Public-Private Partnerships:

PPP – Public-Private Partnership in full - is a concept that was slow to get off the ground in Belgium. The formula was eyed most suspiciously, and was in the first instance geared towards financing projects for which the necessary funds were not readily available, while the added value of a PPP to a project was not, or hardly, taken into consideration. But, as we were able to establish at the 'PPS in Vastgoed (PPP in Real Estate)' Study Day organised by Management Producties at thebeginning of March, the tide finally seems to be turning, provided the formula pursues a win/win for all parties concerned.

Public-Private Partnerships can relate to real estate, more often than not linked to a long-term DBFM(O) agreement (Design, Build, Finance, Maintain & Operate), or can be applied to area development, where collaboration is limited to the construction or development phase.

Steven Steppe, Director of Rebel Group, pointed out: "In Belgium, the DBFM approach is over-emphasised with the result that it has almost become synonymous with PPP, which couldn't be more wrong!". He went on to highlight the distinctly different ways in which the Netherlands and Belgium amake use of PPPs.

Progress reports on PPPs

By contrast with the Netherlands, the possible added value of a Public-Private Partnership in comparison to a traditional tender is not, or hardly, assessed at all in Belgium. Progress reports on PPPs have been in place in the Netherlands since 2006. Following that, 'progress reports' on PPP projects governed by a DBFM(O) agreement were introduced in 2010.

Flanders does have its 'Jaarlijks Verslag van de Vlaamse Regering: Alternatieve financiering van Vlaamse Overheidsinvesteringen (Annual Report by the Flemish Government: Alternative Financing of Flemish Public Investment)' with an appendix 'Jaarrapport Kenniscentrum PPS (Annual Report PPP Knowledge Centre)'. But, by contrast with the Netherlands, where 'added value' is the name of the game, Flanders mainly focuses on the aspect of alternative financing, i.e. the off-balance sheet cost saving.

In June 2014, Wallonia decided to merge the CIF (Centre d'Information Financière - Financial Information Centre) with the WBFin Cell, which comprises a project to overhaul public accounts in Wallonia and the Wallonia-Brussels Federation.

The Netherlands sets the example

In the Netherlands, private financing is not a goal in itself. The preferred option is settled on a project-by-project basis whereby the Kingdom invariably rules in favour of the added value to the taxpayer. Only in cases where the project value of housing developments is more than 25 million Euros or that of infrastructure works exceeding 60 million Euros, does a PPP becomes an obvious choice. In these situations, the added value of a DBFM(O) agreement ranges between 10 and 15% on average. If the afore-mentioned thresholds are not met, the effective returns are lower than the transaction costs.

Since the progress reports were introduced in the Netherlands, DBFM(O) agreements have pushed the added value up to well over 1.3 billion Euros, to be increased by the as yet to be calculated added value generated by opting for more high-end solutions.

PPPs in the Netherlands have been a success story because budget, timing and the international quality rules are adhered to. In countries such as France, Germany, the United Kingdom and undoubtedly in Belgium (Flanders) too, public opinion is somewhat anti PPP, more specifically because, in the early years, many PPP projects were executed without proper risk arrangement having been carried out between the market and the authorities and because the aspect of 'value for money' to taxpayers was somewhat over-looked.

To turn the PPP formula into a success, added value must take precedence over the off-balance sheet funding of the projects.

The perception of DBFM(O) agreements must be enhanced by separating them from alternative financing and from the concept of PPP itself. Ideally, DBFM should be given its own identity.

added value is key to success

Financing viewed differently

"Funding is no longer the impediment that hampers the realisation of projects" Lode Verstraeten, Head of Public Sector & Institutionals KBC Bank Corporate Banking Center Region, stated somewhat surprisingly. *"There is plenty of money available for funding these days, but there is a lack of projects and investments including PPP, and, in addition, relating to the PPP projects that are tendered, the throughput times are too long".*

Banks are not the only ones which can provide funding, other parties, such as insurance companies, are also an option. However, current very low interest rates over a very long period of time (25 to 30 years) might be considered an issue. Financial partners on average tend to prefer shorter financing tenors than 25 or 30 years, but on the other hand currently there is sufficient liquidity in the market to address these long term financings of projects.

The availability payment in DBFM agreements does not have to be fixed for the entire duration but could follow refinancing, e.g. 15 + 15 years. After all, looking at the traditional real estate markets, leases are also subject to indexation and to renegotiation once the contract term comes to an end. PPPs could provide that option too. There has recently been seen one example of a project where Pension insurance companies involvement as road infrastructure financiers in the Netherlands led to inflation linked cash flows, but it would maybe be easier to apply such in more real estate driven PPPs.

Standardisation is also essential: in Belgium, ten bodies are involved as against two in the Netherlands (Rijkswaterstaat (Department of Waterways and Public Works) and Rijksgebouwendienst (Government Buildings Agency)).

> "To turn the PPP formula into a success, added value must take precedence over the off-balance funding of the projects"

These days, the difference between renting and 'using' via a DBFM agreement is becoming increasingly smaller. As a result of the obligation to contain government deficits imposed by Europe, investments must be spread as efficiently as possible, which is the case with an 'availability' over 20 to 25 years which is exactly what a PPP formula with DBFM agreement has to offer. In the current financial context, DBFM is probably the only way investment in infrastructure and public buildings can continue.

Eduard Coddé

Legal context

"A thorough preparation of PPP projects could prevent an awful lot of legal hassle or certainly reduce it by half" was the opening line of Helga Van Peer, Head of the General Public Law Department and partner in Allen & Overy, where she works on many PPP projects. A PPP is no guarantee of a simpler legal context. After all, the individualistic approach to projects, which gives rise to major disparities, prevails for PPP that are not DBFM. A PPP is not a means to suddenly turn a difficult or impossible financing proposition into a feasible one. Furthermore, there are no PPP-specific legal rules. For that reason, a project needs to be clearly defined before the appropriate legal structure can be set up.

"For real estate projects, the trend seem to veer in favour of hybrid projects. It would be a good idea to standardise different types of PPP contracts, with the one for infrastructure DBFM being fairly well accepted by now but not necessarily suitable for other PPP. It would also be worthwhile examining all key elements before launching a project. After all, if a project is not sustainable, setting up a PPP is not a feasible option either. There is increased awareness regarding the importance of thorough preparation, which is a good sign."