



ICMPD
20 YEARS

eptisa



DIRECTORATE GENERAL FOR
NEIGHBOURHOOD AND ENLARGEMENT
NEGOTIATIONS – DG NEAR

**Short Term High Quality Studies to Support Activities under the Eastern Partnership
HiQSTEP PROJECT**

**STUDY ON THE ANALYSIS OF LICENSING AND FISCAL
FRAMEWORKS FOR CONCESSION AGREEMENTS IN THE
ENERGY SECTOR IN THE EASTERN PARTNER COUNTRIES**

COMPONENT 2 REPORT:

ASSESSMENT OF THE PPP UNITS ESTABLISHED IN EASTERN PARTNER COUNTRIES

OCTOBER 2017

This report has been prepared by the KANTOR Management Consultants Consortium. The findings, conclusions and interpretations expressed in this document are those of the Consortium alone and should in no way be taken to reflect the policies or opinions of the European Commission.

Preface

The present report is a deliverable of Component 1 of the **STUDY on Analysis of Licensing and Fiscal Frameworks for Concession Agreements in Energy Sector in the Eastern Partnership Countries**, carried out in the framework of the EU funded project **Short Term High Quality Studies to Support Activities under the Eastern Partnership – HiQSTEP, EuropeAid/132574/C/SER/Multi**. The HiQSTEP Project is implemented by an international consortium under the leadership of Kantor Management Consultants. The present study supported the activities of Platform III “Energy security” – of the Eastern Partnership.

The EaP Platform III Work Programme 2014-2017 has identified Public Private Partnerships, including licensing and concessions for the energy sector as a priority area. The DG NEAR and DG ENERGY are the driving forces in cooperation with the EaP Countries on this theme.

The present study was implemented by a team of international and local experts under the leadership of **Vagn Bendz Jørgensen** - Study Team Leader and international energy expert; and composed of **Evangelia Vassilaki** – international legal expert and the following national experts: **Vardan Grigoryan** (Armenia), **Asya Chalabova** (Azerbaijan), **Maxim Shapelevich** (Belarus), **Tamta Nutsubidze** (Georgia), **Tatiana Vieru and Elena Stratulat** (Moldova) and **Vitaly Radchenko** (Ukraine).

Przemysław Musiałkowski, Team Leader of the HiQSTEP Project, was responsible for the overall supervision, quality check and management.

Sincere thanks go to the national experts and stakeholders in all six countries who provided information through interviews and responses to questionnaires and contributed to the practical implementation of the study.

October 2017

CONTENT

1	Executive summary	5
2	Background and purpose	6
2.1	Description of the assignment, objectives and expected results	6
2.1.1	Objectives	6
2.2	Method	7
2.2.1	PPP Units Functions and Responsibilities.....	7
3	PPPs in the EU.....	8
4	PPPs in Eastern Partnership Countries.....	11
4.1	Current status of PPP Units	12
4.2	Clients to PPP Units	13
4.3	PPP Units mandate	13
4.4	PPP Units functions.....	14
4.5	PPP Project Delivery Support	15
4.6	Approval and Quality Control	15
4.7	Funding of PPP Units	16
4.8	Staffing of PPP Units.....	16
4.9	Capacity Building Needs	17
4.10	Activities	18
5	Assessment of PPP Units in Eastern Partnership Countries.....	18
6	Recommendations for the Eastern Partnership Countries.....	19
7	Annex: Questionnaire for PPP Units.....	20

Abbreviations and acronyms

AM	Armenia
AZ	Azerbaijan
BOO	Build, Own, and Operate contract
BOOT	Build, Own, Operate, and Transfer Contract
BY	Belarus
CHP	Combined Heat and Power Production
DBO	Develop, Build, and Operate Contract
DK	Denmark
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EPEC	European PPP Expertise Centre
EU	European Union
EUD	Delegation of the European Union
GE	Georgia
HIQSTEP	High Quality Studies for the Eastern Partnership Project
IFI	International Financial Institutions
IPP	Independent Power Producer
MD	Moldova
ME	Ministry of Energy
MEAT	Most economically advantageous tender
MOE	Ministry of Economy
MOF	Ministry of Finance
NGO	Non-Government Organisation
OECD	Organisation for Economic Co-operation and Development
PPA	Power Purchase Agreement
PPP	Public Private Partnership
PSA	Production Sharing Agreement
STL	Study Team Leader
TA	Technical assistance
TFEU	Treaty on the Functioning of the European Union
UA	Ukraine

1 EXECUTIVE SUMMARY

In the Eastern Partnership Countries, four PPP units have now been established: in Belarus, Moldova, Georgia and Ukraine. Armenia is in the process of establishing a PPP Unit while in Azerbaijan the development of PPP legislation and supporting framework is on the government's agenda by 2020, there are reasons to acknowledge the efforts to align support of PPPs to the overall legal framework for PPPs and concessions -which is currently being developed. PPP Units should usually perform a combination of three main functions: (i) PPP policy support and related activities; (ii) programme and project delivery support; and (iii) approval and quality control, and all this within a rather complex legislative framework. It is therefore obvious that the strengthening of their role, expertise and experience will be beneficial for the whole investment approval programmes and processes. In this framework, the setting of a PPP Unit and an analysis of the institutional framework and policies for using a PPPs is an important starting point. It is dealt with in the reporting for Component 1.

The legislation on concessions and PPPs is complicated and the relevant authorities need policy and legal advice. This is particularly relevant to specific regions and municipalities, which do not have the necessary knowledge at hand. The fact that supporting actions are implemented or under way in many countries, can therefore only be welcomed. Much of the support for such actions can be taken over by PPP Units, whose primary task is to facilitate the establishment of successful Private-Public Partnerships (PPPs). PPPs can be difficult to create, because a normally public activity is partly transferred to the private sector. The advantage is that investments are taken over by the contractor and hopefully the private operator can provide increased effectiveness. There is a risk in such transfers, that the contractor will bear the major economic risk. Public authorities, which have outsourced their authorities, might in the end be obliged to re-establish the situation before the outsourcing if the project fails. There is therefore an amount of risks associated, which the authorities have to take into account. This is also the case when a guaranteed delivery price for services – like Independent Power Producers (IPP) with power purchase agreements – is part of the PPP contract.

PPPs can come into a variety of models. It can be a complete private takeover of some functions, a partial takeover and also co-financing with public and private partners, as observed in several development projects within the energy sector. Nevertheless, PPPs can help transfer investments from public to private economic operators, together with the economic risks.

A PPP Unit must be prepared to at least advise the authorities on how to handle such projects and assess the risks involved. In some EaP countries risk assessment units are being established, but the task could as well be vested in the PPP Units.

As it will occur in the following sections, for the PPP units, established or planned, the intention is to secure these goals. EC and EBRD have been involved in the establishment of PPP Units in the EaP Countries. It is interesting that the functions of PPP Units in the EaP Countries follow a more aligned approach than those in Western Europe.

It is also apparent that the PPP Units in the EaP Countries are relatively small and lack legal expertise. At least the last problem could be solved, because legal correctness is necessary when public obligations are transferred and complicated rules on procurement and state aid have to be respected. If a project fails, the competent authority will be exposed to strong criticism. A PPP Unit can help prevent such failures. PPP Units should therefore have access to legal advice if permanent employment of lawyers is not possible.

Many PPP projects require a technical insight, so PPP Units should have access to external support in technical matters, as it is probably impossible to have a staff with know-how in every sector. In this case it is recommended that funding for external technical expertise should be available.

2 BACKGROUND AND PURPOSE

The global objective of this assignment is to provide support to the beneficiaries in rationalizing and streamlining their PPP frameworks in the energy sector with particular emphasis to concession agreements. There are four elements to be addressed:

Component 1: An assessment of the PPP legal framework at Eastern Partner Countries

Component 2: Identification of PPP units established in Eastern Partner Countries, assess the tasks entrusted to them as well as their decision-making and enforcement capabilities

Component 3: Development of a standardised proposal for procurement procedure and award of concession agreements.

Component 4: Development of an online portal specifically for PPPs in Eastern Partner Countries

This report on Component 2 focuses on identification of Public-Private Partnership Units established in the Eastern Partner Countries; together with an assessment of tasks entrusted to them and their decision-making and enforcement capabilities.

The status with regard to PPP Units as well as their functions and responsibilities are described in the following chapters. It must be mentioned that the development of legislation and regulatory framework on PPP Units is in constant development in the EaP Countries. During the first half of 2017, a new legislation was adopted in some countries and establishment of PPP Units was progressing. It is therefore a moving target, and new developments are likely to occur shortly after the finalisation of this report. The situation fixed in this snapshot is compared with a 2014 survey by EPEC and with information received from the Danish PPP Unit (as an example of an EU unit). The EPEC survey also includes guidelines for the establishment PPP Units.¹

2.1 Description of the assignment, objectives and expected results

2.1.1 Objectives

According to the Terms of Reference :*“activities in Component 2 will include identification of the PPP units established in the EaP countries and assessment of the tasks entrusted to them as well as their decision making and enforcement capabilities. An assessment of the organisation of PPP units and potential capacity building requirements should also be part of this task. To better understand the functionality and tasks entrusted to the PPP units, a standard questionnaire will be developed and interviews with selected PPP employees should be conducted.*

¹ EPEC, European PPP Expertise Centre: Establishing and Reforming PPP Units, Analysis of EPEC Member PPP Units and lessons learned. August 2014.

A similar assessment of the tasks, responsibilities and organisation of PPP units, in selected EU Member States working on energy related concessions, should also be carried out.

Recommendations to enhance the functionality (powers, organisation, knowhow) of PPP units in the Eastern Partner Countries should also be part of this Component”.

2.2 Method

2.2.1 PPP Units Functions and Responsibilities

The World Bank Group in a report on PPP of 2017 defined a PPP unit as “any organisation set up with full or partial aid of the government to ensure that necessary capacity to create, support, and evaluate multiple public-private partnerships agreements made available and reside in the government”². The World Bank recognises that as PPPs are regulated in different ways, the development of PPPs can take place within different institutional arrangements and with different tasks.

In order to provide an overview of the functions and responsibilities of PPP Units in the EaP Countries a questionnaire was sent to them and addressed either to the PPP Unit itself, where it existed (Belarus, Moldova and Ukraine) or to other competent authorities, if the unit was not there but its establishment was planned (Armenia and Georgia (being established in October 2018)). In the latter case the feedback received refers mostly to plans and expectations, not necessarily fully substantiated yet. Azerbaijan was a case apart due to its completely different framework, and it was the local consultant who was tasked with searching for information and filling in the questionnaire. Information was also received from the Ministry of Economy and included in this report.

In March and April 2017, the Study Team undertook missions to the EaP Countries to get further information on the legal and practical situation regarding concessions and PPPs in the energy sector and to get an impression of the regulatory framework. PPP Units were also visited in countries where they exist. After each mission a questionnaire was sent out with detailed questions on practical functions of the PPP Units. Responses to the questionnaires were collected until 10 August 2017 when the information collection ended, but some late responses were nevertheless included.

Information was searched from international organisations. The World Bank has issued guidelines and OECD provided a worldwide overview from 2009. The most recent information found is from IEB EPEC, who conducted the already mentioned survey of European PPP Units in 2014 with detailed information of their functions. Finally, the PPP Unit in Denmark was contacted and asked to fill in a similar questionnaire to the one for the EaP.

The forms and functions of PPP Units vary widely in response to differences in policies and administrative capacities. Some PPP Units have been more successful in achieving their purpose and/or in adapting to new needs or trends than others.

² Benchmarking Public-Private Partnership Procurement 2017. World Bank Group.

Easter Partnership Countries are under pressure to find innovative approaches and achieve the necessary 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 programmes also drive a focus on changing priorities such as the management, or even renegotiation, of existing PPP arrangements.

PPP Units are usually only a part of a possible approach to building the project delivery mechanism for national or sub-national PPP programmes. The assessment and development of other elements, such as the overall PPP institutional, administrative and legal framework are equally critical. A PPP Unit is unlikely to be effective if other complementary government processes are deficient. 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.

3 PPPs IN THE EU

EPEC³ is the European PPP Expertise Centre established by the European Investment Bank, the European Commission, Member-States of the EU and some candidate states. In August 2014 EPEC published in a report on Establishing and Reforming PPP Units, with analysis of EPEC Member PPP Units and lessons learned. In 2014 EPEC issued a report⁴ focusing on the functions and responsibilities of the existing PPP Units and providing guidelines for further improvements or for establishing such units.

Of the 24 member states of EPEC in 2014, 18 had established PPP units. EPEC has now 41 members predominantly in the EU but also Turkey is a member. Several countries have more than one unit serving regions.

As described in the Component 1 Report of this Study, legal frameworks differ considerably across the EaP Countries which makes these systems difficult to compare. Nevertheless, certain similarities can be observed. PPP Units are not regulated through any EU directive or regulation. It is therefore a fully national responsibility to select the model to be applied.

The EPEC report lists three main categories and sub tasks, which PPP Units could perform as illustrated in Table 1 It is recognised that the tasks and mandates differ considerably between the countries and therefore few PPP Units perform all of the listed tasks. In the following overview the categories and tasks are listed with additional information on **how many PPP units of the 18 surveyed are those that** actually perform these tasks. It is not surprising that there are differences in the responsibilities as the national requirements are different and a PPP Unit’s functions should be based on requirements and the actual legal framework and not on general guidelines. Often, the functions of a PPP Unit change over time as new needs are identified and other could lose relevance. **Table 1: Policy functions and support**

	PPP policy development and support	Number of PPP Units
--	------------------------------------	---------------------

³ <http://www.eib.org/epec/>. EPEC is mainly composed of EU Member States + Turkey.

⁴ <http://www.eib.org/infocentre/publications/all/epec-establishing-and-reforming-ppp-units>

		Performing the tasks (out of a total of 18)
1	Development of legislation (primary or secondary), policy or guidance on preparation and operation of PPPs	14
2	Development of standard contracts or standard contract provisions	15
	Capacity building, knowledge sharing, general PPP promotion and communications	
3	Develop and share good practice (including internationally)	17
4	Promotion of PPPs (e.g. market awareness)	17
5	Provision of training	12
	Intelligence/monitoring of PPP market	
6	PPP database development and management	13

Table 2. Programme and Project Delivery Activities

Programme and Project Delivery Activities		
	Support to procuring authorities during the project	Number of PPP Units
1	Involvement in identification of potential PPP projects and project	6
2	Development of business case/feasibility study	4
3	Assess PPP feasibility	10
	Support to procuring authorities during the project	
4	Support in selection and management of external advisers	5
5	Seat in steering/oversight committee for the project	8
6	Participate in project team/group	5
	Support to procurement authorities during the project	
6	Act as procuring authority for the project	1
7	Involvement in contract negotiation	4
8	Involvement in post-preferred bidder negotiations	4
9	Involvement in financial close	6
10	Involvement in financial close	6

11	Signing the PPP contract	1
	Support to procuring authorities during project	
12	Oversight of payment to the private partner	2
13	Management of the PPP contract	2
14	Monitoring of project implementation	5

Table 3: Approval and quality control functions

Programme and Project Delivery Activities		
	Approval and quality control functions	Number of PPP Units Performing the tasks (out of a total of 18)
1	Approval of eligibility of projects for implementation as PPPs	6
2	Providing recommendations to approval bodies	4
3	Approval of tender documentation	6
4	Approval of PPP contracts	5
5	Approval of renegotiations	4

Source: EPEC: Establishing and Reforming PPP Units. Analysis of EPEC Member PPP Units and lessons learned. August 2014.

As it can be seen from the overview on functions, the majority of PPP Units are involved in development of *legislation and guidance of preparation and operations* of PPPs. All but one are involved in sharing good practices and in promotion of PPPs. It is rather difficult to see if the latter is driven by political goals or by need of the end-users. Also, development of standardised PPP contracts is performed by a majority of PPP Units. For the second category *programme and project delivery support* there are less involvement of the PPP Units, but about half of the PPP Units participate in some kind of steering committee and assesses if a PPP is a relevant model. Regarding the approval of projects for PPP about one third are involved, as well as in the approval of the tender documents.

In several EaP countries there are other institutions involved in prioritising PPP projects and their selection. The PPP Unit will therefore often have rather an advisory function than an executive one. However, it should also be obvious that the functions vary a lot depending on the country in questions. Some countries have regional PPP Units as being the case for Belgium and the UK. In Germany there are some regional PPP Units in the “Länder” and also a central federal one.

4 PPPs IN EASTERN PARTNERSHIP COUNTRIES.

Armenia – planned for 2017 – but delayed. A PPP Unit was to be established in 2017⁵ on the initiative of “Investment Projects and PPP division” of the Ministry of Economic Development and Investment in close cooperation with the Centre for Strategic Initiatives (CSI), with whom the Investment Projects/PPP team was probably to be established. The new legislation on concessions/PPPs and a PPP Unit was adopted in June 2017, however the details of the functioning have not been finally decided, but there are estimates by the CSI on how the system could function. Due to a change in government the establishment of a PPP Unit is delayed and the Centre for Strategic Initiatives has been closed. The establishment of the PPP Unit is therefore pending⁶.

Azerbaijan – possible by 2020. The Law on “*Implementation of Construction and Infrastructure Facilities under special funding of 2016*” is the basis for PPP projects based on the build–operate–transfer (BOT) principle. According to the Decree of the President of the Republic of Azerbaijan of 2016, the State Commission for Supervision over the Privatisations of State Property is in charge of the supervision over the privatisation process. In particular, transparency and publicity shall be ensured.

In the Government’s work programme, the Ministry of Economy has been entrusted with improvement of the regulatory framework for PPP and development of a PPP Concept by 2020. At present there is no PPP Unit or a clear plan to establish it, but its creation could be result from the above initiatives as facilitation of PPP is part of the programme.

Belarus – 2014 National Agency of Investment and Privatisation. Established in 2014 and functioning under the Ministry of Economy.

Georgia – Planned for 2018. A PPP Unit is planned to be operational in 2018, reporting directly to the Prime Minister. Its establishment is planned by the Ministry of Finance and the Ministry of Economy. In addition, a Risk Management Unit for PPPs is planned within the Ministry of Finance, which performs some of the activities related to a PPP Unit. The PPP Unit of Georgia was finally established in October 2018.

Moldova – 2010 Public Property Agency. Established in 2010 and functioning under the Ministry of Economy.

Ukraine – PPP Unit at Ministry of Economic Development and Trade. In addition, the State Property Fund keeps a register of all concessions.

⁵ At the moment of the publication of this report the unit has not been established.

⁶ In September 2018 the CIS has been dissolved and the Government adopted a new draft PPP Law, which foresees the creation of a PPP Unit. The draft will be processed after the Parliamentary elections

During the Study implementation, in 2017, of the six EaP Countries, only Belarus, Moldova and Ukraine had already functioning PPP Units when. Armenia and Georgia were actively planning on establishing PPP Units within a year – Georgian unit was created in October 2018 and could not be analysed. The situation in Azerbaijan presents some uncertainty, although as mentioned the development of PPP legislation and support functions are on the Government’s (Ministry of Economy) work programme by 2020. The legal frameworks for concessions and PPPs are in constant development due to the recent directives of the EU on concessions and procurement. Previous weaker legal frameworks are also being improved. The functioning of the PPP Units will be affected by these developments and will also have to be in accordance with the new legal framework developed. It is therefore a sector under development and the status provided in this report might change over short time.

In May 2017 a questionnaire was sent to the PPP Units or the authorities responsible for planning of PPP Units. Please find the questionnaire in the Annex. Most replies were received by the end of June 2017 and the last one in August 2017. The questionnaires were divided in sections with the following headings:

1. Information of PPP Units establishment and relations to Government institutions
2. Clients served by the PPP Unit
3. Mandate of the PPP Unit
4. Functions of the PPP Unit
5. Project delivery support functions
6. Technical evaluation of feasibility of projects
7. Funding of the PPP Unit
8. Staffing of the PPP Unit
9. Capacity building needs
10. Number of assistance activities

The following sections are based on answer to the questionnaire and comments by the Study Team.

4.1 Current status of PPP Units

Table 4. Current status of PPP Units

	AM	AZ	BY	GE	MD	UA	DK
Operational	P	F	A	P ⁷	2010	A	A
Part of Ministry	MoE	UC (MoE)	MoE	G	MoE	MoE	(“MoE”*)

G : Government (Prime Minister)

* Ministry of Industry, Business and Financial Affairs

⁷ Established in October 2018, after this study report finalised. Therefore, its functions in this and the following tables are described based on information about its planned shape as available in 2017.

A: Active P: Planned for 2017/2018 F: Establishment possible in future, MoE Ministry of Economy, G: Government

Typically, the PPP Units are established within the Ministry of Economy, although Georgia is envisaging a more independent role with direct report to the Government. This will probably also be the case for Azerbaijan where the Government is to approve all concessions. . For Denmark the ministry mentioned is more oriented to enterprises than the Ministry of Economy. It has some of the functions normally vested within ministries of economy. Please note that the PPP Unit of Georgia is being established in October 2018. The answers to this questionnaire was based on planned functions and not actually performed.

4.2 Clients to PPP Units

Table 5. Clients to PPP Units

	AM	AZ	BY	GE	MD	UA*	DK
Government/president	P	n.a.	A	P	A	A	A
Ministries	P	n.a.	A	P	A	A	A
Regions	P	n.a.	No	P	A	A	A
Municipalities/Cities	P	n.a.	No	P	A	A	A
Public Institutions	P	n.a.	No	P	A	A	A

A: Active P: Planned, n.a. no information available *: PPP Unit Ukraine also served NGO and IFI.

As regards the clients, the typical pattern for PPP Units is to serve all public institutions. Belarus is an exception, as the PPP Unit only serves the Government and Ministries.

4.3 PPP Units mandate

Table 6. PPP Units mandate in serving clients

	AM	AZ	BY	GE	MD	UA	DK*
Advice	P	UC	A	P	A	A	A
Checking legal compliance and procedures	UC/P	UC	A	P	A	A	A
Reviewing projects and feasibility studies	P	UC	A	P	A	A	A

Authorisation to approve or reject projects	No/P	UC	A	P	No	A	No
Part of tendering committee	No	UC	No	P	A	A	n.a.

A: Active UC: unclear P: Planned * Only advice and guidance provided; N.a.: No information available

From the answers it is derived that most PPP Units are mandated to check procedures for PPPs and review feasibility studies. Only in Belarus and Ukraine the PPP Unit is authorised to reject PPP projects. Participation in the tendering committee is clearly assigned to two PPP Units.

It can be assumed that most PPP Units have a function of advising the clients but not a direct decision-making function, which is left up to the line ministry or region/municipality.

4.4 PPP Units functions

Table 7: PPP Units functions

	AM	AZ	BY	GE	MD	UA	DK*
Input for legislation/regulation and strategies	P	N.a.	A	U	A	A	A
Providing standard contracts	P	N.a.	A	P	No	P	Some
Promotion of PPP and awareness raising	P	N.a.	A	P	A	A	A
Input on prioritisations of PPP projects	P	N.a.	A	P	No	P	A
PPP market analysis	P	N.a.	A	P	A	A	Some
Capacity building, training, seminars	No	N.a.	A	P	A	A	No

A: Active P: Planned U: unclear n.a.: No information available

More than half of the PPP Units are involved, at least in plans, in input for legislation and regulations. This is also the case regarding elaboration of standard contracts. All respondents are involved in promotion and awareness rising. Whereas four of six are involved in prioritisation of projects. Market analysis appears to be a general part of the tasks and capacity building is only to be done by 5 PPP Units.

4.5 PPP Project Delivery Support

Table 8: Project Delivery Support

	AM	AZ	BY	GE	MD	UA	DK*
Legal/procedural screening	U	N.a.	No	P	A	A	Pt
Advice on project implementation	P	N.a.	No	P	A	P	Pt
Assistance in preparing procurement and contracts	U	N.a.	No	P	A	A	No
Prioritising projects	U	N.a.	No	P	No	P	Pt
Risk assessment	P	N.a.	A	No*	A	A	Pt
Direct assistance on procurement	No	N.a.	No	N.a.	A	P	Pt
Reviewing feasibility studies	P	N.a.	A	P	A	A	Pt
Economic assessment	P	N.a.	A	P*	A	A	Pt
Technical evaluation of feasibility studies	P	N.a.	A	No	A	A	Pt

A: Active P: Planned U: unclear N.a.: No information available *: Risk Management Unit planned. Pt: Partly

For project delivery support the picture is a little more blurred. For feasibility studies and economic assessment five out of six are involved, or planned to be involved, but for the other functions less than half are involved. As regards risk assessment other institutions can be involved as it is the case in Georgia. For feasibility studies five of the PPP Units established or planned for actively evaluate them.

4.6 Approval and Quality Control

Table 9: Approval and Quality Control Functions

	AM	AZ	BY	GE	MD	UA	DK

Legal quality of project/contract	U/P	N.a.	No	P	No	P	No
Economical/financial evaluation	P	N.a.	A	P	No	P	No
Technical evaluation	No	N.a.	A	No	No	P	No
Mandate to recommend/reject projects	U/Tbc	N.a.	A	P	No	P	No
Maintaining databases on PPP projects	P	N.a.	A	P	A	A	No
Follow up/monitoring PPP projects	U	N.a.	A	P	A	A	No

A: Active P: Planned U: unclear N.a.: No information available Pt: Partly Tbc: To be decided

Armenia, Belarus, Ukraine and Georgia have or plan to have legal quality control systems. The same countries and Moldova keep track of PPP projects. Technical evaluation is done or planned for two of the units and economic evaluation is done or planned for 4 of the units. by two of the units, whereas maintenance of databases is (or are foreseen) for 5 of the units.

4.7 Funding of PPP Units

Table 10. Funding of PPP Units

	AM	AZ	BY	GE	MD	UA	DK
Public Funding	A/Tbd	N.a.	A	P	A	A	A
Fees from clients	No/P	N.a.	A	P	No	No	No
Funding from international support programmes	No/P	N.a.	A	P	A	EBRD/EC	No

A: Active P: Planned U: unclear N.a.: No information available. Pt: Partly Tbd: To be decided

Funding of the PPP Units is mainly the Government's responsibility. Belarus, Armenia and Georgia are considering applying a fee from the clients.

4.8 Staffing of PPP Units

Table 11. Staffing of PPP Units

	AM	AZ	BY	GE	MD	UA	DK
Total number of staff	3-4 (p)	N.a.	5	N.a.	5	6	10-15
Lawyers	No	N.a.	No	N.a.	No	2	5
Economists	Yes (p)	N.a.	3	N.a.	A	4	3
Engineers/technicians	No	N.a.	1	N.a.	No	N.a.	3
Assistants/clerks	Yes (p)	N.a.	1	N.a.	No	N.a.	3
Trainees	No/p	N.a.	0	N.a.	A	N.a.	0
Funds available for consultant assistance	No	N.a.	No	N.a.	No	No	Yes

A: Active P: Planned U: unclear N.a.: No information available. Pt: Partly Tbc: To be decided

In the EaP Countries, the staffing appears to be of a limited size and more likely a project group. Economists seem to be the main specialisation. There are no lawyers except for Ukraine and only one PPP Unit (Belarus) employs a technician. Also, there are at present no sources for consultant assistance.

4.9 Capacity Building Needs

Table 12. Capacity Building Needs

	AM	AZ	BY	GE	MD	UA	DK
Legal training in procurement	Yes	N.a.	N.a.	Tbd	Yes	Yes	N.a.
Economics	Yes	N.a.	N.a.	Tbd	Yes	Yes	N.a.
Financial	Yes	N.a.	N.a.	Tbd	Yes	Yes	N.a.
Feasibility studies	Yes	N.a.	N.a.	Tbd	Yes	Yes	N.a.
Risk assessment	Yes	N.a.	N.a.	Tbd	Yes	Yes	N.a.
Others	n.a.	n.a.	n.a.	Tbd	Standard contracts	N.a.	N.a.

A: Active P: Planned U: unclear N.a.: No information available. Pt: Partly Tbd: To be decided

Only Armenia, Moldova and Ukraine report to have a need of capacity building for all specialisations. The other PPP Units (existing and planned) have probably not defined their needs yet. During the

missions it was obvious that there is a need for proper legal training and project evaluation training. Also, difficulties in employing experienced staff were noted. It should be noted that most of the PPP Units are newly established. Therefore, there will be a natural need in capacity building. There are unfortunately examples that officials who benefited from some capacity building activities chose other jobs afterwards. It is of course their free choice but underlines the need for continued capacity building.

4.10 Activities

Table 13. Number of activities performed in 2016.

	AM	AZ	BY	GE	MD	UA	DK
Number of assistance activities	P	N.a.	-	P	104	N.a.	1.100
Projects processed	P	N.a.	6	P	19	N.a.	50
Projects implemented	P	N.a.	-	P	18	N.a.	N.a.
Training for clients	P	N.a.	-	P	12	N.a.	30
Projects evaluated negatively	P	N.a.	N.a.	P	8	N.a.	None

P: planned; N.a. – No information available

Feedback on this category was scarce. PPP Units under establishment could not report on accomplished activities. Only Moldova and partly Belarus had activities to report.

5 ASSESSMENT OF PPP UNITS IN EASTERN PARTNERSHIP COUNTRIES.

First of all, it must be underlined that only three EaP Countries, namely Belarus, Moldova, and Ukraine have full-fledged PPP Units,. In Georgia the PPP Unit has just been established in October 2018.

In Armenia , a PPP Units is planned to be established in the near future while Azerbaijan is lagging behind, but it is believed that with the establishment of a PPP legal framework, the establishment of PPP Units will be possible.

In the text that follows, the tasks of the PPP Units will be discussed, including both present activities for three countries and planned activities for two countries.

Compared to the EPEC countries, the PPP Units of EaP appear to perform more standardised activities. As explained in the previous sections, in EPEC countries, including the EU Member States, there is a large spread in the practical functions performed. Common to both areas is that, PPP Units are strongly involved into PPP policy development and support. As regards more practical functions, such as quality control, mandate and project delivery, the EaP Countries appear to be more involved than the EPEC Countries. This can be a result of the support by EC/EBRD, while the EPEC countries established their PPP Units at an earlier time, individually and without any support or standardised approach.

With regard to clients served, the activities concern both ministries and municipalities, with only Belarus limiting them to ministerial level. As regards the mandate, only PPP Units in Belarus and Georgia can reject projects.

As for the functions, the general picture is that standard contracts, promotion of PPPs, prioritisation, market analysis and capacity building, are on the list in most EaP Countries. Also, project delivery support is managed in the majority of the EaP Countries. This category includes project implementation, risk assessment, feasibility and technical evaluation.

As regards quality control, the focus is on economic evaluation, establishment of databases and monitoring of active projects.

In respect of staffing, the tendency is to employ rather small units of approximate five experts, of which economists seems to play a major role. Surprisingly, only a few lawyers are involved, but it could be a result of difficulties attracting competent staff.

Regarding capacity building, few needs were mentioned in the responses to questionnaires, whereas during the interviews the need for continued capacity building especially for new staff was repeatedly mentioned. The picture is not clear of what kind of capacity building is needed but it appears to the Study Team there is a need for legal expertise, economics, financial management, risk assessment and evaluation of feasibility studies. But only three of the six countries have listed these needs.

As a general remark it could be argued that the PPP Units established or under establishment in the EaP Countries, will fulfil an important role in the development of PPPs. But a constant upgrading of these Units is necessary in light of the new PPP legislation or its revisions. As described in the Component 1 Report, there is still room for improving the legislation.

6 RECOMMENDATIONS FOR THE EASTERN PARTNERSHIP COUNTRIES.

1) All PPP Units are involved in policy formulation and market surveys. These are the natural functions of the PPP Units and should be maintained.

2) It is beneficial to give the PPP Units a position within a Ministry or directly subordinated to the Government, so that that the advice of the PPP Units has the necessary weight. If a PPP goes wrong the blame will be put on the Government or the region/municipality, and at least the formal procedures of procurement could be secured with active involvement of the PPP Units. There are many examples of insufficiently prepared PPPs, which could have been avoided if professional advice was available – especially in municipalities and regions, which often do not have the necessary know how. It is therefore recommended that the Governments should secure the appropriate position of the PPP Units within the Government structure.

3) As described above, the EaP Countries tend to establish rather small units with small numbers of staff. This is not a bad idea. If activity levels increase, especially in municipalities, the staff could be increased if the need arises. It is also noted that there are few specialists in legislative matters. This function should be strengthened because if legal questions arise and become problematic, these might have been avoided with proper legal advice. It cannot be expected that Ministries and more importantly regions/municipalities have access to the necessary legal advice,. With properly organised PPP Units, misunderstandings could be avoided and alignment to the legal regulations in force could be secured. The regulations (national and international) for concessions and PPPs are complicated and proper legal advice is necessary. The availability of legal experts is probably a budget problem, but some assistance should be secured by the Government.

4) The technical expertise is also underrepresented in the PPP Units. As the technical aspects will depend on the sectors involved, it will probably be impossible to employ staff with expertise in all sectors. But it could be advisable to secure a budget for technical support on a consultancy basis for specific projects. There is a considerable difference between kindergartens and Combined Heat and Power Production (CHP) projects. It is therefore strongly recommended that the Governments should assign a budget for consultant services.

5) Regarding fees for service provided by the PPP Units to third parties, it is reasonable to implement a fee in case the commercial sector needs advice, but for governmental authorities/municipalities a fee would only be a reallocation of funds and could prevent municipalities for seeking necessary advice.

6) The PPP Units should be established and functioning according to national needs. Also, international requirements as those of the EU should be taken into consideration, but the functioning of the PPP Units should be directed to the needs of directly involved institutions Ministries/municipalities etc. This could be secured by interviews with involved institutions and especially the municipalities and regions.

7 ANNEX: QUESTIONNAIRE FOR PPP UNITS

Short Term High Quality Studies to Support Activities under the Eastern Partnership

HIQSTEP PROJECT

ANALYSIS OF LICENSING AND FISCAL FRAMEWORKS FOR CONCESSION AGREEMENTS

COMPONENT 2:

QUESTIONNAIRE ON ASSESSMENT OF THE PPP UNITS

IN THE EASTERN PARTNERSHIP COUNTRIES:

IDENTIFICATION, FUNCTIONS, MANDATE AND CAPACITY BUILDING NEEDS IN

ARMENIA, AZERBAIJAN, BELARUS, GEORGIA, MOLDOVA, UKRAINE

Dear Sirs or Madams,

As part of the above European Commission project we kindly ask you to assist us in filling in the following questionnaire regarding mandate, functions and staffing of your Public-Private-Partnership Unit.

During our recent missions to the countries we learned that Belarus, Moldova and Ukraine recently have established such a unit in support of PPPs. Armenia and Georgia are planning to establish PPP units and Azerbaijan maintains some of the functions at the Bid Commission at Ministry of Finance.

During our missions we got various information from the units themselves, when available, and from third parties. The following questions might therefore already have been touched upon. But in order to obtain a structured overview, we nevertheless ask you to fill in the questionnaire. As the frameworks are not fully in place now, we have two categories of answers: One for actual activities and one for planned activities in order to obtain information on planned units or future developments.

In case you do not have precise answers please provide best estimate.

Please return the questionnaire before 26th May 2017 to team leader Vagn Bendz Jørgensen by E-mail to vagnbendz@yahoo.dk. In case of questions please use the E-mail or phone:

+45 40315283 or Skype using my name.

We would really appreciate your assistance in this case in order to secure the quality of the project and that the recommendations to the European Commission reflects your needs.

Yours Faithfully,

Vagn Bendz Jørgensen
Tisvilde Bygade 21F,

KANTOR Study Team leader
3220 Tisvildeleje, Denmark



15th May 2017

1. The PPP Unit

Name	
First year operational	
Part of ministry or separate institution?	
Filled in by	
E-mail	

2. Clients

Please identify PPP unit's stakeholders

Please fill in with yes/no	Actual	Planned
Government/president		
Ministries		
Regions		
Municipalities/cities		
Public institutions		
Others, please mention		

3. PPP Unit's mandate in servicing clients

Please fill in with yes/no or comment	Actual	Planned
Advising		
Checking legal compliance and procedures		
Reviewing projects and feasibility studies		
Having authorisation to approve or reject projects		
Part of the tendering committee		
Other, please mention		

4. Functions

Please fill in with yes/no or comment	Actual	Planned
4.1. Policy support		
Input for legislation/regulation and strategies		
Providing standard contracts		
Promotion of PPP and awareness raising		
Input on prioritisation of PPP projects		
PPP market analysis		
Capacity building to clients, information, training, seminars		
Others		
4.2. Project delivery support		

Legal/procedural screening		
Advice on project implementation		
Assistance in preparing procurement and contracts		
Prioritising projects		
Risk assessment (economical/financial)		
Direct assistance on procurement		
Reviewing feasibility studies		
Economic assessment		

Technical evaluation of feasibility		
Other, please mention		
4.3 Approval and quality control		
Legal quality of project/contract		
Economic/financial evaluation		
Technical evaluation		
Mandate to recommend/reject projects		
Keeping database on PPP projects		
Follow up/monitoring on PPP projects		
Other, please mention		

5 Funding of PPP Unit

Please fill in with yes/no or comment	Actual	Planned
Public funding		
Fees from clients		
Funding from international support programmes		
Other, please mention		

6. Staffing of the PPP Unit

6.1 Staffing	2017	Planned
Total number of staff		
Lawyers		
Economists		
Engineers/technicians		
Assistants/clerks		
Trainees		
Funds available for consultant assistance		
6.2 Capacity building needs	Actual	Planned
Legal training in procurement		
Economics		
Financial		
Feasibility studies		
Risk assessments		
Others, please mention		

7. Activities

Please state approximately	2016	Comments
Number of assistance activities approximate		
Projects processed		
Projects implemented		
Training activities for clients		
Projected evaluated negatively		

Note : the PPP Units usually perform some or a combination of the three main functions

PPP policy support and related activities.

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 project.

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.

Approval and quality control

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 has 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;

We thank you beforehand in assisting to the project delivery.

Vagn Bendz Jørgensen

Study Team Leader