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## **PROBLEMS AND PERSPECTIVES OF THE PUBLIC-PRIVATE PARTNERSHIPS APPLICATION IN GREEN INVESTMENT POLICY AT THE LOCAL LEVEL**

The article revealed the ineffectiveness of state policy and the lack of a systematic approach to the implementation of the mechanism of public-private partnership in Ukraine; justified the expediency of developing and applying the mechanism of public-private partnership at the local level in the framework of the «green» investment policy; outlined the specifics of normative-legal regulation of the mechanism of public-private partnership in Ukraine; identified the main obstacles to institutionalization and widespread use of the mechanism of public-private partnership at the local level; proposals were made to overcome them, taking into account international experience; formulated the main ways of establishing effective cooperation with private investors within the framework of the mechanism of public-private partnership at the local level.

**Keywords:** public-private partnership, «green» investment policy, local level of government, institutionalization, mechanism.

**Urgency of research.** In recent years, radical changes in economic and social realities have aggravated the need to improve the quality of life and a new challenge for public authorities has been that the corresponding expectations of the population need to be coordinated not only with the existing capabilities of the state but also to take into account the needs of future generations, not just intensive development, but sustainable, oriented to each person, development. Identifying the «green» economy as fundamental to solving this problem, the next step is to mobilize investment for its development.

In turn, the formation of a state «green» investment policy requires the development of appropriate mechanisms for achieving the objectives, and one of the mechanisms that can be applied to fulfill most of them, in accordance with the strategic directions, is public-private partnership (PPP).

**Actual scientific researches and issues analysis.** The problem of PPP development was studied by many scientists, including I. Zapatrina, A. Pavlyuk, O. Piltay, P. Shilepnitsky, V. Varnavskiy, J. Delmon, M. Moszoro, N.A. Khan, G. Hodge and K. Gray and many others.

In particular P. Shilepnitsky in his research<sup>1</sup> provides an exhaustive definition of the concept of "public-private partnership" as a complex of relations that are stable and lasting and arise between the state in the person of central and regional executive authorities and local self-government on the one hand, and representatives of business, civil society institutions and local communities, on the other hand, regarding the redistribution of powers for the establishment of a general-purpose infrastructure, the production of goods and the provision of services that were traditionally considered as the state monopoly and the settlement between the parties in connection with this the following issues: distribution of responsibilities, risks, obligations for financial support, design, construction, maintenance, exploitation, ownership, participation in management and distribution of profits based on the principles of equality, openness, non-discrimination, competition, efficiency and minimization of risks and costs.

It should be added that it is expedient to emphasize the definition of PPP as a mechanism of the investment policy of the state, which in the end should contribute to raising the socio-economic level of the country. This specification allows us to determine the vector on which the PPP should be institutionalized.

The need for a widespread PPP, in particular on the path to sustainable development, has been repeatedly highlighted by the international community at the highest level. In particular, in 2015, during the World Summit on «green» economy, the emphasis was put on the need to increase PPP growth rates in order to facilitate the implementation of «green» projects and initiatives, which stipulates the separation

<sup>1</sup> Шилепницький, П.І. (2005). *Державно-приватне партнерство: теорія і практика*: монографія. Чернівці: Інститут регіональних досліджень НАН України.

of «green» investment policy into a separate sphere of state regulation. In these conditions, there is a need to study the specifics of the use of PPP as a mechanism for green investment policy and to identify ways to enhance it in this area.

**Target setting.** The purpose of this study is to analyze the main issues, identify prospects and formulate the main proposals for the application of public-private partnership in the framework of the «green» investment policy at the local level.

**The statement of basic materials.** It should be noted that according to the data of the Ministry of Economic Development and Trade in Ukraine<sup>1</sup>, 192 PPP contracts are registered, of which only 66 or 34.4% are realized. The regional and sectoral structure of these projects can be seen in Figure 1.

The above figure shows that there is currently no systemic approach to the implementation of the PPP mechanism in the country, there are barriers to its application, the problem of effective attraction of investors' funds remains unresolved. In particular, the issue of regulatory and legal harmonization of PPP laws and concessions, which involves the existence of common areas of application and, at the same time, different mechanisms of implementation (simplified in the case of concessions), remains unresolved; absence of regulations on settlement of possible currency risks of investors who act as private partners in PPP projects; the absence in the Tax Code of the provisions on preferential tax treatment for a private partner; increased risks of implementing long-term projects due to inconsistency with the Budget Code; complexity and length of conciliation procedures; low degree of institutionalization.

Therefore, it is urgent for Ukraine to resolve the issue of how to gain a positive experience in implementing PPP projects both at the state and local levels in the absence of funding, when the involvement of public institutions and the corresponding institutional formations are very poor.

It should be noted that the decentralization reform, which is currently in the implementation phase and closely linked to the reform of intergovernmental fiscal relations, creates the preconditions for further development of the country to a greater extent depend on how the state policy on the ground will be implemented. It is logical, therefore, that within the framework of the «green» investment policy, the implementation of tasks on the basis of PPPs will be directly and more widely applied at the local level, and local authorities should become the source of the development of the PPP mechanism in Ukraine. In particular, the following arguments can be used in favor of this statement:

- The smaller the project, the lower investment risk, especially in the context of political instability, so small projects at the local level are more attractive to private investors;
- Local authorities can transfer part of their liabilities to municipal investors to a private investor;
- The possibility of attracting additional resources to the project implementation within the framework of state programs aimed at local (regional) development;
- Cooperation of various levels of government will ensure standardization of the implementation of the PPP mechanism and the creation of a national network of such projects;
- Local authorities can provide a more constructive dialogue with investors through awareness of the specifics of the territory concerned, the level of demand and consumer expectations.

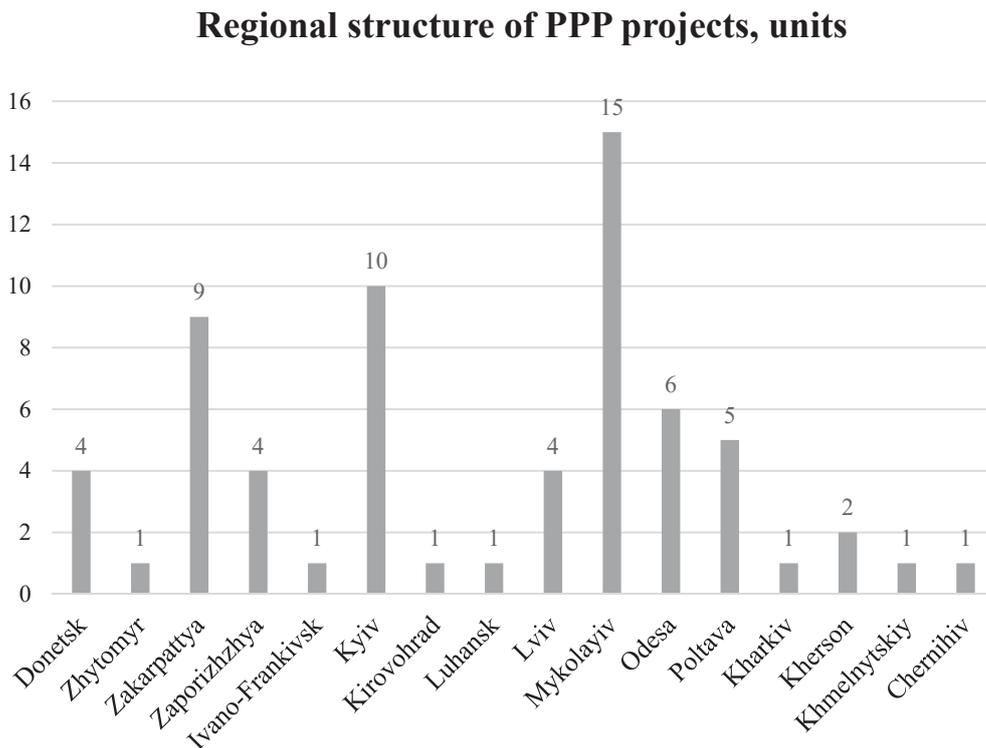
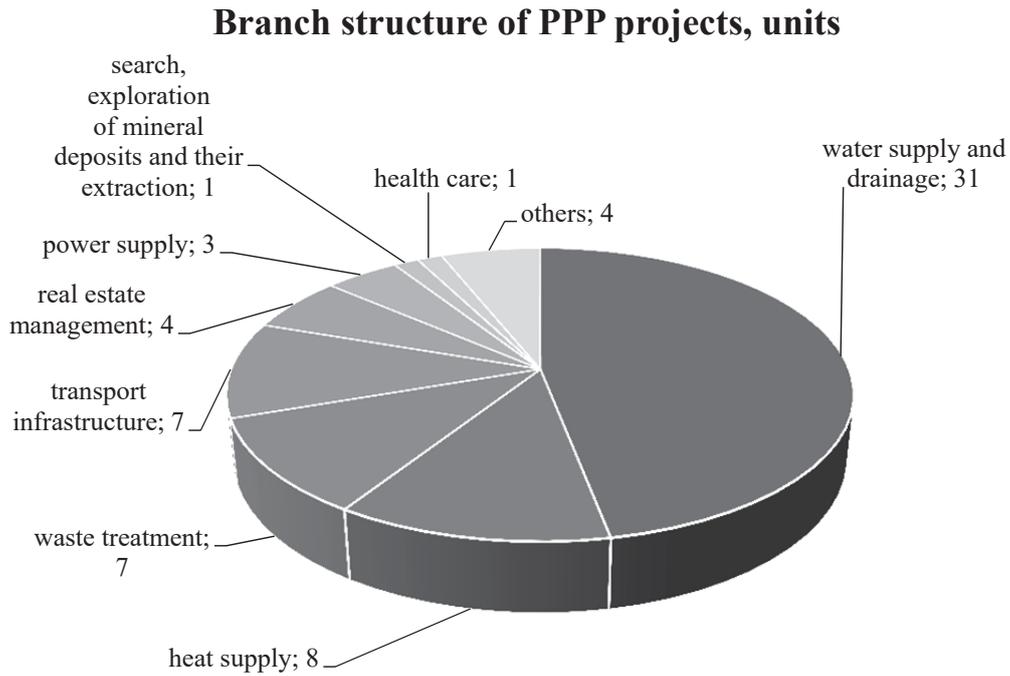
According to the Law of Ukraine on public-private partnership<sup>2</sup> and the Procedure for granting state support to the implementation of public-private partnership, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 17, 2011, No. 279<sup>3</sup>, the initiator of a proposal for state support may be a public or private partner, in agreement with a public partner at all stages of the implementation of the contract.

As it is anticipated that PPP projects will be planned for implementation at the local level, the PPP object should be owned by the law, so the relevant executive bodies of local self-government or individuals who can be private partners in accordance with the law prepare proposals for the implementation of PPP concerning communal properties and submit these proposals to the relevant village, settlement, city, district or regional councils or their authorized bodies.

<sup>1</sup> Міністерство економічного розвитку і торгівлі (2018). *Довідка щодо результатів здійснення ДПП (1 півріччя 2018 рік)* <<http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=62a9b6fb-27ff-462a-b351-eeeadfb26b6f&title=StanZdiisnenniaDppVUkraini>> (2019, February, 05).

<sup>2</sup> Закон про державно-приватне партнерство, 2010 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/2404-17>> (2019, February, 06).

<sup>3</sup> Постанова про затвердження Порядку надання державної підтримки здійсненню державно-приватного партнерства, 2011 (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/279-2011-%D0%BF>> (2019, February, 06).



**Fig. 1. The structure of the PPP projects for the first half of 2018 in the sectoral and regional sections**

*Source: compiled by the author based on Ministry of Economic Development and trade of Ukraine<sup>1</sup>*

<sup>1</sup> Ibid.

On the basis of the submitted proposal, the executive body of local self-government, authorized by the relevant council, conducts an analysis of the effectiveness of the PPP in relation to the relevant objects and identifies the possible risks associated with its implementation. Based on the results of the analysis of the effectiveness of the decision-making body of the competition, a conclusion is presented containing, including proposals on socio-economic (expanding availability, improving the quality of services, the level of demand for goods (work and services), etc.) and the environmental performance of the PPP.

At the same time, if the proposal contains provisions on the responsibilities of the state partner, which are carried out at the expense of the state budget of Ukraine, the conclusion based on the results of the analysis of the effectiveness of the PPP on communal property objects should be agreed with the authorized executive body on PPP issues – the Ministry of Economic Development and Trade, as well as with the Ministry of Finance.

Thus, the local authority sends a conclusion on the results of the analysis of the effectiveness of the PPP implementation to the Ministry of Economic Development and Trade of Ukraine and the Ministry of Finance of Ukraine. The Ministry of Finance conducts an analysis of the conclusion of the efficiency analysis results and sends the Ministry of Economic Development and Trade proposals on the possible financial risks of the respective PPP and the expediency of providing state support. The Ministry conducts verification and agrees the conclusion taking into account the proposals of the Ministry of Finance. A concordance or disagreement is sent to the local government body and the person submitting the proposal.

The conclusion is the basis for preparing a decision of the governing body to conduct a tender for the identification of a private partner.

In accordance with the Law of Ukraine on public-private partnership<sup>1</sup>, the definition of a private partner for the conclusion of an agreement within the framework of the PPP is carried out solely on a competitive basis. At the same time, the criteria according to which the PPP project can be awarded without competition in the specified regulatory document is not established. The procedure for conducting a tender for the determination of a private partner for the implementation of PPP regarding objects of state and communal property shall be established by the Cabinet of Ministers of Ukraine. It should be noted that the issue of establishing rules for determining the body that provides such preparation of the competition remains unresolved today and needs to be resolved. Among the criteria for evaluating bids, in particular, such environmental and social criteria are determined: the compliance of the implementation of the PPP with environmental norms and standards; environmental consequences of PPP implementation; using during the implementation of the PPP of the work of Ukrainian citizens; the level of wages and social security of employees; influence on the level of socio-economic development of the administrative-territorial unit, the region.

It should be noted that in 2017 the Law on Environmental Impact Assessment<sup>2</sup> was adopted to implement the European integration obligations of Ukraine, which provides for a more specific description of the environmental consequences, as appropriate, including a description of the current state of the environment (baseline scenario) and description of its probable change without carrying out the planned activity; description of environmental factors that are likely to be affected by planned activities and their alternatives; description and assessment of the possible environmental impact of the planned activity, in particular the magnitude and extent of such impact; description of the envisaged measures aimed at preventing, avoiding, reducing, eliminating significant negative impact on the environment, including, if possible, compensatory measures; description of the expected significant negative environmental impact caused by the project's vulnerability to emergencies, measures to prevent or mitigate the effects of emergencies on the environment and emergency response measures. Compared to the traditional environmental assessment, the environmental impact assessment is a more complex and lengthy procedure (1.5 to 4 months), which creates additional barriers to attracting investors.

The peculiarity of the legal regulation of PPP in Ukraine is that if the proposal for the conclusion of an agreement comes from a private partner and involves a large-scale research and preparatory work that involves significant costs, it does not guarantee the investor that he will win the competition. Therefore, in practice there are two scenarios: 1) the private investor is not interested in participating in the PPP due to

<sup>1</sup> Закон про державно-приватне партнерство, 2010 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/2404-17>> (2019, February, 06).

<sup>2</sup> Закон про оцінку впливу на довкілля, 2017 (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/2059-19>> (2019, February, 06).

complexity, high cost and lack of guarantees; 2) a private investor concurred with the local authorities, as a result of which he has a guaranteed victory in the competition, while doubting the calculations and justification of the effectiveness of such a project. The way out of the current situation is:

- Local government work on self-preparation of the necessary technical and economic justifications using a transparent model for assessing the effectiveness of the PPP project, which will avoid doubts in the truth of the calculations;
- Creation of regional registers of potential PPP projects with a detailed description and a prepared proposal;
- Development of a PPP model template for city authorities that could be adapted to small projects of local importance;
- Implementation of relevant pilot projects supported by the government.

A similar approach is applied in Canada when a municipality defines an investment need, prepares a business project and conducts a quantitative analysis of value for money, forms a project team and a project plan, and organizes a contest where potential investors are developing their proposals and terms of financing, based on the information provided by the municipality on terms, product / service requirements, payment mechanisms and performance requirements, contract documentation, evaluation criteria, etc.

One of the main obstacles to the successful implementation of the PPP mechanism at the local level is the lack of competence in this area by local government officials. To date, a number of programs have been developed to improve the skills of officials, in particular in PPP, but it is more convenient for local authorities to choose traditional and familiar methods of attracting investments, which ultimately explains the situation with the lack of dissemination of experience in implementing this mechanism in the country. In addition, according to existing legislation, the implementation of the PPP project is a long-term and complex process through:

- a large number of structures of central and other government bodies involved in the process of implementing the mechanism of public-private partnership (Ministry of Economic Development and Trade, Ministry of Finance, national regulators, etc.);
- a large number of conciliation procedures with different authorities;
- the need to prepare a large amount of documentation at the stage of making a proposal, conducting a competition, qualitative feasibility study (business proposal).

In order to overcome these obstacles, after selecting a project and presenting previous studies, it is advisable to conduct a tender for the provision of advisory services to financial, legal and design organizations with a separate service (subdivision) of the local government, whose winners will be responsible for consulting on the process of adopting selected projects.

The intersection of the interests of a public partner, a private partner, a society (or specific community), as well as (if any) support from outside consultants involved in the project on the basis of outsourcing, contributes to the development of a PPP platform, which is a tool for cooperation and exchange of experience among authorities all levels, investors, consumers on behalf of authorized organizations and entities, as well as various consultants or their organizations.

**Conclusions.** The implementation of structural reforms which is necessary to increase the level of socio-economic development of the country and its transformation into a stable one requires the concentration of significant investment resources, in particular extrabudgetary investment resources, but it is a difficult task due to the loss of the role of a fair regulator and a reliable partner by the state. This situation creates the development of cooperation between states and private business, in particular through the PPP mechanism, which is most appropriate in the context of the need for large-scale changes towards sustainable development, the need to address multiple risks, allocate costs, overcome initial barriers, etc. Taking into account the coherence of the PPP mechanism with the state's investment policy, and within the concept of sustainable development – the «green» investment policy, it has been proved that the development of recommendations and the implementation of appropriate measures to promote PPP in the framework of «green» investment projects should be carried out mainly at the local level on the initiative local authorities. Taking into account the imperfection of legal regulation of PPP in Ukraine, further development of this mechanism is possible under the conditions of active initiative of local authorities, development and dissemination of appropriate methodological support from executive bodies and support of the government, as well as establishing a system of informational and communicative support of investors at the regional level, which will eventually allow the creation of a platform for the implementation of «green» PPP investment projects in the country.

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