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EBRD PPP regulatory guidelines collection
Volume III



Chapter 1.

Recent developments in international PPP standards and regulatory policy trends

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Acronyms

CIS: Commonwealth of Independent States

CIS IPA or IPA: CIS Interparliamentary Assembly of Member Nations

the EBRD, the Bank: European Bank for Reconstruction and Development

EEA: European Economic Area

EIB: European Investment Bank

EU: European Union

PFIP or PFIP Legislative Guide: Legislative Guide on Privately Financed Infrastructure Projects

PPP: Public-private partnership

SDGs: Sustainable Development Goals

SEMED: Southern and eastern Mediterranean

UNCITRAL: United Nations Commission on International Trade Law

UNECE: United Nations Economic Commission for Europe

Summary

Identifying the recent sources of international public-private partnership (PPP) standard developments and reviewing upgraded standards and international PPP regulatory policy trends

Developments in international standards in the PPP sector emerged from three major sources in 2015-22: the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Economic Commission for Europe (UNECE) and the European Union (EU). Their reference documents are:

- **The UNCITRAL Legislative Guide on Public-Private Partnerships (2019)¹** and its accompanying **Model Legislative Provisions²** replaced and updated the Legislative Guide on Privately Financed Infrastructure Projects adopted in 2000 and the Model Legislative Provisions on Privately Financed Infrastructure Projects of 2003.
- **The UNECE-EBRD Standard on Public-Private Partnerships/Concessions legal framework in support of the SDGs** (previously named People-first Private-Public Partnerships/Concession Model Law) was officially endorsed by the UNECE Working Party on PPP on 2 December 2022.

- **EU Directive 2014/23/EU** on the award of concession contracts (the Concession Directive) of the European Parliament and the Council of 26 February 2014, which had to be incorporated into member countries' national legislation, while EU associated countries have an obligation of approximation/harmonisation due to their association agreements with the EU. The rules that apply to non-concession PPPs also must be adapted to the revised public procurement directives of 2014.

Other noteworthy initiatives in this area on the part of the World Bank, in association with other multilateral organisations (including the European Bank for Reconstruction and Development (EBRD)), are the World Bank PPP Reference Guide (2017), the Guidance on PPP Contractual Provisions (2019 edition) and the Guidance on PPP Legal Frameworks in 2022. The EBRD's Environmental and Social Policy and related Performance Requirements, updated in 2019, should also be mentioned. In addition, following the adoption of the Commonwealth of Independent States (CIS) PPP Model Law, CIS work has continued with the drafting of an official commentary and compilation of enabling guidelines and templates.

The EBRD has prepared this PPP regulatory guidelines, presenting modules covering core PPP matters and issues (model regulatory outlines) applicable to PPPs under most legal systems.

Analysis of the potential impact of PPP regulatory policy trends on EBRD economies

The continuation of a very active legislative process regarding PPPs is evident in the EBRD regions. Of the 37 economies covered in the final report of the EBRD's 2017-18 Public-Private Partnership Assessment, 26 made major changes to their PPP and/or concession legal framework in 2015-22. This fact, combined with changes that took place over 2011-15, shows that nearly all of those economies have adopted new PPP/concession legislation or substantially changed their existing PPP/concession legal framework in the last decade.

The EBRD's 2017-18 assessment of the legal framework for PPPs and concessions found that the trend towards specific PPP and/or concession laws continues and that institutional frameworks are underdeveloped in most of the regions covered. The assessment also found that EU procurement laws are the main factor generating legislative changes not only among EU members, but also in associated countries that were required to transpose or harmonise their

¹ Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-10872_ebook_final.pdf.

² Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11011_ebook_e_1.pdf.

legislation with the EU's 2014 directives, including the Concession Directive.

Most changes in EBRD PPP and/or concession legislation pertaining to EU membership or accession concern the definition of concession, limits on direct negotiation and detailed development of the amendment process control, as well as review and challenge procedures. Such provisions directly affect the procurement process, which is the main EU single market concern.

Separately, the review of recent PPP/concession legislation shows that the common goal of most EBRD economies is to develop avenues for securing private financing for much-needed infrastructure. This objective prevails over all other considerations.

Differentiating procurement rules so that PPP and concession contracts can be awarded according to rules that are specific to PPPs rather than public procurement is no longer a priority. This is because UNCITRAL's Public Procurement Model Law of 2011 accelerated the modernisation of national procurement regulations.

A review of recent PPP/concession legislation shows that contract preparation and selection of good projects that are fit for PPPs have become priorities.

The European Court of Auditors, the British government and some emerging economies have recently criticised PPPs for failing to deliver value for money, being the source of significant fiscal risk to government" and/or being "inflexible and overly complex".

Such negative comments stem largely from political concerns and were amplified by the Covid-19 pandemic and probably also by Brexit. As such, they cannot be considered a global trend as they do not seem to have affected EBRD economies or other countries. Indeed, PPP legislative activity is booming and emerging markets are rapidly adopting PPPs – often with the support of the G7 or G20 – to cover the infrastructure funding gap. Public investment financing needs private funds more than ever following the pandemic, which has seriously affected public budgets worldwide including in EBRD economies.

Nevertheless, such comments should be regarded as warnings with respect to future PPP developments and the need to choose a PPP model that is not only financially oriented, but follows the standards described above. That means greater emphasis explicitly given to "value for people" in a people-first approach, provided the deal remains bankable.

³ Available at <https://undocs.org/en/A/RES/74/183>.

⁴ Available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/pfip-e.pdf>.

⁵ Available at https://www.uncitral.org/pdf/english/texts/procurem/pfip/model/03-90621_Ebook.pdf

Introduction

Consultants research and identify PPP developments in statutory and regulatory standards in terms of (i) how they reflect recent and current trends in international PPP standards evolution and (ii) their potential impact on EBRD economies over the last seven years (that is, since the 2015 consultant memorandum on the status of international standards in the PPP sector).

Three major sources of new developments in international standards in the PPP sector from 2015-22 were identified: UNCITRAL, UNECE and the EU. There were also a few other important initiatives from multilateral organisations including the World Bank, the EBRD and the CIS Interparliamentary Assembly of Member Nations (IPA).

A. Current sources of international PPP standard developments and review of newly upgraded standards and recent PPP regulatory policy trends.

1. The UNCITRAL model legislative provisions and the legislative guide on public private partnerships

Background

UNCITRAL adopted its new Legislative Guide on Public-Private Partnerships and Model Legislative Provisions at its 52nd session (Vienna, 8-19 July 2019).³

These two UN publications expand and replace two earlier UNCITRAL texts: the Legislative Guide on Privately Financed Infrastructure Projects (the PFIP Legislative Guide), adopted by UNCITRAL at its 33rd session in New York in 2000,⁴ and the Model Legislative Provisions on Privately Financed Infrastructure Projects, adopted by UNCITRAL at its 36th session in Vienna in 2003.⁵

The PFIP Legislative Guide, which international institutions and legislators considered to be the benchmark for PPP legislation for almost 20 years, had to be adapted to the rapid evolution of the international practice of public-private partnerships since they emerged in the early 1990s. UNCITRAL kept the guide updated so it did not become obsolete and inapplicable.

UNCITRAL's sole concern was not updating the PFIP Legislative Guide. Rather, it was keen to draft a PPP model law to complement the recently adopted UNCITRAL Model Law on Public Procurement (2011). It was only after years of effort by the UNCITRAL Secretariat that permission was finally granted in 2017 to update "where necessary all or parts of the Legislative Guide" (PFIP) with the help of international experts. The Secretariat was also charged with updating and consolidating the accompanying legislative recommendations (2000) and the PFIP Model Legislative Provisions (2003).

The Secretariat organised and convened the Third International Colloquium on Public-Private Partnerships (Vienna, 23-24 October 2017), which concluded that most of the recommendations in the PFIP Legislative Guide reflected good policy and practices, and remained relevant. Some revisions were deemed necessary, however, to take account of developments that came into practice after the guide was issued in 2000. These can be summarised as follows:

(a) Some wording should be refreshed (references to PPP, value for money, PPP unit and so on) and some sections of the guide updated. For instance, "public-private partnerships" has become the term generally used to describe the arrangements considered in the PFIP texts and should replace "privately financed infrastructure projects". Also, certain elements (scope, institutions, preparatory and project selection work, monitoring, contingent liabilities) were deemed to be essential topics that needed to be thoroughly updated. Other issues, such as unsolicited proposals and direct negotiations, were to be revisited.

(b) The PFIP texts should fully reflect the objectives and requirements of the United Nations Convention against Corruption, given the extent of ratification of that text. The requirements, contained in articles 9(1) and 9(2) on public procurement and public financial management, respectively, are that systems should be based on principles of transparency, competition and objectivity in decision-making. The PFIP texts should be expanded in regard to good governance throughout the life cycle of PPPs and recent developments should be considered – for example, those encouraging greater transparency in PPPs through open contracting and open data as well as transparency in procurement procedures.

(c) An earlier instruction from UNCITRAL to the Secretariat to consolidate the PFIP texts should be applied as part of the update. The texts should

therefore offer commentary, legislative guidance and legislative recommendations as well as model legislative provisions, as appropriate, on each aspect of PPPs covered. Legislative recommendations should form the central scoping provisions (and could be integrated in laws governing PPPs at the national level). Commentary on issues of implementation and use would be necessary to ensure that the legal framework functions as intended, and so should be included (reflecting the approach of the existing PFIP texts). Updated PFIP texts would therefore take the form of a single legislative guide containing all guidance, recommendations and model provisions.

After more than seven years of hard effort by the UNCITRAL Secretariat and international experts, the Legislative Guide on Public-Private Partnerships and its Model Legislative Provisions were adopted at UNCITRAL's 52nd session (Vienna, 8-26 July 2019).⁶

Another major achievement of the new guide was the widening of its scope to demarcate government-pay PPPs and concessions as two separate categories. The PFIP Legislative Guide, as previously drafted, did not pay sufficient attention to so-called non-concession PPPs. This is no longer the case and constitutes the most significant expansion of the scope of the PPP Legislative Guide.

Other key achievements resulting from the update were:

- development of the project preparation and project selection phase
- use of the value-for-money concept as part of the required feasibility study
- alignment of the PPP contract award procedures with the 2011 UNCITRAL Model Law on Public Procurement
- modification of the unsolicited proposals initiation process to underline the exceptional nature of this procedure, which requires special precaution as well as transparency and competition in the award process
- improvement of the PPP challenge process in accordance with the underlying principles of the United Nations Convention against Corruption.

The restricted mandate given the Secretariat to update the guide and not to draft a model PPP law to complete the UNCITRAL Public Procurement Model Law of 2011 has opened the way for the CIS Interparliamentary Assembly (IPA) of Member Nations to work on a PPP model law specific to the CIS region

⁶ Bruno de Cazalet (August 2020), "The New UNCITRAL Legislative Guide on Public-Private Partnerships (PPP and new Model Legislative Provisions)", RDAI/International Business Law Journal No. 4.

and for UNECE to work on a universal PPP model law oriented towards value for people (“people-first PPP), both with the support and assistance of the EBRD. UNECE, the World Bank, the Organisation for Economic Co-operation and Development and the EBRD have, however, derived much inspiration as far as PPP best standards are concerned from UNCITRAL’s PPP Legislative Guide.

2. EBRD/UNECE model law on public-private partnerships/concessions in support of the SDGs (2022)⁷

2.1 Background

UNECE and the EBRD started work on 14 September 2017. UNECE soon gained the EBRD’s support for the two institutions to jointly draft a “people-first” model law while at the same time remaining bankable (respecting the requirements and expectations of international financial markets). This required many meetings of a large team of PPP pro bono experts from around the world. It was concluded on 19 November 2019, when the project team leader submitted a draft “people-first” model PPP law and commentary to the UNECE Secretariat for review by all stakeholders.

This Model Law was previously named the People-first Private-Public Partnerships/Concession Model Law. It was officially endorsed by the UNECE Working Party on PPP on 2 December 2022.

UNECE initiated the drafting of this document with the support of the EBRD in response to the widespread sentiment that a new approach to PPPs was needed, notably to address the concerns of emerging economies.

The UNECE-EBRD PPP Model Law was not explicitly people-first oriented at the outset. It took on this approach as UNECE was focusing on the Sustainable Development Goals (SDGs) and in light of the drawbacks faced by some PPP projects, mainly in the United Kingdom and Europe.

In preparing the texts, the project team ensured that the draft model PPP law and the commentaries were as consistent as possible with and complementary to UNCITRAL’s Model Legislative Provisions to avoid confusion between two different UN PPP instruments. To ensure consistency between the two instruments, the UNCITRAL Secretariat was the first agency to review the draft UNECE-EBRD Model Law and the draft was harmonised with the Model Legislative Provisions.

The two documents contain different provisions in various articles, but not inconsistent or conflicting ones. The procurement clauses are very similar, though other areas of the draft model PPP law were handled in different ways. These differences were thought to be helpful rather than problematic, as they would give governments alternative approaches and options for particular provisions.

On 22 November 2019, the draft model PPP law was put on the UNECE website for a public review period. The UNECE Secretariat sent a notification to the PPP network and other key stakeholders soliciting comments and observations on the draft law. UNECE completed its public review in March 2020. The document has been very positively received by commentators and governments around the world, with many saying it is the best example of a precedent of this kind available in the market today. The draft has the full support of the UNECE team in Geneva.

The comments received during the public review stage were taken into account in the revised draft submitted to the UNECE Bureau in May 2020 for its review. The Model Law was set to be officially endorsed by the Bureau and then formally adopted by the United Nations at the end of 2019. However, administrative and political issues delayed official issuance of the document, which was finally adopted in December 2022 after a few final revisions to accommodate the remaining minority opinions.

2.2 A PPP model law in support of the SDGs

The SDGs are a collection of 17 global goals designed to be a “blueprint to achieve a better and more sustainable future for all”. The SDGs, approved in 2015 by the United Nations General Assembly and intended to be achieved by 2030, are part of a UN resolution called the 2030 Agenda for Sustainable Development. The targets and indicators for the SDGs are included in the UN resolution adopted by the General Assembly two years later, on 6 July 2017.

SDGs call for different forms of partnerships, including PPPs (SDG 17) as a tool to close the infrastructure gap.

The UNECE-EBRD Model Law aims to capture the elements of international best practice in the area of PPP/concessions legislation and to establish a legal framework for SDG-oriented public-private partnerships. That means PPPs moving from being a mere financing and risk allocation tool at inception in the United Kingdom to – following a process requiring an economic/social assessment – an instrument that

⁷ See <https://unece.org/eci/documents/2022/10/working-documents/standard-public-private-partnershipsconcession-model-law>.

explicitly refers to value for people and value for the planet in addition to value for money.

PPPs structured and implemented according to the provisions of the UNECE-EBRD Model Law can be expected to promote those outcomes. Thus, they should represent enhanced value for money in the true sense of value for people, in terms of their long-term, net value for consumers, government and the wider public, considered over their life cycle in light of all their key impacts, for the greater good of all.

2.3 UNECE subsequent evaluation and rating initiatives

The UNECE People-first Impact Assessment Tool (2020) and assessment methodology were further developed (2021) as a mechanism to evaluate the compliance of infrastructure and PPP projects with the SDGs and to determine the extent to which they meet the people-first PPP designation that can measure impact and score projects. The UNECE PPP and Infrastructure Evaluation and Rating System is a new assessment platform and evaluation methodology for the SDGs (2022).

3. European Union concession directive of 2014

EU Directive 2014/23/EU of 26 February 2014 on the award of concession contracts (the Concession Directive) must be transposed into the national legislation of member countries. EU associated countries wanting to become an EU member, or those recognised as EU candidate or EU acceding countries waiting for agreed incorporation after signature of a treaty (together referred to as prospective members),⁸ have an obligation of approximation/harmonisation resulting from their association agreements with the EU. The rules that apply to non-concession PPPs have also had to be adapted to the revised public procurement directives of 2014.⁹ This has obliged members and prospective members to adapt their definition of concession and, in many cases, to separate their concession and non-concession procurement rules (sometime in the same act) to

benefit from the flexibility given by the Concession Directive to the choice of the procurement process.

Some believed the absence of clear EU rules governing the award of concession contracts gives rise to legal uncertainty, creates obstacles to the free provision of services and causes distortions in the functioning of the internal market. That is why the Concession Directive precisely defines concessions to reflect the specificity of concessions compared to public contracts. As a result of their specificity – relying mainly on the level of operating risk undertaken by the concessionaire – concessions are considered as the sole exception justifying the application of a specific, more flexible procurement regime that differs from national public procurement laws (compliant with the Public Procurement Directive).

This separation trend, however, only affects the procurement phase of the PPP cycle, which is the EU's main (if not sole) concern in regulating the EU single market. Members and prospective members are free to specify their own provisions in other areas within the boundaries of the EU acquis – the body of common rights and obligations that is binding on all EU members.

The other EU standard that affected members' and prospective members' PPP regulatory procurement trend is related to direct negotiation, which has to be limited to very exceptional cases. For the same reason of transparency and risk of collusion/corruption, the provisions apply to contract amendments, which usually are negotiated directly (without new tenders being adopted) to comply with precise rules and only allowed under specific limits and conditions.

The EU Remedies Directives¹⁰ on the award of public contracts and for utilities procurement which are applicable to the award of concessions are also part of the required transposition or harmonisation process with EU directives and the EU acquis, requiring generally significant changes to their review and challenge procedures for new acceding members and associated countries.

⁸ For the purposes of this document, "prospective members" means EU candidate countries and all other countries that have association agreements with the EU that require them to harmonise their legislation with that of the EU.

⁹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance.

¹⁰ Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (89/665/EEC) and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.

4. Continuation of CIS work

The CIS IPA, created on 27 March 1992, is an interstate body of the CIS, consisting of eight member states' national parliamentary delegations: Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyz Republic, Russia, Tajikistan and Uzbekistan. Ukraine and Moldova used to be members but withdrew in 2018 and 2023, respectively. The CIS IPA is tasked with harmonising commercial legislation in member states and has been drafting and enacting model legislative acts and other instruments, including in various commercial law sectors, taking into account national and international experience and recommending their implementation in member states' national legislation.

The EBRD cooperated extensively with the IPA over the past two decades following the signature of a memorandum of understanding. The Bank has sponsored the development of the CIS model PPP law.

The CIS PPP Model Law was developed based on internationally accepted standards in PPP and approved by the IPA in November 2014. It has been recommended for incorporation into the national legislation of CIS member states. The PPP guidelines expected to be developed under this EBRD-CIS IPA technical cooperation project include some that are published in this collection.

5. World Bank PPP reference guide and guidance on PPP legal frameworks

The third edition of the Public-Private Partnerships Reference Guide (2017) is a joint product of the Asian Development Bank, the EBRD, the Global Infrastructure Hub, the Inter-American Development Bank, the Islamic Development Bank, the Organisation for Economic Co-operation and Development, UNECE, the United Nations Economic and Social Commission for Asia and the Pacific, and the World Bank Group. It is not a legislative guide but is part of an effort by the World Bank Group and other multilateral organisations to help decision-makers and PPP practitioners. It aims to disseminate good practices on infrastructure and PPP policies and implementation.

The third edition of the guide focuses on the development of efficient legal and institutional frameworks that help governments identify and select PPP projects, and structure and procure affordable, sustainable PPP contracts that deliver needed services to populations. It expands into new subject areas, notably stakeholder communication and engagement, environmental and social studies, and climate change. Additional sections address municipal

PPPs and private participation in fragile and conflict-affected states.

The World Bank Guidance on PPP Legal Frameworks (2022) is also intended to help government officials learn about and establish sustainable PPP legal frameworks. It sets out key considerations and sample drafting in relation to numerous critical provisions in PPP legislation and supporting instruments. The publication explains the background to these essential legislative provisions, while providing benchmarking examples from markets with different legal traditions and maturities, to highlight the need to cater to a government's specific set of circumstances.

A primary objective of the World Bank Group and the other institutions that have contributed to these publications is to help governments make well-informed decisions about their infrastructure programmes, based on sound analysis and commensurate with their macroeconomic objectives and institutional capabilities. To this end, the World Bank Group and the other organisations are generating global knowledge and diagnostic tools and offering advisory services and technical assistance.

6. EBRD environmental and social policy and performance requirements: 2019 update

Many international financial institutions, including the EBRD and the World Bank, require adherence to environmental and social principles and completion of environmental impact assessments before a project can receive their financing and proceed. These standards should be included in the parameters of the project agreement, but the law may require other standards to be met.

Following extensive internal and external consultation, the EBRD Board of Directors approved the Environmental and Social Policy and its related Performance Requirements in April 2019. The Environmental and Social Policy is one of the Bank's three good governance policies, together with the Access to Information Policy and the Project Accountability Policy. It represents a fundamental governance policy of the EBRD and a key document that guides the Bank's commitment to advocating for environmentally sound and sustainable development in the full range of its investment and technical cooperation activities. The policy specifies how the Bank should undertake its commitment in practice and on its projects.

In line with the previous EBRD policy and related Performance Requirements approved in 2014, the policy details the Bank's commitment to promoting

environmentally sound and sustainable development in the full range of its activities and to refrain from financing projects with adverse environmental or social impact. It also brings to governments' attention the need to select suitable projects and to contribute to the SDGs in accordance with specified standards to boost the chance of private financing of infrastructure projects.

The EBRD standards were set up to conform with the European Principles for the Environment, launched in response to the drive for greater harmonisation of environmental principles, practices and standards associated with project financing. The Council of Europe Development Bank, the EBRD, the European Investment Bank (EIB), the Nordic Environment Finance Corporation and the Nordic Investment Bank have adopted these principles.

EBRD-financed projects are expected to be designed and carried out in compliance with good international practices relating to sustainable development. The Bank has defined 10 Performance Requirements (PRs) covering key areas of environmental and social issues and impacts to help its clients improve the sustainability of their business operations.

EBRD Performance Requirements:¹¹

PR1: Assessment and management of environmental and social risks and impacts

PR2: Labour and working conditions

PR3: Resource efficiency and pollution prevention and control

PR4: Health, safety and security

PR5: Land acquisition, restrictions on land use and involuntary resettlement

PR6: Biodiversity conservation and sustainable management of living natural resources

PR7: Indigenous peoples

PR8: Cultural heritage

PR9: Financial intermediaries

PR10: Information disclosure and stakeholder engagement

Where possible, projects should avoid adverse impacts on workers, communities and the environment. If they cannot be avoided, negative

impacts should be reduced, mitigated or compensated for, as appropriate. New facilities or business activities financed by the EBRD must be designed to meet the Performance Requirements from the outset.

If a proposed business activity relates to existing facilities that do not meet the requirements at the time of Board approval, the client will be required to adopt and implement a satisfactory environmental and social action plan.

B. Analysis of the potential impact of recent PPP policy trends on the EBRD regions

1. Rapid evolution of the PPP legislative frameworks of EBRD economies

We have observed the continuation of a very active legislative process in the EBRD regions. Indeed, 26 of the EBRD economies – eastern European economies as well as southern and eastern Mediterranean (SEMED) economies – made major changes to their PPP/concession legal frameworks in 2015-22. Combined with changes made in 2011-15, this shows that almost all EBRD economies adopted new PPP/concession legislation or substantially modified their PPP/concession legal framework in the last decade.

2. Changes in PPP legislation in eastern European countries, CIS member states, the Western Balkans, and Greece

(i) Albania: On 27 July 2015, the Albanian Parliament approved Law No. 77/2015 On amendments and additions to Law No. 125/2013 on Concessions and Public Private Partnerships.

(ii) Armenia: A PPP law was adopted on 28 June 2019 that includes concessions (drafted with EBRD assistance).

(iii) Azerbaijan: A draft law on PPPs (drafted with EBRD assistance) was signed into law on 27 December 2022.

(iv) Belarus: Law No. 345-Z On Public-Private Partnership was enacted on 30 December 2015 and amended in 2019 by the Act On amendments to the Law of the Republic of Belarus On Public-Private Partnership. First amendments to the law were made in 2019, taking into account the practical work on preparing pilot PPP projects, Law of the Republic of Belarus No. 194-Z, dated 18 July 2022.

(v) Bulgaria: The Concessions Act SG 96/1/12/2017 was enacted in 2017.

¹¹ <https://www.ebrd.com/who-we-are/our-values/environmental-and-social-policy/performance-requirements.html>

(vi) Croatia: The Concessions Act (Official Gazette 69/2017) was enacted in 2017 and the Act on Amendments to Public-Private Partnership Act in 2018 (Official Gazette 114/2018).

(vii) Czech Republic: Act No. 134/2016 on public procurement, which also regulates procurement for concessions and PPPs, was enacted in 2016.

(viii) Estonia: The Parliament of Estonia (Riigikogu) passed amendments to the Public Procurement Act (RHS) in May 2022.

(ix) Georgia: Law 2273 on PPP was adopted on 4 May 2018 covering PPPs including concessions (drafted with EBRD assistance) followed by Governmental Decree No. 426 dated 17 August 2018, Approving Rules on Development and Implementation of PPP.

(x) Greece: Law 4413 (Gov. Gaz. A' 147 and 148/08.08.2016) entitled Award and Execution of Concession Contracts was enacted on 8 August 2016.

(xi) Kazakhstan: The Law on Public Private Partnership was enacted in 2015 (No. 379-V, of 23.11.2015); amended by Law No. 399-VI, On Amendments into Certain Labour-Related Legislative Acts of the Republic of Kazakhstan (the Amendment Law) on 2 January 2021.

(xii) Kyrgyz Republic: Law No. 95 About public-private partnership was enacted on 22 July 2019. In 2021, President Sadyr Zhaparov signed a new edition of law on public-private partnership. Law No. 98 of 11 August 2021. On 25 March 2022, the Cabinet of Ministers adopted a resolution on PPP issues in the Kyrgyz Republic, approving a number of subordinate legislative enactments pertaining to PPPs.

(xiii) North Macedonia: Numerous laws amending and supplementing the Law on Concessions and Public Private Partnership have been amended, most recently on 12 April 2022 (Official Gazette of the Republic of North Macedonia Nos. 6/12, 144/14, 33/15, 104/15 and 215/15 and Official Gazette of the Republic of North Macedonia Nos. 153/19, 261/19 and 89/22). A new draft PPP law is being prepared.

(xiv) Romania: The 2018 PPP law (Government Emergency Ordinance No. 39/2018) recalled Law No. 233/2016 on public-private partnership as subsequently amended and supplemented. Law No. 208/2022 promulgated by the Romanian president amends and supplements the following normative acts of major importance in the field of public procurement:

- Law 98/2016 on public procurement

- Law 99/2016 on sectoral acquisitions

- Law 100/2016 on works concessions and service concessions

- Law 101/2016 on remedies and appeals in the matter of awarding public procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organisation and functioning of the National Council for the Resolution of Appeals.

(xv) Poland: The country's long-awaited PPP law amendment came into force in September 2018.

(xvi) Russia: Federal Law No. 224-FZ On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and the Amendment of Certain Legislative Acts of the Russian Federation was enacted on 13 July 2015. It was supplemented by the amendments of 29 December 2015 and last amended on 3 July 2016. As of 1 January 2016, seven decrees of the Russian government and four orders of the Ministry of Economic Development and Trade have taken effect. The Law on Concession Agreements of 2005, last amended 30 December 2015 (Federal Law No. 265-FZ), and 3 July 2016 (Federal Law No. 275-FZ) were both amendments to the Law on Concession Agreements.

(xvii) Serbia: The Serbian Law on Public-Private Partnership and Concessions was enacted in 2016 (Official Gazette of the Republic of Serbia, No. 88/2011 and 15/2016).

(xviii) Turkmenistan: The new Law of Turkmenistan regulating public-private partnerships entered into force in June 2021.

(xix) Ukraine: The Law of Ukraine on Concessions No. 155-IX (drafted with EBRD assistance) was enacted on 3 October 2019. The Law of Ukraine on the Public-Private Partnership of 1 July 2010 was amended on several occasions including substantially by the Law of Ukraine on Concessions No. 155-IX of 3 October 2019.

(xx) Uzbekistan: The Legislative Chamber adopted the law of the Republic of Uzbekistan on Public Private Partnership on 26 April 2019. The Senate approved the law on 3 May 2019. On 22 January 2021, the president of Uzbekistan signed Law No. 669, which addresses gaps in Law No. 537 on Public-Private Partnership, adopted on 10 May 2019.

(xxi) Turkmenistan: PPP Law dated 5 June 2021.

3. Changes in PPP legislation in SEMED countries

(i) Egypt: Amendment to Law No. 10 of 2010 (December 2021) and Prime Ministerial Decree No. 3217 of 2022 Amending Certain Provisions of the Implementing Regulations of the Law Regulating Partnership with the Private Sector in Infrastructure Projects, Services and Public Utilities, promulgated by Law No. 67 of 2010.

(ii) Jordan: The Public-Private Partnership Law No. (17) of 2020 (PPP Law) repealed PPP Law No. (31) of 2014; the Public Private Partnership Regulation Number (23) of 2021 repealed the Public Private PPP Projects Regulations No. (98) of 2015.

(iii) Lebanon: Law 48 dated 7 September 2017 Regulating Public Private Partnerships.

(iv) Morocco: Law No. 86-12 relating to public-private partnership contracts promulgated by Dahir No. 1-14-192 of 24 December 2014 (hereinafter Law 86-12), entered in force on 4 June 2015. Date of publication of the decree adopted for its application (Decree No. 2-15-45 of 13 May 2015, hereinafter the decree); Dahir No. 1-20-04 of 6 March 2020 promulgating Law No. 46-18 modifying and completing Law No. 86-12 relating to public-private partnership contracts.

(v) Tunisia: The law on public-private partnership (Law No. 2015-49) excluding concessions was enacted in 2016 (finalised with EBRD assistance), while Law 2008-23 of 1 April 2008 on the concession regime was amended by Law 2019-49 of 29 May 2019 relating to the improvement of the business climate and completed by Government Decree No. 2020-316 dated 20 May 2020, fixing the conditions and procedures for granting concessions and their follow-up.

4. PPP legal frameworks in EBRD economies are evolving

Our review of changes in PPPs/concessions in the EBRD economies since 2015 identifies some key developments in various aspects of PPPs, in line with the evolution of best practices and international standards mentioned previously in the PPP regulatory guidelines.

4.1 What trends did the EBRD's 2017-18 assessment observe?

The EBRD's Public-Private Partnership Assessment 2017-18 identified the following major evolution of PPP/concession legislative frameworks:

“4.1 Legislative and industry trends since the 2011 assessment

Many of the results of this assessment are only valid for certain aspects or regions. However, three main trends could be identified that are true across all jurisdictions:

4.1.1 Trend towards specific PPP and/or concession laws continues

The trend of adopting specific laws for privately financed infrastructure projects and the provision of public services by private parties has definitely continued since the 2011 assessment. In many jurisdictions, there is a PPP law and a separate concession law or at least one law for either or both of these groups' project models.

Only very few countries developed in the opposite direction and replaced their specific laws for PPPs and concessions with one overarching public procurement law (these countries include Poland and the Czech Republic). What confirms the general trend even further is that the explanations for these very limited exceptions are – at least to some extent – specific, national circumstances.

4.1.2 Underdeveloped institutional frameworks

The legal framework in the countries assessed continues to be better than the institutional framework and PPP policies.

The country-focused in-depth assessment, however, showed that the experts and stakeholders in most countries clearly welcome institutional support in public project preparation for know-how transfer and project approval.

Further, stakeholders almost uniformly pointed out that political support for each particular project on top of an institutional framework was an indispensable requirement for the success of PPPs/concessions. However, without proper project development and approval, political support is much more difficult.

All results confirm that at least strong political support for PPPs (even if there is no PPP policy in place) is absolutely necessary to make large and complex projects like PPPs successful.

4.1.3 EU Procurement Law is the most important

Single driver for legal development: The EU Procurement Law is the prevailing influence in all countries in which [the] EBRD is active and which are also EU member states or accession states.

All other reasons for legal developments were more specific and thus less far-reaching. The implementation of the 2014 procurement package directives was the main driver for legislative developments in EU member states and accession

countries. However, many of them only focused on EU law compliance and may thereby have missed the opportunity to have implemented other useful standards at the same time.

On the other hand, the 2014 directives were so complex that lawmakers may have preferred to exclude other matters that would have further increased the number and complexity of legal amendments. Hopefully these lawmakers will be ready to deal with other international standards at a later stage.

Nine out of the top 10 jurisdictions in private party selection, and none of the lowest 10, are EU member states or accession countries. The top 10 group includes one accession country, Serbia, and one Asian country, Mongolia. The 'champion' in LFA compliance, Serbia, is among the top three regarding its legal framework for private party selection. However, it not only scores highly in terms of compliance with EU procurement rules, but also in project securities and government support, and is excellence regarding its policy framework. Unsurprisingly, the project pipeline is filled with numerous projects and the award rate is improving, too.

Mongolia is also excellent in terms of its rules for the project agreement. Greece also has a legal [procurement] framework that achieved an outstanding rank in several aspects, namely project agreement as well as security and government support aspects.

However, there is obviously a downside to this trend too and further drivers are needed for the future. EU Procurement Law only aims at ensuring proper competition for contracts paid with taxpayers' money. It therefore focuses on the award process by means of non-discrimination and transparency rules as well as legal protection against awarding authorities. EU Procurement Law, however, completely ignores all aspects of project preparation.

As its application ends with the contract award, it also largely ignores contractual matters as well as project implementation. Another development supporting this effect is the 2011 UNCITRAL Model Law on public procurement, which in many ways became better adjusted to dealing with PPP.

One example is that the so-called best economic value selection criteria are now accepted and not the lowest price only. Further, a wide range of selection processes (procurement procedures), such as the competitive dialogue, has been introduced in the UNCITRAL Model Law. Due to their increased flexibility such procedures also fit well for PPPs.

On the initiative of the EU member states, the EU accession countries faced pressure to comply with the new EU Directives and the 2014 Concession Directive in particular. This, among other reasons, caused states with a PPP law to include concessions into the scope of application of their law or to introduce a specific PFI law in order to apply public procurement rules for non-concession PPPs. Now that this task has been accomplished, new goals should be targeted."

The trend mentioned in the assessment benefits countries which, until recently, had no real legal PPP/concession framework – such as Albania, Armenia, Azerbaijan, Belarus, Georgia, Tajikistan, Turkmenistan, Uzbekistan and, to a lesser extent, Kazakhstan, where concessions were usually limited to mining or oil and gas concessions, but not oriented towards the private financing of infrastructure, which is now urgently needed and where no specific concession or PPP legal framework existed. These countries have chosen a large scope of PPPs, including concessions for work and services and government-pay PPPs, either in a unique PPP law including concessions or with two different sets of laws.

We also observe that some countries have undergone several consecutive changes since 2015. This is true of the Kyrgyz Republic, as well as Romania, Russia, Ukraine and others. Contrary to the trend noticed for 2011-15, these changes no longer reflect the need to extend the scope of PPPs previously limited to concession-type projects (or build-operate-transfer) to include some derived forms of build-operate-transfer. These include build-own-operate (without transfer of ownership to the public sector) and build-own-operate-transfer, where the transfer of new facilities only happens when the concession period expires or aims to include government-pay (availability payments) types of private finance initiatives in addition to user-pay concessions.

5. The EU transposition or approximation trend and treatment of non-concession PPPs

Requirements for compliance/approximation with the EU *acquis* dictate most changes in EBRD economies that are EU members or prospective members. This was the case for Bulgaria, Croatia, Georgia, North Macedonia, Romania, Serbia and Ukraine, which face a deadline to transpose or approximate their national laws with the 2014 EU Directives on public procurement and concessions.

The difficulty faced by EU members or prospective members was related to the difference between objectives of the EU and PPP best standards. The EU is only interested in fair competition in the single market – which means the procurement rules

and not project preparation and selection or the implementation or follow-up of PPP projects. But PPP standards apply to the entire PPP project cycle, from the initiation until ex-post assessment, with procurement being just one of the phases.

The EU believes all public procurement must follow public procurement rules. The sole exception is for concessions justified by the level of operating risk undertaken by the concessionaire. Although the EU compromised by allowing more flexible treatment of concessions, it refuses to recognise a third non-concession PPP route between concession and traditional public procurement: granting special treatment to government-pay PPPs. The EU's public procurement and concessions directives of 2014 confirm this position.

The EU has never felt very comfortable in the domain of concessions and PPP, where it has faced different views from common law and civil law countries leading to compromise positions. This may change with Brexit, as Ireland is the sole representative of common law countries in the EU, while Malta has a hybrid common law/civil law system. All other EU members are civil law countries.

Candidate countries for accession as well as recently acceded EU members face very strong pressure from the EU authorities to harmonise their legal framework for public procurement and PPP with these new Directives, and sometimes to sacrifice a well-designed concession/PPP law to this EU compliance requirement. This was the case for newer EU member countries, such as Croatia, but also for Bulgaria and Romania.

Mature EU countries are also affected. France, for instance, had to incorporate its specific government-pay PPP law known as the partnership contract law (*contrats de partenariat* to become *marchés de partenariat*) into its Public Works Code because the EU authorities would not accept a third public procurement mode between public works and concessions.

The main EU criterion for a concession is not the payment by users, but the operating risk (including supply and demand risk), which should prove that a "significant" part of the revenue is at risk (traffic, operation, performance). Depending on the satisfaction – or not – of this criterion, either the concession law applies with respect to concession awards or the regular public procurement rules will apply.

Excluding non-concession PPPs from the flexible procurement regime for concessions may appear contrary to PPP best practice and international

standards and prejudicial to the development of non-concession PPPs (government-pay PPPs on an availability and performance basis) and to the private financing of infrastructure.

The trend, which countries including Bulgaria, Croatia, Montenegro, Romania and Serbia have followed to satisfy EU requirements and avoid relinquishing the non-concession PPP instrument, has been to separate concession and non-concession treatment only as far as procurement is concerned, by referring to the public procurement law for the contract award of non-concession PPPs. The EU seems to accept this position, provided national public procurement rules are followed for the award of non-concession PPPs.

Other countries, such as North Macedonia, have abandoned all specific procurement processes for concession and non-concession projects to the general public procurement rules. Still others, including Ukraine, resist and want to continue with specific procurement treatment for both concession and non-concession projects.

In any case, this question is less important today with respect to best standards than in the past as all EU members or prospective members have harmonised or are in the process of harmonising their public procurement regulations with the EU Public Procurement Directive, under which contracts are awarded to the most economically advantageous tender, identified on the basis of the lowest price or the best price-quality ratio.

6. Other legislative trends since the EBRD's 2017-18 assessment

All EBRD economies are supposed to be in a transition or development stage; this is a criterion for them to be eligible for financing by an international reconstruction and development institution such as the EBRD. The transposition or approximation requirement for EU members or associated countries aside, the common goal of these eligible countries is to develop and boost private financing for infrastructure. For these countries, this economic development objective associated with value for people usually prevails over the benefit expected under the best-value-for-money concept, which plays a secondary role.

Furthermore, the differentiation of the procurement process to enable PPP and concession contracts to be awarded according to specific rules tailored for PPPs and not the public procurement rules is no longer a priority.

The UNCITRAL Public Procurement Model Law of 2011, which greatly inspired the drafting of the EU Public Procurement Directive, has accelerated the

modernisation of national procurement regulations. This is why UNCITRAL's PPP Legislative Guide and its new PPP model provision refer to the UNCITRAL Public Procurement Model Law and open the possibility of simply referring to public procurement rules for the award of public-private partnerships in PPP legislation.

In addition to commercial and financial considerations, a handful of new PPP laws address the SDGs by including socioeconomic considerations, environmental protection and public involvement. When the 2017-18 assessment was published, the EBRD circulated a checklist that, for the first time, also included a few questions about public involvement and public hearings. The positive response to these questions was limited, signalling that these issues were still of little concern to PPP legislators. Conversely, preparation work and feasibility studies have improved considerably in most countries.

Contract preparation and the selection of good projects fit for PPP have become priorities, along with effective and accelerated capacity building.

Modern PPP legislation must address sustainable development issues such as the environment and socioeconomic consideration, as well as the involvement of the public. All the international best standards mentioned in first part of this memorandum (except EU rules) acknowledge the importance of these issues. EU rules concentrate narrowly on the procurement process, once a decision has been made to undertake a public investment.

The CIS Model Law acknowledges that the public should be involved from the start of a project – that is, from project selection, through a public enquiry or otherwise, and during implementation of the concession through regular information and efficient complaint procedures where consumers' interest is involved. The UNECE-EBRD Model Law also considers the public's role to be a major concern.

Potential environmental damage and the impact on society are always key issues when planning an infrastructure project under a PPP scheme. Governments must determine if the detrimental impact of a project on the environment or on society outweighs its potential benefits, whether the project is necessary, and how the negative impact can be kept to a minimum. This is especially important today to fight the wave of criticism of PPPs that is sweeping across Europe.

7. Negative political trend in western Europe

PPPs face considerable criticism in Europe, especially in the United Kingdom, where the Private Finance Initiative (PFI) and Private Finance 2 (PF2) – under which private companies provided public services and infrastructure – were scrapped in the wake of the collapse of construction firm Carillion.

The UK National Audit Office questioned the financial and economic benefit of the PFI in 2018, saying that “many projects are more expensive (up to 40 per cent more expensive than project directly publicly financed)” and noting a “lack of data available on the benefits of private finance procurement”. PPPs were heavily criticised for failing to deliver value for money, causing “significant fiscal risk” to the government and for being “inflexible and overly complex”. Then Chancellor, Philip Hammond, said the government would no longer use the controversial PPP contracts, though existing contracts would be honoured.

This does not mean that the United Kingdom – the pioneer in PPP projects, at least as far as government-pay PPPs are concerned – has eliminated all forms of private finance for public projects. The country uses other types of private finance to deliver infrastructure, including the recently rediscovered form of user-pay concession for which a law was enacted in 2016 for the transposition of the EU Concession Directive, but also the use of Power Purchase Agreement for Renewable energy projects which represent a very active and promising sector of infrastructure development in the United Kingdom.

The United Kingdom is still the top project finance centre in Europe, the hub from which international project finance deals are structured, negotiated and documented, despite the underlying PPP projects being located elsewhere. According to Market Intelligence Project Finance 2022,¹² the international English law finance market far exceeds the domestic UK project finance market in both volume and size (and often complexity) of deals. The United Kingdom continued to be very active in cross-border financing in 2021 despite Brexit and Covid-19 and this is likely to continue, as PPPs are very popular across emerging markets and have the official support of the G7 and G20.

The European Court of Auditors and some governments in Europe (including France) have also criticised the PPP model. For instance, the court's 2018 report, based on a study of 12 PPPs co-financed by the European Union, noted the “widespread shortcomings and limited benefits of PPP resulting in

¹² Interview with Milbank LLP about project finance in the United Kingdom on 17 March 2022. Market Intelligence Project Finance 2022.

€1.5 billion of inefficient and ineffective spending”. The court concluded that “value for money and transparency were widely undermined in the studied cases, in particular by:

unclear policy and strategy

inadequate analysis

off-balance-sheet recording of PPPs

unbalanced risk-sharing arrangements”.

The European Commission and member states should “not promote more intensive and widespread use of PPPs until the issues identified have been addressed”, the court said.

The current PPP situation in Europe as assessed in the EIB’s European PPP market updates for 2016-22 (see Table 1) shows a somewhat negative trend since 2019. The situation has improved since 2019, but has not recovered completely. The reports note a reversal of situation of the user-pay concession type of PPP compared to government-pay PPPs in Europe: 20 per cent of transactions closed in 2016 were user-pay, but by 2022, that share had reached 70 per cent.

The following PPP market trends emerged over 2016-22, according to the EIB reports:

(i) A steady decrease in the number of transactions reaching financial close from 69 in 2016 to 29 in 2019, with a rebound to 45 projects in 2022.

(ii) A drop in the aggregate value of projects reaching financial close from €12 billion in 2016 to around €14.5 billion in 2017 and 2018, to €8 billion in 2019 and 2020, before rising again to €9.8 billion in 2022.

(iii) Various countries were the most active in value terms from year to year; these included the United Kingdom, Türkiye, Italy, Germany and France. The value of PPP projects in the United Kingdom declined after 2018 but France still came first in terms of the number of projects.

(iv) Transport was the largest sector over the entire period, both in terms of value and number of projects. The education sector, based only on the number of projects, was the biggest in some years.

(v) The percentage of government-pay PPP transactions closed fell steadily, from 80 per cent in 2016 to 30 per cent in 2022, while the popularity of user-pay transactions increased.

Pessimism about PPPs in some European countries, stemming from political concerns further amplified by the Covid-19 pandemic and probably by Brexit, cannot be considered a global trend as it does not seem to

have affected EBRD economies or other developing economies. Indeed, PPP legislative activity is booming worldwide and PPPs are being adopted across emerging markets.

Still, this pessimism should be regarded as a warning about future PPP development and the requirements to select a suitable model of PPP that is not exclusively financially oriented but takes a people-first approach – provided the project remains bankable.

PPP has always been a sensitive topic, especially in civil law countries (which include most of the EBRD economies). This is because PPPs are closely related to public services and public wealth, even though they are an essential component of public investment financing.

C. Risks and opportunities linked to Covid-19 and post-pandemic realities

Public investment financing needs private financing more than ever following the pandemic, which has seriously affected public budgets worldwide, including in the EBRD regions.

PPP/concession contracting counterparties should cooperate to ensure the continued delivery of public services, as the Covid-19 crisis is not – and should not be – regarded as an event of force majeure unless a contract specifically provided for such a force majeure event. Contracting authorities should work closely with PPP contractors to use all available options to maintain public services in such a crisis. This includes maintaining service payments (enabling PPP contractors to pay their workforce and suppliers), revising contract requirements/standards (including scope changes where necessary) and moderating payment and performance mechanism regimes where appropriate.

PPP/concession contractors should ensure their contingency plans are up to date and have been reviewed and discussed with contracting authorities to enable continuity of full services as far as possible to respond to the crisis and maintain vital public services. This is particularly true across national health services, but also public services necessary for the day-to-day life of citizens and to restart an economy. If this were not the case, PPPs/concessions might lose all credibility and generate strong resistance to the delegation of public services to the private sector in the future, or even to any private involvement in them through any form of PPP.

Table 1: EIB European PPP market updates, 2016-22¹³**The headlines for the 2016 EIB report on PPPs show that:**

- 69 PPP transactions reached financial close, for an aggregate value of €12 billion
- in number terms, the market grew 41 per cent compared to 2015
- in value terms, the market decreased by 22 per cent compared to 2015
- the most active market was the United Kingdom (by value and number of projects)
- 10 countries closed at least one PPP project
- transport was the largest sector in value terms, while the education sector recorded the highest number of projects
- more than 80 per cent of the transactions closed were government-pay PPPs.

The headlines for the 2017 EIB report on PPPs show that:

- 42 PPP transactions reached financial close, for an aggregate value of €14.4 billion
- in number terms, the market decreased by 38 per cent compared to 2016
- in value terms, the market grew 22 per cent compared to 2016
- the most active markets were Türkiye (by value) and the United Kingdom (by number of projects)
- 12 countries closed at least one PPP project
- transport was the largest sector in terms of value and jointly by number of projects (with the education sector)
- more than 60 per cent of the transactions closed were government-pay PPPs.

The headlines for the 2018 EIB report on PPPs show that:

- 39 PPP transactions reached financial close, for an aggregate value of €14.6 billion
- in number terms, the market decreased by 11 per cent compared to 2017
- in value terms, the market decreased by 4 per cent compared to 2017
- the most active markets were Türkiye (by value) and France (by number of projects)
- the United Kingdom and Italy declined (as did France)
- 10 countries closed at least one PPP project
- transport was the largest sector in terms of value, while education recorded the greatest number of projects.

The headlines for the 2019 EIB report on PPPs show that:

- 29 PPP transactions reached financial close for an aggregate value of €9.8 billion
- in number terms, the market decreased by 24 per cent compared to 2018
- in value terms, the market decreased by 31 per cent compared to 2018
- the most active market was the United Kingdom in value terms and France in terms of the number of projects
- nine countries closed at least one PPP project
- transport was the largest sector, both in terms of value and number of projects
- 55 per cent of the transactions closed were government-pay PPPs.

The headlines for the 2020 EIB report on PPPs show that:

- 34 PPP transactions reached financial close, for an aggregate value of €7.9 billion
- in number terms, the market decreased by 11 per cent compared to 2019
- in value terms, the market decreased by 27 per cent compared to 2019
- the most active market was Germany in value terms and France in terms of the number of projects
- 10 countries closed at least one PPP project compared to 11 in 2019
- transport was the largest sector, both in terms of value and number of projects
- 41 per cent of the transactions closed were government-pay PPPs. (NB: Project values and numbers for 2019 have been updated to reflect the latest available data.)

The headlines for the 2021 EIB report on PPPs show that:

- 40 public-private partnership transactions reached financial close, for an aggregate value of €8 billion.
- despite expectations of a greater reduction in activity due to the pandemic, the number of projects decreased by just 7 per cent compared to 2020
- in value terms, the market decreased by 13 per cent compared to 2020.
- the most active markets were Italy in value terms and France in terms of the number of projects
- 13 countries closed at least one PPP project compared to 11 in 2020.
- transport was the largest sector, both in terms of value and number of projects
- the rise in demand/revenue-based projects has continued, with more than two-thirds of transactions taking this form and government-pay PPPs declining.

The headlines for the 2022 EIB report on PPPs show that:

- 45 public-private partnership transactions reached financial close for an aggregate value of €9.8 billion
- the number of projects increased by 2 per cent compared to 2021
- in value terms, the market increased by 17 per cent compared to 2021
- the most active market was France, both in terms of value and number of projects
- 15 countries closed at least one PPP project compared to 14 in 2021.
- transport was the largest sector, both in terms of value and number of projects
- the rise in demand/revenue-based projects has continued, with 70 per cent of transactions taking this forms.

¹³ Some of the data in this table were changed in EIB reports in subsequent years.