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Public – Private Partnership in Land Consolidation

1. Introduction

1.1 Public – Private - Partnership

"Public-Private-Partnership" **PPP** seems to be the "secret weapon" in West-European countries as well as in countries in transition; one can get the impression that **PPP** will solve all budget problems of the state and economic problems of the society.

In this context **PPP** should be defined as a transmission of public or state tasks to private persons or private companies; the transfer can occur fully or partly. In the field of land surveying and land administration some West-European countries have a long tradition on **PPP** like United Kingdom and Federal Republic of Germany, but in quite differently pronounced manner.

The recent discussion on **PPP** is started with a reminiscence on principles of subsidiarity: the state should concentrate its care and actions on those being unable to be done by citizens or private persons or private institutions.

1.2 Advantages of PPP

And in deed – a withdrawal of state on core competency has a lot of advantages:

It reduces transaction costs. State budgets decrease because of lower personal costs. Offer and demand react in a better way on the up and down of economic development. And in countries in transition **PPP** can help to substitute the evident lack of administration infrastructure.

2. Analysis

PPP is no "secret weapon" and no "cure-all" or "universal remedy". It has to be carefully analyzed and investigated, which tasks are suitable to be privatized and which tasks can be transferred to the care of private persons or companies. In that context different intensities of **PPP** and cooperation are to proof and to define.

2.1 State tasks and their execution

Normally, classic state tasks are defined in the national Constitution concerned. State acts and their execution are reserved to officers, being in a special term of employment to the state.

State acts are based on the sovereignty of the state and the power to regulate its relations by legislation.

The possibilities of participation of thirds in fulfilling of state tasks pass from plain administration assistance and poor technical preparation work to the "Loan" with and transfer of state tasks.

We have to differ

- public services (administrative or technical)
- simple sovereign action as acts on the field of public right and
- state acts by which the authority does magisterially or governmentally as representative of the public power; in this case a legal authorization has to be given, and the state act has to be done in defined forms of the public right.

An special instrument of a responsible privatizing policy is the "Loan", a transfer of single state acts to private persons or private companies. For a "Loan" there has to be given a legal authorization, and the transfer to a single person or company has to be implemented by a special state act.

2.2 On state core competencies

What are the core competencies of state?

What are sovereign tasks and which tasks have to be executed by state acts.

Which state tasks have to be executed only by the state? Which state tasks can be transferred to thirds and which state services should be offered by thirds?

Should state and third offers remain in competition; is a competition wanted and should this competition promoted. How can be ensured that all citizens can get state services homogeneously.

And: what is to do that thirds, working on principles of profit maximizing, act neutrally and legally, and are controlled by state organs.

All these issues can not be discussed and answered generally and in the needed deepness in this report. Therefore I want to tell you what the regulations are in Germany and in the German Land Consolidation.

3. Public – Private – Partnership in Land Consolidation in Germany

3.1 In general

In Germany we have a quite differentiated system of **PPP**, depending on the corresponding state task and the competency of the private third and his authorization.

| partners public tasks | engineer bureau: Civil Engineer Land Surveyor | private | | public state authorities on legal behalf |
|--|---|--|--|--|
| | | Licensed Land Surveyor (incl. competency of authentication) | Licensed Land Surveyor with additional loan of a legal task | |
| administrative assistance | X | X | X | X |
| technical assistance and/or technical preparatory work on the field of public right (i.e. state survey) | | X | X | X |
| simple state acts on field of public right (i.e. cadastre: notifi- cation about mark- ing) | | X | X | X |
| state acts (i.e. land consoli- dation: publication of the land con- solidation plan | | | X | X |
| state acts and core state competency | | | | X |

3.2 Practice and experiences in the German Land Consolidation

The German land consolidation practice is more than 100 years old, and in the same age is the experience of **PPP**. Since the beginning, private land surveyors were partners in the implementation of land consolidation procedures with best results and an high efficiency in the promotion of the single procedure. Work up to 7 million US \$ / year was and is placed by single state land consolidation authorities like Northrhine–Westphalia.

That is

- identification, determination and surveying of the boundary of the land consolidation area and establishing of fixed marks
- establishing of the framework of minor control points and surveying
- setting out and surveying of the Road and Water Resources Plan with accompanying landscape conservation plan
- setting out and surveying of the Land Consolidation Plan
- execution of amendments of these planes

All these services are works with an immediate regard to the real property cadastre. Thus, these works are executed only by Licensed Land Surveyors. The works are not placed by tendering or auction, but directly placed at the elected surveyor. Payment occurs on the base of a contract between authority and surveyor with regard to a special scale of fees.

The crucial point on a correct fulfilling of the contract is a complete specification and description of the wanted services. For that standard specifications were developed and introduced by both partners.

Further services consist in technical and administration assistance like field check, overview maps on land use, mapping, photogrammetric measures. These works are placed to Licensed Land Surveyors and other engineering bureaus.

3.3 Loan of sovereign competency to "Appropriate Thirds" in Field of Land Management

Since 1990 the transition process occurred in East Germany. At that purpose a special law was enforced, called "Law on Accommodation of Agricultural Structures" ("Landwirtschaftsanspassungsgesetz"). The accommodation of the agricultural structures should occur among other things by land management. And because of a total lack of land consolidation authorities the works should also be done by so called "Appropriate Bodies".

It was not finally and exclusively defined who "Appropriate Person" or "Appropriate Body" is. Regularly, state fund companies should execute this work. It was only regulated that the "Loan" of sovereign competency to the "Appropriate Third" had to be executed by the Ministry concerned. But the Loan didn't content the total responsibility for the whole land management procedure: central and peremptory procedure steps and administrative decisions were reserved for and remained in the responsibility of the state authority.

That are over all

- Land Consolidation Decision
- Preliminary Instructions on Possession of Land
- Provisional Transfer of Possession
- Implementation Order of the Land Management Plan.

On my personal initiative, also Licensed Land Surveyors from West Germany with knowledge and experience in land consolidation got the Loan as Appropriate Third for Land Management in East Germany.

After more than 10 years, we have to state on the base of interviews with a lot of Heads of the Land Consolidation Authorities in East Germany that the transfer of more sovereign competency to Licensed Surveyors – on the whole – wasn't successful; the sum of problems was bigger than the positive results.

The engagement of Licensed Surveyors should be concentrated on the traditional field of surveying and real property cadastre. Obviously, the work of land management is so pretentious that a small bureau, led through principles of profit maximizing, is not suitable to execute land management procedures in the leadership.

3.4 State core competencies

If already simple land management procedures give problems by transfer in the leadership of thirds in single cases, an integrated land consolidation procedure is totally unsuitable to be executed by thirds:

The crucial point is the row of administrative discretion and judgement in an integrated land consolidation procedure. Planning competency and administrative decisions on land use and real property have to be restricted to the state or municipal authorities. Land consolidation means state led development of a region; land consolidation is state special planning and it cancels – timely limited – the local / municipal planning sovereignty.

In the West European legal systems it isn't to imagine that such wide reaching decisions would be done by private thirds. The responsibility for special development is a matter of the state and has to be matter of the state.

Furthermore, the state has to ensure property rights. In countries in transition, also in East Germany last ten years, we have to state quite different knowledge on land and real property by the new land owners and citizens. In land management procedures all people have to be treated equally; equal status of all owners independently of their knowledge and cleverness is an important task and challenge of the authority and a sign of "good governance". Land management without any control is an action field of corruption. In that context it is to proof at which place legality and neutrality are situated in the best way. In Germany, that place is the state land consolidation authority, undoubtedly!

4. Final remark

PPP lies in social and political trend. **PPP** is "en vogue", and everybody, who formulates objections, seems to be "one of yesterday". So, we know the recent pressure on all who don't follow the actual trend. Nevertheless, critical remarks have to be done, where principles of the state constitution and state administration seem to be touched.