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THE PUBLIC -PRIVATE PARTNERSHIP - A BENEFIT OR A CHALLENGE FOR THE MACEDONIAN PUBLIC HEALTHCARE SYSTEM

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Abstract: Financing the public health system remains a major challenge for post-transition countries and small economies such as the Republic of North Macedonia. Healthcare PPPs require the setup of complex legal and financial frameworks. They are usually set up to mitigate the fiscal costs and public finance resources needed to build capital infrastructure. Lately, the public enterprises established by the government or the local government in the region have entered long-term purchase agreements that are like PPPs. In practice, PPPs are very popular in the transport, energy, and water sectors (investment in infrastructure in toll roads, electricity networking, water supply and wastewater treatment, etc.). However, when it comes to the PPPs in the public healthcare sector, these models of financing seem to be facing restrictions and don't enjoy the same popularity as in other sectors for public services.

Therefore, this paper will overview the appearance and legal position of the PPPs in the Macedonian public healthcare system and new competences for sustainable public healthcare systems. In addition, it will tackle the question: What are the legal positions of the public and private partners, and what are the financial implications (pros and cons) of using this model of investment in the public healthcare system?

Keywords: Private-public partnership, public healthcare system, fiscal effects

INTRODUCTION

The public private partnership (further: PPP) has mainly been seen as a mechanism to provide additional finances for public services and functions. It is considered as a relatively new form for financing the public needs. Therefore, PPP's has been used as a long-term model for financing and supporting the public needs from the private sector. This model is seen as a formal cooperation between the public and the private sector worldwide. Public

partner is a legal entity that gives an agreement for the establishment of a public private partnership. Private partner is a domestic or foreign legal entity or natural person or consortium with whom the public partner concludes an agreement for a public-private partnership. Consequently, they are foreseen mostly as a sui generis type of agreement that appears in form according to special law. The PPP's are part of the development strategies of any country, and the governments use it's as an alternative method for capital investments, financing, services

delivery and other crucial infrastructure developments. The PPS is very well familiar type of partnership that brings together the private industry and the public sector in joint undertake in multiple countries. PPPs are a form of long-term contract between a government and a private entity, through which the government and private party partner in the provision of public services. PPPs are distinguished from other government private contracts by: the long-term nature of the contract (typically 15+ years); the shared nature of the investment or asset contribution; and the transfer of risk from the public to the private sector [1]. There is no unified definition, but it should be mentioned that depending of legal systems these joint undertakings appear as different models¹ and special features, thus based on the same or similar guiding principles (transparency, non-discrimination, proportionality, efficiency, equal treatment and mutual recognition). These principals enable the leverage of the use of PPS` s in the area of transport, electro communications, water, health, etc. according to the theory and practice.

1. THE AIM OF THE USE OF PUBLIC-PRIVATE PARTNERSHIP

In global range the government face with a lot of challenges and constrains concerning the public healthcare systems, especially the transformation of the traditional healthcare systems to digital. The public health systems got so severely hit by the appearance of the COVID-19, that the amount the pressure and burden that was followed by reconductoring the global healthcare architecture. The developing countries found it hard to follow the increased healthcare costs, rapidly changing healthcare technology, and the need to deliver high quality healthcare services. Therefore, the need for using alternative ways to improve, develop, sustain and finance the public health system in the transition counties seems to be became *sine qua non*, especially in implementing large infrastructure projects. “The importance of PPP is in the following: overcoming the problem of

¹ For the most common model see supra in the text.

insufficient budget funds for realization of large projects; the pursuit of greater benefit on the basis of the use of know-how and the methods of work of the private sector and the change the role of the public sector from a direct participant in an entity that appears as an organizer, controller and regulator” [14].

The governments worldwide (from low to high income countries) have engaged the private sector in partnership in the area of transport, energy, waste, wastewater and in in the last few decades in healthcare. This long-term partnership between the private and the public partner is regulated by special national law, and by its legal nature it is considered as a long-term contract between public and private party in the provision of public services. The public-private partnership should bring a benefit of public interest that exceeds the benefits resulting from the usual way of providing conditions for the performance of public services, or to be seen “in function to fulfilment of the public needs” [13]. A benefit of public interest means in particular cost savings for the public partner, a higher standard of services provided and other public benefits. There is no unified definition about what PPS are, but mostly they follow several elements that almost every definition has it in its core. Mainly it has been seen as a form of cooperation between public authorities (public partner) and private economic operators, often in order to provide financing, construction, renovation, management and maintenance of infrastructure or to provide a service for benefit a public interest. According to the IOB study the Public-Private Partnerships in developing countries “in only 4 out of the 18 case studies the definition of PPP is explained”² They have summarized these definitions in a so-called Word cloud and the outcome shows that most definitions contain the words “joint”, “government” and “collaborations”.³ In some extended sense, we may see

² For more see in *Public-Private Partnerships in developing countries*, Policy and Operations Evaluation Department (IOB) Study: Ministry of Foreign affairs of the Neverlands No. 378, April 2013, pp.24 <https://www.oecd.org/dac/evaluation/IOBstudy378publicprivatepartnershipsindelopingcountries.pdf>, accessed November 2023

³ *Ibidem*

the PPP as a *sui generis* long-term agreement with a clear goal (public interest) between two parties: 1) Public partner that is always legal person (public authority) and 2) Private partner that might be legal entity or natural person or consortium. These are the basic elements of recognition of every PPP agreement.

The PPP should be considered as a complex procedure that demands previous economic and legal activities to be undertaken. These activities need to be undertaken by different stakeholders and needs to be carefully planned. Therefore, the PPP's, before it's signing, are considered as a project that requires *ex ante* set of interdependent activities based on a previously made analysis of the assessment of economic and functional justification of PPPs.

2. BRIEF OVERVIEW OF THE TYPES OF THE PPP IN EU AND IN ACCORDANCE WITH THE MACEDONIAN LAW

According to the EU practice, there are several types of public tendering procedures in EU: Open procedure- in an open procedure anyone may submit a full tender. This procedure is used most frequently; Restricted procedure- anyone may ask to participate in a restricted procedure, but only those who are pre-selected may submit tenders; Competitive negotiated procedure- in competitive negotiated procedures anyone may ask to participate, but only those who are pre-selected will be invited to submit initial tenders and to negotiate; Competitive dialogue- this procedure can be used by a contracting authority with the aim of proposing a method of addressing a need defined by the contracting authority; Innovation partnership- this procedure may be used when there is a need to purchase a good or service that is still unavailable on the market. A number of companies may participate throughout the process; Design contest- this procedure is used to obtain an idea for a design [26].

When it comes to PPPs in healthcare, three most common PPPs models can be found:

1. The infrastructure-based model: Under the Infrastructure-based PPP model, the private

partner is contracted to build, rebuild or replace a public asset, and is responsible for maintaining the infrastructure throughout the life of the contract, usually long-term contract for 25-30 years. The private partner is responsible for the following: Design, Build, Finance, Maintain, Operate. This model is widely used around the world (UK, Canada, Australia, Italy).

2. The Discrete Clinical Services model is used to improve management of clinical service delivery for specific, high-demand services; to improve quality of and access to specific clinical services; to mobilize private sector involvement in the delivery of healthcare services. These types of contracts exist in many forms and can cover a variety of services, including laboratory, diagnostic, dialysis and other specialist services. The private partner is primarily responsible for: Finance; Maintain and Operate & Deliver. usually short- to medium-term in duration (less than 10 years) to align with the lifecycle of clinical. This model has been implemented across a range of countries that experience inadequate capacity for specific clinical services (India, Romania).

3. The Integrated PPP model - the private partner is responsible for Design, Build, Finance, Maintaining, Operate and deliver. This model requires a complex set of agreements with the private partner (or private consortium) to manage the components of financing, design, construction and service delivery. Transferring responsibility for clinical service delivery to a third party represents a major change for governments, as they must shift from being a provider of services, to a more arms-length relationship as a contractor of services and manager of quality via contract and performance management. (Africa, Spain, Peru) [1, 24-30].

PPP agreements can take various forms, such as concessions, service contracts, joint ventures, or build-operate-transfer arrangements. The use of the PPP's model is mainly left on the parties. Therefore, despite the fact that the domestic laws and EU regulation

complexities and risks that need to be carefully managed to realize their full potential and deliver positive outcomes for patients and populations.

Here are some of the challenges:

Complex Governance and Regulation: Managing PPPs in healthcare requires navigating complex governance structures, regulatory frameworks, and legal issues, which can pose challenges in terms of accountability, transparency, and compliance.

Risk Allocation and Management: Allocating risks effectively between public and private partners is essential for the success of PPPs, as uncertainties related to funding, performance, or legal matters can impact project viability and sustainability.

Affordability and Equity: Ensuring that PPPs in healthcare are affordable, equitable, and accessible to all socio-economic groups is crucial to prevent disparities in service provision, coverage, or quality of care.

Sustainability and Long-Term Viability: Maintaining the sustainability and long-term viability of PPPs in healthcare requires careful planning, monitoring, and evaluation to address financial, operational, and contractual challenges that may arise over time.

Community Engagement and Stakeholder Participation: Engaging stakeholders, including patients, healthcare providers, civil society organizations, and local communities, is important for building trust, securing support, and addressing concerns related to PPPs in healthcare.

5. RECOMMENDATIONS AND CONCLUSIONS

The practical implementation of the Law on concessions and PPP's is quite in line with *lege scripta*. The Law constitutes a solid basis for the development of PPP in the country provided the financing and arbitration issue can be solved in accordance with international best practice for PPPs. The Law and bylaws as well generally are aligned with the EU *acquis*, and are duly enforced. Despite the quite well draft

legislation, the legal preconditions for sustainability of PPPs, the numerous benefits and advantages that aims to the PPPs agreements, still, the legislation should be more consistent, clearly providing adequate mechanism for control. In practice, some of the competences of the ministries and competent bodies often overlaps. Maybe this is as a result of the ambiguity in some provisions that refers to the competences of the authorities and the bodies that are entitled to develop, implement and control the awarded PPP. There is insufficiency of information about the initiation, procedure and the content of the PPP's agreements that has been awarded. Lack of data at the competent authority of the official web links. Therefore, the authorities should enable visibility of all elements of all included parties. In this way, the principles of transparency, proportionality, efficiency and equality to establish and run public-private partnership won't be questioned. The particularly defined roles of the parties (the public partners and all stakeholders) will enable further development of competitive PPPs, with less influence of politics. In the area of the healthcare, this becomes more challenging and takes on even greater significance, and the need for greater expertise and transparency.

The members of the Council of the public-private partnership should tailor their decisions in politically acceptable way, also, they should act in the manner of solidarity and rationality when adopting decisions, even though their decisions have advisory and consultancy nature (non-binding nature). Additionally, the use of the lowest price as a unique criterion for awarding a public-private partnership/concession contract can violate the principle of "value for money". The establishment of a public-private partnership in healthcare should be seen through the balance of the needs of the public partner and "common interest" on one hand, and the inclusion of the private sector in providing high quality public services, on the other.

PPPs in healthcare can bring together the resources, expertise, and innovation of both public and private sectors to address healthcare

system challenges, improve service delivery, and promote better health outcomes for populations. Effective governance, transparency,

and stakeholder engagement are critical for successful implementation and sustainability of PPPs in healthcare.

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JAVNO-PRIVATNO PARTNERSTVO - KORIST ILI IZAZOV ZA JAVNI ZDRAVSTVENI SISTEM MAKEDONIJE

Sažetak: *Finansiranje javnog zdravstvenog sistema ostaje veliki izazov za posttranzicijske zemlje i male ekonomije kao što je Republika Severna Makedonija. Javno privatno partnerstvo u zdravstvu zahteva uspostavljanje složenih pravnih i finansijskih okvira. Obično se uspostavljaju da bi se umanjili fiskalni troškovi i sredstva javnih finansija potrebnih za izgradnju kapitalne infrastrukture. U poslednje vreme javna preduzeća osnovana od strane vlade ili lokalne samouprave u regionu sklapaju dugoročne kupoprodajne ugovore koji su kao JPP. U praksi, javno privatna partnerstva su popularna u sektoru transporta, energetike i vode (ulaganje u infrastrukturu na putevima sa naplatom putarine, elektroenergetske mreže, vodosnabdevanje i tretman otpadnih voda, itd.). Međutim, kada je reč o JPP u javnom zdravstvu, čini se da se ovi modeli finansiranja suočavaju s ograničenjima i ne uživaju istu popularnost kao u drugim sektorima javnih usluga.*

Stoga će se u ovom radu prikazuje pregled pojave i pravnog položaja JPP u makedonskom javnom zdravstvenom sistemu i novih nadležnosti za održive sisteme javnog zdravstva. Pored toga, bavi se i pitanjem: Kakvi su pravni stavovi javnih i privatnih partnera i koje su finansijske implikacije (prednosti i mane) korišćenja ovog modela ulaganja u javni zdravstveni sistem?

Ključne reči: *privatno-javno partnerstvo, javni zdravstveni sistem, fiskalni efekti*