

„PPP” INVESTMENTS – INSPECTION AND QUALIFICATION IN HUNGARY

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Introduction:

Over the past 20-30 years, extensive economic literature has been published all around the world about the role of State and its importance in economy. The recent years have seen the reconsideration of the role of State, the exodus of the latter form certain areas only to let them over to the private sector. "Privatization" and its relationship with government agencies has also become a most disputed issue. The former Soviet republics and a lot of other nations in Eastern Europe have privatized their formerly state-run companies, but the states and cities in the EU and the USA opted to sell the assets and certain activities from prison management to parking card collection. (*Resource: 16*)

The debate about the direct economic activities of government and local government agencies speculates on whether the State is doing the right jobs and if it is doing them effectively enough. Surveys question the participation of State in healthcare, culture, education and the development of infrastructure, as these costs have skyrocketed over the past years. Governments have had to convert so much fund to these that, if this tendency continues, budgets will have to face pretty serious consequences in the years to come.

Recently, there has been an increase of former state duties going over to private hands with a sign of cooperation between the State and the private sectors.

British economist Anthony Giddens (*Resource 2*) writes in his book "The Third Way" that the aim of cooperation between the private sector and the State in the scope of public services is to improve the functionality and effectiveness of economy. In fact, this "third way" concept is but a blend of Keynesian economics that emphasises the importance of government policies and of the neo-liberal views that proclaim the omnipotence of market conditions. My essay investigates whether the way certain government investments are implemented by the private sector in Hungary – called PPP investments – corresponds to Giddens's statements in the case of Hungary, namely whether these investments really turn out to be more cost-effective or there is something else behind the growing number of PPP investments.

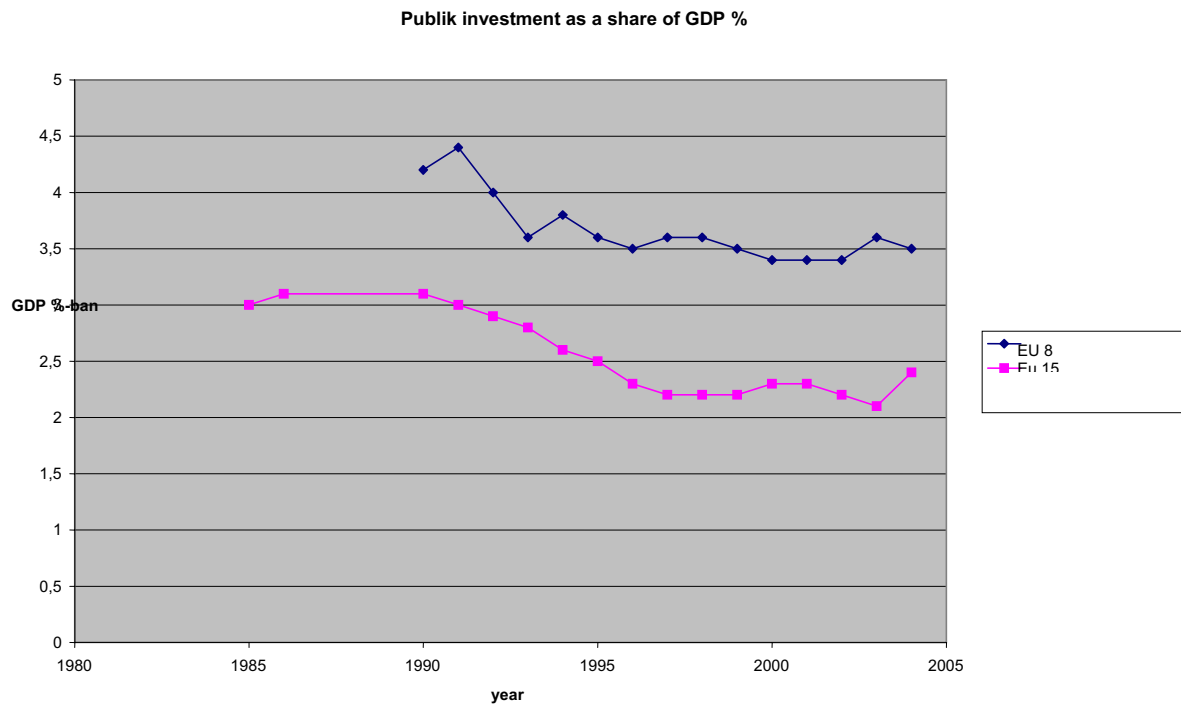
I. Direct government investments and the PPP in the EU countries

In pre-enlargement EU countries, the role of State in direct government policies have been decreasing since the 1970s.

While in the 1970s, the 15 EU member states spent 4.5 per cent of the GDP on direct investment, this figure had decreased to 3 % by the year 1990s, and decreased to 2-2,5 per cent by the early 2000s.

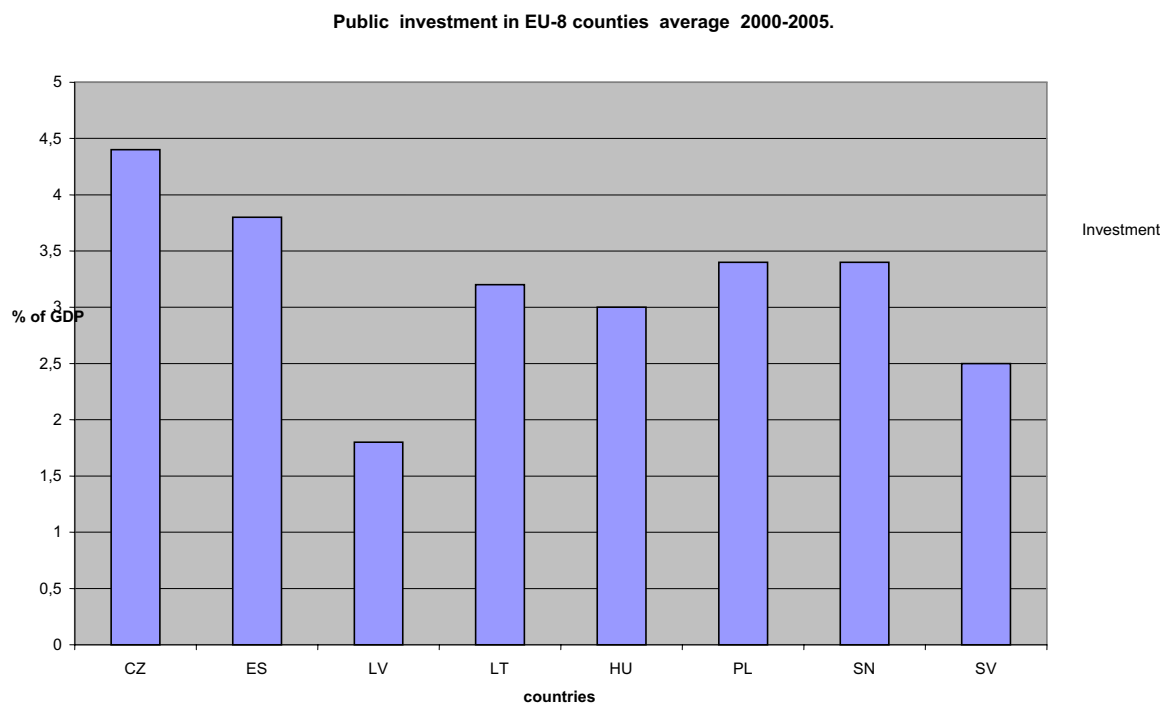
This proportion was higher - 3 to 4.5 per cent - for countries that joined the European Union later. : (*Resource: 13*)

Figure 1



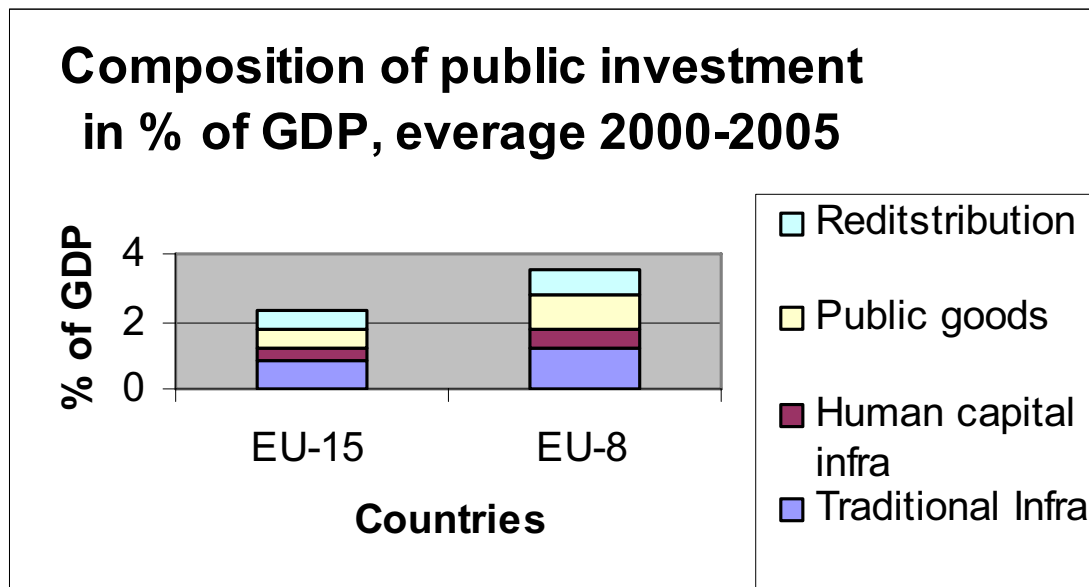
In the new EU countries (EU-8) in east Europe the public investment was the highest in Czech Republik with 4,5 % of GDP, and the lowest in Litauen with 1,8 % of GDP average 2000-2005. In Hungary was the public investment about 3 % of GDP.

Figure 2.



For the 15 EU countries, nearly half of direct government investments were made in the development of infrastructure between 2000 and 2005.

Figure 3:



In most of the newly joined countries, the share of public property has decreased while previously unknown factors, e.g. unemployment or bankruptcy have appeared. Also, the amount of payments deriving from public property have gone down and the possibility of gaining revenues from the formerly considerable management and transfer of assets has decreased.

At the same time, social, healthcare and administration costs – and, in general, the fiscal deficit - have risen.

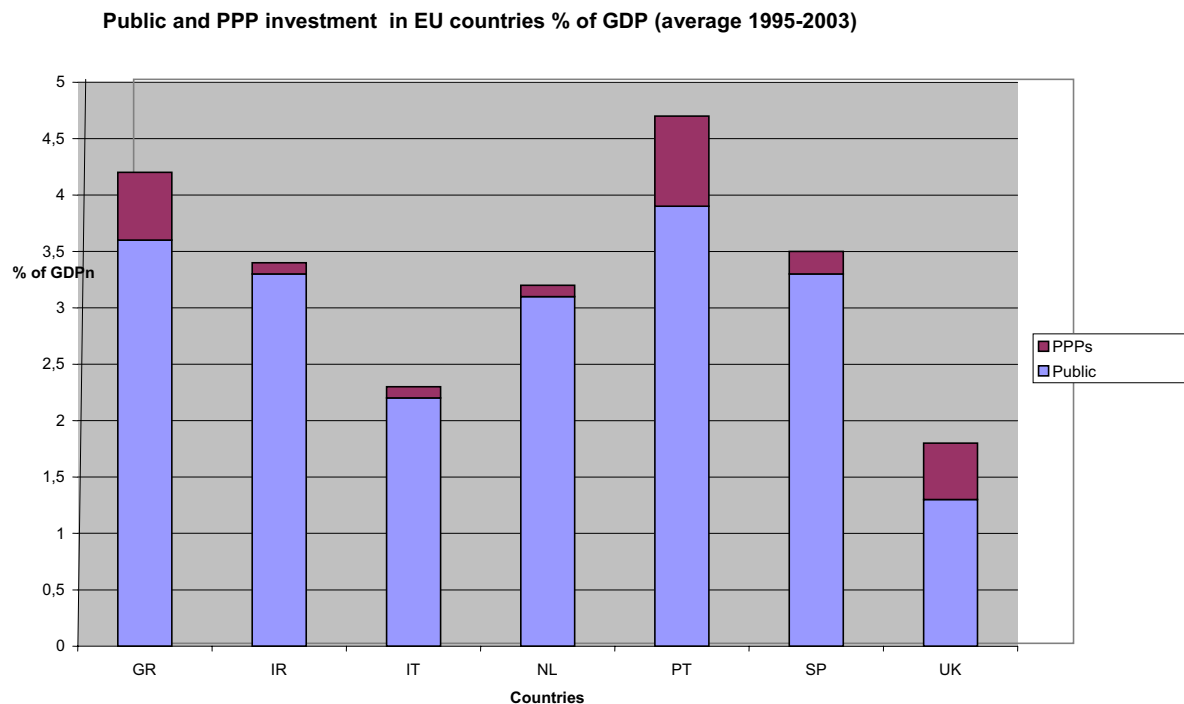
Some countries tried to moderate the deficit by subduing investment expenditure and started looking for solutions to extenuate the costs when an investment was completed.

In 1995 the European Union presented new solutions which instead of postponing the so-called conventional investments ordered by either government or local government agencies could be implemented in cooperation with the private sector in a way that investments were made in spite of the lack of funds, but they still did not appear as deficit. Due to the effective nature of the private sector, the investment had become cheaper.

Such a possible solution was the PPP (Public Private Partnership) construction which served for implementation of projects which were ordered by a local authority, in economic interest or decided on by political circles. Here it was not necessary for the total historic value to be there, nor did the costs of such investments make the fiscal deficit grow !

The PPP construction was applied chiefly in Portugal, the United Kingdom and in Greece during the period 1995 to 2003. Then it spread on to other EU countries – Hungary, among others.

Figure 4



The PPP construction appeared in Hungary between 2003 and 2004. It was considered a suitable means to replace some of the government investments.

The PPP construction stands for a partnership between the public and private sectors. It is a form of cooperation between the public and private sectors where the parties jointly take the risk and responsibility for providing public services.

In the framework of PPP, the government involves the private sector in the fulfilment of public service mission or in the establishment, maintenance and operation of a facility or institution.

In the framework of PPP, the private sector makes an investment and provides a service to the State. It assumes government duties and in return is entitled to a service fee. (*Resource: 3*)

The PPP is attractive to apply as it offers a more favourable solution when it comes to the accrued settlement of a project (regarding the data used for Maastricht markers). Also, the PPP construction was chosen because, unlike conventional solutions e.g. direct government investment or leasing, it offers a lot more economical way of implementation with a lot less risk involved!

Further advantages of the PPP construction are:

- The PPP construction replaces a government investment in a way that it enables a lot more investments to be made from the same resource, as service fees can be delayed to a number of years ahead;
- Government expenditures are plannable on the long run. The fee is fixed and is only exposed to the effect of inflation;
- The higher efficiency of the private sector can be utilized during operation (cost-effectiveness during the construction works, skills during operation, etc.);
- A lot of investment risks can be devolved to the private sector.

II. PPP agreements – features, validity and legal regulations:

For the PPP model, the State orders a long term - 20 to 30 year long - service fulfilment from the private sector.

The liability of a private company may cover the planning, implementation, operation of infrastructure and, at least partially, the financing of a project, while the State and/or the actual service user pays a service charge.

In long-term agreements the principal is a government agency, e.g. Ministry, national agency, university or local authority. It is the State that plays the monitoring role as it coordinates and provides warranty.

Example: in the framework of the Central University Programme the agreements on the reconstruction of new hostels as well as those on the development of research and development infrastructure are concluded by universities and colleges. The Ministry of Education offers a supplementary grant in addition to the own funds of the institutions.

Basically, PPP agreements in Hungary were concluded on the same areas as abroad, but the agreement values are greatly dispersed.

PPP agreements in Hungary, 2003-2007			
Areas	Agreements concluded	Current projects	Total
Construction of schools and hostels	28+15= 43	8	51
Home (for the elderly)			
Sports facilities	12+22=34	3	37
Waste management	0	0	0
Roads and bridges	5	5	10
Rational utilization of energy	0		0
Cultural facilities	1	1	2
Offices		0	0
Other (e.g. prisons)	2		2
Total	85	17	102

Resource: my own calculations according to 11

While in the EU countries, the order of procedure with PPP investments is strictly regulated, in Hungary all forms of cooperation in development and service activities between the State and the private sector had been exclusively regulated by § 138/A of Government Decree 6/23 217/1998. (XII. 30) on the order of operation of general government. This had set the general rules of commitment for development programmes individually approved by the Government until 2006. No PPP project specific order of procedure had been set up.

Government Decree 2098/2003 (V. 29.) on the application of fundamentally new forms of PPP set up the PPP Interministerial Committee (PPP TB) in 2003 to coordinate the implementation of projects. The PPP Interministerial Committee was made up from six members: representatives of the Ministry of Transport and Economy, Ministry of Finances, Ministry of Justice and Law Enforcement, Prime Minister's Office, Hungarian Central Statistical Office and the National Development Agency. The authorized chairman was a competent undersecretary of the Ministry of Transport and Economy.

In early 2007, Government Decree 24/2007. (II. 28.) on certain rules of the undertaking of long-term commitments was proclaimed. The Decree had been initiated by the Ministry of Finances and supported by the PPP Committee.

The new order of procedure allowed detailed elaboration of projects only if the Government had selected them in the Hierarchy and they had sufficient commitment funds.

Currently, this regulation contains the order of procedure concerning PPP projects.

New PPP projects or programmes may be undertaken by the government's consent only.

A pre-condition of government approval is that the preparatory material should contain a profound enough presentation of financial as well economic effects. Also, the project – together with other projects – should not pose too high a burden on the budget in addition to financial allocation.

The amount of financial allocation effective in the given year is always determined by budget law.

The maximum payment fund limit is 3 per cent of the total amount of the budgetary income.

The commitment limit for 2008 is HUF 200bn HUF.

The already existing commitments also go to the debit of the limit, and new commitments may only be assumed to the debit of the free fund limit. Its value is determined by the Ministry of Finance on the basis of the records of the Hungarian State Treasury.

<i>(million Ft)</i>	2006	2007	2008
Long term commitment value	5.795,4	148.910,6	157.904,8
Limit volume			200.000,0
Free funds			42.095,2

Resource: Ministry of Finance Registry, as was on January 31, 2008

III. The PPP construction - participants and duties

According to the Interministerial Committee Registry valid on January 1, 2008, PPP projects operating in Hungary at the time were:

- Palace of Art, Budapest (OKM),
- Motorway sections 1 to 3; building stages 1 and 3 of motorway M6 (GKM),
- BVOP Prisons in Tiszalök and Szombathely,
- 39 Ministry of Education and Culture projects (10 new youth hostels, reconstruction of 13 hostels, 15 developments in research and education infrastructure),
- 7 ÖTM gymnasiums, 4 swimming pools and the Kiskunfélegyháza Sports Court.

All of these were commitment covered projects (*Resource:* 11). There is a significant divergence in the volume of projects.

Except motorway investment projects, every contract followed the DBFO model.

One of the first agreements was the Hungarian University Programme launched by the Ministry of Education and Culture. The project focussed on the construction of

new youth hostels, reconstruction of old ones and the development of infrastructure with 78 or 80 institutions.

The investment value is HUF 151.7bn with costs amounting to HUF 10bn annually for 20 years.

The implementation of programmes were chiefly based on the establishment of accomodation for 10.000 students as promised in the 2002 government programme.

Therefore it was a political decision.

Practical experience shows that 'investor-run' private hostels are no alternative to underlease. Without government contribution they would be a lot more expensive, as a private company has to regain the investment expenses from the fees, whereas the underlessor is not compelled to do so.

In order to shape up competitive prices, institutions (that is the State) assume some of the fees even in case of vacancy (10).

It is typical for PPP investments that the winning investor makes an operator's agreement with the institution or its single-member LTD when the investment is complete. In doing so, he actually renders the right of operation just as if the investment had been implemented out of direct government resources and not as a PPP project.

The investment value of concession motorways M5 and M6 published by the Ministry of Transport is HUF 346bn. The cost is HUF 39bn a year calculated at a 2005 reference price.

However, the way PPP is used for motorway construction in Hungary differs from Western European examples. Here, private capital does not complement government expenditures but almost fully replaces them; this is the allocation of former government expenses to the private sector (7).

The prison building programme of the Ministry of Justice and Law Enforcement in Tiszalök and Szombathely involves a HUF 14bn investment, the cost of which will be HUF 3.9bn annually for 15 years.

"Sport XXI" Facility Building Programme of the Ministry of Local Government and Regional Development aims at the construction of 60-65 classrooms and swimming pools.

The investment value of these is HUF 23.7bn and the cost will be HUF 2.9bn annually for 15 years. High charges have caused several municipalities to give up their implementation plans.

The value of PPP investment was in Hungary average 2005-2007 about 550 Bio HUF, 2 % of GDP.

IV. Morals of the implementation of PPP models in Hungary

Thesis 1 In Hungary, PPP investment for the public sector is an economic-financial technique which sets its aim on the reduction of general government deficit by application of this construction even to the detriment of the criteria of economicalness as compared to conventional implementation.

Which factors support the above statement?

Hungary has undertaken to meet the Maastricht criteria, which is stipulated in the convergence programme. Here Hungary has agreed to reduce the fixed assets

accrual from 4.4 per cent of the GDP to 3.2 per cent between 2006 and 2010. This resulted in a serious reduction of direct government or local government investments (*Resource: 15*).

Chiefly for political reasons, this is the only way of improving schools and hostels on a national scale, redoing swimming pools and classrooms in minor settlements and developing roads or the culture where necessary.

Having perused quite a few agreements it is clear that historic price often neglects the returns. The reason is it's very difficult to calculate – and the invitation to tender does not require that either. The investments have been realized in sectors with no significant income, e.g. prisons, gyms, swimming pools and motorways. For such investments, the majority of income is granted by the government as availability fee.

Agreements normally stipulate the quality of implementation, like the standards of supply for the prisoners, the range of shops necessary for a hostel or the number of exhibitions to hold in a cultural facility. Also regulated is the amount of reduction applied to the rent, though, in fact, this is no real penalty as it does not reach 10 per cent of the rent amount.

Like everywhere else in the world, tender evaluation in Hungary is preceded by a negotiated public procurement procedure which involves cost benefit analysis and current value calculation. However, these are not suitable for comparison of actual historic or market prices.

In addition, before a PPP investment is launched, a current value calculation is done to decide whether it is feasible for the government to take up credit and start an investment with all its risks and nuisances including excess investment costs, overburden deriving from operation and demand for modernization or to apply the PPP construction with a fixed, annual service charge?

However, this calculation is only based on presumptions. The possible risk is evaluated in percentage and regarded as savings, so compensating for investment and additional costs. Moreover, current value calculation often results in an unintelligible negative figure, as earnings are normally less than expenditures.

Construction companies bidding for a tender can normally take more expensive credits than a government could take or finance from municipal bonds. Therefore recompense fees are usually higher than planned, deterring several municipalities from implementing gym or swimming pool building projects. (121 project was planned but existing project ohnly 37 Resource 11).

A great example was the Budapest governmental district project in 2007/2008, which was not only terribly expensive but also ignored many regulations of the competent authorities as well as the city-planning considerations.

I expect a similar outcome with FEREX, (Ferihegy Railway) and Electronic Toll System (ED). The rate of return is uncertain and the investor is not likely to assume demand risk.

Thesis 2 An EUSTAT audit regrades Hungarian PPP from private to public investment, causing PPP to become an item increasing budget deficiency.

Which factors back up the above?

Regulations and definitions relating to budget deficiency are dealt with in EU statistics registry called National System of Accounts (ESA '95 manual), which helps to identify the features that make an investment private or public. The Manual describes how to recognize transactions which by their economic content are only aimed at avoiding the Maastricht debt and deficit by offering ways of classifying these as items increasing budget deficiency and public debt.

Investments may be given clear-cut qualifications only after completion of a risk allocation examination. If the majority of risks are borne by the State, the investment cannot be considered a private one, as it must be regarded financial leasing!

The examination focusses on the following:

- Who takes the risks or the majority of them, respectively? Are there any building risks? Who is responsible for maintenance and provision of the equipment?
- Who will repay the debt if the contract period expires prematurely?
- Who defines the type of asset?
- Who takes demand risk?
- Will the contractor use the asset to gain profit from third parties?
- Will the government pay less in case of poor service quality?
- Will the government pay more if company costs arise?
- Who takes residual value risk?

Having performed a risk allocation examination on implemented PPP investments from the above viewpoint it can be stated that, with hardly any exceptions, the majority of risks were taken by the buyer. Following the advertisement of a project, some contracts had to be modified repeatedly to adapt to problems arisen during construction works. See *The Palace of Art* or M5 motorway.

In case of a contract terminated before deadline it is always the buyer that has to repay the debt. And what is more, most contracts stipulate a considerable amount of penalty as well. The investor does not have such risks.

The type of asset is defined during the public procurement procedure as are the ground-space, function, equipment, etc. Therefore it is also the buyer that has to take the risk deriving from all that.

In most cases, the investor doesn't have to take demand risk of more than 50 per cent of the income.

Therefore, if a university or college, whose lecture rooms and laboratories have been built or redone, becomes unattended after 10 years, it will still have to pay the rent or recompense fee to the budget. Such is the case with sport courts, swimming pools and prisons.

For motorways, the investor receives most of his income from the sale of stickers, but contracts stipulate a significant sum as availability fee which is paid out even if the motorway is not or hardly ever used.

If we examine whether investors use the assets to gain profit from third parties, we will see that they do (except prison and motorway projects). For example, redone lecture rooms at schools are let for conferences or other events, businesses in swimming pools are leased, and balls or other events may be held in the Palace of Art so as to make profit.

The answer to the question whether the government pays less if the quality of the service is below standard is usually yes. Contracts list the services the inefficiency or lack of which will lead to reduction of the recompense fee. This is checked by means of a posterior monitoring system.

Will the government pay more if the company's expenses arise?

Most contracts are adjusted annually according to the inflation rate. So if expenses grow with inflation, the buyer will compensate for them.

The recompense fee is usually set in foreign currency, so the buyer must take the exchange currency risk.

Who takes residual value risk?

For most projects, the buyer has to take this risk because the investment will not pass into his possession when the contract is terminated. He will only have right of pre-emption and buy or re-rent the asset at the effective market price.

It is generally true that EUSTAT accepts operative leasing constructions while rejects those similar to financial leasing because, for operative leasing, assets are in fact lent and the hirer receives right of usage or services with the proprietary right remaining with the lender of ownership.

Following an inspection by EUSTAT, the following items have recently been transferred to the public sector:

- a PPP motorway construction project worth HUF 100bn near Érd-Dunaújváros,
- the Palace of Art project worth HUF 32bn.

A similar result is only to be expected with other PPP investments, e.g. those of the Ministry of Education and Culture, the Ministry of Justice and Law Enforcement, and of the Ministry of Local Government and Regional Development. These projects are likely to end up the same way as the ones above. The reason is that, according to the allocation examination in my study, most of the risks in Hungarian PPP contracts are taken by the buyer, which excludes these contracts from the private sector category and as such, they increase fiscal deficit. If EUSTAT reclassified the new investments in motorways M5 and M6, this alone would increase public debt by HUF 350bn – almost 4 per cent of the total deficit.

Thesis 3 The risks and disadvantages of PPP investments implemented in Hungary outnumber their possible advantages

This thesis is supported by:

- As a result of long-term financial load, the public sector's operating margin has been greatly reduced in the long run. Budget expenditures have been cut down on and their structure has been reformed, which has led to considerable disadvantage. (*Resource: 5, 9*)

- The long term makes it is difficult to evaluate possible risks and their amount in advance. A typical example of this is the School Renovation Programme of the Ministry of Education, which has already raised the question if the State should take on so much liability or provide payment guarantee in spite of all the negative demographic tendencies. Following the utilization of available funds, either the budget ceiling should be increased or the already planned projects should be quitted.
- Experience shows that the primary requirement for the PPP construction has not been met: implementation has not become more economical than with conventional methods. In some cases, direct investment or leasing would be better value even if loaded with interest.
- The examinations I have performed go to show that building costs are no lower than with conventional methods, because there is extremely limited competition involved in PPP procedures. Historic costs are much higher than expected because of factors like inconsequent reference regulations, a negotiated public procurement procedure, higher financial costs and extra taxes imposed on private sector investment (e.g. property tax).
- Certain political leaders urging inspection of PPP constructions claim that some of the contracts violated the Budget Law, and so the State should turn to court to nullify them. In other words, the way this construction is being used in Hungary is adverse to international practice. (1)

Thesis 4: Opposite to other EU-15 countries, in Hungary the rools of PPP investment are not clearly definated and regulated:

This thesis is supported by:

1, Problems with the order of procedure effective until 2006: (*Resource 12*)

- Projects were not submitted for preliminary selection. There was no experience on which to decide if a project was suitable for the PPP structure or if there were enough funds and intention for its implementation. Whoever applied first could join the programme;
- The Interministerial Committee was presented projects of very different qualities as to both content and standard. Some plans were carefully elaborated and supported with economic figures, while others were miscalculated.
- The Interministerial Committee either received no feedback on the contracting period or they were expected to give opinions on contracts or bids.
- Neither the Ministries nor the Committee kept interoperable record of the projects and forms relating to long-term government commitment.
- The Committee was unable to gain information, interrupt or feed back later in the course of project implementation, e.g. when an investment period ended. The inspection of contracts was also impossible to do.
- As the order of procedure was not uniform, the Committee had no insight into several projects (e.g. OKM university projects);
- It was not compulsory to ask for the Committee's opinion before a project was submitted to the government. This resulted in the Committee hearing of a project too late or having to fulfil its counselling duties afterwards.

2, Most off PPP investments are made in the renovation and refurbishment of existing buildings, the following problems remain unsolved:

- How much is a used property worth after it is invested in? How is it introduced in the investor's books and what value will it represent when remaining with the consignor? Will it be scrapped like old asset or continue depreciating?
- What happens to the renovated original holding when the contract is terminated? If the buyer does not purchase the part of investment that corresponds with the renovation, how can the investor take away or utilize it?
- May the investor capitalize the investment onto the existing building or not? What are his intentions when depreciating it as rented property or simply as realty? After all, according to the contract, he is letting the service provided.
- Must the investor pay tax on the property? Although the asset deriving from the investment is for public use, it is not a public property, and therefore it is taxable.
- Must the investor pay duty on the site he is using and the building he is renovating? Must he indicate these in the balance sheet as non-material rights and if so, at what value?

Summary:

In per-enlargement European Union countries, the State has been taking less and less share in direct government investments since the 1970s.

While in the 1970s, the 15 EU member states spent 4.5 per cent of the GDP on direct investment, this figure had decreased to 2 to 2.5 per cent by the early 2000s.

At the same time, this figure was higher - 4 to 4.5 per cent - for countries that joined later. Between 2003 and 2004 a new and nearly unknown construction turned up in the financing of state investments in Hungary: the PPP construction. It served for implementation of projects planned and decided on by the political leadership in a way that fiscal deficit would not increase in the meantime.

With a PPP investment, the public sector involves the private sector in performance of a public duty or in the creation, maintenance or operation of institutions.

In using the PPP construction the private sector makes an investment and provides a service of some kind to the State, assumes the duties of the latter and receives a fee for this service.

At first, the PPP construction was selected because it was considered to ensure more economical implementation with a lot less risk as compared to conventional solutions, such as direct government investment or leasing. By application of PPP the State orders a long-term service (typically ranging from 20 to 30 years) from the private sector.

Until 2006, PPP investments which stand for a cooperation in development or service activities were governed only by general regulations of commitment programmes individually approved by the government. These were coordinated by the Interministerial Committee until the release of Government Decree 24/2007. (II. 28.) on long-term commitment rules initiated by the Ministry of Finance and supported by the PPP Committee. The amount of budget line effective in the given fiscal year is always determined by the Budget Law. The maximum budget line amount is 3 per cent of the budgetary income.

Beside the state and the private sector entrepreneur, the two most important participants in the PPP construction, there is one more significant factor: the financial sector that is of special importance throughout the implementation of a project.

The PPP construction has not only good points but also considerable disadvantages. For instance, because of the long-term financial load, the public sector's operating margin is greatly reduced in the long run and budget expenditures are cut down on. Experience shows that the primary requirement for the PPP construction is not met: implementation is no more economical than with conventional methods. In some cases, it is cheaper to apply direct investment or leasing even if these are loaded with interest.

On the other hand, EUSTAT will refuse to classify a project as private investment if improper risk-sharing or a basically financial leasing is involved. In such cases, the investment will increase the fiscal deficit.

Despite its drawbacks, Hungary, like many other EU countries, has been applying the PPP model to find economic and financial techniques by which to keep down public debt and deficit when making an investment. This would promote fulfilment of the Maastricht criteria and of those in the Convergence Programme even if efficiency criteria are affected or the disadvantages outnumber the advantages significantly. For private construction companies PPP is but a means to create demand for their capacities with the assistance of a bank or leasing firm.

Regulations and definitions relating to budget deficiency are dealt with in EU statistics registry called National System of Accounts (ESA '95 manual), which helps to identify the features that make an investment private or governmental. The Manual describes how to recognize transactions which from their economic content are only aimed at avoiding the Maastricht debt and deficit by offering ways of classifying it as items increasing budget deficiency and public debt. It is generally true that EUSTAT accepts only operative leasing constructions while rejects ones similar to financial leasing!

If a risk allocation examination reveals that the majority of risks are assumed by the government, the investment may not be accounted for a private investment but considered financial leasing.

This study summarizes the criteria applied during the inspection and classification processes of PPP investments.

Based on the results of a recent EUSTAT's inspection we can expect a similar result with other PPP investments, e.g. those of the Ministry of Education and Culture, the Ministry of Justice and Law Enforcement, and of the Ministry of Local Government and Regional Development. These projects are likely to end up the same way as the ones above because PPP contracts in Hungary disregard the 7 + 3 rule and so they further increase the fiscal deficit.

After my research of PPP investment is the result, that the risks and disadvantages of PPP investments implemented in Hungary outnumber their possible advantages, on the other hand opposite to other EU countries, in Hungary the rules of PPP investment are not clearly defined and regulated.

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