

Technical aspects of regulation

From the standpoint of supervising them, PPP-type contracts differ from traditional contracts as follows:

- they are multi-annual and may in certain cases (motorway concessions) spread over several decades;
- the idea is to draw maximum benefit from the private sector's capacity for innovation, and therefore leave it maximum freedom as regards the means to be used to attain the specified performance;
- as manager of part of a public property, the operator should be obliged to report on his actions;
- the idea, as far as possible, is for him to be directly confronted with the users and encourage him to decide himself what corrective measures to take;
- in the end, the regulation body is the final guarantor before the citizens and political powers that the contract will be performed in the best general interest.

Each of these considerations has consequences on the way in which regulation should be carried out.

Contracts may cover long periods

During this period, changes in the legislative and normative context may occur. Changes may occur in social requirements, resulting in pressure to change the performance levels required by the contract. The two parties may finally agree that some of the requirements of the contract are inappropriate.

A fundamental principle of PPP is that if these developments mean that the contract has to be adapted and if this is prejudicial to the operator, such damage should be compensated for.

The role of the regulator is thus to be attentive to these changes, to inform the operator of them, and if necessary, negotiate with him any modifications or adjustments to the contract which may result there from.

Good practice, for technical and financial aspects of regulation, is to plan regular meetings to jointly examine all modifications which may prove necessary due to events arising during the previous period.

Maximum initiative should be left to the operator

The performances to be attained having been determined in the contract, current practice is to ask the operator to describe in a manual how he proposes to attain them.

It is essential in this matter to specify in the contract that the fact that the regulation authority has to approve the manuals does not reduce the operator's responsibility in

any way. This approval should not result in a performance obligation being transformed into a means obligation.

Manuals may be revised at any time by the operator, on condition that the regulation body is informed. The manuals to be prepared vary depending on the projects. The public authorities should concern themselves with remaining reasonable and only requiring truly useful information from the operator for exercising their responsibilities.

The manuals may concern the following topics, for example: road operation; information and communication; routine maintenance (road, ancillaries, and structures); winter maintenance; operation and maintenance of the tolling system; etc.

The following topics dealt with in the manuals may include the following:

- the general organization planned by the operator and how the roles are to be distributed between himself and his sub-contractors. Personnel and equipment planned for various tasks;
- the frequency of inspections made by the operator (for the road, ancillaries, structures and equipment);
- the frequency, nature and modalities of carrying out measurement campaigns;
- measures to be taken in case of an accident. Agreements with emergency services (breakdown service, police, fire brigade, ambulance, etc.);
- possible means of payment for tolls and how it is planned to develop them;
- the organization of information in case of programmed (sites) or unexpected events (accident, weather, etc.);
- precautions to be taken in case of works under traffic or any other event requiring the road to be partially closed;
- how, in case of a major event requiring the road to be closed, the measures to be taken will be examined with the public authorities;
- how complaints registers, or any other means allowing the users to express themselves, will be placed at the public's disposal;
- other.

The operator's obligation to report

The counterpart of this freedom of action left to the operator is that he must report back on his actions or make vital information available to the regulatory body.

This obligation has several objectives:

- to enable the regulatory body to ensure that the contract is correctly performed and provide information for any adjustments which may prove necessary;
- to provide input to the road network data bank, which is vital for a rational management of the whole of the road network, whoever the operators, public or private, responsible for managing it are.

The obligation to report back or make information available should apply both to;

- works performed, and the results of measures taken, which should be made available to the regulatory body, and
- road accidents and the circumstances in which they occurred including traffic restrictions etc.

Confronting the Operator with Users' Claims

Whereas in traditional schemes, the government collects complaints and claims from users and decides what action to take, the trend in PPP cases should be for the operator to be directly confronted with users' reactions and decide as often as possible himself of the measures to be taken when these claims are justified.

Of course, this ideal plan is not always feasible and the role of the regulatory body is precisely to ensure that the operator will make a reasonable decision between the requirements of the public authorities as determined in the contract, those of the users and the cost of corrective measures.

It is in any case vital to oblige the operator to set up the necessary means to collect users' comments on a permanent basis. The simplest way is to make registers available to the public but other means may be used such as making special telephone numbers or dedicated e-mail addresses available.

Checking by the Regulation Body

Any delegated responsibility must be checked and private operators in the context of PPP are no exception.

The regulatory body is responsible for this checking and generally for making any investigations, inspections or audits necessary to ensure that the operator is correctly carrying out his responsibilities. Those investigations will be used as a basis for calculating penalties for the operator or any other sanction foreseen in the contracts.

The means of action available to him, which must be implemented in an appropriate way in each particular case, are mainly the following:

- double-inspections whose frequency should be stipulated in the contract;
- surprise inspections;
- measures of any kind in order to check those taken by the operator;
- periodic audits on safety and respecting the environment;
- user opinion surveys;

As regards user opinion surveys, the following work may prove useful:



The Quality of Road Service, Evaluation, Perception and Response Behaviour of Road Users, World Road Association (PIARC), 1999.

A long-term relationship between public and private actors is a key parameter of PPPs and induces the following constraints that are the main justification for setting up an adequate regulation framework:

- When the private operator operates a natural monopoly, provisions should be made to ensure that it does not abuse this dominant position
- Rules regulating the PPP should take account of the inevitable changes that will occur in the project environment over a long period.

The primary approach of regulation aims to optimize the economic and social impact of the project. However, complex PPP schemes and in particular those involving private financing should also incorporate the identification, assessment and allocation of a project's risks from a financial standpoint.