

ORIGINAL ARTICLE

Ensuring effective governance of Public-Private Partnerships

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ABSTRACT

Public-Private Partnerships (PPPs) can be an effective way of delivering infrastructure. However, achieving value for money can be difficult if government agencies are not equipped to manage them effectively. Experience from OECD countries shows that the availability of finance is not the main obstacle in delivering infrastructure. Governance—effective decision-making—is the most influential aspect on the quality of an investment, including PPP investments. In 2012, the OECD together with its member countries developed principles to ensure that PPPs deliver value for money transparently and prudently, supported by the right institutional capacities and processes to harness the upside of PPPs without jeopardizing fiscal sustainability. Survey results from OECD countries show that some dimensions of the recommended practices are well applied and past and ongoing reforms show progress. However, other principles have not been well implemented, reflecting the continuing need for improving public governance of PPPs across countries.

Keywords: *Public-Private Partnerships; infrastructure governance; institutional framework; consultation; value for money; fiscal risks*

1. Introduction

There is no standard definition of what constitutes a PPP. Each country defines its own key elements, taking into account the national context as well as international definitions. The OECD defines public-private partnerships as long-term contractual arrangements between the government and a private partner. The latter delivers and funds public services using a capital asset and shares the associated risks. The government, in exchange, specifies the quality and quantity of the service it requires from the private partner (OECD, 2012).

In a PPP agreement, the service delivery objectives of the government are intended to be aligned with the profit objectives of the private partner. A central element in PPPs is the effective and appropriate allocation of risks between the private partner and the public sector¹. The private partner may be tasked with the

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¹ The U.S. National Council for Public-Private Partnerships argues that each party should share the risks and potential rewards of the agreement (U.S. National Council for Public-Private Partnerships, 2015).

design, construction, financing, operation and management of a capital asset required for service delivery and the delivery of a service to the government, or to the public, using that asset.

Another key element is the bundling of the construction, operation and maintenance of the underlying asset over the life of the contract. The private partner will receive either a stream of payments from the government for services provided or at least made available user charges levied directly on the end users, or a combination of both. Furthermore, payments are usually made over the lifetime of the contract and are linked with quality outcomes and operational performance (Engel *et al.*, 2008).

PPP projects typically have a long life that lasts between 20 and 30 years (OECD, 2012). Given these features, PPPs involve large transaction costs and a long planning and contracting process, where the focus should be on outcomes and the best way to bring them about (rather than more input-focused “normal” public projects).

Despite their prominence in the literature and the public debate, the quantitative relevance of PPPs is relatively limited, as shown by an OECD survey on infrastructure governance in 24 member countries (OECD, 2018). 19 OECD countries reported that less than 5% of total infrastructure investments took place via PPPs in the last three years. Two countries, Australia and New Zealand, conducted 5%–10% via PPPs. The figures for Italy and the Netherlands were between 10% and 20% and only Chile was above 20% (**Figure 1**). Most countries do not have restrictions with regard to the sectors that can make use of PPPs. However, the largest share of PPPs occurs in transport (road, rail, port) and public buildings (OECD, 2019b).

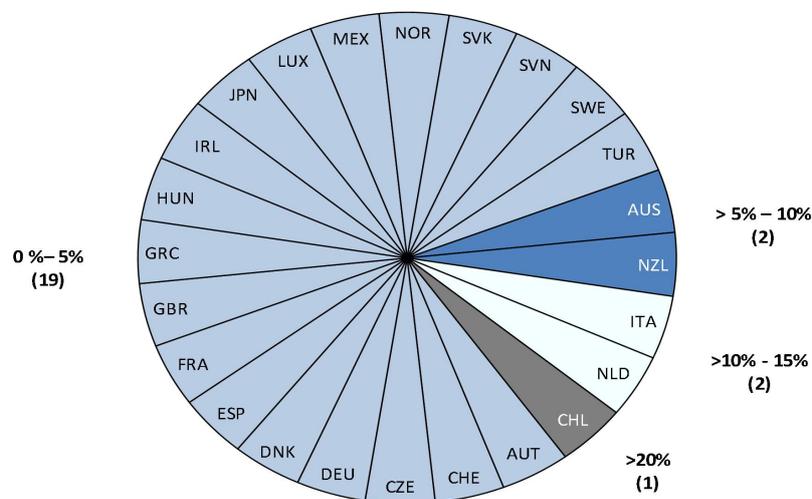


Figure 1. Share of infrastructure investments through PPPs.

Source: OECD (2018), *OECD Survey of Capital Budgeting and Infrastructure Governance, Question 58*

Note: Switzerland noted that the exact value would depend on the definition of PPPs. Data for Belgium, Canada, Finland, Iceland, Korea, Latvia, Poland and the United States are not available. Data for Estonia, Israel and Portugal are not available for this question.

1.2 What is the motivation behind PPPs?

PPPs can help provide public infrastructure in an efficient way because infrastructure design, construction, maintenance and financing can be undertaken in a comprehensive, whole-of-life manner. Private sector expertise, incentives (to use resources efficiently and manage the project well) and innovative potential can speak for a PPP. Certain risks are assigned to the private party based on the belief that the private sector is in a better position to manage and mitigate these risks associated with infrastructure projects. Finally, the benefits of politics (via regulation) may accrue without its risks (political financing cycles and interference, and bureaucratic inefficiency).

PPPs may also help governments overcome financing constraints in the short term. This may be particularly beneficial when the infrastructure is economically highly profitable and financeable via user fees but the government's ability to provide funding upfront is limited. The government may then need less financing in the short term, afford lower taxes or finance other priorities.

Nevertheless, there are a number of important challenges for the benefits of PPPs to accrue. Government as a counterpart in the PPP agreement needs strong skills, institutional capacities and incentives. A legal framework conducive to good governance ensures that PPP contracts are well specified, implemented and monitored. For instance, insufficient planning and project evaluation on the government side can lead to incomplete contracts that do not state clear outcomes, provide measurement indicators or foresee potential liabilities. Governments also need a multitude of strong skills and good coordination across institutions to deal with the complexity and longevity of projects and their financing. Even if these prerequisites are met, there are often unforeseen contingencies.

The financing of PPPs is complex. PPP financing may turn out to be more expensive than government financing, and result in higher administrative/transaction costs for the government. However, such costs need to be weighed against the lower risks for the government and the potential benefits that come from private sector provision and management versus keeping it in the public sector.

At the same time, there is no perfect (infrastructure) contract, and fiscal risks from PPPs can be high. Aggressive bidding in the tendering phase may lead to a low initial price but a high risk for renegotiation, non-delivery or even bankruptcy of the PPP provider(s). There may be high upfront administrative spending that weakens the bargaining position of the government or may require writing off if the project does not come about. Depending on contract provisions (such as the allocation of revenue or currency risk), there may be high contingent liabilities. The motive for choosing PPPs should, therefore, be based on a comprehensive analysis. As highlighted by the OECD Infrastructure Governance Framework, when choosing how to deliver an infrastructure asset or service, government should balance the political, sectoral, economic and strategic aspects of the decision. Legitimacy, affordability, risk allocation and value for money should guide this balance (OECD, 2017).

Finally, there is a risk that the PPP mode is chosen to circumvent spending and procurement processes, potentially even stoking corruption. Macro fiscal rules on deficits might be circumvented if PPP financing is outside the budget and public debt. This issue is particularly problematic if the spending is off-budget but much of the risk remains on-budget. PPPs, therefore, need to link up

appropriately with the government's budget and procurement process and fiscal statistics.

Given these chances and risks, it is not surprising that countries and international organizations spend much time on discussing good governance of PPPs. Principles of good governance may guide public and private actors across countries and layers of government to reap the benefits and avoid the pitfalls of this mode of infrastructure provision.

2. OECD principles for PPP governance

The OECD together with its member countries developed principles for the institutional and procedural treatment of PPPs (OECD, 2012). This should ensure that PPPs deliver value for money transparently and prudently, supported by the right institutional capacities and processes to harness the upside of PPPs without jeopardizing fiscal sustainability (OECD 2011).

The 12 principles are organized under three categories. The first set of principles refers to the need for a clear, predictable and legitimate institutional framework for PPPs. Competent and well-resourced authorities should underpin this framework. This aims to minimize the risk of bureaucratic inefficiencies as well as asymmetric information towards private contracting partners.

The second set of principles aims to ground the choice of PPPs in “value for money”. This efficiency principle refers to both quantity and quality. Bureaucratic efficiency and a level playing field with contracting parties alone do not guarantee that the public sector actually picks the most promising and beneficial projects. Furthermore, value for money should be maintained throughout the entire project life cycle.

The third group of principles refers to how governments should integrate PPPs transparently into the budget process. The aim is to minimize fiscal risks and safeguard the soundness of public budgeting and procurement. This is particularly important, so that PPPs are integrated into the overall processes and objectives of government and that PPPs do not result in (off-budget) contingent liabilities that could undermine fiscal sustainability.

The paper discusses the 12 principles and provides empirical evidence on the quality of PPP governance in OECD countries. The basis are the 2016 Survey of Infrastructure Governance (OECD, 2016)¹, the 2018 Survey on Capital Budgeting and Infrastructure Governance (OECD, 2018)², the 2014 OECD Foreign Bribery Report (OECD, 2014), as well as country-specific reviews and the annual meetings of the OECD PPPs and Infrastructure Governance Network (see also

¹ The 2016 OECD Survey of Capital Budgeting and Infrastructure Governance was sent to the SBO Network of Senior PPP and Infrastructure Officials and collected data on a set of governance dimensions, including strategic planning, affordability, value for money and PPPs. The survey received responses from 26 member countries: Australia, Austria, Belgium, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, New Zealand, Norway, Slovenia, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom. Additionally, two non-member countries—South Africa and the Philippines—answered the survey.

² The 2018 OECD Survey of Capital Budgeting and Infrastructure Governance was sent to the SBO Network of Senior PPP and Infrastructure Officials and collected data on capital budgeting, PPPs, as well as on a set of governance dimensions, including strategic planning, sustainable infrastructure management, affordability and value for money. The survey received responses from 27 member countries: Australia, Austria, Chile, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

Report on the Implementation of the Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships (OECD, 2019a) and Budgeting and Public Expenditures in OECD Countries (OECD, 2019b)).

3. Principles on institutional framework and competent, well-resourced authorities

The first OECD principle states that political leadership should ensure public awareness of the relative costs, benefits and risks of Public-Private Partnerships and conventional procurement. This allows balancing costs and benefits and attaining stability and predictability. The public's understanding of PPPs requires active consultation and engagement with the stakeholders.

Surveys show that most countries conducted consultations with the public—21 out of 28 in total (**Figure 2**). Consultations took place during the project preparation phase in 17 out of 21 countries. This is the best way to build ownership and reduce resistance from the public. About half of the countries undertook consultations during the decision-making and preparation phases of the PPP projects. However, only a minority of countries (12) consulted their citizens during the infrastructure-needs evaluation phase and only six of them talked to citizens directly during the construction phase.

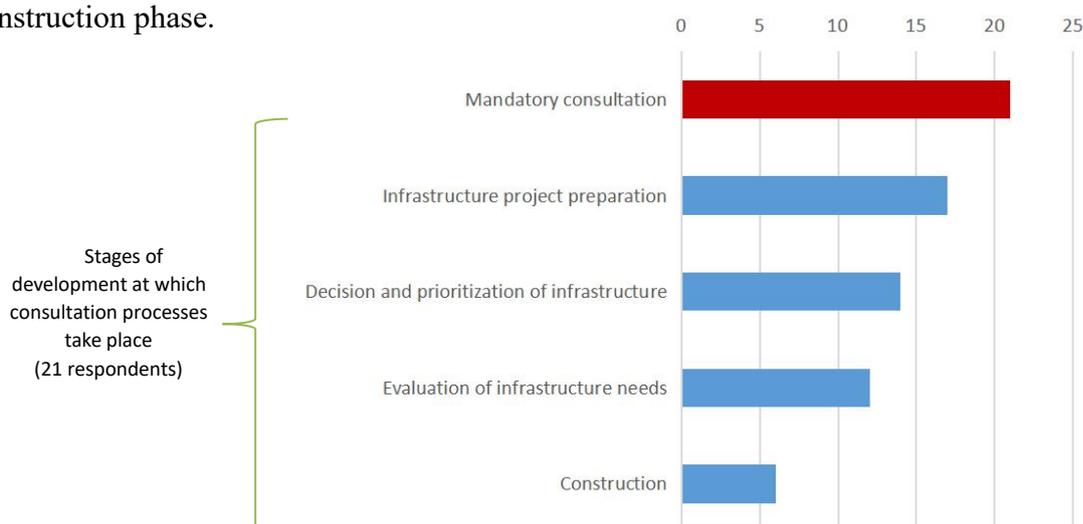


Figure 2. Principle 1: Consultation processes.

Source: OECD (2016), OECD Survey of Infrastructure Governance

Note: Total respondents: 21 (countries with mandatory consultation processes)

The second principle refers to key institutional elements and responsibilities of PPPs. An effective administration ensures the sound management of PPP projects. There has to be an authority—a PPP unit—that prepares and manages the implementation of PPPs including contract preparation, monitoring and enforcement. The role of the PPP unit is also to guide and prepare policy decisions on investment projects and the mode of delivery.

Moreover, the Central Budgeting Authority should ensure that the projects are transparently budgeted for and in line with fiscal sustainability. There also has to be an audit institution that audits project implementation. All these institutional units should be clearly separated, well mandated and adequately resourced. This ensures a clear division of authority,

responsibility and accountability.

OECD surveys show that the overall share of countries with units dedicated to PPPs remained relatively stable in the last decade (OECD, 2010; 2016; 2018). According to the last available data (OECD, 2018), two-thirds of the surveyed countries featured a PPP unit. Half of these (or one-third of the total) were located within the Ministry of Finance or within a separate agency that answers to the Ministry of Finance (**Figure 3**). With this structure, PPP units were close to the budget process and the Ministry's sustainability monitoring.

Another quarter of the countries reported PPP units as part of or reporting to a line ministry, such as the economics or the infrastructure ministry. This is perhaps less optimal from a financial/budgetary perspective but expertise as regards infrastructure provision is likely to be larger. The PPP units reportedly provided policy guidance and technical support as they had the many PPP-specific skills related to contracting, etc. Two countries reported other arrangements, such as independent statutory bodies that fulfill similar roles to PPP units. A full third of the countries did not have PPP units.

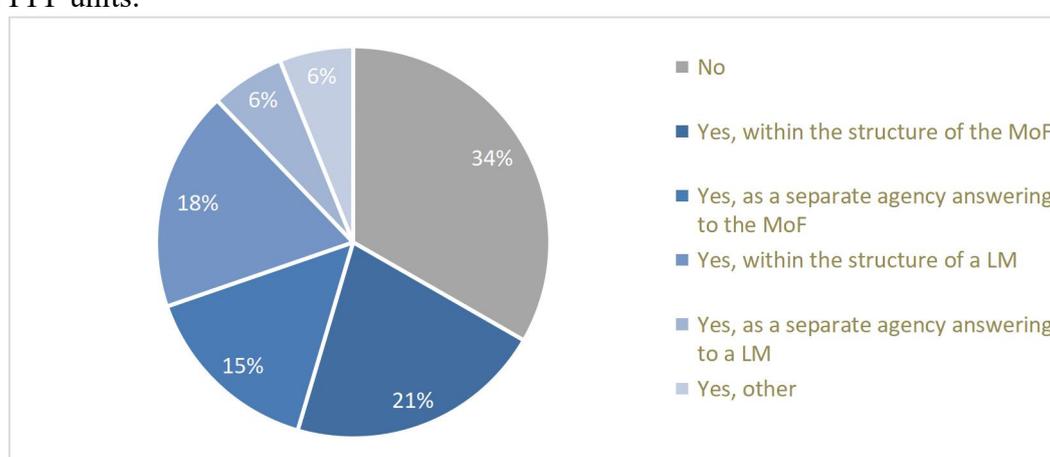


Figure 3. Principle 2 on institutional features and PPP units.

Source: OECD (2018), *OECD Survey of Capital Budgeting and Infrastructure Governance*, Question 59

Note:

(a) "Other" means a PPP unit located outside the MoF and LM. In Italy, for example, it is located inside the PM office.

(b) In Turkey, although there is no PPP unit in traditional means, there is the High Planning Council (HPC), which approves the PPP projects, and the Ministry of Development, which conducts the secretariat of HPC, acts like a PPP unit in many regards. Data for Belgium, Canada, Finland, Iceland, Korea, Latvia, Poland and the United States are not available; data for Estonia is not available for this question.

Developments across countries have been rather diverse. While in several countries new PPP units were created, at the same time other countries such as the Czech Republic or Canada shut down their PPP units as their mandate was fulfilled, or responsibilities had been transferred to another agency. In Italy, responsibilities were assigned to the planning department at the Presidency of the Council of Ministers. In the case of Switzerland, different units within the departmental structure of the Ministry of Finance assisted the line ministries regarding PPPs. Some countries such as the UK or the Slovak Republic featured additional units within specific line ministries to ensure that specific expertise in the relevant sectoral area can be supplied (OECD, 2019b).

Where the central government has the relevant authority, it can allow sub-national governments to prudently use PPPs—assuming that the relevant capacities are available at the sub-national level. In a large majority of countries (73%), PPP units or Infrastructure Units at sub-national governments (municipalities, regions, states) were allowed to design and run infrastructure projects. In practice, this opportunity was taken up to differing degrees across countries. While in New Zealand and Sweden, sub-national governments did not make use of this capacity, other countries, such as Canada, delivered 95% of their PPPs via sub-national governments (Infrastructure Canada, 2018). The complexities of PPPs and the skills required to undertake them often raised questions regarding the administrative capacity and accountability to implement PPPs at the sub-national level (OECD, 2018b).

Principle 3 refers to the quality of PPP-related regulation. All relevant regulation should be clear, transparent and enforced. Only then do administrators in the public sector as well as the private contracting parties face clear rules of the game. Clarity, transparency and enforcement are the institutional underpinnings of contracts that allow an efficient administration to generate value for money and limit fiscal risks without excessive risks of litigation, implementation problems and financial uncertainties.

The regulatory framework has a profound impact on infrastructure investment. Even if the regulatory frameworks are well designed, good outcomes require adequate implementation of these rules and standards, aligned with the economic, social and environmental goals set by the policy makers. While the elements of good PPP governance are well known, the evidence is again mixed. Most countries featured regulations for the infrastructure governance process, such as formal processes to ensure absolute value for money, policies ensuring competitive tendering, and processes regulating the tender panel.

For most surveyed countries, the regulatory framework was perceived as effective, but there were several challenges to effective regulation, including the lack of capacity and skills to draft good regulation for planning, implementation, monitoring and enforcement. Cost and time pressures undermined the quality of project governance in some countries. A lack of standardized evaluation criteria rendered the regulation and implementation of project/contract monitoring and enforcement more difficult (OECD, 2019a).

Technical innovations matter in the sense that they may provide cost savings or better solutions but they constitute a particular challenge for many countries in the tendering and implementation of PPPs. Regulation often did not appropriately balance clarity and flexibility to allow for innovation gains. Some countries did not collect the necessary data in a systematic manner that would allow sound decisions on regulations and projects.

In sum and on the positive side, most countries applied consultation processes and PPP units provided policy guidance and technical support. Moreover, regulatory frameworks tended to be effective and fulfilled their role. However, very few countries extended consultation over the construction and operating phases and countries rarely identified user needs. Coordination across levels of government as well as data collection for evidence-based decisions also guarantee improvement.

4. Principles on grounding PPPs in “value for money”

The second set of principles refers to enhancing the efficiency of PPP projects. Investment projects can only be justified if they provide value for money over the life cycle of a project. The OECD defines value for money as “what government judges to be an optimal combination of quantity, quality, features and price (i.e., cost), expected (sometimes, but not always, calculated) over the whole of the project’s lifetime” (OECD 2012).

Principle 4 focuses on the strategy behind and sequencing of investment decisions. Achieving value for money begins with selecting the right projects. Projects should be aligned with a country’s development goals, address present and future needs, and be prioritized according to the projects’ net economic benefits. The decision to invest should be separated from the decision on how to procure and finance a project.

Evidence on the strategy behind investment project decisions is mixed (**Figure 4a**). Only half of the countries had a long-term strategic vision and plan for infrastructure investment that includes PPPs. It is positive that most countries—16 out of 28—reported taking the decision on an investment project before they decided on the mode of procurement (a). Seven countries decided first on the procurement mode and then on the project, while in two countries the time of the decision to investment depended on the particular project.

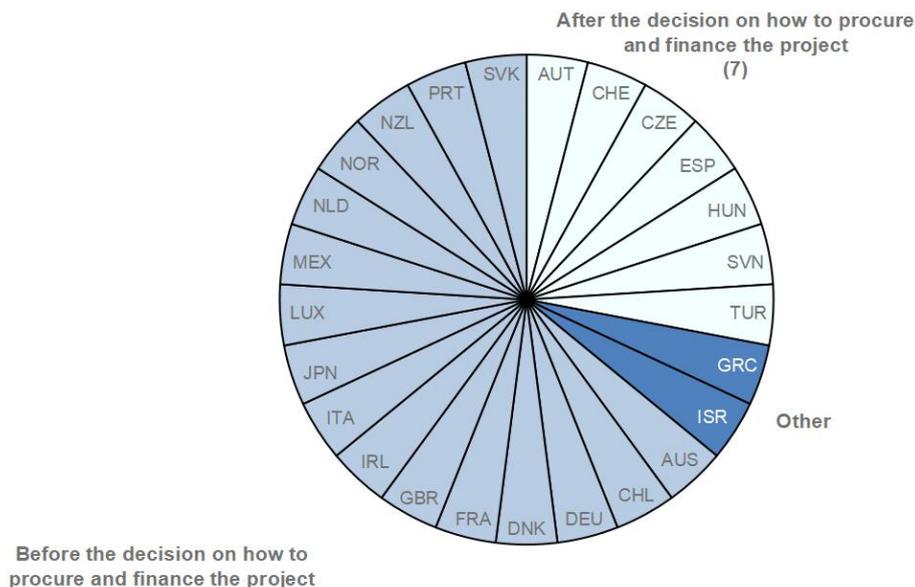


Figure 4a. Principle 4 and the separation of investment from procurement and financing decisions.

Source: OECD (2018), *OECD Survey of Capital Budgeting and Infrastructure Governance*, Question 39

Note:

(a) “Other” might refer to cases where it depends on the project

(b) This question is not applicable to Sweden. Italy answered yes, in general. But it could be possible, for example, to have unsolicited proposals. Data for Belgium, Canada, Finland, Iceland, Korea, Latvia, Poland and the United States are not available; data for Estonia are not available for this question.

When looking at what determines the choice of projects, results are relatively favorable (**Figure 4b**). The short-listing and ultimate funding of projects tended to follow a country’s strategic plan and to be the result of a strong cost-benefit analysis. Political backing came in as a close third

for both short-listing and funding. The functional fit with other infrastructure assets (e.g., network effects) and the development of a particular sector also played a relatively important role for project choice.

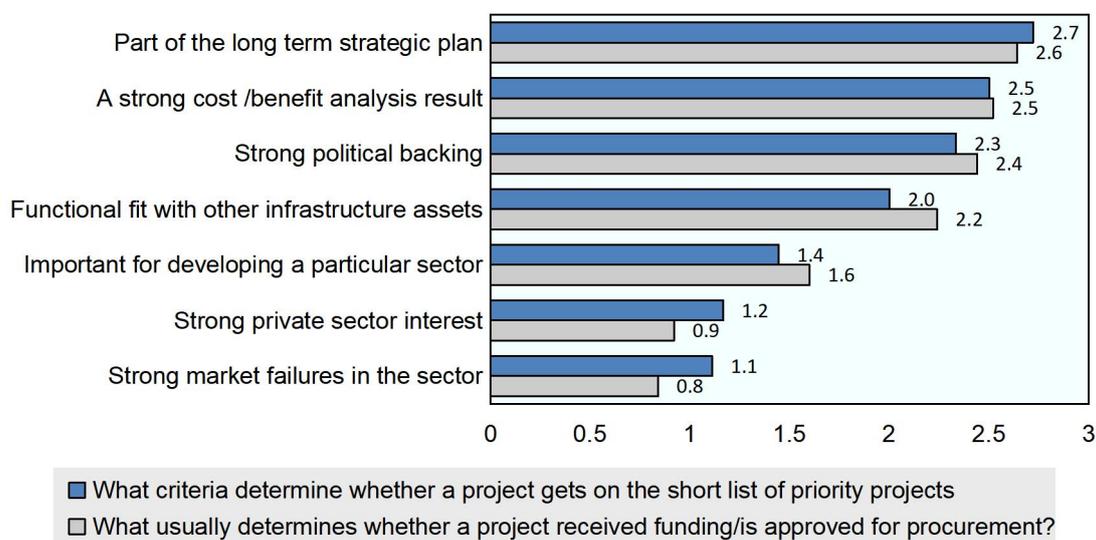


Figure 4b. Principle 4 and the criteria for project prioritization.

Source: OECD (2016), OECD Survey of Infrastructure Governance

Note: Total respondents: 18 (countries with some kind of short-list of priority projects); 25 (final approval). Rating point ranks from 0 (not important) to 5 (very important).

Turning to Principle 5, the concept of value for money aims to compare the relative efficiency of different procurement models. Under this interpretation, value for money is achieved if a particular procurement mode represents the most efficient means of delivering a particular service.

PPPs can generate value for money compared to the traditional procurement if they bring about improvements in quality or costs savings—for example through the adoption of innovative construction techniques or the bundling of construction, operation and maintenance. Value for money can also be construed in absolute terms, whereby a particular intervention delivers a net benefit to society (typically measured using cost-benefit analysis).

Principle 5, therefore, recommends examining carefully which investment method is likely to yield the most value for money. Governments should evaluate key risk factors and characteristics of a PPP project and pre-test which procurement option yields the best value for money so as to see whether PPP is the best option. The first step should be a quantitative comparison of costs and benefits. Other criteria should also play a role in the decision: the need for innovation, sharing risks, building up a market for such projects and capacity in the private sector.

Evidence on the choice of evaluation process suggests that most countries had a legal requirement and a formal process for ensuring absolute value for money from infrastructure projects (**Figure 5**). Five countries, however, did so only on an ad hoc basis and seven countries did not feature a formal process at all. The most popular approach remained cost-benefit analysis (22 out of 28 countries). 18 countries also undertook cash-flow estimates over the project cycle. More than half the countries did the evaluation in a comprehensive process, applying a type of business case methodology (13) or another approach (3). For example, the UK applied a three-stage gateway

process comprising five separate business cases, each focusing on a different dimension (strategic, economic, commercial, financial and management). Each step in the process required the approval by the UK Treasury in order to proceed to the next stage (OECD, 2015). In many countries, the Ministry of Finance was the main agency responsible for the assessment process and had the power to decide on the viability of a project.

Is there a formal process/legal requirement for ensuring absolute value for money from infrastructure projects?

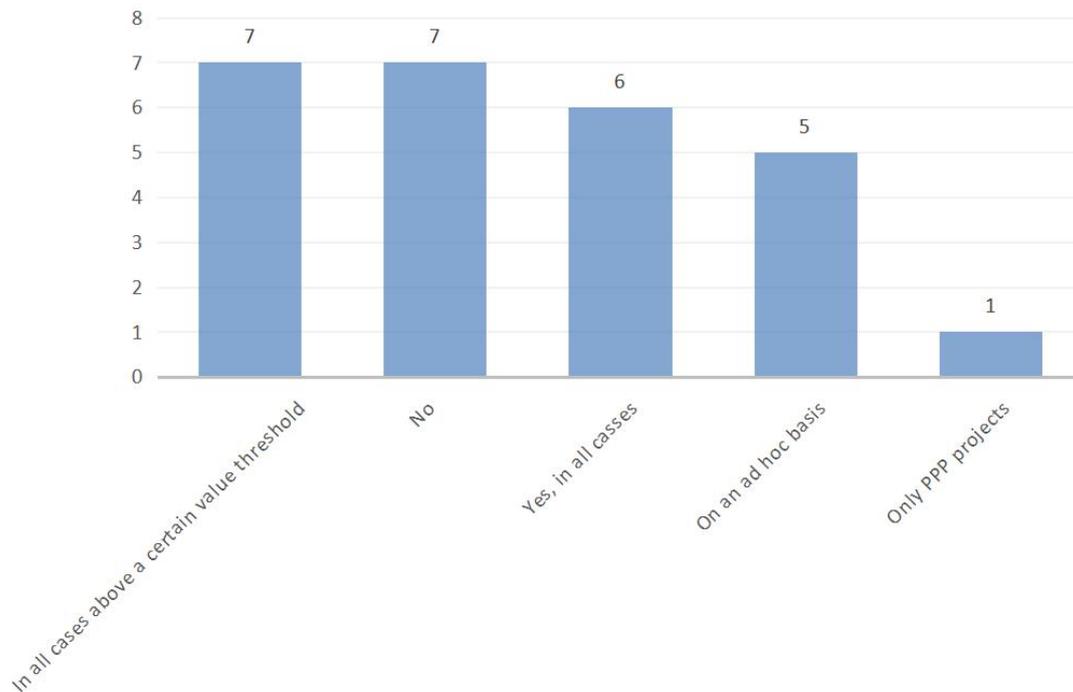


Figure 5. Principle 5 and the process for ensuring value for money.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note: Total respondents: 26; 1: Excluding projects financed by local authorities

Principle 6 touches on the question of who bears the risk of a PPP. There is no obvious “right” answer for every case. The private sector, and thus the contractor of the PPP, is usually best able to bear the operational and financial risk of a project. The public sector may be best able to bear the risk of very extreme events (for which, private “insurance” might be hugely expensive) and for political regulatory changes. In any case, risks should be defined, identified and measured and they should be borne by the party that is best able to bear them. The risks of a project should not only be analyzed and understood, but there should be strategies to mitigate the impact of risks on project cash flows. This process is particularly important for infrastructure projects where the revenue is based solely on the ability of the project asset to generate cash flows (OECD, 2017b).

Only about half of the surveyed countries had a dedicated procedure for identifying and allocating risk (**Figure 6**). 11 countries (one for PPP only) had a full-fledged procedure of identification and allocation. Four countries had a weaker process, while another 11 countries did not feature a risk-identification and allocation procedure. **Figure 7** shows the individual countries. There is no clear grouping, neither by size nor by geographical location.

Is there a dedicated procedure for identifying and allocating risks between public and private parties that take the cost of such allocation into account?

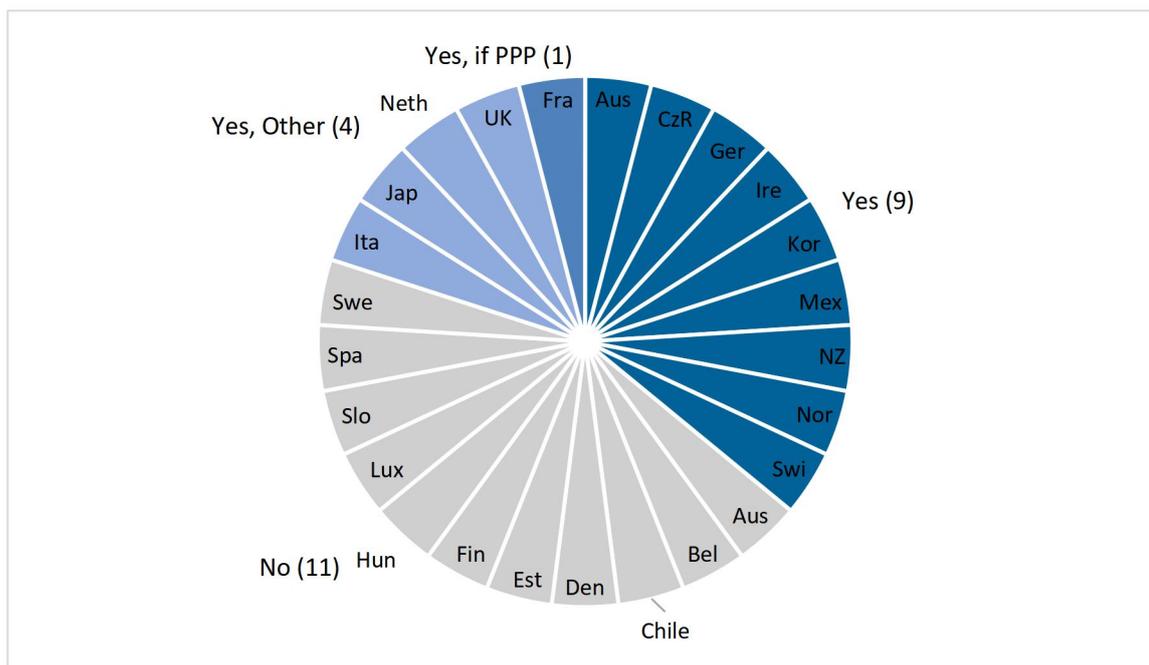


Figure 6. Principle 6 on identifying and allocating risk.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note:

(a) “Other” means (1) soft law, (2) risk-sharing guidance, (3) not relevant, or (4) there is a requirement to identify risks but not one specific process of doing so

(b) Total respondents: 28

Principle 7 aims at ensuring that the procuring authorities are conducting the operational phase of a PPP well. The value for money needs to be ensured at each stage of the project life cycle, from planning through operation. Governments must put in place adequate performance monitoring throughout the life span of the PPP. This should include regular observation and recording of performance data. There are also risks from changing staff (and a loss of knowledge and expertise) in the authorities.

Experience in countries with extensive PPPs such as the United Kingdom has clearly demonstrated the importance of this principle. The capacity to monitor contractual performance as well as the financial situation of the private partner is essential for ensuring that projects deliver value for money over their life cycle and that the public sector does not end up bearing excessive risks.

The UK has defined a number of good practices with regard to contract management. They range from advising that contracts are well understood to being clear about accountability and responsibilities. There is the need for continued vigilance, including to achieve better value for money through innovations and the need for integrated teams and cooperation across government.

Evidence across countries shows that most countries had a good monitoring system that ensured asset performance throughout its life span (**Figure 7**). 15 countries reported a full-fledged dedicated function for this task, which had sufficient resources and monitoring capacity. In two countries, the

function was somewhat weaker. “Only” nine countries, one-third of the total, reported not to have such a function.

In general, is there a dedicated function/policy allocating sufficient resources and monitoring capacity to ensure value for money in contracting?

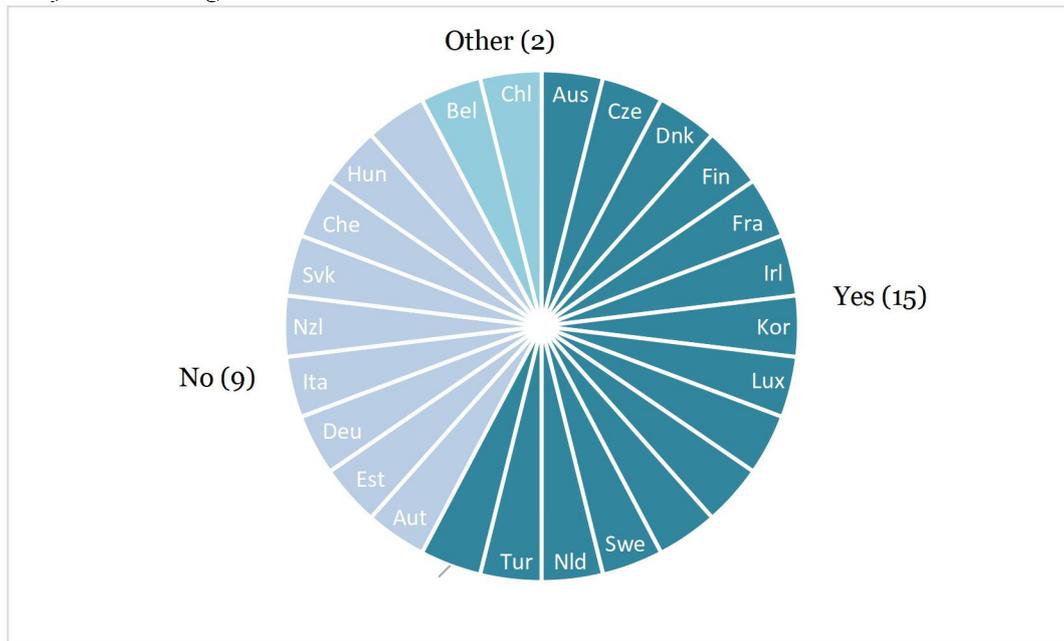


Figure 7. Principle 7 and the monitoring of asset performance.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note:

(a) “Other” means (1) administrative and budgetary control, or (2) on a need-to-need-basis.

(b) Total respondents: 26;

Principle 8 focuses on maintaining value for money over the project cycle. The benefits achieved through a well-structured, competitively procured project can be squandered if future contract renegotiations reduce the net economic benefits of a project. Once projects have been procured, the contracting authority and owners need to ensure that the contractual performance is respected, that the assets are adequately maintained, that contract modifications are avoided and that renegotiations are conducted fairly. Contracts should, therefore, clearly specify the mechanisms and conditions for renegotiation.

There are also bound to be conflicts over the project lifetime of many PPPs, given the length of the life cycle and the many unknowns and surprises that can occur. This requires predictable and transparent rules for dispute resolution.

As regards the challenge of renegotiation, survey results show that discretionary policy action was the most important reason for contract renegotiation. A number of countries experienced renegotiations following external shocks. The survey also shows that most countries had an appeals mechanism for the contracting parties and over half the countries featured remedies systems (i.e., procedures for cancellation and compensation) (**Figure 8a**).

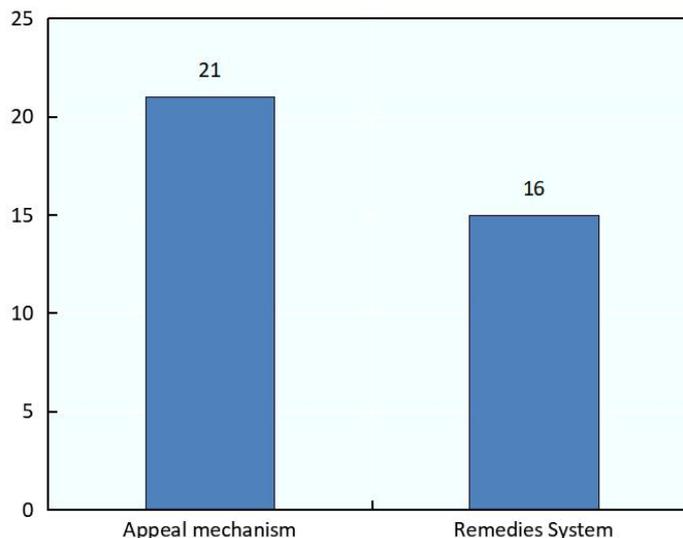


Figure 8a. Principle 8 on dispute resolution.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note: Total respondents: Appeal mechanism: 24; remedies system: 20

Principle 9 stresses the importance of competition and competitive tendering. Competition is the main driver of efficiency, and thus key to ensuring that PPPs deliver value for money. Because PPPs typically involve sectors with natural monopoly features (e.g., motorways) or deliver public services, competition must be introduced during the procurement phase. However, the benefits of competition can be diluted by practices such as the excessive resort to unsolicited proposals or contract modifications (World Bank, 2018). The regulatory framework and oversight bodies should, therefore, guard against potential abuses that could undermine value for money during the procurement process. Almost all OECD Countries (21 of 26) featured a strategy or policy that ensured competitive tendering (**Figure 8b**). The competitive tendering process was covered in EU (10 countries) and national regulation (11 countries). Open tendering was used by most countries to ensure maximum competition. Selective and negotiated tendering were preferred, e.g., when innovation was an important consideration (OECD, 2019a).

Is there a strategy or policy in place that works towards ensuring a competitive tendering process?

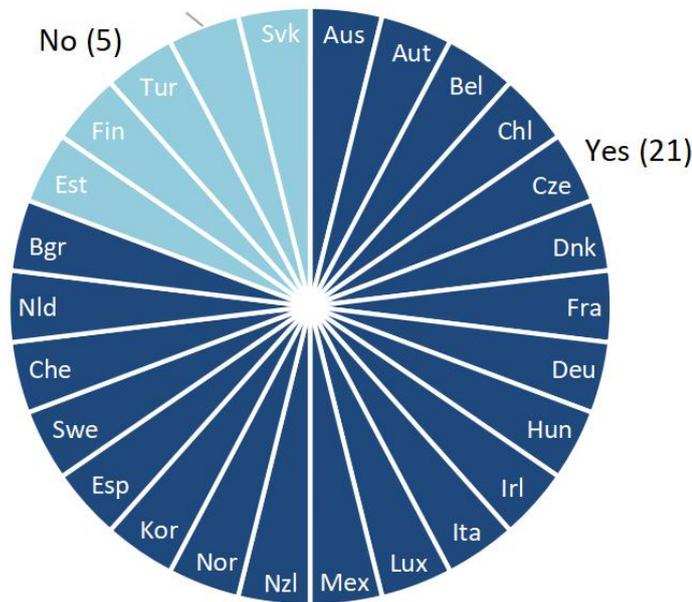


Figure 8b. Principle 9 on competitive tendering.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

In sum and as regards the second group of principles, there is favorable evidence on the use of clear and prioritized short-listing of projects based on cost-benefit analysis. Formal processes ensured value for money. There were clear, predictable and transparent rules for dispute resolution, and central budgetary authorities held a strong position.

On the downside, few countries had a long-term vision in the form of a long-term plan across actors. Decisions on investment in infrastructure assets were not always independent from how to procure and finance a project. Data collection for evidence-based decision-making between delivery modes was often lacking and so was a sound risk-allocation procedure across public and private parties.

5. Principles on minimizing fiscal risks and ensuring integrity of procurement

The third set of principles refers to integrating PPPs into the budget and procurement process and limiting fiscal risks. PPPs, as well as conventional long-term government borrowing for investment, are more difficult to integrate with the annual budget process than ordinary (and more variable) expenditures.

This makes Principle 10 on the affordability and sustainability of PPPs particularly important. An investment project is affordable if the expenditure and contingent liabilities it entails for the government can be covered within current levels of government expenditure and revenue, and if such levels can be sustained in the future. A public-private partnership can make a project more affordable if it improves the value for money compared to that realized through traditional public procurement, and if it fits within the government budget constraint. Governments should, therefore, undertake a sustainability assessment already in the planning/preparation phase.

PPPs limit flexibility as they are long-term contractual and financial commitments. The contractual rigidity of PPPs has made it more difficult for some government agencies to respond to budget cuts by reducing their expenditures on capital and maintenance. This rigidity needs to be considered by procuring authorities when contemplating the PPP route. It is another reason to do a proper ex ante affordability analysis.

Fortunately, evidence on this principle is relatively favorable (**Figure 9**). Most countries had some kind of public budget affordability assessment. Only three did not feature any. In about half the countries, the assessment applied to all projects.

Are projects subject to an assessment of their affordability for the public budget?

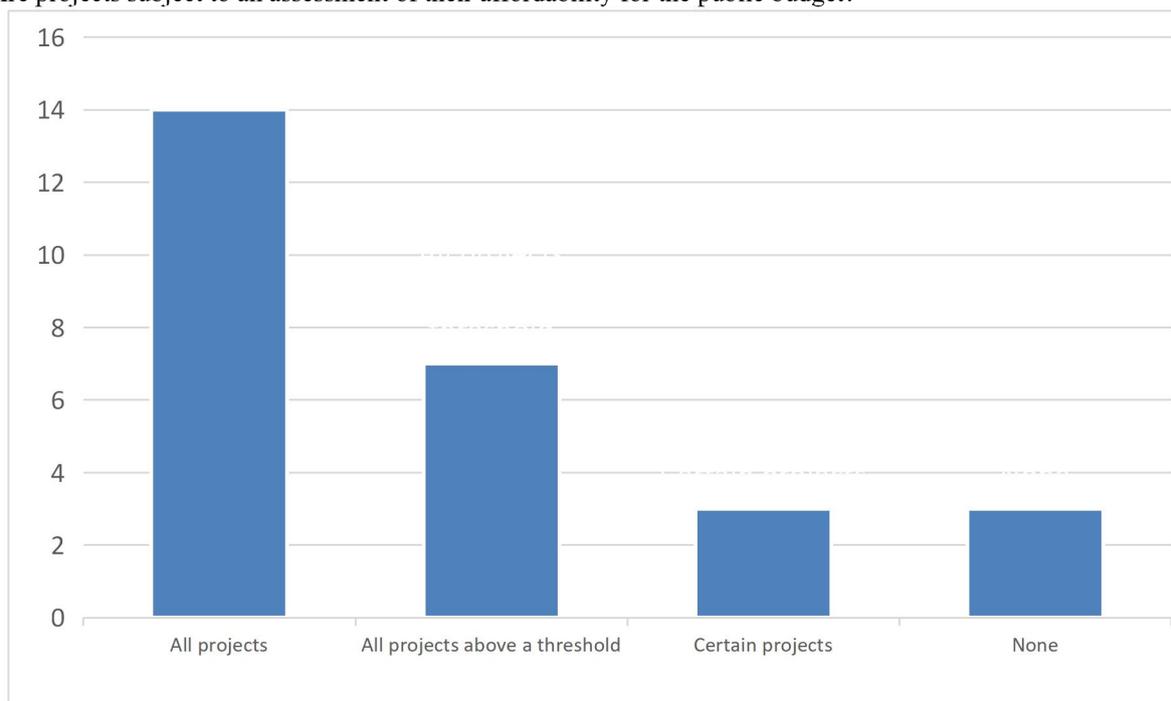


Figure 9. Principle 10 on public budget affordability assessment.

Source: OECD (2016), OECD Survey of Infrastructure Governance

Note: Total respondents: 26;

Principle 11 advises on the proper integration of PPPs in the budget process and the disclosure of all costs and contingent liabilities. Given the long-term nature of PPPs and the uncertainty and risks related to them, this is important. Incentives may be significant to use this procurement mode for hiding fiscal costs and risks outside the budget and outside public debt. The coverage of PPPs in the budget process should involve the whole public sector—including different fields and different levels of government. Budgeting of the full costs of an investment upfront should be considered especially when there are no user charges for covering the cost.

Evidence regarding this principle is again mixed (**Figure 10a**). While all traditional public investment projects were included in the budget, this only fully held for half the countries as regards PPPs. Nine countries included only some elements in the budget. In 11 out of 16 countries that provided information, PPPs were listed and priced in the budget documentation. Four countries only listed them and one country did not even do that (**Figure 10b**). Again, the share of listed and priced traditional projects was higher (14 of 16 respondents).

Is the financing of the procurement types included in the budget of the relevant (national, sub-national) government level?

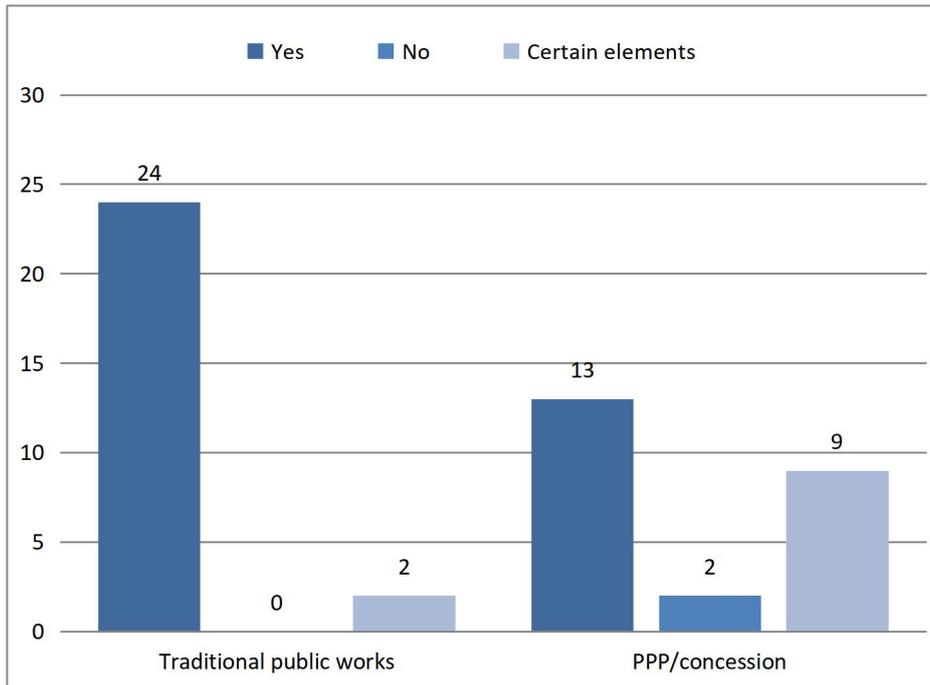


Figure 10a. Principle 11 on the financing of procurement.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note: Total respondents: 26

Does the budget documentation or other published material contain an assessment with respect to contingent liabilities derived from?

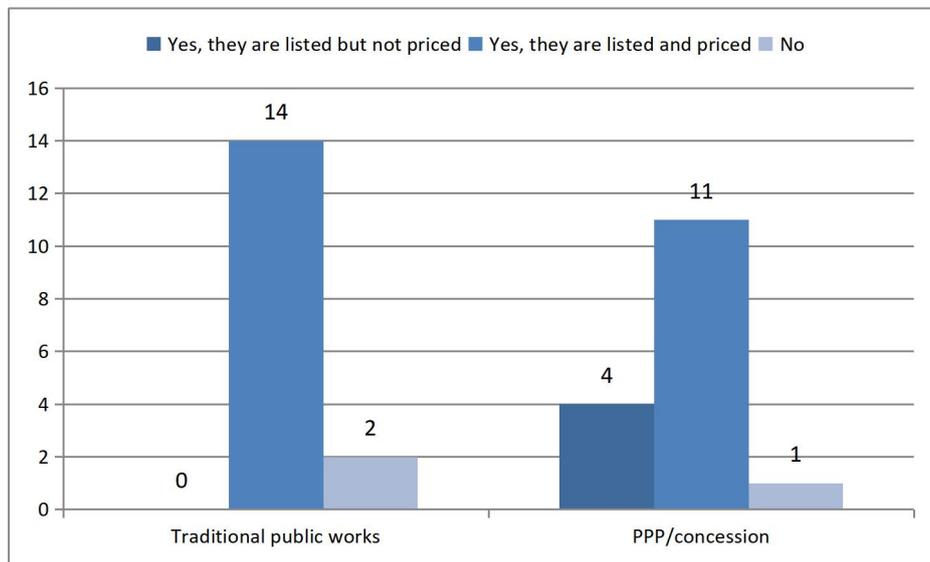


Figure 10b. Assessment on budget documentation.

Source: OECD (2016), *OECD Survey of Infrastructure Governance*

Note: Total respondents: 20 (countries with a formal requirement to account for contingent liabilities and running costs generated by an infrastructure projects a priori)

Finally, large infrastructure projects are particularly vulnerable to rent seeking and corruption and PPP projects tend to be large. This is due to the numerous stakeholders, multiple stages of

development, and the complex and long-term nature of projects. This challenge is covered by Principle 12, which proposes to guard against such risks.

The importance of bribery cases in infrastructure cases illustrates this challenge (**Figure 11**). Two-thirds of all foreign bribery cases occurred in infrastructure-intensive sectors. These included extractive industries, construction, transport and storage, and information and communication. As opaqueness, corruption and favoritism often occur in the tendering phase, policy guidelines, laws or regulations against it is advisable. In 15 out of 21 countries, laws or regulations regarding conflict of interest addressed these challenges.

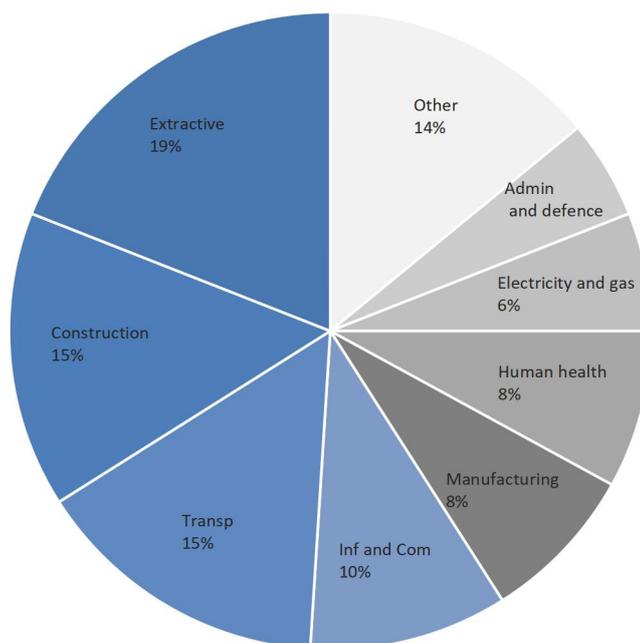


Figure 11. Principle 12 and bribery in infrastructure-intensive sectors.

Source: OECD (2014), OECD Foreign Bribery Report

Note: "Other" includes sectors such as agriculture, wholesale, water supply activities of extraterritorial organizations, financial and insurance activities

In sum, the surveys show that the assessment of affordability of infrastructure projects (including PPPs) for the public budget was very common. Most countries applied measures against corruption in infrastructure. On the downside, the financing of PPPs (or at least of certain elements) was not included in the budget. Moreover, the listing and pricing of contingent liabilities and cost were slightly less common for PPPs than for traditional investment projects.

6. Conclusion

PPPs are normally a small component of a government's total investment. Still, they are a relevant and important option for infrastructure delivery and the principles discussed above should provide governments with guidance on the "ifs" and "hows" of PPPs. When putting together the findings on the principles and their implementation across countries, there are positive conclusions but there is also considerable room for improvement. Only 10 countries see themselves as living up to the 12 Principles. 11 countries reported that they complied "to some extent". Two

countries reported that PPPs are not considered a relevant mode for delivering public services in their country. Results from the survey indicate that there is no clear country pattern. Partial and full compliance ranges from the richest to the poorest countries and does not follow a geographical pattern.

In some dimensions, the recommended practices are well applied and past and ongoing reforms show progress. According to the 2016 Infrastructure Governance Survey, half of the surveyed countries reported to have introduced reforms that brought the country's PPP framework more in line with the OECD Principles.

In many important areas, the recommended practices have become common practice. These include the presence of key institutions with clear mandates and responsibilities, evidence-based decision-making in the form of value-for-money analysis, and obligatory consultation processes.

However, other principles are yet to be well implemented, indicating the continuing need for improving public governance of PPPs across countries. In particular, the PPP mode should not be chosen simply because financing for traditional delivery is not available (which is typically not the main obstacle to delivering infrastructure). Sound project governance is—and should be—the most important criterion. Governments should make use of internationally recognized standards, processes and tools to support investor confidence and maintain control of the overall process.

Furthermore, the governance of PPPs is only one element among a larger set of governance challenges for infrastructure financing and delivery that need to be addressed in order to ensure that PPPs yield the best value for money. PPPs are frequently carried out for reasons that are not primarily grounded in value for money. Problems often arise from issues other than the design of the PPP itself, for instance, planning, prioritization, infrastructure resilience, monitoring mechanisms and other governance aspects of infrastructure investments.

In response to this challenge, the OECD Secretariat has started to develop an encompassing framework to guide countries' reforms of their infrastructure governance. The framework advises on practical governance tools, ranging from strategic planning to project-level delivery (OECD, 2017). Furthermore, the OECD has been conducting PPP country reviews. These have proven to be a valuable tool to assess countries' PPP frameworks and propose appropriate policy responses and tailor-made recommendations.

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