

Annex 1: P3DP Y5Q1 Performance Monitoring Report



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Kyiv School of Economics P3DP Monitoring Report Y5Q1

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Public Private Partnership Development Program - P3DP
42- 44 Shovkovychna Street, Office 11-D
Kyiv 01601 Ukraine
Telephone/Fax: +38 044 234 3525
www.ppp-ukraine.org

P3DP Performance Monitoring Report Y5Q1 (October-December 2014)

The Kyiv Economics Institute prepared this report to assist the PPP project development team in evaluation of its performance, identification of the possible delays and risks in the implementation of the Program objectives.

During Y5Q1, P3DP managers implemented practically all planned activities. They took very active part in meeting and discussions of PPP-enhancing legislation (Objective 1), in further development and promotion of pilot projects (Objectives 3 and 4) and sharing the PPP project experience (Objectives 2 and 3).

In Year 4 it was decided to concentrate more on Objective 1, therefore, managers of Objective 4 activities are concentrating on five pilot projects that are close to the final stage. They are also disseminating the experience of these projects so that other municipalities could also employ PPP to improve public services provision.

The rest of this report is structured as follows. For each of the four objectives of the Program, activities foreseen by this objective for the entire Year 4 (Y4) and their implementation are described and then the relevant performance indicators, their targets and actual values are presented. For the ease of perception, activities that were fully and timely implemented are marked with **green**, activities that are either delayed or implemented partially marked with **yellow**, and activities that are not implemented are marked with **red**. The report ends with some concluding remarks.

List of abbreviations

AMC – Anti-Monopoly Committee of Ukraine
AmCham – American Chamber of Commerce
ARC – Autonomous Republic of Crimea
CLC – Commercial Law Centre
CMU – Cabinet of Ministers of Ukraine
EEF – Eastern European Foundation
GIZ – Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GOU – Government of Ukraine
IBSER – Institute for Budgetary and Socio-Economic Research
IFC – International Financial Corporation
MEP – Ministry of Environmental Protection of Ukraine
MoEDT – Ministry of Economic Development and Trade
MRDCH – Ministry of Regional Development, Construction and Housing
NCCSR – National Commission of Communal Services Regulation
NCMSR – National Commission on Municipal Services Regulation
NPA – National Project Agency
PIEC - Public-Private Partnerships & Infrastructure Expert Centre
PPP – Public-Private Partnership
P3DP – Public-Private Partnership Development Project
RT – Round Table

SIP – [PPP development] Strategy Implementation Plan
SPA – State Property Agency
SWM – Solid Waste Management
TA – Technical Assistance
VR – Verkhovna Rada (the Parliament) of Ukraine
WG – Working Group

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Objective 1. Legal Framework Enhancement.

To achieve this Objective, P3DP works closely with Ukrainian officials, representatives of the private sector and international investors to make legal environment in Ukraine more favourable for PPP development.

In Y5Q1, the following activities were planned and performed within this Objective.

Activity 1.1.1 – a year-round monitoring of legal environment. Within this activity, P3DP team continued to issue Weekly Highlights on new developments in PPP legislation and Monthly Legislation Assessment (this also refers to **Activity 1.1.4** – tracking of new developments in tariff regulation).

In addition:

on **2014-10-22**, P3DP provided to the MoEDT Memo on international experience in concession fee calculation methodology.

on **2014-10-28**, P3DP provided Recommendations to the Draft Law “On Single System of Electronic Cooperation” upon the request of E-Governance Working Group within the Ministry of Regional Development;

on **2014-11-18**, comments to the same Draft Law were submitted to AmCham upon their request;

on **2014-11-17**, P3DP (on USAID request) submitted comments to “PPP in E-Procurement” project and the Advisory Note to this project funded by the European Union and implemented by a Consortium led by Crown Agents Ltd;

on **2014-10-13** and **2014-11-27**, P3DP provided recommendations and comments to the Draft Kyiv City Council Resolution On PPP Development Procedure in Kyiv;

on **2014-12-03**, P3DP provided the recommendations to the Draft healthcare reform strategy to the Health Reforms Strategy Advisory Group within the Ministry of Health;

on **2014-12-10**, P3DP provided a short Memo to the MoEDT on the activities regarding the PPP Projects compliance with the legislation requirements;

on **2014-12-19**, P3DP provided recommendations to the MoEDT PPP Reform Plan taking into account the Coalition Agreement and GOU Program of Activities

Draft Law “On Amendments to Some Laws on PPPs” (**Activity 1.1.2**)

on **2014-11-27**, the Draft Law #4237a with a new number 1058 was resubmitted to the new Verkhovna Rada.

On **2014-12-10**, this Draft Law was supported by the Parliamentary Committee on Industrial Policy and recommended for the first reading, and the next day it was included into the Parliamentary agenda.

Activity 1.1.3 foresaw finalization of the draft CMU decrees #384, 232, 639, and 756. During the Y5Q1, all these draft decrees were finalized. For the Draft Decree #232, P3DP provided comments on legal terminology and received feedback from the MRDCH and other GOU agencies.

Under **Activity 1.1.4**, P3DP intends to assist the MoEDT in development, processing and further adopting of the Draft CMU Decrees on amendments to Decrees #279 and #81 during the first three quarters of the Year 5.

On **2014-12-09**, P3DP resubmitted to MoEDT the Concept Paper on amendments to the CMU Decree #81 regarding PPP contracts performance monitoring to initiate the discussion with the newly appointed minister.

The draft decree #279 can be completed and adopted after the parliament adopts the draft law on PPP (activity 1.1.2).

A year-round **Activity 1.2.2** foresees supporting of SWM Tariff Calculation Methodology adoption by the CMU.

Under this activity, P3DP met with representatives of the MRDCH department dealing with SWM (on **2014-10-29**), and later, on **2014-11-06**, P3DP provided the Draft SWM Tariff Calculation Methodology and supporting explanatory documents to the Ministry. Currently these documents are under revision at the Ministry.

On **2014-11-20 – 2014-11-21**, P3DP participated in the Waste Management Conference in Lviv. At the conference, P3DP made a presentation “Enabling PPPs in SWM areas”.

On the **Activity 1.3.1** (a year-round participation in conferences, round tables, workshops and other events) please see Table 1.

All activities implemented under this Objective, in Y5Q1 are performed as planned. Of the performance indicators, POI 1.3 is implemented by 100%, POI 1.5 - by two thirds, POI 1.4 – by a quarter. The targets for performance indicators for this year are likely to be met.

<i>Table 1. P3DP participation in events during Y5Q1 (Activity 1.3.1)</i>			
<i>Date</i>	<i>Event</i>	<i>Participants</i>	<i>Topic&results</i>
2014-10-01	Doing Business ranking WG meeting at the State Regulatory Committee	GOU Agencies, experts	The PPP related issues were highlighted in the framework of Doing Business ranking activities
2014-10-02	Kyiv International Economic Forum	GOU Agencies, Experts, NGOs, Business	P3DP got acquainted with planned economic reforms in PPP and investment areas during the discussion with GOU officials
2014-10-08	Meeting with the Economic Department of the Kyiv City Administration	P3DP, Kyiv City Administration	P3Dp provided comments on Draft of the Kyiv City PPP Policy
2014-10-09	Round Table “Financing of Healthcare System” PIEC, AmCham	GOU Agencies, Experts, NGOs, Business	Financing of Healthcare System through PPP was discussed and it was agreed to establish a Working Group on Healthcare PPPs
2014-10-17	Inaugural meeting for the Working Group on PPP in Healthcare, AmCham	P3DP, Kyiv City Administration, Experts, NGOs, Business	It was agreed to develop the agenda of the Working Group activities in legislation drafting
2014-10-29	Meeting with the representatives of Department dealing with SWM, Ministry of Regional Development	P3DP, SWM department	It was agreed to cooperate in SWM legislation reform area
2014-10-30	The Conference "Energy Performance Contracts - way to the Energy Efficiency"	Regional Branch of F.Ebert Foundation in Ukraine, Ministry of Energy, Agency for Energy Savings, Experts, NGOs, Donors	The approach for further promoting of ESCO in a new Verkhovna Rada discussed

2014-11-07	Round table “PPPs in the sphere of water supply and water distribution: French experience in the context of Ukraine”	MRDCH, MoEDT, Adetef, Experts, Donors, Business	MoEDT expressed the initiative to facilitate PPPs by renewing the Interagency Working Group
2014-11-07	The Chamber COI Event on Coalition Agreement Discussion with Mr. Volodymyr Groysman and Mr. Dmytro Shymkiv, AmChamr	GOU Agencies, Experts, NGOs, Business	P3DP presented proposals to address PPP issues in the Coalition Agreement
2014-11-12	Donors’ Coordination Meeting on E-Governance	GOU Agencies, Experts, NGOs, Donors	P3DP presented proposals to address PPP issues in the e-governance legislation development
2014-11-17	Conference "Healthcare Reform in Ukraine"	GOU Agencies, Experts, NGOs, Business	P3DP presented PPP aspects of healthcare reforms
2014-11-20-21	Waste Management Conference, Lviv	GOU Agencies, Experts, NGOs, Business	P3DP presented legislation development initiatives to facilitate PPPs in the area
2014-11-24	Working meeting at the MoEDT on PPP legislation development	GOU Agencies, Experts, NGOs, Business	It was agreed to support further PPP development through amendments to PPP Laws and WG activities
2014-11-28	PIEC meeting "Reforming the Investment Policy of Ukraine: Application of the Best Turkish PPP Investment Practices"	GOU Agencies, Turkish Embassy, Experts, NGOs, Business	Experience useful for development of PPP projects in Ukraine in priority sectors of economy was discussed
2014-12-05	Strategy of the healthcare system reform in Ukraine for 2015-2025, public discussion	GOU Agencies, Experts, NGOs, Business	P3DP presented proposals and recommendation regarding PPP aspects of reform implementation
2014-12-19	The Round Table regarding ESCO, Reanimation Package of Reforms	Donors, NGOs, Experts, IFIs	It was agreed to support the ESCO drafts in the Parliament
2014-12-22	Meeting of the Working group on energy saving in public buildings in the Parliamentary Committee	GOU Agencies, Experts, NGOs, Business	P3DP commented on the PPP aspects of the legislation development in the area

Performance indicators for Objective 1 are presented in the Table 2.

#	Definition	Y5Q1 actual	Y5 target	% of target implementation
POI 1.1	<i>Achieved in Y3</i>	-	-	-
POI 1.2	# of actions implemented under PPP Strategy Implementation Plan	0	TBD	-
POI 1.3	# of policy reforms/regulations/ administrative procedures drafted and presented for public/ stakeholder consultations to enhance sector governance and/or facilitate private sector participation and competitive markets as a result of USG assistance (F 4.4.1-13)	3*	3	100
POI 1.4	# of P3DP legal reforms (based in part on the GIDE review) that are submitted in final recommendation form to the relevant GOU (state) entity	0	4	0
POI 1.5	Number of policy reforms/regulations/administrative procedures drafted by/with support of P3DP and adopted by public stakeholder to enhance sector governance and/or facilitate private sector participation and competitive markets as a result of USG assistance	2**	3	67
POI 1.6	Number of laws, policies, strategies, plans, agreements or regulations addressing climate change officially proposed/adopted/implemented as a result of USG assistance	0	2	0
* see Table 3				
** (1) Decree of CMU #585 On Amendments to Decree #384 and (2) CMU program				

Quarter	Document (POI 1.3)	Legal reform (POI 1.4)
Y5Q1	Draft Resolution of Verkhovna Rada On Cabinet of Ministers of Ukraine Program of Activities (also POI 1.5)	
Y5Q1	Draft Resolution of the Kyiv City Council on PPP Development Procedure in Kyiv	
Y5Q1	Recommendations to the Draft Law “On Single System of Electronic Cooperation”	

Objective 2. PPP Unit(s) Establishment.

Within this Objective, P3DP assists the development of a national PPP Unit within the MoEDT, which could coordinate PPPs on the national level and promote PPP-friendly policies.

In Y5Q1, the following activities were planned and performed under Objective 2:

Activity 2.1.1 foresees a year-round participation of P3DP team members in Working Groups organized under different GOU bodies. In the Y5Q1, P3DP held the following meetings with the government working groups:

Date	WG name and GOU body	Topic of WG discussion	# of GOU participants (M/F)
2014-11-19	MoEDT, WG on PPP development	Renewing WG activities and membership; necessary changes to legislation regarding PPP development in Ukraine.	6/3
2014-12-03	MRDCH, WG on Communal Utilities Reform development	WG round table on actions related to further cooperation of TA projects in reviewing communal utilities sector and drafting development strategies jointly with the Ministry and relevant governmental organizations	13/5
2014-12-12	National Commission for State Regulation of Communication and Informatization, WG on Information Services Investment Strategies	WG round table regarding actions of the state regulator to attract investment to Ukrainian market of information services	8/2

Under **Activity 2.1.2** (Guide development and actions of Public Private Partnership and Infrastructure Expert Center), P3DP organized four events:

1. **2014-10-10** – a discussion “PPPs in Healthcare sector in Ukraine”. 68 GOU representatives (30M/38F) took part in this event.
2. **2014-11-14** – a discussion “Economic and Investments Opportunities, existing potential of natural resources in Chernihiv region”. 25 GOU representatives (M15/F10) participated in this event.
3. **2014-11-28** - A follow-up round table for study tour participants. Discussion topic - “Reforming of Investment Policy in Ukraine: Application of the best Turkish PPP practices”. As a result of the meeting, an Aide Memoire was prepared. 59 GOU participants (M31/F28) attended this event.

4. **2014-12-17** – a discussion on “Practical experience of involving private partners into heating supply system on PPP basis” – based on Malyn pilot project. 76 GOU representatives (M51/F25) participated in this event. After the event, an Aide Memoire was prepared.

Activity 2.2.1 foresaw conduct of the study tour for GOU and municipalities’ representatives. The study tour was conducted from 2014-09-28 till 2014-10-03, and was included in the Y4Q4 report.

Activity 2.2.2 foresees drafting of PPP Unit institutional development Action Plan. The first draft Action Plan was completed on **2014-12-18**. The Plan is not finalized yet and not submitted to the MoEDT’s PPP Unit due to internal reorganization of the Ministry initiated in December 2014 after the appointment of the new minister.

Activity 2.2.3 foresees that during Year 5 P3DP will support the implementation of the National PPP Development Concept for 2013-2018. During Y5Q1, no activities were initiated in this respect because amendments to CMU Decrees #232 and #639 remain unapproved by the Cabinet of Ministers due to rotation in the Cabinet.

Activities rescheduled for Y5Q1 from the Year 4:

Guidance Note #3 “Dispute Resolution and Municipal Public Private Partnerships in Ukraine” was completed and submitted to MoEDT (see Table 5).

Guidance Note #4 “Financing of PPPs in Ukraine” was expected to be completed in Y5Q1. However, P3DP decided not to prepare it due to impossibility to make a proper financial market research regarding PPP financing opportunities in Ukraine under the current uncertain economic situation.

PPP Training System Development Plan is not prepared because draft plan was not approved by MoEDT due to the Ministry staff changes. Since MoEDT has an extensive reorganization as the 2015 priority, there is no sense in preparing of such a Plan – therefore, P3DP decided not to prepare the Plan and concentrate on other activities.

Neither **Appraisal Methodology**, nor **Practical Guide** were updated due to pending approvals of CMU Decrees #232 and #384, which were delayed because of internal reorganization process at the MoEDT.

Table 4 presents the performance indicators for the Objective 2 for Y5Q1.

#	Definition	Y5Q1 actual	Y5 target	% target implementation
POI 2.1	# of top level participants in familiarization study tours re: PPP Unit(s) implementation and operations	0	0	-
POI 2.2	# of drafted legislative acts/regulations specifying PPP Unit(s) activities	1*	5	20
POI 2.3	# of analytical documents related to PPP transaction design, implementation and monitoring drafted together with the PPP Unit(s)	1*	2	50
POI 2.4	# of desired Operational Polices drafted for the PPP Unit(s)	0	2	0
POI 2.5	# project ideas submitted by public bodies (line ministries/municipalities) to the designated responsible GOU PPP entity (MoEDT/NPA)	0	10	0
DC 2.1	# of stakeholders (lawmakers, public officials) attending consultations, conferences annually re: regulatory operations/implementation of the designated responsible PPP GOU entity and PPP Strategy Implementation Plan or modification	265 M154/ F111	N/A	-

* see Table 5

Documents related to POI 2.2, 2.3 and 2.4 are presented in the Table 4 below:

Submission/ completion date	Name of the document	POI
2014-10-30	Cabinet of Ministers Resolution #585 from October 30, 2014 (Amendments to CMU Decree #384, On Efficiency Analysis and Tender Procedures of Public-Private Partnerships) was approved	2.2
2014-12-03 (submitted)	Guidance Note #3 “Dispute Resolution and Municipal Public Private Partnerships in Ukraine”	2.3

Since Guidance Note #4 will not be written, it is advisable to change target POI 2.3 to 1. Implementation of POI 2.2 and 2.4 depends only on P3DP staff, so the targets for these indicators are likely to be met.

In Y5Q1 no project ideas were submitted to the ministries. However, as the results and experience of the pilot projects become disseminated, the ideas may appear.

Objective 3. Awareness and Capacity-Development.

P3DP conducts capacity development and awareness events to provide representatives of selected pilot municipalities with knowledge and skills needed to identify, launch and manage successful PPP projects, while also inviting representatives of private and NGO organizations to join.

For the Y5Q1, the following activities were planned under this Objective.

Activity 3.1.3 – Development of e-learning course during Y5. The e-learning course was developed and posted on <http://moodle.ppp-ukraine.org/>. It has been tested internally by P3DP staff and will be officially launched by the end of January 2015.

Activity 3.1.4 Train-the-trainers workshop planned for Y5Q1 was conducted on **2014-11-03 – 2014-11-07** (21 people participated).

Activity 3.2.1 - National Seminar on PPPs in Waste Management was held as planned in Lviv, on **2014-11-20 – 2014-11-21** (150 people participated).

Activity 3.2.2. P3DP did not participate in the XIV International Economic Forum (Lviv) due to the emphasis of the 2014 Forum on Ukraine-EU Association and regional development strategy, where organizers did not see a room for PPPs as an instrument for implementation of the strategy.

Activities rescheduled from Y4Q4:

The event on Lviv Parking Project planned for November 2014 was not organized. P3DP developed the Stakeholder Communication Strategy which contains a series of cohesive activities and discussed it with Lviv municipality.

A press event in Malyn planned for November 2014 was not organized. However, the USAID visit on 2014-11-19 generated a number of press articles initiated by the municipality.

Performance indicators for Objective 3 are presented in the Table 6.

#	Definition	Y5Q1 actual	Y5 target	% target implementation
POI 3.1	# of individual events held to promote PPP understanding	2	19	11
POI 3.2	# of persons attending major events held to promote PPP understanding	171 M101/F70 U96/R25/N50	650	26
POI 3.3	# of targeted government trainees completing PPP training sessions during	0	100	0

	the reporting period			
POI 3.4	# of targeted non-government trainees completing PPP training sessions during the reporting period	21 M7/F14 N21	70	30
POI 3.5	# of individuals who received USG-assisted training, including management skills and fiscal management, to strengthen local government and/or decentralization (F - 2.2.3-1)	21 M7/F14	100	21
POI 3.6	# of sub-national government entities receiving USG assistance to improve their performance (F 2.2.3-5)	8	8*	100
DC 3.1	Index of development in capacity of the public sector representatives to prepare and implement PPP projects. Survey based data	-	-	-
DC 3.2	Index of raised awareness about PPPs among key stakeholders. Survey based data	-	-	-
*- only pilot municipalities are included into this indicator. But in SWM conference there were participants from 40 local government units				

All activities except for one planned for this quarter were implemented. Target indicators were fulfilled by 11-30%, except for POI 3.6. Given the Activities in the Workplan, target indicators are likely to be met.

Objective 4. Pilot Project Transactions.

Within this Objective, P3DP helps Municipal governments to implement PPP projects to improve local business climate and attract investments to rehabilitate depreciated assets and create new infrastructure using the PPP model.

As of beginning of the Year 5, P3DP is moving into two main directions:

- 1) implementation of the last set of remaining PPP Pilots and
- 2) recording and disseminating the experience and the lessons learned to share and ensure replication of the PPPs.

P3DP plans to complete 5 PPP Pilots over the course of the Program. Since 2 are already completed, three more remain to be brought to the tendering stage and promoted among the public and other municipalities in 2015. P3DP already held the first public event (2014-12-17, Malyn project) dedicated to replication of the existing experience, and a list of 25 prospective locations for replication is already available. Should such momentum continue, a broad list of PPP projects' owners (local governments representatives) can be target audience of P3DP activity throughout Y5. P3DP expects to prepare numerous PIBs and Concept Notes for these potential new projects during Year 5.

P3DP and USAID Environmental Team conducted monitoring trip to **Malyn municipal heating with biofuel project** during Y5Q1.

Currently the project is in its operational phase – during October-November 2014, private operator installed all the necessary equipment to start supplying heat for the current heating season. To share this experience, P3DP held an event at the PIEC (*Activity 2.1.2*) dedicated to Malyn success story and identified the list of interested municipalities and bidders for replication of the project.

Vinnitsa SWM LFG (landfill gas) treatment and electricity production: at request of the municipality, P3DP re-estimated the financial model to include new currency exchange rate, inflation, costs, solid waste collection and utilization tariffs, projected revenues, and provided the updated model to the city together with recommendations on how to proceed with the project given increased cost. The updated financial model changes the project scope and requires certain political decisions (related to landfill operations) that need to be made by the city in Y5Q2. P3DP will update the Feasibility Study and tender documents in Y5Q2, and the city will be able to launch the tender afterwards.

Zaporizhya Healthcare PPP project had a temporary delay due to engagement of local authorities in assisting refugees and solving security issues (which arose to some events that aimed at resignation of the Mayor and local political instability), therefore, P3DP expects to visit the Municipality in Y5Q2 (February 2015) and to identify possible schedule of political decisions (approval of the PPP Appraisal Opinion, launching of PPP tender).

Ivano-Frankivsk SWM LFG treatment and electricity production: in Y5Q1, P3DP finalized the feasibility study taking into account comments of the municipality. The next stage foresees the decisions of the City Council and Executive committee to approve PPP Appraisal Opinion and to initiate PPP tender procedure (both decisions are expected in Y5Q2 and P3DP is currently working with the city to prepare these steps). In addition, in

Y5Q1 P3DP completed the Environmental review for this project.

Lviv parking management: in Y5Q1, P3DP met with the city representatives and discussed further steps related to market sounding meetings and public outreach campaign. Parties agreed to distribute the Market Sounding Note package among prospective operators (conducted) and start public outreach campaign in 2015 after positive feedback from bidders and identification of due interest in the PPP project. P3DP plans to visit Lviv Municipality in Y5Q2 to update project activities.

Kyiv Education PPP Pilot Project: Education Department of the KCSA officially applied to Finance Department and Podil rayon administration for approval to initiate adoption of the Kyiv city budgetary program which will provide a long-term support to the PPP project and ensure payback of the investment. P3DP is working with the Education Department, Finance Department and Podil rayon state administration to complete the process and proceed with drafting of the program, which is expected during Y5Q2.

The performance indicators for Objective 4 are presented in Table 7.

Table 7. Performance indicators for Objective 4

		Sector	Healthcare		Altern. energy	Education	Solid waste management		Transport			
	POI	Project stage	Zapori-zhzhya	Kyiv sports& recreation	Malyn municip. heating	Kyiv kinder.	Vinnitsya biogas treatment	Ivano-Frank.	Lviv parking	Y5Q1	Y5 plan	% plan impl.
Stage 2	4.4.	Environmental review prepared	Y3Q1	Y4Q3	Y3Q4	Planned	Y3Q4	Y5Q1	Planned	1	1	50
	4.5.	Feasibility study initiated	Y3Q1	Y3Q2	Y3Q3	Planned	Y3Q4	Y4Q2	Y4Q2	0	1	0
	4.6.	Feasibility study completed	Y3Q3	Y3Q3	Y3Q4	Planned	Y4Q1	Y4Q4	Y4Q4	0	1	0
Stage 3	4.8.	Tender package is being drafted	Y5Q1	Y3Q3	Y3Q3	Exp. in Y5	Y4Q2	Exp. in Y5Q2	Exp. in Y5	1	1	20
	4.9.	Tender issued by Municipality	Exp. in Y5Q2	Y3Q3	Y4Q2	Exp. in Y5	Planned	Exp. in Y5	Exp. in Y5	0	2	0
	4.10	PPP contract executed	Exp. in Y5	Y4Q1	Y4Q4	Exp. in Y5	Planned	Exp. in Y5	Exp. in Y5	0	2	0
	4.11	Project under P3DP monitoring		Y4Q4 - 1st monitoring visit	Y5Q1 - 1st monitoring visit					1	3	17
Stage 4	4.12	# of days of USG funded technical assistance in climate change provided to stakeholders								0	2	0
	DC 4.1	# of jobs created			2					2	40	5
	DC 4.2	Investment, \$ equivalent, million		4.5	0.15					4.65	10	46.5

*due to change in legislation procedures (amendments to the CMU Decree #384), Effectiveness report should no longer be submitted to the PPP Unit. Hence, POI 4.7 will be excluded from the report.

POI 4.1-4.3 are excluded too since no projects are currently at the first stage of development.

P3DP constantly works with pilot municipalities on PPP projects development. Taking into account that due to political and economic reasons currently PPP projects are rather low on the priority list of local officials, it is probable that not all five pilot projects on which P3DP team works will reach tendering stage. However, the POI targets are realistic and are likely to be met – except for POI 4.1 and POI 4.3 which are not needed anymore since P3DP will not pursue any new pilot projects, and therefore, will not be included into next reports.

Concluding remarks

During Y5Q1 P3DP managed to fulfill practically all planned activities. In the current economic situation it is hard to make any forecasts but we hope that the new government will stick to its intention to implement reforms and to raise its efficiency, and so will speed up introduction of legislation favorable for PPP development.

Annex 2: Addendum to P3DP Work Plan Year 5

Addendum to P3DP Year 5 Workplan

13 January 2015

In response to the changing political and economic environment in Ukraine, and based on discussions with USAID, the Public-Private Partnership Development Program (P3DP) in Ukraine will introduce new and tailor ongoing technical assistance activities during the remaining months of Year 5 of the Cooperative Agreement #AID-121-A-00-10-00708 in order to further advance three key objectives:

A) Increase Replication Potential by Developing a Pipeline of Viable PPP Concepts - P3DP will actively engage regional and municipal leaders in identifying viable PPP opportunities in alternative energy, solid waste management, health, education, transport, and other key sectors. This will help create a framework for replication of P3DP Pilot PPPs and other PPP initiatives.

B) Reduce Corruption and Improve Public Procurement Practices - In addition to regional and municipal leaders, P3DP will work closely with members of the media, and other stakeholders in order to increase transparency in the creation of PPPs. Applied ethical policies and practices and increased public awareness will contribute to reducing corruption in public procurements and increasing competition.

C) Accelerate PPP Development Processes - Extensive project analysis and numerous government approvals required to launch PPPs currently hinder the pace of their development, or even dissuade consideration of the PPP option. P3DP will advocate legislative changes to localize decision making and budgetary authority and simplify required analysis and reporting in order to reduce or remove these barriers.

The advancement of these objectives will contribute to achieving the P3DP goal of expanding the use of public-private partnerships, with an expanded role of private sector finance and operational expertise, to improve infrastructure and public services. A description and schedule of the planned activities follows:

A) Increase Replication Potential by Developing a Pipeline of Viable PPP Concepts

In order to create a pipeline of viable PPP opportunities based on replication of the pilot PPPs and initiatives in other sectors, P3DP will:

1) Promote PPPs through a series of regional and municipal events

P3DP will engage municipal and business leaders through a series of meetings and events in the eastern and southern areas of Ukraine to promote PPPs and provide models on how viable opportunities can be created. Host cities and private partners will join P3DP in presenting pilot PPPs to audiences of regional and municipal leaders, interested private sector representatives, members of the media and other stakeholders. Case studies based on P3DP PPP pilots will be shared and examples of the bidding and contracting documents made available. Throughout this process, P3DP will work with participants to create a list of most viable PPP opportunities.

Activities will include:

a) *Regional Roundtables* – Municipal representatives from the Eastern and Southern regions of Ukraine will be invited to attend P3DP organized roundtables to be conducted in Kharkiv, Dnipropetrovsk, and Odessa. The goal of the events is to promote PPPs in addressing priority needs of the public.

b) *Leadership Meetings* – P3DP will conduct follow-on meetings with regional and municipal leaders, primarily from the Eastern and Southern areas of Ukraine to assist them in identifying viable PPP opportunities and creating a framework for their development. Based on results of PIEC events previously conducted, it is estimated that P3DP will meet with leaders demonstrating interest and commitment to developing viable PPP opportunities from at least 25 cities – 3 to 4 cities from each oblast.

c) *Media Training Events* – The 5 PPP media trainings currently planned in P3DP partner cities (Kyiv, Vinnytsia, Zaporizhia, Lviv and Ivano-Frankivsk) will be expanded to Kharkiv, Dnipropetrovsk, and Odessa with additional representatives from Eastern and Southern cities of Ukraine being invited. Regional and city leaders will be asked to introduce their planned PPP initiatives, explaining how they plan to engage the private sector in a transparent manner to address public needs.

d) *Leveraging of Other Donor Assistance Activities* – P3DP will coordinate with multiple projects focused on municipal and regional development to ensure maximum impact. Examples include the UNDP supported “Development and Commercialization of Bioenergy Technologies in the Municipal Sector”, the EU funded “Support to Ukraine’s Regional Development Policy”, the Swiss-Ukrainian “Decentralization Support Project”, USAID’s DIALOGUE program, and others.

2) Promote PPP Pilots through the Public-Private Partnership and Infrastructure Expert Center (PIEC)

Host cities and private partners will join P3DP in presenting pilot PPPs to audiences comprised of regional and municipal leaders, interested private sector representatives, members of the media, and other stakeholders. Case studies will be shared and used bidding and contracting documents made available. The events will contribute to the creation of a list of most viable PPP opportunities. While the regional and municipal level events will cover a wide spectrum of sectors, the PIEC events will focus on sectors where the P3DP PPP pilots are being developed in order to promote their replication. The PIEC events will be supported by:

a) *Case Studies and sample PPP Documents* - P3DP is creating a case study of each pilot PPP as a tool that can guide others interested in their replication. Bidding packages and PPP agreements used will also be shared as examples for adaptation. Sectoral briefs are being created to address broader considerations of the relevant sectors.

b) *Municipal Guide* – A simplified “PPP Guide for Municipalities” based on the updated technical manual will be distributed and discussed and the PIEC (and regional) meetings to further enhance capacity of leaders to understand PPPs and identify viable opportunities.

c) *P3DP Learning Tools* – In addition to case studies and sample feasibility studies, financial models, and PPP agreements, P3DP will make other sources available on-line. These include a PPP e-learning course and a series of short videos highlighting the PPP pilots. After P3DP program completion, the training and guidance resources will be made available through the MOEDT’s PPP Unit and Ukrainian higher education institutions such as the Academy of Public

Administration, the Odessa National Economic University, and other training providers that participated in P3DP's "Train the Trainer" program. These organizations are currently offering or planning to introduce PPP courses to provide support to municipal leaders and others interested in developing PPPs.

3) Create Pipeline of Potential PPP Briefs Engagement of regional and municipal leaders, promotion of the PPP pilots, increased cooperation with the media and other stakeholders, and the engagement of the private sector will be used to identify a pipeline of potential PPP projects. In part, these will be generated through the targeted 25 meetings with municipal leaders and regional roundtables. PPP Project Identification Briefs (1 to 4 pages¹) will be created that briefly describe the opportunity and provide contacts for city officials responsible for their development. The purpose of the Briefs will be to generate private sector interest and provide a framework for exploring the potential project with the public sector counterpart. Expected sectors include:

a) *PPP Pilot Sectors* – P3DP pilot PPPs were selected in part because they address priority needs shared by most municipalities. Briefs outlining the adaptation and replication of the pilots in energy, solid waste, health, education and transport sectors are expected.

b) *Rehabilitation of Infrastructure* – Since the P3DP efforts will focus primarily in Eastern and Southern Ukraine, it is anticipated that municipal leaders will be looking to engage the private sector in restoration of other infrastructure and services, such as water, power, housing and communication.

c) *High Priority other sectors* – PPPs that contribute to economic development are of great interest. Leaders have expressed interest in industrial parks and other sectors. If a viable opportunity and needed leadership is present, PPP Briefs will be created.

B. Reduce Corruption and Improve Public Procurement Practices

In order to reduce corruption and increase greater competition and transparency in PPP procurement, P3DP will:

1) Promote Media's "Watchdog" role in PPP development P3DP will increase tailored cooperation with journalists. An effective media can help ensure the proposed project is in the best interest of citizens and, by promoting the opportunity to a broad audience, stimulate interest of the private sector and competition in the bidding.

a) *PPP Media Workshops* - The number of practical workshops currently planned will be expanded to include more representatives from Eastern and Southern Ukraine. P3DP will cooperate with the USAID funded U-Media and UNITER projects and the EU funded Strengthening of Information Society in Ukraine project to ensure broad media participation.

¹ The Project Identification Briefs will contain brief information about viable PPP opportunities needed for private investors to assess their initial interest in the concept, including contacts of the municipality leader tasked with developing and managing the project. Described will be the basic objective and services to be provided, major technical features and estimated financial requirements, and status of its development.

b) *Media Participation in PPP Procurement Events* - The media will be engaged during stakeholder communication efforts related to PPP pilots. Members will be encouraged to attend all public events related to the PPP development (e.g., the hearing for citizens and the pre-competition conferences) in order to increase their understanding of the proposed project and to be able to better fulfill their role as a “watchdog”.

c) *PPP stories in the Media* – PPP materials, press releases, participation in PPP events, and engagement with municipal decision makers will generate media coverage that generates private sector interest the opportunity. Press kits will developed and distributed at P3DP events to facilitate the creation of the stories. Greater awareness of the PPP projects will increase both competition and transparency.

2) Improve transparency and ethical practices of Competition Commissions P3DP will intensify ongoing assistance to municipalities in their efforts to attract private sector interest and openly and transparently select a PPP partner. Events and engagement of the media will assist in the promotion of the opportunity, and P3DP will work with government leaders to ensure ethical practices are applied in contracting and implementing the projects.

a) *PPP Bidding Proposal Evaluation Tools* - P3DP will create a guidance tool for the objective evaluation of PPP proposals based on key criteria. Measures will address areas of technical; financial/commercial; ecological/social (including gender issues); history, financial viability of submitting firm; and compliance to all bidding rules of the proposed PPP project.

b) *Code of Ethics* - P3DP will promote the introduction of a “Code of Ethics” or conduct for use by municipalities, regions and the national government and their procurement Competition Commissions. This will include full disclosure by members of any possible conflicts of interest, such as ownership or relations to firms submitting proposals.

c) *Advising Competition Commission* - P3DP will propose to cities to expand the current P3DP advisory role into the actual selection process in order to provide feedback and suggestions for improving the evaluation of proposals and selection of the partner, noting how to mitigate the appearance of any real or perceptions of unfair practices.

3) Promote PPP Opportunities The use of PPPs in general will be promoted through national conferences and other events. More importantly, specific PPP pilots and PPP opportunities will be promoted. P3DP plans to actively participate in national events and, through proxy efforts, promote PPP opportunities in international events conducted outside of Ukraine. Events include:

a) *Black Sea Economic Forum* – Traditionally held in Yalta, the Forum is currently scheduled to be conducted in Odessa during April of 2015. The event will focus on what needs to be done attract investment and stimulate economic growth of the region. P3DP will work to have PPPs included as a featured topic

b) *Events in US/Europe* – Organizations such as the American Chamber of Commerce, the US Ukraine Business Council, the British Ukrainian Business Council, and the European Business Association are currently planning their 2015 calendar of events in and outside of Ukraine. P3DP will work with association leadership to include PPPs as a key topic, and promoting specific opportunities.

c) Roadmapping the Future of PPPs in Ukraine – The P3DP results event will highlight PPP pilots and the Project Identification Briefs of viable PPP projects. Leaders of municipalities and the private sector will be invited to meet and explore cooperation.

C. Accelerate the PPP development Process

P3DP will continue efforts to improve regulatory policy requirements, approval processes and PPP development tools so that PPPs can be more readily developed. P3DP will work in Year 5 to simplify and accelerate the PPP development process in Ukraine by:

1) Tailoring the PPP Feasibility Study and related risk assessment and appraisal methodology procedures –P3DP has made progress improving the Risk Assessment and Appraisal Assessment Procedures, but they can be further simplified to closer reflect international best practices. Improving these components of the PPP Feasibility Study preparation process will simplify and accelerate the completion of PPP Feasibility Studies. P3DP efforts will include advocating for reforms of relevant government resolutions governing the PPP development processes.

2) Improve licensing procedures for PPPs in municipal heating and other communal services - The current licensing regulations conflict with existing PPP regulations, preventing private partners from obtaining necessary approvals and licenses for certain activities. P3DP will work to align the procedure with the PPP law and reduce the number of approvals needed to obtain the licensing required for entering into heating supply and other service sectors on the basis of PPPs. This will accelerate processes and reduce opportunities for corruption.

3) Establish clear internal municipal PPP policies conducive to attracting private investment and improving services and infrastructure –Kyiv has requested P3DP to assist in developing local policy and regulations that will lead to better creation, bidding, and monitoring of PPP projects. Once created, the documents can guide other municipal leaders wishing to streamline the PPP process in their cities.

4) Modernization of current legal PPP framework by adoption of the amendments to PPP Law - Upon adoption of the amendments to PPP Law will be simplified land allocation procedure for PPP Projects, improved governance of PPPs, clarified forms of state (financial and other) support to PPP Projects, improved arbitration procedure, and etc.

Supplemental Assistance Activities, January – September 2015

A) Increase Replication Potential by Developing a Pipeline of Viable PPP Concepts		
1) Promote PPPs through a series of regional and municipal events		
Activities	Description	Target Dates
<i>a) Regional Roundtables</i>	PPP promotional Round tables in Kharkiv, Dnipropetrovsk and Odessa will host municipal representatives from the Eastern and Southern regions of Ukraine.	Feb - April - May
<i>b) Leadership Meetings</i>	Meetings will be organized with regional and municipal leaders in order to gather info on potential PPP projects (potentially with participation of PPP Unit representatives).	Feb-April - May
<i>c) Media Training Events</i>	Practical workshops in 5 P3DP partner cities (Vinnytsia, Kyiv, Zaporizhia, Lviv and Ivano-Frankivsk) and 3 additional cities of Kharkiv, Dnipropetrovsk and Odessa will host 15 media representatives from the host cities and other cities in the region.	March - April - May
<i>d) Leverage Other Donor Projects</i>	P3DP will participate in activities with other donor projects dedicated to sector of SWM, Healthcare, energy efficiency, transport, etc.	Jan-Jul
2) Promote PPP Pilots through the Public-Private Partnership and Infrastructure Expert Center (PIEC)		
Activities	Description	Target Dates
<i>a) Case Studies and sample PPP Documents</i>	Case studies of each pilot PPP can guide others interested in replicating similar projects. Sample Bidding packages and used PPP agreements will also be shared as examples for adaptation.	January thru June ²
<i>b) Municipal Guide</i>	A “PPP Guide for Municipalities” based on the updated technical manual will be developed and distributed to municipal leaders to improve their capacity to understand PPPs and identify viable opportunities.	January
<i>c) P3DP Learning Tools</i>	P3DP will make available on-line various PPP learning tools: including: <ul style="list-style-type: none"> • PPP e-learning course • Series of short videos highlighting the PPP pilots 	March April
3) Create Pipeline of Potential PPP Briefs		
Activities	Description	Target Dates
<i>a) PPP Pilot Sectors</i>	P3DP will support municipalities in creating PPP Identification Briefs of viable concepts in pilot sectors (SWM, energy, transport, health, and education) and other areas of interest, especially projects supporting economic development. Additional effort will be placed on developing opportunities in Eastern and Southern Ukraine	Jan - Aug
<i>b) Rehabilitation of Infrastructure</i>		
<i>c) High Priority other Sectors</i>		
B. Reduce Corruption and Improve Public Procurement Practices		
1) Promote Media’s “Watchdog” role in PPP development		
Activities	Description	Target Dates
<i>a) PPP Media Workshops</i>	Media Workshops (see A1c above) will emphasize watchdog role in ensuring PPPs address environmental and gender issues, are in the best interest of the public, and are awarded through transparent processes	March - April
<i>b) Media Participation in PPP Procurement Events</i>	The media will be engaged during stakeholder communication efforts related to PPP pilots, such as public consultations, hearing for citizens and the pre-competition conferences.	January-June
<i>c) PPP Stories in the Media</i>	P3DP activity will generate Media coverage that magnifies interest of the	January-June

² The case studies and sample bidding documents will be based on P3DP pilot PPP projects and the practical experiences of taking the project from concept through development phases. The target timetable is: Kyiv– January; Simferopol – January; Vinnitsiya – February; Zaporizhia – March; Ivano – Frankivsk – April; Lviv – June.

	private sector interest the opportunity.	
2. Improve Transparency and ethical practices of Competition Commissions		
Activities	Description	Target Dates
<i>a) PPP Evaluation Tools</i>	Developed Guidance notes will incorporate “best practices” and be applied during bid evaluation process	March
<i>b) Code of Ethics</i>	Best practice models adapted for municipal and MOEDT use will be incorporated into events and posted on websites	April
<i>c) Advising Competition Commissions</i>	P3DP will share developed tools and offer consultation and guidance throughout competitive selection process	Feb – Aug
3) Promote PPP Opportunities		
Activities	Description	Target Dates
<i>a) Black Sea Economic Forum</i>	P3DP will cooperate with Black Sea Economic Forum Organization Committee to contribute/co-finance the conference in Odessa in 2015.	April
<i>b) Events in US/Europe</i>	Through cooperation with the MOEDT and active participation in the American Chamber of Commerce, the US-Ukraine Business Council, European Business Association, and other organizations, P3DP will work increase awareness about PPP investment opportunities in Ukraine.	Feb- Sept
<i>C) Roadmapping the Future of PPPs in Ukraine</i>	Government, NGOs, municipalities and private business stakeholders will review P3DP experience and assess the PPP environment and opportunities in Ukraine. A guide for future PPP development in Ukraine will be generated.	August
C. Accelerate the PPP Development Process		
1) Tailoring the PPP Feasibility Study, risk assessment and appraisal methodology procedures		
Activities	Description	Target Dates
Draft recommendations to improve officially required procedures	Improved procedures will be reflected in amendments to CMU Decree #232 on PPP Risk Assessment Procedure and MOEDT Order #255 on PPP Appraisal Methodology	June
Simplify Feasibility study requirements	Extent of studies will be limited to satisfying municipal and private partner needs	July
2) Improve licensing procedures for PPPs in municipal heating and other communal services		
Activities	Description	Target Dates
Support adoption of “Amendments to CMU decree #756” addressing documents required for licensing of activities	Aligning licensing procedures conflict with PPP regulations will simplify process for private sector participation in heating supply and other communal services	July
3) Establish clear internal municipal PPP policies conducive to attracting private investment and improving services and infrastructure		
Activities	Description	Target Dates
Guide creation and advocate for adoption of local PPP development procedures	P3DP will support Kyiv City Administration (KCA) efforts and provide output as a model for other municipalities	June ³
4) Modernization of current legal PPP framework by adoption of the amendments to PPP Law		
Activities	Description	Target Dates
Support adoption of Draft Law #1058 that eliminates regulatory barriers to PPP development and investment	P3DP will work with Rada Committees to improve regulations governing land allocation, state financial support, allocation of risks, and dispute resolution.	August

³ In addition to the PPP Municipal Guide (2-b), P3DP is supporting KCA in developing their formal PPP procedures that require approvals and adoption of the City Council and other decision making authorities. When adopted, the model procedures that adhere to legislation and conform to internal procedures will be shared with other municipalities as a tool to guide their efforts.

Annex 3: Legislation Development Meetings conducted during Y5Q1

P3DP participation in conferences, round tables, workshops, and other events to facilitate PPP legislation development

<i>Name of the event</i>	<i>Date</i>	<i>Participants (other than P3DP)</i>	<i>Results</i>
Doing Business ranking Working Group Meeting in State Regulatory Committee	October 01, 2014	GOU Agencies, experts	The PPP related issues were highlighted in the framework of Doing Business ranking activities
Kyiv International Economy Forum	October 02, 2014	GOU Agencies, Experts, NGOs, Business	P3DP was acquainted with forecasted Economy Reforms in PPP and Investment Areas
Meeting with Economy Department, Kyiv City Administration	October 08, 2014	P3DP, Kyiv City Administration	Draft of Kyiv City PPP Policy were commented by P3DP
Round Table "Financing of Healthcare System" Chamber Public-Private Partnerships & Infrastructure Expert Center, American Chamber of Commerce in Ukraine	October 09, 2014	GOU Agencies, Experts, NGOs, Business	Financing of Healthcare System through PPP was discussed and was agreed to establish Working Group on Health Care PPPs
Meeting on Formation of the Working Group on PPP in Healthcare, American Chamber of Commerce in Ukraine	October 17, 2014	P3DP, Kyiv City Administration, Experts, NGOs, Business	It was agreed to develop the agenda of Working Group activities in Legislation drafting Areas
Meeting with representatives of Department dealing with SWM, Ministry of Regional Development	October 29, 2014	P3DP, SWM department	It was agreed to cooperate in SWM Legislation Reforming Are
The Conference "Energy Performance Contracts -	October 30, 2014	Regional Branch of F. Ebert Foundation in Ukraine, Ministry of	Discussed the approach for further promoting of ESCO in

way to the Energy Efficiency"		Energy, Agency for Energy Savings, Experts, NGOs, Donors	a new Verkhovna Rada
Round table PPPs in the sphere of water supply and water distribution: French experience in the context of Ukraine	November 7, 2014	Ministry of Regional Development, Construction, Housing and Communal Service of Ukraine, MOEDT, Adetef, Experts, Donors, Business	MOEDT expressed the initiative to facilitate PPPs by reviewing the Interagency Working Group
The Chamber COI Event on Coalition Agreement Discussion with Mr. Volodymyr Groysman and Mr. Dmytro Shymkiv, American Chamber of Commerce	November 7, 2014	GOU Agencies, Experts, NGOs, Business	P3DP presented proposals to address PPP issues in the Coalition Agreement
Donors' Coordination Meeting on E-Governance	November 12, 2014	GOU Agencies, Experts, NGOs, Donors	P3DP presented proposals to address PPP issues in the e-governance Legislation Developments
Conference "Healthcare Reform in Ukraine"	November 17, 2014	GOU Agencies, Experts, NGOs, Business	P3DP presented PPP aspects of Health Care Reforms
Waste Management Conference, Lviv	November 20-21, 2014	GOU Agencies, Experts, NGOs, Business	P3DP presented legislation development initiatives to facilitate PPPs in the area
Working meeting in MOEDT re PPP legislation development	November 24, 2014	GOU Agencies, Experts, NGOs, Business	It was agreed to support further PPP development through Amendments to PPP Laws and Working Group activities
Expert Center Meeting "Reforming the Investment Policy of Ukraine: Application of	November 28, 2014	GOU Agencies, Turkish Embassy, Experts, NGOs, Business	Experience to develop PPP projects in Ukraine in priority sectors of economy was

the Best Turkish PPP Investment Practices"			discussed
Strategy of Healthcare System Reform in Ukraine for 2015-2025, public discussion	December 5, 2014	GOU Agencies, Experts, NGOs, Business	P3DP presented proposals and recommendation regarding PPP aspects of Reform implementation
The Round Table re ESCO, Reanimation Package of Reforms	December 19, 2014	Donors, NGOs, Experts, IFIs	It was agreed to support the ESCO Drafts into the Parliament
Working group re Energy Saving in Public Buildings meeting in Parliament Committee	December 22, 2014	GOU Agencies, Experts, NGOs, Business	P3DP commented the PPP aspects of the Legislation Development in the Area

Annex 4: Aide Memoire: Reforming Investment Policy in Ukraine: Using Turkey's Best Practices in Investment Public Private Partnership Projects

Aide-Memoire

Reforming Investment Policy in Ukraine: Using Turkey's Best Practices in Investment Public Private Partnership Projects

28 November 2014 saw the workshop held as part of the meeting of the **Public Private Partnership and Infrastructure Expert Centre** and the American Chamber of Commerce in Ukraine with the participation of the Public Private Partnership Development Program (P3DP) funded by U.S. Agency for International Development. The event centred around practical approaches to promote investments in Ukraine (including fostering innovations and cutting-edge technologies).

The workshop was designed to summarise the results of the study tour on public private partnership (PPP) to Turkey (28 September – 3 October) for the study tour participants and a wider circle of stakeholders.

The PPP study tour was organised as part of the USAID Public Private Partnership Development Program. **The study tour was developed so that participants get a better understanding of the structure and functioning of PPP projects across the globe and gain experience for further successful replication of PPP projects in Ukraine.** The study tour placed considerable emphasis on cooperation of representatives of all levels of government in Ukraine (local government, regional government and government officials) who were fully engaged in the creation and development of PPP policy in Ukraine.

Within the framework of the study tour Ukrainian delegation headed by Roman Kachur, Deputy Minister of Economic Development and Trade of Ukraine, visited Ankara and Istanbul and attended working meetings on the PPP development and functioning as well as on the attraction of investment and stimulation of the economy. The delegation included 16 representatives of Ministries, Municipalities and Members of Parliament, in particular Pavlo Pakholko, Deputy Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine, Olexandr Dudka, Director of Kharkiv Regional Centre for Investment and Development, State Agency for Investment and National Projects of Ukraine, Olexandr Koval, People's Deputy, Verkhovna Rada of Ukraine of the 7th convocation, Andriy Guk, Adviser to the Vice Prime Minister on Social Issues, Yevhen Udod, Head of Dnipropetrovsk Oblast Council, Serhiy Yevtushenko, Head of the State Agency for Investment and National Projects of Ukraine, Olga Chubrykova, Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine, Maria Tkachuk, Head of Department for Economic Reforms, European Integration and Investment, Ivano-Frankivsk Oblast State Administration, Ihor Kurdya, First Deputy Mayor, Dobropillya City Council, Serhiy Ostrenko, Deputy Mayor on the Operation of Executive Authorities, Pavlohrad City Council, Alina Kucherenko, Deputy of Rovenky City Council, Oleg Muratov, Director of Department for Economic Development and Trade, Odesa Oblast State Administration, as well as representatives of the Public Private Partnership Development

Program, namely Mick Mullay, Director, Tetyana Korotka, Director of Professional Services, and Olexandra Chala, Government of Ukraine Development Support Coordinator.

For a more comprehensive coverage of Turkish PPP-related best practices and techniques, during the study tour Ukrainian delegation met representatives of different levels of government, the private sector and international institutions involved in PPP projects in Turkey, namely:

- international institutions (World Bank, European Bank for Reconstruction and Development (EBRD));
- bilateral development institutions (AFD (French Development Agency), Proparco);
- public authorities (Republic of Turkey Ministry of Development, Ministry of Transport, Maritime Affairs and Communications, Ministry of Health, Investment Support and Promotion Agency of Turkey);
- regional government (Istanbul Development Agency);
- metropolitan municipality (Ankara Metropolitan Municipality);
- regional municipality (Municipality of Pendik (a district of the Asian side of Istanbul);
- local public private entrepreneurial initiatives (OSTIM, an industrial park, ODTÜ Teknokent, a technology park);
- private sector (Yapı Merkezi, a group of construction companies, Mott MacDonald, an international consulting company).

During these meetings company presentations were delivered, long-term strategic principles of functioning of existing and running PPP projects were explained and the following issues related to the implementation of PPP-based projects were discussed:

- involvement of international institutions in PPP projects financing;
- privatisation of the energy sector based on public private partnership;
- Ankara: presentation of successful waste disposal experience;
- construction of 25 hospitals across Turkey using a PPP model;
- establishment of industrial parks in Turkey, availability of a unique legislative background;
- organisation and operation of technology parks, availability of various tax reliefs and government incentive programs for technology parks;
- PPP regulatory framework for transport industry stipulating and providing various stimuli and guarantees to investors;
- Role and potential of international development institutions in stimulating Turkish economy, etc.

For this very reason, after the study tour to Turkey had completed and Ukrainian delegation had returned home, the **workshop held on 28 November 2014 in Kyiv was aimed at** discussing approaches to the implementation of public private partnership projects in Turkey, analysing PPP practices and using lessons learned to develop PPPs in various sectors of Ukrainian economy such as healthcare, municipal solid waste management, energy efficiency as well as management of industrial and technology parks as centres of cutting-edge technology innovations and commercial platforms for their successful use.

Those invited to take part in the workshop were above all members of Ukrainian delegation for the study tour to Turkey, representatives of the Ministry of Economic Development and Trade of

Ukraine, Ministry of Foreign Affairs of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Finance of Ukraine, Presidential Administration of Ukraine, Embassy of the Republic of Turkey in Ukraine, International Turkish Ukrainian Business Association, State Agency for Investment and National Projects of Ukraine, law firms, business communities of various industries concerned, and ODTÜ Teknokent, a Turkish technology park. The workshop participants had an opportunity to get to know about the study tour to Turkey as well as its main aims and objectives from Ukrainian participants and Turkish hosts, and to obtain information about lessons learned and best practices to launch and implement PPPs across various sectors of Ukrainian economy. In particular, the workshop was planned for dissemination to larger sections of the public of experience of using Turkish PPP best practices in Ukraine and further successful replication of PPP projects in Ukraine. In addition, it was planned to listen to the opinion of expert guests – Roman Kachur, Deputy Minister of Economic Development and Trade of Ukraine, Natalia Lisnevska, Deputy Minister of Healthcare of Ukraine, Yonet Jan Tezel, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine, Burak Pehlivan, Vice President of the International Turkish Ukrainian Business Association. Attached to this Aide-Memoire are the program of the Public Private Partnership and Infrastructure Expert Centre’s workshop (Annex 1) and a full list of the workshop participants (Annex 2).

In his welcoming speech **Yonet Jan Tezel, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine**, noted that Ukraine has the potential to make use of the many mechanisms of Turkish economic development. Turkey’s PPP investment initiatives and development of technology parks have become good examples of the international best practice in project management. Although the needs of one country cannot be exactly the same as that of the others, Turkey is able to offer tried and tested ideas that will resonate with Ukraine. That is why we seek to encourage Ukraine’s Government and the private sector to cooperate with Turkey. We would like to see Ukraine strengthening its economy through high-quality and transparent public private partnerships.

Olga Chubrykova, Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine, reported that the Ukraine-Turkey High Level Strategic Council was established within the framework of relationships between the two countries, which had long been strategic partners. The Council’s meetings serve as a platform for decisions on further development of the private sector and businesses. Ms. Chubrykova proposed to initiate the launch of the PPP working group, amalgamate various profiles and interests of businesses and investors, and table this proposal for discussion with Turkey. Such working group may become an instrument for implementing specific ideas and projects.

Roman Kachur, Deputy Minister of Economic Development and Trade of Ukraine, noted that Turkey has successful experience in the implementation of public private partnership projects based on the flexible national policy of fostering municipalities to originate joint projects with the private sector. The public private partnership mechanism has already helped the Republic of Turkey Ministry of Health build 25 hospitals providing 25 thousand in-patient beds. For its turn the Ministry of Transport constructed two airports in Istanbul as well as in Ankara and Izmir, functioning within the framework of public private partnership. Other implemented projects include renovation and renewal of urban green spaces, construction and development of industrial and technology parks, waste processing plants and shopping and leisure centres, and development of pipeline networks to name a few.

“Turkey is the regional leader in using public private partnership projects to involve the private sector in infrastructure projects”, said **Tetyana Korotka, Head of Expert Centre, American Chamber of Commerce in Ukraine, Director of Professional Services, Public Private Partnership Development Program (USAID)**. According to Ms. Korotka, there are many valuable lessons from Turkish experience which can help Ukraine as it develops and implements its own public private partnership projects.

In the opinion of **Natalia Lisnevskya, Deputy Minister of Healthcare of Ukraine**, the situation with the implementation of PPP projects in Ukraine is far from being optimistic. The needs of society in high-quality healthcare services overgrow the budget capacity. However, the problems at hand and targeted projects in Ukraine may be tackled through the implementation of public private partnership projects. The Deputy Minister is confident that modernisation of the regulatory framework serves as a precondition for the implementation of public private partnership, since without a private partner the healthcare system is unable to neither keep going nor even subsist. The Law of Ukraine On Public Private Partnership enacted in July 2010 governs relationships between the public and private sectors in the form of concession, joint cooperation and other arrangements. It was envisaged that the mechanism of interaction between the public and private sectors would be governed by the law harmonised with the EU legislation. However, the private sector involvement in the implementation of infrastructure projects in Ukraine is unsatisfactory, due in no small part to:

- inadequate attention of the government to the implementation of public private partnership policy and imperfection of the governance system;
- no clear delineation of powers among public authorities;
- sectoral peculiarities of doing business;
- low institutional capacity of public authorities and private sector;
- undermined public confidence in state authorities;
- low public awareness;
- poor human resourcing;
- poor financing of the real economy;
- unfavourable investment climate;
- problems in the public and private sector relationships in terms of licensing procedures, protection of investor property rights and settlement of economic disputes;
- lack of the efficient government support mechanism;
- inconsistencies in the regulatory framework;
- imperfection of the tariff regulation mechanism.

Hence, the existing law does not provide instruments for the implementation of public private partnership projects. First, in order to enter into an agreement it is necessary to undergo a whole range of tendering and licensing procedures. This dilutes the concept of partnership as the two partners are by no means equal. Secondly, bureaucracy makes said procedures rather time consuming and risky for a private partner in terms of unexpected expenses. These are the reasons why there are no healthcare projects attractive for the state and investors. The Deputy Minister expressed the hope that provided that the new Parliament passes the Law of Ukraine On the Strategy for Development of Public Private Partnership in Ukraine as envisaged by Resolution of the Cabinet of Ministers of Ukraine On Approval of the Concept for Development of Public Private Partnership in Ukraine for 2013-2018 No. 739-p of 14 August 2013, the public private partnership would become the driving force to help Ukrainian Government address a number of

healthcare issues. Introduction of public private partnership models into the operation of Ukraine's healthcare and medical providers may serve as an efficient instrument to downsize healthcare industry's non-market segment.

Part two of the workshop – the Application of Strategies and Lessons Learned in Turkey in Setting Up Public Private Partnerships across Various Sectors and Technology Parks of Ukraine – saw speeches delivered by Volodymyr Peregudov, Deputy Head of Dnipropetrovsk Oblast Council, Olexandr Dudka, Director of Kharkiv Regional Centre for Investment and Development, and Olena Kucherenko, Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine. Speakers provided up-to-date information about the state of PPP projects in respective regions and revealed prospects for their implementation.

Volodymyr Peregudov, Deputy Head of Dnipropetrovsk Oblast Council, delivered a presentation on Dnipropetrovsk Oblast's Top Priority Investment Projects and stressed the following overriding development areas of Dnipropetrovsk Oblast:

- industrial parks;
- waste management investments;
- energy efficiency projects;
- science parks;
- healthcare quality improvement projects.

For the time being it is planned to construct two **industrial parks** in Dnipropetrovsk Oblast:

Industrial Park in Kryvyi Rih. 26 hectares land plot allocated. Project aim: constructing a special facility for setting up new manufacturing enterprises. Project status: holding a tender to select a steering company; forming a pool of members; developing utilities hook up project. Project initiators: Dnipropetrovsk Oblast Council, Executive Committee of Kryvyi Rih City Council.

Industrial Park in Pavlohrad. 250 hectares land plot is being allocated. Project aim: constructing an Industrial Park in Pavlohrad Rayon near Pavlohrad. Project status: dealing with land allocation issues; developing Industrial Park's concept. Project initiator: Dnipropetrovsk Oblast Council.

So far, no precedents have been set in Ukraine for the implementation of industrial park projects due to lack of significant investor preferences in terms of:

- taxation: no reliefs or incentives;
- customs duties: exemption from customs duty when importing equipment and components that are not manufactured in Ukraine and are required for project implementation. It takes a lot of time and effort to obtain this exemption as it requires approval of the State Agency for Investment and National Projects, Ministry of Economic Development and Trade, Ministry of Finance, Ministry of Revenue and Duties, Ministry of Industrial Policy and Cabinet of Ministers of Ukraine;
- land: allocation of land plot without auction within the framework of the project (for a steering company).

Special attention is drawn to **waste management investments**, i.e. the project for construction of the municipal solid waste (MSW) processing plant in Kryvyi Rih. Project status: target model for transition from MSW landfilling to processing through construction of MSW processing plant developed; investor is being looked for. Project success criteria: attraction of private investments to the project, processing of 80% of the region's MSW. Social return for the region: environmental improvement, creation of additional jobs, additional budget revenues in the form of taxes. Anticipated profit for the region: sale of electricity, gas/biofuel/hydrogenium/processed raw materials. Potential sites for construction: Saksaganskiy District, 20 hectares, Dzerzhynskiy District, 95 hectares, Ternovskiy District 21 hectares, Ternovskiy District, 33 hectares.

Pertinent issues to tackle include:

- entering into a long-term agreement for purchase of produced heat, electricity, gas;
- making the agreement stipulate for setting and amending prices;

Another focal area is **energy efficiency projects**:

Perspectives for cooperation within energy efficiency projects:

Setting up solid fuel boiler stations for Dnipropetrovsk public utility enterprises.

Project aim: construction of individual modular solid fuel boiler stations to deliver heat, hot water and steam to end users, i.e. communal healthcare facilities of Dnipropetrovsk Oblast. Projects start with five Dnipropetrovsk healthcare providers. Economic benefit: reducing dependency on natural gas. Social return: providing the end user with heat, hot water and steam during the year irrespective of the heating season.

Pertinent issues to tackle include:

- entering into a long-term agreement for purchase of produced heat, electricity, hot water and steam;
- guaranteed size of consumption throughout the term of agreement;
- making the agreement stipulate for setting and amending prices for services rendered;
- eco-mechanism, (i.e. compensating investor costs through saving using energy efficient technologies).

A form of organisation of scientific and innovation process contributing to commercialisation of technological developments, **science parks** represent yet another area of interest. Project aim: developing scientific, technological and innovation activities of an educational/scientific establishment; fulfilment of scientific potential; commercialisation of scientific findings and their domestic and external marketing.

As far as Dnipropetrovsk Oblast's healthcare sector is concerned, the **issues at hand include as follows**:

Setting up a prosthetic and orthopaedic centre in Dnipropetrovsk. Project aim: consulting youths and adults on diseases of musculoskeletal system; taking preventive and rehabilitation measures; manufacturing and distribution of orthopaedic products.

Setting up a "check-up" diagnostic centre (full medical screening and diagnostics within a few days) in Dnipropetrovsk.

According to Olexandr DUDKA, Director of Kharkiv Regional Centre for Investment and Development, Kharkiv – the region of dynamically developing business, vast resources and strong infrastructure for innovation and growth – offers a range of specific projects for competitive growth, including:

Setting up KhTZ industrial park (initiated by JSC "KhTZ"). Aims and scope of the project: development and modernisation of transport infrastructure, optimisation of transport routes. Setting up logistic centres and terminals for long-term storage of agricultural products, transportation and logistics terminals. Redeveloping disused industrial sites (brownfields). Setting up industrial parks on free land plots.

FED public private partnership to raise the region's competitiveness. Aims and scope of the project: creating a cluster model for increasing the region's competitiveness. Designing strategies and projects to develop the following clusters: Fuel and Energy complex, Agricultural and Food Production and Processing, Transport and Logistics, Mechatronics, Information and Communication Technologies, Construction and Construction Materials, Biopharmaceutics and Healthcare, Education, Housing and Utilities, Garment Industry, Culture and Tourism.

Setting up an international nuclear medicine centre (initiated by the National Scientific Centre Kharkiv Institute of Physics and Technology). Aims and scope of the project: introduction of express diagnostics systems, treatment and prophylaxis of the most common diseases (tuberculosis, oncology diseases, cardiovascular diseases, diabetes, etc.) Purchase of physiotherapeutic equipment for preventative treatment and ensuring that village outpatient clinics provide respective medical procedures. Construction of healthcare facilities equipped with contemporary medical devices.

Olena KUCHERENKO, Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine presented plans of the Ukrainian Government for setting the stage for investments into the national infrastructure. Members of the Expert Centre discussed the ways of cooperation among all tiers of government, private investment attraction schemes, project implementation models and improvement of legislation. For their part, Turkish colleagues shared their plans for developing business in Ukraine.

During the last session of the workshop Ufuk BATUM, Vice President, ODTÜ Teknokent, presented Turkish experience in setting up a technology park: adapting successful approaches for Ukraine. Mr. Batum presented the concept of setting up technology parks in Turkey and stressed out the main aspects of successful implementation of PPP projects in Turkey. Mr. Batum noted that in 2001 Turkey suffered a severe financial and economic crisis, when inflation reached 68%, 21 banks went bankrupt and over 30 thousand people lost their jobs. Steps to get the country out of the crisis included creation of "favourable conditions" for capital inflows, provision of incentives for exporters and government support to small and medium-sized businesses as well as formation of industrial zones where producers receive fiscal benefits / incentives, etc. In early 2001, Turkey adopted a law that allowed creating technology parks as campuses. Today technology parks enjoy some exemptions from taxes and contribute to the creation of innovative

products, commercialization of innovations and facilitation of development and support of small innovative businesses

The scope of ODTÜ Teknokent technology park includes air/helicopter system; satellite projects; projects on alternative energy and fuel; development of wind and water turbines; power supply systems; laser technology; sensor technology, microelectromechanical systems; study of tissues and genes; medical equipment; e-government, e-commerce, distance learning, e-learning software; solutions in enterprise resource planning/production (ERP-MRP), geographic information systems, IT systems for hospitals; advanced materials technology, etc.

Summing up the Expert Center's workshop, participants discussed different investment approaches of the Turkish Government to attract the interest of businesses as well as the use of lessons learned for PPP development in Ukraine in such priority areas as healthcare, municipal solid waste management, energy efficiency and management of industrial and technology parks as centres for cutting-edge technology innovations and commercial platforms for their successful use. Participants noted that the issues to tackle in terms of streamlining Ukrainian legislation include:

- paying sufficient government attention to the implementation of public private partnership policy; interaction of the state and the private sector on the basis of public-private partnership;
- promoting private sector involvement in the implementation of infrastructure projects in Ukraine;
- promoting establishment of an effective mechanism of state support in various sectors of economy;
- improvement of legislation in the field of finance, taxation, environment and other areas pertinent to the development of public private partnership infrastructure;
- tackling problems pertaining to public and private sector relationships in terms of licensing procedures, protection of investor property rights and settlement of economic disputes;
- no clear delineation of powers among public authorities;
- inconsistencies in the regulatory framework;
- improvement of the **tariff regulation mechanism in various sectors of economy**;
- issues to resolve in the area of construction of industrial and technology parks: provision of tax discounts/benefits; exemption from equipment import fees, allotment of land without auction within the project.
- issues of engagement of investments in the waste management area: entering into a long-term agreement for purchase of produced heat, electricity, and gas; making provisions in the agreement for setting and amending prices for services rendered;
- issues to be resolved in energy efficiency projects: entering into a long-term agreement for purchase of produced heat, electricity, hot water, and gas; guaranteed amount of consumption of services for the entire effective period of the agreement; making provisions in the agreement for setting and amending prices (rates) for services rendered;
- improvement of public confidence in state authorities;
- increasing public awareness, etc.

According to the experts, even a partial **resolution of these issues will support:**

- a synergetic approach in the operation of the state and the private sector on the public-private partnership principles;
- engagement of non-budgetary funds in various areas of the Ukrainian economy;
- securing transparent mechanisms for implementation of public-private partnership;
- provision of comfortable and guaranteed conditions for investors;
- resolution of issues related to municipal solid waste;
- resolution of issues related to provision of electricity, heat, and steam to consumers depending on their needs;
- improvement of trust in the state in general and government authorities; etc.

This Aide-Memoire has the following annexes:

Annex 1: Workshop Program of the Public Private Partnership and Infrastructure Expert Centre

Annex 2: Complete List of Workshop Participants

Annex 3: Media Coverage;

Annex 4: Photo Report from the Expert Centre Meeting

About the U.S. Agency for International Development (USAID) Public-Private Partnership Development Program:

The USAID Public-Private Partnership Development Program helps create an environment in Ukraine favorable for public-private partnership (PPP) through legislative improvements to establish a legal framework promoting the implementation of PPP and support of the national authorized agency for PPP. Additionally, the PPP Development Program involves preparation for implementation of pilot PPP projects in key sectors by providing advisory support, training, and informational support to pilot cities at all project preparation stages, from the concept to presentation of pilot projects in the market through a transparent and competitive bidding procedure. The practical experience acquired will ensure further improvement of the environment and processess for the use of PPP in Ukraine.



USAID
ВІД АМЕРИКАНСЬКОГО НАРОДУ

PUBLIC-PRIVATE PARTNERSHIP DEVELOPMENT PROGRAM

Public Private Partnership and Infrastructure Expert Centre

Reforming Investment Policy in Ukraine: Using Turkey's Best Practices in Investment Public Private Partnership Projects

28 November 2014, 10:00 – 14:00

**Horizon Park Business Centre, 12 Amosova Street, 15 Floor, Kyiv 03680, Ukraine
Conference Hall of the American Chamber of Commerce in Ukraine**

The workshop is held by the Public Private Partnership Development Program, funded by the U.S. Agency for International Development and implemented by FHI360 (hereinafter – the Program), in cooperation with the American Chamber of Commerce in Ukraine, within the framework of the Public Private Partnership and Infrastructure Expert Centre. The event centres around practical approaches to promote investments in Ukraine (including fostering innovations and cutting-edge technologies). The workshop is designed to summarise the results of the study tour on public private partnership to Turkey (28 September – 3 October) for the study tour participants and a wider circle of stakeholders.

The study tour was developed so that participants get a better understanding of the structure and functioning of PPP projects across the globe and gain experience for further successful replication of PPP projects in Ukraine. The study tour placed considerable emphasis on cooperation of representatives of all levels of government in Ukraine (local government, regional government and government officials) who were fully engaged in the creation and development of PPP policy in Ukraine.

The workshop is aimed at discussing approaches to the implementation of public private partnership projects in Turkey, analysing PPP practices and using lessons learned to develop PPPs in various sectors of Ukrainian economy such as healthcare, municipal solid waste management, energy efficiency as well as management of industrial and technology parks as centres of cutting-edge technology innovations and commercial platforms for their successful use.

PROGRAM

09:30 – 10:00 REGISTRATION AND COFFEE

10:00 – 10:20 WELCOMING ADDRESS

Tetyana KOROTKA, Head of Expert Centre, American Chamber of Commerce in Ukraine, Director of Professional Services, Public Private Partnership Development Program (USAID)

Roman KACHUR, Deputy Minister of Economic Development and Trade of Ukraine
Yonet Jan TEZEL, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine

Olga CHUBRYKOVA, Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine

Natalia LISNEVSKA, Deputy Minister of Healthcare of Ukraine

10:20 – 12:00 APPLICATION OF STRATEGIES AND LESSONS LEARNED IN TURKEY IN SETTING UP PUBLIC PRIVATE PARTNERSHIPS ACROSS VARIOUS SECTORS AND TECHNOLOGY PARKS OF UKRAINE

Natalia LISNEVSKA, Deputy Minister of Healthcare of Ukraine

Tetyana KOROTKA, Head of Expert Centre, American Chamber of Commerce in Ukraine, Director of Professional Services, Public Private Partnership Development Program (USAID)

Burak PEHLIVAN, Vice President, International Turkish Ukrainian Business Association

Volodymyr PEREGUDOV, Deputy Head of Dnipropetrovsk Oblast Council

Olexandr DUDKA, Director, Kharkiv Regional Centre for Investment and Development

Olena KUCHERENKO, Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine

12:00 – 12:45 TURKISH EXPERIENCE IN SETTING UP A TECHNOLOGY PARK: ADAPTING SUCCESSFUL APPROACHES FOR UKRAINE

Ufuk BATUM, Vice President, ODTÜ Teknokent

Discussion

12:45 – 13:00 WRAP-UP

13:00 – 14:00 LUNCH

List of workshop participants (28 November 2014)

№	Name	Position/Institution
1	Roman Kachur	Deputy Minister of Economic Development and Trade of Ukraine
2	Natalia Lisnevskaya	Deputy Minister of Healthcare of Ukraine
3	Yonet Jan Tezel	Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine
4	Emre Manav	Embassy of the Republic of Turkey in Ukraine
5	Jam Murat Ituch	President, International Turkish Ukrainian Business Association
6	Burak Pehlivan	Vice President, International Turkish Ukrainian Business Association
7	Ufuk Batur	Vice President, ODTÜ Teknokent
8	Olena Kucherenko	Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine
9	Pavlo Pakholko	Deputy Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine
10	Olexandr Dudka	Kharkiv Regional Centre for Investment and Development, State Agency for Investment and National Projects of Ukraine
11	Andriy Guk	Adviser to Vice Prime Minister on Social Issues
12	Volodymyr Perehudov	Deputy Head of Dnipropetrovsk Oblast Council
13	Serhiy Yevtushenko	Head of the State Agency for Investment and National Projects of Ukraine
14	Kyrylo Bondar	Deputy Head of the State Agency for Investment and National Projects of Ukraine
15	Olga Chubrykova	Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine
16	Maria Tkachuk	Head of Department for Economic Reforms, European Integration and Investment, Ivano-Frankivsk Oblast State Administration
17	Ihor Kurdya	First Deputy Mayor, Dobropillya City Council
18	Alina Kucherenko	Deputy of Rovenyky City Council
19	Oleg Muratov	Director, Department for Economic Development and Trade, Odesa Oblast State Administration
20	Victor Karpenko	Appraisal Manager, East Europe Foundation
21	Maryna Shapoval	Senior Economist, Financial Policy Department, Institute for Budgetary and Socio-Economic Research (IBSER)
22	Victoria Gryb	Corporate Social Responsibility Manager, DTEK
23	Tetyana Chekhet	Head of Representative Office, Mott MacDonald Limited
24	Mykola Brusenko	Senior Adviser, Main Department for Introduction of Reforms, Presidential Administration of Ukraine
25	Tetyana Anischuk	GIZ Ukraine
26	Anzhela Yerko	Senior Specialist of Economic Unit, Department for Economic, Social and Humanitarian Affairs, Ministry of Economic Development and Trade of Ukraine
27	Oleg Voytovych	Local Economic Development Expert, Ukraine Municipal Local Economic Development Project
28	Olena Tepla	Deputy Head of Credit and Guarantee Relationships Unit, Debt Policy Division, Debt and International Financial Policy Department, Ministry of Finance of Ukraine
29	Natalia Shypilova	Senior Economic and Financial Expert, Credit and Guarantee Relationships Unit, Debt Policy Division, Debt and International Financial Policy Department, Ministry of Finance of Ukraine
30	Dmytro Senichenko	Head of Ukrainian Office, Director for Business Development in Ukraine and CIS, JLL
31	Andriy Pischikov	Head of Representative Office, Hewlett-Packard UA LLC
32	Tetyana Zamorska	Director, KPMG-Ukraine Ltd
33	Andriy Artamonov	Business Development Manager, KPMG-Ukraine Ltd
34	Dmytro Furman	Director for Corporate Governance and Legal Affairs, Astelit (Life)
35	Mustafa Tseilan	Vice President, Credit Europe Bank
36	Hakan Ozmen	Corporate Banking Sales and Marketing Manager, Credit Europe Bank
37	Ella Nikolayenko	Head of Coordination Office, AVEC Group
38	Peter Chabursky	Strategic Adviser, Business Development, Gowlings
39	Yulia Kovalchuk	Legal Adviser, UkrTower LLC

40	Natalia Kushniruk	General Partner, CMS Cameron McKenna LLC
41	Dmytro Savchuk	Lavrynovych & Partners Law Firm
42	Maryna Ilchuk	Lawyer, Arzinger Law Firm
43	Oleksiy Solovyov	Gide Loyrette Nouel
44	Oleksiy Feliv	Partner, Gide Loyrette Nouel
45	Olga Mikhleyeva	Baker & McKenzie, CIS, Ltd
46	Svitlana Kheda	Adviser, Sayenko Kharenko
47	Yaroslav Sverdlichenko	Partner, OMP Law Firm
48	Tetyana Vlasko	Willis Insurance Brokers Ltd
49	Vadym Davydov	Director of Manufacturing, Sumix Ukraine
50	Veronica Sushko	Senator Apartments
51	Veronica Uschapovska	Sales Manager, Senator Apartments
52	Victoria Kokodiy	Baxter CIS B.V.
53	Tetyana Korotka	Director of Professional Services, Public Private Partnership Development Program (USAID)
54	Ruslan Kundryk	Head of Legislation Reform Sector, Public Private Partnership Development Program (USAID)
55	Iryna Davydova	Technical Adviser, Coordination Support, Public Private Partnership Development Program (USAID), Public Private Partnership and Infrastructure Expert Centre
56	Olexandra Chala	Government of Ukraine Development Support Coordinator, Public Private Partnership Development Program (USAID)
57	Natalia Gotvianska	Strategic Development Manager, American Chamber of Commerce in Ukraine
58	Vadym Shklyar	Communications Coordinator, American Chamber of Commerce in Ukraine
59	Vadym Tolpeko	Interpreter

Media coverage:

1) First business channel <http://fbc.net.ua>

2) National union of journalist

<http://fbc.net.ua/video/11298>

<http://e-finance.com.ua/show/188992.html>

Meeting of the Expert Centre on Reforming Investment Policy in Ukraine: Using Turkey’s Best Practices in Investment Public Private Partnership Projects (28 November 2014) Photo Gallery

	<p><i>(from right to left)</i> Yonet Jan TEZEL, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine Roman KACHUR, Deputy Minister of Economic Development and Trade of Ukraine Olga CHUBRYKOVA, Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine Tetyana KOROTKA, Head of Expert Centre, American Chamber of Commerce in Ukraine, Director of Professional Services, Public Private Partnership Development Program (USAID)</p>		<p><i>(from right to left)</i> Yonet Jan TEZEL, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine Roman KACHUR, Deputy Minister of Economic Development and Trade of Ukraine</p>
	<p>Roman KACHUR, Deputy Minister of Economic Development and Trade of Ukraine</p>		<p>Natalia LISNEVSKA, Deputy Minister of Healthcare of Ukraine</p>
	<p>Yonet Jan TEZEL, Ambassador Extraordinary and Plenipotentiary of the Republic of Turkey to Ukraine</p>		<p>Olga CHUBRYKOVA, Deputy Director, Second European Directorate, Ministry of Foreign Affairs of Ukraine</p>

	<p>Tetyana KOROTKA, Head of Expert Centre, American Chamber of Commerce in Ukraine, Director of Professional Services, Public Private Partnership Development Program (USAID)</p>		<p>Olena KUCHERENKO, Director, Department of Investments, Innovations and Development of Public Private Partnership, Ministry of Economic Development and Trade of Ukraine</p>
	<p>Burak PEHLIVAN, Vice President, International Turkish Ukrainian Business Association</p>		<p>Volodymyr PEREGUDOV, Deputy Head of Dnipropetrovsk Oblast Council</p>
	<p>Olexandr DUDKA, Director, Kharkiv Regional Centre for Investment and Development</p>		<p>Ufuk BATUM, Vice President, ODTÜ Teknokent</p>

Annex 5: Guidance Note #3: Dispute Resolution and Municipal PPPs in Ukraine



Public Private Partnership Development Program

PPP GUIDANCE NOTE NO. 3



Dispute Resolution and Municipal PPPs in Ukraine

IMPROVING PUBLIC
SERVICES,
INFRASTRUCTURE, THE
ENVIRONMENT AND
THE ECONOMY
THROUGH
PUBLIC-PRIVATE
PARTNERSHIPS

GUIDANCE NOTE No. 3

Dispute Resolution and Municipal PPPs in Ukraine

Chris Shugart
October 2014

DISCLAIMER

The findings, interpretations, and conclusions expressed in this Guidance Note are entirely those of the author and should not be attributed in any manner to the Public-Private Partnership Development Program (P3DP), FHI360, the United States Agency for International Development (USAID), or to any of its partners. Neither P3DP nor FHI360 guarantees the accuracy of the information included in this publication and do not accept responsibility for any consequence of their use.

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ABOUT THE PUBLIC-PRIVATE PARTNERSHIP DEVELOPMENT PROGRAM

The goal of the Ukrainian Public-Private Partnership Development Program (P3DP), implemented by FHI 360 and funded by the United States Agency for International Development (USAID), is to broaden the use of PPPs in Ukraine and expand the role of private sector finance, expertise, and modern technology to improve infrastructure, the quality of public services, and the environment. The program provides assistance to the Government of Ukraine at national, regional and municipal levels to improve the legal and institutional framework, enhances the capacity of individuals and organizations to design and engage in PPP activities, and supports the implementation of pilot PPP projects. Importantly, P3DP assistance is developing the capacity of government to work effectively with the private sector in building or rehabilitating infrastructure, improving or restoring public services, and developing the economy.

Beginning operations in October 2010, the Program is pursuing the achievement of four interrelated, mutually-reinforcing objectives, each contributing to the development of PPPs in Ukraine in full alignment with USAID's Country Development Cooperation Strategy for Ukraine:

1. **Create a Legal and Regulatory Framework Conducive to PPPs** by improving legislation, regulations, and policies that support PPP initiatives at national and municipal levels.
2. **Strengthen the MOEDT's Capacity to Guide and Support PPPs** so that it serves as valuable resource for municipalities and government agencies seeking to improve the efficiency and quality of public services and infrastructure through private sector participation. The MOEDT coordinates much of its PPP support work through the recently established PPP Unit.
3. **Develop PPP awareness and capacity** of municipalities to create and implement PPPs while improving local governance practices. Training, workshops, seminars, conferences, and study tours contribute to the growing body of knowledge on PPPs at the local level. P3DP also demonstrates how strategic communication programs that reach out to the general public and media provide valuable input during the PPP development process.
4. **Implement Pilot PPPs in key sectors** by providing technical assistance to selected municipalities in all phases of development, from initial concept through the transparent, competitive tendering process. Practical experiences and lessons learned provide valuable feedback to further improve the PPP environment and processes in Ukraine.

ABOUT THE AUTHOR



Dr. Chris Shugart is an independent consultant who has been specializing in private sector participation in infrastructure and PPPs (among other related things) since 1994. He received his Ph.D. from Harvard University in 1998, his dissertation being devoted to PPP contracting. Dr. Shugart works as an advisor, transaction consultant, researcher, and trainer. His principal areas of expertise include: private participation in infrastructure; public-private partnerships (PPPs); concession, BOT, and management contracts (including water and wastewater); structuring incentives; pricing policy; regulatory frameworks, systems, and methodologies; project finance; support in negotiations; and litigation support.

Dr. Shugart has recently been involved in the preparation of a major PPP guide. He was the lead external advisor in the preparation of PPP Guide to Guidance commissioned by the European PPP Expertise Centre. Dr. Shugart has strong PPP transaction experience. He worked as a Senior Banker for the EBRD for five years (1995–2002) and led the development and financing of several PPPs, including the Sofia water concession and the Zagreb wastewater treatment plant BOT.

Before that, he was one of the two lead advisors to the Municipality of Maribor (Slovenia) to prepare a BOT project for a wastewater treatment plant (1995–1997), the first such project in former-socialist central Europe, and a project in operation today.

SUMMARY

For public private partnership (PPP) contracts to be effective, they must be enforceable. However, in many countries, the national court systems are not up to the task of resolving disputes that might arise in a PPP contract. An alternative to the courts is arbitration, which in many countries is the preferred method of dispute resolution for PPPs – especially when foreign investors are involved.

This note examines options available for dispute resolution in Ukraine outside the court system focusing on the municipal level, including both international and domestic commercial arbitration. It provides an overview of the relevant legislation, issues about selecting arbitrators, enforcement issues, and questions about the use of specialized experts.

If the final dispute resolution mechanism is the Ukrainian judicial system, parties to a PPP contract in Ukraine will have little confidence that their contractual rights will be upheld in court. This adds substantial risk, especially for the private partner, and constitutes a major constraint to private partners being willing to make significant investments in the PPP project and to banks being willing to lend large amounts. Mitigating dispute resolution risk is therefore critical if PPPs are to develop in Ukraine.

1. INTRODUCTION

A public private partnership (PPP) is commonly thought of as being based on a *long-term legally binding contract* that sets out each party's rights and obligations, contract conditions, and related things. Although written contracts can be useful as a way to clarify issues even if they are never legally enforced, the parties generally will not make important commitments unless they feel confident that they can enforce their contractual rights in an effective way. If they do not have that confidence, the agreement becomes what is often called a "relational contract" – one that is implemented and kept relatively stable because of the relationship between the parties and other, extra-legal, influences the parties can exert on each other. Much of the potential value of the PPP will be lost.

The importance of effective enforcement should not be judged by how often the parties end up in a dispute resolution forum; this may never happen. They may even rarely look at the contract. But when parties implement a long-term contract or attempt to renegotiate it, the fallback position – the enforceable rights that each party has at present – is always in the background of the discussion.

It is generally agreed that the national court system in almost any country is not well-suited to adjudicate many of the disputes that might arise in a PPP contract. PPP disputes often require special expertise to handle competently. Most courts are not well-equipped to deal with this – even with testimony by expert witnesses. For this reason, among others, arbitration has been the preferred final method of dispute resolution for PPPs in many countries – especially when foreign investors are involved.

This note looks at the options outside the Ukrainian court system for dispute resolution concerning PPP agreements in Ukraine. The focus is on PPPs at the municipal level, which is the level at which P3DP has been most active in the preparation of pilot PPP projects, but many of the conclusions are relevant to PPPs at all governmental levels in Ukraine.

The note is written for non-specialists, is meant to provide an overview only, and does not do justice to the complexity of the legal issues in Ukraine. That is not its purpose. The aim instead is to raise a number of critical concerns of a broader nature for PPP policy makers and practitioners.

Finally, it should be noted that the note looks only at methods for obtaining *binding* decisions by a third party; it does not examine possibilities for mediation or conciliation of PPP disputes.

2. INTERNATIONAL ARBITRATION

2.1 International Practice

International commercial arbitration is a common way to deal with disputes in a PPP contract when the PPP company is foreign or has foreign investors.

For commercial arbitration to be “international”, it does not mean that the arbitration necessarily takes place outside the country in which the PPP is located (although it often does take place outside that country). Rather, the term implies that significant aspects of the parties or the dispute relate to more than one country (e.g. the parties have their places of business in different countries), and it often suggests that the arbitration is conducted using rules issued by a recognized international organization (or closely based on such rules) or conducted under the auspices of such an organization.

2.2 Ukraine

Ukraine has a law “On International Commercial Arbitration”, enacted in 1994, and has signed the major international agreements relating to international arbitration, including the New York Convention and the European Convention on International Commercial Arbitration.

This is a good-practice law, based largely on the widely used UNCITRAL Model Law on International Commercial Arbitration. It governs all international commercial arbitral proceedings conducted in Ukraine. For practical purposes, this would potentially cover arbitration (if “international”) for almost all municipal PPPs in Ukraine; it would be a rare case where a municipality would agree to arbitration to be conducted in Stockholm, Vienna, or London (although there is nothing barring it from doing so).

The law establishes two “permanent arbitral institutions”, one of which is under the Ukrainian Chamber of Commerce and Industry, referred to as the International Commercial Arbitration Court (ICAC at the UCCI). (The other is the Maritime Arbitration Commission, which is not relevant to the present discussion of PPPs.) The parties may also make use of *ad hoc* arbitration – i.e. using a tribunal set up by the parties themselves and not organized under the rules of an institution.

The law applies only when at least one party is foreign or has “foreign investment”, which is not defined in the arbitration law but has been generally interpreted as meaning at least 10% foreign ownership.

Arbitration under this law has worked reasonably well. About 500 cases per year are heard. It is potentially a promising method for final dispute resolution under PPP agreements in Ukraine, but there are several drawbacks or areas of concern.

First, there is a lack of clarity in the law about the types of dispute that are not permitted to be resolved by arbitration (i.e. are “non-arbitrable”). This creates some risk for people using international commercial arbitration in their contracts.

According to the Commercial Procedure Code, disputes relating to “public contracts ensuring state needs” cannot be referred to arbitration. It is not entirely clear yet what this includes. Some people interpret this to mean “public procurement”; others think the meaning is narrower.

At present, the use of arbitration in any type of *concession* (i.e. arrangements falling under the concession law) is limited to situations in which a party itself is a foreign entity; and so a Ukrainian special purpose company with foreign investors would not qualify. Since most PPPs involve *local* PPP companies, regardless of the shareholding, arbitration could not be used in this case for concessions. A proposal to amend PPP-related legislation (which has been registered in the Verkhovna Rada) would broaden the applicability to include *companies with foreign investment*, thus bringing the concession law into harmony with the PPP Law in this respect.

According to one interpretation (based on the law “On International Private Law”), disputes concerning real property (real estate) fall under the exclusive jurisdiction of the courts and cannot be referred to arbitration. PPPs often involve land or rights of way and related property rights. But the decision of the courts so far suggests that only the narrow property-related issues would not be able to be decided in arbitration.

A second area concerns the selection of arbitrators. There is nothing in the law that states that the parties must use arbitrators from ICAC’s recommended list. But in practice ICAC requires that parties select arbitrators from the list of persons maintained by ICAC. Any arbitrator that a party chooses can be challenged by the other party, and it is ICAC that decides the challenge. There is a question whether the parties can find arbitrators in that list who have high competence and experience in many of the issues likely to arise in PPPs – a specialized skill. Most practitioners in Ukraine are of the opinion that selecting arbitrators outside the ICAC list can pose difficulties and is in practice impossible.

One way around this problem might be for the parties to choose the arbitrators themselves using the *ad hoc* procedure (permissible under the law) and to select an appropriate local organization to play a purely administrative role – i.e. to provide administrative support (notices, minutes of meetings, document control, facilities and logistics for the hearings, etc.) – but to play no role in the choice of arbitrators, this function being left to the free choice of the parties. This might work but would require careful drafting of the arbitration clause in the contract between the parties.

One major area of concern is that the *enforcement* of the arbitral award by a court is not always straightforward. Many Ukrainian courts do not have a friendly attitude towards international arbitration. The judges at the first-instance courts lack relevant experience, and the process can be time-consuming.

The winning party must go first to a first-instance court to enforce the arbitral award (unlike in many other countries where it would go immediately to a higher level court). Judges at this level are too ready to accept challenges to the award for a variety of reasons. Various procedural issues are raised, some of them based on highly strained arguments. For example, the losing party may claim that proper notice was not given or that there is a defect in the wording of the arbitration clause itself. The courts often take an excessively

strict and highly formalistic approach in deciding these cases. In some cases, the winning party in effect has to show that there are no grounds to *refuse* enforcement of the award. Sometimes the courts, contrary to the law and to good practice, will even re-consider the case on its merits.

Sometimes courts use the “public policy” rationale for not enforcing the arbitral award. The law states that a court may refuse to enforce the award if enforcement would be “contrary to the public policy of Ukraine”. This is not a Ukrainian novelty but simply reflects the provisions of the UNCITRAL Model Law and the New York Convention. But the intention of this provision, as used in these international texts, was very limited. It is clear from the history of its enactment (confirmed by later interpretation by many national courts) that the public policy exception in the New York Convention was meant to be used only in the most exceptional circumstances, when there would be a violation of the forum state’s deepest notions of morality and justice, not just any law of the country.

The provision, very broadly interpreted, used to be a common ground for non-enforcement in Ukraine. There was a tendency of courts to assume that if the court found that the award did not comply with any Ukrainian law, then enforcing it would be contrary to public policy.

An extreme example (2008) is a case in which the arbitration clause referred to the “Arbitration Court at the Kyiv Chamber of Commerce and Industry” which does not exist. Presumably the parties’ intention was to use the “International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry”. A Ukrainian district court refused enforcement on grounds of public policy.

The saving factor is that these flawed decisions in the first-instance courts, as described above, are often rectified on appeal to the next level.

A final non-legal but extremely important drawback to using international commercial arbitration for *municipal*-level PPPs is that, although there is nothing barring municipalities in Ukraine from using this law (when the PPP company has foreign investment and in all cases except for concessions), most municipalities would not feel comfortable and would not want to use arbitration – and even less, arbitration under the auspices of the Ukrainian Chamber of Commerce and Industry. It would seem highly unusual and unnatural to them. Municipal officials feel familiar using the national court located just down the road. Moreover, they would be worried about the high cost of arbitration – and this concern might well be justified in many cases.

3. DOMESTIC ARBITRATION

Ukraine also has a law on domestic arbitration (“Law on Courts of Arbitration”), enacted in 2004.

Arbitration may be carried out under the auspices of privately created “arbitration courts” that have been registered with the authorities. (Although referred to as “courts”, these are not courts in the usual sense of the term.) Each of these has a closed list of arbitrators.

Arbitration under this law can also be carried out by ad hoc tribunals. There is considerable flexibility as to the choice of arbitrators and procedures.

Once a decision is reached, enforcement is carried out by a writ of execution issued by a state court. The grounds for not issuing the writ are very narrow – e.g. that the arbitral tribunal was not composed in accordance with the law. The judicial court cannot look at the substance (merits) of the decision of the arbitral tribunal.

Over 400 arbitration courts have been set up under the law on domestic arbitration. Most practitioners agree that many of these are biased, some having been set up by the companies that will be parties to the proceedings (and sometimes even operating from the premises of the company), with arbitrators highly sympathetic to the companies’ position.

Domestic arbitration is therefore viewed with some suspicion. In the past, there has been considerable criticism of the use of domestic arbitration, but the criticism was directed at the practice of having uninformed consumers sign arbitration agreements that involved biased arbitration courts. Consumer disputes were subsequently removed from the jurisdiction of domestic arbitration in 2011. Nevertheless, these experiences have left a lingering sense of distrust of domestic arbitration, and this is something that would have to be overcome if the procedure is to be considered acceptable for PPPs.

An interesting point is that, at least on paper, the grounds for challenging the arbitral decision in domestic arbitration appear narrower than under the international arbitration law. In domestic arbitration, the court cannot look at the arbitrator’s decision on the merits. In contrast, as noted above, the international arbitration rules include the “public policy” challenge.

The problem is that first-instance courts do not always make a strict distinction between the procedural aspects and substantive aspects of the arbitral proceedings in deciding whether to enforce the arbitral award. Alternatively, procedural grounds of some kind, however shaky, can be found to justify the refusal to enforce an arbitral decision – and in any case procedural issues are used by the opposing party to cause long delays. Practitioners say, however, that such mistakes of the lower courts will generally be corrected upon appeal.

A critical obstacle, in the context of PPPs, is that neither the state nor a municipality can be a party to domestic arbitration (Article 6, point 6). At present, this closes the door for the use of this procedure in PPPs. Some municipal *enterprises*, however, use domestic arbitration. One arbitration court, the Arbitration Court under the League of Legal Protection of Consumers’ Interest (registered in 2004), handles many cases involving

municipal enterprises. Moreover, a court has recently confirmed that municipal *enterprises* (as opposed to municipalities themselves) can be parties to domestic arbitration.¹

But even if a municipal enterprise and a private sector company could use domestic arbitration to resolve a dispute concerning a PPP agreement, the arbitral award would not be final vis-à-vis the municipality and could be appealed by the municipality to a judicial court if, say, the municipality had guaranteed the payments to be made by the municipal enterprise.

One could argue that this inability of municipalities to use domestic arbitration should be changed, but then some way would have to be devised to prevent the abuses that can arise in domestic arbitration. One idea might be to require that arbitration under the domestic arbitration law must be held under the auspices of the national or regional chambers of commerce, to give more credibility and move away from the “wild west” aspect of some of these forums.

In principle, the domestic arbitration mechanism could work well for PPPs at the municipal level (even if the PPP company has “foreign investment”). Since there is no restriction on who can set up an *arbitration court* for this purpose (so long as they become registered as such), it may be possible in the future (once there are more municipal PPP agreements signed) to make this procedure more acceptable to municipalities by creating a special body oriented mainly for disputes concerning municipal PPPs. But this is not a solution for the immediate future.

¹ Kyiv Economic Court of Appeal, Case № 910/20070/13 (25 February 2014).

4. USE OF EXPERTS TO RESOLVE DISPUTES IN PPPs

4.1 The Need for Fast-Track Dispute Resolution Mechanisms in the PPP Agreement before Reaching Arbitration

When it first began to be commonly used, arbitration may have seemed to offer a quick and cheap way to resolve disputes, but over time it has become highly judicialized in the way it functions, and at least international commercial arbitration is far from being fast and inexpensive. In a long-term contract, it tends to be used when the relationship has broken down between the parties and it often signals the end. It is sometimes referred to as the “nuclear” option for PPP dispute resolution.

It has become more apparent that PPPs (inherently long term in nature) need, in addition, mechanisms that are lighter, quicker, and less expensive for the resolution of many kinds of disputes that arise in the normal course of project implementation.

4.2 Binding Use of Expert Determination

It has become accepted practice in a number of countries to make use of specialized “experts” to decide certain issues and disputes that arise in contracts, often long-term contracts. This is a purely contractual mechanism: the parties agree that if they cannot resolve a certain issue, then a selected expert will resolve it, and the parties agree *in advance* to accept the decision of the expert just as if the result was written by them in their contract. If one party does not accept the decision of the expert, the other party can go to court to enforce the expert’s decision, just as they would for any breach of contract.

Legal systems that defer largely to the will of the parties as expressed in a contract (e.g. common law systems) do not have much difficulty with this method. There are a few contentious issues, but ways to resolve them can be found. For example, it has to be made very clear that the expert is technically not an “arbitrator”, because specific laws in most countries govern the procedure of arbitration. There can also be tricky questions about whether the expert can decide questions of *law*, as opposed to questions of *fact*. Courts might consider this to be their special expertise. But if the expert looks only at narrow technical or financial issues, e.g. involving the measurement or determination of a *value*, then many legal systems have no problem with expert determination.

Disputes can often arise in PPPs about the value of certain things. For example, penalties may be linked to the PPP company’s performance based on objective indicators (“key performance indicators” – “KPIs”). If there is a disagreement about how the company scored on a KPI, this is a perfect occasion where an appropriate technical expert can come in and investigate and take a decision about what the correct value is. Another example – slightly more complicated – would be to determine how the service fee should be adjusted (pursuant to the contract) in response to an extraordinary event, or how the “termination payment” should be determined if one is called for under the contract.

When a dispute over a narrow issue like this arises (and where there is no dispute over the law and no significant dispute over *legal* aspects of the interpretation of the contract), it

really does not make sense to be forced to take the claim to a court or to an arbitral tribunal. Ultimately the court or arbitral tribunal will listen to experts in any case, because they do not have the necessary expertise themselves.

An interesting example of this arose in one of the two Manila water concessions. In 1998, the private-sector concession company submitted a claim against the public authority to a three-member arbitral tribunal. There were several issues; an important one was to determine what *discount rate* should be used in the financial model for the project, in accordance with the terms of the concession contract, which gave vague and confusing instructions about how to determine the rate. Each of the parties engaged a different British-based economic consulting firm to advise them and present arguments to the arbitrators. Then the arbitral tribunal itself decided to appoint an expert – an Australian professor of finance – to assist it in understanding the arguments and assessing the testimony presented by the other two experts. This was clearly an issue for *experts* to decide. It would have been simpler and much less costly and time consuming if a procedure for expert determination had been written into the concession contract.

The PPP agreement needs to spell out in considerable detail how the expert determination will be conducted. One common way to do this is to write all the provisions into the PPP agreement. Another way relies on there being a respected organization that has published its rules for expert determination.² Then the PPP agreement could simply make reference to these institutional rules.

The provisions (whether contained in the agreement itself or in the rules published by a respected organization) need to cover many matters, the main ones being:

- How a party should initiate the process if there is a dispute.
- What the parties must do if they cannot agree on the name of an appropriate expert. For instance, there could be an “appointing authority” that submits several names to the parties and then a procedure for how the parties will rank or score the names to arrive at the single jointly chosen expert.
- How the expert should determine the exact scope of the determination.
- The procedures that will govern the process. It is very important to make it clear that the expert is not obliged to follow strict court-like procedures of due process. The whole purpose is to permit more flexibility than would be allowed in litigation or arbitration. Nevertheless, it is important to require some standards. It is often useful to include a statement such as this: “The expert is to act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.”
- The form of the expert’s decision, and whether or not it must include an explanation.
- Who will pay the costs of the expert. Often the parties share the cost equally.

² For example, the World Intellectual Property Organization (WIPO) has issued a set of rules for expert determination.

- Under what conditions a party is permitted to take the dispute to arbitration (or to court) if it disagrees with the decision of the expert.

Expert determination can be conducted with different degrees of finality. This will sometimes depend on what is permitted under the laws of the country. Two common possibilities are as follows:

- (A) One possibility would be to state that the expert's decision is binding and final and it cannot be taken to a higher level of dispute resolution.
- (B) Another possibility is to say that if a dissatisfied party does not take the dispute to a higher level (be it arbitration or courts) within, say, 30 days, then it becomes final. But in any event, until it is decided by the higher level, the parties have to respect the decision (i.e. it is provisionally *binding*, even if not final).

Experience with method (B) shows that, more often than not, both parties will assess the result and will conclude that it is not worth "appealing" the issue to a higher level – unless it is a fundamental issue and they are deeply dissatisfied – and so they will not act and the decision will become final. This is the goal of expert determination.

A third possibility is to say that the determination is *advisory* only; either party can take it to a higher level anytime. But use of experts in that way – however useful it may be – is not the subject of the present note.

Expert determination is not commonly used in Ukraine, and one might expect a guarded and even antagonistic attitude from the judicial system. The general consensus of Ukrainian lawyers is that approach (A), above, would not be permitted under Ukrainian law. This would be viewed as the parties' attempt to take away the inherent power of the Ukrainian courts to decide disputes. A change in primary legislation would be needed to make (A) acceptable.

There might be more hope for the acceptability of approach (B), where the parties have a certain period – say, 30 days – during which they can decide not to accept the decision of the expert. It might be possible to interpret the non-objection of both parties during the 30-day period as a tacit agreement between them to accept the decision of the expert, just as if they had written an amendment to their contract.

Some Ukrainian lawyers believe this could work. It would probably be good to state this assumption explicitly in the expert determination clause in the contract to encourage a court to interpret the effect of the clause in the intended way – e.g.: "If neither party initiates proceedings in arbitration [*assuming that arbitration is the dispute resolution mechanism under the contract*] to resolve the claim that was decided by the expert within 30 days after the issuance of the decision, the parties will be deemed to have agreed to the decision of the expert and to have made it a binding amendment to the contract."

An additional way to give more certainty could be for the Supreme Court to issue a clarification that explains that such language should normally be sufficient to create a valid amendment to the contract.

Other Ukrainian lawyers, however, believe that courts would not accept silence as tacit acceptance in this case. The parties would need to sign a statement agreeing to amend their contract in such a way that it conforms to the decision taken by the expert. But this might defeat the purpose: it is often much easier (psychologically and administratively) for a party to say nothing even if it knows what the result of its silence will be than for the party to take an affirmative action.

5. CONCLUSIONS AND RECOMMENDATIONS

Although people and companies agree on detailed written contracts for many reasons (there is certainly a value in just setting out clearly and precisely what the common understanding is), a large part of the value of a long-term contract is lost if the contract cannot be enforced effectively against a party that breaches its terms.

At the moment, if the final dispute resolution mechanism is the Ukrainian judicial system, parties to a PPP contract in Ukraine have little confidence that their contractual rights will be upheld in court. This adds substantial risk, especially for the private partner, and this constitutes a major constraint now to a private partner being willing to make significant investments in the PPP project and to banks being willing to lend large amounts. This dispute-resolution risk is an important constraint that holds back the development of a sound PPP program in Ukraine.

Conditions are somewhat better for PPPs in which there is *foreign* investment; they can make use of the provisions of the law on international commercial arbitration. But improvements are needed even here, as noted in section **Error! Reference source not found.**

For the moment, most PPPs in which there are no foreign shareholders cannot be structured as best-practice PPPs at all; instead, they have to be thought of more as “relational contracts”, dependent for their enforcement on incentives and influences beyond the contract itself.

Even if the question of ultimate dispute resolution can be resolved, this would not address how to incorporate mechanisms for more specialized dispute resolution of narrower, technical issues as they arise – mechanisms that are being seen as essential for the stability of long-term PPP arrangements and that are commonly used now internationally in PPP contracts. “Expert determination” and similar mechanisms are rarely used in Ukraine, and there are legal obstacles to their easy adoption.

Annex 6: Aide Memoire the Practice of Private Partner Involvement in the Heating Supply System on the Basis of a Public Private Partnership

Aide-memoire

The practice of the private partner involvement in the heat supply system on the basis of a public private partnership

1. **On 17th December, 2014 in the framework of the PPP and Infrastructure Expert Center (PIEC) of Ukraine** and the American Chamber of Commerce together with the Public Private Partnership Development Program in Ukraine (hereinafter - P3DP), which is funded by the US Agency for International Development, a meeting of the business club on the transfer of the best practices of the first PPP project in the field of the heat supply was held.
2. **The meeting of the Expert Centre was dedicated to** discussing the issues related to the implementation and application of the energy-saving technologies and increase of the efficiency of use of the fuel and energy resources on the example of the first project of the modernization of the heat supply system based on the energy-saving technologies in the town of Malyn within the public - private partnership with the assistance of the Public Private Partnership Development Program.
3. **During the meeting of the Expert Centre** it was planned to consider and discuss the following issues:
 - to consider the technical steps as to the preparation of the relevant project documents, organization of the tender and attraction of a private partner;
 - to demonstrate how the successful experience of the project can be replicated in order to implement similar projects in other towns and cities of Ukraine given the challenges of today (the reduction of the natural gas consumption and switching to the alternative fuels);
 - to receive the consultations of the representative of the Department of Investment and Innovation Policy and Development of the Public Private Partnership of the Ministry of Economic Development and Trade of Ukraine and the administration of the town of Malyn;
 - to distribute the available materials and documents to the participants of the Expert Centre meeting, such as:
 - the project of the public private partnership in the town of Malyn;
 - the joint activities agreement between the City Council of Malyn (the State Partner) and 'Energuia tepla' LLC ('Heating energy') (the Private Partner) for improving in the modernization of certain components of the heat supply system in the town of Malyn, Zhytomyr region.
4. On 19th June, 2013, the Executive Committee of Malyn City Council (Zhytomyr Oblast') made a decision to launch a project of the modernization of certain components of the heat supply system based on the energy-saving technologies in the town of Malyn within the public-private partnership with the assistance of the Public Private Partnership Development Program. The Executive Committee of the City Council, guided by the Law of Ukraine 'On Local Self-Government in Ukraine', shall be responsible for the organization of the project.
5. This project was aimed at:
 - improving the energy efficiency indicators and reducing the energy resources consumption by the public buildings;
 - solving the problems of the budget financing;
 - technical modernization of the heat supply system and, consequently, the reduction of

- the costs of the communal services;
- reduction of the environmental pollution.
6. The proposed project complied with the following PPP features and was intended to implement the following actions:
- Ensuring higher technical and economic performance indicators than in the case of such an activity being implemented by the partner state alone, i.e. without the involvement of the private partnership. It is envisaged that technical modernization will ensure the effective introduction of the new technologies and achievement of the economic effect.
 - The long-term relationship (from 5 to 50 years). A long-term cooperation is envisaged, during which the private partner shall be repaid the investments.
 - Transfer of a part of the risks to the private partner in the process of the public - private partnership implementation. The parties shall distribute the risks among themselves in the framework of cooperation.
 - The private partner shall make the investments into the objects of the partnership from the sources, which are not prohibited by law. The private partner shall provide for the modernization and upgrading with his own funds.
7. In particular, this **project complied with the strategic development priorities of the state / region:** approximation of the energy intensity of the gross domestic product of Ukraine to the level of the developed countries and the European Union standards, the reduction of the energy intensity of the gross domestic product, more efficient use of fuel and energy resources, optimizing the energy mix structure of the state by reducing the share of the imported fossil organic types of the energy resources, including natural gas, the Resolution of the Cabinet of Ministers of Ukraine of 01.03.2010 № 243 approved the ‘State target economic program on energy efficiency for 2010-2015’.

In pursuance of the instruction of the Cabinet of Ministers of Ukraine of 29.07.2009 № 891 ‘On Approval of the Action Plan for 2010 on the implementation of the National Strategy for Regional Development until 2015’ the Regional Energy Efficiency Program for 2010 – 2014 was developed in Zhytomyr oblast’, which was approved by the decision of the Regional Council of 08.09.2010 № 1157 and agreed with the National Agency of Ukraine for Energy Efficiency. Reducing the consumption of the natural gas by the facilities of the public sector due to the transfer of boilers to burning of the local types of fuels will enhance the energy safety of the state and will eliminate the dependence on the gas imports.

8. The project implementation plan provided for introducing of the energy saving measures, with the financial support by the private partner, through the modernization of the boiler house, which is in the communal ownership and provides the heat supply to the public sector facilities in the town of Malyn, Kryms’kogo Street (two secondary schools, sports school for children and youth) with the installation of the hot water boiler, certified in Ukraine, which runs on the wooden fuel (wooden chips, pellets). The town decided to use the competitive advantages of the region, namely, as follows: in Zhytomyr oblast’ and adjacent oblasts’ there are significant forested areas, which led to the active development of the wood processing industry and the productions related to the forest industry wastes. In particular, in the territory of Malyn district there are several enterprises producing wood chips that can be used for heating, i.e. to become an alternative fuel from the wood processing industry (pellets, chips, briquettes, etc.). The participants of the PPP implementation: the State Partner shall be the City Council of the town of Malyn; the private partner shall be an organization, which will be selected through a tender. Duration of the PPP contract shall be 15 years.

9. In order to achieve the objective of the project on the modernization of the boiler-house on Kryms'kogo Street of the town of Malyn, Zhytomyr Oblast', an integrated system of PPP management had to be formed. A system of PPP management is a goal-oriented coordination of the management of the objects and the PPP subjects and their relationship in the process of achieving the objective. The subjects of PPP are the members of the town authorities and the participants of the private business who can seek the assistance from the consulting organizations. The objects of the PPP management are project milestones (stages) that are necessary to achieve the stated objectives. The main general management functions are planning, regulation, analysis and control, resource management, which form the management system.
10. The private partner was selected at the tender, which was held according to the Law of Ukraine 'On Public Private Partnership' and the Resolution of the Cabinet of Ministers of Ukraine №384 from 11.04.2011, which regulates the preparation of the PPP projects. The private partner shall undertake the reconstruction (modernization) of the boiler-house in Kryms'kogo Street of the town of Malyn, Zhytomyr Oblast'. The private partner shall at its own expense install the heating equipment (solid fuel pyrolysis hot water boiler with the automatic fuel supply, pumping group, chemical water treatment), shall obtain by its own efforts the permits required for the commissioning of this equipment, shall ensure and arrange for the fuel for generating the heat, shall sell the heat to the budgetary organization. The owner of the PPP facility shall be the public partner. At the end of the Agreement, the private partner shall transfer the PPP object and the heating equipment, which was purchased by the private partner, into the ownership of the urban community of the town of Malyn.
11. The Public Private Partnership Development Program envisaged to carry out the event for the interested towns and cities, business and expert community representatives, at which the project will be presented and discussed in detail in order to maximize the dissemination of the information about it among the interested towns and cities as well as the regions and to promote the experience of the PPP project in other towns and cities of Ukraine.
12. The representatives of the Ministry of Economic Development and Trade of Ukraine, the oblast' state administrations of Ukraine and municipal councils, utility companies, the Association of the Small Towns of Ukraine and the representatives of the business community of the various interested industries were invited to take part in the meeting of the Business Club. The invited participants had the opportunity to learn about the project of the modernization of the heat supply system in the town of Malyn, based on the energy-saving technologies and using a PPP model, to learn about the important steps, problems and challenges that were faced. The following documents are attached to this Aide Memoire: a program of the meeting of the Expert Centre on PPP and infrastructure (Appendix 1) and a complete list of the roundtable participants (Appendix 2).
13. Mick Mullay, Director, Public Private Partnership Development Program (USAID) said: 'Through the use of the Public-Private Partnership mechanisms and given the limited financial resources, the mayor of the town of Malyn and his team managed to attract the financial resources of the private sector as well as its expertise in order to improve the quality and reliability of the system of heat supply to the key communal buildings of the town. I hope that, as a reliable partner, the town will be able to find common ground with the private sector to address other important issues'.
14. **Mr. Olexiy Grygorovych Shostak, Head of Administration, Malyn City Council**, which has been implementing the project of modernization of the heat supply system within the public-private partnership, briefed the participants on the steps of the project preparation and implementation. Malyn City Council had been seeking the information on the implementation of the projects of modernization of the heat supply system from various sources (attending seminars, searching the information on the Internet, etc.) and

came across the information about the Public Private Partnership Development Program of the US Agency for International Development. The PPP project participants (the PPP Development Programme and the representatives of the town of Malyn) carried out an active dissemination of the information on the preparation of the project and the tentative date of the announcement of the tender at the meetings and conferences in Zhytomyr Oblast' State Administration; during the specialized conferences and seminars; at the working meetings at the governmental institutions (including the Ministry of Economic Development and Trade of Ukraine, the Ministry for Regional Development, the Ministry of Construction and Housing of Ukraine, etc.); the web-site of the PPP Development Program and the web-site of Malyn City Council. The activities at the various levels for at least 12 months contributed to active disseminating of the information on the PPP tender, therefore the interested companies were able to prepare for filing of their applications as well as to study the peculiarities of the region and the town. It was necessary to select a partner for the long term co-operation.

15. **Mr. Olexiy Grygorovych Shostak** explained that the region has a good raw materials base, i.e. 2 state-owned forestry enterprises in the actively developing wood processing industry as well as the related branches of the entrepreneurship, thus, the need for the raw materials is met in full. The energy dependence of the town given the continuous increase of the natural gas tariffs and the advantageous local peculiarities of the region became the key factors in the local authority's adopting the decision to implement the project. 'Although the project is scheduled for the long term of 15 years, it is already now that the first results have been achieved and the indicators of the economic efficiency satisfy us and our partners', – he said. He also noted a positive trend of the changes in the legislation, namely, that during the period of the project preparation and implementation certain modifications have been made in the Ukrainian legislation that bring along the abolition of the barriers and significantly facilitate the work.
16. **Moderator and Director of the Public Private Partnership & Infrastructure Expert Center, American Chamber of Commerce in Ukraine; Director of the preparation of the PPP pilot projects, Public Private Partnership Development Program (USAID), Ms. Tatiana Korotka** explained that in reality the technical solution was already prepared and designed by the municipality and there was only a lack of the legal and organizational model, the role of the private partner in the such a project was not clearly defined, and the risks that the project might face, because it was designed for a long term, were not identified, included and distributed. The achievement of the project objectives had been preceded by a significant preparation, which consisted in identifying the financial, legal and technical aspects of the project, elaborating on the regulatory environment and the project awareness among the general public, expert communities and interested investors and operators who would undertake the financial and other risks. Thus, the PPP Development Program:
 - held the introductory presentations on the peculiarities of the preparation of the projects of the public-private partnerships for the representatives of the deputy corps and the Municipal Executive Committee;
 - developed a business model of the project;
 - contributed to the development of the project feasibility study;
 - contributed to the development of the financial model;
 - prepared a draft of the tender documents for the selection of the private partner;
 - prepared a draft of the PPP agreement.
17. Ms. Tatiana Korotka highlighted the issue of improving the basic law 'On Public Private Partnership': 'Our task is not only to simplify the procedure for the application of the instruments of public-private partnerships, but to also teach the local authorities how to apply them. A number of events were organized in every corner of Ukraine for the general coverage of the opportunities and practical aspects of such a partnership in

various areas, from the improvement of the towns and cities to the implementation of social projects. Ms. Tatiana Korotka drew attention to the main feature of the day, i.e. there is no need to approve the project with the Ministry of Economic Development and Trade of Ukraine, which reduces the project preparation stage for a few months (since October 2014 in connection with the change to the CMU Resolution №384, such an approval is no longer required).

18. **Ms. Svitlana Yarosh, advisor on the energy saving and energy efficiency, 'Energuia tepla' LLC of the town of Malyn**, said that the company has 15 years of experience in the design, installation and commissioning of works. She noted that the solid fuel boilers require more attention and work, that's why they came to the conclusion that it was better to take a boiler house into the complete service (rather than rent) and work there. It is envisaged that the private partner shall undertake the responsibility to attract the funds (without being provided with the municipal or other budgetary guarantees), install the necessary equipment and ensure its operation, repair, etc. The town shall use the heat supply and pay for the heat supply on the basis of the tariffs, approved by the City Council, in accordance with the calculations by the private partner. The PPP Agreement provides that the cost of the heat shall be at least by 10% lower than a similar amount of the heat generated with natural gas, but the difference may be more depending on the cost of the services reached by the private partner.
19. **Ms. Svitlana Yarosh** said that she learned about the program at the training, which was conducted by the PPP Development Program on the public-private partnership and thanked the P3DP for increasing the level of awareness on the PPP as well as for creating a positive attitude to the implementation of the projects with the application of the PPP model.

Rerefence: the PPP Development Program held a number of training and educational events for Zhytomyr oblast' on the topic of the public private partnership, the representatives of the town of Malyn became better aware about the essence of the project preparation, feasibility study and financial model, thus avoiding delays in elaborating of the required business model of the project. The town of Malyn benefited from the assistance of the P3DP, which increased the level of the awareness about the PPP as well as the qualification of the town representatives (on the other hand, their qualification helped to bring this project to the PPP tender in the tight terms.)

20. **Mr. Olexiy Grygorovych Shostak** said that he introduced the initiative to convert one of the boiler houses to operate under the PPP terms. The heating equipment (solid pyrolysis hot water boiler) was installed, which is already operational and provides the heat supply to the facilities.
21. **Ms. Tetiana Korotka** asked to explain to a wider range of participants of the meeting of the Expert Centre what exactly the community had received from the involvement of the PPP?
22. **Mr. Olexiy Grygorovych Shostak** explained that the energy saving direction, the equipment capacity of the boiler houses were not used so efficiently. In terms of the effectiveness of the project: cost of the heat must be by 10% lower as compared to generating the heat by burning gas. At today, as compared to the price of gas, it is by 50% less. The profitability margin of the project is high. Now we get the heat at a reasonable price for us and it satisfies us.
23. **Ms. Tetiana Korotka** commented that it is not only the development of the public-private partnership, but also the development of entrepreneurship, and at the same time this is creation of new jobs. This is not the total privatization, but the involvement of the PPP models where appropriate.
24. **Ms. Olena Kucherenko, Director of the Department of Investment and Innovative Policy and Development of Public-Private Partnership, the Ministry of Economic**

Development and Trade of Ukraine stressed the lack of the alternatives to stimulate the development of public-private partnerships. She pointed out that these services should be used, especially when there is the experience and example. She considers the park in city of Simferopol, Crimea, to be a good example of PPP. It is mutually beneficial to all and is a good example of PPP where the combination of a private partner and the city authorities is synergetic.

Reference: the pilot project using the PPP mechanism 'Reconstruction and Management of the park named after Yuri Haharin in the city of Simferopol' initiated within the Public Private Partnership Development Program (USAID) (the stage of development of the project documents was completed)

25. Ms. Olena Vasylyivna Kucherenko said that there is a Resolution of the CMU on the method of the Ministry of Economy how to organize the cooperation on the basis of PPP. This method includes the information about how to calculate the tariffs, what kind of distortions will there be, how to fix them, and so on. That is, how to actually prepare a feasibility study for the project, considering the risks and other factors. When we have a complete understanding of the project, a call for tender is announced. There is the information available on the web-site of the Ministry of Economic Development and Trade of Ukraine, namely, the joint cooperation agreement of Malyn City Council (the state partner) and 'Energuia tepla' LLC (the private partner). She also noted that the Ministry has the experience and has the possibility to hold consultations. The Ministry states that much of the interest comes from the private partners rather than from the city councils. In turn, the private enterprises want to understand how to work on the basis of PPP, what is the algorithm. An interesting fact is that small towns of Ukraine show more interest.
26. Ms. Olena Vasylyivna mentioned that the Ministry of Economy is actively working on the development of the necessary legal framework for the more effective use of such a mechanism in Ukraine. All the legal framework will be further elaborated, and whether there will be trust to the use of such a mechanism depends on the best practices of the implementation of such projects. Speaking of the legislative changes, it should be noted that now the Ministry is not able to organize the education and training, but the PPP Development Program can continue to do so.
27. The Ministry has a Working Group on PPP, which will soon consider not only the changes to the legislation but also a step by step algorithm of PPP, in which the obstacles that might be faced, troublesome aspects, etc. will be mentioned as an example for others to use. The practitioners can see better how to work best, where the potential problems may arise because they've been through these stages and have gained some experience.
28. 'Among the priorities of the new Minister of Economy is improving the investment climate in Ukraine, which coincides with the existing directions of the Ministry. We appealed to the business community with a proposal to form the standards acceptable for the business. This applies not only to the law on public-private partnership, but also to the related issues that affect the process of the practical implementation of the projects. We plan to continue to coordinate the activities of all the stakeholders to improve the PPP mechanism', - noted Ms. Kucherenko
29. At the end of the speeches of the experts and the guests invited to the meeting of the Expert Centre, **the participants moved on to a question and answer session** where the participants could share their views and exchange their experience on the implementation of the PPP projects in Ukraine.
30. Thus, **Mr. Serguiy Fedorovych Stepanov, Chairman of Lozova City Council (Kharkiv oblast')**, said that the municipality has a favourable geographical location, large railway hub and road transport hub, and so on. There is a dendrological park of the

local significance, as well as a plan of the construction of this park. The project already has the expert opinions and the search for an investor is currently underway. He inquired about who could continue the conversation on this subject. **Ms. Tatiana Korotka** noted that the PPP Development Program can organize a meeting of Lozova City Council, the representatives of the business community of the town of Lozova and Lozova district with the American Chamber of Commerce in Ukraine, which in turn will help in disseminating the information about the existing and potential investment projects and the potential of the district / oblast' and will help to find a private partner.

31. **Ms. Varema Tetiana Nikiforivna, Deputy Director of the Department of Housing and Municipal Economy, Zhytomyr Oblast' State Administration**, expressed the will to share the experience and said that in 2008 the gas supply was suspended, causing the need for the urgent solutions and the transition to alternative fuels. The Department of Energy Saving was created in Zhytomyr Oblast' State Administration, a full inspection and inventory were conducted in order to involve a private partner. Subsequently, the information on the boiler houses that can be objects of interest for private partners was placed on the web-site of the Administration. Regarding this matter, the Administration is currently guided by the Resolution of the Cabinet of Ministers of Ukraine of 09.07.2014 № 296 'Some issue of providing population, enterprises, institutions and organizations with natural gas until the end of the heating season of 2014/15', which limits the gas consumption.
32. **Mr. Netyazhuk Mykhailo Volodymyrovych, City Mayor, Fastiv City Council**, told the audience that the town solved the issue of transport on the basis of PPP, the transporters are no longer bound to the monopoly. The agreement with the transporters stipulates the responsibility for failure to provide services. However, a different approach was taken with regards to the heat-supply system. An agreement on the joint activities was signed, but the fixed assets were not transferred to the concession on the basis of PPP. But the mayor of the town of Fastiv confirmed that the previously developed PPP project of the management of the urban park did not represent much interest for investors.

Reference: the urban park named after Yu. Haharin (Fastiv) is managed by the utility company and the assets of the urban park are on the balance of this utility company. The idea was to transfer all the assets of this urban park to a private partner under the concession conditions. A representative of the PPP Development Program visited the town of Fastiv at the invitation of Fastiv City Council (2012).

During the meeting, it was discovered that the project did not really meet the requirements of the PPP and the concession law, especially with regard to meeting the requirements of the Cabinet of Ministers of Ukraine's Resolutions №384 and №232 on the preparation and implementation of the tender. In fact, the proposed project did not have a properly prepared feasibility study, an evaluation report of Ministry of Economic Development and Trade of Ukraine and the properly conducted tender.

The P3DP representatives prepared a set of recommendations in order to remedy the situation and to bring the documents into compliance with the law. The P3DP representatives also offered their assistance and expertise to improve the current situation.

33. At the end of the meeting **Mr. Olexiy Grygorovych Shostak** summed up all the above said briefly emphasizing the principles and the main goal of PPP. Firstly, if you prefer the rent, it proves to be the blindly path, because there is neither the information nor the vision of the future. Secondly, if you opt for the PPP, it means trust, risk minimization, creation of a positive image. Creating a positive image is a special feature, as it shows to

all other investors that we are open and reliable that we already have a success story, thus, you can work with us in the future.

34. Understanding success and good luck during the implementation of the first project of the modernization of the heat supply system based on the energy-saving technologies in the town of Malyn, we can say that the projects of heat supply are advisable to be implemented in the form of PPP, provided that the project meets the following requirements:

- the project foresees the long-term providing of the services of the similar (or better) quality in favor objects of communal property of the town at a lower price, which will lead to a more rational use of the budget funds and is likely to facilitate the budgetary situation in the town;
- the use of the alternative fuels (that will be produced from the wastes of the forestry and agricultural activities) will allow not only to reduce the price of the heat, but also to improve the environmental situation, to ensure the development of the alternative sources of energy, a more rational use of the local resources in compliance with the state policy priorities;
- a private partner (selected at a tender) will have the sufficient financial resources, experience and expertise to provide the quality and timely services at lower expenses
- the investments made by the private partner will improve the economic situation in the town and the region and will show the ways of the more rational use of the resources
- the avoidance of the budget financing of the capital construction and reconstruction of the heat supply facilities will provide quality ways for the development of the sector with the involvement of private operators.

35. Summing up the meeting of the Expert Centre, it can be said that the PPP Development Program considers the project in the town of Malyn as typical for small and medium-sized towns and cities and pursues the goal to extend the experience of the town of Malyn to other interested towns and cities to be able to prepare similar projects independently or with a little help of the experts and to submit their applications for the PPP tender already in 2015. The PPP Development Program will post on its website the information about the project and the documents accompanying the training (a feasibility study, a conclusion on the analysis of the effectiveness of the PPP project, the tender documentation, a template of the PPP contract, this information reference, etc.), and will also provide advice to the interested towns and cities in preparing similar projects. The interested towns and cities can contact the representatives of the town of Malyn (through the PPP Program Development or directly) and clarify the key circumstances of the preparation of the documents and the official decisions.

36. The following appendices are attached to this Aide Memoire:

Annex 7: Malyn Heating Supply PPP Project Case Study

PPP Case Study: Malyn Municipal Heating with Renewable Energy

Background

Since independence, Ukraine has been dependent on natural gas imports from Russia for heating. But reliable gas supplies have been threatened by ongoing price disputes and the armed conflict between Ukraine and Russia that broke out in 2014. Several times – in 2006, 2009 and again in 2014 – Russia cut off gas supplies, sometimes in the middle of winter. The high cost of Russian gas to Ukraine, sometimes exceeding the market level, was a strain to Ukrainian industry and governments.

In 2012, Malyn, a city of 27,000 located in the Zhytomyr region of Ukraine, began to explore the possibilities of greater energy efficiency and use of alternative fuels, particularly wood or agricultural waste. This would reduce dependency on imported gas, eliminate exposure to rising gas tariffs, and enable the city to use locally-available resources. It would also stimulate the creation of new jobs and provide opportunities for local small businesses.

Zhytomyr region has significant potential for using alternative energy sources for generating heat and electricity. One-third of its territory – 1.1 million hectares – is covered in forests, which generate an estimated 563 thousand m³ of wood waste annually. Its agriculture sector produces over 1 million tons of agricultural waste per year, which generates heat equivalent to 510.9 million m³ of natural gas. It also has significant amounts of peat.

An analysis of municipal holdings led to the selection of a boiler house that provided heating to three schools serving a total of over 1,800 students and teachers. The total area of nearly 17 thousand m² was heated by boilers consuming a maximum annual consumption of 2,000 gcal per year. This facility was designed in Soviet times and was in poor condition, leading to excess fuel and electricity consumption. The city aimed to convert the facility to run on biofuel before the winter of 2014-15.

However, numerous technical and legal issues prevented Malyn from moving forward on the project. Malyn had no capacity to develop the project and was not able to analyze legal, technical, financial, tariff and other issues on its own. In consultation with the Mayor, the Secretary of the City Council, Alexei G. Shostak, turned to the Public-Private Development Project (P3DP) to help execute the project as a public-private partnership (PPP). P3DP is a five-year, USAID-funded program implemented by FHI360 to promote PPPs in Ukraine. It works with the Government of Ukraine and community leaders to create the environment needed for PPPs to improve infrastructure and public services in partnership with private sector partners using open, fair and transparent bidding processes.

Project Concept

Well-structured PPP project in an enabling environment is an effective mechanism for attracting private sector financing, technology, and management expertise for infrastructure and public service projects. In Malyn, the project aimed to select a private partner on a competitive basis according to Ukraine's PPP Law that would replace one or more existing gas boilers with one that operate on alternative fuel, such as compressed wood or straw pellets. The boiler capacity would be sufficient to heat two secondary schools and one sports school. The private partner would provide financing and equipment and would sell heat to the city at a discount of at least ten percent during the life of the contract. A 15-year PPP was anticipated.

Project Characteristics

1. All participants in the PPP should benefit under a "win-win" scenario. Under the PPP contract, the city would receive heating at a reduced cost while reducing its dependence on imported gas. The project duration would be for a sufficiently long period to allow the private partner to earn a reasonable return on its investment. Both the private and public sector partners would therefore have a financial incentive to collaborate. In addition, the arrangement would create jobs and improve the local business environment.
2. Public engagement. Throughout the project, local authorities would keep the public informed about the project through the media. It would provide published materials and solicit comments and feedback. Information about the impact on the city budget, safety of the technology, project progress, and details about the PPP mechanism would be made public.
3. Role of the private operator. Unlike traditional approaches to providing heating in Ukraine, the private partners would be responsible for raising capital, making investments, installing equipment, and provided long-term operational and management responsibilities. These tasks would be done without municipal or state guarantees or any form of state funding.
4. Transparent competition. Of critical importance was the principle of open, transparent tender procedures for selecting the private partner. This approach is consistent with global best practices and ensures that the public interest is served.
5. Optimal timing for an alternative fuel PPP. Events in Ukraine in 2013-14 made an alternative fuel heating PPP highly attractive for other municipalities. This is because (a) Ukraine must increase its energy independence by finding alternatives to imported natural gas; and (b) it needs to make tariffs economically justifiable, and (c) there is growing interest in public-private partnerships in Ukraine.

6. Local competitive advantages. Zhytomyr region is heavily forested. This led to the development of timber and woodworking industries, which produce scrap wood that can be used for heating. Malyn can realize substantial savings by generating heat from alternative sources. The combination of natural gas shortages and high tariffs means that many regions of Ukraine could potentially benefit from using alternative fuel made from wood, such as chips, briquettes or pellets.
7. Environmental protection. Another benefit lay in protecting the environment and mitigating climate change. The PPP program included an environmental assessment that identified the major impacts of the project on the environment and proposed recommendations. The use of biofuels is carbon-neutral (this is because the quantity of emissions is balanced out by the carbon captured in new growth), it does not contribute to climate change.

Key Steps in Project Implementation

The project was developed by representatives of the City Council of the city of Malyn under the leadership of the Secretary of Municipal Council Alexei G. Shostak. A working group that included the Deputy Mayor, the heads of key city departments (housing, education, and legal management), the Chairman of the Budget Committee of the City Council, and experts from P3DP was formed to guide the process. Experts were consulted as needed, for example, on energy, heating or tariffs. As the project developed, potential private operators, for example, producers of pellets for solid fuel boilers, equipment vendors, and entrepreneurs in related fields were also consulted.

As transaction advisor, P3DP worked with the Municipality on the feasibility study, legal review, and environmental assessment for the project. It also brokered discussions between the municipality, producers of biofuel pellets, and technical experts. It also drafted the PPP contract and tender documents in accordance with Ukrainian legislation. Crucially, it communicated key information about the Project to all affected stakeholders, including affected schools, government, the private sector and the general public.

The key stages of the PPP development and implementation process were as follows:

1. Ensuring political support of the project. P3DP held several meetings with the Mayor of Malyn, the Secretary and deputies of the City Council, and the heads of key departments of the Executive Committee. The meetings focused on providing an overview of the principles of public-private partnerships in context of Ukraine's PPP Law, presenting the technical assistance to be provided by P3DP, discussing key legislative features regarding heat supply, budgeting, pricing, and a review of potential technical solutions (for example, the types of boilers that could operate on alternative fuel sources) that potential market operators could propose in the PPP tender. After reaching general agreement on these issues and gaining an understanding of the potential interest from the private sector, P3DP and the Malyn City Council signed a Memorandum of Understanding in 2013 that described the key principles for cooperation on the PPP project.
2. Preparation of feasibility study. P3DP supported the Working Group in preparing a feasibility study of the PPP project in accordance with Ukrainian legislation as described by MOEDT Order № 255 dated February 27, 2012. This document provides guidance on the content and structure of PPP feasibility studies. It should be noted that in preparing feasibility studies, expert consultants should participate and appropriate training should be provided. Malyn officials participated in training on financial models and PPP development as part of the overall feasibility study development process.
3. Development of financial models and sources of financing of the project. P3DP helped Malyn officials prepare the financial model for the project taking into account the

current cost of capital and the estimated payback period. The model showed that the city could achieve savings of at least 10 percent when paying for heat generated from alternative sources. The financial model was critical for determining the level of capital expenditures the private partner could reasonably be expected to bear and the recommended PPP contract term. In this case, it was clear that under various scenarios cost recovery could take between six and twelve years, suggesting that a contract of 15 years would be sufficient to guarantee that the private operator would be able to recover its investment.

4. Passage of legal procedures to enable local authorities to implement PPP projects. In accordance with the law On Public-Private Partnerships and the Implementing Regulatory Legal Acts on PPPs (namely, Cabinet of Ministers Resolution № 384 dated April 11, 2011 as amended by Order № 255), the City of Malyn passed the full procedures to allow the PPP to proceed, including:
 - Establishment of the Executive Committee of the PPP project and the working group;
 - The decision of the City Council authorizing relevant executive bodies to prepare the feasibility study, approve the analysis of the PPP project's effectiveness, and dispose/store existing heating equipment after project completion;
 - The authority of the Executive Committee to approve and refer the PPP to the Ministry of Economic Development and Trade (note: due to Cabinet of Ministers Resolution № 384 of October 2014, this approval is no longer required).
5. Passage of prerequisites for conducting a competitive PPP tender. P3DP and city officials conducted a strategic communications campaign to disseminate information about the project, including details of its preparation and terms of the tender. This included information about relevant meetings of the Zhytomyr Regional Administration, relevant conferences and seminars, meetings of government bodies including the MOEDT, the Ministry of Regional Development, Construction and Public Utilities; development of a website on the PPP project and dissemination of information through the mass media. These activities, conducted over a 12 – 18 month period, contributed to the active dissemination of information about the PPP tender and provided interested companies with the opportunities to prepare for and participate in the process.
6. Conducting the PPP tender. In accordance with legislation, the following decisions were taken in Malyn regarding the tender:
 - The decision of the City Council regarding the implementation of the PPP to recognize that the project was appropriate and in the public interest; approval of regulations for the Tender Commission; appointment of members of the Tender Committee; definition of terms; and delegating responsibility for PPP preparation;
 - The decision of the Tender Committee approving the tender documentation, including the criteria for selecting the private partner and the decision to publish announcement in the media;

- The decision of the City Council on the tender, including approval of tender documentation; approval criteria for assessing proposals; approval of the essential terms of the PPP contract; established procedures for publication of the tender documents; and the announcement of the PPP tender.

7. PPP Tender and Contract Award.

- The Tender Commission was responsible for reviewing bids and determining whether bidders meet qualification criteria. It also announced the winner and articulates the key conditions of the PPP contract;
- The City Council was responsible for approving the results of the PPP and awarding the PPP contract to the winner. A copy of the contract is to be provided to the MOEDT.

8. Replicating the project PPP in other cities of Ukraine. The experience of implementing a PPP in Malyn can be replicated in other Ukrainian cities independently or with some assistance from experts. P3DP will make information about the project, including key documents, publically available. These include tender documentation, feasibility analyses, and sample PPP contracts. P3DP will also provide advice to interested municipalities in the preparation of similar projects. Interested parties can also contact representatives of Malyn to learn more about the key issues in preparing documents and implementing PPPs.

Results of the PPP Tender

In February 2014, the City Council of Malyn announced the PPP tender. One qualified bid was received by Energy of Heat Ltd, a private Ukrainian firm that designs and installs boilers.

The bid went through a detailed technical and financial review by the Tender Committee with P3DP support. In April, the Malyn City Council formally approved the Tender Commission's selection of a private partner, thereby authorizing the mayor to conclude a contract. This made the Malyn project the first in Ukraine to convert a natural gas boiler to an alternative fuel one using the PPP model. Once operational, the project will serve as a model for other Ukrainian cities for using renewable fuel in place of imported natural gas.

The PPP agreement was signed and approved in September 2014. Installation of equipment began shortly thereafter and was operational in time for the 2014-15 heating season.

Benefits include:

- Municipal energy costs are lower – in December 2014, heating from wood was 40 percent cheaper than imported gas. Throughout the project life heating costs are estimated to be ten percent lower;
- Over 1,800 students and teachers are benefitting from warmer and more reliable heating that will not be affected by gas-related issues;
- Carbon emissions are expected to be reduced by over 11,000 tons over the life of the project;
- The feasibility of using alternative fuel as a carbon-neutral renewable fuel source in Ukraine is being demonstrated and has attracted interest from other municipalities;
- Up to \$150,000 in new investments from the private sector is expected; and
- Greater energy independence for Ukraine.

The Malyn biofuel project is the first PPP created in accordance with Ukraine's PPP regulations, approvals and development process. Municipalities, business and the Ukrainian government have expressed strong interest in using the pilot as a model that can be replicated throughout the country.

Although the PPP project is in the early stages, indications are that all stakeholders are benefiting from the arrangement:

City of Malyn. The city is enjoying benefits at several levels:

- **Cost savings:** In the initial stages of operation the boilers are using wood fuel, which is plentiful in the region and much cheaper than imported natural gas.
- **Stable supply of heating:** Ukraine is at risk of a gas shutoff due to pricing issues with Russia and a potential escalation of the war. The schools, however, will remain heated regardless of the outcome of Russia-Ukraine relations.

- **Better local business climate:** In a country widely known for corruption, Malyn stands out as having conducted a transparent, open tender for procuring heating services. Because the tender was subject to public scrutiny through the PPP's strategic communications efforts, underwent a detailed financial analysis, and was reviewed by P3DP experts, the city can provide assurance that the PPP serves the public interest.
- **Potential for further PPPs:** With one PPP secured, the City of Malyn is developing a reputation as a reliable partner for the private sector in the provision of public services. The door is open for further PPP contracts.
- **A model city:** Malyn can also claim, rightfully, that it executed the first PPP under the provisions of Ukraine's PPP Law. It can therefore serve as a model for other Ukrainian cities that wish to develop PPP projects of their own.

The Private Operator. The private operator also benefits from the PPP:

- **New business opportunities:** The greatest benefit to the operator is finding a stable, long-term customer in the Malyn municipality. This strengthens the company's long-term prospects, enables it to create jobs, and positions it to provide similar services with other municipalities.
- **Reputation:** The operator can also demonstrate that it won the transparent tender process without providing bribes or using traditional business practices. This makes it a more reliable business partner for other customers.

Ukraine. At a national level, Ukraine also benefits:

- **Greater energy independence.** Should the project be adopted more widely, Ukraine will be able to reduce its dependency on imported natural gas.
- **Mitigating climate change.** By avoiding the use of fossil fuels for heating, Ukraine can decrease its greenhouse gas emissions. Furthermore, alternative fuel does not contribute to greenhouse gas emissions, as the carbon released by burning equals the carbon absorbed by crops during the growing season.
- **Testing the PPP model.** The Malyn PPP provides valuable input for policymakers as they improve PPP-related legislation. The long-term contracting issue raised by this project is a case in point: it is being addressed at the national level.

Success Factors of the PPP Project

1. Local leadership. The city demonstrated the ability to make quick decisions, give the project an adequate level of public exposure through outreach to the public, the media and key stakeholders. The leaders of the city, including the Mayor, City Council Secretary, Head of Housing, and representatives of Legal Department maintained an ongoing dialogue with P3DP. This ensured a timely exchange of information necessary to prepare, discuss and approve a feasibility study within a reasonably quick timeframe of three to four months. In addition, officials were open to the idea of public-private partnerships and did not hesitate to develop this groundbreaking pilot project, even without models of PPPs from other cities.
2. Capacity Building on PPPs. P3DP conducted a series of training programs in Zhytomyr region on PPPs. This enabled Malyn officials to better understand PPPs and prepare the project, including the feasibility study and financial models, which helped avoid delays. Based on this experience, PPP preparation should include input from a financial advisor on the financial model; a legal advisor to assist with preparation of quality tender documents that ensure a transparent bidding process that treats all stakeholders equally and fairly; and a technical advisor to provide guidance on technical issues for different stakeholder groups and municipal authorities. If expert advice is problematic for financial or other reasons, cities should approach national or regional officials with relevant PPP experience. Malyn was able to work through P3DP, which increased awareness and skills of officials and helped bring the project to completion.
3. Expert advice. P3DP provided technical assistance to Malyn in preparing the PPP. This included consultations with experts in heating, utilities, housing, legal advice, and input from the private sector. Numerous issues arose which required specialized input, for example:
 - Technical issues with boilers for using alternative fuel sources;
 - Supply issues, including storage;
 - Economic issues;
 - Legal issues to protect the city and investors given existing legislation on public procurement.

These issues were covered in the feasibility study, tender documents and the PPP contract, all of which were prepared with expert input.

4. A positive public perception. Many people in Ukraine are suspicious of private sector participation in the public services, such as healthcare or heating, or water. It is therefore critical to establish a meaningful dialogue with the community and other stakeholders. This helps pinpoint and address reasons for opposition and address concerns. Also important is demonstrating how private sector participation can

contribute to the public good. In Ukraine, where corruption related to public procurement is a widespread problem, this is especially important.

In the case of the Malyn project it was important to keep citizens informed about:

- The technology used (solid fuel boilers of Ukrainian or Belarusian production, certified in Ukraine);
- The economic impact on the community;
- Benefits to the regional economy, for example, through the procurement of raw materials from local producers;
- Transparency in the tendering procedure.

Good communications ensured that the public stood by the project.

5. Ensuring a balance of interests of the city, community and business. Although PPPs involve both Government and a private partner, successful local projects should also protect the interests of the community. By balancing the interests of the community, including local businesses and the public, the city can engage in high-quality, long-term cooperation within the framework of a PPP. The private partner provides goods and services more efficiently, the public benefits, and the city fulfills its obligations to its citizens. As a result, a project in the town of Malyn provides an opportunity to provide heat to schools while under an extremely difficult fiscal situation, which is positively received by the community.
6. Using local competitive advantages. PPP projects in Ukrainian cities can take advantage of local comparative advantages such as geographic location, local economic characteristics, and the overall development strategy of a particular sector of the economy. In Malyn and Zhytomyr region, alternative fuel sources are available. Because of the long-term nature of a PPP contract, local businesses have an incentive to develop the alternative fuel market.
7. Improving legislation in the field of PPPs. P3DP draws from the experience of pilot PPP projects to improve and simplify PPP-related legislation in Ukraine. Legislation related to tariffs, long-term municipal budgeting, and other issues are being addressed in this way.

Potential Obstacles for Similar PPP Projects

Several issues that arose in the implementation of the PPP:

1. Current budget legislation complicates PPP projects. The budget code does not allow cities to commit to purchasing heat from a single provider on a long-term basis, and cannot provide long-term guarantees within a PPP contract. This increases the risks to potential private sector partners in engaging in PPP contracts. Another risk factor is the inability to forecast city revenues. However, these issues are understood and in the near future legislation may be amended accordingly. This would enable cities to provide better assurance to private sector operators in PPP contracts that they will receive payment for their services over the life of the contract. P3DP is addressing this issue at the national level.
2. Limited examples of PPP projects. To reduce risks, many government bodies prefer to model their projects on proven PPP arrangements. The pilot PPP project in Malyn can fulfill this function for similar PPPs
3. Limited private sector investors and operators. During preparation of the feasibility study, input from potential private partners provides valuable information for the design phase. In Malyn, for example, potential private partners included local businesses, manufacturers of equipment and raw materials, market operators, energy efficiency, and others. However, in many cities there are few such companies available to participate in PPP tenders.
4. Financial risks for private operators. The private operator bears significant risk since the ability of the user (the city) to pay for services in the long-term is not clear, while the private operator must provide funding to execute the project. In preparation of the PPP, the city should mitigate this risk by providing a bank guarantee as part of the bid or provide other assurance that it will be able to honor its financial obligations. The current investment climate does not provide sufficient financial guarantees to the parties; however, both sides need to carry out a full range of measures to the PPP agreement.

Annex 8: “Train the PPP Trainer” Training

Training of
PUBLIC-PRIVATE PARTNERSHIP EDUCATORS & TRAINERS

November 2014

“Train the Trainer” of PPPs
Training Report

Training Delivered by:

Oleksander Sydorenko & Partners

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1. Summary

On November 3-7, 2014 P3DP organized and conducted a “Training-of-Trainers” (ToT) workshop for university faculty members and trainers of institutions tasked with preparing future public servants or supporting current staff tasked with creating PPPs.

21 professional teachers and trainers from 13 institutions of higher learning and postgraduate education. Among them were: National Academy of Public Administration in Kyiv and its regional branches in Kharkiv, Odessa, Lviv and Dnipropetrovsk; Main State Service, Universities from Odessa, Kharkiv, Kyiv and Zaporizhia.

Throughout the P3DP program period, government and municipal leaders have been given the opportunity to gain PPP knowledge and skills. Practical workshops, seminars and other training events have introduced general PPP concepts, international practices, as well as tools for analyzing the technical, financial and environmental feasibility of proposed PPPs. In addition to the training materials, the process of developing the PPP pilot projects has generated practical information on how to create PPPs in the sectors of waste management, alternative fuels in district heating, healthcare, sports and recreation, and city park management. To share this experience, P3DP has developed a series of case studies based on this experience.

As a step toward institutionalizing this knowledge and teaching tools, P3DP organized a ToT course with the goal to improve the capacity of local institutions to support municipalities and government agencies by developing their capacity to attract private sector investment and resources in order to build infrastructure and improve public services through the public-private partnerships.

2. Objectives

The objectives of the training included:

- Equipping participants with knowledge, skills and materials for teaching PPPs in their respective institutions;
- Expanding the number of local government officials with the capacity to develop PPP projects; and
- Disseminating P3DP’s accumulated experience in developing PPP projects.

3. Methodology

The session was conducted by Ukrainian training experts from the *Consortium for Enhancement of Ukrainian Management Education*, who worked closely with the PDP staff to prepare materials and case studies. The introductory note was provided by **Ms. Ksenia Liapina**, member of the Ukrainian Verkhovna Rada and the author of the PPP Law, P3DP’s Chief of Party **Mick Mullay** and **Olena Maslyukivska**, P3DP’s Manager of Awareness and Capacity Development.

The training combined theory, case studies, a site visit and participant development of action plans under professional guidance.

Team members were involved on different stage to perform specific tasks. During the first stage, Oleksander Sydorenko and Victor Trynchuk work together to collect necessary information and conduct interviews for cases and other training materials. Natalya Tkachenko and Svitlana Vyhontova were involved in the process of drafting cases.

Following this, the team worked on drafting of the teaching modules “General PPP,” “Financial Analysis and Modeling of PPP Projects,” and “PPP Management.” Victor Trynchuk mainly focused on developing teaching materials while Oleksander Sydorenko worked on an information package for media

Drafted cases and training modules that were revised and edited by Oleksiy Vynogradov and per reviewed by all partners.

All team members were involved in the drafting training methodology for ToT workshop and delivery this training for faculty members on November 3-7, 2014.

During the ToT workshop developed cases were tested and debriefed in order to get feedback from participants/ Their feedback was used to revise cases and teaching modules and prepare the final version of these teaching materials which were disseminated among participant in electronic format in the last day of training.

All participants completed their own action plans how they could use at least two of presented during ToT workshop cases in their courses, how they are going modify them, which questions to use for class discussion etc.

4. Created Teaching Tools and Guidance Materials

Created Teaching Tools and Guidance Materials include:

- Teaching with Cases: Theory and Ukrainian Practice
- Teaching PPPs: participant action plans
- Ukrainian PPP Cases:
 - Kyiv Sports & Recreation Project (with a site visit)
 - Healthcare PPP Project in Zaporizhzhia
 - Biofuel Heating PPP Project in Malyn
 - Landfill Gas and Electricity Generation PPP Project in Vinnytsia
 - Simferopol City Park PPP Project
- “Introduction to Public Private Partnership Textbook - Developed a draft of the textbook (130 pages), reflecting PPP concepts, world trends in PPP development, the current PPP environment in Ukraine, P3DP’s experience, illustrated with examples from the pilot PPP projects for municipal leaders;
- Developed an information package for media on PPP development in Ukraine;
- Adapted teaching modules for university faculty:
 - General PPP;
 - Financial Analysis and Modeling of PPP Projects ;

- PPP Management

Each modules includes Power Point presentation, texts of a lecture; reading materials for students.





Workshop agenda

«Teaching of Key Issues in Public Private Partnership»

Place:

CEUME Training Center, Esplanadna Street, 28, Suite 7, Kyiv, Ukraine

Timelines:

Beginning at 10 am Coffee breaks – 11.30 - 11.45, 16.00 - 16.15 Lunch – 13-14 pm

The First day, November 3

10.00 – 13.00 **OPENING**

Mick Mullay, *Program Director, USAID Public Private Partnership Development Program*

Oleksander Sydorenko, *Director, Consortium for Enhancement of Ukrainian Management*

Education

PPP IN UKRAINE

Ksenia Liapina, *member of the Ukrainian Verkhovna Rada*

Olena Maslyukivska, *Manager of Awareness and Capacity Development, USAID Public Private Partnership Development Program*

14.00 – 17.00 **TEACHING OF PPP TOPICS: PRACTICE AND OPPORTUNITIES**

The Second day, November 4

10.00 – 13.00 **TEACHING WITH CASES: THEORY AND UKRAINIAN PRACTICE**

14.00-17.00 **UKRAINIAN PPP CASES**

Case of Health Project in Zaporizhzhia

The Third day, November 5

10.00 – 13.00 **UKRAINIAN PPP CASES**

Case of Malyn PPP project

14.00 – 17.00 **UKRAINIAN PPP CASES**

Case of Vinnytsia PPP project

The Fourth Days, November 6

10.00 – 17.00 **UKRAINIAN PPP CASES**

Life Cases: Kyiv City if Sports: Site visit, discussion, and debriefing

The Fifth Day, November 7

10.00 – 11.30 **UKRAINIAN PPP CASES**

Case of Simferopol City Park

11.30 – 13.00 Brains Ring Game on PPP topics

14.00 – 16.00 **TEACHING PPP: PARTICIPANTS ACTION PLANS**

List of Participants

«Teaching of Key Issues in Public Private Partnership»

BABIAK Natalia Dmytrivna
Professor, Corporate Finance and Controlling Department,
Kyiv National Economic University

BERDANOVA Olga Volodymyrivna
Docent, Regional Management, Local Governance and City Management Department
National Academy of Public Administration

GARBANINA Vita Yuriivna
PhD student, Department of Economic Police and Labor Economy
Lviv Regional Institute of Public Administration

GERASHCHENKO Viacheslav
Deputy Dean
Kyiv Mohyla Business School

GRYNCHUK Natalia Mykhailivna
Chair, Regional Management, Local Governance and City Management Department
National Academy of Public Administration

KVITKA Sergiy Andriyovych
Docent, Department of Public Administration and Local Governance,
Dnipropetrovsk Regional Institute of Public Administration

KITSAK Taras Mykhailovych
Lecturer, Department of HR Policy and Public Service
Lviv Regional Institute of Public Administration

KOLTUN Victoria Semenivna
Docent, Regional Management, Local Governance and City Management Department
National Academy of Public Administration

LUTIKOV Pavlo Sergiyovych
Docent, Department of Administrative Law
Zaporizhzhia National University

MOHYLNY Sergiy Arkadiyovych
Docent, Department of Public Administration and Local Governance,
Dnipropetrovsk Regional Institute of Public Administration

NAGORNY Evhen Oleksandrovyh
Scientific Projects Manager
National Economic University

OKSENIUK Victor
Teacher
Kyiv Mohyla Business School

PANKOVA Alla Yuriiivna
Docent, Management Department
Zaporizhzhia National Technical University

PANOVA Olena Dmytrivna, Expert
Center for Regional Development of the Kharkiv National University of Municipal Management

PIROZHENKO Natalia Victorivna
Docent, Department of Public Administration and Local Government
Odessa Regional Institute of Public Administration

SAMOFALOVA Tetiana Oleksandirvna
Docent, Department of HR Management
Kharkiv Regional Institute of Public Administration

SUCHOVA Victoria Victorivna
Professor, Department of Social and Humanitarian Policy
Kharkiv Regional Institute of Public Administration

SLAVUTA Olena Ivanivna
Expert
Center for Regional Development of the Kharkiv National University of Municipal Management

SMENTYNA Nataliya Valentynivna
Docent, Department of Economics and Management
Odessa National Economic University

TOLPIGO Olga
Lecturer, Department of Public Administration and Local Government
Odessa Regional Institute of Public Administration

SHAROVA Olena Stepanivna
Docent, Department of Project Management
KROK University