

PUBLIC-PRIVATE PARTNERSHIPS (PPPs) AS TOOLS FOR PRIVATISATION THE CASE OF SPAIN



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Contact: observatori@odg.cat www.odg.cat

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PUBLIC-PRIVATE PARTNERSHIPS (PPPs) AS TOOLS FOR PRIVATISATION E2 E3 PPP 컶값



INDEX

| 1. | INTRODUCTION | б |
|----|--|----|
| 2. | MAIN RISKS OF PUBLIC-PRIVATE PARTNERSHIPS (PPPs) | 9 |
| 3. | THE GLOBAL CONTEXT: THE EXPANSION OF THE NEOLIBERAL DOGMA AND FINANCIALISATION | 19 |
| 4. | THE SPANISH CONTEXT: A LOOK AT PUBLIC-PRIVATE GOVERNANCE | 29 |
| 5. | REGULATION OF PPPs | 35 |
| б. | CASE STUDY: THE AP7 MEDITERRANEAN HIGHWAY | 47 |
| 7. | CONCLUSIONS AND RECOMMENDATIONS | 54 |
| 8. | REFERENCES | 58 |
| 9. | ANNEX | 62 |

1. Introduction

Public-Private Partnerships (PPPs) came into existence in 1992 in the United Kingdom as an accounting trick used to avoid government restrictions on public debt, a feature that remains their main attraction for governments and international institutions. As the rest of Europe and the world started to limit public debt with the application of austerity measures, PPPs took off as a component of privatisation policy and a way of balancing budgets through the concealment of debt.

Analysing the process of financialisation and the expansion of neoliberal dogma at the international, European and Spanish levels, we also see a clear trend towards the promotion of the PPP model by institutions as a tool for the privatisation of public goods and services. A brief overview highlighting some of the most relevant economic and political strategies of recent decades will help us to better understand and contextualise the rise of PPPs in Spain.

The PPP recipe is becoming almost the only mechanism used to finance and/or manage our public goods and services. The mantra we hear over and over again is that "private enterprise" is more "effective" and "efficient" in the management of our productive and reproductive economy¹. Thus, the private sector should be invited into sectors that have traditionally been in the public domain (such as health, education, transportation, infrastructure etc.) and facilitate its participation therein.

By "reproductive economy", we refer to all reproductive and care work, which includes the work necessary for human reproduction, as well as the care and attention necessary for the maintenance of human life and survival. Traditionally women take care of these invisible tasks, for no financial compensation.

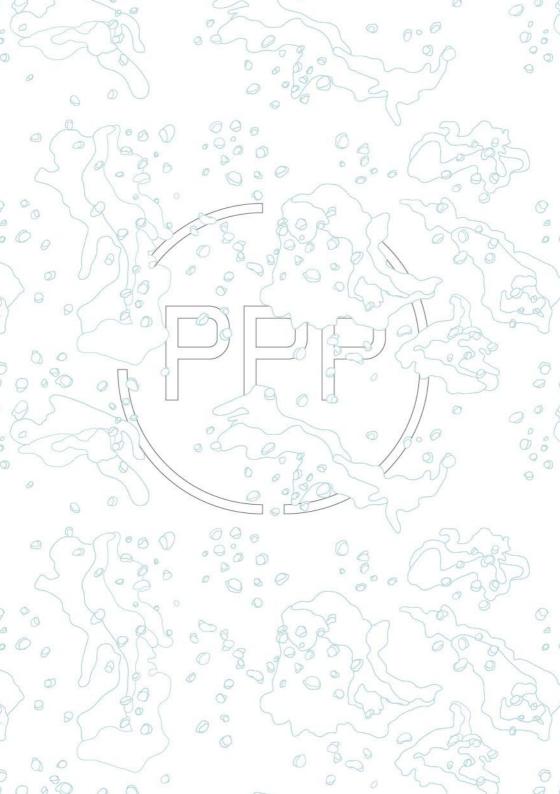
1. INTRODUCTION

However, more and more critical voices are emerging, such as the European Court of Auditors, which criticised the ineffectiveness of many PPP projects in different EU member states in 2018². In spite of this, in the Spanish State, unlike other countries and despite being one of the Member States where the practice is most widespread, there is currently no specific regulation of PPPs or organisation charged with ensuring that they operate in an optimal way. The recent launch of the Independent Office for the Regulation and Supervision of Public Procurement (OIReScon, after its Spanish name) suggests change is happening, but brings up many questions.

7

This report demonstrates that PPPs work very well for investors, the private sector and the ruling political class, while frequently draining public funds and often failing to respect the environment or to respond to citizens' needs. The case study included in this report is the paradigmatic case of the AP7: the Mediterranean motorway which connects the entire Mediterranean coast from the border with France to Algeciras, and has caused an open conflict between Albertis and the Ministry of Development.

2 Special Report on Public Private Partnerships in the EU: Widespread shortcomings and limited benefits https://www.eca.europa.eu/Lists/ECADocuments/SR18_09/ SR_PPP_EN.pdf





MAIN RISKS OF PUBLIC-PRIVATE PARTNERSHIPS (PPPs)

PPPs vary by country and sector (ODG, 2018). They can range from informal and short-term collaborations to implement specific programs or projects, to more complex, formal and long-term contractual agreements in which the private sector collaborates in the supply of assets and services (Hall, 2015).

The experience of PPPs has been overwhelmingly negative and few have obtained positive results for the public interest, exposing the public to tremendous risks.



WHAT IS A PUBLIC-PRIVATE PARTNERSHIP?

The institutions which promote PPPs use very broad definitions, thus leaving room for PPPs to be used to achieve a wide variety of objectives in various sectors, such as transport, social housing and healthcare, and to be structured to adopt different approaches. The World Bank defines a PPP as an "agreement between the public sector and the private sector where some public services or tasks are provided by the private sector under an agreement of shared objectives for the provision of the service or infrastructure". The Organisation for Economic Cooperation and Development (OECD) defines PPPs as "long-term contractual agreements between the government and a private sector partner where the latter finances and provides a public service, using a capital asset and sharing the associated risks" (OECD, 2012). The European Commission defines PPPs as "collaboration between the public and private sector for the development of public infrastructure and / or the provision of a public service, either in the design, construction, financing, operation or maintenance phases (or in a combination of these phases) where the concessionary organisation receives payments from service users or from the public administration" (European Commission, 2004).

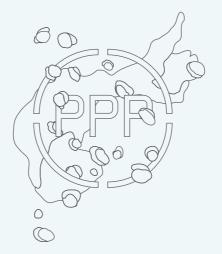
In practice, these broad definitions have been translated into policies and laws which allow various types of PPPs, through arrangements such as concessions, joint ventures or contractual PPPs. In the water supply and sanitation sector, for example, PPPs can range from a minor private sector involvement using a service contract to comprehensive privatisation. There are three main types of PPPs:

- ▲ → Concessions, where the private actor is authorised to charge the public for the use of the facilities, usually by paying a toll, a fee or a bill (for example, a water bill or road tolls). This can be complemented by subsidies paid by the government. The toll, fee or bill reimburses the private costs of the construction and operation of the facilities.
- **B** \rightarrow **Joint** / **mixed companies, or institutional PPPs**, where both the public and private sectors become shareholders of a third company.
- C → Contractual PPPs, where the relationship between the parties is governed by a contract. In the EU, the most common form of PPP is the "turnkey" contract for design, construction, financing, maintenance and operation. Here the private sector partner is entrusted with all phases of the project, from design to construction, operation and maintenance of the infrastructure, including fundraising (European Court of Auditors, 2018). In the Spanish State, two different models have been identified which fall under this category: one is the PFI (Private Finance Initiative) model and another is the PPP (Public Private Partnership) model, which are summarised in the section below.

The private party receives a return on its investment in two main ways. One is a "**user pays**" **scheme**, for example through tolls on the highway or through a fixed payment on the supply bill. The other is the "**Government pays**" formula. This means that payment to the private sector comes through regular payments from the public partner based on the level of service provided. Payments may depend on whether the good or service is provided according to the quality defined in the contract or on how many users the services are provided to, such as a 'hidden toll road' which is free for users although the government pays a fee per driver to the operator (ODG, 2018). Taking into account the main characteristics that projects managed by PPPs have shown in practice, we can give the following definition:

DEFINITION OF PUBLIC-PRIVATE PARTNERSHIPS (PPPs)

PPPs are medium or long-term contracts between the public and private sectors. Backed by public guarantees, the private sector builds and / or manages goods or services traditionally provided by public institutions (whether national, regional or local), such as hospitals, schools, roads, railways, water, sanitation and energy infrastructure, amongst others. In this way, the project risk is shared between the public and the private sector or rests entirely with the public sector. The contract can cover the design, construction, financing, operation or maintenance phases, or all of them. The private actor receives payments from users or from the public administration.



THE MAIN RISKS OF PPPs

There is already a large body of literature demonstrating the risks that the PPP model may entail³. In summary, we identify four main risks:

1 \rightarrow PPPs are more expensive

PPPs are, in most cases, the most expensive method of financing a project. They cost governments - and therefore citizens - significantly more in the long term than if the projects had been directly financed through public debt. This is due, amongst other reasons, to the higher interest rate for private financing operations compared to government loans, to the fact that private sector companies expect to obtain a profit from their investment increasing the overall cost of the investment, or to the increase in the final cost of a project due to renegotiation costs. The privileged position of the private sector company, the lack of experience of the public entity in these negotiations and the lack of transparency means that renegotiation generally significantly profitable for the ruling political class, since they offer the possibility of doing "great things" in a short period of time (the 4 years until the next election). Short-term policies are often beneficial in the electoral realm, but not in the long term for public coffers.

2 ightarrow PPPs MOVE RISKS TO THE PUBLIC DOMAIN

In principle, in a PPP project, risks should be assigned to the party that is best able to manage them, in order to achieve the optimal balance between the displacement of risk and the compensation of the party that assumes it (European Court of Auditors, 2018). The private sector partner is often responsible for the risks associated with the design, construction, financing, operation and maintenance of the infrastructure, while the public sector partner generally assumes regulatory and political risks. However, experience has shown that when these risks are assumed by the public entity they often result in **contingent liabilities**. These are hidden costs, payments that governments may have to make for assuming risks if a future uncertain event occurs which is outside the control of the government, such as if the demand falls below a specific level (demand risk).

³ See for example: ODG (2017b), International Manifesto (2017), European Court of Auditors (2018), EURODAD (2018), ODG (2018), EURODAD (2019).

Current PPP accounting practices allow governments to keep the project out of their accounts, since it is the private sector and not the government that holds the loan that finances the project. This can be called "creative accounting", where the real cost of a project is hidden "off the balance sheet" and therefore not transparent or auditable. Therefore, there is a complete lack of information on public guarantees in PPP projects. Currently, it is not possible to calculate exactly how much public debt could be created through the PPP model if the public sector has to save a private investment, converting private debt into public debt. These practices expose public finances to excessive risks, and many of these "bailouts" can be described as illegitimate debts.



WHAT IS AN ILLEGITIMATE DEBT?

In international law, a debt is illegitimate if:

- → It is debt that derives from financial agreements that (either in the contracting or renegotiation phases, or in what they establish, in what they finance or in the impacts they cause) violate human rights or the principles of international law recognized by the nations of the world which govern relations between states and between peoples.
- → External debt can also be considered illegitimate in its entirety, as a mechanism of domination and impoverishment which perpetuates unfair and unequal South-North relations and responds fundamentally to the interests of creditors: in particular, the economic elites (in the Global North and South).
- $\rightarrow~$ A debt whose funds are used to acquire means and weapons for the repression of the population or for other questionable purposes, such as buying warships, submarines, fighter jets and combat helicopters.
- Bank bailouts are also included, because they do not fulfil the aims for which they were conceived but instead enable the private financial sector to get rid of toxic assets, to pay part of its debts and to restructure obtaining large profits.

An illegitimate debt is therefore a debt that the borrower cannot be forced to pay.

"Illegitimate debt" is not a technical or legal notion, but a political concept that evolves depending on the territorial context. That is, it must be the citizens themselves who democratically define what illegitimate debt is at a certain historical moment⁴.

The definition of a debt as illegitimate is independent of the political organization of the State that contracts it, be it a dictatorship or a government constitutionally elected at the polls. The non-payment of such a debt is not due to legal issues, but to the unjust and morally illegitimate nature of a debt that generates great inequalities and goes against the common good.

⁴ For example, definition of the Public Debt Audit Platform (PACD), citizen platform of the Spanish State that emerged from the 15M movement in 2011: https://auditoriaciudadana.net/2013/04/11/lo-que-quiere-decir-la -pacd-when-talks-about-citizen-audit-of-debt-and-illegitimate-castcat /

3 \rightarrow PPPs threaten democracy through lack of transparency and corruption

PPPs often suffer from a lack of transparency and limited public scrutiny, which in many cases leads to poor decision-making due to reduced supervision and increased opportunities for corrupt behaviour (ODG, 2017b). The lack of transparency is a consequence of poor fiscal transparency and opaque decision-making processes. Many countries do not publicly disclose the full details of the guarantees and contingent liabilities associated with PPPs, or the conditions which generated them or their contracts, which are of vital importance for public scrutiny. This makes fiscal policy decisions less informed and encourages governments to move forward with projects even when they can create fiscal problems in the future.

In addition, PPP contracts often undermine the right and obligation of the State to regulate in the public interest. PPPs can limit the ability of governments to enact new policies -for example, reinforced environmental or social regulations-, if they affect specific projects. It could be said that PPPs mortgage the future, reducing opportunities for future governments to implement progressive policies.

4 ightarrow PPPs CAUSE SOCIAL, ENVIRONMENTAL AND GENDER IMPACTS

PPPs can result in social, environmental and human rights abuses. In many cases, the private sector selects a small number of the most profitable projects and convinces governments to give priority to investment in these projects, not taking into account the distortion this causes in the provision of public services or its impacts on human rights and the environment. The final service does not matter, economic profitability matters: the "business of building." In the case of infrastructure, this has created a tendency to finance mega-projects according to the Big-Big-Big paradigm: big projects, big investments, big corporations (XSE, 2018). A paradigmatic example in the Spanish State is the failed Castor project, which is currently pending resolution, and has generated a strong social resistance⁵.

The construction of large projects under the PPP model -such as dams, power grids, oil rigs, gas pipelines, mines, ports, railroads and highways-, produces violations of fundamental human rights. Large infrastructure projects or corridors (such as the Belt and Road Initiative in China) are destroying territories and ecosystems, and displacing entire communities, especially in the Global South, where they also face violence and repression by corporations.

The PPP mega-project model has a devastating climate impact, which endangers future communities and generations which will be affected by climate change, especially in the Global South. Mega-projects designed worldwide are based primarily on high carbon transport (airports, highways) and energy infrastructure (including fossil fuels).

The PPP model exacerbates gender inequality. First, the search for profits by the private sector restricts access to services for the most vulnerable people, often women, migrant women etc. For example, a change in public transport prices especially affects women, as they are the main users, either going to work or to perform care work. In addition, the more governments pay private companies, the less they can spend on essential social services with a gender perspective, such as universal social protection, vital to the realisation of women's rights. Finally, the objective of the private investor to

⁵ The Castor Case is a citizen action in the form of a criminal complaint, promoted by the ODG, Xnet and the IDHC. Its objective is to identify those responsible and end the fraud and impunity generated around the Castor project; a gas storage facility that has not operated for a single day, executed by EscalUGS of ACS, with the complicity of the PP and the PSOE. The cost of the controversial compensation to the company was initially charged to gas consumers, and has now slowed down but is pending final resolution: https://casocastor.net/

obtain profits limits the provision of decent work for women in PPP projects. For example, there is a growing tendency to use international agencies to outsource workers with flexible contracts (Graham, 2010). Outsourcing erodes working conditions, especially with regard to the prevention of occupational hazards.

THE GLOBAL CONTEXT: THE EXPANSION OF THE NEOLIBERAL DOGMA AND FINANCIALISATION

During the 1990s and 2000s there was talk of a "globalised world", which referred to the expansion of capitalism throughout the globe (with some geographical exceptions) that led to a profound transformation of economies and societies, affecting our ways of thinking and relating, and our cultures and values. We were and still are experiencing exponential technological progress but also a deepening of the international and gender-based division of labour⁶. In search of lower wages (a determining factor for the final price of goods and services), international economic production has been reorganised, relocating production and outsourcing its social and environmental impacts. We have seen the acceleration of international trade and increased transport of goods throughout the world, as multinational companies, the free movement of capital and the definitive establishment of the consumer society become increasingly significant.



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Global "chains of care" are activated. Women, mainly from the Global South, leave their families, immigrating mainly to countries of the Global North to work as caregivers for the elderly and children. The impacts have been very serious for the environment (the disappearance of many species⁷, acceleration of climate change etc.), for the most vulnerable sectors of societies (migrant people, women, children), and for workers who have lost their jobs or seen their working conditions deteriorate. The legal system has been affected by a standardisation and simplification of national and international procedures and regulations, in many cases favouring economic and financial actors. Undoubtedly, the winners of globalisation have been the multinational corporations, which emerged as powerful actors on the world map, and the economic and political elites of the Global North and South, who were able to play the game and keep the biggest slice of the cake for themselves.

If we talk about "living in a financialised world," what does it really mean? It means that we live in the phase of the capitalist economy in which finance has become extraordinarily powerful, penetrating our daily lives and international, national, regional and local political decision making processes.

WHAT IS FINANCIALISATION?

Financialisation is a process and a current phase of the capitalist economy in which finance has become extraordinarily powerful, penetrating everyday lives and international, national, regional and local political decision making processes. It is based on speculation in various financial products not linked to the real economy, which are bought and sold, generating capital gains which are "fictitious" in that they are not related to the value of a material good but to its future value.

7 See the sixth great extinction. https://elpais.com/elpais/2015/06/19/ciencia/1434727661_836295.html

THE HISTORICAL DIMENSION OF FINANCIALISATION

Financialisation is closely linked to the process of globalisation and the expansion of neoliberalism as a dominant ideological model. To understand the success of neoliberalism, one must return to the 1970s. The crisis of the 1970s marked both the end of the period of economic growth in the US and the more developed economies (1945-1970) based on a model of economic growth through the productive economy, and the end of an era characterised by the social pact between social democracies and the European bourgeoisie, and the construction of the welfare state (Espai Fàbrica, 2017). The years that followed were a decade of deep global economic crisis, marked by the oil crises of 1973 and 1979 and the external debt crises of the countries of the Global South; in Latin America, Africa and Asia. At the same time, the breakdown of the Bretton Woods international monetary system⁸ in 1970 necessitated a redesign of the international financial system.

This new financial system was designed based on the neoliberal policy prescriptions endorsed by the world establishment during the 1970s and 1980s. These were collected in a text, written in 1990 by the American economist John Williamson, and became known as the **Washington Consensus**. The main "tenets of faith" are the following (ODG, 2003).

→ The role of the State: Since the private sector manages resources more efficiently than the public sector, governments must reduce the State to its minimum expression and leave most of its management to the private sector. The State must be a facilitator of private sector business (stability), an occasional regulator of market excesses (poverty alleviation and environmental protection programs) and a guarantor of peace (governance).

In the Bretton Woods agreement of 1944, the US dollar was established as the central currency of the international financial system, linking it to gold with a fixed exchange rate with the other currencies of the great world economies.

- → On the advantages of globalisation (and financialisation): The economies of countries must internationalise at all costs. It is necessary to open borders to capital, to attract as much foreign investment as possible, and to aim to send domestic production abroad and for foreign companies to install themselves in national territory. In a word, you must transnationalise.
- → On the distribution of wealth: The presence of development hubs and wealthy elites will start a "trickle-down" process whereby wealth moves from the hubs to the classes less favoured by the model.

This neoliberal dogma has been translated into a set of political measures, which are promoted by multilateral institutions such as the International Monetary Fund (IMF), the World Bank (WB), regional development and investment banks, the institutions of the European Union, and the conservative governments of the North and the Global South. The implementation of this neo-liberal dogma has led to the reduction of public spending, the reduction of wages, the privatisation of public companies to improve competitiveness and the reduction of taxes as a tool to revive the economy. Consequently, the public sector has weakened: many social protection policies and public services and goods have disappeared or shrunk as they are privatised with the objective of reducing public spending and deficit.

THE EXPANSION OF FINANCIAL POWER

Financialisation brought about the expansion of the power of financial actors over the economy and the public sector, and the creation of financial instruments and mechanisms which expand their domain more and more. In the finance sector, neoliberal policies led to the liberalisation of finance, reducing barriers, eliminating regulations and control mechanisms, facilitating tax havens, reducing taxes for large corporations, deregulating direct foreign investment in the countries of the Global South etc. Finance could thrive, expand, adapt new roles and enter spaces where it had not previously existed. For example, the liberalisation of the financial market under the Financial Services Agreement (1999) and the General Agreement on Trade and Services (1994) of the World Trade Organization (WTO) allowed the US to export the financial model of extreme deregulation to more than 100 signatory countries of the WTO (ODG, 2005).

At the same time, the power and size9 of financial actors (such as vulture funds) and their influential lobbies grew, creating an immense portfolio of mechanisms that allowed them to extract maximum profits from the productive and reproductive economies. In other words, financial interests are now everywhere, from public services to private and household debt, from real estate speculation to carbon trading, and from infrastructure bonds and pension funds to PPPs. The new financial elites have established themselves as almost untouchable actors. The management of the financial crisis of 2008 by politicians has undoubtedly shown the predominant influence of finance in international and national politics. Neither in the Spanish State, nor in other countries affected by the financial crisis, have we seen control and prevention laws or measures implemented, or those responsible held to account, as promised to citizens.

P The 50 largest investors worldwide hold 39.78% of the control of the global network of multinational companies. They are mostly from the financial sector. Blackrock, in 2013, participated directly in 35 of the largest companies in the Spanish state. It manages more than 5.1 billion dollars in assets, which represents 4 and a half times the GDP of the Spanish State. See: Vitali, Stefania; Glattfelder, James B., Battiston, Stefano. (2011). The network of global corporate control. Y Santos Castroviejo (2013): Elites of economic power in the Spanish State in 2013.

THE ACCUMULATION OF WEALTH OUTSIDE THE PRODUCTIVE AND REPRODUCTIVE ECONOMY

Another key feature of the financialisation process is a change in the way wealth is accumulated. Neoliberal policies opened the door to a new model: the "fictitious" economy, where the highest returns are no longer obtained through the real economy but through speculation in financial markets. While in the past profits came mainly from the production of commodities and trade in goods, today global wealth is largely extracted through speculative financial channels instead being reinvested in the productive economy. According to the Transnational Institute in 2010, financial wealth was 316% of global GDP.

└∠ Fuente: TNI (2018): Financialisation. A primer.

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IMPACTS OF FINANCIALISATION

The financialisation process has reached a point where it can be said that everything has become a financial product, or an asset class¹⁰. Everything is commodifiable. We live in a time of deep financialisation of our daily lives. Financialisation is present in public or common goods and services provided to meet the needs of the population such as education, health, energy, infrastructure, housing, food, development assistance or climate policies. With the entry of private finance into these sectors, the public sector has gradually reduced its role as protector of economic, social, cultural and environmental rights (ESCRs) of citizens and now responds to investors.

Financialisation has increased global inequalities between countries, classes and genders, while the profits and wealth concentrated by the financial sector have increased as never before¹¹. The losers of financialisation and neo-liberal expansion have undoubtedly been the general populations of the countries of both the Global South and North. They have suffered the impacts of the systemic financial crisis of 2008 and have paid the price of the "bailout and structural adjustment" or "debt relief" programs that national, supranational or multilateral institutions (especially the IMF) have imposed on them.

¹⁰ In finance, an asset class is a group of financial instruments that have similar financial characteristics and behave similarly in the market. We can often divide these instruments into those that have to do with real assets and those that have to do with financial assets.

¹¹ https://www.imf.org/en/Publications/WP/Issues/2018/03/13/The-Distribution-of-Gains-from-Globalization-45722

THE RISE OF PUBLIC-PRIVATE PARTNERSHIPS (PPPs)

Amidst the process of expanding neo-liberalism and financialisation, the Public-Private Partnership (PPP) model appears. Among the main arguments used to defend PPPs, one of the most recurrent is that they dilute the budgetary burden, meaning that public administrations do not have to pay for goods or public service upfront, but can divide and defer the cost of the project or service. In turn, it has been argued that they provide advantages to the public sector because, without losing ownership of the asset, they transfer the risk to the private sector and prevent assets from being counted as debts in their balance sheets (Hernando Rydings, 2012). Advantages for private investors have also been highlighted, offering them "significant guarantees, especially the stability of long-term capital flows from public finances, as well as the incorporation of social or environmental advantages into a project" (European Commission, 2009). Regarding the quality of the service, it is insisted that PPPs accelerate the implementation of the service and improve efficiency, management, leadership and transparency. According to Deloitte, a global corporation focused on the provision of consulting and financial advisory services to the public and private sectors, PPPs provide the necessary financial resources for the execution of projects in the face of stability requirements or budget constraints¹².

¹² https://www.iagua.es/noticias/espana/deloitte/17/07/27/exito-o-fracaso-apps-depende-que-haya-marco-institucional-y-legal

However, the main reason for the promotion of the PPPs has been the neo-liberal narrative of the "efficiency" and "effectiveness" of the private sector vs nation states, which are in a situation of "lack of liquidity and too indebted to meet investment needs". In multilateral institutions such as the IMF and especially the WB (supposedly institutions mandated to create prosperity and development) official establishment interpretation dominates, which claims that the only way to finance development is to attract private financing. This argument is fed by the fact that after the bailout of the banking sector after the financial crisis in 2008, public coffers were empty in the countries of the Global North, and public deficit limits did not allow the states to borrow more. Along these lines, neoliberal institutions promote the PPP model as a perfect solution to compensate for the lack of liquidity of governments and present it as the only way to bridge the "finance gap"¹³. Paradoxically, these institutions rely on the good faith of the private investors (such as private banks or investment funds) who caused the 2008 financial crisis, and thanks to the bailout and public intervention, profited from it.

We end with a key example. In the European Union, neo-liberal dogma has been translated into a set of accounting policies that curb public investment capacity and that encourage public authorities to use the PPP model instead of the traditional form of public financing. The European System of Accounts 2010 (ESA2010) states that public investment expenses must be recorded in the accounts only once, during the year in which that investment is made, which means that they receive the same treatment as any other general expenses (Research for Action, 2018). Therefore, these rules prohibit public administrations from amortising their investments over the entire investment period as private corporations would. The consequence of this rule is to immediately count in one year the investments in public deficits that could have been distributed over 5, 10, 15 or 20 years (CADTM, 2019). For example, an investment of 10 million euros in the public sector would count for 10 million euros in public finances in a given year, while only counting for 1 million euros over 10 years in the private sector. As a consequence, public administrations seek a private "partner" that is not under the same restrictions and can invest for their own benefit within the framework of the PPPs.

¹³ For example, the Organization for Economic Cooperation and Development (OECD) estimates that by 2030 an additional \$ 70 billion will be needed in infrastructure.

IN THE FACE OF PRIVATISATION: RESPONSES FROM COMMUNITIES

Given this global context, alternatives and transformative proposals for the finance and management of services have emerged that demonstrate that it is possible - and desirable - to recover or build effective, democratic, environmentally friendly and accessible public services for the entire population. The alternatives encompass various possibilities, which involve public control and / or community management. These are usually generated at the local level, related to the municipalist movement.

In the Spanish State, the movement for (re)municipalisations demands transparency and democratic control of public services involving, and possibly managed by, the community¹⁴. Municipalities in collaboration with citizen groups have managed to re-municipalise almost 100 services in 66 municipalities in the last 10 years, with water supply being the service where the highest number of public management recoveries was achieved¹⁵. Another example of public-community management are self-managed community spaces such as Can Batlló in Barcelona, where collective volunteer work is carried out to meet the needs of the community.

On the threshold of public procurement, we also experience a growing role of the Social Solidarity Economy (SSE). Participating actors perform services for public administrations, based on criteria of social and ecological sustainability, respecting the ESCRs and demoting economic considerations to second place. The SSE offers a sustainable alternative to the aggressive PPP model proposed by large corporations and which holds maximum profit accumulation as the main objective.

¹⁴ For example, the National Alliance against Water Privatization.

¹⁵ https://www.elsaltodiario.com/remunicipalizacion/casi-cien-servicios-remunicipalizados-66-municipal-2011-2019-agua-publica

THE SPANISH CONTEXT: A LOOK AT PUBLIC-PRIVATE GOVERNANCE

In the late 1970s, and more intensely in the 1980s, deindustrialisation processes forced cities to take up a position in the international division of labour. Large cities lost their competitive capacity in the industrial sector and reinforced their economic specialisation in the tertiary sector, in areas such as commerce, tourism, leisure and cultural services, etc. Some territorial and economic planning strategies, formerly centralised by States, re-scaled towards local and regional governments (Brenner, 2004). In the Spanish State, this process overlapped with the cycle of democratisation after the dictatorship, decentralising powers especially towards the Autonomous Communities, but also to local governments. As this reorganisation of competencies progressed, various non-governmental actors, public-private coalitions and transnational corporations became part of the governance of cities.



The crisis of the interventionist policies associated with the Fordist period and criticism of the excess bureaucracy of the State led to the promotion of the "effectiveness" and "efficiency" of the market as optimal metrics for evaluating and improving public projects. In the United Kingdom, a new regulatory and political framework was quickly introduced: New Public Management. The proposal of Prime Minister Tony Blair to reform the Welfare State was to promote a system that combined "private and public provision in a new form of collaboration for our time" (cited in Deacon, 1998: 307). This "third way" incorporated public-private solutions as an alternative to publicstate planning which was criticised for being hierarchical, bureaucratic and inefficient (Davies, 2011).

Organizations such as the EU, the OECD, the IMF or the World Bank insisted and continue to emphasise that cities and their governments must be "entrepreneurial", supporting the *New Public Management*¹⁶ strategies. These strategies, which in the Spanish context started in city councils from the 1980s and 1990s, promised to increase not only efficiency in public spending, but also the differential value of cities and their influence in global financial circles. The main characteristics of this city-business model are the integration of private capital into the institutional architecture through PPPs, the speculative design and execution of urban projects and macro-events with risks assumed by the public sector and competition between cities for state or European funds (Harvey, 1989). In this way, local administrations have been taking an active role in negotiations with international holders of financial capital to attract investments, implementing institutional arrangements that facilitate alliances with local and global private holders of capital.

In this transition to **city-businesses**, States continue to play an important role, ensuring profitability for private businesses (economic and financial policies) in labour regulations and in the reproduction of the workforce (labour and social policies), centralising key policies for other areas of governments and influencing smaller-scale policies (Kazepov, 2010). Although there are decision, management and coordination tasks that are regionally or locally decentralised, the States retain a vertical strategic capacity through control, financial regulation and "spatial selectivity" functions, privileging parts of their territory in the process of economic specialisation (Brenner, 2004).

The period which began in 1986 was a turning point in the internationalisation

¹⁶ The geographer David Harvey (1989) has analysed this process as the transition of the role of local governments as managers to that of businesses.

and financialisation of the Spanish economy. On January 1, the entry of the Spanish State into the European Economic Community was announced, a process that culminated almost a decade later. **Restricted by European policies, the Spanish State moved definitively away from a regime of industrial accumulation, without the capacity or advantages needed to compete with the rest of the continent.**

Amongst the conditions imposed on the Spanish State for its European integration, one of the most decisive was to stop subsidising national industries. European payments were not aimed at industrial development, but at infrastructure plans associated with real estate cycles (Etxezarreta, 1991; Palomera, 2015). The governments of the PSOE (Spanish Socialist Workers' Party) opted for financial and real estate strategies, seeking to position themselves within the new continental-global order. **Through privatisation policies, the PSOE government facilitated foreign investment in a first boom period (1986-1990) which caused direct effects on the industrial sector and the first massive inflows of foreign capital into financial and real estate markets (Palomera, 2015; López, 2007)**.

In this first period, European capital managed to control areas where there was already foreign participation (chemical, automobile, electronics) but also those previously dominated by national capital (textiles, food and beverages) (Palomera, 2015). Between 1983-1992, the percentage of foreign shareholders in large Spanish companies increased from 14% to 40% of the total (Rodríguez and López, 2010). During successive socialist governments, a total of 77 public companies were sold, using measures defended with "euphemisms such as rationalisation, divestment or resizing" (Palomera, 2015: 32). The entry into the EU meant the subordination of national industrial capital to the interests of European multinationals, the privatisation of public strategic sectors and the implementation of policies that made financial-real estate cycles possible.

THE CONSEQUENCES: THE INDEBTEDNESS OF MUNICIPALITIES -BARCELONA AND MADRID

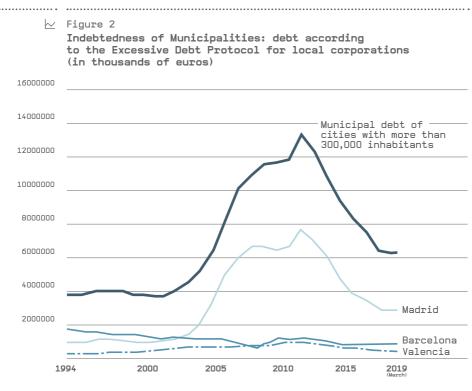
A brief overview of the trajectories of Barcelona and Madrid shows the progressive rise of the public-private solution. The trajectories of the two cities, key components of the institutional and economic architecture of Spain, show that the public-private solution has led to indebtedness and financial dependence, which subordinate public spending to the interests of corporate and financial actors.

In the mid-1990s, governance in Barcelona suffered a shift towards the efficiency imperative, sparking a proliferation of public-private planning and the creation of joint ventures and municipal institutes (Martí-Costa et al., 2011). In an increasingly accentuated way, Barcelona was moving government functions to large companies and developers. During the 1986-1992 period, publicprivate agencies and municipal institutes were created such as the Municipal Institute for Urban Development to coordinate construction for the Olympic games, the Vila Olímpica SA to carry out the Vila and execute expropriations or the Nova Icària SA to undertake architectural projects. The commitment to the Olympic Games increased the intervention of the private sector in the public domain. In 1993, the "Consorci de Turisme" (Tourism Consortium) was created with the participation of the City Council and the Chamber of Commerce. In 1997, joint ventures were created for the revitalisation of city neighbourhoods, such as ProNouBarris SA and ProEixample SA. Between 1997-2008, the public-private model and the development of strategic planning were consolidated, subordinating social policies to economic ones (Casellas, 2011). During this period forms of management inspired by New Public Management became more prevalent and the privatisation of services accelerated (via companies and Third Sector entities). As a result of the budget deficit accumulated between 2009-2011, the new CIU municipal government, led by Xavier Trias, increased taxes, reduced public spending and privatised services, infrastructure and public spaces (Davies and Blanco, 2017).

In the case of Madrid, the local government had followed the standardised city-business model since the late 1980's. The alliance with economic and financial actors gave increased weight to private leadership and coalitions of pro-growth elites (WMO, 2014). In 1980 the Autonomous Tourism Organisation of Madrid was created. In 1987, the Municipal Housing and Land Company of Madrid SA and the Municipal Spaces and Conferences Company of Madrid SA were created. In 1988, the Promomadrid Municipal International Development Company of Madrid was born, which sought to increase the city's international presence. Between 1989-2003, entities such

33

as IFEMA, the Municipal Transport Company, the Mixed Market Company and the Madrid Olympic City Consortium were created. As soon as European integration started the process of economic liberalisation, Madrid made new global financial and economic connections, especially with Latin America, which became the determining axis of its growth and its "new centrality" (WMO, 2007). In 2004, the most emblematic and expensive operation of the decade began: the renovation of the M-30 motorway. Madrid City Council created the joint venture Madrid Calle 30 SA. In 2007, Madrid Global was created to strengthen its international image and the Autonomous Community of Madrid announced the privatisation of Canal Isabel II, the city's water supply company. In 2013, the City Council accumulated a debt of 7,036,279 thousand euros, 721.19% higher than in 1994. Between 2011-2015 austerity measures tightened, with cuts in social programs and the privatisation of education, cleaning, transport and infrastructure services.



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└── Source: Prepared by the authors based on data from the Bank of Spain, last updated on July 1, 2019. Adapting to the new European Fiscal Compact, which obligated all European administrations (national, regional and local) to not exceed a maximum structural deficit of 0.5% of GDP, the Government of Spain passed Law 27/2013 on the Rationalisation and Sustainability of Local Administration (LRSAL after its Spanish acronym)^{17,} better known as the **Montoro Law. The LRSAL recentralises power towards the central government and imposes a spending rule that suffocates municipalities, prioritising the payment of debt.** It includes a zero replacement rate that prohibits hiring staff to replace employees who have retired. It promotes the privatisation of municipal services and their transfer to increasingly indebted regional governments. As a subsidiary of the constitutional amendment of article 135, the LRSAL limits municipalities, restricting their powers, their autonomy and their capacity for intervention.

In this way, over the past three decades, both cities have lost control over their services and infrastructure as they moved gradually into private hands. Although public-private solutions have been presented as a part of decentralised and efficient governance, this brief overview shows that they have not helped city councils into sustainable debt situations, but have led to austerity policies which impact on the ESCRs of citizens. These citizens are the people who, in the end, have paid the price of the citybusiness model.

¹⁷ Previously, in April 2012, the Spanish Congress approved the application of Law 2/2012 on Budget Stability and Financial Sustainability, the main legal expression of austerity. Previously, in 2011, the PSOE in agreement with the PP and UPN (other political parties) modified article 135 of the Constitution in accordance with the monetary policies of European mandate, prioritising debt payment and limiting public investment and indebtedness.

5. REGULATION OF PPPs

Previous research has shown that the lack of public scrutiny and transparency surrounding PPPs leads to poor decision making and opacity in the calculation of real costs, facilitating corrupt behaviour (ODG, 2017b). Although several warnings about the problem have been issued, all evidence suggests that improvements have not been made. To further discuss these aspects, we dedicate this chapter to reviewing the institutional and legal frameworks related to PPPs at a European level, focusing on the Spanish context.



5.1 THE EUROPEAN LEGAL FRAMEWORK

Since the 1990s, European institutions have promoted PPPs, especially for infrastructure construction and management. Between 1990 and 2009, although the United Kingdom led the introduction of PPPs at the European level, the Spanish State came a close second, with 11% of the total economic volume (Kappeler & Nemoz, 2010). After the financial crisis, European institutions have continued to encourage their member states to "develop public-private collaboration (...) in the face of the reduced ability of tax authorities to obtain necessary funds and allocate resources" (European Commission, 2009). For example, the Spanish State received funding from the European Investment Bank (EIB) for PPP model projects. Between 2000 and 2018, the EIB invested 5,176 million euros in 30 PPP projects in the Spanish State, of which 26 (87%) were in the transport sector (see ANNEX 1).

For regulation on a European scale, the European Commission has developed various Directives and Regulations¹⁸, from the 1993 Directive on the coordination of procedures for awarding public works contracts¹⁹ to the 2014 Directives on public procurement²⁰. The latter are part of the objectives of the Europe 2020 Strategy, described as the "improvement of public procurement instruments (...) to achieve smart, sustainable and inclusive growth, together with greater economic rationality in the use of public funds" (European Commission, 2011). Between 2008 and 2014, the Structural and Investment Fund and the Cohesion Fund were the main sources of EU funding, followed by financial instruments, often in cooperation with the EIB.

- 18 https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=LEGISSM%3AI14527
- ¹⁹ Directive 93/37 / EEC of the European Council, June 4, 1993.
- In particular, there are three Directives approved on February 26, 2014: 1) Directive 2014/24/EU on public procurement; 2) Directive 2014/23/EU on the award of concession contracts; 3) Directive 2014/25/EU on contracting by entities operating in the water, energy, transport and postal services sectors.

Directive 2014/23/EU on Awarding Concession Contracts was the first to regulate this area. Its stated objectives are to establish a common legal framework applicable to labour and services concessions, as well as to define their scope, seeking to increase legal certainty. Directive 2014/24/EU established general rules on governance in the field of public procurement. In this way, it is hoped that contracting authorities and entities have precise regulations and that economic operators enjoy guarantees regarding adjudication procedures (Gafo, 2016). Based on these guidelines, various management and financing bodies and tools have been developed to promote PPPs in the Member States.

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| | Figure 3 Management and financing bodies and tools used to promote PPPs in the European Union |
| Legal bodies and management tools | European PPP Expertise Center (EPEC). With the support of the EIB, EPEC works in collaboration with the Member States to monitor the evolution of the PPP market at national and sectoral levels and supports the creation of the institutional capacity to deal with PPPs in national administrations. |
| | Operational Programme (OP). A program that establishes the specific priorities and objectives of a Member State, as well as what funding it will use (public and private national and EU co-financing) to finance projects for a certain period (usually 7 years). These projects should contribute to achieving a certain number of objectives set in the priorities section of the OP. Operational programs can obtain financing from the European Regional Development Fund (ERDF), the Cohesion Fund (CF) or the European Social Fund (ESF). The Member State prepares a OP that has to be approved by the European Commission before payments from the EU budget take place. OPs can only be modified during the corresponding period if both parties agree. |
| Main funds and financial instruments ²¹ | European Structural and Investment Funds (ESI Funds) The ESI funds comprise a total of five different funds which are intended to reduce regional imbalances in the Union, with policy frameworks set for the 7 years of the MFF budget cycle. These funds are: 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. |
| | Cohesion Fund (CF) : The CF is intended to strengthen economic and social cohesion in the EU by financing environmental and transport projects in Member States with a gross national product per capita below 90% of the average of the Union. |
| | European Regional Development Fund (ERDF) : Fund intended to strengthen economic and social cohesion in the EU by correcting the main regional imbalances through financial support for the construction of infrastructure and productive investments capable of generating employment, especially for the benefit of businesses. |
| | European Fund for Strategic Investments (EFSI) I and II: The EFSI is the first pillar of the Commission's Investment Plan for Europe or the "Juncker Plan". Its objective was to mobilise a minimum of 315,000 million euros of long-term public and private investment throughout the EU between 2015 and 2017. It can finance projects in the common interest or other interconnection projects. It is established within the EIB as a trust fund of unlimited duration for financing the riskiest parts of projects. According to "Juncker II", a guarantee of up to 16,000 million backed by the EU will offset the additional risk assumed by the EIB. Member States can also contribute to the EFSI. |
| | JESSICA (Joint European Support for Sustainable Investment in City Areas): An initiative of the European Commission in collaboration with the EIB and the Council of Europe Development Bank (CEB). It provides support for sustainable urban development and regeneration through financial engineering instruments outlined in Council Regulation (EC) No. 1083/2006 which establishes general regulations concerning the ERDF, the European Social Fund and the CF. |
| | CEF (Connecting Europe Facility) : Since 2014, the CEF has been providing financial assistance to three sectors: energy, transport and information and communication technologies. In these three areas, the CEF determines the investment priorities that should be adopted in the next decade, such as electricity and gas corridors, the use of renewable energy, the interconnection of transport corridors and cleaner means of transport, high speed broadband connections and digital networks. |
| | Source: European Court of Auditors, 2018. |
| 21 | "Financial instrument" is the generic term to designate contracts that give the holder a right over a debtor. The EU provides support for 3 types of financial instruments: capital, loans and guarantees. |

The general rules on the **governance of public procurement** were specified in the EU Council Recommendation of July 27, 2016. This Recommendation was based on a finding presented in previous EU reports: that the Spanish State should reduce the deficit of public administrations to 2.2% of GDP by 2018.

In addition to adopting measures to strengthen its budgetary framework and adapt to the spending regulations of the 2013 Stability Law, the Council added that the Spanish State should "establish a coherent framework to ensure transparency and coordination of public procurement policy of all contracting entities and authorities in order to guarantee economic efficiency and a high level of competition". **According to this same communication, the Spanish State is characterised by a low rate of publication of tender announcements and a relatively high allocation of resources through processes negotiated without prior publication.** This procedure eventually translates into direct awards, which involve increased spending and limited competition from companies in other EU countries. Therefore, the EU demanded that the Spanish State comply with the principles of free competition and establish an independent body to "guarantee effectiveness and compliance with public procurement legislation".

To adapt national law to European community law and respond to these EU disciplinary warnings, the Spanish Government has implemented various measures. We analyse them in the next section, where we will outline the Spanish legal framework.

DEFICIENCIES OF THE SPANISH LEGAL FRAMEWORK

In legal terms, PPPs in the Spanish State can be framed as the indirect management of public services, which can fall under various contractual forms such as concessions, fee-based management, joint ventures or service contracts²² (Martínez-Alonso, 2016). Adapting to the European context, the regulation of the PPPs in the Spanish State was initially framed in the Public Administration Contracts Act of 1995. As of 2003, it is also governed by the Law regulating Concession Contracts for Public Works and as of 2007 by the Law of Public Sector Contracts. **These legal frameworks made all kinds of concessions to private entities without implementing the necessary disclosure and transparency measures.**

A LONG PERIOD OF UNCONTROLLED PRIVATISATION

Prior to the current crisis, privatisation processes were implemented by various parts of government as explained in chapter 2 and 3. Taking a necessary historical perspective again, **throughout this period of privatisations there was no supervision of these forms of contracting. In contrast, the trend was towards opacity, benefiting patronage networks.** Nor was there adequate control over the application of the principles of free competition and in no case were other indicators applied to assess environmental and social costs.

In 2011, the Consolidated Text of the Public Sector Contract Law (TRLCSP after its Spanish acronym) was approved. The TRLCSP defined the Public Works Concession Contract and the Collaboration Contract between the public sector and the private sector. In the face of a lack of public investment and European austerity imperatives, TRLCSP contracts have been used as mechanisms that seem to escape the conventional legal sphere (Vicente-Dávila, 2018). Some relevant cases have been the Strategic Infrastructure and Transportation Plan 2005-2020 (PEIT after the Spanish acronym) initiated before the crisis, and the most recent Extraordinary Road Investment Plan (PEIC after the Spanish acronym). Both have relied on the

²² Various legal frameworks that affect the local scale have favoured direct interlocution between administrations and transnational capital markets. The Regulatory Law of the Bases of the Local Regime (LBRL) passed in 1985, the same year as the European Charter of Local Self-Government, facilitated collaboration between local public capital and private capital. Since 2000 strategic plans and the approval of special regulations for large cities have also facilitated public-private partnerships.

41

TRLCSP mechanisms and mark an attempt to prolong opportunities for the land-based accumulation of wealth.

DEFICIENCIES IN THE INSTITUTIONAL FRAMEWORK

Recently, the European Court of Auditors (ECA) published a Special Report 09/2018 entitled "Public-private partnerships in the EU: Widespread shortcomings and limited benefits" (ECA, 2018). Analysing several PPPs in Member States, the Court concludes that projects tend to be managed inefficiently and do not provide adequate profitability.

The ECA examined 12 PPPs co-financed by the EU in France, Greece, Ireland and the Spanish State in the areas of road transport and information and communication technologies. Together, these countries account for around 70% of the total expenditure (\bigcirc 29.2 billion) on EU-backed PPPs. In the majority of the projects audited, the choice of the PPP option was made without any previous comparative analysis (ECA, 2018). In this way, it could not be demonstrated that the PPPs maximised value for money, and the choice between PPPs and the possible use of traditional public contracting was not made from an impartial standpoint but by criteria not based on the public interest.

In the same report, the ECA insists that together with France and Greece, the Spanish State is familiar with the execution of PPP projects and concessions, but reiterates that it does not have an adequate institutional framework to guarantee the satisfactory management of these projects. The Court argues that at the time of the investigation:

"Spain did not have a specific department or PPP unit to support the execution of the audited PPP projects: therefore, the PPPs could not benefit from model contractual clauses, guidance or tools provided at the central level. The Spanish PPP projects did not undergo any comparative analysis with other contracting options, nor any other specific cost-benefit analysis adapted to the PPP projects.

REACTION TO EU WARNINGS

Following the EU warnings, new measures were taken as of 2015. In October of the same year, the PP (People's Party) government created the National Evaluation Office (ONE after the Spanish acronym) to foster public-private collaboration. The purpose of this entity was to evaluate the viability, efficiency and financial sustainability of investment projects implemented through concession contracts for public works and services²³. Through an action of the new PSOE government (June 2018), the ONE was integrated into the Independent Office of Regulation and Supervision of Public Procurement (OIReScon after the Spanish acronym), a new entity created by Law 9/2017 on Public Sector Contracts.

The stated objectives of Law 9/2017 are to achieve greater transparency in public procurement and achieve better value for money (BOE, 2017), adapting the Spanish legal system to the European Directives. Thus, the mission of the OIReScon is to ensure the correct application of contract legislation and, in particular, to promote competition and combat illegalities and corruption in public procurement. However, as of today, July 2019, there is no published evidence that these objectives are being met. By appointment of the Minister of Finance, the OIReScon has been chaired since July 2018 by María José Santiago, previously president of the Administrative Court of Contractual Resources of the Board of Andalucia. In mid-December 2018, the Council of Ministers appointed its officials, four positions filled by free selection²⁴.

²³ http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/minhap/Paginas/2016/200616inversionpublica.aspx

²⁴ Firstly, Francisco Cano Molina, who will lead the Hiring Regulation and Regulation Division and will be responsible for promoting the National Hiring Strategy to be presented by the office. Secondly, Pablo Martín Huerta, leader of the General Affairs Division and responsible for the economic management of the office. Thirdly, Amada de Juan Quirós, leader of the Contracting and Institutional Relations Supervision Division, which will prepare the reports that the office will send annually to the Courts and the Court of Auditors.

At the beginning of March 2019, the BOE²⁵ compiled the first instruction of the OIReScon on minor contracts, creating new obligations for the public sector administrations of the State. These included a requirement to request at least three tenders before awarding the contract and limiting the use of minor contracts, prohibiting the accumulation of multiple small awards within the same company.



²⁵ This is Instruction 1/2019, published on March 6, 2019. For more information, consult: https://boe.es/boe/dias/2019/03/07/pdfs/BOE-A-2019-3281.pdf#BOEn

THE INDEPENDENT OFFICE OF REGULATION AND SUPERVISION OF PUBLIC PROCUREMENT (OIReScon)

Beyond the arrangements in the Contract Law to adapt national law to European regulations and respond to the obligations established by the EU, there is currently no specific regulation of PPPs in the Spanish State. Unlike other countries and despite being one of the Member States where their practice has been most common, there is currently no authority in the Spanish State mandated to ensure that PPP projects operate optimally.

Between 2016 and 2018 the ONE did not produce public reports on their degree of effectiveness or on the adoption of transparency mechanisms. The recent launch of the OIReScon is a sign of change, but it raises several questions.

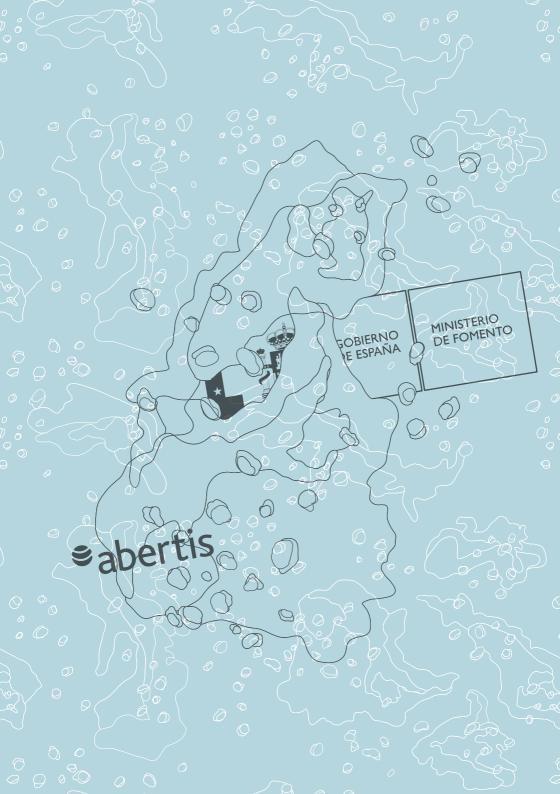
In the first place, the way its appointed members are selected does not seem the most democratic mechanism to guarantee its independence. Secondly, no information or timeframe has yet been published on the preparation of monitoring reports on recognised non-compliance, incorrect application of legislation or cases of fraud and corruption. Finally, it is not clear how it will develop its regulatory function through directives or recommendations which are advisory rather than mandatory for other levels of government, such as Autonomous Communities. **There are many ambiguities as to whether this is an agency that is limited to coordinating the supervision of PPPs and making non-binding recommendations or if it will have the capacity to exercise control or make sanctions.**

The **implementation of citizen participation mechanisms** such as the OIReScon Mailbox seems a good sign in terms of increasing transparency and the involvement of social organisations. Time will tell if it works and if it is a cosmetic measure or a good first step for citizen monitoring and auditing. It is based on the creation of a centralised registry that facilitates monitoring and evaluation, a data aggregation tool which will demand good coordination between the various areas of government. Citizen participation will be key to counter the power of the pro-PPP lobby that was created in 2007, initially under the name PPP Forum. Its objective is the promotion of "collaboration between the Public Administrations and the Private Sector for the development of infrastructure projects of all kinds in Spain (especially in the transport, energy, smart cities, social and health equipment, communications,

and innovation and technology sectors²⁶)". As of 2017, it took on the name **"Foro Infaestructuras"** ("Infrastructure Forum").

In summary, the Spanish case illustrates how European austerity policies have been accompanied by measures which impose new restrictions through the market. Without really demonstrating their efficiency or effectiveness, PPPs have also not been monitored in accordance with free competition. The OIReScon has yet to demonstrate its ability to monitor and ensure the transparency of these operations. However, even that is a very limited objective. The need to adopt other forms of evaluation which focus on the social and environmental impact of PPPs has not even been contemplated in the short or medium term.

Taking into account the negative impacts that the PPP model has had on the citizens, the environment and the public coffers of the Spanish State, and taking into account the legal and ineffective shortcomings of the OIReScon, a political-institutional change around the promotion of PPP model needs to be considered. A limitation or prohibition of PPPs, at least in the sectors which are central to ensuring a healthy and dignified life, is already a real political option. For example, in September 2014, the French Prime Minister stressed that "in order to return to growth and, therefore, to employment, France must stimulate public and private investments in public and construction projects". However, in March 2018, the Minister of Justice, Nicole Belloubet, **announced the abandonment of PPPs** for the future construction of prisons and courts. His main argument was that he considers this option "too expensive".



CASE STUDY: THE AP7 MEDITERRANEAN HIGHWAY

6.0

As we have explained in the previous chapters, there is a strong and established participation of the private sector in the financing, construction and maintenance of transport infrastructure in the Spanish State. The construction of highways, airports or rail networks in the last 15 years has been a multi-million euro business for the private sector. Investment in transport infrastructure was accompanied by a global trend of financialisation of infrastructure (see Chapter 2) and supported by international institutions.

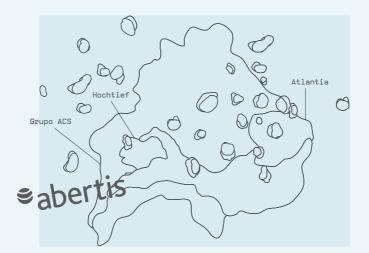
The case of the AP7 has attracted the attention of the media, since it is another emblematic PPP case where a multinational, in this case Abertis, is claiming for compensation running into millions of euros from the Spanish State for a decrease in expected profits, based on clauses in the concession contract.



THE BUSINESS GROUPS THAT CONTROL ABERTIS

Through its subsidiary Autopistas, Abertis is the largest operator of high capacity roads in the Spanish State with a total of 1,559 kilometers, more than 60% of all Spain's toll roads. It comes from the 2002 merger of ACESA (Spanish Concessionary Highways SA) and Aurea, until then its main rival in the sector. In addition to being the largest highway concessionaire in the country, Abertis is also the world's leading road operator by number of kilometres managed, with nearly 9,000 kilometres of highway in Europe, America and Asia²⁷.

In October 2018, the ACS Group, Atlantia and Hochtief bought the majority of shares in Abertis, thus taking control of the company. The new company, Abertis Holdco SA, is owned by Atlantia (with 50% plus one share) ACS (with 30%) and Hochtief, a German subsidiary of ACS (with 20% minus one share). Florentino Pérez is the top shareholder and president of ACS.



27 Abertis is the largest national highway operator in countries such as the Spanish State, Chile, and Brazil, and has an important presence in France, Italy and Puerto Rico. In Brazil, Abertis operates through Arteris, with a total of nine highway concessions that amount to more than 3,400 kilometers. It is the largest highway operator in the country. In Italy, Abertis controls 85.36% of the Italian industrial group A4 Holding, which operates 235 kilometers of highways in the Veneto region and 89 kilometers of the A31. France is the largest market for Abertis, which has a 100% stake in the Sanef concessionaire group, controlling 22% of the total French highway network. For more information, consult the "2017 Activity Report" of Autopistas.

https://www.autopistas.com/wp-content/uploads/2018/09/Informe_Actividades_2017.pdf

THE CONFLICT BETWEEN THE MINISTRY OF DEVELOPMENT AND ABERTIS

Abertis is the holder of the concession for the construction, maintenance and operation of the AP7 motorways (Barcelona-La Jonquera, Barcelona-Tarragona, Montmeló-Papiol, Zaragoza Mediterráneo and Tarragona-Alicante). In 2006, the Ministry of Development and Abertis signed an agreement approved by Royal Decree (457/2006) in the Council of Ministers. This agreement included the expansion of the AP7 in sections where "the problems of a substantial increase in road traffic" and the "repeated problems of congestion of vehicles that occur in specific times and stretches" should be solved. The concessionaire promised to invest a maximum of 504 million euros to expand the highway between Girona and Tarragona. According to the agreement, the cost of the works had to be paid by Abertis, which would be compensated through the tolls collected from the additional traffic that this expansion would encourage. If the increase in traffic did not compensate the cost of the investment, the Royal Decree established a mechanism whereby the company would be compensated by the State.

Traffic on the AP7 decreased up to 30% with the crisis that began in 2008 and the company recorded the corresponding debt in its accounts²⁸. After the change of government from the PSOE to the PP in 2011, the Ministry of Development began to express doubts about the interpretation of the agreement regarding compensation from tolls and the accounting criteria used by Abertis to register them. In the absence of agreement, in September 2015, Abertis brought the dispute to court. In March 2017, the Court of Justice of Madrid (TJM after the Spanish acronym) ruled in favour of Abertis. According to the ruling, the Ministry of Development would have to compensate Abertis with 1,494 million euros in 2021, when the highway concession expires.

Upon hearing the ruling, the Ministry of Development appealed to the Supreme Court. In July 2017, the Council of Ministers approved a report ratifying its interpretation that the compensations claimed were not exclusively generated by the expansion and that they exceeded the investment made. However,

²⁸ Beyond the impact of the crisis, this type of over-estimations and the consequent claims for compensation to the State have been a recurring problem. Among others, stand-out cases are the AP-41 (Madrid-Toledo) with only 11% of the planned traffic or the Madrid radio stations R-2, R-3, R-4, R-5, which barely they supported 40% of the estimated traffic and receive participatory credits endorsed by the State to compensate up to 80% of the traffic (Segura, 2013). All these are included in the package to be rescued with public money, for an amount that can reach 4,600 million euros.

the amount that Abertis claims from the State has been increasing, going from 457,325 million euros in 2011 to a claim of almost 3,000 million euros in February 2018. This figure consists of two compensations that Abertis claims from the Ministry of Development. The first is 2,061 million for the loss of traffic in the AP7 sections in Catalonia (Barcelona-La Jonquera, Barcelona-

Tarragona, Montmeló-Papiol and Zaragoza Mediterranean). The end of the contract for this concession for construction, maintenance and operation is August 31st, 2021. In addition, it claimed 785 million for the loss of traffic on the AP7 Tarragona-Alicante section (and the AP2), whose operating contract ends on December 31, 2019.

On May 22nd, 2019, the Supreme Court issued two decisions in which:

1 → It rejected the payment of the compensation of 785 million to Abertis for the AP7 section Tarragona-Alicante (and the AP2). According to the Supreme Court, the Administration had fulfilled its duty to clean up and improve the road system in the interest of citizens in the vicinity of the highway, which affected traffic volumes on this section²⁹. "In more than 40 years of operation, the concessionaire cannot claim to think that the road infrastructure in the surroundings of its 500 kilometres of highways, would continue unchanged, without city bypasses and other improvement measures," emphasised the Supreme Court³⁰. In principle, on December 31 these sections pass to the State.

2 → It postponed the decision on the compensation of 2,061 million for the sections of the AP7 in Catalonia indicating that "until August 31st, 2021 [the date on which that concession ends] no ruling can be made, since there is no certainty regarding what will happen to traffic volumes until that date (...). Until that date no right has been acquired to an as-yet-unknown amount of compensation³¹".

31 See footnote 28.

²⁹ https://www.elespanol.com/economia/empresas/20190607/abertis-no-recibira-compensacion-millones-ministerio-fomento/404460025_0.html

https://cincodias.elpais.com/cincodias/2019/06/07/companias/1559887021_673102. html

IMPACTS OF THE CONCESSIONS. DEBT AND ITS ENVIRONMENTAL AND SOCIAL IMPACTS

In the Spanish State there has been no transport or mobility policy; instead, infrastructure plans are framed in terms the modernisation and Europeanisation of the country³². Unbridled investment in transport networks has long had significant social approval, sustained by beliefs such as "more mobility is always better" or "more infrastructure means more wealth" (Segura, 2013). Paradoxically, in 2005 the Ministry of Development assured that the Spanish State already had "a mature network, with a practical convergence with Europe in terms of equipping the country with large transport infrastructure, particularly highways and motorways" (Ministry of Development, 2005). Why, then, the huge investment in motorways?

One of the main answers is found in the Spanish economic specialisation model, **focused on the secondary circuit of capital accumulation (real estate and large infrastructure)** (Harvey, 2014). This process involves a specific mode of capital rotation through the built environment. The construction of homes, public infrastructure, transport networks, industrial centres or energy transformation and distribution structures are some of the most visible elements of this accumulation system (López, 2013). PPP formulas in this area have resulted in an unequal distribution of benefits and costs among agents of public administrations, transnational and local holders of capital. **This model has strengthened the business of one of the main pillars of the Spanish oligarchic bloc: the large construction companies.**

In the highway concessionary companies, there is an evident "optimistic bias" around planning and compensation to private companies by the State, which assumes a large part of the risk under public-private infrastructure financing agreements (Conde, 2017). This bias, as we have shown, has resulted in the open conflict between the Ministry of Development and Abertis over some sections of the AP7.

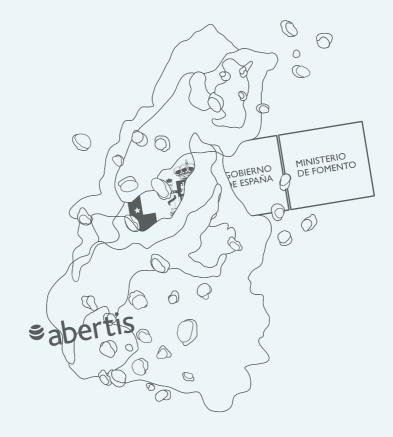
Infrastructure Plans have their own expression in state policies such as, among others, the Strategic Infrastructure and Transport Plan (2005-2020), PEIT, promoted by the PSOE (248,892 million euros) or the Infrastructure Plan (2000- 2007), PIT, promoted by the PP, worth 19 billion pesetas (Segura, 2013).

Due to the guarantees of income coverage for private actors in the agreements offered by the public administration, this model of concessionary and rentier capitalism has led to a huge public debt that absolves private operators of their own inefficiency and ineffectiveness (Costas, 2014). From another angle, transport in the Spanish State is the main emitter of greenhouse gases, despite promises of sustainability and reductions of the externalities of infrastructure plans³³. Its impact on the fragmentation of land, the reduction of biodiversity, the occupation of a large amount of fertile soil and the increase in energy consumption and air pollution has not been evaluated by administrations. These plans have not implemented measures (standard in other areas) where environmental and social clauses are included in public procurement contracts requiring the operator to develop plans to manage or compensate for the impacts of the service or infrastructure³⁴.

Overall, the rise of internal debt incurred in this way in the field of infrastructure has taken place under the radar of citizen monitoring and has had a huge territorial and environmental impact. The lack of planning of transport networks has been disguised by insistent discourse focussed on the existence of a chronic deficit compared the rest of the EU when in fact the Spanish State is the European territory with most kilometres of motorways and highways. The implementation of PPPs has given greater opacity both to the progress made against planned objectives and to the public bailouts made to compensate initial overestimations.

³³ In that sense, it is relevant to review the arguments of the Strategic Infrastructure and Transportation Plan 2005-2020 (PEIT) where sustainability was highlighted as one of the priorities https://www.fomento.es/plan-estrategico-de-infraestructurasand-transport-peit

³⁴ Among others, the Barcelona City Council has expanded the implementation of these clauses in public procurement contracts for urban services https://ajuntament.barcelona.cat/ecologiaurbana/es/que-hacemos-y-porque/energia-y-cambio-climatico / environmental-clauses-contracts-city hall



7.

Conclusions and Recommendations

At the beginning of this report, we have demonstrated that the process of financialisation - understood as the current phase of the capitalist economy in which finances have become extraordinarily powerful, penetrating everyday lives and international, national, regional and local political decisions - has opened the doors to private investors to profit from public goods and services. The most recent crises have been accompanied by the promotion of the public-private solution by entities such as the EU, the WB, the IMF and the OECD. The current situation is no exception. We experience an acceleration of the privatisation of services traditionally offered by the public sector (health, education, transportation, infrastructure, etc.) through the PPP model in the Spanish State as well as worldwide.

But while the PPP model is defended as an adequate strategy for addressing budgetary deficiencies, PPPs do not avoid financial obligations for the public sector and have an impact on their financial sustainability, curtailing the plans of future governments.

Many projects have been developed as PPPs simply to bypass budget constraints and postpone the recording of fiscal costs. Some "creative accounting" practices allow governments to keep the cost of the project "off the balance sheet". This ends up exposing public finances to excessive fiscal risks, in many cases increasing public debt. Current austerity measures and neoliberal policy recipes that encourage low fiscal deficits also create a perverse incentive in favour of PPPs.

Deficiencies in the Spanish legal framework lead to an even greater impact of "concessionary and rentier capitalism" (Costa, 2014). The bailouts paid to concessionaires of public works, highways, airports, etc., respond to the commitments made by public administrations in public-private contracts in the form of income guarantees, acting as guarantors etc. If anything shows the rise of public-private partnerships or concessions in recent times, it is the privatisation of benefits and the socialisation of losses due to not only a lack of "efficiency" and "effectiveness", but also a lack of public scrutiny.

The case study of the AP7 and the conflict between Abertis and the Ministry of Development is paradigmatic, since when there is a lack of planning and social control of investments and public disbursements for operator inefficiencies, the business policies of private actors that do not act for the benefit of society and the environment come into play. 7. CONCLUSIONS AND RECOMMENDATIONS

PPPs have proven unable to offer more "effective" and "efficient" services than direct public management in key sectors such as health, education, transportation or infrastructure. PPPs as a financing and management mechanism are neither sustainable nor fair, and often fail to guarantee a good quality of services. Ultimately, private investors are accountable to shareholders, and do not respond to citizens, which undermines the capacity of PPP projects to contribute to social, environmental and gender objectives.

We therefore recommend:

1 \rightarrow QUESTIONING NEOLIBERAL POLICIES AND AUSTERITY MEASURES - ESA 2010

The public sector is, above all, responsible for guaranteeing the economic, social, cultural and environmental rights (ESCRs) of citizens and should not put the interests of private investors above social policies. Public financing must be guaranteed via General State Budgets, through a progressive fiscal policy that guarantees the income necessary to cover social, economic, gender and environmental needs.

At the same time, the European accounting policy that limits public finances with a comprehensive set of restrictions whilst granting laxity to the finances of private corporations must be abandoned. In this regard, we recommend reforming the European Accounting System (ESA 2010) to increase the public investment capacity of local, regional and national administrations throughout Europe, ending the rule that 100% of investments must be recorded on the date of implementation and replacing it with the usual annual depreciation practices.

2

\rightarrow limit or prohibit the PPP model in Key sectors to guarantee the escres

Healthcare, education, transportation and infrastructure (among others) are common services and goods for the entire population living in a territory. The right of access to these services must be shielded in the Constitution as a fundamental and protected right ahead of private interests. 7. CONCLUSIONS AND RECOMMENDATIONS

3

4

\rightarrow STRICT REGULATION, SUPERVISION, DEMOCRATIC MONITORING AND TRANSPARENCY WHILST MOVING TOWARDS A PUBLIC MODEL

While moving towards the prohibition of PPPs in sectors key to sustaining a healthy and dignified life, a set of legal measures must be implemented to guarantee the regulation, supervision, democratic monitoring and transparency of PPP projects. There is an urgent need to provide detailed and effective legislation and competent supervisory bodies to supervise and control the granting, execution and termination of PPPs, to avoid the serious failures of PPPs that are occurring in the short term, and in the longer term to move towards their prohibition.

- → The Independent Office of Regulation and Supervision of Public Procurement (OIReScon) should be endowed with real power to supervise and control PPP projects if necessary, taking into account public opinion through guaranteed participatory processes.
- → A multi-criteria evaluation of projects must be carried out. Since PPPs can have economic, social environmental and gender impacts, they cannot be assessed only through an economic valuation. It is also necessary to take into account their social, environmental and gender dimensions, and therefore new evaluation criteria are needed. A multi-criteria analysis where these dimensions were taken into account would allow the comparison and evaluation of various forms of public financing against PPPs.
- → All risks to future public debt should be published explicitly and openly, in order to ensure a proper risk assessment before a project begins.
- → Transparency: All contracts, economic agreements, clauses and details, by law, must be made public and easily accessible for scrutiny by citizens, through a transparency portal or other platform managed, for example, by OIReScon.

ightarrow disclosure of the real costs of PPPs

Since PPPs are an expensive form of debt, responsible accounting practices should be adopted and the costs of PPPs should be included in national accounts, for example by publishing the clauses outlining the risks that the public administration assumes in each project that can turn into future public debts for society. These costs should be recognized as public debt and, therefore, would be part of the debt sustainability analysis.

7. CONCLUSIONS AND RECOMMENDATIONS

5 ightarrow OFFICIAL AND CITIZEN AUDITING OF PPPs

In the case of failed projects -or those with serious financial, social, environmental and gender impacts-, the public authority should be obliged to carry out an audit to assess the damage caused to public funds, society or the environment. In case of violation of the ESCRs by the private party, the public party should be obliged to claim compensation from the guilty parties. In any case, if an official audit is not carried out, we recommend that citizen audits be undertaken to assess possible illegitimate debts and promote their non-payment.

Public administrations can promote the creation of public-public **collabo**rations or concessions, which are collaborations between a public body or a public authority and another non-profit organisation or organisation of general interest to provide services and / or facilities, aiming to transfer technical knowledge and experience. Although they are not yet sufficiently developed, these collaborations differ from PPPs in that they do not seek profitability but the transfer of knowledge and experience in the execution of projects. Through the **Public Sector Contracts Law**, commercial PPPs can be restricted and / or collaboration with **Social and Solidarity Economy (SEE)** entities can be promoted, whose objectives are social, environmental and gender sustainability. An alternative to public-private management of key services could be **public-community management**. Banco Europeo de Inversiones & EPEC (European PPP Expertise Center) (2019): PPPs financed by the European Investment Bank from 1990 to 2018.

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🗠 Annex

9.

European Investment Bank (EIB) investments in PPP projects in the Spanish State between 1990-2018.

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| Year | Project PPP | Sector | Amount (€ million) |
|------|---|-------------|-----------------------|
| 2013 | Autovia A66 Benavente - Zamora | Transport | 96 |
| | Hospital de Vigo | Healthcare | 140 |
| | Metro de Malaga - Phase 1 | Transport | 325 |
| 2012 | Madrid-Alicante High, Speed Train Signalling and Telecommunications | Transport | 78 |
| 2011 | Gipuzkoa Waste Management | Environment | 195 |
| | Malaga - Las Pedrizas motorway | Transport | 130 |
| | Hospital de Burgos | Healthcare | 128 |
| 2010 | Zaragoza Tramway | Transport | 175 |
| | C-25 Motorway - Eix Transversal | Transport | 300 |
| | Barcelona Metro - Line 9 | Transport | 400 |
| | Rolling Stock for Madrid Metro Network | Transport | 188 |
| 2009 | Hospital Son Dureta | Healthcare | 130 |
| 2008 | National Expressways Improvements | Transport | 211 |
| 2007 | Metro Train Sets for Madrid Region | Transport | 306 |
| 2006 | Expressway: Reus-Alcover | Transport | 26 |
| | Expressway: Cuellar-Valladolid | Transport | 46 |
| | Light Railway Network in Malaga | Transport | 325 |
| 2005 | Expressway: Santiago - Brio | Transport | 54 |
| 2004 | Los Vinedos Motorway : Toledo - Tomelloso | Transport | 143 |
| | Light Metro Line in Greater Seville | Transport | 260 |
| 2003 | R-3 and R-5 Motorways serving Madrid | Transport | 300 |
| | Tram System in Greater Barcelona | Transport | 125 |
| | R-4 Motorway: Madrid - Ocaña | Transport | 360 |
| 2002 | R-2 Motorway: Madrid - Guadalajara | Transport | 120 |
| | Motorway: Pamplona - Logroño | Transport | 175 |
| 2001 | Tramway in the Barcelona Metropolitan area | Transport | 136 |
| | AP71 Motorway: Leon - Astorga | Transport | 42 |
| | Motorway: A6 - Avila | Transport | 100 |
| 2000 | M-45 Motoway: Madrid Urban Motoway | Transport | 149 |
| | Motorway shadow toll road: Murcia Region | Transport | 13 |
| | | | 5176 |

5176

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└── Prepared by the authors based on data from the EIB & EPEC (European PPP Expertise Center) (2019): PPPs financed by the European Investment Bank from 1990 to 201



