

Country report on the legal framework on Public-Private Partnership (PPP): POLAND

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Table of contents:

1. Introduction	2
2. PPP in Poland	3
2.1. Legal frameworks of PPP functioning	3
2.2. Public institutions supporting development of PPP in Poland	7
2.3. Instruments supporting implementation of PPP in Poland	8
2.4. Tools supporting implementation of PPP in Poland	9
2.5. Polish experience in implementation of PPP	9
3. Revitalization and protection of cultural heritage in Poland	11
3.1. Legal frameworks of functioning within revitalization in Poland	11
3.2. Legal frameworks of functioning within protection of cultural heritage in Poland	11
3.3. Works in the field of revitalization and protection of cultural heritage as public tasks	12
3.4. Support from public institutions and their units for activities in the field of revitalization and protection of cultural heritage in Poland	13
3.5. Instruments supporting projects in the field of revitalization and protection of cultural heritage in Poland	14
3.6. Tools supporting projects in the field of revitalization and protection of cultural heritage in Poland	15
3.7. Polish experience in conducting projects in the field of revitalization and protection of cultural heritage	16
4. PPP in the field of revitalization and protection of cultural heritage - case study	17
4.1. Development of the northern headland of Wyspa Spichrzow in Gdansk	17
4.2. Development of the areas of the Railway Station in Sopot	18
5. Summary and conclusions concerning possibilities to apply the PPP formula to implement projects in the field of revitalization and protection of cultural heritage in Poland	20
Preliminary remarks:	21



1. Introduction

During 2008-2015 the level of infrastructural development of Poland as well as the level of public services improved significantly. Mainly, it is a result of modernization of the country stimulated i.a. by absorption of EU funds.

In this process, PPP plays its role. On the surface of transferring market experiences to public administration in the field of managing production processes and provision of services, PPP plays a leading role. Private capital and know-how of entrepreneurs significantly contributed to effectivization of managing numerous areas of public utility. For these reasons, a potentially large role of PPP in the field of implementation of revitalization projects and projects to protect cultural heritage in Poland should be noticed. Public-private partnership (PPP) is a manner to effectively implement tasks of public administration. Simultaneously, as a form of public procurement, for entrepreneurs PPP constitutes an interesting opportunity to develop their own business within agreements with public authorities. After more than six years since detailed PPP regulations entered into force in Poland, it can be stated that PPP constitutes a basis to implement projects in almost all areas of public infrastructure and services provided to residents by public authorities, especially local governments. Cooperation is undertaken both in small projects assuming several years of cooperation as well as several hundred million investment projects implemented jointly for several decades.

Simultaneously, it should be noticed that social and economic changes during the last 27 years revealed numerous negative phenomenon and processes within urban areas. In many cities and districts there has been degradation of the urban tissue (in the field of technical use and functional aging of both infrastructure and buildings, in particular residential buildings) as well as erosion of social relations and occurrence of numerous economic issues. As indicated in the government document entitled “National Revitalization Plan - Assumptions¹” published in 2014 by the Ministry of Infrastructure and Development (currently the Ministry of Development), this state is created by negative demographic and spatial processes, among others mostly: uncontrolled urban dispersion, depopulation of city centres and a decrease in the number of urban residents as well as domination of individual vehicle travel in urban areas.

In light of the above, it should be indicated that PPP may constitute an instrument used to counteract such negative processes and an important tool in implementation of the assumptions of the National Revitalization Plan and the National Urban Policy 2023. Truthfulness of the above assumption is confirmed by examples of PPP projects implemented in Poland within revitalization and protection of cultural heritage.

¹ Source: https://www.mr.gov.pl/media/22315/NarodowyPlanRewitalizacji_Zalozenia_062014.pdf



2. PPP in Poland

2.1. Legal frameworks of PPP functioning

2.1.1. Scope of PPP regulations

PPP in Poland is regulated by the Act on Public-Private Partnership dated 19 December 2008 (i.e. Journal of laws from 2015, item 696 as amended), further referred to as “the Act on PPP”. The area of broadly understood PPP also includes the Act on Concessions for construction works or services dated 9 January 2009 (i.e. Journal of laws from 2015, item 113), further referred to as “the Act on Concessions”. For PPP, also the Act dated 29 January 2004 is very important - Public Procurement Law (i.e. Journal of laws from 2015, item 2164 as amended), further referred to as “the PPL”. The above listed acts create formal and material frameworks for implementation of joint projects by public administration and entrepreneurs in the PPP formula. The specified legal acts regulate the fundamental principles of public-private cooperation in which the private side can bring its financial capital as well as know-how into the cooperation, sharing the most important tasks and risks occurring in the project with the public sector so that public tasks are implemented as effectively as possible, and the private partner could additionally receive remuneration for their engagement under the terms specified in the agreement.

On the side-lines, it should be indicated that in light of EU law PPP is a broad term, including all forms of cooperation between the public sector (ordering parties) and the private sector (contractors) implementing public tasks, if the cooperation includes division of tasks and division of risks related to these tasks². Due to undertaking the PPP cooperation, the private sector always obtains remuneration which may have various forms.

2.1.2 Subject of PPP and parties of the PPP agreement

The Act on PPP determines principles of cooperation between the public entity and the private partner within PPP. The subject of PPP is joint implementation of a project based on division of tasks and risks between the public entity and the private partner. PPP was determined in the Act on PPP as cooperation between the public entity and the private partner. Therefore, it is important to present these terms.

The scope of the term ‘*public entity*’ has a fundamental meaning for determination of the scope of application of the Act on PPP. The definition of ‘*public entity*’ is essential for the application of the Act on PPP as it outlines the circle of entities obliged to apply the Act. Public entities can be units of the public finance sector within the meaning of the Public Finance provisions. The catalogue includes:

- 1) organs of public authority, including government administration bodies, state control and law enforcement bodies as well as courts and tribunals,
- 2) local government units and their associations,

²Regulation of the European Parliament and the Council (EU) no. 1303/2013 dated 17 December 2013 establishing common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund as well as establishing general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Maritime and Fisheries Fund and repealing the Council Regulation (EC) no. 1083/2006 and the Council Regulation (EC) no. 1083/2006 dated 11 July 2006 establishing general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing the Council Regulation (EC) no. 1260/1999.



- 3) budget units,
- 4) local government budgetary establishments,
- 5) executive agencies,
- 6) institutions of budget economy,
- 7) special state funds,
- 8) Social Insurance Institution and funds managed by it and the Agricultural Social Insurance Fund and funds managed by the President of the Agricultural Social Insurance Fund,
- 9) National Health Fund,
- 10) independent public health care establishments,
- 11) public higher education institutions,
- 12) Polish Academy of Sciences and its organizational units,
- 13) state and local cultural institutions and state-owned film institutions,
- 14) other state or local legal entities established under separate laws to perform public tasks, excluding companies, research institutes, banks and commercial companies.

Also, the so-called entities of public law are obliged to apply the Act on PPP. The Legislator included entities other than units of the public finance sector, legal persons established for the specific purpose to fulfil needs of a common nature and not an industrial and commercial nature in this category, if these entities and the units of the public finance sector, individually or jointly, directly or indirectly through another entity:

- finance the project in more than 50% or
- have more than half of shares or stocks, or
- supervise the managing body, or
- have the right to appoint more than half of the supervisory or managing body.

In practice, most frequently they will be utility companies or single-person companies of the Treasury (as well as their subsidiaries), performing tasks of a public nature entrusted to them by the founding body, including provision of public utility services.

Associations of units of the public finance sector or entities of public law are also public entities.

An entrepreneur or a foreign entrepreneur can be a private partner. Among others, utility companies which - like non-public entrepreneurs - will be able to apply for PPP contracts on an equal footing are also included in the category understood in such a way.

2.1.3 Joint project implementation

The subject of PPP is joint project implementation based on division of tasks and risks between the public entity and the private partner. The collectivity criterion will be fulfilled by solidary operations of the public entity and the private partner aimed at achieving the previously established objectives. Cooperation (usually lasting several years, including the entire cycle of the project from designing, through financing, construction and exploitation of the infrastructure) requires division of tasks between the public entity and the private partner, and it indicates that both parties of the PPP agreement should have specified tasks to implement assigned. Normally, the most important element of cooperation from the side of the public entity will be their own contribution, however tasks of the public entity can be much broader and they can include e.g. conducting social consultation, support in obtaining all necessary authorizations to implement the investment, permits or agreements, promoting the project, active operations in order to increase demand for provided services, etc. Joint



implementation of the project by the public entity and the private partner within PPP assumes among others division of tasks between the parties. The Act on PPP does not use any normative definition of the term ‘*task*’. In this sense, the term, in accordance with the principles of linguistic interpretation, should be understood as an act which should be performed to implement the entire project. In light of this, the requirement to divide tasks is fulfilled in the case of providing the private partner with any task required within implementation of the PPP project. Operations implemented within PPP by the private partner must aim at implementation of the project which based on the Act on PPP always includes an element of maintenance or management of an asset used to implement the public-private project or related to it.

An element distinguishing PPP from other forms of cooperation between public entities and private partners (in particular typical public procurement) is division of risks related to joint implementation of the project. Simultaneously, the Act on PPP does not determine any principles concerning obligatory division of such risks between the parties of the partnership. The PPP agreement should always transfer the risk to the party which can control it better which means that they will carry lower costs in the case of its materialization. However, practice shows that there are numerous risks which are usually taken over by the private party, while the risk related to financing and maintaining the infrastructure created or only exploited within the PPP project has a particular meaning.

The subject of cooperation between the public entity and the private partner within PPP is joint project implementation. The subject of the project can be:

- construction or renovation of a building,
- provision of services,
- performance of work, in particular equipping an asset with a device increasing its value or utility, or
- another service.

All these operations should be connected to maintenance or management of an asset which is used to implement the PPP project or is related to it. The PPP project should be significantly or fully implemented by the private partner. If the scope of tasks of the private partner does not include management of the asset, provisions of the PPL or the Act on Concessions apply. However, maintenance of the asset should involve incurring costs of keeping the asset without deterioration, in accordance with the principles of rational management and maintaining the principles of due diligence. Maintenance should also involve taking care of proper functioning of the asset. Managing the asset should involve making decisions and undertaking operations aimed at proper and effective functioning of the asset.

2.1.4 PPP agreement

Signing the PPP agreement, the private partner is obliged to implement the project for remuneration and to incur all or part of expenses to implement it or that they will be incurred by a third party, and the public entity is obliged to cooperate in order to implement the project objective, in particular through their own contribution. The PPP agreement is a civil law agreement. Based on the PPP agreement, the private partner shall implement the project, including financing at least part of expenses to implement it. The private partner is not only a contractor of the PPP project, but also a party financing at least its part.

The private partner shall receive remuneration for implementation of the project. Consequently, the PPP agreement should be considered to be a payable agreement, as each party obtains particular financial benefits from the other party. Another important element of the PPP agreement is the obligation of cooperation between the parties to implement the project. Cooperation defined in such a way determined the essence of PPP and differentiates partnership from classic public procurement. Cooperation of the parties within the agreement should be expressed in appropriate division of tasks between the public



entity and the private partner. Cooperation of the public entity aimed at achievement of the project objective can involve e.g. their own contribution. Such contribution is the provision of the public entity or the private partner involving in particular incurring part of expenses to implement the project, including financing additional payments for services provided by the private partner within the project or contributing an asset. An asset is a property, a component of a property, a company within the meaning of art. 55¹ of the Civil Code, a moveable thing and a property right. Contribution in the form of a property can take place among others by sales (art. 9 sec. 1 of the Act on PP). If the PPP agreement states so, the asset which was used to implement the project, after termination of the PPP agreement can remain the property of the private partner.

Remuneration of the private partner most frequently involves receiving payment of an amount from the public entity or collecting benefits from the subject of PPP. It should be indicated that pursuant to art. 7 sec. 2 of the Act on PPP, remuneration of the private partner depends mostly on the actual use or factual availability of the subject of PPP. This means that the remuneration amount of the private partner cannot be arbitrary, and it depends each time on at least one of two factors: actual use or factual availability of the subject of PPP. Remuneration depending on the first factor shall be a resultant of demand for services provided within the project. Remuneration depending on the second factor shall be a resultant of quality and availability of services provided within the project. If quality of services does not fulfil relevant requirements or the number of services agreed on in the PPP agreement is not ensured, then remuneration of the private partner, paid by the public entity (payment of an amount) should be appropriately decreased.

2.1.5 Competitive principles of selecting the private partner

PPP constitutes a specific form of public procurement including both implementation of the main subject of procurement (construction works, supplies or services) in combination with an additional subject which must always be management or maintenance of an asset. Due to the fact that PPP agreements are payable, it is required to apply competitive, statutory procedures of selecting the private partner - or the Act on Concessions or the PPL - depending on the model of remuneration for the private partner provided for (art. 4 sec. 1 and 2 of the Act on PPP). Provisions of the Act on Concessions or the PPL will apply not only to the procedure of selecting the private partner itself, but also to entering into and execution of the PPP agreement.

Discussing the above matter, it should be taken into account that on 21 October 2016 the Sejm of the Republic of Poland passed a law on the concession contract for construction works or services. When this law enters into force³, it will replace the Act on Concessions. Passing the law on the concession contract for construction works and services results from the necessity to implement provisions of the Directive of the European Parliament and the Council no. 2014/23/EU dated 26 February 2014 on granting concessions (Official Journal of the European Union No. 94, s. 1) into Polish law. The law on the concession contract for construction works and services will constitute an independent legal basis to enter into a concession contract or pursuant to art. 4 sec. 1 of the Act on PPP - it will constitute one of two fundamental (apart from PPL) modes of selecting the private partner and the legal basis to co-create the content of the PPP agreement.

³ As of development of this opinion, i.e. 22 November 2016 the law dated 21 October 2016 on concession contracts for construction works and services has not been published in the Journal of laws. The law will enter into force after 14 days since its publishing in the Journal of laws.



2.2. Public institutions supporting development of PPP in Poland

The key institution to support development of PPP in Poland is the Ministry of Development (previously the Ministry of Regional Development and the Ministry of Economy). Pursuant to the Act on PPP (art. 3) tasks of the Ministry include disseminating and promoting public-private partnership, performing analyses and assessments of the public-private partnership functioning, including the status and prospects of financial involvement of the private sector. Within the framework of these tasks, the Ministry of Development will run the PPP Platform which on one hand constitutes a forum for discussion and cooperation between representatives of government administration with local governments and PPP experts, and on the other - due to the Internet website (www.ppp.gov.pl) it constitutes a source of information about development of the PPP market in Poland and a treasure trove of valuable elaborations, reports and documents useful within implementation of PPP projects. Moreover, the Ministry of Development coordinates work groups for the RP government policy regarding PPP and necessary changes in law related to PPP. What is important, the Ministry of Development finances complex consulting services for selected, model PPP projects implemented by third party entities, mainly local government units, from the EU budget funds. Key documentation and reports concerning these projects constitute a valuable source of experience for entities interested in application of PPP.

In order to demystify PPP, activities of control bodies, statutorily appointed to verify compliance with the law by public authorities, are very important. In 2010 the Public Procurement Office published a guidebook for public entities indicating how to properly apply public procurement procedures and concessions entering into agreements⁴ on their website. It was issued in cooperation with the Institute for Public-Private Partnership. On the website of the PPO legal opinions explaining procedural complexities concerning PPP and concessions are available. Each local government or private entity involved in PPP can always count on kind support and guidelines from the PPO. Such efforts of the Minister of Economy should be appreciated as in autumn 2014 they published a practical guidebook⁵ concerning application of PPP addressed to public entities, in particular municipalities. On the website of the Ministry of Economy also i.a. templates of documentation for PPP projects within particular industries are available.

The post-audit report prepared by the Supreme Audit Office from 2013 developed based on the audit of concluded PPP agreements and concession contracts, as well as selected ongoing proceedings should be considered to be extremely valuable to increase certainty of turnover under the PPP principles. The Supreme Audit Office positively assesses projects implemented in the PPP system, despite recognized irregularities and still a small number of public investments conducted in the PPP formula. Among others, the report indicates that the controlled municipalities and other public entities were prepared to implement PPP projects to a different extent. Those which took advantage of professional consulting and analysed causes of previous failed proceedings managed best.

Significant support for public entities interested in PPP is provided through activities undertaken by the Polish Agency for Enterprise Development within the Public-private partnership system project implemented within cooperation with the PPP Institute in 2012-2015. Thanks to this project, hundreds of local government officials and entrepreneurs were trained in the field of PPP during regional seminars; substantial supports in the form of the Public-Private Partnership Bulletin is systematically

⁴ Collective elaboration edited by B. Korbus and Prof. A. Panasiuk (scientific edition), *Public-private partnership. Guidebook*, ed. UZP, Warsaw 2010

⁵ Collective elaboration, *Public-private partnership: from the idea to selection of the private partner*, ed. Ministry of Economy, Warsaw 2014



available and the most interesting ideas of local governments for PPP could obtain technical support (financing of complex consulting services provided by professional entities) within cyclical courses.

2.3. Instruments supporting implementation of PPP in Poland

The main instrument used to implement PPP in Poland are legislation solutions. Operations of the Legislator in this field were commenced in 2005, starting from the first act on PPP, and continued mainly in 2009 in relation to provisions of the Act on PPP and the Act on Concessions entering into force.

It should be indicated that entering into force of the Act on PPP and the Act on Concessions was accompanied by changes in provisions, the supreme purpose of which was to facilitate development of PPP, i.e. among others:

- introduction of tax incentives in the act on income tax from legal persons (CIT),
- introduction of facilities in local government and treasury real estate management within PPP agreements,

An important operation also involved introduction of regulations allowing classification of obligations resulting from PPP agreements beyond the state public debt.

An important instrument supporting financing of PPP projects in the field of revitalization was the JESSICA initiative (Joint European Support for Sustainable Investment in City Areas), within which a low-interest loan was granted to finance the project involving management of the area of the Railway Station in Sopot.

An instrument supporting development of hybrid projects in the new EU financial perspective is the Regulation of the European Parliament and the Council (EU) no. 1303/2013 dated 17 December 2013. Works performed by the Ministry of Development which in their own elaboration presented records of the legal act in light of opportunities of its use in Poland should be appreciated⁶. In relation to the hybrid PPP project, we should indicate the records of the act dated 6 December 2006 on principles of running development policy (i.e. Journal of laws from 2016, item 383) which foresees directly that within the operational programme, also PPP projects implemented based on the Act on PPP (art. 28 sec. 8 of the above-mentioned act) can be financed. In this aspect, the Guidelines of the Minister of Development dated 14 October 2016 concerning eligibility of expenses within the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020 are important. In accordance with the Guidelines, expenses incurred in relation with implementation of the hybrid PPP project by the private partner (who is not a beneficiary) are eligible for reimbursement under the grant awarded.

However, the local government sector still awaits instruments which will define the policy of the government of the Republic of Poland regarding PPP and determine tools to implement it. Therefore, actions undertaken by the Work Group for the Policy of the Government and overview of law regarding PPP, implemented by the Ministry of Development should be appreciated. A result of these works will constitute adoption of the policy of the Government of the Republic of Poland in 2016 regarding support for PPP and implementation of changes in law used to support and develop PPP.

⁶ Public-private partnership in the new programming period (2014-2020) - Comments to the provisions of the General Regulation for 2014-2020 regarding public-private partnership. www.ppp.gov.pl



2.4. Tools supporting implementation of PPP in Poland

Tools supporting implementation of PPP in Poland are most of all a derivative of operations undertaken by public institutions supporting development of PPP in Poland and instruments used for that.

Most of all, we must distinguish the previously mentioned PPP Platform (www.ppp.gov.pl) run by the Ministry of Development. Within this platform operations are undertaken within three main areas: 1) exchanging experiences and consultations within determined thematic scopes related to PPP within panel discussions and conferences, 2) financial support of legal, financial and technical consulting services for selected PPP projects, 3) promoting good practices and template documentation through publications and the Internet portal. It should also be indicated that on the PPP Platform there is a current PPP project database available.

A similar role to the PPP Platform is played by the Internet service www.ppp.parp.gov.pl managed by the Polish Agency for Enterprise Development. Publications developed within the PPP System Project, implemented in the past by the Polish Agency for Enterprise Development are available there; they are valuable from a practical and theoretical point of view.

A valuable source of knowledge within PPP for representatives of the public and private sector in Poland are frequent and usually generally accessible workshops and conferences organized by the Public-Private Partnership Institution (www.ippp.pl) as well as publications available on the PPP Forum - the only periodical in Poland fully dedicated to PPP issued by the PPP Institute.

It is worth highlighting that on the contrary to expectations of numerous entities of the public and private sector, there is no central governmental institution to support and coordinate operations for development of PPP in Poland. Such institutions operate in most countries where PPP is applied. There are also no financial instruments, e.g. governmental guarantee funds used to finance PPP projects.

2.5. Polish experience in implementation of PPP

Polish experience in implementation of PPP involves most of all the period of the last nearly 12 years when legal provisions dedicated to cooperation between the public and private sector applied. Up until 2005 in Poland there were not statutory regulations regarding public-private partnership, however the formula was used sporadically, using different provisions of law, e.g. the act dated 20 December 1996 on municipal economy or the act dated 27 October 1994 on toll motorways and the National Road Fund.

Since 2005 in Poland the act dated 28 July 2005 on public-private partnership started to function. Most of all, due to the lack of executory provisions for this act, during the application of this Act no PPP contract was concluded. Additionally, it must be indicated that the market was not ready to implement projects in this formula; funds to prepare necessary analyses before implementation of PPP projects were insufficient. It should be stated that until the beginning of 2009 there was no coordinated governmental policy concerning PPP.

In 2009 a new act dated 19 December 2008 on public-private partnership as well as the act dated 9 January 2009 on concessions for construction works and services entered into force and they determined a new stage of functioning of the PPP market in Poland. Since then, the number of announcements regarding selection of the private partner and concluded agreements has been



systematically growing, however this growth is still not satisfying and a large number of proceedings is not completed with entering into an agreement.

In 2009-2015 more than 350 proceedings to select the private partner or licensee were announced, however in many cases for the same project several subsequent proceedings are announced. This way, we can distinguish approx. 300 separate projects. The value of all these projects is more than 17 bl PLN. Despite such a number of proceedings not much more than 100 agreements were signed. Therefore, efficiency was a little more than 30%. Such a low percentage indicates an unattractive offer for the private sector due to various reasons (poor distribution of risks, unprofitable project, poorly prepared project) or the lack of resources and skills in the private sector to implement the specified tasks.

The main ordering party applying the PPP formula in Poland are local government units (including entities supervised and created by them) most of all of the municipal level, as more than 95% of initiated proceedings were announced by these units. At the national level (governmental) only one PPP agreement is currently implemented in Poland (without highway projects implemented based on the act dated 27 October 1994 on toll motorways and the National Road Fund).

Most PPP agreements signed using the procedure determined in the Act on Concessions which results from the fact that the model assumes transferring most economic risks of the project to the private side. It needs to be noted that the value of agreements signed based on the Act on Concessions is lower than the value of projects for which PPP agreements were concluded applying the Public Procurement Law.

The Polish market is characterized by a large diversity of sectors in which the PPP formula is used. Most agreements were signed for sports and recreational projects (approx. 15% of all agreements), broadband networks (approx. 15%), the water and sanitation sector (approx. 10%) and energy efficiency (approx. 10%). Moreover, projects in the field of construction and maintenance of parking places, revitalization, transport, energy and equipment of hospitals are implemented. Regarding the value of agreements, the largest share is represented by the waste management sector, mainly due to one project with a value of 925 ml PLN (investment expenditure). Regarding projects with a revitalization nature, their share in the PPP market is lower than 5% (concerning the number of projects), however its share in the market measured by the value of projects is slightly higher (approx. 10%).

Approximately 10% of agreements have a value of up to 1 ml PLN, while projects with a value of more than 1 ml PLN to 100 ml PLN constitute 70%. Only 13 agreements were signed for projects with a value higher than 100 ml PLN. Analysing this situation, it should be indicated that the public side (most frequently local government units) deciding to participate in PPP, chose the more neutral concessional formula with a lower contractual value for their budget. The main motivator was the will to transfer not only the risk of construction, but mostly the risk of demand and financing to the private partner. The PPP model using the remuneration mechanism based on payments for availability was only used to a small extent by public entities, mainly in projects regarding energy efficiency.



3. Revitalization and protection of cultural heritage in Poland

3.1. Legal frameworks of functioning within revitalization in Poland

Principles and the mode of preparing, conducting and assessing revitalization in Poland are regulated by the act dated 9 October 2015 on revitalization (Journal of laws from 2015, item 1777, as amended). The Act establishes legal frameworks for revitalization in Poland. Regulations contained in it are supposed to encourage an increasing number of local governments to conduct this process. Its provisions organize understanding of revitalization.

The Act entered into force on 1 January 2016. One of the most important objectives of the Act is to specify the term '*revitalization*' which previously did not have any particular normative meaning. Currently, the term '*revitalization*' means a process of leading degraded areas out of a critical condition conducted in a complex manner through integrated actions for local community, space and economy, locally focused, conducted by stakeholders of revitalization based on a municipal revitalization programme. Therefore, revitalization is not only a set of actions aimed at improvement of the condition of a given infrastructure, but a complexly conducted process aimed at improvement of the social situation as well as space and economy on a given area. The Legislator included a broad range of entities among stakeholders of revitalization, starting from residents of a revitalization area, owners, users of perpetual real estate and entities managing real estate on a given area, through entities running or planning to run business activities on the area of a given municipality, entities running or planning to run social activities on the area of a given municipality to local government units and public authorities. The Act clearly determines principles of social participation in preparation, conducting and assessment of revitalization (art. 5) as well as principles of conducting social consultations in this field (art. 6). Moreover, it must be indicated that the act regulates the matter of municipal revitalization programmes. It also defines principles for participation of residents of a given municipality in the revitalization process within the Revitalization Committee. The Act also specifies principles of establishing a Special Revitalization Zone on revitalized areas. An important instrument provided for in the Act on revitalization is a local revitalization plan being a special form of the local spatial development plan.

3.2. Legal frameworks of functioning within protection of cultural heritage in Poland

The fundamental legal act regulating principles of protection of monuments and the guardianship of monuments is the act dated 23 July 2003 on protection of monuments and the guardianship of monuments (i.e. Journal of laws from 2014, item 1446, as amended). The Act determines the subject, scope and forms of protection of monuments and the guardianship of monuments, principles of creating a national programme for protection of monuments and the guardianship of monuments, financing conservation, restoration and construction works involving monuments as well as organization of monument protection bodies. A monument according to the act is a real estate or a moveable thing, their parts or components, being a creation of man or related to its activities and



constituting a testimony of a bygone era or event, preservation of which is in the public interest due to its historical, artistic or scientific value. An important term used by the Act is a historical urban or rural system which means spatial urban or rural arrangement containing sets of buildings, individual buildings and forms of designed greenery, arranged in the system of historical ownership and functional divisions, including streets or road networks. The subject of interest of the Act are also historical sets of buildings and cultural landscape, defined as a space perceived by people, containing natural elements and creations of civilization, historically arranged as a result of natural factors or human activities. The act clearly distinguishes between tasks in the field of protection of monuments (art. 4) and tasks in the field of the guardianship of monuments. In art. 6 the Legislator determines the type of movable and immovable monuments that are subject to protection and guardianship. It should be indicated that subjects of protection and guardianship should be among others cultural landscapes as well as urban and rural systems and sets of buildings. Legal instruments related to protection and guardianship of monuments can be found in the act dated 27 March 2003 on spatial planning and development (i.e. Journal of laws from 2016, item 778, as amended), the act dated 7 July 1994 - Construction law (i.e. Journal of laws from 2016, item 290, as amended) and in documents of a strategic nature, such as the National Strategy for the Development of Culture for 2004-2020 and the Concept for National Spatial Development.

3.3. Works in the field of revitalization and protection of cultural heritage as public tasks

The Act on revitalization clearly establishes that tasks in the field of preparing, coordinating and creating conditions to conduct revitalization and to conduct it in the scope of municipal properties constitute the municipality's own task. The Legislator requires that tasks in the field of revitalization are implemented by the municipality: 1) in an open and transparent way, ensuring active participation of stakeholders at each stage (social participation); 2) in a way preventing exclusion of residents of the revitalization area from the possibility to use positive effects of the revitalization process, in particular regarding conditions to use the municipal housing stock; 3) taking into account principles of universal design pursuant to art. 2 of the Convention on the Rights of persons with disabilities, signed in New York on 13 December 2006 (Journal of laws from 2012, item 1169). The Legislator recommended that the municipality implementing their tasks in the field of revitalization cooperates with the county, voivodeship, governmental administration and other entities realizing the power of the Treasury on the revitalization area. Here, it should be indicated that tasks in the field of revitalization going beyond municipal properties will constitute public tasks of other entities - county, voivodeships or government administration respectively. If a project implementation of which is a task of a public entity other than the municipality is included in the municipal revitalization programme within the list of revitalization projects, the municipality will have to obtain consent of the entity for that.

The fundamental protection of cultural heritage is taken into account during preparation and update of the concept of the national spatial development, the voivodeship development strategy, voivodeship spatial development plans, the spatial development plan of internal sea waters, territorial sea and exclusive economic zone, analyses and studies in the field of county spatial development, municipal development strategies, studies on conditions and directions for municipal spatial development and local spatial development plans or decisions on establishing location of a public purpose investment, decisions about building conditions, decisions about permissions to implement a road investment, decisions about establishing location of a railway line or decisions about permissions to implement an investment in the field of an airport for public use. Supervision of protection of



monuments is assigned to voivodeship restorers, the General Restorer and the Minister competent for culture and protection of cultural heritage. Regarding protection of cultural heritage, it should be indicated that the guardianship of monuments, including financing of conservation, restoration and construction works involving monuments, the legal title of which belongs to a local government unit, is a task of the unit. In other cases, guardianship of monuments will be a task of the unit which has the legal title to the monument resulting from the property right, perpetual usufruct, permanent management, limited property right or contractual relationship. In specified situations, they will be public entities other than local government units as well as private entities.

3.4. Support from public institutions and their units for activities in the field of revitalization and protection of cultural heritage in Poland

Pursuant to declarations of the Ministry of Development, revitalization is one of priorities of the Government. It is indicated that the role of central authorities is to allow and promote revitalization activities in most degraded urban areas of various sizes and with different scales of problems. As a consequence of this, legal frameworks and development and system solutions are initiated to extend sources of financing as well as promote knowledge and conduct revitalization in a model manner.

Supporting revitalization includes most of all: legislation solutions involving changes in applicable regulations and creating new regulations; instruments supporting revitalization involving especially inclusion of activities within particular public policies into implementation of complex, integrated revitalization programmes (through preference mechanisms, local differentiation of instruments, etc.). It involves spheres such as housing, environmental protection, education, labour market, protection of monuments, culture, sport, etc. Support for revitalization also involves financing of activities within complex revitalization programmes; information and substantive support including i.a. pilot projects in the field of revitalization, supporting local governments through development of model solutions in revitalization projects being conducted, the base of which can be used by stakeholders interested in revitalization.

As indicated by the Ministry of Development, in the system of supporting revitalization, a necessity to relate the revitalization process to all municipal policies is highlighted, among others by taking into account intervention in the field of transforming land and coordinating revitalization programmes with municipal documents of spatial planning, social policy, housing policy or local strategic documents.

An important baseline document in the process of supporting revitalization are assumptions of the National Revitalization Plan. The National Revitalization Plan was designed as a set of solutions to create beneficial conditions to conduct efficient revitalization regarding the diagnosis of local needs and potentials prepared by the municipal government. In accordance with the evaluation of the Ministry of Development, solutions included in the assumptions of the National Revitalization Plan constitute one of the main elements of the revitalization support system.

Support mechanisms from public institutions for activities aimed at protection and guardianship of monuments are provided for in the act dated 23 July 2002 on protection of monuments and the guardianship of monuments. One of such forms of support are specific grants from the state budget to finance conservation, restoration or construction works which can be allocated to the owner or holder of the monument entered in the register, or to the entity which has such a monument within permanent administration (art. 73 of the act). A grant may be given by the Minister competent for



culture and protection of national heritage or by the voivodeship restorer. Grants for conservation, restoration or construction works involving a monument entered into the register may be also given by a legislative body of municipality, county or voivodeship government (art. 81 of the act). The Government Policy in the field of supporting protection of cultural heritage is determined by the National Programme for Protection of monuments and the guardianship of monuments⁷.

3.5. Instruments supporting projects in the field of revitalization and protection of cultural heritage in Poland

The basic instrument supporting projects in the field of revitalization are provisions of the act on revitalization from 2015. Thanks to this legal act numerous tools which are used for revitalization in practice were regulated.

An important instrument to support revitalization projects is the National Revitalization Plan, and to be precise - its assumptions, as the document is still being developed. After the National Revitalization Plan, it is expected that the Ministry of Development will publish guidelines in the field of revitalization of degraded areas within the financial perspective 2014-2020 as well as template documents (strategic, operational, technical, procurement, etc.). In the National Revitalization Plan it is indicated that an important aspect will be to develop the PPP formula and create impulses for investments on degraded areas. The National Revitalization Plan provides that pilot PPP projects in the field of revitalization will be initiated and supported, and that expert support will be provided, among others in the field of verification of the accepted assumptions of PPP model project implementation.

In accordance with the National Revitalization Plan, instruments such as the Thermo-modernization and Restoration Fund (Bank Gospodarstwa Krajowego is its operator) and programmes of the National Fund for Environmental Protection and Water Management (NFEP&WM) concerning modernization of public buildings and financial activities from EU funds (within the Operational Programme Infrastructure and Environment and the Regional Operational Programme) concerning energy efficiency and revitalization of residential and public buildings.

In 2014-2020 broadly understood revitalization activities will receive at least 25 bl PLN, of which approx. 22 bl PLN will come from EU programmes, and approx. 3 bl PLN from the state budget funds and local government funds. A key instrument to support revitalization projects financed from EU funds are the Guidelines of the Minister of Development concerning revitalization in operational programmes for 2014-2020⁸ in the current wording applicable since 2 August 2016. A referential document for the Guidelines is the Partnership Agreement which formulates challenges related to ensuring conditions for appropriate revitalization, i.e. integrated and complex counteracting of degradation processes of the areas suffering from crisis prepared and conducted taking actual social participation into account. The Guidelines are addressed to institutions managing regional and national operational programmes. The Guidelines have a framework nature which means that institutions managing particular operational programmes can develop their own detailed guidelines regarding programmes and procedures to select revitalization projects. In the Guidelines conditions were formulated that must be fulfilled by revitalization projects to be qualified for EU financing and simultaneously to obtain preferences (facilitation in competitions, chance for a non-competition call,

⁷ Adopted by Resolution no. 125/2014 of the Council of Ministers dated 24 June 2014 Source: <http://bip.mkidn.gov.pl/pages/legislacja/programy-wieloletnie/krajowy-program-ochrony-zabytkow-i-opieki-nad-zabytkami.php>

⁸ http://www.funduszeuropejskie.gov.pl/media/23916/Wytyczne_dot_rewitalizacji_po_aktualizacji-zatwierdzone02082016clear.pdf



profiling of criteria to select projects). Appropriate preparation of revitalization programmes was highlighted so that degraded areas are led out of collapse in a complex (combining the social, economic, infrastructural and environmental zone) and coordinated way and to increase quality of life of people residing there. The main source of financing of revitalization projects (resulting from revitalization programmes) are funds from regional operational programmes (ERDF and ESF), while support from the national operational programmes is complimentary and it takes place mainly by formulating preferences for projects resulting from revitalization programmes.

A specific form of support for urban investments in the field of revitalization of urban space is the Municipal Fund managed by Bank Gospodarstwa Krajowego. The Municipal Fund is a long-term financial investor who co-finances municipal investments in real estate. The Fund is interested mostly in projects involving development of estate stocks used by municipalities within implementation of their own tasks, in particular housing real estate as well as public buildings. The Fund is involved in investment projects in the field of modernization and extension of existing real estate stock as well as in construction of new buildings. Investments of the Municipal Fund will be implemented mostly by acquisition and purchase of shares, stocks or debt instruments of project companies established to implement investment projects. The Fund may also assume a role of the financing entity in projects implemented within PPP. Time horizon of investments of the Fund will be adjusted to the specificity of a given project and it will usually be from several to 25 years.

An instrument to support projects in the field of protection of cultural heritage is the National Programme for the Protection of Monuments and the Guardianship for Monuments from 2014. It should be indicated that a total amount of 26,668,205 PLN is provided for the implementation of the Programme for a period of 4 years which in reality fulfils only a small portion of actual needs. The National Programme for the Protection of Monuments and the Guardianship for Monuments will be completed by its equivalents assumed at the local government level by voivodship parliaments, county councils or municipal councils for periods of 4 years.

3.6. Tools supporting projects in the field of revitalization and protection of cultural heritage in Poland

Municipal revitalization programmes are fundamental tools supporting revitalization. Municipal revitalization programmes constitute a basic tool to conduct revitalization, ensuring its complexity and activities in close cooperation with local community (as well as implemented by them). The basis of Municipal revitalization programmes should be to recognize degraded areas which require activities and presenting the whole strategy to conduct them. Financing security for revitalization projects will be their immediate inclusion in the long-term municipal financial forecast.

An optional instrument to support revitalization projects in a municipality may be:

- creating a Special Revitalization Zone (SRZ) on the revitalized areas. The SRZ status will allow using special facilities (e.g. possible grant for renovation of buildings) and it will facilitate administration procedures related to implementation of a Municipal revitalization programme;
- adopting a local revitalization plan (special form of the local spatial development plan) which will constitute a basis to implement urban transformations, and investment and construction works included in the Municipal revitalization programme. Regulations characterizing this special form of the local plan is e.g. a possibility to include urban concepts in the local plan or assign detailed conditions for investment implementation provided for in the plan to a given real estate.



An additional tool used to support revitalization projects is an institution of the Revitalization Committee being a forum of cooperation and dialogue between stakeholders and municipal bodies in matters concerning preparation, conducting and assessment of revitalization. The Revitalization Committee will fulfil a consultative and advisory role of the commune administrator, mayor or president of the city.

Fundamental tools to support projects in the field of protection of cultural heritage in Poland are grant financing mechanisms using funds from the state budget (art. 73 of the act on protection of monuments and the guardianship for monuments) and funds from the budget of local government units (art. 81 of the above-mentioned act).

3.7. Polish experience in conducting projects in the field of revitalization and protection of cultural heritage

Within the assumptions of the National Revitalization Plan from 2014 it is indicated that revitalization during the last twenty years has become more important and intense. It is treated as a common factor conditioning development and improvement of the conditions of life by local governments, experts and residents. It is also clearly accented in various government documents determining directions of national development (among others the National Regional Development Strategy 2010-2020, the Concept for National Spatial Development 2030). In the National Revitalization Plan, it was also indicated that previously also using EU funds and thanks to the effort of numerous involved revitalizers in Poland, many positive effects in revitalization activities were achieved and experience gained through that is not to be underestimated. It should be highlighted that the Ministry of Development conducts pilot projects in the field of revitalization in Lodz, Walbrzych and Bytom in order to develop model revitalization solutions, the effect of which will be template documents, solutions and techniques, good practices, etc. While from the National Municipal Policy⁹ it can be concluded that the scale of degradation of cities in Poland may reach up to 20% of all urban areas. Such a condition requires broad and multi-faceted activities to lead such areas out of crisis, equal their chances for development in comparison to other areas. Revitalization constitutes one of important themes of the National Municipal Policy, but it is necessary to undertake actions in a broader scope - introduce certain legislative, information and organizational solutions as well as extend tools and instruments.

⁹ Adopted by the Council of Ministers during their session on 20 October 2015.



4. PPP in the field of revitalization and protection of cultural heritage - case study

For PPP within revitalization and protection of cultural heritage, there is a significant potential in projects which allow the private sector (developers) to unleash the commercial potential of these areas, simultaneously generating funds allowing financing of elements of public infrastructure necessary to improve the manner of their functioning. Especially attractive areas of joint projects may be integrated communication and transport centres which constitute natural facilities for trade and services. Railway infrastructure (railway stations) and its surrounding are still awaiting their chance as they should be a nucleus for the development of low-carbon urban transport and limit individual vehicle transport (communication centres with P+R). The nearest future - such as in the case of Western Europe - should be a chance for development of collective transport, especially trams. Development of Wyspa Spichrzow in Gdansk and revitalization of the Railway Station in Sopot constitute successful flagship revitalization projects in the PPP formula. Both projects are related to investment of many millions PLN and their purpose is consistent, functional, modern and resident and tourist friendly development of one of the most attractive areas in Gdansk and Sopot.

4.1. Development of the northern headland of Wyspa Spichrzow in Gdansk

The most significant regarding the value of investment and complex revitalization project (also concerning protection of cultural heritage) in the PPP formula is the project entitled Development of the northern headland of Wyspa Spichrzow in Gdansk.

The project involved a socially and urbanistically decapitalized area of the Old City in Gdansk located on the Moltawa River. The planned development involves the area of approx. 2 ha on which - in accordance with the provisions of the local spatial development plan - it is possible to obtain more than 70 thousand m² of usable space. The objective of the project is modernization of one of the most exposed public spaces in Gdansk through achievement of functional and spatial order, creation of friendly and generally accessible public spaces, construction of a communication system taking underground parking places into account, construction of technical infrastructure and elements of small architecture as well as appropriate security and use of monuments. In accordance with the assumptions of the project, the City of Gdansk (public entity) in exchange for financing of the project by an investor, will contribute real estate into the project. Real estate provided for development with commercial purpose buildings will be sold to the private partner at a price compliant with the appraisal report developed upon request of the City of Gdansk and with the offer of the private partner. The final scope of the project constituted the subject of negotiation within the proceedings to select the private partner announced in March 2014.

The proceedings were conducted pursuant to the provisions of the act on concessions for construction works or services and the provisions of the Act on PPP (art. 4 sec. 1 of the Act on PPP). The private partner is a consortium of Immobel Poland SPV 10 spółka z ograniczoną odpowiedzialnością (limited liability company) with their registered office in Warsaw (currently - Granaria Development Gdansk spółka z ograniczoną odpowiedzialnością), Immobel Poland SPV 11 H spółka z ograniczoną odpowiedzialnością with their registered office in Warsaw (currently - Hotel Granaria Gdańsk spółka z ograniczoną



odpowiedzialnością) and Multibud W. Cieurzyński spółka akcyjna (joint-stock company) (currently - Granaria Development Gdansk Bis spółka akcyjna). The PPP agreement was signed on 31 March 2015.

Within the project, the private partner will design, finance, and implement both public and commercial buildings. Regarding public buildings i.a. the following is planned: reconstruction of the road system, reconstruction of the Stagiewny Bridge as a suspension bridge, construction of a marina south of the Stagiewny Bridge and construction of a generally accessible footbridge connecting the northern headland of Wyspa Spichrzow with Długie Pobrzeże. Regarding commercial buildings i.a. the following is planned: construction of a hotel, apartments and several thousand square metres of service buildings.

The estimated cost of the project implementation is approximately 400 million PLN. On the implementation of public objectives, the investor will spend approx. 34 million PLN. Duration of the agreement: 8.5 years (investment process) + 8 years (maintenance and management of public buildings).

Construction works will commence after 19 months since signing the agreement. The first 19 months will constitute the preparation stage - obtaining authorizations and permits as well as designing. The investor will implement the project in accordance with the schedule divided into four stages. Construction works will commence from the furthest north fragment of the island and it will continue towards the south, towards Stagiewna Street. Staging will concern only commercial buildings, i.e. residential, service, and trade buildings. Each stage will include a preparation period (a period to prepare construction documentation and decisions on the construction permits) and an implementation period (construction works).

It should be highlighted that success of the discussed project motivated the City of Gdansk to implement more revitalization projects in the PPP formula, the most advanced example of which is publishing of an announcement for selection of the private partner in the EU Official Journal on 3 August 2016 for the project entitled Development of the area of the former tram depot in the Lower City in Gdansk.

4.2. Development of the areas of the Railway Station in Sopot

Another most important and characteristic PPP project in the field of revitalization is the project involving development of the areas of the Railway Station in Sopot.

The objectives of the project are: revitalization of the buildings within the Railway Station in Sopot, reconstruction of municipal roads, building new parking places, improvement of traffic organization, improvement of the quality of municipal greenery, improvement of collective transport, development of tourism, increasing efficiency of managing municipal and railway buildings and devices of public efficiency as well as promoting the City of Sopot and the Polish State Railways. Within the project a two-level town square connected with the so called Monciak, i.e. Bohaterow Monte Cassino Street, an underground parking for 240 vehicles, a new railway station prepared to handle approx. 5,800 people a day as well as a new hotel and a complex of commercial and service centres are implemented. After completion of the investment, the main point of the area will be a lively promenade with numerous cafes and resting spots. The construction area is approx. 7,230 m². The internal area is approx. 32,275 m². The entity involved in implementation of the project is also PKP S.A. (Polish State Railways) which transferred the ownership rights to part of the land where the project is implemented to the private partner in exchange for financial remuneration and receiving the ownership right to the new Railway Station and common real estate.

The proceedings pursuant to the act on concessions for construction works and services and the Act on PPP (art. 4 sec. 1 of the Act on PPP) were announced on 11 June 2020. The PPP agreement was signed on 9 January 2013. Duration of the agreement: 11 years.



Based on the PPP agreement signed by the Municipality of the City of Sopot with the private partner - Baltycka Grupa Inwestycyjna S.A., the main obligation of the private partner in the field of implementing the project is implementation of the following activities: (a) on the areas purchased from the Municipality - designing and construction of commercial buildings, a hotel, parking places and green areas as well as equipping them; (b) on the public areas of the Municipality intended for revitalization and managed by the private partner for the duration of the public-private partnership agreement (i.e. within the communication system) - implementation of construction works involving construction of roads and greenery.

After termination of the PPP agreement, the private partner will keep the ownership right acquired by them, based on this agreement, to the real estate, apart from the ownership right to the building of the new railway station and the communication system on the land of the Municipality. Bank Gospodarstwa Krajowego gave a low-interest loan for implementation of the project which was possible thanks to support of the JESSICA initiative (Joint European Support for Sustainable Investment in City Areas). The initiative is a financial engineering instrument developed by the European Commission, the European Investment Bank and the Council of Europe Development Bank.

Bank Gospodarstwa Krajowego acting as the Urban Development Fund, in cooperation with Agencja Rozwoju Pomorza S.A., organized a call for proposals to grant financial support in the form of a preferential loan to implement Urban Projects in Gdansk, Gdynia, Slupsk, and Sopot within the Regional Operational Programme for the Pomeranian Voivodeships for 2007-2013 (Priority axis III "Urban and Metropolitan Functions", Action 3.3 "Urban Development Infrastructure - Non-Grant Support").

The value of the project: approx. 100,000,000.00 PLN net. Sources of financing: a low-interest loan within the JESSICA initiative (approx. 42 million PLN) and the private partner's own funds (investment loan): approx. 60%.



5. Summary and conclusions concerning possibilities to apply the PPP formula to implement projects in the field of revitalization and protection of cultural heritage in Poland

In accordance with the assumptions of the National Revitalization Plan, PPP is a complement or even an effective alternative to finance revitalization activities for national or European funds. In the assessment of the Minister of Development, currently one of the reasons for a small use of this formula in financing activities in the field of revitalization is lack of sufficient knowledge and good practices. However, it is changing, the examples of which are revitalization projects in the PPP formula in Sopot and Gdansk. In accordance with the assumptions of the National Revitalization Plan, which are consistently implemented by the Ministry of Development, units of the public finance sector (also local governments) will be supported in preparation and implementation of investments in the PPP formula, in particular hybrid projects which should contribute to an increase of effectiveness of invested funds and encourage private capital to greater involvement in financing the planned projects. PPP projects in the field of revitalization can in particular constitute elements of larger revitalization projects. Existing experience from the past 6 years of PPP development in Poland, as well as relatively good legal instruments in the form of the Act on PPP allow to suspect that PPP will be used for revitalization projects to an larger extent. Broad experience in the field of PPP in thermo-modernization projects gives hope that the element of improving energy efficiency of public buildings will often be one of the most important elements of revitalization projects implemented in the PPP formula. Therefore, it can be stated that PPP constitutes an effective formula to implement tasks in the field of revitalization and protection of cultural heritage, and taking advantage of previous experience and often additional sources of financing (EU funds), numerous revitalization projects in this financial and legal formula can be expected in the coming years.



Preliminary remarks:

1. This analysis / legal opinion was performed by Kancelaria Adwokacka Adwokata Marcina Wawrzyniaka (Law Office of Attorney Marcin Wawrzyniak) with its registered office in Warsaw based on the agreement concluded between the Law Office and Fundacja Instytut Partnerstwa Publiczno-Prywatnego (Public-Private Partnership Foundation-Institute) with its registered office in Warsaw on November 8, 2016.
2. The analysis was performed within the RESTAURA project (CE339) “Revitalizing Historic Buildings through Public-Private Partnership Schemes”.
3. The analysis is based on the current legal status as of 22 November 2016.