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OECD PRINCIPLES FOR GOOD PUBLIC GOVERNANCE OF PUBLIC-PRIVATE PARTNERSHIPS

THE ROLE OF DEDICATED PPP UNITS

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Abstract

Title: OECD Principles for Good Public Governance of Public-Private Partnerships: the Role of dedicated PPP Units

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The purpose of this thesis is to understand whether or not the dedicated Public-Private Partnership (PPP) units set up in accordance with the recommendations put forth by the Organization for Economic Co-operation and Development (OECD) constitute good public governance mechanisms. Our research questions are the following: (i) How and why have governments from OECD Member Countries used PPPs? (ii) How and why have governments from OECD Member Countries established dedicated PPP units? (iii) How do the dedicated PPP units from OECD Member Countries comply (or not) with the recommendations put forth by the OECD? (iv) How and why does the VFM of PPP programs differ in countries that have (or not) dedicated PPP units set up in accordance with the recommendations put forth by the OECD? Using a multiple case study research approach, this thesis answers these research questions focusing on the experience of three OECD Member Countries with dedicated PPP units: the United Kingdom, France and Portugal. It concludes that dedicated PPP units set up in accordance with OECD recommendations have the potential to constitute good public governance mechanisms, however, it also concludes that, as governance mechanisms, such units are insufficient to steward public interests. Indeed, dedicated PPP units are increasingly growing in popularity, but they are not a solution for all problems. Ultimately, the goal of this thesis is to help readers learn more about how dedicated PPP units help (or not) policy makers make PPPs work.

JEL classification: O38, H11, H54

Keywords: public-private partnerships; value-for-money; dedicated PPP units; OECD principles; case studies

Resumo

Título da Dissertação: OECD Principles for Good Public Governance of Public-Private Partnerships: the Role of dedicated PPP Units

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O objectivo desta tese é perceber se as unidades de PPP estabelecidas em concordância com as recomendações publicadas pela Organização para a Cooperação e Desenvolvimento Económico (OCDE) constituem ou não bons mecanismos de governo público. Neste sentido, as questões de investigação a que a tese procura responder são as seguintes: (i) Como e por que razão os governos dos países membros da OCDE utilizaram PPPs? (ii) Como e por que razão os governos dos países membros da OCDE estabeleceram unidades de PPP? (iii) Como é que as unidades de PPP dos países membros da OCDE observam (ou não) as recomendações dadas pela OCDE? (iv) Como e por que razão o valor acrescentado (i.e., *value-for-money*) dos programas de PPP difere em países que têm (ou não) unidades de PPP estabelecidas em concordância com as recomendações publicadas pela OCDE?

Utilizando o estudo de casos múltiplos como metodologia de investigação, a tese responde às questões acima referidas focando-se na experiência de três países membros da OECD com unidades de PPP: Reino Unido, França e Portugal. O estudo conclui que as unidades de PPP estabelecidas em concordância com as recomendações dadas pela OCDE podem constituir bons mecanismos de governo público, mas que, só por si, tais unidades não são suficientes para proteger os interesses públicos.

As unidades de PPP tornaram-se hoje bastante populares, mas não podem ser vistas como uma solução para todos os problemas. Esta tese procura ajudar o leitor a compreender como as unidades de PPP, enquanto mecanismos de governo público, ajudam (ou não) os governos a fazer com que as PPPs funcionem melhor.

Classificação JEL: O38, H11, H54

Palavras-chave: parceria público-privada; valor acrescentado; unidades de PPP; princípios da OCDE; estudo de casos

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Acronyms

CEF-O-PPP	Centre d'expertise français pour l'observatoire des partenariats public-privé
DBFO	Design, Build, Finance and Operate
EU	European Union
EP	Estradas de Portugal
FBC	Full Business Case
GDP	Gross Domestic Product
IAAP	Integrated Assurance and Approval Plan
IGD	Institut de la Gestion Délégée
IGO	International governmental organization
IMF	International Monetary Fund
IUK	Infrastructure UK
MPA	Major Projects Authority
MAPPP	Mission d'appui aux partenariats public-privé
MoU	Memorandum of Understanding
NPM	New Public Management
OBC	Outline Business Case
OECD	Organization for Economic Co-operation and Development
PC	Partnership contract
PFI	Private finance initiative
PF2	Private finance 2
PPP	Public-private partnership
PSC	Public sector comparator
PUK	Partnerships UK
SOC	Strategic Outline Case
UTAP	Unidade Técnica de Acompanhamento de Projetos
VFM	Value-for-money

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1. Introduction

OECD Member Countries have been using Public-Private Partnerships (PPPs) to deliver public goods and services since early 1990s. PPPs are complex, long-term contractual arrangements between a public-sector entity and a private-sector entity for the later to deliver public goods and/or services in exchange of payments made by the government, the end-user or both (OECD, 2008). Nowadays, the main argument purported for the use of PPPs is improved value-for-money (VFM) (Shaoul, 2005). VFM refers to the effective and efficient use of public funds in capital projects (Grimsey & Lewis, 2002b, p. 109). Both PPPs and traditional public procurement methods (i.e. direct public provision) deliver VFM. To ensure that public interests are protected and public funds are effectively and efficiently employed, governments must select the method that yields the greatest *expected* VFM, e.g. the greatest *expected* savings and / or benefits (Burger & Hawkesworth, 2011).

For that, governments often rely on an *ex ante* benefit-cost analysis that uses hypothetical scenarios to calculate the monetary value of the savings a public entity expects to achieve by pursuing a project via PPP instead of traditional public procurement (Morallos & Amekudzi, 2008). “VFM is not about cost-effectiveness alone” (Grimsey & Lewis, 2002a, p. 250; Sarmiento, 2010) nevertheless governments should only pursue a project as a PPP when the costs of pursuing it through traditional public procurement are estimated to be higher (Morallos & Amekudzi, 2008).

The decision to pursue a project as a PPP is thus usually based on the *expected* VFM of the project. PPPs, however, do not automatically achieve their *expected* VFM (OECD, 2010, p. 23). As a matter of fact, research shows that many PPP projects have failed to achieve it and have actually reduced the net worth of the public sector, leading to overall welfare losses (Edwards & Shaoul, 2003; Quiggin, 2004; Meunier & Quinet, 2010; Appuhami, Perera & Perera, 2011; Jooste & Scott, 2012).

Whether or not PPPs are a good solution for delivering public goods and/or services is not the focus of this thesis (Rachwalski & Ross, 2010). For this thesis we assume the general view that, if used correctly, PPPs can result in VFM outcomes for the public sector. However, the complexities and intricacies underlying PPP contracts pose public sector authorities significant challenges. Thus if PPPs are to deliver VFM outcomes to the public sector, appropriate capacities and public governance mechanisms are required (OECD, 2012).

Most governments introduced PPPs assuming that PPPs were just a way of substituting public sector capacity by private sector capacity (Jooste & Scott, 2012). After gaining some experience, however, this started to change (Rachwalski & Ross, 2010). Gradually, reforms in countries’ legal and institutional frameworks commenced to appear, and eventually governments begun establishing dedicated PPP units (PWC, 2005). Dedicated PPP units are considered important instruments of good public governance (Jooste & Scott, 2012; Regan, 2012). They are organizations put forth with full or partial aid from governments to ensure that the capacities required to evaluate, create and support PPP programs are made available within governments (OECD, 2010, p. 28).

While studies suggest that there is a correlation between well-designed PPP units and improved performance of PPP programs (Fischer, Jungbecker & Alfen, 2006; Aziz, 2007; PPIAF, 2007; Jooste & Scott, 2012; Regan, 2012), studies also

indicate that dedicated PPP units “are neither always necessary nor sufficient for the success of PPP programs” (PPIAF, 2007; PPIAF, 2012; Regan, 2012). There are “other institutional options for implementing the PPP program besides establishing a PPP unit” (Hodge & Greve 2007; Rachwalski & Ross, 2010; PPIAF, 2012, p. 3), and even when governments opt for establishing a dedicated PPP unit, it seems there is no “one-size-fits-all” deal (PPIAF, 2007; Istrate & Puentes, 2011; Jooste, Levitt & Scott, 2011; Regan, 2012).

Despite this, international governmental organizations (IGOs), including the OECD, have issued generic guidelines and recommendations for the use of such units.

The OECD is considered to have a central role in the field of good public governance (Woodward, 2007), and throughout the years it has led “a global conversation about what constitutes good governance” (Pal, 2009, p. 1059).

Taking the recommendations put forth by the OECD under the *Principles for the Public Governance of Public-Private Partnerships* (2012), particularly the recommendations under Principle 2.3, the purpose of this thesis is to understand whether or not the dedicated PPP units set up in accordance with the recommendations put forth by the OECD constitute good public governance mechanisms. Focusing on OECD Member Countries, our research questions are the following:

1. How and why have governments from OECD Member Countries used PPPs?
2. How and why have governments from OECD Member Countries established dedicated PPP units?
3. How do the dedicated PPP units from OECD Member Countries comply (or not) with the recommendations put forth by the OECD?
4. How and why does the VFM of PPP programs differ in countries that have (or not) dedicated PPP units set up in accordance with the recommendations put forth by the OECD under Principle 2.3?

Using a multiple case study research approach, we draw the following conclusions: in the late 20th century, the infrastructure gap in most countries was significant, and due to funding limitations and fiscal constraints (Hood, 1995; Quiggin, 2004), governments started using PPPs to “facilitate capital spending off balance sheet” (Coulson, 2008, p. 484). With time, however, VFM concerns started to arise, and nowadays VFM dominates PPP policies across countries (Hodge & Greve, 2007; OECD, 2008). Dedicated PPP units were established to help governments manage their PPP programs, and were set up differently in terms of scope, structure and functions, depending on governments’ needs. All three dedicated PPP units studied in this thesis comply, either partially or entirely, with most of the recommendations put forth by the OECD, and though the VFM of PPP programs differs across the countries under study, on the basis of our research the differences in the VFM of PPP programs cannot be related to the way in which dedicated PPP units function, nor to the level of compliance of such units with OECD recommendations. Dedicated PPP units are a rather recent phenomenon and changes in the VFM of large-scale PPP programs cannot be achieved from night to day. Our thesis concludes dedicated PPP units seem to be insufficient for stewarding public interests (PPIAF, 2007), and additional public governance mechanisms are required if PPPs are to deliver VFM outcomes to the public sector.

The remaining of the thesis is structured as follows. Section 2 presents a literature review on PPPs, VFM, reasons for VFM failures, dedicated PPP units and the role of OECD in the field of good public governance. Section 3 describes the

methodology used to conduct the study. Section 4 looks more closely to the dedicated PPP units of three OECD Member Countries, and includes a case study for each. The case studies answer our first and second research questions. Section 5 evaluates how the dedicated PPP units of the countries under study fit with the recommendations put forth by the OECD under Principle 2.3 (our third research question). Section 6 draws on the findings from both Sections 4 and 5, to assess how and why the VFM of PPP programs differs in countries that have dedicated PPP units set up in accordance to the recommendations put forth by the OECD, and presents the main conclusions of our study. Finally, in Section 7 we explain the limitations of our study, and propose recommendations for future research.

2. Literature Review

2.1. The concept of Public-Private Partnerships

No single form or definition of PPP exists (Grimsey & Lewis, 2005; Hodge & Greve, 2007; Morillos & Amekudzi, 2008; Forrer et al., 2010; Koontz & Thomas, 2012). The basic feature is the central involvement of a public-sector entity with a private-sector entity to serve public purposes (Watson, 2004; Koontz & Thomas, 2012). Nevertheless, although the term can be used to accommodate a wide spectrum of joint public-private arrangements (Bloomfield, 2006; Hodge & Greve, 2007; Forrer et al., 2010; Shaoul, Stafford & Stapleton, 2012), for this thesis we focus on a specific form of PPP, the PFI-type PPP (Hodge & Greve, 2007).

PFI-type PPPs have increasingly become a commonplace for infrastructure development all around the world (UNECE, 2005; Loosemore, 2007; Hodge & Greve, 2008; Vining & Boardman, 2008; Forrer et al., 2010). These are complex long-term contractual arrangements between a public sector entity and a private sector entity for the later to deliver public infrastructure and public infrastructure-based services (Grimsey & Lewis, 2004; Shaoul, 2005). Under PFI-type PPPs the private-sector entity usually designs, builds, finances and operates public infrastructure according to output specifications set out a priori by the public-sector entity and receives in exchange a stream of payments over the life of the contract (Grimsey & Lewis, 2002a; Yescombe, 2007; OECD, 2008).

More often than not the government makes such payments. Therefore, although the projects developed under PFI-type PPPs are privately financed, projects still involve public funds and usually require significant financial commitments from governments (Grimsey & Lewis, 2002a, p. 256; Watson, 2003; Quiggin, 2004; Petersen 2010). Indeed, under PFI-type PPPs the real obligations of the government usually do not change for the better, what changes is the timeframe over which the public payments occur (Grimsey & Lewis, 2002a; Watson, 2003). The focus under these arrangements is on service provision, not infrastructure provision (Grimsey & Lewis, 2002a); the government *pays for the services* the private sector provides (Grimsey & Lewis, 2002a, p. 248; Shaoul, 2005; Loosemore, 2007), and even though the private sector provides both the services and the physical infrastructure, the physical infrastructure is provided “as part of the service agreement” (Shaoul, 2005, p. 442). As such, projects “require little or no upfront capital expenditure but involve a larger operating expenditure over time”, which includes an amortized cost of capital (Grimsey & Lewis, 2002a, p. 256). The cost of capital is thus delayed and spread out over the life of the contract rather than charged immediately against the public budget

(Yescombe, 2007), and thus projects can be carried out even in the absence of sufficient short /medium-term government funding for infrastructure (UNECE, 2005, p.8).

2.2. The rational of Value-for-Money

When PFI-type PPPs were first introduced in the UK in the early 1990s the goal was to “facilitate capital spending ‘off balance sheet’, that is, [to develop public infrastructure] without increasing the official figures for government borrowing” (Terry, 1996; Heald, 1997; Coulson, 2008, p. 484). Fiscal stress, poor macroeconomic performance, government overload and resistance to extra taxes (Hood, 1995; Quiggin, 2004), lead further governments, pressed to develop and improve public infrastructure (Grimsey & Lewis, 2002b; Aziz, 2007), to introduce this form of PPP as well (Aziz, 2007; OECD, 2008).

Although “the incentives in some countries to use PPPs in order to finance assets off the public balance sheets” are still quite pervasive today (OECD, 2013a, p. 96), the rationale for the policy has changed significantly over time (Edwards & Shaoul, 2003; Shaoul, 2005; Hodge & Greve, 2007; OECD, 2008), and nowadays the main argument purported for the use of PPPs is improved value-for-money (Shaoul, 2005).

Governments are increasingly recognizing that PPPs are an instrument to improve the value-for-money (VFM) of public sector delivery (OECD, 2008, p.11).

VFM refers to the effective and efficient use of public funds in capital projects (Grimsey & Lewis, 2002b, p. 109; Monteiro, 2005; OECD, 2008), where the effectiveness is measured in terms of quality and quantity (OECD, 2008, p. 21), and the efficiency in terms of costs (Vining & Boardman, 2008).

Broadly, in comparison to direct public provision (i.e., traditional public procurement¹), PPPs improve the VFM of public sector delivery when they deliver services: (i) as effectively (i.e., with the same quality and quantity), but with improved efficiency (i.e., at a lower costs); or (ii) as efficiently (i.e., at the same cost), but with improved effectiveness (i.e., with improved quality and /or quantity) (Grimsey & Lewis, 2002a; Morillos & Amekudzi, 2008; Sarmiento, 2010).

Both PPPs and traditional public procurement methods deliver VFM; to ensure that public interests are protected and public funds are effectively and efficiently employed, governments must select the delivery method that yields the greatest *expected* VFM, e.g. the greatest *expected* savings and / or benefits (Burger & Hawkesworth, 2011).

For that, governments often rely on an *ex ante* benefit-cost analysis that uses hypothetical scenarios to calculate the present monetary value of the savings a public entity expects to achieve by pursuing a project via PPP instead of traditional public procurement (Morillos & Amekudzi, 2008). This benefit-cost analysis, known as Public Sector Comparator (PSC), is based “on estimates of full costs, revenues and risks, set out in cash flow terms, [and] discounted at the public sector rate” (Sarmiento, 2010, p. 5). It can be complemented by an assessment of qualitative aspects of the project that cannot be

¹ Traditionally, public infrastructure procurement was seen as asset procurement (Grimsey & Lewis, 2002a) and funded from tax revenue or government borrowing (Pollock, Shaoul & Vickers, 2002). Under traditional public procurement, the assets are “procured from private sector contractors” and the “decisions relating to the provision, production and financing of assets as well as operation and maintenance of the services” are “undertaken by the public sector” (Grimsey & Lewis, 2002a, p. 248).

quantified but that can nevertheless lead to additional benefits or costs (Morallos & Amekudzi, 2008; Sarmiento, 2010). However, governments should only pursue a project as a PPP when the costs of pursuing it through traditional public procurement are estimated to be higher (Morallos & Amekudzi, 2008).

The decision to pursue a project as a PPP is thus based on the *expected* VFM of the project. PPPs, however, do not automatically achieve their *expected* VFM (OECD, 2010). As a matter of fact, research shows that many PPP projects have actually fail to achieve it, some because they were flawed from the outset others because the government was not able to *govern* them appropriately (Quiggin, 2004; Meunier & Quinet, 2010; Appuhami, Perera & Perera, 2011; Jooste & Scott, 2012).

2.3. Reasons for VFM failures

Indeed, “the international experience of infrastructure PPP implementations has not been perfect” (Milmo, Inman, & Durrani, 2009, cited in Jooste & Scott, 2012, p. 150).

“PPPs require some form of legal contract because they involve public resources” (Skelcher, 2010, p. 298). There are no fully standardized PPP contracts (Raquel & Andrade, 2010, p. 209), but generally speaking PPP contracts allocate “responsibilities, rights, risks and rewards between the” public and private sector partners (Fitzgerald, 2004, p. 4) so as to create a maximizing profit outcome for the private-sector partner when the private-sector partner delivers the services efficiently and effectively, i.e. when the private-sector partner produces VFM outcomes for the public sector (Alonso-Conde, Brown & Rojo-Suarez, 2007; Johnston & Gudergan, 2007). “The allocation of risk is the central issue in contracting” (Quiggin, 2004, p.54); “both sides to the agreement [need to] have something to lose if the partnership underperforms” (Grimsey & Lewis, 2002a, p.248), otherwise they will not act in the best interests of the partnership (OECD, 2008)².

Once a PPP contract is signed, the contract is used to regulate the relationship between the public and private sector partners (Fitzgerald, 2004; Johnston & Gudergan, 2007). “Misallocation of risks and faulty contract design” (Chang, 2013, p. 1189) have caused projects to be flawed from the outset. However, PPP contracts are complex and incomplete in nature (Grout & Stevens, 2003; Johnston & Gudergan, 2007; Loosemore, 2007; Meunier & Quinet, 2010), and even when adequate rules are followed in the design of PPP contracts, projects may still end up flawed and fail achieve their *expected* VFM outcomes (Monteiro, 2005).

When governments change “from traditional public procurement methods to infrastructure provided under a PPP” (Grimsey & Lewis, 2004, p.94), governments move from service providers to procurers and regulators of services (Edwards & Shaoul, 2003, p. 397) – the so-called shift “*from government to governance*” occurs (O’Leary & Vij, 2012, p. 507). Governance, or “*governance without government*”, refers to “the development, at multiple scales, of a variety of mechanisms of regulation,

² PPPs constitute principal-agent relationships (Monteiro, 2005). The public and private partners in a PPP are not driven by the same objectives (Loosemore, 2007; OECD, 2008, p.18). The private partner seeks profits and the public partner a level of service more effective and efficient than that which would have achieved if it had retained responsibility (Loosemore, 2007). These incongruent goals strengthen “the potential for partners to behave opportunistically and/or fail to work for the best interest of the partnership” (Appuhami, Perere & Perera, 2011, p. 65), threatening possible value-for-money outcomes.

operating in the absence of an overarching political authority” (Mahon & McBride, 2009, p. 86), to ensure that in the absence of such overreaching political authority, public interests are nevertheless protected (Skelcher, 2010, p. 5).

The shift from *government to governance* implies that PPPs do not simply substitute public sector capacity by private sector capacity; instead PPPs require new forms of public sector capacity / expertise (Jooste & Scott, 2012). Yet more often than not, governments around the world have introduced PPPs “without much reflection on the need to reorganize policy-making processes and to adjust existing institutional structures” (Teisman & Klijn, 2002, p. 197; OECD, 2013), and only after some learning and experience did this started to change (Rachwalski & Ross, 2010, p. 277). With time, governments began to understand that in order for PPPs to achieve their *expected* VFM outcomes, appropriate capacities in terms of skills, institutional structures and legal frameworks needed to be develop within governments (OECD, 2012), and gradually, reforms in countries’ legal and institutional frameworks commenced to appear, leading eventually to the establishment of dedicated PPP units (PWC, 2005).

2.4. Dedicated PPP Units

The first dedicated PPP unit was established in the UK in 1999 (Farrugia, Reynolds & Orr, 2008), but nowadays over half of all OECD Member Countries states having a dedicated PPP unit of some kind (OECD, 2010).

No single, agreed-upon definition of dedicated PPP units exists (Istrate & Puentes, 2011). For the purpose of this thesis, however, we use OECD definition. The OECD defines dedicated PPP units as organizations put forth with full or partial aid from governments to ensure that the capacities required to evaluate, create and support comprehensive and cross-sectoral PPP programs are made available within governments (OECD, 2010, p. 28).

Dedicated PPP units vary significantly from place to place, either in terms of jurisdiction, location or functions (Farrugia, Reynolds & Orr, 2008; OECD, 2010; Burger & Hawkesworth, 2011; Istrate & Puentes, 2011; Jooste, Levitt & Scott, 2011). They have been traditionally established to address specific shortcomings and failures in governments’ ability to devise, implement and manage successful PPP programs (PPIAF, 2007; Istrate & Puentes, 2011). More recently, however, dedicated PPP units have begun to proliferate (PPIAF, 2007; Rachwalski & Ross, 2010).

Dedicated PPP units are organizations with accredited expertise and their establishment sends a message about governments’ long-term commitment to PPPs and inclination to use PPPs for VFM purposes (Ahadzi & Bowles, 2004; Rachwalski & Ross, 2010).

Dedicated PPP units can be an important instrument of public governance (Jooste & Scott, 2012; Regan, 2012) and help minimize the potential for problems (EC, 2003; Istrate & Puentes 2011). However, it is important to understand that dedicated PPP units “are neither always necessary nor sufficient for the success of PPP programs” (PPIAF, 2007). Indeed, while studies suggest that there is a correlation between well-designed PPP units and improved performance of PPP programs (Fischer, Jungbecker & Alfen, 2006; Aziz, 2007; PPIAF, 2007; Istrate & Puentes, 2011; Regan, 2012), studies also suggests that “there are other institutional options for implementing the PPP program besides establishing a PPP unit” (Hodge & Greve, 2007; Rachwalski & Ross, 2010; PPIAF, 2012, p. 3). Moreover, studies also indicate that, regarding

effective dedicated PPP units, no “one-size-fits-all” deal seems to exist (PPIAF, 2007; Istrate & Puentes, 2011; Jooste, Levitt & Scott, 2011; Regan, 2012). Effective dedicated PPP units require “painstaking institutional design, proceeding from a clear understanding of a country’s needs, capacity, culture, and administrative traditions” (PPIAF, 2007, p. 1).

Despite this, international governmental organizations (IGOs), including the OECD, have issued specific (generic) best-practice guidelines and recommendations for the use of dedicated PPP units (PPIAF, 2007).

2.5. The OECD and good public governance

The Organization for Economic Co-operation and Development (OECD) came into life in 1961 to support and promote policies designed to achieve the highest sustainable global economic growth, employment, living standards, and world trade (OECD, 1960). To support and promote such policies, the OECD was granted no formal power (Wolfe, 2008; Woodward, 2007). Indeed, contrary to the “International Monetary Fund (IMF), the World Trade Organization (WTO), and the World Bank, the OECD lacks the power to enforce compliance with its decisions” (Mahon & McBride, 2009, p.84). That is not to say that the OECD has no normative agenda, it does (Pal, 2009), however it “operates on the basis of cooperation and informal networks, relying on ‘soft law’ – recommendations and guidelines – rather than hard rules” (Salzman, 2005, p. 217).

The OECD got involved in public governance early on, when the field of public governance emerged in the mid-1990s as a result of the proliferation of New Public Management (NPM) reforms, which lead to the involvement of non-state actors in state affairs (Bovaird, 2005, p. 219; Pal, 2009). The idea underlying NPM was that improvements in the efficiency and performance of the public sector could be achieved by reducing its scale and scope in several ways, namely via PPPs (Head, 1997; Broadbent & Laughlin, 1999; Clark & Root, 1999; Watson, 2004; Pollitt, van Thiel & Homburg, 2007; Shaoul, Stafford & Stapleton, 2012). PPPs “function with delegated responsibilities” (Brinkerhoff & Brinkerhoff, 2011, p. 9). Under PPP arrangements, governments delegate to private sector entities (non-state actors) the responsibility of delivering public goods and/or services (OECD, 2008; Brinkerhoff & Brinkerhoff, 2011). When responsibilities or political authority is delegated to non-state actors, appropriate mechanisms are required to ensure that “in the absence of an overreaching political authority” (Mahon & McBride, 2009, p. 86), public interests are nevertheless protected (Skelcher, 2010, p. 5).

The OECD has stressed the link between good public governance and social and economic development since the mid-1990s (OECD, 1995, p. 14; McNutt & Pal, 2011, p. 442). Indeed, for the OECD, public governance “denotes the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development” (OECD, 1995, p. 14; Weiss, 2000, p. 797). Some argue that the OECD has a key role as agenda setter and promoter of good governance modes, both generally and for PPPs in particular (Verhoest et al., 2014, p. 6). Regarding PPPs, the OECD launched its *Principles for the Public Governance of Public-Private Partnerships* in 2012, recommending Member Countries to take due account of such Principles claiming that they would help policy makers get VFM outcomes out of PPPs (OECD, 2012). “Promoting and gaining consensus on best practices has always been one of the OECD's major goals” (Wouters & Van Kerckhoven, 2011, p.372). Although the capacity of the OECD to induce “actual change in public sector practice (...) [has been shown to be] tenuous at best” (Premfors, 1998, p. 144; Mahon & McBride, 2009),

truth is that the OECD has at least lead to “a global conversation about what constitutes good governance” (Pal, 2009, p. 1059; Woodward, 2009), and the purpose of this thesis is to understand whether or not dedicated PPP units set up in accordance with the recommendations put forth by the OECD under Principle 2.3 constitute good governance mechanisms.

3. Methodology

The purpose of this thesis is to understand whether or not the dedicated PPP units set up in accordance with the recommendations put forth by the OECD constitute good public governance mechanisms. As mentioned earlier, to understand this we want to answer the following research questions:

1. How and why have governments from OECD Member Countries used PPPs?
2. How and why have governments from OECD Member Countries established dedicated PPP units?
3. How do the dedicated PPP units from OECD Member Countries comply (or not) with the recommendations put forth by the OECD?
4. How and why does the VFM of PPP programs differ in countries that have (or not) dedicated PPP units set up in accordance with the recommendations put forth by the OECD under Principle 2.3?

To answer these research questions we will use a multiple case study research approach. Case studies are empirical descriptions of real-life instances used to draw conclusions generalizable to the whole population (Eisenhardt, 1989; Yin, 1994; Eisenhardt & Graebner, 2007). They can be employed to accomplish several purposes, namely to describe a given phenomenon, test or generate theory (Eisenhardt, 1989). Here, we use case studies to describe the experience of OECD Member Countries with dedicated PPP units and, therefore, to answer our research questions. Because case studies are particularly suited when “‘*how*’ and ‘*why*’ questions are being asked about a contemporary set of events over which the investigator has little or no control” (Yin, 1994, p.9), we believe that this research strategy is appropriate. We decided to use more than one case study because, all else the same, “multiple-case studies typically provide (...) more accurate, and more generalizable” results (Eisenhardt & Graebner, 2007, p. 27). But data on dedicated PPP units is extremely hard to get, thus, following the suggestions made by the Head of Public-Private Partnerships and Capital Budgeting at OECD, we decided to focus on a sample of three cases.

The recommendations for dedicated PPP units we are talking about are under OECD *Principles for the Public Governance of Public-Private Partnerships* (2012b). The OCED recommended Member Countries to take due account of such Principles claiming that they would help policy makers get VFM outcomes out of PPPs (OECD, 2012). More than half of all OECD Member Countries states having a dedicated PPP unit of some kind (OECD, 2010; OECD, 2013a). Ideally, we would like to study in detail all the dedicated PPP units from OECD Member Countries, but lacking adequate resources and time we had to opt for an alternative research approach that allowed us to use inductive logics to draw generalizable conclusions from a sample of dedicated PPP units (Eisenhardt & Graebner, 2007).

The case selection follows theoretical sampling rules, and not stratified or random sampling rules (Eisenhardt, 1989; Eisenhardt & Graebner, 2007). This “means that cases are selected because they” can contribute to theory development by

“illuminating and extending relationships and logics among constructs” (Eisenhardt & Graebner, 2007, p. 27). Indeed, cases were selected so as to have:

1. Dedicated PPP units from countries with large but different PPP programs (in terms of development stage, size and composition)
2. Dedicated PPP units from countries with different legal and institutional frameworks
3. Dedicated PPP units all located at central / federal government level
4. Dedicated PPP units from countries for which data would be possible to obtain

The dedicated PPP units we selected for case studying are the following: IUK from the United Kingdom, MAPP from France and UTAP from Portugal.

We know from previous studies that dedicated PPP units are neither always sufficient nor entirely responsible for helping public sector authorities achieve VFM outcomes (PPIAF, 2007; Jooste & Scott, 2012). Contextual conditions affect the effectiveness of dedicated PPP units. The cases will therefore cover both the dedicated PPP units and their contexts. As a matter of fact, we will take into consideration additional variables in our study such as governments’ rational for using PPPs (e.g., VFM versus budgetary constraints), the PPP Program (e.g., development stage, size and composition), the legal and institutional frameworks for PPPs (specific PPP laws and institutions), and the PPP project cycle. Because all the three dedicated PPP units under study are located at central government level, our thesis will focus on countries’ experience with PPPs at central government level.

Data for the cases will be taken from previous written material (e.g., reports, studies), and the case studies will be structured as follows: we will start with an (i) *Overview* to understand how and why governments from OECD member countries use PPPs (first research question); in the *Overview* we will also take a look to the national PPP program (in terms of development stage, size and composition), and assess its performance (i.e., its VFM). Then, we move on to the (ii) *Legal Framework*, to understand how have the laws (if any) that regulate PPPs evolved in each country. Under the (iii) *Institutional Framework*, we present the key public entities involved in the PPP process. Next, under the (iv) *Dedicated PPP unit* section, we answer our second research question (how and why have OECD Member Countries established dedicated PPP units); we examine the background of the dedicated PPP unit, the rational for establishing the dedicated PPP unit, its mission, general structure and general functions. Last but not least, we present a brief description of the (v) *Project Cycle*, including the role of the dedicated PPP unit in the project cycle.

4. Case Studies

4.1. United Kingdom

4.1.1. Overview

PPPs, as defined in this thesis, are based on the refinement of the private finance initiative (PFI) introduced in the 1990s in the UK to develop public infrastructure (Grimsey & Lewis, 2005). Although the term PPP in the UK encompasses a wide spectrum of arrangements such as joint ventures and concessions (EPEC, 2014a), for the purpose of this thesis we focus

exclusively on the PFI type of PPP. Moreover, for the period after UK's devolution (1998 onwards), our analyses focus exclusively on England's experience with PFIs, including also the "areas of spending that are not devolved (defence and some aspects of energy policy)" (EPEC, 2014a, p.5).

As anywhere else, in the UK public infrastructure was traditionally seen as asset procurement (Grimsey & Lewis, 2002a) and funded with tax revenue and government borrowing (Pollock, Shaoul & Vickers, 2002). However, the economic slowdown that hit Britain in the early 1970s together with increases in inflation and oil prices, made the levels of public spending, which had grown rapidly since the end of world war II (Jonson, 1976), unsustainable (Hood, Emmerson & Dixon, 2009). In 1976, the British government requested an emergency loan from the IMF, committing itself to raise taxes and cut public spending (Hood, Emmerson & Dixon, 2009). Because governments can defer capital spending more easily than current spending, public investment in new infrastructure was immediately put on hold (Terry, 1996; Broadbent & Laughlin, 1999). What is more, public spending in existing infrastructure was set so low that didn't even "kept pace with the rate at which public assets [were] (...) depreciating" (Chote, 1993, cited in Clark & Root, 1999).

When the Conservative government of Margaret Thatcher was elected, in 1979, a new mindset in terms of public sector administration was installed. The government, determined to improve the efficiency and performance of the public sector (Pollitt, van Thiel & Homburg, 2007), introduced "new public management'-oriented reforms" (Flinders, 2005) which reduced the "scope of the public sector and the extent of government intervention" (Rhodes, 1994, p. 131). This led to significant changes in "the modes of public sector delivery" (Head, 1997, p. 568), especially in the modes of public infrastructure delivery.

By early 1980s "the extent of decay and disrepair in [UK's] infrastructure" (Terry, 1996) was blatant. "The accumulated volume of unmet infrastructure needs" (Clark & Root, 1999), coupled with rigid controls over public spending and government's "ideological commitment to increase the involvement of the private sector in (...) public sector" delivery (Broadbent & Laughlin, 1999, p.99), resulted in the adoption of two emblematic expedients for reforming and modernizing the nation's ageing infrastructure: "privatization and private participation in the provision of public infrastructure" (Quiggin, 2004, p. 52).

A significant part of the investment burden was indeed transferred to the private sector via privatization (Terry, 1996). However, "for financial or political reasons" (Edwards & Shaoul, 2003, p. 397; Shaoul, 2005, p. 441), there are some public services that cannot be privatized – some are not financially viable because no fees can be charged to end users (e.g., prisons); other services are considered basic public services and must be available to all (e.g., hospitals, schools, networks) (Yescombe, 2007, p. 9). For such services the government came up with an alternative solution that involved the use of private financing for the delivery of public infrastructure and public infrastructure-based services (Clark & Root, 1999; Grimsey & Lewis, 2002a).

But the implementation of such solution was not without problems. In the 1980s, the rules governing private sector involvement in public sector delivery, i.e., the Ryrie Rules, were too restrictive and gave public sector authorities "no incentive to seek privately funded solutions" (Heald, 1997; Poole, 1997, p. 23; Broadbent & Laughlin, 1999, p. 99; Clark &

Root, 1999; Flinders, 2005, p. 220)³. As a matter of fact, the Ryrie Rules only allowed projects to be privately financed if that “was more cost effective than public financing” and required all privately financed projects to “be counted against the public body’s capital budget” (Spackman, 2002, p. 284), i.e., all “private money invested in public sector projects [had to be] registered as ‘public spending’” (Poole, 1997, p. 17)⁴.

The Ryrie Rules were “technically sound, but had become unsustainable in practice” (Spackman, 2002, p. 285), so, “on the grounds that they had outlived their usefulness” (Poole, 1997, p. 23), the Ryrie Rules were officially abolished in 1989. “However, abolishing the Ryrie Rules did not stimulate any new flow of privately financed projects” (Spackman, 2002, p.285)⁵. To worsen things, controls over public spending were intensified in 1992, when “all European countries wishing to be part of the European Monetary Union” (Broadbent & Laughlin, 1999), including the UK, committed through the Maastricht Treaty to avoid government deficits above 3% of GDP and levels of government debt above 60% of GDP (Heald, 1997; Broadbent & Laughlin, 1999).

The government was determined “to increase the scope for private financing of capital projects” (Lamont, 1992), and in 1992 the government announced the Private Finance Initiative (PFI) (Heald, 1997; Poole, 1997; Broadbent & Laughlin, 1999). The PFI was designed to hearten private investment in public infrastructure (Quiggin, 2004) and to “facilitate capital spending ‘off balance sheet’, that is, without increasing the official figures for government borrowing” (Coulson, 2008, p. 484). Specifically, the idea was to use DBFO arrangements to develop public infrastructure projects; the “money contributed by the private sector (...) [would] not contribute towards public spending”, and the private sector would receive “payments from Government relating to the” services provided (Lamont, 1992).

Together with the launching of the PFI in 1992, the government announced also the introduction of a new spending control mechanism, the New Control Total (NCT), which required any increases in public spending to be matched by equivalent reductions in other areas; projects developed under the PFI would of course release resources for other uses (Terry, 1996; Broadbent & Laughlin, 1999).

“Despite this important launch, interest in the PFI (...) was somewhat muted” (Broadbent & Laughlin, 1999). “To encourage greater participation in the initiative by both private and public sectors” (Private Finance Panel, 1995, p. 7, cited in Broadbent & Laughlin, 1999, p. 100; Jooste, Levitt & Scott, 2011; EPEC, 2014a), in 1993 the government announced the creation of a new Private Finance Panel, and a year later, in 1994, it established the ‘universal testing rule’ (Broadbent & Laughlin, 1999, Spackman, 2002). According to this rule, the Treasury would not approve public sector projects unless private financing had been considered (Spackman, 2002, p. 285). Furthermore, in 1995 the government announced a list of

³ The Ryrie Rules had been originally set up by the Thatcher Government in 1981 to regulate the use of private finance in nationalized industries, where “profitable opportunities were being lost” due to lack of public sector financing (Heald, 1997; Broadbent & Laughlin, 1999, p. 99; Clark & Root, 1999). Although they were originally “specific to the nationalized industries” (Barr, cited in Heald, 1997, p.577), they were “almost immediately assumed to affect (...) all public sector institutions (Clark & Root, 1999, p. 349), and were “taken to be a statement of the Treasury’s position on the use of private finance across the public sector” (Barr, cited in Heald, 1997, p.577).

⁴ The rules aimed at safeguarding VFM and at avoiding the option of using private financing to postpone bills to the future (Poole, 1997; Clark & Root, 1999)

⁵ The Ryrie Rules were officially abolished in 1989, but the requirement of a comparison “with [the] alternative [of] public sector financing, which still gave an inevitable preference to the use of public finance, remained” (Broadbent & Laughlin, 1999, p. 99).

priority projects (EPEC, 2014a). However, the first five years that followed the launching of PFI “saw only limited implementation of PFI projects” (Jooste, Levitt & Scott, 2011, p. 15), and only when the Labour Government of Tony Blair came to power did this started to change (Flinders, 2005; Jooste, Levitt & Scott, 2011; EPEC, 2014a).

The Labour party had been quite critical and suspicious of the PFI when in opposition (Flinders, 2005), and when Tony Blair was elected in 1997 “many anticipated that it would be the death knell for” the initiative (Jooste, Levitt & Scott, 2011, p. 15). Yet “it quickly became clear that the government intended to continue with” the PFI policy (Flinders, 2005, p. 218), but not in the same terms. UK’s infrastructure requirements were still huge, and the government was determined to improve the initial PFI form so as to ensure that “sound projects” could be rapidly developed (Leach, 2000, p. 7). Shortly after being elected, the government announced the end of the ‘universal testing rule’ and commissioned a comprehensive review of the PFI model in place (Flinders, 2005, p. 221), i.e. the first *Bates Review* (EPEC, 2014a). Such review made several recommendations “to streamline and improve the delivery of PFI projects”, and the government followed such recommendations introducing several changes to the PFI policy (EPEC, 2014a, p. 8). In 1999, the government commissioned a second *Bates Review* to understand “the progress made by the government in the delivery of (...) PFIs” (Li, Akintoye & Edwards, 2005, p. 459) and further reforms were made. The PFI, which was initially promoted by the Conservative as a means to achieve “reductions in measured or reported government debt” (Watson, 2003, p. 3), was significantly reformed under the Labour administrations. Indeed, the Labour administrations stressed extensively that the decision to use the PFI route was to be taken on the grounds of VFM alone, and not on whether or not projects were off balance sheet (HM Treasury, 2013, cited in Coulson, 2008, p. 484). Some authors suggest that this resulted in distorted VFM assessments in favor of PFIs (Coulson, 2008, p. 484; Burnett, 2012), yet we need to recognize that under the Labour administrations the rationale for the PFI policy shifted significantly towards VFM (Quiggin, 2004).

From 1997 onwards, the PFI deal flow grew substantially (EPEC, 2014a) and, up until the onset of the global credit crunch in 2008, everything was going well. Yet the credit crunch impacted significantly the long-term credit markets on which PFIs greatly rely (Farquharson & Encinas, 2010). Many “banks stopped lending to government infrastructure projects” (House of Commons, 2010, p. 7), and by 2009 markets confidence had been somewhat restored (Farquharson & Encinas, 2010; EPEC, 2014a) but the cost of long-term capital had increased considerably (House of Commons, 2010; Burnett, 2012). The issue reached media’s attention (Hellowell, 2013), and the lack of transparency surrounding PFI deals was put on the spotlight. Gradually, “ministers began to acknowledge that the economic case for the PFI had weakened as a result of substantial increases in the cost of long-term bank loans” (Hellowell, 2013). When in 2010 the Conservative Government of David Cameron came to power, concerns about the transparency and cost-effectiveness of PFI deals were growing (HM Treasury, 2011a, p. 3). To address these concerns, the government “invited all interested parties to respond to a call for evidence on the reform of PFI and to bring forward proposals for a new approach in using the private sector in the delivery of public infrastructure and services” (HM Treasury, 2011a, p. 3). In December 2012, the Government published the results of such call, specifying a set of reforms that were to be introduced to the PFI, which was to be rebranded as Private

Finance 2 (PF2) (Hellowell, 2013)⁶. The goal of PF2 is to reduce “the dominance of commercial banks in the infrastructure financing markets and increasing the contribution of alternative investors” (House of Commons, 2014). However, about the PF2 we cannot say much yet, since as of June 9, 2014 no PF2 deal had been signed (House of Commons, 2014). The Conservative Government of David Cameron has “continued to sign PFI projects (...) where they (...) continued to represent value for money” (EPEC, 2014a, p. 9), and truth is in 2013 “the UK remained the largest PPP market in Europe, both in terms of value and number (...) of transactions closed” (EPEC, 2013, p. 2).

Looking specifically at England’s PFI Program, up until the end of 2012, the cumulative number of PFI contracts signed, including the deals closed in areas of spending that are not devolved, amounted to 566 (HM Treasury, 2013). Of these, 509 were operational. The majority of PFI deals signed were in education, health, transport and defence.

Figure 1 - Number of PFI contracts signed in England by year:

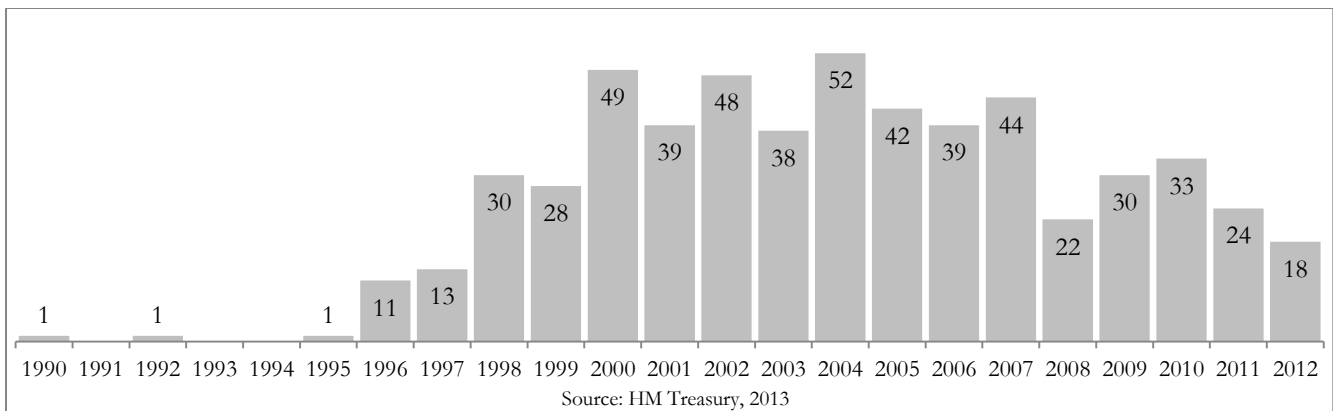
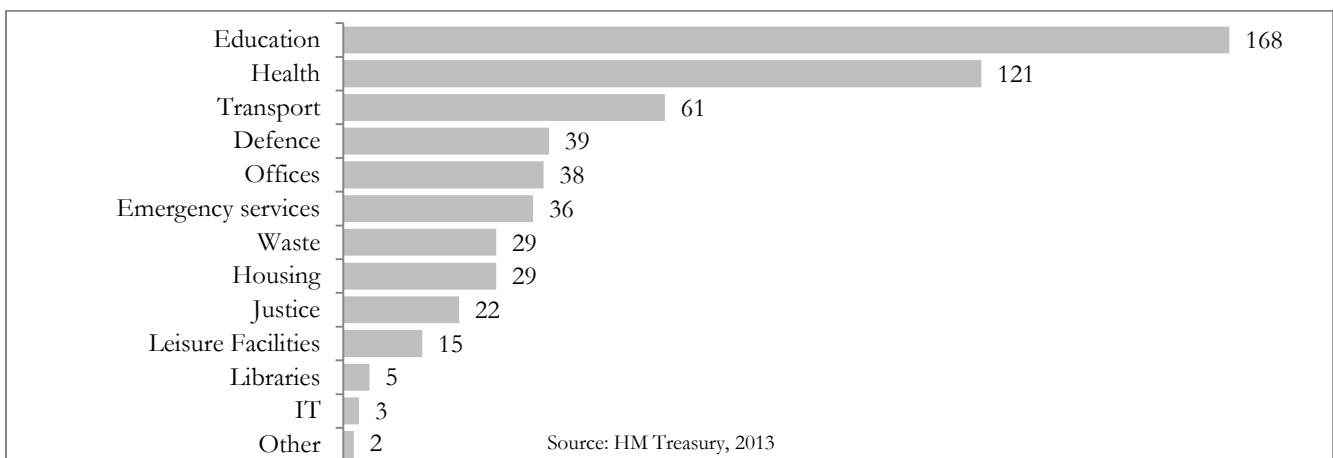


Figure 2 - Number of PFI contracts signed in England by sector, as of March 31, 2013



Regarding the VFM of such deals, there is not much information. Concerns have been raised, and it has been argued that “a great deal of public money may have been misallocated or wasted” (House of Commons, 2011). A review from HM Treasury in the beginning of 2011 concluded that significant savings could be obtained from operational PFI contracts

⁶ The Labour Government of Tony Blair did the same in 1997, when it introduced the public-private terminology (Quiggin, 2004; Jooste, Levitt & Scott, 2011).

(NAO, 2013), and the government began “encouraging authorities to examine the potential for operational savings in PFI projects” (HM Treasury, 2011b). “By June 2013, departments had reported £1.6 billion of signed savings from operational contracts” (NAO, 2013, p. 5), but much needs still to be done.

4.1.2. Legal framework

There is no specific PPP Law in England. The legal system in the UK is based on common law and policy makers believe there is enough “flexibility and certainty within the statutory and common law framework to recognize and permit PPPs” (EPEC, 2014a, p. 23).

As a matter of fact, there are broadly two types of legislation in the UK: (i) primary legislation, made by the UK Parliament (e.g., statutes); and (ii) secondary legislation, “made by other bodies under powers granted to them by Parliament” (Wilson et al., 2011, p. 35). Although no primary legislation exists to regulate PFIs in England, the government can use secondary legislation “to ensure that PFI is not adversely affected by general changes in the law” (EPEC, 2014a, p. 23).

The Procurement Contracts Regulations (SI 2006/5) and the Utilities Contracts Regulations (SI 2006/6), regulate the PFI procurement procedures, when project’s value is above certain thresholds (EPEC, 2014a). Such regulations make available the following procurement procedures: open, restricted, negotiated and competitive dialogue procedures (EPEC, 2014a). Although in England, the open procedure is not employed for PFI projects (EPEC, 2014a).

LEGAL FRAMEWORK - UK	
PPP LAW	<ul style="list-style-type: none"> ▪ No specific PPP Law
OTHER LAWS APPLICABLE TO PPPS	<ul style="list-style-type: none"> ▪ Public Contracts Regulations ▪ Utilities Contracts Regulation

4.1.3. Institutional Framework

In England, the key public entities involved with PFIs at central government level are the following:

- **Line Ministries / Sponsoring Departments:** which are actively involved in the PFI process and “are given a great deal of responsibility for initiating, procuring, delivering, and operating PPP projects” (EPEC, 2014a, p. 18)
- **Private Finance Units (PFU) within Line Ministries / Sponsoring Departments:** they exist in larger departments and provide advice on PPP / PFI matters (EPEC, 2014a)
- **HM Treasury:** all spending above a certain limit needs to be approved by HM Treasury (OECD, 2010)
- **Infrastructure UK (IUK):** central dedicated PPP unit within HM Treasury
- **Efficiency Reform Group (ERG):** gives guidance on procurement issues (EPEC, 2014a)
- **Major Projects Authority (MPA):** under the umbrella of ERG, the MPA oversees, in collaboration with sponsoring departments and reporting regularly to Line Ministries, the biggest projects developed and implemented at central government level to improve their success rate (EPEC, 2014a)
- **National Audit Office (NAO):** oversees and scrutinizes public spending on behalf of UK’s Parliament assessing regularly the VFM of PFI projects (EPEC, 2014a; <http://www.nao.org.uk/>)

- **Office for National Statistics (ONS):** produces and publishes statistics related to economic, demographic and social issues across the UK, including about the balance sheet impact of PPP / PFI contracts in the UK; the data about the balance sheet impact of PPP / PFI contracts is forwarded to Eurostat, for Eurostat to compute UK's public debt, and to the Office for Budget Responsibility (OBR), for the OBR to estimate the fiscal sustainability of the PPP / PFI program (EPEC, 2014a; <http://www.ons.gov.uk/>)
- **Office for Budget Responsibility (OBR):** examines and delivers reports about UK's public finances to Parliament, namely about the fiscal sustainability of PPPs / PFIs

4.1.4. IUK PPP Unit

Background

As mentioned earlier, the Conservative government of Sir John Major announced the creation of a new Private Finance Panel in 1993. The Panel was created to encourage greater participation in the PFI and to find new areas of public sector activity that could benefit from private sector involvement (Broadbent & Laughlin, 1999; EPEC, 2014a).

When in 1997, the Labour Government of Tony Blair came to power and commissioned a comprehensive review of the PFI model in place, i.e. the first *Bates Review* (Flinders, 2005, p. 221; EPEC, 2014a). The review recommended the creation of a new taskforce to “to help foster PFI expertise” in the public sector (EPEC, 2014a, p. 8). The taskforce was to replace the Private Finance Panel and have a limited life of two years – as after that “a sufficient level of expertise would (...) have been build up within government to enable the PFI to be taken forward without the need for such a body” (Tott & Fox, 1999; Farrugia, Reynolds & Orr, 2008). Set up in late 1997 within HM Treasury, the organization became known as HM Treasury Taskforce. It acted as “a central focal point for all PFI activities across government” (House of Commons, 2001, p. 16; EPEC, 2014a, p. 36), and had a leading role in PFI policy development (Hickman, 2000), supporting central government departments in project prioritization and project development (House of Commons, 2001; Farrugia, Reynolds & Orr, 2008; Roy, 2008; EPEC, 2014a).

In 1999, a second review of the PFI was published, i.e. the second *Bates Review* (House of Commons, 2001; Li, Akintoye & Edwards, 2005; EPEC, 2014a). The review recommended the replacement HM Treasury Taskforce, “whose two-year life was drawing to a close” (House of Commons, 2001, p. 16), by a permanent organization, Partnerships UK (PUK) (Spackman, 2002; Roy, 2008; EPEC, 2014a). PUK was established in 2000, and “in March 2001 PUK became a PPP in its own right following the sale of a 51 per cent stake to private investors” (Flinders, 2005, p. 221; EPEC, 2014a, p. 36). PUK “activities were limited to working with the public sector (i.e. it did not support or advise private sector companies)” (OECD, 2010, p. 78), and comprised mostly “technical support, capacity building and PPP promotion” (OECD, 2010, p. 78). Its mission was “to support and accelerate the delivery of infrastructure renewal, high quality public services and the efficient use of public assets through better and stronger partnerships between the public and private sectors” (Farrugia, Reynolds & Orr, 2008, p. 18; Roy, 2008).

PUK was the first dedicated PPP unit “to come into existence” (Farrugia, Reynolds & Orr, 2008, p. 17). When PUK was created in 2000, the team within HM Treasury Taskforce responsible for PFI policy development was separately transferred

to another government organization, the Office of Governance and Commerce (OGC), which was also created in 2000 (Spackman, 2002; Roy, 2008). A Private Finance Unit was established within OGC, being “responsible for developing and promoting PFI policy for public bodies, until 2003 when (...) HM Treasury Private Finance Unit” was created and the unit was transferred to this new body (Roy, 2008, p. 7).

When in 2008, following the onset of the global credit crunch, “banks stopped lending to government infrastructure projects” (House of Commons, 2010, p. 7; Farquharson & Encinas, 2010), HM Treasury established The Infrastructure Finance Unit (TIFU) to temporary “lend to PFI projects that (...) [unable to] raise sufficient debt finance on acceptable terms” (Farquharson & Encinas, 2010, p. 4). TIFU only needed to lend once⁷, and was quite successful in restoring markets confidence in PFIs (Farquharson & Encinas, 2010; EPEC, 2014a).

Notwithstanding, lending markets changed significantly and by 2009 the cost of long-term capital had increased significantly (House of Commons, 2010; Burnett, 2012). The increased cost of long-term capital weakened the economic case for the PFI (Hellowell, 2013), and new approaches for involving the private sector in the delivery of public infrastructure were required (HM Treasury, 2011a). In December 2009, the government announced the establishment of Infrastructure UK (IUK), which would “take on the role (...) [of advising] the government on strategic long-term infrastructure planning, prioritization, financing and delivery across sectors” (Farquharson & Encinas, 2010, p. 7).

Rationale for establishing IUK

IUK was established because it was necessary “to accommodate a wider remit and coordinate infrastructure planning as a whole (...) and not focus solely on PFI” (EPEC, 2014a, p. 37). There was no organization in the UK that had as a responsibility to develop and support the delivery of a comprehensive infrastructure strategy for the UK. Moreover, it was announced that IUK would consolidate in one single body and under HM Treasury umbrella the PFI / PPP policy team within HM Treasury Private Finance Unit, TIFU and also the “the program and project delivery capability of PUK” (Farquharson & Encinas, 2010, p. 7; OECD, 2010). Since “HM Treasury believed that in order to carry out (...) [its role, IUK] needed to be wholly owned by government, (...) PUK’s private sector stakeholder were bought out” (EPEC, 2014a, p. 37). As such, IUK would be able to “provide a focal point for infrastructure investors and industry, (...) tackle cross-cutting policy issues; help ensure value for money for Government investment in a fiscally constrained environment; [and] continue to address the commercial skills gap in Government” (Ballingall, 2012).

IUK Mission

IUK’s remit is to facilitate and coordinate the planning, prioritization and enabling of private sector investment in public sector infrastructure, either through PFI or not, and to improve infrastructure delivery so as to achieve greater VFM outcomes (EPEC, 2014a; <http://webarchive.nationalarchives.gov.uk/>).

⁷ “For the Manchester Waste Project in 2009” (EPEC, 2014a, p. 16)

IUK General Structure

GENERAL STRUCTURE OF DEDICATED PPP UNIT - IUK	
NAME	▪ IUK
JURISDICTION	▪ Central / federal government
OPERATIONAL SINCE	▪ 2010
LOCATION WITHIN GOVERNMENT	▪ Within HM Treasury, reporting to HM Treasury via its Permanent Secretary ⁸
OWNERSHIP	▪ Public
FUNDING	▪ Government budget
PROJECT COVERAGE	▪ Projects in England ⁹
SECTORS	▪ All sectors
MANAGEMENT & STAFF	▪ 10 full-time staff ¹⁰

IUK General Functions

GENERAL FUNCTIONS OF DEDICATED PPP UNITS (OECD, 2010) PERFORMED BY IUK	
POLICY GUIDANCE (e.g., advise governments on, and oversee the strategic direction of national PPP policy)	✓
GREEN LIGHTING PROJECTS (e.g., decide whether or not a project should move forward)	✓
TECHNICAL SUPPORT TO GOVERNMENT & OTHER PUBLIC-SECTOR ENTITIES (e.g., in project identification, evaluation, procurement and management)	✓
CAPACITY BUILDING (e.g., training public sector officials)	✗
PROMOTION OF PPPS (e.g., nationally and/or internationally)	✓
ADDITIONAL FUNCTIONS PERFORMED BY IUK	
<ul style="list-style-type: none"> ▪ Research centre / knowledge dissemination ▪ Development of standard documentation ▪ Implement PF2 reform ▪ Assess alternative sources of capital to finance infrastructure ▪ Coordinate England's infrastructure strategy / plan as a whole 	

4.1.5. Overview of project cycle

(i) Identification and preparation phase

Procuring authorities are responsible for identifying and determining their investment needs, and for preparing the business cases (EPEC, 2014a). There are three business cases that public authorities need to prepare: the Strategic Outline Case

⁸ IUK's "Chief Executive reports to the Permanent Secretary of HM Treasury, who is (...) accountable to Parliament for the day-to-day activities of IUK" (EPEC, 2014a, p. 14)

⁹ For sectors that are not devolved, IUK coordinates "activities with the devolved administrations" (EPEC, 2014a, p. 16)

¹⁰ IUK is divided into four teams: the PPP policy team, the assurance team, the infrastructure delivery team, and the infrastructure finance team. Although IUK employs 45 professionals, "for PPP issues IUK has [only] around 10 full-time equivalents (FTEs) overall, with six FTEs in the PPP Policy team and the rest distributed across IUK" (EPEC, 2014a, p. 17).

(SOC), the Outline Business Case (OBC) and the Full Business Case (FBC). The business cases are prepared following the guidelines put forth by HM Treasury under the *Green Book of Appraisal and Evaluation*¹¹, and also the guidelines put forth by the PPP policy team within IUK¹². The business cases are subject to HM Treasury approval¹³, and IUK provides support to HM Treasury in all approval processes (EPEC, 2014a, p. 30).

During the identification and preparation phase, the relevant business cases are the SOC and the OBC.

The SOC is basically a preparatory document that contains indicative information to understand why is the project worthwhile, and why should public resources be used to develop an OBC. Note that since April 1, 2011, alongside the OBC, or even before, procuring authorities must also prepare and submit a draft of the project's Integrated Assurance and Approval Plan (IAAP) to the Major Projects Authority (MPA). The project's IAAP sets up the timetable for assurance (i.e. gateway reviews) and approvals (either internal departmental approvals or HM Treasury approvals) (HM Treasury, 2011c; Cabinet Office, 2011), and is reviewed and developed afterwards by the MPA together with HM Treasury along the project cycle (EPEC, 2014a).

Once the SOC is approved, the procuring authority moves into the preparation of the OBC, which requires a much more in-depth analysis. Overall, the OBC includes: (i) explanation of the needs and why is the project worthwhile; (ii) specification of the desired outcomes and objectives of the project; (iii) option appraisal, i.e. an appraisal of the possible options for achieving the desired outcomes and objectives, being that for each option a base case scenario is established using estimates of costs and benefits; (iv) selection of best option or options, on the basis of VFM and considering affordability issues; at this point the selection must be refined into a solution; (v) final evaluation (HM Treasury, 2003; EPEC, 2014a). If the OBC is approved, the project moves into the procurement phase.

(ii) Procurement phase

Having been approved, the project is then launched into the procurement phase. The procurement phase is conducted by the procuring authority (EPEC, 2014a). Tender notices are published in the Official Journal of the EU (OJEU), and the procurement procedures are regulated according to "EU Directives, supported by interpretative guidance issued by HM Treasury and the Efficiency and Reform Group" (EPEC, 2014a, p. 31). Procuring authorities in the UK can grant a PFI contract via open, restricted, negotiated or competitive dialogue procedures (EPEC, 2014a). "The open procedure is not used for PFI projects in England", and since 2006 the competitive dialogue has been the most strongly promoted

¹¹ The current edition of the *Green Book of Appraisal and Evaluation* is from 2003, and provides public sector authorities with direction on how to prepare and appraise proposals before committing public funds so as to allow public sector authorities manage risks appropriately and obtain VMF outcomes (HM Treasury, 2003).

¹² "There is a wide range of supplementary Green Book guidance giving more information on particular issues and on applying the Green Book in specific contexts" (www.gov.uk). Until the establishment of IUK, such guidance was produced and published by the PPP policy team within HM Treasury; now that the team has been absorbed into IUK, IUK has such responsibility.

¹³ As mentioned earlier, all spending above a certain threshold requires HM Treasury approval (OECD, 2010). For spending levels below that threshold, departments are allowed "to spend their budgets as they see fit (subject to the internal approval processes of the departments) (...). Above that (...), [however] Treasury approval is required" (OECD, 2010). Indeed, all major projects require HM Treasury approval. PFI projects in the UK are considered major projects (EPEC, 2014a), and therefore require HM Treasury approval. HM Treasury approval can take three forms, "depending on project cost and risk and the department's track record for managing project spending" (EPEC, 2014a, p. 30). Projects can be approved "(in declining order of importance)" (EPEC, 2014a, p. 30) by (i) the Major Projects Review Group / MPA; (ii) HM Treasury Approval Point with panel meeting; (iii) HM Treasury Approval Point without panel meeting.

procurement procedure in England (EPEC, 2014a, p. 34). The procuring authority selects the preferred bidder, and afterwards it has to prepare and submit the Full Business Case (FBC) to HM Treasury (HM Treasury, 2007). The FBC “takes place within the procurement phase of the project” (HM Treasury, 2014), and its purpose is to revisit and update the OBC, presenting the key developments that occurred during the procurement process, and providing a recommendation on the option that optimizes the VFM of the public sector (HM Treasury, 2014). If HM Treasury approves the FBC, the contract is then signed by the procuring authority (EPEC, 2014a).

(iii) Implementation and oversight

The responsibility for implementing, managing, overseeing and renegotiating PFI projects and contracts rests with the procuring authority. The procuring authority can employ private sector consultants for managing operational issues and any renegotiation and dispute resolution “is based on standard UK base law” (EPEC, 2014a, p. 32).

Summary of IUK’s involvement in Project Cycle

IUK’S INVOLVEMENT IN PROJECT CYCLE	
PROJECT IDENTIFICATION AND PREPARATION PHASE	
PROJECT IDENTIFICATION AND DEVELOPMENT OF BUSINESS CASE	<ul style="list-style-type: none"> ▪ The PPP Policy team within IUK provides guidelines to support procuring authorities in project identification and development of business case
ASSESSMENT OF BUSINESS CASE / FEASIBILITY STUDY	<ul style="list-style-type: none"> ▪ IUK supports HM Treasury in the assessment of the business cases for approval processes
APPROVE / QUALIFY PROJECTS AS PPPS	<ul style="list-style-type: none"> ▪ IUK supports HM Treasury in the approval processes
PROCUREMENT PHASE	
INVOLVED IN FINANCIAL CLOSING & FINAL CONTRACT APPROVAL	<ul style="list-style-type: none"> ▪ IUK supports HM Treasury in the approval of business case and contract terms before financial closing
IMPLEMENTATION AND OVERSIGHT	
<ul style="list-style-type: none"> ▪ IUK is not involved in the implementation, management, oversight or renegotiation of PFI contracts 	

4.2. France

4.2.1. Overview

France has a long-standing tradition of private sector involvement in public sector delivery (EPEC, 2012; Bonnet & Chomat, 2013). Indeed, concessions to private sector entities have been awarded in France at least since the *ancien régime* (Sandran, 2004; Ambassade de France en Australie, 2014). But after World War II things changed (Sandran, 2004). The cult of the state started gaining form, and state interventionism began dominating public policy (Sandran, 2004, p. 236; Ratledge, Lignières & Andriani, 2006). Concessions that had been previously awarded to private sector entities were placed under state ownership, and all new *concessions* were awarded to companies in which the public sector had a majority stake in a way to keep the investment off balance sheet (Sandran, 2004; Ratledge, Lignières & Andriani, 2006; Bel & Foote, 2007; Yescombe, 2007, p. 43).

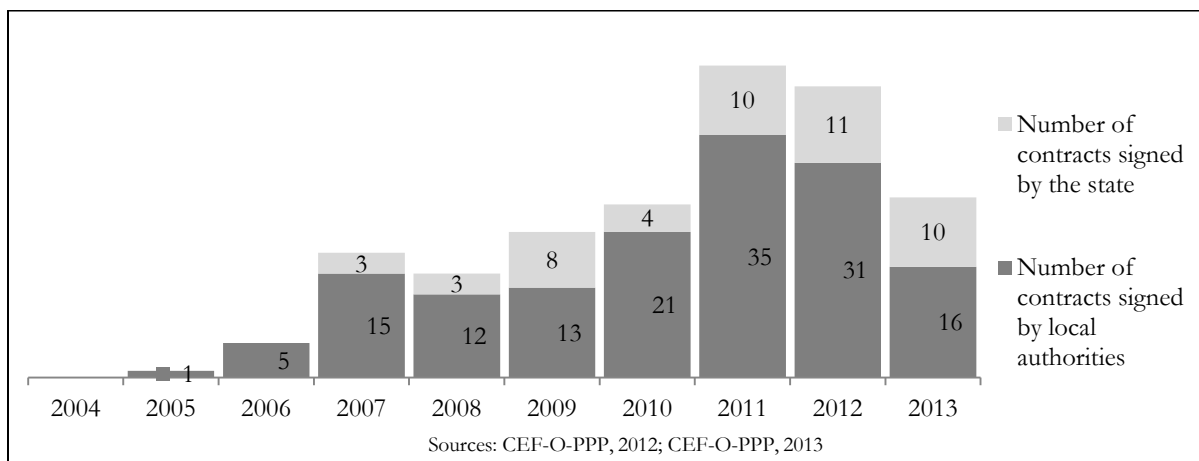
By late 1970s, however, the public sector stopped being able to handle the increasing demand for infrastructure (Ratledge, Lignières & Andriani, 2006; Ambassade de France en Australie, 2014), and thus concessions began to be awarded again to

private sector entities (Sandran, 2004; Ratledge, Lignières & Andriani, 2006)¹⁴. But because concessions rely on user-based payment mechanisms (Saussier & Tran, 2012), and in sectors such as health, education, defence and others alike “usage risk inherently cannot be transferred to the private sector” (Yescombe, 2007, p. 9; Saussier & Tran, 2012; Brux & Desrieux, 2012; EPEC, 2012), infrastructure in such sectors was put on hold (Ambassade de France en Australie, 2014). However, by late 1980s, early 1990s, the deterioration of infrastructure in such sectors was blatant, and the government ended up introducing sector specific laws that allowed private sector entities to design, build, finance and operate public infrastructure in exchange of payments made by the government (Ratledge, Lignières & Andriani, 2006 p. 8; EPEC, 2012)¹⁵. These arrangements, equivalent to UK-PFI contracts, were extended to all sectors in 2004, when the government introduced the *contrat de partenariat* (partnership contract) (EPEC, 2012).

In France the term PPP is used to refer both to partnership contracts and concession arrangements (Ratledge, Lignières & Andriani, 2006; EPEC, 2012). For the purpose of this thesis, we do not consider concession arrangements as PPPs, only partnership contracts (PCs).

Between 2004 and December 2013, 198 PCs were signed in France, of which over 75% signed by local authorities (CEF-O-PPP, 2012; CEF-O-PPP, 2013).

Figure 3 - Number of Partnership Contracts signed in France by year (2004-2012)

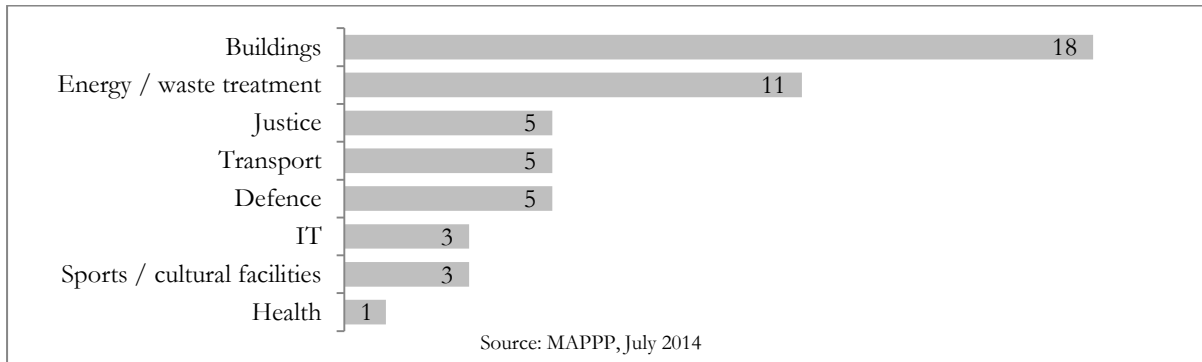


PCs have been used at central government level to develop projects in different sectors, mostly buildings and energy / waste treatment projects (Saussier & Tran, 2012).

¹⁴ There were other forms of *délégations de service public* that allowed private sector involvement in public sector delivery, namely the *affermage* (a franchise, where the concessionaire is given the infrastructure and delivers only services) and the *régie intéressée* (similar to the *affermage*, only the concessionaire does not assume commercial risk). Notwithstanding, the *concession de service public* (a works concession, where the concessionaire delivers the infrastructure and / or the infrastructure based services; basically a DBFO scheme), was the only form of *délégations de service public* in France that permitted the private sector to build infrastructure on behalf of the public sector (Heitzmann, 2006; EPEC, 2012).

¹⁵ The BEA (*bail emphytéotique administratif*) in 1988, the AOT (*autorisation d'occupation temporaire du domain public*) in 1994, and the BEH (*bail emphytéotique hospitalier*) in 2003 (EPEC, 2012)

Figure 4 - Number of Partnership Contracts signed in France by the State by sector (2004-July 2014)



PPP activity in France was not slowed down by the economic downturn; instead, the crisis led to an increase in the number of partnership contracts (Jeny-Cazavan & Richard, 2012). Partnership contracts were launched in sectors previously considered commercial, such as the road sector, and because the credit crunch and illiquidity of financial markets made it more difficult for projects to be financed with high levels of leverage, the public sector began to re-internalize a larger share of risks by providing financial guarantees for the debt of the project companies (Jeny-Cazavan & Richard, 2012). These factors, together with changes in the political power, are raising criticism and questions about this type of procedures (Saint, 2012). However, the French PPP market is said to be performing quite well (EPEC, 2012; Ambassade de France en Australie, 2014). As a matter of fact, not many studies have been performed (Saussier & Tran, 2012), but the ones that have suggests that the PPP experience in France has had positive results: about 80% of the projects were effective in delivering infrastructure on time, about 90% had low costs overruns (below 3%), and refinancings were shared evenly between public and private partners (PWC 2001 cited in EPEC, 2012; Ambassade de France en Australie, 2014).

4.2.2. Legal framework

The legal framework for PPPs in France is quite complex. Over the last few years, laws were enacted both on a sector specific and on a generic basis to regulate the use of joint public-private arrangements (Ratledge, Lignières & Andriani, 2006). We are interested here in the body of laws that regulates the use of PCs.

PCs were officially introduced as a new contract category in June 2004, by Government Order no 2004-559 (Saussier & Tran, 2012). The law defined PCs as administrative contracts through which the State or State entities entrust third parties, for a determined period (defined according to the timetable of the investment amortization or the financing mechanism used), with a global mission, a DBFO scheme, receiving in exchange payments over the life of the contract (Government Order no 2004-559). Moreover, the legislation also defined the criteria for using partnership contracts: emergency and complexity; the tender procedures for granting partnership contracts: competitive dialogue and, in case of particular urgency, restricted procedure; and the basic terms of the contracts (e.g., risk allocation).

The Government Order no 2004-559 was reviewed and amended in 2008 by Law 2008-765. Among the provisions established by Law 2008-765, the following need to be highlighted: introduction of best VFM criterion (in addition to emergency and complexity, to allow public sector authorities use PCs when PCs are expected to deliver better VFM

outcomes than other forms of public procurement) (Jeny-Cazavan & Richard, 2012), and introduction of negotiated tender procedure for projects above certain thresholds.

The regulation was reviewed and amended again in 2009, by Law 2009-179, so as to facilitate the financing of partnership contracts.

The Government Order no 2004-559, as amended by Law 2008-765 and Law 2009-179, regulates the use PCs. The accounting treatment of PCs, which up until 2010 followed EUROSTAT rules¹⁶, is regulated by the Government Order of December 16th 2010 (Buso, Marty & Tran, 2013).

LEGAL FRAMEWORK - FRANCE	
PPP LAW	<ul style="list-style-type: none"> ▪ Ordinance 2004-559, as amended by Laws 2008-735 and 2009-179
OTHER LAWS APPLICABLE TO PPPS	<ul style="list-style-type: none"> ▪ Government Order of December 16th 2010

4.2.3. Institutional Framework

In France, the key public entities involved with PCs at central government level are the following:

- **Line Ministries:** responsible for identifying their investment needs and for demonstrating the socio-economic usefulness of the projects they want to pursue, Line Ministries have an active role in the PPP process and enjoy significant autonomy (EPEC, 2012)
- **PPP units within Line Ministries:** e.g., *Agence de Maîtrise d'Ouvrage des Travaux du Ministère de la Justice* (AMOTMJ) within the Ministry of Justice; *Mission Nationale d'Appui à l'Investissement Hospitalier* (MAINH) within the Ministry of Health (EPEC, 2012)
- **Ministry of Economy and Finance:** the Treasury department gives an opinion about the VFM of PCs developed at central government level and approves the risk matrix and financial structure of projects (EPEC, 2012)
- **Mission d'appui aux partenariats public-privé (MAPPP):** central dedicated PPP unit within the Ministry of Economy and Finance
- **Ministry of Budget:** approves the affordability and budgetary sustainability of PCs at central government before contract signature (EPEC, 2012)
- **Institut de la Gestion Déléguée (IGD):** promotes private sector involvement in public sector delivery and, together with MAPPP, manages the *Centre d'expertise français pour l'observatoire des partenariats public-privé* (CEF-O-PPP) and the *École des PPP* (EPEC, 2012)
- **Centre d'expertise français pour l'observatoire des partenariats public-privé (CEF-O-PPP):** a research and knowledge dissemination centre that tracks the performance of partnership contracts and promotes a good use of PCs

¹⁶ “According to Eurostat rules (2004), PPPs are classified off-balance sheet if the private partner bears both the construction risk and at least one of either availability or demand risk” (Buso, Marty & Tran, 2013, p. 2)

- *École des PPP*: promotes and carries out PPP training activities.

4.2.4. MAPPP PPP Unit

Background

MAPPP was not preceded by any organization / institution.

Rationale for establishing MAPPP

Government Order no 2004-559, which introduced partnership contracts in France, required that an expertise body, created by decree, helped public authorities in the preliminary needs assessment of partnership contracts (Government Order no 2004-559). Given the complexity of the newly created contract category, at the time the Ministry of Finance felt that a new expertise body could be established for that, and also to support and regulate partnership contracts in general (Farrugia, Reynolds & Orr, 2008). In October 2004 MAPPP was created by Decree 2004-1119, and in May 2005 MAPPP became operational.

MAPPP Mission

MAPPP was “assigned a three-fold mission” (www.economie.gouv.fr), which includes: (i) evaluation of preliminary assessments prepared by procuring authorities, (ii) support in the preparation, negotiation and monitoring of partnership contracts, and (iii) information and promotion (EPEC, 2012).

MAPPP General Structure

GENERAL STRUCTURE OF DEDICATED PPP UNIT - MAPPP	
NAME	▪ MAPPP
JURISDICTION	▪ Central / federal government
OPERATIONAL SINCE	▪ 2005
LOCATION WITHIN GOVERNMENT	▪ Within and reporting to the Treasury department of the Ministry of Economy and Finance
OWNERSHIP	▪ Public
FUNDING	▪ Government budget
PROJECT COVERAGE	▪ National / state projects ¹⁷
SECTORS	▪ All sectors
MANAGEMENT & STAFF	▪ 1 & 6 full-time

¹⁷ Sub-national governments may request MAPPP for technical support if they wish to, but they are not required to do so (Farrugia, Reynolds & Orr, 2008).

MAPPP General Functions

GENERAL FUNCTIONS OF DEDICATED PPP UNITS (OECD, 2010) PERFORMED BY MAPPP	
POLICY GUIDANCE (e.g., advise governments on, and oversee the strategic direction of national PPP policy)	x
GREEN LIGHTING PROJECTS (e.g., decide whether or not a project should move forward)	✓
TECHNICAL SUPPORT TO GOVERNMENT & OTHER PUBLIC-SECTOR ENTITIES (e.g., in project identification, evaluation, procurement and management)	✓
CAPACITY BUILDING (e.g., training public sector officials)	x
PROMOTION OF PPPS (e.g., nationally and/or internationally)	✓
ADDITIONAL FUNCTIONS PERFORMED BY MAPPP	
<ul style="list-style-type: none"> ▪ Research centre / knowledge dissemination ▪ Development of standard documentation ▪ Helpdesk services to PCs stakeholders ▪ Manages other key public entities in the PC arena, namely CEF-O-PPP and the <i>École des PPP</i> 	

4.2.5. Overview of project cycle

(i) Identification and preparation phase

Procuring authorities (e.g. line ministries) are responsible for identifying their investment needs and for demonstrating the socio-economic usefulness of the projects they want to pursue. Once a procuring authority identifies a project that can be pursued as a partnership contract, it has to prepare a business case / preliminary assessment report (*évaluation préalable*). The preliminary assessment report includes a description of the project, the reasons for pursuing it as a partnership contract, how the project meets the terms established by law, and an analysis of the costs. MAPPP provides methodological support for the preparation of preliminary assessments and validates the assessments prepared for national / central government projects. Sub-national procuring authorities do not have to submit their preliminary assessments to MAPPP, only to the relevant decision-maker (e.g., a local council), but they can if they wish to. For central government projects, the validation of the preliminary assessment by MAPPP is necessary (although not sufficient) for the project to move on into the procurement phase. MAPPP has up to four weeks to produce an opinion on the preliminary assessments; if the opinion is favourable, the report is then forwarded to the Ministry of Budget for approval.

(ii) Procurement phase

Having been approved, the project is then launched into the procurement phase. The procurement phase is conducted by the procuring authority, and MAPPP is not directly involved. Tender notices are published in the Official Journal of the EU (OJEU), and the procurement procedures are regulated according to the provisions set up in the PPP Law. Public authorities can grant a partnership contract via competitive dialogue, restricted procedure (in case of particular urgency) or negotiated procedure (for projects below a certain threshold). Competitive dialogue is the most used procedure in France,

and projects are generally awarded to the offer that is most economically advantageous (EPEC, 2012). The decision to award the contract must be approved by the relevant decision-maker, the one to which the procuring authority reports to, which also approves the contract signature. For national / central government projects, MAPPP provides an opinion on the final terms of the contract to the Minister of Economy and Finance, who approves, together with the Ministry of Budget, the contract signature.

(iii) Implementation and oversight

The responsibility for implementing, managing and overseeing projects rests with procuring authorities. MAPPP might be requested to provide guidance and may collect information regarding project performance to issue recommendations, but it is directly involved in this phase of the projects.

Summary of MAPPP’s involvement in Project Cycle

MAPPP’S INVOLVEMENT IN PROJECT CYCLE	
PROJECT IDENTIFICATION AND PREPARATION PHASE	
DEVELOPMENT OF BUSINESS CASE / PRELIMINARY ASSESSMENT REPORT	<ul style="list-style-type: none"> ▪ MAPPP provides guidelines to support procuring authorities in the development of business case (<i>évaluation préalable</i>) but it is not directly involved in the development of the business case
APPROVAL OF BUSINESS CASE / QUALIFY PROJECTS AS PPPS	<ul style="list-style-type: none"> ▪ For projects developed at central government level, MAPPP has to approve the business case otherwise projects cannot move into the procurement phase
PROVIDE RECOMMENDATIONS TO APPROVAL BODIES	<ul style="list-style-type: none"> ▪ The approval of MAPPP is necessary but not sufficient for projects to move into the procurement phase; projects have also to be approved by the Ministry of Budget, to whom MAPPP provides a recommendation
PROCUREMENT PHASE	
FINAL CONTRACT APPROVAL	<ul style="list-style-type: none"> ▪ For projects developed at central government level, MAPPP provides an opinion on the final terms of the contract to the Minister of Economy and Finance, who approves, together with the Ministry of Budget, the contract signature
IMPLEMENTATION AND OVERSIGHT	
<ul style="list-style-type: none"> ▪ MAPPP might be requested to provide guidance but it is directly involved in the implementation and oversight of projects 	

4.3. Portugal

4.3.1. Overview

In 1986, Portugal became a member of the European Community. Public infrastructure was considered vital for countries’ economy to develop and grow (Chatterjee, Sakoulis & Turnovsky, 2000, p.2), and the infrastructure gap in Portugal at the time was quite significant (Sarmiento & Renneboog, 2014). The Portuguese GDP per capita in purchasing power standards rounded 55% of the EU average, and economic discrepancies were also found in other recent EU member countries such as Spain, Greece and Ireland (Roeger, 1996; Pereira & Gaspar, 1999; Chatterjee, Sakoulis & Turnovsky, 2000; Pereira &

Andraz, 2005)¹⁸. In 1989 the EU launched its first multi-annual Community Structural Fund Program (1989-1993), a cohesion policy program that aimed at reducing social and economic discrepancies across EU member countries (Pereira & Gaspar, 1999; Manzella & Mendez, 2009)¹⁹. The Program comprised transfers from the EU budget, and funds put forth by domestic governments and domestic private sector entities of lagging countries, to invest in drivers of long-term growth, such as infrastructure, human capital and R&D (Roeger, 1996; Pereira & Gaspar, 1999; Pereira & Andraz, 2005). The allocation of funds across targeted areas varied from place to place, as decided by the EU together with the recipient country in the country's Community Support Framework (Pereira & Gaspar, 1999; Pereira & Andraz, 2005)²⁰. In the first Community Support Framework for Portugal (1989-1993) 46,6% of the funds were allocated to infrastructure development (Pereira & Gaspar, 1999).

The Portuguese Government gained resources to tackle the country's infrastructure gap that was withholding economic growth, and infrastructure development became a priority (Cruz & Marques, 2011; Araújo & Silvestre, 2014).

The Portuguese government adopted different strategies to develop infrastructure in different sectors (Sarmiento & Renneboog, 2014). Sectors such as water, water waste, energy and ports were financially viable and thus projects were passed to private-sector entities under concession arrangements that involved no public funds, only payments by end-users (Sarmiento & Renneboog, 2014). The Community Structural Funds were mostly invested via traditional public procurement in health, education, public urban transportation and railway projects (Sarmiento & Renneboog, 2014). PPPs in Portugal were introduced in 1993 (Sarmiento, 2010; Sarmiento & Reis, 2013).

The first PPP was launched in Portugal in 1993, to develop the second Tagus bridge project (Sarmiento, 2010; Sarmiento & Reis, 2013). Signed in 1995, the PPP method was selected for purposes of effectiveness, to ensure that the bridge was constructed and open to traffic by 1998²¹. Yet the Portuguese PPP Program, as a package, only started to gain form later, when the government decided to employ PPPs to develop the country's highway network (Marques & Silva, 2008; Sarmiento & Renneboog, 2014). Let's see.

The Portuguese highway network follows a National Road Plan (NRP), which dates back to 1945 and that was reviewed and amended first in 1985, and then in 1998 (Fernandes & Viegas, 2005; IMTT, 2010). The network is divided into principal itinerary (i.e., main connections) and complementary itinerary (i.e., secondary connections) (Cruz & Marques, 2013). By 1996, more than half of the country's principal and complementary itineraries had yet to be built (Fernandes & Viegas, 2005).

¹⁸ In 1988 the Portuguese GDP per capita in purchasing power standards was only 53,8% of the EU average, the Greek was 54,4%, and the Irish was 64,6% (Pereira & Gaspar, 1999; Chatterjee, Sakoulis & Turnovsky, 2000).

¹⁹ The EC (later EU) cohesion policies, which date back to late 1960s-early 1970s, underwent a significant reform in 1988 given rise to the first multi-annual Community Structural Fund Program in 1989 (Manzella & Mendez, 2009). Ever since, Community Structural Fund Programs have been launched for the periods of: 1989-1993, 1994-1999, 2000-2006, 2007-2013, 2014-2020 (<http://ec.europa.eu/>).

²⁰ The Community Support Framework is simply a document approved by the EU that contains the general guidelines of the investment strategy for each country receiving Community Structural Funds (ec.europa.eu)

²¹ According to Lusoponte (<http://www.lusoponte.pt/>) the project was completed in a very tight schedule in order to ensure an easy access to Expo'98.

Up until late 1960s, roads in Portugal were constructed using traditional public procurement methods. However, by late 1960s early 1970s, the government, facing funding limitations, decided to involve private sector entities in the development of road infrastructure to meet road infrastructure requirements. In 1972, concessions for projects in the road sector were awarded to BRISA, a private sector company that was nationalized after the 1974 revolution, and privatized again in the 1990s (Marques & Silva, 2008; IMTT, 2010; Cruz & Marques, 2011; Cruz & Marques, 2013). After the 1974 revolution, “Portugal went through a political stabilization period” (Cruz & Marques, 2011, p. 4024), and infrastructure was put on hold up until the launching of the first Community Structural Fund Program, which allowed “Portugal to have access to large capital funds” (Cruz & Marques, 2011, p. 4024). Between 1990 and 1995 significant road extensions were constructed using EU Funds (IMTT, 2010). But by 1996, the EU Funds available for road infrastructure were insufficient to develop the necessary extensions and the government, having already significant amounts of external debt, opted thus for using PPPs to accelerate the completion of the country’s highway network (Fernandes & Viegas, 2005; Sarmiento & Renneboog, 2014; www.tradingeconomics.com).

In 1997 the Decree-Laws 9/97 and 267/97 established the terms for using real and shadow toll PPPs in some road projects (Marques & Silva, 2008). Real toll PPPs are user-pay PPPs, while shadow toll PPPs, known in Portugal as SCUTs (*Sem Custos Para o Utilizador*), do not involve payments by end-users. Such regulations were gradually adjusted to include additional projects²² (Marques & Silva, 2008). Between 1999 and 2002, 10 PPP contracts in the road sector were signed in Portugal (Cruz & Marques, 2011; Araújo & Silvestre, 2014; Sarmiento & Renneboog, 2014). Of these, 3 were real toll PPPs and 7 were shadow toll PPPs (Araújo & Silvestre, 2014; Sarmiento & Renneboog, 2014). Under the shadow-toll PPPs, private partners received payments from the Government on the basis of service quality and traffic volume (Fernandes & Viegas, 2005; Sarmiento, 2010)²³. Yet, the payment structure was designed in such a manner that private partners would never incur losses (Araújo & Silvestre, 2014)²⁴. The official justification for this was that shadow toll PPPs were used to develop itineraries in poorer regions; it was argued that increased efforts from taxpayers were needed to develop the country’s hinterland (Fernandes & Viegas, 2005; Sarmiento, 2010). However, only 55% of the roads built under shadow-toll PPPs were located in such regions (Sarmiento, 2010).

Some say that early PPP contracts in Portugal were effective in developing new infrastructure quickly and with improved quality (Monteiro, 2005, p. 73; Sarmiento & Renneboog, 2014, p. 4)²⁵. However, early PPPs were not very efficient

²² The Decree-Law 9/97 established the terms for using real toll PPPs (called concessions in toll regime with charges to end-users) in two road projects from the principal itinerary network, the Norte and the Oeste highways (Decree-Law 9/97).

The Decree-Law 267/97 established the terms for using shadow toll PPPs (called concessions in toll regime without charges to end-users, i.e. SCUTs) in six projects: Costa de Prata, Beira Interior, Algarve, Grande Porto, Interior Norte, Beiras Litoral-Alta (Decree-Law 267/97).

Later, in 1999, the Decree-Law 119-B/99 established the terms for using the regime of real-toll PPP in the Litoral Centro project, and for using the regime of shadow toll PPP in the Norte Litoral project (the last of the seven SCUT projects) (Decree-Law 119-B/99).

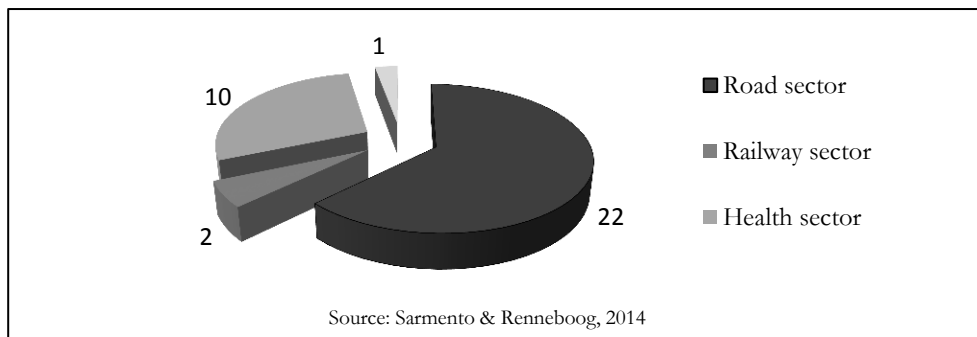
²³ According to Sarmiento (2010) the payment structure of these arrangements was appealing for private partners, as private partners assumed a very low traffic risk.

²⁴ The payments were structured in three bands, with tariff levels declining as traffic levels increased (Fernandes & Viegas 2005, Sarmiento 2010); and the government even committed to compensate private partners if traffic levels fell below the minimum forecasted (Tribunal de Contas, 2012, cited in Araújo & Silvestre, 2014).

²⁵ Araújo & Silvestre (2014) argue that no conclusions can be drawn regarding improvements in quality, because data on this matter only began to be collected in 2008-2009.

(Monteiro, 2005, p. 73; PPIAF, 2007; Sarmiento, 2010; Sarmiento & Reis, 2013; Araújo & Silvestre, 2014). The public sector was eager to bring in private funds into the provision of road infrastructure, and failed to take into consideration the long-term fiscal implications of PPPs and PPPs affordability (Monteiro, 2005). It launched a considerable number of PPP deals in a rather short period of time (Sarmiento, 2010; Cruz & Marques, 2011), and because it lacked appropriate capacities and know-how, it was unable to ensure competitive bidding processes and good management of contractual relationships (Monteiro, 2005). In 2004, the government signed a new isolated real-toll PPP contract for a road project, but no more deals were initiated in the road sector until 2007, when the New Road Sector Management and Financial Model (NRSFMF) was approved. The NRSFMF introduced significant changes in the way road PPP contracts were granted and managed (Cruz & Marques, 2013). It established Estradas de Portugal SA (EP) as a state owned company, which was later that year awarded a 75-year concession for developing and maintaining the country’s road network (Cruz & Marques, 2013). EP became the grantor of new PPP road projects (EPEC, 2014b; Sarmiento & Renneboog, 2014)²⁶. Between 2007 and 2010 EP awarded 10 new PPP contracts (Sarmiento & Renneboog, 2014). The payment mechanisms of the PPP contracts awarded by EP are quite peculiar; the contracts are real toll PPP contracts because the private partners collect toll revenues from end-users, however the toll revenues are handed over to EP and the private partners receive payments based on availability instead (Sarmiento & Renneboog, 2014)²⁷. Such payment mechanism has an underlying strategic purpose; under EU Public Accounting Rules (ESA95), EP has commercial revenues and thus can be excluded from the consolidation perimeter of state budgeting, easing deficit calculations for the government (Sarmiento & Renneboog, 2014). Portugal is one of the European countries that has most heavily used PPPs (AR, 2013; Macário, Couchinho & Ribeiro, 2013; Sarmiento & Renneboog, 2014). Portugal has mostly used PPPs in the road sector to develop the country’s highway network, but PPP Projects were also implemented in the railway, energy, security and health sectors (Sarmiento & Renneboog, 2014). Between 1995 and 2014, a total of 35 PPP projects were signed in Portugal, representing a capital investment of EUR 20 bn; the road sector accounts for about 94% of the total capital invested (Sarmiento & Renneboog, 2014).

Figure 5 - Number of PPP contracts signed in Portugal by sector (1995-2014)

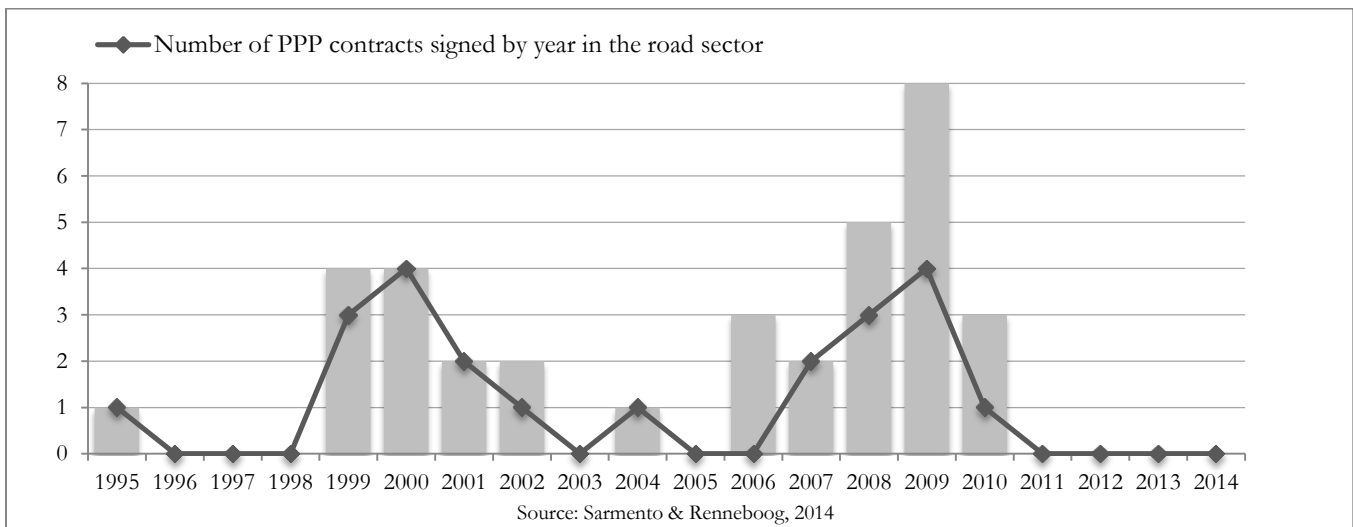


²⁶ Note that EP can adopt either traditional public procurement methods or PPPs (i.e., sub-concessions) for the construction, financing and maintenance of new roads (Cruz & Marques, 2013).

²⁷ According to Sarmiento & Renneboog (2014, p. 9), such payment mechanism has an underlying strategic purpose; under EU Public Accounting Rules (ESA95), EP has commercial revenues and thus can be excluded from the consolidation perimeter of the state budget, easing the deficit calculations of the Portuguese government.

PPP activity in Portugal has been slowed down by the country’s fiscal reform (EPEC, 2014b), which started in 2011 when Portugal requested an international bailout from Troika (EU, ECB and IMF). The bailout required Portugal to implement a detailed Economic Adjustment Program, which included specific prescriptions for PPPs. These prescriptions, defined in the memorandum of understanding (MoU) under fiscal structural measures, addressed reporting and monitoring issues, and required improvements in the legal and institutional frameworks for PPPs, as well as renegotiations of PPP contracts whenever feasible. The objective was to eliminate the prevailing incentives for using PPPs as a way to finance public infrastructure off-balance sheet and to reduce the financial obligations of the Government with PPPs (Sarmiento & Reis, 2013; Sarmiento & Renneboog, 2014).

Figure 6 - Number of PPP deals signed in Portugal by year (1995-2014)



To reduce the financial obligations of the Government with PPPs the government initiated multiple contract renegotiations (EPEC, 2014b). In the road sector, real tolls were introduced in former shadow-toll PPP contracts, the ones signed between 1999 and 2002 (SCUTs); the private partners now collect tolls on behalf of the government, and receive an availability payment irrespective of the traffic volume (EPEC, 2011; Cruz & Marques, 2013). The net financial flows with PPP projects in the road sector decreased when this change was introduced in 2011 (DGTF, 2011, cited in Macário, Couchinho & Ribeiro, 2013), yet the public expenditures with PPP projects in the road sector are still expected to increase until 2021, peaking from 2014 onwards (Araújo & Silvestre, 2014; EPEC, 2014b).

PPP projects in Portugal are currently “under intense public scrutiny” (Cruz & Marques, 2013, p. 4030). Questions about the efficiency and VFM of PPPs have been increasingly raised (Monteiro, 2005; Sarmiento, 2010; Sarmiento & Reis, 2013; Sarmiento & Renneboog, 2014), and there is a growing understanding among politics and society at large that Portuguese governments went too far with PPPs in the road sector (Araújo & Silvestre, 2014).

A Parliamentary Investigative Commission set up to investigate the contracting, renegotiation and management of PPP projects in the road and railway sectors in 2012, issued a report in 2013 where it stated that globally PPP projects in the road sector did not accomplished their primary objective: achieve VFM outcomes for the public sector (AR, 2013). The reasons purported for this were the following:

- Motivation for using PPPs as a means to achieve reductions in public debt
- Nonexistence or deficient use of ex ante VFM appraisals (PSC)²⁸
- Non-affordability of projects
- Lack of comprehensive studies that justify the launching of PPPs
- Lack of appropriate capacities in the public sector
- Difficulties in attracting and keeping staff with PPP expertise
- Lack of transparency

These problems were identified in previous studies (Fernandes & Viegas, 2005; Monteiro, 2005; PPIAF, 2007; Marques & Silva, 2008; Cruz & Marques, 2011). When setting up PPPs, Portuguese governments were more concerned with public deficits than with VFM outcomes, and now that Portugal is in the midst of a severe fiscal crisis (Sarmiento & Reis, 2013, p. 4), the increase in the level of payments due by the Government is posing public sector authorities significant challenges (EPEC, 2014b). Reforms in the legal and institutional framework for PPPs in Portugal have been introduced to address these problems and avoid future comebacks (EPEC, 2014b).

4.3.2. Legal framework

PPPs were introduced in Portugal before any legal framework for PPPs had been defined (Tribunal de Contas, 2008). Initially, to implement PPP projects in face of this legal void, Portuguese Governments adopted the legal regime of concessions, introducing specific negotiation provisions (Tribunal de Contas, 2008). The Decree-Laws 9/97 and 267/97 we mentioned in the previous section exemplify such practice.

The first legislation referring to PPPs in Portugal was the 2001 Budgetary Framework Law 91/2001 (PPIAF, 2007; EPEC, 2014b). The law included two specific provisions for PPPs: one requiring a VFM assessment, and another establishing a maximum limit for public commitments with PPPs (Budgetary Framework Law 91/2001).

The first PPP Framework Law was approved only in 2003, by the Decree-Law 86/2003. The Law outlined the general rules applicable to PPPs and to the State intervention in the definition, conception, preparation, bid, adjudication, modification, auditing and global monitoring of PPPs across sectors. It also assigned a central role in the PPP process to the Ministry of Finance (EPEC, 2014b). The Law defined a PPP as a contract or bundle of contracts through which private entities, i.e. private partners, compel themselves in the long term, and in face of a public partner, to ensure the development of an activity intended to satisfy a collective need; the responsibility for the investment, financing, exploitation and risks associated with that must be taken, entirely or in part, by the private partner, who receives a recoupment in exchange (Decree-Law 86/2003).

This PPP Framework Law was reviewed and amended in 2006, by the Decree-Law 141/2006; the objective was to reinforce and improve the cooperation between Ministry of Finance and line ministries, and to establish mechanisms for better controlling the use of public resources in PPPs (Decree-Law no. 141/2006; Sarmiento & Renneboog, 2014, p. 7).

²⁸ According to Sarmiento (2010, p. 18) “until 2006 Portugal had never run a public sector comparator when setting up public-private partnerships”. Moreover, Sarmiento & Renneboog (2014, p. 7) reveal that in the PPP road projects signed between 2007 and 2009, the PSC was not performed “due to a political decision”.

Amended again in 2012, by the Decree-Law 111/2012, which updated and replaced the Decree-Law 141/2006 (EPEC, 2014b, p.16). This last amendment, currently in force, aimed at strengthening the role of the Ministry of Finance in the PPP process, improve the monitoring of public commitments and risks in PPPs, and make the PPP process more transparent (Decree-Law 111/2012; Sarmiento & Renneboog, 2014). Most of the changes introduced by this last amended followed Troika’s prescriptions (Sarmiento & Renneboog, 2014). This last amendment (hereinafter “2012 PPP Framework Law”) established also UTAP.

In addition to the Budgetary Framework Law 91/2001 and the 2012 PPP Framework Law, the Public Contracts Code 18/2008, as amended by Decree-Law 278/2009, regulates the procurement process of PPP contracts, specifying “limited tender by pre-qualification, the negotiated procedure and competitive dialogue” (EPEC, 2014b, p. 18). Sector specific legal frameworks, such as the road and health legal frameworks, approved, respectively, by the Decree-Laws 380/2007 and 185/2002, also regulate sector specific PPPs (Sarmiento & Renneboog, 2014).

LEGAL FRAMEWORK - PORTUGAL	
PPP LAW	<ul style="list-style-type: none"> ▪ Decree-Law 86/2003, as amended by Decree-Laws 141/2006 and 111/2012
OTHER LAWS APPLICABLE TO PPPS	<ul style="list-style-type: none"> ▪ Budgetary Framework Law ▪ Public Contracts Code ▪ Sector Specific Legal Frameworks

4.3.3. Institutional Framework

Besides the Ministry of Finance and the Line Ministers, UTAP and the dedicated PPP teams within sponsoring Line Ministries, other public entities with important responsibilities in the PPP process include: sector specific regulators²⁹, the General Inspectorate of Finance , and the State Auditing Body (“*Tribunal de Contas*”). GASEP, a cabinet under the General Directorate of Treasury and Finance (DGTF) which falls under the auspices of the Ministry of Finance, that was created in 2007 to oversee PPPs in terms of fiscal / budgetary sustainability (www.dgtf.pt; Sarmiento & Renneboog, 2014). Finally, in the road sector, EP was awarded in 2007 a 75-year concession for developing and maintaining the country’s road network (Cruz & Marques, 2013)³⁰; note that it is not clear whether or not the projects granted and managed by EP are “subject to the same procedures as PPPs developed by other public authorities” (EPEC, 2014b).

4.3.4. UTAP PPP Unit

Background

As mentioned above, the Decree-Law 86/2003 assigned a central role in the PPP process to the Ministry of Finance. In 2003 Parpública SA was officially mandated, by Despacho Normativo no. 35/2003, to help the Ministry of Finance enforce

²⁹ In the health sector, the Health Regulatory Entity (ERS) was created in 2003. In the transport sector, the first regulatory body to be established was the InIR in 2007, specific for roads; InIR was abolished and replaced in 2012 by the Mobility and Transport Institute (IMT), an administrative entity located under the Ministry of Economy responsible for regulating the entire transport sector (www.imtt.pt; EPEC, 2014b).

³⁰ In March 2014, the Portuguese government announced the merger of EP with REFER, a public company that manages the nation’s rail infrastructure; a commission to prepare the merger has been recently established and the operation is expected to be completed before the end of 2014 (economico.sapo.pt)

this new law. A PPP Unit within Parpública SA was then created to formalize and streamline PPP processes across sectors (Monteiro, 2007, p.2; Farrugia, Reynolds & Orr, 2008, p.13). Funded in its entirety by the Ministry of Finance (Farrugia, Reynolds & Orr, 2008, p.13), the unit's formal role was to provide PPP technical support to the Ministry of Finance in the preparation phase and oversight / follow up of projects (Despacho Normativo no. 35/2003). In practice, however, the unit was also involved in the procurement, negotiation and deal closing of contracts, offering technical support to other line ministers under request (PPIAF, 2007, p.82; Farrugia, Reynolds & Orr, 2008, p.14).

Line Ministers from sectors in which PPP projects are implemented were assigned an active role in the PPP project cycle as well (Sarmiento & Renneboog, 2014). To help Line Ministers play their part in the PPP project cycle, PPP teams were also established in their Ministries, e.g., in the Ministries of Transport, Health and Environment (EPEC, 2014b, p.4).

PPP capacities at national level started thus to develop, although in a rather disperse and uncoordinated manner (EPEC, 2014b; Sarmiento & Renneboog, 2014). The dispersion of resources across the public sector, and the lack of coordination in the management of the national PPP program lead to the creation, in 2012, of a new, dedicated PPP unit, named Unidade Técnica de Acompanhamento de Projetos (UTAP), which took over Parpública's PPP Unit functions and also the functions of the other Ministerial PPP teams (EPEC, 2014b; Sarmiento & Renneboog, 2014).

Rationale for establishing UTAP

Established by 2012 PPP Framework Law, UTAP was created to address particular weaknesses in the Portuguese institutional context. There was no single entity that had as formal mission to participate in the preparation, development, execution and global oversight of PPPs, and which provided, at the same time, the necessary technical support to the Government and to other public sector entities. Indeed, the technical support was too disperse and scattered along the public sector. There were several bodies involved in the PPP process, and there was an overall lack of coordination in the management of the national PPP program. The government relied constantly on external consultants, and all these factors aggravated public sector expenditures with PPPs. UTAP was thus created to help correct these failures.

UTAP Mission

UTAP has as formal mission to participate in the preparation, development, execution and global oversight of PPPs, and to provide the necessary PPP technical support to the Government and other public sector entities.

UTAP General Structure

GENERAL STRUCTURE OF DEDICATED PPP UNIT - UTAP	
NAME	▪ UTAP
JURISDICTION	▪ Central / federal government
OPERATIONAL SINCE	▪ 2012
LOCATION WITHIN GOVERNMENT	▪ Within and reporting to the Ministry of Finance
OWNERSHIP	▪ Public
FUNDING	▪ Government budget
PROJECT COVERAGE	▪ National and sub-national projects with total payments above 10 m and investment cost above 25 m
SECTORS	▪ All sectors
MANAGEMENT & STAFF	▪ 1 & 8 full time ³¹

UTAP General Functions

GENERAL FUNCTIONS OF DEDICATED PPP UNITS (OECD, 2010) PERFORMED BY UTAP	
POLICY GUIDANCE (e.g., advise governments on, and oversee the strategic direction of national PPP policy)	✗
GREEN LIGHTING PROJECTS (e.g., decide whether or not a project should move forward)	✗
TECHNICAL SUPPORT TO GOVERNMENT & OTHER PUBLIC-SECTOR ENTITIES (e.g., in project identification, evaluation, procurement and management)	✓
CAPACITY BUILDING (e.g., training public sector officials)	✓
PROMOTION OF PPPS (e.g., nationally and/or internationally)	✓
ADDITIONAL FUNCTIONS PERFORMED BY UTAP	
<ul style="list-style-type: none"> ▪ Research centre / knowledge dissemination ▪ Development of standard documentation ▪ Global oversight of PPP Program on economic and financial matters ▪ Oversight of public expenditures with PPPs 	

4.3.5. Overview of project cycle

(i) Identification and preparation phase

When a public sector entity wishes to implement a new PPP project, it first submits a proposal to the sectorial Line Ministry. If the sectorial Line Ministry approves the project, it notifies the Ministry of Finance and requests the establishment of a project team. Upon request from the Ministry of Finance, the project team is appointed by UTAP. UTAP Coordinator can be designated by the Ministry of Finance to chair the project team, which will comprise five to seven members and will include employees from the sectorial Line Ministry and from UTAP.

³¹ UTAP can have a team of up to 12 full time staff; the current staff size reflects the low level of deals (EPEC, 2014, p. 10).

The project team carries out a comprehensive technical appraisal of the project (the business case), including a VFM analysis, an assessment of the risks, and an evaluation of the project's affordability. It then submits a report with the main findings, together with a recommendation decision both to the sectorial Line Ministry and the Ministry of Finance, which must jointly decide in a period of 30 days whether or not to move on with the project.

(ii) Procurement phase

Having been approved, the project is then launched into the procurement phase (Decree-Law 111/2012). A jury committee composed by three or five members is established to oversee the procurement procedures. The jury committee approves the tender documentation, manages the tendering process and develops the PPP contract. The president of the jury committee must work at UTAP, and the Coordinator of the PPP unit can appoint at least one additional member for the working group. The procurement process is regulated by the Public Contracts Code (Decree-Law 111/2012), and starts with the opening of the tendering procedure. Tender notices are published in the Official Journal of the EU (OJEU), and the procurement procedures are regulated according to the provisions set up the Public Contracts Code, which allows "limited tender by pre-qualification, (...) negotiated procedure and competitive dialogue" (EPEC, 2014b, p. 18). "Only two bidders are allowed to present their best and final offer" (Sarmento & Renneboog, 2014, p.8). The jury committee prepares a comprehensive report of the two proposals, including a quantitative evaluation of the public sector payment commitments, the affordability of each proposal, and the impact that potential risks could have on the public sector. This report is submitted both to the relevant Line Ministry and the Ministry of Finance, which must approve, adjudicate and co-sign the PPP contract in a period of 30 days.

All PPP contracts are subject to approval by the Portuguese State Auditing Body at financial close. "Without this approval, the public sector payment obligations will, as a rule, not be enforceable" (EPEC, 2014b, p. 13). The State Auditing Body approves the PPP contract after verifying that all procedures have been carried out properly and that right state budget allocations were made for the project.

(iii) Implementation and oversight

If necessary, the relevant Line Ministry together with the Ministry of Finance can set up a team to oversee the initial implementation of the PPP contract. This team will be appointed by UTAP under request. However, the procuring authority is generally the entity responsible for managing and overseeing the PPP contract. To ensure contracts are appropriately managed, procuring authorities often hire a contract manager (EPEC, 2014b). UTAP also oversees PPP projects, but focuses on economic and financial matters mostly.

PPP contracts may be also subject to renegotiations. When that is the case, a negotiation committee is generally appointed by UTAP upon request from Ministry of Finance. The committee might be headed by UTAP. All renegotiations must be approved by the relevant Line Ministry and Ministry of Finance, and the State Auditing Body can also be requested to validate the renegotiation.

Summary of UTAP's involvement in Project Cycle

UTAP INVOLVEMENT IN PROJECT CYCLE	
PROJECT IDENTIFICATION AND PREPARATION PHASE	
APPOINT PROJECT TEAM	<ul style="list-style-type: none"> ▪ Upon request from the Ministry of Finance, the project team is appointed by UTAP. UTAP Coordinator can be designated by the Ministry of Finance as the leader of the project team
SIT ON PROJECT TEAM	<ul style="list-style-type: none"> ▪ The project team includes employees from UTAP
DEVELOPMENT OF BUSINESS CASE	<ul style="list-style-type: none"> ▪ UTAP is involved in the development of the business case via project team
PROVIDE RECOMMENDATIONS TO APPROVAL BODIES	<ul style="list-style-type: none"> ▪ UTAP provides recommendations to approval bodies via project team
PROCUREMENT PHASE	
SIT ON JURY COMMITTEE	<ul style="list-style-type: none"> ▪ The president of the jury committee must work at UTAP, and the Coordinator of the PPP unit can appoint at least one additional member for the working group
APPROVE TENDER DOCUMENTATION	<ul style="list-style-type: none"> ▪ Via jury committee
BID EVALUATION	<ul style="list-style-type: none"> ▪ Via jury committee
DEVELOPMENT OF FINAL CONTRACT	<ul style="list-style-type: none"> ▪ Via jury committee
IMPLEMENTATION AND OVERSIGHT	
OVERSIGHT	<ul style="list-style-type: none"> ▪ UTAP oversees PPP projects, focusing on economic and financial matters mostly
APPOINT NEGOTIATION COMMITTEE	<ul style="list-style-type: none"> ▪ Upon request from the Ministry of Finance; the committee might be headed by UTAP
PARTICIPATE IN CONTRACT NEGOTIATION	<ul style="list-style-type: none"> ▪ Via negotiation committee

4.4. Main Findings

➤ Rationale for using PPPs

UK, France and Portugal are three leading nations in the use of PPPs for infrastructure development (Kappeler & Nemoz, 2010). In the late 20th century, the infrastructure gap in these countries was significant (Aziz, 2007), and so there were the funding limitations and fiscal constraints (Hood, 1995; Quiggin, 2004). Governments introduced and used PPPs initially to “facilitate capital spending off balance sheet” (Coulson, 2008, p. 484). With time, however, VFM concerns started to arise, and nowadays the VFM rationale dominates these countries PPP policies (Hodge & Greve, 2007; OECD, 2008).

➤ PPP program

In terms of size, composition and development stage, PPP programs vary significantly from place to place. In the UK, where PPPs were firstly introduced, PPPs or PFIs are used across a wider range of sectors, with the majority of projects being in education, health, transport and defence. In France, PPPs or PCs were introduced to develop complex or emergency projects, and until the onset of the financial crisis, in 2008, the projects pursued via PPP at central government level were in sectors not suited for concession arrangements, i.e. non-commercial sectors (Jeny-Cazavan & Richard, 2012).

In Portugal, on the other hand, PPPs were mostly used in the road sector, to develop the country's highway network (Sarmiento & Renneboog, 2014).

➤ **Effects of the financial crisis on the PPP program**

The 2008 financial crisis affected significantly, but differently, the PPP programs in each country. In the UK, the cost of long term capital increased significantly, threatening VFM outcomes of PFI deals, and the conservative government that came to power in 2010 started a reform, currently underway, renaming the PFI policy as PF2 and establishing a new approach towards infrastructure (Hellowell, 2013). The deal flow decreased (EPEC, 2012) however the UK continued to be the largest PPP market in terms of value and number of deals (EPEC, 2013). In France, on the contrary, the crisis led to an increase in the number of partnership contracts (Jeny-Cazavan & Richard, 2012). PCs were launched in sectors previously considered commercial, such as the road sector, and because the credit crunch and illiquidity of financial markets made it more difficult for projects to be financed with high levels of leverage, the public sector began to re-internalize a larger share of risks by providing financial guarantees for the debt of the project companies (Jeny-Cazavan & Richard, 2012). This raised significant questions and criticisms (Saint, 2012). In Portugal, PPP activity was put on hold when the country requested an international bailout from Troika (EU, ECB and IMF) in 2011; since then, significant reforms have been introduced in the country's legal and institutional frameworks for PPPs to (i) eliminate the prevailing incentives for using these arrangements as a way to finance public infrastructure off-balance sheet, and (ii) reduce the financial obligations of the Government with PPPs (Sarmiento & Reis, 2013; Sarmiento & Renneboog, 2014).

➤ **VFM**

Overall, in terms of VFM, our research suggests that Portugal and the UK have fail to achieve VFM outcomes through PPPs, and that France has an over-optimistic view of the VFM that PC contracts produce (studies suggest that PCs in France have been performing quite well, however not many studies have been performed (Saussier & Tran, 2012) and the financial crisis has changed significantly the French PC market (Buso, Marty & Tran, 2013)).

All three countries introduced PPPs “without much reflection on the need to reorganize” (Teisman & Klijn, 2002, p. 197) “roles, responsibilities and capacities in the public sector” (OECE, 2013B), and only after some learning and experience did this started to change (Rachwalski & Ross, 2010, p. 277). Gradually, governments began to “reorganize policy-making processes and to adjust existing institutional structures” (Teisman & Klijn, 2002, p. 197).

➤ **Legal Framework**

No specific PPP law was enacted in the UK, where the legal system is based on common law; however, in Portugal and France, where the legal systems are based on civil law, specific PPP laws were approved and amended over the years to regulate such partnerships³².

➤ **Institutional Framework**

³² “In civil-law systems, by contrast, codes and statutes are designed to cover all eventualities and judges have a more limited role of applying the law to the case in hand” (Economist, 2013)

In all countries, the Ministry of Finance and Line Ministries have a key role in the PPP process, and several other entities have been established to help the public sector deal effectively with PPPs.

➤ **Dedicated PPP units**

The dedicated PPP units that exist in Portugal and UK were preceded by similar organizations and were basically established to address shortcomings in governments' ability to manage effectively and in a coordinated manner the PPP program. In France, where MAPPP was not preceded by any other organization, the goal was to bring in appropriate expertise to help support and regulate PCs at central government level (Farrugia, Reynolds & Orr, 2008).

Regarding the missions of the dedicated PPP units under study, the most striking difference is found in IUK. IUK was established to coordinate effectively the nation's infrastructure strategy or plan as a whole instead of focusing exclusively on PFIs (EPEC, 2014b); at the time IUK was established (2009), the PFI procedure was under intense public scrutiny and the objective was to make sure that PFIs were not seen as the only solution for infrastructure delivery (Hellowell, 2013).

In terms of general structure, all the dedicated PPP units are established at central government level, within the Ministry of Finance / Treasury, and reporting to the Ministry of Finance / Treasury. They are publicly owned and publicly funded (from government budget), they cover projects from all sectors, and vary slightly in terms of management & staff size. The functions of dedicated PPP units vary, e.g. IUK is involved in policy guidance while MAPPP and UTAP are not; UTAP promotes capacity building and training activities while IUK and MAPPP (as least directly) does not.

➤ **Role of dedicated PPP units in project cycle**

Regarding the functions of the dedicated PPP units, all three dedicated PPP units promote the use of PPPs, and provide technical support to governments and other public sector entities during the project cycle, however they provide this support in different manners. IUK and MAPPP publish guidance to support procuring authorities, while UTAP is directly involved in the project cycle via project team. Also in the project cycle, MAPPP and IUK green light projects, while UTAP does not.

5. Fit with OECD Recommendations

In 2012 the OECD launched its *Principles for the Public Governance of Public-Private Partnerships* (2012b). Specifically, regarding dedicated PPP units, the OECD gave seven important recommendations. In the next pages we assess how the dedicated PPP units of the countries studied in Section 4 comply with such recommendations. The units can either *comply*, *partially comply* or *not comply* with the recommendations.

1 “Institutional shortcomings should be addressed taking the country’s needs and current institutional context into account”		
Country	Compliance	Justification
England	<i>Complies</i>	<ul style="list-style-type: none"> ▪ IUK was set up in 2009 to coordinate effectively the nation’s infrastructure strategy as a whole instead of focusing exclusively on PFIs (EPEC, 2014a). It was created precisely to address institutional shortcomings and promote a new approach for infrastructure delivery.
France	<i>Complies</i>	<ul style="list-style-type: none"> ▪ Partnership contracts (PCs) were introduced in France in 2004 to develop complex or emergency projects. The legislation that established PCs required that an expertise body, created by decree, should help public authorities in the preliminary needs assessment of PCs. Given the complexity of PCs, and the importance of the preliminary needs assessment, at the time the Ministry of Finance defended that a new expertise body should be established to support and regulate PCs at central government level, and therefore MAPPP was created (Farrugia, Reynolds & Orr, 2008).
Portugal	<i>Complies</i>	<ul style="list-style-type: none"> ▪ UTAP was created to manage the national PPP program in a coordinated manner. PPP expertise in the Portuguese public sectors was too disperse and there was no coordination in the management of the PPP programs (EPEC, 2014b; Sarmiento & Renneboog, 2014)
2 “The PPP Unit should enable authorities (e.g. line ministries) to create, manage and evaluate a PPP efficiently and effectively”		
Country	Compliance	Justification
England	<i>Complies</i>	<ul style="list-style-type: none"> ▪ The PPP policy team within IUK provides guidelines that enable procuring authorities to create, manage and evaluate a PFIs / PPPs efficiently and effectively
France	<i>Complies</i>	<ul style="list-style-type: none"> ▪ MAPPP publishes guidance that enables authorities to create, manage and evaluate a PFIs / PPPs efficiently and effectively
Portugal	<i>Partially complies</i>	<ul style="list-style-type: none"> ▪ UTAP is actively involved in the project cycle via project team; the project team comprises members from the sponsoring ministry as well, and although procuring authorities are responsible for managing the projects, it seems that, UTAP, instead of enabling authorities to create and evaluate PPPs efficiently and effectively takes on the role of creating and evaluating PPPs on its own

3 “The PPP Unit has the requisite in-depth financial, legal, economic and project management skills. This capacity should be used to assess the specific PPP compared to the traditional public investment route”		
Country	Compliance	Justification
England	<i>Partially complies</i>	<ul style="list-style-type: none"> ▪ IUK seems to have the requisite in-depth financial, legal, economic and project management skills. ▪ However, IUK does not use such skills to assess directly the specific PPP / PFI against the traditional public investment route; that responsibility lies with procuring authorities. ▪ To support procuring authorities, the PPP policy team within IUK produces policy documents and guidance on VFM appraisals. In addition, IUK also supports HM Treasury teams and the Major Projects Authority (MPA) in the approval process of individual projects. ▪ Although IUK does not use its capacities directly to assess the specific PPP / PFI against the traditional public investment route, it partially enables other public authorities to do so.
France	<i>Partially complies</i>	<ul style="list-style-type: none"> ▪ “MAPPP staff have a wide range of legal, financial, technical and public administration expertise” (EPEC, 2012, p. 23). ▪ However, like IUK, MAPPP does not use such expertise to assess the specific PPP / PFI against the traditional public investment route, that responsibility in France also lies within procuring authorities. ▪ But because MAPPP provides “the methodology for assessing the value for money of projects” (EPEC, 2012, p. 20), MAPP enables authorities to assess the specific PPP / PFI against the traditional public investment route, and therefore partially complies with the recommendation.
Portugal	<i>Complies</i>	<ul style="list-style-type: none"> ▪ UTAP’s team has “a background in law, project finance, economics and public sector administration” (EPEC, 2014b, p. 10), and UTAP assesses the specific PPP compared to the traditional public investment route via project team.
4 “The PPP Unit should support the authority in its endeavor to secure value for money both in the procurement and in the implementation phases”		
Country	Compliance	Justification
England	<i>Complies</i>	<ul style="list-style-type: none"> ▪ IUK is often directly involved in the procurement and implementation phase of projects. Also, the PPP policy team produced policy documents and guidance to support authorities in their endeavor to secure VFM in the procurement and implementation phase.
France	<i>Partially complies</i>	<ul style="list-style-type: none"> ▪ MAPPP can be requested to provide guidance but it is directly involved in the procurement and implementation of projects
Portugal	<i>Complies</i>	<ul style="list-style-type: none"> ▪ UTAP is actively involved in the procurement process, via jury committee, and can also be involved in the implementation phase of projects under request.

5 “The Unit should make sure that procedural steps (gateways) are followed throughout”		
Country	Compliance	Justification
England	<i>Partially complies</i>	<ul style="list-style-type: none"> Such responsibility lies within the MPA and HM Treasury spending teams. Because IUK works closely with MPA and HM Treasury spending teams, IUK can be seen as partially complying with such recommendation.
France	<i>Complies</i>	<ul style="list-style-type: none"> MAPPP coordinates the PPP process for projects developed at central / government level, and to that extent MAPPP ensures that the procedural steps are followed through.
Portugal	<i>Complies</i>	<ul style="list-style-type: none"> UTAP ensures, in cooperation with the sponsoring Line Ministries and procuring authorities, the development of the PPP process.
6 “The role of the PPP Unit is clear and without conflicts of interest”		
Country	Compliance	Justification
England	<i>Complies</i>	<ul style="list-style-type: none"> There are many entities involved in the PFI / PPP process, however the responsibilities of each are well defined and without conflicts of interest
France	<i>Complies</i>	<ul style="list-style-type: none"> MAPPP’s role seems to be clear and “no impression of conflicts of interest” seems to exist (Gacon, 2008).
Portugal	<i>Partially complies</i>	<ul style="list-style-type: none"> The role of UTAP is well defined, however it is not clear whether or not the projects “developed or managed by EP (...) [are] subject to the same procedures as PPPs developed by other public authorities” (EPEC, 2014b, p.14)
7 “The PPP Unit should not decide on whether the PPP should move forward”		
Country	Compliance	Justification
England	<i>Does not comply</i>	<ul style="list-style-type: none"> IUK it is involved in the approval processes and provides support to HM Treasury spending teams and MPA
France	<i>Does not comply</i>	<ul style="list-style-type: none"> MAPPP acts as a project gate-keeper in the identification / preparation phase, and MAPPP’s validation is required for the project to move on into the procurement phase
Portugal	<i>Complies</i>	<ul style="list-style-type: none"> In Portugal, such decisions are made by the Ministry of Finance together with the sponsoring Line Ministry

6. Comparative analysis and conclusions

All three dedicated PPP units seem to comply, either partially or entirely, with most of the recommendations put forth by the OECD. They were set up taking into consideration the country’s institutional shortcomings; they help create, manage and evaluate PPPs effectively and efficiently; they enable the assessment of specific PPPs compared to traditional public procurement; they support authorities in securing VFM in the procurement and implementation phase, they help ensure that the procedural steps are followed through and they have clear mandates without conflicts of interest (OECD, 2012). While IUK and MAPP act as gatekeepers, UTAP does not.

Answering now to our final research question – *how and why does the VFM of PPP Programs differ in countries that have (or not) dedicated PPP units set up in accordance with the recommendations put forth by the OECD under Principle 2.3* –, it seems that the VFM of PPP programs differs indeed across the three countries under study, however, on the basis of our research, the differences in the VFM of PPP programs cannot be related to the way in which dedicated PPP units operate, nor to the level of compliance of such units with OECD recommendations. All three dedicated PPP units have been successful in pursuing their remits, and some of them have even been able to reduce the financial commitments of the public sector with PPPs (Babo & Baltazar, 2014). But PPPs are complex arrangements, and changes in the VFM of large-scale PPP programs cannot be achieved from night to day. Moreover, though dedicated PPP units can be an effective instrument of public governance (Jooste & Scott, 2012; Regan, 2012), dedicated PPP units are nevertheless insufficient to steward public interests (PPIAF, 2007). There are other public entities with responsibilities and greater decision-making power in the PPP process, and when governments use “PPPs for the wrong reasons” – and PPPs were used in the UK, France and Portugal for the wrong reasons –, PPPs are likely to fail and to result in overall welfare losses (PPIAF, 2007, p. 23).

Comparison of Legal Frameworks			
Country	UK	France	Portugal
PPP Law	<ul style="list-style-type: none"> ▪ No specific PPP Law 	<ul style="list-style-type: none"> ▪ Ordinance 2004-559, as amended by Laws 2008-735 and 2009-179 	<ul style="list-style-type: none"> ▪ Decree-Law 86/2003, as amended by Decree-Laws 141/2006 and 111/2012
Other Laws applicable to PPPs	<ul style="list-style-type: none"> ▪ Public Contracts Regulations ▪ Utilities Contracts Regulation 	<ul style="list-style-type: none"> ▪ Government Order of December 16th 2010 	<ul style="list-style-type: none"> ▪ Budgetary Framework Law ▪ Public Contracts Code ▪ Sector Specific Legal Frameworks
Comparison of Institutional Frameworks			
Country	UK	France	Portugal
Key Public Stakeholders	<ul style="list-style-type: none"> ▪ Line Ministries / sponsoring departments ▪ Private Finance Units within Line Ministries / sponsoring departments ▪ HM Treasury ▪ IUK ▪ Efficiency Reform Group (ERG) ▪ Major Projects Authority (MPA) ▪ National Audit Office (NAO) ▪ Office for National Statistics (ONS) ▪ Office for Budget Responsibility (OBR) 	<ul style="list-style-type: none"> ▪ Line Ministries ▪ PPP Units within Line Ministries ▪ Ministry of Economy and Finance ▪ MAPPP ▪ Ministry of Budget ▪ Institut de la Gestion Déléguée (IGD) ▪ CEF-O-PPP ▪ École des PPP 	<ul style="list-style-type: none"> ▪ Line Ministries ▪ PPP Units within Line Ministries ▪ Ministry of Finance ▪ UTAP ▪ General Directorate of Treasury and Finance ▪ State Auditing Body ▪ Estradas de Portugal (EP)

The purpose of this thesis was to understand whether or not dedicated PPP units set up in accordance with OECD recommendations constituted good public governance mechanisms. As mentioned before, many have argued that there is no “one-size-fits-all” deal in what concerns dedicated PPP units (PPIAF, 2007; Istrate & Puentes, 2011; Jooste, Levitt & Scott, 2011; Regan, 2012). Yet, our research has not been conclusive. It seems that dedicated PPP units set up in accordance with OECD recommendations have the potential to constitute good public governance mechanisms. However, as governance mechanisms, they appear to be insufficient to steward public interests. Indeed, “PPP Units are not a miracle cure” (PPIAF 2007, p. 71), therefore if PPPs are to deliver VFM outcomes to the public sector, additional public governance mechanisms are required.

7. Limitations and recommendations for future research

This study has some limitations; the most significant ones resulted from lack of information. It is important to understand that PPPs are currently under intense public scrutiny, and that public authorities are not properly inclined to share information about the VFM of PPP programs. Due to “commercial confidentiality” (Edwards & Shaoul, 2003, p.339), the data on VFM publicly available is extremely scarce, and it’s not just the data on VFM, the information on dedicated PPP units is limited too. Our case selection and VFM analysis was significantly constrained by the information available in previous studies and reports. The Head of Public-Private Partnerships and Capital Budgeting at OECD made several efforts to schedule interviews with PPP officials from the countries under study, but despite all efforts no interview took place.

Also, the *Principles for the Public Governance of Public-Private Partnerships* (OECD, 2012) developed by the OECD do not provide exclusively recommendations for dedicated PPP units. The principles are quite comprehensive and cover much more aspects of the public governance system than just dedicated PPP units (OECD, 2011). We did not studied how countries complied with all OECD principles, and we couldn’t even if we wanted to due to time constraints. Good public governance of PPPs is an emergent topic, and we still have much to learn about how to make PPP arrangements work (Rachwalski & Ross, 2010). We believe that future research projects can use and extend the present study and help better determine whether or not compliance with all OECD principles and recommendations can in fact ensure effective stewardship of public interests.

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