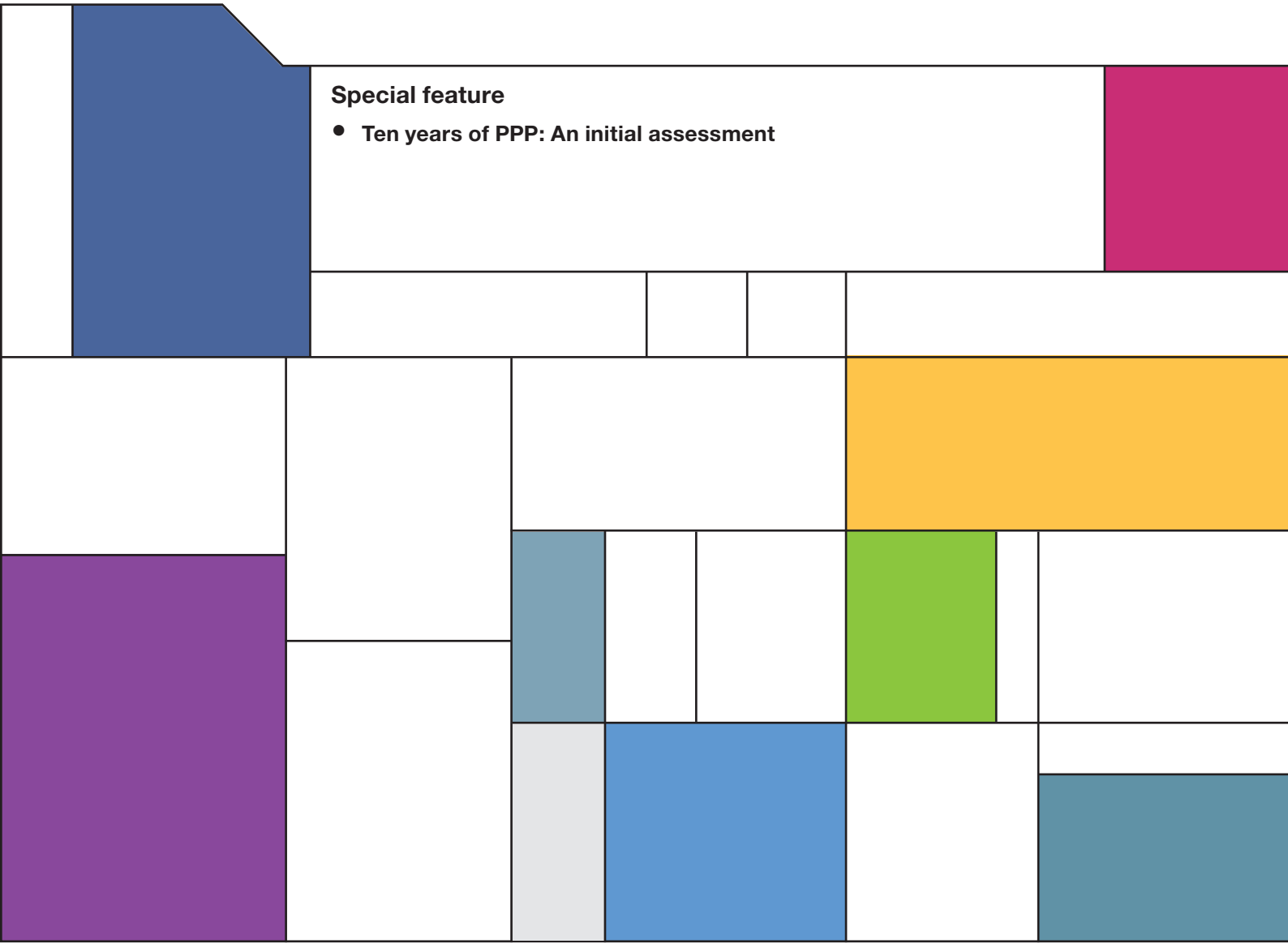
OECD Journal on Budgeting



Special feature

- Ten years of PPP: An initial assessment

Volume 2015/1

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Overview of public governance of public-private partnerships in the Russian Federation

by
Ian Hawkesworth *and* Ihssane Loudiyi*

Good infrastructure is crucial to a country's development and continued success. Russia's developmental goals require new and upgraded infrastructure throughout its territory. Private investment in capital projects will be vital for Russia to meet these goals. To facilitate private investment, the Russian government has embarked on a series of reforms aimed at improving the investment climate and creating a robust institutional framework for private sector participation in concessions and Public-Private Partnerships (PPPs).

The OECD's 2012 Council Recommendation on Principles for Public Governance of Public-Private Partnerships (the PPP Recommendation) aims to support governments facing trade-offs between three demands inherent in a PPP project process. This article provides an overview of the alignment of the policies of the Russian Federation in the area of public governance of PPPs with these recommendations.

JEL classification: H41, H54, H57

Keywords: Council recommendations, public private partnerships, Russian Federation, value for money

* This report was was prepared by Ian Hawkesworth, Head of PPPs and Capital Budgeting, and Ihssane Loudiyi, Policy Analyst.
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1. Introduction

In order to meet Russia's development goals, there is an important need for new and upgraded infrastructure throughout the country. Private investment in capital projects will be vital in meeting these needs. Under the leadership of the Federal Ministry of Economic Development, the government has embarked on a series of reforms aimed at improving the investment climate and creating a robust institutional framework for private sector participation in concessions and PPPs. More specifically, it is in the process of amending relevant laws and drafting a Federal PPP Law that will serve as a basis for Russian sub-national states to tailor their own legislation to their regional needs within a national framework. The Russian authorities are also preparing detailed guidelines and methodologies on private partner selection, risk allocation, contract preparation, and other important elements that will help achieve value for money from PPP projects. Russia is therefore sending a strong signal as to its commitment to PPPs and its move towards best practice for the adoption of this procurement method for public service delivery. These are important and necessary steps, and will hopefully fully unclog the Russian PPP pipeline for national and international actors.

This article provides an overview of the alignment of the policies of the Russian Federation in the area of public governance of Public-Private Partnerships[1] (PPP) with the 2012 Council Recommendation on Principles for Public Governance of Public-Private Partnerships (the PPP Recommendation). In evaluating Russia's position, it is necessary to take into account the fact that the Recommendation has been adopted recently, and that OECD member countries are also in the process of adapting their policies and practices in this area.

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, and much will depend on the specific projects. 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.

The Recommendation consists of 12 specific guidelines, grouped under three headings (see Box 1). The discussion on Russia's practices below is structured along these headings. The full text of the Recommendation is available here.

Box 1. **OECD Recommendation on Principles of Public Governance of PPPs**

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.
2. Key institutional roles and responsibilities should be maintained.
3. Ensure that all significant regulation affecting the operation of Public-Private Partnerships is clear, transparent and enforced.

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

4. All investment projects should be prioritised at senior political level.
5. Carefully investigate which investment method is likely to yield most value for money.
6. Transfer the risks to those that manage them best.
7. The procuring authorities should be prepared for the operational phase of the Public-Private Partnerships.
8. Value for money should be maintained when renegotiating.
9. Government should ensure there is sufficient competition in 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.
12. Government should guard against waste and corruption by ensuring the integrity of the procurement process.

Source: OECD (2012).

2. Establish a clear, predictable and legitimate institutional framework supported by competent authorities

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.

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. In Russia, 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", the training course conducted by Vnesheconombank and the PPP Chair of the Financial University under the Government of the Russian Federation, and media coverage.

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 its role could be further defined and 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. The PPP-positive, non-profit partnership, the PPP Development Centre also plays a role in facilitating the development of PPPs, and has notably published PPP Methodological Recommendations for regions in partnership with the Ministry of Economic Development. 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.

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 several large planned and ongoing PPP projects in the road sector, such as the currently planned USD 18.8 million Moscow-St Petersburg high-speed railroad, and the

planned USD 18.4 million international transport corridor between Europe and West China. Other PPP projects have been realised in the Transport sector, such as the "Sapsan" high-speed train between Moscow and St. Petersburg (December 2009), the high-speed road between Moscow and Nizhny Novgorod (Summer 2010), and the international "Allegro" high-speed train between St Petersburg and Helsinki 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 Table 1. The table presents an overview of the location and functions of dedicated PPP units in countries surveyed by the OECD. 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. Such an organisational set up usually gives the PPP unit some kind of gateway role. Russia's draft federal law on PPPs[2] introduces a federal body in charge of public-private partnership matters. Its main responsibilities will be to examine and authorise PPP proposals at the federal level and by sub-national states based on value for money considerations, to develop value for money methodology for all government levels, and to provide co-ordination and procedural support for procuring authorities at various stages. Competent authorities at the sub-national level are expected to support the federal body in its mission and receive methodological guidance as needed. This PPP Unit will thus have both an advisory and gateway role in PPP agreements, and will closely consider the comparative advantage of entering into a PPP instead of the traditional procurement route. Although this is not specified by the law, the authorised body in charge of PPPs will most likely be housed in the Ministry of Economic Development, which is the authority responsible for pushing PPPs forward in Russia. 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. In Russia, some capital projects receive funding from the oil revenue infrastructure fund based on the country's medium-term investment plans. A fund dedicated to roads has also been established, particularly in response to regional needs for resources to undergo large capital investments.

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 at that level 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. This creates a reticence to invest at the regional level, especially when there are risks for legislative misalignment. In Secretariat interviews conducted in May 2013 in Moscow with a financial institution, cases were mentioned where the procuring

Table 1. **Location and functions of dedicated PPP units in OECD countries**[1]

		Location	Year created	Policy guidance	Technical support	Capacity building	Promotion
Case studies	Germany[2]	Independent	2009	•	•	◊	◊
	Korea	Independent	1999	•	•	•	•
	United Kingdom	Finance Ministry	1997	•	•	•	•
	Victoria (Australia)	Finance Ministry	2000	•	•	•	•
	South Africa	Finance Ministry	2000	•	•	•	◊
Other member countries	Czech Republic	Independent	2004	•	•	•	•
	Denmark	Line Ministry	2006	•	•	◊	•
	Flanders (Belgium)[3]	Finance Ministry	2002	•	•	•	•
	France	Finance Ministry	2005	•	•	◊	•
	Greece	Finance Ministry	2006	•	•	◊	•
	Hungary	Finance Ministry	2003	•	•	◊	◊
	Ireland	Finance Ministry	2003	•	•	•	•
	Italy	Finance Ministry	1999		•	•	•
	Japan	Finance Ministry[4]	2000	•	•	◊	◊
	Netherlands	Finance Ministry	1999	•	•	◊	◊
	New South Wales (Australia)	Finance Ministry	2000	•	•	◊	•
	Poland	Line Ministry	2001	•	•	◊	◊
	Portugal	Independent	2003	•	•	◊	◊
	Total			17	18	8	11

Key: • = yes, ◊ = no

Notes:

1. No dedicated PPP units in Austria, Finland, Iceland, Luxembourg, Mexico, New Zealand, Norway, Slovak Republic, Spain, Sweden, Switzerland, United States.
2. Germany refers only to the federal level.
3. Belgium: Flemish Government Executive Staff.
4. Japan: PFI Promotion Office, within the Cabinet Office.

Source: OECD (2010).

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.

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. The current federal legislative framework for PPPs is Federal Law No. 115-FZ of 21 July 2005 on Concession Agreements. This law is limited to BTO (Built-Transfer-Operate) type concessions. Recent amendments to the law widened the framework for concession agreements and public procuring authorities that fall under the law, opened concession contracts to initiation by a private party (i.e. unsolicited bids), and introduced greater protection for private partners and lenders. There are two dominant models for PPPs/Concessions in Russia: 1) concessions, where the users fund the asset via tolls and 2) life cycle contracts (LCCs). In the case of classical concessions, the project is expected to recover its construction and operation costs via the tolls that users pay as they use 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 primarily government 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). They are effectively like a loan mechanism that can be used by the government to finance infrastructure projects. 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. However, more than 70 regions of the Russian Federation have developed local acts on PPP, half of which are estimated to be operational. The objective of the regional laws was to enable alternative PPP models to the widely used concession model and hereby expand the use of PPPs.

The current framework has produced successful PPPs or the successful financial close of PPPs, e.g. in the Tomsk region, St. Petersburg and Kemerovo. In total, 53 PPP agreements have been concluded under existing regional PPP laws according to the Ministry of Economic Development. Table 2 gives an overview of PPP projects that have reached financial close in Russia. Most large infrastructure projects that successfully incorporated private sector participation in Russia appear to be concentrated in or between large cities.

Table 2. **Example of PPPs/concessions having reached financial close in Russia**

Project	Type	Cost (USD billion)	Public sponsors	Private/Public developers	Financiers	Financial close
Western High Speed Diameter: St. Petersburg Beltway	DBFOM (Design Build Finance Operate Maintain)	4.0	Ministry of Transport/ City of St. Petersburg	Magistral Severnoi Stolitsy (Northern Capital Highway) consortium: VTB Capital (58%)/Gazprombank (42%)	EBRD (USD 250 million); Vnesheconombank (USD 750mln); VTB Capital/ Gazprombank (USD 500 million); Eurasian Development Bank (USD 300 million); federal and city grant (USD 1.5 billion)	June 2012
St. Petersburg, Pulkovo Airport	DBFOM	1.8	City of St. Petersburg	Northern Capital Gateway: Fraport (36%)/VTB Capital (58%)/Horizon Air Investments (Copelouzos) (7%)	EBRD/IFC (USD 258 million)	July 2010
Moscow-St. Petersburg Toll Road, M11, Km 15-58	DBFOM	1.4	Russian Ministry of Transport	North-West Concession Company (NWCC): Vinci Concessions (30%) and state-owned Russian bank partners (70%) (Vnesheconombank and Sberbank)	N/A	April 2010
Odintsovo Bypass	DBFOM	0.85	Russian Ministry of Transport	OAO Glavnaya Doroga: Brisa/Lider/Gazpro/ FCC/ Stroygasconsulting/Alpine Group	N/A	April 2010
St. Petersburg Wastewater Plant Completion	Concession	0.29	City of St. Petersburg and its water company SUE Vodokanal	Ondeo	EBRD	June 2003

Source: Public Works Financing (2013), Public Works Financing Database, *www.PWFinance.net*.

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 and sometimes presents contradictions to existing federal laws such as the Land Code or the Federal Law on Competition, 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. One example of the rigidity of the current legislation is that public property, including land plots, cannot be allocated for the purpose of a PPP project without a separate tender procedure. The need to engage in different tender procedures for different constituent parts of a PPP project can deter investors. Fourth, it is difficult to obtain long term financing due to the nature of project ownership rules and limited local financing.

The issue of securing long term financing for PPP projects is of concern to both private and public stakeholders in Russia. Most projects need to be financed in Rubles, making them subject to limitation of the local currency market. Only a small number of national banks can provide such large financing. Also, local debt-financing is currently available for a maximum of 10 to 15 years. With PPP projects having a typically longer life, loans need to be refinanced at later stages of the project cycle. These lending limitations could discourage private investors as they pose additional risks to PPP projects. An added difficulty is the inability to secure fixed interest rates for longer-term financing, in part due to the limited financial instruments that are available for Ruble-denominated debt. This also affects availability payments that the government would need to make for certain capital projects. In order to address the issue of financing, a number of companies and special purpose vehicles (SPVs) have issued domestic concession bonds as way to attract funding (see Table 3). This is a positive step towards diversifying financing options, but more remains to be done to address the issue of financing.

Table 3. **Concession bonds issued by Russian companies**

Concessionee/ Bond Issuer	OAO Glavnaya doroga	OAO Glavnaya doroga	LTD North-West Concession Company	OAO Western High-Speed Diameter	3AO Volga-Sport	OOO Waste Management-Volgograd	3AO Waste Management-NN
Issue number	04	03	04	01	01	-	01
Issue total (RUB mln)	300	8 000	5 000	5 000	1 400	1 200	1 000
Issue period	1 year	18 years	20 years	20 years	11 years	10 years	10 years
Coupon period	½ year	1 year	½ year	½ year	1 year	-	-
Issue date	4 June 2010	22 November 2010	21 October 2011	7 June 2011	4 April 2011	Cancelled	27 June 2012
Issue price (% on nominal)	100	90	100	100	100	100	100
Coupon fee on issue date (% per year)	10,2	5 the first year; remaining coupons based on consumption, price and GDP growth	11,46	8,93	9,76	-	11 the first year; next 17 coupons based on inflation
Level listing on MICEX	B	A1	A1	A1	A1	-	A1
Provisions			Guarantee by the Ministry of Finance	Guarantee by the Ministry of Finance	Debenture bonds	Debenture bonds	Debenture bonds

Source: Federal Ministry of Economic Development, Russian Federation (2014).

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 clearer legislation will address the reticence towards PPP investments in regions by containing the regulatory risk associated with it. 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 is scheduled to be presented for a second reading by the Duma in spring 2014. It defines the PPP as a contract utilising private finance intended for improving

the quality and securing the availability of public services. The new law is a framework law that increases flexibility, as it stipulates a uniform terminology and certain principles but leaves it to the regions to develop their own specific implementing regulation. Highlights of the law include the widening of the scope of PPP objects and agreement types, rules regarding the transfer of ownership of the PPP object and related property, and the introduction of an authorised body in charge of PPPs (see Box 2 for more articles under the law). Given the capacity challenges, the Ministry of Economic Development is developing PPP project preparation and implementation guidelines in collaboration with the European Bank for Reconstruction and Development (EBRD). It is currently drafting standard contracts and recommendations on how to select the private partner.

Box 2. **Highlighted articles under Russia's draft Federal Law on PPPs**

The draft law includes several new provisions and amended legislation to widen the scope of private sector participation in the provision of goods and services. It shows the endorsement of PPPs by the federal government and highlights efforts currently being made at that level. The law sets a base for regional PPP laws by providing important rules and procedures:

- **Article 4** on the principles of PPPs highlights the importance of efficient risk allocation, open and equitable competition, and other best practices based on international experience. It allows engagement of qualified external consultants to assist public authorities on PPPs.
- **Article 5** on the terms of PPP agreements specifies essential terms that must be included such as the rights and obligations of both the public and private partner, the terms of settlements between the two, and the procedures for allocating necessary property rights. The article also notes non-essential agreement terms, including an arbitration clause.
- **Article 7** on the objects of a PPP agreement removes the limits on what type of projects PPPs can be applied to. Any "immovable and/or movable property" that can be used to meet the public service performance needs of state and local government bodies are thus allowed.
- **Article 11** on the powers of the Russian federation in PPP matters lists the different ways the Federal government will provide support to the implementation of PPPs. One highlight is the creation of a unified information system for PPPs, to notably include samples PPP agreements, PPP monitoring findings, and a list of existing bank guarantees.
- **Article 13** on powers allocated to sub-national governments (municipalities) in PPPs grants municipal units the ability to hold tendering procedures, prepare and conclude PPP agreements, and monitor the project.
- **Article 14** introduces an authorised body in charge of PPP matters (14.1), specifies the content of PPP proposals (14.2) such as an assessment of the comparative advantage of a PPP against Traditional Infrastructure Procurement (TIP), and details the rules, procedures, and stages of the competitive tender procedure (14.6).
- **Articles 15** on granting land or other property to the private partner addresses the issue of property transfer when needed for the performance of the activity under the PPP agreement.
- **Article 16** on guarantees of rights of private partners sets in place rules for preserving the economic interest of private partners and creditors against adverse changes in legislation, and allows for direct agreements between creditors, private and public partners, and funding organisations.

Box 2. **Highlighted articles under Russia's draft Federal Law on PPPs** *(cont.)*

- **Articles 17-24** on amendments to existing legislation, most importantly the Land Code, the law on Protection of Competition, and the law on State registration of rights to real property and transactions.

Source: Russian Federation (2013), Draft Federal Law No. 2388276 on the fundamentals of public-private partnership in the Russian Federation and on amendments to some legislative acts of the Russian Federation.

By developing a new law that permits more PPP models, the perceived regulatory risks that led some sub-national governments to refrain from using PPPs 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 such forms of PPP. 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 sector 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. The new PPP draft law contains amendments to over 20 laws, including the Land Law. Amendments to other regulations are being aligned. One of the most relevant amendments is the one made to the Russian budget code, which grants an exception for concession-type projects in terms of the three-year budget planning timeline (see Section 4). This will notably allow regions to plan for longer term capital projects easier. One fundamental issue with regards to the current Russian legal framework is the multiplicity of input specifications (for example, specifying construction materials to be used for a project). 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 more difficult to manage and more expensive. Creating a framework that will unlock the efficiencies that the private sector can bring to capital projects will require more than legislative changes. There is a need to build capacity at the institutional level in order to move from input specification to developing output-oriented specifications.

The effectiveness of the PPP governance framework will also depend on the broader administrative environment and investment climate. The Russian government acknowledges that strengthening legislation is only the first step in setting up a robust PPP framework. Other elements must be aligned in order to create an attractive environment for private sector investments, and to engage in projects that improve citizens' welfare. 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.

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

To ensure the sustainability and success of the Russian PPP programme, 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 money.[3] The starting point for a PPP 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 is designed to take 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 then 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 over the whole of the project's lifetime. Relative value-for-money tests compare several forms of procuring the asset in order to determine which form represents the most value for money. Absolute value for money tests determine whether a project overall (ex. dam, airport, highway) represents value for money society. Methodologies for both kinds of assessments vary by country. Table 4 shows that most OECD member countries only conduct relative value for money assessments of PPPs compared to Traditional Infrastructure Procurement or TIP for certain projects. Absolute value-for-money assessments are more commonplace. Some countries have put dedicated PPP units in place to ensure robust value for money assessments of PPPs, to align stated objectives with the profit objectives of the private sector, and to ensure that they are administered in a transparent manner.

Table 4. **Value for money assessments of PPPs and TIPs and dedicated PPP units**

	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	For TIPs			
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	..	..	..	..	..	..

Table 4. **Value for money assessments of PPPs and TIPs and dedicated PPP units** *(cont.)*

	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	For TIPs			
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			

Note: Data refer only to central/federal governments and exclude practices at state/local levels.
Source: OECD (2012), *2012 OECD Survey on Budgeting Practices and Procedures*.

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. A three-year federal investment plan also exists, which only lists capital projects. Funding for capital projects may however go beyond the defined budget planning. 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. Funding for projects is

allocated in the ordinary budget process. Overall, this investment planning framework is broadly comparable to what is found in most OECD countries.

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). Key questions that government can ask themselves when selecting between PPPs and TIP are listed in Box 3. The application of the fifth principle remains uneven in Russia. 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. 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, 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, 887 concession/PPP agreements were concluded in 2012 alone, almost 95% of which were in the housing and utilities sector; 17 were in education and 7 in healthcare. According to the Russian State Registry, the total number of concession agreements in different stages of implementation amounted to 1 347 as of April 2013. These high numbers can be explained by the need to conclude up to several hundred concession contracts for a project in a single property complex as per the existing Concessions Law. An example is the reconstruction of the municipal district heating system in the Krasnoyarsk region. This project required the conclusion of 220 separate agreements for each object under the property complex. Subsequent research and regional consultations underwent by the Ministry of Economic Development concluded that there were 79 concessions in Russia as of 2013, distributed as follows: 27 in social infrastructure (35% of total agreements), 21 in transport infrastructure (27% of total), 17 in energy infrastructure (22% of total), and 14 in housing infrastructure or utilities (16% of total).

Box 3. **Securing Value for Money**

Criteria that should be considered in a procurement option pre-test:

- Can risk be defined, identified and measured?
- Can the right type of risk be transferred?
- Is the size of risk large enough to serve as an incentive towards value for money?
- Are private partners willing to accept the risk to be transferred to them?
- How much competition is there for the market?
- How large are the benefits from combining the construction phase and the operating phase of the project in a whole-of-life contract?
- Can the quality and quantity of service output that the private partner must deliver be clearly measured so as to deal with possible cost and quality trade-offs?
- How much innovation is required?
- What is the availability in the public sector of the skills needed to operate the asset?
- How rapidly and significantly does the technology needed for the project change?

Box 3. **Securing Value for Money** *(cont.)*

- How much flexibility does the government want to change the output specifications of the service to be delivered?

The choice between a pure PPP (depending on the government for its revenue stream) and a concession (depending on user charges levied directly on the beneficiaries of the service) adds further criteria:

- Is demand sufficient to render the levying of user charges a viable source of income for a concessionaire?
- Does the service create externalities that might give rise to a free-rider problem and hence lead to demand not being revealed by beneficiaries?
- To what extent is there a need for/desire by the government to subsidise all or part of the beneficiaries of a service?

Source: Burger, P. and I. Hawkesworth (2010).

The government is currently exploring more schemes to provide social housing, for which there is an important need, through private sector participation. The health sector is also of particular interest for private sector participation, given the right financing schemes. The largest reported healthcare project is a Moscow hospital, which is aimed at renovating 4 units under a multi-functional hospital. It is a concession project of EUR 100 million with a concession period of 49 years. In addition to the important need for infrastructure investment in Russia (see Table 5), this shows that there is also tremendous demand for capital investment in social sectors. In Russia, however, further efforts would be needed to ensure the effective application of methods to secure value for money in practice across all concerned sectors. The Ministry of Economic Development has notably started developing a roadmap for PPPs in social sectors, including in healthcare. It is also working on developing a methodology for selecting between PPPs and TIPs based on value for money criteria. This methodology will be uniform at the federal and regional level, and will be subject to several levels of checks.

Table 5. **Investment needs of the infrastructure sector in Russia by 2020**

Infrastructure type	Volume of investment needed (USD billion)	Details of investment
Motorways	559	Required for: construction of 451 000 km of new motorways; reconstruction of 14 600 km of federal (approximately USD 5 million per km) and 35 400 km of regional motorways (approximately USD 1 million per km). Despite the above due to materialise in 2020, motorway density in Russia (0.07 km per km^2) will be lower than in Canada (0.14 km per km^2) and China (0.19 km per km^2).
Railroads	80	Required for: construction of 16 605 km of new roads (approximately USD 1.5 million per km); reconstruction of 44 200 km of the roads (52% of the total length, approximately USD 0.75 million per km); development of 659 km high-speed railroad sections (approximately USD 32 million per km).
Energy	70	For energy efficiency programmes and development of social infrastructure, the sector needs approximately USD 5 billion a year.
Ports	33	Current forecasts envisage 5% year-on-year growth of total sea and river port capacity, which amounts to a 620 million tonne increase by 2020.
Airports	11	The Ministry of Transportation has selected 24 airports as priority investment objectives. The reconstruction programme needs USD 440 million for each of these investments.
Total	753	

Source: Gazprombank and EBRD (2012).

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. Appropriate risk allocation is often considered to be the key aspect of successful PPPs. Three categories of risks, listed in the Table 6 below, can be identified: macroeconomic, commercial and legal/political risks. Risks are events that can be measured and the probability for their occurrence assigned. Risks vary in nature, some of them are endogenous (controllable by a party to a meaningful extent) and some others exogenous, uncontrollable, to at least some of the parties, but measurable. Risk identification and mitigation is in progress in Russia. The use of technical standards set by the government, specifically through input specification, could be considered a risk management tool. However, this top-down approach can hinder innovation of and limit competitiveness for capital projects. It also heightens risks to the private sector, thereby increasing total project risk. To address these concerns, the Ministry of Economic Development is already working

Table 6. **Risks types and transfer in PPPs**

Risk	Agent	Types of Risk		
		Macroeconomic	**Commercial**	**Legal and Political**
External/	Private	Aggregate Demand	Force majeure	Different Investment preferences of alternating governments
		Interest rate risk	Demand risk	Expansionary anti-crises policies raising the cost of financing
		Liquidity risk		Risk of expropiation
		Exchange rate risk		
	Public	Aggregate Demand	Force majeure	
		Interest rate risk		
		Liquidity risk		
		Exchange rate risk		
Project specific/	Private		**Project risk**	
			Design and construction risk	
			Operation	
			Maintenance	
			Input and output quality and quantity risk	
			Residual value risk	
			Contractor failure risk	
			Renegotiation risk	
			Early termination risk	
			Security risk	
			Technology risk	
			Idyosincratic interest rate	
			Idyosincratic liquidity risk	
			Credit risk	
			of the SPV	
			of the constructing and operating	
			of the financial institution	
	Public		sovereign risk	Different Investment preferences of alternating governments
			Demand risk	Expansionary anti-crises policies raising the cost of financing
				Risk of expropiation

Source: OECD (2012).

towards establishing standard contracts and value-for-money toolkits, including guidelines for developing a PPP risk matrix and undertaking quantitative risk analysis. This methodology will be available to all levels of government. The draft PPP law also highlights efficient risk allocation as one of the main principles of PPPs, sets it as an essential evaluation criterion for the authorised body in charge of PPPs, and lists the types of risks that must be taken into consideration. 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.

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.

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. The Ministry directly handles all central government renegotiations on behalf of the State. Renegotiations only occur in Russia as a consequence to government decisions affecting the project, such as a change in tariffs. 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.

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. This includes a level playing field between established companies, SOEs and companies seeking to enter the market. There are no specified restrictions against foreign investors looking to participate in capital projects in Russia. Federal projects appear to attract large international players, in part due to the strong political will behind such projects and their contained amount of risk relative to regional projects. Yet in Russia, investment climate issues may prevent both domestic and foreign companies from entering the market. Some stakeholders pointed to the issue of input specification, and the required stamps of approval at each stage, which often

undermines technical competition and limits the bidding process. 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.

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.

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

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's budget process. PPPs that receive public funding 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.

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, 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 (Kraan, D. et al., 2008). In most OECD countries, the government first decides on the affordability of an investment project before choosing the best procurement route (see Table 7). As the Central budget authority, the Ministry of Finance should likewise play a strong role in ensuring project affordability well before choosing between PPP and TIP.

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

Table 7. **Does the government first decide on the procurement of an asset (which would include an assessment of its affordability) before it considers the choice between PPP procurement and traditional infrastructure public procurement?**

Responses	Countries
Yes always (100% of the time)	11 countries: Australia, Canada, Czech Republic, Finland, Germany, Luxembourg, Mexico, Netherlands, New Zealand, Spain and the UK
Yes very often (> 75, but < 100% of the time)	3 countries: Brazil, Hungary and Italy
Yes often (> 50-75% of the time)	Korea
Yes sometimes (> 25%-50% of the time)	No country
Yes rarely (> 0, but < 25% of the time)	No country
No, not required	Japan
No PPPs	4 countries: Austria, Estonia, Sweden and Switzerland
Other, please specify	3 countries: Norway, Slovakia and South Africa

Source: Burger, P. and I. Hawkesworth (2013).

not assured for longer than the budget year. In July 2013, the Russian Government recently introduced an amendment to the budget code that allows for longer-term obligations, going beyond the three-year period, for concession projects provided they receive the explicit approval by the Federal Government or the supreme executive body of a region or a municipality, respectively (Article 78 of the amended Budget Law). The same procedure will be available for new PPPs.

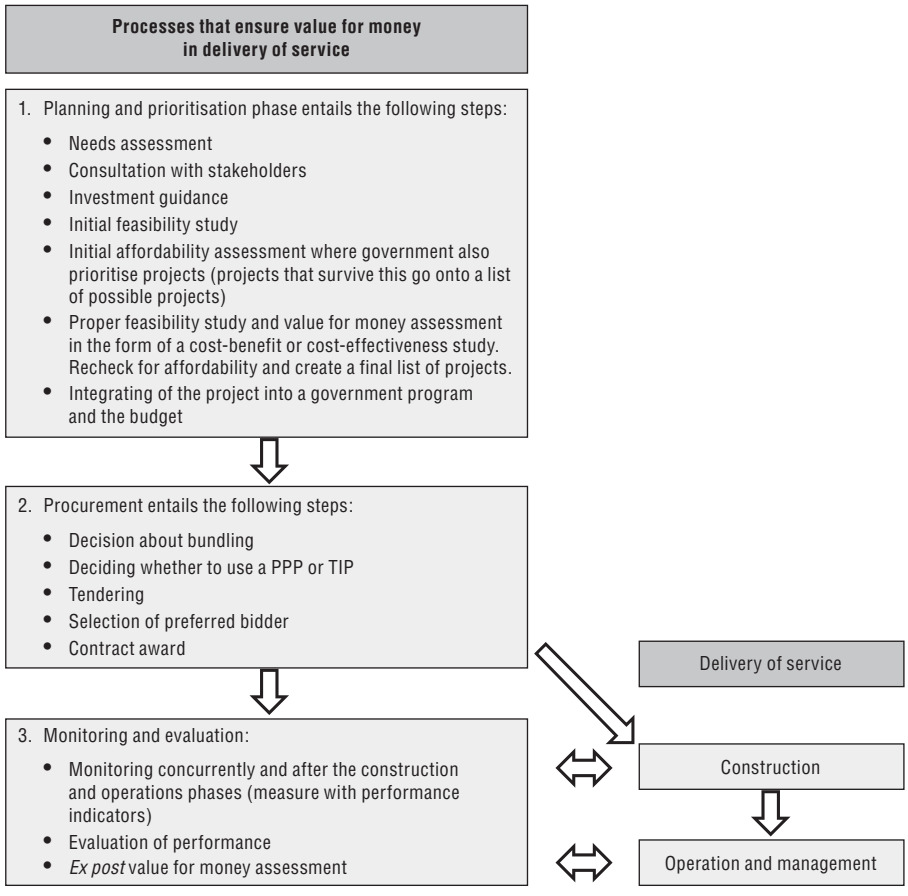
For reasons of accountability and risk management, the transparency of the PPP project in the budget process is important, which is emphasised in the **eleventh PPP principle**. The budget documentation must disclose all costs and contingent liabilities, and special care should be taken to ensure that budget transparency of PPPs covers the whole public sector. Guarantees by the public sector to the private partner should be clearly disclosed. 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. A list of financial guarantees and obligations associated with capital projects appears to exist internally in the Ministry of Finance, but it not clear to which extent this information is integrated into the budgeting process. Guarantees are granted at the federal level by the Ministry of Finance or the relevant line ministry based on the importance of the project and the appropriate type of guarantee. A method to keep better track of guarantees on the national budget is currently being developed by the Ministry of Finance. The introduction of results-based budgeting in 2014 should help clarify planned projects to the public, as the federal budget will be allocated to states on the basis of their programmes. This could be an opportunity to clearly disclose presently existing liabilities of the government with regards to specific PPP projects.

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 co-ordination of these two perspectives for the PPPs to be effectively used as ordinary infrastructure delivery mechanisms.

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. Tasks and responsibilities should be clearly and distinctly assigned to different authorities, and value for money should be the golden thread that runs through all the stages of public procurement (see Figure 1). 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. 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

Figure 1. **Phases of a procurement cycle to ensure value for money**



Source: Burger, P. and I. Hawkesworth (2013).

infrastructure projects. The situation is exacerbated in cases of contracts awarded to an SOE without tendering. The new PPP law aims to bring more transparency by specifying that SOEs cannot take part in a project as a private partner, thereby narrowing down their participation in a PPP to the public side. This is a positive step forward by the government in creating a clearer procurement framework for PPPs.

Some good practices in ensuring the integrity of procurement procedures already exist in Russia. The federal Ministry of Transport is widely experienced in the procurement of large infrastructure projects and has sophisticated tendering procedures. According to requirements under the new law on the Federal Contracting System, decisions about holding tenders have been made more open and are publically shared with different stakeholders such as unions and chambers of commerce online and via open letters. All information about public hearings must also be shared with the federal government. The Ministry of Finance is also closely involved in the bidding process for concessions and PPPs above a certain threshold (RUB 1.5 billion). It requires the procuring public authority to justify the selection of a specific private partner. The Ministry of Finance's approval is needed before the project goes through, and the contract cannot be signed until the project has been inscribed in the budget. 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. 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 led by the Council for Fighting Corruption.

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 (OECD, 2013).

5. Conclusion

The governance of PPPs in Russia is on the right path. Large efforts are currently being dispensed by the Ministry of Economic Development to provide a uniform legal framework and methodologies for the adoption of PPPs. Certain problems remain, both in terms of processes and institutional capacity, but significant experience gained with large projects can be utilised to further spread best practice based on successes and failures. Starting with a broader public and sub-national understanding of PPPs, the government is working to align its legal, institutional, and regulatory framework for PPPs with international standards. The OECD's recommendation on principles on the good governance of PPPs lists important criteria that need be considered in creating a robust PPP framework, for member countries and non-member countries alike.

The PPP principles emphasise 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 on regulatory soundness, 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.

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 methodology 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.

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.

In conclusion, the Russian government has taken important steps towards the adoption of a robust PPP framework based on international best practice. It is partially aligned with the OECD's PPP recommendation, but the government should continue its current momentum in order to reach its stated goals. The new PPP law, which was presented in December 2013 for the second reading by the Duma, is the first of several reforms that must be implemented in order to encourage private sector participation in the provision of public goods and services in Russia. Efforts to create a clear, uniform methodology for the adoption of PPPs across all levels of the government are currently underway and will benefit from the country's experience in certain star sectors such as Transport. The way these reforms are to be implemented in the next years will be the true indicator for the success of Russia's PPP agenda.

Notes

1. Public-Private Partnerships (PPPs) are long-term contractual arrangements between the government and a private partner whereby the latter delivers and finances 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).
2. Russian Federation (2013), Draft Federal Law No. 2388276 on the fundamentals of public-private partnership in the Russian Federation and on amendments to some legislative acts of the Russian Federation
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Ten years of PPP: An initial assessment

by
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A public-private partnership (PPP) is a long-term contractual arrangement whereby the government calls on a company or a consortium formed for the purpose to design, build, finance and maintain a structure or facility necessary for its public-service mission. The company or consortium is subsequently remunerated according to the availability and performance of the structure or facility. The remuneration must enable the company or consortium to repay its initial investment and cover the financing costs and the services it provides.

In a broad sense PPPs have long existed in France under various names and in various forms, marking the history of the development of the country's infrastructure networks. In the modern sense, corresponding to the partnership contract (contrat de partenariat now renamed "machés de partenariat" since 2015) created in 2004 and covering all-inclusive government-pay contracts, PPPs have made significant inroads in certain sectors of public management such as social infrastructure (schools, hospitals, prisons, etc.). As a result France topped the European PPP league table in 2011-12, though PPPs remain a niche market overall in relation to the total amount of public procurement. Now, ten years later, it is possible to take stock, in both qualitative and quantitative terms, of projects initiated and carried out.

This report aims to show the impact and effects of this new public procurement resource, sector by sector, in facts and figures, and to illustrate the contributions it has made and the feedback it has generated by major type of project and by public-sector initiator, from municipalities to central government agencies.

JEL classification: H40, H5, H83

Keywords: Infrastructure, partnership contracts, public private partnerships, public procurement

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Acronyms

ANAP	*Mission nationale d'appui à la performance des établissements de santé et médico-sociaux*
AOT	*Autorisation d'occupation temporaire*
APIJ	*Agence pour l'immobilier de la Justice*
ARH	Regional hospital agencies
BEA	*Bail emphytéotique administratif*
BEH	*Bail emphytéotique hospitalier*
CDC	*Caisse des dépôts et consignations*
CHSF	*Centre hospitalier du sud francilien*
DHOS	*Direction de l'hospitalisation et de l'organisation des soins*
EIB	European Invertment Bank
EPPJP	*Établissement public du palais de justice de Paris*
FM	Financial Management
FTTH	Fibre-to-the-home
IMF	International Monetary Fund
LOA	Lease with an option to purchase
LOPJ	*Loi d'orientation et de programmation pour la justice*
LOPSI	Internal Security Framework Act
MAINH	*Mission nationale d'appui à l'investissement hospitalier*
MAPPP	*Mission d'appui au partenariat public-prive*
METP	*Marché d'entreprise de travaux publics*
OECD	Organisation for Economic Co-operation and Development
OPPIC	Cultural Property Development and Heritage Agency
PFI	Private Finance Initiative
PPP	Public-private parnerships
RMN	*Réunion des musées nationaux*
ROI	Return on Investment

1. Origins and development of the PPP

Why choose 2004 as the starting point? Basically because that was the year in which the partnership contract (*contrat de partenariat*) and MAPPP (*Mission d'appui à la réalisation des contrats de partenariat*[1]), the central PPP task force, were created. This was the first explicit reference to the PPP in French public procurement terminology. PPPs had existed beforehand, though they were not called that: the concept had long been in use in France in various forms, either institutional (e.g. semi-public companies) or contractual, especially concessions. Generally speaking, all public procurement contracts involve private operators in public-interest projects, even if they are not concluded with a long-term partnership in mind. Government does not function in isolation from the world of business; it needs companies to carry out its public-service missions.

Thus, the introduction of a new terminology with the creation of the partnership contract signals the recognition in France of a current of thought which had become prevalent around the world in the 1990s under the acronym PPP. In international usage, PPP is a generic and rather vague term for which there is no precise and universally accepted legal definition. The term has become increasingly common in recent years in the recommendations of multilateral organisations with an economic brief, especially the OECD, or with responsibility for the main financial balances (IMF), and the major development banks such as the World Bank, EIB and regional development banks. It has replaced privatisation as the preferred means for developing public-service or public-interest infrastructure.

In France, then, PPPs can be said to have already existed under other names and in other forms. However, that does not in the least detract from the importance of the key period 2003-04, when the partnership contract became a practical legal reality for the purposes of French public procurement. This symbolic aspect, linked to the first use of the term public-private partnership, can help to explain the often passionate and sometimes disproportionate reactions in political, academic and business circles to the share of the public procurement market taken by the new instrument.

1.1. Previous forms

French experiments

Early contractual forms

Many contracts which we would now call public-private partnerships were created in France in the 17th century, relating for example to street paving, roadbuilding and refuse collection. They were generally successful and paving contracts continued until 1830 with the regular auction of successive ten-year leases.

Colbert created a construction contract for French roads which included a ten-year maintenance requirement and made it compulsory in public works by means of a circular issued in 1669.

This government-pay construction and maintenance contract, under which an entrepreneur contracted to finance, build, maintain and police the structure, was used so widely that it passed unscathed through the turmoil of the Revolution and the Empire and became the source of the model specifications for public procurement contracts in the early 19th century, which included mandatory maintenance at the contractor's expense for a six- to ten-year period.

As a result of the imposition of public management principles based on the pre-eminence of the private sector, the 19th century saw an exceptional expansion of privately financed public works.

The concession concept was gradually refined and incorporated into French administrative law in the mid-19th century, ensuring the rapid spread of this type of contract, entirely or partly paid by the community of users, in urban planning and development, water supply, sewage and railways. The prefect of Paris under the Second Empire (1852-70), Baron Haussmann, signed 42 such contracts for the renovation of Paris, freeing up land and enabling the creation of roads, sewers, street lighting and residential buildings. Contracts to build public infrastructure were remunerated from the public purse for a period of around ten years. Subsequent laws perpetuated similar arrangements for the construction of railway lines. Water supply systems were also built under such contracts by entrepreneurs who were remunerated for their service as a whole over time.

The model was successfully exported from the mid-19th century: the international concession for the Suez Canal, inspired, financed and built by the French, lasted for nearly a century until the canal was nationalised in 1956.

The contract reappeared at the end of the First World War in the new field of aviation, with Aéropostale, and the construction of social housing on the old ring of fortifications around Paris. 30-year concessions for refuse collection and treatment were concluded, under which contractors built and operated most waste incineration plants in return for an annual fee. Dams were also built under such contracts.

The model fell into disuse after the Second World War as a result of nationalisation and greater direct government intervention in the economy. It was replaced by public project contracting (*maîtrise d'ouvrage publique*), the facilities subsequently being managed directly. It still existed in watered-down forms, such as concessions to semi-public companies in which the state was a majority shareholder and service concessions with no upfront investment (*affermage*), for the construction and operation of motorways, waste management and heating networks between the 1950s and 1980s.

Decentralisation in the early 1980s gave a new lease of life to contracts with local authorities, since many buildings, especially schools, were transferred to them. During the 1990s, local authorities facing complex or urgent investment needs tried out new and complex contractual arrangements incorporating financing and operating aspects, such as the METP (*marché d'entreprise de travaux publics*).

In a country with a statute law system like France, the development of these contracts in the 1990s was curbed by the lack of any clear legal framework in public procurement law.

METPs were ultimately banned by the Council of State because they infringed the prohibition on deferred payment for public procurement and replaced in practice by the *bail emphytéotique administratif* (BEA),[2] a long-term lease arrangement allowing for the transfer of rights to build on and occupy public land, coupled with an undertaking to lease the structure back to the public authority. The BEA was thus transformed into a public procurement resource for local authorities. The government revised the Public Property Code in legislation passed in July 1994, introducing an arrangement similar to the BEA, namely a temporary occupation authorisation (*autorisation d'occupation temporaire*, AOT) coupled with a quasi-property rights. A variation of the BEA for hospitals, the *bail emphytéotique hospitalier* (BEH), was introduced in August 2003.

Lawmakers had already sought to introduce genuine public-private partnership arrangements for prison-building in the Public Prison Service Act of 22 June 1987, though they ultimately had to make do with a contractual arrangement for the design, construction and development (but not financing) of public prisons, concluded in the form of a public procurement contract.

The distinctive feature and disadvantage of these measures was that they addressed privately financed building projects only in a roundabout way, through a long-term lease or an administrative authorisation. Their workings were unclear and many professionals were unsure of their precise scope.

There was also doubt about the relevance of the Public Procurement Code to the wider problem of the management of public assets. The rules governing contractual relations in the public sector plainly did not meet the needs of the managers of public assets facing enormous challenges, such as the renovation of hundreds of schools which no longer complied with safety standards. The ban on deferred payment instituted by the Code blocked any possibility of delegating anything at all.

The creation of public service delegations (*délégation de service public*) by Law 93-122 of 29 January 1993 (the "Sapin" Act) did not resolve the central problem of government-pay delegation contracts, a key issue for so-called "social" services or infrastructure for which users can pay at best only a very small part of the cost. The sole purpose of the Sapin Act was to introduce regulations for the conclusion of contracts previously called *concessions* and *affermages* (a form of service concession where the operator is not required to make any significant capital investment), now renamed public service delegations, which are basically privately financed user-pay arrangements.

Meanwhile, other European countries facing similar problems were also readily considering and experimenting with this type of contract. The UK government in particular had been trying for several years to find a way out of the straitjackets imposed by contracts with consultants rarely responsible for the financial outcome of the projects they managed, which had ended up by wearing out the contracting authorities. In 1992 the government, wishing to give contractors overall responsibility by requiring them to manage the facilities after completion, introduced the Private Finance Initiative (PFI), a vast programme to renovate and reform UK public services. It can be argued that this policy was, in no small way, inspired by the French concession and METP models. Being widely used and ideologically influenced (private-sector management was presented as a means of remedying the structural problems of the public sector), and having generated extensive comment in political and economic circles, the PFI attracted considerable attention in the field of public management. Similar arrangements were introduced in Italy, Spain and Portugal. In contrast, France did not introduce PPP legislation until 2002-04.

Public-private partnership legislation

The public-private partnership idea re-emerged in France in 2002 with the introduction of a number of sectoral measures, limited to prisons and policing.

In addition to these sectoral measures, however, policymakers wished to bring a more general measure into French law. Available to central and local government authorities, as in many other European countries, it would allow firms to offer public authorities all-inclusive services.

In this framework, Article 6 of Law 2003-591 of 2 July 2003 authorises the government to issue orders creating new forms of contract for the design, construction, transformation, operation and financing of public amenities or the management and financing of services or a combination of both. Order No. 2004-559 creating partnership contracts was adopted on 17 June 2004.

A genuine legal framework for public-private partnerships

There was no legal definition of public-private partnership in French law until order No. 2004-559 was adopted in June 2004.

Article 1 of the order gives a clear working definition of the French partnership contract, which combines private-sector responsibility for the various phases of an infrastructure or services project (generally including all or some of the design, construction, financing, upkeep, maintenance and operation), with payment not by the end-user of the service or facility but by the government.

Order No. 2004-559 was subsequently supplemented by two laws passed in July 2008 and February 2009 which extended and clarified the arrangement and introduced measures to make it easier to finance such projects at a time of acute financial crisis.

1.2. Motives

The partnership contract was created after lengthy consultation which saw a convergence in public- and private-sector approaches to public procurement not only from an economic and legal standpoint but also in public management terms.

Private-sector motives

The economic analysis has traditionally focused on the motives of the client, i.e. the contracting authority. Yet business motives played a key role in the emergence and subsequent development of the partnership contract, driven by private-sector players. What was the aim and what were their motives?

The primary aim was to offer public-sector clients a resource missing from the public procurement toolbox which would enable contractors to offer a comprehensive service.

A secondary aim was to commit to build public amenities on the basis of their total lifecycle cost, an option offered by no other contract.

This new contract would also naturally pave the way for the realisation of projects, large or small, which would have been deferred or even abandoned under conventional contractual arrangements, for lack of available budget funding or excessive uncertainty about the final cost. For business, the interest lay in additional long-term markets for both projects and services, somehow disconnected from economic conjuncture. Another factor not to be underestimated was the desire of French firms which had already gained experience of public service delegations in France or of PPP/PFI projects in other countries to demonstrate their professionalism and their capacity to meet new technical and economic challenges once the contractual arrangements allowing them optimise their services were in place. In passing, the new contract also gave construction firms an opportunity to integrate or expand upstream and downstream from their traditional core business, as some had already begun to do with concessions.

Industry bodies, largely made up of small and medium-sized enterprises, also approved the launch of a new public-private partnership contract, considering that it would bring their members more work.

Public-sector motives

Public-sector motives were many and various, covering the whole gamut of micro- and macroeconomic concerns.

In *microeconomic terms*, the public sector wanted better compliance with deadlines and budgets, guaranteed performance and the ring-fencing of upkeep and maintenance through an all-inclusive contract. Experience over time clearly shows that regular preventive maintenance is less costly than corrective maintenance coupled with large-scale expenditure on refurbishment or renewal, while ensuring greater availability and efficiency.

Maintaining a high level of quality throughout the lifetime of a structure or facility costs less with regular, preventive upkeep, maintenance and replacement, which is precisely what PPPs offer.

In *macroeconomic terms*, four major sets of factors came into consideration.

Firstly, qualitative factors influenced the quest for more effective public management through the virtuous circle effect attributed to PPPs, i.e. the prior evaluation requirement, integration of the design/build and upkeep/maintenance phases and optimisation of technical and economic solutions through competitive dialogue, resulting in better value for money and shorter lead times to completion, all at less immediate cost to the public purse.

Other factors included the need to take a lifecycle approach to the cost of the structure or facility, consideration of the sustainable development aspect, the possibility of outsourcing due diligence on the project's economic and financial feasibility to banks and financial institutions, and internal governance of the project as a result of the highly contractual nature of the arrangements upstream. More fundamental factors included a conviction that the public sector had much to gain from drawing on the private sector's management techniques, capacity for innovation and managerial expertise, together with its capacity to identify, calculate and minimise beforehand the effect of risk on smooth realisation of the project.

Secondly, the wish on the part of public-sector clients to take capital projects off the balance sheet undoubtedly played a role, even if that has now become difficult (or even impossible) or inappropriate. In the 1980s, a financially squeezed public sector found it increasingly difficult to meet sustained demand for high quality public service infrastructure and facilities management. This led to a lag in necessary investment in healthcare, higher education, prisons and transport networks, causing existing infrastructure to deteriorate.

Under the circumstances, it is understandable that the authorities should have wished to extend PPPs to areas such as social infrastructure where a user-pay model is not possible. The windfall effect on the budget related (at least initially, when the market was gearing up) to the massive mobilisation of private finance to replace and/or supplement public funding at a time when public finances were under severe pressure made it possible to carry out more public-sector projects sooner, without having to stagger or split budget commitments and risk seeing completion deadlines recede as a result. The 2007 Hospital Programme is a good illustration of this. In addition, as PPPs were often treated initially like industrial lease agreements, they were not restated as debt in contracting authorities' accounts, leaving their capacity to contract debt intact.

A third factor concerns the changing locus of administrative and technical responsibilities between different levels of government. 25 years of decentralisation and devolution in France have led to a transfer of powers, in public works engineering for example, from central government to local or autonomous operators. These players have had to find ways to assume those responsibilities (responsibility for roads, for example, has been transferred to *départements*). In these circumstances, PPPs can represent a response to complex challenges for which the new players are ill-prepared.

Fourthly, in France, unlike elsewhere, factors such as maximising inward investment or improving the balance of payments, often invoked by emerging countries or multilateral development finance bodies to support PPP programmes, were not a consideration. As a result, there has been no controversy about the expected or feared role of foreign industrial investors in the domestic PPP market (on the contrary, some observers have regretted the fact that they are virtually absent from the French market), in contrast to the arguments about the place of SMEs.

Table 1. **The French public procurement toolbox**

Public procurement contracts (Public Procurement Code)	BEA long-term lease (Art. L-311-2 of the Local Authorities Code)	Partnership contract (Order of 17 June 2004)	Public service delegations (concession, *affermage*, etc.) (Sapin Act of 29 January 1993)
Single-purpose Short-term (generally)	Single-purpose Long-term (18 years minimum)	Multi-purpose Long-term	Multi-purpose Long-term Delegation
No prefinancing Successive contracts Service rendered to the authority	Private-sector prefinancing Design/build Operation under a supplementary contract Service rendered to the authority Government-pay	Private-sector prefinancing Design/build Service rendered to the authority Government-pay	Private-sector financing Design/build Maintenance and management Operation of the service Direct relation with users User-pay or combined
Construction risk	Construction risk	Construction risk Performance risk	Construction risk Performance risk Demand/traffic risk

The partnership contract in public procurement

The PPP remains an exception to the standard public procurement procedures. The public authority must state the public-interest grounds which underpin the project, taking account of the characteristics of the service concerned and citing the reasons of urgency or complexity which justify the use of a partnership contract. A third criterion introduced by the Act of July 2008 was validated by the Constitutional Council as described below.

Three major innovations

a) One of the great innovations of the partnership contract is to require a **prior evaluation**. This reasoned approach before the award of a public procurement contract marks a major step forward for public management. Prior evaluation covers performance (including lead times), risks and the lifecycle cost, assessed on a comparative basis between the various contractual options for the project concerned (see table below).

b) Secondly, **the structure of partnership contracts** is defined in the 2004 order. They must contain clauses relating to:

- the duration
- **risk-sharing** between the public authority and the contractor

- **performance targets** for the **quality of services** and of structures or facilities
- the **contractor's remuneration**, the investment, operation and financing costs, and the revenues that the contractor may be authorised to raise by using the structures or facilities to meet other needs
- payment terms[3]
- the contractor's obligations relating to **compliance with the use of structures** and facilities for public-service purposes
- monitoring methods, fulfilment of performance targets, conditions of compliance with the undertaking to award part of the contract to small businesses and trades
- **sanctions and penalties** for non-compliance, especially with performance targets
- conditions in which **certain aspects of the contract may be amended or terminated,** in particular to take account of changing needs relating to technological innovation or changes in the financing terms obtained by the contractor
- the public authority's control over partial or total transfer of the contract
- **in the event of contractor default,** the conditions in which continuity of the public service is ensured, especially where the contract is terminated
- the consequences of the **end of the contract, early or not,** especially with regard to ownership of the structures or facilities
- terms for dispute prevention and settlement and arbitration.

c) **Competitive dialogue** was introduced into French law. This was an important step forward, originating in the European Directive of 30 April 2004, which was itself inspired by the French performance-based tendering procedure. The **mandatory criteria for awarding the contract** contained in the 2004 order include:

- the total cost
- **performance targets,** defined according to the purpose of the contract
- the portion of the contract that the bidder undertakes to subcontract to small businesses and trades.

1.2.1. The role of Mission d'appui au partenariat public-privé (MAPPP)

The primary purpose of MAPPP, the PPP task force attached to the Ministry of the Economy, is to assist public authorities and all other professionals involved in preparing partnership contracts. As such, it can provide an expert opinion on the overall structure of the operation and help the contracting authority to carry out the requisite evaluation.

MAPPP also provides assistance during the contract award and negotiation phase. To that end it issues recommendations and factsheets, including a handbook published by the Ministry of the Economy called *Les contrats de partenariat – Guide méthodologique* (Partnership Contracts: A Methodological Guide), which contains principles for using partnership contracts and guidelines for awarding them. MAPPP has also developed an online cost- and risk-valuation modelling tool for the quantitative comparative analysis part of the prior evaluation.

All plans for partnership contracts by central government agencies or public corporations must be referred to MAPPP for an opinion. MAPPP then decides whether or not to validate the principle of a partnership contract in light of the prior evaluation submitted to it by the contracting authority. The corresponding opinion is posted online and may be consulted on the MAPPP website[4] after the contract in question has been signed. The same

contracts are again referred to MAPPP at the end of the award process so that, on behalf of the Minister of the Economy and in liaison with the Budget Directorate (which carries out its own budget sustainability assessment), it can assess whether the draft contract complies with recommendations and best practice and what its impact on the public finances will be before it is signed. On this basis, the Minister of the Economy authorises the colleague responsible for the project to sign the contract. Local authorities may consult MAPPP if they so wish for a reasoned opinion on the eligibility of the partnership contract on the basis of the evaluation provided.[5]

MAPPP also monitors contracts, which must be transmitted together with their annexes within a month after they have been signed. As such, it acts as a sort of clearing-house for all partnership contracts concluded in France. On the basis of feedback from new contracts, it can suggest changes to the regulations. It has a policy advisory committee for the purpose, which serves as a forum for all institutional and professional players with an interest in PPPs.

MAPPP's remit extends to all complex contracts or contracts involving innovative financing which the Minister of the Economy may refer to it for an opinion.

1.2.2. The 2008 financial crisis: A turning point

Three sub-periods may be distinguished in relation to partnership contracts:

1. 2004-08: running-in and the first small-scale local projects;
2. 2008-11: expansion of the market, driven by the government's anti-cyclical response to the financial crisis. Partnership contracts were given a broader legal foundation with the introduction of a third criterion in addition to the project's urgency or complexity, namely **economic efficiency**, or a more favourable balance of advantages/disadvantages than with other forms of public procurement;
3. 2012 to the present day: contraction of the market due to a political reassessment and the crisis in French public finances.

The financial crisis of 2007-08 hit just as the French government was launching its first major infrastructure PPPs and had a deep impact. Financing became shorter-term, harder to raise and more expensive, threatening to make partnership contracts less advantageous and less attractive. The response was both legislative and administrative: the planned makeover of the system after the first few years was expanded in order to incorporate initial feedback and provide new answers to the challenges raised by the financial crisis.

2. An initial assessment of PPP

2.1. Facts and figures

2.1.1. The PPP market

PPPs now account for a significant share of public procurement. Central and local government authorities have commissioned over 600 PPP projects in barely ten years, including 200 partnership contracts and over 400 other projects in sectoral or local variants of the PPP model, such as long-term lease arrangements (BEH, BEA) or temporary occupation authorisation plus lease with option to purchase (AOT/LOA). PPP contracts have become a regular, if not general, feature of public procurement in France.

Although partnership contracts account for only about a third of the number of PPP projects, they represent much more in terms of the amount of investment: nearly EUR 15 billion, or 83%. The balance is even more heavily weighted in terms of future

payment flows (see below), since partnership contract projects have a greater service component (maintenance, upkeep and repair, not to mention fluids/consumables and personal services) than lease-type operations (BEA or AOT), which focus more strictly on the property and building aspect.

At mid-2014, there were:

- 535 identified partnership contract projects,
- 259 under consideration,
- 78 in the award phase (calls for tender issued),
- 216 opinions issued by MAPPP,
- 197 partnership contracts concluded, including 147 (74%) by local authorities or their agencies and 50 (16%) by central government or national public corporations, representing investment of EUR 4.1 billion and EUR 10.6 billion respectively and a total of **EUR 14.7 billion**;
- 365 BEA, 42 BEH and 13 AOT, representing total investment of a little over EUR 3 billion.
- This gives a total of 620 partnership or similar contracts representing total investment of approximately **EUR 18 billion**.[6]

Table 2. **Investment corresponding to partnership contracts concluded (EUR million)**

Year	Local authorities	Central government	Total EUR million
2005	1		1
2006	79	70	149
2007	148	16	164
2008	490	330	820
2009	235	235	470
2010	789	1 065	1 854
2011	761	4 591	5 351
2012	712	2 959	3 670
2013	850	1 240	2 090
H1 2014	**9**	**120**	**129**
2005 -> 2014	**4 074**	**10 725**	**14 700**

Source: MAPPP.

- The main central government partnership contracts by financing amount include:
  - Brittany-Pays de Loire and Nîmes-Montpellier high-speed rail links (EUR 3.5 billion and EUR 1.8 billion respectively)
  - GSM-R railway wireless communication system (EUR 600 million)
  - HGV ecotax project (EUR 700 million)
  - 63 road maintenance centres for the Ministry of Ecology (EUR 130 million)
  - L2 Marseille bypass (EUR 620 million)
  - VNF: modernisation of dams in the Aisne-Meuse basin (EUR 300 million)
  - -plus prisons, universities, law courts, hospitals, Defence Ministry, etc.
- The main local authority partnership contracts include:
  - 12 lower secondary schools in Seine-St-Denis (EUR 290 million)
  - stadiums in Lille, Marseille, Nice and Bordeaux (from EUR 170 to 300 million)

- upper secondary schools in Lorraine (EUR 160 million)
- Dunkirk Arena (EUR 80 million)
- ultrafast broadband in Auvergne (EUR 167 million)
- Kérino tunnel under the river Marle at Vannes (EUR 60 million)
- numerous street lighting projects, each worth several million euros.

In terms of payment flows (aggregate rent already paid or still to be paid to the private-sector partner), the overall PPP market is now worth EUR 42.5 billion. 197 partnership contracts have been concluded, with a value of EUR 36 billion. BEA/BEH account for 12% of the PPP market, representing 510 contracts worth EUR 5 billion. 13 AOT/LOA contracts worth EUR 1.7 billion (4% of the total) have been awarded since they were introduced by the Internal Security Act of 29 August 2002.

Nonetheless, PPPs remain a niche market, accounting for less than 5% of total public procurement between 2004 and 2014.

2.1.2. An unprecedented expansion of partnership contracts until 2011

The number of partnership contracts in France rose steadily after they were introduced by the order of 17 June 2004. Europe's second-largest PPP market after the UK, France saw steady growth until 2011. However, the number of new projects has fallen since 2012, in France as in Europe as a whole. There are many reasons for this, including the global liquidity crisis, which curtailed banks' capacity to finance projects, the crisis in French public finances and the 2014 municipal elections, which caused local authorities to defer capital spending projects.

Box 1. **A large number of local urban planning and development projects**

Local authorities make more use of partnership contracts (147 contracts) than central government (50 contracts). This is due to the number of small-scale local PPP urban development projects involving small building programmes, street lighting or road maintenance. Nearly two-thirds of partnership contracts since 2004 have been worth less than EUR 10 million. In financial terms, however, major national infrastructure projects account for the bulk of investment in PPPs. Contracts awarded by local authorities represent only about a quarter of the total amount of investment.

2.2. Pilot projects and the rise of the partnership contract

2.2.1. Central government pilot projects

As a pump-priming measure following adoption of the order introducing the partnership contract, the government planned to use the new instrument for pilot projects commissioned by major ministries. The then prime minister issued a call for projects in June 2005, asking each ministry to identify and submit two to four projects that could be launched as PPPs in short order. Projects were selected for prior evaluation and then transmitted to MAPPP for review and validation where appropriate. For many projects with a regional development dimension, a policy decision was taken and the projects were fast-tracked to the CIACT (interministerial committee for regional development and competitiveness). Meeting on 14 October 2005, the CIACT selected some 30 projects from

eight ministries for which the tender procedure could be launched before the end of 2006 if MAPPP validated the legal and economic aspects of the evaluation report.

Thirteen transport infrastructure projects to be realised as public service delegations, including the South Europe Atlantic high-speed rail link, were added to this list of projects fast-tracked as potential partnership contracts.

2.2.2. A contrasting picture

Nearly a decade later, only 12 of the projects have been reviewed and validated by MAPPP and launched as partnership contracts. Some have been completed: INSEP (National Institute for Sport and Performance), RDIP (French air force communication networks), EALAT (Dax Army Helicopter School), Armed Forces Sports School, Roanne Hospital, MuCEM (Museum of European and Mediterranean Civilisation) Reserves and Vincennes Zoo. Some are in progress (GSM-R railway communications, Nîmes-Montpellier high-speed railway bypass, L2 Marseille bypass, VNF dams) and one is awaiting signature (Paris-La Santé detention centre). MAPPP has reviewed two other projects:

- the Seine-Nord Europe canal. The decision to launch the project was taken in 2011 and the two rival consortia started a competitive dialogue. This was halted in 2013 following the conclusions of a review of the project's cost and financing terms conducted by the General Council of the Environment and Sustainable Development and the Finance General Inspectorate. Another report[7] has since concluded that the project should be relaunched on a smaller scale using the public project contracting model;
- the South Europe Atlantic high-speed rail link, launched as a public service delegation (concession) rather than a partnership contract. Referral to MAPPP was justified by substantial public assistance in the form of subsidies and cost-sharing contributions and, above all, government security for loans from commercial banks and the EIB, made necessary by the financial crisis, still unresolved at the time of closing in June 2011.

This achievement may seem underwhelming. However, not all these projects were necessarily mature or had been validated in socio-economic or political terms. In addition, many had been preselected in haste by the ministries concerned in response to strong political promptings and did not necessarily have all the qualifying characteristics for a partnership contract. Some of them were put forward above all because they had not been included in existing budget programmes or could not be financed by conventional budget means. In these cases, the ministries responsible for the projects saw PPPs as a boon in relation to the choices and programming decisions already made. That did not stop budget considerations from making a comeback later on, in particular with regard to the long-term budget sustainability of the largest-scale projects, the Seine-Nord Europe canal being a noteworthy illustration.

Those projects which passed the tests of prior evaluation and justification according to the relevant legal and economic criteria generally passed off without difficulty, yielding some of the benefits expected from partnership contracts. These included compliance with deadlines and the generation of incidental revenue (rental of space at INSEP, maintenance in operational condition and training for non-ALAT helicopter fleet managers and users for HeliDax), reducing the cost of the administrative lease.

Nonetheless, the projects did not really have the expected pump-priming effect: the first project, for the renovation of INSEP at Vincennes, was not signed until December 2006. This is doubtless because they were relatively large-scale and complex, with transport

infrastructure projects in particular being subject to a large number of approval and authorisation procedures, including public debate, public enquiries, compliance with water legislation, budget decisions by local authorities making cost-sharing contributions and so on. Smaller-scale projects commissioned by local authorities in areas such as street lighting, schools and sports facilities were the real drivers of the market from 2005-06. Major central government sectoral programmes fast-tracked into the partnership contract procedure, such as prisons and universities, did not gather momentum until 2007-08.

However, these pilot projects were useful insofar as they obliged project and programme managers to consider the PPP option beforehand and to reassess the customary contractual and financial terms of such projects.

2.2.3. Expansion driven by local projects

Local authorities were quicker to take advantage of the new instrument, partly because the projects and hence challenges were smaller and partly because prior evaluations did not have to be validated by MAPPP before the tender procedure could be launched.[8]

By the end of 2006 half a dozen local authority projects had already been evaluated, validated (in some cases), awarded and signed, representing total investment of around EUR 100 million, contrasted with none at central government level. MAPPP contributed to the process, taking part in meetings with the French Association of Urban Communities, Regional Development Agencies, national and local politicians, Economic and Financial Advisory Units at the Public Accounting General Directorate and Regional Directors from the Caisse des dépôts et consignations as well as organising training seminars, taking part in a chat on the Finance Ministry website on the subject of local authorities and PPP, and attending the annual conference of French mayors. To the best of its abilities, MAPPP takes calls or emails about local projects, providing guidance and advice, and staff members often attend project-related meetings all over France. It has sought to position itself as a source of support for local decision-takers, whether elected officials or public employees, from the early stages of the procedure and to accompany them on request through to award of the contract.

However, about two-thirds of prior evaluations of local partnership contract projects are not referred to MAPPP, depriving it of the possibility of influencing the project structure or the scope of the assignments entrusted to the private-sector partner in order to optimise the economic outcome. Under these circumstances, and despite the efforts made to communicate and provide information, it cannot be ruled out that some projects were launched primarily in order to circumvent budget and accounting requirements, for reasons of budget convenience and in order to take the project off the balance sheet of the local authority concerned. On this basis, the rapid expansion of local PPP projects in the early years may well have been partly due to reasons unrelated to economic optimisation. This situation did not come to an end until new rules were introduced in an order dated 16 December 2010.[9] Partnership contract assets must now be included on the local authority balance sheet, generally from the date of entry into use, and the corresponding debt recorded as a liability, whereas previously they had been off-balance sheet items contained in an annex to the administrative and budget account.

Of course financial analysts, rating agencies, banks and regional audit offices already restated these amounts as debt-equivalents in order to assess the financial solidity of the public authorities concerned, but the new rules made things much clearer. This movement

coincided with the slowdown on the market which began in 2011. In view of the effects of the financial and economic crisis since 2008-09, however, it is difficult to say exactly what impact this more hardline approach to the accounting treatment of PPPs may have had on local authorities' choices.

2.3. Transport projects

2.3.1. Introduction

Although France has a very comprehensive infrastructure network spanning all forms of transport, considerable needs remain, linked to new modes of travel and economic regulation, and will continue to increase. Further investment in and maintenance of transport infrastructure are essential for regional development and the enhancement of economic and social life, not to mention environmental objectives linked to the intermodal shift. However, such projects are highly capital-intensive. Substantial amounts are needed in order to build infrastructure[10] and projects are often difficult to finance because of public-sector budget constraints. Nonetheless, it is up to public authorities to mobilise all the necessary resources to develop projects of proven socio-economic value.

With regard to meeting this public-interest requirement, the limitations of the traditional public project contracting approach to building and financing infrastructure are soon apparent:

- *insufficient short-term budget resources* to initiate the projects deemed necessary, compounded by the constraints of budget splitting and phasing, which are not always compatible with the requirements of project management;
- *the need to inject the resources as a lump-sum at the outset*, even though the projects have a working lifetime of several decades.

Innovative financing methods such as PPPs often prove a more appropriate response to the issues involved. With partnership contracts, as with concessions, private-sector resources can be mobilised over the lengthy period during which the expected socio-economic benefits are generated and allocated to major projects in the national interest. Another advantage, where the economic and legal conditions allow and socio-political acceptance is obtained, is that concessions (as well as partnership projects, when complemented by a toll, although this partnership contract+toll model has been scarcely used) transfer some of the cost to the end-user, thus limiting the need for contributions from the public purse and the corresponding impact on public-sector debt and the government deficit.

2.3.2. Partnership contracts in the transport sector

Table 3a. **Local authorities**

Contracting authority	Purpose	Amount (EUR million)	Award date
Tournonais Inter-municipal Council	CFTV station	3.2	9 August 2011
Verdun sur Garonne	Bridge	13.1	30 April 2010
Dijon Urban Community	Tramway electrical system	53.3	1 July 2010
Tarbes	Bypass	20	8 July 2010
Vichy	Bypass	54	31 October 2011
Dijon Urban Community	Hybrid buses	88	13 June 2012
Vannes	Tunnel crossing	57	27 November 2012
Martinique public transport authority	Public transport	74	7 December 2013
Cantal *Département* Council	RD 120 road	23	10 December 2013
Oise *Département* Council	Beauvais bypass	70	19 November 2013

Source: MAPPP.

Table 3b. **Central government**

Contracting authority	Purpose	Amount (EUR million)	Award date
RFF (French rail infrastructure manager)	GSM-R railway wireless communication system	608	18 February 2010
Sustainable Development Ministry	HGV ecotax system	675	20 October 2011
Sustainable Development Ministry	Road maintenance centres	130	14 January 2010
RFF	Brittany Pays de Loire high-speed rail link	3 300	1 January 2011
RFF	Nîmes-Montpellier high-speed railway bypass	1 530	13 January 2012
Sustainable Development Ministry	L2 Marseille bypass	600	7 May 2013
VNF (French waterways authority)	Aisne and Meuse dams	310	19 April 2013

Source: MAPPP.

Partnership contracts spread gradually in the transport sector without replacing existing forms of procurement, especially concessions. On the contrary, the public authorities use both forms jointly in PPPs. Over the last ten years or so, public financing arrangements for central government transport projects have been divided more or less equally between partnership contracts, concessions and public project contracting, as follows:

- *public project contracting*: Eastern high-speed rail link Phase I, Eastern high-speed rail link Phase 2, Rhine-Rhône high-speed rail link, Seine-Nord Europe canal (latest version);
- *concession*: A65, A63, A150 and A355 motorways, Perpignan-Figueras railway line, South Europe Atlantic high-speed rail link, Notre-Dame des Landes airport (Nantes);
- *partnership contract*: GSM-R railway wireless communication system, road maintenance centres, HGV ecotax, Brittany Pays de Loire high-speed rail link, Nîmes-Montpellier railway bypass and Montpellier station, L2 Marseille bypass, VNF dam renewal programme.

The public authorities clearly intended to allow themselves to choose what they regarded as the most appropriate model for each project. However, a dual trend can be seen:

- partnership contracts quickly became highly successful, being used for a large number of projects, especially where both the cost and the public interest value are high;
- at the same time concessions started to be used for railway projects (Perpignan/Figueras, South Europe Atlantic high-speed rail link, initial CDG Express project) and even airport construction.

The relevance of partnership contracts in the transport sector can be analysed not only in absolute terms in comparison with public project contracting (as an all-inclusive contract with transfer of risk to the private-sector partner) but also in relation to concessions, the trade-off being made between the transfer of traffic risk and an off-balance sheet project on the one hand (concessions) and a lower cost of equity financing and debt margin on the other hand (partnership contracts).

Partnership contracts come into their own when an economic assessment has been made that user revenue does not generate a sufficient return on investment (ROI) to raise the bulk of the finance on the markets on a project-risk basis without government security. Financial market pressures have raised the ROI thresholds for debt carrying technical and commercial project risk, since banks have become much more attentive to the risks incurred by the concession-holder. They have also reduced the maturity of available financing and are seeking significantly higher margins, especially in order to cover refinancing risk on long-term loans. As a result it has become harder in recent years to set up the financial package for concession projects, generating higher demand for public co-financing and government securities (with the attendant risk of seeing the operation

taken back onto the balance sheet in public accounts). Beyond a certain level of public co-financing of the concession, the partnership contract option becomes more attractive.

Partnership contracts are therefore used for transport projects where there is no user-generated revenue or where the revenue is insufficient to cover most of the costs and risks borne by the private-sector partner. This explains why public authorities have used both PPP methods, especially in the rail sector, with the concession model being chosen for the most-used and hence most "profitable" line (Tours-Bordeaux) and the partnership contract model for the others.

2.3.3. Main partnership contract projects

- Pilot projects

Some 30 projects were identified after the CIACT meeting on 14 October 2005, eight of them major transport infrastructure projects with a regional development aspect, worth a total of around EUR 5 billion. They were:

- the GSM-R railway wireless communication network,
- the L2 Marseille bypass,
- the renovation of VNF dams,
- the Nîmes-Montpellier railway bypass,
- the eastern branch of the Rhine-Rhône high-speed rail link (railway equipment only),
- the central section of the Avignon bypass,
- the upgrading of the RN 88 highway,
- the shared section of the A4/A86 motorways.

Of these eight projects, shortlisted after a quick review, the first four were implemented as partnership contracts and the last four were shelved or reprogrammed as public project contracting projects, which can be regarded as a broadly positive outcome.

- Major railway PPP projects

The option of entrusting a project to a private-sector partner did not become available to RFF, the French rail infrastructure manager, until December 2006, when a special law was passed. The financial crisis struck in 2008 just as award procedures for a number of major projects were starting, making private-sector debt scarcer, shorter-term and more expensive. Various measures had to be taken in 2008-09 to ensure public support for project financing, including government securities and the possibility of adjustable financing.

GSM-R, the first partnership contract, worth EUR 600 million, was concluded in March 2010. The EUR 7.8 billion contract for the South Europe Atlantic high-speed line from Tours to Bordeaux was signed as a concession in June 2011. It is the project with the highest revenue/investment coverage ratio. Under this public service delegation arrangement, the concession-holder bears the commercial risk. An initial public contribution of nearly half the financing amount was made necessary, in addition to RFF's contributions, reducing the concession-holder's contribution to 30% of the total. In addition, a substantial portion of the financing raised by the concession-holder is guaranteed by the state (central government or RFF), reducing the extent of the commercial risk.

As concessions could not therefore be considered for the other projects, the partnership contract option was chosen. The EUR 3.4 billion contract for the Brittany Pays de Loire high-speed line was signed in July 2011, the EUR 1.8 billion contract for the Nîmes-Montpellier

rail bypass was signed in June 2012 and the call for tenders for the new Montpellier-Odysseum station, worth an estimated EUR 100 million, was launched in July 2012.

Hubert Du Mesnil, former chairman of RFF:

The conclusion of the partnership contract for the GSM-R wireless communication system very significantly speeded up the timetable for rollout across the rail network. The main advantage of PPP is that it obliges both public- and private-sector players to give a joint long-term commitment, integrating design, operation and maintenance of the infrastructure in a single package. It is an arrangement that could well be used for other projects, involving new technology or network modernisation, for example, as well as for smaller projects than high-speed lines, and stations of course.

- Some partnership contracts with local authorities
  - Dijon: Tramway electrical systems, July 2010,
  - Dijon: Hybrid buses, June 2012,
  - Fort de France (Martinique): Bus rapid transit system, December 2013.

Local authorities tend to prefer concessions for urban public transport. Three projects use this model: the Rouen light rail system, the express tram from Lyon-Part Dieu station to Lyon Airport and the Reims tramway. Concession projects are still difficult to put together because the large amount of capital required and the issues at stake (very high visibility, political and social impact, etc.) make them difficult to abandon or delay once work has started. Even if the concession-holder runs into serious problems, in practice it is out of the question for the contracting authority to shelve the project, thus generating a major off-balance sheet commitment ("contingent liability") which the public-sector partner needs to take fully into account beforehand.

2.3.4. Sectoral illustrations

- Rail transport

RFF was able to commission rail infrastructure (high-speed or conventional lines, signalling and communication systems such as GSM-R, stations) using partnership contracts since the corresponding legislation was introduced in December 2006. Under Article 4 of its by-laws, however, RFF is bound by a financial equilibrium requirement which means that it cannot commit to projects, whatever their contractual form, which cannot be financed from the expected revenue. Consequently, the share of fees not financed from expected revenue (rental of track to SNCF, provision of structures, etc.) must be covered by initial subsidies from public authorities, whether central government, local authorities or the EU.

- Urban public transport

Urban public transport is one of the local public services in France where management is most frequently delegated (over 90%), though the Paris region, with RATP and SNCF – public utilities under the oversight of STIF, is an exception. However, delegated management mainly concerns operation, in the form of incentive management contracts or contracts with a lump-sum price or contribution. It includes the financing of structures or equipment in fewer than 3% of cases. The investment requirement is of the order of EUR 6-7 billion a year nation-wide, however, and can be covered by a concession or partnership contract,

typically over the very long term (30 years or more). As with rail transport, the partnership contract does not generally cover rolling stock, which is more often acquired through structured financing or leasing, with or without tax optimisation.

- Road transport

PPPs may also be used for road infrastructure projects, whether local link roads, bypasses or urban ring-roads or even fast roads or motorways funded by central government. The motives are the same as in other sectors: compliance with deadlines, budgets and contractual long-term targets for availability and performance.

Local authorities have embarked on four road projects under partnership contracts: the north-west Tarbes bypass (Hautes-Pyrénées *Département* Council), the Vichy bypass, the RD 120 upgrade (Cantal *Département* Council) and the Beauvais-Troissereux bypass (Oise *Département* Council). Civil engineering structures under partnership contracts include the Kérino tunnel (Marle crossing) at Vannes and a bridge at Verdun-sur-Garonne. Projects with central government funding include the L2 Marseille bypass and 63 road maintenance centres for the Ministry of Ecology.

2.3.5. *Advantages and disadvantages of partnership contracts in the transport sector*

In transport perhaps even more than in other sectors, especially building, PPPs offer substantial scope for optimisation. However, such projects also involve higher levels of risk, whether financial (in concessions) or socio-economic (in partnership contracts), linked to the difficulty of predicting levels of traffic or use. Many projects around the world have been seen through rose-tinted spectacles.

2.3.5-1. Comparison of different options

- Partnership contracts help to modernise public management by promoting a culture of evaluation and comparison of the different options for carrying out a project. This highlights hidden costs such as delays, insurance, overheads and management costs, project management costs, etc.
- In contrast, benchmarking (definition of standard costs) is difficult and evaluation methods may be very different (socio-economic benefits generated by earlier availability of the facility, weighted average cost of capital vs cost of public debt).

2.3.5-2. All-inclusive contract/Scope of the partnership contract

- Design, construction, maintenance and financing are all integrated into the same contract and the private-sector partner manages all interfaces.
- Several levels of project integration may be envisaged in order to define the scope of the private-sector partner's assignments (design and civil engineering or infrastructure works; rolling stock and signalling; technical and commercial operation of the project), with a choice having to be made between them. This brings up aspects which need to be carefully analysed, such as the integration capacity of the contracting authority (the authority which organises the transport), the applicable regulations, impacts on the expected level of competition, etc.
- In contrast, it is necessary to define a critical size for the project bearing in mind the complexity and cost of the contractual arrangement.

2.3.5-3. Cost/Deadlines

- Penalties help to guarantee timely handover of the project in compliance with the terms of the contract. This is particularly important for urban public transport infrastructure projects which cause a high level of nuisance (traffic problems due to road works, impact on local shops, etc.) and are highly visible for residents and users who are also voters.

2.3.5-4. Competition

- Competition is assessed according to a wide range of criteria, including sustainable development (mandatory for partnership contracts), ensuring that consideration is given to environmental issues such as local residents' quality of life, the natural and built environment, air quality and protection of habitats and fauna.
- In contrast, large-scale projects mobilise only major firms because of the need to provide robust financial guarantees to lenders, especially during the appeal period after contracts have been signed.

2.3.5-5. Private financing

- Leverage of public financing has allowed for more projects to come to the market, generating a snowball effect, without phasing. For the first time, PPPs allowed RFF to build several high-speed lines at the same time and to allocate the public resources freed up in the short term to other projects (though with the risk of creating a "hump" in the following years, given the limited long-term financial capacity of the rail system).
- So far, the scarcity of long-term bank lending has been offset by the possibility of using the partial and adjustable financing terms in the final bid to optimise the financial package. The financing can thus be finalised after the successful bidder has been chosen (BAFO stage), which has the additional advantage of introducing a funding competition, as was the case for the Brittany Pays de Loire high-speed line.
- These transport infrastructure projects generally have a long or very long contractual term (50 years for the South Europe Atlantic high-speed line) due to the scale of investment required and very long technical and economic amortisation periods. It has been possible to maintain loan maturities and reduce the cost of financing under partnership contracts through the security offered by the Dailly assignment of receivables, with the EIB and the Caisse des dépôts et consignations Savings Funds Department providing additional bank liquidity over long maturities.
- In contrast, lenders' risk aversion has generated demands for additional securities which are unjustified with regard to the project companies. Hedging interest rate risk and swaps has proved complex when the public authority wants to set rates on signing the contract, which is generally the case in the transport sector.

2.3.5-6. Interfaces

- The large number of players in the transport sector (incumbent operators, regulatory bodies, etc.) makes it essential to clarify remits in order to define the private-sector partner's assignments.
- Exclusivity clauses limiting the possibility of creating competing facilities and early termination clauses are particularly complex in transport contracts. With transport projects, the difficulty of managing functional and geographical interfaces remains after the construction phase, during the period of operation.

2.3.5-7. Long-term optimisation of the project

- PPP projects integrate design, construction and maintenance in a lifecycle cost approach. Operating and maintenance costs are ring-fenced.
- Maintenance and replacement are integrated over the lifetime of the contract. In contrast, the technical specifications, defined by the incumbent operators, are very demanding. Private-sector partners will not assume technology risk, in a market which is not yet mature.
- There is not as yet any long-term feedback for regeneration.

Whatever the acknowledged economic advantages of PPP in comparison with public project contracting (shorter lead times and contractual performance guarantee), two questions arise today:

First, with regard to *budget sustainability*, do public authorities still have the resources to bear the financial burden of PPP fees (or subsidies, for the concession model)?

The answer is perhaps to be found in models combining a partnership contract with the collection of a toll, where possible, by the public authority (or by the private-sector partner on the public co-contractor's behalf). This would transfer the traffic/use risk back to the state (though it should be possible for the risk to be spread at that level) and, from the standpoint of Eurostat, take back onto the balance sheet arrangements which, as concessions, could have been regarded as off-balance sheet. Conversely, it would also significantly optimise financing terms for both equity (portion and required return on investment) and debt, generating greater financing capacity for an identical public-sector financial commitment.

The other dimension of the question arises in connection with the cancellation of the Ecotax (or "HGV toll") project. A partnership contract project (see the chapter on ICT PPPs), it was intended to finance transport projects through the French transport infrastructure financing agency AFITF, especially rail and waterway projects designed to promote an intermodal shift.[11]

Second, with regard to *bank liquidity*, given that PPPs traditionally rely on long-term non-recourse financing to cover 80-90% of the financing amount, is that still possible for the very long periods typical of infrastructure projects?

It would appear that, despite the recent financial crisis, the interest in transport infrastructure projects shown by lenders and investors has not waned, not least due to greater involvement on the part of institutional investors and the creation of a new asset class, namely infrastructure debt.

2.4. Projects in the justice sector: Prisons and courts

2.4.1. The specific features of the justice sector

For reasons of urgency and lack of facilities, the justice sector was one of the first to be earmarked for PPP-type arrangements, with the passing of the Justice System Framework Act of 9 September 2002 (*Loi d'orientation et de programmation pour la justice*, LOPJ). The Act opened up public procurement to all-inclusive contracts including financing with the aim of facilitating and speeding up implementation of a large-scale prison building programme involving the construction of 13 200 places at an estimated cost of EUR 1.4 billion in order to ensure compliance with European rules on individual cells and showers in cells.

2.4.1-1. The PPP prisons programme

In view of the scale of investment required, PPPs were planned from the outset, especially using the AOT/LOA model,[12] the terms of which had just been defined in the Internal Security Framework Act of 29 August 2002. The generic partnership contract was not introduced until later, in mid-2004. Leaving aside budget considerations, the government's aim was also to refocus the prison service on its core missions while continuing the experiment of joint management on a lifecycle cost basis begun with the "Chalandon" programme in the 1990s.

The first round of tenders, for four prisons batch with 2 790 places under the LOPJ framework and using the AOT/LOA model, concerned design, construction, financing and maintenance for 27 years. It resulted in the conclusion in February 2006 of the first major central government PPP building project and provided an opportunity for trying out the new system, including prior evaluation (not mandatory with the AOT/LOA model but urged by the ministry), preparation of the master programme, competitive dialogue, choice and weighting of criteria for the admission and selection of bids, etc.

In contrast, prior evaluation is mandatory with partnership contracts, which succeeded the AOT/LOA model in 2008 (see table below), and must be validated by MAPPP. The services falling within the scope of a partnership contract are not limited to construction of the facility[13] but may include personal services[14] such as the supply of fluids, catering services for prisoners and staff, management of the prison shop and laundry, family transport and reception and prisoner transfer as well as work and vocational training for prisoners. In all circumstances, the prison service remains responsible for guarding prisoners.[15]

There were no new prison PPP projects under consideration in mid-2014, though this development is due not so much to the choice of partnership contracts, the feedback from which is regarded by the judicial building agency APIJ as entirely positive (see below), as to the government's decision in 2012 to turn away from the emphasis on locking offenders up and increasing capacity and to give priority to alternatives to prison.

2.4.1-2. Institutional players

- Construction: APIJ

One of the characteristics of the justice sector is the existence of a strong and experienced public project management unit, the Justice Ministry building agency, initially created in 2001 and renamed APIJ (*Agence pour l'immobilier de la Justice*) in 2006. The agency oversees all prison and court building projects (except for the Paris Law Courts project, which is overseen by a sister agency, EPPJP, a special-purpose public corporation, though it shares technical competence and human resources with APIJ). APIJ, which exercises operational oversight of projects to handover, has built up a dynamic and motivated team. It has accumulated and developed expertise over time, moving rapidly up the learning curve, even though private-sector candidates have sometimes found it to be overbearing. The Cour des comptes (French National Audit Office) has on several occasions acknowledged APIJ's "professionalism and efficiency" and "the noteworthy efforts made by the prison service to improve its project management resource"[16] (see below).

Co-operation between MAPPP and APIJ has strengthened over time, starting at the prior evaluation stage. One outcome of that co-operation has been the implementation and enhancement of MAPPP's risk modelling methodology. Likewise, APIJ has regularly involved its MAPPP colleagues in competitive dialogue committees at the various stages of the bid selection procedure and during finalisation of the draft contract.

Over the period, APIJ has considered the appropriateness of extending the scope of partnership contracts to personal services in addition to conventional building services, and to the role to be given to the lead contractor in order to guarantee architectural quality, thus helping to make partnership contracts more effective over time.

- Operation: The prison service

For the last 20 years, the Justice Ministry prison service (Direction de l'administration pénitentiaire) has delegated the operation and maintenance of French prisons through "delegated management agreements". In 2007, the service decided to set up a dedicated unit[17] to manage a network to monitor and control the new partnership contract and AOT/LOA contracts. The 8-person unit (Mission de la Gestion Déléguée) is responsible for general oversight of the contracts. It is involved in the design and conclusion of contracts by APIJ, then oversees construction, tracks financial and budget aspects after handover of the facilities and provides information and training to the network.

In 2013, the unit monitored 51 prisons (out of a total 191) with a little over 30 000 places, representing 50% of all capacity. The number of prisons under delegated management has risen by 24% since 2009, but they mostly concern medium-term contracts (five to seven years) with existing prisons for the provision of catering services, maintenance, fluids and energy and vocational training. Only three contracts (corresponding to the first three lots) out of 18 and ten prisons out of 51 are comprehensive long-term PPP contracts (approx. 30 years) which include construction and financing.

The main services provided by co-contractors are property services and, predominantly, personal services. One of the prison service's concerns is that negotiating conditions should not be distorted by the very small number of players in the sector.

Delegated services in these prisons cost EUR 400 million a year, representing 36% of the prison service's operating budget, with PPP rents accounting for almost a third of the total (EUR 115 million). PPPs alone therefore consume around 10% of the operating budget, a share which is likely to increase with the handover of the next facilities (Lots A and B) from 2015.

In order to manage these contracts, the prison service has adopted an oversight strategy based on three strands: self-monitoring, provided for in the contracts; internal control; and external controls by consultancies in more technical areas such as catering, maintenance and performance.

The prison service puts the cost of oversight at close to EUR 10 million corresponding to 2% of the invoiced rent amount (this figure does not include the impact of penalties).

APIJ has already concluded five PPPs for prisons on behalf of the Justice Ministry, including three under partnership contracts.

- The first, on 23 February 2006, was an AOT/LOA contract with Optimep 4, a wholly-owned subsidiary of Eiffage, for the financing, design, construction, upkeep, maintenance and lease of four prisons in the Loire, Rhône, Meurthe-et-Moselle and Hérault *départements*. They have all been built and are now in operation.
- The second, on 12 October 2006, was also an AOT/LOA contract with Thémis, a subsidiary of Bouygues group companies, Dexia and Royal Bank of Scotland. The contract concerns the financing, design, construction, upkeep, maintenance and lease of three prisons in the Vienne, Sarthe and Haute-Normandie *départements*. The three prisons have been handed over.

Table 4. **Projects completed and in progress**

Contracting authority	Purpose	Form	Investment (EUR million)	Notification	Lead contractor
Justice Ministry – APIJ	Lot 1: four prisons (Roanne, Nancy, Lyon-Corbas, Béziers), 2790 pl.	AOT/LOA	178	February 2006	Eiffage
Justice Ministry – APIJ	Lot 2: three prisons (Poitiers, Le Havre, Le Mans), 1 690 pl.	AOT/LOA	155	Oct 2006	Bouygues
Justice Ministry – APIJ	Lot 3 (Réau, Nantes, Lille-Annœullin), 2 030 pl.	PC	195	20 February 2008	Bouygues
Justice Ministry – EPPJP	Paris Law Courts	PC	563	15 March 2012	Bouygues
Justice Ministry – APIJ	Caen Law Courts	PC	34	27 December 2012	Natixis
Justice Ministry – APIJ	Lot A – two prisons definite (Valence, Lyon), one conditional (Lutterbach)	PC	320	28 December 2012	Spie Batignolles/GEPSA
Justice Ministry – APIJ	Lot B – Prisons (Beauvais)	PC	90	28 December 2012	Spie Batignolles/GEPSA
Justice Ministry – APIJ	Reconstruction of La Santé detention centre	PC	180	May 2014	GTM Bâtiments (Vinci)

- The third, on 20 February 2008, was a partnership contract with Théia, another subsidiary of Bouygues group companies, Dexia and Royal Bank of Scotland. The contract concerns the design, construction, upkeep and maintenance of prisons in the Nord and Loire-Atlantique *départements* plus the provision of personal services. The prisons were handed over in 2013-14.
- The fourth, in March 2012, was a partnership contract for the Paris Law Courts project with a consortium led by Bouygues Bâtiment Ile-de-France and the Renzo Piano practice as architect.
- The fifth, for prisons in Valence, Riom and Lutterbach (Lot A) and Beauvais (Lot B) was concluded in December 2012, though the Lutterbach project in Lot A was ultimately shelved.

The partnership contract for La Santé detention centre is due to be signed in late 2014, once MAPPP and the Budget Directorate have approved the final draft.

2.4.1-3. The appropriateness of using PPPs in the sector

A comparison of design/build (used for most non-PPP projects) and PPP models (AOT/LOA or partnership contract) showed a cost of EUR 2 450-2 650/m^2 for the latter in operations carried out in 2008, which is 7-8% higher than for design/build (the costs per inmate evaluated are harder to compare because of major differences between programmes). The higher cost is probably due partly to the risk transfer provision introduced by contractors in PPPs and partly to the choice of longer-lasting materials and solutions, which reduce medium-term upkeep and maintenance costs. More evidence is needed, however, since there has not been sufficient feedback from the projects to date.

Contractors have complied with construction and handover deadlines for all the programmes, even though lead times were significantly shorter than for similar operations using the public project contracting model (see interview with the director of APIJ below).

2.4.1-4. Law courts

Only two law court projects have been carried out as PPPs, though the first is a very large project indeed.

- Paris Law Courts

Construction deadlines for the Paris Law Courts project, which includes a very tall tower, are extremely tight. Occupying a site with a footprint of about 17 500 m^2, the future complex will include 90 courtrooms, a 250-seat auditorium and a large lobby.

In order to achieve this, the agency heading up the project for the Justice Ministry (*Établissement public du palais de justice de Paris*, EPPJP) wished to bring in a private-sector partner responsible for designing, financing, building and maintaining the structure and providing soft FM services (supply of fluids, cleaning, waste management, reception, fire safety). The contract is for a 27-year term as of the date of entry into possession of the buildings, with the total design/construction phase lasting 57 months. The architectural and planning challenges associated with this landmark project and the involvement of local authorities in the choice of the architectural project led EPPJP to launch a one-off procedure with the aim of giving the partner complete responsibility for the design, albeit with an obligation for each candidate to put forward several architects in the initial bid phase.

Although this option allowed bidders to offer a wider range of architectural solutions than in a conventional partnership contract arrangement, where each candidate generally only proposes a single architect/designer and a single architectural solution, the additional cost makes it unsuitable for other projects. As well as being a very large-scale and high-rise project, the greater complexity caused by internalisation of the architectural competition and the level of compensation for bidders not chosen after the competitive dialogue meant that only two consortia were admitted to bid. However, the dialogue appears to have fulfilled its promise to optimise the planned project and to have resulted in an architectural solution that is not only the best in relation to the economic and financial criteria but also, in the unanimous opinion of the specialists on the dialogue committee, worthy of the eminence of such an edifice (helped by the 25% weighting given to this criterion in the award procedure). The works budget of EUR 563 million (excluding borrowing costs and tax) and the forecast aggregate rent of around EUR 2.2 billion make this an exceptional project in every way.

The project advanced rapidly once the government had decided on the site in the Batignolles district of Paris, announced by the President of the Republic on 29 April 2009. However, the partnership contract, signed in February 2012, was almost cast into doubt shortly afterwards when the new Justice Minister, surprised that the contract should have been signed just a few months before presidential elections saw a change at the highest level of government, decided to ask the General Inspectorate of Judicial Services to carry out an audit of the project. The audit report concluded that the contract was fair and that it would be difficult to back away for both financial and organisational reasons. The project was confirmed.

However, it was held up again in 2013-14 by appeals lodged by a campaign group called "Justice dans la Cité", founded by lawyers at the Paris Bar opposed to relocation from the existing law courts in central Paris to the new site in the north-west of the city. This illustrates just how sensitive the bank financing for this type of package is to cancellation or termination risk. Banks are extremely reluctant to authorise drawdowns of credit facilities as long as such risk remains, however unlikely, because of appeals to the administrative courts. In this particular case, work was halted for nearly eight months, from July 2013 to April 2014, before starting again after the Paris Administrative Appeal Court issued a judgment dismissing the appeal on 8 April 2014.

- Caen law courts

As refurbishing and extending the existing law courts in Caen would be both expensive and problematic, APIJ decided to build a new complex. Located in the city's peninsula neighbourhood, it will comprise Caen District Court and other lower courts. In addition to traditional hard FM services, the contract signed in December 2012 includes other services including fire safety and the purchase of fluids. The contractor is a leasing company belonging to the BPCE banking group, which helped to oil the financial discussions and made it easier to raise the financing for this medium-sized project, which calls for upfront investment of EUR 25 million (in constant terms) and has a term of 27 years plus the construction period.

Here again, the new Justice Minister suspended the project procedure in summer 2012. Initially sceptical about PPPs in general, she finally concluded that in this particular instance the project was too urgent to call the outcome of the tender procedure into question, because the need was clearly identified and there was no credible public project contracting alternative.

2.4.2. Initial feedback

2.4.2-1. Handover of facilities to the prison service

Handover from the agency which oversees construction to the agency which will operate the facility and take over the project and relations with the private-sector partner is always a critical time. The APIJ systematically involves the prison service in the procedure to hand over a facility, which determines the start of the period when rent becomes payable and marks acceptance of the assignment of claims. In 2009, the prison service started using performance-based contracts coupled with a set of indicators to track outcomes.[18] The system was extended to all prisons under delegated management in 2010, entailing a major cultural shift for public-sector staff. One or more indicators are used to measure the performance of a service in a PPP. The process is as follows:

- definition of the service,
- performance indicators (conversion of general objectives into expected outcomes),
- benchmarks (expected outcomes),
- measurement of the indicator (how the outcomes are calculated),
- tolerance range (reduction of expected outcomes) and time limit (for achieving outcomes),
- penalty threshold (how penalties are calculated),
- amount of the penalty incurred.

A system has been set up to track penalties. If they have risen in recent years, it is not because co-contractors have become less efficient but because the prison service has become more expert at tracking indicators and applying penalty clauses. Nonetheless, the amount of penalties remains marginal (around 1% of the amount of rent invoiced in 2012), very much lower than both the theoretical amount of penalties incurred and the amount that the unsecured portion of the financial rent after the assignment of receivables would allow (i.e. the portion corresponding to equity and project-risk debt). But private-sector partners are very sensitive to penalties, however small they might appear, and seem to feel under genuine pressure as a result.

2.4.2-2. Feedback from projects in operation and conclusions

4. Building aspects

a) Some construction flaws have been found, often caused by the need to comply with handover deadlines, causing work to accelerate towards the end of the project. Disputes arise at a later stage, during operation, and result in premises becoming unavailable, the difficulty being to identify who is responsible for the flaws.

Examples:

- Failure of the CCTV system at Lyon-Corbas (AOT/LOA Lot 1), failure of the microwave barrier system at Roanne (AOT/LOA Lot 1).
- Problems of water infiltration and waterproofing of buildings at Le Havre (AOT/LOA Lot 2).
- Replacement of resins in cell shower units in the four prisons of AOT/LOA Lot 1, requiring three years of work in each prison.

b) Requests for changes or additional work are complex to manage, especially as it is difficult to use third parties. The problem lies in how to handle supplements without upsetting the balance of the contract while ensuring competitive tendering.

Conversely, because of their long-term performance commitment, private partners have an incentive to improve the design of technical facilities so that they are easier to maintain. At Lille- Annœullin, for example, cells are fitted with watertight concrete shower units, which are more expensive to install but harder-wearing.

Box 2. **Interview with Jean-Pierre Weiss, Director General of APIJ from 2007 to 2013**

The first thing we noticed was how quickly work on a PPP could start. The competing bidders take their studies to a very advanced stage during the competitive dialogue procedure, which means that they are immediately operational once the contract has been signed. Lead times for public project contracting are a year longer on average than with a partnership contract, even if the high quality of our people at APIJ generally ensures that deadlines are met.

On the subject of risk transfer, there have been three occasions involving major risk where the PPP model proved very useful.

On the Nantes project, hundreds of explosives were found underground during works even though the Defence Ministry, which had sold the land, had issued a certificate stating that there was no such risk. The private-sector partner, Bouygues, handled the situation, which caused a one-year delay. Even though the potential risks were estimated at tens of millions of euros, the public-sector partner (central government) argued that it was not contractually bound by the decontamination certificate. In the end, a penalty of EUR 7 million was paid and charged to the Defence Ministry on the grounds of proven negligence. The PPP had indeed protected the public-sector partner.

This case shows that the excess cost of partnership contracts is at least partly attributable to its function as a sort of insurance against this kind of hazard.

On the Le Havre project, another underground risk arose with the discovery of an enormous cavity that had not been detected by preliminary boring. The private-sector partner did not

Box 2. **Interview with Jean-Pierre Weiss, Director General of APIJ from 2007 to 2013** *(cont.)*

seek compensation and was able to make up the delay, handing over the project on time, whereas with public project contracting the same problem would have cost around EUR 10 million and delayed handover by six months.

On the Réau project, construction of the central control unit revealed a blind spot in relation to paths taken by inmates, as a result of which the public-sector partner required the private-sector partner to make extensive alterations. With a conventional model, the public-sector client would have approved the construction plans without being aware of the flaw and would have had to pay the cost of rectifying it.

In each case, APIJ strengthened its monitoring and quality control team in order to ensure that the setbacks would not cause any loss of quality.

Ex-post audits of prison building projects using PPP and design/build models do not show any major difference in terms of outcomes.

That is primarily due to the attention paid by public-sector partners to the quality of work carried out by the private-sector partner. However, it is regrettable that the shareholder structure and management of special-purpose vehicles are not designed with optimisation of the project as a whole over time in mind. The SPV manager during the construction phase is a construction industry professional who is therefore less sensitive to the need to do what is necessary to optimise the subsequent operation and maintenance phase. Too often, the private-sector project company merely passes the risk on to the builder and finance management (FM) provider through back-to-back allocation. SPVs need more substance in terms of project management and capitalisation.

5. Operational aspects

a) It is still difficult for the prison service to compare the operational quality of public project contracting and PPP prisons because the levels of major maintenance and replacement are not the same.

b) There is no good economic reason why personal services should be included for the lifetime of the contract. They should therefore be uncoupled from the term of the overall contract.

c) The major maintenance and replacement plan should be included in the contract because there is no document at present which stipulates precise terms for the handover of built structures at the end of the contract.

d) Additional costs related to deterioration of facilities are sometimes exaggerated (e.g. a contractual provision of EUR 10 000 for replacing a TV!).

In contrast, the private sector is acknowledged to have greater expertise in catering (consideration given to health and safety standards, public health and special diets for inmates) and prison shops (over 750 products listed under delegated management, compared with just 400 on average under public management).

6. Contractual aspects

a) The effectiveness of the PPP model is undermined by the complexity of indicators and clauses in the contractual arrangements. It is important to simplify definitions and calculations wherever possible.

b) A lack of understanding of how rents are calculated undermines monitoring of the contract at local level, with the result that they have to be monitored at regional level, despite increased training.

c) Some detrimental contractual imprecisions remain, especially in early contracts such as the AOT/LOA contracts for Lots 1 and 2.

7. Steering aspects

Strong public-sector governance is essential. Information systems need to be further improved.

There have been no disputes to date because the prison service prefers to seek dialogue. A database of current contracts needs to be created in order to capitalise on feedback and establish benchmarks, including clarification of contractual arrangements which may leave room for interpretation and disagreement, suppression of unproductive or ineffective provisions and the addition of provisions to remedy identified shortcomings.

Nonetheless, the prison service probably has more experience than other agencies of capitalising on feedback from the operational implementation of PPP contracts and is willing to compare its practice and experience with those of other agencies. A plan for progress is being considered, based on four types of indicator – qualitative, social, economic and environmental – in order to provide a better basis for negotiations with the private-sector partner and reduce the cost of the contract.

2.4.3. Cour des comptes criticism: More rigid Justice budgets due to PPPs and the difficulty of comparing public- and private-sector management

A Cour des comptes report in 2010 found that "the cost of rents represents a payable expense that cannot be reduced by a budget measure. The prison service budget becomes more rigid as a result", with the attendant risk of seeing the emergence of a two-speed system with first- and second-class prisons. The long-term contractual payment guarantee in the delegated management model thus leads to an underlying reduction of budget resources allocated to the public sector in the traditional management model.

The decision to make extensive use of PPPs offered a way of circumventing the immediate constraints of the conventional budget financing of central government investment and securing the necessary construction, upkeep and maintenance requirement in the long term. However, it raises the question of the policy's long-term budget sustainability. The cost of rents associated with PPPs is known and likely to continue rising sharply in coming years in view of the scheduled handovers to 2015.[19] In constant terms at 2011 values, excluding indexation, and merely for the projects already under way, the Cour des comptes estimates that rental payments will rise from EUR 95 million in 2010 to EUR 567 million in 2017, a six fold increase. The prison service's incompressible expenses now represent more than 50% of a budget which is itself rising sharply.

However, several developments limit the scope of this criticism.

- Under the new rules instituted by Council of State decree No. 2012-1093 of 27 September 2012 in response to this legitimate concern, a PPP with a central government agency or public corporation can now be signed only after a budget sustainability study and with the official consent of the Economy and Budget ministers. In addition to the project's total budget cost and the annual need for budget appropriations for commitment authorisations and payment appropriations to cover investment, financing and operating costs for the entire lifetime of the contract,[20] the budget sustainability study

must describe projected price indexation assumptions, illustrated by sensitivity tests on the amount of rental payments, and estimate for at least the year following entry into possession the portion of programme and mission appropriations allocated to PPP rents already contracted. It must also include information that will help to assess the project's effect on public accounts (possible inclusion in the public-sector deficit and debt under the Maastricht criteria), a description of the building project (only for central government and its agencies) together with occupancy and floor space ratios, and changes in the public-sector workforce over the first three years of the contract. Even if the implementing circular prepared by MAPPP and the Budget Directorate in October 2012 had not yet been adopted by mid-2014, the text marks a significant step forward in relation to medium- and long-term budget sustainability and predictability.

- Concerning the "separability" of contracted personal services (limited to five years in the most recent partnership contracts, i.e. Lots A and B), APIJ found that the synergies from combined hard and soft FM contracts were not as great as expected, especially as even with market-testing or benchmarking,[21] outsourcing personal services greatly limited the public authority's room for manœuvre over time. A decision was therefore taken as of Lots A and B to limit the term of such contracts to nine years (thus making them renewable twice, given that these partnership contract last 27 years) in order to ensure greater flexibility, including a return to direct management if the results of outsourcing are not conclusive. Limiting the scope of personal services in prisons should also help to attract medium-sized bidders who are not in a position to offer the same range of services.
- Ring-fencing has a beneficial effect: Expenditure on maintenance and upkeep is not intended to act as an adjustment variable from one year to another, otherwise it could ultimately compromise the facilities' availability and value in use. If an adjustment has to be made, it is better that it should happen upstream, at a point where the ministry frames its multiyear strategy and carries out overall budget planning.

Initial projections under the new prison-building programme, which until 2012 foresaw the use of PPPs for some 20 additional facilities, have now been called into question within the broader framework of a redirection of policy towards alternatives to prison and a reassessment of the appropriateness of PPPs following the evaluation carried out by the Finance General Inspectorate in 2012. The third tranche of Lot A (Lutterbach prison) has not been confirmed.

It is singularly difficult, if not impossible, to compare public- and private-sector management because of the lack of cost accounting data on which to base a like-for-like comparison of costs under the two systems.[22] The prison service often has little idea of the real costs incurred by its private-sector partners and service providers. Broadly speaking, the Cour des comptes considers that publicly-run prisons, which still account for half of total capacity, are far from having the same instruments for measuring costs and performance at their disposal as privately-run prisons.

This underlies the policy options chosen by the prison service's delegated management unit, which aim to better understand the existing situation with each model in order to be better able to choose between them.

2.4.4. The quest for optimised competition and contracting

APIJ's experience with PPP projects is intended, where relevant, to inform and influence other forms of public procurement used by the agency to implement its programmes. In

this respect, there is growing use of all-inclusive contracts combining design and construction (the preferred procurement method for prisons) with the possibility of competitive dialogue, or even the design, construction, upkeep and maintenance contracts authorised by the Planning Act of 27 March 2012, without additional conditions, in the same way as for design/build contracts, by way of an exception to the Public Project Contracting Act. At the same time, APIJ tries to involve contractors in the finalisation of design studies for the project before inviting them to tender on the basis of a final design (this finalisation corresponding to the firm tranche of their contract), with construction being a conditional tranche that becomes firm if the company is able to confirm its price. These various measures are directly inspired by positive feedback received by APIJ from its PPP projects and illustrate the related benefits that may be expected from a reasonable use of PPPs.

2.5. PPPs in the healthcare sector: Hospitals and nursing and care homes

2.5.1. Substantial investment over the last 10 years using PPPs

If there is a sector with an urgent need for rapid investment justifying new forms of contracting, it is healthcare. Dilapidated and obsolete hospital buildings and facilities combined with new health and safety standards and the need for investment in areas identified as national priorities (A&E, perinatal care and cancer) meant that there was a lot of catching-up to do.

- The 2007 and 2012 Hospital Programmes

1. *Origins*: The aim of the 2007 Hospital Programme was to modernise healthcare and public and private hospital buildings. Calling for investment of EUR 16 billion, including EUR 6 billion of public subsidy, the programme was launched in 2003 in order to substantially boost investment in hospitals over the five-year period to 2007 and accelerate the upgrading of hospital facilities.

   Priority was therefore given to projects starting in 2003 and/or scheduled for completion before the end of 2007. Unlike in other public service sectors, the use of new sources of external financing such as the *bail emphytéotique hospitalier* (BEH, a form of long-term lease) were to be systematically considered, the stated objective being that PPPs would cover 15% of the amount of the 2007 Hospital Programme and include at least one project per region in mainland France, with speed being of the essence. Another reason for using PPPs was the perception that they were off-balance sheet operations and therefore did not affect the existing debt situation of hospital entities (*établissements publics de santé*).

2. *Implementation*: In reality, although most projects used the conventional public project contracting method, the new procedures were used for some 60 projects, representing investment of EUR 1.8 billion, 12% of the total.

   - Design/build contracts were used for around 40 projects representing investment of EUR 1.2 billion with a 33% public subsidy.
   - BEH models were used for 18 projects representing investment of EUR 613 million with a 45% public subsidy on average. There was therefore a clear financial and institutional incentive to use the BEH model, irrespective of its assumed advantages, making hospital PPPs different from those in other sectors.

3. *Extension*: In order to complete investment programmes, a new 2012 Hospital Programme was launched when the first one expired, with a first tranche worth EUR 5 billion.

Against a background of economic reform and the deteriorating financial situation of hospital entities, the 2007 Hospital Programme achieved its aim of boosting investment but also increased debt, and amortisation and interest expenses because projects were financed mostly by direct or indirect borrowing, with support being based on repayment assistance rather than upfront subsidy.

4. *Context*: The public-sector context for this investment was complex, involving several levels of responsibility and decision-taking compounded by the fact that France's 1 000 or so hospital entities enjoy extensive autonomy. From a governance standpoint, hospital entities operate autonomously. Within their budget projections (annual estimates of revenue and expenditure), they can make their own choices regarding construction (in contrast to prisons, for example, each hospital entity is its own contracting authority), operation and maintenance and may decide to sub-contract or provide services itself. Only the project monitoring aspect – in practice seen mostly from the standpoint of disbursements and timetables – was carried out on a tripartite basis between regional hospital agencies (ARH[23]), the hospital investment support unit (*Mission nationale d'appui à l'investissement hospitalier*, MAINH) and the Directorate of Hospitals and the Organisation of Healthcare (DHOS[24]).

   These innovative procedures speeded up the management of some building projects, reducing the time to completion by 30% on average.

   Those factors and policy options helped to encourage the use of various forms of PPP over the last ten years. Although the objectives of the 2007 and 2012 Hospital Programmes have been broadly met, that has not prevented some spectacular failures and a flurry of severe criticism from oversight bodies, notably the General Inspectorate of Social Affairs and the et Cour des comptes.

   In addition, the initial scaling of building projects, especially for hospital entities, was based on optimistic forecasts of activity which have not yet been realised. Increased capacity and the resulting operating and maintenance costs are weighing heavily on hospital budgets and contributing to operating deficits.

2.5.2. Use of PPPs

2.5.2-1. Available types of contract

There are two models for PPPs in the hospital sector, created at different moments in time.

One is the *bail emphytéotique hospitalier* (BEH), derived from the *bail emphytéotique administratif* (BEA) used by local authorities (see Section 1.1.a above) and introduced at Article L. 6148-1 et seq. of the Public Health Code following official approval of the 2007 Hospital Programme. It is a property lease only, not designed for service projects. The BEH was created in August 2003, before the partnership contract, due to the urgent need for the Health Ministry to launch an investment programme.

The other is the standard partnership contract, offering possibilities which are not available with the BEH, relating to energy performance or better suited to comprehensive projects including a property enhancement component, for example.

The *bail emphytéotique administratif* (BEA) is a third instrument which may be used by nursing homes or care homes run by local authorities.

2.5.2.2. Contract award procedures

PPPs remain an exception to the rule in public procurement. Prior evaluations, which have always been mandatory for partnership contracts, have also been a requirement for BEHs since 2010 and must be validated by the expert body. Each type of instrument has its own expert body (see Section 3 below): MAPPP for partnership contracts and ANAP (see below) for BEHs.[25]

At the same time, the director general of the regional health agency sends a study evaluating the project's short- and medium-term effects on the hospital's budget situation together with the prior evaluation and the budget study to the Health, Social Security, Budget and Economy ministers for approval before launching the contract award procedure.

Hospital entities must now include assets which they do not legally own but control and manage in the property, plant and equipment item on their balance sheet, as of entry into use and for the total value corresponding to the aggregate investment component of the overall remuneration of the asset. This new accounting and budget requirement[26] became applicable to partnership contracts in 2011 and to BEHs in 2012.

The following table lists partnership agreements concluded in the healthcare sector, together with the amount and purpose.

Table 5. **Partnership contracts**

Contracting authority	Amount (EUR million)	Award date	Contractor	Type of project
Roanne Hospital	7.4	26 April 2007	GDF Suez	Energy supply
Alès Hospital	8.0	16 January 2008	Veolia	Energy supply
Douai care home	21.5	11 May 2009	Auxifip	Building
Périgueux Hospital	5.4	29 December 2009	GDF Suez	Energy/Heating
Marseille Hospital	68	22 November 2010	Vinci	Logistics hub/Building
Poitiers Hospital	2.6	24 June 2011	GDF Suez	Energy/Heat network
Toulouse Hospital	3.2	21 October 2011	Purpan Energie Santé	Energy
Thionville Hospital	23.6	26 March 2010	Dalkia	Energy
Franche-Comté Hospital	38.9	25 July 2012	Vinci	Building/Logistics hub
Niort Hospital	9.5	13 July 2012	Elutis	Energy/Heat network
Angoulême Hospital	24.3	27 December 2012	Vinci	Care home building
Villefranche-sur-Saône Hospital	13.3	25 October 2013	GDF Suez	Energy/Heat network
Dijon Teaching Hospital	5	22 October 2013		Nursery building

Source: MAPPP.

2.5.3. *Institutional players*

- Mission nationale d'appui à l'investissement hospitalier (MAINH)

The National Agency for Hospital Investment (*Mission d'appui à l'investissement hospitalier,* MAINH) was created in 2003 to guide investment under the 2007 Hospital Programme and support the rollout of innovative forms of contracting.

MAINH's primary role was to help hospitals implement BEHs and make an initial selection of projects transmitted by regional hospital agencies (about half were eliminated at this stage; 20 or so projects remained under the 2007 programme), without replacing hospitals during the award procedure. MAINH does not take part in the competitive dialogue, for example.

A secondary role was to draw up a methodology, including the publication in early 2005 of a guide to using the BEH model. MAINH was the first agency to issue recommendations

in this area (the MAPPP guide on partnership contracts was not published until May of that year) and its guidelines ranged from selection criteria to the conduct of the competitive dialogue and contracting. MAINH had a small PPP unit: two full-time experts backed up by the mainstream staff and a network of 30 or so investment directors in regional hospital agencies.

MAINH also sat with regional hospital agency and hospital representatives on steering committees for the main projects, acted as the interface between the main public- and private-sector players and, from 2007, undertook initial analysis of ten signed contracts.

- *Mission nationale d'appui à la performance des établissements de santé et médico-sociaux* (ANAP)

The National Agency for Performance Improvement (*Mission nationale d'appui à la performance des établissements de santé et médico-sociaux*, ANAP) was created in July 2009 by merging MAINH and two other specialist bodies. ANAP does not monitor projects directly and is not an arm of government.

A policy decision to extend the scope of existing missions led to the ending of one-off support assignments. Following decree No. 2010-245 of 29 April 2010 confirmed by decree No. 2012-1093 of 27 September 2012, ANAP is now an expert body which issues an opinion on prior evaluations of BEHs.[27] Hospital entities must now validate the appropriateness of the investment project with the regional health agency before starting the prior evaluation.

Although it has a staff of around a hundred, ANAP does not have the means to offer operational support to the 30 000 or so hospitals, nursing and care homes in the sector. In practice, the time and resources it devotes to PPPs have been greatly reduced with the decline in the number of new PPP projects.

- *Mission d'appui au partenariat public-privé* (MAPPP)

MAPPP continues to have exclusive administrative competence for all partnership contract projects in the healthcare sector.

In order to use the same rules to process prior evaluation reports transmitted by hospital entities, ANAP and MAPPP have concluded an agreement setting out their respective roles. Inter alia, the two bodies have agreed to keep each other informed when a BEH or partnership contract project involving a hospital or nursing or care home comes to their attention.

This reciprocal exchange of information is repeated at each step in the project's progress. In addition, the two bodies share their remarks on the project in order to inform the competent body's opinion.

2.5.4. Critical assessment

Most healthcare sector PPPs to date have concerned building projects (this applies to all BEHs but only a third of partnership contracts, better suited to processes and services such as energy and logistics). A rapid start was followed by a relative slowdown. Some 50 projects have been concluded to date; over half of them (mostly BEHs) are now operational and some of them have already been running for several years.

- Projects are of all sizes, ranging from EUR 1 million to EUR 350 million.
- They have different purposes:
  - complete hospitals (4) or significant building programmes (4),

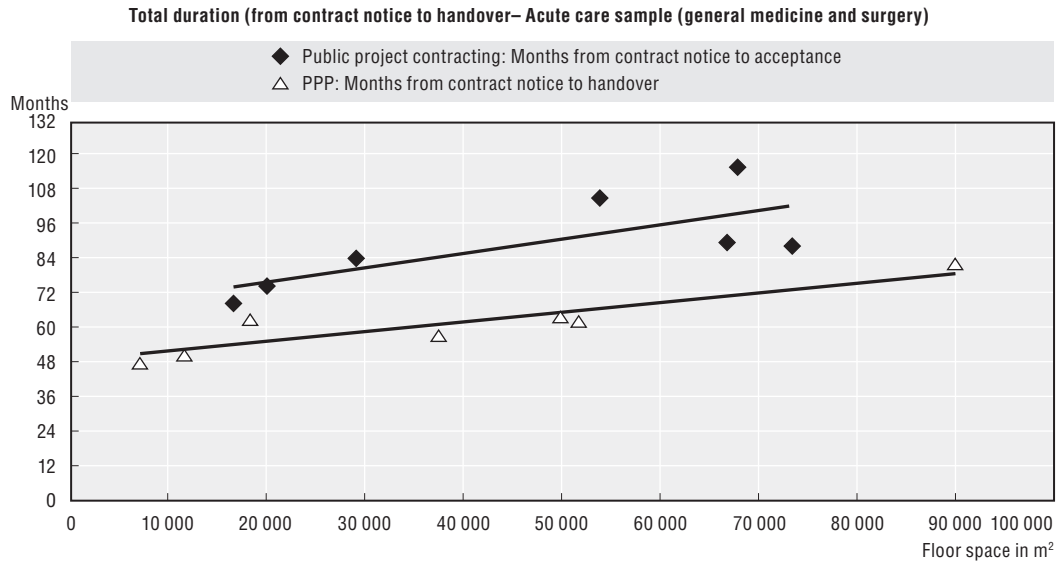
- single- or multiple-process logistics hubs (15),
- energy units (7),
- nursing homes (7),
- psychiatric or rehabilitation and recuperative care facilities (4).

Almost all of them have been completed on time, with handover dates being respected in most cases.

- Projects have terms of 15 to 35 years (mostly around 30 years), including design and operation.
- Contracts include design, construction, financing, maintenance and operation (which may be more or less extensive), but there is little or no scope for generating additional revenue, which is more difficult with the BEH model.
- Rents are progressive, unlike in other sectors.
  - The building or financial rent (covering amortisation of the capital investment and corresponding interest charges) rises at a uniform rate of 0.5-2.5% a year over the term of the contract from handover of the project.
  - Progressive rents (plus the upkeep and maintenance fee, which is indexed on cost indicators for labour or consumables) mark hospital PPPs out from other partnership contracts concluded over the period, most of which have fixed financial (building) rents corresponding to constant annuities. They were justified in the mind of their instigators by the idea that a casemix payment system would be reflected in rising sales. In fact, however, this system – over which hospital entities had no control or even visibility – is not conducive to reliable budget forecasting. Coupled with technological advances such as outpatient surgery, which reduces the amount of time spent in hospital, and the classification of medical procedures, it has resulted in some cases in flat or falling volumes, making rising rents difficult to withstand.
  - Maintenance and operating fees increase in line with composite indexes.
- The competitive dialogue procedure, used in all PPP projects (BEH or partnership contract), has broadly satisfied the public authorities because it offers the possibility of a genuine discussion with bidders. This has the effect of significantly enhancing the quality of bids and the extent to which they match hospitals' needs.
- A stable project team helps to ensure that the fundamentals of the project, especially its master programme, are not called into question. Stability also helps to preserve corporate memory of the project.
- PPP contracts are complex and highly sophisticated instruments. They combine very different phases and require a very high capacity for anticipation on the part of public authorities so that they can project themselves into the future. This calls for high-level staff and advisers, capable of giving a long-term commitment, especially as a hospital chief executive or the appointed project manager will rarely be in a position to carry out several PPP projects in the course of their career. It raises a real difficulty with regard to project oversight over the long term.
- Stable requirements in terms of capacity, functions and techniques, at least during the design and construction phases, are a very important condition for PPP projects. When changes have been made during either of these phases, they have seriously disturbed the contract mechanism, with the risk of generating substantial extra costs. The same

applies to some public project contracting operations. In the latter case, however, the effects are limited to design and construction, whereas with a PPP they affect the whole scope of the project, including financing, maintenance and future operation.

Figure 1. **Comparative lead times for hospital projects**



Source: ANAP (general hospitals providing acute care).

For these general hospitals, the table shows an average gain of two years for PPPs in relation to public project contracting.

The costs resulting from handover of the facility are generally consistent with the initial forecast provided that there has been little or no change to requirements during the design phase or that the interest rates which determine the building rent were set when the contract was signed. In contrast, initial assessments have not shown gains on design or construction costs. In fact, PPP projects are often a little more expensive in terms of investment.

The number of PPPs has fallen sharply since 2009-10, for whatever reason (reduction in the number of hospital building projects, need to control the scale of building programmes at a time of budget restrictions).

PPPs still under consideration (energy/heating plants, heat networks, logistics hubs) are targeted more closely and tend to be smaller and better suited to partnership contracts rather than BEH. Only four BEH projects have been the subject of prior evaluations referred to ANAP for validation since the change of procedure in 2010.

2.5.5. *The criticisms of oversight bodies*

Various oversight bodies have severely criticised both hospital PPPs and the serious project management difficulties associated with them. The Cour des comptes has been a frequent critic of hospital PPPs, either directly or through regional offices. Criticisms have included:

- a section in the Cour des comptes' annual report for 2013 entitled "Public-private partnerships in the 2007 Hospital Programme: a poorly controlled procedure";

- a report by the Nord Pas de Calais regional audit office on the Douai Hospital PPP, published in early 2013;
- a Cour des comptes report issued in September 2013 on implementation of social security budgeting rules in the hospital sector, highlighting potential savings of EUR 5 billion a year.

In March 2013, the Finance General Inspectorate issued a report on hospital bank debt.

There have also been innumerable parliamentary reports on these matters.

2.5.5-1. Criticisms

In addition to the customary criticisms of PPPs, two particular points in relation to hospital PPPs have given rise to adverse comment.

The first concerns a hospital's changing needs as a result of technological progress, causing rapid obsolescence and the need to adjust resources and usage at frequent intervals, which is not consistent with the long-term contractual arrangements of a PPP. Needs may change even within the time it takes to build a hospital.

The second is that some projects, because they were PPPs and could give the impression of being free from budget restrictions, became oversized and over-equipped ("gold-plated" projects) in comparison with similar projects using the traditional public procurement model. It is a fact that because budget disbursements are deferred and spread out over time, a PPP may be seen as an incentive to invest more

Box 3. **Interview with Christian Béréhouc (ANAP)**

In the 2007 Hospital Programme, there was a deliberate policy from the outset of encouraging PPPs, for new-build only and within a limit of 15% of projects, by means of a 50% rent subsidy, because they were seen as a means of reducing lead times while taking costs off the balance sheet.

One of the particular problems of the hospital sector, due to its governance model, concerns hospital administration. Hospital administrators rarely stay in the same job for more than three or four years and there is generally no overlap between the old and the new chief executive. It can take several weeks or months to fill a vacant post, coverage being provided in the meantime by a chief executive from another hospital. This undermines continuity and presents a particular problem with a PPP, where experience and the memory of previous stages such as competitive dialogue, bid selection and finalisation of contract clauses are key factors in ensuring a balanced relationship, as well as the public-sector partner's capacity to oversee and actively manage the project over time. The saga of the Southern Paris Region Hospital Centre (Centre Hospitalier du Sud Francilien, CHSF, see below) illustrates the difficulties that can arise from rapid turnover of top administrators on the public side in this regard.

It has been possible to measure the impact of the contracting method on the design of facilities. Although PPPs have not brought any landmark innovations, they have helped to make hospital facilities more compact while offering the same capacity and treatment, thus limiting subsequent upkeep and maintenance costs, even though this effect is not significantly stronger than with design/build contracts. They have also shone the spotlight on long-term operation and maintenance issues.

2.5.5-2. The *Centre hospitalier du sud francilien* (CHSF)

The landmark and unfortunate case of the Southern Paris Region Hospital Centre (*Centre hospitalier du sud francilien*, CHSF)[28] at Evry-Corbeil has been given extensive media coverage and used to denounce both the cost of PPPs and the way construction firms can take advantage of them to obtain a long-term rent to the detriment of the public purse. In a rare departure from usual practice, the regional audit office for the Paris region carried out a second review of the project in 2009-10, issuing a highly critical report barely three years after an earlier report in 2007. The Cour des comptes had already been critical of the choice in 2006 of a PPP for construction of the hospital.

We shall look here at what may be said objectively about the qualities and shortcomings of a particular arrangement and the responsibility of the players involved.

The largest hospital project to be launched, with a capacity of over 1 000 beds and an investment budget of EUR 343 million, it was also the largest building project in France in 2007-09.[29] Very soon, however, the project ran into governance problems on both the public and the private side. Although handover, which triggered the first payments, occurred only three days after the contract date, the many changes requested during construction, right up until the last few days before handover, and the fact that the building was not ready for occupation meant that it did not actually open until almost a year after the date of entry into possession. Presented as France's most modern medical facility, the hospital opened in January 2012, eight months late, because of the changes and additional work requested by the hospital, carried out after handover, and the many reserves.

On the public-sector side, six chief executives (including temporary appointments) came and went during the construction phase. Furthermore, political considerations had weighed too heavily in the decision to initiate the project,[30] which was poorly defined or deliberately oversized (for example, the previous two hospitals had nine operating theatres between them, whereas the new hospital which replaced them has 20). Programme changes were introduced during construction, one example being the plan to modify one wing to accommodate sick prisoners,[31] which occupied the private-sector partner for nearly a year before being abandoned. More fundamentally, however, the hospital had embarked on a project beyond its means: already running a structural deficit before the project, the CHSF had undertaken under the partnership contract to pay Eiffage a rent of EUR 45 million a year (compared with EUR 31 million at the outset[32]) for 30 years before taking ownership in 2041. The budget could not sustain such a rent. All that for a new hospital, the need for which is not even certain.

On its side, the private-sector partner, Eiffage, had doubtless underestimated the complexity of the task and the amount of work involved in overseeing such a large project. As it was unable to balance the project satisfactorily as a result, it had an incentive to negotiate amendments on account of the programme changes imposed by the public-sector client during construction.

There was at least one positive aspect to the whole affair, namely transparency, since the problems were made widely public. Hospital managers were accused of frequently changing the purposes and hence the plans of the new building, while Eiffage was accused of defective work and overcharging. As the PPP contract covered not only construction but also the long-term operation of the building, its cost was known in advance. Had that not been the case, it is likely that the hospital and its governing authority would have changed their minds about its purpose even more often and demanded even more changes to the

plans, since they would not have been dealing with a single partner or signed a contract binding on both parties. The tone of negotiations between all the players would have been low-key, with the aim of not stirring up trouble, in the knowledge that none of them is entirely beyond reproach.[33]

2.5.6. *Nursing homes*

Residential care facilities for the dependent elderly (nursing homes) occupy a space where healthcare and social services overlap. As their facilities are less sophisticated than those of a hospital, they are less exposed to changing needs over time, an argument often levelled against PPPs for hospital projects. Public-sector nursing home projects (private nursing homes also exist) often involve reconstruction in order to replace one or more existing facilities. This generates a need for enhancement which can only be met by the partnership contract model.

Other types of non-building investment in the healthcare sector are rare and mostly limited to energy facilities. Although hospital information systems were originally perceived as possible targets for partnership contracts, no projects have actually been initiated.

2.5.7. *ANAP's viewpoint*

ANAP produced a comparative analysis in September 2013, drawn up pursuant to Article 62 of the 2013 Social Security Financing Act, "giving details of planned or completed PPP projects for the construction of hospital entities in the framework of the 2007 and 2012 Hospital Programmes which generated cost overruns caused by the lack of public-sector project oversight".[34]

The report looked at 19 PPP projects. In order to make a comparison, ANAP took a sample of similar construction projects carried out over the same period using the public project contracting model. It received 17 completed questionnaires (corresponding to 12 contracts) for PPP projects and 15 for public project contracting operations. Widely differing scopes of comparison made the analysis more complicated: timetables were not strictly identical, the financed investment or the scope of operation and maintenance were not the same and future expenditure on operation, upkeep and maintenance in the public project contracting model is mostly or entirely unpredictable. ANAP therefore restricted its comparative analysis to the cost of buildings (including the financing cost), discounted at the same benchmark rate. The study did not take account of qualitative factors, notably the use of competitive dialogue in the PPP procedure, which the respondent hospitals acknowledged to be an advantage. The report therefore gave a snapshot of hospital PPP contracts at a point in time, from which no final or certain conclusions can be drawn.

The projects were classified into three groups: acute care hospitals, psychiatric or rehabilitation and recuperative care facilities, and nursing homes. The results were as follows.

- Investment costs (design and construction) were very similar for both models (PPP or public project contracting).
- **Lead times and hence handover times were shorter with the PPP model**, with very significant differences (about two years less for PPPs). However, the resulting socio-economic benefits were not quantified, thus placing interpretation of the results of the PPP sample at a disadvantage.

- **The cost of financing investment was generally higher for PPPs than for public project contracting** (lower rates over shorter periods), especially when discounted. Although the first generation of BEHs under the 2007 Hospital Programme benefited de facto from highly competitive conditions (the spreads on "Dailly" debt sometimes dipped as low as 10 basis points, or 0.1%), they were applied at a benchmark rate (3-month Euribor) which rose sharply over the period. ANAP noted that financing rates for PPP projects were almost three points higher than for public project contracting and included a remuneration of equity and, indirectly, of the various risks that could arise during the entire project lifecycle (design, construction, operation). With public project contracting, in contrast, the same risks are borne by the public sector and not quantified. The report noted that financial conditions for the different sources of financing were "very different" between the two models for the contract periods but pointed out that PPPs had been hit by relatively unfavourable economic conditions.

For ANAP, the interest but also the limitation of the study lies more in the governance of investment in buildings over their lifecycle than in an ex-post comparison of different devolution and financing procedures for hospital investment. In view of these findings, it recommends that hospital entities should do more to monitor investment in buildings, the associated steering costs and ownership costs (operation, routine and major maintenance, replacement and financing).

Summary of ANAP's conclusions

2.6. Public lighting: An ideal sector for partnership contracts?

One of the very earliest partnership contracts, signed by the Auvers-sur-Oise municipality in March 2005 before MAPPP was even set up, was for renewal/modernisation of its public lighting system. Since then, over a third of partnership contracts signed by local authorities have been for public lighting, making France a global leader in this field. What lies behind such success, unforeseen by the promoters of the reform that created partnership contracts? Why the preference for this type of arrangement despite a cumbersome procedure with regard to average project size?

Let us first look more closely at the extent of the phenomenon before considering the economics of these contracts and the reasons that lead local authorities to use them.

2.6.1. Rapid and unexpected growth

The growth in partnership contracts for public lighting is one of the period's pleasant surprises, since it cannot be said that this type of project was among the principal targets or growth areas that the promoters of the new instrument had in mind. Many observers initially thought that the investment amounts involved were too small (in the region of a few million euros in most cases) to lend themselves to a relative complex and cumbersome procedure such as PPP, even though the order did not set a limit in this respect (unlike the approach adopted in many other countries). Last but not least, the main promoters of PPP in the private sector – major construction firms – seemed less immediately interested by this family of projects.

But such constraints have in many cases become opportunities: an opportunity to test a new and still little-known procedure on what, for local government, were traditionally non-priority projects in strategic and budgetary terms with more limited budget implications and over shorter periods, an opportunity to involve SMEs and mid-sized

Box 4. **Advantages and disadvantages of BEH**

Advantages

- Competitive dialogue fosters ongoing discussion of the project fundamentals and gives the client the assurance of an optimised response to the match between programme and project (planning solutions, technical solutions, fitness for purpose, etc.).
- Costs and deadlines are shown to be controlled under conditions.
- The involvement of the FM provider ensures that consideration is given to operating and maintenance issues throughout the design and construction phases.
- The consortium bears risks relating to subcontractor tendering and default.
- Administrative management is made simpler for the client during the construction phase.

Disadvantages

- The BEH contract can greatly reduce architectural choice in favour of controlled investment and operating costs.
- The client needs to assemble financial and legal skills in order to be in a position to negotiate a balanced contract.
- The programme must remain invariable after conclusion of the contract, resulting in limited flexibility with regard to structural works and causing hospitals concern about the cost of changes.
- Procedural costs are high.
- Project companies are insufficiently capitalised.
- Competition has weakened over the years and is now mostly limited to the major construction firms.
- -Private-sector assumption of the initial investment defers disbursements and can result in projects which are oversized or functionally over-demanding and unsustainable in budget terms over the long term.

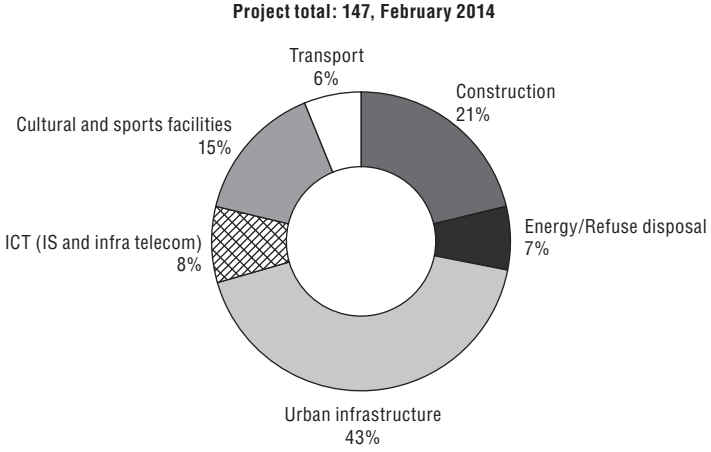
companies as partners in addition to the usual big players, an opportunity to add related general-interest or revenue-generating services, etc.

As a result, there has been a constant stream of projects from the outset, which has now resulted in signature of over 55 partnership contracts representing an overall investment of some EUR 500 million and 37% of the total number of partnership contacts signed by local government.

2.6.2. Scope of partnership contracts for public lighting

Renewal of public lighting traditionally covers highway electrical equipment, traffic lights, illumination of public buildings and festive lighting. Some authorities also include stadium lighting, special lighting for historical and other important monuments, CCTV, etc. As in every renewal project, the authority must consider pre-existing infrastructure. Management of this existing structure (operational to varying extents) must therefore be included in the scope. It is thus essential for an audit to be carried out as part of the upstream studies (rather than within the scope of the contract, for obvious reasons of conflict of interests, as has been noted in some cases). The purpose of the audit is ultimately to obtain an exhaustive description of horizontal infrastructure (electricity network) and vertical infrastructure (street-lamp position, installation date, state of repair,

Figure 2. **Number of projects awarded by local authorities**



Note: The great majority of urban infrastructure projects are for public lighting.
Source: MAPPP.

Table 6. **List of partnership contracts for public lighting since start of PPP**

Awarding authority	Object	Investment (EUR million)
Auvers-sur-Oise Town Council	Public lighting	1.1
Castelnau-le-Lez Town Council	Public lighting	3.8
Thiers Town Council	Public lighting	3.0
Rouen City Council	Public lighting	41.0
Agde Town Council	Public lighting	27.0
Saumur Town Council	Public lighting	8.1
Saint-Fons Town Council	Public lighting	1.4
Bussy-Saint-Georges Town Council	Public lighting	6.8
Châtillon-sur-Chalaronne Town Council	Public lighting	4.5
Hérouville-Saint-Clair Town Council	Public lighting	3.4
Sénart Town Council	Public lighting	3.6
Autun Town Council	Public lighting	3.7
Libourne Town Council	Public lighting	7.3
Boulogne-Billancourt Town Council	Public lighting	36.0
Contres Town Council	Public lighting	1.3
Beaune Town Council	Public lighting	12.0
Trélon Town Council (Nord)	Public lighting	0.5
Vallauris – Golfe Juan	Public lighting	6.6
Louvroil Town Council	Public lighting	1.4
Divonne-Les-Bains	Public lighting	
Beaucaire Inter-municipal Council	Public lighting	3.6
Longjumeau	Public lighting	5.2
Soissons	Public lighting	6.3
Thiais	Public lighting	14.7
Moissy – Cramayel	Public lighting	6.2
Pointe-à-Pître	Public lighting	15.5
Aix-les-Bains	Public lighting	2.5
Sassenage	Public lighting	1.2
Val de Reuil	Public lighting	8.0
Pont-à-Marcq (Nord)	Public lighting	
Bougival	Public lighting	6.8
Chaumont	Public lighting	3.7
Digoin	Public lighting	2.0
Leucate	Public lighting	6.3

Table 6. **List of partnership contracts for public lighting since start of PPP** *(cont.)*

Awarding authority	Object	Investment (EUR million)
Arcachon	Public lighting	3.3
Plessis-Robinson	Public lighting + roads	21.0
Ouest-Plaine de France Inter-municipal Council	Public lighting	5.6
Chécy	Public lighting	0.9
Goussainville	Public lighting	5.0
Sablé/Sarthe	Public lighting	2.5
Marly (Nord)	Public lighting	2.7
Maubeuge	Public lighting	11.4
Onnaing	Public lighting	1.0
Maurepas	Public lighting	2.0
Gouzon (Creuse)	Public lighting	0.5
Savigny le Temple, Nandy (Seine-et-Marne)	Public lighting	9.2
Valenciennes	Public lighting	7.6
Chasse-sur-Rhône	Public lighting	1.2
Hazebrouck	Public lighting	8.7
Avignon Urban Community	Public lighting	9.8
Cesson-Sévigné	Public lighting	3.6
Prouvy	Public lighting	0.9
Veneux-les-Sablons	Public lighting	1.5
Marseillan	Public lighting	1.6
Aubignan	Public lighting	1.0
Pézenas	Public lighting	2.8
Juvignac	Public lighting	3.9
Cergy-Pontoise Urban Community	Public lighting	74.8
Sète	Public lighting	17.6
Grasse	Public lighting	5.9

Source: MAPPP.

equipment type, etc.). This audit must establish the initial state of the system and make it possible to benchmark performance throughout the life of the contract. It will also provide comprehensive information for all prospective bidders and therefore a proper risk assessment and a guarantee of compliance with competition law.

2.6.2-1. Constraints

State of play: in the past the public lighting system was managed on an ad hoc basis depending on funding and public dissatisfaction. This has resulted in the following situation:

- *Lack of overall coherence* (both aesthetically and in terms of performance) owing to one-off measures spread over time with no overall vision;
- *Old lighting stock*: Non-compliant and obsolete equipment failing to meet current regulatory requirements for electricity and lighting, particularly the new standards in the pipeline (under EU directives, all mercury vapour lamps – over 70% of the stock – are to be banned from 2015)
- *Dangerous stock* owing to premature ageing of the system: In the absence of thorough monitoring, some authorities only become aware of its state once lamps start falling on parked cars;
- *Energy-intensive stock*: The old technology being used consumes 40-60% more power than the new technology available (LED, etc.).

For the above reasons, together with a pursuit of energy savings, more and more authorities have had to rethink their lighting systems entirely.

- Choice of public procurement method

For street lighting, partnership contracts are the only alternative to public procurement contracts, since other models such as public service delegation, long-term lease arrangements for official buildings (BEA) and all-inclusive contracts cannot be used for legal reasons. Moreover, the quality-related public safety issues affecting this type of infrastructure necessitate prompt and appropriate renewal at a time when funding is often problematic for traditional public procurement contracts. Similarly, because the allotment inherent to the latter model entails delivery in several annual instalments, the model is less convenient than a partnership contract, which is better for economies of scale on the equipment to be purchased and in terms of performance obligations.

So far it has been relatively easy to prove the criterion of complexity for partnership contracts, thus allowing use of competitive dialogue. The "system" aspect and range of technology choices for energy optimisation are easy arguments to make. In terms of the cost-benefit trade-off, it is necessary to consider the co-contractor's capacity to commit to performance targets (energy use reduced by up to 50%,[35] commitment to delivery date with recognition of requirements relating to traffic and neighbourhood convenience).

Lastly, unlike other procurement instruments, partnership contracts hold out the possibility of generating secondary revenue (to be shared between the public and private partners) such as street-light WiFi hotspots, information panels and advertising media, etc.

It follows from the above that the technical and economic benefits seem to argue for partnership contracts. However, for small projects in particular, they do require not inconsiderable resources, especially owing to the fact that this is an innovative approach of which there is thus no previous experience.

- Procedural requirements

The drafting of the final contract through competitive dialogue, generally viewed as very satisfactory by local government, nevertheless requires full commitment on its part:

- Need for contracted support to authority;
- Drafting of prior evaluation;
- Management of a competitive dialogue phase that is sometimes needlessly lengthy.
- Entering of the corresponding budgetary liability into the accounts (since 2011)

These four stages entail significant involvement by local government (for an average capital cost that is relatively low: EUR 5-10 million in most cases, descending as far as EUR 1 million), but experience has shown that it has ultimately borne fruit in the great majority of cases.

These requirements create relatively high transaction costs for the generally limited investment involved. In an effort to standardise and capitalise on good practice, given the large number of these projects, MAPPP therefore drew up boilerplate clauses for public-lighting partnership contracts from 2012 in order to expedite and improve the final phase of contractualising commitments.

While most of the tax, accounting and grant-management distortions between public-procurement contracts and partnership contracts have now disappeared, some legislative constraints still remain.

- Legal and financial constraints

Two important points have yet to be resolved: power supply and burying of overhead lines. These two points concern relations between national power-supply companies and network-management companies. The issues are as follows:

Power supply

It was initially very tempting to extend the scope of partnership contracts to power supply (the co-contractor thus being required to minimise energy consumption and show tariffs that are cheaper than the established schedule – with profit-sharing on margins earned). However, by introducing energy competition through its contract, a local authority could irreversibly waive its right to apply the historic regulated tariff whatever the contract provisions. MAPPP therefore recommends excluding power supply from public-lighting partnership contracts as long as the regulated tariff is to be made available.

Burying of overhead lines

The problem is that the appointed concession-holder for the network refuses to bury the lines but also objects to this burying being carried out by the co-contractor (and therefore at local-government expense). This problem is less significant than the previous one, since local negotiations are possible and regularly lead to agreements (apart from in certain regions) if the question has been adequately studied beforehand.

Application of the regulation of 1 July 2012 concerning notification of work to network managers

This last point is a new requirement applying to the contracting authority (the local authority for traditional public procurement projects and the co-contractor for partnership contracts) whose purpose is to pinpoint horizontal infrastructure (networks). These new services must therefore be included in the contract.

The existence of these constraints, or at least the first two, limits the scope of partnership contracts and therefore the possibility of further widening the cost gap between public procurement contracts and partnership contracts to the latter's advantage.

Despite the above issues, which generally weigh more on partnership contacts than on public procurement contracts, many local authorities regard partnership contracts overall as particularly suited to public lighting. What are their advantages?

2.6.3. Reasons why local authorities opt for partnership contracts for public lighting

2.6.3-1. An area's attractiveness

The first of these reasons is that, in view of local authorities' economic constraints and the need to make their areas attractive, it is no longer possible to manage public lighting in the way it used to be run even a few years ago. On top of its functional role, public lighting is generally used to buttress local development policy, which has to meet the challenge of making the area attractive. Heritage promotion, together with the significant share of a local-government budget taken up by festive decorations for periodic events, shows serious recognition of this need, with emergence of new professions such as light architect. The corporate communication around such projects is a further case in point.

2.6.3-2. Lower operating costs

To these concerns may be added the equally significant factor of energy performance. Power consumption for public lighting commonly represents 20 to 30% of a city's total energy consumption and costs quite considerable sums.

Optimising light output means both directing light emission (problem of light pollution) and managing the consequent power consumption to meet the challenges raised at the Grenelle Environment Forum. Both factors require the individual expertise to ensure continuous renewal in the light of developments in available market solutions. Unlike in previous decades, public lighting projects today are not a matter of merely copying what was done before but represent an opportunity for a thorough review of practice. This concerns all aspects of the contract: infrastructure roll-out, design, performance, technology choice (LEDs, etc.), maintenance procedures, migration to new services.

2.6.3-3. A comprehensive answer to a complex problem

These new practices have led to a far-reaching transformation of the lighting specialist's role in local authorities owing to the need for new expertise as well as the resources required by management of a stand-alone project, even though most of the time the process is referred to, wrongly, as renewal.

Local authorities would therefore be well-advised to increase their expertise in this field both quantitatively and qualitatively in order to achieve their objectives. There are a number of solutions:

- Recruitment and training;
- Outsourcing through public procurement contracts;
- Outsourcing through partnership contracts.

The first two solutions are still the ones used by most awarding authorities, but they are increasingly failing to address current budget constraints (cost of recruitment based on over 40 working years + civil pension, priority given to recruitment focused on local-authority core functions, etc.). As for outsourcing through public procurement contracts, it here entails a lack of long-term commitment, little risk transfer and a recognised loss of technical expertise. However, outsourcing through partnership contacts offers greater safeguards:

- The co-contractor bears the risk of its investment choices (service quality, performance, etc.);
- The public authority must retain the power to evaluate the co-contractor's performance obligations throughout the project;
- The local authority's project management expertise either evolves into a contracting authority role (in that the local authority provides support to the co-contractor for technology watch and the resulting choices) or is transferred to other local-government activities (electrical systems for buildings, networks, etc.);
- The long-term contract (though seldom more than 18-20 years) does not, however, rule out open-endedness in its scope and solutions, particularly concerning "technology watch" aspects, with provision of a reserve whose use for improving the service in relation to the original terms of reference is negotiated between the parties. Thus we are now seeing emergence of new activities linked to the main object of public lighting, such as provision of defibrillators on streets, charging points for electric cars, etc.

In conclusion, a partnership contract for public lighting offers a local authority a sound basis for renewing what is sometimes a neglected part of public service infrastructure, with a somewhat lower budget commitment and a **fairly quick return on investment with energy-use savings of up to 40 or 50%** compared to baseline levels, as well as socio-

Box 5. **Case study: Le Plessis-Robinson**

In July 2011 the town council of Le Plessis-Robinson signed a partnership contract that for the first time combined renewal/maintenance of the municipal road system with public lighting. The initial investment covered complete renewal of 18 km of roads (carriageway, pavements and parking areas, traffic lights, vertical, horizontal and direction signing, security features, amenities) and comprehensive renewal of public lighting, for an initial investment of EUR 21 million plus EUR 10 million for major maintenance and replacement the following years, amounting to EUR 52 million in total rent over 20 years. The corresponding work (which would have been spread over 20 years under the traditional method), was scheduled over 30 months and finished two months ahead of schedule, even though it required coordination of ten different system operators: ERDF (electricity), GRDF (Gas), France-Telecom, SEDIF-Veolia (Water), cable providers, fibre-optic providers, etc. The PPP approach enabled trench opening to be optimised rather than having each party regularly dig separate holes in the road, and all "for a total cost that was lower than the EUR 92 million invested in road repair between 1989 and 2010 and for a more consistent result" (B. Gaillot, Director of Services). On top of this, there were immediate savings on the various systems refurbished: water savings equivalent to annual consumption of 400 people, electricity for lighting down by 30%, etc. All in all, a particularly virtuous PPP in terms of sustainable development…

economic benefits arising from the area's improved image and stronger appeal. In many cases it is also an opportunity to run the service jointly through an inter-municipal body. Last but not least, it is a sound way of gaining partnership contract experience for limited budget amounts and with some degree of security owing to the existence of experienced contracting-authority support as a result of almost nine years or practice, which has led, amongst other things, to preparation of boilerplate clauses by MAPPP.

2.7. School buildings: Primary and secondary schools

Some 30 lower secondary schools have been built or are under construction using PPPs, while several dozen more educational establishments are covered by PPPs designed to rehabilitate them, improve their energy performance or equip them with appropriate digital facilities. This is consequently one of the sectors of most interest to local authorities, particularly *département* councils (responsible for lower secondary schools), regardless of political affiliation.

Let us first look more closely at the extent of the phenomenon before considering the economics of these contracts, which last between 20 and 25 years on average, and the reasons that lead local authorities to use them.

2.7.1. Continuous growth over the period

The growth of partnership contracts for school buildings covers two main categories of project:

- New construction or on-site extension/rebuilding (construction-only projects),
- Process implementation, whether for power production/distribution/consumption (heating, etc.) or information and communication technology.

While the client remains the same – the three tiers of local government represented by municipalities (primary schools), *département* councils (lower secondary schools) and regional

councils (upper secondary schools) – the private-sector bidder consortiums vary: construction firms for the first project category and energy companies or ICT firms for the second.

As a result, there has been a constant stream of projects from the outset, which has now resulted in signature of over 26 partnership contracts representing an overall investment of some EUR 1 billion, with over one partnership contract in six at local-government level being signed in this field. Three regions and seven *départements* have started using this method of procurement, with a high rate of re-use from some repeat-business users (Loiret *Département* Council, Lorraine Regional Council, etc.) suggesting that the initial experience was satisfactory.

Table 7. **List of partnership contracts for school buildings since start of PPP**

Awarding authority	Object	Award	Investment (EUR million)
Loiret *Département* Council	Villemandeur lower secondary school	21 Apr. 2006	13
Eure-et-Loir *Département* Council	Computerisation of lower secondary schools	2 Feb. 2007	3.2
Yonne *Département* Council	Two lower secondary schools (Noyers and Avallon)	12 Feb. 2008	21.2
Alsace Regional Council	Energy efficiency upgrading of upper secondary schools	18 Dec. 2009	27.6
Loiret *Département* Council	Timber-built lower secondary school	29 Mar. 2010	17.5
Centre Regional Council	Energy performance of upper secondary schools	20 July 2010	33.1
Lorraine Regional Council	Bains-les-Bains upper secondary school	11 Feb. 2011	25.6
Lorraine Regional Council	Jarny upper secondary school	11 Feb. 2011	53.9
Lorraine Regional Council	Montigny-les-Metz upper secondary school	28 Feb. 2011	40.3
Moselle *Département* Council	Two lower secondary schools (Verny and Verlaine)	31 Aug. 2011	54.2
Moselle *Département* Council	Two lower secondary schools (Hombourg and Freyming)	31 Aug. 2011	54.2
Nantes	School gymnasium	16 July 2011	3.8
Lorraine Regional Council	Two upper secondary schools in Pont-à-Mousson	3 Nov. 2011	65.6
Paris	Energy performance, 100 primary schools	1 Dec. 2011	56.7
Hauts-de-Seine *Département* Council	Courbevoie lower secondary school	10 Nov. 2008	21
Aubervilliers	Energy performance, school complex	29 June 2009	7.8
Ruffec	Primary school	28 Oct. 2010	4.5
Seine-Saint-Denis *Département* Council	Four lower secondary schools (Package 1)	8 Mar. 2012	98.7
Seine-Saint-Denis *Département* Council	Four lower secondary schools (Package 2)	8 Mar. 2012	92.1
Seine-Saint-Denis *Département* Council	Four lower secondary schools (Package 3)	8 Mar. 2012	95.6
Loiret *Département* Council	Two lower secondary schools (Meung and St Ay)	29 Mar. 2012	36.9
Corbeil	School complex	11 May 2012	12.9
Loiret *Département* Council	Five lower secondary schools	29 Mar. 2013	62.8
Mandres-les-Roses	School complex	28 Jan. 2014	8.93
Orléans	School complex and gymnasium	27 Jan. 2014	14.2
Total			**EUR 925.5**

Source: MAPPP.

2.7.2. Scope of partnership contracts for construction of school buildings

2.7.2.1. Scope of functions

This traditionally comprises design, (part-)financing, construction, maintenance and upkeep.

Provision is generally made for the following components in addition to education (classrooms):

- Catering/central kitchen and sports centre/gym, a multipurpose hall,
- School facilities: Learning resources centre, school administration, healthcare and welfare centre;

- Management and educational support, with offices, staffrooms, maintenance department and communal areas;

Provisions are also made for reception areas, outside areas and on-site accommodation, areas for extra-curricular activities, digital work spaces and general meeting rooms. Projects usually include a low-energy target for all buildings and compliance with accessibility standards for persons with disabilities.

Depending on the circumstances, a local authority may wish to outsource routine maintenance and operating work performed by local-authority staff (ten maintenance workers on average per lower secondary school), with the following expenditure being included in the contract:

- First-level technical maintenance of buildings and upkeep of open spaces;
- Caretaking, cleaning;
- Pupil catering, room preparation, etc.

2.7.2-2. Constraints

State of play: even though the situation has improved considerably since decentralisation and the transfer of secondary-school management to *département* and regional level, school buildings are too often in disrepair, hazardous for users and energy-intensive. Modernisation/computerisation and upgrading to comply with safety standards are often carried out as and when needed, school by school, when conditions became too unsatisfactory, which has made it impossible to upgrade the entire stock at the same time and on a relatively equal footing in terms of resources, whether for logistics, IT or energy performance.

- Choice of public procurement method

Faced with these goals and constraints, local authorities have a rather less extensive range of instruments than might have been imagined: a long-term lease (BEA) coupled with a lease agreement, which might be one answer, especially if operating as such is outside the scope of the project, is subject to weaker regulation and is less suited to a complex project. Moreover, the size of the project (usually over EUR 10 million in estimated capital, financing and operating costs when the contract is signed) means that a BEA is not eligible for the VAT Compensation Fund, which appears to be a crippling obstacle (the same goes for authorisation of temporary occupation of publicly owned property coupled with a lease with an option to purchase [AOT/LOA]). In practice, in most cases the two major options are a succession of public procurement contracts (public project contracting) or a partnership contact.

As in the case of street lighting, use of competitive dialogue for partnership contracts is generally regarded by the public-sector client as extremely valuable although requiring full commitment on the latter's part. Despite these constraints, which generally weigh more on partnership contracts than on public procurement contracts, many local authorities regard partnership contracts overall as particularly suited to school buildings. What then are their advantages?

2.7.3. Reasons why local authorities opt for PPP contracts for school buildings

2.7.3-1. Ability to start several projects quickly at the same time

While the numbers attending upper secondary school can be anticipated some years in advance, this is less the case for primary schools and lower secondary schools, which are

more likely to be affected in the medium term by population movements in particular geographical or employment areas. This sometimes results in emergency programmes in order to catch up or offset the consequences of a prolonged lack of action by those in charge earlier. It should be pointed out that the assets transferred from central government in 1986 were often in disrepair and not fit for purpose (many system-built lower secondary schools constituting safety hazards): there has been considerable investment since, but much still remains to be done. Current developments relating to teaching and functionality suggest that 700 pupils ought to be the maximum for lower secondary school enrolment (as against a thousand today in many cases), which means providing more schools. It should be added that school quality – which also depends on new or refurbished buildings, up to standard and having the necessary logistical and sports facilities – is one factor in the attractiveness that local authorities have to establish in order to attract and retain populations, particularly in the middle and upper socio-professional bracket. Use of PPPs, by spreading the budget burden evenly over the duration of the work and setting contractual performance targets in terms of quality and availability of services delivered by the facilities, would seem to provide a suitable answer to both quantitative and qualitative requirements.

Contracting offices within education departments of *département* councils are usually unable to embark upon more than two projects a year for construction or major renovation of lower secondary schools in addition to their other functions (modernisation and upkeep of the building stock). Without resorting to large-scale recruitment every now and again, with all the uncertainties that this entails, the *départements* facing this type of challenge do not have the resources to deal with it on their own. As for delegating contracting authority, while it would doubtless ease the burden on contracting offices, it would to some extent add to project complexity (by requiring additional tendering) without guaranteeing a significant advantage in terms of time-saving, as experience has demonstrated.

It is worth noting that the Procurement Code's requirement for work to be divided into packages (Allotment) means that the overall project has to be implemented in several separate operations, directly proportional to the number of sites, requiring multiple meetings by decision-making bodies (design-contest panels, tendering committee for construction contracts) in a very short space of time, with the proliferation of contractual relationships likewise entailing risks of litigation or failure. Many examples of lower-secondary schools built over recent years using traditional public procurement show completion times of five to six years (even exceeding ten years if planning is included!) whether or not contracting authority is delegated. These lengthening time frames are due in part to ever stricter requirements for division into packages as well as to the very high number of bidders (sometimes around a hundred) for project management contracts.

2.7.3-2. Budget predictability

Local authorities are increasingly confronted with expenditure over which they have limited influence: this is particularly the case for *départements* with regard to social assistance at a time when traditional revenue (local taxation and central government transfers) are either levelling off or declining. Hence an increased need to respect budget commitment ceilings and keep within spending forecasts in such financially (but also socially and politically) fraught areas as school building policy, which is usually one of local government's main priorities.

2.7.3-3. Meeting deadlines relating to the school year

More than any other field of local-government action, schools are governed by a very strict timetable marked by the start of the school year and the dates of the school holidays, to which may be added the beginning and end of the heating season, which is likely to vary somewhat depending on seasonal temperatures. Meeting project delivery dates is imperative for this type of building: any delay is not only painfully obvious and fully publicised by users (schoolchildren and families) but also means that replacement solutions have to be found (principle of public service continuity in education), which are costly both financially and politically as well as difficult to implement. A PPP would seem – and initial results and feedback confirm this – a good way for the relevant authorities to make delivery/operational dates more dependable.

Box 6. **Case study: Four lower secondary schools of the Moselle Département Council**

In 2008 the Moselle Département Council adopted its 2009-13 Secondary School Plan at a cost of some EUR 200 million, to be implemented in part through innovative contracts. Four large-scale projects were launched (in two packages) using partnership contracts: rebuilding of the Paul Verlaine school in Faulquemont, the Albert Camus school in Freyming-Merlebach and the Robert Schuman school in Hombourg-Hautet as well as construction of the département's new Jean-Marie Pelt school in Verny. The choice of contract type and contracting procedure was relatively quick. The Département Council having decided in November 2008 to build/rebuild the four lower secondary schools, the decision to use partnership contracts was reached on 25 June 2009, based on the project's complexity and the benefits of this approach in comparison with public project contracting arrangements.

"In the PPP and competitive dialogue process, I must stress that we greatly appreciated the involvement of the various stakeholders in the project's all-inclusive approach", said Ms Emmanuelle Champigny, Deputy Director of Services. The architect took an active part in all the consortium's meetings to clarify needs and expectations with regard to facilities as well as maintenance and operating. In this respect, the partnership contract method proved to offer genuine value-added for design. "The work thus began in reasonable time, which is usually not the case for public project contracting", Ms Champigny pointed out.

The successful bidders for the two packages were selected in summer 2011, without outsourcing of catering or routine building maintenance, which are still provided by the schools' public-sector employees. The outcome of the process is considered very positive inasmuch as the choice of a partnership contact brought with it the benefit of input from competitive dialogue and made it possible to expedite the schedule so that the new Verny secondary school could be delivered to its pupils for the start of the 2014 school year.

"It's the contract time and speed of work that make the difference. We're going to do in two years what we would normally have done in four and a half if we had done it on our own", explained Ms Champigny. Moreover, the contracts' all-inclusive approach allowed significant savings on the costs of construction and long-term maintenance. "A PPP is no more expensive than public project contracting thanks to the savings from the all-inclusive approach."

Initial feedback (see comparison chart produced by the Loiret *Département* Council for similar projects launched simultaneously through public project contracting and partnership contracts) indicates that the average length of the tendering process (including

competitive dialogue in virtually all cases) is between 12 and 18 months, to which must be added the construction time, in the region of one year, giving a total duration of about two and a half years from the decision date (approval of prior evaluation + meeting authorising issue of contract notice) to the delivery/operational date, in comparison with an average duration of over four years with public project contracting.

Box 7. **Case study: Twelve lower secondary schools in Seine-Saint-Denis**

This département, which had over 1.5 million inhabitants in 2010, has been experiencing significant population growth (1.1% per annum), and 29% of its population is under 20. This population is distinguished by a low average income, a poor social mix and a great diversity of backgrounds (21% of households include a foreign national). Between 2008 and 2015 the increase in lower secondary school enrolment was almost 4 000, and this rate is set to continue owing to the département's underlying population trends.

This explains why education (and lower secondary schools in particular) is a priority for the département council.

This council has adopted a special investment plan for lower secondary schools over the 2010-15 period that provides for 21 construction/rebuilding projects at a total estimated capital cost of EUR 530 million, with an additional EUR 145 million for major repairs to existing lower secondary schools and EUR 28 million for digital equipment.

It is well beyond the département's capabilities to implement such an ambitious programme (using the procedures employed hitherto) on time and on budget.

That is why the département council decided to use partnership contracts to implement twelve of these projects, at a total estimated capital cost of EUR 340 million:

- Three school rebuilds on new sites: The Maurice Thorez school in Stains, the Jean-Baptiste Corot school in Raincy and the Anatole France school in Pavillons-sous-Bois,
- Four school renovations or rebuilds on the same site: The Pierre Curie school in Bondy, the Jean Jaurès school in Villepinte, the Louise Michel school in Clichy-sous-Bois and the Jean Moulin school in Aubervilliers,
- Five new schools: in Blanc-Mesnil, Saint-Denis/Saint-Ouen, Aulnay-sous-Bois, Montreuil/Bagnolet and Noisy-le-Grand (the international school).

The project was split into three separate packages of equivalent size (four schools for a construction cost of just over EUR 110 million each). In March 2012 two work packages were awarded to Eiffage and the third to the Fayat Group. This division into several contracts enabled the range of private partners to be expanded and promoted architectural diversity; the département council stipulated that each school was to be designed by a different architect, i.e. four architects for each contract in order to avoid any risk of replication.

Another requirement was for 30% of the building cost to be subcontracted to SMEs. Thus 263 SMEs worked as subcontractors on the Eiffage sites, mainly on the building-services and finishing-work packages. In addition, firms had to agree to provide 155 000 hours of work for persons usually excluded from the labour market, i.e. 7 to 8% of the total hours worked. "In the end, the average cost of construction came to EUR 1 850/m^2 NFA", says Robin Monnier, the special investment plan project manager for the département council. Each school has a "community hub" with a sports hall (400 m^2), a multipurpose hall (150 m^2), an exhibition gallery (70 m^2), and a teaching pond and garden, as well as a parents' room (between 20 and 30 m^2). Reserved for pupils during the school day, these facilities are available to residents and associations outside school hours.

Box 7. **Case study: Twelve lower secondary schools in Seine-Saint-Denis** *(cont.)*

Sustainable development has been another priority. Three schools are thus zero-energy and seven are heated using geothermal piles. Green roofs are a systematic feature, and there is a strong emphasis on open spaces. The département council has also used this programme to compensate in part for the area's shortage of sports facilities. Thus four schools have 1 500 m^2 gymnasiums, and the Clichy-sous-Bois school even has a swimming pool.

All twelve schools were delivered on time and on budget for the start of the 2014 school year, after less than two years of work. The Clichy-sous-Bois school was opened on 2 September 2014 by the French President.

Some pioneer *département* councils have even become habitual PPP users, building up an in-house expertise over the years that now makes them a model for other councils interested in trying out this contracting approach. Loiret is one such council.

Box 8. **Case study: Feedback from Loiret lower secondary schools**

Building and modernising secondary schools: A goal made easier by PPPs

Responsible for lower secondary schools since 1986, the département council has made modernisation a priority. In order to extend, modernise or rehabilitate the 56 existing schools and build new ones, EUR 600 million were budgeted for the 1998-2013 period, covering 35 000 pupils. In this connection, Loiret Département Council has acquired real PPP expertise, recognised in France both by business and by local authorities wishing to develop this system for their own projects. For construction of its school in Villemandeur the council used a partnership contract on grounds of urgency: the contract was signed in May 2006 and the school was delivered for the start of the 2007 school year – a real success. The local authority thus embarked on a second contract for construction of the Becquerel school in Sainte-Geneviève-des-Bois. Further partnership contracts followed, benefiting from the experience gained: the two schools in Meung-sur-Loire and Saint-Ay, and the five schools in Château-Renard, Bazoches, Chécy, Trainou and Ferrières-en-Gâtinais.

Partnership contracts: A repeat choice for their advantages

For Loiret Département Council, partnership contracts have many advantages: "No break in the chain of responsibility (a single partner for design, build, maintenance and caretaking), shorter construction times, energy cost control and, last but not least, a fixed rent throughout the life of the PPP, with ownership reverting to the département council after ten to twenty years." Moreover, as Éric Doligé, senator and leader of Loiret Département Council, explains: "Having entered into a number of PPPs, we have been able to compare financing costs with the traditional public project contracting model. Regarding rents, although we pay a bit more for financing, a PPP costs a bit less for construction and above all saves up to two years on a traditional public project contracting procedure. Overall, PPPs have thus proved more attractive."

The Sainte-Geneviève-des-Bois school is a good illustration of the advantages of a partnership contract, the latter being perceived as best suited to the specifics of the project, given its complexity. Following a favourable prior evaluation, the competitive dialogue procedure was begun on 12 March 2009. A year later, on 29 March 2010, Auxifip (Crédit Agricole Group) won this EUR 34 million contract covering a total period of 21 years and four months, after which the school will become the property of the département council. The private co-contractor undertook to ensure that 35% of the design/build costs

Box 8. **Case study: Feedback from Loiret lower secondary schools** *(cont.)*

and 50% of the operating and maintenance costs would be awarded to SMEs and trades. With a sixteen-month construction time, the school was delivered on time in August 2011.

Today Loiret Département Council may be considered a trailblazer with its use of partnership contracts and has been able to build up real expertise in this field. PPPs have been instrumental in enabling 60% of secondary schools to be renovated over 10 years, and many local authorities (including Seine-Saint-Denis Département Council, which embarked on a programme of 12 PPP schools) have wanted to draw on Loiret's success.

In the end, even though the great majority of local authorities have not yet had occasion to use PPPs to implement their construction, renovation or upgrading projects for school buildings, those that have done so (which may be considered a representative sample, including politically) are by and large satisfied with their choice and in some cases have already demonstrated as much by repeatedly resorting to this method for successive projects. In this respect PPP already has a shop window and positive feedback, and this should now be made more widely known.

2.8. University projects

In numerical terms, university PPPs are the leading sector for central-government PPPs, with some 20 partnership contracts signed or proposed over nine years. This is of course due to the particular circumstances of university property, suffering from chronic underinvestment and a perpetual lack of maintenance, but also to policy choices at the highest level of government with the launch of Operation Campus in late 2007. Although the start of operations was slower than expected, for reasons that had more to do with governance considerations on the universities' part and with initial miscalculation of completion times for such projects than with use of PPPs, early results seem encouraging.

2.8.1. Relevance of PPPs for the academic sector

This relevance must be assessed in the light of financial and budgetary issues and specific legal requirements. It is generally thought that France's academic buildings are not up to the challenges of the early 21st century: mostly built during the first wave of democratisation of access to higher education in the 1950s to 1970s, they have suffered in subsequent decades from a permanently inadequate level of maintenance, which now means that the quality and availability of buildings and the associated services are well below international standards despite the investment drive by central and local government since the "Universities 2000" programme, designed to support the second wave of democratisation. The gravity of the situation varies, and there are some exceptions. The very real inadequacy of the budget resources earmarked by central government for upkeep and maintenance of academic buildings is therefore not the only explanation for this situation. The choices made by universities and the management and contracting methods for property operations over recent decades, marked by a systematic preference for new fabric and an inability to recognise the need for maintenance and renewal of the existing stock, are also responsible.

The academic building stock, which is disparate and not properly recognised, represents 18.5 million square metres divided between some 200 public institutions,

including 82 universities. Various official reports suggest that around in middle years of the first decade of this century only half of all maintenance requirements were being met: average expenditure worked out at EUR 8.3/m^2 (2006 Budget Bill: annual performance plan) as against an estimated requirement of EUR 16/m^2 (i.e. 1% of construction costs that amounted to some EUR 1 600/m^2 excluding fixtures).

However, this shortfall does not merely reflect inadequate budget appropriations: "The under-resourcing of building maintenance is largely due to decisions against it in the universities."[36] In many cases, partnership contracts seem an appropriate answer to university needs, for the following reasons:

- The urgency of safety upgrading and renovation in general for decaying, substandard and badly maintained buildings.
- The universities' declared intention of exercising greater authority over their building stock but without being ready to provide the human resources necessary, since their priority is naturally to allocate their resources to teaching and research.
- The existence on many campuses outside the capital of land that could be developed by a private partner.
- The inclusion of upkeep and maintenance services in partnership contracts creates a contractual obligation, meaning that appropriations must be ring-fenced for asset maintenance and eliminating the risk of the decisions criticised by the inspectorates against expenditure on the assets concerned.

Last but not least, the introduction, first by the Caisse des dépôts et consignations (CDC) and then the European Investment Bank (EIB), of lending for partnership contract projects concerning academic property is likely to improve the financial competitiveness of these projects.

2.8.2. Early projects

It was therefore natural to consider use of an all-inclusive approach with long-term performance-based contracting through PPPs: several pilot projects were thus selected by mid-2005 after a call for proposals from the main ministries concerned by partnership contracts. As far as universities were concerned, these projects covered renovation of Paris-Dauphine, Strasbourg 1, Bordeaux 1 and the Brittany students' welfare office (CROUS), as well as modernisation of the RENATER digital network, and in a vaguely connected field, through the National Museum of Natural History, the refurbishment of Vincennes Zoo. At the same time the CDC was working on a pilot project for the University of Toulouse-Le Mirail.

In fact, it was only from 2008 onwards that the first "real" projects were launched by pioneering universities, and they looked quite different from these pilot projects:

University of Versailles St-Quentin:

- Construction of the Medical Department: Initial investment of EUR 44 million for a 25-year contract. MAPPP approval on 9 March 2007, leading to publication of the contract notice on 3 June 2008, followed by competitive dialogue and signing of the partnership contract on 20 November 2009.
- Energy-efficiency upgrade for buildings (apart from Medical Department): EUR 10 million investment over a 21½-year partnership contract. MAPPP approval on 2 July 2008, start of competitive dialogue in December 2008 and signing of partnership contract on 29 July 2011.

University of Paris IV: Rebuilding and extension of Porte de Clignancourt campus: EUR 53 million investment over a 29-year partnership contract. MAPPP approval on 2 March 2007 and partnership contract signed on 24 July 2009.

University of Paris-VII René Diderot: Building of new premises in the Rive Gauche Tolbiac-Masséna urban development zone: EUR 125 million investment over a 26-year partnership contract. MAPPP approval on 11 May 2007 and partnership contract signed on 23 July 2009.

2.8.3. Operation Campus

After this initial experimentation, Operation Campus, an extensive capital investment programme for the universities, begun in 2008 as part of the higher education reform policy and designed to support renewal of French universities, used partnership contracts as the best means of implementation, "with the three goals of speed, improved relations between higher education establishments and the private sector, and more responsibility for university management teams".

The objective was to use a call for proposals to glean the most promising grassroots initiatives and, by focusing on urban integration and better student conditions, promote the emergence of university centres of excellence through campus development projects and large-scale restructuring of property assets on a limited number of sites, all to be implemented through PPPs.

Operation Campus received a EUR 5 billion endowment (EUR 3.7 billion from the government's disposal of its shares in EDF, and EUR 1.3 billion from the Investing for the Future programme). Revenue from the endowment, initially allocated to the National Research Agency and then paid to the commissioning authorities[37] once partnership contracts were signed, was to be used to pay the "investment" and "major maintenance and replacement" items in the partnership contract fees. Because of this financing method, as well as the limited project contracting resources of both ministry and universities, use of PPPs was presented as a means of implementing a larger number of projects simultaneously whilst guaranteeing long-term upkeep of academic buildings. The idea was that regular projected expenditure (rents) would be covered by/paid from future revenue in order to balance the budget over the contractual term of these projects.

The call for proposals was issued by the Ministry of Higher Education and Research in February 2008 with the aim of selecting ten or so "campuses of excellence". The projects submitted were assessed more for their academic and teaching ambitions than for the content and maturity of their property and development plans. This often resulted in projects that were overambitious in terms of the overall financial ceiling, which itself was specified quite late: the rate of return on the endowment was set at 4.03%, by the order of 15 June 2010, making it possible to generate some EUR 200 million in annual revenue[38] to back future fee flows connected with the PPPs in progress.

The selection panel initially selected ten projects. Given the quality of the proposals, the minister decided to award "campus", "campus of the future" and "innovation campus" quality labels, together with PPP budget funding, to an additional eleven candidates that had not been selected by the board. In total, Operation Campus projects therefore covered 21 sites:

- Twelve "Campuses", of which ten were endowment-funded and two budget-funded;
- Five "Campuses of the Future" and four "Innovation Campuses", all budget-funded.

The following stages came after selection of the sites:

- Completion of negotiations and political announcement of amounts earmarked for each site (January to September 2009).
- Establishment of a national steering body with the creation in March 2009 of the Major Property Projects Department within the Ministry of Higher Education and Research.
- Establishment of project management bodies within each university and higher education cluster (spring 2009 to spring 2010).
- Provision of the endowment and defining of the terms for the return on it and for use of interest (early 2009 to summer 2010).
- Matching of proposed projects with available resources, coupled with more detailed project definition, particularly regarding urban aspects. It should be stressed that for the seven "Campus" sites outside the capital the aim was development over areas extending from 40 to some 300 hectares. This scale, equivalent to an entire city district, required drawing up of development plans in consultation with the relevant town-planning authorities.

The fast-growing impression that implementation of Operation Campus projects was behind schedule was due to the fact that policymakers had underestimated the time needed to complete all the above stages. Contrary to appearances, everything was implemented fairly quickly – albeit at different rates on different sites – especially considering that this process took place against a background of major change in academic governance (management autonomy enshrined in the University Freedoms and Responsibilities Act, but combined with incentives to amalgamate in federated bodies: the higher education and research cluster established by the 2006 law) and at a time when university vice-chancellors were also preoccupied by other issues: transition to broader responsibilities and fields of action and replying to multiple calls for proposals for the Investing for the Future programme, including "initiatives for excellence" ("Idex").

The tendering procedure for the first Campus PPP was begun in December 2010, and by spring 2012 twelve contract notices had been published for PPPs on nine sites (five endowment-funded and four budget-funded). Despite what was said at the time, the Operation Campus projects were not suffering widespread deadlock. They were for the most part advancing fast.

With the establishment of the Major Property Projects Department, the Ministry of Higher Education and Research took steps to support and assist commissioning authorities by drawing on a whole range of resources: project design financing, training (project teams set up on each site), production and distribution of reference documents (performance targets, project management, boilerplate, etc.), support through a strategic planning committee, etc. It also established contractual arrangements with these commissioning authorities and local government (design agreements, site partnership agreements, construction agreements) to arrange and guarantee financing and good project management. As is now frequently the case for major central-government capital projects, local authorities were closely involved and had their say in the financing plans for partnership contracts.

These PPPs included in the same contract both services to be financed from the funds earmarked for Operation Campus (investment and major maintenance and replacement) and other services (routine maintenance and services) that were supposed to be financed from central-government annual grants (public service support grants). Financing of

contract fees was therefore split between PPP budget funding in the shape of the return on endowments (for investment and major maintenance and repair) and the recurrent budgets of the establishments concerned (for routine maintenance and services). This division meant that in the project appraisal process particular importance was attached to the budget sustainability of commitments made the academic stakeholders.

Here it may be considered that the preference for use of partnership contracts was consistent with the financial resources of the Ministry of Higher Education and Research and the goals of Operation Campus (restructuring campus management with the focus on globalisation, long-term maintenance and better working and living conditions for students and researchers). However, in practice this preference in no way exempts commissioning authorities from providing, for each project, a prior evaluation complying with the 2004 order and one that compares this model with an alternative public project-contracting model, which evaluation is subsequently submitted for approval by MAPPP.

A PPP is not a public procurement instrument that will fit all purposes, and the initial decision to make exclusive use of this procedure soon proved incompatible with the aim of overall upgrading, in terms of property and urban environment, of campuses that already existed for the most part, and which required a wide range of action with regard to all sorts of items varying greatly in importance.

It was fortunately possible to remove this undue constraint by summer 2010 by settling the Operation Campus endowment on the National Research Agency, where it received interest from the Treasury. The scheduled interest for 2010, 2011 and 2012 thus made it possible to finance a whole string of projects that could not have been properly carried out by way of a PPP:

- Purchase of property and essential preliminary studies for a better understanding of the risks involved in operations requiring a PPP.
- Improvement of outside areas and rehabilitation of communal facilities.
- Rehabilitation of halls of residence, sports facilities and minor teaching and research buildings.
- Provision of cafeterias, etc.

The commissioning authorities made use of this opportunity to varying degrees. It nevertheless meant that, on most of the endowment-funded sites, the project's credibility could be maintained by authorising the start, before the 2012 elections,[39] of various work anticipating the main projects to come.

Spring 2012 saw a mixed picture, with some sites already well on the way with implementation of their projects (Aix-Marseille, Grenoble, Toulouse Le Mirail, Brittany, Clermont-Ferrand and Dijon in particular) and others still conducting their scoping and scheduling studies; some universities had accepted use of partnership contracts, while others were trying to evade this obligation.

When she came to office, the new minister, finding that few projects were fully developed and the actual take-up rate of appropriations was low, decided on a root-and-branch review of Operation Campus. At her request, a task force consisting of a panel of experts chaired by Roland Peylet, a member of the Conseil d'État, produced a detailed report in October 2012, from which it emerged that:

- The projects were uneven in quality, since they were "not always obviously part of an overall strategy".

- The drive for new development had often prevailed over rehabilitation of existing buildings, which was nevertheless a priority.
- Operational management of the projects had suffered on account of "delicate relations" between, on the one hand, higher education clusters in their role as project coordinators and, on the other, the universities that belonged to them, and not enough progress had been made regarding project design.
- With respect to use of PPPs in particular, use of partnership contracts presupposed "a particularly well-informed public buyer with financial muscle" and the method could "in no way be justified to offset the shortcomings of public procurement". The necessary learning curve was "not the only explanation for the length of time taken to sign partnership contracts".
- Local-government reservations – "largely on principle or stemming from a defence of the local economic fabric" against the construction "majors" – had, in particular, led "several regional councils to refuse all involvement in PPP financing".[40] In short, this approach was of little relevance to small-scale projects, and for the others the choice remained open.

The more general report on PPPs delivered to the Minister of the Economy and Finance by the Inspectorate-General of Finance in December 2012 (see Section 5 below) came to similar conclusions regarding university PPPs. However, it did recommend recentralising contracting procedures at ministry level.

This is a long way from the blunt assessment blaming "PPPs" for the unanticipated delays in implementing Operation Campus projects and for the problems with some local authorities. In fact, use of PPPs has been only partially discredited by these reports, since most of the projects initiated have been confirmed, apart from cases in which the universities commissioning them insisted on withdrawing from procedures initiated by previous university teams just prior to re-election of university bodies,[41] and a large proportion of new projects have kept this contracting method.

2.8.4. Initial assessment: Mid-2014

Box 9. **University PPP projects**

Background: Situation before Operation Campus

- University of Versailles St-Quentin (two partnership contract projects):
  - ❖ Construction of Medical Department
  - ❖ Energy-efficiency upgrade for buildings
- University of Paris IV (partnership contract: rebuilding and extension of Porte de Clignancourt campus)
- University of Paris VII (partnership contract: building of new premises in the Rive Gauche Tolbiac-Masséna urban development zone)

Operation Campus projects (20 partnership contract projects)

1) Ten signed partnership contracts

- Three contracts signed in 2012 (University of Grenoble: GreEn-ER; University of Aix-Marseille: Océanomed 2; University of Toulouse-Le Mirail: Mirail campus)

Box 9. **University PPP projects** *(cont.)*

- Six contracts signed in 2013 (University of Grenoble: PILSI; University of Burgundy in Dijon: innovation campus; University of Lyon: Lyon Sud Medical Faculty; Clermont University: Magma and Volcanoes Laboratory; European University of Brittany: digital campus; University of Lille Nord de France: innovative training)
- One contract signed in mid-2014 (University of Aix-Marseille: Arts Faculty and Law Faculty in Aix-en-Provence)

These contracts have received ministerial approval.

NB: An 11th PPP was signed in Bordeaux in the shape of authorisation of temporary occupation of public property creating rights in rem coupled with an inseparable lease agreement ("public-public" partnership promoted by the CDC).

2) Six partnership contract projects for which the prior evaluation has been approved by MAPPP and a tendering procedure is in progress

- Condorcet Campus, Paris-Aubervilliers
- University of Grenoble: Social sciences
- École Centrale Paris: Establishment on Saclay campus
- University of Lorraine: Mathematics, IT and Engineering Department, Metz
- University of Lyon: École Normale Supérieure
- University of Aix-Marseille: Science Faculty, Luminy (Marseille)

3) One partnership contract project for which the prior evaluation has been submitted to MAPPP and which will be put out to tender in 2014 once approval has been obtained

- University of Lorraine: Health and Biology campus, Brabois (Nancy)

4) Three partnership projects for which the prior evaluation is in progress and likely to be submitted to MAPPP in 2014/15

- University of Paris Est: Copernic building, Descartes campus
- University of Paris Sud: Pharmacy, biology and health cluster, Saclay campus
- University of Lille-Nord de France: Villeneuve d'Ascq science campus

Source: MAPPP/Ministry of Higher Education and Research.

The first Operation Campus contracts were signed in the second half of 2012, and 2013 was also a very busy year for university PPPs.

Sites not affected by decisions challenging Operation Campus programmes and the procedures used are now preparing to sign contracts, begin construction and start new competitive dialogue procedures.

Moreover, the Minister of Higher Education noted in early 2014 that university partnership contacts were proceeding smoothly. She pointed out at the same time that in the end some 40% of the Operation Campus programme would be implemented in the form of PPPs, even if it was now planned to use public project contracting for many of the new projects. The financing constraint represented by endowment interest as sole funding has been partly removed by authorisation to borrow from the EIB and the Savings Fund Department of the CDC (which have made available specific amounts for this purpose) since the general prohibition on resorting to borrowing for central-government agencies was lifted to allow them to finance university property projects.

The following PPP contracts were signed in 2012:

- 20 July: Contract for the Grenoble energy, education and research project (GreEn-ER) for construction of a 23 000 m^2 building to accommodate teaching activities, research laboratories and technology platforms in the field of energy, as well as a refectory. The commissioning authority is the University of Grenoble, and the amount invested is EUR 66 million.
- 12 November: PPP for the first phase of the science and technology campus at the University of Bordeaux, entailing rehabilitation of 16 buildings covering an area of some 87 000 m^2. The commissioning authority is the University of Bordeaux. At the request of Aquitaine Regional Council, which is financing the project half and half with central government, it is being implemented not under a partnership contract but under the 1994 law on authorisation of temporary occupation of public property creating rights *in rem*, with an ad hoc package promoted by the CDC. The amount invested is EUR 131 million.
- 14 November: Partnership contract for the Océanomed 2 project for construction of a 4 500 m^2 building to accommodate teaching activities, research laboratories and a conference hall in the field of oceanography. The commissioning authority is the University of Aix-Marseille, and the amount invested is EUR 11 million.
- 21 December: Contract for reconstruction of the Le Mirail campus, covering a built area of some 61 000 m^2 together with redevelopment of outside areas and sports grounds. The commissioning authority is the University of Toulouse 2-Le Mirail, and the amount invested is EUR 155 million.

Further PPPs were signed in 2013:

- 4 July: Partnership contract for the PILSI-EDD-BEeSy project for construction of three buildings representing 21 000 m^2 of science laboratories and test platforms for digital technology, for environment and sustainable development subjects, and for environmental and systems biology. The commissioning authority is the University of Grenoble, and the amount invested is EUR 54 million.
- 18 July: Partnership contract for the "innovation campus" of the University of Burgundy, for construction of three buildings covering a total area of 7 000 m^2 to accommodate research and development activities, student facilities and visiting researchers, as well as energy-efficiency upgrading of 32 000 m^2 on the Montmuzard campus in Dijon. The commissioning authority is the University of Burgundy, and the amount invested is EUR 20 million.
- 23 July: Partnership contract for the project to extend the Lyon-Sud Faculty of Medicine, covering construction of three buildings totalling 5 700 m^2. The commissioning authority is the University of Lyon Higher Education and Research Cluster (amount invested: EUR 18 million).
- 13 September: Contract for construction of a 4 500 m^2 building for the Magma and Volcanoes Laboratory ("Labex" (laboratory of excellence) project) on the Les Cézeaux campus of the University of Clermont-Ferrand (amount invested: EUR 16 million).
- UEB-C@mpus contract for creation of a digital campus for the Brittany region, for construction of four buildings covering some 11 000 m^2 and roll-out of digital services and facilities at 54 sites across the region. The commissioning authority is the European University of Brittany, and the amount invested is approximately EUR 39 million.[42]

- Lille campus "training and innovation" contract for construction of three buildings covering some 21 000 m^2 to accommodate teaching activities in the fields of health, management and modern languages. The commissioning authority is the University of Lille-Nord de France, and the amount invested is approximately EUR 53 million.

In early 2014 competitive dialogue began or was continuing for the following projects:

Aix-Marseille: Restructuring of Aix-en-Provence campus and Law/Arts Faculty buildings + rehabilitation of three main buildings on the Luminy campus (research, teaching and central campus);

Condorcet campus: Establishment on Aubervilliers site;

École Centrale Paris: Transfer of academic premises to Saclay;

University of Lorraine: New buildings for mathematics, IT and engineering departments in Metz;

Grenoble: New premises for social sciences department;

Lyon: Refurbishment of École Normale Supérieure premises (Monod campus);

Lastly, over half a dozen projects are at the prior-evaluation drafting stage, suggesting another busy year for university PPPs in 2014.

The four projects predating Operation Campus have now been delivered, on time and on budget[43] with no major problems.[44] Initial experience has enabled some teams introduced to the procedure through a first PPP to tackle a second with greater equanimity and genuine expertise. PPPs have made it possible, according to everyone who has used them, to:

- upgrade the skills of project management teams in the public sector, which have to work in project mode on a long-term basis;
- discover and make good use of the leverage potential of competitive dialogue as a 'smart' tendering procedure.

Box 10. **D. Filâtre, former vice-chancellor, University of Toulouse-Le Mirail**

Entirely rebuilding a campus is a rewarding experience. You have to have an overall ambition for a living community rather than just want to renovate some buildings: my vision was urban planning for universities. In this respect, competitive dialogue was outstanding. Public project contracting would only have allowed a building programme. It is interesting to see how the bidding groups worked on an intelligent case, with sound support through the dialogue procedure, and the responsiveness of the university teams and their assistants.

- cover aspects that it would not have been possible to address with traditional methods, such as building of residential hotels for visiting professors in Dijon, inclusion of a whole digital technology dimension for the European University of Brittany, and property enhancement with establishment of a crèche for university staff at Clermont-Ferrand.

Conversely, the procedure has proved lengthy, time-consuming and resource-intensive, especially for the legal aspects of financing (need to put in place and "secure" tripartite agreements with the banks, after the financial crisis, to provide bank financing in

the event of appeals). The current situation regarding contracts has given rise to new complexities at the final negotiation stage, with lenders requiring additional securities faced with litigation-related risks of contract termination or voidance.

Box 11. **A. Neveu, Head, Major Property Projects Department, 2008-14**

The subject of partnership contracts often boils down to a discussion of the inherent benefits and disadvantages of this method of public procurement.

Partnership contracts are generally perceived to offer the following benefits:

- The all-inclusive approach required by the procedure, making it possible to optimise the project in terms of total cost and enabling a public authority to anticipate all project outcomes, particularly financial ones.
- The dynamics of the competitive dialogue procedure, ensuring agreement on economically sustainable answers thanks to step-by-step reconciliation of corporate proposals with the public authority's programme.
- A clear approach to project risk, making it possible not only to find the best distribution but also to take precautionary measures and actively manage certain risks.
- Improved timeliness and cost-compliance, except in the event of a public-authority risk forcing the authority to bear the direct and indirect consequences.

Partnership contracts are generally perceived to have the following disadvantages:

- More rigid budgets as a result of long-term contract commitments borne by the recurrent budgets of the establishments concerned (routine maintenance and services), which is the other side of the coin for ring-fencing of this expenditure.
- Transaction costs associated with the all-inclusive approach: Contracting costs, contractor management costs and the costs of the competitive dialogue procedure. The expected savings of the all-inclusive approach must outweigh the foreseeable transaction costs if use of partnership contracts is to be justified.
- The gap between project financing costs and public-authority financing costs. The sudden rise in bank commissions and margins after the financial crisis and lenders' insistence on having their assets fully secured – in addition to the security provided by assignment of receivables – by means of more and more legal clauses designed to cover every theoretical case in which these securities might be cancelled or become ineffective have resulted in a process handicapping partnership contracts and led the Ministry of Higher Education and Research to substitute public resources (CDC savings funds and EIB financing) for some of this bank lending.
- Charging to the project of costs that are usually hidden: Financing costs and the cost of risk cover. Use of partnership contracts results in the appearance of financing costs charged to the government's higher education programme (Programme 150), whereas these costs remain hidden as part of public debt service when a project is implemented using traditional public project contracting. Hence there is an undoubted political cost associated with this transfer of expenditure within the central government budget.
- The potential risk of restricting competition to a handful of bidders. While competition has operated fully so far, including to the benefit of regional firms, two factors might lead to a gradual restriction:

Box 11. **A. Neveu, Head, Major Property Projects Department, 2008-14** *(cont.)*

This traditional and sometimes contentious argument focusing on investment and its immediate effects (upkeep and maintenance of technical facilities) should be defeated by recognition of the leverage effect of partnership contracts viewed as a means of combining construction, services and development.

Two types of indirect benefit may emerge:

a) PPPs are a very demanding public procurement method, both for public authorities and for companies. Successfully implementing a PPP can represent an opportunity for a significant qualitative leap in university property management.

b) Like any other organisation, a university can harbour pockets of inefficiency and underperformance. Use of PPPs may prove to be a lever of change enabling universities to develop high-quality services out of reach of their in-house resources or to do so keeping costs under better control, in line with the university's financial resources.

Regarding the first point, university PPPs have been a catalyst for skills development in the universities concerned. The support set up for Operation Campus projects – following the assistance provided to the University of Paris IV for its PPP – and the requirements introduced by the Ministry of Higher Education and Research for project evaluation processes have helped universities make progress with managing their own projects and the impact on operating and budgets. This expertise has yet to be consolidated in the long run by moving from project management of the scheduling, contract-awarding, design and construction phases to project commissioning by the university, extended in the operating phase to the individual components (departments and laboratories) and all the support services involved (property, legal, financial).

Regarding the second point, university PPPs have made only limited progress:

- Outsourcing of services such as room preparation (by assistants) by the University of Paris IV for the Clignancourt campus.
- Innovative service delivery by services supporting the collaborative communication infrastructure of the digital campus of the European University of Brittany.
- Delegated management of the residential hotel on the innovation campus of the University of Burgundy in Dijon.
- Enhancement of unused land on the Les Cézeaux campus to fund a joint university crèche for Clermont University.

These few examples of success are limited in scope and tend to concern new services that the institution could not reasonably have expected to take on under public-authority control, rather than a transformation in the way universities operate.

The most ambitious venture, commissioned by the University of Versailles Saint-Quentin (UVSQ) with its energy performance contract, was a failure. The contract's extensive outsourcing of upkeep and maintenance services still provided under public-authority control presupposed genuine change-management accepted as a policy by the executive team and implemented using an appropriate management approach. In the absence of both these factors, the university found itself dealing not only with extra costs but also with an internal labour crisis and a dispute between the staff supposed to manage the job-holder and the job-holder himself. In the crisis that the university was experiencing in other respects, the causes of which went well beyond the PPP, the obvious solution would have been drastically to reduce the scope of the contract and restore the status *quo ante* – a mixture of public-authority control and purchasing of specialist services – for all services other than those directly relating to achievement of contractual energy performance targets.

Box 11. **A. Neveu, Head, Major Property Projects Department, 2008-14** *(cont.)*

Despite this example to the contrary, it is to be hoped that the universities, encouraged by the positive experience gained from managing such contracts and driven by necessity, will endeavour to draw greater secondary benefits from their PPPs in future.

1. The difference between firms able to do entirely without lenders owing to the combined action of the EIB and CDC, and all the other remaining firms.
2. The competitive advantage enjoyed by some firms on account of experience gained with contracts already won for the first Operation Campus PPPs, to the detriment of their less fortunate competitors.

2.9. Cultural projects

2.9.1. Specific features of the cultural sector

The market share of partnership contracts in the cultural field is still low, with ten or so such contracts for both central and local government. This state of affairs is due more to cyclical factors than to any fundamental incompatibility with the sector. Nevertheless, it has proved necessary to take into account a number of features specific to cultural projects in order to ensure growth of partnership contracts in this sector.

2.9.1.1. Major constraints

Public service provision in the cultural sector is distinguished by:

- The sector's very specific features
  - Cultural institutions, which have considerable influence over contracting authorities, usually want to distance themselves from a commercial approach. Local authorities have a more flexible approach than central government in this field. They often wish to combine heritage preservation and development with a tourism-based approach, or, in the performing arts, support for new work with appeal to the general public.
- The sector's structural economic imbalance
  - The relatively high cost of investment and maintenance in relation to expected revenue from facility users (specific nature and considerable cost of theatres, substantial restoration and maintenance costs for heritage buildings);
  - The wage burden (no "productivity gains", other than marginal ones, in activities that are by definition labour-intensive – and not just in the performing arts).

In practice, cost and scheduling overruns are often substantial for major cultural projects

In Lyon, the Confluences Museum, was set to open late in 2014, thirteen years after its architects were selected. In the meantime there has been a succession of main contractors and companies, all overwhelmed by the complexity of the work. Initially estimated to cost EUR 60 million, it will probably come to six times as much. The reports of the Cour des comptes are filled with references to public buildings, often very prominent facilities for culture or sport, for which the delays can be counted in years and the financial overruns in hundreds of millions of euros. In recent years, the Cour des comptes has had the renovation of the Paris-Belleville School of Architecture in its sights, as well as the Picasso Museum, the Grand Palais and the National Archives in Pierrefitte, amongst others. Its reports keep coming and its criticisms run together concerning "generally poor performance with regard to scheduling, estimate compliance and timeliness". Budget variance is often over +30% (after cost discounting), and a thirty-month delay is the average.

Central and local government are thus at risk of undermining their credibility in the name of architectural quality that looks more like local marketing. This is the "Bilbao effect": elected representatives are looking for projects that will bring publicity to their city or region and attract business and tourism, sometimes regardless of budget constraints.

2.9.1-2. Relevance of PPPs for the cultural sector

It follows that the environment in which partnership contracts for cultural and heritage facilities are likely to develop is quite constrained:

- Cultural institutions, which are traditionally anxious to remain independent of market policy (consider the continuing debate on free admission to museums), immediately see partnership contracts as a source of confusion, if not compromise, at a time when culture is still, for both central and local government, a highly emotive, political and even ideological field.
- Conversely, some local authorities have in the past overestimated the revenue that could be generated through cultural investment whilst fairly systematically underestimating the real costs of maintenance and operating. Thus semi-public companies have generally proved an unsuitable instrument for managing cultural facilities (example: Douarnenez Maritime Museum, declared bankrupt in 1997). Nor has central government been immune to this failing – witness the awkward experiment of the Réunion des Musées Nationaux (RMN), whose transformation into a state-owned industrial and commercial enterprise (EPIC) and attempts at business development have not been crowned with success.
- Local authorities' ability to take initiatives of their own is restricted by near-systematic request for central-government support through the regional agencies for culture and quality certification procedures (for theatres, museums, cinemas and multimedia libraries), which are a prerequisite for state subsidy.
- The highly symbolic nature of cultural buildings means that the project originator will often want to retain authority over design of the work (architectural concept).

Partnership contracts nevertheless offer the following opportunities, which specifically meet these constraints:

- They avoid the mixing of activities so detrimental in general to sound management of cultural work by keeping the core activity under public management (local authorities or public institutions for cultural co-operation (EPCCs) in the case of local government, and government agencies (EPAs) or *ad hoc* institutions in the case of central government): scheduling and operating, artistic creation and educational heritage promotion thus remain outside the scope of the contract, as does the associated "attendance risk".
- On the other hand, partnership contracts include related revenue-generating services: catering/cafeterias, shops, accommodation and possibly room hire according to availability.
- They enable the existing historical heritage to be restored, developed and maintained in the long term without having to raise immediately the full amount of capital needed;
- They offer greater flexibility in division of responsibilities with the private partner: thus project design can be separated from the partnership contract and awarded to an architect directly by the local authority through an unconnected competition. Several specific cases (Perpignan theatre, storage area of the Museum for European and Mediterranean Civilisations) have clarified the practical arrangements for transfer of project management under this method;

- They assign maintenance tasks and basic operation to the private partner, with the advantage to the public operator of guaranteed availability and no spiralling costs (frequently seen in this sector).
- They include, where applicable, the "commercial" side of running a site, since the "attendance risk" for events organised under the aegis of the private partner is borne by the latter under the partnership contract provisions concerning income generation.

Box 12. **Case study: Redevelopment of Aniane Abbey**

This rehabilitation project commissioned by the Vallée de l'Hérault Inter-municipal Council concerns an ancient abbey rebuilt in the seventeenth century and has three components: opening the site to the public and making it a centre of research for medieval archaeology; attracting artists in residence and organising events; and, lastly, from the economic angle, provision of a sixty-bedroom hotel. The private partner in charge of the project will rent the cultural areas to the local authority.

It should be noted that the specific technical features of cultural buildings, the use of heritage buildings and recourse to dual management ("arts" and "technical") are all factors tending to prove the complexity of these projects in terms of the Constitutional Council requirements.

A partnership contract also offers options in the ICT field, not least with regard to marketing logistics (ticketing, online booking). For the time being this has been explored only on a small scale and with quite disappointing results (Palace of Versailles ticketing). Another possible field would be culture digitisation networks.

This would suggest that the market for cultural heritage with tourist potential – at a time when the cultural industry and cultural tourism seem to be one of France's assets in international competition – is a field with considerable growth potential for partnership contracts.

2.9.2. Current projects

2.9.2-1. Central government projects

These are still few and far between. Reluctance on the part of the Ministry of Culture has undoubtedly delayed emergence of projects in this field. Those included in the list of "pilot projects" were all badly designed, lacking in balance and suffering from congenital defects: it is hardly surprising that they have come to nothing. Other projects were clearly candidates for a partnership contract approach (Grand Palais, fourth stage of the La Villette project, Cité Musicale Philharmonic Hall, etc.), but this option has generally been dismissed without even a preliminary comparative assessment.

The only Ministry-commissioned project to have emerged was for the storage area of the Museum for European and Mediterranean Civilisations (and, in a rather different category, Vincennes Zoo, mentioned in the section on university PPPs). Originally just an expedient choice, the partnership contract turned out to be well-suited to its purpose and, more importantly, was regarded by the department responsible for France's museums (Direction des Musées de France) as a trial heralding projects on a larger scale.

Among the great assets of this project was support from the Ministry of Culture project contracting agency (EMOC), which has since become the Cultural Property Development and Heritage Agency (OPPIC). The project contracting agency immediately harnessed its extensive culture-related contracting experience to implementing the partnership contract, considering it to be a new field of activity for the agency. This was an important choice for the future; the Ministry will thus have a capable in-house support body.

2.9.2-2. Local government projects

The main projects concern theatres and cinemas:

- Perpignan theatre (Théâtre de l'Archipel). The following problems were encountered:
  - The commissioning authority's insistence on the design (architectural concept) being treated separately; this issue was settled through a satisfactory legal solution that was subsequently implemented.
  - Payment of subsidies from central government, the European Union and other authorities. Transfer of contracting authority to the private partner brought objections from Treasury accountants and paymasters-general – objections that had to be counteracted by instructions from the Public Accounting Directorate: virtually all cultural facilities built by local authorities are subsidised.
  - The respective roles of the "cultural" management body and the private partner's management body. The rules on how they work together, which are complex but also central to the problems of partnership contracts for cultural facilities, have to be set down in detail.
- Rodez and Saint-Raphaël cinemas. These projects were part of urban development schemes, the cultural facilities being combined with other public facilities (Le Foirail district in Rodez; the coach station in Saint-Raphaël). One particular problem that has been carefully studied by the National Centre for Cinema and the Moving Image (CNC) is payment to the operator (as distinct from the private partner) of capital grants for its facilities.

Box 13. **G. Ancelin, Mayor of Nogent-sur-Seine and Deputy Leader, Aube Département Council: Camille Claudel Museum**

The architectural, engineering and museum aspects of this project were highly complex owing its historic site, the house occupied by the artist Camille Claudel in the nineteenth century, in the heart of the old town centre. The PPP's main advantage has been its ability to meet a tight project schedule for a high-quality facility; the innovative (or even unusual) side of the procedure was an additional incentive for the various stakeholders both private and public (town council, Direction des Musées de France, etc.).

Box 14. **J.-M. Pujol, Mayor of Perpignan: Théâtre de l'Archipel**

The municipality's first concern was to avoid the unpleasant surprises sprung on other municipalities with comparable projects (the Lyon opera house, for example), such as construction cost overruns and exponential maintenance costs. The aim for the arts was to give the city a multidisciplinary theatre able to accommodate every variety of the performing arts in several multipurpose auditoriums whilst creating a landmark building

Box 14. **J.-M. Pujol, Mayor of Perpignan: Théâtre de l'Archipel** *(cont.)*

in terms of its architecture – hence the decision to award design, after a separate competition, to the Jean Nouvel design agency, while the partnership contract was awarded to a regional construction SME.

MAPPP helped us sort out the procedural difficulties relating to subsidies and repayment of VAT that arose out of the pioneering nature of a PPP for a cultural facility of this kind.

Table 8. **Table of past and present projects**

Project name	Commissioning authority	Characteristics	Capital cost	Status	Comments
Storage area, Museum of European and Mediterranean Civilisations (MuCEM)	Ministry of Culture (Direction des Musées de France), EMOC	Management of works of art shared with museum team	EUR 18.8 million	MAPPP approval in 2006; delivered in 2013	Design separate (prior to contract)
Palace of Versailles ticketing	Palace of Versailles public establishment	IT provision, operating	EUR 3 million	MAPPP approval in 2006; terminated following legal action	
Maritime Museum/ Surf Centre	Biarritz City Council	Renovation and construction of a building	EUR 41 million	Delivered December 2010	Design separate (prior to contract)
Théâtre de l'Archipel	Perpignan City Council	Building maintenance and operating Cultural activity assigned to an EPCC	EUR 42 million	MAPPP approval in Nov. 2006, 25 months of construction Delivered in July 2011	Design separate (prior to contract)
Vincennes Zoo	National Museum of Natural History	Zoo reconstruction		Delivered April 2014	
Camille Claudel Museum	Nogent-sur-Seine		EUR 15 million	MAPPP approval Dec. 2009 Delivered late 2014	
Multiplex cinema, Victor Hugo district	Saint-Raphaël Town Council		EUR 1.2 million (cinema: EUR 17 million total)	MAPPP approval in 2006 Partnership contract signed in Nov. 2007 Delivered in Jan. 2010	Part of a package of services
Cité Musicale/Ile Seguin Philharmonic Hall	Hauts-de-Seine *Département* Council		EUR 170 million	Partnership contract signed in July 2013, delivery expected June 2016	
Fabrique de l'Image	Arenberg		EUR 104 million	2014	
Aniane Abbey rehabilitation and development	Vallée de l'Hérault Inter-municipal Council	Redevelopment, resident artists and organisation of events + provision of a hotel	EUR 10 million		
College of Music and Dance	Saint-Omer Urban Community		EUR 13 million		

Source: MAPPP.

Box 15. **Case study: Cité Musicale, Boulogne-Billancourt**

Construction of the Paris-La Villette Philharmonic Hall using public project contracting will probably cost at least three times as much as the EUR 120 million euros announced during the architecture competition in 2007.

At the same time, in mid-2013, Hauts-de-Seine Département Council used a partnership contract to embark on a similar project for the Ile Seguin, albeit somewhat smaller,: the Cité Musicale. This will be a top-quality cultural facility comprising a 5 000/6 000-seat concert

Box 15. **Case study: Cité Musicale, Boulogne-Billancourt** *(cont.)*

hall, a smaller auditorium, recording studios and rehearsal rooms as well as a business area, restaurants and music-themed shops. Of the 400 or so annual events planned, some 50 will be chosen by the département council while the remainder will be organised by the private partner, which will undertake the arts programming at its own risk in return for a fee (deducted from the rent paid by the local authority).

2.10. Public-private partnerships for sports facilities

2.10.1. Background

2.10.1-1. State of play

Among the sectors turning out to be particularly promising for PPPs are major sports facilities, although this was not anticipated. This phenomenon is probably due to a convergence of two factors:

- The *capital-intensive* nature of sports facilities such as stadiums and aquatic centres (large initial investment) and the regular *upkeep-maintenance/upgrading to standards* that they require, together with marketing to generate secondary revenue, suggests at first sight that they would be prime candidate for PPPs to build and operate for local government.
- The relative *disrepair* of France's sports facilities, true both of basic facilities (the great majority of swimming pools were built in the 1960s and 1970s as part of major capital programmes (Tournesol swimming pools, Caneton swimming pools, etc.), but there has been no comparable new investment since then although standards have evolved and types of use become more varied) and of high-capacity sports grounds. France is lacking these facilities: French stadiums are old (67 years old on average) and have the smallest seating capacity of any country for the five major European championships (on average under 30 000). By 2010 only one major stadium had been built over the past forty years (the Stade de France for the 1998 World Cup) and only two stadiums had over 50 000 seats (the Stade Vélodrome in Marseille and the Stade de France in Saint-Denis), a prerequisite for being designated a UEFA Elite Stadium. The country was lacking the facilities required to stage European and international sporting events. Furthermore, the standard of reception and services offered by the stadiums was lower than in other Member States (including in terms of multifunctionality).

The amounts of money that they attract (capital costs and commercial revenue) make these major sports facilities very significant economically, but this does not preclude the idea of public service, if only through control of prices and the spin-offs in terms of image and business activity for the local authorities concerned.

2.10.1-2. Economic model for a major sports facility: Main economic flows

a) Expenditure

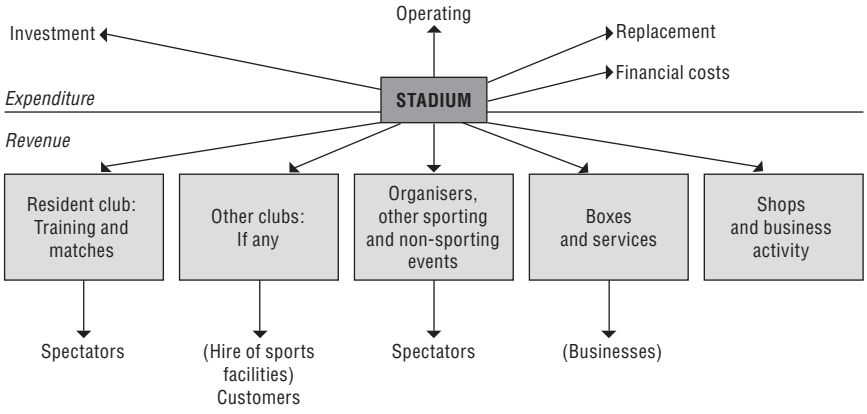
- Capital cost
- Cost of operating/upkeep/maintenance and major repairs for wear due to use
- Cost of major maintenance and replacement/reinvestment for upgrading to meet standards required by sports federations
- Financial costs

b) Revenue

- Provision of sports facilities to resident club (or even neighbouring clubs) for training
- Provision of sports facilities to resident club for matches (spectator revenue from matches paid through resident club)
- Provision of facilities for non-sporting events (spectator revenue paid through organisers)
- Corporate box hire (corporate lounges)
- Sale of services (meals, refreshment areas, various stalls) for matches and other events
- Business hire (restaurants, shops, hotels, etc.)
- Hire of business premises connected with the sport
- Naming rights

The choice of legal and financial arrangements would depend on forecast revenue and expenditure (on the basis of the schedule and the market) and related contingencies.

Figure 3. **Legal and financial choices for stadiums**



Resident club

This club is the main user of the facilities and a vital partner but does not usually have the technical and financial capacity to meet the cost of the facilities; it must ultimately be involved in the arrangement but cannot be a member of the bidding group (which would skew competition).

2.10.1-3. Possible arrangements involving the private sector

While public project contracting is always possible, its main drawbacks are well-known:

- Completion times (tied to Public Procurement Code procedures and the law on public project contracting and its relationship to private project management) sometimes at odds with outside deadlines (e.g. dates of major international competitions).
- Entire risk borne by local authority.
- Technical and commercial management often necessitating additional local-government resources with no guarantee of optimum efficiency.

Hence the importance of considering recourse to the private sector, which may take a number of forms.

a) **Concession** with a private concession-holder bearing the entire risk

But this necessitates a substantial subsidy at the outset and entails long-term business risks (particularly in connection with the resident club's sporting performance) that are too large to allow an attractive financial structuring (cf. example of Le Mans Stadium, which was granted as a concession: the resident club, having been relegated to the sixth tier, was put into receivership, triggering the financial guarantee provided by Le Mans City Council).

b) **A public-private partnership**, based on sharing of risks and responsibilities between public authority and private partner in order fully or partly to optimise:

- Effectiveness of the design/construction phase.
- Technical management and marketing.
- Financing.

This may take various legal forms: long-term lease arrangement (BEA), partnership contract or a concession with shared business risk.

For sports facilities it will be incumbent on the local authority, at the prior evaluation stage, to demonstrate the value-added of a legal and financial arrangement of this kind for meeting all objectives as effectively as possible.

The value-added of a partnership contract could be highlighted in cases where the project's economic health depends on the sharing of business risk between public and private stakeholders and where several different types of facility (public or private) may be planned on the same site to optimise earning capacity.

2.10.2. Major stadiums for Euro 2016

France's staging of the Euro 2016 football championship necessitated building and/or renovating eight stadiums, which was done in four different legal forms.

Apart from the two projects implemented using public project contracting (St-Etienne and Toulouse), all the other projects called on the private sector in varying degrees:

- Five projects used two types of legal arrangement connected with PPPs in the broad sense:
  - ❖ BEA: Lens
  - ❖ Partnership contract: Lille, Nice, Marseille and Bordeaux
- One arrangement is entirely private (Lyon, Stade des Lumières), fully financed by the resident club (Olympique Lyonnais) for some EUR 450 million, although the local authorities are providing supplementary financing (EUR 180 million) for access and development of the approaches.
  - ❖ All stadiums must be delivered, allowing for one exception in Bordeaux, by the end of 2014 in order to meet the UEFA timetable. The national authorities have made a financial commitment to this end through direct grants paid by the National Centre for the Development of Sport (CNDS) on the basis of project size (but with no impact on the contracting method, in compliance with the neutrality rule for subsidies, which must depend only on the nature of the project eligible and not on its method of financing) for a total amount of EUR 152 million, to which must be added the assistance provided by the relevant local authorities through grants, securities and direct payments/rent, totalling EUR 900 million.

The following stadium information covers the main technical and financial characteristics of projects implemented using PPPs.

❖ Bordeaux stadium

Size: 43 000-seat covered stadium (+ annexes)

Contracting method: Partnership contract

Tendering procedure: Competitive dialogue

The local authorities own the stadium (Bordeaux City Council) and the site (Bordeaux City Council and Bordeaux Urban Community), the site being made available to the private partner.

Timeline: Contract notice published in OJEU on 4 and 5 June 2010.

Five bidders replied, of which three were shortlisted and invited to tender.

Partnership contract signed on 28 October 2011 by Bordeaux City Council with Stade Bordeaux Atlantique (a simplified joint-stock company set up by the Vinci and Fayat groups), which will be the stadium builder/operator on behalf of the city council.

Object: Design, part-financing, construction, major maintenance and replacement, upkeep, routine maintenance and operation of the stadium.

Delivery: April 2015

Contract period: 30 years

Total cost: EUR 165 million. The project has received public grants from the following: central government (via the National Centre for the Development of Sport, CNDS), EUR 28 million; local government (regional council, Bordeaux Urban Community and Bordeaux City Council): EUR 47 million. The Girondins de Bordeaux Football Club is making an initial contribution of EUR 20 million to stadium financing, representing an advance on rents owed to the city council for lease of the new stadium, an amount repaid by the city council for stadium construction.

Annual property fee: EUR 8.1 million paid by the city council to the private partner.

The private partner pays the city council a stadium operating fee of EUR 4.5 million/year (guaranteed revenue), with revenue beyond the guaranteed amount being shared according to a predefined formula.

In addition, the Bordeaux football club will pay the city council a rent of EUR 5.2 million/year (index-linked).

Naming rights: Yes

Box 16. **A. Juppé, Mayor of Bordeaux**

I suggested a PPP arrangement to the city council, since I thought it would be better economically for the council to have a private partner for the routine operation of the stadium, working closely with the Girondins football club. I must confess too that the complex arrangements for this project, in order to be successful, offer the best value economically and meet the Euro 2016 deadline, ruled out a traditional public project contracting arrangements in practice, particularly because we did not have sufficient staff at the time.

❖ Lille stadium

Size: 50 000-seat covered stadium and annexes + inbuilt 30 000-seat arena

Contracting method: Partnership contract

Tendering procedure: Competitive dialogue

Timeline: Contract notice published in OJEU on 5 December 2006.

Three bidders replied and were invited to tender.

Partnership contract signed on 15 October 2008 by the Greater Lille Urban Community (CULM) with Elisa (Eiffage Group subsidiary), the stadium builder/operator on behalf of the city council.

Object: Design, part-financing, construction, major maintenance and replacement, upkeep, routine maintenance and operation of the stadium.

Delivery: August 2012

Contract period: 31 years

Total cost: EUR 282 million. The project is receiving public grants from the following: central government (via the National Centre for the Development of Sport, CNDS), EUR 28 million; local government (Nord-Pas de Calais Regional Council), EUR 45 million; i.e. EUR 73 million in total.

Annual property fee: EUR 15.8 million paid by the city council to the private partner.

The private partner pays the city council a stadium operating fee of EUR 5.8 million/year plus a share of any additional revenue beyond this guaranteed amount.

In addition, the Lille football club will pay the city council a guaranteed revenue of EUR 4.7 million/year, with revenue beyond this amount being shared according to a predefined formula.

Naming rights: No ("Pierre Mauroy Stadium")

- Marseille stadium

Size: Stadium renovation/extension/roofing for a **66 000-seat** capacity (including 6 000 VIP seats) + rugby/athletics stadium.

Contracting method: Partnership contract

Tendering procedure: Competitive dialogue

Timeline: Contract notice published in OJEU on 23/7/2009

Two bidders replied and were invited to tender.

Partnership contract signed on 15 October 2008 by Marseille City Council with Arema (Bouygues Group subsidiary), the stadium builder/operator on behalf of the city council.

Object: Design, part-financing, construction, major maintenance and replacement, upkeep, routine maintenance and operation of the stadium.

Delivery: July 2014

Contract period: 31 years

Total cost: EUR 234 million. The project will receive public grants from the following: central government (via the National Centre for the Development of Sport, CNDS), EUR 28 million; local government (Provence-Alpes-Côtes d'Azur Regional Council, Bouches-du-Rhône *Département* Council, Marseille Provence Métropole Urban Community, Marseille City Council): EUR 102 million; i.e. EUR 130 million in total.

Annual property fee: EUR 9.8 million paid by the city council to the private partner.

The private partner pays the city council a stadium operating fee of EUR 12 million/year plus a share of any revenue beyond this guaranteed amount.

In addition, Olympique de Marseille Football Club will pay the city council a guaranteed revenue, with additional revenue being shared according to a predefined formula.

Naming rights: No (same name maintained: "Stade-velodrome")

- Nice stadium

Size: 35 000-seat covered stadium and annexes

Contracting method: Partnership contract

Tendering procedure: Competitive dialogue

Timeline: Contract notice published in OJEU on 28/10/2009.

Four bidders replied and were invited to tender.

Partnership contract signed on 17 December 2010 by Nice City Council with Nice Eco Stadium (Vinci Group subsidiary), the stadium builder/operator on behalf of the city council.

Object: Design, part-financing, construction, major maintenance and replacement, upkeep, routine maintenance and operation of the stadium.

Delivery: August 2013 (for the Francophonie Games in September 2013)

Contract period: 27.5 years

Total cost: EUR 205 million. The project is receiving public grants from the following: central government (via the CNDS), EUR 20 million; local government (Provence-Alpes-Côtes d'Azur Regional Council, Alpes-Maritime *Département* Council, Nice Côte d'Azur Urban Community), EUR 49 million; i.e. EUR 69 million in total.

Annual property fee: EUR 10 million paid by the city council to the private partner.

The private partner pays the city council a stadium operating fee of EUR 5.5 million/year plus a share of any revenue beyond this guaranteed amount.

In addition, Nice football club will pay the city council revenue of EUR 3-4 million/year (fixed share + variable share on the basis of ticketing revenue).

Naming rights: Yes ("Allianz Riviera")

- Lens stadium

This is actually a mixed arrangement combining BEA and public project contracting: although the local authority (city council) owns the stadium (built in 1934, 39 000-seat capacity), in 2002 it handed it over to the resident football club (RC Lens) for 50 years under a long-term lease. It is therefore the resident club, the leaseholder, that is responsible for compliance work, but given its inability (being currently in the second division) to cover improvement work costed at EUR 70 million, it is Nord-Pas de Calais Regional Council that has become the contracting authority for the renovation/upgrading work. As regards financing, EUR 12 million is being provided by central government (CNDS) and EUR 47 million by local government (regional council, *département* council, urban community), with the remainder (EUR 11 million) in the form of a loan by the regional council repayable by the leaseholder from 2017, depending on its economic, financial and sporting position. The competitive dialogue process (using public project contracting) began on 18 October 2013 with work to start in early 2014. Once work is completed, the fee for using the stadium that Lens football club pays to the city council will be revised upwards by France-Domaine.

Box 17. **PPPs in stadium construction**

By mid-2014 PPPs can already be considered a way of respecting deadlines and fee budgets for facilities with architectural design and functional requirements that are highly demanding: this in itself is a noteworthy early outcome at a time when similar programmes for major sports facilities have given rise to financial controversy with political repercussions (Winter Olympics in Sochi (Russia) and stadium building programmes for the Football World Cup in Brazil).

2.10.3. PPP swimming pools

Swimming pools, and aquatic centres more generally, are another example of a field in which PPPs are worth using. Here it is necessary to design, build and operate both technically and, where applicable, commercially on the same site and on behalf of local government (either one municipality or several together) a number of facilities (meeting "High Environmental Quality" standards and constantly changing health and safety rules and leading the way on eco-features), areas, and separate environments (sports, recreation, relaxation and fitness) for mixed and multipurpose use combining exercise, relaxation and well-being. The arguments for designing, financing, building, operating and maintaining aquatic centres through PPPs are given below.

2.10.3-1. Economics of partnership contracts in this sector

Of the 200 partnership contract projects begun since 2004, twenty (i.e. 10%) have concerned sports facilities. The latter include stadiums, velodromes, leisure parks and marinas as well as ten swimming pools, all for a total of some EUR 1.4 billion.

Table 9. **Sports centres built using partnership contracts**

Awarding authority	Object	Award	Investment (EUR million)
Lille (Urban Community)	Stadium	16 Oct. 2008	282.0
Le Controis Inter-municipal Council	Aquatic centre	13 July 2009	4.0
St Quentin en Yvelines	Velodrome	17 Dec. 2009	71.4
Marseille	Stadium	22 June 2010	251.8
Nice	Stadium	13 Dec. 2010	204.0
Montauban	Aquatic centre (+PSD)	28 Feb. 2011	24.2
Bussy St Georges	Sports complex	5 Oct. 2011	12.0
Bordeaux	Stadium	24 Oct. 2011	188.2
Arcachon	Three swimming pools	29 Sept. 2011	29.8
Nantes	Gymnasium	16 July 2011	3.8
St Dié des Vosges	Aquatic centre	17 Jan. 2012	18.0
Commentry	Aquatic centre	11 Feb. 2011	7.3
Teyran	Sports facility	12 Nov. 2010	2.3
Grand Pic St Loup Inter-municipal Council (Hérault)	Aquatic centre (+PSD)	8 Mar. 2012	8.2
St Omer	Arts and aquatic centre	20 Mar. 2012	48.6
Chatel	Aquatic centre	19 Mar. 2012	10.4
Dunkirk Urban Community	Arena	11 Oct. 2012	82.7
Angoulême Urban Community	Stadium	10 Jan. 2013	5.3
Ministry for Youth, Sport and the Voluntary Sector-INSEP	Sports facility	21 Dec. 2006	70.0
Ministry of Defence	CNDS Fontainebleau	24 Jan. 2012	70.0

Source: MAPPP.

Partnership contracts for swimming pools and aquatic centres can remedy the shortcomings of traditional contracting methods:

- Public procurement: Because of the law on public project contracting (MOP), it is very difficult to sign an all-inclusive contract. Deferred payments are prohibited. The contract period cannot usually exceed three years. The public buyer is required to produce detailed specifications when calling for tenders, which presupposes a clear idea of the best solution. Establishing competitive dialogue around an ill-defined functional programme is difficult.
- Public service delegation (PSD): Public service delegation could theoretically be used, in the shape of a concession, but this model is generally unsuitable from the financial point of view, since the concession-holder is supposed to derive a return mainly from operating income from end-users. However, aquatic centres usually show a structural operating deficit, particularly when meeting a demand from schools and associations. Given the high costs of design and construction, operating will not allow the concession-holder to make a return on the initial investment, which then entails the risk of the contract being converted into a public procurement contract, thus creating real legal uncertainty. Moreover, the public sector's power to terminate the contract unilaterally and the way the contract is treated in the courts are an obstacle to private investment.
- Long-term lease arrangement (BEA): There is a significant risk of conversion into public service delegation. The public authority has little control over the services delivered by the leaseholder. Access to the VAT Compensation Fund for an aquatic-centre construction project is difficult.

A partnership contract answers the complexity of some aquatic centre projects where it is difficult for policymakers to determine priorities when faced with the diversity of users and demand and to reconcile sometimes conflicting uses (sport and leisure). It is hard to plead urgency given the secondary nature of this public service in relation to others (health, law and order, etc.). Nevertheless, although it cannot provide significant financial savings by comparison with a conventional public project-contracting procedure or a BEA, a partnership contract seems able significantly to shorten construction times for aquatic centres, an important economic performance requirement.

However, one obstacle is the rather fine difference between the actual purposes of PSD, which is delegation of the management of public services, and of a partnership contract, which is limited to construction and management of a facility contributing to delivery of a public service. Is it a facility or a public service that is being operated? This is a point that remains to be clarified in the next revision of legislation governing partnership contracts.

2.10.3-2. Complementing traditional public procurement

The conventional method of public procurement – public project contracting by means of multiple contracts for project management, construction and services – reaches its limits more quickly here than in other fields. Various reports from the Regional Audit Offices have highlighted the problems inherent in delivering public services in this sector: loose estimates of costs and timing, delays, defective work, default by builders, operators or subcontractors, industrial action, etc.

The result is insufficient control of contract procedures and arrangements by local government, since the choices made at different levels (swimming-pool construction and management methods, agreement type, contract terms) are not always appropriate to the

different situations concerned. Partnership contracts should allow closer collaboration between public and private partners, better distribution of risk and investment, greater accountability and ultimately greater control of aquatic centre projects if central government honours its commitments regarding award of CNDS grants, which are often critical for this type of project.

Box 18. **Christian Pierret, Mayor of Saint-Dié-des-Vosges**

The Aquanova America Aquatic Centre in Saint-Dié-des-Vosges opened in January 2014. Far from being just a swimming pool, the centre offers various areas – swimming, sauna, fitness, play, diving – and was designed as an attraction to give a fresh boost to the local economy.

The PPP has given us much greater confidence and security, allowing us to take advantage of the private partners' expertise and skills for the public benefit.

Being hybrid facilities and the most polymorphous type of public service, aquatic centres cover a range of spheres (sports, education, culture, and even tourism and the economy – making the local area more attractive) and are aimed at a very broad public. This has been well understood by inter-municipal councils, which include "sports and cultural facilities" in their remit when they are created. However, it is still necessary to remove the constraint constituted by the overall commercial provision of companies and groups specialising in management of aquatic sports facilities, which is still insufficiently geared to the market.

2.10.4. Conclusion

Sports facilities are multipurpose public areas that find it hard to be self-financing. They can be built and managed by various methods, offering attractive prospects for PPPs in the sports and leisure industry. There are many reasons for entrusting the service to private operators (commercial, voluntary-sector or semi-public): no local-government sports departments and problems recruiting qualified staff in rural areas, fear of health and safety liabilities in relation to users, high demand-risk in a competitive environment, borrowing, high tax burden, etc. By contrast, the fact that the choice cannot really be reversed as far as local-government staff are concerned and the small number of operators able to tender for long-term contracts, especially when these contracts are coupled with substantial investment (particularly for concessions), is a significant problem. Last but not least, many elected representatives are still attached to the idea of a project with high value-added in electoral terms and do not wish to hand over some or all of the public-service and general-interest missions associated with these flagship facilities.

The PPP contracts already signed show signs of improvement in this field: clarification of public service goals and resources, standardisation of performance indicators, rationalisation of management methods, a greater share in the earnings, stricter definition of responsibilities (particularly concerning upkeep, maintenance and replacement), development of a commercial price adjustment system, greater clarity in review clauses, etc. These measures were designed to remedy some of the problems encountered in private-sector management: loose estimates of costs, timing times and usage, as well as delays, disruption, default by private partners, procedural irregularities, distortion of competition, incomplete specifications, insufficient monitoring, etc.

Partnership contracts based on close, long-term collaboration between public and private partners and on a fair distribution of risk and investment on the basis of each partner's capacities should provide the operational and intellectual resources for success. The issue is greater accountability and greater project control in this promising sector.

2.11. Public-private partnerships in information and communication technology (ICT)

2.11.1. Description of ICT projects

This section covers projects in the field of information and communication technology (ICT) in the following categories:

- Infrastructure projects
  - Pure telecommunications infrastructure (broadband, superfast broadband);
  - Infrastructure supporting information processing services (videosurveillance, e-government, central-government or state-owned company projects concerning infrastructure management for transport and other fields, etc.).
- IT equipment
- Information system projects
  - E-government
  - Multimodal information systems (MISs)
  - Data management of central-government departments and state-owned companies

2.11.2. Specific features of ICT PPPs

The ICT partnership contract is particularly relevant in a situation where processes for performing the departmental tasks of central and local government are being modernised and local areas are being developed to increase their appeal. Unlike public procurement contracts, because of the guarantees they provide in terms of performance (timeliness of delivery, partner's long-term expertise over the life of the contract (as opposed to the difficulty experienced by public services in maintaining this expertise in-house), significant risk transfer, etc.) partnership contracts ensure prompt delivery of a state-of-the-art service through technology-intensive projects in a tight budget environment.

2.11.2-1. High-risk projects

Usually, partnership contracts reduce project risks for public authorities. However, projects in the ICT field are high-risk projects – witness the numerous fiascos connected with major public IT projects owing to deadline extensions, cost overruns or outright abandonment. There are unfortunately legions of examples in this field. Over recent years, at central-government level alone, the following projects based on major IT/telecommunications architecture systems have had to be either abandoned or completely reviewed after years of delay and substantial cost overruns: the CHORUS public accounting software, the Personal Medical File, the COPERNIC system, the secure electronic national identity card (INES) with a biometric chip, the Louvois payroll software for Ministry of Defence staff, etc. Use of PPPs may therefore be expected to have a big operational impact on this type of project.

2.11.2-2. Strong emphasis on services

Moreover, unlike the other fields in which partnership contracts are used,[45] these projects usually have a modest initial investment compared to the level of downstream

service (low-capital intensive projects). Thus, in payments to the private partner, the first element – repayment of loans – is a limited proportion (usually under 20%) in relation to the second – compensation for a recurring service (the remaining 80%). Even if private financing results in additional expenditure, this is more than compensated by the productivity gains from service production in the private sector. Over the whole cycle (design, investment then recurring service) the resulting optimisation has a leverage effect: a project on the critical path of government modernisation and reform can see its return on investment multiplied.

2.11.2-3. Short lifespan

On the other hand, the logical consequence of the fast-moving technological progress characteristic of these projects, and the fast obsolescence this entails, is that the average contract period is relatively short: generally between 8 and 15 years, although the cost of some aspects may be spread over longer periods (trenches and underground cable insulation, etc.).

2.11.3. In phase with regional development

2.11.3-1. The advantages of an ICT partnership contract for increasing an area's appeal

An ICT regional development project can of course be implemented using conventional public procurement. The choice will very much depend on the context. Thus broadband can be developed through competition between telecom operators. Yet experience shows that this solution is suitable only in densely populated environments, i.e. in areas where investment per potential customer is relatively low. Broadband projects in rural areas (not served by any operators) or even semi-rural areas (served by one operator) will be of limited appeal to operators. The same is true of superfast broadband (Fiber-to-the-home, or FTTH) projects in densely populated areas: although there are many customers in the area, the capital cost quickly becomes a deterrent, especially if the operators do not wish to share their infrastructure.

In addition to the "natural" market, there are what are known as "public-initiative networks". These are based either on the public procurement model or on delegation of public service or sometimes a mix of both. In both cases, the risk transfer is in principle to the public authority's disadvantage. Rolling out a network of this kind, mostly within a small area, calls for highly specialised in-house expertise on the part of local government (and also requires access to data on existing networks – long considered ultra-confidential by the legacy telecommunications operator).

2.11.3-2. Complementing public service delegation

Public service delegation may be an alternative solution. However, it requires a project to show a speedy return on investment, which will usually not be the case here, since it will not have been considered a priority target by the operator market. Obviously some flexibility can be obtained from the concession-holder if significant subsidies are paid (close on 70% of the investment amount in many cases) but at the risk of a change in legal status.

Unlike public service delegation, a network roll-out project under a partnership contract remains under the control of the local authority and is governed by the policy it wishes to pursue locally. The project may well show no return in the first few years but will

help to improve the area's appeal (arrival of new businesses, creation of business parks, etc.) and thus generate socio-economic benefits both before and after reaching financial profitability.

2.11.4. An ICT partnership contract: A sustainable project

Unlike many projects, an ICT project is a sustainable project inasmuch as the initial investment depreciates little over time and the wealth that it creates continues to accumulate.

A large part of an ICT "network roll-out" project consists of civil engineering (usually 70% of investment), which does not lose its value. The same applies to masts, pylons, etc. These assets can even be a source of income.[46]

An ICT information system project consists of equipment that loses its value faster over time (obsolescence inherent in this high-tech sector). However the data processed can, if the necessary care is taken, be a non-depreciable asset with high value-added that can bring in significant revenue if its potential is maximised.

Experience has shown that a succession of public procurement contracts to outsource information systems (a common procedure in the field) means exporting the old architecture to the new one, often associated with irreversible damage to data reliability. As for systems developed in-house, the public sector's limited experience and motivation with regard to management of its intangible assets has not helped to optimise them.

Using partnership contracts to handle ICT projects will, if suitable contractual pressure is applied, guarantee service continuity (maintenance no longer being the balancing item in budget funding) and automatically encourage innovation by the partner, especially if it receives a share in the earnings.

2.11.5. Resource-sharing: A vital requirement for ICT partnership contracts

An ICT project is, almost by definition, a resource-sharing project. Local public-initiative networks have little chance of success if their scope is limited. Likewise, a multimodal information system project can be of only limited value if it remains local. Its governance must at the very least enable it to be gradually opened up to new players. The Alsace MIS partnership contract project (a multimodal information service platform for travel in the Alsace region) took account of the system in Germany from the outset. The e-Burgundy partnership contract[47] was set up on the basis of a public interest group open to all local authorities in the region, thus allowing step-by-step commissioning.

The cost of a partnership contract procedure – given initial investment that is generally low – is a strong disincentive for small ICT projects and is thus a spur to resource-sharing that does not exist in other public procurement models. Moreover, the scale of a shared project is better suited to attracting subsidies, finding potential bidders more easily (with tenders therefore being more competitive) and lastly, for Internet network projects, being large enough to gain access to information about existing networks and infrastructure that can be shared.

2.11.6. Special case: Internet telecommunications networks

Partnership contracts for Internet networks have very specific features. Two major constraints have to be taken into account:

- The partnership contract cannot allow transfer of the usage risk to the co-contractor.

- Internet access for a client must be provided in compliance with national rules on competition and therefore on the basis of a national pricing system.

A public initiative using a partnership contract is warranted in the absence of local provision. This lack of provision is due to the fact that operators do not have an infrastructure, and the cost of building it would not bring a return in the short term.

A partnership contract will enable a local authority to cover the capital cost of this infrastructure inasmuch as it joins forces with a partner to build, operate and maintain the infrastructure. The partner is also responsible, on behalf of the local authority, for selling use of the network to all the Internet service providers (ISPs – also known as retail operators), which will sell it on to end users. The co-contractor is thus an "operator of operators". It does not bear the usage risk, since it sells the service on behalf of the local authority (through authorisation to receive revenue, for example). Usage risk is borne only by the retail operators. Lastly, there is no monopoly risk, since access to the infrastructure is open to all telecom operators.

This approach has been followed for a number of projects (see list below). It could also be used for superfast broadband (FTTH[48]), which consists in taking the optical fibre directly to the customer (thus circumventing the existing copper network used for ADSL). Following a number of recommendations from ARCEP (the electronic communications and postal regulatory authority) requiring operators to pool investment for the shared parts of the network, roll-out is increasing, but very locally. On the other hand, widespread roll-out can take place only with support from local government (and that of central government so frequently promised – cf. the succession of "digital economy" plans over the past ten years). As in the case of rural broadband, in densely populated areas this type of infrastructure can be provided through partnership contracts if the competitive marketplace is not sufficiently proactive.

2.11.7. Projects examined by MAPPP

Table 10. **List of projects examined by MAPPP**

Project description	Awarding authority	Award notice	Investment (EUR million)	Central gov.	Local gov.
Secondary school computerisation	Eure-et-Loir *Département* Council	2 Feb. 2007	3.2		1
Broadband network	Auvergne Regional Council	10 Oct. 2007	22.4		1
Broadband network	Meurthe-et-Moselle *Département* Council	20 July 2008	37		1
Multimodal information system	Alsace Regional Council	23 Apr. 2009	0.5		1
Broadband	Gironde *Département* Council	25 June 2009	60		1
Broadband network	Morbihan *Département* Council	8 July 2009	8		1
Electronic services platform	e-Burgundy Public Interest Group	16 Nov. 2009	3.4		1
Broadband network	Languedoc-Roussillon Regional Council	11 Dec. 2009	32		1
GSM-R	Réseau Ferré de France	18 Feb. 2010	600	1	
Broadband network	Hautes-Pyrénées *Département* Council	19 Feb. 2010	29		1
Broadband network	Finistère *Département* Council	19 Feb. 2010	14		1
Oise integrated mobility services system	Oise *Département* Council	6 Mar. 2010	11		1
Videosurveillance	Paris Police Headquarters	8 July 2010	73	1	
IP network	Ministry of Defence	6 Apr. 2011	123	1	
HGV eco-tax	Ministry of Sustainable Development	20 Oct. 2011	675	1	
Superfast broadband network	Auvergne Regional Council	3 Aug. 2013	167		1
Multimodal information system	Isère *Département* Council				1

Source: MAPPP.

Box 19. **Case study: The HGV eco-tax**

The HGV eco-tax that was the focus of political and media attention in late 2013 and 2014 was a distance-based tax designed to charge both French and foreign heavy goods vehicles, according to vehicle class and category, for use of the non-tolled national road network, currently free of charge, and some local roads likely to receive a significant increase in traffic as a result. The technical system chosen was able to determine when a vehicle had passed a charging point, calculate the amount of tax due, ensure payment of the tax according to whether or not the user had subscribed to the electronic toll payment service, and identify and issue penalties to users failing to comply with the rules.

The legal relevance of a partnership contract was confirmed in February 2009 by MAPPP given the obvious complexity of this original and innovative project: it was, for example, impossible for central government to determine in advance, on its own, whether a satellite system (GNSS) or a gantry system (DSRC) was the best technological option – hence the need for a partnership contract using competitive dialogue to help the public partner make this choice. With regard to finance, the MAPPP had found that a partnership contract was preferable, not in terms of total cost – slightly higher with a partnership contract because of private prefinancing – but in terms of the overall economic assessment, since a partnership contract had the advantage of expediting delivery times and consequently collection of anticipated revenue from the eco-tax. A two-stage competitive dialogue procedure with five candidates, three of which continued to the final tender, led to a bidder being chosen in January 2011 and signing of the contract in October 2011.

In late 2013, when the system was on the point of being delivered, fairly much on time and on budget, with cost and performance levels largely in line with the terms of the contract, the project became caught up in controversy with the campaign of the "red caps". Some of the roadside equipment was destroyed or vandalised, setting back the prospects of its commissioning accordingly. Overtaken by a tax revolt, many politicians, both in government and in the opposition, chose to question the partnership contract arrangements used to implement the project, affecting to have no previous knowledge of this project that they had nevertheless approved at the various stages of its examination. The then Minister of the Economy even went so far as to mention the Ancien regime system of "tax farming", indignantly in public that collection of a tax could be delegated to a private partner and one that was also majority-owned by foreign shareholders! In late 2014 the commissioning of this flagship ICT project was abandoned, and the government announced its decision to terminate the partnership contract, illustrating the fact that in addition to technical risks – which in this case were fairly well managed in the construction phase – these large-scale PPP projects are always open to political risks.

All the ICT projects launched have been awarded (the contract for the intermodal information system project in Isère is to be signed shortly). These projects represent just over 10% of the contracts signed since 2004, with an overall investment of some EUR 2 billion.

It should be noted that there have been fewer ICT projects since 2010, especially for broadband, owing partly to the lack of predictability of "digital economy" plans and partly to a change in strategy by operators, which are now developing subscriber hubs for white spots, a trend initiated by the legacy operator and designed to optimise ADSL accessibility by bringing network hubs closer to customers.

All the same, projects using partnership contracts are fewer in number than was originally hoped. But there are a large number of potential projects – such as healthcare

information systems in hospitals (hospital information systems), provision of digital work spaces for secondary schools, etc. – which could be implemented promptly and economically by means of partnership contracts.

2.12. PPPs in the Ministry of Defence

2.12.1. Background

Being subject to budget constraints earlier than other ministries and strongly urged to outsource/professionalise support functions that had traditionally been assigned to recruits doing their military service, the Ministry of Defence was among the first public users of PPPs. Although only a limited success as a substitute for budget financing to purchase combat equipment,[49] PPP arrangements began to come into their own for defence procurement with initial projects for office buildings, support and services, telecommunications, logistical support, training, etc.

2.12.2. Procedure

The Ministry of Defence, relying on its in-house resources,[50] is notable for its large internal capacity for design work (particularly the prior evaluation required) without calling on outside consultants and for being able to carry out extensive economic and financial simulations.

Similarly, it has tended wherever possible actively to seek additional revenue (from property or ancillary services) and to use variable compensation for the private partner on the basis of effective availability of facilities and services: thus the contract signed with HéliDax for training helicopter pilots of the Army Aviation Service provides for billing/payment on the basis of actual flight/training hours. Contrary to general practice, there is thus no assignment of receivables under the Dailly Act here, since this is not a repayment for equipment/facilities but payment for performance of services (which happens to include an initial investment in aircraft, with 36 helicopters).

Table 11. **Table of PPP contracts signed by the Ministry of Defence**

Project name	Object	Date of contract signature	Legal nature (PC, BEA, AOT)	Contract period
DAX	Training of army helicopter pilots	31 Jan. 2008	PC	22 years
ENSTA	Construction of École Nationale Supérieure de Technique Avancée following transfer to Palaiseau site	1 July 2009	AOT/LOA	33 years
BALARD	Concentration of defence staff and services on Balard site (“French Pentagon”)	30 May 2011	PC	30 years
RDIP	Air Force Internet network	22 Aug. 2011	PC	16 years
ROC NOIR	Energy performance contract (Chambéry)	12 Nov. 2011	PC	20 years
CNSD	National Defence Sports Centre (Fontainebleau)	22 Dec. 2011	PC	30 years
ISAE	Residential complex for students at Institut Supérieur de l’Aéronautique et de l’Espace (Toulouse)	24 Jan. 2012	PC	30 years

Source: MAPPP/Ministry of Defence.

Box 20. **Case study: Helicopter pilot training in Dax**

To meet the rapidly changing needs of the Army Aviation Service at a time when the sophistication of the latest generation of aircraft brings rising costs, the defence sector has had to find innovative economic solutions. In 2008 the first partnership contract run by the Ministry of Defence was awarded to HéliDax, a

Box 20. **Case study: Helicopter pilot training in Dax** *(cont.)*

subsidiary of the DCI Group. The company, which is based at the Army Aviation Service College in Dax and has been operational since late 2010, provides not the equipment but the necessary flight hours for basic training of army, air force and navy pilots, National Gendarmerie pilots, and other pilots from France and abroad. HéliDax owns the aircraft, which it maintains in operational condition and hires out by the flight hour on the basis of 20 000 to 22 000 hours a year. There is thus no "property" rent to repay the initial investment, and which could be factored to the private partner's creditor banks under the Dailly Act, but rather a contract commitment by the public partner to take up this quota of flight hours – provided, of course, that the aircraft are actually available from the private partner. This is a clear example of an outsourced service being substituted for capital assets that used to be charged directly to the defence budget, and it also removes this item from the balance sheet.

This partnership contract, signed for a 22-year period, allows use of 36 EC120B helicopters converted to the NHE model (Nouvel Hélicoptère Ecole, successor to the Gazelle). The trainers are still from the army. Since the start of the contract, over 70 000 flight hours have been provided for army aviation service trainers and other users, while the test stands and other technical equipment designed to maintain and guarantee the availability of the aircraft have been used to generate significant levels of secondary revenue from other civil and military helicopter users.

General Marc Demier, Commandant of the Army Aviation Service College, said in 2013: "Outsourcing the flight hours and maintenance associated with army instructors' training – the College's core function – has given exemplary performance! This combination is a major asset in getting tomorrow's combat pilots ready for new-generation helicopters. I am delighted with the success of this partnership, in which a lot of people have shown an interest."

2.13. Ministry of the Interior: Long-term leases and other sectoral PPP methods for gendarmerie barracks and police stations

2.13.1. Instruments established by Internal Security Framework Act (LOPSI)

2.13.1-1. *Bail emphytéotique administratif* (BEA)

As we have seen, long-term lease arrangements for official buildings (BEA)[51] pre-dated partnership contracts, which only arrived in June 2004. Two years earlier, in summer 2002, BEA was adopted as the preferred method of implementing sectoral capital programmes for gendarmerie barracks and police stations under the Internal Security Framework Act (LOPSI).[52] A property coming under a local authority or inter-municipal corporation (EPCI) can be leased under BEA for the purpose of providing on its behalf a public service mission or an activity in the public interest that comes within its remit, or, for a limited period of time,[53] to meet the needs of the justice system, the national police or the national gendarmerie (General Code of Local Government, Article L. 1311-4-1). This model enables a local authority to use private project management to have a police station or gendarmerie barracks prefinanced and built, in return for a rent to the private partner ("the leaseholder") over a contract period of 30 years on average (although up to 99 years is possible by law).

At the end of the contract the local authority acquires the property as freehold. However, it is no longer eligible for central-government grants.

The site is then made available by the local authority to the police or gendarmerie by subletting it through a standard lease contract. The rent is set by France-Domaine in the light of the real letting value and must be lower than the financial rent paid by the local

authority to the leaseholder (gendarmerie or police, not intended to finance in full an asset that it would never own).

The reasons why local authorities use such PPPs very often include the wish to ensure good conditions for the police and gendarmerie units in their areas by providing them with new or refurbished premises.

2.13.1-2. *Autorisation d'occupation temporaire* (AOT)/ Lease with an option to purchase (LOA)

At the same time, central government was using AOT/LOA under the same law of 29 August 2002 (LOPSI), which supplemented the law of 25 July 1994 on creation of rights *in rem* in public property, combined with the Multiannual Military Policy Act of 27 January 2003. Section 3 of LOPSI allows central government to issue private operators with temporary occupation authorisation (AOT) for its public property for payment of a fee. The authorisation-holder builds and then makes available to central government one or more buildings which the latter leases for a period of 30 to 35 years under a lease with an option to purchase (LOA). Building upkeep is the responsibility of the private operator. At the end of the lease, central government has full ownership of the facility. The lease includes an option for central government to purchase these facilities before the date specified in the occupation authorisation.

AOT/LOA projects expected to represent an annual rent of over EUR 1 million are now subject to prior evaluation and review by MAPPP since the law of 28 July 2008[54] "for the purposes of choosing among public procurement contracts the contract presenting the best balance in terms of advantages and disadvantages".

2.13.2. Significant PPP use over the period but now in abeyance

The property issue remains a problem in the Interior Ministry's investment policy. Certainly, there have been some flagship projects in recent years, but they cannot conceal the fact that some buildings are in a bad state of disrepair at a time when budget constraints are beginning to bite. Hence the use of PPPs over this period, combined with financing support from many local authorities for construction, extension and restructuring of police and gendarmerie buildings.

In 2012 six additional construction projects were approved (including four for the law-enforcement complex in Cergy-Pontoise), together with one rehabilitation project. The total number of PPPs entered into by the National Gendarmerie General Directorate (DGGN) is thus 14.

The police, for their part, have implemented 11 PPPs in the form of AOT or BEA.

In total, PPPs for the police represented an investment of EUR 305 million, the main project being in Strasbourg (EUR 122 million). It should be noted that an average BEA for the police/gendarmerie is on a much bigger scale than other BEAs (at least ten times larger), although there are admittedly many more of the latter (some 400 "normal" BEAs for … LOPSI BEAs over the period concerned).

The impact of PPPs on the budgets for national police and national gendarmerie programmes is significant in terms of both volume and long-term impact, since these projects have considerable financial implications for capital budgets (commitment authorisations must be earmarked upon signing of the contract) and current and future operating budgets. They make the police and gendarmerie capital and operating budgets more rigid.

Table 12. **Police PPPs**
In EUR million

Site	Total
Tournefeuille	12.08
Albi	33.08
Nice Ouest	44.23
Grasse	1.49
Coulaines	1.20
Colmar	33.27
Val de Rueil	4.82
Briey	9.71
Conflans-Sainte-Honorine	12.73
Saint-Dié-des-Vosges	29.69
Strasbourg	122.76
Total	**305.06**

Source: National Police.

Consequently, despite the not inconsiderable advantages of PPPs (ringfenced maintenance, properties delivered on time or even ahead of schedule, payments spread over the contract period and therefore partial smoothing as commitment authorisations and payment appropriations), the current policy of the Ministry of the Interior is not to make provision for any new PPP projects for the police and gendarmerie in the medium term.

2.13.3. Some flagship projects

Over recent years the national police (DGPN) and national gendarmerie (DGGN) have initiated or implemented some flagship projects to meet new needs. A few of these PPP projects stand out for their organisational importance and/or the sums involved: in particular the transfer of the headquarters of the National Gendarmerie General Directorate (DGGN) to Issy-les-Moulineaux (AOT/LOA), the building of a regional headquarters for the Rhône-Alpes gendarmerie in Sathonay-Camp, the Strasbourg police station, and, in circumstances open to criticism,[55] the establishment of the Internal Security Central Directorate (DCRI) in Levallois-Perret in a building bought under AOT/LOA.

Box 21. **Case study: DGGN headquarters in Issy-les-Moulineaux**

The National Box Gendarmerie General Directorate (DGGN) had a fragmented infrastructure with over 1 500 people split between 12 sites across the Ile-de-France region. Its transfer to the Issy-les-Moulineaux site, which took place in 2012, was therefore to give it state-of-the-art facilities fit for purpose in order to ensure the managerial coherence expected of this general directorate.

The project covered a usable floor area of 29 000 m^2 with construction of an office building, a mess, a small hotel, premises for specific gendarmerie purposes, and an underground car park.

Implemented in the form of temporary occupation authorisation (AOT) together with a lease with an option to purchase (LOA), this contact with the Eiffage Group entails a rent of EUR 12.2 million (as against the EUR 12.7 million originally estimated in 2008). At the end of the 30-year lease, central government will become the owner of a well-maintained facility.

Box 21. **Case study: DGGN headquarters in Issy-les-Moulineaux** *(cont.)*

The total cost of the project is EUR 424 million, the estimated cost having been EUR 469 million. The DGGN and DEPAFI (Performance Evaluation, Finance and Property Directorate) were thus able to remain within the budget originally approved.

A partnership contract turned out to be the best method of ensuring an environmentally friendly workplace, reducing energy requirements and optimising management of upkeep and maintenance. "The great advantage of the PPP is that in 30 years' time we are sure of having buildings that, although not new, will be in a satisfactory state of repair and in keeping with what we originally wanted from the contract in general", says Jean Colin from the National Gendarmerie General Directorate. The handover to the gendarmerie was scheduled for 28 October 2011, and the 72 000 m^2 site was delivered within the time frame (34 months). Competitive dialogue made a considerable contribution to the site renovation project. "The great virtue of partnership contracts is competitive dialogue, a crucial dialogue between builder and building user that doesn't usually happen", Jean Colin adds. Close co-operation with the builder during the dialogue phase was particularly productive for environment issues. The building was designed and built in collaboration with gendarmerie staff and meets high environmental standards: the project's bioclimatic design made it possible to obtain "High Environmental Quality" certification and the "Very High Energy Performance" label, guaranteeing building energy-use at least 20% below the regulatory baseline for heating.

3. Conclusion

Twelve years ago, anyone typing the abbreviation "PPP" into a search engine would most likely come across the Internet "Point-to-Point Protocol" or the economic concept of purchasing power parity. Nowadays it is the reference to public-private partnerships that dominates, reflecting the rise of this new instrument both as a concept in economic and business literature worldwide and through the volume of investment in the market. This development has been particularly marked in France, driven by adoption of a new generic resource in the form of partnership contacts, managed and supported by the PPP Task Force (MAPPP) of the Ministry of the Economy and Finance and, above all, routinely used by several hundred public-sector bodies at all levels of government and of every political persuasion, with millions of hours being worked by specialists, large concerns and SMEs to carry through these contracts. These commissioning authorities have chosen to hand over to the private sector the overall task of financing, building and maintaining public facilities with the aim of expediting and improving the public service eventually delivered.

Today in France public-private partnerships regularly come in for both political and media criticism, fuelled by changeovers in power and a handful of projects that got off to a bad start, against a background of increasing pressure on public finances. PPPs are supposed to be inexpedient for public authorities because more expensive structurally, benefiting only big private groups, and are claimed to be a budget time bomb in the long run. This view, which often reflects a lack of knowledge about this innovative public-procurement method, disregards what is really at stake in PPPs and what they can contribute: in addition to their recognised ability to meet schedules and budgets, they are designed as an instrument to modernise public management and thus contribute to the overall competitiveness of the French economy. PPPs are an innovative procedure for public procurement in many respects and have sparked hopes and criticism out of proportion to how it is currently used. Its image in the eyes of the general public and

policymakers is now tarnished by controversy, often unjustifiably, despite initial results that are generally encouraging.

It appears that anything on the boundary between the public and private sectors continues to be an extremely sensitive issue where French public opinion is concerned. Media interest in PPPs has unfortunately not been free of simplistic and even ideologically biased analysis of a phenomenon whose complexity and many different aspects do not lend themselves to simplification.

Yet public-private partnerships in the broad sense, i.e. long-term private-sector involvement in the financing and provision of a public facility or structure delivering a public service, have existed in various guises for several centuries in France, where they have left their stamp on the history of its infrastructure: canals, bridges, railways, water mains, gas and electricity, motorways, etc. PPPs in the modern sense, publicly funded through the partnership contracts introduced in June 2004 have seen significant growth in some sectors of public management. The past ten years now allow an initial quantitative assessment of projects begun and delivered. In all, up to mid-2014 some 200 partnership contract projects were signed and begun (75% by local authorities), generating investment of almost EUR 15 billion, to which must be added over 400 PPP projects using local or sectoral options: long-term leases for official buildings (BEAs) and hospitals (BEHs), and other public property arrangements, amount to approximately EUR 3 billion of additional investment.

This makes a total of 600 publicly funded PPPs, generating future rent of some EUR 45 billion over the contract periods concerned. These sums, concentrated on a limited number of flagship projects (high-speed railway lines, new Ministry of Defence headquarters in Balard, Paris law courts, major stadiums, etc.), made France the leading European and global market for PPPs in 2011-12 and provided valuable export credentials for major French utilities and construction and engineering groups. Nevertheless, PPPs generally remain a niche market given the overall volume of public procurement (some EUR 70 billion annually).

3.1. Initial experience

The fact remains that, so far, the main impact of PPPs is to be found less in volumes of new investment than in the qualitative progress that it has brought about in public management. After ten years of implementation, the first available studies on the contribution of PPPs show clearly that the method works, both technically (facilities built to contract standards and delivered on time) and financially (rent budgets not exceeded) in over 90% of cases.[56] Overruns are usually due to changes of programme at the public partner's request or to force majeure. As regards the legal aspect, there have been few court cases: a half-dozen partnership contracts have been terminated or cancelled to date. In France the preparatory work for PPPs and the supervision of methods and procedures by MAPPP seem to have borne fruit.

Nevertheless, there have been some high-profile failures – such as the BEH for the Centre Hospitalier Sud-Francilien. Such problems are not all attributable to the private partner: they are caused in large part by an inaccurate prior socio-economic assessment and inadequate governance in the public sector. Lessons are being learnt: selection and prioritisation of central-government capital projects will in future have to be approved by the General Commission for Investment (CGI) and long-term budget sustainability examined beforehand. Given its duration and the broadness of its scope (which includes

prefinancing), a partnership contract, more than other public procurement contract, calls for constant vigilance on the public client's part for both preparation and implementation. At the same time the early illusions have vanished, including those that saw PPPs as a winning budget and accounting formula, thus generating "hidden debt": it has now been clearly established that publicly funded PPP projects have to be publicly recorded in budgetary, accounting and statistical terms for Eurostat.

Long-term PPP performance in the operating phase – until final transfer of the facility to the public partner in good working order – has yet to be assessed; this will take a few more years, although initial experience is here again encouraging.

The partnership contract procedure enables overall cost to be taken into account right from the prior evaluation and project design stage. It is therefore usual (and indeed logical, for informed public decision-making) to show the life-cycle cost, representing the true long-term cost to the public authority, which is two to three times higher than the amount initially paid for the work. But it is still necessary to compare like with like and not counterpose, as some people tend to do, the *ex ante* nominal cost of the public investment on its own with the whole-life cost represented by total rent over the life of a PPP.

Moreover, while PPPs are not necessarily cheaper, the completion times are obviously shorter, to judge by feedback from projects already delivered.

3.2. The future of PPPs

Given the turnaround in the French market since 2011-12 and the negative way in which they are perceived, the future of public-private partnerships is open to question. In micro-economic terms, whatever the advantages that may be expected from it, a PPP can never transform a bad project into a good project, any more than it can release a public authority from devoting the necessary resources to organising and monitoring its proper execution. It is up to each public commissioning authority to determine, through careful assessment of the advantages and disadvantages, whether a partnership contract is the most efficient and appropriate method of contracting, without confining itself to considerations of how to spread budget expenditure over time. The current legal rationalisation and consolidation of partnership contracts should provide further clarity and certainty regarding the terms on which they can be used.

The main question is more the strategy that public authorities should adopt: when are PPPs to be used, and to meet which needs and sectoral priorities? There are a number of reasons for continuing with PPPs, which might thus see further growth in coming years.

The current situation is forcing authorities to refocus on their core functions in a context of limited resources and loss of in-house expertise, to manage their finances carefully and to transfer most of the risks inherent in a project to outside firms with recognised competence. PPPs provide a **general answer** to the resulting public procurement requirements in terms of service and performance as well as cost predictability. It would be an illusion to think that by doing away with partnership contracts we could also do away with these requirements. The advantage of PPPs also lies in their easy access to **prefinancing**. Provided that projects are properly chosen from the socio-economic point of view, this advantage is not negligible: PPPs break down immediate budget barriers to investment generating socio-economic value and even operating-cost savings.

Although the era of major projects and sectoral programmes on which PPPs have thrived over the past few years now seems to have passed, many sectors have not yet, or

not properly, tested this instrument, which is in principle well-suited to renovation of public property to energy-efficient standards, regeneration of existing infrastructure and even urban renewal, and could thus help improve the French economy's competitiveness in the international arena.

Drawing on its legal tradition and multifarious experience with contractual arrangements associating awarding authorities with private companies, France has equipped itself, over the space of a few years, with a sound, properly regulated instrument that has quickly shown its ability to solve a range of sectoral problems for projects with sizes ranging from several million to several billion euros. PPPs still have to be strengthened in preparation for the revision of public-procurement legislation with incorporation of new EU directives, and the potential of the instrument and the multiple skills that it has promoted and developed in the domestic market (to the benefit of French local authorities) and internationally must be maximised to support French businesses with major export projects.

At the beginning of the 21st century, France, a country with a tendency to self-deprecation, is pondering its future. Its comparative advantages with regard to the inexorable international competition that it is facing are not so numerous that it can afford to relinquish one of its main assets: its excellent "ecosystem" of PPP businesses and the high standard of public facilities that have been built and maintained using it. It is a legacy and a valuable resource that must continue to be used to optimum effect, without political or ideological prejudice, for the benefit of the economy and the well-being of French citizens. …

Notes

1. Later renamed « Mission d'appui au partenariat public-privé »
2. Law 88-13 of 5 January 1988 improving decentralisation.
3. Assignment of receivables (cession de créances) was chosen for this type of contract, as in public procurement.
4. *www.economie.gouv.fr/ppp/accueil*.
5. A currently envisioned reform would call for local authorities to submit all their evaluations to MAPPP, MAPPP's opinion keeping a purely advisory value (no obligation to comply) with regard to local PPP projects
6. Financing amount (works and other investment-related costs). *Source*: MAPPP and CEFOPPP.
7. By the French parliamentarian Rémi Pauvros on reconfiguration of the Seine-Nord Europe canal, published in December 2013.
8. Under Article 72 of the French Constitution, elected local authorities are self-governing.
9. In addition, MAPPP had to stop promoting the new resource from 2012 since this was deemed liable to cause a potential conflict of interest with its role of validating evaluations.
10. The National Transport Infrastructure Plan, shelved in 2013 following the report of the Mobilité 21 commission, called for investment (excluding the Grand Paris plan) of EUR 260 billion over 25 years, much more than could ever be raised out of public resources.
11. The government abandoned the ecotax project in October 2014, resulting in termination of the partnership contract.
12. Temporary occupation authorisation and lease with purchase option. The state provides the private-sector partner with land. After financing and building the facility, the private-sector partner then rents it to the state and provides upkeep and maintenance for a given period, at the end of which the state may acquire the facility for a token sum.

13. In the broad sense: the supply of energy and fluids has been deemed to fall within the scope of the BEA.
14. Soft FM, in contrast to hard FM.
15. This is not the case in the UK or other English-speaking countries where this responsibility has been transferred to the private-sector partner, who can then be paid on the basis of performance indicators such as escape or suicide rates among the prisoners they guard.
16. Report of the enquiry into prison PPPs, September 2011, on the basis of Article 58-2 of the Constitutional By-law on Budget Acts.
17. Notably following criticism from the Cour des comptes in a report on prison management published in January 2006.
18. The performance specifications are set out in a very comprehensive 160-page document.
19. Rent becomes payable as of handover and the entry into operational service of the facility.
20. And the right to invoke the withdrawal clause.
21. Issuance of a new call for tenders or at least identification of the market cost of equivalent services in order to evaluate whether contracted services are more or less price-competitive and adjust the price correspondingly from time to time.
22. Report of the enquiry into prison PPPs, September 2011, on the basis of Article 58-2 of the Constitutional By-law on Budget Acts.
23. Subsequently renamed regional healthcare agencies (*agences régionales de la santé*).
24. Direction de l'hospitalisation et de l'organisation des soins, the Health Ministry department responsible for the hospital system.
25. Decree No. 2010-425 of 29 April 2010 and decree No. 2012-1093 of 27 September 2012.
26. Contained in interministerial circular DGOS/PF1/DGFiP/CL1B/2011/170 of 11 May 2011.
27. Prior evaluation became mandatory for BEHs with the circular of 20 September 2006 on oversight of hospital investment. It is based on the same criteria as for partnership contracts, i.e. urgency, complexity and efficiency.
28. Curiously, although all the major BEH projects (investment in excess of EUR 100 million) were included in the 2007 and 2012 Hospital Programmes, the CHSF project was not.
29. With ill-directed pride, the welcome message on the site of the new hospital was not "the most efficient hospital" or "the hospital with the best treatment" but "France's largest hospital", which tends to suggest that the most important criterion for the local authorities involved was the building's size.
30. Political interference continued throughout the construction phase.
31. An 80-bed interregional secure hospitalisation unit proposed by the Health and Justice Ministries in May 2008.
32. Astonishingly, the difference was due to the failure to include VAT on the building rent and annual indexation.
33. The BEH for the CHSF was terminated amicably on 11 April 2014 after a year of negotiations between the parties.
34. The wording already shows an anti-PPP bias.
35. Up to 56% for renewed lighting in Val de Reuil and 59% in Sète!
36. 2003 joint report by the Inspectorate-General of Finance (IGF), the General Inspectorate of Education (IGAENR) and the Conseil Général des Ponts et Chaussées, p. 23.
37. Universities or higher education and research clusters (PRESs, now known as ComUEs under the law of 22 July 2013).
38. EUR 5 billion at 4% interest.
39. 2012 also saw elections to boards of governors and executive teams in the universities.
40. In fact, on the initiative of Aquitaine Regional Council – hostile to the PPP principle – the University of Bordeaux abandoned implementation of its project using a partnership contract, opting instead for an arrangement proposed by the CDC making use of the 1994 law on authorisation of temporary occupation of public property creating rights in rem, which might be deemed a public-

public partnership: setting-up of a university subsidiary with capital from both regional council and CDC, which signed the contracts for project delivery itself. This change of foot nevertheless resulted in a two-year delay for this project, a pilot project selected in early 2007 and one of the very first examined, for which the contract was signed only in November 2012.

41. As at Montpellier and Toulouse.
42. This project has received EUR 9 m of local-government capital grants for its digital component.
43. See the opinion of Mr Montarras (Section 5 below), Vice-Chair at the University of Paris 7-Diderot.
44. Although the Paris 7 project experienced some misadventures connected with an appeal against planning permission, unrelated to the PPP implementation/financing method.
45. Such as transport infrastructure.
46. Through equipment-sharing with other firms.
47. Electronic services platform for communication between local and central government and their partners: transmission of documents for review of legality, computerised accounting, management of relations with the public (change of address, civil-status records, call-centre management, online information, mail processing), official e-procedures, electronic records management, establishment of joint public-service databases and networks.
48. Fibre to the home.
49. As in the case of the multi-mission frigates (FREMM).
50. Its financial affairs department, SGA-DAF, and a specialist department, the DRESD, to manage concentration of defence staff and services on the Balard site.
51. Ordinary BEA: Law 88-13 of 5 January 1988 on improving decentralisation, incorporated in the General Code of Local Government (Article L.1311-2 et seq.).
52. Law 2002-1094 of 29 August 2002 on internal security policy.
53. Initially planned to end on 31 December 2007, this measure has already been extended twice.
54. The 2008 Partnership Contracts Act makes the following provision in Section 48:

    "From 1 January 2009, any lease project on the part of central government or a central-government agency that is signed in connection with a temporary occupation authorisation of public property creating a right in rem as defined in Article L.2122-15 of the General Code of Public Ownership, for which the rent exceeds the amount determined by decree by the Conseil d'État, shall be subject to a prior evaluation under the terms of Article 2 of Order 2004-559 of 17 June 2004 on partnership contracts.

55. See the 2008 annual public report of the French National Audit Office, which criticises the project's financing method: no allocations for paying cash meant a substantial extra cost to central government by way of interest. In this particular case it seems that it was because the owner opted to sell that central government finally decided to buy the building, which it had initially planned only to rent. This is therefore a departure from the recommended approach for a PPP project.
56. Cf. the Sorbonne Graduate Business School (IAE, Paris-1) study on partnership contracts produced in late 2012.

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The coverage of aggregate expenditure ceilings

by
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Aggregate expenditure ceilings are today a feature of budgeting in many OECD countries. They are typically used either to enforce a trend-based expenditure policy, or to gradually reduce the size of government. With the increased popularity of expenditure rules, aggregate ceilings are also required to give effect to these rules. This article focuses on the key design issue of the coverage of aggregate expenditure ceilings – that is, should they cover the totality of government expenditure, or is it legitimate to exclude certain categories of expenditure? It is suggested that the distinction between "determinate" and "indeterminate" expenditure is crucial to properly answering this question. It is also argued that the appropriate coverage of aggregate expenditure ceilings is different during expenditure planning (budget preparation) and during budget execution.

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1. Introduction

Aggregate expenditure ceilings have become an increasingly widely used budgeting tool. During budget preparation, the early establishment of an expenditure ceiling limits the amount of new spending which is approved, thereby improving fiscal discipline. Clarity about the total amount which can be spent also encourages government to make better choices between alternative expenditure options, thereby improving allocative efficiency. The establishment of an aggregate expenditure ceiling at an early stage of the budget preparation process is the essence of the concept of *top-down budgeting*.

During budget execution, on the other hand, an expenditure ceiling aims to keep total spending in line with plans, in particular by preventing unconstrained increases in spending as a result of additional new spending decisions taken after the budget is approved (e.g. via supplementary budgets). The amount of such additional "out of budget cycle" new spending is strictly limited by the *contingency reserve* which is incorporated within the ceiling.[1]

Top-down budgeting requires that budget preparation is guided by expenditure ceilings which are set for at least the coming budget year. A number of countries go even further and set firm *multi-year* ceilings which constrain both budget preparation and execution over a timeframe of three years or more.

The popularity of aggregate ceilings has been reinforced by the adoption by number of countries (and by the European Union) of expenditure rules, with ceilings being used to give practical effect to expenditure rules.

It is important when discussing expenditure ceilings to clearly distinguish between expenditure ceilings and expenditure rules. An aggregate expenditure ceiling is a quantitative upper limit on all, or a large part, of government expenditure *which is set for a specific year*. For example, a government is setting an aggregate expenditure ceiling if it makes a commitment in year *n* that government expenditure (possibly excluding certain items) will not exceed 380 billion in year *n*+1. Expenditure rules, on the other hand, are limits on government expenditure which are formulated in a general form intended to have *continuing* application. A commitment that total government expenditure will not exceed 35% of GDP is, for example, an expenditure rule (Robinson, 2012).

Notwithstanding the increasingly widespread use of aggregate ceilings, there are significant differences between countries with respect to the comprehensiveness of these ceilings. At one end of the spectrum lies Sweden, where almost all categories of government expenditure are covered. At the other end of the spectrum are countries which exclude all or most social security benefit expenditure (such as the UK) and even much health expenditure as well (e.g. France[2]). Lying in between are countries where, although a large part of social security expenditure is included with the ceilings, unemployment benefits expenditure is (partly or wholly) excluded. There are also countries which include part but all of unemployment benefits and other social security expenditure, such as Finland.[3] While most countries exclude interest expenditure, but some have not. Nowhere, in fact, are ceilings completely comprehensive.

What is the correct approach? Should ceilings be completely comprehensive, or are there practical reasons which argue for the exclusion of specific major categories of expenditure? If exclusions are appropriate, what does this mean for the effectiveness of ceilings as a tool for controlling expenditure? These are the questions upon which this article focuses.

2. The objectives of aggregate expenditure ceilings and their coverage

Experience indicates that governments usually have one of two objectives in mind when they set ceilings and rules. These have direct relevance to the comprehensiveness of ceilings.

The first objective is to prevent expenditure fluctuating in line with purely temporary fluctuations in revenue by linking the level of aggregate expenditure to *trend* revenue, thus breaking the link with actual annual revenue. Following the Dutch, this can be labelled the *trend-based expenditure policy* rationale for ceilings. Expenditure ceilings based on trend revenue promote fiscal sustainability by preventing governments from deceptively "paying for" new spending initiatives with temporary revenues, thereby setting the scene for future deficits while maintaining the appearance of fiscal responsibility in the short term. One specific consequence of this is that trend-based expenditure policy prevents unsustainable pro-cyclical surges of expenditure when revenue exceeds trend levels during the upswing of the business cycle – although this is a less relevant consideration under present macroeconomic conditions than in the past.

Some governments have, however, had an alternative objective in mind when setting expenditure ceilings – that of permanently reducing government expenditure.[4] This was, for example, the main objective of the Swedish system of medium-term ceilings, the success of which is shown by the reduction in Swedish government expenditure as a proportion of GDP from 33% in 1997 (when the system was introduced) to 27% in 2013 (Finanspolitiska Rådet, 2013: 78-79; 2014: 157). The use of ceilings to permanently reduce government expenditure is motivated by a desire to substantially reduce taxes and/or reduce debt. In Sweden's case, both these objectives were important: from 1997 to 2013, Sweden reduced revenue/GDP by approximately 10% while cutting debt/GDP by more than half. The use of expenditure ceilings as a means of permanently reducing government expenditure may be referred to as the *smaller government* rationale for expenditure ceilings.

In Sweden's case, there was no expenditure rule to guide the setting of the expenditure ceilings. The same was true of other countries which pioneered expenditure ceilings in top-down budgeting processes (e.g. Canada) and/or multi-annual budgeting (e.g. Netherlands and Finland). The widespread use of expenditure rules arrived much later than that of ceilings. When, as it is increasingly the case these days, there is an explicit expenditure rule to which the ceilings must give effect, the choice between the objectives of trend-based expenditure policy and that of smaller government will typically be reflected in the way in which the expenditure rule is formulated.

The Swiss "debt brake" expenditure rule, which has operated since 2003, is an excellent example of an expenditure rule which is intended to enforce a trend-based expenditure policy. The rule limits expenditure to the amount of cyclically-adjusted expenditure, with the objective of structurally balancing the budget. It is therefore explicitly "aimed at keeping total federal government expenditures relatively independent of cyclical variations". Implementation of the debt brake rule led directly to the introduction of a top-down budget preparation process in which an aggregate expenditure

ceiling consistent with the rule is defined at the start of each annual budget preparation process (Geier, 2011: 12, 21).

The EU "six-pack" expenditure rule is another example of a rule which aims to institute trend-based expenditure policy. This rule requires that government expenditure (with certain exclusions[5]) must not grow faster than trend GDP (which is a proxy for trend revenue[6]) *unless there is an offsetting permanent change in tax levels*. By allowing increases in expenditure/GDP as long as they are financed by permanent changes in tax levels, this rule is quite deliberately neutral with respect to the size of total government expenditure.

By contrast, if there is an expenditure rule which set expenditure limits which are independent of trend revenue, the objective is generally smaller government. This is the case, for example, for the French *zéro volume* expenditure rule ("norme"), in place now for over a decade, which requires that budget expenditure (with certain exclusions) must not increase in real terms, irrespective of revenues. The fact that coverage and other design deficiencies in the French system of expenditure rules[7] have limited their effectiveness in downsizing the French state does not change the fact that their underlying rationale is smaller government.

Whether the objective of government when setting expenditure ceilings (or rules) is smaller government, or whether it is to establish trend-based expenditure policy, one would think that the coverage of ceilings should be comprehensive – in other words, that all categories of expenditure should be included, with none of the exclusions of whole categories of expenditure which one sees in practice in many countries. If the aim is to cut spending in order to be able reduce taxes and/or debt, then it is the totality of government expenditure – and not merely some part of expenditure – which needs to be cut. If, alternatively, ceilings are designed to enforce a trend-based expenditure policy, the ceilings should presumably be consistent with the prevailing targets for the fiscal balance. Because fiscal balance targets should in principle be comprehensive in their coverage, expenditure ceilings should be similarly comprehensive.[8]

In neither case is distinctions between budget and off-budget expenditure of any relevance: logic suggests that both should be covered. In any event, what is deemed to be "budget" expenditure and what is considered "off-budget" varies enormously between one country and another, making this an essentially useless criterion for the coverage of aggregate ceilings.

3. The challenge of explaining partial coverage

If the objectives behind setting expenditure ceilings suggest that comprehensive coverage is appropriate, why in practice does the coverage of ceilings fall well short of comprehensiveness in most countries?

One obvious possible explanation is the desire of governments to circumvent the disciplinary effect of expenditure ceilings, so as to be able to simultaneously reap political advantage from the appearance of maintaining discipline while in practice avoiding it. It seems reasonable, for example, to suggest that precisely this has been the motivation of successive French governments in excluding from the coverage of ceilings certain substantial expenditures which they deem to be temporary in nature. These and certain other exclusions from the ceilings have been condemned as inappropriate by the *Cour des comptes* (the supreme audit institution), which has pointed out that they make it possible even for narrowly-defined budget expenditure to continue growing notwithstanding the

supposed respect by the government for its announced ceilings (Cour des comptes, 2013: 104). This is merely one example of the risk, identified by the Finnish MOF (2011: 47), that when expenditure ceilings only cover part of government expenditure, "merely staying within the spending limits [i.e. ceilings] will lead to the mistaken belief that growth of public spending as a whole is on a sustainable level".

Might there nevertheless be persuasive reasons for excluding specific major categories of expenditure from expenditure ceilings? This is a point on which the technical literature – including that emanating from ministries of finance with expenditure ceiling systems – is unsatisfactory. The only criterion which is clearly and explicitly recognised in this literature as relevant in determining the coverage of ceilings is the cyclical sensitivity of some expenditure. Everyone with a background in basic macro-economics is familiar with the concept of automatic stabilisers, the clearest example of which on the expenditure side is the tendency of unemployment benefit expenditure to automatically increase during recessions and to automatically decline during booms. It is therefore unsurprising that the question of how to handle cyclical sensitivity in the design of expenditure ceilings has received considerable attention. This has led to near-consensus that unemployment benefits (and perhaps also certain closely-related benefits expenditure) should either be excluded from the coverage of expenditure ceilings or should be "smoothed out" by excluding its cyclical component (see Box 1). Sweden is an outlier in this respect.

Box 1. **Unemployment benefits and expenditure ceilings**

In order to prevent expenditure ceilings from blocking the operation of expenditure-side automatic stabilisers some countries – such as the Netherlands in 2009 [Ministerie van Financiën, 2010: 60]) – have chosen to entirely exclude unemployment benefits expenditure from their ceilings. An alternative approach is to leave unemployment benefits within the ceilings, but exclude cyclical fluctuations in benefits expenditure. This can be, at least in principle, achieved by using (for the purposes of the expenditure ceilings) a cyclically adjusted measure of unemployment benefits expenditure. This ensures that the costs of discretionary changes to unemployment benefits (i.e. explicit decisions to change benefit levels or entitlement criteria) are covered by the ceilings. Another approach which aims to achieve the same effect is to exclude unemployment benefits while requiring that the cost of any discretionary changes to benefits is included within the ceiling. This is the approach which for Finland takes (and which has also been used in the EU expenditure rule).

This focus on cyclical sensitivity is, however, unduly narrow. A central contention of this paper is that the main problem facing the design of expenditure ceilings is a more general one of how to handle uncertainty pertaining to *automatic changes* in expenditure which may arise from a wide range of factors. These "automatic changes" are increases or reductions in spending which occur without any decision on the part of government, usually as the result of the provisions of standing laws or contracts. The state of the business cycle is only one of the factors which produce such automatic changes, and it is therefore inappropriate to focus exclusively on the problem of the cyclical sensitivity of expenditure.

4. Indeterminate versus determinate expenditure

In this paper, we will use the term *indeterminate expenditure* to refer to categories of expenditure in relation to which there is significant uncertainty due to automatic changes

(as defined above). By contrast, *determinate expenditure* refers to categories of expenditure which are either not subject to automatic changes or where there is little uncertainty about the magnitude of any automatic changes. The distinction between indeterminate and determinate expenditure is related to, but is not the same as, the familiar distinction between discretionary and non-discretionary expenditure.[9] It should also not be confused with the distinction between budget and off-budget expenditure.[10]

Unemployment benefits constitute one important category of indeterminate expenditure, but by no means the only one. Interest expenditure is another particularly important one. Not only is the level of interest expenditure not subject to discretionary government decision, but it tends to be subject to significant uncertainty even twelve months ahead. For example, in the United States over the four financial years from 2010 to 2013, the difference between the budget estimate of interest expenditure for the year ahead and the actual interest expenditure ranged from 0.5 to 0.7% of total federal government outlays, with an average (absolute value) of 0.6% (OMB, various years). Such differences between estimates and actuals arise from a number of sources, including errors in forecasts of interest rates for newly issued debt instruments, and errors in inflation forecasts which affect the nominal interest rate paid on indexed debt. The sheer magnitude of government debt in most countries means that small differences between projected and actual interest rates have an impact on expenditure which is far from trivial.

The uncertainty of interest expenditure is not primarily cyclical in nature. While it is true that interest rates are cyclically sensitive and tend to decline during recessions, interest expenditure is equal to the average interest rate *multiplied by* the stock of debt, and the stock of government debt tends to increase during recessions. Moreover, many non-cyclical factors also impact on interest rates. It would, for example, be misleading to characterise as exclusively or mainly cyclical the exceptionally low interest rates which have prevailed since the global financial crisis. These low rates are a more enduring phenomenon related, according to one's analytic taste, to "secular stagnation", excessive reliance upon monetary stimulus, or to the unavoidably slow process of deleveraging after a "balance sheet recession".

The ministries of finance of countries which exclude interest expenditure from their aggregate expenditure ceilings have had considerable difficulty presenting a clear rationale for this exclusion. Many have muddled the issue with that of the cyclical sensitivity of expenditure. Thus, for example, when the Netherlands, which had originally included interest within its aggregate expenditure ceilings, decided to exclude it, the decision was justified by reference to the need to "diminish pro-cyclicality" (Ministerie van Financiën, 2008: 4). In Finland, a review of the expenditure ceiling system undertaken by the MOF in 2007 wrestled unsatisfactorily with the question of whether the exclusion of interest from the ceilings was justifiable. Starting from the assumption that the only clear possible justification for exclusion of major categories of expenditure was cyclical sensitivity, the review considered carefully whether this justification applied properly to interest expenditure. It concluded that it did not, and recognised that "continuing to exclude interest payments from the spending limits is not necessarily justified in cyclical policy terms". Notwithstanding this, the review went on to recommend, in a distinctly ambivalent and unpersuasive manner, that the exclusion should be maintained (Finnish MOF, 2007: 78-79; 2011: 86-87).

Interest expenditure is, however, not the only important category of indeterminate expenditure which is subject to automatic changes which are not due to the state of the business cycle, and which cannot therefore appropriately be labelled as automatic stabilisers. In many advanced countries, expenditure on numerous major categories of

social security benefits other than unemployment benefits – such as housing benefits, incapacity and disability benefits, and family allowances – are also subject to significant uncertainty which is not primarily cyclically-related. As highlighted in a careful recent analysis of its own forecasting errors by Britain's independent Office for Budgetary Responsibility (OBR, 2014a: 59-71), major non-cyclical sources of forecasting errors for these types of benefits include the inflation rate, demographics and housing market developments (e.g. movements in private sector rent levels). Illustratively, the forecasting error in the OBR's March 2013 forecast of 2013-14 welfare expenditure *excluding unemployment benefits*[11] was approximately 0.08% of total 2013-14 central government expenditure (OBR, 2014b: 84, 89). This might not sound much, but if the contingency reserves is, say, around 0.25% of government expenditure (see below), it is far from trivial.

In one way or another, any system of expenditure ceilings must be capable of dealing with uncertainty pertaining to all of these categories of indeterminate expenditure, and not merely to the expenditure-side automatic stabilisers. As discussed below, the problems created by uncertainty arise first and foremost during budget execution, as opposed to during the preparation of the budget.

5. Aggregate ceilings and budget predictability

When discussing the problems which may affect expenditure ceilings during budget execution as a result of indeterminate expenditure, a crucial consideration is that of budgetary stability and predictability for spending ministries. Advocates of expenditure ceilings (particularly multi-year ceilings) often emphasise the benefits of ceilings in increasing budgetary stability and predictability, thereby enabling ministries to plan expenditure better and as a consequence improve efficiency and effectiveness. However, this over-simplifies the matter. In fact, the impact of ceilings on budgetary stability and predictability depends very much on the coverage of the ceilings.

Budgetary stability and predictability mean quite different things in respect to indeterminate and determinate expenditure. In the case of determinate expenditure, it is stability and predictability in respect to the *amount* (dollar value) of the budget allocation which is important. Managers need to know, firstly, that their ministry will actually receive during budget execution the full allocation which is appropriated for it in the budget law, and that they will not suffer unpredictable *sequestration* (the withholding of some portion of their approved budgets) during the year. Secondly, they need to be assured that there will not be sharp unanticipated fluctuations from one year to the next in their ministry's budget allocation.

By contrast, in respect to indeterminate expenditure, stability and predictability requires that the government provide sufficient funding to meet all of the expenditure obligations which arise from relevant standing laws and contracts, even when this implies significant variations in the total amount of expenditure. In the case of social security benefits, for example, stability and predictability mean that benefits are paid out as required by existing legislation irrespective of exogenous changes in the number of persons entitled to benefits. In the case of interest expenditure, it means that government meets all of its interest obligations even when the required interest expenditure is subject to significant unanticipated variation. In short, for indeterminate expenditure, stability and predictably require a willingness on the part of government to vary the budget allocation to accommodate automatic changes.

6. Indeterminate expenditure and expenditure ceilings during budget execution

The distinction between determinate and indeterminate expenditure is a great importance for the way in which expenditure ceilings operate during budget execution. Enforcing expenditure ceilings requires control over expenditure. However, during budget execution, governments have much less control over indeterminate expenditure than they have over determinate expenditure. Interest expenditure is essentially uncontrollable. Social security expenditure, while controllable in the medium and longer terms, is under most social security regimes essentially impossible to cut in the short term. Implementing cuts to benefits in most cases requires legislative change plus significant implementation time, while the alternative path of tightening up administration usually also involves substantial time lags.

To reflect this, the analysis which follows makes the assumption (which admittedly over-simplifies the matter) that the amount of indeterminate expenditure can only be controlled (if at all) by government by decisions taken during budget preparation, and that this expenditure is subsequently uncontrollable during budget execution (i.e. for the twelve-month period of the execution of each annual budget).

By contrast to the short-term controllability of indeterminate expenditure, governments have some degree of control during budget execution over the total amount of determinate expenditure, making it possible (if not necessarily desirable) to use sequestration to cut such expenditure even during budget execution.

The uncertainty of indeterminate expenditure, and its relative immunity to short-term control, have major implications for the coverage of expenditure ceilings during budget execution.

To clarify this, consider firstly the possibility that, rather than setting a single comprehensive expenditure ceiling, the government sets two separate ceilings, one covering determinate expenditure and the other covering indeterminate expenditure.[12]

During budget execution, the ceiling applying to indeterminate expenditure would directly confront the problem of unanticipated automatic changes in interest, social security and other indeterminate expenditure. The lack of any ability to make within-year cuts to these expenditures would make this this "ceiling" a pseudo-ceiling without constraining effect upon these automatic changes. The only tool available to maintain the *appearance* of respect for the ceiling in the face of unanticipated automatic changes in expenditure would be to incorporate within the contingency reserve what might be called (following British terminology) a *forecasting margin*, the primary function of which would be explicitly to absorb unanticipated changes in indeterminate expenditure. This forecasting margin, and therefore the contingency reserve itself, would in general need to be relatively large.

Contrast this with a hypothetical ceiling covering only determinate expenditure. In this case, the ceiling would not need to cope with the problem of automatic changes in indeterminate expenditure. The contingency reserve applying to this ceiling would therefore only need to play the standard role of limiting the amount of discretionary new spending approved by government outside the normal budget preparation cycle. It would therefore essentially constitute what might be called an *unplanned discretionary spending reserve*. The reserve could and should therefore be kept small, in order to tightly constrain unplanned discretionary spending and thereby make the ceiling as effective as possible in controlling expenditure. The availability of the sequestration tool as a last resort mechanism for ensuring that the ceiling is respected would also help in this respect.

A ceiling applying exclusively to determinate expenditure would therefore have a very real constraining effect and would fully deserve the label "ceiling".

Consider now the alternative of setting a single comprehensive ceiling covering both determinate and indeterminate expenditure. How large would the contingency reserve need to be? Presumably large enough to provide both a forecasting margin for indeterminate expenditure and an unplanned discretionary spending reserve. It might be thought that the contingency reserve applying to the comprehensive ceiling should therefore equal the sum of the contingency reserves which would apply to two hypothetical separate ceilings – in other words, the sum of the relatively large forecasting margin which would apply to the indeterminate expenditure ceiling, and the much smaller unplanned discretionary spending reserve which would apply to the determinate expenditure ceiling. However, this would result in a relatively large contingency reserve, with significant negative consequences. Specifically, the inclusion within the contingency reserve applying to a comprehensive ceiling of the relatively large forecasting margin would make it possible, particularly in the later part of the budget year, to divert any unused amounts of the forecasting margin to finance additional unplanned discretionary spending.[13] The single comprehensive ceiling would under these circumstances be much less effective in limiting additional discretionary "out of budget cycle" expenditure than the two separate ceilings – simply because the larger the contingency reserve, the less effective the ceiling is as a means of limiting government expenditure.

In the context of a single comprehensive ceiling, the alternative would be to set a contingency reserve which is significantly less than the sum of the reserves which would apply to separate ceilings. Because the unplanned discretionary spending reserve component is already small, this would require substantially reducing the forecasting margin component. The risk that the contingency reserve might prove inadequate to cope with unanticipated automatic changes in indeterminate expenditure would increase significantly. This would in turn increase the risk that the government would be forced to have recourse to the single alternative means of coping with unanticipated automatic increases in indeterminate expenditure – sequestrations (within-year cuts) of determinate expenditure.

The use of sequestration to ensure respect for the comprehensive ceiling while keeping the contingency reserve relatively small has, however, major disadvantages. If unanticipated automatic changes in indeterminate expenditure are potentially large, so also must be the size of the sequestrations required to compensate for them. Routine recourse to sequestrations as a means of enforcing a comprehensive expenditure ceiling would run directly counter to the objective of providing budgetary stability and predictability to spending ministries. It would gravely undermine spending ministry confidence that will receive their annual budget allocations, thereby adversely affecting efficiency and effectiveness. This would run the risk of reintroducing into budgeting in advanced countries the type of within-year budgetary uncertainty and instability which does so much damage in many developing countries.

Under a comprehensive ceiling, there is thus a direct trade-off. The more the contingency reserve is tightened to ensure the disciplinary force of the ceilings, the greater the risk that disruptive sequestrations of determinate expenditure will be required from time to time. Conversely, increasing the size of the contingency reserve in order to avoid the risk of being forced to undertake sequestrations weakens the disciplinary force of the ceilings.

The only imaginable way of avoiding this problem while retaining indeterminate expenditure within the expenditure ceiling would be to somehow adjust the measure of indeterminate expenditure so as to exclude unanticipated automatic changes. In some countries, this is possible in the case of unemployment benefit (see Box 1). The problem is that this is much more difficult with respect to other major categories of indeterminate expenditure. No robust methodology exists for adjusting measures of non-cyclical social security benefits expenditure so as to exclude the impact of automatic changes. With respect to interest expenditure, it is not even clear at a conceptual level what such adjustment would mean.

7. The Swedish experience

The problems which can arise from the inclusion of major categories of indeterminate expenditure within relatively comprehensive expenditure ceilings may be illustrated by the Swedish experience.

As noted above, Sweden has for almost two decades operated a system of multiannual comprehensive expenditure ceilings with very wide coverage. Apart from interest expenditure, essentially all other indeterminate expenditure – including social security benefits and even unemployment benefits – is covered. The exceptionally wide coverage of the Swedish ceilings means that the measure of aggregate expenditure covered by the ceilings is much more affected by unanticipated automatic changes in indeterminate expenditure than in other countries with expenditure ceilings systems. This has meant that the contingency reserve has throughout needed to be substantially larger than in those other countries. The intention when the Swedish system was originally designed was that the "budget year" contingency reserve should be approximately 1% of outlays.[14] This compares, for example, with the target contingency reserve of 0.25% in Finland and 0.5% in the Netherlands (Mears et al., 2010: 18).

The Swedish system has, as a consequence, experienced major problems from both the undershooting and overshooting of indeterminate expenditure.

On the one hand, when indeterminate expenditures have been lower than forecast, the contingency reserve has been used to finance increased discretionary spending. As Flodén (2012: 16), puts it the contingency reserve was "often … used for unplanned expenditure when budget outcomes were favourable". This happened, for example, in the late 1990s (Heeringa and Lindh, 2002: 504-5).

Conversely, when indeterminate expenditure has been higher than anticipated, the ceilings and/or contingency reserves have come under considerable pressure. The most serious source of such pressure has, unsurprisingly, has been unexpected cyclically-related surges in unemployment benefits expenditure, firstly in the early 2000s and subsequently during the global financial crisis (GFC). However, before discussing the difficulties that the system experienced in the wake of the GFC, it is important to emphasise that the cyclically-sensitive expenditure has by no means been the only source of pressure. Forecasting errors in respect to other social security benefits have also been a problem. In particular, it has repeatedly proven difficult to accurately forecast expenditure on sickness leave benefits, early retirement benefits and disability benefits, and the forecasting errors have had little obvious relationship to the state of the economy. The first time this occurred was between 1997 and 2003 when, after trending down over many years to exceptionally low levels, spending in these areas surged significantly for a time (Hansson-Brusewitz and Lindh, 2006: 674),

absorbing a large portion of the contingency margin and putting considerable pressure on the ceilings. A similar problem arose from 2010, when once again major errors arose in forecasts of expenditure in these areas added to the GFC-related pressures on the system (Swedish MOF, 2010: 6; Finanspolitiska Rådet, 2013: 79-85; 2014: 13).[15]

However, it was in the wake of the GFC that the system experienced extreme stress. Even the relatively large contingency reserve proved hopelessly inadequate to cope with the unanticipated automatic changes in unemployment benefits expenditure. Critics – including the official Swedish Fiscal Policy Council (Finanspolitiska Rådet, 2010: 45) – were not slow to blame tight ceilings and insufficiently large contingency reserves for keeping fiscal policy too restrictive.[16] In response to this criticism, the Government increased substantially both the contingency reserve and the ceilings themselves, citing the need to cope with increased expenditure uncertainty and to avoid being forced to inappropriately cut expenditure in the event of further deterioration in macroeconomic and financial system conditions (Finanspolitiska Rådet, 2011: 99; Swedish MOF, 2010: 6; Swedish MOF, 2011: 18; IMF, 2011: 12). For budget year 2011,[17] the contingency reserve was set at an unprecedented 5.7% of expenditure (Swedish MOF, 2010), followed by 5.2% for budget year 2012 (Swedish MOF, 2011).

However, dramatically increasing the contingency reserve levels greatly weakened their disciplinary force. This unleashed an avalanche of criticism, including from the Swedish National Audit Office and even from the Fiscal Policy Council (notwithstanding its earlier stance). The Council now opined that contingency reserves had become "very large and are hardly a constraint on spending", and worried that this would open the door to a substantial increase in unplanned new expenditure (Finanspolitiska Rådet, 2012: 31; 2011: 102). Given past experience (see above), this fear was a reasonable one.

In 2013 and 2014, as expenditure uncertainty declined, the budget year contingency reserve was reduced (to respectively 2.7% and 1.5% of expenditure) and the ceilings themselves were tightened (Swedish MOF, 2012, 2013). Despite – or rather because of – these reductions, the Government once again found itself criticised, with the Fiscal Policy Council now suggesting that the reserves were now once again too small (Finanspolitiska Rådet, 2014: 153-158). However, even at these reduced levels, the budget year contingency reserve remained well above the 1% indicative level set when the system was established.

The MOF (Swedish MOF 2011: 18-19) has explicitly recognised in that the inclusion of unemployment benefits is a major source of the difficulties which Sweden's expenditure ceiling system has faced.[18] However, as noted above, the pressures experienced by the Swedish system are not exclusively the result of its flawed treatment of the automatic stabilisers. Even if unemployment benefits had been excluded from the Swedish ceilings, the inclusion of other social security benefits expenditure alone would still have made it necessary to set contingency reserves much higher than in other countries, creating the risk of diversion of the unused forecasting margin component of the contingency reserve to the financing of additional new discretionary expenditure.[19]

It seems strange that the Fiscal Policy Council and other Swedish commentators have not recognised that a key source of the recent difficulties faced by the system is precisely the "original sin" of adopting a largely comprehensive expenditure ceiling without regard to the difference between determinate and indeterminate expenditure. Instead, these commentators have focused on second-best partial solutions such as dividing the contingency reserve into two parts.[20]

The exclusion of interest expenditure from Sweden's expenditure ceilings is also at odds with the general emphasis on comprehensiveness. The principal architect of the Swedish system, Per Molander, has indicated that the reason for this exclusion was the "volatility" of interest expenditure and the fact that it was the "largest single item on the budget" (Molander and Holmquist, 2013: 27). These are persuasive considerations. During the randomly selected four financial years 2010-13, errors in budget forecasts of next year's interest expenditure were between 0.0 and 1.1% of total outlays, with an (absolute value) average of 0.6% (Ekonomistyrningsverket, various years). If interest expenditure had been included within the ceilings, it would therefore have been necessary either to approximately double the intended contingency margin – thereby significantly loosening the disciplinary effect of the ceilings – or to have been willing to engage in substantial sequestering of determinate expenditure from time to time in order to absorb part of the forecasting error for interest expenditure.

The problem is that the volatility rationale for excluding interest expenditure is also a rationale for excluding other major categories of indeterminate expenditure which have been left within the coverage of Sweden's expenditure ceilings.

The real reason that interest expenditure was excluded while these other categories of indeterminate expenditure were left within the expenditure ceilings was a different one – that unlike social security benefits expenditure, interest expenditure is (again in the words of Molander and Holmquist) "not politically decided". Quite understandably, the Swedes did not wish to leave unemployment benefits or other social security benefits outside of the expenditure ceilings because, as they saw it, there would then be no constraint on discretionary policy decisions by government to raise benefits or broaden eligibility.

8. Comprehensive vs partial ceilings – the UK experience

The Swedish system of comprehensive expenditure ceilings may usefully be contrasted with the UK system of partial expenditure ceilings which was introduced at about the same time (in 1998) and which still operates today. This is a system in which the aggregate expenditure ceiling – the Departmental Expenditure Limits (DELs) – quite deliberately excludes essentially all indeterminate expenditure. Indeterminate expenditure is categorised as Annually Managed Expenditure (AME), and lies outside the DELs. AME includes interest expenditure, social security benefits and number of other categories of indeterminate expenditure.

Even after the recent introduction of the so-called "welfare cap" as a mechanism for controlling the evolution of social security expenditure (discussed below), it remains the case that social security expenditure is not part of the DEL expenditure ceilings.

The decision in 1998 to exclude all indeterminate expenditure from the aggregate expenditure ceiling was the culmination of two decades of previous experience with the problems created by more comprehensive aggregate expenditure ceilings or targets. In 1979, the UK had introduced "Planning Totals" – not quite an aggregate expenditure ceiling, but more than merely a target – which were as broad in their coverage of aggregate expenditure as the Swedish ceilings are today. (That is, the Planning Totals included all social security expenditure and excluded essentially only interest expenditure.) The impact of unanticipated autonomous changes in indeterminate expenditure was one of the key reasons why these Planning Totals were often breached during the execution of the budget (Thain and Wright, 1995: 293, 489-91). In 1992, the Planning Totals were replaced

with the "New Control Total", which was a firm top-down ceiling, and which excluded cyclical social security expenditure (particularly unemployment benefits) (Heald, 1995; Heald and McLeod, 2002; Thain and Wright, 1995; IFS, 2009: 8-9).

The subsequent move from the New Control Total to the DELs/AME model went significantly further and also excluded non-cyclical social security expenditure. One of the key reasons for the exclusion of all social security benefits and other indeterminate expenditure from the new aggregate ceiling was that the newly-elected Labour government wanted to be able to give spending ministries ("departments" in UK parlance) certainty about their budgets over the medium-term, to enable them to "prioritise resources and plan ahead" (HM Treasury, 1998). This is the budgetary stability and predictability objective of ceiling-setting discussed earlier in this paper.

Under the new DELs/AME system, stability and predictability were to be achieved by setting the aggregate DELs ceilings over a three-year time horizon, and then within the aggregate DELs designating guaranteed ceilings for each spending ministry for each of the three years. This essentially made the aggregate DELs a minimum as well as maximum for expenditure covered by the ceiling. In this context it was essential to ensure that the government would not find itself forced during the course of each three-year medium-term budget to make cuts to the ceilings which had been guaranteed for individual ministries in order to compensate for unanticipated automatic changes in indeterminate expenditure. As the White Paper establishing the new system put it, AME (indeterminate) expenditure was excluded from the DELs precisely because it "cannot reasonably be subject to firm multi-year limits" (HM Treasury, 1998).

Box 2. **Expenditure ceilings in the USA**

The UK is not the only country which limits expenditure ceilings in the manner described above. A system of expenditure ceilings was introduced in the United States by the Budget Control Act (BCA) of 2011. These ceilings only apply (approximately speaking) to determinate expenditure. More precisely, BCA introduced "limits ('caps') on the amount of discretionary budget authority that can be provided through the annual appropriations process." "Mandatory" expenditure – which includes most indeterminate expenditure as defined in this paper is not subject to the limits. Instead, it is controlled by an entirely separate statutory "pay-as-you-go" mechanism which requires "that any bills increasing mandatory expenditures must be fully offset by revenue increases or cuts in mandatory programs" (OMB, 2013: 128-129).

9. The downside of ceilings with partial coverage

The exclusion of indeterminate expenditure from the aggregate expenditure ceiling avoids the problems which arise from unanticipated automatic changes in social security, interest and other indeterminate expenditure. However, such exclusion is undeniably problematic. A regime of aggregate expenditure ceilings with only partial coverage of government expenditure would appear inconsistent with the basic objectives which aggregate expenditure ceilings to achieve – whether these are implementation of a trend-based expenditure policy, or smaller government.

In the first place, if these are the objectives behind the ceilings regime, then even if unanticipated automatic changes in indeterminate expenditure may create problems

during the implementation of aggregate expenditure ceilings, it remains crucial to *plan* aggregate expenditure with an eye to limiting the comprehensive total of all government expenditure. Only in this way can the objectives of smaller government or of a trend-based expenditure policy be achieved. This means that the coverage of ceilings applied during expenditure planning (budget preparation) should be comprehensive, with essentially no exclusions.[21]

The importance of applying a comprehensive aggregate expenditure ceiling *during expenditure planning* is reinforced by the importance of promoting allocative efficiency. Allocative efficiency means making the right choices between alternative expenditure options. As noted at the outset, one of the key advantages of the setting of an aggregate expenditure ceiling at an early stage in the budget preparation process – that is, of top-down budgeting – is to promote enhanced allocative efficiency. An aggregate ceiling which is respected during budget preparation does this by making clear the zero-sum nature of expenditure decisions – in other words, making it clear that the opportunity cost of each new spending decision (or, indeed, of each decision to maintain an existing programme) is the sacrifice of an alternative spending option. However, the coverage of the expenditure ceiling is crucial, because the obligation to make choices which arises from the zero-sum constraint of the aggregate ceiling applies only to choices between categories of expenditure which are covered by the expenditure ceiling. To exclude social security expenditure from the aggregate ceiling which sets the framework for budget preparation inevitably removes the need to make choices between, on the one hand, social security expenditure and, on the other hand expenditure covered by the ceiling. This is most undesirable because, although social security expenditure may be rigid in the short run, it can be changed through decisions, taken with sufficient lead-time, to modify entitlement criteria and benefit levels. There is a therefore direct trade-off between the level of such expenditure and the level of other (determinate) expenditure. Applying during the preparation of the budget a comprehensive ceiling which incorporates both types of expenditure forces government to recognise these trade-offs.

The desirability of a holistic perspective on expenditure prioritisation was precisely one of the key considerations behind Sweden's decision to adopt relatively comprehensive ceiling coverage.

The allocative efficiency argument for comprehensive ceilings does not apply to interest expenditure, because it constitutes only an argument for the inclusion within the aggregate expenditure ceiling of all expenditure which is subject to *ex ante* discretionary control – which interest expenditure is not. However it remains important to target a comprehensive measure of aggregate expenditure *including* interest expenditure if the objectives of smaller government or trend-based expenditure policy are to be achieved.[22]

In addition to the problems which partial coverage of expenditure ceilings would create during expenditure planning, there is also an obvious problem during expenditure execution. If social security and similar expenditure is excluded, what is to prevent its continued upward drift? This is exactly the problem which the UK government found itself faced with under the DEL/AME regime – there was a sustained upward trend in AME expenditure which the ceilings regime itself did not address.

10. The appropriate coverage of aggregate ceilings

The analysis above points to two key problems. Firstly, the appropriate coverage of aggregate expenditure ceilings is not the same during expenditure planning as it is during

expenditure execution. To meet the needs of good budget preparation, aggregate expenditure ceilings should include every category of expenditure. However, to work optimally during budget execution, ceilings should cover essentially only determinate expenditure. This points to the second problem – if indeterminate expenditure is excluded from expenditure ceilings during budget execution, how is control to be maintained over this important category of expenditure and, consequently, on total aggregate government expenditure?

With respect to the first of these problems, the difficulty of reconciling the differing coverage requirements of aggregate expenditure ceilings during expenditure planning and expenditure execution is apparent rather than real. There is no reason why the aggregate expenditure ceiling used during budget preparation need have the same coverage as that applying during budget execution. There is nothing to prevent the inclusion of indeterminate expenditure in the ceilings used during budget preparation, and its subsequent exclusion from the ceilings applied during budget execution. This means that, rather than using the term expenditure ceilings in a way which implicitly assumes that the same ceilings will apply at both stages of the expenditure cycle, one should explicitly distinguish between budget preparation (expenditure planning) ceilings and budget execution ceilings.

The view put forward in this paper then, is that the budget preparation ceiling should be comprehensive – in other words, that the budget should be prepared so as to respect a top-down ceiling which covers all categories of government expenditure, whether determinate or indeterminate, and whether on or off budget. However, when budget preparation has been completed and the budget is presented for legislative approval, determinate and indeterminate expenditure should be distinguished and treated differently. At that time, government should propose a budget execution ceiling which covers essentially only determinate expenditure. The budget documents should present forecasts of indeterminate expenditure, but without any suggestion that these forecasts constitute a ceiling which the government has the power to ensure is not breached.

Under this approach, the contingency reserve would apply only to the determinate expenditure ceiling, and would therefore not need to include any forecasting margin to cope with unanticipated automatic changes in indeterminate expenditure. It would serve only as an unplanned discretionary spending reserve. The contingency reserve could therefore be kept small, so as to maximise its effectiveness as a tool for limiting new spending decisions taken outside the budget preparation process.

This brings us to the second problem – how to maintain control over indeterminate expenditure if it is excluded from ceilings. The fact that indeterminate expenditure would be covered by ceilings only during budget preparation and not during budget execution implies an acceptance that from time to time the level of indeterminate expenditure will exceed forecasts and that, when this happens, the comprehensive aggregate expenditure ceiling applied by the government during budget preparation will be exceeded during budget execution. If this is due only to random forecasting errors which cancel themselves out over time, no problem arises. If, however, actual indeterminate expenditure systematically exceeds forecast levels, there is a problem.

There are a number of potential means of dealing with this problem.

One is to require *ex post* compensation – offsetting expenditure reductions – if indeterminate expenditure systematically exceeds forecast levels. Given that it is not

feasible or desirable to use within-year sequestration to compensate for overruns, such compensation must necessarily take place in subsequent years. This is essentially what is achieved by the *ex post* "compensation mechanism" first introduced in Switzerland (Geier, 2011) and subsequently adopted in certain other countries. Under this mechanism, if the cumulative excess of actual expenditure over expenditure ceilings exceeds a threshold level, mandatory expenditure cuts must be made in subsequent years.[23]

Another valuable instrument for controlling indeterminate expenditure is to use independent verification to ensure the integrity of expenditure forecasts for indeterminate expenditure which the government uses when asserting that it has respected a comprehensive budget preparation expenditure ceiling. Independent verification is essential to prevent governments from engaging in persistently optimistic forecasting of indeterminate expenditure so as to "game" the expenditure planning ceilings. It is appropriately part of the broader task of independently verifying fiscal forecasts which is assigned to independent fiscal councils in many countries, such as the UK Office for Budget Responsibility.

A particularly notable development in this context is the recent introduction by the UK government of a "welfare cap" designed to discipline social security expenditure (IFS, 2014: 45-50; Rhodes and McInnes, 2014), in conjunction with the DEL expenditure ceiling system. Under the welfare cap system[24] the government sets rolling multi-year planning ceilings ("caps") which cover most social security expenditure.[25] It is then required to ensure that the budget presented to parliament respects these ceilings – in other words that *forecast* (not actual) social security expenditure is not in excess of the ceilings. The Office for Budget Responsibility independently checks these forecasts and reports on whether the government's social security policies are consistent with respect for the welfare caps which it is announced. The entire emphasis is on *ex-ante* respect for the ceilings, and there is no mechanism for *ex post* enforcement if actual social security expenditure exceeds the cap. In other words, the welfare caps represent expenditure planning ceilings, and not budget execution ceilings. The design of the system is in this respect driven by the explicit recognition that it takes time to change the level of social security expenditure.[26]

11. Summary of policy implications

The main conclusions of this paper may be summarised in three propositions:

Proposition 1: Aggregate expenditure ceilings need not, and should not, have the same coverage during budget preparation and budget execution. In recognition of this, it is appropriate to distinguish explicitly between budget preparation (expenditure planning) ceilings and budget execution ceilings.

Proposition 2: Budget preparation ceilings should be comprehensive, including all social security expenditure (with the single exclusion of the cyclical component) and interest expenditure.

Respect for these comprehensive budget preparation ceilings should be assured through independent verification of the expenditure forecasts (especially for indeterminate expenditure) which underpin them.

Proposition 3: Budget execution ceilings should exclude indeterminate expenditure (including interest expenditure and all categories of social security and other entitlements expenditure which are subject to significant forecasting uncertainty).[27]

In this context, additional consideration should be given to *ex post* compensation mechanisms which force compensating expenditure reductions in future years in the event that indeterminate expenditures systematically exceeds forecast levels.

12. Concluding reflections

The analysis in this paper makes it clear that the view advanced by some – that the more comprehensive the coverage of expenditure ceilings, the better – is simplistic. To the contrary, it is highly desirable that ceilings which apply during budget execution exclude major categories of expenditure.

A further implication of the analysis is that the degree of comprehensiveness of expenditure ceilings which apply during expenditure execution will appropriately vary between countries and levels of government. For example, the ceiling should logically be more comprehensive for a sub-national government with limited or no responsibility for social security than for, say, a national government with primary responsibility for running a "welfare state".

It is also relevant in this context that the degree to which certain categories of expenditure may be considered "determinate" or "indeterminate" can vary between countries depending on institutional and legal arrangements. For example, in some countries health expenditures may fit more naturally into the indeterminate category. This has implications for the design of expenditure ceilings which have been abstracted from in the analysis in this paper. However, it is relevant to the fact that some countries set separate sub-ceilings for health expenditure within their aggregate expenditure ceiling.

Calling on all governments around the world to adopt highly comprehensive expenditure ceilings is therefore an unfortunate example of "one size fits all" policy advice.

A further implication of the analysis in this paper is that if expenditure rules cover broad expenditure aggregates which include, whether partially or wholly, major categories of indeterminate expenditure, it is inappropriate to expect that these rules can or should be uncompromisingly enforced during budget execution through the application of similarly comprehensive expenditure ceilings. It is realistic only to require that the expenditure rules be faithfully observed during the preparation of the budget. During budget execution, the possibility of some departure from the expenditure rule must be recognised due to automatic changes in indeterminate expenditure. Independent verification of fiscal forecasts and *ex post* correction mechanisms, as discussed above, become particularly important for the enforcement of the expenditure rule under these circumstances.

Notes

1. Subject to "escape clauses" which may permit expenditure ceilings to be breached under circumstances of severe recession or natural disaster.
2. In France, expenditure ceilings and the two expenditure rules ("normes") which underlie them (see the main text below and note 7) apply only to the budget and exclude off-budget expenditure. This means that most social security expenditure and health expenditure lies outside the ceilings. It is true that the French government also sets an "objective" for total public expenditure, as well as an objective for social security and health expenditure ("ONDAM"). However, these objectives are not ceilings and have frequently been breached. For example, in 2013 the objective for total government expenditure was 0.9% real growth, whereas actual growth was 1.7% (according to the Cour des comptes (2014: 47) or 1.3% (according to the government [République française, 2014: 22]).

3. The main social security expenditure exclusions in Finland are "unemployment security expenditure, pay security, housing allowances and the central government contribution to the cost of basic benefit of social assistance" (Finnish MOF, 2013: 5). Crucially, however, that expenditure resulting from "discretionary" changes to these categories of social security expenditure is included in the ceilings.
4. This may mean cutting expenditure in nominal or real terms, or as a percentage of GDP, or it may mean reducing the underlying trend growth of expenditure.
5. Interest and "non-discretionary" changes to unemployment benefits expenditure.
6. The assumption is that with stable tax policies trend revenue should usually grow in line with trend GDP.
7. In addition to the "zéro volume" norme (which applies to budget expenditure with certain limited exclusions), France also has a more recently-introduced additional "zéro valeur" norme (which applies to budget expenditure with the further exclusions of interest payments and government employee pension expenditure). The reason for excluding interest payments from the second norme is discussed in note 22 below.
8. The sole qualification to this is the possible exclusion of extra-budgetary funds which are wholly self-financing from non-tax sources.
9. Non-discretionary expenditure is expenditure pursuant to standing legislation (i.e. laws with continuing application) or contracts – such as social security benefits and interest expenditure. Discretionary expenditure, on the other hand, is expenditure undertaken only by virtue of its authorization in the annual budget law. Determinate expenditure is essentially discretionary expenditure plus that part of non-discretionary expenditure which can be estimated in advance with a high degree of confidence. (For example, salaries of judges and other "statutory" public officials qualify in some countries as non-discretionary expenditure because they are made pursuant to standing legislation rather than to budget appropriations. The amount which has to be paid is nevertheless quite clear, making these part of determinate expenditure.) Indeterminate expenditure, by contrast, is that (considerable) portion of non-discretionary expenditure the amount of which varies significantly due to automatic changes, the magnitude of which variation is subject to significant uncertainty.
10. Not all expenditure authorized in the budget is discretionary (or determinate) expenditure, because in almost all countries budget appropriations include some expenditure which must be undertaken by virtue of standing laws or contracts irrespective of whether it is also authorised in the budget law. Interest expenditure, which in most countries is "authorized" by the budget law, is the most common example of this. In France, the budget includes a number of so-called crédits évaluatifs which are appropriations for the estimated amount of certain non-discretionary expenditures. These contrast with the crédits limitatifs, where the amount to be spend is fixed. In the US, the same concepts are captured in a distinction between definite and indefinite "budget authority". An extreme – and very unusual – example of the inclusion within the budget of non-discretionary items is that of Sweden where all non-discretionary expenditure, including social security benefits, is covered by formal budget appropriations which specify the maximum amount to be spent. This arrangement, however, "in no way nullifies the rights [to benefits] laid down in social security legislation" (Molander and Holmquist, 2013: 22). In short, in all countries some budget expenditure is non-discretionary, and some of that on-budget non-discretionary expenditure qualifies as "indeterminate" in the terminology used in this paper.
11. And certain other highly cyclical benefits.
12. The Netherlands, approximately speaking, has separate ceilings for determinate and indeterminate expenditure (more precisely, there is one ceiling for the central government budget; and two others respectively for social security and labour market policy expenditure, and for health care expenditure.
13. This latter problem may in principle be avoided by partitioning the contingency reserve into two separate reserves (an uncertainty reserve and an unplanned discretionary spending reserve). This is, however, a move back in the direction of two separate ceilings, one for determinate expenditure and the other for indeterminate expenditure. The problem would remain that either the ceiling would fail to exercise any constraining effect upon indeterminate expenditure or it could do so only by destabilising determinate expenditure.
14. The "budget year" contingency reserve means the reserve which would be included in the year n budget as passed by parliament in year n-1. The reserves for the outer years – years subsequent to year n – of the medium-term framework are deliberately larger, because they include fiscal space

for additional new spending measures (what has sometimes been called a "planning reserve") which will only be decided when it comes time to prepare the budget for the year concerned. Over time, as these outer years get closer, their reserves are gradually reduced.

15. These forecasting errors were not obviously related to the business cycle. Expenditure in these areas was (and remains today) below pre-GFC levels.

16. The government's use of creative accounting to partially circumvent the ceilings in 2009 (Finanspolitiska Rådet, 2009:79) implicitly acknowledged the validity of this critique.

17. Note that the fact that ceilings are set for 3-4 years in advance resulted in a time lag in increasing the contingency reserve.

18. An additional major design flaw in the Swedish system – which has been pointed out by the Fiscal Policy Council and other critics – is the lack of an escape clause which would have permitted the ceilings to be suspended under conditions of serious macroeconomic crisis.

19. The inclusion of non-UB social security benefit expenditure would, for example, have made it impossible to operate with the contingency reserve anywhere near as low as the 0.25 per cent level set in Finland. If one takes the three major non-unemployment benefit categories of social security benefits in Sweden (sickness and handicap benefits, family and child benefits and old-age benefits excluding pensions), the average absolute value of one-year forecasting errors for these three areas taken together in the four years 2010-13 equalled 0.15 per cent of expenditure covered by the expenditure ceilings, with a peak value (in 2013) of 0.21 per cent (calculated from data in Ekonomistyrningsverket [various years] and Regeringskansliet [various years]).

20. The Fiscal Policy Council has suggested the splitting of the contingency reserve into two reserves, one to cover cyclically-induced additional expenditure and the other to cover other unplanned additional expenditure (Finanspolitiska Rådet, 2009: 36). This is somewhat similar to the notion, discussed in footnote 13, of dividing the reserve into a forecasting margin and an unplanned discretionary spending reserve, and as such suffers from the same deficiencies. Moreover, the Government and retired senior officials close to the government (Molander and Holmquist, 2013: 41) have criticised this suggestion on the grounds that the distinction between these two types of expenditure is not always clear in practice, so that splitting the reserve would leave the door open to manipulation by the misclassification of additional expenditures. An alternative suggestion from the IMF (2013: 15) – that the use of the contingency reserve during budget execution should be made conditional upon indicators of the state of the macroeconomy – is flawed because it fails to recognize that coping with cyclically-related expenditure uncertainty is not the sole function of the contingency reserve.

21. The one obvious qualification to this is that it remains necessary to exclude the cyclical component of social security expenditure from the ceilings during budget preparation in order to permit the full operation of the automatic stabilisers.

22. There may be a case for setting both a comprehensive expenditure ceiling which includes interest expenditure and, within that, a sub-ceiling excluding interest expenditure. This is what the UK did under the New Control Total regime. In the UK's case, the NCT ceilings were based on an indicative expenditure rule which limited the real growth rate of expenditure covered by the ceilings (i.e. excluding interest expenditure and cyclical social security expenditure) to a maximum of 1.5% per year. At the same time, the government aimed to limit total government expenditure ("General Government Expenditure", which included interest and also for security expenditure) to a maximum of 2% per year. Although France's expenditure ceilings (normes) have always been far from comprehensive, it is worth mentioning that in France, the government in 2011 started to set an expenditure sub-ceiling excluding interest expenditure (guided by a so-called zéro volume norme) within the overall budget expenditure ceiling including interest expenditure which it had been setting for over a decade (based on the so-called the zéro valeur norme). The reason it did so was that the exceptionally low interest rates which have prevailed in the post-GFC period create a challenge for a ceiling system the basic objective of which was smaller government. Because they artificially lower interest expenditure, the low post-GFC interest rates create additional room, within a comprehensive ceiling which includes interest expenditure, for additional discretionary spending. This essentially took off some of the pressure for expenditure reduction. Establishing the sub-ceiling excluding interest expenditure avoided this problem. The desirability of ensuring that "lower than expected interest expenditures will not increase room for other expenditures" was also a factor in the exclusion of interest expenditure from the recent expenditure ceiling in the Netherlands (Ministerie van Financiën, 2011: 33). However, it would arguably have been better to have established a sub-ceiling excluding interest.

23. Simplifying somewhat, under the Swiss compensation mechanism, when actual expenditure exceeds the ceiling, the difference is added to a notional account. If and when the amounts added to the notional account exceed certain thresholds, equivalent automatic expenditure cuts are required. (An addition compensation mechanism is also applied during budget preparation – for details see Geier [2011]).

24. Note that the system is complex and the description here is somewhat simplified.

25. With limited exceptions one of which is unemployment benefits (because of its cyclicality). For coverage see HM Treasury (2014: 88).

26. In fact, the welfare cap applies only with a 12-month lag, "in order to allow the government time to implement policy changes to bring down spending if necessary" (HM Treasury, 2013: 35).

27. The sole potential exception to this is the costs of any deliberate changes to social security benefits made during the period of budget execution, which may appropriately (insofar as they are permitted) be included within the budget execution ceiling. It should, however, be noted that not only are benefit changes at short notice during budget execution uncommon, but they should be discouraged.

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