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Assessment of Public Governance of Public-Private Partnerships in the Russian Federation

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Delegates to the Public Governance Committee are invited to:

- *DISCUSS public governance of Public-Private Partnerships in Russia*

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RUSSIA'S CURRENT ALIGNMENT WITH THE OECD RECOMMENDATION ON PRINCIPLES FOR PUBLIC GOVERNANCE OF PUBLIC-PRIVATE PARTNERSHIPS

1. This note provides an assessment of the alignment of the policies of the Russian Federation in the area of public governance of Public-Private Partnerships¹ (PPP) with the 2012 Council Recommendation on Principles for Public Governance of Public-Private Partnerships (the PPP Recommendation) [[C\(2012\)86](#)]. The Russian Federation provided its position on this Recommendation in a letter dated 19 November 2013. In evaluating Russia's position, it is necessary to take into account the fact that the Recommendation has been adopted recently, and that OECD Members are also in the process of adapting their policies and practices in this area.

2. The PPP Recommendation aims to support governments facing trade-offs between three demands inherent in a PPP project process. First, the public sector must be a prudent fiscal actor. It has to ensure that the PPP is affordable, that it represents best value for money, and that any fiscal risks, such as contingent liabilities, are limited. Second, the demands for investment from particular sectors such as transportation, health and education have to be assessed prudently against each other so that the projects that are pursued are those that yield the highest return on investment for society as a whole. Finally, there is an inherent interest of private investors to maximise profits which often means limiting the amount of risk they are carrying. However, inadequate risk transfer to the private investor undermines the rationale for undertaking PPPs in the first place. Governments must thus balance the risks taken by the private sector and those retained by the public sector in light of a realistic assessment of the price of these contracts. There is not necessarily a single solution to these trade-offs. The OECD PPP Recommendation was developed to guide governments in organising their public governance system in a manner enabling them to exercise prudent fiscal management and to secure value for money from PPPs when managing the trade-offs inherent in PPPs.

3. The Recommendation consists of 12 specific guidelines, grouped under three headings. The assessment of Russia's practices below is structured along these headings. The full text of the Recommendation is available in Annex A.

¹ Public-Private Partnerships (PPPs) are 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. PPPs may deliver public services both with regards to infrastructure assets (bridges, roads) and social assets (hospitals, utilities, prisons).

A. ESTABLISH A CLEAR, PREDICTABLE AND LEGITIMATE INSTITUTIONAL FRAMEWORK SUPPORTED BY COMPETENT AUTHORITIES

4. This section first discusses the degree to which the Russian Federation has taken steps to ensure public and stakeholder awareness of and input to PPPs; second, it assesses the clarity of mandates and capacities of relevant institutions; third, it looks at whether significant regulations affecting PPPs in Russia are clear, transparent and enforced.

5. As its first principle, the OECD PPP Recommendation emphasises the importance of the political leadership ensuring public awareness of the relative costs, benefits and risks of PPPs and conventional procurement. Popular understanding of PPPs requires active consultation and engagement with stakeholders. There is a consensus amongst the key stakeholders in government, the private sector and NGOs that PPPs can be of profound value to Russia. Russia faces an urgent need for increased public social and economic infrastructure across a large number of sectors, and PPPs can contribute to meeting this need. A number of arguments are raised in favour of PPPs in Russia: i) private operators can be more efficient than the public sector in terms of technology, organisational capacity, and integrating the construction and maintenance phases of the asset; ii) by using consortiums with foreign partners, PPPs can further technology transfer in sectors where Russia is currently lagging; iii) PPPs can harness private financing, hereby complementing current budget limits and speeding up necessary investment. An argument raised against PPPs is that they appear to be more expensive than traditional public procurement. This can be due to several reasons, which may include a lack of comparable life cycle costs for traditional procurement and limited awareness of what PPP entails in general. Indeed for the population at large, the difference between the various forms of infrastructure procurement is difficult to assess. Furthermore, there are some transparency concerns, including 1) limited public consultation and debate regarding PPPs which may lead to sub-optimal outcomes for users and citizens, as well as 2) a possibility of using PPPs in an opaque manner for procuring infrastructure projects with an unclear allocation of responsibilities. To address these concerns, the Russian Federation has already taken a number of steps to explain the nature of PPPs to the wider population, including through the official site “PPP in Russia”, and the training course conducted by Vnesheconombank and the PPP Chair of the Financial University under the Government of the Russian Federation, and media coverage.

6. The second principle focuses on the importance of clear institutional roles and strong capacities across involved institutions. This requires that procuring authorities, PPP Units, the Central Budget Authority, the Supreme Audit Institution and sector regulators be entrusted with clear mandates and sufficient resources to ensure a prudent procurement process and clear lines of accountability. With respect to the roles, responsibilities and capacities in the public sector for attaining value for money from PPPs, Russia appears to follow the same path as many OECD countries – introduction, gaining experience, and then refinement of framework and capacities. The Russian authorities are in the process of gradually refining the governance framework for PPPs by building on their experiences with concessions at the sub-national level. The Ministry of Economic Development has been given a mandate to develop the PPP framework and to lead the overall investment plan. This gives the ministry the foundation for further strengthening PPP capacities and setting up a PPP Unit similar to those found in OECD countries at the federal level in Russia. The Supreme Audit Institution has conducted some value-for-money analysis of PPPs, but this could be further enhanced. The role of the Ministry of Finance will be further discussed below with respect to ensuring value for money and links to the budget process. However, further efforts

would be beneficial to clarify the key roles and responsibilities, and to enhance capacity throughout the PPP cycle and the relevant institutions – procuring authorities, the Ministry of Economic Development, the Ministry of Finance-Central Budget Authority, the Supreme Audit Institution, sector regulators and possible PPPs Units.

7. In certain sectors, such as roads, airports and water, there are capacities and experiences with respect to the use of concessions/PPP that approximate those found in OECD countries. For instance, according to the Ministry of Economic Development, 30 million Russians receive water from a private provider operating under a long-term concession. There are presently competent units in some line departments that procure PPPs, such as in the Road Agency, but the capacity needs to be enhanced and mainstreamed. In many federal ministries and agencies, PPPs will be a new form of procurement, and there will be a lack of expertise available. This, in turn, puts the onus on the central ministries to make PPP expertise available. Most OECD countries that use PPPs have set up a PPP Unit for such a task, as shown in Annex B. The ‘PPP Unit’ should not necessarily be perceived as a single unified one-stop-shop for PPPs. It should rather be understood as creating available capacity in various forms for assisting the procuring authorities. This may take the form of advice on good processes, the creation of standard contracts, training and tools for assessing procurement modalities, value for money and affordability. It is important that such a unit should be clearly focused on assisting in the creation of sustainable PPPs. Consequently a location within or reporting to, a central ministry such as Economy, Finance or the Prime Minister’s office is what is mostly seen in OECD countries. In order to ‘un-clog’ the PPP pipeline, some countries have also set up a Project Development Fund that helps potential procuring authorities fund the sometimes heavy costs associated with developing PPP projects.

8. There is, in principle, no difference between the institutional roles, responsibilities and capacities that need to be present at the federal and at the subnational level. In Russia, as in many OECD countries, the capacity challenges are larger at the sub-national than at the national level. There is also often less understanding of the requirements for creating a feasible PPP project that could attract serious bidders. Several Russian stakeholders report that the need for extensive analysis prior to tendering or for a transparent and bias-free procurement process is not always fully understood at the subnational level. In Secretariat interviews conducted in May 2013 in Moscow with a financial institution, cases were mentioned where the procuring authority directly asked a potential project sponsor to create PPP tender documentation. This may lead to situations of conflict of interest. The federal Russian authorities are aware of the fact that a good PPP framework requires a multiplicity and separation of institutional roles and responsibilities at all levels of government, and are actively pursuing this goal. The new draft PPP law contains a number of initiatives that seek to address the institutional weaknesses discussed above.

9. The third PPP principle calls on countries to ensure that all significant regulation affecting the operation of PPPs is clear, transparent and enforced. Red tape (i.e. unnecessary or inefficient regulation) should be minimised, and new and existing regulations should be carefully evaluated. With regard to the legal framework, there are two dominant models for PPPs in Russia: 1) concessions, where the users fund the asset via tolls and 2) life cycle contracts (CCL). In the case of concessions, the project is expected to recover its costs from construction and operation via the tolls that users pay as they use the asset during operation of the asset (e.g. a toll road). This form of PPP limits the risk to governments if the private side carries the demand risk. LCCs, in turn, are also primarily user-financed, but unlike concessions, payments to the private party can begin after the asset has been in operation for a certain amount of time (e.g. 5 years of a 20 year contract). There are also a number of differences with respect to the legal status of the asset that is being used. The current federal framework sets the overall parameters for these two contracts, and subsequent implementing legislation is enacted at the sub-national level. Most of Russia’s regions (68 out of 83) have their own implementing PPP laws, but it is estimated by the Russian authorities that only about 40 are operational. The current framework has produced successful PPPs or the successful financial close of PPPs, e.g. in the Tomsk region, St. Petersburg and Kemerovo.

10. However, stakeholders point towards a number of issues with the functionality, clarity and enforcement of the current legal framework. First, there is little possibility of using PPPs for social infrastructure where tolling is not relevant. Second, the current legal framework is considered unclear, which makes authorities hesitant to use PPPs. Third, some find that the law is too rigid and blocks more tailor-made PPP models. This flexibility is thought to be necessary in order to attract project sponsors, make projects more economically viable and tap into new financing sources such as bonds and capital markets. Finally, the current law places a heavy transactional burden on both public and private parties, and is not suited for middle-range projects, such as hospital buildings.

11. To address these gaps, the Ministry of Economic Development started developing the new PPP law in 2011, which should mitigate the perceived weaknesses of the current framework. It should also send a strong signal to the regions that the federal government encourages them to undertake PPPs. The draft law is based on good practice from Russian regions and international experiences, and is currently being considered by the State Duma. The law has passed the first reading, and is raising broader awareness and debate. It defines the PPP as a contract utilising private finance and the exploitation of a specific asset by the project company. The new law is a framework law that increases flexibility, as it stipulates certain principles and leaves it to the regions to develop their own specific implementing regulation. Given the capacity challenges, the Ministry of Economic Development is also in the process of developing guidelines and standard contracts.

12. By developing a new law that permits more PPP models, the regulatory risks should be minimised. However, it may also open the door to more complex PPP models that would be difficult to manage for a public sector relatively new to PPPs. Increased discretion provided under the law could also lead to greater opportunities for corruption and thus would need to be carefully managed, including through the use of appropriate integrity and transparency safeguards. For the law to be effective, it would need to be aligned with various sectorial laws. More specifically, sectorial laws, the Budget Code, the Land Code, the Public Procurement Law and the Law on Competition would all need to be aligned with the upcoming law to create an investment climate propitious to private sector participation. One fundamental issue with regards to the current Russian legal framework is the multiplicity of input specifications. PPPs can be more efficient than traditional public procurement, because the contract focuses on what is to be delivered, not how it is delivered. This allows the private sector to use new and cost-saving technical and managerial techniques to reach specified results. However, stakeholders have emphasised that Russian authorities have a tendency to specify both inputs and processes, which can make the projects unmanageable and introduce regulatory risks.

13. The effectiveness of the PPP governance framework will also depend on the broader administrative environment and investment climate. As discussed in the 2012 PGC/RPC Russia Accession Assessment and elsewhere, international comparisons suggest that Russia scores low with regard to the rule of law in several dimensions, including perceived undue influence of government on courts, corruption, uneven regulatory enforcement and open government. Moreover, regional and municipal administrations seem to exercise very broad discretionary powers in the interpretation of regulatory requirements, which may create problems for effective and fair regulatory enforcement.

Assessment

14. The first PPP principle emphasises the need for political leadership to ensure public debate about PPP. In Russia, there is already a consensus amongst the key stakeholders in government, the private sector and civil society that PPPs can be of profound value to the country. However, further steps towards broadening this debate would be important for Russia to achieve the necessary level of awareness of the strengths and weaknesses of PPPs. The second PPP principle emphasises the importance of clear institutional roles and strong capacities to carry out PPP projects. The Russian authorities are aware of the

steps needed to establish a good public governance framework for PPPs, and are actively working on updating and strengthening the institutional and legal framework. As with many OECD countries, building up institutional capacity and the right legal framework is a gradual process. The new federal framework law for PPPs, addressing the third principle, is making its way through the legislature. This is a step in the right direction and is expected to move Russia closer to OECD best practice, pending its adoption and effective implementation.

B. GROUND THE SELECTION OF PUBLIC-PRIVATE PARTNERSHIPS IN VALUE FOR MONEY

15. To ensure the sustainability and success of the Russian PPP program, the government needs to assess whether or not a project represents value for money. Indeed the drive to use PPPs is increasingly premised on the pursuit of value for money². The starting point for a value-for-money calculation is comparing a PPP procurement solution to a traditional infrastructure procurement solution via the ‘public sector comparator’ or a relative value-for-money test. A public sector comparator compares the net present cost of bids for the PPP project against the most efficient form of delivery according to a traditionally procured public-sector reference project. The comparator takes into account both the risks that are transferable to a probable private party and those risks that will be retained by government. The public sector comparator serves as a hypothetical risk-adjusted cost of public delivery of the project. Ensuring the robustness of a public sector comparator is difficult, and it may be open to manipulation in order to either strengthen or weaken the case for PPPs (e.g. depending on the chosen discount rate or the value attributed to a transferred risk). In addition to the quantitative aspects usually included in a ‘hard’ public sector comparator, value for money includes qualitative aspects and usually involves an element of judgement on the part of government. Value for money can therefore be defined as what governments judge to be an optimal combination of quantity, quality, features and price (i.e. cost) expected (sometimes, but not always, calculated) over the whole of the project’s lifetime.

16. The fourth OECD PPP principle focuses on prioritisation, requiring all investment projects to be prioritised at senior political level. As there are many competing investment priorities, it is the responsibility of the government to define and pursue strategic goals. The decision to invest should be based on a whole-of-government perspective, and be separate from decisions on procurement and financing the project. In the case of Russia, it does broadly comply with the fourth principle, which concerns a process of prioritisation of capital projects at both political and technical levels. The Russian national development plan and the government national programme encompass the main policy areas and capital infrastructure needs at the federal, regional and local level. This includes projects that are designated to be funded using private financing. This also includes key performance indicators which are monitored by the Ministry of Economic Development. The Ministry of Economic Development is responsible for capital investment (PPPs and traditional) and oversight of the development plan. Along with the Ministry of Finance, they review and approve capital and infrastructure projects of line ministries.

² OECD (2008), *Public-Private Partnerships: In Pursuit of Risk Sharing and Value for Money*, OECD Publishing, Paris

Overall, this investment planning framework is broadly comparable to what is found in most OECD countries.

17. Once a project has been prioritised, the fifth PPP principle suggests that countries should carefully assess which investment method is likely to yield most value for money. This involves evaluating key risk factors and assessing how suitable a proposed project is for PPP procurement (procurement option pre-test). The application of the fifth principle remains uneven in Russia (see also Annex B). There is currently no particular methodology for determining value for money when choosing between traditional or PPP procurement in Russia. The approach used in Russia is that projects that can be funded via user tolls are brought forward as PPPs, thereby augmenting the national budget. In Russia, value for money from a specific project would be mainly derived from a competitive tender process, which is also the case in a number of OECD countries. Yet, as reflected in the eighth PPP principle, most OECD countries are moving towards more focused approaches to secure value for money, such as the use of public sector comparator methodology. This becomes more important when PPPs are used in social infrastructure where user charging is typically not relevant. In Russia, however, further efforts would be needed to ensure the effective application of methods to secure value for money in practice.

18. Moreover, more work is needed on procurement methods in Russia to define, identify and measure risks as stated in the sixth PPP principle. The sixth PPP principle emphasises the importance of transferring project risks to the party (public or private) that is best able to manage them. To address these concerns, the Ministry of Economic Development is already working towards establishing standard contracts and value-for-money toolkits, including guidelines for developing a PPP risk matrix and undertaking quantitative risk analysis. In addition, the new law on the Federal Contracting System, which introduces stronger safeguards throughout the full procurement cycle, including forecasting and planning, is another important step forward, pending its effective implementation.

19. Moreover, there is uneven information on the degree of preparedness of the procuring authorities for the operational phase in Russia, which is mentioned in the seventh PPP principle. The seventh PPP principle calls on the procuring authorities to be prepared for the operational phase of the PPP. Securing value for money requires vigilance and effort of the same intensity as during the pre-operational phase. Particular care is needed during the transition to the operational phase of the PPP, as the actors on the public side are liable to change. There are indications that alignment with the seventh principle varies significantly between policy areas and regions. Moreover, under current practice, clear renegotiation clauses do not commonly appear under PPP contracts, which could place the government in a difficult position should the contract not go according to plan. As such, a transparent and systematic procedure for renegotiation should be part of the new PPP legal framework, which is currently being discussed in the Duma. It should be emphasised, however, that, for federal projects over a certain size, the Ministry of Finance actively monitors project development and operation.

20. The eighth PPP principle underlines the importance of maintaining value for money when renegotiating the PPP contract. It suggests that the government should only consider compensating the private sector in case of a change of conditions due to discretionary public policy actions. Clear, predictable and transparent rules for dispute resolution should be in place. The Ministry of Finance takes an active role as custodian of the public purse during renegotiation and assesses the needed response to a change in contracts. There have been no indications during interviews with Russian authorities that renegotiations have systematically undermined value for money. On the contrary, private stakeholders have highlighted that the authorities are perceived as the strongest and less inhibited party in cases of renegotiation.

21. Finally, the ninth PPP principle requires government to ensure sufficient competition in the market and a competitive tender process. It could also involve structuring the PPP programme in a manner to facilitate an ongoing functional market. Where market operators are few, governments should ensure a level playing field in the tendering process to enable non-incumbent operators to enter the market. Value for money depends on sufficient competition, as emphasised by the ninth principle. This includes a level playing field between established companies, SOEs and companies seeking to enter the market. Yet in Russia, investment climate issues may prevent both domestic and foreign companies from entering the market. Indeed, Russia's general policy settings remain relatively anti-competitive, as suggested by the OECD's product market regulation (PMR) indicators (OECD 2013). The PMR indicators reveal the remaining pervasive nature of state involvement in the economy. There are indications that competition on the market for PPP projects could be improved. Some stakeholders find that there are presently only two or three construction companies which can realistically undertake PPP projects. There are cases of foreign parties entering the PPP/concession market as a part of consortiums, but it is still relatively rare. Reaffirming the availability of international arbitration would also help build investor confidence.

22. Ensuring competition in the PPP market is a priority for the Russian authorities, and Russia's competition law has been amended several times in recent years, broadly in line with best international practice. The competition authority, Federal Antimonopoly Service (FAS) Russia, is large, well-financed and pro-active in enforcing the law, yet it is heavily overloaded. Competition is also hampered by subsidies to large firms, especially those introduced or expanded during the global crisis. FAS has also highlighted potential challenges with the enforcement of legislation that promotes competition.

Assessment

23. The overall infrastructure prioritisation process in Russia is comparable to what is found in many OECD countries and hence is broadly in line with the fourth principle of the recommendation. Russia mainly relies on competitive tendering to ensure value for money from its PPPs. This approach has also been used extensively in OECD countries, but, increasingly, a more focused approach to secure value for money has become the norm, as discussed in relation to the fifth, sixth, seventh and eighth principles. The Russian authorities are working towards developing a public sector comparator, risk management tools, guidelines for the operational phase of the PPP and good re-negotiation procedures. Indeed, many of these tools will be based on successful PPPs already in operation in Russia. As emphasised in the ninth principle, value for money requires sound competition which includes a level playing field for all potential bidders. In addition to existing efforts by the Russian authorities, further steps would be beneficial to promote and ensure sufficient competition in the PPP market.

C. USE THE BUDGETARY PROCESS TRANSPARENTLY TO MINIMISE FISCAL RISKS AND ENSURE THE INTEGRITY OF THE PROCUREMENT PROCESS

24. The annual budget is the primary mechanism with which OECD governments reconcile competing policy interests, allocate resources and set the medium-term direction for public spending. The central budget authority, typically located within the Ministry of Finance, is the custodian of this budget process. As PPPs can represent long-term spending commitment and potential fiscal risks, there must be a clear and strong link to the government budget process. PPPs that receive public subsidies are more difficult to integrate with the annual budget process than ordinary variable expenditures which can be modified from year to year. It is therefore paramount that the PPP should be affordable. An investment project is affordable if the expenditure and contingent liabilities it entails can be accommodated within current levels of government expenditure and revenue, and if it can also be assumed that such levels will be sustained in the future.

25. The tenth PPP principle emphasises that, in line with the government's fiscal policy, the Central Budget Authority should ensure that the project is affordable and that the overall investment envelope is sustainable. In Russia, the budget process is managed by the Ministry of Finance. Jointly with the President, Prime Minister and Ministry of Economic Development, it is responsible for the preparation, approval and execution of the budget within the executive, as well as accounting and audit. Russia has a strong and overall well-functioning budget process as discussed in the previous OECD accession assessment (2012), which gives the Central Budget Authority a strong tool with which to ensure overall affordability as required by the tenth principle. The overall investment planning in Russia is set in the medium-term investment plans that are partly funded by the oil revenue infrastructure fund.

26. The current budget law stipulates that the government (including regional and municipal levels) cannot guarantee funding for more than the three years that are covered by the ordinary budget. Thus, not unlike in some OECD countries, government funding is not assured for longer than the budget year. The most straightforward remedy to overcome this limit is a dispensation from the three-year limit which can be given by the Prime Minister, on the recommendation of the Ministry of Finance and the Ministry of Economic Development. It is unclear whether the private contractor can have a signed multiyear contract enforced by a court, since the budget code formally supersedes it. The possibility of such disruption may undermine the business climate and substantially increase the risk premium that the provider requires to enter into the PPP. Yet interlocutors indicate that it is a problem that is manageable, if burdensome. Authorities cancelling operating contracts are a relatively rare occurrence and are usually resolved in a subsequent negotiation. However, Russia may consider developing other legal instruments – such as regional laws – to mitigate the political and funding risk that the PPP will have to carry. This measure would bring it closer to good practices found in some OECD countries, which have established specific legal provisions that allow the executive to enter into long term contractual arrangements that otherwise do not fit the yearly budgetary cycle.

27. For reasons of accountability and risk management, the transparency of the PPP project in the budget process is important, which is emphasised in the eleventh PPP principle. The budget documentation must disclose all costs and contingent liabilities. Special care should be taken to ensure that budget transparency of PPPs covers the whole public sector. If there are central government guarantees to sub-national governments, PPP activity should be controlled through rules on PPP stocks and flows. The Ministry of Finance should retain an up-to-date overview of all PPP liabilities relevant for central

government. While the reported Russian practices may indicate that affordability is well-assured, the aftermath of the global financial crisis has shown that the use of certain financial structuring involving Russian development banks was not as stable as assumed. Greater transparency and robust methodologies and procedures for assessing affordability and fiscal risks of PPPs could therefore be valuable. The regulatory framework gives the Ministry of Finance a strong foundation to ensure fiscal sustainability, but it is generally not perceived as supporting the creation of a strong pipeline of PPP projects. It is often the Ministry of Economic Development that is seen as enabling and encouraging greater use of PPPs. It would be important to ensure alignment and coordination of these two perspectives for the PPPs to be effectively used as ordinary infrastructure delivery mechanisms.

28. The twelfth PPP principle underlines the importance of governments guarding against waste and corruption by ensuring the integrity of the procurement process. The necessary procurement skills and powers should be made available to the relevant authorities. Enhancing integrity necessitates recognising the risks inherent throughout the procurement cycle and developing appropriate management responses to these risks, and monitoring the impact of mitigating actions. The general issue of uneven public sector integrity and corruption remains a burden on business in Russia, as discussed in the Accession report (OECD 2012, 2013). Specific PPP-related integrity challenges include potential contributions to blurring the lines between public and private sectors and interests, undermining competition as well as creating additional corruption risks given the complexity and limited transparency of PPP projects. There are examples of individuals with political roles at the head of large corporations, which may create a conflict of interest (OECD 2012). The mandate, status and interest of a SOE, acting as a concessionaire in a PPP, can have an impact on the transparency of public governance in this area. The lines between public and private interests can also be unclear in cases where the government calls on an SOE to perform a particular public role in large infrastructure projects. The situation is exacerbated in cases of contracts awarded to an SOE without tendering. While the regulatory framework for public procurement is improving, including with the introduction of the new law on the Federal Contracting System, a problem with enforcement is widely acknowledged (see [[GOV/PC/ACS\(2013\)1](#)]). For example, there are ongoing concerns with the utility sector, which often reports cases of collusion and corruption. The authorities are aware of this and are in the process of reforming the legal framework for private participation in the sector, as part of the larger anti-corruption initiatives.

29. Overall, Russia would strongly benefit from greater transparency in the PPP cycle, as recommended by the eleventh PPP principle. More could be done with regards to transparency about guarantees given to third parties, and transparency and the clarity of liabilities related to SOEs remain uneven. There is still progress to be made before SOEs in Russia can be said to operate according to traditional corporate and commercial principles, and, hence, to enable the alignment of Russia's practices and policies with high standards of transparency and accountability, in line with the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The governance and treatment of SOEs in Russia is treated in other OECD assessment tools (2013).

Assessment

30. The Russian budget process provides a strong foundation for ensuring affordability for PPPs as recommended by the tenth PPP principle. Like some OECD countries, Russia may benefit from stronger tools for the assessment of PPP affordability and fiscal risks at all levels of government. More could be done to transparently disclose liabilities and guarantees carried by the Federal government, and to ensure clarity between the public and private roles of SOEs. Ensuring the integrity of the procurement process, as well as the prevention of conflicts of interest, would support Russia's efforts in establishing a sound PPP system in line with those found in OECD member countries. The new law on the Federal Contracting System, which aims to introduce transparency and integrity safeguards into all stages of the public procurement cycle, is an important step in this direction.

BIBLIOGRAPHY

Burger, Philippe and Hawkesworth, Ian, “How To Attain Value for Money: Comparing PPP and Traditional Infrastructure Public Procurement”, *OECD Journal on Budgeting Volume 2011/1*, OECD Publishing, Paris.

OECD (2013), “Russia – Modernising the Economy” brochure, www.oecd.org/russia/Russia-Modernising-the-Economy-EN.pdf.

OECD (2013), *Economic Survey of Russia*, OECD Publishing, Paris (forthcoming).

OECD (2012), Accession Assessment Report: Russia [[GOV/PGC/ACS\(2012\)2](#)].

OECD (2012), Council Recommendation on Principles for Public Governance of Public-Private Partnerships [[C\(2012\)86](#)].

OECD (2010), Accession Review of the Russian Federation on Corporate Governance [[DAF/CA/CG/ACS\(2010\)6/REV2](#)].

OECD (2010), *Dedicated Public-Private Partnership Units: A Survey of Institutional and Governance Structures*, OECD Publishing, Paris.

OECD (2008), *Public-Private Partnerships: In Pursuit of Risk Sharing and Value for Money*, OECD Publishing, Paris.

ANNEX A: COUNCIL RECOMMENDATION ON PRINCIPLES FOR PUBLIC GOVERNANCE OF PUBLIC-PRIVATE PARTNERSHIPS**THE COUNCIL,**

HAVING REGARD to Articles 1, 2 a), 3 and 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council for Improving the Quality of Government Regulation [[C\(95\)21/FINAL](#)], the subsequent Guiding Principles for Regulatory Quality and Performance [[C\(2005\)52](#) and CORR1] and the Recommendation of the Council on regulatory policy and governance [[C\(2012\)37](#)], Policy Framework for Investment [Annex 2 to [C\(2006\)68](#)], Recommendation of the Council regarding the Principles for Private Sector Participation in Infrastructure [[C\(2007\)23/FINAL](#)], Recommendation of the Council on Enhancing Integrity in Public Procurement [[C\(2008\)105](#)];

NOTING the focus and progress made by Members and non-Members to improve the framework for public governance of Public-Private Partnerships;

NOTING that the challenges facing governments today and in the foreseeable future, in ensuring that Public-Private Partnerships are met by strong public institutions, are affordable, represent value for money and are transparently treated in the national budget process, have not been addressed systematically in previous OECD recommendations and principles;

RECOGNISING that democracy and the rule of law depend upon and require sound regulatory frameworks, notably relating to fiscal sustainability;

RECOGNISING that Public-Private Partnerships are increasingly becoming a prominent method for delivering key public services, can deliver value for money transparently and prudently in so far as the right institutional capacities and processes are in place;

NOTING that the public governance framework for Public-Private Partnerships should be set and monitored at the highest political level, so that a whole of government approach ensures affordability, transparency and value for money;

RECOGNISING that the current financial crisis makes transparent and prudent management of contingent fiscal liabilities, as well as government long-term commitments derived from Public-Private Partnership contracts particularly necessary;

RECOGNISING that the OECD has played a leading role in the international community to promote fruitful interaction between the public and private sector, prudent budgetary practices and procedures and sound regulatory practices on a whole of government approach;

On the proposal of the Public Governance Committee:

I. RECOMMENDS that Members take due account of the Principles for public governance of Public-Private Partnerships set out below:

A. Establish a clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities

1. The political leadership should ensure public awareness of the relative costs, benefits and risks of Public-Private Partnerships and conventional procurement. Popular understanding of Public-Private Partnerships requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality.
2. Key institutional roles and responsibilities should be maintained. This requires that procuring authorities, Public-Private Partnerships Units, the Central Budget Authority, the Supreme Audit Institution and sector regulators are entrusted with clear mandates and sufficient resources to ensure a prudent procurement process and clear lines of accountability.
3. Ensure that all significant regulation affecting the operation of Public-Private Partnerships is clear, transparent and enforced. Red tape should be minimised and new and existing regulations should be carefully evaluated.

B. Ground the selection of Public-Private Partnerships in Value for Money

4. All investment projects should be prioritised at senior political level. As there are many competing investment priorities, it is the responsibility of government to define and pursue strategic goals. The decision to invest should be based on a whole of government perspective and be separate from how to procure and finance the project. There should be no institutional, procedural or accounting bias either in favour of or against Public-Private Partnerships.
5. Carefully investigate which investment method is likely to yield most value for money. Key risk factors and characteristics of specific projects should be evaluated by conducting a procurement option pre-test. A procurement option pre-test should enable the government to decide on whether it is prudent to investigate a Public-Private Partnerships option further.
6. Transfer the risks to those that manage them best. Risk should be defined, identified and measured and carried by the party for whom it costs the least to prevent the risk from realising or for whom realised risk costs the least.
7. The procuring authorities should be prepared for the operational phase of the Public-Private Partnerships. Securing value for money requires vigilance and effort of the same intensity as that necessary during the pre-operational phase. Particular care should be taken when switching to the operational phase of the Public-Private Partnerships, as the actors on the public side are liable to change.
8. Value for money should be maintained when renegotiating. Only if conditions change due to discretionary public policy actions should the government consider compensating the private sector. Any re-negotiation should be made transparently and subject to the ordinary procedures of Public-Private Partnership approval. Clear, predictable and transparent rules for dispute resolution should be in place.
9. Government should ensure there is sufficient competition in the market by a competitive tender process and by possibly structuring the Public-Private Partnerships program so that there is an ongoing functional

market. Where market operators are few, governments should ensure a level playing field in the tendering process so that non-incumbent operators can enter the market.

C. Use the budgetary process transparently to minimise fiscal risks and ensure the integrity of the procurement process

10. In line with the government's fiscal policy, the Central Budget Authority should ensure that the project is affordable and the overall investment envelope is sustainable.

11. The project should be treated transparently in the budget process. The budget documentation should disclose all costs and contingent liabilities. Special care should be taken to ensure that budget transparency of Public-Private Partnerships covers the whole public sector.

12. Government should guard against waste and corruption by ensuring the integrity of the procurement process. The necessary procurement skills and powers should be made available to the relevant authorities.

II. RECOMMENDS that Members take appropriate steps to ensure that Public-Private Partnerships are affordable, represent value for money and are transparently treated in the budget process, in accordance with the principles expressed in this Recommendation, which are recalled and further developed in the Annex to this Recommendation of which it forms an integral part.

III. INVITES Members and the Secretary-General to disseminate this Recommendation.

IV. INVITES non-Members to take account of and adhere to this Recommendation.

V. INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees, including the Investment Committee.

ANNEX
PRINCIPLES FOR THE PUBLIC GOVERNANCE OF PUBLIC-PRIVATE PARTNERSHIPS

A. Establish a clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities

1. The political leadership should ensure public awareness of the relative costs, benefits and risks of Public-Private Partnerships and conventional procurement. Popular understanding of Public-Private Partnerships requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality.

1.1 Only if the political level is aware of and accepts the costs and benefits of using PPPs can the issues around PPPs be tackled and balanced appropriately with stability and predictability. The Ministry of Finance, line Ministries and executive agencies should ensure that a coherent approach to PPP is rolled out in the public sector and is joined up with other initiatives in adjacent fields. Given their complexity and long-term scope engagement with civil society is a prerequisite for the successful use of PPPs. This is especially the case when PPPs provide key public services. PPPs should, ideally, form part of an integrated public-sector infrastructure investment and procurement framework.

1.2 Active consultation and engagement with stakeholders should be an integral element of the process. PPPs may be used to introduce a more private-sector approach to service delivery in sectors that have previously been a part of the government. This can have effect on both working conditions, the culture of the work place and opportunities for advancement. Labour unions consequently represent a key stakeholder group that can be substantially affected by the usage of PPPs. For PPPs to work and to be legitimate, labour should be actively involved. The same can be said for NGOs and other civil society groups which often have concerns that PPPs may have social and environmental consequences and impact the rights of minority groups. Active involvement of NGOs can create transparency about problematic issues that might otherwise be overlooked and become serious problems if not tackled at an early stage.

1.3 Defining outputs in the PPP contract is essential. It should involve end-users in defining the project and its output specification and subsequently in monitoring service quality once the project is operational. Defining outputs can be instrumental in achieving better alignment of service specification with user expectations and exert pressure on service providers to meet service standards. In addition, involving end-users in design and monitoring increases the likelihood of the effort being perceived as legitimate, fair and understandable. Independent public oversight of PPP implementation can also promote public sector innovation and better outcomes for the society as a whole through greater accountability and social control.

2. Key institutional roles and responsibilities should be maintained. This requires that procuring authorities, Public-Private Partnerships Units, the Central Budget Authority, the Supreme Audit Institution and sector regulators are entrusted with clear mandates and sufficient resources to ensure a prudent procurement process and clear lines of accountability.

2.1 A number of institutional roles should be competently pursued to secure and maintain value for money: a sound procurement process; implementing the specific PPP; fiscal and budgeting issues; auditing of the PPP; rule monitoring and enforcement. These roles can be maintained in a number of institutional set-ups, but it is important that they are kept separate so as not to confuse the key tasks of each actor and to secure lines of accountability.

2.2 The authority that is procuring the PPP is the institution ultimately responsible for the project, subject to approval, monitoring and advice from the other actors at various stages. The authority is responsible for preparation, negotiation and administration of the contract and for monitoring and evaluating contract performance during the construction and operation phases of the project. This is crucial to ensure

government retains value for money during the whole life of the contract. This authority is, therefore, ultimately responsible for the PPP contract and its operation. By value for money is meant the optimal combination of quality, features and price, calculated over the whole of the project's life.

2.3 Given the complexity of PPPs and their somewhat infrequent use, critical skills to ensure value for money may need to be concentrated in a PPP Unit that is made available to the relevant authorities. A PPP Unit's function can be pursued by a number of complementary units. The PPP Unit can fill gaps in terms of specific skills, a lack of coordination or high transaction costs. Institutional shortcomings should be addressed taking the country's needs and current institutional context into account. The PPP Unit should enable authorities (e.g. line ministries) to create, manage and evaluate a PPP efficiently and effectively. This role requires that the PPP Unit has the requisite in-depth financial, legal, economic and project management skills. This capacity should be used to assess the specific PPP compared to the traditional public investment route. The PPP Unit should support the authority in its endeavor to secure value for money both in the procurement and in the implementation phases. This Unit should also make sure that procedural steps (gateways) are followed throughout. It is important that the role of the PPP Unit is clear and without conflicts of interest. While responsible authorities should draw on expertise from the PPP unit where necessary, it should be emphasised that they remain ultimately responsible for the project. Importantly, although the PPP Unit should help the relevant authorities prepare and negotiate the PPP contract, it should decide on whether the PPP should move forward. This green-lighting process should be anchored in the Central Budget Authority.

2.4 To secure affordability and project quality the Central Budget Authority should scrutinise each PPP. The Central Budget Authority should check and monitor the PPP through each key phase: Planning; Feasibility, Design and Tender Preparation; Bidding and Contract Signing; and Construction and Operation. The Central Budget Authority should scrutinise the project for value for money, affordability, procedural steps and that the projects remain in line with political agreements. While the Central Budget Authority need not possess deep and specific knowledge of the PPP project's technical design, it needs sufficient capacity to evaluate the documentation presented to it. The Central Budget Authority should assure that capital investments are aligned with the government's short and medium term macroeconomic stability targets.

2.5 The Supreme Audit Institution (SAI) has an important role in examining whether the risks involved in PPPs are managed effectively. The SAI's reports to Parliament can keep the public informed about the services that they receive and also disseminate best practice. The SAI should audit and assess the PPP ex post with regards to performance, finance and compliance. It should maintain sufficient capacity to give a clear verdict on whether or not the project ultimately represented value for money, suggest possible improvements to the regulatory PPP framework, the procurement processes and make available overall lessons regarding the use of PPPs and investments. All relevant information should be made available to the SAI.

2.6 Sound regulatory policy promotes the efficient functioning of regulatory agencies by ensuring that they operate under an appropriate and clear mandate, with the necessary independence from political influence and regulated subjects, that they are appropriately resourced and equipped, and that their decision-making is fully transparent and accountable. Where PPPs are employed in the delivery of infrastructure facilities with natural monopoly characteristics, the role, design and organisation of regulators is important to secure value for money for the public sector and protect users and consumers. This role should be clear to all (staff, regulated entities and the community). The appropriate sector regulator should consequently be consulted in the project design and subsequently monitor compliance with regulated service standards. This role is important not only in shaping the markets, but also with concrete issues such as service quality, profitability, tariffs and prices. Of particular interest in monopoly-like situations is the degree of profitability compared to the sector average using various benchmarks.

2.7 The above roles should be institutionally maintained at sub-national level.

3. Ensure that all significant regulation affecting the operation of Public-Private Partnerships is clear, transparent and enforced. Red tape should be minimised and new and existing regulations should be carefully evaluated.

3.1 A regulatory environment which meets the key principles of good regulation, as set out in the OECD Recommendation on Regulatory Policy and Governance, reduces the costs to business and enhances the chances that PPP projects bring value for money.

3.2 While the contract is the main basis for a PPP, it is necessary to have a clear and transparent regulatory framework that all parties can trust, is enforced and that does not create barriers to entry. Such a framework fosters competition and helps minimising the risk of conflicts of interest, regulatory capture, corruption, and unethical behaviour. To that end, governments should adhere to principles of open government. Access to information and the decision-making process should be open and equitable.

3.3 Private investment will be facilitated if unnecessary red tape is removed and delays to approval processes are reduced. An effective regulatory framework implies careful evaluation of new regulations and systematic review of the stock of significant regulations to ensure that they are up to date, cost effective and consistent and deliver the intended policy objectives. This may require the coordination of approval processes in specific circumstances to remove regulatory obstacles to the delivery of PPPs, such as coordinating and streamlining multiple layers of regulation that may affect projects – either across one or different levels of government (central/federal, sub-national/state and local). The rule of law and the protection of property rights and contractual rights are a key condition as also highlighted in the Principles for Private Sector Participation in Infrastructure.

B. Ground the selection of Public-Private Partnerships in Value for Money

4. All investment projects should be prioritised at senior political level. As there are many competing investment priorities, it is the responsibility of government to define and pursue strategic goals. The decision to invest should be based on a whole of government perspective and be separate from how to procure and finance the project should be no institutional, procedural or accounting bias either in favour of or against Public-Private Partnerships.

4.1 It is important that the projects that go ahead have been prioritised at the political level. The basis for the decision should include an initial cost assessment and evaluation of the opportunity cost that should feed into the affordability decision. The decision to invest should include a holistic cost-benefit analysis addressing the project's interaction with other government policy tools (such as spatial planning, regulation of traffic, utilities, and development plans) and objectives. Line ministries and other actors should not be allowed to develop their investment programs without aligning them with the government's overall political priorities.

4.2 On the basis of the initial cost assessment, the holistic cost benefit analysis and the political judgment, an initial affordability decision can be made and projects can be prioritised against each other. The cost-benefit evaluations and the ranking of different projects should be made available to the public to encourage debate about what large infrastructure projects are the most important. The investment decision should be separate from the decision as to how to procure and finance the specific project. To strengthen prioritisation between PPPs and traditional infrastructure procurement within the budget envelope decisions should be based on a whole of life, present value, approach for both.

4.3 There should be no institutional, procedural or accounting bias either in favour of or against PPPs. Value for money should be the only test as to whether a particular project is procured by way of a PPP or through conventional procurement routes.

5. Carefully investigate which investment method is likely to yield most value for money. Key risk factors and characteristics of specific projects should be evaluated by conducting a procurement option pre-test. A procurement option pre-test should enable the government to decide on whether it is prudent to investigate a Public-Private Partnerships option further.

5.1 Once the government has decided to move forward with the investment, a project should be subjected to a procurement option pre-test. This should guide government in selecting which mode of procurement is likely to deliver the most value for money. The following elements should be included in such an examination and thereby indicate to the policy maker whether it is worthwhile to investigate the PPP procurement option:

- What are the comparative costs of (a) finance (b) construction (c) operation, as calculated over the whole lifetime of the project, in each alternative mode of procurement?
- Can the risks of the project be clearly defined, identified and measured?
- Can the right types of risk be transferred to the private partner to ensure value for money?
- Does the project involve any transfer of risks onto other stakeholders, including workers and local communities?
- Is the risk appetite of potential private-sector partners sufficiently robust to explore a PPP?
- Do potential private-sector partners have a track record of good service delivery, responsible business conduct and PPP experience?
- What is the potential level of competition in the market? If competition is lacking, is the market contestable?
- Is there sufficient market interest in the project to generate a robust competition that will ensure a value for money outcome?
- How large are the whole of life benefits from combining the construction and the operating phases of a project in one contract?
- What are the risks of project failure associated with similar PPPs? What are the costs to the public authority associated with such failures?
- What contingent liabilities are associated with the project?
- Can the risks, cost and quality trade-offs be quantified and managed by the public sector?
- Can the desired project output be specified clearly ex ante? Is the planned project operating in a rapidly changing policy or demand environment? Are the underlying assets to be used to deliver the output in an area subject to rapid technological change?
- Is the potential PPP project of a size sufficiently large to justify the transaction costs?

- Who will make the contractual payments to the private-sector partner? Can some or all of the payments come from end-user charges?
- If end-user charges are levied will demand be sufficient over the lifetime of the project to ensure that the private partner generates the revenue required for it to maximise its profit? Might the potential private-sector partners accept demand risk in addition to availability risk?

5.2 If relevant, further analysis regarding using a PPP should be based on input from a prudent public sector comparator, or an equivalent to compare value for money across options, especially when operation is an important component of the project. There are different methods used to assess the relative value for money of the different delivery models. In principle, a public sector comparator compares the net present cost of bids for the PPP project against the most efficient form of delivery according to the output specification by conventional public sector means (the so-called reference project). The public sector comparator serves as a hypothetical risk-adjusted cost of public delivery of the output specification of a PPP project. The methodology for preparing the public sector comparator should be published.

6. Transfer the risks to those that manage them best. Risk should be defined, identified and measured and carried by the party for whom it costs the least to prevent the risk from realising or for whom realised risk costs the least.

6.1 After the fundamental assessment of specific issues and comparative costs, the key element in the decision to use PPPs is the transfer of risk from the government to the private partner. Risk is defined, identified and measured, and either retained by the public sector or transferred to the private partner through specific contract terms and an appropriate payment mechanism. Risk should be allocated where it can be best managed. By 'best' managed is meant the party for whom it costs the least to prevent the risk from realising, or for whom it costs the least to deal with the consequence of realised risk.

6.2 Risk should not be transferred to the private partner at any price for the sake of transferring risk alone or to achieve a desirable accounting treatment. Governments and public authorities cannot transfer to the private sector the risks associated with statutory responsibilities to maintain services.

6.3 An essential question is whether the risks of the project can be defined, identified and measured. The less this is the case, the more room there is for conflict over the contract, particularly when the risk realises. Potential private partners might also be unwilling, for an acceptable price, to take on risks that are not clearly defined, identified and measured. There should be clear methods in the contract by which risks can be apportioned when they materialise. This is particularly important in cases where risk is difficult to measure.

7. The procuring authorities should be prepared for the operational phase of the Public-Private Partnerships. Securing value for money requires vigilance and effort of the same intensity as that necessary during the pre-operational phase. Particular care should be taken when switching to the operational phase of the Public-Private Partnerships, as the actors on the public side are liable to change.

7.1 There is a danger that after the financial close of the PPP the attention from public sector decision-makers and key actors is substantially reduced. Should such a reduction of attention result in a concomitant reduction of capacity on the public side value for money can be threatened. Monitoring the performance of the PPP in the construction phase and the operational phase requires skill and dedication, especially as targets may shift and unforeseen, but legitimate, obstacles may arise. It is also the responsibility of the procuring agency to ensure that the private partner acts according to the norms of responsible business conduct as mentioned in the OECD Guidelines for Multinational Enterprises.

7.2 For the operational phase to be successful all relevant actors should remain involved. The responsibility for the operational phase of the project primarily rests with the procuring line ministry/ agency. Potential problems should be identified at this level and dealt with to the extent of these institutions' mandate. However, the PPP Unit, Central Budget Authority, Supreme Audit Institution and Regulatory Authorities should play their part and retain the appropriate level of ownership regarding the project.

7.3 Particular attention should be paid to contractual arrangements and monitoring capacity at later stages of a project to ensure that incentives do not deteriorate as the cost of non-compliance falls.

8. Value for money should be maintained when renegotiating. Only if conditions change due to discretionary public policy actions should the government consider compensating the private sector. Any re-negotiation should be made transparently and subject to the ordinary procedures of Public-Private Partnership approval. Clear, predictable and transparent rules for dispute resolution should be in place.

8.1 By monitoring and liaising with the private contractor, the public sector should maintain a project's value for money throughout its operation. The original risk transfer and contract terms should be maintained and care should be taken to make sure that the standards to which the private-sector contractor operates are not eroded without compensation to the public-sector authority. Clear rules stipulating the criteria, procedures and compensation for government expropriating the asset should be in place as prescribed in the Guidelines for Multinational Enterprises.

8.2 Nonetheless, in some cases the assumptions underlying the project may turn out to be flawed and in extreme cases this can lead the project towards failure. As the public sector has an interest, sometimes a statutory responsibility, in making sure the asset keeps operating smoothly; a re-negotiation should take place to investigate possible solutions. However, even if the current project outcome differs from what the private partner expected, it may just be a realisation of the risk that it carried. Both parties should distinguish between the realisation of risk and a genuine unforeseen change in circumstances. Only if conditions change due to discretionary public policy actions (i.e., "actions of the Principal") should the government consider compensating the private sector. Any other compensation for changes in commercial conditions should be explicitly negotiated within the contract. Otherwise, the risks to re-negotiations of PPP contracts due to changes in international conditions not foreseen at the moment of the contract award could significantly increase fiscal costs of PPPs for the government. Clear, predictable and transparent rules for dispute resolution should be in place to resolve disagreement on the above between the public and private parties.

8.3 Furthermore, any re-negotiation that substantially alters the original agreement should be made public and be subjected to approval by the authority responsible for approving PPPs. Such an agreement should be as competitively done as possible.

9. Government should ensure there is sufficient competition in the market by a competitive tender process and by possibly structuring the Public-Private Partnerships program so that there is an ongoing functional market. Where market operators are few, governments should ensure a level playing field in the tendering process so that non-incumbent operators can enter the market.

9.1 Competition helps ensure the effective transfer of risk, that optimal solutions are developed by the private sector and that the most competitive bid is tendered. There should be competition for the market when tendering for PPP bids or in the absence of competition, the market should be contestable once the tendering is concluded and the PPP is operational. Thus, the private partner would know that there is the possibility of other private partners entering the market. To further strengthen competition, it can be beneficial to structure a PPP program to ensure an ongoing functioning market. This can possibly be

achieved by unbundling the supply chain, so that different operators can enter various operational segments of the chain, and also by unbundling large-scale national or regional projects into different geographical parts. This is particularly important in cases where the PPP operator subsequently becomes a monopoly in a certain area. The OECD Recommendation Concerning Structural Separation in Regulated Industries can provide guidance in this respect.

9.2 It is beneficial to maintain an open and non-discriminatory investment environment and steps should be taken to ensure that domestic and foreign-owned firms can compete on an equal footing. Though private providers can coexist with State owned incumbents, measures to maintain a level playing field may be needed. According to the OECD Guidelines on Corporate Governance of State-Owned Enterprises, these measures include a clear separation between the public sector's ownership function and other factors that may influence companies' position, transparency regarding service obligations, access to finance and transparency concerning financial assistance and guarantees covered by the public purse.

C. Use the budgetary process transparently to minimise fiscal risks and ensure the integrity of the procurement process

10. In line with the government's fiscal policy, the Central Budget Authority should ensure that the project is affordable and the overall investment envelope is sustainable.

10.1 PPPs, as well as conventional long-term government borrowing for investment, are more difficult to integrate with the annual budget process than more ordinary variable expenditures that can be modified from year to year. This makes affordability assessments particularly important when the project is being prepared. An investment project is affordable expenditure and contingent liabilities it entails for the government can be accommodated within current levels of government expenditure and revenue and if it can also be assumed that such levels will be and can be sustained into the future. The investment expenditure budget, including an assessment of contingent liabilities, should be based on medium and long term fiscal projections and regularly updated. Limits on stocks and flows of PPP, while not a substitute for medium-term planning, can help contain fiscal costs and limit overall public sector long-term commitments to levels that are fiscally affordable. This applies to the overall public sector, regardless of the level of government from which the fiscal costs originated.

11. The project should be treated transparently in the budget process. The budget documentation should disclose all costs and contingent liabilities. Special care should be taken to ensure that budget transparency of Public-Private Partnerships covers the whole public sector.

11.1 Budget documentation should transparently disclose all information possible regarding the costs and contingent liabilities of the PPP. The information should include what and when the government will pay, and full details of guarantees and contingent liabilities. The payment stream from government under the PPP contract should be highlighted, particularly if it is back loaded. Preferably the information should be disclosed at the same time as the results of the long-term fiscal analysis that shows the long-term effects of the stock and new flow of PPP contracts. The treatment of PPPs should conform to The 2002 OECD Best Practices for Budget Transparency.

11.2 A particular challenge for the prudent and transparent usage of PPPs is the application of this tool outside of general government but within the public sector, in particular state owned enterprises (SOEs). SOEs can engage in PPP-type of arrangements that often, but not necessarily, require explicit, or implicit, guarantees from the central government. SOEs may have long-term obligations to purchase goods and services from the private sector, such as power and water purchase agreements. As these obligations in general are not included in the definition of public debt they may not be properly monitored by the central government. However, given the political importance of the provided services central government might

very well be expected to assume some financial responsibility if needed. This may require that the Central Budget Authority actively monitors and mandates the use of PPP-like arrangements in the Public Sector at large.

11.3 Where central government has the relevant constitutional authority it should consider allowing sub-national governments to prudently use PPPs. If there are implicit or explicit central government guarantees to sub-national government levels, PPP activity should be controlled through rules on PPP stocks and flows. The Ministry of Finance should retain an up-to-date overview of all PPP liabilities relevant for central government. Given the fact that sub-national governments are less likely to accumulate a critical mass of projects over time central government should consider ways of leveraging its management capacity regarding PPPs to the benefit of sub-national governments.

12. Government should guard against waste and corruption by ensuring the integrity of the procurement process. The necessary procurement skills and powers should be made available to the relevant authorities.

12.1 Enhancing integrity necessitates recognising the risks inherent throughout the entire procurement cycle, developing appropriate management responses to these risks, and monitoring the impact of mitigating actions. PPP procurement should be a strategic profession, informed by an understanding of relevant commercial principles rather than a simple administrative process within a public organisation. This transformation necessitates developing knowledge and creating tools to support improved procurement management decision making. Enhancing integrity in public procurement should be placed within the broader management goals of the public sector as discussed in the 2008 OECD Principles for Enhancing Integrity in Public Procurement.

ANNEX B: PUBLIC PRIVATE PARTNERSHIPS IN OECD COUNTRIES

Country	Use of relative value for money assessments	Use of absolute value for money assessments		Dedicated PPP unit reporting to Ministry of Finance	Dedicated PPP units in line ministries	No dedicated PPP unit exists in central/federal government
	For PPPs	For PPPs				
Australia	●	●	⊙			✓
Austria	n.a	n.a	○			✓
Belgium	n.a	n.a	n.a	✓	✓	
Canada	●	●	⊙	✓	✓	
Chile	●	●	⊙	✓		
Czech Republic	..	..	⊙		✓
Denmark	○	⊙	⊙			✓
Estonia	n.a	n.a	⊙			✓
Finland	⊙	⊙	⊙	✓		
France	⊙	●	⊙	✓	✓	
Germany	●	●	●	..	..	..
Greece	●	●	⊙		✓	
Hungary	⊙	⊙	n.a	..	..	..
Iceland	..	..	..	✓
Ireland	●	●	●	✓		
Israel	⊙	⊙	⊙			✓
Italy	○	⊙	⊙		✓	
Japan	○	●	⊙	✓	✓	
Korea	⊙	●	⊙			✓
Luxembourg	⊙	⊙	⊙			✓
Mexico	●	●	●	✓	✓	
Netherlands	⊙	●	⊙	✓		
New Zealand	●	●	⊙			✓
Norway	n.a	n.a	⊙	✓	✓	
Poland	n.a	●	●	✓		
Portugal	●	●	●			✓
Slovak Republic	n.a	n.a	○			✓
Slovenia	⊙	●	⊙			✓
Spain	⊙	⊙	⊙			✓
Sweden	⊙	⊙	⊙			✓
Switzerland	⊙	○	○	✓		
Turkey	○	●	●	✓		
United Kingdom	●	●	●			✓
United States	⊙	⊙	⊙	✓	✓	
Russian Federation	○	●	●			
OECD total				14	9	15
●	Yes, for all projects	10	17	7		
⊙	Yes, for those above certain monetary threshold	4	4	13		
⊙	Yes, ad hoc basis	8	5	8		
○	No	4	1	3		
n.a	not applicable	6	5	2		