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Establishing and Reforming PPP Units

Analysis of EPEC Member PPP Units and lessons learnt



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lessons learnt

August 2014

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Abbreviations

APPP	Agency for Public Private Partnership, Croatia
ASFINAG	<i>Autobahnen- und Schnellstraßen-Finanzierungs-Aktiengesellschaft</i> (Highways Agency, Austria)
CP	<i>Contrat de partenariat</i>
CFCA	Central Finance and Contracting Agency, Latvia
CPMA	Central Project Management Agency, Lithuania
EP	<i>Évaluation préalable</i>
EU	European Union
FTE	Full-time equivalent (for staff counting purposes)
HMT	Her Majesty's Treasury (the UK Government's economic and finance ministry)
ICPPP	Inter-Ministerial Committee for PPPs, Greece
IUK	Infrastructure UK
LIFT	Local Improvement Finance Trust
MAPPP	<i>Mission d'Appui aux Partenariats Public-Privé</i> (PPP Unit, France)
MID	Ministry of Infrastructure and Development, Poland
MoE	Ministry of Economy
MoF	Ministry of Finance
NDFA	National Development Finance Agency, Ireland
NTMA	National Treasury Management Agency, Ireland
OGC	Office of Government Commerce, UK
OECD	Organisation for Economic Co-operation and Development
PD	<i>Partnerschaften Deutschland ÖPP Deutschland AG</i> (PPP Unit, Germany)
PPP	Public Private Partnership
PUK	Partnerships UK
SEITT	<i>Sociedad Estatal de Infraestructuras del Transporte Terrestre</i> (Terrestrial Transport Infrastructure Company, Spain)

SFT	Scottish Futures Trust, Scotland
SIB	Strategic Investment Board, Northern Ireland
UTAP	<i>Unidade Técnica de Acompanhamento de Projetos</i> (PPP Unit, Portugal)
UTFP	<i>Unità Tecnica Finanza di Progetto</i> (PPP Unit, Italy)
VIFG	<i>Verkehrsinfrastrukturfinanzierungsgesellschaft</i> (Infrastructure Financing Agency, Germany)

Executive Summary and Recommendations

Most European countries have established some form of centralised capability as a core part of their institutional framework to implement PPPs, usually in the form of a specialist PPP unit ('PPP Unit'). The Members of EPEC¹ have found that establishing a specialised source of technical expertise within government can be an effective way to strengthen government's capacity to select, prepare, deliver and manage PPP projects. However the existence of a PPP Unit is not evidence of a strengthened capability *per se*. This depends on the nature of the PPP Unit's functions in relation to the gaps or weaknesses in the particular PPP delivery system and its capability and capacity to address such gaps. Established PPP Units provide useful lessons for others but, if copied, should be suitably adapted.

In coordination with EPEC Members, the EPEC team has conducted reviews of institutional frameworks for 24 EPEC Members (set out in 'Unit Reports') a number of which are publicly available on the EPEC website. A central PPP Unit was identified in 18 of the 24 institutional frameworks reviewed. The purpose of the report therefore is to draw collectively from these Unit Reports in order to identify trends and lessons learnt. The report is based on information that was correct at the date of publication for each Unit Report, i.e. between October 2011 and March 2014. The report also makes some, though more limited, reference to the experience of the PPP Units and programmes of EPEC Members for which Unit Reports have not been prepared.

Main Functions of a PPP Unit

A review of EPEC Member PPP Units indicates that they perform some or a combination of the three main functions discussed below, namely (i) PPP policy support and related activities, (ii) programme and project delivery support and (iii) approval and quality control. Carrying out a combination of different functions can strengthen the PPP Unit's capability (e.g. project delivery activities can better inform policy development). In other areas, potential conflicts of interest may need to be anticipated and avoided or managed (e.g. combining project support and approval functions). In a number of cases, the activities (and location) of the PPP Unit are part of a broader set of public infrastructure planning and delivery activities. This is an interesting trend reflecting the fact that (i) the disciplines involved in PPPs are often relevant to other forms of public infrastructure delivery (and vice versa) and (ii) PPPs are only part of a broader range of approaches to delivering public infrastructure investment. Finally, some PPP Units may also play a role in funding or financing PPP activities, in addition to being sources of policy or project support and/or quality control.

PPP policy support and related activities. The analysis set out in the report indicates that almost all PPP Units reviewed carry out all or a part of this function. Experience has shown that the need is not only for initial policy support, but that this support is required continuously as the PPP programme develops over time. This activity can

¹ www.eib.org/epec/about/members/index.htm

also be broad: in addition to PPP policy development it may involve PPP promotion and awareness raising, communications, interacting with and shaping the market, coordinating PPP activities across government, developing standardised PPP contracts, promoting PPP projects, training and collecting and managing information on PPP projects.

These functions, carried out by PPP Unit itself, or together with other entities in the institutional framework, can lead to, *inter alia*:

- better coordination of PPP activities with infrastructure delivery requirements across government;
- more coherent and consistent PPP laws and regulations;
- the availability of good quality and relevant guidance material on PPP issues;
- stronger capacity development and awareness of good practice across government;
- the availability of well-developed standardised PPP documents;
- a stronger capacity to drive reform in the public sector in PPP project selection, preparation and delivery;
- improved public sector knowledge of, and ability to develop, market capacity;
- better awareness of PPP projects in the market;
- improved project pipeline management;
- clearer communication and therefore improved public support for PPP policy and lower political risk;
- improved availability of information on projects and understanding of long-term fiscal implications; and
- improved ability to assess the costs and benefits of PPPs and to make use of experience from previous projects.

Programme and project delivery support. This function involves the provision of technical support at the project (or sometimes programme) level to select, prepare, procure and manage PPP projects. Rather than the PPP Unit seeking to act as transaction adviser itself, it usually involves ensuring that procuring authorities are better aware of what is truly needed in terms of the resources, time and expertise to deliver sound projects. It can therefore involve helping procuring authorities to identify, appoint and manage the right mix of expertise needed from the advisory market. Equally important, the function can involve supporting better deployment and dissemination of existing public sector project delivery experience across government.

A number of EPEC Member PPP Units have found that participating in the oversight bodies established to direct a particular project (or programme of projects) is an effective and efficient way to provide project level support. A PPP Unit can also be an important source of short-term technical support when such support is needed on a specific issue at short notice (such as via a helpdesk).

In most cases procuring authorities will be responsible for their projects throughout the process. In some cases, EPEC Member PPP Units act as project procuring authorities themselves, taking responsibility for the project during the procurement and early operational stages. This project function requires the PPP Unit to have staff with strong technical skills and project level experience.

A line ministry or investment programme may have its own specialist PPP team to support a particular sector or programme of investment. For the purpose and focus of this report however PPP Units are defined as playing a number of roles across sectors and government. The sector-focused PPP team in a line ministry may be expected to work closely with the central PPP Unit.

Providing project delivery support can lead to, *inter alia*:

- procuring authorities being better equipped to identify, appoint and manage the right mix of public and private sector expertise required to prepare and manage their PPP projects;
- the availability of technical support to help address project problems quickly;
- an improved ability for government to accumulate and learn from project delivery issues; and
- better prepared and managed PPP projects.

Approval and quality control. Around half EPEC Member PPP Units reviewed carry out this function, but they do so at different decision points in the project development cycle. These include the decision to prepare the project as a potential PPP, to launch the PPP procurement and to enter into the long-term PPP agreement. For a PPP Unit to be effective in an approval or quality control role, it is important to ensure that it has the appropriate powers and authority to do so. Some PPP Units may not have the powers to approve decisions themselves due to their structure or potential conflict with their project support roles. In this case, the technical know-how of the PPP Unit may still be used as an important source of support to a separate approval body within government. These functions may also be part of a wider public investment quality control and approval process. The experience of some EPEC Members has also shown that it is important to avoid an approval, or project support, process creating unwanted bias in favour of using, or not using, PPPs.

Having the PPP Unit carry out approval and quality control functions, on its own or together with other entities in the institutional framework, can lead to, *inter alia*:

- a reduced risk of poorly developed projects advancing too far in the process or, at worst, long-term PPP contracts being signed on inappropriate terms;
- improved compliance with agreed PPP policy across government and improved consistency in the use and nature of PPPs across the programme;
- benefits of using standard documentation and good practice, especially in terms of optimal risk allocation on value for money terms;
- a stronger market response to projects that are prepared and managed in a more consistent way;

- a stronger capability to assess and monitor any long-term government accounting, statistical and fiscal impact arising from a PPP; and
- overall, helping to ensure that projects are more likely to be affordable, bankable, manageable and represent value for money before any long-term contractual commitment is signed with a private partner.

Only a limited number of EPEC Member PPP Units themselves carry out in full the three main functions mentioned above, but many perform different combinations of these functions. Other entities within the institutional framework may carry out some of these functions or they may be performed at a sector level (for example project support). This underlines the importance of considering the overall institutional framework when determining the range of functions for the PPP Unit.

Staffing and Funding

The EPEC Member PPP Units reviewed do not have large teams. Team size is determined more by the functions of the PPP Unit than the size of the PPP programme. A number of PPP Units have experienced a lack of capacity in relation to the tasks expected of them. This may highlight the need for clear understanding by the parent organisation of the nature and complexity of the work involved.

Staffing PPP Units can be challenging given the wide range of expertise and experience often required: project support work in particular requires specialist technical and transaction skills some of which may need to be recruited from the private sector. This in turn can sometimes present challenges for public institutions to offer competitive packages to attract and retain individuals with specialist skills and experience. At the same time, provision of experienced public sector project delivery skills can be key to the PPP Unit having the credibility to work effectively with procuring authorities. The position of the PPP Unit within government and its operational flexibility can have a strong impact on the PPP Unit's ability to attract and retain the right staff, both public and private.

A number of PPP Units use secondment arrangements as a way to obtain specialist skills and to reap the benefits of using experienced individuals, especially in the early years of operation. PPP Units have generally found it more difficult to attract secondees at later points in their operation, so it may not present a longer term staffing solution. It is important also to recognise that over-reliance on this approach may have an impact on the institutional memory of the PPP Unit once secondees return to their host organisations.

The appointment of the head of the PPP Unit can be particularly challenging and important. Such an individual usually needs to operate credibly and visibly with both the public and private sectors and at the same time, motivate and lead a team that will often be required to operate in a changing environment.

Most of the PPP Units reviewed provide their services free at the point of use. A limited number of PPP Units charge for their use (or a part of their use). This can help to ensure efficient use of scarce PPP Unit resources and impose a strong

quality discipline. However where a charging model is used, PPP Units have found that it is important to anticipate and manage any conflict between revenue generation and ensuring the appropriate PPP projects are delivered in the right way. The impact on the perception of the credibility of the PPP Unit with the rest of government and with the market must be managed together with the risk of creating incentives not to use PPP Unit support (because it has to be paid for). Finally, the need to comply with any public procurement rules needs to be considered.

Governance and Ownership

EPEC Member PPP Units use a variety of structures. PPP Units have been established as entities within a central government ministry (typically finance), as executive agencies (owned by a central ministry) or as separate public limited companies. PPP Units with a *policy focus* tend to be established as units within a central ministry. However, a number of EPEC Members have found that an agency or company structure can provide operational flexibility and focus where a high level of specialist technical input needs to be provided. Some PPP Units use committees to provide oversight or support. Such committees may involve senior individuals from the public and private sector. This helps to ensure that the PPP Unit is informed on developments in the market as well as across government.

The governance structure, the location of the PPP Unit within government and its reporting lines into, or within, senior levels of government are critical to the effectiveness of the PPP Unit. These ensure that it can:

- engage effectively with other parties across government and the market;
- exercise its authority;
- manage conflicts of interest;
- benefit from skills, practice and relationships of the parent organisation; and
- attract the appropriate quality of staff.

Approach to Establishing or Reforming a PPP Unit

The approach to establishing or reforming a PPP Unit should primarily be driven by the context in which it is required to operate. Nevertheless, this report recommends the following approach by way of a checklist of priorities.

Top priorities

Political support. Ensure that there is strong and continuing high-level political support for the PPP Unit. This will help to ensure that:

- best use is made of specialist input into PPP policy development;
- the PPP Unit has the authority and ability to work effectively across government;
- the PPP programme is seen to be credible to the market and so attracts strong market interest in PPP projects; and

- high quality staff are recruited and retained by the PPP Unit.

Analysis of requirements. Carry out a comprehensive analysis of the expected nature and gaps in the processes and capacity of government to deliver PPPs. This should include a clear understanding and linking of the PPP Unit's activities to the government's PPP policy requirements and investment priorities. This will ensure that the right functions of the PPP Unit are identified and indicate how the PPP Unit is expected to operate. In particular, it will help to ensure that the PPP Unit's purpose and operating mode is relevant and workable, that any constraints to its ability to work with other entities across government are identified and addressed and that it is likely to have the appropriate resources to operate.

High quality staff. Ensure that the quality of staff and in particular the head of the PPP Unit is properly matched to the required functions of the PPP Unit. The complexity, and therefore quantity and quality of resources, to deliver and manage PPPs can be under-estimated. Given that the main purpose of the PPP Unit is to be a source of specialist support within government, the quality of its staff is paramount. The PPP Unit's governance and operating policies should be designed to enable the PPP Unit to attract and retain the right skills.

Location of the PPP Unit. Ensure that the PPP Unit reports into senior levels of decision-making in government and that it is located in a central area of the administration. Together with high quality staff, this will help to ensure the credibility of the PPP Unit and its capacity to be able to work effectively across government and the market. It will also have a strong impact on the PPP Unit's ability to recruit and retain high quality staff.

Other key areas

While the above may be considered in relative terms top priority areas of focus, the following should also be included in the overall checklist of the key areas that should be taken into consideration:

Functions and coverage. Once the analysis of required areas for support is reasonably clear, determine the functions and coverage of the PPP Unit. This should take into account the three main functions listed above and include the sectors and market constraints that are likely to be the main focus of the PPP programme. This in turn will help to ensure that the right skills for the PPP Unit are identified and that the design of the PPP Unit is proportionate to the size and complexity of the PPP programme.

Stakeholder management. Identify the PPP Unit's stakeholders and how they will be managed. This should include how the PPP Unit is expected to interact with line ministries, procuring authorities, oversight bodies and, more widely, the communications activities and skills required.

Funding. Identify how the PPP Unit will be funded. This should realistically consider the resources needed to attract and retain the staff identified in the staffing analysis and other operating requirements. A fully funded approach that enables support to be

free at the point of use is generally recommended. However user-pay approaches for all or part of the services can be effective provided that the issues mentioned above (access, conflict of interest, credibility and public procurement) have each been considered.

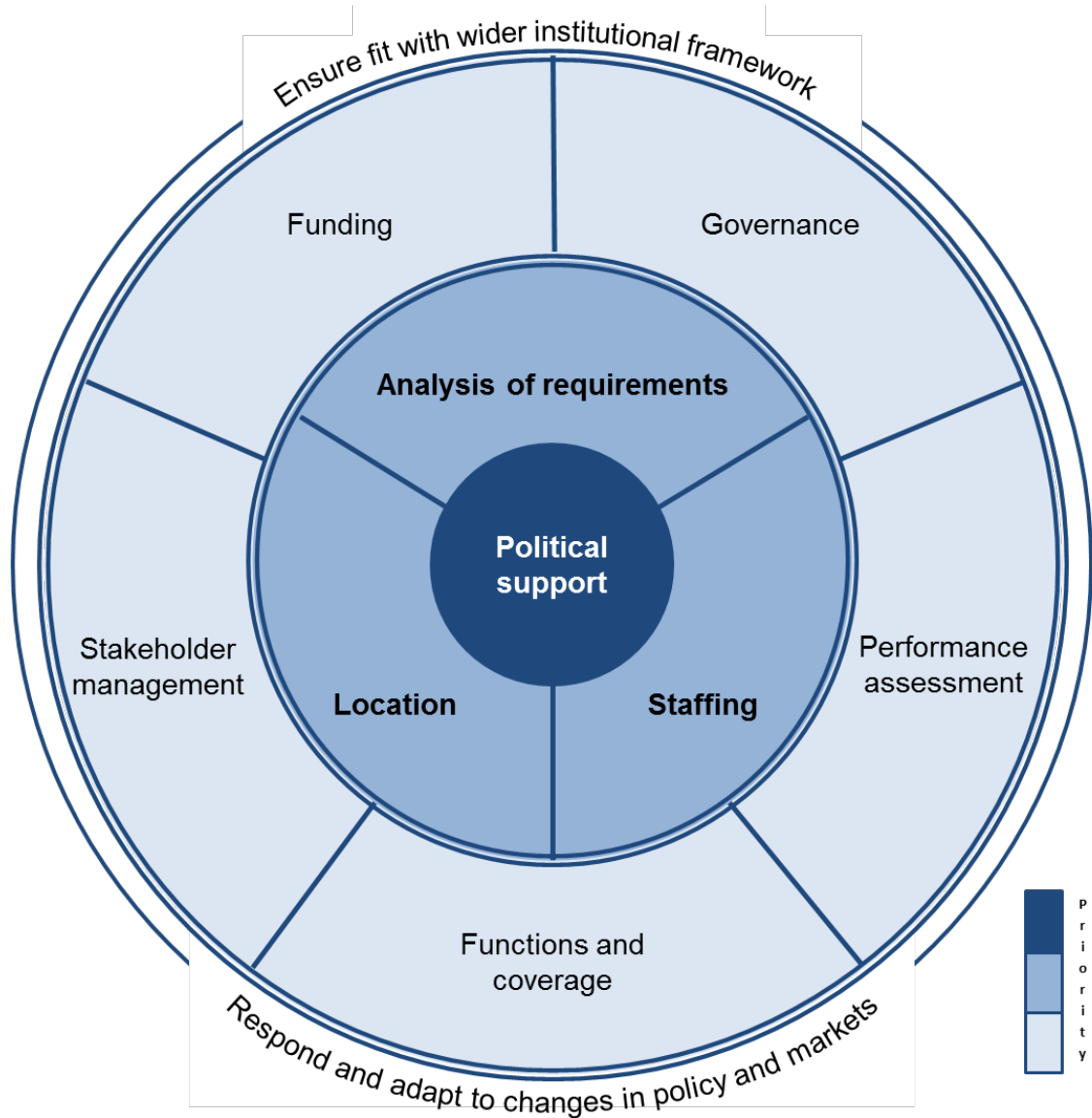
Governance. Identify the appropriate governance structure and procedures of the PPP Unit including the operational flexibility required to attract the right skills and to be able to work with other entities across government. This should ensure that the PPP Unit has a clearly defined mandate and policies on performance oversight, resourcing, appointments and conducting of its business in line with good practice (e.g. transparency, accountability, communications, financial budgeting and reporting). This would also identify how the oversight bodies may guide and support the PPP Unit with senior level expertise on public and commercial sector issues.

Performance assessment. Identify how the PPP Unit will assess its performance and continuously monitor changes in its operating environment. Consider how the PPP Unit can be best equipped to be able to respond flexibly to any changes in policy, infrastructure investment need and market conditions. This will help to ensure that the PPP Unit remains able to help drive the PPP programme forward with the right skills and address new issues and capacity gaps as they emerge.

It is important to recognise that the issues involved in establishing or reforming a PPP Unit are inter-dependent and that the process can be expected to be iterative. For example the functions of the PPP Unit will determine the staffing requirement which in turn may be affected by the location and reporting lines of the PPP Unit within government.

Figure 1 below summarises these recommendations.

Figure 1 – Identification and priority of actions to establish or reform a PPP Unit



1. Introduction

To implement more and better PPPs, many EPEC Member countries have carried out institutional and administrative reforms aimed at strengthening their capacity to deliver and manage PPP projects. The establishment of specialist PPP Units ('PPP Units') has often been a key factor in this reform process.

However, the form and function of PPP Units varies widely in response to differences in policy and administrative capacity. Some PPP Units have been more successful in achieving their purpose than others or to adapting to new needs or trends. Others have disappeared or been recreated as a result of changes in the political or macroeconomic context.

EPEC Members are under pressure to find innovative approaches and the required capacity to procure and manage infrastructure in an economic environment that is often subject to change. At the same time, developments in the political context can create a policy environment that is more or less favourable for PPPs. More mature programmes² also drive a focus on changing priorities such as the management, or even renegotiation, of existing PPP arrangements. In a number of markets, PPPs have become more closely integrated into the wider infrastructure delivery process with consequences for the PPP Unit. Against this background, it is to be expected that even the most successful PPP Units find themselves reassessing and redefining their organisational structure and functions. At the same time, newer players will look to the experience of others for the best way to build capacity and to develop approaches to managing issues that can be new and unfamiliar.

PPP Units are usually only a part of a possible approach to building the delivery mechanism for a national or sub-national PPP programme. The assessment and development of other elements, such as the overall PPP institutional, administrative and legal framework and the financial and contractor market capacities, are equally critical. A PPP Unit is unlikely to be effective if other complementary government processes are deficient.³ This report does not seek to cover all of these wider issues but wherever possible it highlights the potential contexts that are relevant for a PPP Unit.

In coordination with EPEC Members, the EPEC team has to date conducted reviews of institutional frameworks for 24 EPEC Members (set out in Unit Reports).⁴ A number of these Unit Reports are publicly available on the EPEC website.⁵ A central PPP Unit was identified in 18 of the 24 institutional frameworks reviewed.⁶ This

² Where relevant in this report the term 'programme' is used to refer to national or sub-national cross sector PPP programmes to distinguish them from sector focused programmes.

³ This was one of the key conclusions of a World Bank report on PPP Units in 2007. See www.ppiaf.org/sites/ppiaf.org/files/publication/WB%20-%20PPP%20Units%202007.pdf

⁴ Austria, Belgium – Wallonia, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Montenegro, Netherlands, Poland, Portugal, Slovakia, Turkey, UK – England, UK – Northern Ireland, UK – Scotland.

⁵ See www.eib.org/epec

⁶ The central PPP Unit at the MoF in Slovakia was established in 2007 and dissolved on 1 September 2011.

provides a reasonable level of collective experience from which to draw some conclusions and identify trends and lessons learnt. The report could not therefore have been produced without the participation, contribution and help from the EPEC Members in developing the Unit Reports and their participation in the related meetings.

It is important to highlight that this report is based on information that was correct at the date of production for each Unit Report, i.e. between October 2011 and March 2014. The report also makes some, though more limited, reference to the experience of the PPP Units and programmes of Members for which Unit Reports have not been prepared.

1.1. Defining PPP Units

PPP Units (sometimes also referred to as ‘agencies’ or ‘task forces’) can serve a wide variety of purposes. In this report, a PPP Unit broadly refers to a unit that operates across sectors and projects at either a national or sub-national/state/municipal⁷ government level. In this context, such a PPP Unit may be a division within a cross-sectoral ministry, established as a separate agency or an incorporated entity that is at least partly publicly owned.

Of the 18 EPEC Member PPP Units reviewed, three PPP Units operate at a sub-national government level only. Many, but not all, national government level PPP Units operate at both national and sub-national/municipal levels, although in different ways.

Additionally, sector specific PPP teams (or units) are often established in different line ministries. In France, for example, line ministries have considerable autonomy in the PPP process in their respective sector such as justice, health, higher education, defence and railways. In Germany, *Verkehrsinfrastrukturfinanzierungsgesellschaft* (VIFG) is a specialist agency of the Ministry of Transport with a focus that includes developing PPPs in the roads sector.

Separate PPP sector focused programme management units may also be established and work closely with the national or sub-national PPP Unit and/or line ministry units to deliver a defined programme of investment for a sector – an example is the Schools Building Organisation under the Ministry of Education in Greece or the Local Improvement Finance Trust (LIFT), a programme to deliver partnerships in primary care and other local services in England.⁸ This report does not cover sector programme delivery units, although it is acknowledged that their form and function may sometimes overlap with national or sub-national programme PPP Units and many of the issues they face may be similar.⁹

⁷ PPP Units at municipal government level are less common – an example is the Leeds Private Finance Unit (UK).

⁸ See www.communityhealthpartnerships.co.uk/about-the-lift-programme

⁹ EPEC is currently preparing a paper on examples of sector programme delivery approaches.

Figure 2 below seeks to map the potential range of relevant institutions that can be expected to play a part in a country's PPP programme with the bodies highlighted in red being the focus of this report. This schematic is based on a collective view of the institutional frameworks identified in the Unit Reports across the EPEC Members: clearly the actual range and scope of the different institutions varies significantly across Member countries and none of them individually have all these different bodies. The key point however is to recognise that a PPP Unit is likely to be only one of the players, albeit a very key player, within the government's framework of institutions supporting a national or sub-national PPP programme.

PPP Unit activities may not always be recognised as those of a discrete entity but may be part of a wider collection of infrastructure related activities that take place within a division of, for example, the ministry of finance. This is an important and emerging trend: a number of EPEC Members, such as Infrastructure UK (IUK) or Scottish Futures Trust (SFT), now see PPP policy development and related support and approval activities as part of a broader infrastructure investment remit. This recognises that PPPs are just one of a number of tools that can be deployed in and combined with approaches to delivering infrastructure investment and the services they provide. The issue is to use PPPs for the right projects and in the right way. This is reflected in the structure of the PPP Unit, which may not always be a separate identifiable body, but a department or even a team within a larger government body or agency.

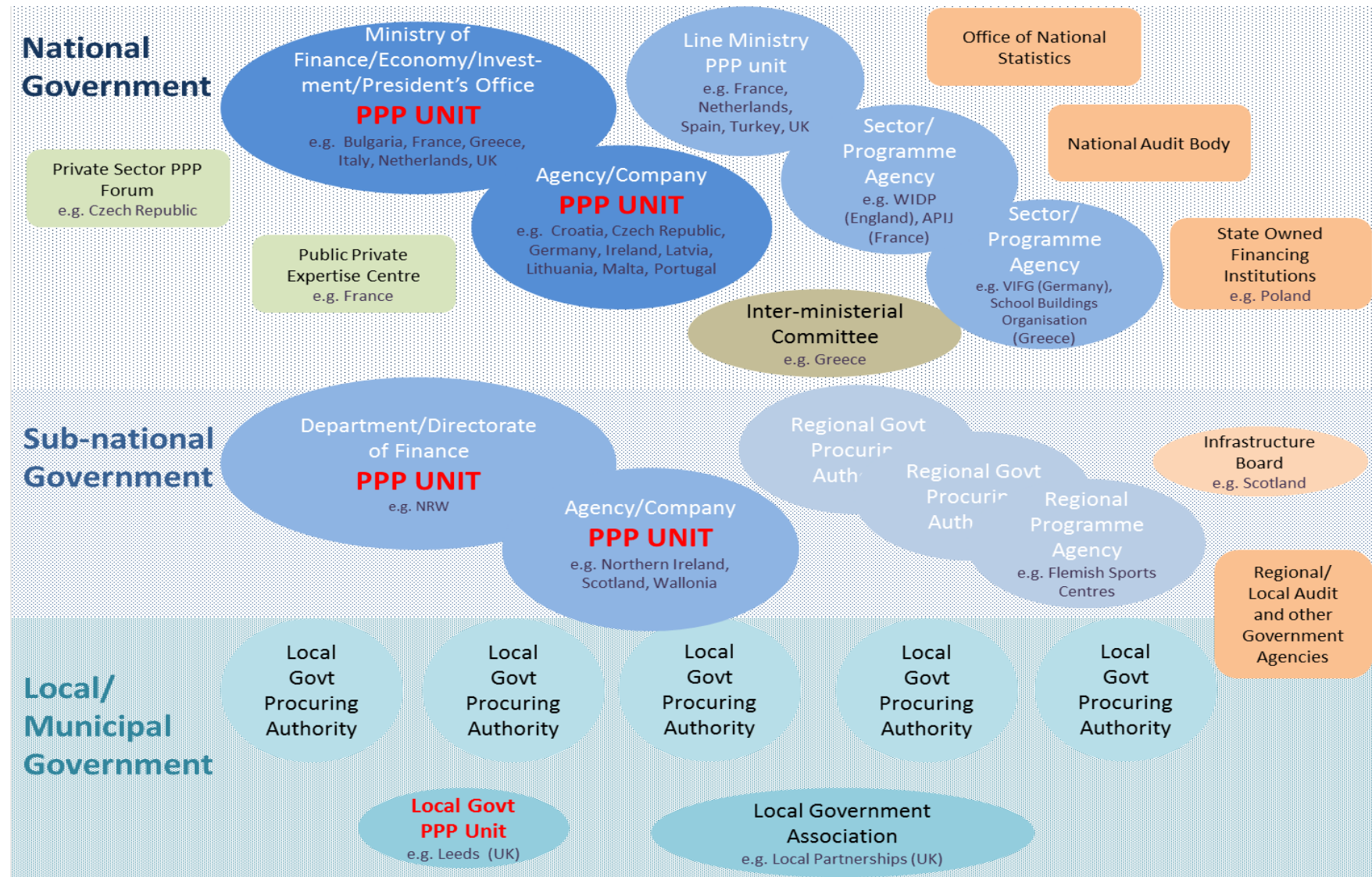
While many of the PPP Units reviewed actively engage with the market and provide information and data, it is rare that they advise the private sector (i.e. beyond providing relevant information on policies or projects). Their operating policies usually restrict their activities to public sector support, for obvious conflict of interest reasons.¹⁰

Some of the PPP Units reviewed also have minimum limits established for the size of project that they are involved with which may mirror the application of the relevant PPP legislation.¹¹

¹⁰ The PPP Unit in the CPMA in Lithuania is however permitted to advise the private sector under certain circumstances.

¹¹ For example UTAP in Portugal.

Figure 2 – Schematic of potential bodies within a PPP framework



1.2. Is a Central PPP Unit Necessary?

Not all EPEC Member countries that have delivered PPPs have a 'central' PPP Unit: six countries reviewed so far within the EPEC membership have no identifiable central PPP Unit (this excludes those that have a wider infrastructure role), yet they have delivered PPP projects successfully.

To some extent this may reflect wider government structures including high levels of autonomy of national and sub-national procuring authorities. An example is the Finnish Transport Agency in Finland which has successfully delivered a number of transport PPPs. Austria is another example where a limited number of PPP projects have been delivered by various public sector bodies at the national (federal) level (e.g. the Austrian Highways Agency, ASFINAG) and at sub-national (provincial and/or municipal) levels (e.g. several municipal healthcare PPP projects sponsored by social security bodies), as well as by special bodies governed by public law.

Spain has also developed a significant number of PPPs over many years without a central PPP Unit as defined above. At the national level, sector focused entities such as *Sociedad Estatal de Infraestructuras del Transporte Terrestre* (SEITT) are heavily involved in delivering transport PPP projects (see Box 1). At sub-national government level, often structured as 100% government-owned entities, cross-sectoral entities are responsible for the delivery of infrastructure using PPPs and other forms of procurement.

Box 1: SEITT activities (Spain)

SEITT is responsible for the delivery of transport PPPs within the National Ministry of Development. SEITT also provides advisory support to sub-national administrations on infrastructure concessions across a range of transport sectors (e.g. roads, rail, ports, airports). In this regard, SEITT's activities include:

- support to the development of the business case for concessions;
- analysis of concession tariff structures;
- support in the definition of policies for the development of concessions;
- preparation of the terms and conditions for concession procurement;
- viability assessment and financial structuring of concessions; and
- support to Spanish firms in developing PPPs overseas as well as to overseas governments.

Source: SEITT website

In the case of Poland and Turkey, while there is no central PPP Unit recognised as such, a number of different ministries and other public bodies play various roles in the delivery of PPPs (see Boxes 2 and 7).

Box 2: Poland's PPP related institutions

While there is no central PPP Unit, two entities within government play key roles in the institutional framework:

- the Ministry of Economy (MoE) is responsible for establishing the legal framework for PPPs in Poland and for any subsequent legislative changes to it. MoE is also responsible for a number of other activities prescribed in the PPP Act, including the promotion and evaluation of PPPs, development of standard contracts, provision of training and sharing of best practices. Accordingly, a PPP Unit was established within MoE in 2013. MoE has also developed a PPP project database and runs an Inter-ministerial PPP Council (as an advisory body to the Minister of Economy) which includes representatives of different ministries, social partners and the private sector;
- the Ministry of Infrastructure and Development (MID) is responsible for establishing the legal framework for concessions in Poland and for regional development policy which includes development of guidance on PPP issues – mainly on hybrid PPPs that blend EU funds and private financing. MID also has a department dedicated for PPPs (Department of PPP Projects Support) which supports public authorities across sectors but does not have formal project decision-making powers. MID also supports pilot projects to prepare template documentation, runs a hybrid PPPs database and guide to Polish PPP guidelines. It coordinates a PPP platform, established in 2011, that brings together a wide range of players across different levels of government including local procuring authorities and national level ministries; and
- other relevant players include the Ministry of Finance which issues the consent for financing projects over a defined size from the state budget and the Public Procurement Office (for general public procurement rules) and Central Statistical Office (for general statistical treatment of PPPs).

The example of Poland also serves to illustrate that PPP programme delivery usually involves a wide range of actors and that functions may evolve within different existing bodies.

Many governments have found that some form of central coordination and specialist capability can improve the efficiency and effectiveness of the delivery national or sub-national PPP programmes. This reflects the need for mechanisms which can help to ensure that aspects of PPPs that cut cross sectors or have an impact on wider policies are appropriately understood and managed by those entities responsible for delivering projects. Examples include government accounting treatment of PPPs, the recording and monitoring of long-term liabilities, project pipeline development and market shaping. Such issues are less likely to be covered by a particular line ministry developing a particular PPP project. As the number and scope of PPPs evolves, the benefits of establishing a more central PPP capability may become evident. Regularly reviewing the development of the national or regional PPP programme is

therefore advisable. Assuming a reasonably sized programme of projects, and given the range of functions that need to be covered, there need to be powerful reasons not to establish a central PPP Unit or at least some form of centrally focused PPP capability.

The key point however is to look beyond the institutional structure *per se*, and ask questions about what needs to be done to deliver PPPs successfully before deciding what institutional arrangements are most appropriate. This needs to take place within the context of the policy drivers for using PPPs, the size and focus of the national or sub-national programme and the administrative structure and processes of government. The following chapters look at these issues in more detail.

1.3. Purpose and Structure of the Report

This report therefore seeks to share and stimulate thinking on how the different EPEC Member countries have built their capacity to implement PPPs with a focus on identifying the rationale and the issues that are useful to consider in establishing or reforming a national or sub-national PPP delivery capability.

The report frames the issues by breaking down the analysis into three key but inter-related issues for PPP Units, namely:

- rationale and functions – Chapter 2;
- staffing and funding – Chapter 3; and
- governance and ownership – Chapter 4.

For each Chapter, findings from the analysis of the Unit Reports are presented, followed by a commentary on findings. Issues to consider are highlighted through the text with the ➡ symbol. These are summarised at the end of each Chapter.

Chapter 5 provides some concluding remarks.

The Appendix sets out key elements of an executive agency governance structure.

2. Rationale and Functions

Key questions

- What is the rationale for a PPP Unit?
 - What do PPP Units typically do?
 - Can different functions be combined in a PPP Unit?
-

2.1. Introduction

This Chapter identifies and discusses the range and purpose of functions carried out by PPP Units. Using data from the Unit Reports, a brief comparative analysis is presented followed by a discussion of findings in the context of the PPP delivery system. From this analysis, issues to consider when determining or further developing a PPP Unit's functions are then highlighted.

As the issues are quite extensive, this Chapter breaks down the topic into a number of components, looking first at some over-arching issues, it then considers three main groups of functions found across PPP Units. The different ways these three categories of functions are combined is discussed, together with how some PPP Units may play a broader role than PPPs and how they may fund or finance¹² PPP activities themselves.

2.1.1. **Some over-arching issues**

Requirements drive functions: the term 'PPP Unit' may imply that there is a single recognisable set of functions carried out by a PPP Unit. This is not the case and the analysis of EPEC Members shows that the functions of PPP Units vary considerably from one country to another. This reflects the important characteristic that the functions of PPP Units are, or at least should be, designed to address gaps or weaknesses in the particular PPP delivery system. Even within the EPEC membership, the nature of these gaps varies considerably. These are due to differences in existing public administrative systems and capacity, legal frameworks, markets, national or sub-national PPP programme size, sector focus and, perhaps most importantly, the fundamental policy drivers for using PPPs. The key message is that the requirements should drive the functions of the PPP Unit, not the other way round. Therefore when setting up or reforming a PPP Unit an analysis of the institutional framework and of the policy drivers for using PPPs is an important starting point.

¹² In this context 'funding' refers to a non-recoverable financial resource (e.g. from government capital or revenue budgets) whereas 'financing' refers to a potentially recoverable financial resource (e.g. loans or equity from the public or private sector).

- *Before establishing or reforming a PPP Unit, consider the key policy drivers for developing a national or sub-national PPP programme and the gaps that may need to be addressed if such a programme is to be delivered successfully.*

PPP Units are usually part of a wider institutional framework: a wide range of other entities likely to be responsible for functions that will have an impact on the delivery of PPPs (e.g. line ministries, procuring authorities, audit bodies within central and sub-national government). Establishing a PPP Unit may be a necessary but not a sufficient response. It is therefore important to understand how the PPP Unit can work within the existing institutional framework. An example is Germany where *Partnerschaften Deutschland* (PD) is required to work with a wide range of entities across federal, state and municipal government levels involved with PPPs.

However, for a number of EPEC Member countries, lack of clarity of the PPP Unit's role *vis-à-vis* other public sector bodies has hampered their effectiveness.

- *Consider what other institutions are expected to be involved in delivering the national or sub-national PPP programme and how the PPP Unit might work with these.*

Equally, reviews of EPEC Member PPP institutional frameworks show that the scope and influence of a PPP Unit, and its ability to coordinate effectively, is often determined by much broader issues of the scope and extent of delegated powers across central government and to sub-national and municipal levels of government.

- *Consider the scope and extent of delegated powers across government and to sub-national and municipal levels of government.*

A key driver is the national or sub-national programme size and sector focus: it is often difficult to predict how large or in which sectors a PPP programme is likely to develop over time. This presents an issue of over or under-engineering a central PPP capability – even one project may have wider implications outside the sponsoring ministry such as fiscal impact, accounting and procurement, but creating a dedicated unit at the very start may be hard to justify. Where EPEC Member countries link their PPP programmes to wider and longer term infrastructure plans, the expected size and sector focus can help to inform the expected requirements of the PPP Unit.

- *Consider the expected size and sector focus of the PPP programme in the PPP Unit design and the use of forward-looking infrastructure investment plans.*

Functions change over time: the individual Unit Reports are inevitably a snapshot of the country's PPP institutional framework at a particular point in time when each Unit Report was prepared. In many cases, the functions, structure, and mode of operating of any PPP Unit have changed prior to and since the Unit Report was prepared – and in some cases changed significantly.

In the Netherlands for example the role of the PPP Unit has evolved considerably over time as the number and range of PPPs has developed (see Box 3 below). This suggests that one of the internal functions of the PPP Unit should be focused on the

forward-looking strategy of the PPP Unit itself, ensuring that its functions remain relevant to policy, delivery of the national or sub-national programme and market factors. The Netherlands also benefits from a forward-looking national infrastructure planning approach which can help to identify potential PPP projects.

Some EPEC Member countries have carried out reviews of their PPP Units after operating for a number of years to check that their functions and governance are still relevant. An example of this was the review that the *Mission d'Appui aux Partenariats Public-Privé* (MAPPP) in France carried out in 2010 which led to some changes in its governance arrangements. Similarly, the 'Bates I' and 'Bates II'¹³ reports in the UK led to the creation of the Treasury Taskforce and, subsequently, Partnerships UK (PUK) at the time.

Box 3: Evolution of the role of the Netherlands' PPP Unit

The role of the Ministry of Finance (MoF) in supporting PPPs has gone through three different phases since the late 1990s:

- the first phase involved developing the PPP market. Much of the groundwork for PPPs, such as methodology and guidance, was prepared at this time by the PPP Knowledge Centre which was established in 1999 by the MoF;
- the second phase was largely based on co-ordinating PPP activities. This involved the dissemination of methodology, expertise and lessons-learned about PPPs across government by the PPP Knowledge Centre; and
- the third and current phase is a shift towards supervising the PPP framework and its implementation. As the need to promote PPPs and develop guidance has reduced in a maturing market, the need for a PPP Knowledge Centre separate to MoF was seen as less relevant, and in July 2006, the Knowledge Centre was directly integrated into the MoF. Today the central PPP Unit is in the Department for Public Private Investment in the Directorate for Financing of the MoF.

Staff members of the central PPP Unit are less directly involved in individual PPP projects and there is no obligation on the central PPP Unit to be part of a project team (although some staff can spend up to half their time working on individual projects). The central PPP Unit however still reviews key decisions on individual projects and is involved in a wide range of policy issues.

- *Consider regularly reviewing the functions of the PPP Unit in relation to the policy, administrative and market context as well as the development of the national or sub-national PPP programme itself and how the PPP Unit might respond to changes in these contexts.*

¹³ Sir Malcolm Bates led two reviews in the second half of the 1990's.

2.1.2. Range of functions

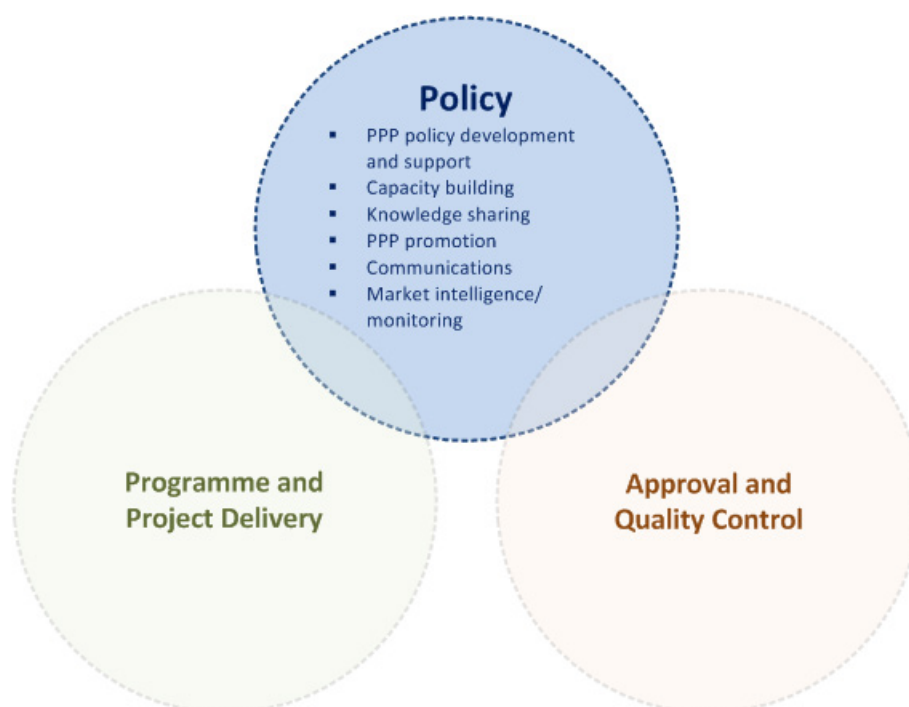
Based on the functions identified in the Unit Reports, PPP Unit functions can broadly be classified into three main areas:

- PPP policy support and development;
- National/sub-national programme and project delivery support; and
- Approval/quality control of projects.

PPP Units often carry out more than one of these broad roles and in different combinations. This classification of functions needs to be treated as approximate but it provides a checklist to help identify the main potential functions for a new or reformed PPP Unit and how they might be combined.

In the following sections, each of the above categories are examined in more detail. In each case the relevant findings from the Unit Reports are summarised and from these some key observations and lessons learnt are identified.

2.2. Policy Support and Related Activities



2.2.1. Basic findings

Based on findings at the time each of the 18 Unit Reports was prepared and with regard to the PPP Units' activities in policy development and support:

- over two thirds of the PPP Units are responsible for developing or supporting the development of PPP policies and in many cases this includes the development of PPP standard documentation. Where this is not done, it is because the PPP Unit has a primary focus on project delivery;

- 70% of PPP Units lead and a further 25% support the development and sharing of PPP best practice;
- all PPP Units lead or support developing market awareness of PPPs;
- just over half the PPP Units lead or support PPP training for the public sector; and
- around two thirds of the PPP Units are responsible for developing and managing databases on PPPs in their markets.

In summary, activities to support policy development and related activities are carried out by almost all the PPP Units reviewed. However, the sub-set of activities within the policy function varies across PPP Units.

Table 1 below shows the different activities that are considered as policy related functions, together with examples of the EPEC Member countries that carry these out (to the extent identified in the Unit Reports).

Table 1 – Mapping of policy functions with examples of PPP Units that carry these out¹⁴

Policy related functions	Location of PPP Units that include this function
PPP policy development and support	
<ul style="list-style-type: none"> Development of legislation (primary or secondary), policy or guidance on preparation and operation of PPPs 	Belgium-W (S), ¹⁵ Bulgaria (S), Croatia, France, Germany (S), Greece, Italy (S), Latvia, Lithuania (S), Malta, Netherlands, Slovakia, UK-Eng, UK-Scot
<ul style="list-style-type: none"> Development of standard contracts or standard contract provisions 	Belgium-W (S), Czech Rep (S), France, Germany, Greece, Ireland, Italy (S), Latvia, Lithuania (S), Netherlands, Portugal (S), Slovakia, UK-Eng, UK-NI, UK-Scot
Capacity building, knowledge sharing, general PPP promotion and communications	
<ul style="list-style-type: none"> Develop and share good practice (including internationally) 	Belgium-W (S), Bulgaria, Croatia, Czech Rep (S), France, Germany, Greece, Latvia, Lithuania, Ireland, Italy (S), Netherlands, Portugal, Slovakia, UK-Eng, UK-NI, UK-Scot
<ul style="list-style-type: none"> Promotion of PPPs (e.g. market awareness) 	Belgium-W (S), Bulgaria, Croatia, Czech Rep, France, Germany, Greece, Latvia, Lithuania, Ireland (S), Italy, Malta, Netherlands, Slovakia, UK-Eng, UK-NI, UK-Scot
<ul style="list-style-type: none"> Provision of training 	Bulgaria (S), Croatia, Czech Rep, France, Germany, Greece, Latvia, Lithuania, Netherlands (S), Portugal, Slovakia, UK-Scot
Intelligence/monitoring of PPP market	
<ul style="list-style-type: none"> PPP database development and management 	Croatia, France, Germany, Greece, Ireland, Italy, Latvia, Netherlands, Portugal, Slovakia, UK-Eng, UK-NI, UK-Scot

2.2.2. Observations and issues to consider

Developing policy

Source of PPP policy expertise within government: most EPEC Member countries have found that developing PPP policy in the form of primary or secondary legislation or guidance (depending on the nature of the administrative system) is an important component of the PPP delivery system and that a PPP Unit can play a crucial role in this activity. The benefits of a coherent and consistent PPP policy include providing clear guidelines across government about why and when PPP should be considered and how the PPP approach should be carried out. This enables procuring authorities to plan their investment and carry out their procurement strategies within a coherent set of rules. As PPP projects are implemented, development of policies on operational issues, such as contract management, benchmarking and ensuring continued delivery of VfM and operational savings, become equally important.

¹⁴ Activities may be carried in some countries by entities other than the identified PPP Unit (e.g. in Poland).

¹⁵ '(S)' means that the PPP Unit plays a supporting role for this activity.

Given that PPP policy can be technically demanding, a core body of expertise focused on PPP issues can ensure that senior policy makers are well informed and that policies are well thought through. Key technical issues may include for example understanding the long-term fiscal implications of a PPP policy or developing approaches to risk allocation that are both bankable and represent value for money. They may also include aligning the costs and benefits of using PPP with other policy objectives, such as small and medium-sized enterprise development.

In France for example MAPPP has played an important role in developing guidance, analytical tools and factsheets for the benefit of all procuring authorities at both national and local level.¹⁶

Continuity of support: PPP policy development is often a continuous process in response to changes in the market or other policy developments. Therefore PPP Units often find themselves continuing to play an important role once the initial PPP framework has been established. Establishing a PPP Unit for policy development has usually turned out not to be a short-term exercise, although initial expectations have sometimes been otherwise.

Driving reform in the public sector: EPEC Member PPP Units are often on the front line in implementing reform. Delivering infrastructure and public services in partnership with the private sector can require changes to approach and thinking which may be unfamiliar to those in the public sector responsible for delivery – for example developing output rather than input specifications or managing new forms of procurement. This can create resistance but may be the very reason why government is keen to use new and different approaches such as PPPs. Chapters 3 and 4 examine in more detail the implications for resourcing and structuring PPP Units as a consequence of this. If this mission is acknowledged, then the required structure, staffing and support of the PPP Unit is more likely to be appropriate. Clearly, PPP Units should not be created to help ‘get around the system’ when it is the system itself that may need reform.

Signalling policy to the market: by setting out the PPP policy, PPP Units can also help to provide a clear signal to the market about political commitment to the national or sub-national PPP programme and how PPP projects will be developed, procured and managed in a consistent way. This encourages and enables bidders to develop their own capacity and thus helps to ensure a strong competitive response from the market when projects are launched.

Market shaping: the capacity of the market to bid for PPP projects usually needs to be encouraged to develop, especially in the early stages of a national or sub-national PPP programme or in developing alternative and new sources of supply to ensure healthy competition. Local bidders in particular will be unfamiliar with the risks and long-term performance based nature of PPP contracts. There may even be resistance from the market to such change. PPP Units have sometimes found that they need to play a role in ‘shaping’ the market, so that high quality bidders are able

¹⁶ For example *Les contrats de partenariat: guide méthodologique, modèle financier d'évaluation préalable, clausier-type du contrat de partenariat*. See www.economie.gouv.fr/ppp/outils-0

to respond to PPP tenders. An example of this might be developing and coordinating forward-looking project pipelines (which may also involve the PPP Unit in the development of national infrastructure plans) or developing policies to attract new sources of long-term capital.

Some PPP Units have decided to concentrate on these and other national or sub-national programme level issues (and sometimes focus less on project level support activities): the Netherland's PPP Unit for example focuses on issues such as the future use of pension funds in the development of the PPP market and improved practice in the management of operational PPP contracts. Similarly, IUK (England) has a number of programme-level activities such as mobilising additional long-term finance sources and development of programme-wide standardised contractual terms (as well as wider infrastructure delivery issues).

- *Consider the need for PPP-specific expertise to support PPP policy development on a continuous basis, drive reform and help to develop the PPP market.*

Co-ordinating the PPP delivery system: PPP Units are usually part of a wider project delivery system. However an important role for the PPP Unit is often to ensure co-ordination across all the different players. Not only can this ensure greater coherence and consistency of policy across sectors (for example in value for money assessment methodology), but it can also improve efficiency and effectiveness. An example might be in co-ordinating project pipelines to ensure that the market is not overwhelmed or in coordinating the response to the failure of a contractor across multiple procuring authorities. In Poland for example the importance of ensuring coordination across government is recognised as a challenge.

- *Consider the need for coordinating other PPP-related entities and approaches across government to support national/sub-national programme-wide coherence and consistency.*

Standardisation of contracts: a number of PPP Units are involved in developing standard terms for PPP contracts and tender documents. For PPP contracts, this in effect involves developing a consistent approach to how certain risks in a PPP are to be allocated contractually between the public and private sector. By developing key documentation terms at a central government level through the PPP Unit, the public sector may be better able to benefit from engaging with the market as a whole. This avoids having such terms developed or negotiated on a project-by-project basis, which can sometimes lead to negotiating the public sector's requirements down to the lowest common denominator. Furthermore, as conditions in the market evolve or policies change, the PPP Unit is well placed to consider and engage with the market on any revisions that may be required for new projects. The cost and time savings in developing PPP contract and tender document terms across the national or sub-national programme can also help to make the process more affordable and therefore ensure that high quality resources are deployed by the public sector in this exercise. Examples of this approach include IUK (England), MAPPP (France), PD (Germany), SFT(Scotland) and *Unità Tecnica Finanza di Progetto* (UTFP) in Italy.

- *Consider the need for PPP Units to provide a specialised resource to engage with the market and to develop and update standardised PPP contractual documentation.*

Capacity building, information and communication

Reflecting the importance of this issue, it is not surprising to observe that over two-thirds of the PPP Units reviewed are involved in collecting, managing, analysing, reporting on and publishing PPP project data. PPP Units carry out this activity for a range of reasons including:

Awareness raising and promotion of PPP policy: in the earlier stages of national or sub-national programme development, it is important to raise awareness of PPPs with procuring authorities. However as a number of PPP Units have found, it is important to ensure that the choice between PPPs and other forms of procurement is not biased one way or the other simply as a result of a particular process or funding mechanism in the public sector. Instead, the emphasis should be on the promotion of good PPP practice in the event that the PPP route is the appropriate one. Some PPP Units have also been involved in sharing and promoting PPP expertise internationally as part of wider government-to-government relations.

Promoting PPP projects in the market: in addition to promoting PPP policy, some PPP Units are also involved in raising market awareness of PPP projects themselves. This can be especially important for newer markets. Raising awareness of potential projects with international contractors and investors can benefit from this support as capacity for this may not necessarily be available at the line ministry or local government level. Presenting projects in the right way and at the right stage in their development is very important to ensure their credibility. This is where a PPP Unit can help to avoid poorly developed 'wish-lists' of projects being disseminated which deter potential serious bidders.

Training: a number of PPP Units also provide training or may arrange to outsource the delivery of training while overseeing the content of training materials. Some PPP Units may also use other mechanisms to help spread good practice. An example is the secondment of PPP Unit staff temporarily into sectoral PPP units in line ministries. Some PPP Units have also supported relevant entities in government in the development and oversight of quality improvement mechanisms. This can involve government personnel qualified to peer review each other's PPPs (and other projects) within a quality review framework (such as the Office of Government Commerce (OGC) GatewayTM review process in the UK). These approaches seek to avoid creating the PPP Unit as 'an island of excellence', instead using it to drive reform and spread PPP know-how and good practice.

Ensuring a clear and consistent message to citizens on PPP policy: PPP Units may be involved in helping to ensure consistency and clarity of message from ministers and senior officials on PPP issues. They may also play a role in responding to any criticism from the media in an informed and consistent way. The complexity of PPPs, and the different motivations for using them, often requires accurate simplification of

a complex topic so that policy can be clearly understood by those disseminating it across government and relevant stakeholders. Communicating the role of the PPP Unit itself is also important.

Handling reviews, criticism and information requests: these activities can form an important role for the central PPP Unit, providing an informed resource to handle questions or criticisms that may be raised by parliament or a national audit body on government's PPP policy and the performance of underlying projects. A suitably informed and qualified resource may also be needed to handle questions that are raised by citizens or the media including those raised under any freedom of information requirements.

Managing information databases and supporting transparency: PPP Units are often involved in the central collection and management of information on PPP projects to ensure for example that long-term fiscal obligations can be identified, tracked and managed appropriately (supporting for example a ministry of finance budget office in this work). The PPP Unit in Portugal (UTAP), has these functions specifically identified in its mandate which is established in law. Some PPP Units have also developed project databases and project tracking tools that are publicly available. These can assist the market and create greater transparency. However the resources required for collecting project information and ensuring that it is accurate and kept up-to-date should not be underestimated.

- *Consider the role of the PPP Unit in providing specialised support to ensure clear communication of PPP policy, handle complex questions around PPP policies and performance, as well as to ensure recording and tracking of project information for budgeting and other purposes.*

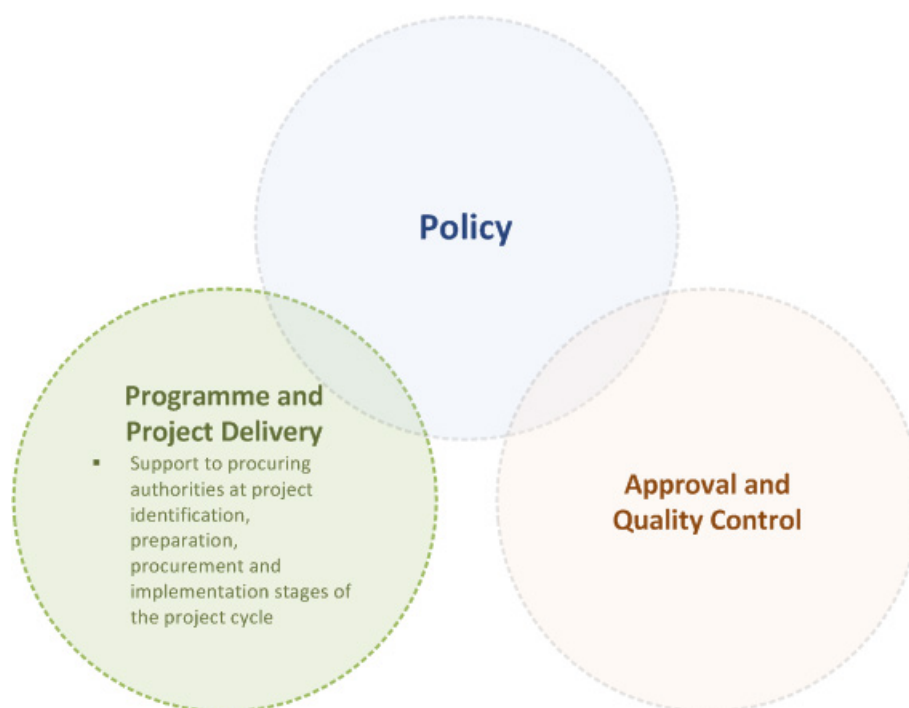
Ex-post evaluation

From time to time (i.e. not routinely), some PPP Units also carry out ex-post evaluations of national or sub-national programmes or projects (in addition to separate independent efficiency or value for money evaluations carried out by a national auditing body). This activity is often carried out by a specialised consultancy supervised by the PPP Unit. These evaluations are used, for example, to inform further policy development.¹⁷

- *Consider the role of the PPP Unit in evaluating or managing the evaluation of national or sub-national PPP programmes and projects to inform further policy development.*

¹⁷ EPEC is currently developing a paper on ex-post evaluations.

2.3. Programme and Project Delivery Activities



2.3.1. Basic findings

National/sub-national programme and project delivery activity usually involves providing support to a separate procuring authority, typically a line ministry or sub-national body, responsible for the development, procurement and implementation of the PPP project itself. Around half the PPP Units reviewed carry out this function. Within this function:

- just under half the PPP Units are involved at the project identification and feasibility stages in the project cycle or assist procuring authorities in finding advisers. Of these PPP Units, most play a supporting rather than a leading role in the process;
- around a quarter of the PPP Units are a part of the project team during the development and procurement stages. Another 25% of the PPP Units can provide support at these stages, but only if requested;
- around a third of the PPP Units are involved in contract negotiations and in bid evaluations; and
- around a half of PPP Units participate in a committee overseeing the project development and procurement processes.

The above observations suggest that where PPP Units are involved in project related activities, the most common approach is to do so in a supporting or oversight capacity rather than to participate directly in project level activities.

As mentioned, line ministries and other levels of government in many EPEC Member countries, and who are themselves procuring authorities, often have their own sector-

focused PPP teams. Therefore the role of the central PPP Unit is to support, not substitute for, this capability. For this to work well, the quality and credibility of additional support from the central PPP Unit is vital for an effective working relationship with these procuring authorities and their PPP teams.

Table 2 below identifies the main project level activities in the PPP process and provides examples of support provided by PPP Units.

2.3.2. Observations and issues to consider

Addressing the need for specialist skills

Wide range of skills needed: one of the key challenges for the public sector is the wide range of specialist skills that are required in the selection of projects suitable for PPP procurement, their preparation for market, their procurement and subsequent implementation and contract management. These include legal, technical, financial and project management skills. However the nature and need for specialist skills may not always be obvious to the procuring authority itself, especially when the PPP process is new. This can lead to underestimating the mix of specialist skills needed for the PPP process.

Furthermore, to the extent that such skills are not available within the public sector, contracting specialist expertise from the market can often be more efficient and effective than establishing these skills in-house. Most national or sub-national PPP programmes rely extensively on the use of external advisers. However, the appointment of appropriate advisers on the right terms, and their subsequent management, can present a challenge for less experienced procuring authorities (see EPEC guidance on *The role and use of advisers in preparing and implementing PPP projects*).¹⁸

Managing external advisory support: PPP Units can play an important role in supporting procuring authorities in identifying, appointing and managing the right mix of expertise from across the public and private sector and in identifying realistic budget resources required.

- ➡ *Consider how procuring authorities will themselves develop or access specialist advisory support and the role of the PPP Unit in supporting them in doing so.*

¹⁸ See www.eib.org/epec/resources/publications/role_and_use_of_advisers_en.pdf

Table 2 – Mapping of project-related functions with examples of PPP Units that carry these out¹⁹

Project related functions	Location of PPP Units that include this function ²⁰
Support to procuring authorities during the project <u>identification</u> stage	
<ul style="list-style-type: none"> Involvement in identification of potential PPP projects and project pipeline planning 	Croatia, Germany, Greece (S), ²¹ UK-Eng (S), UK-NI, UK-Scot (S)
<ul style="list-style-type: none"> Development of business case/feasibility study 	Greece (S), Ireland, UK-NI, UK-Scot (S)
<ul style="list-style-type: none"> Assess PPP feasibility 	Belgium-W (S), Croatia, Greece (S), Latvia, Netherlands, ²² Portugal, Slovakia, UK-Eng (S), UK-NI, UK-Scot
Support to procuring authorities during the project <u>preparation</u> stage	
<ul style="list-style-type: none"> Support in selection and management of external advisers 	Ireland, Greece (S), Slovakia, UK-Scot, UK-NI
<ul style="list-style-type: none"> Sit on steering/oversight committee for the project 	Belgium-W, Greece, Ireland, Lithuania, Portugal, Slovakia, UK-NI, UK-Scot (S)
<ul style="list-style-type: none"> Participate in project team/group 	Belgium-W, Ireland, Portugal, UK-NI, UK-Scot (S)
Support to procuring authorities during the <u>procurement</u> stage	
<ul style="list-style-type: none"> Act as procuring authority for the project 	Ireland
<ul style="list-style-type: none"> Involvement in contract negotiation 	Ireland, UK-NI, Greece (S), Portugal
<ul style="list-style-type: none"> Involvement in post-preferred bidder negotiations 	Greece, Ireland, Portugal, UK-NI
<ul style="list-style-type: none"> Involvement in financial close 	Ireland, Greece, Portugal, UK-Eng, UK-NI, UK-Scot
<ul style="list-style-type: none"> Sign the final PPP contract 	Ireland
Support to procuring authorities during project <u>implementation</u> stage	
<ul style="list-style-type: none"> Oversight of payments to the private partner 	Greece, Portugal
<ul style="list-style-type: none"> Management of the PPP contract 	Greece (S), Portugal ²³
<ul style="list-style-type: none"> Monitoring of project implementation 	Belgium-W (S), Greece (S), Latvia, Portugal (S), UK-NI

Developing in-house technical support: in some cases, the PPP Unit itself may establish in-house expertise, especially for issues that arise repeatedly across the national or sub-national programme and/or involve the close involvement of senior decision-makers. PPP Units may therefore play a significant role in a particular phase of the project life cycle. Examples of this include managing contract issues and contract renegotiations across a programme,²⁴ especially where the issues are likely to raise complex questions, important decisions need to be taken and government

¹⁹ Based on the PPP project cycle used in EPEC's Guide to Guidance (see www.eib.org/epec/g2g/index.htm). Information is as reported in the PPP Unit Reports at the time. Activities may be carried in some countries by entities other than the identified PPP Unit.

²⁰ Other PPP Units may also carry out these tasks, if specifically requested (e.g. PPP Centrum in Czech Republic).

²¹ '(S)' means that the PPP Unit plays a supporting role.

²² If at the request of the PPP Unit.

²³ If requested to act as contract manager.

²⁴ See EPEC paper on 'Managing PPPs during their Contract Life' at: www.eib.org/epec/resources/epec_managing_ppp_during_their_contract_life_en.pdf

wishes to ensure that a consistent line is taken in approach and negotiation. In Portugal, this is currently a major activity of UTAP.

- *Consider areas where it may be more efficient and effective for the PPP Unit to develop and provide project specialist support itself and the basis upon which this would be provided to procuring authorities.*

Drawing on existing public sector PPP project delivery experience: for many EPEC Member countries, the establishment of the PPP Unit has taken place after a number of projects have been delivered by a particular line ministry or procuring authority in sectors such as transport (or in the case of Bulgaria, natural resources). Experience developed within the public sector of managing the overall delivery of a PPP project is particularly valuable. PPP Units have been most effective when they have taken account of the experience that has been developed in line ministries and have made use of and helped to disseminate this experience to other procuring authorities less familiar with PPPs (this issue is examined further in Chapter 3).

- *Where possible, make use of and disseminate project delivery expertise that already exists in some procuring authorities.*

Forms of engagement in providing project support

Participation in project governance: a number of EPEC Member PPP Units have found that an effective way to provide support to procuring authorities is through participation as a member of a programme or project steering committee. This can be an efficient way to deploy senior and experienced staff from the PPP Unit, leaving the day-to-day project delivery activities to the project management team itself. In some countries, membership of the project and procurement committees is mandatory and the head of the PPP Unit may also be required to appoint other members of the project committees (e.g. UTAP). PPP Units are sometimes required to take over direct management of a PPP contract, but this is usually in response to a situation in which the procuring authority finds itself no longer able to do so.

Ad hoc support: a number of PPP Units have also established a capability to provide *ad hoc* technical advice, available at short notice, to procuring authorities (and even the private sector) through a 'helpdesk'. The Danish Competition and Consumer Authority established a helpdesk service for public authorities interested in PPPs. UTFP in Italy was also established to provide technical assistance to a wide range of public bodies, especially to municipalities, on PPP issues such as financial feasibility analysis, preparation of tender documents as well as supporting central ministries on strategic infrastructure issues. For large national or sub-national programmes with multiple procuring authorities, this can help ensure that experience from one project is quickly and efficiently transferred to other projects (for example in the implementation of competitive dialogue processes or in dealing with common issues that may arise in contract management). Helpdesks work well when they can react quickly to requests and reduce the need to seek advice from advisers that may take time to procure and be less cost-effective.

- *Consider how the PPP Unit will engage with procuring authorities if project level technical support is to be provided, possibly through participation in the governance of the project, and/or through the availability of a helpdesk or development of a specialist support team housed in the PPP Unit.*

Fee-for-advisory role: some PPP Units, such as PD (Germany) and the PPP Centrum (Czech Republic), provide specialist advisory services on a fee basis at the request of the public sector client (this is discussed further in Chapter 3).

Acting as the procuring authority: across the EPEC Member countries, most line ministries (or municipalities) are the procuring authority for their projects during the preparation, procurement and implementation stages. An alternative approach is the National Development Finance Agency (NDFA) in Ireland, which can act as the procuring authority for national level projects (see Box 4), where necessary outsourcing particular skills to project advisers.

Box 4 – NDFA (Ireland) procurement functions

In addition to its advisory role for projects during the project identification and development phase, NDFA can act as a procuring authority in its own right across a wide range of sectors (excluding transport). There are clear conditions to be met before a project is transferred to the NDFA to ensure that it is properly sponsored by the relevant originating authority. These conditions include completion of detailed project appraisal, decision on main components of risk allocation, agreement on output specifications, obtaining statutory approvals and stakeholder consultation.

Once a project is procured, NDFA continues to be responsible for managing the contract during the construction phase until service commencement, whereupon it transfers responsibility to the original sponsoring authority.

NDFA continues to be available to provide support on contract management over the life of the project and particularly in relation to any renegotiation issues that may arise from refinancing.

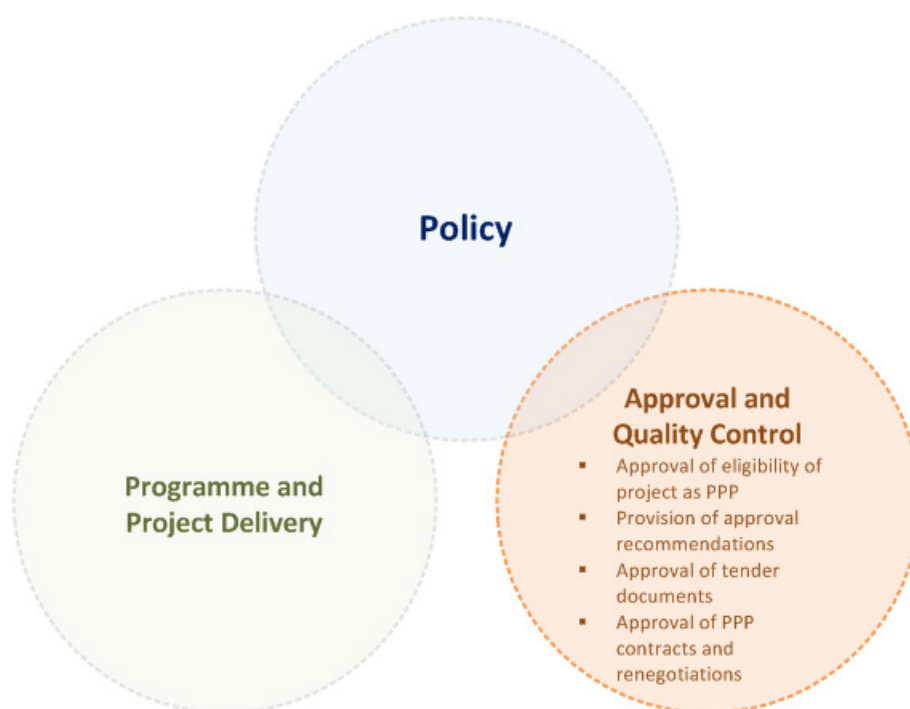
This approach acknowledges the complexities of the PPP procurement stage and the costs of developing the range and level of expertise across different procuring authorities. In these cases, especially for smaller national or sub-national programmes, there may be benefits to centralising procurement experience and expertise. This can also help to ensure discipline and consistency in approaches to the market and strengthen the public sector's negotiating power through use of a single procuring entity.

- *Consider, especially for smaller national or sub-national programmes, if the PPP Unit should have a procurement function, taking into account how projects are initiated and subsequently managed over their contract life.*

Developing programme delivery mechanisms: some PPP Units have played a central role supporting line ministries in the development of sector-specific PPP programme delivery mechanisms²⁵, including the teams or units established to manage these. This may also involve bringing together different entities to deliver a common programme of investment. An example is the Waste Infrastructure Delivery Programme in England²⁶ established to deliver a sector-specific programme of investment, including PPPs, and which is sponsored by a number of line ministries and local government.

- ➔ *Consider whether and how the PPP Unit might develop programme approaches in specific sectors working with the relevant line ministries/authorities.*

2.4. Approval and Quality Control



2.4.1. Basic findings

Ensuring that the right project is procured in the right way can be an important function of the PPP Unit. This can be achieved by processes that monitor, check and approve the suitability of the proposed project against policy requirements at various stages in the project life cycle. Strong, high-level oversight can also add credibility to the national or sub-national PPP programme overall and may be part of a more broadly applied public investment process.²⁷

²⁵ EPEC is currently developing a note on delivering multiple PPPs under a programme approach.

²⁶ See www.gov.uk/government/policies/reducing-and-managing-waste/supporting-pages/waste-infrastructure-delivery-programme

²⁷ For example see the UK's (HMT) guidance using the Five Case Model.

- Around half the PPP Units included in the review are involved in assessing or providing some form of support in assessing projects for their suitability as PPPs;
- Around half either approve or support the decision body that approves projects for PPPs;
- Around a third are required to approve PPP tender documents;
- A smaller proportion (around a quarter) of PPP Units are involved in approving the bid evaluation and the terms of the final contract before signature;
- 20% are required to approve renegotiated contract terms during construction; and
- One PPP Unit²⁸ is required to approve the project financing documentation.

The stages at which such approvals take place in the project cycle vary among the PPP Units but the two most common points are at the pre-procurement stage (i.e. approval on whether or not a project will be procured as a PPP) and at the pre-contract signature stage (i.e. approval of final PPP contract terms). For some PPP Units, the approval function is one of their primary activities. This does not necessarily mean that in other EPEC Member countries there is no PPP approval process (which may be based on different or wider criteria than PPP-specific criteria) just that it is not a function of the PPP Unit.

Table 3 below lists the types of activities that may be involved in this function and examples of the activities carried out by PPP Units.

Table 3 – Mapping of approval and quality control functions with examples of PPP Units that carry these out²⁹

Approval and quality control functions	Location of PPP Units that include this function
<ul style="list-style-type: none"> ▪ Approval of eligibility of projects for implementation as PPPs 	Croatia, France, Greece, Latvia, UK-Eng, UK-Scot ³⁰
<ul style="list-style-type: none"> ▪ Providing recommendations to approval bodies 	Belgium-W, Greece, Portugal, UK-Scot
<ul style="list-style-type: none"> ▪ Approval of tender documentation 	Greece, Ireland, Latvia, Portugal, UK-NI, UK-Scot
<ul style="list-style-type: none"> ▪ Approval of PPP contracts 	France, ³¹ Greece, Latvia, UK-Eng, UK-Scot
<ul style="list-style-type: none"> ▪ Approval of renegotiations 	Croatia, Greece, Ireland, Latvia

²⁸ PPP Secretariat, Greece.

²⁹ As reported in the Unit Reports at the time. Activities may be carried out in some countries by entities other than the identified PPP Unit.

³⁰ In conjunction with the Government Finance Department.

³¹ For State projects.

2.4.2. Observations and issues to consider

Ensuring compliance with the policy framework and established standards: approval processes ensure that policy and other requirements are complied with at the right time. This is usually an integral part of a quality control process designed to ensure that any issue that might adversely affect the project is recognised as early as possible and the right action taken. Quality control functions (discussed later in this Chapter) can therefore be an important activity for PPP Units (or other entities) in conjunction with the policy development functions. One approach may involve the PPP Unit examining a set of clearly defined PPP-related criteria using specialist skills within the PPP Unit. An example of this is the *évaluation préalable* (EP) carried out by MAPPP (see Box 5 below).

Box 5 - The *évaluation préalable* in France

An EP is an analysis carried out by a procuring authority which compares alternative procurement and contractual solutions such as the comparison of traditional public works contracts with the PPP. The EP analysis looks at the global cost of a project, performance aspects and risk sharing matters. It is not meant to address the socio-economic usefulness of a project (this has to be analysed before the EP process). Equally, an EP does not tackle issues related to the affordability of a project for the public sector. An EP therefore sets out the relevance of using a *contrat de partenariat* (CP) for a specific project. EPs follow a standard approach and format which have been developed by MAPPP.³²

State procuring authorities (e.g. line ministries, *établissements publics*) are obliged to submit their EPs to MAPPP for its validation. Local government procuring authorities have the option (but no obligation) to submit their EPs to MAPPP. In practice though one out of three local procuring authorities contemplating the use of a CP approaches MAPPP for validation.

When required, the opinion of MAPPP is a necessary condition (although it does not suffice) for the start of the procurement process for a CP.

By May 2012 (the date of the Unit Report for France), MAPPP had dealt with over 500 potential CP projects and had provided 175 opinions on EPs. Negative opinions are rare: this apparent low failure rate is explained by the fact that MAPPP is often consulted in the preparation of EPs before they are formally submitted, allowing it to turn down potential CPs at an early stage without going all the way to a formal opinion.

Part of a wider network of approval processes: the approval activities of a PPP Unit may be part of a more widely standardised approach across infrastructure projects, not just PPPs, such as the 'project decision' in the case of the Netherlands.

³² See annex 1 of MAPPP's *Guide méthodologique* at: www.economie.gouv.fr/files/files/directions_services/ppp/GuideContratPartenariat.pdf

The Key Stage Review process carried out by SFT forms a part of the Scottish Government's Independent Assurance Framework. Other examples include the Major Project Assurance process in the UK. In the latter case, staff members of IUK (England) take part in project review committees to assess all infrastructure projects, not just PPPs, above a threshold investment value. As highlighted in a recent study by the Organisation for Economic Co-operation and Development (OECD), subjecting traditionally procured projects and PPPs to similar levels of detail, information and processes for approval can help to eliminate institutional bias against PPPs which are typically subject to more onerous approval processes.

Basis of authority is important: in many cases, the PPP Unit itself may not have the authority to issue an approval but is required to review proposals and provide recommendations to a separate committee or act as a 'gatekeeper' prior to the submission of proposals to an approval committee – an example of this is the role of the PPP Secretariat in Greece (see Box 6 below).

Box 6 – Role of the Greek PPP Secretariat in the project approval process

An authority intending to develop a PPP must submit its proposal to the PPP Secretariat which evaluates the feasibility of the specific project and its inclusion, or otherwise, in the 'List of Proposed Partnerships'. The project proposal must include:

- the socio-economic characteristics that justify the need for the proposed project;
- a detailed description of the project / service that will be provided as a PPP;
- technical, legal, economic and financial specifications of the proposed PPP;
- all financial elements, including the proposed payment structure, present value of availability payments, level of anticipated capital contributions and other financial support mechanisms provided through public resources; and
- a project delivery timetable.

When evaluating a proposal, the PPP Secretariat takes into consideration:

- socio-economic criteria, including needs analysis and the level of stakeholder support, particularly for projects expecting to receive EU grants;
- the quality of the project feasibility studies and the status of any necessary government approvals;
- the expected impact of the project on delivery of improved quality of service to end-users;
- the affordability and bankability of the project; and
- the competence of the authority's project team to implement the project.

Following its evaluation, and if positive, the PPP Secretariat adds the project to the List of Proposed Partnerships and notifies the authority of its decision. The authority may then submit its project to the Inter-Ministerial Committee for PPP (ICPPP) identifying PPP as the preferred procurement option and requesting ICPPP approval.

- *Consider how policy compliance and quality control will be implemented across the national or sub-national PPP programme and the potential role of the PPP Unit (either in performing a specialist approval role and/or as part of a wider set of approval processes and/or as a source of technical review support to a separate approval committee).*

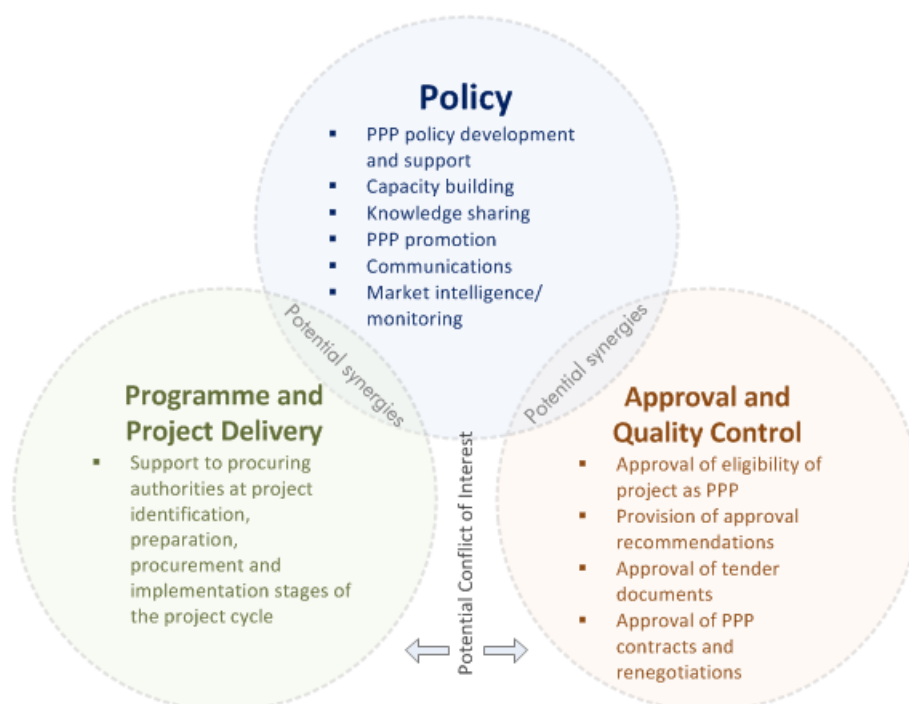
This highlights an important operational issue with any approval process: such processes need to be supported by the correct levels of authority. The location of the PPP Unit (discussed in Chapter 4) is therefore important.

- *Consider the source of authority for the PPP Unit in performing its approval functions.*

In some cases, PPP Units are the gatekeepers to funding for PPP projects which can be an effective tool to impose discipline and consistency of approach across a national or sub-national programme. This of course will depend on the extent to which the existing expenditure and budget process can allow this. It is also important to guard against a process which creates an unwanted positive or negative bias in using PPPs (i.e. the decision to use a PPP is driven by the access to funding and not by a policy requirement such as value for money).

- *Consider the impact of any process that may create an unwanted positive or negative bias in favour of PPPs.*

2.5. Combining Functions



2.5.1. Basic findings

Many of the EPEC Member PPP Units carry out a combination of policy, project support and approval functions. Table 4 below sets out the relative level of support for the different PPP Unit functions. The darker colours in Table 4 represent a higher priority and level of activity within a particular PPP Unit. Lower priority functions for the central PPP Unit itself might however be carried out by other entities: for example in Italy project delivery and approval is largely carried out by sub-national and municipal authorities.

Table 4 – Mapping of function combinations across PPP Units

Location of PPP Unit	Policy	Programme and project delivery	Approval and quality control
Belgium – Wallonia	Medium priority activity	Limited/no activity	Higher priority activity
Bulgaria	Medium priority activity	Higher priority activity	Higher priority activity
Croatia	Higher priority activity	Higher priority activity	Medium priority activity
Czech Republic	Medium priority activity	Medium priority activity	Limited/no activity
France	Higher priority activity	Limited/no activity	Medium priority activity
Germany	Higher priority activity	Medium priority activity	Limited/no activity
Greece	Higher priority activity	Higher priority activity	Higher priority activity
Ireland	Medium priority activity	Higher priority activity	Higher priority activity
Italy	Medium priority activity	Higher priority activity	Limited/no activity
Latvia	Higher priority activity	Limited/no activity	Medium priority activity
Lithuania	Higher priority activity	Limited/no activity	Higher priority activity
Malta	Higher priority activity	Limited/no activity	Limited/no activity
Netherlands	Higher priority activity	Higher priority activity	Higher priority activity
Portugal	Higher priority activity	Higher priority activity	Medium priority activity
Slovakia	Higher priority activity	Higher priority activity	Higher priority activity
UK-England	Higher priority activity	Medium priority activity	Medium priority activity
UK-Northern Ireland	Higher priority activity	Higher priority activity	Medium priority activity
UK-Scotland	Higher priority activity	Medium priority activity	Higher priority activity

Higher priority activity

Medium priority activity

Lower priority activity

Limited/no activity

2.5.2. Observations and issues to consider

One function can reinforce the effectiveness of another function: there are potential synergies among different functions. For example PPP Units have found that providing support to projects themselves (or by having close links with other entities that perform this function) can help ensure that their PPP policy work is based on a good understanding of the realities of the market and of public sector implementing capacity. The development of standardised PPP contract terms needs to be informed

by a close understanding of what risks may be allocated to the private sector and on terms that are likely to represent good value for money. Related issues, such as the importance of lenders' step-in rights, have sometimes been underestimated by policy makers when drafting legislation or standard contract provisions. A PPP Unit that has an understanding of the requirements of lenders through project support activities can help to avoid this problem.

Potential conflicts across functions: particular care is required in combining project support and approval functions. Provided conflicts can be anticipated and managed through an appropriate governance mechanism (for example by the PPP Unit providing technical support to a separate decision-making body) there can be benefits from a PPP Unit supporting procuring authorities with their project preparation as well as being involved in the approval process. Not least, they will have a thorough understanding of what is required. It may also help to ensure that the approval process is better informed by the key issues affecting a project.

- *Consider the benefits of combining different functions within the PPP Unit and how this might reinforce the effectiveness of the PP Unit, taking account of any potential conflicts between roles.*

2.6. Wider Functions

Across the EPEC membership, there are a number of examples where PPP Units have been designed, or have developed to play, a broader role in the delivery of infrastructure projects and programmes. Examples of this include IUK, SFT, UTFP and the Department for PPPs, State Ownership and Concessions in Bulgaria. The Strategic Investment Board (SIB) in Northern Ireland is tasked with bringing broader investment expertise into the public sector in general, not just through PPPs as well as developing the investment strategy and supporting government departments in making more effective and efficient use of their property assets.

Assuming that the key policy objective is the efficiency and effectiveness of infrastructure investment overall, the drivers include some combination of the need for:

- skilling up and specialising in wider infrastructure planning, prioritisation and delivery;
- further information and data on public infrastructure delivery and performance;
- consistency of treatment between PPPs and other forms of procurement; and
- combining PPPs and other forms of infrastructure procurement and delivery (especially for very large or very small projects).

This approach also recognises that many of the disciplines used in the delivery of PPPs³³ can be equally relevant in traditional forms of public infrastructure delivery. Bringing these disciplines together in one place can also stimulate innovation and bring fresh approaches and models for infrastructure investment such as the aggregation of debt financing for batches of projects. Finally, it can also help to ensure that decisions are not biased towards a particular project delivery route, PPP or otherwise.

- ➔ *Consider whether the expected PPP Unit functions share common features with broader infrastructure delivery issues and whether these functions should be part of a wider collection of infrastructure planning, delivery and approval activities.*

2.7. Funding and Financing of PPP Activities

Finally, some PPP Units play a role as sources of funding and/or financing for national or sub-national PPP programmes or projects, although this is not very common. This may be part of a broader infrastructure support activity, such as the UK Guarantees Scheme run by a team within IUK (England), or it may be part of an existing capability, such as the implementation of EU co-financing programmes, as is the case of the PPP Units in the Central Finance and Contracting Agency (CFCA) in Latvia and the Central Project Management Agency (CPMA) in Lithuania. One of the benefits of this approach is that these schemes can sometimes be established relatively quickly (the UK Treasury's previous Treasury Infrastructure Finance Unit was fully operational as a lending body within six months). These activities can also enhance the role and authority of the PPP Unit and strengthen its engagement with procuring authorities.

To help catalyse new or challenging forms of PPPs, sometimes a PPP Unit helps to finance the establishment of programme delivery vehicles (albeit not project companies) or supports particular project preparation costs (recovering costs at or after financial close). PUK (prior to its absorption into IUK) is an example of a PPP Unit that provided this type of support.

While there can be considerable benefits to a PPP Unit providing such support, any conflicts of interest between acting as a source of funding or finance and the other functions of a PPP Unit need to be recognised and managed. In such cases, project approval functions, for example, could be carried out by a separate body.

- ➔ *Consider the possible role of the PPP Unit in funding or financing PPP activities, taking into account potential conflicts and any impact on policy, project delivery and/or approval functions.*

³³ Such as the need for thorough ex-ante project evaluation or the use of quality control processes during the project cycle.

2.8. PPP Unit Functions: Summary of Issues to Consider

Based on observations from the Unit Reports with regard to the functions of a PPP Unit, the key lessons learnt and issues for public-decision makers to consider are summarised below.

Commence with an analysis of the requirements expected of the PPP Unit, including the need to identify:

- the key policy drivers for developing a national or sub-national PPP programme and the gaps that may need to be addressed for the programme to be delivered successfully;
- what other institutions are expected to be involved in delivering the national or sub-national PPP programme and how the PPP Unit might work with these; and
- the expected size and focus of the national or sub-national PPP programme using forward-looking infrastructure plans, where these are available.

... and, subsequently:

- regularly review the functions of the PPP Unit in relation to the policy, administrative and market context as well as the development of the national or sub-national PPP programme itself. Review how the PPP Unit might respond to changes in these contexts given that the requirements will change over time.

With regard to PPP policy related issues, consider:

- how the PPP Unit can provide PPP-specific expertise to support PPP policy development on a continuous basis, drive reform and help to develop the PPP market;
- the need for coordinating other PPP-related entities and approaches across government to support programme-wide coherence and consistency;
- the need for specialised resources to engage with the market, develop and update standardised PPP contractual documentation;
- the need for specialised support to ensure clear communication of PPP policy, handle complex questions around PPP policies and performance, as well as to ensure recording and tracking of project information for budgeting and other purposes; and
- the role of the PPP Unit in the evaluation of national or sub-national PPP programmes and projects to inform further policy development.

With regard to project support functions, consider:

- how procuring authorities will develop or access specialist advisory support and the role of the PPP Unit to support them in doing so;
- areas where it may be more efficient and effective for the PPP Unit to develop and provide project specialist support and the basis upon which this would be

- provided to procuring authorities, taking into account and making use of project delivery expertise that may already exist in some procuring authorities;
- how the PPP Unit will engage with procuring authorities if project level technical support is to be provided, through participation in the governance of the project, and/or through the availability of a helpdesk or development of a specialist support team housed in the PPP Unit;
 - whether the PPP Unit should have a procurement function, taking into account how projects are initiated and subsequently managed over their contract life, especially for smaller national or sub-national programmes; and
 - whether and how the PPP Unit might catalyse and support procuring authorities to develop programme approaches in specific sectors which may involve a number of different procuring authorities working together.

With regard to approval and quality control functions, consider:

- how policy compliance and quality control will be implemented across the national or sub-national PPP programme and the potential role of the PPP Unit. This could include performing a specialist approval role itself or as a source of technical review support to a separate approval committee;
- the source of authority for the PPP Unit in performing its approval functions; and
- the impact of any approval (or other PPP support process) that may create an unwanted positive or negative bias in favour of PPPs.

In addition, consider:

- the benefits of combining different functions within the PPP Unit and how this might reinforce the effectiveness of the PPP Unit, taking account of any potential conflict between roles;
- whether the expected PPP Unit functions share common features with broader infrastructure delivery and whether these functions should be part of a wider collection of infrastructure planning, delivery and approval activities; and
- the possible role of the PPP Unit in funding or financing PPP activities, taking into account potential conflicts and any impact on policy, project delivery and/or approval functions.

3. Staffing and Funding

Key questions

- What size of team is appropriate for a PPP Unit?
 - What staff skills are required?
 - How can appropriate staff be recruited and retained in the PPP Unit?
 - How are PPP Units funded?
-

3.1. Introduction

This Chapter identifies, analyses and discusses the relationship between the role of the PPP Unit and the resources required, together with the issues to consider in attracting and retaining the right staff. This Chapter also looks at how PPP Units fund themselves.

Staffing PPP Units is critical to the success of a national or sub-national PPP programme and may present one of the more significant challenges for governments in establishing an effective PPP Unit. This is often compounded by the need to combine a wide range of skills and competencies from both the public and private sector, especially if project support is a function of the PPP Unit. People with these skills need to be attracted to and retained within, usually, a public sector entity and one that may be new or have an uncertain future.

3.2. Staffing of PPP Units

3.2.1. Basic findings

Table 5 below summarises the findings from each of the Unit Reports. To put these findings in context, these are mapped against the outline of functions for PPPs Unit presented in Chapter 2. The information for each PPP Unit is based on the information correct at the time of the particular Unit Report for each country (as are the functions) but it is recognised that the situation may have changed since the date each Unit Report was prepared. Observations and further issues to consider are then discussed.

Table 5 – Matrix of functions and staff

Location of PPP Unit	Policy	Programme and project delivery	Approval and quality control	Team size (FTE equivalent where relevant)	Use of secondees	Difficulty attracting staff with PPP expertise
Belgium - Wallonia				2	No	Yes, large
Bulgaria				7	No	Yes, large
Croatia		0.167		12	No	Yes, large
Czech Republic				6	No	Yes, large
France				10	No	No
Germany				30	No	No
Greece				10	Yes	No
Ireland				35	No	No
Italy				12	No	Yes, moderate
Latvia				2	No	Yes, large
Lithuania				5	Yes	Yes, large
Malta				1	No	Yes, large
Netherlands				15	No	No
Portugal				8	No	No
Slovakia				5	No	No
UK - England				10	Yes	Yes, moderate
UK - Northern Ireland				50 ³⁴	Yes	No
UK - Scotland				29	Yes	No

Higher priority activity

Medium priority activity

Lower priority activity

Limited/no activity

³⁴ Includes PPP and non-PPP staff.

3.2.2. Observations and issues to consider

Team size depends on the functions of the PPP Unit and how it is expected to operate: PPP Units do not have large teams, with staff ranging from 1 to 35 people. The size (and composition) of the team are largely determined by the functions of the PPP Unit which, as seen in Chapter 2, vary across PPP Units.

Project support functions generally require larger teams: as can be seen from Table 5 above, PPP Units that have more project support and delivery related tasks tend to have larger teams. This probably reflects the workload generated by a pipeline of projects and the broader range of skills needed to support this work. This is the case for Ireland (35 full-time equivalents (FTE)), Germany (30 FTE) and Scotland (29 FTE) but some of these cases also involve functions that stretch more widely than PPPs.

Where project delivery or support takes place among various line ministries or their dependent agencies, the PPP Unit tends to be smaller since these ministries usually have in-house dedicated teams for project delivery. This is for example the case of France, where MAPPP has less involvement in individual project support and focuses more on approval, development of guidance and dissemination of good practice, with the bulk of project level work carried out by the line ministries (e.g. Ministry of Defence).

Breadth of coverage also drives team size...: while the nature of the work may help determine the size of the PPP Unit, coverage also has an impact. PPP Units that provide support to a large number of procuring authorities tend to be staffed with a larger number of employees. This is the case of PD in Germany that has framework agreements to provide advisory services to both federal and sub-national procuring authorities and agencies.

...while team size is less correlated with market size: the size of the market however does not appear to drive the size of the PPP Unit. This can be seen for example in the relatively small size of the team within IUK in England focused on PPPs (around 10 FTE) when compared with the size of the English PPP market. Team size therefore appears to be very much a function of *what* the PPP Unit is expected to do (e.g. project support, policy and/or approvals) and *how* it is expected to operate (e.g. across a narrower/wide range of agencies and levels of government). In fact, with larger more mature national or sub-national programmes, additional separate sector-focused entities may be created and take over the activity of the PPP Units in particular sectors. This reduces the need for the PPP Unit itself to expand to cover new sectors itself.

A number of PPP Units however have experienced a lack of capacity in relation to the range of tasks assigned to them. Project quality review work can be particularly resource consuming, for example. One cause for this may be a lack of understanding by the parent organisation of the level of complexity of work involved. This is where including individuals with a good understanding of the nature of the PPP Unit's work within the Unit's oversight bodies may help. It also points to the importance of the PPP Unit itself helping to ensure that there is a close understanding of its activities by

the parent organisation. Otherwise there is the risk that the quality of the PPP Unit's work may suffer and of it losing high quality staff.

Team composition: team composition varies depending on function. Well-resourced teams typically involve experts in economics, project finance, procurement, commercial law, administrative law (particularly in civil code jurisdictions), communications and project management. This breadth of expertise can make a helpdesk function particularly powerful. PPP Units with powers to approve or to procure projects tend to have more staff with a public sector background and skills. This is the case in Ireland and France. An interesting example is Portugal where the recently re-established PPP Unit plays a significant role in the approval process but is staffed mainly with personnel from the private sector. This however reflects the technical nature of some of UTAP's areas of work (such as contract renegotiation) and its role to provide specialist support to approval bodies separate to UTAP.

PPP Units often recruit from the commercial sector for project support skills: PPP Units that are involved in project support activities often recruit a proportion of staff from the private sector to provide the technical and transaction skills needed for these activities such as reviewing contract documentation, analysing financial models or assessing the bankability of risk allocation.

Experience of staff in project related activities is key to working effectively with procuring authorities: procuring authorities may be suspicious at first of the project support role of the PPP Unit.³⁵ A number of PPP Units have found that procuring authorities only have confidence in the support provided by the PPP Unit if it deploys staff who understand how the authority operates and have relevant experience and expertise to contribute. Experience of public sector project delivery can often be as important as specialist commercial skills.

➔ *Consider the functions and the expected coverage of the PPP Unit to determine the resource requirement. If project support is a function of the PPP Unit, this will usually require a team that has both specialist commercial skills as well as project delivery experience in the public sector and an understanding of procuring authorities and their processes, priorities and constraints.*

PPP Units providing project support tend not to be training grounds for less experienced individuals: such individuals therefore tend to be mid- to late-career. Equally, PPP Units involved in project support tend to have flatter, less hierarchical structures as one might expect for a team of experienced specialists who are expected to work with less supervision.

However, PPP Units do not generally substitute for transactions advisers: the PPP Unit's staff do not usually replace those carrying out the detailed transaction work more typically carried out by transaction advisers, even where they might be acting as procuring authorities themselves.³⁶ Instead, the PPP Unit may play a key role in

³⁵ For example, is the PPP Unit playing a supporting or controlling role? What value can it add? Do the PPP Unit staff understand the authority's processes, priorities and constraints?

³⁶ See EPEC's paper on the 'Role and Use of Advisers in preparing and implementing PPP projects' at: <http://www.eib.org/epec/library/index.htm>

supporting the project governance team in the overall management of the project development and procurement process, including the selection and management of transaction advisers (see Chapter 2).

- *Consider the PPP Unit's role in supporting the overall management of the project development and procurement process, including the selection and management of transaction advisers, but not substituting for transaction advisers.*

Retaining staff: overall, difficulties in retaining staff are reported to be low by most of the PPP Units reviewed. Some turnover of staff can help to ensure that experience within the PPP Unit is more widely distributed across the market and, at the same time, that the skills of the PPP Unit are kept current. Therefore a reasonable level of staff turnover is likely to be a sign that the PPP Unit is responding to changes and keeping its skills base up to date. There is little evidence from the Unit Reports of approaches to staff training or staff performance appraisal systems, but clearly these should form part of the PPP Unit's staff management systems. It may be useful to consider requiring transaction advisers, as a condition of their mandate, to transfer skills to procuring authorities and PPP Unit staff.³⁷

Head of the PPP Unit: given that PPP Units are small but often highly visible and work at senior levels of government and the private sector, the experience and expertise of the head of the PPP Unit is crucial to its effectiveness. The head may often be the face of a country's PPP programme, supporting ministers and representing agreed policy across the whole of government as well as to the private sector. Experience indicates that the head of the PPP Unit must be capable of leading and motivating a team in a challenging and fluid environment. The head should be able to 'speak the language' of both the public sector and commercial world, commanding credibility and confidence in both the public and private sector.

- *Consider carefully the role and profile of the PPP Unit head and the extent to which he or she is expected to operate at senior levels within the public and private sector.*

At the same time, a potential weakness identified in some cases would appear to be on over-reliance of the PPP Unit on a single individual. Building a strong management team and the use of advisory boards may help to ensure continuity in the event of the unavailability or departure of the head of the PPP Unit.

- *Identify if the PPP Unit may be at risk of over-reliance on a single individual and consider ways to manage this risk to ensure continuity.*

Recruiting and retaining commercial skills can create challenges for PPP Units: especially in aligning public sector pay scales with the private sector where such skills are needed. As shown in Table 5 above, about half the PPP Units have reported difficulties with this issue and others see this as a potential difficulty when economic activity, and therefore competition for highly qualified individuals, is strong.

³⁷ For example requiring advisers to hold training workshops with authority staff during their mandates.

To help address this problem, some PPP Units have been structured as agencies or public corporations where staff remuneration policies may afford greater flexibility. In a number of cases this has been a factor in the choice of governance and ownership structure (see Chapter 4). Some PPP Units also use individual fixed term contracts to recruit commercial expertise (for example IUK in England or SIB in Northern Ireland) or by contracting with firms to provide a part of such support.

Secondment arrangements: secondments have also been used by around a quarter of the PPP Units reviewed to supplement their technical expertise. A specialist is provided by a seconding, public or private, organisation for a defined period of time usually under a cost-sharing arrangement. This can form part the individual's career development to gain experience from within government and benefit the seconding organisation with this experience in the longer term. It is important that conflicts of interest are recognised and managed through clear terms of engagement. While this can be an effective and fast way to inject high quality specialist expertise into a PPP Unit, over-reliance on this approach may have an impact on the institutional memory of the PPP Unit once secondees return to their host organisations. The economic cycle can have an impact on an organisation's willingness and ability to participate. PPP Units have also generally found it more difficult to attract secondees at later points in their operation, so it may not always present a longer term staffing solution.

Overall the picture appears to be one of PPP Units largely being staffed by public sector officials, supplementing skills from the private sector in various ways and with varying degrees of difficulty, particularly where they are involved in project support activities.

Location and profile of the PPP Unit is important to attracting high quality staff: the position of the PPP Unit within government and its reporting lines also have a bearing on its ability to attract and retain experienced individuals from both the public and private sector. Clearly, a PPP Unit that reports into senior levels of government and is visibly supported at such levels is better able to attract and retain high quality personnel than a Unit that does not enjoy such support.

Similarly, if the PPP Unit is located in a position to exercise influence across government and attract high quality individuals, it is important that the staff selection processes also ensure the right individuals are appointed. However as part of the wider public administration, PPP Units may be subject to staff appointment processes that can sometimes lead to the employment of less qualified individuals. One of the benefits of a corporate or agency structure (discussed in Chapter 4) can be the greater autonomy such structures may provide for the staff appointment process, but this would still require the PPP Unit to exercise this autonomy well. This is where the role of the oversight bodies (also discussed in Chapter 4) can play a helpful role in supporting and protecting the best interests of the PPP Unit.

- *Consider the location, profile, governance and ownership structure of the PPP Unit as this may affect the ability and flexibility to recruit and retain high quality staff as well as the use of secondment arrangements to boost access to specialist skills.*

3.3. Funding PPP Units

Most PPP Units are free at the point of use: apart from two (PD and PPP Centrum), all PPP Units reviewed provide their support free at the point of use. To a large extent this reflects the nature of policy and approvals activities of many PPP Units: a charging model for example may undermine the credibility of an approvals function, as some PPP Units have more recently experienced (for example SIB in Northern Ireland).

User charging: PD, which focuses on providing specialist PPP technical support across all levels of government in Germany, is one of the few current examples of a PPP Unit that operates on a user charging basis. PD was specifically designed as such from the start. A framework of daily fee rates established for PD consultants of different levels of experience enables PD to provide and charge for services without the need for public bodies to carry out an individual procurement for each support activity. PD does not charge success or milestone fees as this can create a conflict, or perceived conflict, with its mission to help ensure that the right projects are prepared in the right way.

PPP Centrum in the Czech Republic has a fee-for-service advisory capacity for public sector clients. This includes its role, essentially funded by the MoF, in the development of PPP evaluation methodologies and promotional activities, reflecting its origins as a centrally funded PPP knowledge centre.

A previous example of this user-fee approach was PUK (prior to its absorption into IUK). PUK had a range of charging structures depending on the seniority and experience of the staff deployed and the nature and length of the assignment. The model worked well for an entity that provided specialist, largely commercial, support to projects and programmes working across all levels of government and sectors. It was important that users were free to decide whether or not to purchase such support. The model does not work well if the authority does not feel that value is being added to their project by the PPP Unit. Additionally, charging public sector users a fee can become challenging if authorities generally face limited budgets to pay for such support, which was one of the reasons for the change in the PUK model. At a local government level Local Partnerships, which provides technical support to local government bodies in England and Wales on PPPs, can also charge for its services.

A charging model however imposes a strong quality discipline on the PPP Unit (assuming that its use is largely not mandatory) and can help to ensure that its scarce resources are allocated well. It may however act as a disincentive (or excuse) for procuring authorities not to make use of the PPP Unit's support when it may be important to encourage such use, especially in the early days of PPP programme development. This highlights the problem that procuring authorities may not always understand the nature and cost of the appropriate support required to prepare PPP projects well. Finally, it can raise issues with users as to whether the advice provided is independent of the choice whether or not to use a PPP.

Where PPP Units have used a charging model (e.g. PD in Germany), this has operated within a larger framework where other functions, such as approval or policy making, are carried out by entities that are directly funded by government on a non-user charge basis.

Some PPP Units established as departments within a ministry also charge other entities for some services, so a charging structure is not necessarily limited to PPP Units established as separate agencies or public corporations (see Chapter 4). IUK for example provides support to other ministries such as the UK Foreign Office (Ministry of Foreign Affairs) within an agreed inter-departmental charging structure. Such services may be important for other government departments or ministries and charging can help to prioritise use of a PPP Unit's limited resources. Charging for services between public bodies will depend on specific rules within government for the intra-governmental provision of services. It is also important to take advice on whether or not a charging structure would be subject to public procurement rules as the relevant case-law of the Court of Justice of the EU is interpreted differently by Member States on this issue. This is highlighted in the 2014 Procurement Directives.³⁸

- *Consider how the PPP Unit will be funded. A fully funded approach that enables support to be free at the point of use is generally recommended. However user pay approaches for all or part of the services can be effective provided that these do not impede users, such as procuring authorities, accessing support from the PPP Unit when needed. Ensure also that there is no impact on the perceived credibility of the PPP Unit or conflict with its mission.*

EU funding: a number of EPEC Member countries such as Lithuania have made use of EU structural funding mechanisms to support their PPP Units, combining this funding source with state budgets and, in some cases, other bilateral and multilateral financial instruments.³⁹

3.4. Staffing and Funding: Summary of Issues to Consider

Based on the observations from the Unit Reports with regard to the staffing and funding of a PPP Unit, the key lessons learnt and issues for public decision-makers to consider are summarised below.

In determining the team size and composition, consider:

- the functions and the expected coverage of the PPP Unit in order to determine the appropriate resource requirement;

³⁸ See, for example, *EU Directive 2014/24/EU*, paragraphs 30-34.

³⁹ EU funding for PPP project preparation work may also be available via the relevant national body under EC Regional Policy (see ec.europa.eu/regional_policy/index_en.cfm) and, via the managing authorities, from programmes such as JASPERS (see www.jaspers.europa.eu).

- the requirement for both specialist commercial skills as well as public sector project delivery experience and an understanding of procuring authorities and their processes, priorities and constraints, especially if the PPP Unit is expected to work with procuring authorities and provide project support;
- the PPP Unit's role in supporting the overall management of the project development and procurement process, including the selection and management of transaction advisers, not substituting for the transaction advisers;
- the role and profile of the PPP Unit head and the extent to which he or she is expected to operate at senior levels within the public and private sector; and
- if the PPP Unit may be at risk of over-reliance on a single individual and ways to manage this risk to ensure continuity.

For recruiting and retaining commercial skills, consider:

- the profile and location of the PPP Unit to ensure high quality staff are attracted and retained;
- the governance and ownership structure of the PPP Unit, as this may provide greater flexibility in the recruitment of high quality and specialist staff; and
- the use of secondment arrangements to access specialist skills.

For funding of the PPP Unit, consider:

- a fully funded approach that enables support to be provided free at the point of use. However if a user pay approach for all or part of the services is to be considered, ensure that this does not impede users, such as procuring authorities, accessing support from the PPP Unit when needed. Ensure also that there is no impact on the perceived credibility of the PPP Unit or conflict with its mission.

4. Governance and Ownership of the PPP Unit

Key questions

- Where should the PPP Unit be located?
 - How should the PPP Unit be structured?
 - Who should own the PPP Unit?
 - What governance structures have proved effective for managing PPP Units?
-

4.1. Introduction

This Chapter provides a comparative analysis of the governance and ownership structures of PPP Units based on the findings of the Unit Reports. It also identifies a range of issues that may be useful to consider in relation to governance and ownership of the PPP Unit.

4.2. Linking Functions to Structures

4.2.1. Basic findings

Just over one-third of the PPP Units reporting on governance issues are located within the MoF (or other central government ministry or authority). Around a further third are structured as separate executive agencies (but which may be owned by, or report to, the MoF). The remaining PPP Units are structured as public limited companies (again, usually reporting to the ministry of finance or other central government ministry).

In some countries, where there are separate ministries of finance, economy or an office of the Presidency, reporting by the PPP Unit may depend on whether the focus is on approval/reporting activities or on pipeline development and national or sub-national programme/project implementation. Indeed these different functions may be spread across such ministries and coordination among them is therefore a challenge. An example is Turkey: while arguably it does not have a central PPP Unit, a range of different entities assume the typical specialist functions of a central PPP Unit, one of which (Ministry of Development) also plays a coordinating role – see Box 7 below.

Box 7 – Key entities in Turkey’s PPP framework

Turkey enacted its first PPP law in 1984 and over 120 PPP-style projects have reached financial close under various models. While Turkey does not have a central PPP Unit, a number of high-level government bodies and key institutions collectively assume the typical functions of a PPP Unit.

Turkey’s PPP framework is distinguished by a number of model-specific and sector-specific laws. This largely explains the range of bodies involved, with project approval authority involving different bodies depending on the sector and its relevant legislation.

The Under-secretariat of Treasury carries out a number of PPP functions across sectors supporting the various approving bodies through PPP Units housed in its two General Directorates.

The Ministry of Development and MoF play important cross-sectorial roles in opining on project feasibility studies, with the former also coordinating input for some of the approval bodies. These ministries also play a role in the development of legislation, while line ministries such as energy, transport and health actively develop PPP projects. In contrast to other line ministries, the Ministry of Health has established its own PPP team, centralising the different PPP-related tasks for this sector.

As can be seen in Table 6 below, there is some correlation between those PPP Units that play a significant project delivery/support role and their establishment as, or location in, executive agencies or public limited companies.

On the other hand, those with a policy focus tend to be structured as PPP Units based in the ministry of finance or economy.⁴⁰

Those PPP Units with approval functions may still be agencies. However this can reflect their role in providing technical support to a separate central government based approval body which has the formal approval authority.

⁴⁰ Or, in the case of UTFP, within the Presidency of the Council of Ministers as a unit of DIPE (*Dipartimento per la Programmazione e il Coordinamento della Politica Economica*).

Table 6 – Matrix of PPP Unit functions and structure

Location of PPP Unit	Policy	Programme and project delivery	Approval and quality control	Structure/location of the PPP Unit
Belgium - Wallonia				Executive agency
Bulgaria				Ministry of Finance
Croatia				Executive agency
Czech Republic				Public limited company
France				Ministry of Finance
Germany				Public limited company
Greece				Ministry of Finance
Ireland				Executive agency
Italy				Presidency
Latvia				Executive agency
Lithuania				Executive agency
Malta				Public limited company
Netherlands				Ministry of Finance
Portugal				Executive agency
Slovakia				Ministry of Finance
UK - England				Ministry of Finance (HMT)
UK - Northern Ireland				Executive agency
UK - Scotland				Public limited company

Higher priority activity

Medium priority activity

Lower priority activity

Limited/no activity

Overall, the message would appear to be that where the PPP Unit is required to provide a high level of specialist technical support, an agency or company type structure can bring benefits. This may be related to the opportunity for pooling expertise into a specific entity that has a clearly defined mission and the autonomy

afforded by such a structure in managing its affairs to pursue its mission. Another benefit (as mentioned in Chapter 3) may be an increased flexibility to recruit and retain specialist staff from both the public and private sectors. Finally, such structures may bring funding and wider stakeholder benefits that can be relevant to the PPP Unit's mission.

4.2.2. Observations and issues to consider

Where should a PPP Unit be located: the location of the PPP Unit within government and its reporting lines have an important impact on the PPP Unit's ability to:

- engage with other parties across government;
- exercise its authority (where relevant);
- operate without conflicts of interest on other issues;
- benefit from existing skills, practice and relationships of the parent organisation relevant to its mission;
- attract the appropriate quality of staff; and
- run its affairs efficiently and effectively.

There is no single best model: the location of the PPP Unit depends on its proposed functions and the organisation of processes within individual jurisdictions. The location of a PPP Unit can be a critical factor in its effectiveness, as other studies of PPP Units have observed.⁴¹

4.3. Governance and Relationship with Stakeholders

As highlighted above (Table 6), there are a range of governance structures that EPEC Member countries have used to establish their PPP Units. Closely linked to the governance structure, but a separate important point to consider, is the *relationship* of the PPP Unit with the relevant stakeholders, which is considered further below.

4.3.1. PPP Units based in ministries of finance/economy

PPP Units based in ministries of finance or economy will clearly be governed by the common administrative, organisational and audit rules of the parent ministry. The effectiveness of the PPP Unit is influenced by such factors as:

Reporting lines: the level at which the head of the PPP Unit reports within the parent ministry/authority varies across the different PPP Units reviewed. This can be an important factor in the effectiveness of the PPP Unit, especially in the earlier stages of development of a national or sub-national PPP programme.

⁴¹ See 'Public-Private Partnership Units - Lessons for their Design and Use in Infrastructure' www.ppiaf.org

Senior level reporting (e.g. directly reporting to a minister) can also be a powerful way for government to signal strong political support for the national or sub-national programme and the credibility of the PPP Unit. This can assist the PPP Unit in its interactions with other parts of government as well as create confidence in the market as to the seriousness of intent behind a PPP programme. This can help to ensure that a wide number of credible bidders are attracted to PPP procurements.

For example the Chief Executive of IUK (England) reports to the most senior civil servant in the UK Government's Economic and Finance Ministry (HMT). The Coordinator of UTAP in Portugal is a Director General/Permanent Secretary level appointment, reporting directly to the Secretary of State for Finance. This helps to ensure that these Units can work effectively and authoritatively across government and with the market.

- *Consider the seniority of the PPP Unit's reporting lines within government as this is a powerful signal to both the rest of government and the market and can assist the PPP Unit in its effectiveness.*

The location and interface between the PPP Unit and the other bodies within government: this is critical to its effective functioning and will be influenced in part by the position of the PPP Unit's parent ministry within government. Ministries of finance or economy normally look across different line ministries, which is one reason why a large number of EPEC Member countries have located their PPP Units in such ministries. The PPP Unit may also benefit from key links and therefore better integration of the programme with central budget, accounting and planning departments. They may also benefit from greater cooperation with other relevant bodies such as the national audit body and statistical office. Often however the most challenging link is with line ministries and other procuring authorities that need to be clear whether the PPP Unit is playing an oversight/approval role or a project support role.

- *Consider the location of the PPP Unit within government and how it will work with other ministries and government bodies, especially those that are involved in delivering projects.*

It may be attractive to locate the PPP Unit inside another organisation to benefit from an existing and readily available operating platform. However such a platform needs to be appropriate for the PPP Unit's activities (see Box 8 below).

Box 8 – Some issues to consider when locating a PPP Unit inside another organisation

Is the mission of the parent organisation appropriately aligned with that of the PPP Unit?

Are there likely to be conflicts of interest between the PPP Unit's functions and those of the parent organisation?

Will the PPP Unit report to the right people and level of seniority within government?

To what extent will the PPP Unit have its own separate identity and can this be achieved by being located within a parent organisation?

Will the PPP Unit have the right visibility across government (i.e. beyond the parent organisation) required to carry out its functions?

Locating a PPP Unit inside an investment promotion organisation may for example have institutional advantages and provide access to high quality staff (see Chapter 3). However, this may not be appropriate if the focus of the PPP Unit is on project procurement approval to secure value for money or to develop and issue PPP policy.

There are a number of additional governance mechanisms that PPP Units have deployed. For example some PPP Units are required to report additionally to an inter-ministerial PPP committee as well as to parliamentary committees. In France for example, in addition to reporting to the Treasury Department of the Ministry of Economy, Finance and Industry (where it is located), MAPPP also reports to an advisory committee (*Comité d'orientation*) composed of 37 members drawn from public sector PPP stakeholders (e.g. line ministries, *Cour des Comptes*, *Conseil d'État*, the mayors' association) and private sector PPP stakeholders (e.g. the contractors' association, the French banks' association). The *Comité* has a consultative function, proposes main themes for MAPPP's work programme and meets once a year. MAPPP also produces an activity report for approval by the *Comité*.

This type of structure is a useful way to help ensure that the PPP Unit's work remains relevant to developments within both the public and private sector and that the PPP Unit's senior team are both supported and well informed by experienced individuals from the public and private sectors. As mentioned in Chapter 3, this may also help to ensure greater continuity in the event of senior staff changes in the PPP Unit.

- *Consider the use of advisory committees to support and oversee the work of the PPP Unit and provide guidance on the focus and priority of its activities drawing on senior and experienced individuals from both the public and private sector.*

4.3.2. PPP Units based in other government organisations

EPEC Member countries have identified other platforms for PPP Units, depending on the point of development of the national or sub-national PPP programme. In Lithuania for example the PPP Unit is based in the CPMA in view of the synergies between CPMA's activities and those of the PPP Unit (see Box 9 below). However, as mentioned, the synergies with the host organisation need to be carefully assessed in order to ensure that the host organisation adds to the effectiveness of the PPP Unit or, at the very least, does not have functions that conflict with those of the PPP Unit.

Box 9 – Lithuania's PPP Unit

The CPMA, which hosts the PPP Unit was established in 2003 by merging the Central Financing and Contracting Unit and the Housing and Urban Development Fund.

The CPMA reports directly to the MoF and is responsible for justifying the use of funds allocated to programmes and projects by the state budget, EU and other financial sources. The CPMA is also responsible for developing the public procurement system and provides the methodological and advisory assistance (if requested) for PPP issues. As a consequence, the PPP Unit was established in CPMA in 2010.

The PPP Unit participates in project initiation and preparation and is a member of the project team. While the PPP Unit itself has no formal role in the decision-making process, by law a member of the CPMA must sit on the Commission for PPP Projects, a body which formally approves the implementation of a PPP project.

A number of advantages were recognised in placing the PPP Unit within the CPMA:

The CPMA already has knowledge of using EU funds so it can assist with opportunities to blend EU funds with private capital in PPPs;

The PPP Unit can act relatively independently, as it is not within a ministry and not under the same recruitment restrictions as the core civil service, particularly in relation to upper-band salary limits set by the public sector; and

The PPP Unit can avail itself of existing project management skills within the CPMA, including experts in planning, cost benefit-analysis, procurement processes and communication.

4.3.3. Incorporated entities

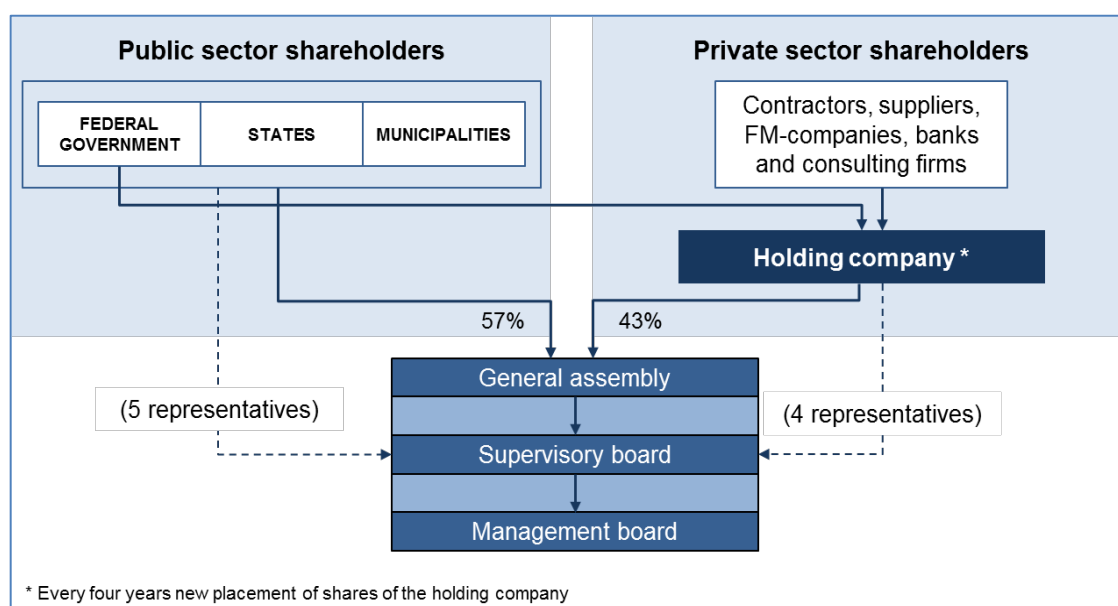
Some central PPP Units have been established as discrete legal entities: such entities have a shareholding ownership structure and a mandate established in their corporate statutes. The staff of such entities are usually not public servants and not rewarded as such, often a key reason to be structured in this way.

Examples of public limited company structures include PD in Germany, SFT in Scotland and SIB in Northern Ireland, all of which rely on individuals with private

sector specialist skills and experience to deliver their public mission. Although its focus is on transport infrastructure and is wider than PPPs, SEITT in Spain is also established as a public limited corporation that is 100% government owned (SEITT is operationally controlled by the Ministry of Public Works with financial supervision and formal ownership of SEITT the responsibility of the MoF).

The ownership structure of PD (Germany) is particularly unique with PD's share ownership split between the public sector (57%) and the private sector (43%). This structure was considered to have benefits of spreading the ownership of PD across a number of relevant stakeholders, including the wide range of proposed potential users and sources of support. The private sector shareholding is held via a holding company. This in turn has a defined allocation of ownership between larger and smaller firms and between construction and facilities management firms, consultants and financing entities. On the public sector side, shareholders include the federal government, federal states and municipalities. Delivery of PD's services takes place under a framework agreement with public bodies and, as a consequence, the private sector shareholdings are required to be retendered after four years (the sale of their shares before then is not permitted). The ownership structure of PD is set out in Figure 3 below.

Figure 3: Ownership structure of PD



Source: PD

Private ownership of PPP Units however is rare: this is likely to reflect control and potential conflict of interest concerns and the governance complexity this can require. In the case of PD, the holding company structure helps to ensure that no special interests can influence the work of the PPP Unit while at the same time facilitating PD's links with, and access to, commercial experience. Prior to its absorption into IUK (England), PUK was 51% private sector owned (together with HMT 45% and Scottish Ministers 4%). This structure enabled PUK, as technically a majority privately owned entity, to establish a platform with considerable operating flexibility

and the ability to attract and retain specialist private and public experts. This flexibility would not have been so easy to achieve as a majority government owned entity at the time, especially if a more permanent organisation was envisaged. However PUK required a relatively complex governance structure for its size, given the nature of its part private ownership and wholly public sector mission. Policy attitudes towards such structures in general can also change, and this partly explained the absorption of PUK into IUK.

The governance arrangements for an incorporated entity therefore need to focus on ensuring that the PPP Unit's work is aligned with PPP policy: for example, the arrangements should ensure that the PPP Unit does not promote PPP projects simply to keep itself in business. The governance and oversight arrangement of SFT (Scotland), as well as the wider government structure in which it operates, is described in Box 10 below as an example of how these issues are managed. In Spain, SEITT has developed its governance structure on the basis of the principles set out in the OECD *Guidelines on Corporate Governance of State-Owned Enterprises*.⁴²

Box 10 – Governance of the SFT and related bodies

SFT was established as a public corporation and has full operational independence. SFT is governed by its Board of seven members comprising a non-executive chairman, four non-executive directors, the Chief Executive and the Director of Finance. The Board members are appointed by Ministers and bring experience of the public and private sector. An annual plan for service delivery is proposed to the Scottish Government by the Board.

SFT's effectiveness is monitored through an independently verified benefit statement, which identifies the annual savings realised in infrastructure investment and asset management activities directly attributable to SFT's work.

The Chief Executive establishes SFT's corporate and business plans and assumes overall operational responsibility for SFT's work streams and staff.

The Infrastructure Investment Unit, a part of the Scottish Government Finance Directorate, is SFT's sponsoring division within the Scottish Government.

Scrutiny of governance and delivery of the overall capital investment programme is provided by the Infrastructure Investment Board which reports directly to Audit Scotland and the Public Audit Committee. The Board has a senior 'corporate membership' of eight permanent members, including the Chief Executive of SFT.

⁴² See www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf

- *Consider the benefits of different ownership structures for the PPP Unit, which may not necessarily be wholly public sector as this may bring benefits in terms of operational flexibility, but after taking into account the potentially more complex governance arrangements required.*

4.3.4. Executive agencies

Executive agencies are usually established as entities that are a part of a government ministry or department but treated separately in terms of management and budgets. They are often used to enable executive functions within government to be carried out by a well-defined business unit with relevant technical skills. Examples include Ireland's NDFA (see Box 11 below) and the Croatian PPP Agency (see Box 12 below). Such agencies have a clear focus on delivering specified outputs within a framework of accountability to ministers or parliament, allowing the ministry or department to focus on policy issues.

Box 11 – NDFA's governance structure

The Chief Executive of the National Treasury Management Agency (NTMA), NTMA's reporting agency, chairs the NDFA Board whose seven additional members are appointed by the MoF. They serve a maximum of two five-year terms.

The NDFA Board sets strategic objectives and targets, approves corporate policies and plans including the risk management strategy, the system of internal financial controls and the annual report and accounts. Internal audit is performed by the NTMA Audit Committee, which includes an NDFA Board member.

In conjunction with the NTMA, the Board has taken additional steps to safeguard governance including establishing the NDFA Code of Conduct for the Management of Conflicts of Interest.

When required, the Chief Executive Officer and the Chairperson must give evidence to Parliament's Committee of Public Accounts.

The NDFA is a prescribed public body for the purposes of the 'Ethics in Public Office Acts' which require the disclosure of vested interests, prescribe corrupt acts in public office and set up control structures. There are also specific disclosure requirements under the NDFA Act.

In some EPEC Member countries (such as Croatia, Greece and Portugal), the functions of the PPP Unit are prescribed in specific legislation enacted to establish the PPP Unit as an agency. For example UTAP was established under Portugal's PPP law as 'an administrative entity with administrative autonomy' under the umbrella of the MoF. This can be helpful in making sure that there is clarity of the role of the PPP Unit in relation to other administrative entities within government. However, any change to functions and authority would require a change to the relevant legislation or by-laws.

Agencies and incorporated entities usually work alongside and support other central entities such as a MoF based policy unit or approval committees that have the authority to approve policy and projects and oversee the agency.⁴³ Therefore such structures may be less suitable where the day-to-day involvement of the ministry or ministers is inevitable or where policy and its execution are inextricably linked. This may explain why PPP Units with a lead role in PPP policy development tend not to be structured as executive agencies. However there are exceptions to this, such as the Agency for Public Private Partnership (APPP) in Croatia, which reports directly to an Administrative Council comprising ministers (see Box 12 below).

- ➔ *Consider the use of incorporated entities or executive agencies as alternative structures for a PPP Unit, especially when its focus is expected to be technical and/or involve project level support requiring flexibility in operation and access to commercial skills.*

Box 12 – The Croatian PPP Agency

APPP plays a key role in the PPP project approval process and in the development of PPP regulations and guidance, operating at both national and sub-national levels. APPP answers to an Administrative Council composed of the:

- Deputy Prime Minister (President);
- Minister of Economy, Labour and Entrepreneurship;
- Minister of Finance;
- Minister of Justice; and
- Minister of Environmental Protection, Physical Planning and Construction.

The Administrative Council reports directly to the Government on the activities of APPP including approval and supervision of the agency's annual work programme as well as deciding the financial plan and signing off its financial report. The Council is also responsible for nominating the Director and Deputy Director of APPP for subsequent approval by the Government. Once appointed, the Director and Deputy Director of APPP may only be replaced under the circumstances stipulated in the PPP Act, so preserving their independence.

There is no universal governance structure for an executive agency which can be governed in a range of ways. To address this, a number of governments have established guidelines for their own jurisdictions and the European Commission itself has established recommendations with respect to its own agencies.⁴⁴ Key elements of an executive agency governance structure to consider are set out in the Appendix.

⁴³ However APPP in Croatia retains some project approval powers, even though it is structured as an agency.

⁴⁴ See europa.eu/about-eu/agencies/index_en.htm

4.4. Performance Assessment

There is no standard measure for the performance of PPP Units given the wide variety of functions that they perform. Assessing performance however is built into the governance systems of a number of PPP Units. As mentioned in Chapter 2, some PPP Units have also been the subject of *ad hoc* strategic reviews in response to changes or anticipated changes in the environment.

Measuring success by the number of PPP projects alone is generally not considered a good approach⁴⁵ as a successful PPP Unit may often need to prevent projects unsuitable for PPP from being undertaken (e.g. as part of their quality control and approval function). Furthermore, a PPP Unit is usually not the only actor in the project delivery system that can help the right project go forward. A successful PPP Unit should contribute to successful PPP transactions that respond to the government's need, offer value for money and comply with general standards of good governance. The PPP Unit should be judged by the quality of its advice and analysis and its ability to work effectively with the rest of government and contribute to innovation in project delivery (if that is a required function of the PPP Unit).

- ➔ *Consider periodically reassessing the fitness-for-purpose of the PPP Unit against appropriate performance criteria in light of the changing environment in which PPP Units usually operate.*

4.5. Governance and Ownership: Summary of Issues to Consider

Based on observations from the Unit Reports with regard to a PPP Unit's governance and ownership, the key lessons learnt and issues to consider by public decision-makers are summarised below.

With regard to location and reporting, consider:

- the location of the PPP Unit within government and how it will work with other ministries and government bodies, especially those that are involved in delivering projects; and
- the seniority of the PPP Unit's reporting lines within government as this is a powerful signal to both the rest of government and the market and can assist the PPP Unit in its effectiveness.

With regard to structure and governance, consider:

- the use of advisory committees to support and oversee the work of the PPP Unit and provide guidance on the focus and priority of its activities drawing on senior and experienced individuals from both the public and private sector;

⁴⁵ See recommendations in Dedicated Public-Private Partnership Units - A Survey of Institutional and Governance Structures, OECD, 2010, at: www.oecd.org/gov/budgeting/dedicatedpublic-privatepartnershipunitsasurveyofinstitutionalandgovernancestructures.htm.

- the ownership of the PPP Unit which may not necessarily be wholly public sector as this may bring benefits in terms of operational flexibility, but after taking into account the potentially more complex governance arrangements required; the use of incorporated entities or executive agencies as alternative structures to a ministry based division given the potential benefits of operating flexibility these may bring, especially when the PPP Unit's focus is expected to be technical and/or involve project level support requiring access to commercial skills;
- the governance arrangements to oversee the PPP Unit's work and ensure alignment with its mission including the use of advisory committees to provide guidance on the focus and priority of its activities drawing on senior and experienced individuals from both the public and private sector; and
- periodic re-assessment of the fitness-for-purpose of the PPP Unit against appropriate performance criteria in light of the changing environment in which PPP Units usually operate.

5. Concluding Remarks

It is challenging to classify PPP Units precisely in terms of functions, resourcing and structure because each Unit needs to work within a particular administrative environment and address a particular range of issues, which in turn change over time. Even the term 'Unit' is an approximation given the range of structures used. This is particularly the case where the 'Unit' may be a less discrete component of a wider infrastructure policy and implementation entity, a trend that increasingly recognises PPP as part of a wider set of tools to deliver the right infrastructure in the right way. The over-arching theme however is recognition that a team with experienced and specialist resources is required within the public sector to coordinate, assess, develop and implement PPPs.

Consequently, this report does not seek to prescribe a 'one-size-fits-all' range of functions or structure or assess or rank PPP Units in terms of their efficiency or effectiveness. The overall 'success' (however defined) of a national or sub-national PPP programme will no doubt reflect in part the effectiveness of a particular PPP Unit but this needs to take into account the many other factors within government and externally that also have an impact on the success of a PPP programme to meet the required policy objectives.

What this report seeks to do is to highlight the range of possible approaches that different EPEC Member countries have taken to the design and operation of their PPP Units. By so doing, it is hoped that this will stimulate and inform those tasked with establishing or reforming a PPP Unit to have a clearer perspective of the range of functions and approaches that should be considered and of the consequences of doing so both for the PPP programme and for the structure and operation of the PPP Unit itself. At the very least, the intention is that the report provides some helpful signposts to the reader, based on the collective experience so far of EPEC Members and their PPP Units.

Appendix - Key Elements of an Executive Agency Governance Structure

The following are key issues to consider when developing the governance structure of a PPP Unit as an executive agency:

- a clearly defined mandate of the agency setting out its roles and responsibilities within the PPP framework, the performance reporting criteria and delegation of any relevant powers to the agency;
- arrangements for overseeing the agency's performance and delivery of its mandate. This usually involves policies for risk assessment and management and effective high-level performance monitoring and review. A senior figure in the sponsoring ministry might act as the main source of external advice to the relevant minister on the performance of the agency;
- a clear policy and resource framework including a definition of the relationship of the head of the agency with the relevant minister and with any other ministries, agencies and organisations and clarity of the agency head's responsibilities. Policies governing access for the agency head to the sponsoring minister are seen in some cases as particularly important for the effectiveness of the agency;
- a management board with relevant skills and appropriate (limited) stakeholder representation appointed on a transparent basis and governed by conflict of interest, appointment (usually a defined term with a maximum number of re-appointments) and performance review policies. Non-executive members can bring external expertise and perspectives: such members should be supportive but also constructively challenging. The management board typically sets the strategic objectives of the agency within its overall mandate, approves relevant operating policies (such as risk management, internal financial controls) and ensures the agency performs effectively within its agreed mandate;
- policies for the appointment of agency staff, including the chief executive, based on merit and open competition; and
- policies with regard to the conduct of business that would include a code of conduct covering issues such as transparency and accessibility to information, anti-corruption and whistleblowing, accountability and reporting, handling of communications and financial budgeting and reporting.



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