



# Public–Private Partnerships in Romanian New Urban Developments—A Potential Valuable Instrument in the Privatization Era

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## Abstract

The large metropolitan areas from Romania are facing a lack of public land in the context of an increased demographic pressure, especially in the areas that concentrate on multiple economic activities (the population relocates according to professional opportunities), increased pressure from the real estate developers that want to monetize their properties, and last but not least an increased community demand for public facilities within reasonable distance from their home (education centres, healthcare facilities, public squares, markets, parks, playgrounds, cultural facilities, recreational areas). In addition, unlike other European Union member states, Romania currently has the highest percentage of private properties (~98% of the dwellings stock), together with multiple restitution of property rights after 1990 and the transfer of many old industrial platforms to private companies. All these factors had gradually led to a drastic decrease in public land and to the difficulties for the local authorities to develop the minimum public and social facilities. The expropriation law may be used for the development of public facilities, but it involves a lot of time and financial resources that authorities usually do not have. For this reason, most of the urban facilities were developed before 1990, based on the Disposition of the Romanian Communist Party from 1972. The public–private partnership represents a relatively new instrument defined by Romanian law in 2010 and its possibility to be extended as a territorial planning instrument was not yet explored. Starting from the analysis of the legal framework regarding this aspect in France and Poland (where this concept has been implemented since 1955 in France and 2004 in Poland), the objective was to identify the ways in which these partnerships can support the balance

between public and private interest in the new urban developments, can become a tool for urban planning and can develop the public facilities using the financial potential of the private sector.

## Keywords

Public facilities • Urban development • Public land • Peri-urbanization phenomenon • Public–private partnership

## 1 Introduction

The paper aims at analysing the legal and institutional framework of two European Union member states with demonstrated experience in implementing public–private partnerships (France and Poland) and to determine the development premises of this collaboration model in the new urban areas in Romania.

France is recognized as a country that implemented this type of partnership in multiple projects (infrastructure, education and health facilities, prisons and courts), with a stable legislation that was improved several times. On the other hand, Poland is a country with a more recent regulatory framework of public–private partnership, but which in a short period of time managed to equal France’s achievements in terms of the amount of public projects implemented through this type of contract compared to the total public investments (approx. 5%). These two case studies offer a wide range of perspectives on how this partnership can be legislated, stimulated and coordinated by the central or local authorities. In addition, Poland may be considered a representative country for Romania due to the past communist regime, as they faced similar economic, political and social challenges, whose transition from a centrally planned economy to a market economy and from nationalization to privatization era, should be mentioned.

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There is an extensive phenomenon of peri-urbanization identified around the main urban growth poles of Romania due to the increased migration inside the territory (for professional reasons), increased demand for housing in more affordable areas and dynamic urban development, all these under the pressure of a limited public budget that fails to ensure access to the minimum facilities. According to the latest statistics, in Romania, we have territories whose population has increased two or three times in the last 10–15 years due to the new economic activities that were located there. In this context, the central and local authorities have to identify ways in which they can support this dynamic development with functional infrastructure and public facilities.

One possible solution that has not been sufficiently exploited until now is the public–private partnership that may give access to the financial, human resources, technology and know-how owned by the private entities. This instrument also benefits from an increasing support from the European Commission which gave access to European funds for this type of contract. This was a very important measure that consolidated the perspective upon public–private partnerships and made them more attractive to private entities.

The aim of this research is to analyze the positive and negative aspects identified in the two case studies (France and Poland), to determine the potential legal and institutional obstacles from Romania and to issue some proposals for the current approach in order to increase its popularity among public authorities.

This complex tool for financing and managing projects of public interest has specific regulations according to each country in which is implemented, but the objective of this paper is to identify the common aspects from the legal and institutional framework that facilitated the public–private partnerships in France and Poland. These common structures, procedures and standards may represent a first step in developing a coherent regulation for this instrument in Romania.

Although public–private partnerships were first mentioned in 2002 in Romania with the publication of Law no. 137/2002 (2002), until 2019 no contract was signed using this financial instrument. This fact may suggest several obstacles that public authorities may encounter when trying to use this specific tool, which supports an average of 5% of the total public projects from the European Union.

In order to study the Romanian context on urban dynamics and to highlight the urgent need to promote a financial alternative for public facilities, the present research paper focuses on four metropolitan areas (Cluj, Timisoara, Iasi and Bucharest). The case studies were selected based on the demographic evolution, built-up area evolution, supply and demand of the housing market, distribution of public and private land and the ratio between new urban

developments and public facilities. The last aspect reveals the public authority's capacity to respond to the increasing real estate pressure.

The analysis of the two case studies focuses on understanding the legal and institutional framework (distribution of responsibilities related to initiating, concluding, standardizing and regulating public–private partnerships) from France and Poland, followed by studying the changes and improvements that were implemented over time in order to support public–private partnerships. Secondly, the paper presents an overall image of the partnerships implementation in each chosen country (number of projects financed through this instrument compared to the total number of public projects) together with a set of representative projects.

The recommendations for the Romanian legal and institutional framework were made based on the common aspects identified in the regulatory framework, but also the practical experience from France and Poland.

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## 2 Romanian Context Regarding Public Facilities in New Urban Developments

The large metropolitan areas are nowadays confronted with a high demographic pressure due to the unbalanced distribution of economic activities in the territory. There is a clustering trend in some areas considered favourable in terms of accessibility, availability of highly qualified human resources, availability of land for investments and finally the fiscal incentives and the total costs generated by performing an economic activity.

Analyzing only a few representative case studies, we are able to see the dimension of population mobility phenomenon among regions which lead to an accelerated expansion of the cities beyond their current limits, covering the peri-urban areas and even managing to integrate the communes within the metropolitan area. This dynamic development brings a lot of challenges for the public authorities that need to provide access to the main public facilities. In order to highlight this issue, the study focused on four metropolitan areas from Romania (Cluj, Timișoara, Iași and Bucharest) with a close look on the following indicators and variables: number of residents in 1977, 1992, 2002, 2011, built-up area evolution for the communes included in the metropolitan area, supply and demand of the housing market and also the price variation, distribution of land according to its regime (public or private) and the status regarding new public facilities developed in the recently developed areas.

The Metropolitan Area of Cluj Napoca consists of the municipality of Cluj Napoca and 19 communes and had the highest population growth among the other urban centres defined on national level (Urbasofia, 2015). Between 2002

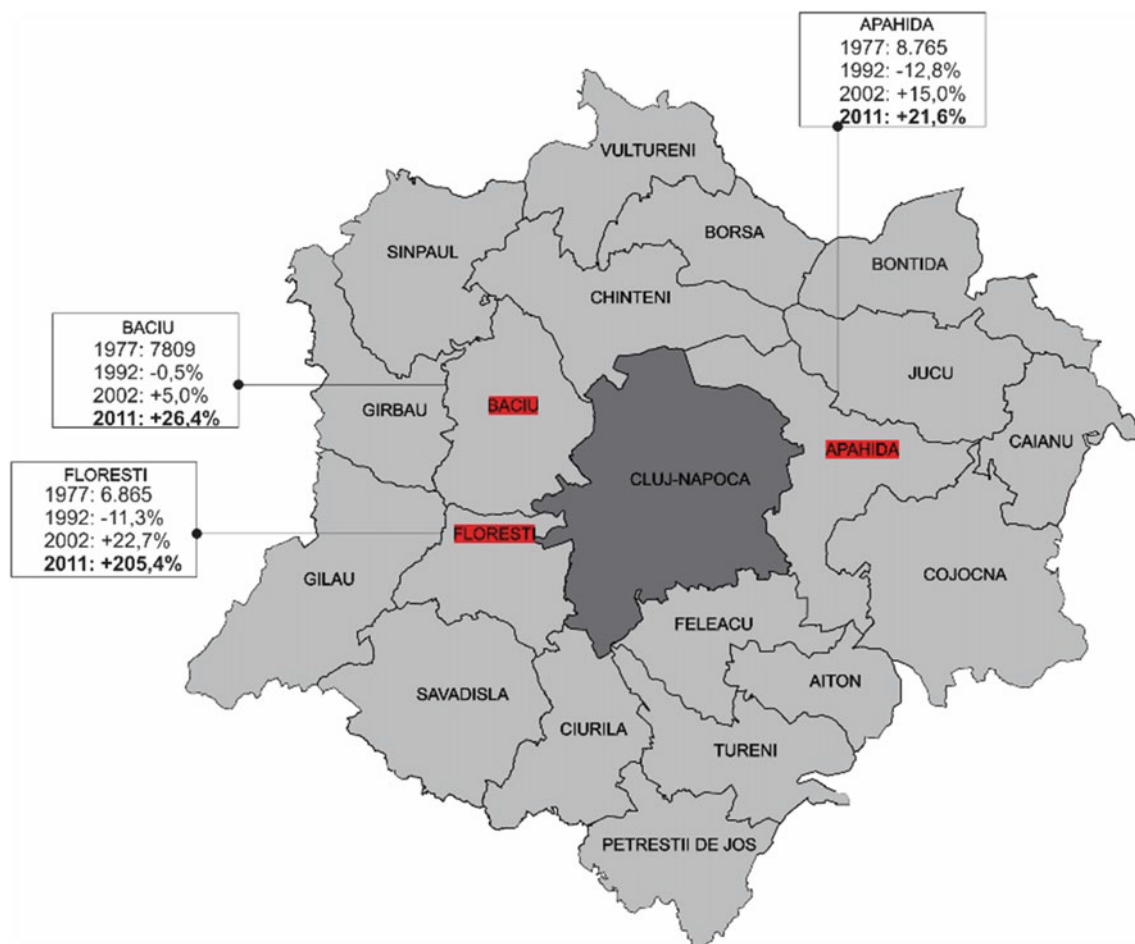
and 2012 the population increased by 6,8% (from 385.434 to 413.761) mainly due to the peri-urbanization of the first ring of communes. Among the areas that experienced the highest pressure, Florești is to be mentioned with an increase of 205,4% (between 2002 and 2011), Baciú with 26,4% and Apahida with 21,6% (Fig. 1). Although the population of Cluj Napoca remained relatively stable at around 300.000, the communes that border the municipality became residential districts.

In the communes with the largest population growth, the study revealed an extension of the built-up areas proposed through the masterplans, as follows: the municipality of Cluj Napoca + 60%, Apahida + 65%, Florești + 50%, Chinteni + 45%, Ciurila + 28.8%, based on a comparative analysis between the last two general urban plans (Urbasofia, 2015).

Regarding the housing market, the number of new dwellings between 2013 and 2018 in Cluj Napoca increased four times. The high demand for residential areas influenced the average price per square metre, while in 2015 the price was around 873 EUR/sqm, in 2016—1000 EUR/sqm, in

2017 it increased up to 1211 EUR/sqm (+39%) (Veridio, 2018). The total value of property transactions kept the same upward trend, from 200 mil. EUR (2013) to 594 mil. EUR (2017) (Veridio, 2018). The communes near Cluj Napoca had similar challenges as the growth rate of new housing stock in Florești between 2007 and 2009 exceeded even the municipality of Bucharest and Ilfov county.

In the context of the real estate market boom, the new peripheral urban developments highly depend on the urban centres or municipalities, regarding the access to public facilities (health and education services, commercial spaces, public markets, parks) and job offers. According to the analysis published by the local administration from Florești (City Hall of Florești, 2019), they currently have only two schools, which is insufficient considering that 20% of the population is under 14 years old. The local authority has planned two new projects for schools and kindergartens, but these facilities are not yet developed as the financial resources are limited. Other issues mentioned in this document is the lack of medical facilities, social services units for the



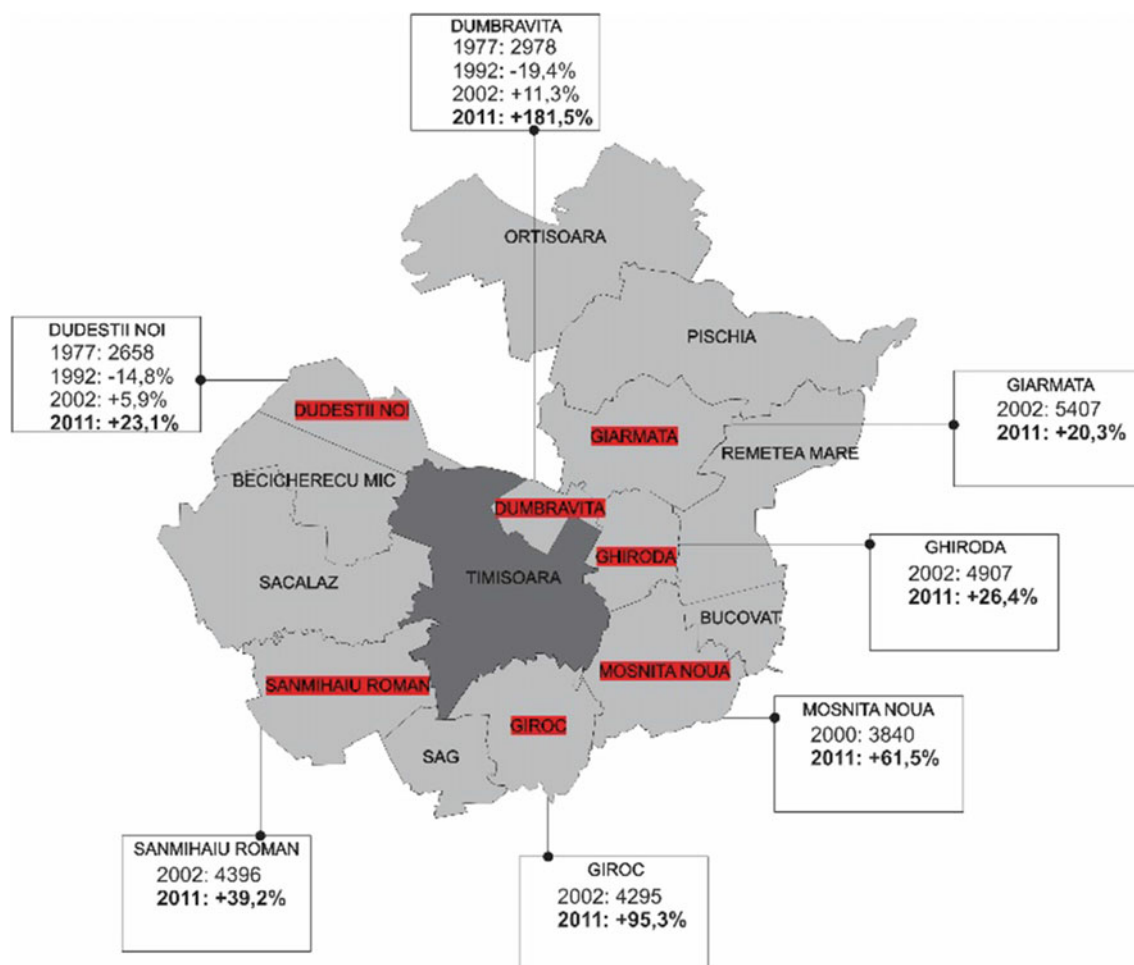
**Fig. 1** Demographic evolution in the metropolitan area of Cluj Napoca (the communes marked with red had a population increase that exceeded 20%)

vulnerable people, as well as other facilities of public interest (the commune has no high school or nursery). All these essential investments are hard to be supported only from the local budget, as this commune is considered a residential district of Cluj Napoca with few economic activities that could contribute with taxes. In addition to all these difficulties, the local authorities usually do not own parcels on which they can develop these public facilities, so they first have to find optimal locations and purchase the properties.

The second metropolitan area relevant for this study is the one configured around the municipality of Timișoara, another urban growth pole due to its influence in the territory. Among its structure, there are seven communes that registered a demographic upward trend of over 20% during 2002–2011 (year of the last population census): Dumbrăvița (+181.5%), Dudeștii Noi (+23.1%), Sânmihaiu Român (+39.2%), Giroc (+95.3%), Moșnița Nouă (+61.5%), Ghiroda (+26.4%) and Giarmata (+20.3%) (National Institute of Statistics, 2003, 2012) (Fig. 2). The case is similar to Cluj Napoca as the

urban population from the municipality of Timișoara remained constant, but the population from the peri-urban area increased in more than half of the communes.

The built-up area also increased significantly, for example in Dumbrăvița (which also had the highest demographic growth) it was extended by 710.98 ha new lands proposed for different functional areas (AMH Mediu Expert, 2019). Some of the communes have not updated their masterplans, but instead, they approved several zonal urban plans for various functional areas: Dudeștii Noi—Zonal urban plan for leisure activities, sport, houses and services on a surface of 7.96 ha (MS-CAD S.R.L., 2017) and Giroc—Zonal urban plan for houses and public facilities on 4.1 ha (Tectonics house S.R.L., 2019). As for the housing market, the prices increased in the last ten years from 850 Euro/sqm to 1300 Euro/sqm (for new apartments) and from 770 Euro/sqm to 1350 Euro/sqm (for old apartments) especially due to a high demand for new residential areas (Imo Timișoara, 2020). In the first nine months of 2018, in the entire county of Timiș,



**Fig. 2** Demographic evolution in the metropolitan area of Timișoara (the communes marked with red had a population increase that exceeded 20%)

the building permits were released for a total usable area of 623.992 sqm of new residential buildings. This number places Timiș county on the third place at national level, just below Bucharest and Ilfov, with an increase of 42% compared to the same period of 2017 (Timiș online, 2018). In this metropolitan area, the local authorities are facing the same problems as in the first case study, which is the limited financial resources compared to the requirements for new public facilities. For example, in the Local Strategy of Dumbrăvița County they conclude that ‘For the rehabilitation of the social infrastructure and for the development of new partnerships in the educational and cultural field, external resources are necessary: European or governmental funds or support from the County Council’ (City Hall of Dumbrăvița, 2014).

The metropolitan area of Iași is another example of how the peri-urbanization phenomenon affects the access to proper public facilities. The entire metropolitan area population increased by 9% from 2005 to 2014 (GEA Strategy & Consulting, 2015), but among all the communes there are four examples that stand out with a demographic growth starting from 30 to 60% between the last two censuses: Valea Lupului (+62%), Bîrnova (+46.9%), Miroslava (48.1%) and Reditu (+33.8%) (Fig. 3).

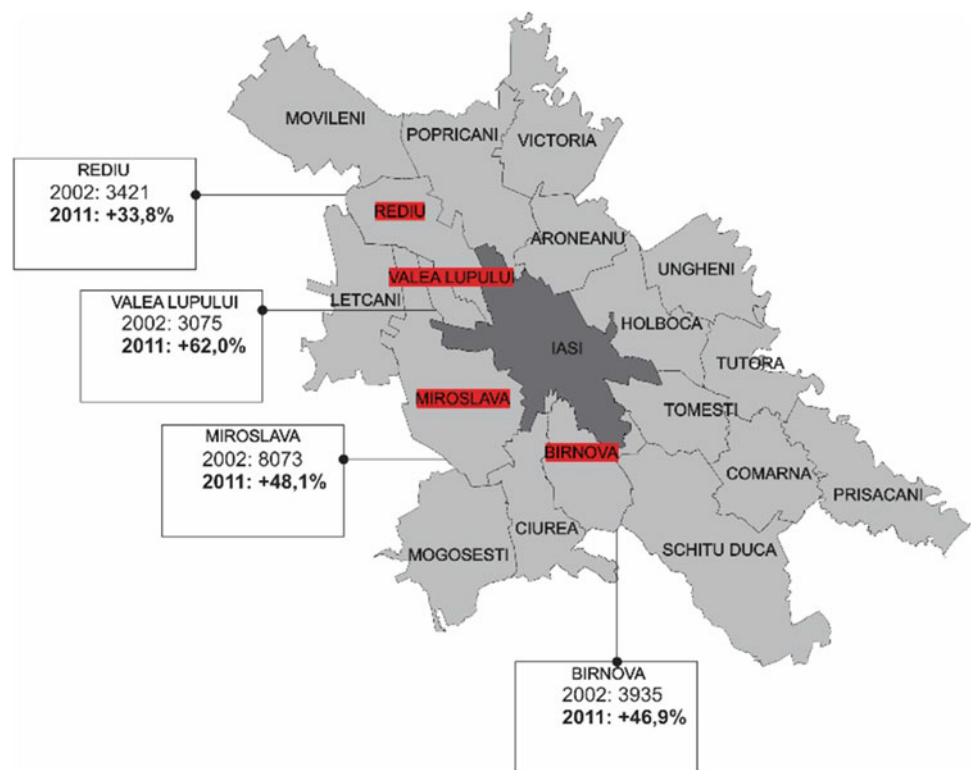
Regarding the urban sprawl tendency, after 1990, the communes bordering Iași municipality increased their built-up area significantly in order to allow the development of new residential districts: Valea Lupului by 76%,

Miroslava by 56%, Reditu by 22%, Popricani and Bîrnova by 18% and Ciurea by 15% (GEA Strategy & Consulting, 2015). These new areas were mostly monofunctional, underestimating the need for public facilities. The housing market stock increased by average of 13% during 2009–2012, while there were communes in which the growth exceeded 50% (e.g. Communes of Miroslava and Bîrnova).

According to the strategy developed for the metropolitan area of Iași, the main public facilities are overworked, for example ‘in the case of educational units, the demand is above national average in 10 out of 18 communes’ (in Victoria there are 45 students per class) (GEA Strategy & Consulting, 2015). In addition, ‘school laboratories, gymnasiums and sports fields are missing in many communes from the metropolitan area, as in Movileni, Schitu Duca, Valea Lupului’ (GEA Strategy & Consulting, 2015). The analysis upon the health infrastructure reveals an even worse situation since all the communes depend entirely on the services offered by the Municipality of Iași. The only type of medical facility developed outside Iași is family doctor offices. Social services infrastructure is also missing in most of the communes.

The last case study that shows the urgent need to improve the access to public facilities is represented by the metropolitan area of Bucharest, where we find the highest demographic pressure and housing demand. According to the statistics, the population increased by over 20% in 22 out of 38 communes and cities in part of the metropolitan area

**Fig. 3** Demographic evolution in the metropolitan area of Iași (the communes marked with red had a population increase that exceeded 20%)





(between 2002 and 2011). There are cases in which the growth was even more accelerated, as for example Bragadiru (+87.7%), Pantelimon (+59.8%) and Popești-Leordeni (+44.9%) (National Institute of Statistics, 2003, 2012) (Fig. 4).

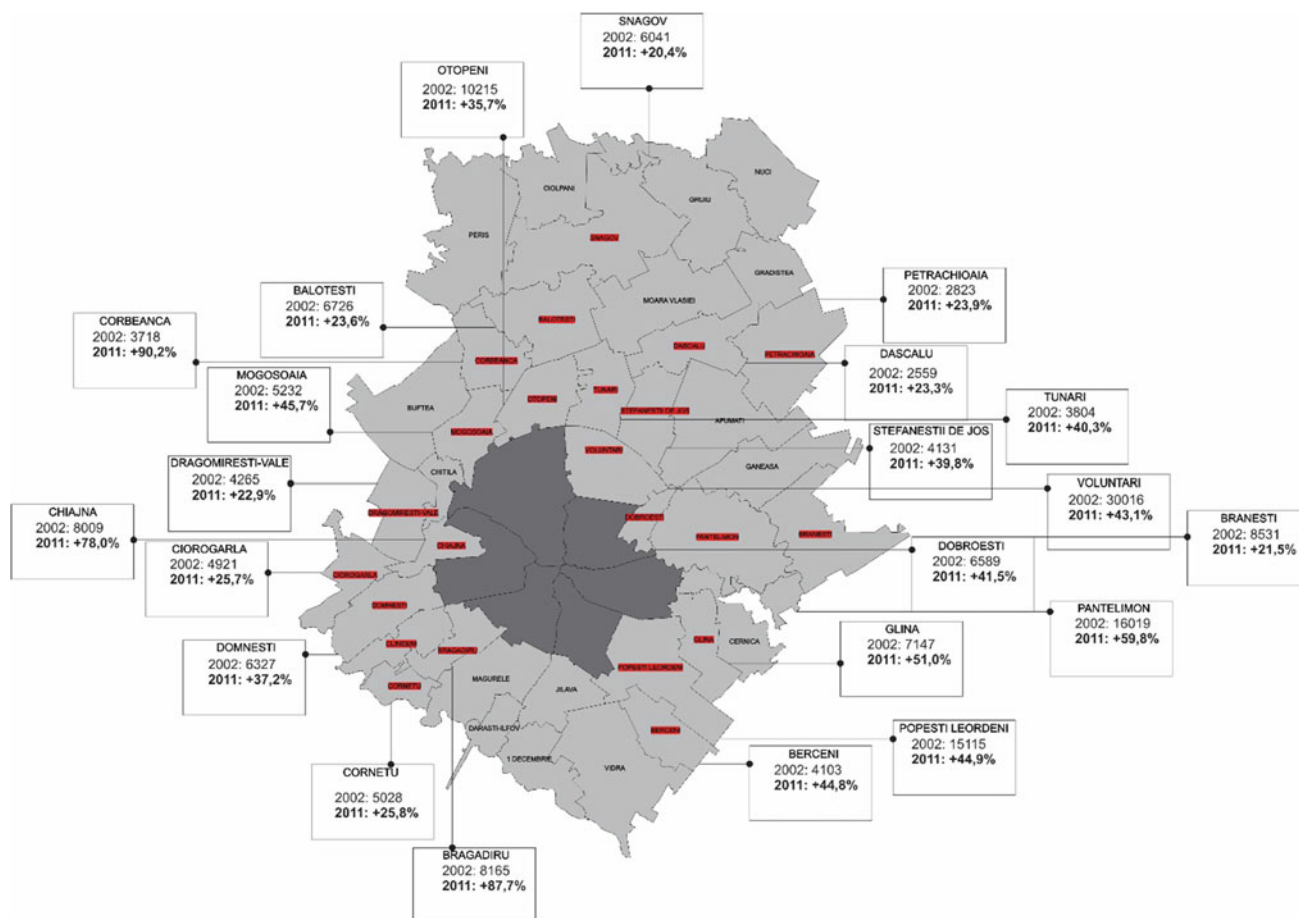
The local administrations that have faced an important demographic pressure, were constrained to extend the built-up area through their masterplans, of which the following can be mentioned: Chiajna—1080.7 ha were added to the last area (+223.6%) (Geoid S.R.L., 2013), Domnești—602.54 ha (+34%) (Amec Environment & Infrastructure S. R.L., 2014) and Corbeanca—1479.9 ha (+60,5%) (Mina-M-Com, 2008), Pantelimon—750.77 ha (+53,0%) (Plan.Co UrbisDesign S.R.L., 2013), Otopeni—459.2 ha (+16.9%) (Grigoraș PFA, 2013).

The dwellings stock in the metropolitan area of Bucharest also increased with 1739 more units in 2018, compared to 2017 (National Institute of Statistics, 2019). The number of new housing units built in Ilfov county reveals the impact that Bucharest has on its surrounding territories. In 2018,

5583 new units were built in Ilfov, a very close value to the one registered in Bucharest—5689 (these values are exceeded only by Cluj Napoca).

This peri-urbanization phenomenon has an important influence on the demand for new public facilities, starting from roads, public transport infrastructure, urban infrastructure systems (water, energy, information), education and health facilities, social services, parks, sport fields, playgrounds and other functional areas.

In the masterplans developed for the communes and cities inside the metropolitan area of Bucharest, the specialists mentioned about the issues regarding the access to public infrastructure: ‘lack of health, education and commercial facilities’, ‘lack of social spaces’, ‘insufficient local financial resources to support all the investments’ (Urban Architectural Management S.R.L., 2015a), ‘deficit of cultural facilities’, ‘unbalanced distribution of public facilities such as kindergartens, school, dispensaries’, ‘insufficient funds for projects of national or local interest’ (Europroiect, 2010), ‘poor social infrastructure’, ‘insufficient sports and leisure



**Fig. 4** Demographic evolution in the metropolitan area of Bucharest (the communes and cities marked with red had a population increase that exceeded 20%)

facilities’, ‘limited financial resources compared to the value of the mandatory investments in infrastructure, urban networks.’ (Public research, 2017).

As regards to the property regime, the local authorities are facing a lack of public land that may be used for these important investments. For example, in Bragadiru, the local authority owns some parcels on the periphery, mostly used for weekly open markets or leisure activities, but not appropriate for other types of public facilities (Urban Architectural Management S.R.L., 2015b). In order to be able to develop educational, health or social services, the authority must have enough resources to acquire an appropriate land (considering the surface needed, location and accessibility), to contract the feasibility studies, technical projects and to finally build it, assuring periodically maintenance works.

Another obstacle is the fact that the local authorities in most cases do not have a clear overview upon the lands they own, an updated database with survey plans. In addition, considering the lack of land survey plans for most of the communes and cities inside the metropolitan area, the authorities are slowly progressing towards a complete land survey plan by making topographic measurements only for the lands of immediate investments (e.g. route of a future road), without considering the future investments on medium or long-term. Due to all these aspects, the masterplans are usually unable to make clear localization for new public facilities, as the authorities can be charged with restricting the owners’ right to use their private property. As a result, masterplans usually propose mixt-use areas for both residential areas and public facilities, in order to allow these investments correlated to private entities’ intentions.

According to Law no. 33/27.05.1994 (1994) related to the expropriation procedure for public utility, ‘the buildings and lands necessary for investments in social housing and other public facilities of education, health, culture, sports, protection and social assistance, as well as public administration’ are considered projects of public utility and they can follow this procedure, but the local authorities must have the financial resources to carry out all the necessary studies and projects.

Furthermore, 98% of the dwellings stock from Romania is owned by private entities and only 2% by public authorities (The World Bank, 2015). Regarding other functional buildings or lands, there are no public data available as there are no land survey plans that might provide an overview of the property regime. The significant reduction of public land was also influenced by the restitutions made after 1990. According to statistical data, 9026 buildings were reclaimed by the old private owners (including schools, kindergartens and hospitals), 340.011 ha of land inside and 709.305 ha outside the built-up area, while in 2015 there was still 300.000 ha for which the decisions were not yet issued

(Finanțștii, 2015). The old industrial platforms inside urban centres were important land resources that could provide support for public investments, but in many cases, they were returned to the initial owners and usually they changed their profile into residential, commercial areas or offices.

Another aspect that raises problems in developing new public facilities is the current norms and regulations that set a lot of requirements regarding the land surface and building capacity depending on the population density, demographic trends and district area. In areas of high building density, the local authorities have difficulties in finding lands considered appropriate for public facilities, according to the norms. For example, the plot of land necessary for a kindergarten is defined between 1000 and 2000 sqm in rural areas and 2000–4000 sqm in urban areas, while the construction must not exceed 25% of the land area. In addition, the building must have a minimum distance of 25 m to the street boundary and must not exceed two stories. Also, the acceptable walking distance for the kindergartens is 500 m (Ministry of Regional Development and Public Works, 1997). As for the nurseries, the requirements are even more difficult to meet. According to the General Urban Regulation of 1996, the maximum percentage of land use is 20% (Regulamentul General de Urbanism, 1996). The last report published by the Romanian Health Observatory in 2015 showed that there is an unbalanced distribution of health units and medical staff between counties and especially in rural areas and new facilities must be built in short-term (Romanian Health Observatory, 2015). For hospitals, the same regulation sets a minimum requirement of 10–15 sqm/patient of parks inside its plot, difficult to achieve given the fact that the functionality of the health facility is more important (without ignoring the benefits that green spaces can bring). The maximum percentage of land use, in this case, is also 20% (Regulamentul General de Urbanism, 1996). All these conditions made the local authorities’ mission heavier as there is almost impossible to convert other existing buildings into public facilities. Because of all these reasons, most of the public facilities are built before 1990, later on being only rehabilitated or extended, while in only few cases new facilities were developed by public or private entities.

In conclusion, the large urban areas are confronting with high demographic pressure due to the increased population mobility and also with the pressure of the housing market. The new urban developments have started to expand beyond the urban centres limits, integrating the first ring of communes as residential districts. The demand for public facilities is increasing and the local authorities have two possible action plans: to stop all the private investments until they will have enough resources to develop the public infrastructure and facilities or to invest using the benefits of public–private partnerships.

### 3 Public–Private Partnerships Framework and Implementation in France and Poland

According to the statements made by the World Bank, ‘Public–private partnerships (PPPs) can be a tool to get more quality infrastructure services to more people. When designed well and implemented in a balanced regulatory environment, PPPs can bring greater efficiency and sustainability to the provision of public services such as energy, transport, telecommunications, water, healthcare and education. PPPs can also allow for better allocation of risks between public and private entities.’ (The World Bank, 2019).

One study entitled published by the Commonwealth Secretariat presents three main benefits of implementing public–private partnerships: possibility to make multiple investments without the constraints of a limited budget, more efficient process managed through one integrated contract and access to private companies’ resources and know-how (Cambridge Economic Policy Associates Ltd, 2010).

Among the European Union member states that have an extensive experience in implementing public–private partnerships, this study will focus on the legal and institutional framework, projects and results from France and Poland.

#### 3.1 France

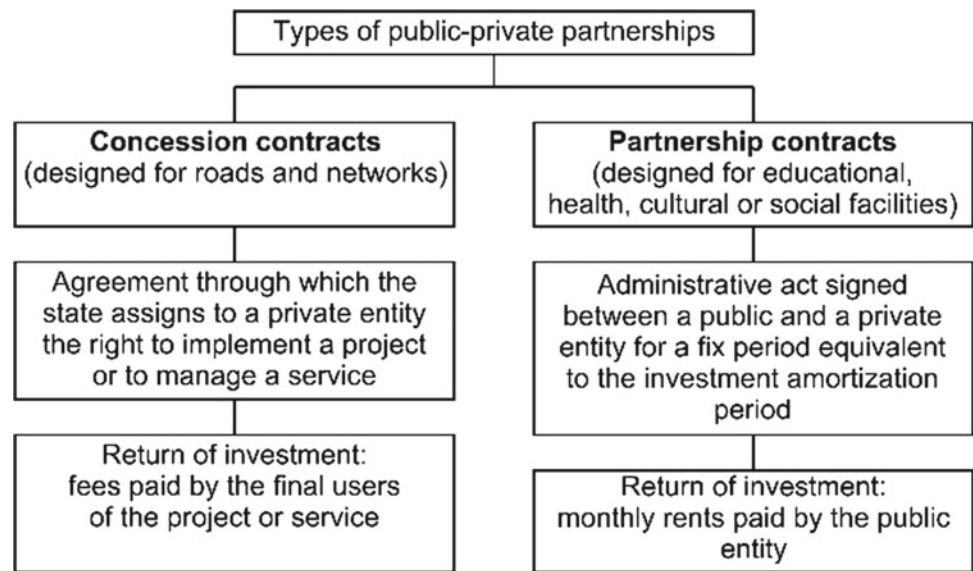
In France, the first concession contract was signed in 1554 for the construction and maintenance of a canal over a period of 10 years (Bougrain, 2014). The concession law dates from 1955 and between 1956 and 1964 several companies with partially state-owned capital were created to build and operate part of the motorways system and receive the road taxes in return. Between 1980 and 1990 there was an attempt to extend this type of contract to public facilities (schools, penitentiaries), but due to the lack of transparency during the acquisition process, these contracts were restricted for 10 years and reintroduced in 2002 with a more specific regulation. After several updates and improvements, all forms of public acquisitions and procurements were finally defined in 2019 in the Public Procurement and Concession Agreements Code. The main purpose was to integrate the information from over 30 preceding laws and to present all the aspects related to these procedures. Multiple national authorities were created to coordinate and assist the public institutions and administrations when implementing public–private partnerships: Mission d’appui à la réalisation des contrats de partenariat public-privé, FIN-INFRA (responsible for evaluating the initial partnership proposals and the sustainability of the projects), Agence Publique pour

l’Immobilier de la Justice (authority responsible for the projects of courts, penitentiaries and other similar buildings), L’Agence nationale d’appui à la performance des établissements de santé et médico-sociaux (Freire, 2020).

The main two forms of public–private partnerships are the concession contracts designed mainly for roads and network infrastructure and the partnership contracts for the rest of the projects in educational, health, cultural or social field (Fig. 5). The concession contract was defined as an agreement through which the state assigns to a private entity the right to implement a project or to manage a service. The return of investment is covered by the fees paid by the final users of the project or service. The partnership contract is an administrative act signed between a public and a private entity for a fixed period equivalent to the investment amortization period. The objective of this type of contract is to implement integrated projects (finance, design, build, maintenance works and management) and the investment is recovered by the monthly rents paid by the public entity.

The Public Procurement and Concession Agreements Code has defined three fundamental aspects to be followed in order to evaluate the sustainability of the projects. The first requirement is to have a preliminary assessment of the projects regarding the financial aspects, risks, maintenance costs and a comparative analysis of all the possible sources of finance. The public authorities should demonstrate that the public–private partnership is the best instrument for their investment. These evaluations are further analyzed and validated by the responsible central authority. The second requirement refers to the minimum information that should be included in the contract between the public and private entities: contract objectives and time frame, risk distribution, quality standards, financial obligations towards the private entities, obligations of the private partner regarding the use of the public infrastructure outside the project (if allowed), evaluation methods, sanctions and clauses and contract conclusion possibilities. The publishing of a model structure for all partnership contracts offers the support for the public entity to clarify and negotiate every important aspect regarding the investment right from the initial phase. The last requirement is related to the evaluation criteria of the received offers: financial value, objectives and time frame, the number of activities that the private entity cannot provide on its own and need to subcontract (French Government, 2018). An important condition for initiating a public–private partnership is to fulfil one of the following criteria: project of high complexity, urgent project (the investment must be made on short-term and the public entity does not have the necessary resources), increased economic efficiency using this type of partnership compared to other procurement alternatives (Freire, 2020). Otherwise, the public authorities are recommended to select another form of financing



**Fig. 5** Types of public-private partnerships

presented in the Public Procurement and Concession Agreements Code. At the end of the partnership contract, the construction becomes the property of the central or local public entity. The monthly or quarterly rates paid to the private partner include the works or services provided by the partner, tangible and intangible assets and maintenance costs (including the replacement of the equipment or consumables). The payment is not fixed, it can depend on multiple considerations, like the additional revenues obtained by the private entity from using the investment outside the project (if the contract allows it). The French state encourages this form of collaboration between public and private entities but does not guarantee the contracts (except from the projects of national importance). The local authorities on the other hand are allowed to guarantee the bank loans requested by the company responsible for implementing the project.

One national programme aimed for the development of the public health infrastructure is the hospital programme initiated in 2003 and improved in subsequent versions from 2007 and 2012. The public-private partnerships represent 12% of the total amount invested within this programme and the average contract period for health facilities is 15–35 years (most of them being signed for 30 years). The legal framework drafted three types of contracts for health facilities projects: BEH (Bail Emphytéotique Hospitalier), BEA (Bail Emphytéotique Administratif) and CP (Contrat de partenariat). BEA and BEH were designed only for local authorities, while CP can be signed by authorities from all levels of government. The adaptation of this investment instrument according to the project profile and the contractor has many advantages, as the French state can make specific recommendations or requirements.

To evaluate the results of public-private partnerships so far, the study will focus on the public facilities projects

implemented through a CP (Contract de partenariat), as this contract is intended for all types of projects and public entities. Between 2004 and 2012, 200 contracts were signed and started (75% initiated by local authorities), totalling a value of 15 bil. EUR, to which are added the contracts using other public procurement models (BEA and BEH) with a total value of 3 bil. EUR (European PPP Expertise Centre, 2012). Due to the negative publicity, lack of transparency and the restrictions between 1990 and 2002, public-private partnerships represent today only 5% of the total public investments, although the studies have demonstrated that this alternative is both efficient and financially sustainable. ‘After ten years of implementation, the first available studies on the contribution of PPPs show clearly that the method works, both technically (facilities built to contract standards and delivered on time) and financially (rent budgets not exceeded) in over 90% of cases.’ (Bergere, 2016). The projects that benefited from the public-private partnership advantages cover a wide range of facilities: high-speed railways (e.g. Brittany-Pays de Loire and Nîmes-Montpellier high-speed rail links), educational infrastructure (universities, high schools, secondary schools—e.g.: 12 schools in Seine-St-Denis), sport and leisure facilities (e.g. stadiums in Lille, Marseille, Nice, Bordeaux, Dunkirk Arena), network infrastructure (e.g. internet in Auvergne), cultural and social facilities. According to the evaluation published by MAINH (Mission nationale d’appui à l’investissement hospitalier) in 2007 on 10 hospital projects developed in public-private partnerships, they concluded that the works were delivered on time, without exceeding the estimated budget and the authorities were satisfied with the collaboration and the final results. Questionnaires were also implemented to assess the community feedback regarding the services managed by the public/private authority or by a mixed regime and the results

were positive for projects carried out by public–private partnerships (Bougrain, 2014). Public sector co-lending facilities for PPPs is a programme developed exclusively for education facilities. This solution was implemented by the French state due to the lack of predictability in the migration trends. People relocate for new professional opportunities and authorities must have a quick response to unanticipated demographic pressure. The education facilities built in public–private partnerships were functional after two and a half years in average, compared to those made by the public authorities which became functional after four years, according to Loiret Council (Bergere, 2016).

The main advantages of public–private partnerships are: access to private funds, management experience and advanced technology; risk distribution between public and private entities according to their competencies and efficiency and the possibility to implement several public projects simultaneously without being constrained by the limited public budget. This collaboration form also has a positive influence upon the local authority activity, as they are forced to plan their budget and long-term investments (without considering the term of a political mandate), to define a coherent and sustainable strategy on public facilities and to increase the project management competencies among its employees. These contracts, unlike other public procurement forms, are not so vulnerable to the economic instability, as they are usually planned for long periods. Another advantage would be that the proper maintenance of the buildings by the private entity is less expensive than periodic general rehabilitation that the public entities usually prefer. This is also a consequence of the several clauses or penalties included in the contract for the private entity in case the activity or service can no longer be performed in the best conditions. Public–private partnerships benefit from the private companies' experience in a specific field and the authority can sign a single contract for all stages of the investment (finance, design, build, maintenance and management). On the other side, the private entity is motivated to speed up the first stages in order to recover its investments and gain some profit, but also to provide a good quality service in order to reduce the maintenance costs.

The criticisms against this form of public procurement are: higher final value of the investments compared to using bank loans (although the value of the risk taken by the private entity cannot be quantified), possible opportunistic behaviour of the private entity, difficult project management that requires clear evaluation and control mechanisms as well as increased competencies among the project team. One of the main barriers of these partnerships is the difficulty to anticipate all the possible future situations or bottlenecks that may arise during the contract, as there are many factors that can influence the project on long-term (political, economical and social context, emerging technologies).

In conclusion, public–private partnerships represent a valuable instrument improved by the new procurement code, but not exploited at its full potential, as the percentage of these projects represents only 5% in France out of the total public investments. These partnerships can support a sustainable system of public facilities, without reducing the possibility for central or local authorities to invest in other sectors. The contracts have to be clearly defined, the procurement process must be transparent and encourage the competitiveness between the different private companies and the public entity has to ensure a stable assigned project team, regardless of political changes.

### 3.2 Poland

The legal framework from Poland on public–private partnerships consists of the following acts and regulations that address all public procurement forms: Communal Economy Act and Civil Code (1990), Act on public–private partnership (published in 2005 and revised in 2008), Act on Public procurement law (published in 2004 with several subsequently amendments), Act on concessions for public works or services (published in 2009, revised in 2010 and 2012), Act on Toll Motorways and the National Road Fund (1994) (Sirghi, 2015).

As regard to the institutional framework, there is a distribution of different responsibilities in promoting, coordinating, validating and monitoring public–private partnerships between several entities: Public Procurement Office, Ministry of Infrastructure and Development—Public–private Partnership Platform, Ministry of Economy, Polish Agency for Enterprise Development, Ministry of Finance, Ministries for other sectors, other institutions. The department dedicated for this procurement model from the Ministry of Infrastructure and Development is responsible with developing the methodology, standards and reference documents, coordinating public entities who want to apply for a public–private partnership, monitoring projects workflow, recommending improvements to the current legal framework and afterwards assess the impact of these changes and promoting this concept among the public and private entities in the country. In order to facilitate and encourage the access of the public authorities to this partnership model, methodologies, practical guides and standard documents have been published: examples of risk analysis, questionnaire models for private entities, possible performance indicators for different projects categories (roads, network infrastructure, buildings) and contract models. In 2010, the Public Procurement Office in collaboration with the Institute for Public–Private Partnerships published the guide for public authorities on procurement and concession procedures. This guide came in response to the fact that under the

2005 law no public-private partnership contract was signed, the procedure being considered very difficult and confusing. In addition, the Polish Agency for Enterprise Development provided training sessions, courses and technical support to all entities involved. Besides the authorities created in order to facilitate this investment model, in Poland, there are also other mechanisms and public platforms meant to support cooperation and exchange of good practices among entities, for example: [www.ppp.gov.pl](http://www.ppp.gov.pl)—developed in 2011 and [www.ppp.parp.gov.pl](http://www.ppp.parp.gov.pl). The first online platform created by the Ministry of Infrastructure and Development also aims at presenting a database with all projects implemented through public-private partnerships that can serve as models to other public authorities. In order to stimulate the use of this procurement form, the Polish state introduced several incentives for the private entities, while for the public authorities, a new category of public debt was created exclusively for public-private partnerships, in order to avoid a distorted image of the public budget.

According to the legal framework, there are four types of projects that can be developed under public-private partnerships: construction or renovation of buildings, furniture and equipment replacement, and other categories of services (Fig. 6). The approach includes all project phases: finance, design, build and operate/maintain. Unlike the French legal framework, the buildings resulting from this partnership model can remain in the property of the private entities which, during the contract, will only receive the amount related to the renting and maintenance costs.

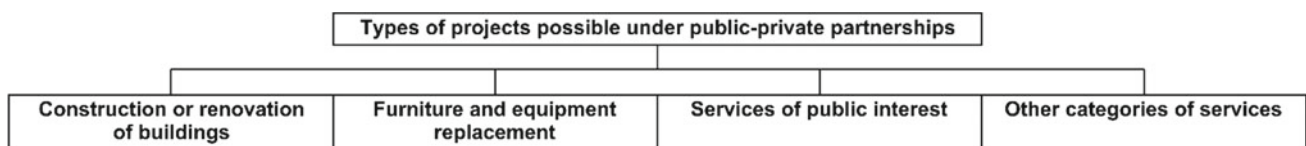
The law defined three risk categories for the public-private partnerships that need to be negotiated from the initial phases: risks within the construction process (e.g. non-compliance with technical requirements and time frame), risks within the building operation stage and the risks related to the flexible market demand for a service (Public-Private Partnership Platform, 2020). While the first two risks are assumed by the private entity, the last one lies on the public authorities as they pay the monthly costs regardless of the market demand. The private entity may also receive payments from the end users, as we usually find in the case of roads or urban network infrastructure. The evaluation criteria for the received offers are defined by the law as follows: distribution of income between the public

and private entity, financial contribution, project management efficiency, compliance with project requirements (quality, technical parameters, maintenance), distribution of responsibilities and risks, contractual terms related to time frame and payments.

Due to the new hybrid contract model proposed by the European Commission, the entities involved in a public-private partnership can benefit from access to European funds. This fact increases the profit for investments that were not considered opportune by private entities or that could not be sustained only by private resources.

In terms of results, although Poland has a limited experience using public-private partnerships, between 2014 and 2018 they amounted 951 mil. EUR. Based on the law published in 2005, no partnership contracts were signed, mostly because of the lack of clarity on the procurement procedures. Since 2008 when the first revision of the law was published, there has been a significant increase in the number of projects implemented through public-private partnerships (2009—77 projects, 2014—211 projects). The projects developed in Poland are covering a wide range of public infrastructure: sports and leisure facilities (Mineral Swimming Pools Complex in Solec-Zdrój), social and student housing, parking areas, educational and health facilities, roads, urban infrastructure, waste management (Waste Management Facility System for the City of Poznań), urban revitalization projects (Development of the northern headland of Wyspa Spichrzów in Gdansk, Development of the area of the former tram depot in the Lower City of Gdansk, Revitalization of the Railway Station in Sopot), heritage protection projects (Interreg Central Europe, 2016). During 2013, the sectors that had benefited the most from public-private partnerships were: leisure, sports facilities and tourism infrastructure—417 mil. EUR, roads—848 mil. EUR and waste management—636 mil. EUR (Sîrghi P, 2015). In terms of contract value, 10% of the contracts had values less than 1 mil. PLN, while 70% were between 1 and 100 ml. PLN. Also, 95% of the projects were initiated by local authorities.

There was some uncertainty among the private entities as between 2009 and 2015 only 100 contracts were signed out of 300 listed projects. The possible reasons might be the lack of trust in this investment model, lack of information,



**Fig. 6** Types of projects under public-private partnerships

unbalanced risk distribution between the public and private entity, low profitability, lack of research documentation or lack of financial and human resources. Despite these issues, the number of new public–private partnerships maintained an upward trend and in 2020 there were 100 more contracts signed than in the previous year, reaching 5% of the total public investments (similar percentage to the France achievements). The number of projects listed by public entities and the percentage of signed contracts compared to the number of listed projects also increased. In Poland, distinct from France, there are several regulations and norms that detail the public–private partnership, as they do not have a common procurement code. The responsibilities related to promoting partnerships, managing, validating and providing the necessary support are distributed among several public authorities. Furthermore, there is no national entity intending to correlate the activity of the multiple authorities engaged in this subject.

From my point of view, all the mechanisms aimed to promote public–private partnerships along with the access to the standardized documents have facilitated the expansion of this investment model, especially at the local level. In addition, the access to European funds has increased the attractiveness of public projects among private entities.

The European Commission also offers its support to improve the public–private partnership legislation and to promote this concept among member states through the Green Paper on public–private partnerships and community law on public contracts and concessions, published in 2004. A new authority has been created in collaboration with the European Investment Bank, called the European Public–private partnership Expertise Centre and it has multiple responsibilities in assisting public entities in the initial stages of the projects, exchanging information and good practices, publishing several reports and guides about this procurement model. The hybrid contract developed by the European Commission is another confirmation that public–private partnerships are encouraged throughout the entire European Union (Cieślak, 2016). A report made by the European Courts of Auditors in 2018 presents several recommendations for the current legal framework regarding public–private partnerships. First, they mention about the importance of transparency during the listing and acquisition procedure but also in the later stages. Another important aspect that all the authorities should consider is to have a comparative analysis of all the funding options in order to be convinced that the public–private partnership is the best solution for that particular project. The last recommendation is to increase the project management competencies among the authorities that want to implement this type of contract (European Court of Auditors, 2018).

#### 4 Recommendations for Romanian Legal and Institutional Framework

In Romania, public–private partnerships have first been mentioned in 2002 with the publication of the Law no. 137/2002 regarding privatization procedures in which it is stated ‘In order to attract new types of funding, public–private partnerships may be developed according to the dispositions provided by the general regulation’. Since 2002 the legal framework has been revised several times by Government Ordinances, Government Emergency Ordinances or other subsequent laws. This procurement form is currently defined by a series of acts, ordinances and methodological norms and this may be confusing for the interested authorities. The main legal documents are: Law no. 100/2016 regarding concessions of public works and services, GEO no. 39/2011, GEO no. 86/2011, GEO no. 96/2012, GEO no. 11/2014, Law no. 528/2004, Law no. 219/1998, GO no. 16/2002, GEO no. 34/20016, Law no. 293/2003 to which are added more acts that influence the public–private partnerships. The lack of a clear legal framework discourages the authorities that may be interested in this type of contract, as there is an increased risk of omitting some procedural details that are mentioned in additional acts or ordinances. These issues are also sustained by the fact that until 2019 no public–private partnership contract was signed based on the law from 2010. In 2018 by the Government Decision no. 357/2018, several strategic projects were assigned to be carried out with public–private partnerships (roads, railways, hospitals and airports), but until 2019 only feasibility studies were approved, the overall procedure lasts longer. After the feasibility study is approved by the government or other deliberative authorities, the contract assignment procedure is initiated, the best financial offer is accepted and the contract is signed. One of the main issues regarding the implementation mechanism is the lack of a section dedicated to these initiatives on the public platform SEAP (Electronic Public Procurement System), there is only one section dedicated to concessions (Vass Lawyers, 2012). This fact is reducing the visibility of the projects and discourages both private and public entities from initiating these procedures which are vulnerable precisely due to the lack of transparency. In addition, there are no platforms available for consultations or collaboration between the interested entities, as we have seen in Poland. The number of public–private partnership initiatives is very small, although the overall experience and results of countries promoting such procedures is positive. In the European Union the project value is around 5% out of the total public investments, but in UK and Australia is around 15%.



According to the Law no. 178/2010 (2010), ‘centralized coordination and monitoring of public-private partnership projects is in the responsibility of the Department for Infrastructure projects, foreign investments, public-private partnership and export promotion’, revised by GD no. 11/2014. This department transformed later in a General Division under the General Secretariat of the Government entitled ‘National Commission of Strategy and Forecast’ is responsible with developing the public-private partnerships database, but the online platform does not benefit from a very good visibility and the site design is not user friendly (National Commission of Strategy and Forecast, 2020).

Based on the comparative analysis of the legal and institutional framework from Poland and France, the current legislation from Romania on public-private partnership can benefit from important improvements in order to increase the visibility of this collaboration model and to facilitate the access to the resources and know-how owned by the private entities and finally to support the development of public facilities without the constraints of a limited public budget. The online platforms dedicated to public-private partnerships are a valuable instrument, but they must be updated periodically, must contain clear and structured information accessible to both private and public entities and must increase the transparency of these initiatives. Through these platforms, the assigned central authorities can provide support and both technical and financial consultancy to all the entities involved or interested in this type of investment. As to the legal framework, one country recently implemented a common procurement code (France) and one country for which the public-private partnership is detailed in several acts and norms (Poland), which makes it difficult to comprehend all the specifications and changes. Implementing a single legal framework has many advantages and ensures a correlation between the different regulations that were published over time. The frequent changes occurred to the law of public-private partnership through several Government Ordinances, Emergency Ordinances or other related laws affected the stability and reliability of this investment model and make it more vulnerable. Public-private partnerships are long-term commitments and the contracting procedure can last 1–2 years (depending on the complexity of the project) and for this reason, the legislative stability is mandatory, without discouraging the correction or improvement of certain aspects that proved inefficient.

As regards to the institutions and authorities with a consultative or deliberative role, the support from Poland may be considered more consistent as there are various entities meant to promote and facilitate this concept among different public or private entities, to offer consultancy or to develop methodologies, framework papers, guides or model projects and contracts. In France, these authorities are specialized on various project categories such as health

facilities, courts and prisons. Depending on the complexity of the public investments and procedures, it may be better to have specialized departments or divisions, but this measure may be implemented at later stages when the volume of projects increases significantly. In Romania, it may be too early to propose this measure as there are few initiatives made by central authorities and not by local authorities. In Poland, the online platforms were developed as an important instrument to support the high increase in the number of public-private partnerships initiated by local authorities. In order to encourage and promote this concept, it is necessary to organize project management training for the local authorities so as to be able to follow up the project course and to properly evaluate the private entity’s performance.

The procedure for public-private partnerships is not very different from the regular public procurement, but the later stages are more difficult for central and local authorities as they include project monitoring (time frame, objectives, performance indicators), risk management and periodic evaluations. The assistance of public entities must be continuous and should be supported through several means of communication: online platforms, consultations or working sessions. The Romanian government must also adopt measures to increase the attractiveness of these public investments among private entities, as they are not so popular nowadays (e.g. financial facilities, access to European funds, guaranteed loans by the state or local authorities, promoting public initiatives on SEAP platform and other dedicated online websites).

Regarding the new urban developments from Romania, there is a high demand for public facilities that are evenly distributed and at an acceptable walking distance from the residential areas. Public-private partnerships may be a valuable instrument that can improve the access to the most important facilities without the constraints of a limited public budget. First of all, the local authorities should undergo a study on the existing public facilities and the demand for new projects and to further identify the potential locations for them according to the surface needed and accessibility. The investments should then be prioritized based on the population density in those areas and the local authorities should further initiate the acquisition procedure using the expropriation law or public procurement law. After the parcels are registered in the public property inventory, the local authorities can start the feasibility study and list the project on the dedicated platforms in order to find a private entity interested in that investment. The local authorities may also consider making a reservation of a piece of land from the initial stages of a new urban development and buying it from the investor. Although this procedure involves certain acquisition costs, the resources needed are fewer than in the case of a project implemented solely by the local authority (parcel and building costs, maintenance, service



management) and the same limited public budget would allow the development of more facilities simultaneously as they will have access to European funds and private resources. The risk distribution is also an important advantage in favour of the public–private partnerships as the demand for these facilities may fluctuate and on mid or long-term it may be more cost-efficient to conclude the contract and leave the building to the contractor, as the flexibility is higher.

Although this concept may seem to have more advantages to the public entities, it may also be seen as a win-win situation as the real estate developers can better evaluate their properties and housing units if there are new public facilities in the area. The buyers are starting to become more aware about the importance of having all the facilities at a reasonable walking distance in order to reduce the car dependency. The real estate developers will have two possible action plans, to sell the parcels designed for public facilities to the local authorities in order to allow them to make the necessary investments or to assume to build the facilities with their own resources, which may seriously affect their profit. In addition, the private companies that invest in public facilities may benefit from multiple advantages: more credibility in the market as they become a partner of a central or local authority, improved image as they show interest for the community needs, reliable fixed income on long-term for the public services they provide.

In conclusion, in order to improve the mechanism of public–private partnerships in Romania, the authorities should consider implementing a dedicated section on the public platform SEAP together with online platforms for consultation and collaborations between the interested entities, updated periodically with free access for both private and public actors. Furthermore, the central authorities should pursue to create one single and coherent legal framework that can ensure a correlation between the different regulations that were published over time and that highly discouraged the use of this instrument. The legislative stability is also an important aspect to be regarded, as the public–private partnerships are usually long-term collaborations, without discouraging the correction or improvement of some aspects that proved to be inefficient. The central authorities should assist all the public entities interested in using this instrument, through different means of communication: online platforms, consultations or workshops. Considering the different procedures specific to each type of public investment, it may be necessary to create specialized departments, but this measure is highly dependent to the volume of projects and the difficulties encountered during implementation.

## 5 Conclusions

The mobility of population and economic activity leads to a high and unpredictable demographic pressure on large urban areas and as a consequence the real estate developers are investing in new residential areas in the urban peripheries in order to meet the demand for new housing units. Furthermore, there is an extensive phenomenon of peri-urbanization of the first communes around the important urban centres which in some cases leads to their integration in the metropolitan area. The expansion with new residential districts brings a lot of problems to the local authorities that need to ensure access to the minimum public facilities (education and health facilities, sport fields, parks, social services and social housing), constrained by a limited public budget and no available public plots. The authorities need to find sustainable ways in which they can support this dynamic development without compromising the investments in other sectors.

In the context of promoting smart and adaptable cities and an increased complexity of urban developments, the concept of public–private partnership is a valuable alternative that is not affected by the limited financial capacity of the public authorities. Although the average value of these projects among European Union member states is just around 5% of the total public investments (considering that there are also states that have not signed any partnership commitment until now), the European Commission encourages these collaborations since 2004 when the Green Paper on public–private partnerships and community law on public contracts and concessions was published, but also with more recent papers and programmes. The main advantages that this investment model has are: risk distribution between the public and private entities according to their competences and efficiency in solving potential obstacles (market risks, development/planning risks, project risks, political risks, regulatory risks, financial risks), access to private resources and know-how, possibility to implement several public projects simultaneously without being constrained by a limited public budget, less vulnerability to the economic and political instability (long-term commitments), proper maintenance of the buildings, efficient management of contracts (integrated projects covering all the stages: finance, design, build, maintenance works and service management) and better access to public facilities on short-term. The potential issues of public–private partnerships are the need to increase the contract management competences of the project team (allocated by the public authority) and to implement clear project monitoring mechanisms (e.g. performance indicators, periodic evaluation). One major disadvantage is the multiple

factors that may influence the project success rate on long-term as it is impossible to capture all the potential scenarios in the contract. This fact can be overcome by a good communication between the two entities, willingness to teamwork and full commitment to the project objectives. Both entities need to be flexible with the requirements mentioned in the contract as they can be adjusted during time according to the context. The legal and institutional framework from Poland and France revealed two perspectives upon the mechanisms that may encourage and support the initiatives for public-private partnership. Both states have created several national authorities responsible with developing standard documents, methodologies, guides and contract models and also online platforms for experience exchange and access to projects database. The legal framework is integrated in one procurement act in France and in multiple legislative papers dedicated for each type of procurement in Poland, both examples may be used as models for Romania, so as to achieve an integrated, correlated and stable legal framework.

In conclusion, public-private partnerships have many benefits to all the entities involved, starting from the property owner or developer that needs to better evaluate their new residential areas, the private entity that wants to invest in public facilities, the public authority interested to ensure the access to all the minimum facilities for the community and the final user who want to live in a sustainable and well-developed district.

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