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Regulatory Mechanisms of Business-Government Interaction in the Field of Administrative Management: Global Practices and Opportunities for the State

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ABSTRACT**Keywords:**

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Global practice shows that sustainable development and functioning of a modern national innovation system without State-Private Partnership (SPP) in the field of socio-economic development is difficult. The SPP mechanism is designed to combine the resources and capabilities of the government with the capabilities of the business community of a particular territory. The main result of this synergy of efforts is the achievement of the goal of public satisfaction with a particular public service or sector in general. An SPP is a new concept in Ukrainian law. It has been established that scientific legal sources contain scattered theoretical studies of certain Public-Private Partnership (PPP) issues, but there has been no full-fledged, comprehensive study in legal science aimed at organizing the experience gained earlier. Having analyzed foreign legislation and practice at the current stage, we conclude that effective legal means can be used in the development of SPPs, which may vary depending on the specifics of national legal orders. Examples of such cooperation within the framework of relevant agreements already exist; therefore, further analysis and improvement of this activity is required. The purpose of the article is to analyze the potential of legal regulation of SPPs in the public administration system. Using the methods of comparative legal, formal legal and logical analysis, the author establishes that the approaches to regulation of such partnerships in Ukraine need to be modified, since sustainable development should provide long-term benefits to society. First of all, the author proposes a choice of stakeholders and forms of their interaction. Secondly, it is proposed that sustainable development goals should be included in the main project determinants. The article examines the peculiarities of SPP regulation in transport infrastructure projects and proposes to improve the existing legislation by clarifying the categorical apparatus and including aspects of sustainable development. The article suggests aspects of improving the Law of Ukraine "On State-Private Partnership".

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The economic and legal literature is currently actively searching for and analyzing promising variations in the interaction between the government, local self-government, and business structures. One such area of interaction is SPP. It is often considered as one of the most promising areas for ensuring effective social development, as it allows involving private entities in the implementation of public functions, and is also characterized as an effective tool for distributing project costs and risks between the private and public sectors, as one of the most promising alternatives to the contract system (UNGA Resolution, 2015).

At the same time, the very concept of SPP and the peculiarities of the relations that arise in this case are defined differently by different researchers. Sometimes, the phenomenon under study is interpreted quite broadly, and it is proposed to understand it as a form of interaction between municipal and state authorities and civil society institutions in order to establish cooperation in the areas of political, social and economic development (Harbarynina, 2014; Vynnyk, 2021). A number of international publications also understand SPP as a mechanism of cooperation (Wadhvaniya et al., 2019; Yeboah, 2024). Other authors propose to distinguish between the concept of "Public-Private Partnership" (PPP) as any form of interaction between the state and business to solve socio-economic problems and in a narrow sense as a specific agreement between private and public sector partners, within the framework of which their cooperation is carried out, aimed at implementing a joint investment project that involves combining the resources of partners and sharing risks between them in order to solve public problems (Fabre & Straub, 2021; Hueskes et al., 2017; Song et al., 2016). The second approach

is more correct, as it allows differentiating public-private partnership as a certain general legal and social category and, on the other hand, as a sectoral (primarily civil law) institution.

In essence, the SPP introduces a long-term contractual relationship between the operator and the public authority. It ensures full or partial provision of public services delegated through private financing and attracts private sector know-how. While the SPP field continues to develop rapidly, there remains considerable variation in the definition and application of terminology. The legal definitions developed to facilitate the regulation of SPPs may not exactly match the operational characteristics of a particular project.

Some authors draw attention to such a feature of SPP relations as the presence of a socially significant goal (Yehorycheva & Lakhyzha, 2020), while others point to the importance of risk sharing among stakeholders (Vynnyk, 2021).

In general, summarizing the positions set forth in legal science regarding the specific features of SPP relations, it can be noted that the following are usually distinguished as such:

- 1) SPP relations are characterized by a specific subject composition; as a rule, the state, its subjects or public authorities act as a public partner;
- 2) the purpose of the SPP is to satisfy the state, public interest, and perform tasks that are the function of the state or local government;
- 3) distribution of risks, costs and profits from participation in the SPP project between the parties;
- 4) the object of the partnership is usually property that is in the sphere of public interest and control.

The essential features of PPPs that allow to distinguish the essential properties of this form of interaction from other forms (including public procurement, state participation in the property of a commercial organization and other forms) are as follows:

- a legally formalized (fixed only by a contract or implemented through a joint venture created on the basis of a contract) mutual cooperation of a public authority (state authority or local self-government body – state/municipal partner) with a private (non-state, non-municipal) public interest entity and with an initial separation of projected costs and revenues;
- subject of the PPP a long-term project (set of projects) of high public importance for the creation, renovation/modernization (including on the basis of quality and cost optimization), maintenance, technical and/or economic operation of facilities or systems or provision of public services;
- specific interests of the public participant within the framework of the PPP project implementation;
- specific interests of the private partner in the PPP project;
- long-term cooperation (from 15-20 years and more; may reach 50-70 years).
- specific forms of delineation of responsibility for the project as a whole and for project elements – complex functional-target (concordant-target and correlative-functional) consolidation of organizational and managerial, educational and competence, financial, property, scientific and innovative and other tangible and intangible resources of stakeholders, which ensures the achievement of cooperative, synergistic-systemic and multiplier socio-economic effects;

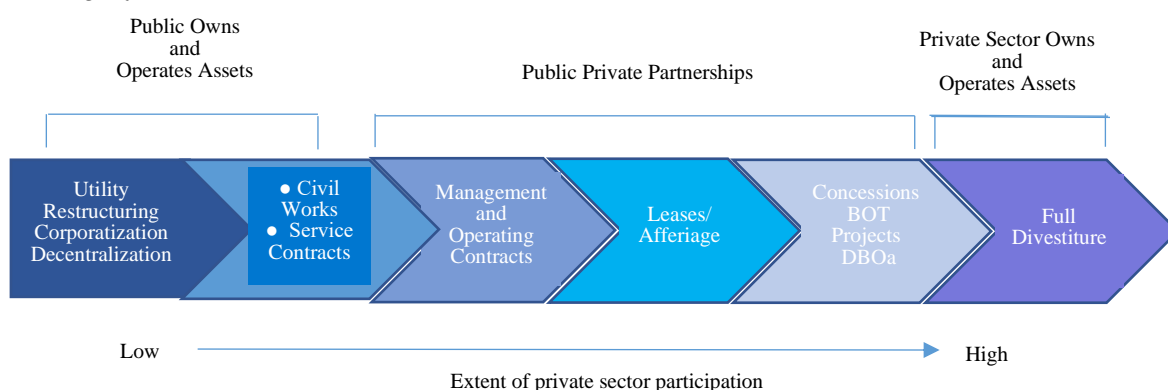
– segregation of risks and responsibility for risk management. As a general rule, the responsibility for certain risks associated with the implementation of the SPP project rests with the partner who can manage them most effectively;

– the form of the SPP agreement may vary depending on the content of the relationship under this agreement. It can be either a concession agreement or a complex agreement that provides for many types and forms of contractual relations.

The global experience has developed many models for implementing partnerships between the state and business within the framework of their business activities. The accepted classifications of SPPs distinguish a number of forms (Figure 1). Typically, the terms of the SPP are determined by an agreement or contract that clearly sets out responsibilities and a clear distribution of risk.

Figure 1

The Range of SPP Transactions



Source: Worldbank (2023, 2025a, 2025b)

The choice of the legal form and legal means of SPP is determined based on the specifics of legal regulation in the field of economic activity. In the field of state and natural monopolies, the main legal forms of SPP are concessions and production sharing agreements. In the social sphere, along with concessions, promising forms include a trust management agreement and a lease agreement with investment terms. In the field of innovation, an agreement on a special economic zone, venture capital funds, and technology parks are promising.

The establishment by the state of independent legal regulation of SPP relations sometimes raises certain concerns. In particular, in situations related to the transfer of the partnership object to the investor's ownership on the basis of the SPP agreement, one may think that it is possible to legally circumvent the provisions of the law on privatization, which establishes a closed list of methods of privatization of state and municipal property, or the provisions of the law on the contract system, which establishes the obligation to use certain public procedures to meet state and municipal needs.

The law is intended, in particular, to regulate those property relations that arise in society due to their relevance and demand. Legal scholarship also points to the use of relevant partnership models in foreign practice and the generally positive experience of such application. Some general political resonances are also cited in favor of the transfer of various SPP models, in particular, that this form of interaction can increase the state's influence on economic processes.

At the same time, when characterizing SPP, it cannot be argued that it should be aimed mainly at satisfying the public interest, since the essence of partnership relations should be the mutual satisfaction of not only public but also private interests. Therefore, it is more correct to talk about the need to achieve a balance of stakeholder interests within the framework of public-private partnerships as the basis for mutually beneficial cooperation (Introduction to the Public-Private Partnership Guide for Ukraine, 2021).

It is not for nothing that legal scholars have suggested the need for more detailed regulation of relations within the framework of the SPP, despite the existence of the Law of Ukraine “On Public-Private Partnership” (2010).

There are also significant problems in the cooperation between business and public authorities, in particular: a significant number of regulations; instability of public policy; poor quality of the business climate (corrupt judiciary, significant shadow economy and war); unregulated functioning of the sphere of natural monopolies; problems of intellectual property protection; lack of regulation of formalization of relations between government and business; imperfection of business participation in political decision-making processes that affect economic development”.

Literature Review

SPP is one of the most relevant research topics for modern scientists. Researchers pay most attention to the issues of risk differentiation, improving SPP project management, identifying success factors and evaluating project performance, concessions and contract management, strategies for ensuring stability and innovative development (Poliakova et al., 2020).

Most of the publications are related to the analysis of SPP issues in the transport sector, as well as in the housing and utilities sector and in the social sector (primarily in healthcare). This is confirmed by a number of studies analyzing the leading scientific publications on PPPs (indexed in Scopus, Web of Science, etc.), including a review of scientific publications on PPPs in developing countries (Asian Development Bank, 2020), a review of emerging trends in PPP research in “A Review of Emerging Trends in Global PPP Research: Analysis and Visualization” (Song et al., 2016), a review of scientific publications on SPP by Ma et al. (2019), and another study on critical success factors in SPP by Akomea-Frimpong et al. (2023). In terms of the nationality of researchers, more than half of the research on SPP was carried out by the most active scholars from the United States, Austria, and the United Kingdom. Similar conclusions are contained in the study “A Review of Emerging Trends in Global PPP Research: Analysis and Visualization” (Song et al., 2016).

Studies show that the more mature a country becomes in implementing SPP, the wider the range of forms that are implemented. This is due to an increase in the number of sectors and areas of activity for SPP implementation, as well as more creative project structures and financial mechanisms. The SPP Law and other related laws are evolving to enable these arrangements to be implemented (United Nations Economic Commission for Europe, 2023). They are also evolving to address the obstacles and inconsistencies that inevitably arise in the implementation of SPPs. The legal framework of the SPP should be characterized by certainty and flexibility that will allow for positive changes in SPP programs and projects.

A study of the experience of countries with mature SPP programs shows that the broad SPP legal framework, as well as the organizational framework and processes for implementing SPP,

have been regularly updated and improved. This reflects the experience gained and the increased level of SPP knowledge and skills within the government and knowledge of SPPs within the government and among potential partners, lenders and investors. The legal framework, processes, practices and organization of SPPs will inevitably evolve in response to changing circumstances.

The legal framework for SPP in many countries is evolving to address key issues related to recognition and promotion (Buryk, 2020; Garbarinina, 2014; Kelly, 2016):

- innovative financing from both private and public sources: examples include a wider range of public support mechanisms, including grants and capital contributions that are combined with private financing, as well as other financial and with private financing, as well as other financial and non-financial support that prioritizes projects that can be financed by banks;
- a change in attitude towards the optimal distribution of demand risks;
- Affordability-based PPAs, whereby the government pays for project revenues and bears most of the demand risk, have become more common;
- better preparation of projects due to financing of project development;
- improved contract management;
- improved monitoring of the operational phase of the project to verify service quality and service-related payments;
- regular reviews to ensure value for money;
- emphasis on the cumulative impact of the overall SPP project program and portfolio, and less emphasis on a series of one-off projects;
- competition between potential partners for projects to encourage innovation;
- public financial management to assess and manage fiscal risks and affordability decisions;
- risk management at different stages of project implementation;
- stop positioning private financing as a temporary alternative to public funding;
- coordinated approach at the national and international levels.

In 2013, the EU introduced the concept of “public-private partnership” in EU Regulation 1303/2013.39, which established common rules applicable to European Structural and Investment Funds (ESI). The SPP was seen as a form of cooperation between public authorities and the private sector aimed at improving the implementation of investments in infrastructure projects or other activities, the provision of public services by sharing risks, combining private sector expertise or attracting additional sources of capital. It should be noted that a separate chapter of the Regulation defines the support provided to SPP operations through funds (Articles 62-64). It also confirms the role of the European Investment Bank in the development of SPP projects (Bogdanowicz, 2020).

The main reasons, main types, forms, and advantages of building SPPs, as well as the challenges facing the implementation of SPPs in the modern world, are systematized in Batjarga and Zhang (2022). Prats Cabrera (2019) identified centralized and decentralized institutional models of SPPs in his work. The peculiarities of SPP regulation during the Covid-19 pandemic are described in Akomea-Frimpong et al. (2023).

The review of SPP research has revealed that, despite the rather long period of development of modern forms of SPP, certain issues still remain unaddressed in scientific publications. There are practically no works that study SPP as a factor of infrastructure development. Comparative analysis of SPP development in different countries is another relatively rare area of research

that has not yet received much attention (Ma et al., 2019) come to similar conclusions. In particular, the legal regulation of its implementation in the context of Ukraine's post-war recovery requires study and analysis. To date, such research is insufficient, as most studies consider only general aspects of SPP development.

The purpose of the study is to characterize the specific features of the relations between public-private and municipal-private partnerships, consider the legal forms of realization of these relations, and assess the current national legislation.

This goal can be achieved by solving the following tasks:

- to study the genesis of the SPP phenomenon and characterize the essence of the public-private partnership phenomenon;
- to identify the features and legislation on SPP;
- to systematize the international experience of SPP;
- to analyze the need for the implementation of international practice of legal forms of public-private partnership in Ukraine.

Method

The priority methods used in the study were comparative legal, formal legal and logical analysis.

The issues of public-private partnerships were studied as interdisciplinary, existing at the crossroads of legal and economic science, which was related to the tasks of a comprehensive analysis of this phenomenon. As partial research methods, the historical, legal, and comparative law methods were of particular importance; the author studied the extensive practical experience of the SPPs of different countries, as well as historical and modern experience in the field under study.

The information and analytical basis of the study is the legal acts regulating the SPP sphere, international documents, documents and materials of international organizations (Directives of the European Parliament, 2014) and the Council, documents of the European Bank for Reconstruction and Development, the World Bank, etc.).

Results

The UK (private finance initiative) is universally recognized as the European leader in the context of SPP projects. It is also necessary to mention France and Germany, which have a wide range of traditions of using SPP in implemented project activities.

According to the structure of legal regulation and the state of the SPP regulatory framework (the presence (or absence) of a universal legislative law or regulation of certain aspects of SPP within the existing legislation), Prorochuk (2020) identifies:

- 1) a model characterized by the absence of a specialized comprehensive legal regulation in the field of SPP; projects in this area are regulated by general legislation;
- 2) a model in which, in the absence of a comprehensive regulatory legal act on SPP, there are acts regulating certain forms of SPP or public-private partnership relations in certain specific areas of the economy;
- 3) a model with a special comprehensive specialized regulatory legal act (acts) in the field of SPP (a model of unified special legislation regulating SPP relations in all sectors of the economy).

Therefore, the mere fact that there is no single law on SPP in the country is not a decisive factor that negatively affects the development of SPP relations.

It should be noted that the main political and economic “rules of the game” and the norms of legal behavior in partnership within the framework of economic activity of the state and the business community in the leading countries where the SPP mechanism is used have been formed for a long time, unlike in Ukraine (Poliakov, 2020).

An analysis of the experience of different countries in implementing SPP projects allows us to distinguish between the stages of maturity of SPP mechanisms, which can also serve as a decisive factor in building the Ukrainian model (Table 1).

Table 1

Rating of Countries by the Degree of Development of the PPP Mechanism

Degree of development	States
Initial stage Development of SPPs (group 1)	Albania, Belgium, Bulgaria, Brazil, China, Croatia, Czech Republic, Denmark, Finland, Hungary, India, Latvia, Mexico, Slovakia, South Africa, South Korea, Ukraine
Intermediate level SPP development (group 2)	Canada, France, Germany, Greece, Italy, Japan, Netherlands, New Zealand, Portugal, Spain, USA
Degree with persistent forms of PPP (group 3)	Australia, Great Britain, Ireland, South Korea

At the first stage – the formation stage – the framework conditions for the use of SPP are developed (development of policy and regulatory framework), the public sector initiates project implementation, SPP project management bodies are established, a mechanism for competitive project selection and the market for SPP projects are formed (Implementation of Public-Private Partnership Projects in Ukraine, 2017).

The second stage involves the development of SPP forms, the emergence of “hybrid” forms (public sector financing is provided by several levels of the budget), the development of the SPP project market, the creation of specialized units in sectoral public authorities, and the involvement of financial market institutions in project implementation.

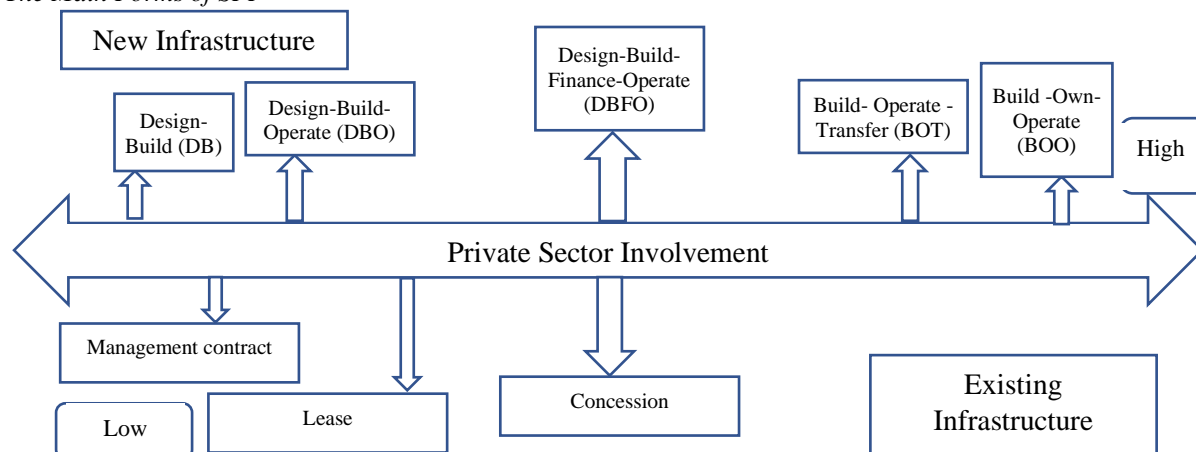
At the third stage, the forms of PPPs used are improved and integrated programs emerge, stakeholder interaction is characterized by greater flexibility, and risk-sharing schemes in project implementation become more complex. PPPs are beginning to be used for the entire life cycle rather than for specific project stages, the range of players in the PPP market (pension funds, private equity funds) is expanding, and the private sector is using more of its own funds for financial projects than borrowed funds. There is a transfer of private sector management experience to the state, which helps to increase the efficiency and competitiveness of the government (Poliakova et al., 2020).

The experience of Japan's SPP is interesting, as its concept was developed in stages, taking into account the historical transformations of the postwar realities. The authorities considered the SPP mechanism as a catalyst for economic activity, which was subsequently adjusted by law to include conceptual changes in the segment of private financial initiative. SPP projects in Japan are characterized by smaller amounts of financial resources (5-10 billion yen), concentrated (mostly) in the segment of social infrastructure (healthcare, culture, education, etc.).

SPPs are aimed at achieving a wide variety of goals, so they can be differentiated by the level of private sector involvement, contract terms, asset ownership, risk allocation, and life cycle stages. Figure 2 shows a list of the main forms of SPPs according to the level of private sector involvement and classifies them by the stages of the infrastructure life cycle.

Figure 2

The Main Forms of SPP



Source: Chen et al. (2012)

EU legislation provides the main functionality for regulating SPPs. In particular, the Concession Directive 2014/23/EU provides the legal basis for their regulation, defines and regulates the conceptual framework of SPPs (European Commission, 2023a, 2023b, 2023c).

As foreign experience has shown, the nature of SPP development in terms of the amount of investments attracted is cyclical and is determined by a number of factors. The peak of SPPs in European countries was in the 2010s. As large projects were implemented and the infrastructure gap was reduced, there was a gradual decline in activity in this area. Another factor in this matter is budgetary sufficiency, which is one of the key drivers of SPP development - the higher it is, the less incentive the government has to attract private capital. On the other hand, a decline in the use of the SPP model in the context of insufficient budgetary funds for infrastructure development (as is the case in Ukraine, especially in the post-war period) may indicate unresolved systemic issues that should be addressed.

With regard to legal regulation, an effective regulatory system, including transparent and objective tender procedures, as well as an effective law enforcement system, is an important factor. Unfortunately, foreign experience of public-private partnerships often does not find a balanced model in legislation. Some elements are selectively copied, concepts are distorted (for example, the term “private initiative” is used in a different sense than it is used abroad), irrelevant issues are discussed, which wastes the time of legislators and the professional community, and important problematic issues are relegated to the background or forgotten. For example, instead of introducing the VfM mechanism, which is fundamentally important in the implementation of the SPP program, the issue of the maximum share of the state in project costs is being discussed, which is incorrect, since the share may vary from project to project (taking into account the conditions of the region of implementation, efficiency and other factors).

A balanced use of foreign experience for the development of SPP in Ukraine will allow attracting private capital to the infrastructure sector, which should have a positive impact on infrastructure restoration and, as a result, on the country's competitiveness.

At the same time, education and healthcare in Ukraine in the postwar period are no longer priority areas for the use of SPP instruments, primarily due to significantly lower GDP per capita and the priority of economic recovery over the development of the social sphere. Therefore, it is extremely important to implement a set of measures to build the country's transport infrastructure.

SPPs, including in Ukraine, are usually regulated by a number of legal acts, including laws, other regulations, decrees, policies and guidelines. In addition, the legal and regulatory framework for SPPs also affects the regulation of issues such as land ownership or the management of public finances and investments.

In Ukraine, the rights and obligations of stakeholders in the implementation of SPP projects are currently defined by the following legal acts: The Constitution of Ukraine (1996); the Civil Code of Ukraine (2003); the Budget Code of Ukraine (2010); the Law of Ukraine "On Public-Private Partnership" (2010); the Law of Ukraine "On Investment Activity" (1991), the Law of Ukraine "On Roads" (2005), the Decree of the President of Ukraine "On the Sustainable Development Goals of Ukraine for the period up to 2030" (2019), the Law of Ukraine "On Concession" (2019), Resolution of the Cabinet of Ministers of Ukraine "On the procedure for conducting a concession tender and competitive dialogue in the electronic trading system" (2021), Resolution of the Cabinet of Ministers of Ukraine "Procedure for allocating funds for the preparation of public-private partnership projects and fulfillment of long-term obligations under public-private partnerships in relation to state-owned objects" (2023). The latter still leaves the possibility of corruption risks associated with obtaining state support for projects, which negatively affects investors.

The Law of Ukraine "On Public-Private Partnership" (2010) regulates the procedure for developing a proposal for the implementation of an SPP project and preparing the project itself. Also, the provisions of this law apply to concession relations only if another procedure for legal regulation of concessions is not defined by the Law of Ukraine "On Concession".

The provisions of the Law of Ukraine "On Public-Private Partnership" (2010) and the Law of Ukraine "On Concession" need to be harmonized. Thus, the latter stipulates that starting from January 1, 2023, all concession tenders and competitive dialogues shall be conducted exclusively using the electronic trading system (ETS), which is not provided for in the Law of Ukraine "On Public-Private Partnership" (2010). The ETS should provide conditions for the creation, posting, publication and exchange of information and documentation in electronic format, allow for faster, more transparent and better quality tender for the selection of a private partner in real time, and interact with an electronic platform for integrated project management.

Consideration should be given to the issue of compulsory acquisition of private property by the transport infrastructure operator to provide or expand the provision of relevant services or the relevant implementation of the PPP project. It is about the need to delegate to the concessionaire the right to take certain actions related to such acquisition, but the government remains responsible for the relevant measures. It is quite important, especially in transport infrastructure, to establish special mechanisms to meet the concessionaire's needs, in particular

for transit through or through the territory owned by a third party. Easements often fail in such situations and delay the project implementation process.

In transportation infrastructure projects, an important element is the land plot, which, according to the Law of Ukraine “On Public-Private Partnership” (2010), is not an object of SPP, unlike international law, which applies to it the general rules of partnership.

By-laws regulate the following organizational aspects of SPP projects in Ukraine: preparation and holding of a partnership tender; replacement of a private partner; identification of related risks; calculation of concession payments; engagement of advisors for the preparation of a project to be carried out under concession terms; holding a concession tender and competitive dialogue in the electronic trading system; and maintaining the Register of Long-Term Obligations. It also regulates the decision-making on the provision of state support; reporting on the implementation of SPP projects by participants; analysis of project efficiency; and competitive selection of independent experts.

In contrast, it should be noted that the EU has refused to develop special legislation on PPPs at the EU level, as it is regulated by EU legislation on concessions or public contracts. In the EU, unlike in Ukraine, where the concept of SPP is reduced to a single contract, SPP is understood as a variety of “forms of cooperation between public authorities and the business community, the purpose of which is to finance, construct, reconstruct, manage and maintain infrastructure or provide services” (European Commission, 2023b) and applies to all contracts concluded for the implementation of a PPP project.

An important point to emphasize is that for a partnership between any parties to be successful, each party must be fully aware of the other's goals and desires. The success of partnerships, therefore, depends on the ability of SPP project participants to achieve the common goals for which the partnership process was initiated.

The success of partnership programs requires an active role of the state in several areas, such as building effective national human resources, developing legislation, ensuring neutrality, transparency and integrity in the application of this legislation and contracting, ensuring a healthy competitive environment, and expanding opportunities for public participation (Aboelazm et al., 2024).

The most well-established definition in Ukrainian law is “state-private partnership,” although, in our opinion, it is more appropriate to use the variation “public-private partnership,” since this partnership model is used not only between the state and business, but also in the relations between territorial communities and business. Back in 2003, the European Commission proposed the term Public-Private Partnership (PPP) as a delegation of powers and responsibilities to private stakeholders, which is enshrined in the Green Paper on PPPs. It has been proposed to understand PPPs as various forms of interaction between business and government to ensure that public interests are met.

The basic features of PPPs include the following:

- PPP parties – government authorities and business structures;
- formalization of relations between the parties on an official basis, based on the principle of equality and social orientation;
- consolidation of resources of the project parties;
- distribution of risks and costs between project participants in certain proportions.

In the following, the article will use the term PPP, since in the domestic economy, the application of the principles of PPP, rather than SPP, will be most effective when considering the interaction of all levels of government, including the municipal level (including territorial communities), and private business. This is because the interaction between municipal governments and private business can be represented as a Municipal Private Partnership. However, an MPP is an SPP because national legislation delineates the powers of all levels of government and defines the boundaries between state and municipal authorities.

This means that PPP, in a simple sense, is both SPP and municipal private partnership. In mathematical terms, this interpretation can be expressed as the formula $PPP = SPP + MPP$. In this case, PPP in the general sense can be understood as official long-term cooperation between state authorities, local governments and legal entities (private partners) related to the provision of public services by the state, provided that the private partner transfers a share of risks on the basis of an agreement concluded in accordance with the procedure established by law.

In particular, in the context of transport infrastructure, it remains an important issue to consider the feasibility of amending land legislation to facilitate the implementation of PPP projects and programs. For example, this could include the provision of state-owned or municipally owned land without procurement for PPP projects.

The partnership between the government and business is an important component of Ukraine's modern innovation and investment policy, as if effectively organized, it provides broad benefits from stimulating research for innovative development, which is seen as a strategic factor in the dynamics of economic systems. In view of the above, the PPP is an institutional and organizational alliance between all levels of government and business organizations to implement socially important state programs, including innovation-oriented ones.

At the same time, the Law of Ukraine “On Investment Activity” does not establish the specifics of investment in the process of implementing projects through SPP, although it establishes investment by non-state actors, the state (implementation by public authorities), at the local level (implementation by local governments), foreign and joint investment. Therefore, it is necessary to develop the legal norms of investment in Ukraine in the context of the Law of Ukraine “On Public-Private Partnership” (2010) to take into account the peculiarities of the procedure for planning, implementation and control of the investment process, and the conclusion of an investment agreement for SPP projects.

The undoubted advantages of PPPs are budgetary savings and the demonstrable effectiveness of such projects, as citizens use transportation, educational, and medical services on a daily basis. At the same time, it is necessary to point out legislative gaps and identify problems that arise in practice.

The first problematic issue is that the state does not have an official list (register) of incentives for private investors. As is well known, in practice, the private party may be granted tax exemptions and quotas free of charge; deduction of an agreed percentage of profits (in case of reconstruction of production), free land ownership and other benefits. The second problematic issue with PPPs is the abuse of private partners. Investors often declare themselves bankrupt after signing a concession agreement and receiving a certain benefit from the state, and thus can no longer invest their money in the SPP project. The third problematic issue is the

responsibility and risks of investors, as SPPs are usually long-term cooperation, and investor's investments may increase due to inflation.

Public procurement has been clearly identified in some of the Sustainable Development Goals (SDGs). Goal 12 includes the promotion of sustainable development in the context of procurement as a goal to ensure models of sustainable economic development. Theory and practice continue to understand and apply sustainable development in the procurement context, which is synonymous with green procurement. Sustainable development in the context of procurement is defined by the EU Commission as “the process by which public authorities seek to achieve an appropriate balance between the three pillars of sustainable development – economic, social and environmental – when selecting a private partner in SPP projects”.

Thus, taking into account the environmental component, in particular through environmental impact assessment, is quite important when implementing SPPs. This assessment in the project analysis is usually carried out during the feasibility study in the context of assessing the socio-environmental impacts of SPP projects. A positive assessment guarantees the achievement of sustainable development goals and social responsibility in SPP (Li & Xu, 2024).

Climate change mitigation and adaptation are possible through infrastructure. In addition, infrastructure improves people's living standards by providing basic transportation services. However, poorly planned and implemented transportation infrastructure can have catastrophic consequences for the environment and people.

Damage to individuals and communities at various stages of the project life cycle is a reality. Among them, land grabbing, forced displacement, and restrictions on free, prior, and informed consultation with residents are linked to the ways in which resources are exploited and land is acquired for the physical installation of transport infrastructure. Territorial communities are often not taken into account in decision-making on transport infrastructure, undermining their participation in decision-making and choosing development paths to meet their own needs.

Municipalities, as well as the state as a whole, are constantly facing problems related to the lack of budgetary resources for the implementation of municipal investment cases and the growing demands on the services provided to them. At the same time, the private sector has accumulated a lot of experience and funds that could be used to address priority municipal projects.

In Ukraine, establishing cooperation between municipalities and the private sector that fully addresses the needs of society has proven to be a challenge. Insufficient elaboration of the institutional legal, economic, and organizational framework for this interaction, in most cases, leads to negative consequences.

In these circumstances, it is of particular relevance to summarize the practical experience of developed countries of the global community in engaging private participants in the implementation of priority municipal projects, as well as to develop proposals for improving the forms and methods of PPPs at the local level for the sustainable and long-term development of Ukrainian communities.

Practice shows that even in developed countries with their strong institutional frameworks, partnerships between private business and the state are sometimes used to realize mainly private interests. This results in distortions in economic policy, violations of competition, and growing distrust of partnerships. In real economic reality, these phenomena often take the form of

corruption. It is not easy to eliminate these negative phenomena, but it is quite possible to minimize them and thereby increase the efficiency of partnerships.

This can be facilitated by the following factors: an effective economic structure and fair distribution of opportunities and risks; transparent and efficient distribution of public contracts; and the ability to accurately calculate the costs and benefits of a project. The political and legal environment is important in eliminating negative phenomena during the implementation of SPPs. The rules of partnership should be legitimate, transparent, reasonable and acceptable to both sides of society.

This creates the need for an in-depth study of the existing mechanisms and tools used by the authorities to consciously influence the behavior of other SPP stakeholders to achieve sustainable development goals (Worldbank, [2025b](#)).

At the preparatory stage, the customer must express its own wishes and priorities for sustainable development, determine the requirements of other stakeholders based on coordination and co-production mechanisms, and select available and relevant sustainable development solutions. The exclusion criteria contain some elements related to sustainable development, such as the exclusion of companies that have violated social, environmental, and labor laws.

At the same time, sustainability can be significantly influenced by selection criteria related to the technical and financial capacity of companies. For example, past performance requirements could be integrated with sustainability considerations (European Commission, [2011](#)).

Customers need to adhere to the principles of sustainable development and the Sustainable Development Goals of Ukraine for the period up to 2030. However, one particular challenge is that a large part of the sustainability criteria cannot be measured or applied, so sustainability indicators, especially social indicators, need to be measurable.

A necessary overall strategy should be to emphasize quality aspects in procurement, which implies working with the highest possible price. This is where government agencies and local governments have an important role to play.

In fact, coordination is quite important, since procedurally, SPP in the course of project implementation in Ukraine falls under the functions of separate regulatory procedures (expert opinion, approval of SPP projects), which involve different public authorities (Ministry of Economy of Ukraine, [2023](#)).

For example, for transport infrastructure projects, the Ministry of Infrastructure of Ukraine approves the Technical Documentation, the terms of concession tenders are approved by the Ministry of Community and Territorial Development of Ukraine, and the Ministry of Finance of Ukraine checks the project status and the procedure for the need for state support. Thus, the SPP's subject composition is heterogeneous, and the relevant public authorities involved in the implementation of SPP projects are not subordinated to the body authorized to manage the SPP sector, and therefore, the Ministry of Economy is not able to fully exercise its competencies related to the regulation of this area in a comprehensive and systematic manner.

Discussion

It should be assumed that relations related to the achievement of Sustainable Development Goals (SDGs), application of social responsibility and environmental sustainability criteria,

corporate governance (hereinafter - ESG criteria) within the investment process and SPP create a special subject of regulation of civil and investment legislation, legislation on SPP, and set goals of legal regulation for them and contractual practice that traditionally belong to the public sphere.

In the course of exercising their rule-making function, international organizations have adopted a number of decisions related to the regulation of SPPs in relation to the SDGs, and their volume is currently growing dynamically. The outcome document of the UN Conference on Sustainable Development notes that enhanced private sector participation can significantly contribute to sustainable development, in particular through SPPs.

“Sustainability clauses” are gradually being incorporated into the practice of concluding contracts that mediate cross-border relations for the provision of services and works. Several standardized “sustainability” clauses have been developed, but they can hardly be considered acceptable for use in the contractual practice of SDG-oriented SPPs.

The author of this article proposes a “sustainability” clause to designate the terms of the PPP agreement that create a special legal regime for “sustainable” investments to create PPP facilities that meet the criteria of “sustainable” infrastructure and/or provide services aligned with the SDGs and ESG criteria, a special procedure for exercising the rights and obligations of stakeholders, the financing organization in the event of possible ESG risks. The functions of the proposed “sustainable development” clause in the PPP agreement are thus related to balancing the interests of the partners and protecting their guarantees. The clause is also important as a tool for managing ESG risks, as it helps to identify them, prevent their occurrence or minimize their negative impact.

In a PPP agreement, a “sustainable development” clause may be formulated by establishing prohibitions and restrictions for the parties to the agreement, obligations not to take actions that may adversely affect the achievement of the SDGs and the application of ESG criteria. In doing so, the principle of reasonableness should be followed, and excessive prohibitions and restrictions for the parties to the PPP agreement should be avoided. The clause may include a mechanism for interaction between the parties to achieve the SDGs and ensure compliance with ESG criteria in the course of “sustainable” investment under the SPP, as well as grounds for termination of the SPP agreement or other liability measures if one of the partners violates the obligations and procedures provided for in the clause.

The proposed hypothesis-based theoretical construction of the “sustainability clause” is not a sure thing. There are inevitable questions, for example, about whether the parties to an SPP agreement, based on the principle of freedom of contract, have the right to include terms affecting sustainable development, and whether the subjective will of the private partner can give the nature of the obligation under the SPP agreement to indicators and indicators related to the SDGs or development goals of a particular state (Gonnon, 2019; Grochowski, 2020; Mitkidis, 2020).

As for the international experience of using PPPs to achieve the SDGs, it is worth noting the implementation of projects in Denmark and Germany in the field of alternative energy sources. These projects were made possible by the active participation of private partners.

The importance of such projects for countries that do not have large reserves of natural resources (oil, gas) does not require detailed argumentation. Singapore and the United Arab Emirates are actively using SPPs to improve people's lives by providing a high standard of

living through the development and implementation of modern transportation and logistics management systems and other urban services. The overall effectiveness of the implemented systems is confirmed by the large flow of tourists and skilled workers seeking to travel to these countries for a long stay.

In turn, in China, the city of Shanghai is implementing a water supply and wastewater treatment project with the help of SPP, which, given the city's population, is one of the important services needed to ensure a decent life for people. Such a project clearly demonstrates the social significance and economic feasibility of using SPP tools for the state.

None of the current international trends in regulating SPPs as a means of achieving the SDGs has so far been reflected in the SPP legislation, Ukraine's national development goals, or national projects aimed at their implementation. Taking into account new approaches to the SPP concept at the international level, it is advisable to consider expanding the SPP objectives and its basic tools in the national SPP legislation and supplementing economic aspects with social and environmental components that ensure the basic rights and needs of the population, as set out in RES/70/1.

Conclusion

Summarizing the international experience of the PPP, despite the universality of the mechanisms, it is necessary to note the specifics of the development of the national legal system, national affiliation with the legal family and at the same time membership in a particular regional system (the European Union, BRICS, etc.).

An analysis of the practical experience of developed countries shows that the choice of forms, mechanisms and models of legal regulation of PPPs is most influenced by economic factors and development indicators. Sustainable development considerations do not play a necessary role in the procurement of PPP projects in Ukraine.

It is difficult for public procuring entities to establish them (sustainability criteria), especially in terms of measurability and enforceability, in addition to environmental sustainability and social sustainability. These ideas require further research, which will include the identification of measurable indicators for sustainability assessment criteria. The issue of adapting the PPP mechanism to attract investments to rebuild destroyed infrastructure also remains open. To address this issue, the Ministry of Infrastructure has launched the Digital Ecosystem for Accountable Recovery Management (DREAM) as a “one-stop shop” for project creation, financing, management, and control.

For Ukraine, aspects of international experience can serve as a basis for improving its PPP legislation. In particular, the Concessions Directive 2014/23/EU forms a solid basis for guaranteeing transparency, fairness and efficiency of concession contracts.

The main proposed recommendations include:

- 1) Determining the levels and forms of CPT in the context of post-war reconstruction of Ukraine.
- 2) Formation of a system of legal support for the PPP.
- 3) Creation of the PPP market and conditions for competition in it.
- 4) Implementation of regulatory supervision.
- 5) Improving the system of regulatory and legal support in the field of public procurement.

This will help to create optimal conditions for the successful development of PPPs in Ukraine, which will contribute to the efficient provision of public services and infrastructure development.

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