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Aims and Scope

Public Goods & Governance is a semi-annual academic journal, aims to publish original material within the field of public policy, public management, governance and administration. This includes articles, shorter notes and comments based on theoretically and empirically grounded research on public goods, public service delivery and other public functions in a wide range of sectors, especially focused on recent challenges of governmental roles and new governance models in the market economies.

The journal welcomes submissions (articles, notes and comments) from anywhere in the world from both academics and practitioners. The maximum word limit for articles is 2500 words. Notes (not full academic papers presenting new phenomena, ideas or methods in a brief form) and comments providing additional thoughts and critical remarks to previously published articles should not exceed 1000 words.

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REGIONALISATION AND COMPETITION – FINNISH SOCIAL AND HEALTH CARE REFORM*

Markku Mölläri[1]

The Economist from September 10th 2016 listed many challenges British NHS is facing. Finland shares the need to take better care of people – in situation where population is getting older, technological possibilities are huge and need to better control the economy can be so frustrating.
In Finland, the last Governments have very clearly recognized huge need for reforms in social and health care sector. Mr Juha Sipilä's current Government has prepared the latest reply to the old challenge: over 800 pages of new legislation draft, issued in the end of June 2016.

The Government agreed upon the policy lines that will guide the drafting of legislation on three interconnected reforms:

(1) The reform of the organization of health and social services
(2) Freedom of choice and multisource financing reform, and
(3) The regional government reform, i.e. the establishment of 18 autonomous counties governed by elected county councils. The counties will be responsible also for certain other public duties e.g. rescue services.

The goals of the social and health services reform are the following

(1) The objective of the healthcare and social welfare reform package is to curb growth of costs by EUR 3 billion. The goal is to curb growth of health and social services expenditure by approximately 1.5 percentage points per year in the period 2020–2029 – this will contribute to better balance of public economy.
(2) Guarantee equal access to high quality services everywhere in the country and
(3) Reduce regional and social inequities.

The health and social reform is based on a client-centered *integration of health and social services* as the key measure for narrowing health and wellbeing disparities, improving the effectiveness of the services in an equal manner and bringing cost savings. There will be *18 counties* with own budget but a single financial management and they will provide the necessary health and social services on their own, together with other counties or in collaboration with the private or third sector. Counties will be *financed by the central government* and the current multisource financing will be simplified – all these things are easy to write but really challenging to make into reality!

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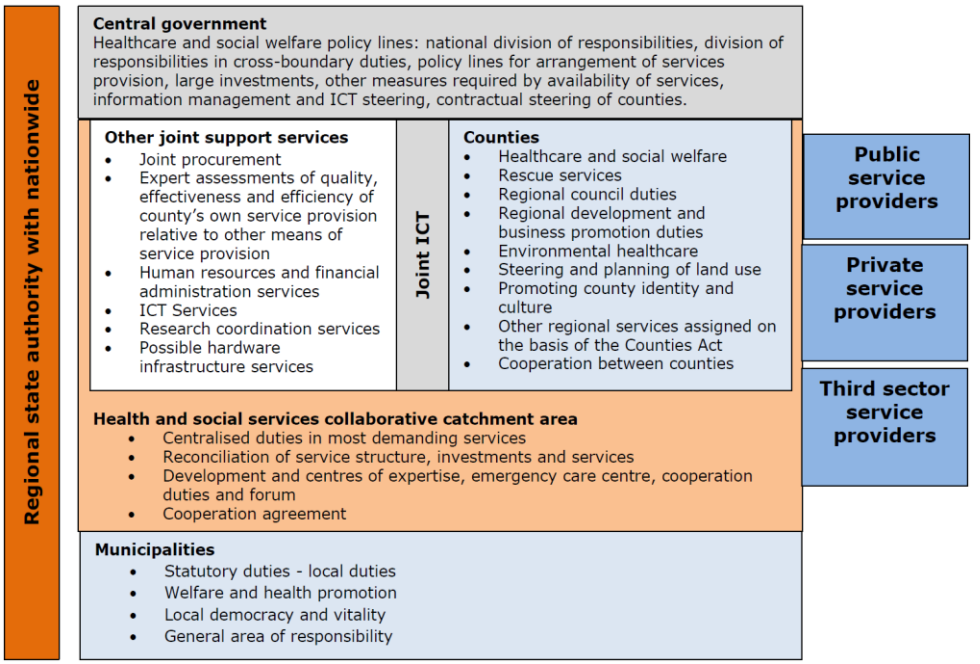
Chart 1 Counties' duties and new healthcare and social welfare structure 1 January 2019



Source: English summary of Government's draft proposal for health, social services and regional government reform legislation http://alueuudistus.fi/hallituksen-esitysluonnos-31-8-2016

A *purchaser–provider separation* will be implemented: counties will ensure that the organization and provision of services are genuinely separated and performed by different organizations. *Freedom of choice* will significantly promote competition in the provision of services. Integration of information systems will increase information flows between different providers. Consequently, the service chain integration will improve. Essential public health functions, including health promotion and disease prevention, will be ensured for the youngsters and elderly people – this seems to be a very interesting effort to other countries as well!

The government bills on the reform will be passed to the Parliament in 2016 and 2017, and enacted in 2019. *Improved cost management* will be a key principle when preparing legislation and implementing the reform. Successful and skillful change management will be a prerequisite for achieving the targets and thus will receive particular attention during the reform implementation.

To sum up, ongoing process is a most interesting one. Introducing, in a very limited time, a new level of administration, with solid finance and cost control, change of duties between municipalities and this new level – the Government has chosen an open way – there is an ongoing commentary phase for municipalities this autumn. Different workgroups are currently busy finding their answers to difficult questions – like what are the key indicators in health and social services, how should we make better use of digitalization, how better invest – even with limited resources – on people to make their life better.

WELFARE SECTOR IN BELARUS: CONSISTENT PUBLIC POLICY IN THE BUDGET SPHERE?*

Yuri Krivorotko[1]

For a long time the Belarusian authorities characterized their national and subnational budgets with a welfare orientation. Every year before the republican budget adoption the Belarusian parliament declared about its welfare priority. This brief note focuses on two questions: (i) what tendencies of social budgetary policy can be observed in the time of economic recession and (ii) how consistent was the welfare orientation of the central and local budgets in practice.

Sources of welfare spending in Belarus

In recent years, development of the Belarusian welfare sector (health care, education, physical culture, sport, culture, mass media and social policy) was characterized by significant growth. During 2005–2014 the personal income per capita has increased in nominal terms by 13.9 times, expenditures on final consumption have raised for 10.7 times and GDP per capita in 12.2 times.

However, the growth of these indicators was promoted not so much by structural reforms and economic modernization with compliance of market rules, but more by exporting Russian cheap oil based products in the EU countries. It had brought big "profits" for the Belarusian economy in the form of customs duties and filled up the national budget with tax revenue from foreign economic activity. In the last decade share of customs duties in the national (republican) budget revenues has increased from 7.9 up to 14.4 percent, and in 2011 and 2012 it was respectively reached 28.0 and 26.8 percent. In addition, injections in the form of loans from international financial organizations and other fraternal countries have pumped the budget of Belarus.

The main actors of Belarusian welfare policy are the state and governmental organizations. The non-governmental organizations having innovative potential are seldom attracted as partners. Despite of rather developed welfare system, the interaction of the state with other entities is governed by the principles of the Soviet period when the state was both the decision-maker and the main implementing actor.

Welfare expenditures: increasing share of local budgets

Welfare sector funding is provided by the national and local government budgets, only. Dynamics of welfare expenditures in the period from 2010 to 2015 shows, that the structure of welfare spending moved towards the subnational budgets: in 2010 the subnational budgets covered 69.0 percent of welfare expenditures, while in 2015 already 79.2 percent (Figure 1.). During 2010–2015, the average annual increase of

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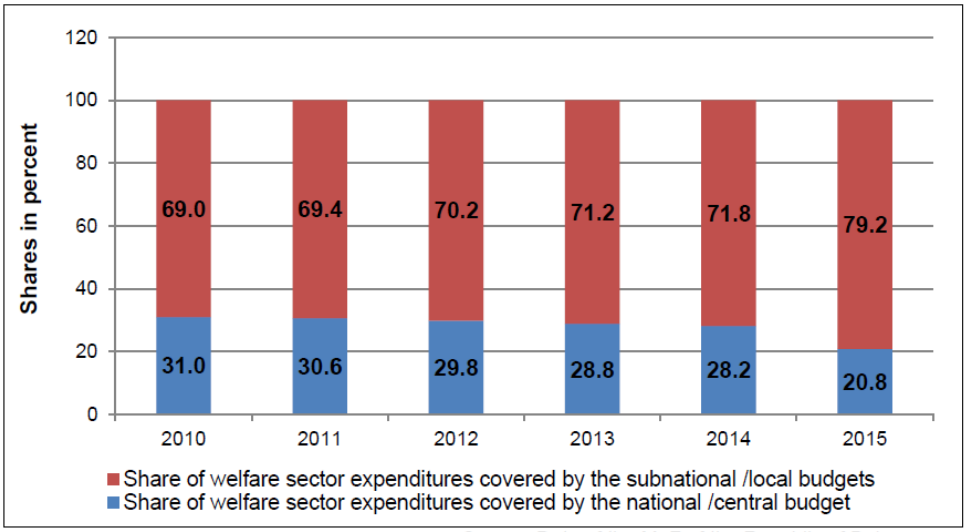
welfare expenditures in the national budget was 2.03 percent and in subnational budgets 4.5 percent.

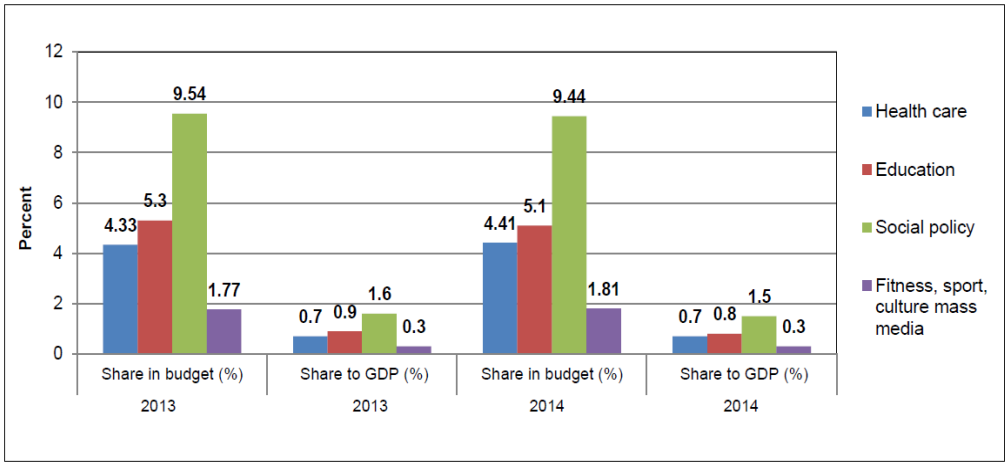
Figure 1. Dynamics of welfare sphere covered by the national /central and local budgets for 2010–2015 (in percentage)



Source: Data of the MoF of the Republic of Belarus reports

In 2014 welfare sector expenditures have captured more than 20 percent of the national (central) budget and nearly 50% of subnational ones and their shares in GDP reached 3.5 and 8.6 percent, respectively (Figures 2 and 3).

Figure 2. Share of welfare branches expenditures in national / central budget and to GDP (percentage)

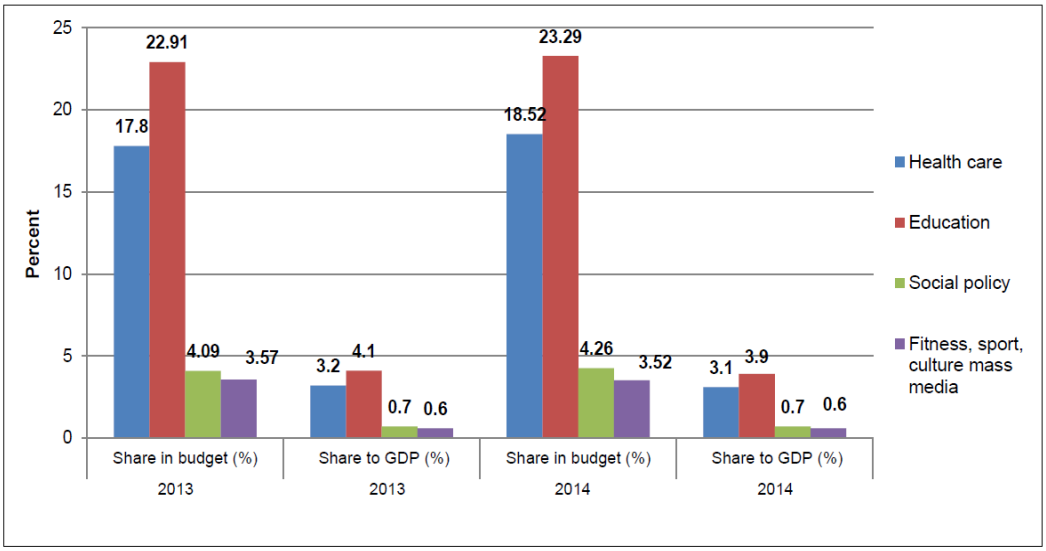


Source: Own author's calculations on the basis of the Ministry of Finance of the Republic of Belarus reports.

As Figure 2 shows, the greatest share of national budget welfare expenditures is on social policy, the second is education. Public education expenditures are the largest in the subnational budgets, followed by health care expenditures.However, a comparative analysis of welfare expenditures to GDP shows that Belarus is still far from the

European and international standards. According to the public expenditures review of Belarus prepared by the World Bank experts in 2013, the health care expenditures (5.4 percent) were lower than in the ten new EU countries.[2] For example, in Lithuania 7 percent of GDP are spent for health care. At the same time, according to the World Health Organization, Belarus is at the 105th place of the 190 countries ranked by the level of health care expenditures to GDP.

Figure 3. Share of welfare branches expenditures in the subnational budgets and to GDP (percentage)



Source: Own author's calculations on the basis of the Ministry of Finance of the Republic of Belarus reports

It is important to note that the welfare expenditures are not equally developed in the subnational (oblast) budgets. In 2014, the share of expenses on welfare was the smallest in the budget of Minsk city (37.96%) and in the Minsk oblast (48.34%), while the highest in the Vitebsk oblast (54.7%). This can be explained not so much by diverse local budget preferences, but by the oblasts' revenue potentials. In Minsk city, in the Minskaya oblast there was a rather strong revenue base for covering the standard welfare costs. Therefore these oblasts had an opportunity to re-direct the remaining revenues to other areas, such as housing and communal services, housing construction, law-enforcement activity, maintenance of order, etc.

Financial efforts in welfare spending

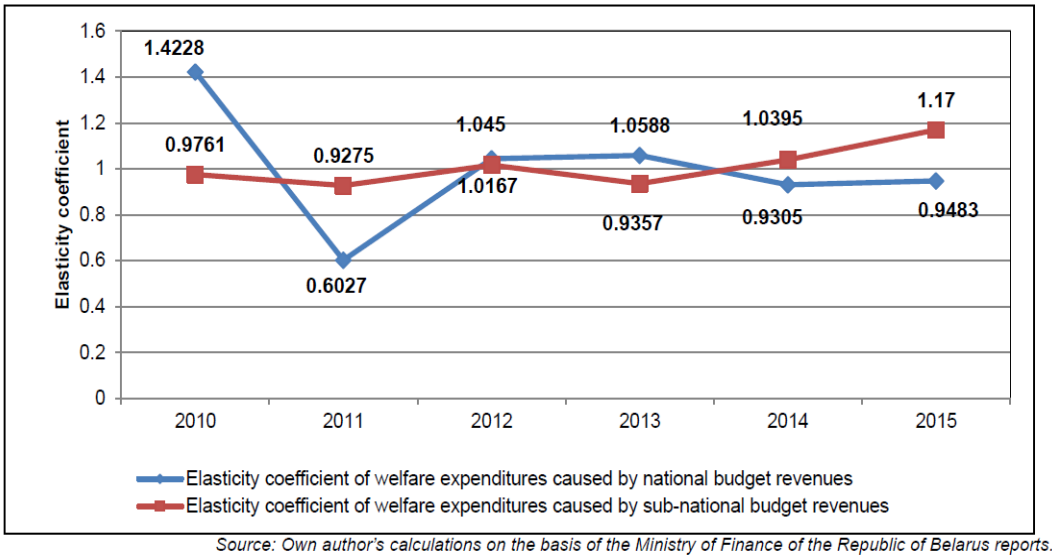
Government's financial efforts and welfare security have become central issues recently. Elasticity coefficient[3] of expenditures on welfare services on total budget

[2] i. e. Member States which acceded on 1 May 2004 to the European Union.

[3] El *ex* (rv) = In(e2/e1)/ In(r2/r1), where: El *ex* (rv) – Elasticity of welfare branch expenditures caused by the total budget revenues; *e 1, e2* – expenditures at the moment of time t 1 and t2, accordingly ; *r1, r2* – revenues at the moment of time t 1 and t2, accordingly; In – consumer prices index. At an original interpretation of elasticity coefficient there is a consumer price index. It is necessary for adjustment on inflation. However, because this index is corrected both on formula numerator, and on denominator, it

revenues shows how consistent the budget priorities are in the welfare sector (Figure 4).

Figure 4 Elasticity coefficient of total welfare expenditures caused by the national budget revenues and subnational ones for 2010-2015



Source: Own author's calculations on the basis of the Ministry of Finance of the Republic of Belarus reports.

Our analysis shows that for this period government welfare policies both in the central and in the subnational budget were inconsistent and often changeable. In the national budget, in 2010 all welfare expenditures had a high priorities. However, in 2011 this policy failed, then the situation got better in the following year, and in 2014 and 2015 failed it again. If we take an elasticity coefficient for welfare expenditures in the subnational budget revenues, then it is possible to find a different trend: cutbacks in 2010, 2011 and in 2013, but increase in 2012, 2014, 2015.

The reason why elasticity coefficients of welfare expenditures are different both at national level and subnational one is that expenditure functions for these levels are different. For example, if we take education, the universities and higher educational institutions are funded from the national budget and the primary and secondary schools, pre-schools from the rayon local budgets. In health care, the special medical centres are funded by the national budget and the regional, interregional hospitals are by oblast (local) budgets.

Declining welfare service performance

Despite regular government promises to make budgets socially-focused, the welfare policy remains unstable. As our assessment proved, during the last five years the Belarusian governments' efforts in welfare spending showed instability, frequent variations and they were inconsistent with the declared policy goals.

does not get impact on calculation result of elasticity coefficient. It is possible to accept index for 1,0 or eliminate this index in calculations at all.

Due to the economic recession the government was not able to keep the share of welfare expenditures to GDP at the level of the last five years. Most of the welfare service indicators decreased. In *health care*, the number of hospitals was reduced from 657 to 636 between 2012 and 2015. There was a reduction of hospital beds from 106.6 thousand to 80.7 thousand. Instead, the out-patient treatment has been developed from 2,263 out-patient organizations (2012) to 2,352 ones (2015).

In the Belarusian *education* there was a similar situation. According to the official statistical data the number of preschool educational establishments in 2012/2013 academic year was 4,064, in 2015/2016 year their number was reduced to 3,951. However, in the same period the number of enrolled children increased from 398 thousand up to 409.8 thousand. In the 2012–2015 period the number of the primary and secondary educational establishments was reduced by 349 from 3,579 to 3,230. But despite reduction of schools, number of pupils has increased: from 928.2 thousand pupils to 969.1 thousand. During previous four academic years in Belarus two universities were closed and now only 52 are functioning. The number of the students has decreased by 92 thousand, from 428.4 thousand to 336.4 thousand.

Thus, national welfare budget was not in line with the announced policy objectives. The Belarusian government could keep its health care and public education priorities in the local budgets only.

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FOREIGN INVESTMENTS: ON THE EDGE OF PUBLIC AND PRIVATE LAW[*]

Nikolett Zoványi[1]

Investing into a foreign country always requires risk management and preliminary research in order to identify a favorable legal and economic environment for the prospected activity. This presumption enacts various duties to the host state in case it wants to accept foreign investors. It is, however, a very complex and sensitive question and presumes a coordinated cooperation among multiple areas of legislation. Many think that taxation is the exclusive method to lure foreign investors in and to show them how open the country is to foreign investments. In practice, foreign investors examine a lot more than just taxation and they often pay attention to the company law regimes and protective measures or guarantees the state is willing to provide in case of unfavorable events (eg. insolvency, creditor arguments).

The purpose of modern company law is to provide an effective framework for conducting business activities in a legally regulated and transparent form, and also to provide protection to several interest groups, such as the shareholders against the company's management, minority shareholders against the decisions of the majority, and creditors/business partners against the company and its assets in general. A foreign investor may most likely take these factors into consideration when deciding on establishment in one country or the other. Modern day company laws in Europe seem to follow different paths. Some believe in a very flexible form of company regime, while others still tend to keep mandatory rules and guarantees alive even in the 21st century. The purpose of this study is not a deep analysis on the advantages or disadvantages of the two different regimes but a short introduction on what the potential foreign investors may see in one system or the other.

The European Union continuously puts the member states under pressure and try to make them accept a more standardized or harmonized system of company law. So far, there has not been a major breakthrough in this respect as the already adopted directives only deal with basic questions, leaving an almost unlimited freedom to the member states to develop their company laws the way they wish. A foreign investor is most likely looking for a predictable and secure legal environment, where maneuvering in the market has clear boundaries while the law still provides the option of reasonable flexibility. Before we jump into a conclusion that flexible company laws that are considered less secure to creditors hit the jackpot here, we should get back to square one: the question of establishment. Establishing a company always requires some core capital that is typically coming from the founders, the first shareholders of the company. This core capital may seem to be a simple legislative decision from the angle of private law, however, it truly has deep connection with policy considerations.

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Classic company law in the 19th and the early 20th centuries treated capital requirements as safeguards to the creditors and bails in exchange for the limited liability of the shareholders. Today, it is more of a political decision than a legal one, therefore, the public nature of the capital requirements is more eminent than the private considerations behind their regulation. Foreign investors are willing to invest a certain capital that they determine based on the prospected starting expenses of the activity. Their mind is not set to look for the legal limbo on that issue, they rather make economic analysis on the problem and then see a system that fits in. For the first look, laws with symbolic or no core capital requirements may seem to be the ones that completely abolished this once very important factor of the establishment problem and creditor protection. In fact, they solely rely on the market and they let the market determine the amount of money certain activities require for a start. These systems treat the investors and their future business partners – the future creditors – as adults and true professionals. While the law provides endless freedom to the investors and founders, their bad choices may result in serious economic consequences. If the desired activity bears a huge risk and calls for a decent deposit in the market, pennies would not be sufficient to enter into the market. Other factors like the crowded nature of the given market full of competitors and potentially rival companies may also come to consideration when deciding over the capital. In these systems, the legal type of the prospected company has very little to do with the amount company law requires for a start. It is more determined by the activity and market conditions. Even in such regimes, the law imposes strict minimums for activities that bear high risks to a significant group in the society (eg. insurance, financing). These barriers are, however, independent from the company type and the general considerations of shareholder liability or creditor protection, they are more dependent on public policy. This method is also present in those systems where a general minimum of core capital is regulated for each company type. The selected activities and the individualized core capital regulations merit from the same ground: to protect public interests in the given sectors.

Another important angle to foreign investors is the security of their investment under the selected company type. The limited liability company types are the most popular forms for foreign investments as they guarantee a loss-minimization right at the beginning. The foreign investors only risk what they were willing to invest as a contribution to the venture. Future debts do not impose burdens on their private assets. It seems to be an understandable need as very few investors are willing to take major risks, especially in an unknown territory. One of the new phenomenon of company laws in Europe in the 21st century is the continuously increasing number of liability norms that seem to threaten or – in some cases – undermine this assumption. After inventing the corporate veil concept, we had to find tools to penetrate it for the greater good: to protect creditors against fraudulent company and shareholder activities. The recent financial crisis generated an increased number of insolvency procedures and liquidations. We could not treat limited liability companies as absolutely independent legal entities, independent from their shareholders. In insolvency law and in company law, we can identify plenty of clauses that may shift the otherwise protected status of

the shareholders in cases when they fraudulently caused the insolvency of the company they own. As life is more colorful then words, these shifter clauses are rarely exact.

Open clauses and general rules govern this area of company law providing a fair discretional power to the courts even in civil law legal systems. We experience that in certain cases, judges tend to follow policy considerations (eg. an increased need for accountability instead of leaving obligations unsatisfied; general assumptions that foreign investors or the foreign parent companies can survive the loss) when interpreting these clauses rather than the classic governing principles (creditor protection, bona fide – male fide) of private law.

While scholars of international business law tend to emphasize that foreign investments should be protected against political turmoil, hostile governments, unstable political regimes or the unlawful and extensive practices of eminent domain, we believe that foreign investors also have to take a deeper look at the policy considerations behind the rules of company law. This can prove an attitude how business activities are treated in the host country and how open and welcoming the prospected territory of the venture toward foreign investors. It certainly gives a better and clearer picture for risk assessment too. The European idea on the dichotomy of private and public law is somewhat blurry these days, and company law is a great example to back up this statement.

Where does Hungary stand in this debate? The new Civil Code (Act V of 2013) certainly made the problem multi layered and complex. In Europe, the Hungarian Civil Code seems to be the most flexible code on company law in terms of providing an almost unlimited option for derogation (Article 3:4). If we take a closer look, the flexible and open clauses can easily become traps to foreign investors as they adumbrate an unpredictable attitude of the courts upon registering a company and even on the questions of shifting shareholders' liability in litigation. It does not pamper investors with a secure and predictable company law environment, rather, it places a great deal of trust in the hands of judges who may be open for serving public policy agendas instead of deliberating in individual cases. If a foreign investor is looking for a regime where the structure and the operation of the company can be largely customized by his needs, Hungary is definitely a good place. If the foreigner wants to secure a no-risk policy for his venture, he may be better off waiting a bit more to see how the courts will use the suddenly earned trust of the legislator. The ongoing projects for the revision of the company law rules in the Civil Code also do not encourage foreign investors and these may also easily deliver a bad message to the courts: company law is purely dependent on the policy considerations of the legislator and does not follow private law principles and theories, therefore, it can be changed whenever the legislator wishes to enforce its will in a specific question. The manifestations of such policy changes can only be wise and cautious if they do not happen too often, and they step beside the already existing rules instead of knocking them out, resulting in a coherent regime.

WILL RE-MUNICIPALISATION IN WATER SECTOR INFLUENCE DONOR POLICIES?*

Gábor Péteri[1]

Increasing number of re-municipalisation cases and enhancing public influence in service provision indicate a major policy shift in public service management. The former privatisation trend in water management and other infrastructure services seem to be reversed. The question is whether international donors, financing institutions and technical assistance programs acknowledge these changes and take into account this new political reality?

Transformation of local utility management

Private sector participation in public utility services was the critical part of New Public Management since the early 1980s. As a response to the growing but inefficient public sector, it aimed to incorporate market incentives, private sector management techniques and promoted greater customer focus in public service provision. The standard forms of privatisation and liberalisation obviously had diverse consequences in developing, emerging and in rich countries. The specific institutional environment and the administrative traditions determined how successfully these principles were introduced into the domestic practices.

However, following three influential decades on public service management, the policy priorities and the social landscape has gradually changed. One of the most consistent research and activist program on this systemic transformation collects the re-municipalisation cases in the water sector.

Table 1

Countries mostly affected by re-municipalisation (2000-2015)

France	87
USA	53
Spain	14
Germany	9
Argentine	8

Source: Kishimoto *et al,* 2015

According to this recent publication of the team, there are 235 cases in 37 countries when formerly privatised or privately managed water and sanitation service organizations were returned back to local governments since 2000. Table 1 shows that France, with rather fragmented municipalities was affected the most, as 87 local

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[1] *Gábor Péteri,* PhD, Ecobomist, LGID Ltd.

governments found a new form of service provision. It is followed by the US and other European countries, with large cities, such as Atlanta or Berlin, Stuttgart on the list.

Table 2

Forms of re-municipalisation, 2000-2015

Contract expired	47,5%
Contract terminated	42,0%
Decision made, but not implemented	7,3%
Operator withdrew	2,3%
Sold by private operator	0,9%
Total	100,0%

Source: Kishimoto *et al,* 2015

Re-municipalisation does not necessarily mean a hostiletakeover by the local administration. Almost half of these changes was peaceful, simply finding a new form of service management when the contract with the private service organization expired (Table 2).The other half of these re-municipalisation cases were initiated by the client local governments. The private partner had to be compensated, the shares were sold or they simply withdrew their offer. The new service organization might be some form of inter-municipal cooperation or association, a public entity with outsourced services.

The contractors were typically the large international companies providing various infrastructure services or in the developing countries the traditional business partners (Portugal in Mozambique, Spain in Venezuela). As the French companies were the most active on thisglobal market, they were seriously affected by the re-municipalisation: Veoliawater unit lost 80 contracts, but SUEZ (39) with its US subsidiary, United Water (18) and SAUR (18) were also affected. Terminatedcontracts, which had a negative impact on company finances, e.g. the Veolia group environmental services company sharesnow are at the same nominal price level as they were in 2003 and they could not recover after the 2008/2009 crisis.

According to the anti-privatisation activist movements there are both economic reasons and social consideration behind these contract closures. The financial arguments are the usual ones, such as increasing cost of services, delayed investments, high dividends paid from cost savings, overpricing contracts for own subsidiaries, lack of cooperation between various contractors under different municipal departments.
New elements of this re-municipalisation movement were the greater emphasis on citizens' or workers' objectivesand the stronger community focus. According to the activists, enhanced local accountability will make services more effective. The public service providers are more concerned about working conditions and safety. The public partnerships will make water service management more inclusive and consequently more sustainable. Even the successful benchmarking movement in the water sector is criticized because of homogenizing water services, neglecting alternative forms of service management, focusing on outputs instead of outcomes and especially because of ignoring social impacts.

There are social movements supporting these values, even in the UK, which was the first country promoting privatisation three decades ago. The civic programs such as "We Own It" or theanti-PFI campaign all aim to reverse the privatisation trend in public service management. The exclusively public water service operators themselves have also recognised this need for renewed policies and service management methods by supporting water operator partnerships and creating their own international association, e.g. the Aqua Public Europea.

The offered solutions are rather simple ones: promotion of inter-municipal cooperation for achieving economies-of-scale and creating public-public partnerships. Promoters of this movement are aware of the future problems whenwater services are taken over by the municipalities: local administration lacks expertise, databases developed by the service organizations are not accessible, transparency and inclusion mechanisms have to be developed in this sector.

The question is whether these politically motivated social preferences in local service managementand the re-municipalisation movement will have any influence on the investment policies and the major donors' programs and priorities?

Changing paradigm in international development

In the meantime water became a scarce resource and clean water and sanitation is one of the long term targets in global development. Ensuring access to water and sanitation for all is part of the seventeen Sustainable Development Goals (SDG) targeted by 2030. It aims to provide access to potable water to 663 million people and to the three times more who still use contaminated water, to help the 2.6 billion people who have no basic sanitation services and where 80% of human waste water is directly discharged to rivers and the sea.

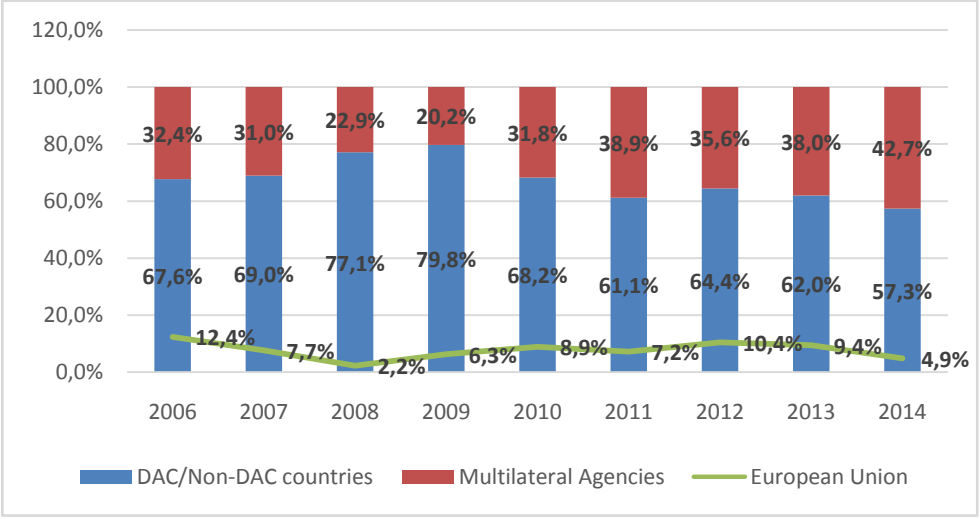
Infrastructure in general is critical for sustainable development. Other areas of SDG focus on affordable and clean energy, it is arecognized condition of industries, innovation and urban development. The overall objectives of infrastructure development emphasize the need for smaller scale of facilities (with economies of scale in project preparation), use of green and alternative technologies, need for integrity and curbing corruption in infrastructure investment and local service provision.

Here the key question is how these public services are financed and managed, as ultimately economic principles of cost recovery, economies-of-scale, market incentives, etc., determine their finances. As it was discussed in my other note in this blog, despite ending the "Washington consensus" on liberalization, privatization and deregulation, the market based financing and managementpolicies still prevail. With the great recession of 2008/2009, the funds available for public and private investments have contracted and in generalthe trust in private sector significantly declined. But by now PPPs are back and the new infrastructure investments, for example in alternative energy supply and green technologies need private sector participation both in developing and rich countries.

International financial institutions, such as the World Bank have realized that development assistance methods should be improved. Sources of financing will be diversified where public sector aid has a catalytic role and more private sources will be channelled into official development assistance (ODA), that is financial aid and technical assistance programs of governments. Allocation policies should recognize the different needs by country types (e.g. in fragile states hit by conflicts) and make domestic revenue mobilization as a condition of aid in developing countries.
International development will rely on new donors from emerging countries to a greater extent, which will also reform aid policies and might introduce innovative sources of financing. The China led Silk Road Economic Belt drive, the newly established Asian Infrastructure Investment Bank (AIIB) or the Islamic Investment Infrastructure Bank to be launched by the Islamic Development Bank are all strong examples of these shift in international development. The traditional members of Development Assistance Committee of the rich countries with a targeted level of ODA as 0.7% of Gross National Income, also want to respond on these new requirements by increasing the role of output based aid and untying aid by opening competition for donor funded procurement.

Chart 1

Official Development Assistance in water and sanitation (commitments)



Source: OECD, http://stats.oecd.org/qwid

However, the ODA statistics show that multilateral agencies represent relatively minor financial share in official development assistance (according to the definition of ODA 25% of the allocated funds should be grant). During the past decade they provided only 9%-11% of all donor funding (see OECD Query Wizard for International Development Statistics), which might be explained by the transforming objectives of ODA. Share of economic infrastructure and services, such as energy, transportation and communication is increasing and presently represents 19% of all aid and they might be preferred by country donors.

The water and sanitation sector is an exception, here 4% of total ODA is used, but the role of multilateral organizations is increasing (Chart 1). Multilateral agencies represent 42.7% of total aid commitments and they provide a broader package of policy tools for the recipient countries. So in the water sector donors' priorities matter and international development policies influence domestic practices a lot.

Potential scenarios

Re-municipalisation in local public services and the gradually transforming development priorities show that there are signs of conversion in local and in international practices. Despite these visible changes, the new public sector focused local service management still might have diverse influence on donor priorities.

The first option is that the recent re-municipalisation trend will remain marginal. So the private sector and market focused development assistance policies will be continued. Perhaps minor shift in aid priorities, greater emphasis on conditions of service effectiveness, social accountability will be introduced, but basically re-municipalisation will have *no impact on ODA.* It will further weaken the values represented by these activist movements.

Another possible scenario is that re-municipalisation will be only temporary: the recent nationalization experiments and centralization policies turn out to be unsustainable. There are several casesfor example in Hungary, that the new state run water companies accumulated huge losses, in municipal solid waste management the centralized tariff collection does not work and the remaining municipal service companies go bankrupt. It will verify the conspiracy theories, which say that the present populist policies in the utility sector are only slogans for the benefit of the political-financial elite. Under this scenario, thepresent nationalization will be followed by privatization in a more restricted market environment. Obviously,it will be in *line with the private sector focusedinternational development policies*.

Finally, it cannot be excluded, that the popular movement of claiming greater customer influence and community control in local public services will be further strengthened. Similarly to the civic pressure against corruption and for greater transparency in the late 1990s, it *will bring new values to international development and donor financing*. Presently the public financial management methods, the accounting, budgeting and reporting practices of international financial institutions have all incorporated those transparency and government openness standards, which two decades ago seemed to be moral claims from outsiders, only.

But how deeply re-municipalisationwill influence donor policies and in what way will transform development priorities, it is remained to be seen. Competing scenarios might prevail. Donors are not unified and their domestic political and development policy priorities matter a lot. Also the ODA recipient countries might need different interventions. Perhaps more community based service management techniques are needed in developing countries and stronger private sector participation might work effectively in countries with developed regulatory institutions. However, it is for sure that donors and development agencies should respond on these new re-municipalisation values in one way or another.

OFFSHORE: LEGAL OR ILLEGAL?*

Nikolett Zoványi[1]

It has been an ever growing debate over the existence and the legality of offshore companies since their appearances in the early 1800s. In the 21st century, voices against the existence of the offshore phenomenon got even louder as the financial crisis bursted out in 2008 and hurt – and in some places it is probably still hurting – the interests of national economies. Offshore is not an easy terminology to define, however, we may identify two very distinct scenarios in this respect. In the first case, a company that is incorporated in a tax haven is doing almost the entirety of its business activities outside the country of incorporation and takes the profit back there to pay its dues by the probably very favorable tax rates. In the other scenario, the company outsources most of its production into a country that is different than the one in which the company was originally incorporated. In the first case, we experience a clear agenda of tax evasion, while in the second case, there may be even more serious consequences of the offshore activities for the economy and society of the home country (e.g. the offshore company is not conducting its activities by hiring domestic workforce, it does not feel the need to support the community it operates in etc.). For the purposes of this study, we consider offshore as a definition determined by the first scenario.

The majority of the world are in a constant combat against the phenomenon of offshore, and still, these combined efforts are not sufficient to stop the 'disease' from spreading. Here, we do not want to go into a deeper economic analysis on certain benefits of the offshore model, instead, we take it as a generally accepted statement that offshores are hurting national economic interests in the host countries, most importantly public interests as they consider the country where they conduct their activities playgrounds and they do not support it by paying their public burdens there. This combined effort in many jurisdictions of the world often use sanctions and prohibitions that are public administrative, criminal and tax related in nature, trying to make national laws less favorable to offshore activities. In this agenda, many forget about the importance of private law, especially the role of company laws that may be either favorable or disadvantageous to offshore activities in the host country. Company laws can also effectively fight against offshores tying companies incorporated in a country to that home country. A notable example to this policy is the somewhat hypocritical approach of Hungary prior to 2005. The old Company Tax Act[2] in Hungary provided a definition to 'companies conducting business activities abroad' and established multiple requirements for these entities. While the old Hungarian law certainly allowed the establishment of offshore companies in the country, this was definitely not an encouragement if we take a closer look at the regulatory details. First

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[2] Act LXXXI of 1996 on the company tax and divident tax.

of all, the law imposed nationality requirements for the employees and the staff members. These companies conducting business activities abroad had to prove that the majority of their employees, managers and supervisory board members were Hungarian nationals, and they also had to register a Hungarian lawyer or law firm and an accountant. Conducting the majority or all the business outside the country of incorporation following these requirements was extremely difficult if not impossible to those in the production and manufacturing business as moving and accommodating the workers from the home country to the country of activity probably made the costs irrational and detoured many from considering Hungary as their place of incorporation. In the financial and some service sectors, however, it might have worked, and it could certainly still be a feasible option if the company is willing to utilize the achievements of telecommunication (e-sales). The nationality requirement, however, was not sufficient and, therefore, could not be continued after Hungary had joined the European Union as the Union-wide non-discrimination clause did not tolerate such restrictions. We have to point out that this now historical regulatory approach only works if the home country is willing to cooperate in the restriction of offshores, or, if the country of incorporation would like to prohibit its own companies to go offshore and use their favorable taxation system for such purposes. Unfortunately, it is not how famous tax havens treat the phenomenon of offshore, so this model does not seem to be a viable option to company law in the combat against offshores.

Another interesting concept to keep offshores out is when company laws stick to the real seat theory in order to decide over the nationality of a company. In private international law, two theories are competing to each other. The incorporation theory emphasizes the importance of incorporation, therefore, the governing law is determined by the place of registration, no matter where the company is conducting business activity or whether it does any activity in the country of incorporation. On the other hand, the real seat theory determines the applicable law by reference to the country in which the company has its actual real seat, head office or central administration. The world is quite divided on this matter, and even EU member states do not seem to have an agreement on this. The incorporation theory certainly encourages pseudo-foreign companies (e.g. offshores), while the real seat theory may run into difficulties in determining what real seat truly means, and it may also be anti-competitive. The United States, Canada, the United Kingdom, Austria, Sweden and China are some important players following the incorporation concept. Germany, France, Turkey or Spain are true believers of the real seat theory. The real seat theory may serve as a safeguard against forum shopping since the company can only move its central business activity if it is willing to change its legal status too. While under the umbrella of the incorporation theory, operating offshores does not run into obstacles in terms of the institutions of company law, the real seat theory may be a true blockage. If the country of incorporation (home country) and the country of real seat (host country) follow different concepts, they may easily claim simultaneous legal governance over the very same company at the very same time. In tax law, treaties for the avoidance of double taxation may show some relief, however, company law still causes turbulence in the operation of offshore companies (e.g. shareholders claiming safeguards against the management, stricter rules and requirements for managers and their liability,

favorable and less favorable capital requirements, supervisory tools over the operation of the company etc.). The European Union tried to solve this chaos generated by the various company law theories through the Recognition Convention in 1968, however, it never entered into force.[3] As the European Court of Justice emphasizes the somewhat restricted concept on the freedom of establishment for companies[4], it certainly encourages mutual recognition making this debate almost meaningless if we purely focus on company law issues and inter-EU offshoring.[5]

Many think that the idea of offshore is solely governed by the existence of tax havens and favorable taxation systems all over the world. There may be, however, another aspect of offshoring, the so-called jurisdictional offshoring. If we take the European Union as an example, we can easily see how jurisdictional shopping gets more and more popular due to lack of a unified company law in the Union. Under the freedom of establishment principle, companies incorporated in any member state of the EU enjoy non-discrimination in other member states and they must be treated as domestic companies. The Treaty on the Functioning of the European Union (TFEU) grants for the companies to do business in another member state. The restriction-based reading of the Treaty, however, may raise the question whether a member state has a right to enact barriers when a domestically incorporated company wants to leave the state.[6] An even more interesting angle of this problem was under scrutiny in the infamous Inspire Art Case.[7] A company incorporated under UK law having a sole director with a domicile in the Hague opened a branch in the Netherlands for tax considerations. Back then, Dutch law had a regulatory framework applicable to 'formally foreign companies'. That law established special rules for the responsibility of the managers, certain minimum capital requirements, and a specification in the company register that the firm is formally foreign. The 'formally foreign' label alone was found discriminatory by the European Court of Justice as it could have easily discouraged costumers and potential business partners. The Dutch law wanted to prevent jurisdictional offshoring through a label in the firm's name showing that the company does not consider itself a domestic company and does not pay its public burdens in the country it gathers the majority or the entirety of its profit.

The debate over the legality of offshores are complex, and those arguing against the beneficial existence of offshoring should take into consideration that a complex problem needs complex, multi-area treatment. Tax law and public administrative law cannot be effective in the combat against offshores if company law – the source of the problem in a legal sense – is not considered as an important regulatory instrument in this battle. The EU's anti-discriminatory practice on taxation cannot eliminate the phenomenon of offshore alone. Over the past decade, jurisdictional offshoring also

[3] Jacobsen, Christen Boye: An introduction to modern EU company law, RGSL Working Papers no. 28, Riga, 2005, available at: http://www.rgsl.edu.lv/images/stories/publications/Jacobsen_final.pdf (10 July 2016).
[4] Daily Mail case C-81/87, Cartesio case C-210/06, Vale case C-378/10.
[5] Überseering case C-208/00, Inspire Art case C-167/01.
[6] Centros case C-212/97.
[7] Inspire Art case C-167-01.

became a problem, hurting the competitiveness of certain member states. There is no doubt that a unified company law could easily eliminate this problem from the continent, however, it is a somewhat utopistic idea now, and it does not seem to become a reality soon. If Europe would like to make more effective steps against external offshoring, it first has to settle the questions of the two competing theories over the governing company laws (incorporation and real seat), then it should move toward the detailed rules of taxation and public administration laws.

FEASIBILITY OF GREEN AUCTIONS IN THE MAROSSZÖG, HUNGARY*

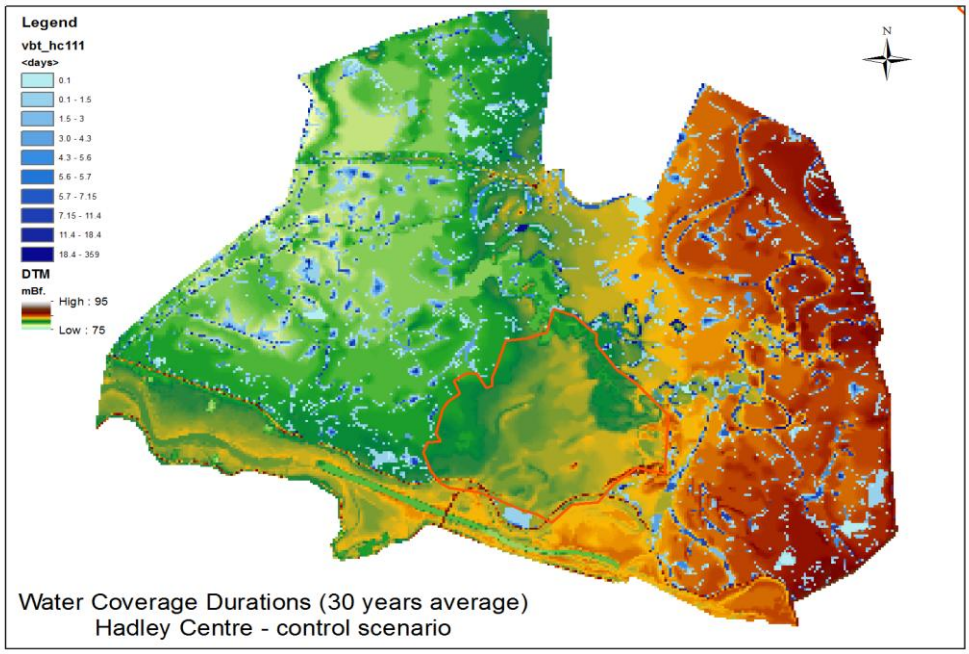
András Kis and Gábor Ungvári[1]

A major goal within the reform of the EU Common Agricultural Policy (CAP) is "greening" of farming activities. Adopted with the 2013 CAP Reform, greening aims to motivate farmers to adopt and carry on farming practices that are also environmentally beneficial. Since markets alone do not reward these activities, CAP provides direct incentives via green payments. Farmers who receive an area-based payment have to adopt specific measures that benefit the environment and climate. Participating farmers have to choose from the following measures: 1) they can diversify their crops, 2) they may choose to maintain permanent grassland or 3) they can dedicate 5% of their arable land as "ecological focus area", while giving up intensive farming here.

With a case study within the EU FP7 funded EPI Water project, we examined the feasibility of satisfying the third criteria via an economically efficient cooperation among farmers in the Marosszög area in the South of Hungary.

Figure 1

The average water cover within the Marosszög



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[1] *András Kis and Gábor Ungvári*, REKK AQUA

At present almost all of the area within the Marosszög is cultivated. There are various pieces of land in terms of quality and agricultural productivity. Some farms are adequate for intensive vegetable farming by using developed irrigation technology, while at the other end of the spectrum there are farms that are barely worth cultivating and the only real reason for farming is the annual receipt of area-based CAP subsidies. The latter farms are often situated in low lying areas subject to excess water inundation in case of wet weather, generating substantial costs of draining the water or prompting to give up production for the entire year in question.

If greening through "ecological focus areas" is introduced in the Marosszög that would imply that each participating farmer would need to give up production on 5% of its land, whether that land is of superior or inferior quality. The case study in question examined if farmers are willing to cooperate in the common fulfilment of the 5% goal. It means in practice that farmers with more productive land would continue to use all of their area, while paying for farmers with less productive land to give up production on the productive land users' behalf as well.

Within the case study an "auction game" was developed and run in which participating farmers bid their land for greening. By greening we meant land use change from intensive arable land to some other, more environmentally beneficial use, such as fallow, hedges and trees, buffer strips. The unit of the bids were HUF per hectare per year, the amount of money in exchange of which a farmer would give up cultivation of its land for the benefit of others, i.e. of those who would not have to introduce greening on their own land.

The auction exercise was held on 24th January 2013 at the Farmers' Association of Makó. 22 farmers with total cultivated land of 1778 hectares participated in the exercise, a little less than 20% of the case study area.

From the bids a supply curve was constructed showing the marginal cost of land use change. This curve helped to determine the equilibrium price of converting the required number of hectares. The farmers whose bids are accepted receive this equilibrium price for each hectare. The compensation is paid from a fund to which the owners of unconverted land have to contribute, equally after each hectare.

The results of the game were shared with the farmers, together with the analysis of the spatial pattern of the bids. A number of conclusions were derived from the exercise:

1. Less productive lands (those that are regularly covered with water inundation) were offered at the lowest cost and more productive pieces of land fetched much higher bids. The spatial pattern of the results corresponded well with the hydrological model based categorisation of land area from the perspective of water inundations.

2. Adaptation by the scheme would result in a substantial decrease of adaptation costs compared to a process when each farmer acts individually. (The calculated adaptation cost saving for the participants at the study site would have been 38%.)

3. Once farmers understood the mechanism, they were absolutely willing to cooperate with each other on finding mutually beneficial solutions to satisfy greening requirements together.

4. The auction – if implemented in reality – has the potential to improve the economic position of all participating farmers compared to individual fulfilment of the 5% ecological focus area requirement.

5. Detailed implementation of CAP greening is to a large extent an internal matter of the EU Member States. Given the above results, policy makers should make sure that common implementation can be pursued.

6. Even if common implementation as an option is available, farmers themselves may not recognise that they should cooperate to reduce overall costs of adjustment. Therefore external catalysts – such as providing a tailor made auction system – may be necessary for smooth and efficient implementation.

PPP and Hungary: What should we do for success?

Judit Varga, PhD

On the one hand PPP is a complex, time-consuming and costly solution to supply public duties. On the other hand it could be a good method to satisfy certain public needs. As the author mentioned PPP has favourable properties. It is particularly suitable to produce goods and services from which consuming non-payer consumers may be excluded.

So PPP can be a good device in the State's hand but its advantageous features are not realized automatically. Every PPP contract needs careful preparation, impact assessment.

Hungarian experiences show that these former prudent deliberations, impact assesments were not happened. This is one reason why the Hungarian PPP contracts' lack of success. The other reason is the Hungarian legal institutional environment. What should we do to have a chance to create a successful PPP contract?

− There is a need to eliminate the regulatory vacuum because expressly legal standards for establishing long-term state contracts lacking in today's Hungarian legal system. Earlier there were fragmentary regulations for these treaties in our general act of public finance but they were compulsory only for contracts made by central government and not for contracts made by local governments.

− In addition, we should strive to ensure a stable regulatory environment because the profit-oriented stakeholders manage as a risk the rapidly changing legal standards and they price themes. This will result in increase of costs. Because of the former reasons, it should define the stability of development policy as an aim.

− It would be important to accept and adapt legal requirements which grantee an objective comparison method of public task provision alternatives. This comparison should be important after the investment decision is taken.

− Essential during the implementation and operation of PPP projects that the state lives with its control right, keeps it and does not contract it out.

− It is determinative that the state does not miss the consistent application of sanctions when its private partner does not fulfil the contract or fulfil it late or wrong. Lack of sanctions – thought that the missed interests' enforcement by state – were problems in many domestic PPP investments.

− Also it would have a great need for a system of legal norms which grantees transparency of the utilization of public resources. This could be ensured by consistent control and monitoring, by disclosure of these controls' results, by the detailed and same formed indication of the Budget and Final Accounts' data in each separated projects. It is a problem in Hungary for instance when each ministries' PPP projects are in an aggregated form in the Annual Budget and Financial Accounts Acts. Thus amount for each PPP investments are not separated from each other. Still belong to the transparency is that: public funds user companies do not rely on business secrets the context of budget support and ensure the publication of these data.

The overall conclusion is that PPP is a complex contractual construction which can be an option of original investments by the state in many fields of public task provision and which is able to adopt for the ever-changing social and economic needs which brought it alive. PPP's application in practice is not free from challenges because of the long contract length and the presence of for-profit public sector partners in the public tasks provision. Due to the former points and the state short-term budgetary planning and because of the medium term policy objectives PPP can be a constant subject of professional and policy debates.

A sample for other countries

István Hoffman, PhD

The Finnish reform of the structure and management of welfare services is a highly debated change. It fits to the new European trends, the concentration of the welfare services. The economy of scale is highly required and the traditional forms of service provision seems to be inefficient. Therefore more centralized and concentrated structures have evolved in Europe. This tendency could be observed in the Scandinavian countries, as well. The first concentration reform was the Norwegian health care reform in 2002 which resulted the nationalization of the former municipal inpatient health care. In Sweden new, urban inter-municipal cooperation evolved.

The one-tier Finnish municipal system and the broad municipal tasks resulted strong debates on the reform of this welfare service system. It was clear, that the traditional system should be reformed. In the last decades alternative solution have evolved. Firstly, the voluntary health care were encouraged by the central government which resulted a slowly, but evolutionary change. The economic crisis impacted this system and the acceleration of the concentration process was required.

After 2010 the reform became a hot topic in Finland. Several authors stated that the centralization of the welfare services should be an adequate answer. The municipalities tried to maintain the former system. At the end neither solutions were chosen. Although the concentration of the health care services seems to be a compromise, it is strongly debated. The chosen model is a bit inadequate to the Finnish municipal traditions, the welfare regions are relatively big and the real local governance could prevailed only limitedly – thus the central government does not have the responsibility, but the municipalities have only a limited impact on the system.

Because the concentration of the public services is a trend in Europe, the results of the Finnish reform are very interesting, because this model could be a sample for other European countries.

Finland is far away

Gábor Péteri, PhD

It is rather hard to assess a complex social and health care reform by reading a brief blog, only. But my understanding of the present coalition government's reform efforts is that they aim not a simple centralization of Hungarian style. The three year long refom program is more about regionalization of human services and strengthening the new national regulatory, professional advisory and development functions. But as Mr. Möllari wrote, at the same time keeping the purchaser-provider split, that is to allow diversity of competing service organizations. And here the amalgamated municipal governments could play an important integrating role. As we could read the new county governments' social and health care services will be financed solely by the central budget (details mechanisms elaborated later).

So this makes the Finnish reform really interesting: how the competing goals of technical service rationale (ecomomies of scale, incentives for savings, equitable service standards) can be matched with the traditional values of local autonomy, transparency or the "old fashioned" NPM values of customer orientation, freedom of choice, etc.

There is a lot to learn from Finland in this respect - with high hopes that they will have sufficient time, political strength and concensus, economic prosperity to complete the reform process. It seems that the administrative capacity and technical expertise are in place.

Some elaboration of current work with Finnish reform

Markku Mölläri, Ministry of Finance, Finland

Thanks for excellent comments, Mr Hoffman and Mr Péteri. Our reform is indeed quite a change for our system and debate about it is currently high. The Association of Finnish Local and Regional Authorities has a key role in commenting and also the metropolitan area debate has been active in last few days.

Discussion has much concentrated on the new regional level and how that is to be done. The discussion about the future role of the municipality has not been emphasized so much in this extend. Our message to the municipalities has been quite encouraging: after transfer of the big tasks in social and health care sector, there will remain still very large and important duties for the local level. Also the economic adjustments of the reform are very positive for municipalities, even though there are fears of the effects – how cutting in municipal income tax percent, equivalent of task transfer, is done right.

There are several interesting points we really should get it right for success. There should be, also in future, the role for municipality to encourage local business culture and creating new workplaces in the enterprises of the area – in good co-operation with region. The role of municipality in promoting health living, to prevent diseases and

social problems is also a highly important one. And of course big duties in education and culture will remain in municipal level.

We are not very busy promoting amalgamations currently – the last carrot money is given to few amalgamations coming into force from 2017.

The very important issue that is under development in workgroups is developing indicators for services and economy – very interestingly, the evaluation of objective and subjective need of customer is not an easy task. Indicators are in key role to help ways to better cost and quality control. There is a lot of room for better data management – digitalization is on the top agenda of Government, but finding concrete solutions is a hard work. The freedom of selection is an issue that is under political discussion, and that discussion is very interesting.