

A central image of two hands shaking, symbolizing partnership. The hands are wearing light-colored shirts. The background is dark blue with various geometric shapes in shades of blue, orange, and white.

RECOMMENDATIONS
TO SUPPORT
PUBLIC-PRIVATE
PARTNERSHIPS AT
THE LOCAL LEVEL

REPORT

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Abbreviations / Glossary

EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
Feasibility Study	FS
OECD	Organization for Economic Co-operation and Development
PPA	Power Purchasing Agreement
PPP	Public-Private Partnership
Public Investment Management	PIM
SPV	Special Purpose Vehicle
UNCITRAL	The United Nations Commission on International Trade Law
Unsolicited PPP/USP	Unsolicited Proposal
VFM	Value for Money
WEF	World Economic Forum
WB	World Bank

Introduction

Public-private partnerships (PPP) constitute a significant instrument of cooperation between the public and private sectors, which enables the enhancement of the private sector's role in the implementation of key projects.

The principal benefits of PPP for the state include savings on government spending, fostering innovation and know-how, efficient project management and increasing project effectiveness, reduction of implementation-related risks (via redistribution to the private sector), general stimulation of economic development (at both central and local levels), and, most importantly, increasing value for money.

Public-private partnerships have traditionally been applied to implement large-scale infrastructure projects, improve state services, and increase their effectiveness. However, this instrument, given an efficient and diverse scheme, allows for the development of other, profitable projects across the country on national and municipal levels.

Moreover, PPP projects are accompanied by risks, of which fiscal risks are particularly noteworthy. Assessing such risks requires significant and specific knowledge and skills. Hence, successful implementation of public-private partnership projects at the local level constitutes a challenge for numerous countries.



Methodology

For the purposes of this project, the legal and institutional systems for public-private partnerships in Georgia have been analyzed in detail, and a centralized approach to decision making on PPP projects was identified.

In-depth interviews were also conducted with several key stakeholders to assess the results of the local structures, challenges, and operations of public-private partnerships. The interlocutors included the Georgian Ministry of Economy and Sustainable Development, responsible for the drafting of the Law of Public-Private Partnerships and carrying out relevant reforms; as well as the following institutions: the Ministry of Finance of Georgia (analyzing the assessment of fiscal risks associated with the implementation of PPP projects); the Public Private Partnership Agency (evaluating the development of the PPP system in Georgia); and representatives of several municipalities (identifying the preparedness and capacity to implement PPP projects at the local level).

Based on the analysis and interview results, the strengths and weaknesses of public-private partnerships in Georgia were assessed to subsequently develop targeted recommendations.

In addition to the local context, international experience was also analyzed for the purposes of the report. The process commenced with a review of relevant EU legislation, given the commitments under the EU-Georgia Association Agreement (AA). Within the frames of these commitments, Georgia should align its legislation with EU laws and best practices, including in areas directly or indirectly related to public-private partnerships (e.g., EU public procurement directives).

Moreover, four countries were selected for analysis: two EU member states: France and Lithuania; one EU candidate country: Serbia; and an example of successful international practice: the United Kingdom. These countries differ from one another in terms of economic situation and state structure, as well as in terms of the level of PPP development. The experience of these states is interesting for Georgia, especially with a view to enhance the understanding of how countries at varying levels of development approach the management and implementation of the PPP system, especially at the local level. In addition, all of them have two major factors in common:



According to various assessments, these countries all successfully apply the PPP model in practice



These countries' laws are influenced by EU legislation

Various reports/assessments produced by the World Bank, the European Bank for Reconstruction and Development (EBRD), and the Organization for Economic Cooperation and Development (OECD), as well as a variety of international articles in this field have also been used to analyze public-private partnerships.

Following a thorough analysis of national and international experience in PPP, as well as taking into account Georgian specifics, targeted recommendations have also been developed. The implementation of these recommendations will contribute to the successful subsequent implementation and effectiveness of the PPP process, spur private sector interest and attract investors to implement PPP projects.



1. Public-private partnerships at the local level

Based on existing requirements, the introduction of PPP mechanisms at the local level generally contributes to meeting local needs, as well as greater involvement of the private sector in economic development, with particular regard to improving infrastructure and services, increasing investment, creating employment opportunities, contributing to human resource development, etc.

PPP projects are implemented locally in various countries around the world. Even though much more costly projects occur at the central level, many more PPP projects are being introduced locally (e.g., in France, this figure constitutes 79% of all projects, while in Australia 90% of PPP projects are implemented at the subnational level). Nonetheless, there are countries where the opposite is the case. For example, in Germany and the United Kingdom, the cost of local PPP projects exceeds the cost of centrally implemented projects. More specifically, 80% of PPP project costs are procured by local authorities, while in the United Kingdom, local government generally acts as the public partner for PPPs¹.

However, it is important to keep in mind that the implementation of such projects at the local/subnational level is associated with certain risks and constitutes a challenge for countries.

Maximizing the benefits and minimizing the risks of PPP projects requires that the public sector, especially at the local level, possesses the appropriate capacity and qualifications to undertake successful implementation.

¹ OECD Multi-level Governance Studies, [Subnational Public Private Partnerships – Meeting Infrastructure Challenges](#), 2018.

The following challenges are associated with the implementation of PPP projects at the local level:



FINANCIAL RISKS:

Numerous problems can be caused by selecting unsuitable projects. As practice shows, local authorities tend to favor PPP mechanisms due to limited budgets and the opportunity to circumvent fiscal rules. To this end, local government attracts funds from the private sector, which carries a significant risk in the long run. The principal objective for PPP project selection should be to increase value for money and project receivables, rather than to evade fiscal constraints.

Once operational, PPP projects are frequently funded through government disbursements, fees allocated by end users of specific services, or a combination of the two. Contingent liabilities and amounts payable by local authorities may become a burden on the local budget in the future, which reduces flexibility in the event of fiscal risks. At the same time, some national governments render assistance to the local authorities via the allocation/transfer of funds. However, this also carries risks since it raises expectations for similar assistance in the future and, therefore, increases the likelihood that local authorities will pay less attention to fiscal risk assessment when selecting PPP projects.

Customer-supplied financing poses another type of risk associated with demand forecasting: if demand for a specific service is calculated incorrectly, project revenues will decrease, putting its sustainability at risk.

In most cases, investors fund PPP projects through resource attraction. This could be bank loans or other financial instruments, including special purpose vehicles (SPVs) – entities, jointly created by the public and private sector for the purpose of PPP project implementation. In this case, funds are mainly issued through non-recourse funding. This implies that both the borrower and lender (in this case, the SPV and the private partner) depend on the revenue generated by the project; the lender (private partner) also covers credit liabilities from project revenues, which creates additional fiscal risks in the medium and long term.

In addition, in terms of private sector funding, local PPP projects may be less attractive than centrally implemented projects due to the following circumstances: credit institutions harbor relatively less trust towards local authorities, which is associated with risks of untimely and incomplete fulfilment of obligations by the public partner (in this case – local government). Consequently, credit institutions are cautious when funding such projects.



ADMINISTRATIVE OPPORTUNITIES:

In most cases, local authorities have limited capacity and knowledge to implement PPP projects efficiently. This relates to ex-ante cost-benefit analysis and expertise, as well as fiscal risk forecasting and project implementation monitoring. However, there may be exceptions as well – in large cities or administrative units, relevant capacity and knowledge in this respect is higher than, for example, in small municipalities. Providing and then retaining qualified local staff, equipped with specific knowledge and skills, is difficult, including in developed countries.



REGULATORY NORMS:

If the basic regulatory framework for public-private partnerships differs between the local and national levels, this increases the burden on the private sector, and drives up project costs, since, given the specificity, investors may maintain contact with both the local and national agencies. However, due to the diversity of PPP projects and initiatives, if legislation lacks flexibility, the process becomes more complicated, which in turn reduces private sector interest to participate in this arrangement.



CORRUPTION RISKS:

A lack of capacity, relevant skills, and transparency at the local level frequently drives local authorities to use the PPP mechanism for political purposes – favoring politically profitable initiatives over efficient projects, which may ultimately have a negative impact on the budget and prove to be unprofitable for the private sector.

The expenses of smaller-scale projects (including feasibility studies) are much higher than those for larger-scale initiatives. According to the World Economic Forum (WEF), in case of large PPP projects (valued at over 100 million USD), these expenses range at around 1-3% of total project costs, while in the case of smaller-scale projects, the range amounts to 3-4%.

It is generally considered good practice to establish a PPP unit at the state level, which would be engaged in the full PPP management cycle. Most frequently, PPP units operate at the national level and are also involved in the implementation of local PPPs. However, there are countries where PPP units operate locally, or at both the national and subnational levels.



2. Overview of the legislative and institutional frameworks in Georgia

On 4 May 2018, the Parliament of Georgia adopted the Law on Public-Private Partnerships,² which established a special legal framework to regulate this sphere. Prior to the adoption of the law, PPP arrangements were regulated by Georgian civil law, as well as, to an extent, the Laws on Public Procurement and Privatization. On 17 August 2018, via Ordinance #426, the Government of Georgia approved the “Rules for the Development and Implementation of PPP Projects”³.

Significantly, the adopted legislation is in line with the UNCITRAL model law and relevant EU legislation.

In addition to a legal framework, the new law mandated the establishment of an institutional framework for public-private partnerships. Namely, it defined the authority of various responsible agencies and established a Legal Entity of Public Law (LEPL) – the Public Private Partnership Agency, which aims to coordinate such partnerships, support and encourage relationships in this process, identify potential PPP projects, assess project proposals submitted, establish and manage a database for PPP projects, etc.

For the purposes of supporting public-private partnerships, the framework Law defines an authorized body, which, in addition to ministries and other state agencies, encompasses municipalities, governments of the Autonomous Republics of Abkhazia and Adjara, and enterprises established with direct/indirect and over 50% equity participation by the state or municipal authorities. This, in fact, stipulates that if the local government takes a decision to implement a PPP project, it must do so in compliance with the legal framework and the requirements established by law.

According to the Law, municipalities are authorized to identify and initiate potential projects in accordance with the municipal development strategy/action plan; analyze and assess initiative proposals; develop projects; manage the selection process of the private partner; conclude the PPP agreement, etc.

² Public Private Partnership Agency, [Law of Georgia on Public-Private Partnerships](#)

³ *Ibid.*, [Ordinance N426 of the Government of Georgia on Approving the Rules for the Development and Implementation of a PPP project](#)

Several key aspects of public-private partnership development and implementation are noteworthy: central government agencies are actively involved in virtually all stages of PPP project development. Along with the Government of Georgia (which is the final decision maker), the Ministry of Finance plays a significant role in the process. This agency is tasked with evaluating a variety of issues, including fiscal risks, quality-to-price ratio, and so on.

More specifically, for a PPP project to proceed, an authorized body should submit to the Government of Georgia relevant initial information, supplemented by recommendations from the Public Private Partnership Agency, and a conclusion from the Ministry of Finance of Georgia on the project. A decision to begin preparing the conclusion is rendered by the Government of Georgia, based on the following criteria: strategic or public significance of the project; preliminary assessment of its economic impact; availability of public financing for its implementation; fiscal risk assessment for the project. Without these elements, the project will not be granted clearance. Of note, independent municipality action at this stage of PPP project development is limited. Moreover, once the authorized agency concludes the preparatory work, the results are once again submitted to the Ministry of Finance, which once again prepares a conclusion on the feasibility of the project to be submitted to the Government of Georgia. If the government, on the basis of these documents, approves the PPP project, the authorized agency initiates the procedure for private partner selection. Consequently, even at this stage, the freedom of action of the authorized agency is also quite limited.

At the private partner selection stage, the agreed terms of the future contract are submitted to the Ministry of Finance for review, and, together with its conclusion, are subsequently forwarded to the Government of Georgia for consideration. Therefore, ultimately, the winner of the selection process is the participant, who meets all the qualification requirements and whose proposal, as per the assessment of the selection committee and the Government of Georgia, contains the most lucrative conditions compared to the other participants.

Subsequently, any amendments to an already concluded contract, which may entail fiscal risks, will be submitted to the Ministry of Finance. If the Ministry considers the fiscal risks significant, the draft amendments will then be referred to the government.

If the partnership contract stipulates that the public partner shall transfer to the private partner specific rights to public infrastructure and/or associated assets/property, the rules and conditions of municipal property transfer will be determined by a resolution of the Government of Georgia.

Even in the case of small-scale projects (valued below 5 million GEL), the central government is involved in the decision making: in particular, the project is submitted to the Public Private Partnership Agency and the Ministry of Finance, whose proposals must be mandatorily considered (unless the project is submitted to the Government of Georgia, in which case the Ministry's conclusion serves as a non-binding recommendation).

To efficiently implement investment projects financed from the state budget, in 2016, the Government of Georgia, via Ordinance #191 (22.04.2016)⁴ adopted the Public Investment Management (PIM) guide. The document entails rules and procedures for the development of investment projects; determines stakeholder roles and responsibilities; and defines the rules for the evaluation of capital investments and project prioritization in strategic planning and budget development (both in terms of the economy and regional focus).

The guide on PPP projects at the central and local, as well as autonomous republic level is applied in compliance with public-private partnership legislation. The Ministry of Finance reviews such projects in accordance with the rules and procedures outlined in the guide, and subsequently issues conclusions on the following aspects: project implementation with budgetary funds, switching to the PPP modality, or feasibility of partial implementation.

For the purposes of the guide, an investment project is a financially significant initiative, procured through budget funding and with a total estimated cost equal to or exceeding 5 million GEL.

The guide gives a detailed description of the phases and regulations for both the preliminary and final evaluation of the project, including in terms of risk analysis and management. In evaluating PPP projects, it is essential to analyze value for money. According to the guide, depending on the scale and complexity of the project, as well as the level of specialized technical knowledge required, evaluations may be carried out with support from hired experts.

In compliance with the Law on Public-Private Partnerships as well as the guide, once the procuring entity has rendered a decision on project implementation, the proposal is submitted to the Ministry of Finance for evaluation. As mentioned above, the Ministry evaluates investment projects in accordance with the guide. If the Ministry's conclusion is negative, the initiator of the project (state entity) is entitled to submit it for consideration to the Interagency Commission, and if the latter also produces a negative conclusion – to the Government of Georgia (for final decision making).

⁴ Ordinance [N 191](#) of the Government of Georgia, 22 April 2016 (in Georgian).

Investment projects earmarked for implementation should be reflected in the budget as well as the country's Basic Data and Directions (BDD) document.

This mechanism resembles the Private Finance Initiative (PFI) arrangement discussed below, which is also widely applied in European countries and entails a public and private sector co-financing of investment projects. However, PIM evaluation of projects in Georgia is still limited – only a small fraction of budget-financed projects undergoes this procedure.

An analysis of the PPP framework shows that within the current legislative and institutional system in Georgia, PPP arrangements are centralized and the final decision in nearly all cases is centrally rendered. Consequently, in this respect, the powers of the local authorities are quite limited.

According to the Local Self-Government Code, exercising the powers mandated by the Law on Public-Private Partnerships is within the competence of the municipality and the responsibility of the mayor.

Regarding the institutional framework, the legislation outlines the following principal agencies involved in the PPP system: authorized bodies (ministries, municipalities, etc.); the Public Private Partnership Agency, as a coordinating body; the Ministry of Finance of Georgia, as an agency assessing project fiscal risks and general fiscal aspects; and the Government of Georgia, as a decision-making body.

Interviews have demonstrated that on a practical level, there are several problems in the implementation of PPP projects locally. Namely, interviews with municipality representatives showcased the following:



Knowledge of PPPs at the local level is very limited, or completely non-existent (this, however, does not apply to the Tbilisi municipality);



Given their small scale, municipalities do not envision the possibility to implement PPP projects;



According to the municipality representatives, the Ministry of Finance applies a stringent evaluation process and cannot identify any prospects for the PPP model.

Tbilisi registered a viewpoint different from the other municipalities: capital-based interlocutors see serious potential in PPP projects, especially in terms of the development of different types of transportation.

According to the World Bank's Benchmarking Infrastructure Development 2020 report,⁵ Georgia has good scores in all four PPP assessment components: PPP project preparation, PPP project procurement, PPP contract management, and unsolicited proposals (USP). The highest score (83 points) was logged for USPs (PPP project proposals initiated by private entities). The scores across the other three components were distributed as follows:



PREPARATION - 65 POINTS



PROCUREMENT - 74 POINTS



CONTRACT MANAGEMENT - 79 POINTS

Georgia's scores in all four areas are much higher than the global and regional indicators, as well as compared to the average rates for countries with similar income levels (upper middle, in this case).

As per the EBRD's review⁶ for 2017 and 2018, Georgia's scores in terms of the PPP legal framework are quite low with an overall rating of 43%; however, in this case, the assessment does not account for the Law on Public-Private Partnerships (presumably, the review was conducted prior to its adoption).

⁵ The World Bank, *Benchmarking Infrastructure Development 2020: Assessing Regulatory Quality to Prepare, Procure, and Manage PPPs and Traditional Public Investment in Infrastructure Projects*

⁶ The European Bank for Reconstruction and Development (EBRD), *2017/2018 Review: Georgia*



3. Strengths and Weaknesses

An analysis of the existing legislative and institutional frameworks allows to identify several key aspects:



STRENGTHS:

- ✓ The legislation is in line with the UNCITRAL model law and relevant EU legislation;
- ✓ The system is organized in such a way so as to maximize insurance against fiscal and other types of PPP-related risk;
- ✓ The system entails the option for unsolicited proposals (USP), which allows for more flexibility;
- ✓ The system limits, to the best possible extent, the possibility of direct negotiation, which, at present, is permissible only in the case of energy projects. This contributes to the competitiveness of the PPP framework.



WEAKNESSES:

- The PPP system in Georgia is fully centralized, and the engagement of the local authorities, as authorized agencies, is usually limited to technical and preparatory aspects;
- Knowledge and expertise of PPP at the local level is significantly limited;
- The relatively small scale of local projects makes it difficult to identify initiatives of interest to the private sector;
- Despite the established minimum cap (5 million GEL), even “small-scale projects” are also screened by the Ministry of Finance and, in certain cases, the Government of Georgia;

- Despite the brief timeframe since the enactment of the Law and the onset of the COVID-19 pandemic in 2020, interviews have shown that no PPP initiatives have been launched by local governments. The above may be due to a complex procedure, which requires the engagement of numerous centralized parties, as well as a lack of qualifications at the local level (which requires capacity development);
- Moreover, although little time has passed since the enactment of the legislative and institutional framework, public-private partnerships are mainly limited to energy projects (which were actively implemented previously in the form of Power Purchasing Agreements (PPAs)); the establishment of a new system has yet to provide adequate incentives for the development of PPPs in Georgia.



4. Overview of international projects

4.1 Regulations for public-private partnerships in the European Union

The EU does not have uniform legislation governing PPPs at the horizontal level. Within the EU, PPPs are mainly regulated via the following three directives:



Directive 2014/24/EU⁷ on public procurement



Directive 2014/25/EU⁸ on procurement by entities operating in the water, energy, transport, and postal services sectors



Directive 2014/23/EU⁹ on the award of concession contracts¹⁰

Directive 2014/23/EU is a key legislative act, which governs concessions and applies to the central, regional, and local authorities of EU member states, as well as public enterprises and entities enjoying exclusive rights. It is possible for an association of these organizations to assume the role of the public partner in this partnership. According to the Directive, there are two types of concessions – works and services. In both cases, the award of a contract implies the transfer to the concessionaire of operating risks. The Directive applies to contracts valued at over 5,186,000 EUR. In the case of concessions, public procurement procedures set out in Directive 2014/24/EU and Directive 2014/25/EU should be applied. The directives also define the duration of the concession contract, which should not exceed the period required to reimburse the investments made by the concessionaire and

⁷ [Directive 2014/24/EU](#) of the European Union Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

⁸ [Directive 2014/25/EU](#) of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC

⁹ [Directive 2014/23/EU](#) of the European Union Parliament and of the Council of 26 February 2014 on the award of concession contracts

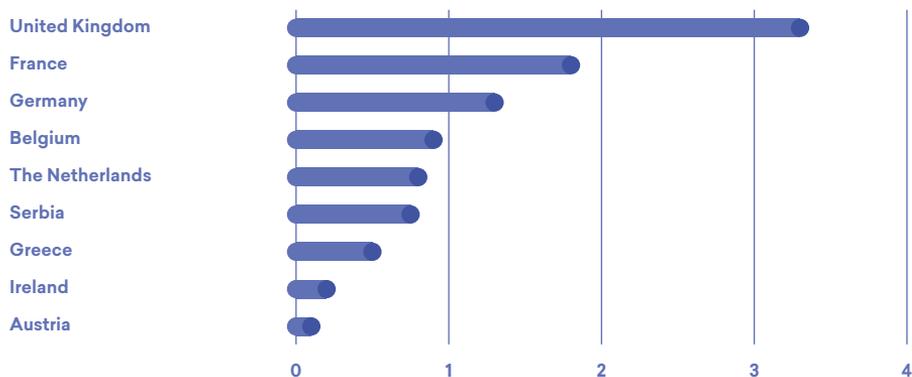
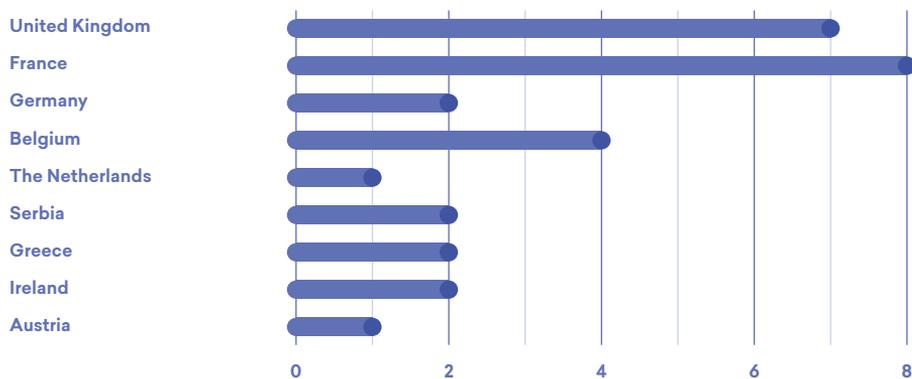
¹⁰ According to the October 18, 2019 Ordinance No 2/2019 of the EU-Georgia Association Committee in Trade, Annex XVI to the Association Agreement was revised to include the three EU directives.

generate a certain profit. In some cases, the directives allow for the revision/amendments to concession contracts. document defines the monetary limits of the contract value, above which it applies. In the case of procurement by regional and local authorities, the Directive applies to contracts valued over 209,000 EUR, which exceeds the value of central government procurement contracts (135,000 EUR).

Directive 2014/25/EU regulates procurement related to the supply of work, goods, and services in the water, energy, transport, and postal sectors and applies to procurement implemented by central, regional, and local authorities, as well as state-owned companies and organizations with exclusive rights. This type of procurement considers the requirements set forth under Directive 2014/24/EU, although Directive 2014/25/EU also considers the specifics of the sectors described above. In this case as well, the Directive delineates the monetary value of the contract, above which it applies (418,000 EUR for goods, services, works, and design contests; 5,525,000 EUR for works and 1,000,000 EUR for social and other services).

According to the Review of the European PPP Market in 2019¹¹, produced by the European PPP Expertise Centre (EPEC), an initiative involving the European Investment Bank (EIB), the United Kingdom and France lead in the implementation of PPP projects: the former – in terms of value (3.3. billion EUR), and the latter – in terms of the number of projects. In 2019, 29 PPP projects were completed in European countries, with a total value of 9.8 billion EUR.

¹¹ Source: European PPP Expertise Centre (EPEC), [Market Update: Review of the European PPP Market in 2019](#)

CHART 1.**CHART 1. COUNTRIES BY VALUE AND NUMBER OF PPP PROJECTS IMPLEMENTED IN 2019****AGGREGATE VALUE OF PROJECTS (BILLION EUR)****NUMBER OF PROJECTS**

Source: [European PPP Expertise Centre](#).

As the graph shows, along with the more developed European countries, Serbia is also quite successful in terms of PPP project implementation. Hence, this experience may be interesting for Georgia.

4.2 Comparison of individual countries' experiences with Georgia

For the purposes of the analysis, experiences of public-private partnerships have been reviewed in several countries at the subnational/local level. The countries were selected bearing in mind several factors: developed countries with good experience of PPP project implementation at the local level; countries, relatively similar to Georgia in terms of development; EU member states (allowing for the analysis of European experience); and countries with a Soviet past.

Several countries were selected based on the above criteria. To share EU experience, according to EPEC's *Review of the European PPP Market in 2019*, France was selected due to the scale of PPP application among EU countries.

The United Kingdom's experience with PPP application is considered best practice among developed countries. Therefore, to share said best practice, it would be interesting for the Georgian context to review this experience as well.

As noted, Serbia, an EU candidate country, is also quite successful in this regard, which is developmentally approximate to Georgia, which makes it an interesting example.

Lithuania, a small EU member state with a Soviet past, was also selected for analytical purposes. Thus, its experience is especially of interest to Georgia.

The PPP Laws Assessment for 2017-2018¹² conducted by the European Bank for Reconstruction and Development (EBRD) in 47 countries was also used to evaluate the country selection. The assessment is conducted in two principal parts, which result in an overall rating (in percentages):



Extent to which the legislative framework is harmonized with internationally accepted standards and best practices, comprising of five components:

- 1 Regulatory framework
- 2 Project preparation and selection
- 3 Selection of the private partner
- 4 The content of the project agreement, and
- 5 Security and government support issues

¹² [2017/2018 PPP Laws Assessment in the EBRD Region](#)



Effectiveness of the legal framework, which entails four elements:

- 1 PPP policy framework
- 2 Institutional framework
- 3 PPP statistics, and
- 4 Specific business environment for PPPs and concessions

According to the EBRD's rating indicators, countries are divided into five main groups/levels: $\geq 90\%$ very high; 70-89% high; 50-69% medium; 30-49% low and $< 30\%$ very low.

The analysis also utilizes the World Bank's (WB) 2020 report - *Benchmarking Infrastructure Development*¹³, which measures countries' effectiveness in terms of PPP project implementation and makes an assessment based on the following four criteria: PPP preparation, procurement, contract management and unsolicited proposals (USP).

4.3 Country experience in public-private partnerships



The United Kingdom

The United Kingdom has a long history of implementing infrastructural and social PPP projects at the local level, although there is no unified/framework legislation on public-private partnerships and PPP projects are primarily governed by public procurement laws (as in the EU, as per the directives described above), as well as general PPP rules and guidelines.

The Private Finance Initiative (PFI) mechanism, which has been applied in local public-private partnerships since the 1990s, was replaced in 2012 by PFI 2.

Since the 1980s, the country's policy towards public transport and social infrastructure (e.g., hospitals, schools) has changed: a privatization process was initiated in the mid-1980s, with the transfer of facilities to the private sector through concession contracts, which resulted in a significant decrease in public investment. Moreover, the state experienced drawbacks

¹³ The World Bank, *Benchmarking Infrastructure Development 2020: Assessing Regulatory Quality to Prepare, Procure, and Manage PPPs and Traditional Public Investment in Infrastructure Projects*

in terms of timely and efficient completion of infrastructure projects. To address these issues, the UK government launched the PFI mechanism in 1992, initially, to carry out large-scale infrastructure initiatives at the central level, and in 1996-1997 – at the subnational level. To increase effectiveness of the process new PPP program (4P – Public-Private Partnership Program) was adopted in 1996.

Although both mechanisms (PFI and PPP) are instruments of public-private partnerships, there are certain distinctions between them: namely, PFI provides for a specific mechanism of state involvement and funding through SPVs (this can be loan financing or capital investment), while the PPP mechanism is much more flexible, and the parties enjoy more freedom to agree on a funding scheme. According to PFI guidelines, this mechanism should be applied when financing projects valued under 20 million GBP.

As noted, the public-private partnership scheme was originally applied at the central level, however, as of 2000, it has been widely implemented at the local level as well. In the following years, local PPP projects have gradually replaced centrally implemented initiatives. While it is true that the aggregate value of projects carried out at the local level exceeds the total cost of those implemented at the central level, projects of key significance are still implemented centrally.

The public-private partnership model was initially used for the development of social infrastructure (e.g., healthcare, education), to which transport infrastructure was later added. Following the global financial crisis of 2008, PPP mechanisms have been applied in economic projects.

In the United Kingdom, as a country with a complex administrative structure, PPP relations take place at various levels of governance, incorporating a variety of different actors. These include the following: central authorities, the administrations of Scotland, Northern Ireland, and Wales, local authorities, and various state agencies (there are 353 local governance entities in England alone).

At the central level, the principal agency responsible for PPP relations is the UK's Economic and Finance Ministry (HM Treasury). The Treasury's system incorporates various agencies established to promote infrastructure and PPP development, including the primary entity, Infrastructure UK (IUK), founded in 2009. In 2010, IUK was merged with Partnerships UK (PUK), which operated as a PPP unit, assisting all levels of government in PFI/PPP project implementation. PUK itself was an organization created through a partnership between HM Treasury and the private sector, the main objective of which was to promote PPP. In 2016, IUK was replaced by the Infrastructure and Project Authority, which was established as a result of a merger between IUK and the Major Project Authority. It is this agency that currently provides oversight and coordination of large projects at the central level.

England serves as a good example of PPP project implementation locally: PPP project management at the local level is a function of the local authorities, which receive support in the development and implementation of PPP projects (including negotiations) from Local Partnership, an organization established jointly by HM Treasury and the Local Government Association. In some municipalities (e.g., Leeds), PPP units are established to carry out public-private partnership initiatives. The Project Review Group (PRG) has also played a significant role in the development of PPP management at the local level. The PRG brings together representatives of HM Treasury and the Ministry of Housing, Communities and Local Government and oversees PFI project selection and implementation.

Although local governments have the freedom to select key projects for specific territorial units, they frequently coincide with the central government programmes, effectively contributing to the achievement of national objectives.

While there is sufficient PPP project implementation experience at the local level, the fulfilment of financial obligations assumed by local authorities within the framework of PPP projects remains problematic. Ultimately, these commitments are fulfilled by grants and credits allocated by the central government.

According to the World Bank's Benchmarking Infrastructure Development 2020 report¹⁴, the United Kingdom has fairly high scores in PPP project implementation:



PREPARATION – 82 POINTS (OUT OF A MAXIMUM OF 100)



PROCUREMENT – 77 POINTS (OUT OF 100)



CONTRACT MANAGEMENT – 85 POINTS (MAXIMUM: 100 POINTS)

The unsolicited proposal (USP) model is not implemented in the UK, and, hence, there are no related regulations.

The UK's scores in all three components exceed average global and regional ratings, as well as those for other high-income countries.

¹⁴ The World Bank, *Benchmarking Infrastructure Development 2020: Assessing Regulatory Quality to Prepare, Procure, and Manage PPPs and Traditional Public Investment in Infrastructure Projects*



Lithuania

Lithuania does not have a unified legal framework regulating public-private partnerships. PPPs are governed by several laws and PPP guidelines. The main regulatory acts for PPPs are the Law on Public Procurement and the Law on Concessions. Laws on Investment and Public and Municipal Property also apply. The PPP legislation of Lithuania, as an EU member state, is based on European Union regulations.

Concession procedures have been applied in Lithuania since 1996 to implement infrastructure projects. Since 2009, special regulations have been enacted for PPP implementation and PFI procedures have been introduced. In 2010, the Government of Lithuania launched a PPP support program, which also included the development of required standard documents and the engagement of the Investment Agency and the Central Project Management Agency (CPMA).

In Lithuania, public-private partnerships occur at both the central and local levels. Therefore, a PPP project procurement organization can be a ministry or a local agency.

PPP policy development and project oversight are among the functions of the Ministry of Finance, while project approval and quality control are the prerogatives of the CPMA.

The initiation and implementation of PPP projects is not centralized under one PPP unit and procurement agencies themselves are involved in the process at central or local levels.

PPP focus areas are not limited, and projects may take place both in concession/non-commercial, as well as commercially profitable areas. In the latter case, the forms of state support are defined by the investment law.

Prior to a tender announcement, non-commercial/concession PPP projects should be evaluated according to PPP guidelines, which, inter alia, include an assessment of value for money as per predefined criteria, as well as a review of a project's financial sustainability and budget. Non-concession PPP projects are additionally reviewed by the Public-Private Partnership Commission. In this case, a preliminary socio-economic impact assessment (SEIA) of the project is also mandatory.

A private partner is selected through a competitive tender process. As a mandatory step, bidders for a non-concession PPP project must be pre-selected or fulfil pre-qualification requirements. In certain cases, the legislation allows for exceptions by granting tenders without pre-qualification procedures; these cases and relevant procedures are also described in detail in the law.

Unsolicited proposals (USPs) are allowed, although detailed regulations regarding this process are not specified. USPs may be implemented only if the project initiated by the private sector is entirely new, or has been identified, but no feasibility study has been conducted. The initiator of a USP submits the proposal to the relevant state agency and, if approved, a tender is announced.

TABLE 1. Roles of key agencies involved in the PPP process

Central Project Management Agency (CPMA)

A state agency within the system of the Ministry of Finance provides consulting services to government organizations in the implementation of PPP projects. It is also responsible for evaluating PPP feasibility studies, determining their compliance with PPP methodology and standards.

CPMA functions also include the management and implementation of projects funded by the European Union and other donors.

Invest Lithuania

A state agency under the auspices of the Ministry of Economy consults the public sector on PPP project preparation and conducts negotiations with investors to attract project investment.

Invest Lithuania provides technical assistance to both investors (during tender preparation) and procuring authorities (during the bidding process).

Ministry of Finance

The Ministry acts as the main gatekeeper for PPPs. Its key task is to ensure that state liabilities resulting from PPP projects are manageable and that the projects are in line with budgetary policies. Moreover, the Ministry is responsible for the review and approval of PPP contracts.

Ministry of Economy

The agency is involved in drafting and proposing legislative amendments in terms of PPPs that aim to improve the investment climate and increase the country's international competitiveness.

Source: *Invest Lithuania, Public and Private Partnerships: Lithuania's Story (2018)*.

The legal framework and the regulations for the preparation and implementation of PPPs in Lithuania clearly define all stages of the process, as well as procedures that the project should undergo during implementation at both the central and local levels. Project evaluation takes place throughout the process.

Most PPP projects are carried out at the local/municipal level; accordingly, public partners are local authorities. As per the available statistic, 61 PPP contracts were concluded before 1 January 2020 with an investment of 190 million EUR (55% have been implemented locally, while 6 – at the central level).¹⁵

Under the investment law, the private sector may be granted the following functions: infrastructure design, construction, reconstruction, repair, renovation, management, maintenance, as well as service provision. PPP project implementation occurs in nearly all sectors, and in exceptional cases, can only be allowed after government approval.

Under the Laws on Concessions and Investment, PPP projects in Lithuania are mainly implemented according to two schemes:



Contractual PPPs, applied in the case of PFIs and concessions; and



Institutional PPPs, implemented when the (central or local) public partner invests in capital equally alongside a private partner.

However, contractual PPP projects in Lithuania are implemented more frequently, since this scheme is more acceptable for both the public and the private sectors.

The maximum duration of a PPP project is 25 years. In practice, this timeframe often ranges from 13 to 25 years.

Although local authorities have the capacity to initiate and implement both concessions and commercial PPP projects, both the Ministry of Finance and the Central Agency for Project Management (CPMA) are involved in the process. In addition, the Municipal Council has the final word at all stages of project approval. Investment projects and the final contract are reviewed by the municipal controller, which serves the role of an external auditor in the municipality.

¹⁵ Source: CPMA, [List of Public and Private Sector Partnership Contracts](#).

When the (central or local) procuring authority decides to apply the PPP model, it must complete and submit a PPP questionnaire to the CPMA, together with an investment project. The latter then conducts an analysis and provides a conclusion on whether the investment project is in line with PPP methodologies, and whether the PPP is a suitable model for the project. In the case of a central-level PPP, the project is submitted for final approval to the government via the Ministry of Finance. In cases where state liabilities exceed 58 million EUR, additional approval from parliament is required. At the local level, projects are reviewed by the Municipal Council, while the Ministry of Finance ultimately assesses PPP contracts and, in case of remarks, returns them to the procuring authority for correction.¹⁶

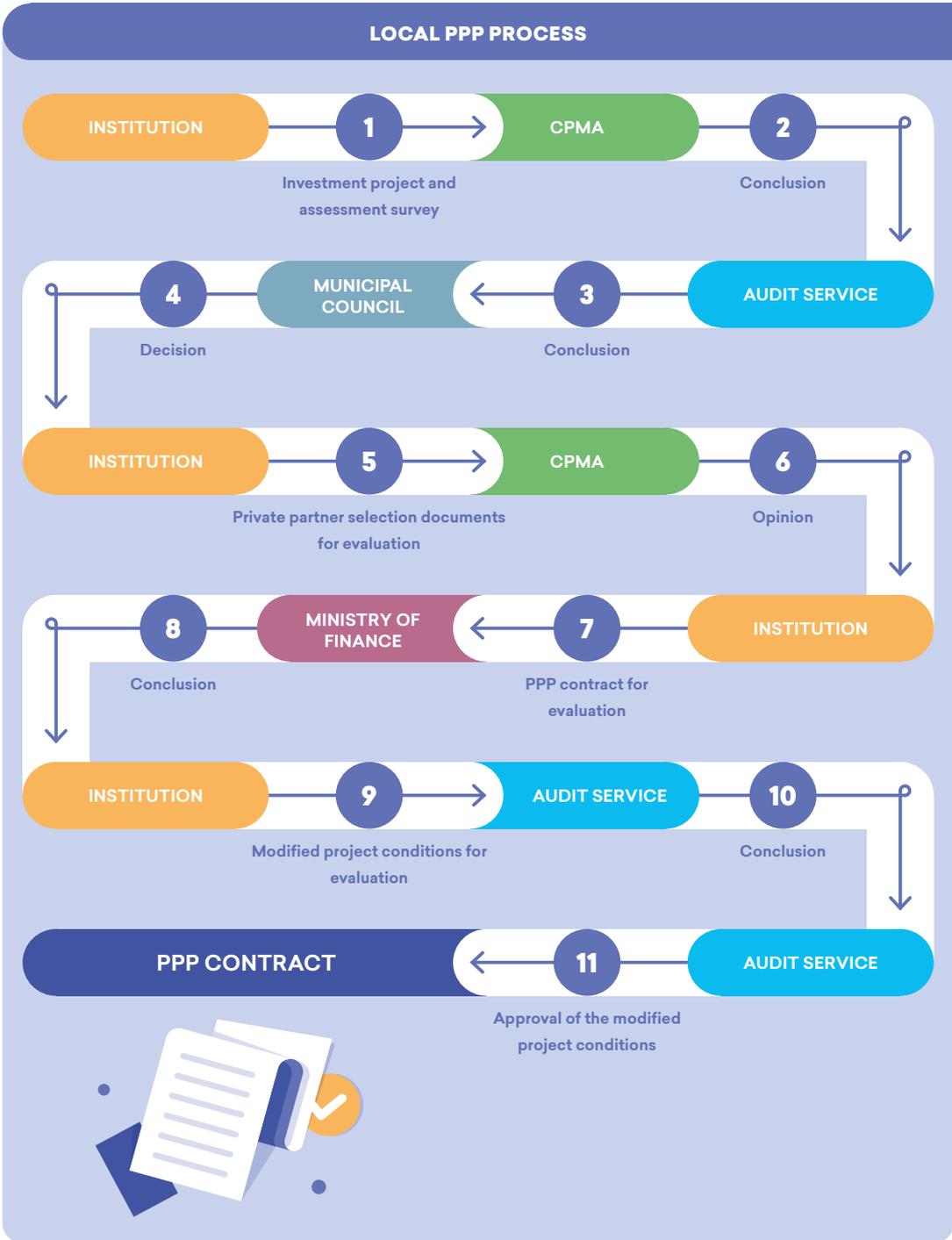
Figure 1 shows that the stages for PPP projects at the central and local level are virtually identical; however, instead of the engagement of the central government, the local PPP process involves the Municipal Council. The Central Project Management Agency (CPMA) participates on two occasions in both cases: 1) Assessing the investment projects and questionnaire; and 2) Evaluating the selection documents for the private partner. In case of local PPPs, the Ministry of Finance evaluates PPP contracts and draws conclusions.

In both cases, the pathway from the initiation of the project to the conclusion of the contract comprises an 11-step process.

¹⁶ Invest Lithuania, *Public and Private Partnerships: Lithuania's Story* (2018).

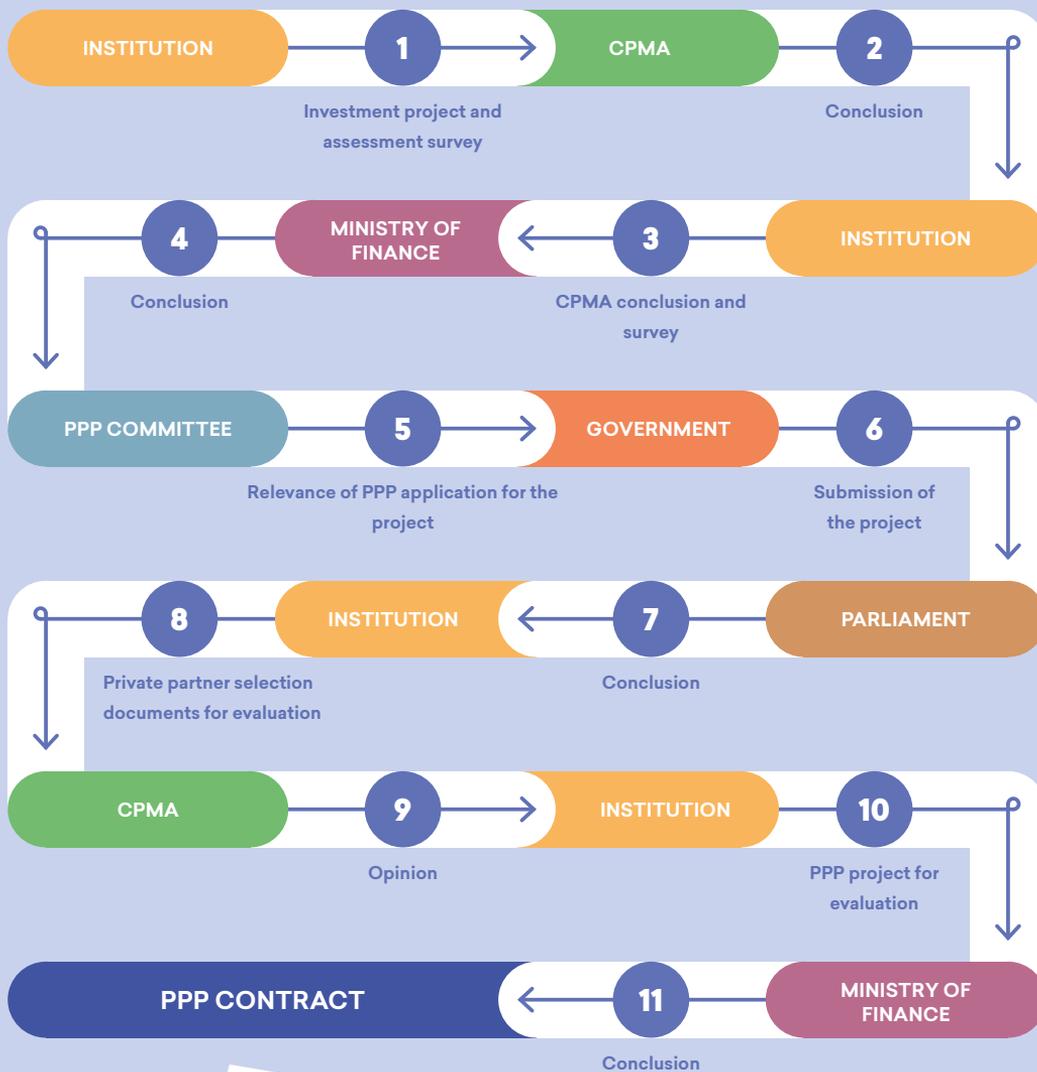
FIGURE 1.

Process stages for central and local PPP projects



Source: *PPP Lietuva*.

CENTRAL PPP PROCESS



Depending on the specifics of the project, private partner selection can take up to 6 months in the case of a standard project; if the project is complex, the process may take up to 1.5-2 years.

Although not required by law, agencies involved in the PPP process (e.g., Invest Lithuania) and CPMA may monitor the progress of the project.

Experts engaged with the PPP Competence Centre – PPP Lietuva¹⁷ provide advice and consultancy to Lithuanian state agencies in PPP processes. Their competence includes PPP project initiation and development, assessment of feasibility studies, project evaluation and preparation of project documentation. PPP Lietuva conducts capacity development trainings in PPP, and its experts have themselves been trained in the UK and United States.

In Lithuania, the PPP process is constantly being re-evaluated and relevant legislation, regulatory frameworks and guidelines improved. For example, at the initial stage, PPP project implementation encountered certain problems, especially in the case of small-scale projects implemented at the municipal level (as it turned out, this was due to the fact that private sector interests were not adequately researched during the project development process); tenders were announced for projects that proved to be uninteresting for the private sector and commercially unattractive, which led to unsuccessful tenders. To avoid such outcomes in the future, especially in the case of large-scale PPP projects, the CPMA has developed methodological recommendations for procuring authorities on consulting the private sector and conducting market research prior to project development.¹⁸ In particular, in 2015, methodological recommendations for market research and communication plan development for PPPs initiated by public entities were produced.¹⁹ The document describes in detail the significance of a complex and multi-stage market research process prior to the initiation of a PPP project. The **first stage** defines the objective to be achieved by the market research: namely, an assessment of the scale of the problem, potential private partners (both local and international), and their capacities is conducted; moreover, marketing tools (survey, public conference, engagement of the NGO sector, etc.) for the market research are selected; at the **second stage**, the market research itself is conducted: an assessment is first carried out to determine whether a similar problem may have been resolved through

¹⁷ [PPP Lietuva](#)

¹⁸ *Invest Lithuania, Public and Private Partnerships: Lithuania's Story (2018)*

¹⁹ *CPMA, PPP Lietuva, [Methodological Recommendations for the Development of a Communication Plan and Market Research for Public-Private Partnership Projects Initiated by a Public Entity](#)*

a PPP model elsewhere; funding issues for potential executive agencies are defined (whether they have access to local or international funding modalities). At this stage, the financial attractiveness of the project, and risks associated with its implementation are also reviewed in detail. The private sector is given the opportunity to provide comments and recommendations on the project; at the **third stage**, the collected information is assessed, and a relevant decision is made.

The methodological guidelines also identify the need for an intensive communication plan around the PPP project. This document entails communication with all stakeholders, including private companies, associations, the public, the NGO sector, other members of government, etc.

The Lithuanian Public Private Partnership Association²⁰ brings together stakeholders interested in PPP development and analyzes the PPP process with the purpose of its further improvement. Membership in the PPP Association is possible after making a contribution, the amount of which is less for individuals than legal entities.

The Lithuanian PPP Association, in cooperation with Invest Lithuania, has defined a 7-step action plan to improve the efficiency of the process:

1

Development of long-term sectoral PPP plans: At this stage, PPP plans and guidelines have not yet been developed across sectoral lines. These guidelines will support the public sector to identify resources required in the long run, and provide investors with an opportunity to better assess investment potential for a longer period of time;

2

Investor engagement at the initial stage of PPP project development: The private sector should be enabled to submit their proposals on the project concept to make it more attractive for investors and increase their involvement in the selection process;

3

Introduction of international PPP standards: The engagement of international experts at all stages of the PPP process should be ensured, which will further increase transparency and investor confidence in the process; to increase competition, tender documents should be published not only in Lithuanian but also in other international languages;

²⁰ [Lithuanian PPP Association](#)

4

Increase system efficiency for private initiatives: USP guidelines should be developed, since the lack of such guidelines in a context where legislation allows for USPs reduces investor interest;

5

Centralization of project identification and the PPP process as a whole: A centralized procuring organization for PPP projects should be established, which will concentrate expertise and, accordingly, mobilize highly qualified personnel; it will also increase the quality of project implementation. This implies the inclusion of local PPP projects into the portfolio;

6

Establishment of a state fund for the co-financing of PPP projects: Such a fund will help increase investor confidence and decrease risks; therefore, more investors will be interested in such projects;

7

Improvement of legislation in line with international best practice: New international best practice should be analyzed and taken into account when developing or amending legislation

Lithuania is one of the most successful countries in terms of fostering public-private partnerships. Its PPP legislation received quite a high rating from the EBRD: as per the 2017-2018 assessment, Lithuania's PPP regulatory laws received a score of 95 out of 100; legal framework compliance is at 78%, effectiveness – at 80%. PPP project bankability amounts to 70%, while Lithuania's overall rating is 79%. According to the EBRD, Lithuania's legal framework for PPPs is in line with the highest international standards.²¹

According to the World Bank ([Benchmarking Infrastructure Development 2020](#)), Lithuania has 77 out of a maximum of 100 points in PPP project preparation, 80 – in procurement, 79 – in contract management and 67 – in USPs. In nearly all components, aside from USP, Lithuania's ranking exceeds global and regional averages, as well as those for countries with a similar income level (high income).

²¹ [2017/2018 PPP Laws Assessment in the EBRD Region](#)

EXAMPLES OF MUNICIPAL PPP PROJECTS IMPLEMENTED IN LITHUANIA



Improvement of municipal infrastructure – Street Lighting, Kaunas:



Improvement of street lighting and increase of energy efficiency



Project duration – 15 years



Project value – 12.67 million EUR



Private investment – 5.2 million EUR



Private partner obligation – lighting design, construction/installation, and service provision



Development of recreation infrastructure on the Great Island of Lake Zarasas, Zarasai Municipality:



Development of a tourist center



Concession contract granting the right to manage and utilize the site



Duration – 15 years



Private investment – 115,849 EUR



Private partner obligation – economic activity and provision of public services



Multifunctional Center Project, Palanga (Palanga Municipality):

- ✓ Concession agreement granting the right to management and utilization
- 🕒 Project duration – 20 years
- € Project value – 9.2 million EUR
- ➔ Private partner obligations – commercial activities in the field of culture, including in order to attract local and foreign tourism



Municipal Traffic Stop Project, Kaunas:

- ✓ Concession agreement
- 🕒 Project duration – 20 years
- € Project value – 13.6 million EUR
- € Private investment – 8.3 million EUR
- ➔ Private partner obligations – development, maintenance and operation of traffic stop infrastructure

Source: [PPP Lietuva](#).



Serbia

The first law on public-private partnerships in Serbia was adopted in 2003, however, it failed and a new law on PPPs and concessions (hereinafter the PPPCL)²² was adopted in 2011. In 2016, the law was amended twice to reflect certain aspects in terms of several complex PPP projects ongoing at the time, which contributed to the successful implementation of these projects.

Serbia, as an EU candidate country, has its PPP legislation heavily influenced by relevant EU regulations (described in the section on EU regulations above).

Under the PPPCL, the Commission for PPP was established in 2012, comprising of members of state and local government. The Commission oversees the entire PPP cycle, including the review and assessment of concession/non-concession proposals and approval procedures for PPP projects; it also coordinates consultation processes and events related to PPP. Since its inception until late 2020, the Commission for PPP has approved 170 projects²³, of which most concession projects were developed at the local level.

According to the legislation, depending on the authority, PPP projects are initiated at the central, autonomous province, and local/municipal levels. The public partner on the side of the state may be as follows:



A central government body or a state organization, which is directly or indirectly funded from the state budget;



Autonomous provinces or local authorities;



State enterprise;



Legal entity, where over 50% of the governance body is comprised of state agencies; where over 50% of the voting rights are held by state representatives; where operations are supervised by a state agency; where over 50% of shares are owned by a public body, or where over 50% of funding is sourced from the state/local budget.

²² *Law of Serbia on Public-Private Partnerships and Concessions, 2011.*

²³ *Projects approved by the Commission for PPP*

Given the above, organizations authorized by the state to draft PPP projects are as follows: the central government, government of an autonomous province, municipal assembly, state enterprise, and a legal entity with government shareholding.

An interested agency/organization (central or local) submits a PPP proposal to the Commission for PPP, which evaluates the project and renders a conclusion on whether the PPP model is pertinent for the specific project.

If the estimated cost of a PPP project submitted by a central, local, or other state enterprise/legal entity exceeds 50 million EUR, the Commission for PPP is required to request a conclusion from the Ministry of Finance.

If a PPP project is implemented at the central level, the procuring entity submits it to the Government of Serbia for approval. If the project is implemented at the level of an autonomous province, it is delivered to and approved by the government of the autonomous province, while approval of a project at the local/municipal level is the function of the local assembly (electoral body).

Depending on which level the PPP project is implemented, the contract is supervised by the following entities: the Ministry of Finance, competent authorities of an autonomous province, or local-level authorities. Moreover, these organizations may request oversight by relevant inspectorates and tax authorities.

PPP projects in Serbia, like in Lithuania, are contractual and institutional:



In case of contractual PPPs, the rights and duties of the parties are governed solely by a PPP contract. If the project contains elements of concession, it may also be regulated by legislation in a specific field;



In case of an institutional PPP, a public and private partner invest in capital and, for this purpose, establish a joint enterprise in the form of a Special Purpose Vehicle (SPV), which oversees the implementation of the PPP project.

The PPP project should meet the following criteria:



There should be a demand for the operation or services of a particular facility;



The public partner should possess the resources necessary for the implementation of the project;



An assessment of investment effectiveness and financial analysis should be performed;



Value for money should be defined, etc.

According to the PPPCL, the private partner is selected on the basis of the Public Procurement Law, or the PPPCL itself (in the case of a concession).

Serbia allows and regulates Unsolicited Proposals (USPs), which may be initiated by a private enterprise. Although, even in this case, a tender is announced, where the project initiator company can also take part if this participation does not violate the tender. The authorized agency/organization will only review the USP if it is not associated with a PPP project, for which a tender has already been announced. If a USP-initiator private company enjoys a competitive advantage over other bidders, the public partner is liable to provide them with information that will help equalize the conditions. If the USP-initiator's competitive advantage is not neutralized, it may be removed from the PPP process.

In case of a concession PPP, an approval from the Ministry of Finance is required, regardless of which level the project is implemented at.

PPPs in Serbia are also supported by the National Alliance for Economic Development (NALED), which comprises of local authorities, the private sector and civil society representatives.²⁴ NALED's principal mission objectives are to improve the regulatory and institutional framework for business, and to strengthen the capacities and responsibility of state institutions, including around public-private partnerships.

The EBRD has assigned quite a high ranking to the level of compliance of Serbia's PPP legal framework with international standards and its effectiveness.²⁵ The legislation governing PPPs and concessions has been awarded a maximum of 100 points. The general compliance rate is at 90%, effectiveness – at 76%, while PPP bankability is rated at 82%. Serbia's total rating amounts to 83%.

²⁴ [*National Alliance for Economic Development*](#).

²⁵ [*2017/2018 PPP Laws Assessment in the EBRD Region*](#)

According to the World Bank's [Benchmarking Infrastructure Development report for 2020](#), Serbia holds the highest rating of 90 points (out of a maximum of 100) in the PPP project procurement component; in contract management, Serbia has been awarded 68 points, in the USP component – 67 points, while in PPP preparation – 48 points. Serbia's ranking in three components – PPP procurement, contract management and USP – exceeds global and regional indicators, as well as the averages among countries with a similar level of income (upper middle); in the PPP preparation component, Serbia is 2 points behind the regional indicator, although it exceeds the global average and that for countries with a similar income level.

EXAMPLES OF MUNICIPAL PROJECTS IMPLEMENTED IN SERBIA



Municipal Solid Waste Processing Plant, Belgrade:



The plant will process up to 1,000 tons of waste per year



Type of PPP – BOT



Project duration – 25 years



Project value – 416.3 million USD



Water Purification Plant, Zrenjanin:



The plant will process up to 1,000 tons of waste per year



Construction and operation of the plant; type of PPP – BOT



Project duration – 15 years



Project value – 33.3 million USD

Source: WB, [PPP Knowledge Lab](#).

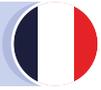


Passenger transport, Loznica: Regular urban and suburban passenger transport.



Communal infrastructure, Stara Pazova Municipality: Construction, management, and technical maintenance of sewerage infrastructure/ network.

Source: PPP Commission, [Approved projects](#).



France

PPP mechanisms have been applied in France since 2003. Initially, PPP project implementation faced certain difficulties, which were mainly brought about by legislative innovation, although merely a year later, as of 2005, the number of PPP contracts has been growing on an annual basis. Over a short period of time, France occupied nearly half of Europe's PPP market, and even surpassed the UK, where this model was first introduced in the 1990s.²⁶

From the very outset, the local government has been actively applying the PPP model to finance infrastructure projects in France. In 2005-2012, approximately 80% of infrastructure projects and 2/3 of the total value were initiated, concluded, and funded by local governments.

As noted, to date, France is one of the leading countries in successful PPP implementation, including at the local level.

The PPP model is applied in numerous sectors in France (e.g., transport, healthcare, education, energy efficiency, telecommunications, culture, etc.). The country's PPP market is quite large, and the total cost of PPP projects exceeds 100 billion EUR.²⁷

PPP legislation in France was amended several years ago to reflect the new EU directives (see section 4.1 Regulations for public-private partnerships in the European Union). In 2018, the government adopted the Public Procurement and Concession Agreements Code (PPP Code), the main purpose of which was to gather in one document all regulations related to public procurement and concessions, and to improve access to the private sector, especially, for small and medium-sized businesses. The new Code entered into force on 1 April 2019.

In France, PPP projects are implemented both at the central and local levels. The local government is quite active in terms of public-private partnerships. For instance, in 2020, it was at the local level that a number of key high-profile projects were implemented, including: the Fibre-to-home network – a PPP project (concession) on broadband internet, valued at approximately 500 million EUR, with a duration of 25 years (Loiret);²⁸ a port project in Cannes aimed at the development of a port and maritime infrastructure, valued at approximately 525 million EUR (Cannes).

²⁶ *Stephane Saussier and Phuong Tra Tran, The Efficiency of Public-Private Partnerships in France.*

²⁷ *Law Reviews; The Public-Private Partnership Law Review: France, 2021.*

²⁸ *A department, administrative unit, in the Centre-Val de Loire region of north-central France.*

In France, too, generally two types of PPP models are applied: Concessions – in case of large infrastructure projects, and Partnership Contracts, similar to Private Finance Initiatives (PFIs). These two models differ from each other also in project funding. In the case of partnership contracts, the state pays the private sector a “lease” for project implementation, while concession contracts are mainly financed by service recipients.

According to a partnership contract, a private partner carries out the project (including design, construction, dismantling, (technical) maintenance, refurbishment, intangible assets, etc.), during the period established by the agreed terms and conditions for investment amortization or financing. This type of PPP is used in the following cases:



If the value of intangible assets exceeds 2 million EUR and the contract contains specific performance objectives



If the value of network infrastructure exceeds 5 million EUR



If the project value exceeds 10 million EUR, except for the above cases

In the case of concession PPPs, the concessionaire (or a group of concessionaires) may manage the works or services for a (limited) period. In this case:



The risk associated with operating works or services is transferred to the private partner, in return for the right to the implementation/operation



The private partner may receive additional remuneration



The risks transferred to the private partner necessarily entail market fluctuations

Generally, in France, concessions are used more frequently than partnership contracts.

Other than central and local authorities and public institutions, a non-profit public company, a company founded by several public organizations, or a state-owned network operator can also be a party to a PPP contract.

The approval of the Ministry of the Economy and Finance is required for the conclusion of PPP contracts implemented at the central level. This is not a requirement for projects carried out locally.

In general, at the local level, a private partner for a PPP project is selected by the procuring entity/organization, which concludes the contract.

One of the key participants in the PPP process is the PPP Support Service – FIN INFRA,²⁹ a specialized unit within the auspices of the Ministry of the Economy and Finance, which renders support to public partners in PPP project implementation. FIN INFRA is responsible for the pre-tender evaluation and validation of PPP projects developed by public partners. The agency consults public bodies both in the preparation of PPP contracts and in negotiations with private partners. One of its key functions in the PPP process is the development of a conclusion on the sustainability of the PPP initiatives. FIN INFRA is also required to submit signed copies of the PPP contracts to the procuring organization.

The private partner will in most cases be selected through a competitive tender.

State guarantees for PPP projects are not specified per se, although, in 2009, France adopted a guarantee mechanism to support PPP investment projects affected by the global financial crisis. Only one of the four major PPP projects selected by FIN INFRA benefited from the guarantee scheme. Unlike the state, local governments can issue a loan guarantee to a private partner to implement a PPP project.

France's PPP legislation enables a government agency to unilaterally amend a PPP contract due to public interest, although the details of the amendment are regulated in such a way so as not to disrupt the structure of the project.

A PPP agreement (concession or partnership contract) may be prematurely terminated by the contractor if the Court of Justice of the European Union (CJEU) finds that a country has materially breached its obligations under the EU common market, due to which the PPP contract should not have been concluded.

The PPP project financing scheme envisages a high debt-to-equity ratio, depending on a specific project and relevant market. This scheme implies a non-recourse model, as per which the project investor/private partner is not required to cover project debt if the income is insufficient to cover full loan servicing.

Unsolicited proposals are not regulated in France, and thus not implemented in practice.

According to the World Bank's [Benchmarking Infrastructure Development 2020](#), France has the highest rating – 87 points (out of a maximum of 100) – in the PPP procurement component; in PPP preparation, France has been awarded 60 points, while in Management – 69.

²⁹ PPP Support Service - [FIN INFRA](#).



5. Key findings

An analysis of international practice had led to several key factors:



Some countries do not have a unified legal framework for public-private partnerships and PPP projects are regulated by a variety of legislative acts and guidelines



Local authorities widely apply the PPP mechanism to carry out key projects



At the local level, PPP projects are implemented in various sectors, and the form of implementation also varies



Particularly large-scale projects are mainly implemented centrally, while PPP projects carried out at the subnational level have a more localized nature. Nevertheless, they should be included in general development priorities and respond to local needs



In virtually every country, the Ministry of Finance, or another agency responsible for state fiscal policy, is involved at some stage of the PPP process both at the central and local levels, the purpose being to assess and minimize fiscal risks



In several countries, decisions on PPP projects carried out at different levels are taken by a relevant branch of the government – at the local level, the local authorities are generally responsible (except in cases where the project is particularly large-scale)



In some cases, especially in the case of particularly large-scale projects, the legislature is involved in the decision-making process



There is a dedicated PPP unit (one or several) or other similar agency, which evaluates PPP projects and supports the parties in project implementation. In some countries, PPP units are found at both the central and local levels



In most countries, including in more developed states, effective implementation of PPP projects at the local level remains a problem due to a lack of qualified staff. Therefore, for instance, even in the UK, which is considered as one of the founders of the PPP process, the central government is, to some extent, still involved in the implementation of PPP projects at the local level



In most countries, organizations/associations established jointly by the public and private sectors address the following issues: capacity development of the parties involved in the PPP process; assisting the parties in the development and implementation of projects; identifying gaps in and improving the legislation, etc



6. Recommendations

To facilitate the PPP process at the local level and to maximize the role of the local authorities, based on the above analysis of international experience taking into account Georgia's specifics, the following issues require attention:

✓ **Municipal development strategy** - According to Paragraph 2, Article 12 of the Law on Public-Private Partnerships, municipal development strategies and action plans should include an outline of areas of interest and potential projects to be carried out under the PPP mechanism;

✓ **Areas of focus** - The following areas of focus can be considered for potential PPP projects (especially, inter-municipality initiatives) at the local level: Municipal water supply; sewage infrastructure and management (mainly, in large cities and towns); reclamation; solid waste management; municipal transport; preschools; design and management of recreational parks, etc. Moreover, PPP projects can also be implemented in the field of tourism, which is one of the key sectors of development. This could entail the development/rehabilitation /management of amusement parks, and other key tourist attractions. The PPP model (whether it is Build-Own-Operate (BOO), Build-Operate-Transfer (BOT), Build-Own-Operate-Transfer (BOOT), management contract, concession, etc.) depends on each individual project, its specifics and private sector interest, which can be identified in prior consultations with the private entity (see recommendation below). Due to the complexity of inter-municipal PPP project management, in the case of three or more parties, it becomes quite difficult to distribute duties and responsibilities (including in terms of reflecting financial obligations in the local budget). It is also difficult to manage the projects effectively (especially given that, at present, even awareness of public-private partnerships at the municipal level is rather low, and, hence, no relevant practice exists). Thus, it is imperative that, prior to the launch of inter-municipal projects, local authorities have accumulated relevant experience in the application of the PPP model;

✓ **Preliminary list of PPP projects** - When drafting the annual budget, the local authorities should identify a list of key priority projects to be implemented with the PPP model, firstly focused on infrastructure improvement and, later on, other fields. The Public Private Partnership Agency and the Ministry of Finance should evaluate the relevance of applying the PPP model to these projects (including within the PIM process). If the PPP model is deemed appropriate, the municipality should consider these projects when planning the budget for subsequent years and, at the same time, initiate the process of identifying a private partner/investor – either independently, or with the support of the Public Private Partnership Agency;

✓ **Preliminary consultations with private sector** - Prior to the development of a preliminary list of PPP projects, it is essential that the municipalities conduct consultations with the private sector (market research). This will help define the private sector's readiness to engage in the process, as well as motivate the private sector itself to become involved in project development at the local level;

✓ **Capacity development and training** - Prior to introducing changes to the legal and institutional framework, it is essential to consider the factors that underlie the current framework. Staff capacity remains a problem for the independent and effective management of the PPP process at the local level. To address this problem, both the Ministry of Finance and the central government should be engaged in this process. Therefore, it is important to develop locally qualified human resources, who will be equipped with analytical and other skills required for PPP implementation;

✓ **Increasing decision-making discretion at the local level** - In the case of local-level capacity development and increased fiscal decentralization, Georgia may adopt certain elements from the Lithuanian model. In this case, local authorities will be responsible for rendering decisions to implement PPP projects, however, the engagement of the Ministry of Finance and the Public Private Partnership Agency will remain mandatory, as prescribed by international practice;

✓ **Outsourcing PPP expertise** - In the absence of qualified staff, as an alternative, one or a group of municipalities may hire a qualified company. This will assist the local authorities through significant milestones of the PPP process (such as evaluating the initiative, designing the project, preliminary risk analysis, etc.) and submission of the initiative to the subsequent authorized agency. This approach will facilitate the development of relatively high-quality projects and minimize the risk of unscrupulous performances (which, as international practice shows, also constitutes a problem at the local level);

✓ **Enhancing the role of local councils in the PPP process** - It is essential to increase the engagement of local representative bodies/councils in the PPP process. The council should be the body which takes the final decision on the implementation of the PPP project (instead of the government, as determined by law and practice today);

✓ **Monetary limits** - At the initial stage, it is recommended to introduce monetary caps for PPP projects at the local level. These may be expressed as project cost margins – the value of PPP projects to be implemented at the local level should not exceed 20 million GEL;

✓ **Cooperation between municipalities/regions** - There are projects (more frequently – in infrastructure) that require economies of scale and may cover several municipalities. Hence, cooperation between municipalities in the implementation of such projects is crucial. To enable such cooperation, relevant regulations or guidelines should be introduced at the legislative level. This will increase the effectiveness of the project, as well as benefits/value for money.



Annex 1. List of interviews

N	NAME	POSITION
1	NIKOLoz GAGUA	Deputy Minister of Finance of Georgia
2	SHOTA GUNIA	Head of the Fiscal Risk Division (Ministry of Finance of Georgia)
3	VAKHTANG TSINSTADZE	Head of the Department for Economic Analysis (Ministry of Economy and Sustainable Development of Georgia)
4	NATALIA MOTSONELIDZE	Acting Head of the Public Private Partnership Agency
5	VIKTOR TSILOSANI	Head of the Transport and Urban Development Agency, Tbilisi City Hall
6	GIORGI SAKHOKIA	State Representative in the Guria Region
7	VAKHTANG GVELEBIANI	Deputy Head of the Regional Project Management Service, State Representative Administration in the Guria Region
8	MALKHAZ TORIA	State Representative in the Samegrelo-Zemo Svaneti Region
9	GIORGI SHENGELIA	Mayor of Zugdidi

