

## PUBLIC-PRIVATE PARTNERSHIP IN THE COUNTRIES OF THE EURASIAN ECONOMIC UNION

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### ABSTRACT

The paper systematizes and examines the primary elements of the PPP management sphere in the countries of the Eurasian Economic Union (EAEU). These include doctrinal policy execution, long-term planning of infrastructure development, legislative support, establishing management bodies, key directions and state support instruments. Based on relevant experience, recommendations are provided on the via-

bility of raising the efficiency of PPP state management in EAEU countries and establishing cooperation between them in the PPP sphere.

Recommendations are relevant, in particular, to the development of the PPP Institute based on a systemic approach, strate-

gic infrastructure development planning, improvement of legislative regulation, strengthening mutual cooperation in the PPP sphere via the harmonization of regulatory and methodological framework, and integrating the efforts in the implementation of trans-border infrastructure projects.

**KEYWORDS:** *public-private partnership, state management, PPP policy, long-term infrastructure development planning, legislative framework, PPP management bodies, state support system.*

## *Introduction*

In the last two or three decades, the Institute for Public-Private Partnerships has become ingrained in the fabric of world economy, and has proven its viability in countries with different state structures and socio-economic development levels; it has become a functioning instrument of infrastructure development in various countries. There are tens of thousands of implemented projects in the world, the amounts invested in them are estimated at billions of dollars, the results of the partnership have manifested themselves in transport infrastructure, power industry, utilities sector, communications, state and municipal administration, health care, education and cultural facilities.<sup>1</sup>

The peculiarity of the PPP Institute and its dissimilarity from other forms of interaction between authorities and business is in the fact that its framework allows the state to engage the private partner in financing, construction, maintenance, technical servicing, reconstruction and modernization of social infrastructure facilities on conditions of long-term mutually rewarding cooperation, risk and responsibility sharing.<sup>2</sup>

Public-private partnership is lucrative to both participating sides. The state obtains an opportunity to engage extrabudgetary financing, resolve important socio-economic problems, which it cannot resolve on its own, lower the risks of infrastructure facility construction, increase the efficiency of infrastructure management, ensure a higher quality of the services provided to population, and employ modern, highly efficient technologies. For certain countries and their regions, PPP acts as the driver of economic growth, promotes the rise of their investment attractiveness and the development of local capital, goods and services markets.

The private sector considers it lucrative to participate in PPP with regard to the expansion of business opportunities and acquiring access to new, previously inaccessible market segments. The long-term nature of PPP operations and the opportunity to associate with the state as the anchor cus-

<sup>1</sup> See: APEC (2015). PPP Best Practice; J. Delmon, "Public-Private Partnership Projects in Infrastructure," 2nd edition, Singapore, 2017; *Public-Private Partnership and Investment in Infrastructure*, OECD, 2010; "Institutional Investment in Infrastructure in Emerging Markets and Developing Economies," PPIAF, 2014; *Taking Stock of PPP and PFI around the World*, London, 2012; *How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets*, World Bank, PPIAF, 2011; *Public-Private Partnership. Reference Guide*, Version 3, World Bank, 2017; E.R. Yescombe, "Public-Private Partnerships: Principles of Policy and Finance," 2nd edition, Elsevier Science, Oxford, 2013 and others.

<sup>2</sup> See: E.E. Ameyaw *et al.* "A Survey of Critical Success Factors for Attracting Private Sector Participation in Developing Countries," *Journal of Facilities Management*, Vol. 15, Issue 1, 2017.

tomers who provides long-term, large-volume contracts are attractive to the business segment. Direct state support and participation, which lower the risks for the private enterprise, also play a significant role. Lastly, business retains a relative autonomy in operational decisions, since the state adheres to non-interference principles in conducting business in the framework of PPP projects.<sup>3</sup>

In light of the above-mentioned facts, the public-private partnership format is drawing increasingly great interest in the countries of the Eurasian Economic Union (EAEU), which unites Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. EAEU member countries consider PPP an effective instrument of infrastructure development, resolution of many social and economic tasks, promotion of sustainable economic growth, and raising the population's standard of life. The interest in PPP and the significance of this Institute for infrastructure improvement in EAEU countries are becoming even more clear in light of the authoritative international experts' evaluation of its condition (see Table 1).

*Table 1*

**Quality of Infrastructure in EAEU Member Countries**

| Country           | Place in Infrastructure Quality Rating | Auto Road Quality Index (1-7) | Railroad Quality Index (1-7) | Airport Infrastructure Quality Index (1-7) | Electrical Power Supply Quality Index (1-7) | Mobile Communication Availability (Number Of Devices Per 100,000 People) |
|-------------------|--|-------------------------------|------------------------------|--|---|--|
| <b>Armenia</b>    | <b>80</b>                              | <b>3.7</b>                    | <b>2.9</b>                   | <b>4.8</b>                                 | <b>4.8</b>                                  | <b>114.8</b>   |
| <b>Belarus</b>    | n/a                                    |                               |                              |  |   |  |
| <b>Kazakhstan</b> | <b>68</b>                              | <b>2.9</b>                    | <b>4.1</b>                   | <b>4.0</b>                                 | <b>4.6</b>                                  | <b>150.0</b>   |
| <b>Kyrgyzstan</b> | <b>109</b>                             | <b>2.7</b>                    | <b>2.4</b>                   | <b>3.1</b>                                 | <b>3.6</b>                                  | <b>131.4</b>   |
| <b>Russia</b>     | <b>35</b>                              | <b>2.9</b>                    | <b>4.5</b>                   | <b>4.6</b>                                 | <b>5.1</b>                                  | <b>163.3</b>   |

*Source:* Compiled according to the data provided in the World Economic Forum (2017). *The Global Competitiveness Report 2017-2018*.

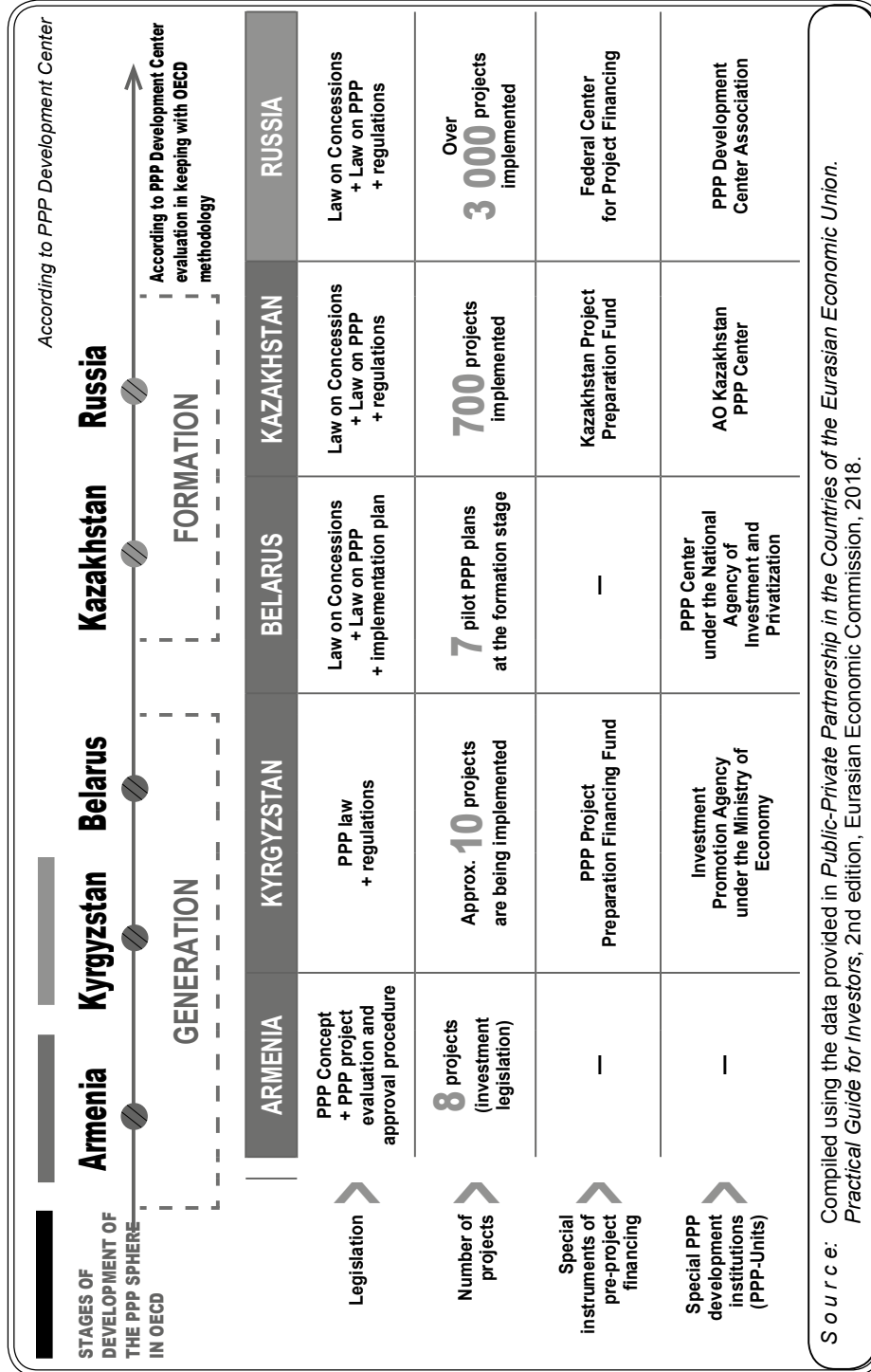
## **Characteristics of EAEU Countries' Approaches to the Establishment and Development of Public-Private Partnership**

Public-private partnership is a complex socio-economic and institutional phenomenon, which cannot emerge momentarily, even if the country's highest authorities decreed it. According to the indicative models of PPP development, proposed by UNECE and OECD, the emergence of the PPP Institute in certain countries has to go through a number of stages before such partnership can function comprehensively.

<sup>3</sup> See: O.V. Ivanov, "Teoriia i mirovaia praktika gosudarstvenno-chastnogo partnerstva," MGIMO, Moscow, 2016, pp. 27-35.

Figure 1

Comparative Analysis of the PPP Sphere Development in EAEU Countries



- In the course of the first stage, the government evaluates the viability of the idea of a partnership, examines the international and domestic experience of engaging business in projects that encompass the development of state and municipal property, formulates PPP policy, introduces basic concepts into economic and legal matters, prepares the legislative and regulatory framework, begins to form the project market and portfolio, and prepares and implements pilot projects.
- The second stage entails the formation of PPP bodies, adoption of laws and regulatory acts, education of civil servants in partnership theory and practices, active development of the national project market; also spheres of PPP application gradually expand and risk distribution schemes are developed and implemented.
- The third stage includes the completion of establishment of the management system, finalizing the legislative and regulatory framework, refining PPP models, and creating a full-bodied project market. At this stage, a wide range of committed investors also emerges, an arsenal of financing sources is established, and the qualification level of the state and municipal civil servants in the PPP sphere becomes adequate to the goals being set.<sup>4</sup>

EAEU countries have begun to utilize PPP mechanisms at different times, on different scales, and with different regulatory and institutional PPP framework. As a result, the development of PPP in the Union's member countries still remains at different levels (see Fig. 1). Russia and Kazakhstan are significantly ahead of other countries in the ripeness of the PPP institutional environment, which comprises a complex of political, economic, legal and organizational conditions, which stimulate its development, i.e., state political support (policy formulation, elaboration of the conceptual principles of PPP development, strategies and programs), legal field (adoption of relevant legislative and regulatory acts, state management system, which stipulates for the establishment of authorities with coordination, assistance and control functions). Belarus and Kyrgyzstan, which have begun to develop PPP significantly later, strive to accelerate the establishment of its legal base and institutional foundations. Armenia is at the very beginning of the path and is only making the first steps.

Nonetheless, the analysis of the efforts aimed at the establishment and development of PPPs in the EAEU countries allows us to identify the common points in their approaches to PPP.

One of the characteristics of the EAEU member countries' approach to the development of PPP is the aim to have a systemic basis for the establishment of the PPP Institute. A systemic approach stipulates the conceptual and doctrinal foundation of PPP policy, finding a long-term plan-based foundation for the development of infrastructure and PPP, strengthening the legal foundation of PPP, as well as the formation of the PPP governance system.

## **Conceptual and Doctrinal Foundations of PPP**

There is no integrated, unified definition of public-private partnership in EAEU countries (as well as in the world in general). Nonetheless, despite the peculiarities of the national legislation, all the countries share the understanding that PPP has its systemic characteristics that distinguish it from other forms of interaction between government and business. These characteristics include, first and foremost, a long-term nature of partnership, risk and responsibility sharing between the partners, full

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<sup>4</sup> See: *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission for Europe, 2008, pp. 7-9.

or partial financing of a public infrastructure facility construction by the private partner, as well as engaging the private partner both in the construction of the facility and in its subsequent operation or technical maintenance.

In EAEU countries, conceptual foundations of PPP are usually stipulated in founding political documents, as well as a special legislative corpus. The doctrinal foundations of the state PPP policy in EAEU countries are relatively varied, and take the form of concepts, strategies, plans, programs and other documents.

For instance, in Armenia, the PPP Concept has been developed and approved by the Government of the Republic of Armenia with the assistance from the U.N. Development Program (UNDP), which has introduced the concept of PPP, its systemic characteristics, main goals, application spheres and partnership formats. It stipulates that PPP will be implemented at the national, regional and local levels.<sup>5</sup> In 2017, the PPP Policy of the Republic of Armenia was developed and approved, wherein the goals, legal and institutional principles of PPP implementation and promotion were identified, and the aim of moving public-private partnership to a qualitatively new level has been set.<sup>6</sup>

In May 2018, the Government of the Russian Federation adopted the Roadmap on the Development of the Public-Private Partnership Instruments, which was, in fact, the first systemic strategic document aimed at stimulating the application and development of PPP mechanisms. According to the document, it is planned to implement a set of measures for the development of mechanisms for construction and reconstruction in Russia, improvement of PPP-related legislation to implement long-term infrastructure projects and raising the investment attractiveness for private investors. For instance, the roadmap stipulates for the development of concepts of new infrastructure construction and reconstruction mechanisms and the creation of a governmental commission. The competence of the latter would include the coordination of work of relevant authorities and organizations on the development of PPP-related state policy, realization of state infrastructure development programs, as well as control of implementation of the roadmap measures, as well as implementation of the recommendations of the Ministry of Economic Development of the Russian Federation on the implementation of PPP projects. Other priorities include the development of the order of creation of an “infrastructure map” and an open unified register of infrastructure construction and reconstruction projects in the main sectors, formation of a list of the pilot PPP and MPP (municipal-private partnership) projects and concessions, as well as a complex of measures to ensure competition, stimulate the use of modern technologies and lowering the expenditures during design and construction.

Accredited authorities and organizations should also develop a method and procedure for the evaluation and reporting the socio-economic effects of the PPP project and concession implementation, and form objective criteria for selecting projects that aim to receive state support. One of the sections of the plan stipulates for introducing changes to the legislation with the aim of improvement of PPP mechanisms, which include: assigning the Ministry of Economic Development the status of the key regulator of PPP and concession issues, creating PPP (MPP) project and concession co-financing mechanisms by the beneficiaries (users) of the infrastructure facilities, maintaining the plurality of the public partner (concession granter) in the projects, renewal of approximate concession agreement forms, etc.<sup>7</sup>

In 2017, the National Strategy of Sustainable Development of Kyrgyzstan for 2013-2017 was completed, wherein the tasks of ensuring economic growth, joining the material and financial re-

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<sup>5</sup> See: *Resolution of the Government of the Republic of Armenia of 28 April, 2008 “On the Program of the Government of the Republic of Armenia for 2008-2012”* (in Russian).

<sup>6</sup> See: *Decree of the Government of the Republic of Armenia of 9 November, 2017 “On the Main Directions of the State Policy of the Republic of Armenia in the Field of Public-Private Partnership”* (in Russian).

<sup>7</sup> See: *Draft National Report on Attracting Private Investment in Infrastructure Development and the Use of Public-Private Partnership Mechanisms in the Russian Federation, National Center of PPP, Moscow, 2018, p. 53* (in Russian).

sources of the state and business sector, lowering the burden on the state budget and redistribution of budgetary funds were set.<sup>8</sup>

In the conceptual documents, governments of many EAEU countries outline the main goals that they would like to achieve while implementing PPP programs and development plans in the countries. The list of these goals and structuring them according to a certain priority allow to create an understanding of the PPP state policy direction and its alignment with other vectors of state economic policy. In EAEU countries, these goals include:

- Attracting additional investment resources to infrastructure by engaging the private sector;
- Using new approaches to infrastructure development, in particular, full life cycle management of infrastructure facilities;
- Raising the quality of services provided to end users;
- Engaging management, technical and technological opportunities of the private sector;
- Using innovations and greater efficiency of the private sector;
- Achieving the optimal “price-quality” ratio of the provided infrastructure services;
- Increasing the transparency and accountability of provision of infrastructure services;
- Stimulating economic growth and development in the country.

## **Long-Term Infrastructure Development Planning**

In recent years, increasingly more EAEU countries have been switching infrastructure development to a long-term strategic basis, which is generally aligned with leading international practice. This phenomenon is not accidental. It reflects the mounting endeavors of states and governments to form a clearer vision of the infrastructure development vector, calculate qualitative and quantitative parameters of this development, and establish reference points in regard to financing sources. Apparently, the significance of long-term planning increases particularly when the number of infrastructure projects with a planning horizon of twenty years and more is measured in hundreds, they comprise a wide range of infrastructure spheres and the need of their inter-industry harmonization.

Long-term infrastructure development planning, including that which involves using PPP mechanisms, allows to:

- Determine the strategic development vector;
- Develop industry and regional priorities;
- Determine qualitative and quantitative target parameters;
- Form a set of tools for achieving goals;
- Establish reference points in regard to sources of financing.

Interesting in this regard is the experience of Belarus, where the National Infrastructure Strategy for 2017–2030 was developed and approved, reflecting the government’s assessment of the country’s infrastructure needs and the long-term budget financing gap. The National Infrastructure Strat-

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<sup>8</sup> See: *Law of the Kyrgyz Republic “On Public-Private Partnership in the Kyrgyz Republic” of 22 February, 2012* (in Russian).

egy is considered an important document aimed at informing the business community about the state plans for infrastructure development and intended to attract the private sector to the financing, construction and reconstruction of infrastructure facilities on PPP principles. The National Infrastructure Strategy determines priority directions of infrastructure development in 2016-2030 (power industry, transport, social infrastructure, housing and utilities sector) and adopts a list of 100 priority infrastructure projects with guidelines for the amount of funding needed.<sup>9</sup>

In order to create a supportive environment for the development and successful implementation of the PPP mechanism, the Program for the Development of Public-Private Partnership in the Kyrgyz Republic for 2016-2021 was elaborated. This program is a roadmap for the development of public-private partnership in Kyrgyzstan. The document determines the main conditions and tasks for the implementation of PPP mechanisms and will promote the modernization of the existing and creation of new infrastructure facilities and services to ensure country's long-term economic growth and efficiency.<sup>10</sup>

Kazakhstan successfully implemented the Program for the Development of PPP for 2011-2015, which included expanding the scope of application of PPP mechanisms, developing state support measures, introducing new types of contracts, changing approaches to planning budget investments, and improving planning and implementation procedures. Subsequently, roadmaps for the development of PPP for 2016-2018 were adopted at the republican and local levels, including, for instance, expanding the use of PPP mechanisms and attracting private investment in such areas as education, health, physical education and sports, housing and communal services, agriculture, environmental protection and transport, optimization of procedures for planning and launching PPP projects, including through the development and implementation of standard documentation, the launch of a single information PPP project base, as well as the expansion of methodological work in the regions.<sup>11</sup>

In September 2018, the Russian government approved a comprehensive plan for the development of trunk infrastructure until 2024. The plan includes transport and energy infrastructure facilities worth a total of 6.3 trillion rubles, 3 trillion of which will come from the federal budget, the rest—from extrabudgetary sources. The plan includes construction projects for high-speed highways, development of the Murmansk transport hub, ports in the Azov-Black Sea basin, reconstruction of the M5 and M7 roads, detours of major cities—Nizhny Novgorod, Krasnodar, Ivanovo, Ryazan, creation of transport and logistics hubs, reconstruction of over 60 airports, etc.<sup>12</sup>

## Reinforcement of the Regulatory Framework

In the context of the development of PPP, which is risky in nature and is associated with the long-term interests of its participants, the EAEU countries attach particular importance to the formation of a solid regulatory framework. In this case, the legal regulation of the PPP sphere in the practice of these countries is carried out on the basis of a model for the development of special legislation.

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<sup>9</sup> See: *Natsionalnaia infrastruktornaia strategiiia 2017-2030*, Gosudarstvenno-chastnoe partnerstvo, Minsk, 2017.

<sup>10</sup> See: *Decree of the Government of the Kyrgyz Republic of 16 June, 2016, No. 327, "On Approval of the Program for the Development of Public-Private Partnership in the Kyrgyz Republic for 2016-2021"* (in Russian).

<sup>11</sup> See: *Decree of the Government of the Republic of Kazakhstan of June 29, 2011, No. 731, "On Approval of the Program for the Development of Public-Private Partnership in the Republic of Kazakhstan for 2011-2015"* (in Russian).

<sup>12</sup> See: *Order of the Government of the Russian Federation of 30 September, 2018, No. 2101-r* (in Russian).



Belarus adopted the Law on Concessions in 2013 and the Law on Public-Private Partnership in 2016, along with a wide range of regulatory legal acts (government decrees, regulations of the Ministry of Economy, etc.) regulating procedural issues and, thus, designed to promote the practical implementation of the above-mentioned legislative acts.

The legislation of the Republic of Kazakhstan in the field of Public-Private Partnership includes the Law on Concessions of 2006, the Law on Public-Private Partnership of 2015 and other regulatory legal acts. The large variety of forms of concession project support by the state, which is formalized in the law, is notable: compensation for part of investment costs, guarantee of state demand, project co-financing, grants-in-kind, loan guarantees, guarantees on infrastructure bonds, and other forms. The Law on PPP regulates the conceptual apparatus, the range of participants and the scope of application of PPP, establishes an open list of the forms of interaction of government and business, including concession agreements, service contracts, trust management contracts. In accordance with the Law on PPP, there are clear eligibility requirements for potential private partners. Depending on the complexity of the facility, two tender scenarios are provided—a simplified version for small projects based on standard tender documentation and a standard PPP contract, as well as a two-stage tender for unique and technically complex projects. The law is focused on the broad development of partnership—PPP projects are allowed in all sectors except strategic ones.<sup>13</sup>

A special PPP regulatory and legal framework has also been established in Kyrgyzstan. It adopted the Law on PPP, which establishes the scope of PPP mechanism application, authorized bodies operating in the PPP sphere, their powers and competencies, types of state support and guarantees for a private partner, identifies the main stages and procedure for implementing a PPP project; regulates the procedure for the selection and implementation of PPP projects. Pursuant to the Law of the Kyrgyz Republic (KR) on Public-Private Partnership in the Kyrgyz Republic, a wide range of secondary legislation (government decrees, orders of the Ministry of Economy, etc.) has been adopted, regulating numerous specific issues related to the activities of the authorized PPP bodies, the tender procedure, content of tender documentation, PPP project registry maintenance, etc.

The special legislation of the Russian Federation on PPP consists of the Law on PPP, the Law on the Concession Agreements, other federal laws and other regulatory legal acts of the Russian Federation, as well as regulatory legal acts of the constituent entities of the Russian Federation. Moreover, all legal norms contained in regulatory legal acts of constituent entities of the Russian Federation and municipal legal acts must comply with the laws on PPP and the Concession Agreements.<sup>14</sup>

The key difference between the Law on PPP and the Law on Concessions is the option of private ownership of public infrastructure. Given this option, it is possible for a private partner to only carry out the maintenance of facility in question without carrying out its operation (impossible in concessions), which could potentially be more interesting for private investors.

In the interests of investors, the laws on PPP and on concessions provide a mechanism for guaranteeing the immutability of the basic parameters, which served as the basis of the decision on project implementation. In the event of changes in macroeconomic conditions or legislation directly affecting the project (taxes, benefits, etc.), reasonable changes are made to the agreement aimed at returning the concessionaire's investments (i.e., an extension of the deadlines for the implementation of the Concession Agreement, increased financing from the public side, providing state or municipal guarantees).

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<sup>13</sup> See: *Law of the Republic of Kazakhstan "On Concessions" dated 7 July, 2006, No. 167; Law of the Republic of Kazakhstan "On Public-Private Partnership" dated 31 October, 2015* (both in Russian).

<sup>14</sup> See: *Federal Law of 21 July, 2005, No. 115-FZ, "On Concession Agreements"; Federal Law of 1 July, 2015, No. 224-FZ, "On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation"* (both in Russian).

Although the special laws on PPP in the EAEU countries differ significantly from each other conceptually and substantively, reflecting political approaches, specifics of national jurisdictions, legal traditions, etc., all these legislative acts are united by the desire of legislators to form a single conceptual apparatus, to consolidate the required terminological basis, and formulate uniform “rules of the game.” As a rule, the special laws on PPP contain the following main blocks: objectives, definitions, concept, guidelines and principles of state policy, the main content (parameters) of projects, project selection procedures, competitive selection of private operators, and government assistance measures. Laws usually comprise a list of infrastructure facilities that fall under their jurisdiction, disclose the concept of state PPP policy, formalize the state’s main approaches to the PPP Institute and the basic principles of PPP. Of particular importance for private partners are the provisions of the law that contain guarantees of their rights, the procedure for settling disputes between the parties, the issues of collecting collateral and the payout of compensation for early termination of the PPP agreement.

## **Organizational and Institutional Basis of PPP Management**

The level and quality of public-private partnership development is largely determined by the availability and effectiveness of the public administration system in the PPP sphere, including the formation of various types of government bodies and empowering them with relevant functions, the creation of PPP development institutions, the development of state support tools for implementing PPP projects, and so on.

In *the Republic of Belarus*, an appropriate institutional base for managing the PPP sphere has been formed with a clear distribution of powers between different governmental institutions. The President determines the general state policy in the PPP field, and the Government of the Republic of Belarus ensures its implementation and determines the procedure for interaction of entities in the PPP sphere (preparation, review and evaluation of proposals for the PPP project implementation, procedure for organizing and holding a competition, concluding a PPP agreement, etc.).

The Ministry of Economy has been identified as the main body for implementing state policy and coordinating the activities of government agencies and organizations subordinate to the government, as well as local executive and administrative bodies in the PPP sphere. It also establishes requirements for the feasibility study of the PPP project and the methodology for evaluating PPP project proposals and provides methodological and consulting support in the preparation and implementation of PPP projects jointly with the National Agency for Investment and Privatization (the Public-Private Partnership Center is a part of the agency).

Other ministries and departments, as well as local executive and administrative bodies implement the state policy in the PPP sphere within their competence. The following state bodies and departments, as a rule, take part in the implementation of specific PPP projects: the Ministry of Economy, the Ministry of Finance and the State Property Committee, and, if necessary, other state bodies within their competence. They evaluate the proposed PPP projects, coordinate the tender documentation, and participate in the work of the commission that conducts the tender for the selection of a private partner.

The Public-Private Partnership Center prepares a comprehensive review on the proposal for the PPP project implementation, evaluates the tender documentation and may participate in the work of the commission.

The Inter-Agency Infrastructure Coordination Council decides on the approval of proposals for PPP project implementation (for subsequent decision-making on the PPP project implementation) and PPP project tender documentation.

Following the decision on project implementation, authorized state bodies or organizations in the PPP sphere (“Public Partner”) organize competitions, create commissions for holding competitions; determine the date of the competition, approve the conditions of the competition and tender documentation, accept applications for participation in the competition; conclude an agreement on public-private partnership on behalf of the Republic of Belarus or its respective administrative-territorial unit.<sup>15</sup>

In *Kazakhstan*, the development of the state policy main directions in the PPP sphere and their implementation is the responsibility of the Government of the Republic of Kazakhstan. The Ministry of National Economy, the Ministry of Finance, and the authorized state bodies of the respective sectors implement the state policy in the PPP sphere within their competence. Inter-sectoral coordination and methodological guidance in the field of PPP is provided by the Ministry of National Economy.

At the local level, state PPP policy is implemented by local executive bodies of regions, cities of republican significance and the capital, within the scope of their competence. Local executive bodies also monitor PPP contracts and the implementation of local PPP projects.

In *Kyrgyzstan*, in order to ensure the coordination of PPP development activities, a Public-Private Partnership Council has been established, with the following functions:

- coordination and ensuring the interaction of state executive authorities, local governments, business entities, non-profit and research organizations in regard to the search for PPP projects, their initiation, preparation and implementation;
- approval of action plans for the development of PPP; preparation of proposals for the development of concepts, strategies, programs and other documents related to the development of PPP in the Kyrgyz Republic;
- preparation of recommendations for improvement of regulatory legal acts in the PPP sphere;
- analysis of existing and newly proposed measures to stimulate the development of PPP;
- monitoring the activities of state executive bodies and local self-government bodies on the issues of the search for PPP projects, and their initiation, preparation and implementation;
- identification of priority sectors and directions for initiating PPP projects;
- other functions.<sup>16</sup>

In *the Russian Federation*, the institutional basis of the state management of the PPP sphere has not yet become final and comprehensive, but many of its elements have already been formed and are functioning. An important role in this system is played by the Ministry of Economic Development, which is entrusted with the development of state PPP policy, regulatory support, selection of PPP projects, reviewing the effectiveness and presence of the comparative advantages of PPP projects, assessment of the level of development of PPP in the constituent entities of the Russian Federation and compiling a PPP-rating of Russian regions.

Certain federal executive bodies (the Ministry of Health, the Ministry of Construction and Housing and Public Utilities, the Ministry of Transport, the Ministry of Culture, etc.) are engaged in the preparation and implementation of PPP projects within their competence.

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<sup>15</sup> See: *Resolution of the Council of Ministers of the Republic of Belarus of 6 July, 2016, No. 532, “On Measures for Implementing the Law of the Republic of Belarus of 30 December, 2015 ‘On Public-Private Partnership’”*; *Resolution of the Ministry of Economy of the Republic of Belarus of 27 July, 2016, No. 49, “On Measures to Implement the Law of the Republic of Belarus of 30 December, 2015 ‘On Public-Private Partnership’”* (both in Russian).

<sup>16</sup> See: *Decree of the Government of the Kyrgyz Republic of 16 June, 2016, No. 328, “On the formation of the Council on Public-Private Partnership in the Kyrgyz Republic”* (in Russian).

An important role in supporting the development of PPP in the country is played by the National PPP Center, which performs a wide range of functions—from examining project initiatives and helping find private partners for them to advising the Federation constituent entities and providing assistance with personnel training.

## State Support of PPP Development

One of the most important functions of PPP management bodies in the world is to assist in the development of this Institute. The main directions of state support are financial, advisory, methodical, informational, and educational, and the EAEU countries have already begun to move in this direction.

*Kazakhstan's* legislation regulates a large variety of forms of state support for concession projects—compensation for a part of investment costs, guarantees of demand from the state, project co-financing, grants-in-kind (in the form of land plots, structures, machinery and equipment, computers, measuring funds, vehicles, production and household equipment, etc.), loan guarantees, guarantees for infrastructure bonds, etc.<sup>17</sup>

In order to promote the development and launch of PPP projects, the required institutional system has been created in the Republic of Kazakhstan (see Table 2).

Table 2

| <b>PPP Project Support Institutions<br/>in the Republic of Kazakhstan and their Functions</b> |   |
|---|---|
| <b>JSC Kazakhstan PPP Center<br/>("Think Tank")</b>   | <ul style="list-style-type: none"> <li>Expert evaluation of republican PPP projects</li> <li>Personnel training in the PPP sphere</li> <li>Research and recommendations on PPP issues</li> <li>Methodological and informational support, review of PPP project realization</li> </ul> |
| <b>Kazakhstan Project<br/>Preparation Fund, LTD</b>   | <b>Consulting support for republican PPP projects</b>   |
| <b>Juridical persons,<br/>authorized representatives,<br/>local executive authorities</b>     | <ul style="list-style-type: none"> <li>Consulting support for local PPP projects</li> <li>Expert evaluation of local PPP projects</li> </ul>  |

In order to conduct research and develop recommendations on PPP issues, assess and evaluate the implementation of PPP projects, as well as train PPP specialists and maintain a list of PPP projects, the Government has established the PPP Development Center (JSC Kazakhstan Public-Private Partnership Center).

At the national level, advisory support of PPP projects is carried out by Kazakhstan Project Preparation Fund LTD. At the local level, the legal entity for advisory support is determined by the executive authorities of the regions, cities of republican significance and the capital.

Advisory support of PPP projects can be compared with "one window" service, when all the required procedures for executing a PPP project are provided in one place. At the initial stage, advisory support consists of advising government bodies on structuring a project, developing proposals

<sup>17</sup> See: *Law of the Republic of Kazakhstan "On Concessions" dated 7 July, 2006, No. 167* (in Russian).

for a PPP project, etc. Both government bodies and citizens and organizations, including potential private partners (investors), can apply for project support services.

One of the forms of PPP project support in Kazakhstan is preferences in obtaining land and other required property. According to the Law on PPP of the Republic of Kazakhstan, the provision of land plots is one of the forms of participation of state bodies in PPP. Land with the right of temporary free use may be granted to citizens and legal entities of the Republic of Kazakhstan for the duration of the public-private partnership agreement, including the concession agreement. The legislation also stipulates that a private partner for the implementation of PPP projects or a concessionaire for the implementation of concession projects may receive a land plot without bidding (tenders, auctions) for the land plot.

A similar rule applies to concession agreements and PPP agreements in *the Russian Federation*. Such a simplified procedure for granting land plots reduces the time for implementing a PPP project and reduces land risks for investors.

*Kyrgyzstan* has advanced further than other EAEU member countries in terms of creating special structures to provide financial support for PPP projects. Relying on the best international practices, the country has created a whole range of financial support tools. It includes *an infrastructure financing fund* to provide long-term loans in national currency due to limited opportunities for providing such financing by the domestic banking sector; *a guarantee fund* in order to reduce the risk exposure of private financing sources, including the hedging of foreign exchange risks, risks of increasing the cost of lending, risks of insufficient income and political risks; *a subsidized financing fund* to finance the insufficient viability of PPP projects that are economically feasible and attractive, but not financially viable by means of revenue from user fees.

Tax concessions are an important tool for improving the economy of PPP projects and stimulating the private investors' interest. Although the legislation does not provide for special privileges for public-private partnership projects in any EAEU country, they are subject to the relevant general legislation measures (i.e., investment, tax).

Another interesting tool is the debt financing cost reduction mechanism for the private partner. One option is to provide state guarantees (sureties) to creditors. The second option is to subsidize the interest rate on a private partner loan. In the Russian Federation, for example, interest rate subsidies are used in the field of communal infrastructure via subsidies from the Housing and Utilities Reform Fund.

In addition, country laws may provide separate guarantees for the protection of the rights of investors and other similar measures. For example, in accordance with the Law of the Kyrgyz Republic on Public-Private Partnership, in order to provide guarantees for the protection of private investments in a PPP project, a private partner and project company is guaranteed:

- non-interference by the public partner in the economic activities of the private partner and the project company;
- protection of the property of the private partner and the project company from nationalization or other equivalent measures in the manner prescribed by law;
- the right to free possession, use and disposal of investments provided for the PPP project, and the income and returns received from them for purposes not prohibited by law;
- the right to the free conversion of the national currency to any other foreign currency and to the free export of the currency obtained as a result of the implementation of the PPP project;
- the right to reimbursement of losses incurred as a result of unlawful actions (inaction) of public and/or municipal authorities or their officials who caused damage to the private partner and/or project company, in accordance with the terms of the PPP agreement;
- the right to revise the terms of the PPP agreement or to terminate the PPP agreement early and receive compensation for the damage caused in case of adoption of regulatory legal acts

that worsen the conditions for the implementation of the PPP project by the private partner and/or the project company compared to the conditions stipulated by the PPP agreement.<sup>18</sup>

Similar measures are provided for in the Belarusian legislation on PPP.

## *Conclusion*

### **Results and Recommendations**

The analysis of organization and management of the PPP sphere in EAEU countries allows to make the following conclusions and propose certain recommendations.

- The problem of the infrastructure condition is rather poignant in the countries of the Eurasian Economic Union (EAEU). The high degree of weariness of infrastructure facilities determines the need to implement a complex of measures to at least alleviate it, if not eliminate it entirely. EAEU member countries see PPP mechanisms as one of the most efficient ways of resolving this task. Although PPP is considered by EAEU countries as a mechanism of, first and foremost, national infrastructure development, options of collaboration on regional and even global projects, i.e., the infrastructural part of the Silk Road Economic Belt, are under consideration.
- The scale and the degree of utilization of PPP mechanisms in EAEU countries vary widely: Russia and Kazakhstan have already accumulated significant theoretical and practical experience with PPP projects, established the primary legislative framework for PPP, formed the institutional foundation for the partnership, gathered experience in practical implementation of PPP projects in various spheres, and continue multi-dimensional work in the PPP formation stage. Belarus and Kyrgyzstan have significantly advanced in establishing PPP, developed the essential legislative and regulatory legal acts, created governing bodies, and engaged in implementation of PPP projects. Armenia is forming an institutional PPP base, while simultaneously venturing into the realization of pilot projects.
- EAEU countries aim to put PPP development on a systemic footing. For these purposes, they are forming national state management systems in the PPP sphere, developing strategic goal-setting documents, planning long-term infrastructure development and investment projects, establishing governing bodies, and creating PPP-project state support systems.
- Meanwhile, there is an entire range of problems that is restricting the expansion of PPP mechanism utilization. Among the key issues are the absence of correlation between investment projects and socio-economic development plans of corresponding areas, a discrepancy in competence between the public and private sectors, lack of qualified specialists at various levels of the state management system, and the associated low-quality structure of PPP projects, excessive expectations of the public partner regarding the commercial attractiveness of the projects, lack of local political will and real commitment to attracting investors, a regional deficit of specialized organizations engaged in PPP, imperfection of legislative framework of PPP, insufficient state support of PPP, and, as the result, exceedingly high risks for the private partner, etc.
- Despite the generally common understanding of PPP, and even a declared aim to cooperate, no major progress has currently been achieved in the supranational coordination of PPP de-

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<sup>18</sup> See: *Law of the Kyrgyz Republic on Public-Private Partnership in the Kyrgyz Republic, dated 22 February, 2012* (in Russian).

velopment within the EAEU. In 2015, plans to create a Supranational PPP Center of Excellence, similar to the Europe's (UNECE) PPP Center of Excellence, were proposed and positively evaluated. Another structure that was proposed and received a positive evaluation was the international center of project financing, similar to the existing structures under international financial institutions (i.e., IFC, EBRD, etc.), however, there are still no such specialized PPP structures in the EAEU.

The main work on supranational coordination of PPP development efforts is currently being carried out by the Business Development Department of the Eurasian Economic Commission (EEC), and the Expert Group on the Development of PPP Mechanisms under the Consultative Committee for Entrepreneurship under the EEC Board. Among the chief reasons that restrict the establishment of productive collaboration of EAEU countries in the PPP sphere are the significant differences in the degree of independent "mastery" of the PPP mechanism by EAEU countries at both practical and legal levels, absence of efficient communication channels, uncoordinated member countries' policies, low level of international investments, non-competitive technologies and competencies.

- It seems that in the current conditions the vector of development in establishing PPP-related cooperation between EAEU countries may be aimed at empowering the Expert PPP group, initiating an international discussion platform in the framework of the annual Russian PPP week, elaboration of an integrated PPP development strategy and supranational standards, determining the priority infrastructure sectors and regions in the interests of investors, formation of a list of priority infrastructure development projects, systematization and coordination of the process of attracting international investments to public infrastructure facilities, formation of supranational instruments of attracting financing to the infrastructure projects in the EAEU countries, and implementation of pilot PPP projects with maximum integrative effect within the EAEU.
- Both international practice and that of EAEU member countries demonstrates that even in the absence of legal standardization there are true opportunities for project implementation. Adoption by the Transport Ministers of the EAEU countries of a list of 39 transportation projects with an integrative component can be considered a symbolic event. The projects are oriented towards establishing end-to-end logistics through China-Eurasian Union-EU and associated routes. Meanwhile, the possibility of implementing PPP mechanisms for some of the projects is being examined. One of such projects is the North-South corridor investment program, aimed at the reconstruction of the 550-km auto road through the entire territory of Armenia, with subsequent access to the Georgian ports of Poti and Batumi (Black Sea), and further on to Russia and the CIS and EU countries.

Despite the fact that the institutional foundations of PPP in the RF have a more mature and developed nature compared to other EAEU member countries, its partners' experience in organizing and managing the PPP sphere contains much important information to learn from. It concerns the conceptual framework of PPP policy (Armenia), elaboration of integrated PPP-based infrastructure development plans (Belarus), legislative framework viability and ensuring the rights and interests of private partners (Kazakhstan, Kyrgyzstan), using a wide range of PPP-project state support instruments (Kazakhstan, Kyrgyzstan), establishing PPP-coordinating authorities (Belarus, Kazakhstan, Kyrgyzstan), etc. It seems that arming oneself with rational elements of this experience and their adjustment to Russian conditions would promote the increased efficiency of Russian public management of the PPP sphere.