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**INFRASTRUCTURE DEVELOPMENT THROUGH PUBLIC-PRIVATE PARTNERSHIP\***

*Many countries around the world have recourse to the private sector capital inclusion in order to complete public investment projects for which there were insufficient funds in the public budget. In addition to fundamental financial funds, private sector participation brings with it numerous benefits such as technical expertise, risk transfer, costs reduction and time required for project implementation. Thus, developing and emerging countries see in PPP the potential for the development of their infrastructure and also for the increase of economic growth. But, for the successful implementation of PPP, certain conditions are crucial: legal framework and institutions, in particular. This study analyses the current state of PPP in Serbia and Croatia.*

*Keywords: infrastructure development; PPP; legal framework; institutions.*

**Біляна Ракіч, Тамара Міленкович-Керкович, Тамара Раденович**  
**РОЗВИТОК ІНФРАСТРУКТУРИ ЧЕРЕЗ ДЕРЖАВНО-ПРИВАТНЕ ПАРТНЕРСТВО**

*У статті представлено світову практику залучення приватного капіталу у державні інвестиційні проекти у випадках нестачі бюджетних коштів. Крім суттєвої фінансової допомоги, участь приватного капіталу у таких проектах має низку додаткових переваг: технічна експертиза, трансфер ризиків, зниження не тільки вартості проекту, а й часу, витраченого на нього. Саме тому країни, що розвиваються, вбачають у державно-приватному партнерстві суттєвий потенціал для розвитку інфраструктури, що в свою чергу сприятиме подальшому економічному зростанню. Для успішного впровадження проектів державно-приватного партнерства важливою є низка чинників, зокрема, законодавче забезпечення та інституційний розвиток. Їх вплив на проекти державно-приватного партнерства показано на практичних прикладах Сербії та Хорватії.*

*Ключові слова: розвиток інфраструктури; державно-приватне партнерство; законодавче забезпечення; інститути.*

*Рис. 3. Табл. 3. Літ. 26.*

**Билjana Ракич, Тамара Миленкович-Керкович, Тамара Раденович**  
**РАЗВИТИЕ ИНФРАСТРУКТУРЫ ЧЕРЕЗ ГОСУДАРСТВЕННО-ЧАСТНОЕ ПАРТНЁРСТВО**

*В статье представлена мировая практика включения частного капитала в государственные инвестиционные проекты в случаях нехватки бюджетных средств. Кроме существенной финансовой помощи, участие частного капитала в подобных проектах имеет ряд дополнительных преимуществ: техническая экспертиза, трансферт рисков, снижение не только стоимости проекта, но и затраченного на него времени. Именно поэтому развивающиеся страны видят в государственно-частном партнёрстве значительный потенциал для развития инфраструктуры, что в свою очередь будет способствовать дальнейшему экономическому росту. Для успешного внедрения проектов государственно-частного партнёрства важен ряд факторов, в частности, законодательное обеспечение и институциональное развитие. Их влияние на проекты*

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\* The paper is a result of the research within the projects No. 179066 and III 42006, funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia.

*государственно-частного партнёрства показано на практических примерах Сербии и Хорватии.*

*Ключевые слова: развитие инфраструктуры; государственно-частное партнёрство; законодательное обеспечение; институты.*

### **Introduction**

The idea for private sector involvement in the provision of public goods and services initially arose with the public sector reform during the 1980s, known as New Public Management (NPM). The main idea of NPM was to change the orientation of public sector institutions towards market, consumers and stakeholders and to increase organisational and cost efficiency, effectiveness and productivity (Rakic, 2011). The basic assumption of PPP as the important instrument of public policy modernisation is that private participants' involvement in service provision or realisation of public goals will increase the quality of those services and deliver better value for money.

The global economic crisis has additionally emphasised the role of PPP arrangements, especially as a means for the implementation of bigger public investments in infrastructure. Potential role of these arrangements as the instruments of counter-cyclical fiscal policy lies in the fact that they can be used for the private sector recovery and employment creation. Although the main focus of PPP is on the promotion of efficiency in public service provision through risk sharing and private sector expertise, they can also relief pressure on public finance by providing additional capital (Rakic, Radenovic, 2011). Hence, many developing countries' governments are putting their efforts on the wider usage of PPP.

In this paper, we will first emphasize the importance of infrastructure development for economy and then we will examine the PPP market in Croatia and Serbia by using the comparative analysis of the legal framework, institutions and projects.

### **The importance of infrastructure development**

Infrastructure development is essential for any country due to the fact that it has a positive impact on economic growth and macroeconomic competitiveness. Inadequate infrastructure represents huge constraint on growth worldwide, especially in developing countries. Namely, infrastructure services are often insufficient to meet demand, usually are of low quality and some areas are simply unserved. Poor infrastructure performance is determined by numerous factors (WBI, 2012). First, governments usually lack funds necessary for infrastructure development, since their budgets are used for other purposes, particularly in crisis times. Secondly, due to poor planning, political interests and corruption in the selection process, those funds are often spent on unprofitable projects. Thirdly, owing to inefficient management, service delivery is weak, while projects are regularly overbudgeted. Finally, constructed infrastructure is generally unsuccessfully maintained, thus increasing costs. As a result, private sector has also become involved in infrastructure provision through PPPs in order to improve infrastructure performance.

PPPs can help infrastructure performance by raising additional capital, better project selection, improved service delivery and superior infrastructure maintenance. In order to better understand the necessity for infrastructure, we have to distinguish its main types. According to Grimsey and Lewis (2004), infrastructure can be divid-

ed into 4 categories (Table 1): 1) hard economic infrastructure; 2) soft economic infrastructure; 3) hard social infrastructure; 4) soft social infrastructure.

Economic infrastructure incorporates almost 70% of all infrastructures in most countries, independently of the criteria used for division (Sredojevic, 2010). The importance of economic infrastructure lies in its ability to provide necessary preconditions for good functioning of the economy and enhance productivity and innovations. While the importance of social infrastructure lies in its ability to provide basic services to households, thus improving their quality of life and welfare in the community as a whole.

Economic infrastructure, especially transport, connects regions and countries and enables their integration into the global economy. Improvements in quality and scale of transport infrastructure, aside from time saving, also lead to lower costs of inputs, production and distribution, thus enhancing national competitiveness. At the same time, these improvements also lead to productivity increase, trade development, as well as employment and GDP increase. Thus, infrastructure development is a necessary precondition for the overall country's development, particularly for developing countries.

*Table 1. Classification of infrastructure by types*

	Hard	Soft
Economic	roads motorways bridges ports railways airports telecommunications power	vocational training financial institutions R&D facilitation technology transfer export assistance
Social	hospitals schools water supply housing sewerage child care prisons aged care homes	social security community services environmental agencies

Source: Grimsey, D. and Lewis, M. K. (2004).

### **PPP market in Croatia and Serbia**

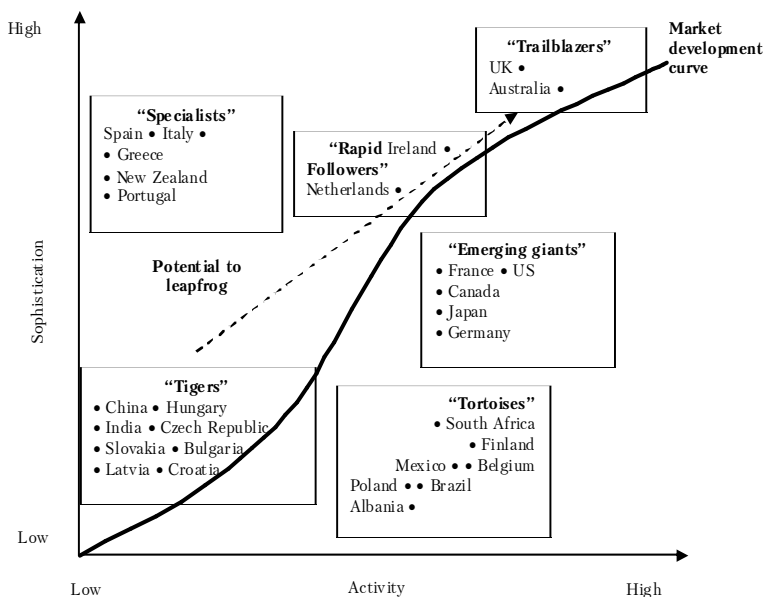
The need for considerable investments in public infrastructure, in order to increase efficiency and improve the quality of public sector services, is obvious for the countries which are the EU members, as well for those which are not, but have the intention to become. Namely, public infrastructure very often neither correspond to the increase in government standards, nor to the increase in the level and quality of services, and this disproportion is largely evident with new member states and candidate countries.

In order to support the development and implementation of PPP projects, many countries have adopted special legal acts in the form of laws, regulations or guidance, thus providing legal framework and clearly stimulating and encouraging PPP projects implementation. Although PPPs represent an alternative way for providing public

services, they incorporate only 10–15% of the public services provision (Blanc-Brude et al., 2007; Adair et al., 2011).

As we can see from Figure 1, the countries are at different stages of understanding and implementation of innovative PPP models. Each country has its own path of development, while the huge number of them is still in the initial stage. This is the case with Croatia and Serbia. This stage is characterised by (Amovic, 2011):

- clearly defined policy and legal framework;
- formation of central unit for managing and implementing PPP projects;
- defined institutional structure for PPP;
- compliance of sectoral legislation;
- development of public sector comparator model;
- implementation of previous experiences from one sector into the other.



Source: Northoff, T. (2008).

Figure 1. PPP maturity curve

However, many countries instead of using the experience of "trailblazers", "specialists" or other countries at the advanced stages of development, usually enter in partnerships without an adequate understanding of the concept. Those countries that have appeared late at the PPP market can avoid the mistakes typically made at the initial phases of development (such as the implementation of a single model for all infrastructure projects) and implement more flexible and creative approaches used in developed countries. Such behaviour will enable them move faster along the market development curve and even leapfrog to the advanced phases of development.

Therefore, in order to examine whether countries at the initial stage of development – Croatia and Serbia, have adequately used the potential of late entrance to the PPP market, in the rest of the paper we will examine the current PPP situation in these countries by means of comparative analysis.

### **Legal framework**

Due to the fact that both Croatia and Serbia have obvious needs for investments in public infrastructure and taking into account limited financial possibilities for governments to increase the public debt, these governments are recommended to implement the PPP models for infrastructure development.

First, Croatia adopted the "Guidance for the Implementation of Contractual Forms of PPP" in 2006 (OG 98/06). The purpose of this Guidance was to support and lead local and regional self-governments in the realisation of public infrastructure projects through PPP (Marenjak et al., 2007). The "Public Private Partnerships Act" adopted in 2008, replaced the Guidance (OG 129/08). The Act was modified in 2011 (OG 55/11) and then replaced by new "Public Private Partnerships Act" in 2012 (OG 78/12). At the moment, the area of PPP in Croatia is regulated by this Act and the accompanying "Regulation on implementation of Public Private Partnership Projects" (OG 88/12), Concessions Act (OG 125/08) and Public Procurement Act (OG 90/11) describing the procedures for awarding public procurement contracts and concessions. Additionally, the issues not regulated by these acts and regulations are governed by special sectoral acts and regulations.

The PPP Act defines PPP as "the long-term contractual relation between the public and the private partner subject of which is construction and/or reconstruction of public infrastructure, for the purpose of rendering public services within the area of the public partner's competence" (Article 2). This Act distinguishes two PPP models – contractual and institutional, and defines the contract duration (from 5 to 40 years), as well as the minimum content of a PPP contract.

According to the Act, only public body can submit a PPP project proposal to the Agency for PPP, which will approve the proposal after acquiring a prior consent from the Ministry of Finance, but only if the proposal fulfils all necessary criteria. Information on the approved PPP project proposals is available on the official website of the Agency and only those projects can initiate the procedure for a private partner selection. All signed contracts must be registered in the Register of PPP contracts, which is public. After 6 months from the date of registration of a PPP contract, the public partner is obliged to submit to the Agency the first report on Implementation of PPP project and then further reports each 6 months (Article 18).

The PPP Act also determines the foundation of the Agency for PPP, as well as the list of its tasks and bodies. But, the details concerning this institution will be presented later in the paper.

Opposite to Croatia, which acknowledged the importance of PPP projects and adopted the necessary regulations in 2006, Serbia adopted its Law on Public Private Partnership and Concessions in 2011 (OG 88/2011). The new law has the objective to simplify and shorten the procedures for the realization of the projects, thus satisfying the growing need for new public infrastructure and services of public interest.

Before the adoption of this law, local authorities have been obliged to follow numerous laws related to foundation, organization, operation and financing of local self-governments when signing a contract with a private partner. Basically, local self-governments had two options on the activities of public interest – to set up public utility corporations or to form various types of partnerships with private partners (Pavlovic-Krizanic, Brdarevic, 2010).

However, practical implementation of these legal possibilities has been limited for several reasons (Rakic, 2011). Firstly, local municipalities have been unsure in economic effectiveness of such projects, since they neither have financial resources to conduct pre-feasibility studies, nor the examples of good practice to demonstrate the possible course of action and potential benefits from partnership projects. Secondly, there is a widely accepted opinion, that in this kind of cooperation the private partner always gains, while the public partner loses, because it bears higher risk and costs and resolves environmental problems.

The law defines PPP as a long-term cooperation between public and private partners in order to finance, build, reconstruct, manage or maintain infrastructure and other objects of public interest and provide public services (Article 7). It also distinguishes two models – contractual and institutional, which is in accordance with the EU regulations. Contract duration is set for the period of 5 to 50 years.

According to the law, a PPP project proposal can be submitted by private participants or public body. After adopting the proposal of private participants, public body has the obligation to submit the PPP project proposal for approval and consent to a particular authorities depending who the public partner is (Article 26). The authorities which give approval are: 1) Government, if a public partner is Republic of Serbia or other public body of Republic of Serbia; 2) Government of the Autonomous Province, if a public partner is Autonomous Province or other public body of Autonomous Province; 3) Assembly of the local self-government unit, if a public partner is local self-government unit or other public body of local self-government unit. Once the proposal is approved, public body is starting the procedure for private partner selection according to the Public Procurement Law. Before choosing a private partner and signing a public contract, the public body has the obligation to submit final draft of the contract to a particular Authority for approval. When the Authority gives consent, the contract can be concluded.

The law also defines the manner in which a public contract can be financed. Namely, a private partner can finance the contract through the combination of direct investments in capital or debt financing, including also project financing provided from international financial institutions or banks (Article 49). Additionally, a private partner has the obligation to deliver periodical reports on its work, activities and fulfillment of contract obligations once a year.

The PPP law also determines the foundation of Public Private Partnership Commission without whose positive opinion a PPP project can not be implemented. The list of the approved PPP projects in a form of Register has to be available to public at the subportal of the Public Procurement Office.

The comparison of the PPP legal framework in Croatia and Serbia has led us to the conclusion that despite few differences (contract duration, the body eligible to submit PPP proposal, the approval procedure of PPP projects), both countries have similar PPP regulations which are harmonised with the EU regulations.

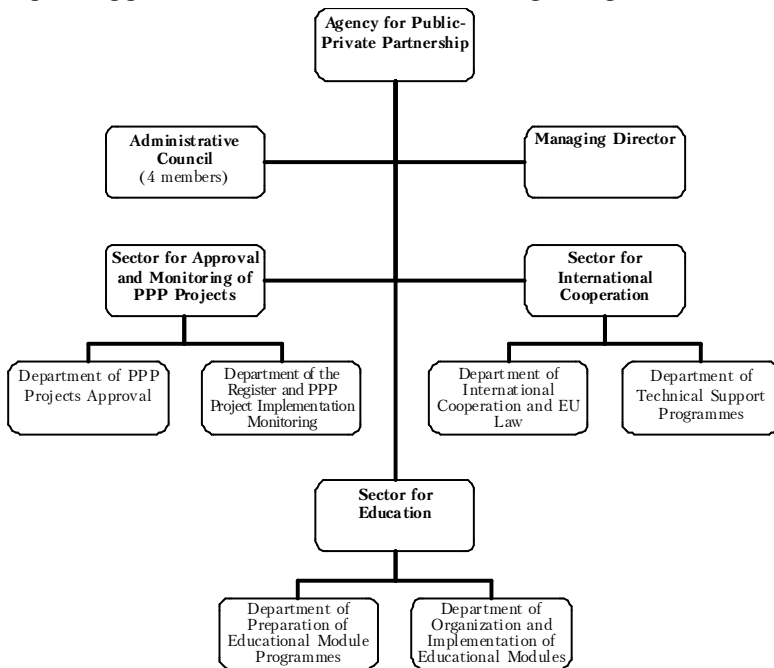
### **Institutions**

In Croatia, the Agency for PPP is the central national body in charge of the implementation of PPP Act. Among other activities, this Agency has the obligation to promote the PPP concept within the country and internationally, organize and keep the Register of PPP contracts, publish guides and handbooks for the preparation

and implementation of PPP projects, cooperate with scientific and research institutions, economic and non-governmental organisations with the purpose of improving the national PPP model theory and implementation and apply international best practices in the field of PPP. The organisational structure of the Agency is presented in Figure 2.

Apart from the Agency, institutions responsible for policy framework are the Ministry of Economy and the Ministry of Finance. Namely, Ministry of Finance grants approval on PPP projects regarding their compliance with budgetary projections and plans, fiscal risks and constraints imposed by special regulations, as well as financial and fiscal sustainability of the proposed projects. Hence, these two institutions constitute functional unit, while the whole process of approving projects proposals includes also other ministries, regional and local self-governments directly connected with the proposed project.

The role of Ministry of Economy is more evident in the public procurement system. Namely, the Ministry of Economics is responsible for supervision of the procedures for granting public contracts and enforcement of public procurement contracts.



Source: Authors' presentation based on the data retrieved from <http://www.ajpp.hr/homepage/agency/organization-of-the-agency.aspx> www.ajpp.hr.

Figure 2. Organisational structure of Agency for PPP

Additionally, the State Commission for Supervision of Public Procurement and Administrative Court have significant roles in the public procurement system. As the body of first instance, the State Commission is responsible for handling appeals in public procurement process, concessions granting and selection of private partners in public private partnership, while the Administrative Court deals with the same procedures in the second instance.

In Serbia, the PPP Commission is in charge of granting approvals on the proposed PPP projects. Implementation of PPP projects is possible only for those projects that have attained positive opinion from the Commission. But, positive opinion cannot be given without the positive vote from the representative member of the Ministry of Finance (OG 13/2012).

Apart from this body, Belgrade Chamber of Commerce established in 2011 the Centre for PPP with the aim of informing and educating both public and private sectors about PPP and promoting its use in Serbia. This Centre also offers numerous consulting services such as: partner search, selection of the proper partnership agreement, management of the partnership, project development and implementation, ensuring involvement of institutions, organizations, and donors, determination of Public Sector Comparator, preparation of partnership agreement documentation, management of the PPP agreement, monitoring during utilization and operation of the constructed facility (<http://pppcenter.rs/services.aspx>).

Additionally, USAID Business Enabling Project (USAID BEP), in cooperation with the Commission, has developed the "Draft Value-for-Money Methodology" for PPP projects (<http://www.bep.rs>). Special significance of this methodology stems from the importance of PPP projects in addressing a number of economic and social issues and from the importance of the value for money analysis for successful implementation of these projects.

Both countries are the members of the Southeast European Public Private Partnership Network (SEEPN). The Network operates within the Regional Cooperation Council and its main purpose is to coordinate the regional exchange of knowledge and expertise on PPPs, support the assessment of South East Europe's PPP enabling environment and propose measures for its further development and harmonization (<http://www.ajpp.hr/seepn/about-seepn.aspx>).

The analysis of the institutional framework in Croatia and Serbia has shown that institutional development in Croatia is far ahead Serbia. Namely, the Agency for PPP has its official website where interested parties can find all information and data on the preparation and implementation of PPP proposals, as well as the Register of all approved and signed PPP projects. This Agency also organises numerous seminars and educational trainings and brings professionals and practitioners from around the world to convey practical experience to interested parties, thus promoting the PPP concept and increasing the number of the signed deals.

Unfortunately, situation in Serbia is quite different. The PPP Commission does not have its official website and thus information and data needed for the preparation and implementation of PPP proposals are very hard to find. Private investors or local self-governments interested in PPP have to seek help from the Centre for PPP or to collect all necessary information by themselves from different sources. Until recently, the Value-for-Money Methodology has not been developed, thus further causing difficulties with PPPs implementation. The situation has been somewhat improved since January 2013, with the assistance of USAID BEP, which has helped in the preparation of draft methodology for the value for money analysis. However, the Commission will need further assistance in future to reach at least the level of institutional development in Croatia.



## Projects

Adequate legal and institutional framework represents an indispensable prerequisite for the preparation and implementation of PPP projects. The efforts put into these activities usually correspond to the number of signed and realised projects. Hence, while in Croatia the number and the value of contracted projects is significant, the situation in Serbia is less promising.

On the official website the Agency provides information on public body's intention to implement a project, as well the information about the approved and contracted projects. In Table 2 we can notice that 3 out of 4 approved projects are in the contractual form, while just one project is the concession.

**Table 2. Approved Projects**

Project	Contracting Authority	Contract type
"Elderly home Gerovo"	City of Cabar	contractual PPP model
Construction of the New Zagreb Airport Terminal	The Ministry of the Sea, Transport and Infrastructure	concession contract
Construction of "Sokolski dom"	City of Osijek	contractual PPP model
Construction of "Kompleks Zapadna Zabica"	City of Rijeka	contractual PPP model

Source: Authors' presentation based on the data retrieved from <http://www.ajpp.hr/homepage/ppp-projects/approved-projects.aspx>.

As we can observe from Table 3, the total value of PPP projects that have reached financial closure is approximately 150 mln euro, while the contracts are signed for the period ranging from 20 to 30 years. Most of the projects (9 out of 13) are in the form of Design-Build-Finance-Operate-Maintenance model, with the private partners' obligation to transfer the facility to the public partner at the end of the contracted period. Further, the number of contracted projects is the biggest in the sector of education (9 out of 13), but these projects are small in value.

**Table 3. Contracted Projects**

Project	Project value in ^	Contract duration	Sector	PPP model
High School and Sports Hall in Koprivnica	9.300.000	25 years	Education	DBFOM
Central Bus Station in Osijek	16.000.000	30 years	Transportation	DBFOM
Reconstruction of the County Hall	1.200.000	20 years	Public Administration	DRFOM
Upgrading of the Schools in Varazdin County	6.624.000	25 years	Education	DBFM
Upgrading of the Schools in Varazdin County	2.457.000	25 years	Education	DBFM
Upgrading of the Schools in Varazdin County	5.408.000	25 years	Education	DBFM
Upgrading of the Schools in Varazdin County	4.258.000	30 years	Education	DBFOM
Upgrading of the Schools in Varazdin County	2.142.000	30 years	Education	DBFOM
Upgrading of the Schools in Varazdin County	1.859.000	30 years	Education	DBFOM
Upgrading of the Schools in Varazdin County	5.292.000	30 years	Education	DBFOM
Upgrading of the Schools in Varazdin County	3.684.000	30 years	Education	DBFOM
City Sports Hall in Varazdin	23.623.000	24 years	Sport	DBFOM
Sport-Business Complex Lora in Split	67.200.000	30 years	Sport	DBFOM

Note: D – design, B – build, R – reconstruction, F – finance, O – operate, M – maintenance.

Source: Authors' presentation based on the data retrieved from <http://www.ajpp.hr/homepage/ppp-projects/contracted-projects.aspx>.

As Figure 3 shows, sports facilities participate with 60% in the total value of contracted projects, education facilities with only 28%, transportation sector with 11% and public administration with just 1%.

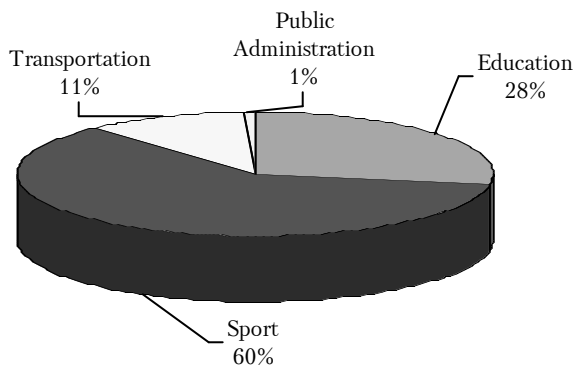


Figure 3. Participation of Some Sectors in the Total Value of PPP Projects

Opposite to Croatia, the value of the projects in Serbia is quite small and all the projects are realized at the local level. The partnership between private and public sector is achieved within the areas of public transportation, waste management, gas provision, parking services, water supply and sewage (Brdarevic, 2009). These areas are popular because of smaller investments, shorter period of return and lower investment risks. The PPP in the form of joint venture is only noted in 3 municipalities (Sombor, Cicevac, Uzice) in the area of gas provision, where as the greatest number is in the form of contracting-out agreements in the areas of waste management and parking service.

After its foundation, the PPP Commission has approved only one project in the area of optical infrastructure. The project is signed between the public partner "Informatika" and the private consortium of Slovenian companies – "Sago", "E project" and "Riko". The total estimated value of the project is 70 mln euro. Private consortium has the obligation to finance the construction of the optical network, which will be in the ownership of the city Novi Sad, and which will be managed by the public partner "Informatika". Private partner will acquire 75% of the revenues from the optical network operations during the period of 25 years and after the end of the contracted period all the revenues will go to the city budget (<http://www.nsinfo.co.rs/lat/prihvacena-ponuda-slovenackog-konzorcijuma-sagoe-projekt-i-riko>). This is the first major project in Serbia and the Commission has to put its efforts to ensure more such projects in the future.

### Conclusion

Infrastructure development through PPP is important for developing countries in order to maintain and enhance their economic growth and living conditions for citizens. However, the successful implementation of this concept, apart from the foundation of legal and institutional framework and few promising projects to represent the examples of good practice, also requires a favourable investment climate, demonstrating joint efforts of politicians and numerous agencies in promoting PPP.

This paper has employed the comparative analysis to examine the fulfilment of these preconditions in Croatia and Serbia. The overall conclusion of the study is that PPP market in Croatia has reached the higher stage of development than in Serbia. The reasons for such conclusion can be found in the fact that Croatia adopted the

PPP Law much earlier than Serbia, and in the well structured institutional framework which offers support and help to all participants involved.

The analysis of the legal system has shown that both countries have similar PPP regulations which are harmonised with the EU norms. Nevertheless, slight differences exist in contracts duration, the body eligible to submit PPP proposal and the approval procedures.

The investigation of institutional framework has resulted in rather diverse conclusions. Namely, Croatia has a central national institution, with complex organisational structure, responsible for the promotion and implementation of PPP. Additionally, the Agency is in charge for the application of international best practices in the field of PPP, thus offering significant benefits, such as the avoidance of past errors repeating and the usage of encouraging examples. On the other hand, in Serbia the PPP Commission has rather small power in promoting and implementing PPP concept, due to the fact that it is relatively new and does not have diversified organisational structure. This constraint is partly overcome by the support of other institutions founded with the aim of promoting and encouraging PPP projects.

Finally, the analysis of the signed projects has shown that the number of projects in both countries is not large, but the value of projects is much greater in Croatia than in Serbia. Furthermore, high value projects are realised for the hard economic infrastructure development (airports and telecommunications) while the number of projects is far more in hard social infrastructure (schools, gas provision and waste management). Accepting the fact that modern infrastructure is the precondition for economic development and that the private sector is more efficient than the public one, the private sector should be quicker included in huge infrastructure projects in future.

The practice has shown that successful project implementation requires prudent project selection and sufficient time for detailed project preparation. Greater effort put in the project selection process can later bring significant benefits related to the avoidance of corrections and adjustments during the implementation.

Even if there are insufficient financial funds of the private sector under crisis, the development of PPP projects and reforms promoting them must not be stopped. Given that, with the end of the crisis, the realization of the planned projects should be continued as well as the development and wider implementation of PPP.

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Стаття надійшла до редакції 05.04.2013.