

# *Public-private partnership as a complex interdisciplinary concept in the conditions of modern industrialization*

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**Abstract**—The author studies the issues related to the definition of the concept of public-private partnerships, as well as points of controversy in the interaction between the public and private partners. Based on the analysis of the analysis of current legislation and the existing doctrinal approaches, the author identifies the main features of public-private partnerships and proposes their definition. The main goal of work is to define the concept of public-private partnerships on the basis of features identified by the author through the analysis of Russian and European legislation, as well as modern academic opinions.

**Keywords**—*public-private partnership, public partner, private partner, agreement on public-private partnership, public interest, private interest.*

## I. INTRODUCTION

Public-private partnership projects have been used throughout the world for many years facilitate major public projects. This article is devoted to legal regulation of public-private partnership and provides a systematic overview of PPPs and their functions. It covers both the contractual relationships between public and private actors and relationships between PPPs and third parties, such as end-users. It also examines from a commercial perspective the major sectors where PPP structures have been successfully employed.

The article will be interesting and useful for students of law and economic faculties, it helps them to understand the latest techniques relevant to a particular sector in PPP and or to understand how responses developed in jurisdictions where PPP is firmly established might be applied to new markets.

## II. RESEARCH METHODOLOGY

The article uses systematic and comparative methods of research.

Research objectives:

1. Analysis of European doctrinal and regulatory sources that define the notion of public-private partnerships.

2. Analysis of the approaches of Russian economists to the definition of the concept of public-private partnerships.

3. Analysis of the approaches of Russian legal theorists to the definition of the concept of public-private partnerships.

## III. RESULTS

The work studies the evolution of the notion of public-private partnership concept in Europe and analyzes the latest academic opinions that made it possible to identify the main approaches to the definition of the concept of public-private partnership in economics and legal science at the present stage. Based on the selected features, the author gives her own definition of the concept of public-private partnerships.

## IV. IMPLEMENTATION OF THE RESEARCH OUTCOMES

The obtained research results can be used as recommendations in the organization of the legislative process in the constituent entities of the Russian Federation, as well as in the process of interaction between businesses and the state and municipal authorities with the purpose of developing their contractual relations. Besides that research outcomes could be used as recommendations for the educational process in order to organise the effective cooperation between business structures and public authorities, thus increasing their interaction.

## V. ACKNOWLEDGMENT

Our comparative legal analysis of the definitions of the concept by domestic and foreign authors and the provisions of law allows us to identify the main attributes of PPPs that separate them from other forms of cooperation. These attributes are the following.

1. Risk sharing. The principle of risk transfer implies that the risks are transferred to the party that can best cope with them. Within a PPP, risks associated with the infrastructure design, construction and operation are transferred to the private partner, which helps reduce losses. In other words, in

this aspect, PPPs are a union of the state and business based on the sharing and redistribution of risks in order to achieve better results, to distribute the costs of the project, to pool resources, assets and participation of the parties.

2. The long-term nature of PPP relations. As a rule, a PPP project will be designed to live for 10-20 years, although there are projects that may have a shorter life, say, 3-5 years.

3. The partnership nature of relations, based on parity and mutual interest of the partners in the subject of PPP.

4. The legal regulation of PPP relations. The relationships of the PPP parties are established by agreements that combine public (financial and administrative) and private law principles.

So, we can propose our own definition of PPPs based on the described features. Public-private (municipal-private) partnerships are a complex administrative, financial, civil, organizational and economic mechanism of cooperation between public and private partners in order to implement infrastructure and other socially valuable projects or to provide public services, which are based on long-term cooperation, risk sharing, parity, and price-quality ratio.

Public-private partnerships (hereinafter PPPs in the sense in which the term is currently used) appeared in the UK, when John Major's government announced a new concept of state property management - the private financing initiative [21, p. 7]. In the UK, PPPs usually refer to government agencies or businesses created for public purposes and financed by the government along with one or more private companies. The relevant contracts distribute the project powers and financial and technical risks between the public and private sectors [20, p. 3]. Many British lawyers consider PPPs a type of contract concluded with a government agency. However, we believe this interpretation is rather narrow and suggest adopting the view of Y. Marique, who defines PPPs as long-term cooperation between public and private partners for the provision of public infrastructures or services in order to share the risks and achieve the best value for money [25, p. 2]. In other words, the British model of PPPs is based on private law, and entitles businesses to deciding on the methods and location of the social infrastructure objects.

PPPs are popular in the EU states as a way to provide public infrastructure and public services. In France, PPPs (*Le partenariat public privé*) are defined as a scheme for financing the development, planning, construction and operation of public service infrastructures by private investors [19, p. 19]. The legal platform of PPPs in France was laid down by Decree of the Ministry of Economy, Finance and Industry from June 17, 2004 No. 2004-559, adopted in respect of partnership contracts (*Ordonnance du Ministère de l'économie des parties et de l'industrie*) [22, text 2]. At the same time, the definition of PPPs by French scholars suggests a rather ambiguous attitude to this legal category. Researcher Philip Arlan says that PPP is just a form of hidden debt, a rollover plan. According to Sebastien Ramnoux, this system is apparently fraught with pitfalls. To begin with, the rent that the state ultimately pays to its partner in some schemes may significantly exceed the initial cost of equipment [24]. Thus,

the French model of PPPs can be characterized as public law based on an administrative regulation.

PPPs are not considered a separate phenomenon by the German law; instead, they fit into the existing legal field as another method to execute budget spending and to fulfill state and local government obligations. Germany pays increasing attention to the constitutional basis, emphasizing the principal responsibility of the state for performing public tasks, and questioning PPPs projects from the point of view of public law and financial policy [18, p. IV]. German PPP (*Offentlich Private Partnerschaft*) refer to the mobilization of private capital and special knowledge to solve public tasks [23, p. 3].

Russian economic and legal literature notes that the diversity of types, forms and spheres where PPPs are used makes them a universal mechanism for solving many long-term tasks – from infrastructure creation and development to solving problems of investment and innovation [15, p. 10]. However, we have yet to see a single academic approach to defining the PPP concept.

The term "public-private partnership" when translated into Russian means "state-private partnership." The Federal Law "On State-Private Partnerships, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts" uses the term "state-private partnership" and "municipal-private partnership" (hereinafter - the RF Federal Law on SPPs) [26, p. 4350]. Meanwhile, some scholars agree that the terms "state-private partnership" and "municipal-private partnership" can be replaced by the general term "public-private partnership". V.V. Kilinkarov notes that the use of the term "public-private partnership" is consistent with the current tendency in Russia and other countries to combine the concepts of "state" and "municipal" into the concept of "public": terms such as "public law", "public services", "public subject", "public education", "public procurement" have long been used in the legal field, and lawyers no longer associate them with exclusively social phenomena. Moreover, he says the term "public-private partnership" is the most general and traditional for the legal model in question [8, p. 128]. V.F. Popondopulo expresses a similar opinion [17, p. 1-2]. V.E. Sozonov suggests his own definition of public-private partnerships [14, p. 67-68], at the same time pointing out the possibility of a narrower and more generalized definition of state-private partnerships (and not public-private partnerships) [14, p. 61], which does not seem entirely logical to us. K.A. Makarevich favors the term "public-private partnership" [11, p. 20-21]. While the term public-private partnership correctly reflects the essence of the relationship in question, combining "state-private partnership" and "municipal-private partnership", and accepting its use in the domestic legal doctrine, we have to follow the logic of the legislator and also agree with the terms "state-private partnership" and "municipal-private partnership" that adopted by the current legislation.

It is interesting to analyze the opinion of Russian scholars regarding the definition of the term "state-private partnership", as today, whether in theory or in practice, there is no common approach to the concept of SPPs. The approach will differ

depending on the relevant academic field and the aspect of SPPs being studied.

In economic literature, the definition of V.G. Varnavsky seems to disclose the essence of SPPs. The scholar understands SPPs in two ways: in the theoretical context, it refers to the total of contractual relations between the state and business, widely used as a tool for national, international, regional, city, municipal economic and social development and planning. From the practical point of view, SPPs are specific projects implemented by various government agencies and businesses jointly, or solely by businesses using state and municipal property [2, p. 41]. Another representative of economic thought V.N. Girich believes that SPPs should be viewed not only as cooperation between the state and business within particular projects, but also as one of the global mechanisms for regulating the economy, with very specific goals and objectives at all levels of the state structure [3]. L.K. Lokhtina and E.D. Batuyev refer SPPs to a form of cooperation between the state and private business based on the overlapping rights and obligations of the partners, where business helps the state to fulfill its obligations before the people, and the state provides special preferences that are unique only to it [10]. R.I. Saifullin proposes the definition of SPPs as partnerships between representatives of the state (public) and private sectors, including scientific and educational institutions, intended to solve problems lying in the sphere of public interests. The author believes that this understanding of PPPs requires high levels of competence of its parties, in that only those with the appropriate finance, organization, management, production and other resources to implement the partnership goals and objectives can be a partner [13]. According to N.V. Provalenova and A.A. Nikolaeva, since a foreign investor (as in the construction of M1/M15 motorways between three capitals - Vienna, Budapest and Bratislava, and M5 that connects Budapest with Yugoslavia border) can also be involved in PPP projects, they can be construed as legally allowed mutually beneficial contractual cooperation between the state and a domestic or foreign private partner, for the creation, renovation, modernization, maintenance or operation of social and engineering infrastructures in state or municipal property, as well as services performed or provided by state or municipal bodies, institutions and enterprises to ensure efficient use of state and municipal property [12, p. 6]. N.N. Lebedeva studies PPPs from the economic perspective. In her opinion, PPPs are a mechanism of interface between the private and public sectors in financing and management of projects having comparable socio-economic relevance and effectiveness for the involved parties, initiated by the private sector [9, p. 6]. These definitions allow us to note that the majority of economic theorists consider PPPs as a union between the state and business based on mutually beneficial cooperation in order to spread risks and achieve the best results.

Legal scholars tend to define SPP differently. However, they also lack a unified approach to the definition of PPP. A.V. Belitskaya notes that PPPs refer to the types of investment activities, along with public and private

investment, which are categorized by the investing entity. In other words, PPPs are understood to be cooperation between public and private partners based on joining of participation and risk sharing that is legally established for a certain period in order to solve public and social tasks through investment projects in respect of objects that are in the field of public interest and control [1, p. 24]. This definition is supported by V.F. Popondopulo and N.A. Sheveleva [17, p. 8]. I. Ivanov considers PPPs from the standpoint of investment activity, defining them as a comprehensive tool to attract investment to capital-intensive infrastructure projects [4, p. 5]. O.N. Ignatyuk defines PPPs as a type of cooperation of public authorities with businesses, individuals or associations thereof through the pooling of resources, means, property, efforts or potential in order to implement government policies, meet social needs, create public facilities, protect social, labor, or other rights of citizens, or to solve other socially valuable tasks [5, p. 15]. Quite interesting is the definition by V.A. Kabashkina, who regards PPPs as the involving the private sector for more efficient and high-quality solution of public sector tasks based on cost recovery, and sharing of risks, obligations and competencies [7, p. 52]. S.N. Shishkin defines PPPs as a form of direct economic support for entrepreneurship by the government, consisting in participation in the financing of certain socially significant business activities [16, p. 232-239]. V.G. Istomin considers public-private partnerships as a form of cooperation between the government and business [6, p. 9]. K.A. Makarevich regards PPPs from the standpoint of financial law. In this context, PPPs are a universal mechanism for improving the efficiency of financial and managerial performance of the government and expanding government access to private resources in order to improve the volume, quality and consistency of public services [11, p. 21].

Moving from academic definitions to the approach of the Russian legislator, we note that the adoption of the Federal Law on SPPs has resolved the problem of the legal definition of PPPs. Subparagraph 1 of part 1 of Article 3 of the Federal Law on SPPs, a state-private or municipal-private partnership is a partnership between a public partner on the one hand, and a private partner on the other hand based on pooling of resources and risk sharing, which is legally binding for a certain period by a public-private partnership agreement or municipal-private partnership agreement concluded in accordance with the Federal Law on SPP in order to attract private investment into the economy, or in order for state and local governments to ensure the availability and improve the quality of goods, work or services. Based on this legal definition of SPPs, we can identify the main features as the cooperation between a public and private partners, the SPP agreement concluded for a specific period, and the purpose of pooling resources and risk sharing. Following the legislator, we agree that a broad legal category such as SPP cannot be reduced to a mere agreement and, therefore, be a legal means, whereas the means of an SPP execution is exclusively the agreement, and not the SPP itself as a legal category.

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