

# **PUBLIC GOODS AND PUBLIC-PRIVATE PARTNERSHIP IN POLAND – THEORETICAL AND LEGAL ASPECTS**

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## **Abstract in original language**

The article is devoted to the analysis of the public goods theory and the problem of their provision, with the particular regard to the discourse on the possibility of using the public-private partnership as the instrument of the public sector economizing. In the paper the concept of public goods as well as the public-private partnership and legal bases of PPP in Poland were presented. The problem of delivering public goods is particularly important then in the context of substantial budgetary constraints, of growing public sector debt and the deepening crisis of the public finance in the European Union.

The study is divided into the following parts: a) nature of public goods, b) theoretical aspects of public-private partnership, c) legal aspects of public-private partnership in Poland, d) provision of the public goods.

## **Key words in original language**

public goods, public-private-partnership, PPP act, public debt

## **CLASSIFICATION OF PUBLIC GOODS**

The review of the world extensive literature discussing the economics of the public sector allows for formulating enough bright and precise definition of public goods.<sup>1</sup> It is possible to describe public goods as the universal, social, nonprivate. The category of public goods has a primary importance for the theory of the public finance. The existence of such goods requires the collection of public funds, necessary to finance the process of their provision.

In scientific literature public goods are determined as the goods which have two features. Firstly can be consumed by the additional consumer without extra costs. Secondly individual consumers cannot be excluded from the consumption. These two features are determined as: non-rivalry and non-excludability.<sup>2</sup> A good is excludable if people (ordinarily, people who have not paid for it) can be prevented from

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<sup>1</sup> J. E. Stiglitz, *Ekonomia sektora publicznego*, Wydawnictwo Naukowe PWN, Warszawa 2004, s. 150.

<sup>2</sup> R. Holcombe, *A Theory of the Theory of Public Goods*, "Review of Austrian Economics" 1997, Vol. 10, No. 1, s. 1 and next.

using it. It is rival if one person's consumption of a good necessarily diminishes another person's consumption of it.<sup>3</sup>

Outstanding economist J. Buchanan, for the purposes of his analyses, defined as "public" every good or the service which some community of individuals is deciding to get via the any collective organization.<sup>4</sup>

It is possible to combine the existence of public goods with the category of collective needs. Meeting the human needs is a main motive for taking the business activity up. However not all needs can be satisfied through the mechanism of the market allocation of goods and services. Natural features of some needs cause, that they must be satisfied by the collective way, and hence the lack of private entity which will be motivated to the delivery the goods and services meeting those needs.<sup>5</sup>

A social good is a specific type of public goods. This good could be private goods, but from various reasons, usually on account of the social policy conducted by official authorities, is available to every citizen and financed from public means.<sup>6</sup>

There are other types of goods: club goods and common goods, described in the literature on the subject.<sup>7</sup> Club goods are the goods that are excludable but non-rival. This means that while certain people can be excluded from the consumption of a good, one person's consumption of it does not diminish the good for another person (cable television; computer software, swimming-pools, theatres, cinemas. Common goods there are: fisheries, forests, air, etc.<sup>8</sup>

In analysis of public goods one should also take the level of the market-democratic maturity of different countries into account. Because it turns out that at certain stages of the social-economic development we are dealing with the changeable scope of public goods.

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<sup>3</sup> Experimental Economics Center,  
[http://www.econport.org/econport/request?page=man\\_pg\\_table](http://www.econport.org/econport/request?page=man_pg_table)

<sup>4</sup> J.M. Buchanan, *Finanse publiczne w warunkach demokracji*, Wydawnictwo Naukowe PWN, Warszawa 1997, s. 29.

<sup>5</sup> S. Owsiak, *Finanse publiczne. Teoria i praktyka*, Wydawnictwo Naukowe PWN, Warszawa 1999, s. 21-23.

<sup>6</sup> Ibidem.

<sup>7</sup> J. Wilkin (red.), *Teoria wyboru publicznego. Wstęp do ekonomicznej analizy polityki i funkcjonowania sfery publicznej*, Wydawnictwo Naukowe Scholar, Warszawa 2005, s. 160.

<sup>8</sup> Experimental Economics Center,  
[http://www.econport.org/econport/request?page=man\\_pg\\_table](http://www.econport.org/econport/request?page=man_pg_table) (31.11.2011)

Table 1.

### TYPES OF GOODS

	<b>excludable:</b>	
	<b>Yes</b>	<b>No</b>
<b>rival: Yes</b>	private goods	common goods
<b>No</b>	club goods	public goods

Source: Experimental Economics Center,  
[http://www.econport.org/econport/request?page=man\\_pg\\_table](http://www.econport.org/econport/request?page=man_pg_table) (28.10.2011)

### PURE AND IMPURE PUBLIC GOODS

Goods which cannot be commissioned to the private sector (at least theoretically), these are so-called pure public goods. It is possible to distinguish 3-4 types of these goods:<sup>9</sup>

- national defence and the sovereignty of the state,
- sphere of the internal security,
- due construction of the legal-institutional order,
- the protection of ownership and freedoms of individuals.

Impure goods, determined by some authors as merit goods are creating other category of goods which it is possible to rank among: education, health care, economic infrastructure, environmental protection, sector of the research and development, public assistance, self-government sector.

In the economic theory public goods, besides external effects, natural monopolies and the information asymmetry are determined as so-called imperfections of the market. These imperfections of the market are understood as circumstances, in which the social surplus is larger in case of sure alternative allocations, in the comparison to the ones which are a result of the market equilibrium.<sup>10</sup>

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<sup>9</sup> J. Kleer, *Sektor publiczny w Polsce i na świecie. Między upadkiem a rozkwitem*. Wydawnictwa Fachowe CEDEWU.PL, Warszawa 2005, s. 274-275

<sup>10</sup> D.L. Weimer, A.R. Vining, *Policy analysis*, Prentice Hall, Upper Saddle River, New Jersey 1999, s. 74.

In the model of the perfect competition we are dealing with the allocation of goods in the Pareto optimum meaning. The efficiency in the Pareto meaning requires so that public goods are delivered in the amount, for which the sum of marginal benefits from public goods to all consumers will be equal of the marginal cost.

Economic reality rarely perfectly corresponds to assumptions of the perfect competitive model. On account of character of public goods the free market in the predominating amount of cases isn't able to deliver goods of this type to the optimum amount. The individual consumer will be interested in the purchase of only such an amount of given good, which his private marginal benefit will be equal of the price, not taking into consideration benefits, which are achieved from the purchase by others. So the score of such a transaction in case of public goods won't be optimum in the Pareto meaning and as a result of the action of market mechanisms, the amount of delivered goods will be too small.

To sum up, it is possible to indicate the following features of public goods:<sup>11</sup>

- non-excludable,
- non-rivalrous,
- potentially they serve everyone, irrespective of a share in the costs.

## **PUBLIC-PRIVATE PARTNERSHIP**

In current discussion on public goods, the analysis of the public-private partnership as the instrument of delivering public goods more and more often turns up, due to the possibility of achieving the benefit from using this instrument.

There is no single definition of a PPP. The term can cover a variety of transactions, e.g. relatively short term management contracts, concession contracts and joint ventures where there is a sharing of ownership between the public and private sectors. Generally speaking, PPPs is filling the gap between the traditional way of delivering public goods and the privatization.<sup>12</sup>

Public-private partnership can be defined as a form of cooperation between the public and the private entities for the sharing of the risks and responsibilities for the provision of public infrastructure (public

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<sup>11</sup> P.A. Samuelson, W.D. Nordhaus, *Macroeconomics*, McGraw-Hill, Inc., New York 1989, s.45.

<sup>12</sup> D. Grimsey and M. Lewis, *Are Public Private Partnerships Value for Money? Evaluating Alternative Approaches and Comparing Academic and Practitioner Views*, "Accounting Forum" December 2005, 29 (4), pp. 345-378.

goods and services). In recent years, public-private partnership's method has developed in many fields. Characteristic feature of this usually long term cooperation is the specific role of the private sector, who is involved in various stages of the project (planning, implementation, financing, operation and maintenance), who is intended to bear risks that are traditionally borne by the public sector.<sup>13</sup>

The public infrastructure generally includes:<sup>14</sup>

- economic infrastructure (transportation facilities, waste utilization, water, electricity), and
- social infrastructure (schools, hospitals, libraries, prisons).

Critical survey of different meanings of PPP deriving from liberal and conservative ideology one can find in S.H. Linder's article.<sup>15</sup> In accordance to him we can distinguish:

- *Public-private partnership as management reform* – public sector is being treated by market discipline
- *Public-private partnership as a conversion problem* – private sector is taking from public sector the realization of its tasks, which causes the reduction of costs. Private sector gives know-how and its financial resources and public sector decreases tax burdens and can provide additional funds.
- *Public-private partnership as a moral renovation* – partnership has a mental influence on people engaging in that. The main purpose is giving people a chance for ownership of shares of utilities sold by the state on the stock market.
- *Public-private partnership as a risk shifting* – transfer of the risk. Private sector, which jointed to cooperative enterprise is some kind of financial lever for public funds but doesn't replace them. Aims are the same even if financial resources are mixed.
- *Public-private-partnership as reconstruction of public sector (public services)* – partnership can serve as a way of movement

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<sup>13</sup> Commission of the European Communities, *Commission Interpretative Communication on the application of Community law on Public Procurement and Concessions to institutionalised PPP (IPPP)*, Brussels 2008, C(2007)6661, p. 3.

<sup>14</sup> Yescombe E.R., *Public-Private Partnerships. Principles of Policy and Finance*, Elsevier, 2007, pp. 350, ISBN: 978-0-7506-8054-7, p. 1.

<sup>15</sup> S.H. Linder, *Coming to terms with the Public-Private Partnership. A Grammar of Multiple Meanings*, "The American Behavioral Scientists" September 1999, Vol. 43, No. 1, p. 35-51

public servants to private sector and as a way of deregulation of labour market.

- *Public-private partnership as a sharing of the power* – partnership can fundamentally change relations between public and private sector. Ethos of cooperation and trust replaces adverse relations specific for command-and-control regulations.

PPP can have one or more following features:<sup>16</sup>

- transfer of a facility controlled by the public sector to the private sector for the term of the contract,
- the private sector designs, builds, finances, extends or renovates a facility,
- specification of the operating features of the facility by the public sector,
- provision of services by the private sector using the facility for the long period of time (strictly defined),
- the private sector agrees to transfer the facility to the public sector at the end of the PPP contract.

Of course the national indicators and differences cause that national, political, socio-economic, cultural and institutional context should be taken into account in analysis of PPP.

Poland has special public-private partnership law – The PPP Act resolved by the Parliament on the 21th December 2008 (the second Act, first was established in 2005) and the Concession Act resolved by the Parliament on the 9th January 2009. *The Concession Law came into force on the 20th February 2009, the PPP Law came into force on the 27th February 2009. There is a strict relationship between the PPP Act and the Concession Act. The PPP Act refers to the Concession Act in the field of private partner selection process.*<sup>17</sup>

Apart of that there is PPP Centre (Centrum PPP) as a newly established unit (since 10 of July 2008), with a main purpose to promote public-private undertakings in Poland on a non-profit basis. *Poland believes PPP to be a solution perfectly answering challenges lying ahead of the Polish public service. PPP Centre performs the role of government agency in preparation of the best practice standards and PPP promotion in Poland.* It was founded by 41 entities including

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<sup>16</sup> D. Grimsey, M. Lewis, *Accounting for Public Private Partnerships*, “Accounting Forum” September 2002, Vol. 26, No. 3, p. 245-270

<sup>17</sup> <http://www.centrum-ppp.pl/start,2> (02.12.2011)

banks, law firms, consulting companies, firms, regional development agencies, foundations, associations, chambers and business agencies.<sup>18</sup>

The realization of the first public-private partnerships in Poland was initiated at the beginning of nineties of XX century. At first projects included the sphere of the urban facility, i.e.: the housing, waste disposal, education services, the public transport, cleaning and the urban greenery, as well as so-called services network e.g.: water-sewer, heating network or council energetics. Later PPP is developing in more and more other fields of economics e.g.: section of the real estate (structure of new object-hospitals) whether of communication (structure of the underground, segments of railways and motorways).<sup>19</sup>

As was mentioned, regulatory frameworks and legal of public-private partnership in Poland are entered into the Act from 19 December 2008 about the public-private partnership.

In accordance with the Act the joint realization of a project based on the division of tasks and risks among the public entity and the private partner is an object of the public-private partnership.<sup>20</sup>

They are a public entity:<sup>21</sup> 1) public authorities, including government administration authorities, authorities of national inspection and protections of the law and courts and tribunals; 2) self-government units, 3) budgetary authorities, 4) self-government budget units, 5) executive agencies, 6) institutions of the budget economy, 7) national appropriated funds, 8) the Social Insurance Institution and the Agricultural Social Insurance Fund, 9) National Health Fund, 10) self-contained public healthcare centres, 11) public colleges, 12) Polish Academy of Sciences and its organizational units, 13) national and self-government cultural institutions and film state-run institutions, 14) other national or self-government legal persons created based on separate acts to the purpose of the performance of tasks public, excluding enterprises, research and development units, banks and commercial partnerships or companies. Apart from these entities the public partner can be legal person, formed in the particular purpose of satisfying social needs, not-having of industrial or commercial character<sup>22</sup>

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<sup>18</sup> Ibidem.

<sup>19</sup> Ibidem.

<sup>20</sup> Art. 1 Ustawa z dnia 19 grudnia 2008 r. o partnerstwie publiczno-prywatnym, Dz. U. Nr 19, poz. z późn. zm.

<sup>21</sup> Art. 9 Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych, Dz. U. Nr 157, poz. 1240 i 1241 z późn. zm.

<sup>22</sup> Art. 2 pkt. 1 Ustawa z dnia 19 grudnia 2008 r. o partnerstwie publiczno-prywatnym, Dz. U. Nr 19, poz. z późn. zm.

Private partner – every entrepreneur can be it, as well as foreign entrepreneur, if is meeting required conditions for the conducting business activities to territory of Poland.<sup>23</sup>

In the Article 27 of the Draft of the budgetary act from 6 December 2011 for 2012 it was determined that government administration authorities from the title of the public-private partnership can contract financial liabilities- in the height 1 000 000 thousand PLN.<sup>24</sup>

From the public sector point of view in the PPP the most important is the public interest. For starting investment in the PPP formula, defining the public interest is extremely important. And so the public interest relies on the performance of public tasks in the determined way i.e. economically, effectively, the better quality and the availability.

Advantages of PPP can be as following.<sup>25</sup>

- creating the possibility of performing a public task which without the public-private partnership could not be done,
- saving public expenditures,
- increasing the quality of provided public services or goods,
- increasing the accessibility of services,
- reducing the arduousness for the environment
- taking over the risk by the private partner.
- increasing the productivity and reducing operating costs of provided services,
- additional sources of the financing of the infrastructure, and in case of foreign investments additional inflow of the foreign currency,
- long-term, strategic supervision of the public sector of the infrastructure what in case of total privatizing is being impossible ,

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<sup>23</sup> Art. 2 pkt. 2 Ustawa z dnia 19 grudnia 2008 r. o partnerstwie publiczno-prywatnym, Dz. U. Nr 19, poz. z późn. zm.

<sup>24</sup> Ministry of Finance,  
<http://www.mf.gov.pl/dokument.php?const=5&dzial=32&id=277125>

<sup>25</sup> Compare: *Fundusze europejskie szansą rozwoju PPP w Polsce*, Centrum PPP, Warszawa 2009, s. 30-32



- transfer of modern technologies what can stimulate progress also in other branches of industry,
- possibility of fast building the infrastructure without the need to invest public funds,
- using experiencing the private entity, and hence an increase in demand for the work of specialists,
- the competition rising in determined market segments what is extorting the decline in prices and the increase in the service quality,
- the growth of the social awareness and liabilities of recipients of services, forced incurring real payments for delivering and consuming services,
- development of domestic capital markets.
- PPP has disadvantages such as:<sup>26</sup>
  - complex process of preparing and conducting the tender what causes, that the enforcement the PPP formula lasts longer and is more expensive than at the application of the traditional method,
- costs resulting from the imbalance of experience which often force the public partner into making use of professional advisers services,
- rise in transaction costs resulting out of necessity of increasing the time of preparing agreements, their forming and the control,
- higher finance charges, than in case of the task implemented only by the public partner,
- increasing payments for users, covered previously in part by the public sector,
- tendency of the increase in the level of charges for provided services in a long term,

## **PUBLIC DEBT IN POLAND – ECONOMIZATION OF PUBLIC SECTOR**

Due to the high level of public debt, not only in Poland, but in the European Union too, PPP is worth considering. At the end of 2010, the lowest ratios of government debt to GDP were recorded in Estonia

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<sup>26</sup> Ibidem.

(6.7%), Bulgaria (16.3%), Luxembourg (19.1%), Romania (31.0%), the Czech Republic (37.6%), Lithuania (38.0%), Slovenia (38.8%) and Sweden (39.7%). Fourteen Member States had government debt ratios higher than 60% of GDP in 2010: Greece (144.9%), Italy (118.4%), Belgium (96.2%), Ireland (94.9%), Portugal (93.3%), Germany (83.2%), France (82.3%), Hungary (81.3%), the United Kingdom (79.9%), Austria (71.8%), Malta (69.0%), the Netherlands (62.9%), Cyprus (61.5%) and Spain (61.0%).<sup>27</sup>

Table 2.

**GENERAL GOVERNMENT CONSOLIDATED GROSS DEBT**

**(current prices) in % of GDP**

Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
EU 27	61.9	61.0	60.4	61.9	62.3	62.8	61.5	59.0	62.5	74.7	80.1
Poland	36.8	37.6	42.2	47.1	45.7	47.1	47.7	45.0	47.1	50.9	54.9
Czech Republic	17.8	23.9	27.1	28.6	28.9	28.4	28.3	27.9	28.7	34.4	37.6
Slovakia	50.3	48.9	43.4	42.4	41.5	34.2	30.5	29.6	27.8	35.5	41.0

Source:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tsieb090&plugin=1>

Of course PPP is not a remedium for public debt getting bigger, but we must to remember that the possibility to finance a new infrastructure is limited, and that is why PPP could be used in the provision of the selected public goods and services. Especially if we take into account, that the infrastructure provided in PPP system do not deepen the public debt if the construction risk and demand risk or availability risk are being taken by private sector.

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<sup>27</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/2-21102011-AP/EN/2-21102011-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-21102011-AP/EN/2-21102011-AP-EN.PDF)

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