

# D11. Final Report

Methodology and Guidance for PPP Preparation and  
Procurement

**REFORM/SC2021/077**

This project is carried out with funding by the European Union via the  
Technical Support Instrument and in cooperation with the European  
Commission's DG REFORM



### **Disclaimer**

This Guidance was prepared with the financial assistance of the European Union. The views expressed in this report are those of the consultants and do not necessarily reflect those of the European Union

This project is implemented by AARC, in association with Rebel and Leroy



## ABBREVIATIONS

CA	Contracting Authority
DG REFORM	Directorate General of the Structural Reform Support of the European Commission
EPEC	European PPP Expertise Centre
EU	European Union
MoF	Ministry of Finance
PIMU	Public Investment Management Unit
PPP	Public-Private Partnership
RfS	Request for Service

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## 1. PURPOSE OF THIS DOCUMENT

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Following completion of all other deliverables, this final report provides (a) a summary of the activities carried out during the implementation of the contract, (b) the challenges encountered, (c) lessons learned that could be useful and relevant for implementing similar initiatives in other EU Member States, and (d) communication material.

## 2. SUMMARY OF ACTIVITIES

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### 2.1 Summary of Deliverables

Following a request for support from the Government of Romania, DG REFORM commissioned this assignment to provide consultancy services to develop PPP contract guidance and standard provisions and other PPP guidance, tools and training to support and improve the preparation and procurement of PPPs in Romania. The assignment comprised a total of 11 deliverables and related activities, which are summarised as follows:

- D1: Inception Report
- D2: Report on international best practice
- D3: PPP Contract Guidance and Standard Provisions
- D4: Methodology and guidance for VfM assessment
- D5: Methodology for risk assessment and allocation
- D6: Methodology for PPP affordability assessment
- D7: Methodology for identification and calculation of PPP impact on government debt and deficit
- D8: Guidance on the PPP preparation and procurement process
- D9: Training workshops
- D10: Training materials on PPP guidance and tools
- D11: Final report

### 2.2 Working Group

The primary parties involved in this assignment, along with their roles in responsibilities, are summarised as follows:

- **DG REFORM:** Commissioned the assignment; oversaw delivery of the assignment from the European Commission's side; attended workshops.
- **PIMU:** The Government of Romania's lead institution responsible for PPPs and primary beneficiary of the technical support provided through this assignment; actively participated in working group discussions and reviewed all deliverables; hosted and attended workshops.
- **EPEC:** Acted as the European Union's PPP technical advisor to PIMU; reviewed deliverables and participated in working group meetings with the consulting team and PIMU to help refine and assure quality of the deliverables.
- **AARC:** Primary contractual counterparty for this assignment through its framework agreement with the European Commission.
- **Rebel:** Subcontractor to AARC; responsible for leading the financial and procurement aspects of the assignment.
- **Leroy:** Subcontractor to AARC; responsible for leading the legal aspects of the assignment and for providing local context.

The communication and cooperation among the working group went smoothly for this assignment.

## 2.3 Timeline of Activities

Following contract signing on 14 Dec 2021, this assignment was originally scheduled to last 20 months until 13 August 2023. In June 2023, a 4-month extension of final completion to 13 December 2023 was requested and granted, for the following reasons:

- interaction between the current project and changes in the Romanian legal framework regarding PPP, which delayed the review of the deliverables by the beneficiary authorities; and
- limited availability of Romanian government officials during the summer holiday period to follow the training workshops.

Taking into account the extension, all deliverables were completed on time.

As this assignment involved preparation of a package of aligned and cross-referenced guidelines, many of the guidance deliverables were progressed in parallel, and there was a final review once all were complete in July 2023 to ensure consistency and accurate cross-referencing among the guidance documents.

To summarise the activities carried out, Figure 1 presents the work plan from the Inception Report (D1), which has been updated to reflect actual timing.





### 3. CHALLENGES ENCOUNTERED

This chapter lists material challenges encountered during delivery of the assignment.

#### 3.1 Required Changes to Existing Legal Framework

**Challenge:** Early on in the assignment, Leroy identified several provisions of the existing Romanian legal framework which needed revision to remove barriers to developing PPPs in Romania and to move closer to international best practices. In particular, the following provisions were identified as problematic and recommended for revision:

- Under existing Romania legislation, there are two laws governing the requirements for a Feasibility and Substantiation Study for PPP projects: G.D. No. 907/2016 (governing the preparation of technical-economic documentations for investment projects financed from public funds) requires a Feasibility Study, and G.E.O. No. 39/2018 (the PPP Law) requires a Substantiation Study. This framework causes two major concerns:
  - In international best practice, a single feasibility study is required during preparation of a PPP project. Even if a Contracting Authority would attempt to meet the requirements of both studies within a single consolidated study, the two studies have separate approval processes, creating unnecessary bureaucratic and time-consuming processes that slow down progress without incremental safeguards or benefits compared to customary international PPP practices.
  - A recent amendment<sup>1</sup> to G.D. no. 907/2016 introduced provisions that apply specifically to PPP projects (as well as to concessions for works and to concessions for services which also include works). According to these new provisions (which are inspired by international best practice), technical-economic documentations prepared for PPP (and concession) projects will be based on indicators related to the projects' functionalities (in other words, on output indicators). Moreover, the new provisions establish a simplified framework content for pre-feasibility and feasibility studies that are prepared for PPP (and concession) projects.

Nevertheless, the aforementioned amendment to G.D. no. 907/2016 does not address the issue of the separate approval processes set forth by the current legal framework for the feasibility study and the substantiation study.

  - IFC and EBRD both raised these issues as major obstacles to supporting further preparation of PPP projects in Romania, based on their experience in supporting the preparation of several potential hospital PPP projects in Romania.
- Art. 12 (2) of the PPP Law caps the public partner's contribution to the funding of the investment (during the construction phase) at 25% of the total value of the investment. This cap includes European Union and other non-reimbursable external funds and the national contribution to such funds, as well as the contribution of public investment funds and investment companies.

However, EU funds and other grants can play an important role in PPP project affordability. By capping the maximum contribution of such funds to 25% of the investment value, the risk arises that good projects that would add considerable benefits to society and would generate value-for-money as a PPP may not be affordable, even though additional EU or other grant funding (above the 25% cap) could be obtainable. Such a cap in respect to PPP projects is not common internationally and restricts the ability to optimally structure a project's funding and delivery model.

<sup>1</sup> See Government Decision no. 1116/2023.

IFC and EBRD also raised this restriction as another barrier to developing social infrastructure (e.g., hospital) PPPs in Romania, as social infrastructure typically requires greater than 25% public funding to make the project viable.

**Mitigation:** PIMU has advocated for amendments to the legal framework to address the major challenges described above. As of the date of this final report, the amendments designed to address the feasibility studies' requirements and framework content have been adopted by means of an amendment to G.D. no. 907/2016. However, these amendments do not address the existence of separate approval processes for substantiation studies and feasibility studies. Furthermore, the proposed changes to remove or relax the 25% cap on public funding have encountered resistance and are still pending agreement within government. It is unclear if or when this proposed change will be adopted.

In the final version of the PPP guideline deliverables, it was decided by the working group to base the guidance on international best practices, while noting material areas where the existing Romanian legal or institutional framework differs from best practice.

### 3.2 Parallel Development of National PPP Strategy

**Challenge:** With support from EPEC, PIMU was in the process of developing a PPP Strategy for Romania. At the time of commencement of this assignment, the PPP Strategy was in advanced draft form but not yet finalized and adopted. The draft strategy included some envisioned yet not established structural elements (e.g., an approval body), which led to some confusion early in the assignment as to whether the PPP guidance documents developed under this assignment needed to align with the draft strategy and whether the PPP Strategy would ultimately be finalized and adopted.

**Mitigation:** It was discussed and clarified among the working group that the guidance developed under this assignment should be based on international best practices and reference existing Romania law and institutional structures, rather than aligning with the draft PPP Strategy.

### 3.3 Mixed Prior Experience with PPPs in Romania

**Challenge:** While Romania had an early PPP success story in 2000 with the concession of Bucharest's water and sewage system, since then the country has had some policy missteps and experienced unsuccessful PPP project attempts, which gave some stakeholders an unfavourable view of PPP benefits and potential.

**Mitigation:** Through stakeholder consultations starting early in the assignment, and with the leadership of PIMU, we were able to discuss what went wrong in the past and explain how those issues are being addressed in the new PPP framework. Some of the skeptical stakeholders participated in the training workshops toward the end of the assignment and seemed engaged and open to reconsider the PPP model.

## 4. LESSONS LEARNED

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This chapter lists lessons learned during the delivery of this assignment that could be useful and relevant for implementing similar initiatives in other EU Member States.

### 4.1 Importance of a Champion

The development of a comprehensive set of PPP guidelines is a lengthy, complex and intensive process, which requires strong stakeholder management across a number of government institutions. Without a champion engaged and leading the process on the beneficiary government's side, it can be difficult to achieve. Ms. Dana Galben, Head of PIMU, has provided the critical leadership to make this assignment successful. She has also advocated for recommended amendments to the legal framework that will facilitate the preparation of PPP projects in Romania and encourage further donor support.

### 4.2 Involvement of EPEC

The involvement of EPEC as a strategic level advisor to PIMU and DG REFORM has enhanced the process and quality of the deliverables under this assignment. In particular, Ed Farquharson has guided PIMU to navigate complex topics, engaged in detailed discussions with the consulting team on technical PPP approaches to arrive at the optimal recommendation for Romania, added useful context from the PPP experience of other EU countries, and contributed to the training workshops. Critically, EPEC provided timely input on draft deliverables and was accommodating for scheduling of meetings, thereby minimizing a potential disadvantage of having an additional party involved in the review process.

### 4.3 Local Context

Awareness of and adaptation to the local context is critical. This was accomplished in this assignment in the following ways:

- The consulting team included a local partner (Leroy). Not only did Leroy cover the legal scope of the assignment, but they also provided local context to the international experts and facilitated close communication with PIMU thanks to physical presence in Bucharest, local language proficiency and existing working relationships.
- International best practices for PPP preparation and procurement were tailored to the Romanian context. Rather than "cut and paste" from other jurisdictions, all details of the proposed PPP standard provisions, contract guidance and PPP guidelines were discussed and tailored to the local context. Where international best practice did not align with the existing Romanian legal framework or institutional structure, it was agreed that the guidelines would reflect recommended best practice while flagging differences with the existing Romanian framework.

### 4.4 Multi-Stakeholder Involvement

It proved valuable to involve a wide range of stakeholders during this assignment. Led by PIMU, a PPP Working Group was formed comprising a range of ministries and Contracting Authorities that had prior experience with PPPs or future prospects to develop PPP projects. A questionnaire was prepared and distributed to the stakeholder group, with responses providing initial insights on existing PPP experience and awareness. The consulting team held focused consultation sessions with a few key stakeholders toward the beginning of the

assignment to understand the past experience with PPP attempts in Romania and ensure that historical issues would be addressed in the new PPP guidance documents to be developed.

Many public officials from the initial PPP Working Group participated in the training workshops at the end of the assignment. Furthermore, the stakeholder outreach was not limited only to national institutions but was also extended to municipalities, which are the lead authorities for some of the hospital projects being assessed for PPP potential.

## 5. COMMUNICATION MATERIALS

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The following communication material is provided according to the requirements of Section 2.7 of the RfS.

### 5.1 Project Description

Project description in maximum 250 words:

- *Title:* Guidance on PPP Project Preparation and Procurement in Romania
- *Summary:* DG REFORM supported the Government of Romania to improve public sector capacity in the preparation and procurement of PPPs through the development of PPP guidelines, standard contract provisions, tools and delivery of training workshops.
- *Context:* The Government of Romania is increasingly turning its attention towards PPPs as a means to deliver public infrastructure and services, despite a poor track record in implementing PPPs. This technical support aims to improve public sector skills and expertise in preparing PPP projects and managing the PPP process.
- *Support delivered:* A consulting team of AARC, Rebel and Leroy worked together with PIMU, valuably supported by EPEC as the strategic level advisor on PPPs, to develop an integrated set of PPP guidelines, standard contract provisions and tools based on international best practices, culminating in a series of capacity building workshops delivered to public officials.
- *Results achieved:* The guidelines and tools developed through this assignment are poised to help the Government of Romania build a positive track record of delivering public infrastructure and services through PPPs, as other EU countries have demonstrated. The presence of these guidelines and tools is also expected to encourage further support of PPP project development by donor institutions.
- *Mention of EU assistance:* This project is funded by the European Union via the Technical Support Instrument and implemented by AARC, in association with Rebel and Leroy, in cooperation with the European Commission.

### 5.2 Social Media Text

Brief draft unpublished Twitter post texts:

- DG REFORM helping Romania get back on track with infrastructure PPPs
- Romanian public officials competed in an interactive bidding game to practice PPP concepts

### 5.3 Visual Materials

See Appendix 1 for photos from the training workshops conducted in Bucharest in October 2023.

# APPENDIX 1: PHOTOS

The following photos were taken during the training workshops conducted in Bucharest in October 2023.



