

Aspects on the Promotion of Public-Private Partnership, in Romania, after 1990

Florina Popa

Romanian Academy, Institute of National Economy

florinapopa289@gmail.com

Abstract

The introduction and expansion of market forces in the public sector field, as a result of substantial changes initiated by governments, as early as the first decades of the last century, has taken place based on some political mechanisms and institutional structures, whereat the Public-Private Partnership is included, too.

In Romania, in the period after 1990, PPP has manifested itself in the context of the structural changes in the economy, in the period of transition, in the effort to find answer to the social and economic problems characteristic of the period.

The paper shows the challenges in the Romanian economy generated by the transition from a model based on the command-control principle, to a competitive economy system, supported by the principle of freedom of action, as well as the applied strategies oriented towards the economic reform in the context of this process.

There are shown the measures of upholding and promoting the cooperation between the public and the private sector through the actions of strengthening the legislative framework, respective, developing legal regulations and the establishment of institutional structures, with attributions in the implementation of the public-private partnership.

Key words: transition, centralized economy, market economy, public-private partnership, legal regulation.

J.E.L. classification: P10; P11, P16, P20, P21, L32, L33.

1. Introduction

The knowledge of the historical aspect of the partner forms practiced in Romania and their evolution in the last century is a topic of interest, relevant to the role played in promoting the development of the economy.

At the national level, various theorists have shown their interest in the field, making their contribution to highlighting the forms of association between the public and the private sector; these have manifested differently, over time, depending on the economic, social and political context in which they evolved.

This material is referenced to the manifestation of the Public-Private Partnership in Romania, after 1990, in the context of the structural changes in the economy, in the period of transition, of the restructuring of the relations between the governmental and the non-governmental sector, as an echo and response to the social and economic problems characteristic of the period.

There are presented the measures of upholding and promoting the cooperation between the public and the private sector through the actions of strengthening the legislative framework, respective, the elaboration of legal regulations and the establishment of institutional structure with attributions in the implementation of the public-private partnership.

The end of the study presents the conclusions resulting from going over the literature in the field.

For the achievement of the present paper, the methodology of the domestic specialty literature and of the relevant legislation research in the field was used.

2. Theoretical background: Some elements, concerning transition and measures for restructuring the economy

The transition of society from the socialist model, based on the command-control principle of economic and social activities, to a system with competitive economy supported by the principle of freedom of action, in which autonomy is controlled by the democracy of the collectivity, is a normal process of social evolution, oriented towards progress and prosperity. Human collectivity needs to make efforts of adaptation and social costs may be lower if the process follows a normal course of economic and social activity.

The transition from the socialism, based on a centralized economy, to the competitive, market economy is complex in nature, in relation to the transition from the totalitarian state, to the rule of law, from an obsolete behavior pattern, to a new, educational and cultural one, oriented towards international economic integration.

The challenge is the ability to make economic judicious decisions, to ensure the correlation of resources and their use, accordant with social needs, so that the market freedom to be in relation to social harmony (Popescu and Ciucur, 1995, p. 12).

The finality of the transition must lead to the achievement of competitive, well-developed and competitive market economy able to join to the world economy (Popescu and Ciucur, 1995, p. 12, 13).

The process of systemic-post-communist change, covered in democratic ways presents difficulties and requires a long time that engage significant economic and social costs and a change of mentalities and people.

Removing the political system has had consequences on the economic system, also changing, and on the population subjected to some severe attempts. The need for relocation of resources was hampered by the lack of an adequate institutional system needed to coordinate a complex process of change. (Prelipceanu, 2006, p.13).

The change covered by the Romanian society, beginning with the last decade of the last century produced itself with difficulties, under the influence of internal economic and social conditions and of the international trade. After 1989, the Romanian economy faced a structural crisis, a result of the imbalances accumulated in the period previous the transition, of the extensive development that has not always been done, on the criteria of efficiency, competitiveness, of the effects generated by the change in ownership reports, of the impact of the international conjuncture on the internal processes. The effects have been negative felt on functioning of the basic sectors of production (industry, agriculture, infrastructure, services) of the correlation between the consumption of factors of production and outputs (Popescu and Ciucur, 1995, p. 32-37, p. 151).

The applied strategies aimed at the economic reform were accompanied by unsatisfactory elements, too, significantly to economy, such as: inflation, unemployment, budgetary and trade deficit, social inequities (Popescu and Ciucur, 1995, p. 11).

The experience of the transition countries did not identify a middle way between the centralized system and market economy system of capitalist type, so that the manifestation of the economic imbalances meant an incentive for the governments in the Central and Eastern European countries, towards the improvement of the reforms (Iovițu, p. 32) .

In Romania, some of the elements initiated within the reform, were remarked by (Iovițu, p. 215, 216, 230):

- The abolition of the old economic structures, without preparing the implementation of other efficient forms for society, in prospective, which led to chaos and big losses in the Romanian economy: the diminution of the industrial and agricultural production, resulting in the loss of a large number of external markets, the penetration on the Romanian market, of a large volume of foreign products; the rise and increase of unemployment which became a perpetual phenomenon, the devaluation of the national fixed capital, the decrease of the national currency rate and the accelerated increase in the prices of consumer goods and services, the decrease of the labor cost, the consequence being a pronounced impoverishment of the population. The measures in the transition period were accompanied by inflationary processes manifested by controlled or evolving inflation, as well as by a financial deadlock whose effects ranged in vicious circle, namely: postponing the payment

to suppliers who, in their turn, as buyers, delayed the performance of other payments. The phenomenon could lead to companies' default and to their call for support and sustain by the authorities.

- A coherent program needed to design a modern economy, effectively, from an economic, social and ecological perspective did not materialize. The general nature of the goals targeted at and the macroeconomic measures adopted did not correspond to the needs of microeconomics, the consequence of which was the slowdown in national production, the increase in imports of expensive similar products paid through the call for foreign loans.
- The excessive liberalization had serious consequences in various fields: industry, agriculture, tourism, scientific research, culture, health, education, but also for the population benefiting from these activities.
- A rapid decentralization of administrative decisions and structures took place in the 1990-1991 period;
- There have been changes in the mentality and behavior of a part of the population;
- In order to support economic reforms, Romania called for the World Bank's support and benefited from loan programs, such as: the ASAL project intended for the rehabilitation of the agricultural sector and the FESAL project aimed to the recovery of the financial system and enterprises.

For Romania, the transition to a market economy meant a correct perception of how a free market economy should operate, so that, the fall in economic activity could be stopped and the conditions needed to relaunch the production capacities of the economic system should be designed. (Popescu and Ciucur, 1995, p. 181).

The restructuring of the Romanian economy consisted in integrating the specific risks determined by internal factors and also, by the risk of the world economy implications on the Romanian economy (Popescu and Ciucur D, 1995, p. 198, 199, 200).

The solution chosen and considered efficient for the restructuring of the economy was the privatization, the condition of the success of action being the consistency and the pursuit of the economic and social efficiency and the fulfillment of the final objective of achieving a competitive economy, this being a way of incentive of the capital investments (Popescu and Ciucur, 1995, p. 193; Prelipceanu, 2006, p.14). In this respect, one of the measures considered useful for the need of restructuring of the economy was the Foreign Direct Investment that could favor the process of relocation of resources, of market economy behaviors instauration, of getting competitiveness on the external market (Prelipceanu, 2006, p.14).

In the case of Romania, the flow of FDI (Foreign Direct Investment) is closely correlated with the privatization process. The progress of the privatization in Romania should be traced from the perspective of the main theories and methods used at that time (Prelipceanu, 2006, p.14).

The privatization in our country has developed, gradually, since 1991, through the adoption of the Privatization Law, according to which the National Agency of Privatization (NAP) was empowered to privatize trading companies. (Prelipceanu, 2006, p.89).

The MEBO method, the main form of privatization used until 1995, has allowed the privatization of many companies, with some remarks: the former managers were the main shareholders, the prices of the shares were symbolic, the debts held by some companies were not acquitted, in other cases they increased. This form meant an advantage for the employees of the enterprises, who had become shareholders (the goal being the salary increase, job security), but it was considered as a brake in the way of potential acquisitions of some outsiders, causing the discouragement of external investors (Prelipceanu, 2006, p. 89).

The year 1995 meant an acceleration of the privatization program by the transition to *mass privatization*, consequence of the pressures of international bodies such as the World Bank and the International Monetary Fund, which conditioned the granting of new loans, by speeding up this process. The method of mass privatization consisted in distributing of privatization coupons to the population, free of charge, in nominative form, with a determined nominal value. The coupons were to be exchanged for a percentage of 30% of the share capital of the state-owned trading companies after the ownership certificates had been distributed, in the first form. Finally, the designated percentage, of 30% of the share capital of state-owned trading companies has reached less than 1%. (Prelipceanu, 2006, p. 90, 91).

The method of mass privatization has not reached its expected purpose, resulting in a slowdown in the process of privatization and difficulties in implementing the other programs of privatization.

The direct sale was another form practiced in the 1996-1997 period. In the ECE countries it has been difficult to apply because of the low level of savings and the low level of business environment attractiveness, for foreign investors (Preliceanu, 2006, p. 92).

The auction sale has been practiced since the beginning of 1998 years; by this method, priority was given to the highest price offered, which was the best offer, too (Preliceanu, 2006, p. 93).

The privatization through the capital market, the enterprises privatized by this method, being called "rebut", was considered as the only method suitable for their privatization (Negrescu, 2001, quoted by Preliceanu, 2006, p. 93)

Up to 1998, 72 enterprises were liquidated, by the end of 2000 year, 572 enterprises in the FPS portfolio were taken into liquidation, elements generated by the delay of the adoption of the bankruptcy law, Law no. 64/1995 (Legea 64/1995), but also, by avoiding the increase of the unemployment rate and the emergence of new deprivations that the population would have, heavily, endured (Preliceanu, 2006, p. 93, 94 quotes Legea 64/1995 and OCDE, 1993, apud Labaronne, 1997).

Overall, the privatization of small enterprises has been achieved successfully, with the privatization of large enterprises being achieved the most difficult; in 1995, from the total of privatized enterprises, the small and medium enterprises represented 3/4.

Creation of some **joint-venture** type enterprises, a form supported by foreign investors; in 1995, these were over 50.000 (Preliceanu, 2006, p. 94).

Table no. 1 Trading companies in the FPS and FPP portfolio privatized on 1 October 1995

The size of enterprises	Number	%	The share capital in billions of lei	%	The number of employees in tens of thousands	%
Small	976	73,4	0,2	11,7	175	33,2
Medium	308	23,1	1,01	59,0	217	41,2
Large	45	3,5	0,5	29,3	134	25,6
Total	1329	100	1,71	100	526	100

Source: Labaronne (1997), quoted by Preliceanu R., 2006, p. 95

It is noted that the largest share of privatizations is held by small enterprises (73.4%) or with the share capital of only 11.7% in total.

According to a study achieved by Earle and Talegdy, 2001 (apud Negrescu, 2001) (Preliceanu, 2006, p. 95, quotes Earle și Talegdy, 2001, apud Negrescu, 2001) it was shown that the privatization contributed, positively, to the labour dynamics and productivity.

In Romania, almost all the methods of privatization were carried out, the results being relatively modest. The privatization process in Romania had a negative impact on the flow of FDI and, implicitly, on the economy, as a whole (Preliceanu, 2006, p. 96).

During the first period of transition, between the 1991-1996 years, there were reached large discrepancies in regard to the volume of Foreign Direct Investment, between Romania and the countries that were to join the EU, in 2004 (Preliceanu., 2006, p. 99). During this period, the level of Foreign Direct Investment per capita, in Romania, amounted to \$ 9 (Preliceanu, 2006, p. 100).

It followed a 1997-2002 period, in which the FDI flow reached a significant increase in comparison with the previous period as well as with the group of the 10 countries that joined in 2004, although, an enough large discrepancy remained between Romania and these countries (Preliceanu, 2006, p. 100).

As early as 1993, the Council of Europe stipulation for ECE countries, aspiring to become a member of the EU, has been their ability to assume their obligations that they are incumbent on to meet the economic and political conditions of accession (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

The criteria formulated have remained, over time, elements of substance in the accession talks, mainly referring to: the stability of the institutional system, guarantor of democracy; orderliness of lawfulness, of human rights, protection of minorities; competitive functional market economy; the assumption of follow-up accession obligations, including adherence to political, economic and monetary objectives (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

In connection with EU accession Romania's request, the EU Commission's analysis (Agenda 2000) reported, in 1997, the failings of the authorities in the reform process, due to the non-implementation of the reform programs, but only partially, and the non-achievement of the anticipated progress; the instability of the economic environment could not stimulate the savings and investments (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

For Romania, joining the European Union meant the implementation of measures provided for in the Partnership for Accession, which, in essence, emphasized the need for the structural transformation of the economy interconnected with a rational fiscal policy, among the requirements, being: accelerated privatization and restructuring of large state-owned enterprises, restructuring of the financial system, inclusively, the privatization of state-owned banks, strengthening the financial control means, aligning the fiscal system with the community model, continuing the restructuring of some industrial sectors, respectively, food, steel, other heavy industries and mining (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

In agriculture, too, within the restructuring measures, also, the privatization of companies with majority state-owned capital was provided for (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

The Romanian economy has undergone several stages of restructuring which have conditioned its becoming as a member country of the EU, the policies of adjustment of the economic structures, continuing after the moment of the accession (2007), too, in the efforts of increase the competitiveness and the opportunities of access to the external market (Tita M., <http://capriro.tripod.com/econ/econ09.htm>).

3. Public-Private Partnership, a favorable solution to the challenges of the economy

The introduction and expansion of market forces in the public sector field, as a result of substantial changes initiated by governments, as early as the first decades of the last century, has taken place on the basis of some political mechanisms and institutional structures, whereat the Public-Private Partnership is included, too.

Developed both at European and international level, in the period of the last fifty years, the Public-Private Partnership is as an advantageous solution for the implementation of some projects of major importance in the economy of a country, the cooperation of the two sectors being profitable to both sides: investors, public authorities (Singurel and Coman, 2017).

The perspectives for the realization of cooperation between public authorities and the business environment, towards the development of Public-Private Partnership projects are due to the challenges in the economy: the infrastructure deficit, lean budgetary resources. In this way, the jointly use of the available resources of the central, local administration and of the private economic agents, based on partnerships, constitute itself as a real necessity and chance in stimulating the regional economy development.

For the government, the achievement of the Public-Private Partnership implies assuming some roles wherewith to guarantee and ensure favorable conditions for the manifestation of these processes. A number of elements contribute to the success of Public-Private Partnership projects (Mina-Raiu, 2015, p. 61, 62 quotes Consiliul Național pentru Parteneriat Public-Privat, SUA):

- *The political element* - involves ensuring by government, the rigorous legislative and institutional framework that form a support for project implementation and an incentive for investors.
- *The public sector supervision* of private sector performance.
- Determination of objectives, responsibilities, how to resolve litigations, aspects that can be outlined in a *plan of the projected work*.

- The existence of *income streams* throughout the whole span of the project. Their source may come from taxes, subsidies or the resources of the private partner, which he must recover during the operation of the contract.
- *The rigorous selection of the partner*, taking into account both the price offer and its competence and performance in the field associated with the project.

Alongside the two partners (public and private), other actors are involved in the partnership, too: banks, financial institutions (domestic, international), insurance companies, consultants, law firms. In this context, the partnership is both as an infrastructure project - object of the contract, and as a stakeholder network, playing an important role in negotiating the conditions of the two parties. The management of the stakeholders is determinant in ensuring the success of the partnership (Mina-Raiu, 2015, p. 67).

4. Initiatives for Promoting Public-Private Partnership in Romania, through measures aimed at strengthening the legislative and institutional framework

After 1990, in Romania, the manifestation of the Public-Private Partnership took place in the context of the structural changes in the economy in the period of transition, of the restructuring of the relations between the governmental and the non-governmental sector, as an echo and response to the social and economic problems characteristic of the period. Since the early years of the last decade of the last century, privatizations targeted at different forms of concession have been initiated and subsequently, developed (Mina-Raiu, 2015, p. 87).

The promotion of cooperation between the public and the private sector was supported by actions of strengthening of the *legislative framework*, respectively, legal regulations were developed and institutional structures were created. Following-up the Sustainable Development Strategy (1999) and Economic Development Strategy on medium term (2000), partnership structures or institutionalized structures emerged, with role of coordination and promotion of this form of association, an example being the Tripartite Commission and the Economic and Social Council (Mina-Raiu, 2015, p.87 quotes IPP, 2004:7).

The first legislative initiatives concerning the Public-Private Partnership, were taken in 2002.

O.G. no.16/2002 on the Public-Private Partnership contracts and H.G. no. 621/2002 concerning the methodological norms for its implementation, are the first regulations issued for the Public-Private Partnership; by this legal framework there were specified the situations in which partnerships can be found, "projection, financing, construction, exploitation, maintenance and transfer" (Mina-Raiu, 2015, p.88 quotes Săraru, 2009:361), of the asset whereby the provision of the public service is achieved.

O.U.G. no. 34/2006 on assigning of public procurement contracts, of public works concession contracts and services concession contracts takes over the provisions of the European Directives 2004/17/CE, 2004/18/CE, 2007/66/CE and the Regulation 1177/2009/CE Through the Ordinance, the concession contracts are considered Public-Private Partnerships; OUG no. 34/2006 repealed the previous regulation - OG no.16/2002 (Mina-Raiu, 2015, p. 88, 89 quotes O.U.G. nr. 34/2006)..

The Decision no.71/24 January 2007 (Hotărârea nr.71/ 24 ianuarie 2007) approves the Norms for the Application of the provisions regarding assigning the public procurement contracts, public works concession contracts and services concession contracts, provided in OUG no. 34/2006 (Mina-Raiu L., 2015, p. 89, quotes H.G. 71/ 24 ianuarie 2007 pentru aprobarea normelor de aplicare a prevederilor referitoare la atribuirea contractelor de concesiune de lucrări publice și a contractelor de concesiune de servicii prevăzute în Ordonanța de Urgență a Guvernului nr. 34/2006).

In 2010, the Law on Public-Private Partnership no. 178/2010, published in M.O. Part I no. 676/5 October 2010 (Legea Parteneriatului public-privat nr.178/2010, publicată în M.O. Partea I nr. 676/5 octombrie 2010) was enacted (Mina-Raiu, 2015, p. 89 quotes Legea Parteneriatului public-privat nr. 178/2010). By law, it is regulated that the partnership has as public goal "the projection, financing, construction, rehabilitation, modernization, operation, maintenance, development and transfer of a public good or service" (Mina-Raiu, 2015, p. 90 quotes Art. 1 in Legea nr. 178/2010).

The Ordinance no.39/2011 for the modification and completion of the Public-Private Partnership Law no. 178/2010 published in M.O. P. I, no. 284/21 aprilie 2011 (Ordonanța nr.39/2011 pentru modificarea și completarea Legii parteneriatului public-privat nr. 178/2010 published in M.Of. P. I, nr. 284/21aprilie 2011) amended the Law 178/2010 (Mina-Raiu, 2015, p. 90 quotes Puie, 2011: 10-11).

From the same period of the years 2001- 2010, a number of other regulations, also, refer to cooperation between the public authorities and the business environment for the achievement of some public utility works, local services or projects (Mina-Raiu, 2015, p. 90 quotes Puie, 2011: 26-35):

- *The Law on local public administration no. 215/2001 (Legea administrației publice locale nr. 215/2001)* establishes the competence of local councils and of county councils to make decisions on "cooperation or association with Romanian or foreign legal persons, in order to finance and jointly carry out some actions, works, services or projects of local public interest".
- *Decision 246/2006 on the approval of the National Strategy concerning Accelerating the Development of Community Services of Public Utilities* item 6.3.6 (*Hotărârea 246/2006 pentru aprobarea Strategiei naționale privind accelerarea dezvoltării serviciilor comunitare de utilități publice* pct. 6.3.6) refers to the private sector's participation under the terms provided by the public-private partnership legislation „, to streamline service operation, for a better quality/cost ratio, to expand the operating area, to ensure the increase in quality and continuity of community services of public utilities, to transfer a part of risks and guarantees of operating and financing of private sector and to cover the co-financing needs within the European programs (grants)”.
- *OG 57/2002 concerning the scientific research and technological development (OG. 57/2002 privind cercetarea științifică și dezvoltarea tehnologică)* refers to the partnership in different forms of association: art. 10 (1) "the research-development activity in the public or private field may be carried out within some associative forms, too, under the conditions provided by the law".
- *The Law on Community Services of Public Utilities no. 51/2006 (Legea serviciilor comunitare de utilități publice nr. 51/2006)* correlated with the Norms of Implementation of the Law 178/2010 (Normele de aplicare a Legii 178/2010), refers to the management of the community public services and to the Public-Private Partnership contract.

The institutional framework created for the public-private partnership, stipulated by the law (OUG 34/2006) includes structures and authorities with attributions for the promotion and coordination of the public-private partnership.

The Central Unit for the Co-ordination of Public-Private Partnership Activities (UCCPPP) was created on the basis of HG no. 208/2005 on the Organization and Functioning of the Ministry of Public Finance and the National Agency for Tax Administration (Mina-Raiu, 2015, p. 92 quotes HG 208/2005). It is important for the development of the government policy and strategy as well as for supporting local administration authorities, in promoting and implementing the Public-Private Partnership. Its tasks are related to the areas of evaluation, consultancy and expert assistance verification for public and private actors, who intend to engage in Public-Private Partnership projects.

The Export Council - an institutional Public-Private Partnership that relates to the National Strategy of Export and has attributions in promoting the development of some partnerships for activities of export promotion (Mina-Raiu, 2015, p. 93 quotes Consiliul de Export).

Other institutional structures with responsibility in the field of Public-Private Partnership can be named: The National Authority for Regulation and Monitoring the Public Procurement (ANRMAP) (Autoritatea Națională pentru Reglementarea și Monitorizarea Achizițiilor Publice (ANRMAP)); Unit for Coordination and Verification of Public Procurement (UCVAP) (Unitatea pentru Coordonarea și Verificarea Achizițiilor Publice (UCVAP)); The National Council for Settlement of Litigations (CNSC) (Consiliul Național de Soluționare a Contestațiilor (CNSC)); The Competition Council (Consiliul Concurenței) (Mina-Raiu, 2015, p. 93).

The amendments to the legislation during the last decade have been made in the intention of creating a legislative environment which to encourage the development of these activities with a major impact on the Romanian economy.

The last regulation given by OUG no.39/2018 (OUG nr. 39/2018) on the public-private partnership (MO no. 427/18.05.2018) aims at removing some elements that could hinder the promotion of projects, referring to the partial financing of the works and the way of guaranteeing them, reported to the public partner (Van de Waart, 2018).

5. Conclusions

In Romania, the introduction and materialization of the concept of Public-Private Partnership has been made gradually, both through the creation and efforts of Parliament and Government, of improvement of the legal framework and through the achievement of projects in some areas of the economy.

After 1990, *the Public-Private Partnership manifested, itself, within the actions of restructuring of the economy, by achieving investments in various fields, concessions to private foreign investors but also domestic and privatizations (transfer of property from the public sector to the private one).* The procedure consisted in the sale of shares managed by FPS and the investor's capital contribution. The privatization of state assets (factories, plants etc.) for which expenditure of maintenance were supported from the budget, generated, different forms of partnerships and concessions, in economy (Mina-Raiu, 2015, p. 87). The transfer of public capital to the private one led, as a rule, to the private partner getting the majority stake, thus, taking over the control on the activity of the respective firm. As regards the concessions that concern constructions, operation and long-term maintenance of some state assets, the regulations (O.U.G. 34/2006) do not provide for express financing by the private partner (Mina-Raiu, 2015, p. 95 quotes UCCPPP 2008d: 29-32).

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