Delays, cost increases and underuse were partly attributable to inadequate analyses and unsuitable approaches

82. We found that the PPP option was often entered into without a sufficiently robust basis of analysis. For most of the audited projects, there was no comparative analysis, such as Public Sector Comparator, to demonstrate that a PPP offered maximum value-for-money or to protect the public interest by ensuring a level playing field with different procurement methods.

83. Although the European Commission's investment in the Marguerite Fund falls under the TEN-T regulation, which provides for the Court's audit rights even in case the beneficiary is a private partner, the Irish authorities refused to provide us the PSC and the tender dossier for the N17/18 motorway project, which were also not available at the Commission. Accordingly, the rationale in designing and procuring the project and in choosing the PPP option instead of alternative procurement methods (such as traditional procurement and concession) could not be assessed.

84. Most of the audited PPP projects demonstrated inadequacies in the use of the PPP option. Risk-sharing arrangements were poorly conceived, resulting in ineffective or incoherent risk allocation, or excessive risk exposure for the private partner. In one audited case, the high remuneration of 14 % for the private partner's risk capital was not coherent with the low risks allocated to it. Moreover, the combination of new technologies, such as in the ICT sector, with long-duration contracts was not always well-managed, as public partners had to keep a contract running even if the rapid pace of change led to technological obsolescence.

Recommendation 3 – Base the selection of the PPP option on sound comparative analyses on the best procurement option

In order to ensure that the PPP option is the one that maximises value-for-money, we recommend that:

- (a) Member States base the selection of the PPP option on sound comparative analyses, such as Public Sector Comparator, and appropriate approaches that ensure that the PPP option is selected only if it maximises value-for-money also under pessimistic scenarios.
- (b) The Commission ensures that the Court of Auditors has full access to the necessary information in order to assess the choice of the procurement option and the related procurement by the public authorities even where EU support is provided directly to private entities through financial instruments.

Target implementation date: as from September 2018.

The institutional and legal framework is not yet adequate for EU supported PPP projects

85. The shortcomings identified in our audit show that considerable administrative capability is necessary for the implementation of successful PPP projects, and that this can only be ensured through adequate institutional and legal frameworks and extensive experience. We found that these conditions are currently in place only in very few Member States, which conflicts with the EU's increased emphasis on the more widespread and intensive leverage of public funds with private funds and the role, PPPs can play in that respect.

86. This is confirmed by the high geographic and sectoral concentration of the assessed projects (59 % of the total EU-amount or 3.3 billion euro provided to Greece; 88 % of the total cost of EU-supported projects in the Transport sector), and by the pattern of projects financed under the EFSI, as 63 % of EFSI financing was concentrated in the United Kingdom, Italy and Spain, and mainly in the energy (46 %) and transport (19 %) sectors.

87. Furthermore, though familiar with the implementation of PPP projects and concessions, three of the Member States we visited (France, Greece and Spain) did not have a fully adequate institutional framework to ensure the successful management of PPP projects.

88. The Member States visited lacked - to varying degrees – an adequate-strategic approach to the use of PPPs. These were considered as a means of attracting additional financing in the form of private funds, but there was no clear indication about the role PPPs should play in national investment strategies or in which areas it would be advisable to commit a significant share of future budgets.

89. Although PPPs have the potential to contribute, as a further option to traditional procurement methods, to the completion of priority large infrastructure plans and to ensure good standards of service and maintenance, we found that two thirds of the audited motorway projects were not located on the high-priority Core TEN-T network, which is intended to highlight the priority for completing the network by 2030, but on the comprehensive network expected to be completed by 2050 only. In addition, some of the audited PPPs were implemented in sectors (such as ICT) that are subject to rapid technology changes that are not easily compatible with long contract durations.

90. Finally, only a few Member States have envisaged capping the use of PPPs in order not to commit excessive amounts of future budgets, which would bind the public partner also in periods of economic downturn and would not be available for future policies' implementation.

Recommendation 4 - Establishment of clear PPP policies and strategies

In order to ensure that Member States have the necessary administrative capability and clear PPP policies and strategies are in place to implement successful EU-supported PPP projects, we recommend that:

- (a) The Member States establish clear PPP policies and strategies that clearly identify the role that PPPs are expected to play within their infrastructure investment policies, with a view to identifying the sectors in which PPPs are most suitable and establishing possible limits to the extent to which PPPs can be effectively used.

- (b) The Commission proposes legislative amendments to concentrate financial support to future PPPs in sectors that it considers of high strategic relevance and compatible with the long-term commitments of PPPs, such as the Core TEN-T network.

Target implementation date: from the next programming period.

91. Five out of the 12 PPP projects assessed with a total cost of 7.9 billion euro were initially recorded off-balance. While this is in line with the EU accounting framework, this practise increases the risk of negative side-effects that undermine value-for-money, such as a bias towards PPP projects even if value-for-money considerations could lead to different choices, and transparency.

92. Combining EU funding with PPPs has led to additional complexities and uncertainties that did not encourage their use. The number of EU-supported PPP projects as a share of the overall PPP market was still low. The new ESIF regulations have partly clarified the possibilities provided by the funds for financing PPPs and have removed some of the complexities that blending would generate, but there is further room for simplification.

Recommendation 5 – Improved EU framework for better PPP project effectiveness

In order mitigate the risk of bias towards selecting the PPP option, to promote further transparency and to ensure that PPPs can be effectively supported by EU funds, the Court recommends that:

- (a) The Commission links the EU-support to PPP projects to the assurance that the choice of the PPP option was justified by value-for-money considerations and thus not unduly influenced by considerations relating to budgetary constraints or to their statistical treatment.
- (b) The Member States improve transparency by publishing periodic lists of PPP projects, including sufficient and meaningful data on the assets financed, their future commitments and their balance-sheet treatment, while preserving the protection of confidential and commercially sensitive data.

- (c) The Commission assesses the additional complexity of EU-blended PPP projects in view of further actions aiming at simplifying relevant rules and procedures of EU programmes.

Target implementation date: by the end of 2019.

This Report was adopted by Chamber II, headed by Mrs Iliana IVANOVA, Member of the Court of Auditors, in Luxembourg at its meeting of 7 February 2018.

For the Court of Auditors

Klaus-Heiner LEHNE

President

ANNEX I**EU-supported PPPs for the period 2000-2014, in million euro, by country**

Countries	Number of projects	Total Cost	EU Contribution	% of EU contribution
Greece	8	6 806	3 301	58.53 %
Portugal	3	2 379	564	10.00 %
France	21	9 856	324	5.74 %
Spain	4	2 422	311	5.51 %
Poland	4	388	272	4.82 %
Germany	14	2 147	254	4.50 %
Italy	6	553	210	3.72 %
United Kingdom	3	2 212	110	1.95 %
Belgium	2	686	101	1.79 %
Ireland	3	1 286	81	1.44 %
Lithuania	3	99	40	0.71 %
Slovenia	10	52	36	0.64 %
Croatia	1	331	20	0.35 %
Malta	1	21	12	0.21 %
Estonia	1	4	4	0.07 %
Grand Total	84	29 242	5 640	100.00 %

Source: Table elaborated by ECA on the basis of data provided by the Commission, EPEC and selected MS. The sources for the EU contribution were: ERDF, Cohesion Fund, Marguerite Fund, LGTT, PBI and JESSICA.

In the remaining 13 Member States there was no EU-support towards PPPs.

ANNEX II

Main difficulties in the use of blended PPPs, 2007-2013 period, and changes introduced to the Common Provisions Regulation for 2014-2020

2007-2013	2014-2020
The need to select the private partner before initiating the grant application exposed the public authorities to the risk of not having the grant approved, while already having entered into a PPP commitment.	While applying for a grant only after concluding the PPP procurement remained an option, the new provisions also provide for the conditional approval for a private partner to be a grant beneficiary prior to its formal selection under the PPP procurement process. This allows the procuring authority to proceed with the grant application in parallel with the procurement procedure and get a conditional grant approval before the award of the PPP contract, providing more clarity and certainty on the funding sources from an early stage and eliminating the risk for the public partner of not having the grant approved, while already having entered into a PPP commitment.
The requirement for grants to be disbursed within two years after the year of allocation (the n+2 rule) limited the use of grants to pay for up-front capital costs and was not well suited to accommodate PPP structures where payments are made over much longer-term.	The new provisions provide for an extended disbursement period of the grant, which can be as long as the PPP duration. The grant is transferred to an escrow account controlled by the public partner, which allows payments to be more in line with the longer-term payment profile of a PPP.
The complexity and uncertainty of calculating the exact maximum amount of EU assistance (the funding gap ¹) for revenue generating projects before the completion of the PPP procurement exposed the public authorities to a funding risk in case the grant amount was less than expected.	While the funding gap method is still available to calculate the amount of EU support for revenue-generating projects, the new provisions provide considerably simplified alternatives, using pre-established funding gap flat rates for particular sectors.
	The new provisions allow for the replacement of the private partner beneficiary without losing the grant, thus accommodating better the lenders' step-in and substitution rights.

¹ Revenue generating projects are the ones where users pay directly for the services. The principle is that ESI funds should be used only to meet the gap that remains between the project's costs and generated revenues. The sum of the national and EU contributions cannot exceed the funding gap.

ANNEX III**Audited projects**

	Sector/Projects	Contract status and duration	Delay in months	Planned total project cost	Provisional total project cost	Additional cost borne by the public partner	% cost increase	Comments	EU support	Source of EU funding	On/off balance	Public Sector Comparator
				In million euro					In million euro			
	Greece											
1	Transport: Central Motorway E-65 ¹	30-year concession (until 2038), construction- ongoing	47	2 375	1 594	413	see comment	The provisional total cost is lower than the planned total cost due to a project scope reduction by 55 %. However, the total cost per km increased by 47 %. The figure of 413 million euro includes additional State financial contribution of 231.4 million euro and payments to the concessionaire in the amount of 181.4 million euro.	647.6	ERDF and Cohesion Fund	Initially off-balance, recorded on-balance only after the reset	no
2	Transport: Olympia Motorway ²	30 year concession (until 2038), construction –ongoing	37	2 825	2 619	678	see comment	The provisional total cost is lower than the planned total cost due to a project scope reduction by 45 %. However, the total cost per km increased by 69 %. The figure of 678 million euro includes additional state financial contribution of 238.5 million euro and payments to the concessionaire in the amount of 439.7 million euro.	1 012.4	ERDF and Cohesion Fund	Initially off-balance, recorded on-balance only after the reset	no
3	Transport: Moreas Motorway ³	30 year concession (until 2038), construction- completed	52	1 543	1 791	84	see comment	The total cost per km increased by 16 %. The figure of 84 million euro is for payments to the concessionaire.	328.6	ERDF and Cohesion Fund	Initially off-balance, recorded on-balance only after the reset	no
	Spain											
4	Transport: Motorway A-1 ⁴	19-year concession (until 2026), construction- completed	24	475	633	158	33 %	Required modifications in the planned works.	2.2	Marguerite Fund	on	no
5	Transport: Motorway C-25 ⁵	33-year concession (until 2044), construction- completed	14	695	838	144	21 %	Required modifications in the planned works and contract re-negotiation.	70	LGTT	on	no
	Ireland											
6	Transport: N17/18 Motorway ⁶	25-year concession (until 2042), construction- ongoing	n/a	946	n/a	n/a	see comment	Project construction was ongoing at the time of the audit.	2.7	Marguerite Fund	off	n/a
7	ICT: National Broadband Scheme ⁷	5, 7-year project agreement, construction- completed	0	223	169	n/a	see comment	The project generated less revenue than expected as compared to the original tender due to the significantly lower than expected customer uptake. This has also impacted the overall operational expenditure, decreasing the initially estimated project funding.	36	ERDF	off	n/a
8	ICT: Metropolitan Area Networks ⁸	Up to 25 years from last MAN certification	n/a	117	84	n/a	see comment	Project scope reduced, 4.2 % increase in the average cost per town covered. The cost figure excludes the operation and maintenance of the infrastructure, for which there is a separate contract, and contribution from local authorities.	42.1	ERDF	on	n/a

	Sector/Projects	Contract status and duration	Delay in months	Planned total project cost	Provisional total project cost	Additional cost borne by the public partner	% cost increase	Comments	EU support	Source of EU funding	On/off balance	Public Sector Comparator
				In million euro					In million euro			
	France											
9	ICT : Le numérique au service des Girondins ⁹	20 years (until 2029), construction-completed	16	146	143	-4	-2 %	Construction of the infrastructure was completed on time, but there was a 16 months delay for the commissioning of the project due to administrative reasons.	12.5	ERDF	on	yes
10	ICT : SPTHD Communauté de l'agglomération de Pau Pyrénées ¹⁰	15 years (until 2018), construction- ongoing	n/a	18	31	13	73 %	Project construction was ongoing at the time of the audit. 73 % cost increase in order to comply with introduced regulatory changes.	7.7	ERDF	on	n/a
11	ICT: Proximit-e broadband in Meurthe et Moselle ¹¹	26 years (until 2034), construction-completed	2	148	148	0	0 %		5.9	ERDF	on	yes
12	ICT: Haute Pyrénées numérique ¹²	22 years (until 2031), construction-completed	0	107	106	-1	-1 %		0.9	ERDF	on	yes
	Total			9 618	8 156	1 490			2 169			

¹ The project involves: a) the design, financing, construction, operation, maintenance of a new motorway of 174 km and b) the operation, maintenance and exploitation of a section of the Athens-Thessaloniki motorway between Skarfia and Raches (57 km) constructed by the Greek State (DBFMO).

² The projects involves: a) the design, construction, operation, maintenance and exploitation of a new motorway of 283.7 km linking the Greek towns of Korinthos and Tsakona, and b) the operation, maintenance and exploitation of two existing motorway sections from the town of Elefsina, near Athens, to Korinthos (of 63.2 km length) and the Patra by-pass motorway section (of 18.3 km length) (DBFMO).

³ The project involves: a) the design, construction, operation, maintenance and exploitation of a new motorway of 76 kilometres linking Tripoli and Kalamata and another new motorway of 47 kilometres linking that motorway from Lefktro with Sparta, as well as b) the upgrading, operation, maintenance and exploitation of a 82 kilometres section of existing motorway between Corinth and Tripoli (DBFMO).

⁴ The project involves the upgrade to motorway standards and maintenance of the A-1 Motorway (section Santo Tomé del Puerto – Burgos) with a total length of 150.12 Km (DBFMO).

⁵ The project involves the construction of double lanes, the upgrade to motorway standards and maintenance of the road (DBFMO).

⁶ Green-field DBFMO of 53 km of dual-carriageway motorway from Gort to Tuam and of a bypass west of Tuam + 4 km of non-motorway dual-carriageway bypass at the west of Tuam (DBFMO).

⁷ The objective of the NBS is to encourage and secure the provision of affordable broadband services in identified target areas in which no such services are currently available (project agreement).

⁸ Second phase of program involving traditional procurement of “middle-mile” carrier-neutral, open access fibre networks by local authorities and subsequent concession to a single private partner for management, maintenance and wholesale to communication operators (traditional procurement and concession).

⁹ This project involves the construction and the exploitation of a high speed telecommunication infrastructure in the department of Gironde. This project aims at providing very high speed internet services (i.e. more than 30 Mbps) (très haut débit) to Economic Activity Zones (ZAE) and public establishments, as well as high speed internet services (i.e. more than 2 Mbps) (haut débit) to population in zones blanches, for which private initiative from service operators is missing due to poor profitability (contrat de partenariat).

¹⁰ This project involves the exploitation and commercialisation of a very high speed telecommunication infrastructure in the agglomeration of Pau-Pyrénées. This project was aimed to provide high speed internet services (i.e. more than 10 Mbits) (haut débit) to all users in within the perimeter of Communauté d'Agglomération de Pau Pyrénées (délégation de service public).

¹¹ This project involves the construction and operation of a departmental high speed telecommunications network in Meurthe et Moselle. The objective of the project was to provide a backbone fibre network infrastructure and 100 % internet coverage of a minimum speed of 2 Mbps, including 95 % of a speed over 6 Mbps, using a mix of technologies: fibre optic, ADSL and WiFiMax (contrat de partenariat).

¹² This project involves the construction and operation of a departmental high speed telecommunications network in the Department of Hautes Pyrénées. The objective of the project was to provide a backbone fibre network infrastructure and 100 % internet coverage of a minimum speed of 2 Mbps, and over 20 Mbps for all public sites and business zones, using a mix of technologies including fiber optic, ADSL, WiMAX and satellite (contrat de partenariat).

ANNEX IV**Public-Private Partnership projects - Overview of potential benefits and risks compared to audit observations with regard to the audit scope**

Theoretical benefits of PPPs	Risks	Audit observations with regard to the audit scope: 12 EU co-financed PPPs (six motorway and six ICT projects) in four Member States: France, Greece, Ireland and Spain	
		Positive	Negative
May enable to implement large-scale projects in one go	Less competition due to the size of the infrastructure to be procured; Affordability illusion, i.e. use of the State budget for more or bigger projects than would normally be affordable.	Additional financing allowed public authorities to complete larger-scale infrastructure plans.	Implementing larger-scale projects increased the risk of low competition levels – thus putting the public authority in a position of dependence – and the overall project complexity. This was, for example, in the case of a Motorway in Greece, where from the four candidates invited to submit an offer, two did so, but just one offer was evaluated at the final stage of procurement.
Bringing together the design, financing, building, operation and maintenance phases of a project in a single contract may ensure whole life approach for long-term benefits	Financing the full cost of construction through the private partner may complicate and delay financial close, increase financial costs and expose the private partner to increased financial risks; Combining different phases in a single contract adds elaborated requirements and risks to the procurement procedure and may lead to delays;		For one Motorway project in Ireland, the procurement was delayed by three years, resulting in a total procurement duration of 5 years, because of difficulties in reaching financial close; All the three motorway projects in Greece were suspended because lenders withdrew from the project; Combining PPP procurement and ICT projects in an environment of rapid technological change led to additional

Theoretical benefits of PPPs	Risks	Audit observations with regard to the audit scope: 12 EU co-financed PPPs (six motorway and six ICT projects) in four Member States: France, Greece, Ireland and Spain	
		Positive	Negative
	Long-duration contracts not compatible with the rapid pace of technological change.		costs and potential overlaps with future initiatives (like in France, three out of four broadband projects).
Risk sharing and risk allocation to the party best suited to manage them	Risk allocation may be influenced by the negotiation skills of the parties involved, with unsatisfactory results; Risk allocation may be influenced by considerations regarding the statistical treatment of the project.		Risk allocation was either incoherent (e.g. remuneration of 14 % for the private partner's risk capital despite low risk exposure) or inappropriate as excessive demand risks were transferred to the private partner (i.e. full traffic risk); Moreover, in one case, penalties and bonuses cancelled each other out, resulting in no risk for the private partner (= ineffective risk allocation).
Cost and time efficiency	Additional requirements are likely to increase the duration of procurement, offsetting any efficiencies during construction; Causes of delay are often independent from whether the project was procured traditionally or as a PPP. Impact of shortcomings in the project planning and implementation are amplified and may result in		Significant delays in procurement due to use of the PPP option or to factors that it could not do nothing to influence; Moreover, during the construction phase: seven out of the nine completed projects delayed (2 to 52 months) resulting in 1,5 billion euro extra cost (mainly Greece 1,2 and Spain 0,3), borne by the public partner (30 % of which EU co-financed), as caused by circumstances for which the public partner was mainly responsible.

Theoretical benefits of PPPs	Risks	Audit observations with regard to the audit scope: 12 EU co-financed PPPs (six motorway and six ICT projects) in four Member States: France, Greece, Ireland and Spain	
		Positive	Negative
	considerable payments borne by the public partner.		
More realistic and robust assessment of the required infrastructure needs and its future usage	<p>Public partner may rely on assessments made by private partners and lenders, whose objectives may not be in the public interest;</p> <p>Paying for the infrastructure in multiple instalments and, in some cases, without putting the infrastructure on-budget may dull the incentive to scale projects appropriately to requirements.</p>		<p>Most of the audited projects PPP-option were chosen without a robust analysis (e.g. Public Sector Comparator), thus failing to demonstrate that it was the one maximising value-for-money and protecting the public interest by ensuring a level playing field between different procurement methods (e.g. PPP to traditional procurement).</p> <p>The choice of the PPP option did not prevent the formulation of overly optimistic scenarios regarding future demand and for the planned infrastructure (i.e. in an ICT project the actual customer uptake figures were 69 % less than expected).</p>
Better standards of maintenance and service	Lack of automatic penalty adjustments, especially in long contracts may reduce the incentive for the private to ensure good quality maintenance.	Long-term budgeting, especially regarding maintenance, has the potential for keeping good service and maintenance levels during the contract duration.	
Under certain conditions, the EU accounting framework may allow public involvement in PPPs to be	Potential lack of a level playing field between different procurement	Only in one of the four audited Member States (France) PPP projects	For five of the 12 audited projects (with total cost of 7.9 billion euro) important consideration was given to

Theoretical benefits of PPPs	Risks	Audit observations with regard to the audit scope: 12 EU co-financed PPPs (six motorway and six ICT projects) in four Member States: France, Greece, Ireland and Spain	
		Positive	Negative
registered as off-balance sheet items, thus incentivising their use for enhanced compliance with the Euro Convergence Criteria.	<p>options may result in biased selection.</p> <p>Less consideration of value-for-money aspects when selecting the PPP option;</p> <p>Keeping PPP projects off-balance may provide incomplete information.</p>	are systematically recorded on-balance.	the possibility to record PPPs off-balance when selecting the PPP option. This increases the risks of negative side-effects that may undermine value-for-money, unbalanced risk-sharing arrangements and transparency.
Comprehensive legal and institutional frameworks can support the implementation of PPP projects.	Lack of appropriate strategies for the use of PPPs within an overall investment policy, and of adequate PPP laws and standard contracts, together with the lack of appropriate administrative capability, may lead to a less implementation of PPP projects.		Commission and national institutional and legal frameworks contributed to the underperformance observed at project level, e.g. limited public sector expertise and capacity to implement PPPs and a lack of coherence in the strategic approach on the use of PPPs; Therefore, they do not match the EU's increased consideration to a more widespread and intensive leverage of public funds with private funds and to the role, PPPs can play in that respect.

REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS

"EU-SUPPORTED PUBLIC PRIVATE PARTNERSHIPS: WIDESPREAD SHORTCOMINGS LARGELY UNDERMINE THEIR POTENTIAL BENEFITS"

EXECUTIVE SUMMARY

III.

First indent: The Commission does not consider that the very large scope and size of a project necessarily reduces the level of competition, as such projects are tendered internationally; in general, EU and EEA construction markets are sufficiently large to allow for enough competition.

The Commission notes that large-scale projects are most often undertaken by consortia in order to pool all the necessary technical, human and financial resources together, thus allowing the selected bidder to offer all the products or services requested.

Second indent: The Commission underlines that the period of delay that was exclusively attributable to the choice of the PPP option was in the case of most of the projects concerned a fraction of the total duration of the entire procurement process. This was necessitated by the fact that, in some cases (Greece), the contracts had to be ratified by the national Parliament as foreseen by the national legislation for such large-scale contracts.

See also Commission replies to paragraphs 30 and 31.

Third indent: The Commission acknowledges that the audited projects were subject to delays and cost overruns. It considers, however, that in the case of the examples cited in paragraph 34, these delays and cost changes were not necessarily linked to the choice of the procurement approach. It also recalls the effects of the sovereign debt crisis and the recession that affected the European economy.

The Commission recalls that the choice of the PPP option falls under the remit of the Member States (shared management) or of the project promoter. A constant feature of infrastructure projects, and in particular of major projects, is the significant inception and development time they entail, regardless of the procurement model.

Fourth indent: The Commission notes that the completed motorway projects in Greece audited by the ECA make a substantial contribution to the completion of the core TEN-T network despite the extremely unfavourable economic conditions prevailing in Greece since 2009. It also notes that the actual traffic data for Moreas motorway available until the end of 2017 indicate traffic very close to the forecast of the reset operation. Concerning Olympia motorway, for reasons set out in the reply to paragraph 38, the Commission considers that it is reasonable to expect that traffic volume data for 2018 - being the first full year where the entire project is in use - would improve.

The Commission underlines furthermore that the financial crisis the ECA also refers to firstly had a severe impact on the originally forecasted traffic and revenue volumes of the projects (prepared under the 2000-2006 period), secondly it brought about a liquidity crunch and a severe risk aversion suffered by all participating banks, which the Commission considers created exceptional conditions under which the audited Greek motorways were constructed. The Commission notes that there are examples of PPPs in Greece from the mid-90s which yield actual benefits.

Fifth indent: Concerning the Greek motorway projects and the financed sections cited in paragraph 45, the Commission recalls that the structuring of the Greek motorway PPPs was an exclusive decision of the Greek authorities. These projects are justified by their socio-economic benefits.

Concerning the National Broadband Scheme (NBS) project in Ireland, the Commission recalls that the number of connections was not specified in the NBS contract; the ultimate anticipated level of uptake was the successful bidder's market forecast.

Please refer to the Commission replies to paragraph 45, 46 and Box 1.

Seventh indent: The Commission notes that the responsibility for analysing the potential for PPPs to deliver additional value-for-money falls under the remit of the Member States.

As regards delivering major projects financed from ESI Funds as PPPs, the Commission points out that an economic and financial analysis is foreseen for PPPs in the CPR in 2014-2020 as part of the Cost Benefit Analysis. Please refer to Commission's reply to paragraph 53.

The Commission underlines that the use of the Public Sector Comparator (PSC) tool is subject to fulfilling an important number of conditions. Please refer to the Commission reply to paragraph 50.

As regards some of the audited projects concerned, various analyses have been carried out in the course of the selection procedure, which have led to the conclusion to combine available EU and national resources with private funds as being the only viable option.

Please see Commission reply to paragraphs 50 and 52.

Eighth indent: The risk allocation within a given contract is multi-faceted. The Commission considers that all these aspects are important when assessing elements such as the respective rates of return achieved by the private partners. As there are vast differences between individual PPPs, it considers that individual issues should be assessed on a case-by-case basis. Whereas the Commission acknowledges that some practices could be made more uniform, it also notes that it has no legal base to intervene in the negotiations between the partners.

The choice of the PPP option does not necessarily preclude the inclusion of provisions ensuring the necessary flexibility to allow for evolutions due to technological changes. Concerning the broadband project in France, see also Commission replies to Box 3.

IV. The Commission stresses that various channels offering assistance are already available to Member States, such as JASPERS, the Advisory Hub of the EIB, the European PPP Expertise Centre (EPEC) and the Structural Reform Support Service (SRSS) created under the Structural Reform Support Programme (SRSP). Furthermore, with its Communication of 3rd November 2017, the Commission has introduced a helpdesk, a notification mechanism and an information exchange mechanism aimed at helping MS and contracting authorities to design their large infrastructure projects.

See Commission replies to paragraphs 85 to 87.

V. The Commission acknowledges that PPPs are more complex than purely public projects requiring the necessary expertise from national authorities. While the decision to choose the PPP procurement model is a national prerogative, the Commission makes available support (see examples in Commission's reply to paragraph IV) to national authorities on request, in view of preparing good quality projects, including PPPs.

As regards the possibility for off-balance sheet treatment of PPPs Eurostat, in cooperation with the EPEC, has already produced a Guide on the Statistical Treatment of PPPs which has been well received by stakeholders. (See Commission reply to paragraph 72.) The Guidance requires that PPPs are undertaken on the basis of value for money and an appropriate allocation of risks and operational efficiency, with a particular eye on affordability and long-term fiscal responsibility.

(a) The Commission accepts the recommendation insofar as the Commission is concerned, subject to the Commission's replies to recommendations 2 to 5. See also Commission reply to recommendation 1.

(b) The Commission notes that this recommendation (recommendation 2) is addressed to Member States.

(c) The Commission notes that part of the related recommendation (recommendation 3a) is addressed to Member States. Concerning major projects financed from ESI Funds, see Commission's reply to paragraph 53. See also Commission reply to recommendation 3a.

As for the part of the recommendation that the Commission accepts that concerns ensuring access for the Court of Auditors to information requested (recommendation 3b), the Commission considers that it is already implemented. See Commission reply to recommendation 3b.

(d) The Commission notes that part of the related recommendation (recommendation 4a) is addressed to Member States.

The Commission does not accept the part of the recommendation which requests the Commission to propose legislative amendments to concentrate financial support to future PPPs in sectors that it considers of high strategic relevance and compatible with the long-term commitments of PPPs, such as the Core TEN-T network (recommendation 4b) for reasons set out in the Commission reply to recommendation 4b.

(e) As regards the part of recommendation 5 that calls on the Commission to link the EU-support to PPP projects to the assurance that the choice of the PPP option was justified by value-for-money considerations (recommendation 5a), and thus not unduly influenced by considerations relating to budgetary constraints or to their statistical treatment, the Commission does not accept it for reasons set out in the Commission reply to recommendation 5a.

As regards the part of recommendation 5 that calls on Member States improve transparency by publishing periodic lists of PPP projects, including sufficient and meaningful data on the assets financed their future commitments and their balance-sheet treatment, while preserving the protection of confidential and commercially sensitive data (recommendation 5b), the Commission notes that it is addressed to Member States.

As regards the part of the recommendation that calls on the Commission assesses the additional complexity of EU-blended PPP projects in view of further actions aiming at simplifying relevant rules and procedures of EU programmes (recommendation 5c), the Commission accepts it as explained in the Commission reply to recommendation 5c.

INTRODUCTION

6. While ESA 2010 allows recording of PPPs off balance sheet of government if the majority of risks and rewards are undertaken by the private partner, there is no clear correlation concerning incentives. In a few countries, PPPs are always included on government balance sheet.

10. Throughout the implementation of the Europe 2020 strategy, the national frameworks for PPPs are regularly assessed and recommendations are made in order to make them more efficient.

OBSERVATIONS

27. The Commission considers that the position of the Greek authorities, namely that available public national and EU Funds were not sufficient to complete the Trans-European motorways in Greece within a reasonable deadline, is valid. In addition, the important delays experienced systematically in the past with the construction of other sections of the core motorway network procured by the Greek authorities as public works, justified the PPP choice. Thus the five motorway

concessions were included in the National Strategic Reference Framework for Greece under the 2007-13 programming period for ERDF and CF.

The subsequent reduction in scope of the two motorway concessions was justified by the economic crisis.

28. The Commission does not consider that the very large scope and size of a project necessarily reduces the level of competition, as such projects are tendered internationally; in general EU and EEA construction markets are sufficiently large to allow for enough competition.

In addition, the Commission notes that such large-scale projects are most often undertaken by consortia precisely in order to pool all the necessary technical, human and financial resources together, thus allowing the selected bidder to offer all the products or services requested.

29. The Commission acknowledges the specificities of the particular situation regarding the Central motorway in Greece.

However, in Greece, the large scale of the tendered PPPs for motorway projects actually attracted bidders from all over Europe.

30. The Commission considers that difficulties that occurred in markets under the stress of the 2008 crisis could not, given the unexpected nature and extent of the crisis, be linked to the PPP mechanisms or to the related need for a comprehensive approach to project implementation, financing, operation and maintenance. Further, the consideration of longer term project issues can be considered good practice in many cases.

31. The Commission acknowledges that only 3.5 months of the total 6.5 years necessary to procure Greek motorways is exclusively attributed to a PPP option. The ratification of the contracts by the Greek Parliament is foreseen by the national legislation for any individual PPP's and Concession project whose total cost exceeds € 500 million. It is not related to the absence of an EU legal framework for concessions but rather linked to the need to regulate at national level such issues like the collection of tolls, airport fees, etc.

34. The Commission considers that the cost changes and delays referred to in this example are not necessarily linked to the procurement approach.

In the case of France, the sporadic increases of budgetary needs were addressed by the private counterpart, in full respect of the contractual terms of the PPPs.

(a) Concerning C-25 motorway project in Spain, according to the information received from the EIB, financial close of the project indeed suffered significant delays, however this was a result of the worldwide financial crisis; the re-negotiation of the concession agreement reflected the impact of the crisis on project financing costs and traffic volumes. The infrastructure became available to the public in January 2013, which is seven months ahead of August 2013, i.e. the deadline scheduled following renegotiation.

(b) The Commission notes that the Pau Pyrénées ICT project was particularly innovative at that time, as no other French local authority had launched such project. Tender specifications were defined but no private operator was able to meet the requirements and there was no standard contract available for this type of project neither at regional nor national level. The financing scheme was submitted to the French regional audit authority. The project experienced the following positive outcome: the objective to build a digital infrastructure in a landlocked territory was fully achieved, the price for every connection for individual consumers is equivalent to the one of more recent projects, the last years allowed to achieve a positive financial track record overall and the specific objective to achieve 55 000 connections was even exceeded.

(c) The Commission is aware that the Irish authorities undertook a thorough review process to reconsider the 95 towns selected for the MANs project, following very significant changes in the telecoms markets and availability of broadband in Ireland. The outcome of these reviews was that MANs were built in 66 towns instead of 95. This review was necessary after the procurement and construction of some MAN had already been launched.

The higher cost per MAN was derived from the decision to construct more effective fibre networks instead of wireless solutions in a number of the MAN towns. The decision to do so was strategic in nature in that it made available critical up-to-date infrastructure which has withstood the test of time.

35. These three audited concession contracts, which were signed back in 2007, count for a total planned project cost of € 6,743 billion, i.e. about 25% of the total costs of all audited PPP projects by ECA under this audit. However, the contracts under question, were based on analyses of data and forecasts for traffic and revenues made in the period 2000-2006, when the Greek Gross Domestic Product (GDP) grew on average around 3% per year. These forecasts were of course affected by the 2009 crisis in Greece, firstly by an unprecedented reduction of traffic and revenues for the motorways in their construction phase, and secondly by a liquidity crunch and a severe risk aversion suffered by all participating banks. It should be recalled that the Greek sovereign debt crisis that erupted in 2009, has provoked the historically deepest and longest recession that has ever been recorded in a single country, over the last two centuries. For these reasons, the Commission considers that the conditions under which the audited Greek motorways were built were exceptional. The Commission notes that there are examples of PPPs in Greece from the mid-90s which yield actual benefits.

38. The Commission considers that the additional amounts made available by the EU and national public sector in Greece were justified in order to allow the reset of stalled motorway projects. Indeed, this "reset" operation allowed the completion in March 2017, of the audited motorway concessions which suffered a serious blow in the years 2009-2013 due to the Greek economic crisis.

The Commission notes that the completed projects make a substantial contribution to the completion of the core TEN-T network despite the extremely unfavourable economic conditions prevailing in Greece since 2009.

It also notes that the actual traffic data for Moreas motorway available until the end of 2017 indicate traffic very close to the forecast of the reset operation, and this allows for much more optimistic perspectives for future traffic volumes. Concerning Olympia Odos, fully completed and made available to users in its entirety only in August 2017, recorded traffic volume for the year 2017 is 15% below forecasts made under the "reset" operation for annual traffic volumes expected with a fully completed project. It is reasonable to expect that traffic volume data for 2018, the first full year where the entire project will be used, would improve.

In the case of Moreas motorway concession, annual traffic volumes and revenues are measured basically at the level of the entire concession, and not by individual sections, such as the Lefktron-Sparti section.

The Central motorway section has been delivered on the 22nd of December 2017 and no traffic data are available.

39.

Third alinea: The Commission notes that the concession agreements made clear provisions on the risks of delays due to archaeology environmental permits and land expropriations.

40.

The Commission notes that in the case of the Olympia motorway concessions in Greece, the capital expenditure for the construction of the motorway was reduced at the reset, from € 2 220 million to €1 238, as the physical scope of the project has been significantly reduced.

45. The Commission notes that the structuring of the Greek motorway PPPs was an exclusive decision of the Greek authorities. Furthermore, these projects are justified by their socio-economic benefits. Two PPP motorway projects also benefit from revenues of more profitable sections, and this arrangement contributes to achieving the regional development objectives.

Box 1 - Example of a motorway in Greece that risks being heavily underused

The Commission notes that the full construction of E65 has been deferred. The decision to carry out the remaining sections lies with Greece. The co-financing of the South section from Lamia to Xyniada is foreseen in the programming period 2014-20 of ERDF and CF. The Commission will assess the projects according to the relevant provisions of the ESI Funds-related regulation in force when the application for EU financing would be submitted to the Commission.

46. As regards the French project, the amount of fares and incomes was estimated on the basis of feasibility studies and appraisals prior to the launch of the project. Revenues have been adjusted to the current collected returns and no longer to notional revenue. These figures have been evaluated over 10 years, until 2020, but they remain below initial expectations.

The National Broadband Scheme (NBS) launched in January 2009 achieved its contractual target of making broadband available by autumn 2010 in all of the designated areas in the NBS Coverage Area. While it is true that the uptake was less than expected, the number of connections was not specified in the NBS contract. The ultimate anticipated level of uptake was the successful bidder's market forecast. With regard to the overall adoption of broadband, other operators responded to the NBS. By 2011, overall broadband subscriptions in NBS areas (both NBS and commercial) amounted to two thirds of the original target.

50. In the case of the Greece motorways, before tendering them there has been a traffic analysis, financial analysis, technical analysis and legal analysis carried out by consultants selected under an open and competitive selection procedure. All these analyses have led to the conclusion that the only viable option to complete the TEN motorway network projects in Greece in the next 10 years was to combine available EU and national resources with private funds. The use of the Public Sector Comparator (PSC) tool is subject to fulfilling an important number of conditions since its methodology relies on hypothetical assumptions about the most likely and efficient form of public sector delivery that could be employed to satisfy all elements of the output specification.

In any case, in light of the chronic failures of the traditional public procurement the PSC would not have had any value added on the decision to structure the motorway concessions contracts in Greece. Both delays observed in traditional public works contracts and the lack of sufficient financial resources advocated for the PPP solution.

As regards the ECA's access to documentation, the Commission refers to its reply to paragraph 51.

51. The Commission already includes in the documentation of funds it invests in clauses providing for the access of the ECA to the documentation of the funds. Moreover, the Commission reserves the right that it may request from the Member State the information that is relevant to check the legality, regularity and performance of expenditure within the frameworks of audits that the Commission may carry out in accordance with the applicable regulatory and contractual arrangements. The information potentially collected in this framework could be made available to the ECA, where necessary.

The Commission considers that the access to documents referred to by the ECA and relating to the identification, planning and procurement should be provided by the Member State concerned, as the

latter has to ensure the legality, regularity and performance criteria in the procurement procedure, in accordance with its national rules.

52. In the case of the Irish project, while a formal cost-benefit analysis was not legally required and was actually not carried out the building of the Phase II MANs "in a cost-effective manner" was one of the criteria in the review which led to a reduction in the number of MANs built. This review was necessary after the procurement and construction of some MAN had already been launched.

The Commission refers to its reply provided under paragraph 34(c).

53. As far as major projects under ESI Funds are concerned, a complete economic and financial analysis is already foreseen for PPPs, as part of the Cost Benefit Analysis for Major Projects, under Article 101 of the CPR for the current programming period 2014-2020 (as further specified by Commission's Implementing Regulation EU 2015/207).

56. The Commission stresses that the risk allocation within a given contract is multi-faceted. It considers that all these aspects are important when assessing elements such as the respective rates of return achieved by the private partners.

(b) The risk allocation within a given contract is multi-faceted. The Commission acknowledges that some practices could be made more uniform, however it also notes that it has no legal base to intervene in the negotiations between the contracting partners.

(c) The severity and duration of the economic crisis affected all public works and construction projects in Greece. In the case of Greece an assessment of the demand risk had been carried out in both cases of the E65 and Moreas motorways. A state subsidy was foreseen during the operation phase of these projects.

58. In terms of technological obsolescence, the NBS infrastructure served to assist the subsequent rollout of 4G technology in the areas concerned.

59. The choice of the PPP option does not preclude the inclusion of provisions ensuring the necessary flexibility to allow for evolutions due to technological changes.

See also the Commission reply to Box 3.

Box 3 - PPPs in the face of rapid technological change - the project in Meurthe-et-Moselle

The Meurthe-et-Moselle project includes and takes into account technological developments. Overall, all telecommunication networks must upgrade their equipment regularly. Therefore, in terms of management and planning, it is necessary to provide almost as much investment for the evolutions as for the initial investment. The fiber optic network was designed from the outset to serve as a "backbone" but also as a transmission network for the future FTTH network, which will limit investment in the compliance of future installations.

62.

(b) The Commission notes that Greek national legislation related to large scale infrastructure projects beyond € 500 m including VAT, such as the five Greek motorways need firstly to be approved by an Inter-Ministerial Committee-IMC for PPPs and concessions, on the basis of the proposal made by the competent Ministry. Following a positive opinion of the IMC, the National Parliament needs to examine and eventually ratify PPP and concession contracts by law. This is the reason why the PPP legislative framework of law 3389/2005, excludes PPPs and concessions over € 500 million from its scope.

For PPPs and concessions below € 500 million in Greece, the Inter-ministerial Committee and the Special Secretariat for PPPs in the Ministry of Economy are coordinating their preparation and implementation. Three PPP projects under law 3389/2005. Such PPP projects and concessions, are

supported by the special Secretariat both in their preparation and implementation phases. Three of projects under question, earned recently international distinctions and awards : a) the 24 Schools PPP projects, earned the award " Education deal of the Year 2014", by the magazine World Finance, b) the Western Macedonia Waste management PPP project earned the award of " Waste deal for the year 2014", by the same magazine, and c) the rural areas broadband PPP project, earned the " European Broadband award 2017" by the EU Commission, in the category " Territorial cohesion in rural and remote areas".

66. The legal acts regulating the implementation of EU-funds and the execution of the EU budget, provide always a concrete field of intervention of EU instruments, and these specific conditions are also applicable for the use of PPPs. However, such legal acts do not set further requirements linked exclusively to PPPs, such as restricting the use of PPPs to projects falling within the high-priority Core TEN-T network, etc.

69. The Commission acknowledges that PPPs are certainly more complex than purely public projects and require the necessary expertise from national authorities to prepare, and implement them. The Commission makes available support to national authorities on their request, in view of preparing good quality projects, including PPPs, possibly blended with grants from ESI Funds, where appropriate. JASPERS and the Advisory Hub (see Commission's reply to paragraph 85) are for example key instruments to help Member States in this direction.

70. The Commission notes that for the 2007-2013 structural funds programming period, it approved 28 major projects co-financed by ERDF and CF, which were PPP projects.

71. The Commission underlines that a number of PPP projects are currently under preparation in several Member States, to be co-financed either by grants or by financial instruments from ESI Funds under the 2014-2020 programming period.

72. The Commission stresses that in a few countries PPPs are systematically included on government balance sheet.

In order to improve the statistical framework Eurostat, in cooperation with the EPEC, has produced a Guide on the Statistical Treatment of PPPs, which has received a very positive response from all public and private stakeholders, including the ECOFIN Council, and it is undertaking the promotion of this Guide in Member States.

<http://ec.europa.eu/eurostat/documents/1015035/7204121/epec-eurostat-statistical-guide-en.pdf>

Common Commission reply to paragraphs 73 to 75:

Although it is true that "as keeping PPPs off balance sheet means shifting most of the risks and benefits to the private partner" the Commission would like to stress that in the Guide on the Statistical Treatment of PPP mentioned above it is mentioned that PPPs should be undertaken on the basis of value for money and an appropriate allocation of risks and operational efficiency, with a particular eye on affordability and long-term fiscal responsibility.

74. The decision to go for a PPP project is a national prerogative. As such, the Commission is not in the capacity to reply to the ECA's representations.

(b) The Commission notes that even in a heavily indebted country such as Greece, ESA rules in force were applied and after the reset of the audited PPP motorway contracts, they have been reclassified them as on-balance sheet items.

76. The Commission considers that the provision on PPP commitments and their associated liabilities is a national prerogative.

Eurostat provided information on the impact on debt and deficit levels of contingent liabilities of Member States, including PPPs, on the basis of information provided by national statistical offices.

Conclusions and recommendations

77. The Commission acknowledges that the audited projects were subject to delays and cost overruns. It considers, however, that this is not necessarily linked to the nature of the PPP projects. It recalls the effects of the sovereign debt crisis and the recession that affected the European economy. See also Commission reply to paragraph 34a.

78. The Commission notes that the responsibility for analysing the potential for PPPs to deliver additional value-for-money falls under the remit of the Member States.

Recommendation 1 – Do not promote a more intensive and widespread use of PPPs until the issues identified are addressed and the following recommendations successfully implemented

The Commission accepts the recommendation insofar as the Commission is concerned, subject to the Commission's replies to recommendations 2 to 5.

National frameworks for PPPs are regularly assessed during the policy coordination process, and if issues are identified, individual MS are encouraged to address them. In the context of the European Semester, country-specific recommendations may touch upon aspects of PPPs. As regards the European Semester and Europe 2020 strategy, there is no specific encouragement for a more intensive use of PPPs. In this context, the Commission's country analyses already recognize the objectives envisaged in the recommendation.

With regards to sectorial instruments, PPPs are one of the tools put at the disposal of Member States and project promoters as a potential instrument of policy implementation. The Commission does not have a legal basis to request Member States to use more or less PPPs, compared to traditional public contracts.

Under shared management of the ESI Funds, the discretion to use PPP is left exclusively to Member States.

79. See Commission replies to paragraphs 10 and 28.

80. The Commission acknowledges that the audited projects were subject to delays and cost overruns. It considers, however, that this is not necessarily linked to the choice of the PPP procurement model. It recalls the effects of the sovereign debt crisis and the recession that affected the European economy.

The Commission recalls that the choice of the PPP option falls under the remit of the Member States (shared management) or of the project promoter. A constant feature of infrastructure projects is the significant inception and development time they entail, regardless of the procurement model.

81. Please refer to the Commission replies to paragraph 22 and 46.

Recommendation 2 – Mitigate the financial impact of delays and re-negotiations on the cost of PPPs borne by the public partner

The Commission notes that the recommendation is addressed to Member States.

82. As regards delivering major projects financed from ESI Funds as PPPs, please refer to Commission's reply to paragraph 53.

Concerning the use of the Public Sector Comparator tool please refer to the Commission reply to paragraph 50.

83. See Commission reply to paragraph 51.

84. The risk allocation within a given contract is multi-faceted. The Commission considers that all these aspects are important when assessing elements such as the respective rates of return achieved by the private partners. Moreover, considering the vast differences existing between individual PPPs, it considers that individual issues should be assessed on a case-by-case basis. Whereas the Commission acknowledges that some practices could be made more uniform, it also notes that it has no legal base to intervene in the negotiations between the partners.

Recommendation 3 – Base the selection of the PPP option on sound comparative analyses on the best procurement option

(a) The Commission notes that this part of the recommendation is addressed to Member States.

Concerning major projects financed from ESI Funds, see Commission's reply to paragraph 53.

(b) The Commission partially accepts the recommendation as explained below. For the part it is accepted, the Commission considers that it is already implemented.

The Commission already includes in the documentation of funds it invests in clauses providing for the access of the ECA to the documentation of the funds. Moreover, the Commission reserves the right that it may request from the Member State the information that is relevant to check the legality, regularity and performance of expenditure within the frameworks of audits that the Commission may carry out in accordance with the applicable regulatory and contractual arrangements. The information potentially collected in this framework could be made available to the ECA, where necessary.

The Commission considers that the access to documents referred to by the ECA and relating to the identification, planning and procurement should be provided by the Member State concerned, as the latter has to ensure the legality, regularity and performance criteria in the procurement procedure, in accordance with its national rules.

Common Commission reply to paragraphs 85 to 87:

The Commission stresses that various channels offering assistance are already available to Member States.

JASPERS, which is co-financed by ERDF and CF technical assistance at the Commission's initiative, may assist Member States and regions, on their request, in preparing and implementing PPP projects of good quality.

The Advisory Hub operating within the EIB may offer assistance to Member States and to project promoters for PPPs, again on their request.

The European PPP Expertise Centre (EPEC) was created in 2008 to support Member States of the EU, EU Candidate States and others in their work on PPPs. It is based in the Advisory Services Department of the European Investment Bank (EIB) and serves 41 EPEC member organisations: national or regional PPP units, and other public entities in charge of PPPs, as well as the European Commission. EPEC covers extensively the development of PPP guidance and tools, sharing of PPP information, experience and good practice with the aim to help the public sector deliver sound PPPs, while being neutral on the PPP solution. An example of such tool is the Project Preparation Status Tool, which is aimed at helping procuring authorities in preparing sound PPP projects (a) by identifying appropriate "to do" lists and (b) flagging potential and actual gaps in the process.

Furthermore, with its Communication on "Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects" of 3rd November 2017, the Commission has introduced a) a helpdesk, b) a notification mechanism and c) an information exchange mechanism aimed at helping MS and contracting authorities to design their large infrastructure projects, also in the form of PPPs in compliance with EU procurement rules.

Under the Structural Reform Support Programme (SRSP), the Commission's -Structural Reform Support Service (SRSS) may provide technical support to Member States upon their request, with a view to strengthening administrative capacity *inter alia* in relation to PPP's, to the extent that such support underpins a structural reform in a Member State.

89. The EU-funds and the legal acts regulating the implementation and the execution of the EU budget including, where applicable, contribution to PPP projects, provide criteria for application as set out in the specific legal text.

The choice of the PPP option does not necessarily preclude the inclusion of provisions ensuring the necessary flexibility to allow for evolutions due to technological changes.

Recommendation 4 - Establishment of clear PPP policies and strategies

(a) The Commission notes that this recommendation is addressed to Member States.

While the Commission considers it important to develop the PPPs as an instrument and help the Member States to address the obstacles for its successful implementation, the Commission does not deem it beneficial to conceive strategies with concrete specifications of the sectors or situations where there the PPPs are to be preferably used. The Commission has, in this respect, no mandate to intervene in this area which falls under the responsibility of procuring authorities at Member State level.

Furthermore, the Commission notes that substantive guidance to procurement and implementation issues in PPPs in the EU has been provided to date by EPEC, which is the European Expertise Centre supporting the public sectors across Europe in delivering better PPPs.

(b) The Commission does not accept the recommendation.

The EU-funds and the legal acts regulating their implementation and the execution of the EU budget provide always a concrete field of intervention of EU instruments, and where appropriate for the use of PPPs. The Commission does not intend to propose legal provisions allowing the imposition of further policy restrictions and criteria linked exclusively to projects delivered as PPPs.

91. PPPs are complex arrangements, mostly produced by private stakeholders, and the definition of risks should be clearly defined, even where projects are to be classified "off government" balance sheet

Already in the Guide on the Statistical Treatment of PPP mentioned above it is mentioned that PPPs should be undertaken on the basis of value for money, an appropriate allocation of risks and operational efficiency, with a particular eye on affordability and long-term fiscal responsibility.

92. The Commission refers to its reply to paragraph 69.

Recommendation 5 – Improved EU framework for better PPP project effectiveness

(a) The Commission does not accept the recommendation.

Although the Commission acknowledges that the choice of the PPP option by the Member State has to be justified by value-for-money considerations, it does not consider it feasible to condition EU support to a PPP project on receiving confirmation from the Member State that such considerations linked to the choice of the procurement model (i.e. those related to budgetary constraints or to the statistical treatment) are not at the expense of value for money. The statistical treatment can generally be confirmed only at the point that financial close is achieved, which does not necessarily coincide with the timing of the decision on financing support from the EU budget to a PPP project. Under shared management of ESIF in the current period 2014-2020, the Commission approves programmes and is informed about their implementation in annual implementation reports submitted by Member States. The Commission is not informed about and does not approve co-

financing of individual projects by ESIF, with the exception of major projects included in programmes. The Commission is informed about and approves (or rejects) the ESIF contribution to major projects already selected by managing authorities.

(b) The Commission notes that this recommendation is addressed to Member States.

(c) The Commission accepts the recommendation as explained below.

The Commission has started to reflect on ways to simplify the rules of implementation and management systems for the next Multi-annual Financial Framework in general. Simplification of all spending instruments, including grants and financial instruments, is a key objective.

Event	Date
Adoption of Audit Planning Memorandum (APM) / Start of audit	20.4.2016
Official sending of draft report to Commission (or other auditee)	23.11.2017
Adoption of the final report after the adversarial procedure	7.2.2018
Commission's (or other auditee's) official replies received in all languages	8.3.2018

Public-Private Partnerships (PPPs) harness both the public and the private sector to provide goods and services conventionally supplied by the public sector, while easing the tight budget constraints on public spending. We found that despite PPPs have the potential to achieve faster policy implementation and ensure good maintenance standards, the audited projects were not always effectively managed and did not provide adequate value for money. Potential benefits of PPPs were often not achieved, as they suffered delays, cost increases and were under-used, and resulted in 1.5 billion euro ineffective spending, out of which 0.4 billion euro EU funds. This was also due to the lack of adequate analyses, strategic approaches towards the use of PPPs and institutional and legal frameworks. With only few Member States having consolidated experience and expertise in implementing successful PPP projects, there is a high risk that PPPs will not contribute to the expected extent to the aim to implement greater part of EU funds through blended projects including PPPs.



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