



Comparative Review on Legal Issues

Where Are the Areas for
Improvement?



UN Economic Commission for Europe

- Team of Specialists on Public Private Partnerships
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- Dr. Wim A Timmermans
- Landman & Timmermans Advocaten
- Leiden University, The Netherlands



Comparative Review on PPP Legislation

- Introductory observations
- Is PPP legislation necessary?
- General PPP law vs. sectoral laws
- Place of PPP law within the legal system
- Elements of a PPP law
- Methodology for review
- Final remarks



Introductory observations (I)

- PPP law
 - encompass concession laws and regulations
 - is not isolated
 - Should be viewed within the entire legal framework



Introductory observations (II)

- Overall review is beyond the scope of this presentation
- However, following laws are essential, too:
 - Contract law
 - Property law
 - Company law
 - Law on secured transactions
 - Etc.



Is PPP legislation necessary?

- There are countries that do without PPP legislation (UK, The Netherlands)
- As legislation in force provides sufficient support for PPPs
- Dependent on level of sophistication of legislation in force
- Countries in transition will be better off with PPP legislation



General PPP law vs sectoral laws

- Some countries have just one single general PPP law
- Other countries have PPP laws for each individual sector (transport, water supply, energy, telecom, etc.)
- Tailor made laws v. risk of contradictions in the laws



Place of a PPP law in the legal system (I)

- Within the public law domain or in the private law domain
- Inequality of the parties v. equality
- Special powers for the state v. civil law powers
- Public interest v. private sector interest



Place of a PPP law in the legal system (II)

- If within the public (administrative) law domain, than state should be bound by general principles of good governance
 - Legality
 - Proportionality
 - Legitimate expectations
 - Legal certainty
 - Non-discrimination
 - transparency



Elements of a PPP law

- Main elements of a concession agreement
- Tender process
- Dispute resolution
- Model concession agreement



Methodology for review

- Starting point – UNCITRAL Model Legislative Provisions on privately Financed Infrastructure projects
- Benchmarking – EU Directive? Spanish law of 23 May 2003?
- EBRD Review of concession laws



Final remarks

- Purpose of review
- Standardization of contracts
- Cooperate with EBRD – see Concession Assessment Project, Analysis Report, August 2004