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Financial and legal aspects of public-private partnership in financing revitalization activities – general issues

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Abstract. Public participation is gaining importance with regard to the implementation of municipal investments of various kinds. The relations between inhabitants and local authorities, are currently coming more towards participation based on consensus rather than confrontation. Changes in this area are a positive result of both the examples of good practices coming from the developed European countries (Norway, France, Germany), as well as the orientation of the EU urban policy in this direction. At the same time, however, the EU urban policy draws attention to the scarcity of public financing as regards municipal investment projects. The EU policy emphasizes the need to involve private funds. Both the EU and Polish strategic documents on urban policy point to the role and importance of public-private partnership in financing municipal investments. The paper presents public-private partnership as one of the basic means of realization of the idea of social participation in the financing of revitalization processes as well as the problems related to this funding model within the Polish legislation in relation to the European Union provisions in this regard.

Introduction

Revitalization processes play a vital role in the regeneration of degraded urban areas. Their aim is to bring back to life the areas which have been socially, economically and spatially deteriorated to the largest extent. In many cases such areas constitute the city centres on which hopes are pinned related to further development of a city as a whole, due to the fact that tourist, cultural and service functions are concentrated there. Due to a complex nature of revitalization processes and limited possibilities of public financing

support from private entities is required. Public-private partnership (hereinafter referred to as PPP) is by definition a model of cooperation between a public entity and a private partner in fulfilling public tasks. This model is founded on the Polish legislation. Nevertheless, in its current shape determined by the Polish legislator it can limit the possibility of carrying out revitalization projects by means of cooperation between a public entity and a private partner.

The objective of this paper is to point to the need to work out the model of public-private partnership in financing revitalization activities based on the idea of more comprehensive participation of the social consensus. The studies are interdisciplinary – legal and financial. They were carried out using the comparative and dogmatic methods – in the law area and the descriptive and empirical methods – in the area of finance.

1. Revitalization – the objectives and sources of finance

Revitalization is a multifaceted process which comprises elements regarding the social, economic, environmental and spatial development policy as well as culture and, in many cases, protection of the national heritage. Revitalization is a public task. As a complex process it requires determining the sources of finance in the long term. The definition of revitalization which features in the Act of 9 October 2015 on Revitalization reflects its understanding adopted in the European documents (Toledo Declaration, 2010) as well as Polish and foreign subject literature (Billert). According to the Act on Revitalization, revitalization constitutes the process of recovering from the critical state of degraded areas which is conducted in a comprehensive way by integrating the activities for the benefit of the local community, space and economy which are concentrated on a particular territory and carried out by revitalization stakeholders pursuant to the local community revitalization programme (OJ 2015 item. 1777). The aim of revitalization is a durable social and economic revival of the revitalized area, improvement of its attractiveness for residents and entrepreneurs as well as increasing the quality of life (The National Urban Policy, 2015).

Revitalization is conducted by stakeholders who, first and foremost, comprise the residents of the area subjected to regeneration, owners and perpetual usufructuaries of the real estate and entities managing the real estate situated in the said area, other residents of the local community, entities which carry out or intend to carry out economic activity in the local community entities which carry out or intend to carry out social activity in the local community, including NGOs and informal groups, territorial self-government units and their organizational units, public administration bodies and the entities which in the revitalization area exercise the powers conferred on them by the State Treasury (Art. 2, Para. 2). Stakeholders actively participate in all the stages of the revitalization process, i.e. in preparing, implementing and evaluating the process. A wide representation and the participation of private and public partners in the process of revitalization reflects

the guidelines of the European policy of integrated urban development and integrated urban revitalization (Leipzig Charter, 2007).

Revitalization in Poland constitutes the local government's own task of an optional nature. This forces local governments to search for financial means to cover the costs of carried out projects. Moreover, the local government implements (finances) revitalization solely within the scope of their own tasks which fall under their competence. Due to the fact that local governments are not able to cover all the revitalization costs on their own, raising adequate funds is a serious challenge. Currently however, European funds constitute the primary source of financing of revitalization projects. In the years 2014–2020 approximately € 5.68 bn has been allocated to revitalization activities in a broad sense. European funds will account for € 5 bn of the aforementioned sum (about € 3.4 bn will be provided within the framework of regional programmes and € 1.6 bn will be raised by means of national programmes) and the means provided by state or local government budget will amount to € 0.7 bn (according to the exchange rate 1 EUR equals 4.4 PLN). Yet the years 2014–2020 are the last period of financial support for Poland within the framework of the European Union financial programming. The prospect of the said period being the last financial programming period constitutes an incentive to search for alternative sources of finance. The following sources of financing of revitalization projects are indicated: (National Urban Policy, 2015)

- public funds: foreign means (European funds provided within the framework of national and regional operational programmes) and national means (city budget – a city's own means, national special purpose funds, voivodeship funds and contracts, government programmes),
- private means: bank loans, leasing, issuing of bonds, bank guarantees, loan subsidies,
- combinations of private and public means. As regards the last possibility, the means may come from the public funds mentioned above and may be provided within the framework of local programmes (e.g. property tax exemption offered as part of the support programmes targeted at entrepreneurs, subsidies for conservation, restoration and construction works with regard to the historic sites entered in the national register which are not the property of the city), investment loans, bank guarantees and sureties, leasing and loan subsidies.

Apart from the aforementioned sources of finance there is one more vital element which is responsible for the successful implementation of revitalization. It consists in triggering off the so called self-activating processes. These processes are connected with the commitment on the part of NGOs, private investors, residents, tenants' associations, other stakeholders and encompass not only financial means but also organizational assistance, engagement and contribution in the form of work performed by these entities. Generally degraded areas need a pulse to lift up from the fall (Skalski, 2000, pp 33). Undertaking revitalization by local authorities and the envisaged results should constitute an incentive to employ private capital which is interested in allocating funds

in a commercially viable area which promises good profits.

2. Public-private partnership revitalization projects in the context of PPP market in Poland

PPP means cooperation between a public entity and a private partner in fulfilling public tasks which include revitalization. PPP is a model grounded on legislation. In Poland the concept of PPP introduced into the legal order has been narrowed down in terms of the subject. According to the definition set forth in the Act of 19 December 2008 on public-private partnership, PPP means joint implementation of a project based on a division of tasks and risks between a public entity and a private partner. The notion of “a private partner” encompasses an entrepreneur or a foreign entrepreneur. The notion of “a project” covers the following: construction or refurbishment of a building or structure, or provision of services, or performance of a work, in particular equipping an asset with devices increasing its value and usability, or other consideration – combined with maintenance or management of the asset that is used for implementation of the public-private partnership project or related to it (OJ 2009 No. 19 item. 100). In contrast, according to the definition set forth in Article 2, Point 24 of the general regulation on cohesion policy of the European Union for the years 2014–2020, PPP means forms of cooperation between public bodies and the private sector, which aim to improve the delivery of investments in infrastructure projects or other types of operations, delivering public services through risk sharing, pooling of private sector expertise or additional sources of capital. Article 62 of the regulation provides that projects implemented within the framework of PPP may be supported from the European Structural and Investment Funds (Regulation (EU) No 1303/2013). It is worth highlighting a more comprehensive understanding in terms of the subject (private sector) of the PPP model set forth by the European Union which also emphasises major infrastructure projects and the possibility of financing such projects by means of European funds. The legislative changes which have been instigated at the level of the European Union legislation will undoubtedly contribute to further progress in this direction accomplished by the EU member states.

It may be pointed out that over the last years the interest in PPP has been increasing systematically (compare: Herbs, Jadach-Sepiolo, Marczevska, 2012, pp 19). In 1997 only five countries in the world: Great Britain, Australia, the Republic of South Africa, Japan and Slovenia applied the PPP model in implementing projects. Currently there are no countries in Europe without projects carried out with the application of this model.

Table 1. European PPP market in 2015 – country breakdown by number and value of projects

Country	Number of projects	Value (millions EUR)
United Kingdom	15	2,409
Turkey	7	9,174
France	5	1,172
Germany	5	393
Netherlands	4	772
Belgium	3	309
Ireland	2	446
Spain	2	417
Denmark	2	161
Greece	2	65
Finland	1	265
Poland	1	26

Source: Market Update. Review of the European PPP Market in 2015, retrieved from <http://www.eib.org/epec/> (30.06.2016).

On the basis of the data set forth in Table 1 it may be pointed out that in Poland the market of the projects carried out with the application of the PPP model is in the stage of development. As presented in Table 1, Poland has completed one project carried out with the application of the PPP model (it is a project implemented at the central government level). The project implemented at the central government level with the application of the PPP model consisted in designing and construction of a court building in Nowy Sącz. The building constitutes the contribution to the project on the part of the public entity. The private partner is obliged to develop the design of the building, to construct the building as well as to maintain it and to put it at the public entity's disposal for the period of 20 years in return for a consideration fixed in advance. In fact many more projects have been completed. However, they fall under the competence of territorial self-government and therefore as such they are not covered by the European statistical research. The Polish market is characterized by a low value of projects (the value of projects usually falls within the range of € 1 m to € 3.5 m – according to the exchange rate 1 EUR equals 4.4 PLN) and the fact that most projects are in the idea and design stage (European Investment Bank, 2015).

Table 2 presents data concerning the number and the value of projects carried out with the application of the PPP model in Poland in a sectoral perspective implemented by the local self-government.

Table 2. Sector breakdown by number and value of PPP projects in Poland as at 30 October 2015

Sector	Number of projects	Value (millions EUR)	Average value of one project in millions EUR
Sport and recreation	48	3.18	0.07
Transport	30	2.95	0.10
Healthcare	21	7.95	0.38
Car parks	16	5.45	0.34
Public buildings	14	6.14	0.44
Culture and education	12	0.11	0.01
Energy	8	1.14	0.14
Housing	6	0.68	0.13
Revitalization	6	9.55	1.59
Water and sewage management	4	2.27	0.57
Waste management	3	52.05	17.32
ICT	2	32.50	16.25
Miscellaneous	12	1.14	0.10

Source: Foundation PPP Centre, on the basis of www.bazapp.gov.pl, retrieved from: www.centrum-ppp.pl/start,1 (31.05.2016).

Pursuant to the data presented in Table 2 it can be noted that the revitalization projects implemented by territorial self-governments with the application of the PPP model in 2015 accounted for only 3.3% of all the projects. The average cost of one project amounts to € 1.59 m. The projects implemented by territorial self-government the following include: land development in the area of the railway station in Sopot – the project value amounts to € 22.73 m, redevelopment of the Lubicz-Basztowa underpass for pedestrians including the construction of new shopping centres and modernization of the existing ones in Cracow – the project value amounts to € 0.48 m, land envelopment in the area of the northern tip of the Spichrzów Island in Gdańsk – the project value amounts to € 56.82 m, renovation of underpasses for pedestrians in Warsaw – the estimated value of the project amounts to around € 9.09 m and renovation of the market square in Kędzierzyn-Koźle along with neighbouring streets – the estimated value of the project amounts to € 3.41 m. (citations from Mysiorski, Nowosiadły, 2016).

3. Public-private partnership – social and legal aspects of the revitalization processes

As indicated before, revitalization requires supporting public funding with private funding. Moreover, since revitalization processes are multifaceted, long-lasting and unpredictable in terms of successful completion, they entail high investment risk. Generally,

it is worth remembering that projects aimed at the regeneration of the degraded urban areas are costly and apart from substantial financial resources involve also the need to come up to particular social expectations. This means that their value is considerable in relation to other sectors.

PPP as defined in the Polish legislation is a form of primarily financial participation of a public entity and a private partner in carrying out a project which constitutes part of public tasks. Revitalization is one such task which in turn consists of various undertakings of a different character. The PPP model is used for the purpose of fulfilling a public task by a private partner in the scope which lies beyond governance, i.e. in the scope of the public property management. However, according to the definition of PPP set forth in the Polish legislation, the notion of “a private partner” participating in the implementation of the revitalization project encompasses exclusively an entrepreneur or a foreign entrepreneur. Whereas the circle of private entities who are stakeholders in revitalization process has a much wider scope as defined by the legislator. Private entities which are interested in participating in revitalization projects do not encompass exclusively entrepreneurs but also the residents of the revitalization area or even inhabitants of the local community. The PPP model, which, as defined in the Polish legislation, is connected with engaging entrepreneurs in revitalization projects, is therefore a form of participation of these entrepreneurs in revitalization. Taking into account a complex nature of revitalization processes, this model may however prove inadequate, too. It is necessary to search for other than PPP forms of cooperation between private entities in a broad sense and public entities or to extend the PPP model in terms of the subject and scope to include other private entities, and possibilities of cooperation. The PPP model should, for the purpose of revitalization, encompass any kind of collaboration in fulfilling the public task of revitalization between a public entity and the private sector in a broad sense. A specific character of revitalization carried out with the application of the PPP model makes it also necessary for both parties to meet additional non-financial conditions which may hinder the application of the said model for the purpose of revitalization. The following may be indicated: the legal status of the land on which a revitalization project is carried out must be clear, the duration of the revitalization process must be strictly defined, local authorities must display determination and engagement and adequately promote revitalization projects. It is necessary to liaise with society as skillfully conducted consultations with society may guarantee success in implementing a revitalization project (Ślebocka, 2016).

It is worth mentioning that the involvement of private entities in urban processes by means of various mechanisms and incentives constitutes the foundation of the policy of integrated urban development of the European Union which in turn comprises the policy of integrated urban revitalization. As it is pointed out in the European Union strategic documents it is necessary to engage business entities, interested parties and society in general. The policy of integrated urban development engages participants who are not part of public administration and enables citizens to play an active role in shaping their immediate environment. The necessity to adopt an open approach by municipal

self-governments towards the need of comprehensive social participation is justified by taking into consideration the funding of urban processes in the future. The need to involve private resources in financing urban processes is pointed to. This need results from scarcity of public financial means. Allotting private funds is considered possible only when public and private interests are reconciled i.e. participation is based on a social consensus (Leipzig Charter, 2007). At the same time it is necessary to bear in mind that, from the point of view of participation, the policy of integrated urban development also has a wider dimension which serves to implement the European Union cohesion policy and the Europe 2020 strategy. It is worth mentioning that in European strategic documents, apart from social participation, also the participation of cities in accomplishing the goals of cohesion policy and the aims of the EU with regard to development is emphasized (Tylman, 2016). “Cities should become major centres of development of urban areas and take responsibility for the territorial cohesion. Therefore it would be beneficial if there were closer ties between our cities at the European level. (...)” (Leipzig Charter, 2007).

Despite growing demand on the part of public entities, private partners are still little interested in investing in revitalization. However, there is hope that, the amendments to the Act on public-private partnership introduced by means of the Act on Revitalization (Art. 46) will improve the current situation. Article 7 of the Act on public-private partnership was modified since a new section was added. The newly introduced section 2a makes it possible to discern in a PPP contract within the framework of the remuneration of a private partner the amounts of payments made by a public entity to finance the production, purchasing or betterment of fixed assets when implementing the project, which meet the requirements of assets-related expenditure as defined in the Act on public finance.

Conclusions

Degradation of urban areas is a progressive process. Years of neglect are particularly evident in former socialist economies. In the period of social economy little importance was attached to the issues connected with revitalization. However, as it is indicated, “cities play a vital role in the social and economic life of the European Union. Approximately 80% of the population of the EU live and work in cities or in densely urbanized areas surrounding cities” (European Investment Bank, 2016). Cities are innovation incubators, they generate gross domestic income and thus create economic prosperity. Although cities contribute to the well-being of society and the soundness of economy they themselves require assistance. Years of neglect and the lack of investments in the sphere of technical infrastructure led to considerable deterioration of the quality of life in urban areas. Therefore the revitalization of degraded urban areas has become indispensable.

In the context of revitalization itself, the need for more comprehensive social participation, which is grounded on the provisions of the strategic documents of the European Union as well as on the documents and legal acts adopted at the national level, will make

it necessary to continue seeking the way forward as regards this issue. The use of PPP in this situation seems obvious. However, legal provisions concerning the functioning of PPP which will be adapted to the needs of revitalization processes should constitute the foundation for fruitful partnership which in turn is the beginning of a successful form of establishing contacts with local society. This conclusion results from the fact that the PPP model in revitalization processes requires engaging all the parties to the project, including the whole community residing in the degraded area. Such the construction of PPP may play the role of a stimulus and, as a result, bring about an increase in social conscience which is part of the process referred to as social participation. Apart from the potential profit connected with investment there is also the value added consisting in the awareness of the possibility to help the local society as whole which may in the future encourage private entities to actively partake in participatory revitalization processes.

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OD PARTYCYPACJI DO PARTNERSTWA PUBLICZNO-PRYWATNEGO W FINANSOWANIU DZIAŁAŃ REWITALIZACYJNYCH

Słowa kluczowe: rewitalizacja, partycypacja społeczna, partnerstwo publiczno-prywatne

Streszczenie. Partycypacja społeczna zyskuje w ostatnich latach na znaczeniu w odniesieniu do realizacji inwestycji miejskich o różnym charakterze. Relacja mieszkańcy miasta – administracja lokalna zmierza aktualnie bardziej w kierunku partycypacji konsensusu niż konfrontacji. Zmiany w tym zakresie zawdzięczać należy zarówno przykładom dobrych praktyk płynących z rozwiniętych państw europejskich (Norwegii, Francji, Niemiec), jak również zorientowaniu unijnej polityki miejskiej w tym kierunku. Jednocześnie jednak unijna polityka miejska zwraca uwagę na ograniczoność środków publicznych w finansowaniu projektów inwestycji miejskich. Podkreśla się potrzebę zaangażowania środków prywatnych. Zarówno w unijnych, jak i polskich dokumentach strategicznych dotyczących polityki miejskiej wskazuje się na rolę i znaczenie partnerstwa publiczno-prywatnego w finansowaniu inwestycji miejskich. Artykuł przedstawia partnerstwo publiczno-prywatne jako jeden z podstawowych środków realizacji idei partycypacji społecznej w finansowaniu procesów rewitalizacyjnych, jak również wskazuje na wątpliwości natury prawnej związane z funkcjonowaniem partnerstwa publiczno-prywatnego dla potrzeb procesów rewitalizacji.

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