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Contents

Preface	9
Beata Bal-Domańska: Convergence of Central and Eastern European regions – spatial aspect.....	11
Barbara Dańska-Borsiak: The determinants of migration outflows from Polish sub-regions in both internal movement and abroad – identification and comparison.....	22
Anna Golejewska: Rethinking regional competitiveness. The role of productivity.....	33
Małgorzata Golińska-Pieszyńska: Intellectual capital as an important element of knowledge management.....	43
Piotr Hajduga: Special economic zones in the Lower Silesia region as a regional development stimulator during the crisis	56
Petr Hlaváček: Analysis of the development processes of the city of Ústí nad Labem as an example of the social and economic transformation of cities in the Czech Republic.....	66
Anna Jasińska-Biliczak, Jan Buleca: Participation of economic self-government in the process of the promotion of entrepreneurship – case study of Poland, Germany and Slovakia.....	78
Małgorzata Karczewska: Diversity of the gross expenditure on R&D in GDP by sources of funds in Poland against the background of the European Union	89
Artur J. Kożuch, Janusz Sasak, Kamilla Noworól: Target costing and participatory budget in Territorial Self-Government Units.....	97
Alina Kulczyk-Dynowska: National park as an element fostering the sustainable development of the region – the example of the Tatra municipalities.....	108
Iwona Ładysz: The regional dimension of economic security in the age of globalisation using the example of the Lower Silesian Voivodship	118
Krzysztof Malik: Smart specialisation and Key Enabling Technologies in the New Regional Development Policy	128
Štefan Marsina, Pavol Oravský: Utilization of geothermal energy as a renewable source.....	141
Anna Mazurek-Kusiak, Julia Wojciechowska-Solis: Noticeability and effectiveness of tourism promotion in Lublin province	149
Grygorii Monastyrskyyi, Tetyana Monastyrska: Modernization of local self-government in Ukraine.....	160
Alicja Olejnik: Prospects and frontiers of Multidimensional Panel Spatial Autoregressive Models	170

Pavol Oravský, Štefan Marsina: Infrastructure of energetics and its diversification	180
Alina Piątyszek-Pych: The cluster development policy in Poland	190
Zbigniew Piepiora: Occurrence of natural disasters in Africa and international cooperation in the field of counteracting their effects	200
Renata Pisarek: The importance of passenger air transport and high-speed rail for regional development.....	210
Małgorzata Rogowska: The quality of public space in the development of urban areas.....	223
Joanna Szafran: Public-private partnership in Poland and the European Union	231
Ewelina Szczech: Is there a creative city in Poland? Defining and measuring the concept in Poland	242
Andrzej Sztando: Twelve rules for the construction of planning documents prepared by self-government units	252
Maciej Turala: Institutional capacity in Polish communes. Strategic, financial and spatial planning dimension	264
Alla Vasina: Management of the investment potential of Ukraine's regions in the process of regional structural policy realization	275
Svitlana Veleshchuk: Strategic development of the region in the context of the branding concept.....	285
Marcin Bogdański, Wioletta Wierzbicka: Socio-economic potential of Polish voivodship cities.....	295
Marcelina Zapotoczna, Joanna Cymerman: Application of selected synthetic measures in the assessment of the level of satisfied housing needs in Poland.....	306

Summaries

Beata Bal-Domańska: Konwergencja regionów (NUTS-2) Europy Środkowo-Wschodniej – aspekt przestrzenny	21
Barbara Dańska-Borsiak: Determinanty krajowych i zagranicznych odpływów migracyjnych z podregionów – identyfikacja i porównanie	31
Anna Golejewska: Rozważania na temat konkurencyjności regionalnej. Rola produktywności.....	42
Małgorzata Golińska-Pieszyńska: Kapitał intelektualny jako ważny element zarządzania wiedzą.....	55
Piotr Hajduga: Specjalne strefy ekonomiczne na Dolnym Śląsku jako stimulator rozwoju regionalnego w dobie kryzysu	65

Petr Hlaváček: Analiza procesów rozwojowych miasta Ústí nad Labem jako przykład społecznych i ekonomicznych transformacji zachodzących w miastach Republiki Czeskiej	77
Anna Jasińska-Biliczak, Jan Buleca: Partycypacja samorządu gospodarczego w procesie wspierania przedsiębiorczości – analiza przypadku Polski, Niemiec i Słowacji	87
Małgorzata Karczewska: Zróżnicowanie udziału wydatków na B+R w PKB w Polsce według źródeł finansowania na tle krajów Unii Europejskiej	96
Artur J. Kożuch, Janusz Sasak, Kamilla Noworól: Rachunek kosztów docelowych a budżet partycypacyjny w JST.....	107
Alina Kulczyk-Dynowska: Park narodowy jako element wspierający równowagę rozwoju regionu – przykład gmin tatrzańskich	117
Iwona Ładysz: Regionalny wymiar bezpieczeństwa ekonomicznego w dobie globalizacji na przykładzie województwa dolnośląskiego.....	127
Krzysztof Malik: Specjalizacje inteligentne i technologie wiodące w Nowej Polityce Rozwoju Regionalnego	140
Štefan Marsina, Pavol Oravský: Utylizacja energii geotermalnej jako źródła odnawialnego.....	148
Anna Mazurek-Kusiak, Julia Wojciechowska-Solis: Zauważalność i skuteczność promocji turystyki w województwie lubelskim	159
Grygorii Monastyrskyi, Tetyana Monastyrska: Modernizacja samorządu lokalnego na Ukrainie	169
Alicja Olejnik: Perspektywy i ograniczenia panelowego wielowymiarowego autoregresyjnego modelu przestrzennego	179
Pavol Oravský, Štefan Marsina: Infrastruktura energii elektrycznej i jej dywersyfikacja.....	189
Alina Piątyszek-Pych: Polityka rozwoju klastrów w Polsce	199
Zbigniew Piepiora: Występowanie katastrof naturalnych w Afryce i międzynarodowa współpraca w zakresie przeciwdziałania ich skutkom	209
Renata Pisarek: Znaczenie pasażerskiego transportu lotniczego i kolei dużych prędkości dla rozwoju regionalnego	222
Małgorzata Rogowska: Jakość przestrzeni publicznej w rozwoju aglomeracji miejskich.....	230
Joanna Szafran: Partnerstwo publiczno-prywatne w Polsce i w Unii Europejskiej.....	241
Ewelina Szczech: Czy w Polsce istnieje miasto kreatywne? Próba definicji i pomiaru zjawiska w Polsce	251
Andrzej Sztando: Dwanaście zasad budowy dokumentów planistycznych jednostek samorządu terytorialnego.....	263
Maciej Turała: Sprawność instytucjonalna polskich gmin. Wymiar planowania strategicznego, finansowego i przestrzennego	274

Alla Vasina: Zarządzanie potencjałem inwestycyjnym regionów Ukrainy w realizacji regionalnej polityki strukturalnej	284
Svitlana Veleshchuk: Strategia rozwoju regionu w kontekście koncepcji branding.	294
Marcin Bogdański, Wioletta Wierzbicka: Potencjał społeczno-gospodarczy miast wojewódzkich w Polsce.....	305
Marcelina Zapotoczna, Joanna Cymerman: Wykorzystanie wybranych miar syntetycznych do oceny zaspokojenia potrzeb mieszkaniowych w Polsce	316

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PUBLIC-PRIVATE PARTNERSHIP IN POLAND AND THE EUROPEAN UNION

Summary: Although growing rapidly since the late 1990s, unfortunately the share of the Polish PPP market is negligible since in 1990-2009 it amounted to only 0.4% of the total number of completed projects and 1.7% of the total value. The new laws that entered into force in 2009 have brought a slow upward trend in PPP projects, though only one in five calls for competition brings a signed deal. The low value of the Polish PPP market also results from its specific structure. In developed markets, transport has remained the largest PPP sector. The dominant sectors in Poland were sport and leisure (35%) and the construction and management of parking lots (12%), followed by sewage-water management, energy, healthcare, education, ITC, housing, culture and only 2% in transport. These shares result from fact that Polish local governments of communes and city counties are predominantly involved in public-private projects. The development of the PPP market in Poland can be hampered by e.g. insufficient knowledge, no transparent legal framework and procedures and no specialized PPP units, no PPP market development strategy, political and economic factors.

Keywords: public-private partnership, concession, European PPP market, hybrid PPPs.

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1. Introduction

A public-private partnership (PPPs) involves various forms of cooperation between the public and private sectors, which depends on the contractual allocation of tasks and risks so that the skills and resources of each party could be optimally used to provide services or facilities for public use and to benefit both parties [Guidelines for Successful Public-Private Partnerships, p. 16, Article 1(2); Act of 19 December 2008 on public-private partnership]. A PPP is an interesting alternative to traditional public state investment funding when services, facilities and public infrastructure are in high demand, public budget, management and personnel are limited and the debt is rising. Moreover, private funds can be part of blended projects (hybrid PPPs) which are co-financed from the EU budget. This comparative analysis on PPPs in Poland and the European Union aims at describing the specific features of the Polish PPP market to identify the constraints and opportunities for its development.

2. Participation of Poland in the European PPP market

The involvement of the private sector in the financing of public tasks and projects has been known in Europe for a long time and dates back to the industrial revolution which was accompanied by the development of urbanization and transport. The infrastructure in Europe and later in America, China and Japan was financed from private funds, whereas the expenditure for courts of law and wars were financed from public funds [Walker, Smith 1995, p. 1]. However, this instrument was not popular in Western Europe until the second half of the 20th century (Figure 1).

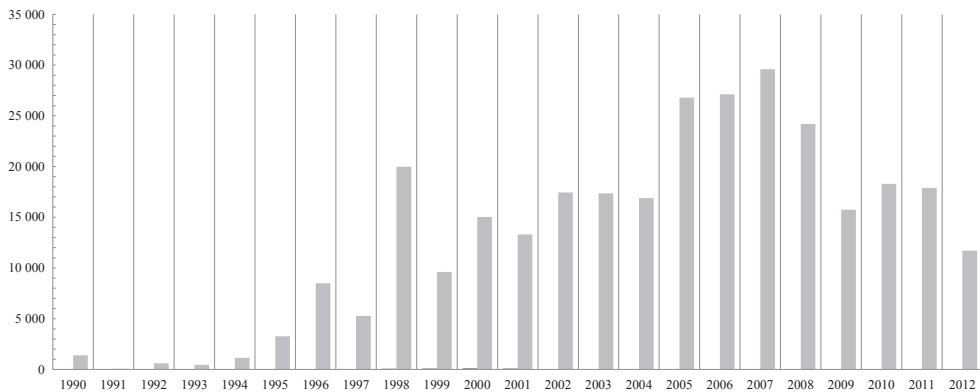


Figure 1. Value of PPP projects in the EU in 1990-2012 (in mln EUR)

Source: own developed upon the data provided by the European PPP Expertise Centre (EPEC).

The data in Figure 1 show that the European PPP market has been growing rapidly since the late 1990s. Its highest value, 29.58 billion, was recorded in 2007 and the largest number of projects that reached financial close, 144 billion, was recorded the year before. In 1990-2009, the PPP markets in the European Union reported a total of 1,340 projects that achieved financial closure of a total of EUR 253,744.9 million. However, the economic crisis interrupted this positive trend and both the number and value of PPP projects were reduced. In 2012, only 66 contracts of a value of EUR 11.7 billion were concluded, which has been the lowest value of this market for a decade.

In 1990-2009, the United Kingdom had two-thirds of all projects and 53% of the total value of European PPP [Kappeler, Nemoz 2010, pp. 8-9], followed by: Spain (11.4% of the total value of PPP projects), Portugal (7%), Greece (5.5%), France (5.3%), Germany (4.1%) and Italy (3.3%). In total, these seven countries generated 92% of the projects of a value of almost 90% of the European PPP market. Accordingly, the results of the countries of Central and Eastern Europe are poor because their total share in the period was about 2% out of the total number, and 5%

of the total value of the European PPP market. This fact results from their immature markets that have no appropriate laws, no specialized institutions to promote PPP, no support for this idea from public authorities, and mental barriers, e.g. public authorities are afraid of being suspected of corruption. In addition, the economic crisis does not favor the stability and development of the PPP market in this region. The value of completed projects fell from EUR 2 billion in 2009 to EUR 150 million in 2010 [EPEC, Market Update 2010, p. 4].

In 1990-2009, the Polish share in the PPP market was only 0.4% of the total number of projects that achieved financial close and 1.7% of the total European PPP market [Kappeler, Nemoz 2010, p. 8]. The transformation of the Polish political system in the 1990s and the reform of local government revived public-private cooperation which dates back in Poland to at least the 1840s, when private capital was involved in the construction of railways in the area of all three Partitions. In 1992, the city of Gdańsk and the French company, Saur, established the first joint venture for public utility to provide water and sewage services in Gdańsk, Sopot and the neighboring communes. Soon, other cities established joint ventures in which private parties could provide services in water and sanitation management, public transport, waste management and energy [Moszoro 2010, p. 41]. Private entities could perform public tasks for the commune's economies in accordance with the provisions of the Act of 20 December 1996 on municipal services, in particular Art. 3(1) and the rules laid down in the Civil Code and then the provisions of the Public Procurement Law (PPL). The Act of 27 October 1994 on toll motorways started a cooperation on road building between public government authorities and the private sector. However, until now only three licenses were granted just in 1997 for the construction, operation and maintenance of the sections of the A1 and A2 motorways, and the adjustment to toll collecting, operation and maintenance of The A4 motorway in the section between Katowice and Kraków. A public-private partnership is also provided by the Act of 21 August 1997 on real estate and the Act of 24 April 2003 on public benefit and volunteer work.

However, the first act on public-private partnership, the Act of 28 July 2005, failed to give a legal framework to public-private partnerships because no project was launched according to its provisions. It was only the coming into force of the new Act of 19 December 2008 on public-private partnership, and of the Act of 9 January 2009 on concessions for construction works services that resulted in announcing about 40 PPP projects in various areas of public utility, technical and social infrastructure in the same year. A slow upward trend on the Polish public-private partnership market was recorded in 2009-2012, but the prevalent part of more than 200 published and 177 actual announcements is not reflected in concluded deals and projects actually carried out. Over four years, 33 transactions were signed, which is less than 19% of the actual announcements and shows that this method is much less efficient than the traditional public procurement method. The preferred legal and organizational form of projects is a concession, i.e. more than 80% of the announcements in 2009-

-2012 among which construction works, in which concessions are most frequent. A concession is an independent institution according to Polish law (this form of cooperation was indicated in 80% of the announcements in 2009 to 32% in 2012) or as a form of public-private partnership, i.e. small partnership – only 10% of the announcements in 2009 and already half of the announcements in 2012. The fundamental difference between these forms consists in the object of partnership, i.e. a concession can be granted to perform construction works, services or supplies only, whereas PPP projects involve comprehensive activities. A concessionaire is selected and contractual obligations shall be specified pursuant to the act on concessions for works or services while the act on public-private partnership allows for selecting a private partner as provided in the act on public procurement (but by a simplified procedure of a competitive dialogue) or by negotiations as provided in the act on concessions for construction works or services. Moreover, to implement a project, parties can establish a blended capital venture known as an institutional public-private partnership. However, only four calls in 2012 provided for this solution. The unquestionable popularity of concessions may be due to, e.g. a desire to shift the risk due to the implementation of a project to a private partner or a better specified concessionaire's tasks and responsibilities. However, while deciding on the form to implement PPP projects, public entities are increasingly willing to follow the provisions of the Act on public-private partnership (20% of the projects submitted in 2009, 36% in 2010, 43% in 2011, and 68% in 2012).

Public-private partnerships will attract more interest in the next few years because such projects known as blended or hybrid projects can be co-financed from the EU funds. Note that the Community law has no separate act or even a definition of public-private partnerships (PPP contracts are mentioned only) so this kind of partnership is regulated by soft law and thus not harmonized. The first acts that created a common procurement market legally sanctioned a concession for construction works only [Directive 2004/18/EC]. The documents that specify how to apply public-private partnerships are chiefly the European Commission Guidelines for Successful Public-Private Partnership from 2003, the Green Paper on public-private partnership and the Community law on public contracts and concessions from 2004, the Commission Interpretative Communication on the application of the Community law on Public Procurement and concessions to institutionalised PPP from 2008. Accordingly, Member States were *somewhat unrestrained* in selecting structures and financial and legal forms for such projects, respecting the provisions of the acts on public procurement or concessions.

Small projects are typical of the Polish public-private partnership market compared with the European one. The value of concluded contracts usually ranges from PLN 1 to 5 million, and the majority of announced proceedings amounts to PLN 10 to 50 million [Herbst, Jadach-Sepiolo, Marczevska 2012, p. 31]. This fact results from the fear of trying out new legal solutions and the specific Polish public-private partnership market in terms of its sectoral structure and ordering entities.

3. Sectors and entities in PPPs in Poland and the EU

The structure of the PPP market will be different in each EU Member State due to the introduced preferred subjects, e.g. in Spain – transport infrastructure and hospitals, in Germany – schools, hospitals, refurbishing [Herbst et al. 2012, p. 41]. The aggregated data on the number and value of PPP projects which reached financial closure in 2010-2012 in the European market by sector is depicted in Figure 2.

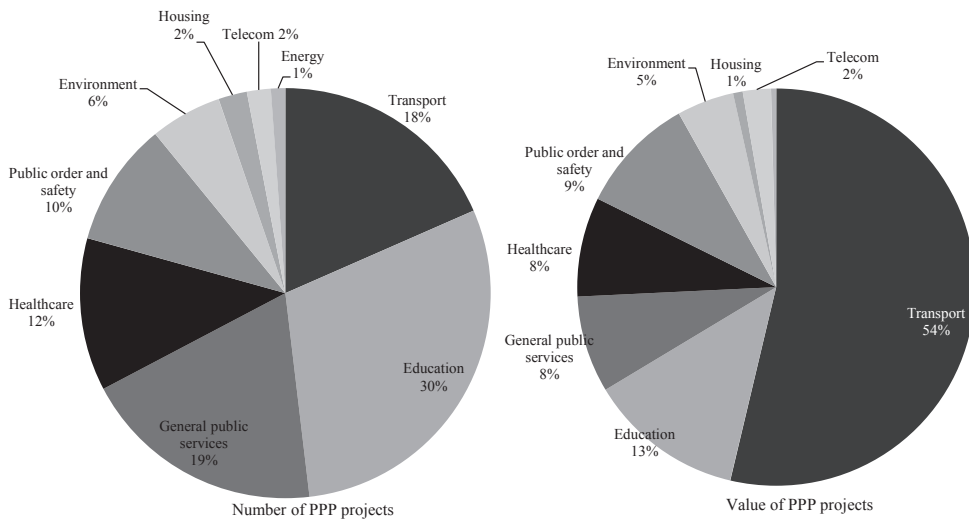


Figure 2. Structure of PPP projects by sector in the EU in 2010-2012 – number of projects (left) and value of projects (right)

Source: own developed upon the EPEC data.

The data in Figure 2 show that transport remained the largest sector in value terms, accounting for more than half of the total market value. In that period, 49 transport projects were launched. They are the largest projects on the PPP market, including speed rail projects and their bypasses, tramways, motorways (in Germany, France, Italy, Spain, Belgium, Finland and others) and a port (in Rotterdam). However, the most active sector was education with 79 projects that reached financial closure in the period studied. Due to the prevalence of small projects, the sector only accounted for 13% of the EU market as a whole (e.g. refurbishing, construction and redevelopment of up to 211 primary and secondary schools in Flanders; third group of school under Ireland's Department of Education and Skills). A fall in the number of projects by 57% and their value by 86% were reported in the healthcare sector. Education and healthcare have been the most important sectors (in number and value) since 2005, in particular in the UK.

The general public services covered both the construction of a number of public offices, street-lighting, communication centers (e.g. implementation of a satellite-based tax collection system for heavy good vehicles in France), and libraries, exhibition centers, leisure and sport centers and even a zoo PPP project. This sector involved sport, leisure and culture projects accounting for 3% of all the projects and only for 0.8% of the total market value in 2012. A rising trend in the public order and safety sector was recorded since 2005, but in 2012 there was a decline in the value of deals by 52% compared to the previous year. These projects included a number of police and fire station, prisons, law courts as well as the French Ministry of Defence at Balard.

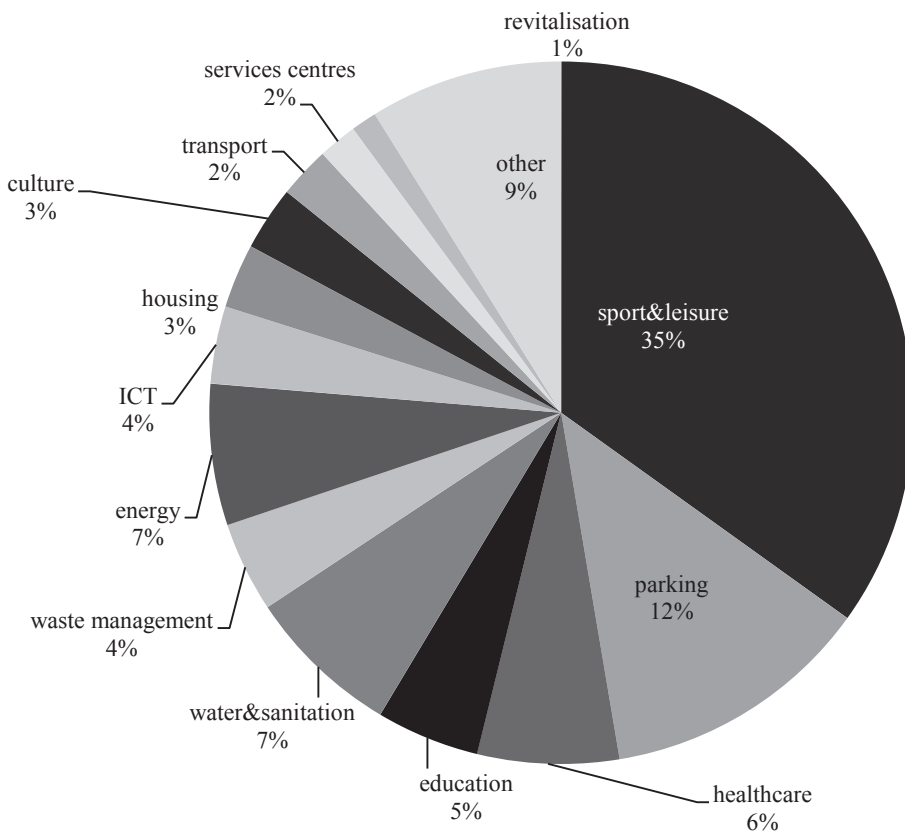


Figure 3. Sectoral structure of the Polish PPP projects in 2009-2012

Source: own developed upon the data provided by Centrum PPP and www.pppbaza.pl.

In 2010, the closed five telecommunication transactions in France included GSM-R Rail Communication, covered the building, operation and maintenance of a new train-to surface radio system and broadband communication. Only one project

in the energy sector closed in 2012 was less than 1% of an European PPP market share.

Against the developed PPP markets, the Polish PPP market has got a different structure by sector, as illustrated in Figure 3.

This data shows that sports and leisure projects (swimming pools, thermal baths and stadiums) dominated because calls for projects on construction and management of parking lots were three times fewer. However, if the number of projects in the two leading areas and in healthcare (constructing and equipping healthcare centers and providing medical services) is examined by year, there is a downward trend. The increased interest in PPP projects in water and sanitation, waste management, municipal construction, energy, refurbishment, as well as education and culture, is a positive trend. Cooperation between a public sector authority and a private party is particularly possible in the first six sectors because they can guarantee regular customer payments or provide for solutions capable of generating revenue (refurbishment). In coming years, local governments shall need PPP projects on public infrastructure, e.g. street lighting, bus shelters, underpasses.

Public-private projects in Poland are mostly carried out by local governments. In 2009-2012, local governments submitted three-quarters of all PPP projects and concluded most of this type of contract, i.e. more than 80% of concluded transactions. The most active and efficient in the PPP market are communes (17, which is more than half of signed transactions) and city counties with counties (9 signed transactions), followed by local government-subordinated units (budgetary units, utility companies – 5 signed transactions) and finally marshal offices which have concluded one contract only. Note that the size of a commune does not influence its activity in the PPP market and its investment value, because this formula was used both by large provincial cities, urban and rural communes, and by rural communes. The discrepancies between different levels of local government is related to their tasks and competences. In the future, local governments in districts and voivodships are expected to be more interested in PPPs because of limited resources to finance their needs, e.g. road infrastructure. The Polish government administration, with only one concluded contract, has a negligible share in the announced PPP projects. Other entities that were interested in PPP projects were universities (e.g. management of conferences), educational institutions, healthcare centers, a prison, and a housing agency. Figure 4 depicts calls and signed PPP contracts by voivodship.

The regional distribution of announced and signed PPP projects demonstrates that they are concentrated in the top most invested and developed voivodships. The entities from the małopolskie voivodship are the most active on the PPP market (nearly every five calls for competition in 2009-2012), mazowieckie (13% of calls), then dolnośląskie, śląskie and wielkopolskie. 60% of the announcements in total were in these five voivodships. However, the śląskie and pomorskie voivodships were the most efficient in terms of the percentage of the signed contracts from the

announcements, i.e. 44% and 43%, respectively. Surprisingly, no such contract was concluded in 7 voivodships by the end of 2012.

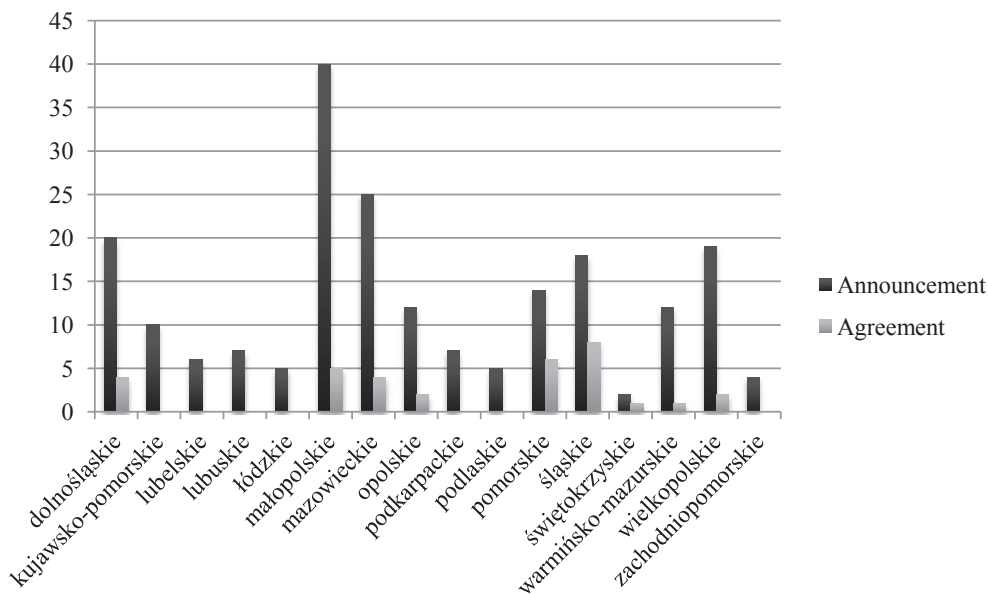


Figure 4. Calls for competition and signed PPP transactions by voivodship in 2009-2012

Source: own developed upon the reports by Invest Support, Rynek PPP w Polsce in 2009, 2010 and 2011 and Rynek PPP w Polsce 2012. The report by Fundacja Centrum PPP http://www.centrum-ppp.pl/templates/download/RYNEK_PPP_W_POLSCE_2012_Raport_Centrum_PPP.pdf.

Public authorities in the EU Members States have developed mostly national (regional, local) strategies (programmes) of using PPPs and established some specialized institutions to coordinate, monitor and evaluate the benefits of PPP projects, provide training courses, develop standards of good practice, disseminate and promote this form of public investment. The role of government and public financial institutions (domestic or supranational) also involves financial support, e.g. PPP transactions benefited from public funding and guarantee commitments. Poland is the only country where neither any specialized institution to coordinate and evaluate the benefits of PPPs, nor a public action strategy for the development of the PPP market, have been created [*Fundusze Europejskie Szansą Rozwoju PPP...* 2009, p. 7]. A more substantive and financial involvement of public authorities, particularly national and provincial can be associated with the preparation of blended projects known as hybrid PPPs.

In some circumstances PPPs may deliver better grant-funded projects than classical procurement. The European Investment Bank (EIB) found that “PPP tend

to be characterised by professional project management and implementation, project delivery on time and on budget, an improved asset and service quality as well as a life-cycle approach defined performance standards throughout the contract period. (...) But while PPPs can help grant funded projects to happen, the converse is also true. In some cases, EU funding programmes have been used to improve the risk profiles and strengthen the contractual arrangements of PPPs, so increasing their marketability” [*Using EU Funds in PPPs...* 2011, p. 5.].

By mid-2012, EPEC identified 49 projects that successfully combined PPP structures with EU funds. These are both large and small projects, chiefly on transport, ICT, leisure, and environment. There was one Polish project (“Mineral water swimming pool complex in Solec Zdrój”) of a total cost of EUR 4 million, including EUR 2 million grants from the European Regional Development Fund (allocated within the Regional Operational Program for Świętokrzyskie 2007-2013). As indicated in the Polish web portal on hybrid projects in Poland (www.ppp.gov.pl) by mid-2013, in another 15 blended projects there were signed transactions which are co-financed within the Regional Operational Programmes of the following voivodships: dolnośląskie, mazowieckie, małopolskie, pomorskie, śląskie and wielkopolskie as well as national operational programmes like Infrastructure and Environment, Development of Eastern Poland. Moreover, in the current programming period the following instruments for blending PPPs and EU Funds are operating: Initiatives – Jessica, Jeremie, Jaspers (technical support) Loan Guarantee Instrument for TEN-Transport (LGTT) regarded as financial engineering instruments. To implement the priorities of the Europe 2020 strategy, the following institutions were established: 2020 European Fund for Energy, Climate Change and Infrastructure, known as the Marguerite Fund.

4. Conclusions

The share of the Polish PPP market in the EU PPP market is negligible. However, its growth is closely related to the new acts on PPPs and concessions that entered into force in 2009, as well as the adaptation of the existing laws to create a coherent legal framework for such projects. The emergence of another 208 ideas until mid-2013, and more projects undertaken in all voivodships (according to the web portal of Baza projektów PPP www.PPPbaza.pl), can also be associated with the act which entered into force in the beginning of 2013 on reducing some administrative burdens in economy, which by Art. 18a of the Act on PPPs specifies the obligations under PPPs that are impartial to the level of public debt and fiscal deficit (including the implementation of the Eurostat Decision 18/2004).

The limited nature of the Polish PPP market also results in its small value. The projected larger share of voivodship governments (in strategic regional infrastructure such as telecommunications, roads), and above all government administration (potentially, e.g. courts of justice, prisons, roads, railways and aviation) would

significantly improve the average value of these projects and the entire market [Herbst, Jadach-Sepiolo, Marczevska 2012, p. 33].

The low efficiency of this instrument, which is evidenced by the relatively small number of concluded transactions and projects that reached financial closure, indicates that many obstacles still need to be overcome to regard the PPP market in Poland as mature. The most important obstacles include: insufficient knowledge about the mechanisms of financing and implementing PPP projects (including the lack of professional officers), no transparent laws and procedures (e.g. procurement, excessive bureaucracy), no specialized institutions to promote and facilitate starting cooperation between the public sector authority and the entrepreneur, no strategy development of the PPP market, political factors (no political will, tenured governments), economic factors (the economic crisis does not favor long-term investment loans, risk of collapse of the private partner). On the other hand, the guidelines prepared and models of blended projects (European Commission, EIB, Jaspers) and the principles of the cohesion policy 2014-2020 will encourage or even force the development of public-private partnership in view of the increasingly complex and valuable PPP projects.

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PARTNERSTWO PUBLICZNO-PRYWATNE W POLSCE I W UNII EUROPEJSKIEJ

Streszczenie: Europejski rynek PPP rozwija się dynamicznie od drugiej połowy lat 90. XX wieku, jednak udział Polski w tym rynku jest marginalny, w latach 1990-2009 wyniósł zaledwie 0,4% ogólnej liczby zamkniętych projektów i 1,7% jego całkowitej wartości. Wejście w życie w 2009 r. nowych regulacji prawnych przyniosło powolny wzrost projektów PPP, jednak tylko co piąte ogłoszenie skutkuje podpisaniem umowy. Mała wartość rodzimego rynku PPP wynika z jego specyficznej struktury. Na rozwiniętych rynkach PPP największy udział ma transport. Tymczasem w Polsce dominuje sektor sportowo-rekreacyjny (35%) oraz budowa i zarządzanie parkingami (12%), dalej uplasowały się gospodarka wodno-kanalizacyjna, energia, ochrona zdrowia, edukacja, ITC, mieszkalnictwo, kultura i zaledwie 2% transport. Przedsięwzięcia PPP są w Polsce domeną samorządów lokalnych – gmin i miast na prawach powiatu. Najważniejszymi barierami w rozwoju polskiego rynku PPP są: niedostateczna wiedza, brak przejrzystych przepisów i procedur oraz wyspecjalizowanych jednostek PPP, brak strategii rozwoju rynku PPP, czynniki polityczne oraz ekonomiczne.

Słowa kluczowe: partnerstwo publiczno-privatne, koncesja, rynek PPP, projekty hybrydowe.