

United Nations Economic Commission for Europe

National PPP Readiness Assessment Report

Belarus



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ECONOMIC COMMISSION FOR EUROPE

**UNECE International PPP
Centre of Excellence**

**UNECE National PPP
Readiness Assessment Report**

Belarus

February 2013

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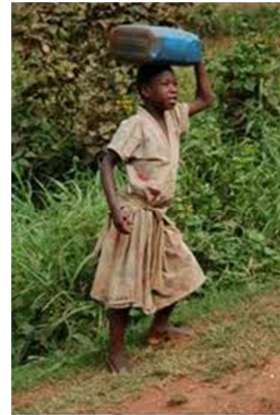
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1. Introduction

The world is facing an increasing demand for infrastructure. The rapid growth of the world's population, the urgent need to make further progress in achieving the UN's Millennium Development Goals, and the need to mitigate the effects of climate change, are coming together and overstressing every government's budget many times over. Pressing areas of need range from water and sanitation, waste management, hospitals and health care, schools to roads, green energy and many more. Estimates by the OECD put the figure at 35 billion USD for new infrastructure and 45 billion USD for the mitigation of climate change affects in countries with emerging economies alone. It is not a discussion of why, the problem is how to find funding to meet these enormous needs.



The traditional approach of governments is either to use the state's own budget or privatisation. The first is by far insufficient to meet the needs while the latter only works in a sound legal and financial framework. There is though a third way in undertaking this task. Governments are focusing their attention on the role of the private sector to help – with emphasis on HELP - but in a distinct new form, namely Public-Private Partnerships (PPPs). The role of Public-Private Partnerships (PPPs) is of critical importance.

PPPs can be defined: *as innovative, long-term, contractual arrangements for developing infrastructure and providing public services by introducing private sector funds, sound risk allocation, expertise and motivation but not taking over the responsibilities into areas that are traditionally done by the government*¹.

The number of PPP projects worldwide has increased exponentially over the past decade or so, and there are over 4500 successful projects in the world today. However, unfortunately, there are only a few PPP projects that are successfully operating in developing countries and transition economies. Although CIS countries are beginning to look at PPPs as a means to addressing their infrastructure challenges, for most of these countries PPP is a totally new concept and a model where there is no living memory of, and substantial capacity-building and training will be required in order to deliver successful projects.

1.1 Belarus's vision

Infrastructure is the basis for a sustainable and inclusive economic growth that creates more jobs and reduces poverty. This is a widely shared vision in Belarus. One of its key strategies in achieving this is through the development of a PPP programme. From transportation to water and energy systems, Belarus needs investment and innovation to develop a more sustainable framework to reduce its reliance on fossil fuels, create capacity for economic growth, and make better use of its natural resources.

¹ UNECE Guidebook on Good Governance on PPPs

Belarus needs a world-class infrastructure by which it can benchmark its own infrastructure's development against globally competitive economies. This vision will include, among other things:

- an efficient water and sewage system;
- modern health and education systems;
- an efficient integrated multi-modal transportation network;
- a productive agriculture system with supply chain agro-food processing; and
- a diversified energy system.

To date, the State plays a too strong role in the delivery of public services relative to the leading successful market economies. Belarus needs to improve the mix between state and private and to give more opportunities to the private sector to deliver public services.

The lack of infrastructure has been internationally recognised as a bottleneck to economic growth in any economy, and PPPs are a means to fulfil the vision and priorities for the nation's infrastructure needs by setting goals to align departmental policies, ensure best value from government spending, reduce duplication, and show how investments can reinforce one another. The PPP model has in-built mechanisms that avoid the enormous time delays and costs overruns in delivering major projects, and set the context within which decisions are taken at the state and local levels with a high degree of confidence.

1.2 Capability Gap

The vast majority of countries with economies in transition and developing countries in the UNECE region and beyond that are at the initial stages of developing national infrastructure investment strategies, including PPPs, need to improve their understanding, knowledge, capability, skills, and establish efficient processes that would allow them to properly develop and deliver their PPP strategies. The UNECE recognised this capability gap and thus embarked on the development of the National PPP Readiness Assessment Tool in order to help countries to develop their PPP strategies according to best international practice, so that they might successfully deliver much needed infrastructure on a large scale and co-ordinated basis, for the good of the citizen and at a cost that represents 'value for money'.

1.3 The UNECE national PPP readiness assessment in Belarus

In addressing this capability gap in Belarus, the UNECE, through its Team of Specialists on PPP and the UNECE International PPP Centre of Excellence, and in cooperation with the Ministry of Economy, held a series of meetings with key stakeholders involved in furthering PPP development in Belarus (including lead and line ministries, financial institutions, private businesses and representatives of intergovernmental organisations). Besides representative of the Ministry of Economy, the UNECE Team was accompanied by a representative of the European Union for most of the meetings. The knowledge acquired from these meetings, together with the replies to the pre-visit questionnaire helped to formulate a number of recommendations contained in this document.

The programme of meetings in Belarus took place from 19 to 23 March 2012 (see Annex III), and it was specifically designed to engage all of the major stakeholders in Belarus who are involved with infrastructure development, both in the public and private sectors, as well as major international organisations. Most of the meetings with line ministries were at the level of First Deputy Ministers, while those with the banking

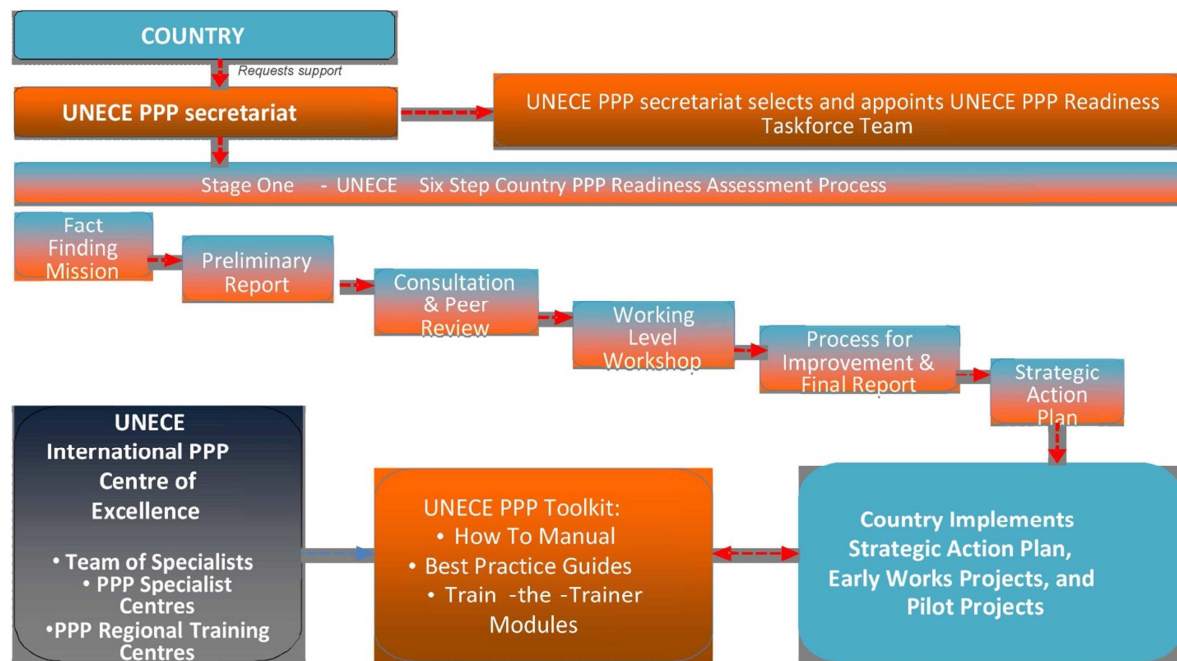
community and private businesses were at the level of senior executives. The consultations with the various stakeholders were informal in nature, and the knowledge acquired from these meetings together with the replies to the pre-visit questionnaire provided the basis for the readiness assessment report and the recommendations below.

UNECE national PPP readiness assessment

The purpose of the readiness assessment is to:

- make a thorough examination of the enabling environment and identify challenges that may face a country in its aim to attract private capital for infrastructure development;
- consider areas where potential pilot projects are needed and feasible; and
- formulate an Action Plan to develop PPPs in the country.

Table 1 – ‘Six Steps’ to the UNECE National PPP Readiness Assessment



The process to a UNECE National PPP Readiness Assessment (RA) is graphically depicted in Table 1 above, while a more detailed description of the ‘six steps’ is contained in Annex I. Suffice it to say at this juncture that the fact-finding mission, which represents step 1, took place in March 2012, and step 2 was completed in June 2012. Step 3, corresponding to the consultation and peer reviewing, was held from June to December 2012, while the working level workshop (step 4) was held in Minsk on 9-10 July 2012. This report represents step 5.

The following timeline provides the target completion dates for each of the six steps:

Step No.	Description	Target Completion Date
1	Fact Finding Mission	March 2012
2	Preliminary Report	May 2012
3	Consultation and Peer Review	June-December 2012
4	Working Level Workshop	9-10 July 2012
5	Improvement Process and Final Report	February 2013
6	Strategic Action Plan	2013

1.4 Methodology

Where possible, primary sources were the main sources of information used throughout this report. These include, information obtained from responses to the pre-visit questionnaire (see Annex II) from various stakeholders, and from the consultations with the various public officials, representatives of the business community and the banking sector, and representatives of international organisations.

A number of secondary sources were also used in compiling this report, and these were mainly studies prepared by reputable international organisations, including International Financial Institutions.

1.5 Peer reviewing

The report was peer reviewed by a number of distinguished international PPP professionals within the UNECE PPP expert network whose pertinent comments were included in this report. The names of these individuals have been included in the 'acknowledgments' section above.

2. Recommendations

The recommendations are structured in a sequenced approach, starting with developing institutions and procedures, including training and capacity building; the importance of infrastructure plans, especially if sectoral plans are presented to the market as one comprehensive national infrastructure plan; and finally the drivers to PPP implementation, including a list of potential sectors where pilot projects could be initiated.

2.1 Developing Institutions and Procedures

2.1.1 Training and Capacity-Building²

Capacity-building at various levels was identified by all stakeholders involved in the RA as the most crucial need today to develop PPPs in Belarus.³

An extensive training and capacity-building programme to ensure that all stakeholders involved in the PPP process, including public officials, the banking sector, the business community and the public at large are fully aware of the PPP concept and its effective development. *Recommendation 1*

The training is envisaged to be:

- project focused (adopting a ‘learning by doing’ approach); and
- once the basic skills are acquired, would eventually be delivered by local trainers using the top class scientific academic institutions available in Belarus.

The subject-matter of training and capacity-building is envisaged to be focused on:

- 1. the gradual reduction of the overarching role of the State in the PPP process; and**
- 2. the need to create more space for the private sector to develop especially in the modernisation of Belarus’s infrastructure.**

² Training and Capacity-Building encompass the following: 1. *Human resource development*, which is the process of equipping individuals with the understanding, skills and access to information, knowledge and training that enables them to perform effectively; 2. *Organizational development*, or the elaboration of management structures, processes and procedures, not only within organizations but also the management of relationships between the different organizations and sectors (public and private), and 3. *Institutional and legal framework development*, which entails making legal and regulatory changes to enable organizations, institutions and agencies at all levels and in all sectors to enhance their capacities.

³ The need for training and capacity-building is not endemic in Belarus and UNECE’s experience is that training and capacity-building remain essential in enabling countries with economies in transition to develop their PPP programmes. In devising a capacity-building and training strategy, one should keep in mind that in order to be effecting and enduring, capacity-building and training should be a continuous, progressive and iterative process that is participatory, country-driven and consistent with national priorities and circumstances. Furthermore, this process has to be supplemented with the experiences of countries with a more mature PPP programme, whose best (and not so good) practices and lessons learned remain crucial in avoiding early mistakes and failures.

2.1.2 Inter-Ministerial Infrastructure Board

Formation of an inter-ministerial infrastructure board to share knowledge, promote good practice and to develop approaches to cross-cutting themes such as how to effectively attract private capital to Belarus, successful project development, innovative financing options and the use of ICT.

Recommendation 2

The inter-ministerial infrastructure board, with all lead ministries represented at senior manager or director level (not at ministerial level) as focal points, to be led by the PPP Unit (see below), will share knowledge, promote good practice and develop approaches to cross-cutting themes such as how to effectively attract private capital to Belarus, successful project development, innovative financing options and the use of ICT. This board should arrange PPP education and greater understanding of PPP law for public servants, through the PPP Unit. It should also ensure that proper procedures are developed for PPP procurement. The focal points would also facilitate sectoral training and capacity-building provided by international agencies working on PPPs in their respective sectors.

2.1.3 Setting up a national PPP Unit⁴

It is commonly accepted that governments can build the necessary capacities in a combined approach which establishes new institutions and trains public officials while at the same time using external expertise. However, developing skills inside government presents a major challenge. There are a number of new skills that must be developed for PPPs, such as negotiation, contractual and financial skills. One of the key challenges is that instead of the traditional approaches, which focus on inputs, PPPs require skills that can identify the outputs of projects. These skills are generally not found within governments but these skills may be acquirable. The challenge is to retain skills acquired from the private sector within the public sector.

A national PPP Unit⁵ be statutorily established within the public sector to house the new skills and this concentration in one body will increase the impact of the acquisition of the necessary skills, the key functions of a which are elicited in Table 2 Below.

Recommendation 3

⁴ See the separate comments to the draft law on PPPs sent to the Ministry of Economy on 18 May 2012, and the UNECE Guidebook on Promoting Good Governance in PPPs, 2008, where the setting up of a PPP Unit is considered international best practice.

⁵ One of the functions of the UNECE International PPP Centre of Excellence is to provide certification services, including the possibility of also certifying public service PPP Units according to UNECE governance standards, thereby giving confidence to investors and assurance to Governments that projects will be undertaken according to correct procedures.

Table 2 - The key functions of the PPP Unit:

- help develop and support the management of the project preparation process;⁶
- provide the policy, technical, legal and other support mechanisms to local authorities and government ministries that have the responsibility of putting the project together rather than undertaking the projects itself;
- help the relevant procuring authority⁷ to more confidently manage the whole process (including engagement with external advisors) from the development of the initial project design through to the bid evaluation process and post financial close;
- take on the role of consulting with investors and communicate to line ministries their concerns regarding legal and institutional bottlenecks to the implementation of PPP projects;
- develop the market for PPPs, which can provide a consistency of approach across a wider range of projects – thus limiting the chance that the private sector might play one part of the public sector off against another;
- play a crucial role to maintain a strong dialogue with all players in the market;⁸
- hold regular seminars for the commercial advisers – legal, technical and financial; and
- engage with advisers and get their informal advice (which is a form of ‘market testing’) at the various phases of project development.

Source: UNECE Guidebook on Promoting Good Governance in PPPs

Institutional capacity-building is crucial to ensure the proper functioning of the PPP Unit even before its establishment.

2.1.4 Positioning of the national PPP Unit

Thought should be given to where is best to locate the national PPP Unit within the executive. There are no hard and fast rules, but countries where their PPP unit was located at the appropriate level of authority have performed best. Thought should therefore be given to locate the national PPP Unit either at the President’s Office or the Prime Minister’s Office. The location of the national PPP Unit within either Office would provide the national PPP Unit with the required authority it would need in its dealings with Government Ministries, agencies, municipalities and private sector entities, in order to ensure PPP is established and implemented successfully. This position would also allow it to have the necessary strategic view and oversight, above that of the line ministries.

⁶ It is important to carefully prepare and develop projects, especially given the long-term contractual nature of many PPP deals and the scrutiny they will subsequently be subject to by lenders’ credit committees and the public at large.

⁷ Particularly one that is new to PPP or if the project is particularly new or complex.

⁸ This often starts purely as a need to liaise over PPP technicalities and to provide the private sector with information. The role usually develops because the unit reports to public sector colleagues the key findings about market attitudes and companies’ responses to public sector actions and statements, in addition to reporting details and views about the private sector’s capacity.

Locate the national PPP Unit at the appropriate level of authority, including considering locating the Unit at the President’s Office or the Prime Minister’s Office.	<i>Recommendation 4</i>
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2.1.5 PPP law

The draft PPP law needs substantive revision to make it reach the necessary standard. One should keep in mind that investors have many other alternatives where to put their money and improving the law must be a priority of the Government if Belarus if it is to launch a successful PPP programme.

Ensure that the PPP law that is enacted corresponds to international best practice (see Table 3 below).	<i>Recommendation 5</i>
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The first draft law prepared by the Ministry of Economy undergoes a thorough revision before it is processed further to take into account a number of comments, including those provided by the international PPP legal experts in the UNECE PPP network (see section on Legal Framework below).	<i>Recommendation 6</i>
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Establishing a PPP Unit in the law, something which is hitherto missing, keeping in mind that in most PPP successful countries, the PPP Unit provided a platform for PPP development.	<i>Recommendation 7</i>
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Ensure that procedures for unsolicited proposals, whereby the private sector could submit innovative proposals for the management of infrastructure facilities and public services, are clearly provided.	<i>Recommendation 8</i>
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Strengthen lenders rights, including ‘step-in’ rights for lenders in the event of a default by the private partner contractor, which are so critical to ensure that PPP deals are bankable.	<i>Recommendation 9</i>
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A successful PPP programme has at its base a robust legal framework that is supported by adequate public sector institutions, and at the very top, the necessary political will to steer the PPP process through its various stages. Table 3 below visually depicts the key components of a PPP programme.

Table 3 Key components of a PPP programme

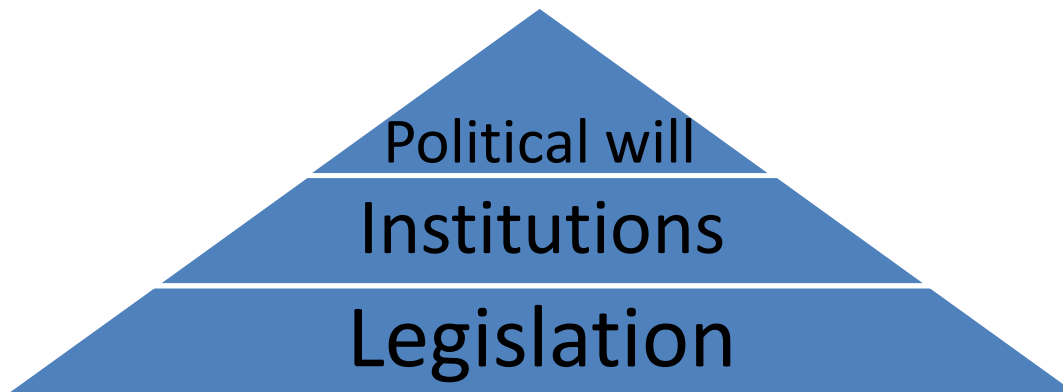


Table 4 PPP legal framework

Synthesis of key principles for an adequate PPP legal framework

- **Constitutional, legislative and institutional framework:**
 - no undue restrictions for private sector involvement in infrastructure projects;
 - power and capacity of a public authority to award the infrastructure (PPP) projects and to enter into the project (PPP) agreement with the private partner;
 - identify the sectors where PPPs projects may be awarded and those were they are specifically excluded.
- **Selection of the private partner:**
 - selection criteria and procedures, including on unsolicited proposals, should be clear, open, transparent and efficient;
 - concessions without competitive procedures should be awarded in exceptional circumstances set forth in the law.
- **Government support and guarantees:** public loans, subsidies, guarantees against adverse acts of governments, tax and customs benefits, guarantees related to the project site and other forms of government support should be explicitly set forth in legislation.
- **Repatriation of profits:** crucial that the repatriation of profits is not prohibited by legislation.
- **Tariff setting and tariff control:** restrictions on the private partner’s freedom to establish tariffs and fees should follow established principles of “reasonableness”, “fairness” or “equity”.
- **Step-in rights:** statutory step-in right provisions or at least the possibility of stipulating such provision in the project agreement are crucial for lenders.
- **Expropriation/nationalization and compensation:** adequate statutory protection should be provided to investors, including a transparent procedure for compensation at market value.
- **Termination of the project agreement and compensation:** a clearly established procedure for compensation in case of early termination of the agreement should be available.
- **Dispute resolution:** arbitration in a neutral jurisdiction would provide investors with the assurance that disputes are resolved fairly and efficiently.

Source: based on UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects

The key principles for an adequate PPP legal framework are elicited in Table 4 above. These principles are based on the UNCITRAL work on privately financed infrastructure projects,⁹ and provide internationally accepted and proven benchmarks against which legislative provisions should be measured.

2.2 Elaborating a National Infrastructure Plan (NIP)

2.2.1 National Infrastructure Plan (NIP)

Develop a ten-year, cross-sectoral National Infrastructure Plan (NIP), in consultation with local authorities, private sector parties and trade unions with the Ministry of Finance as the lead ministry.

Recommendation 10

The NIP must include rigorous and transparent funding and affordability analysis. A number of pilot projects should be identified within the NIP as the first to market, after proper initial appraisal (including pre-feasibility studies) has been undertaken. The NIP should be nationally and internationally promoted, to attract widespread interest.

The National Infrastructure Plan 2011 – United Kingdom¹⁰

The United Kingdom's National Infrastructure Plan 2011, produced by The Treasury in October 2011, is a good example of a NIP that Belarus might want to look to emulate. In essence, the plan sets out:

1. a clear design for the UK's infrastructure (vision);
2. a new strategy for coordinating public and private investment;
3. new investment in critical infrastructure projects; and
4. a new focus on delivery.

A NIP is a more potent weapon in a country's arsenal than individual plans of line ministries when it comes to attracting infrastructure investment into the country. Due to the intrinsic nature of infrastructure projects, investors in such projects think long term and a NIP assists them to better understand the public sector's long term goals in infrastructure development in a country. The NIP should therefore be considered as a sales tool for encouraging private sector involvement, while at the same time ensures that the line ministries are in tune and work together across all sectors rather than working in isolation with the risk of having one sector (usually transport) much more advanced in its strategy and plans than others (such as health and education).

⁹ UNCITRAL legislative guide is available at: <http://www.uncitral.org/pdf/english/texts/procurement/pfip/guide/pfip-e.pdf>

¹⁰ Available at: http://www.hm-treasury.gov.uk/national_infrastructure_plan2011.htm

2.2.2 Develop Fully Costed Infrastructure Plans

Ministries and Municipalities develop fully costed infrastructure plans based upon well-developed strategic service models and needs analysis as a first interim step to a NIP.

Recommendation 11

These sectoral infrastructure plans would be used to then feed into the development of the NIP. The Government should also consider underwriting projects and/or providing viability gap funding for projects of national importance.

2.2.3 Develop Strategic Service Models

Review existing ministerial/sectoral plans versus the country's need, and to develop strategic service models (SSM).

Recommendation 12

It is important that these plans be reviewed by all government ministries, in conjunction with local authorities, within their particular sector based upon an area needs analysis. In this way each Ministry would have a high level plan for the location of its services throughout Belarus. For example, a Healthcare SSM would contain the location by city or town, of particular health services, extending throughout the country; all services from tertiary, secondary, mental, primary and community and elective care would be allocated to a particular location.

2.3 Driving PPP Implementation

2.3.1 The PPP enabling environment

The enabling environment is the expression that encompasses government policies that focus on creating and maintaining an overall environment that is conducive to the development of PPPs. In fact this will benefit all private investment in Belarus, not just PPP, since the constraints facing PPP investors are generally endemic rather than specific to a particular project or transaction. This sub-section provides a number of recommendations identified by the UNECE Team while examining the prevailing enabling environment in Belarus. The recommendations focus on the macroeconomic, business, financial and governance, legal and regulatory climates.

2.3.1.1 Macroeconomic climate

The Government addresses selected areas in the macroeconomic climate (such as a tightened fiscal policy coupled with policy intervention to stabilise the rate of inflation) to stand a better chance of attracting external bidders for its infrastructure projects to ensure value for money for the citizens.

Recommendation 13

2.3.1.2 Business climate

The Government addresses selected areas in the business climate, such as the real or perceived barriers related to:

- doing business in Belarus (that include, high level of state bureaucracy; active state intervention; heavy fines; system of currency regulations; instability of normative legal framework for business; system of sanctions; business conduct procedure; level of tax burden; access to financial resources; level of consulting; and other professional services support);
- corruption (real or perceived); and
- policy intervention to mitigate the costs associated with access to finance, which is so crucial for the PPP development.

Recommendation 14

2.3.1.3 Financial climate

The following policies aimed at:

- making lending more accessible to businesses, both to local and foreign capital;
- encouraging long-term lending for infrastructure projects beyond the present ten years. The absence of long term debt availability in Belarus does constitute a problem to PPP development, especially given that as a rule of thumb, the post-financial crisis debt/equity ratio in a typical PPP project is 80-20;
- considering introducing sovereign guarantees;
- making lending terms less onerous to businesses; and
- stabilising local debt interest rates for long-term infrastructure projects,

should be promoted by the Government of Belarus to lay the foundation for its PPP development.

Recommendation 15

Provide the necessary framework to encourage the banking sector to accept more risk in building the economy

Recommendation 16

This is important in order to develop the economy, and the nascent bond market should be enhanced and encouraged by providing the necessary legal and regulatory powers aimed at increasing local autonomy and municipal borrowing power in order to encourage all the major municipal authorities to issue bonds to supplement their revenue generating powers to raise the necessary finance for PPP projects in a sustainable manner.

2.3.1.4 Governance Environment

Introduce the standard use of internationally-recognised accounting and reporting standards.

Recommendation 17

Policy intervention aimed at introducing these standards, especially International Financial Reporting Standards (IFRS) and Resource Accounting Budgetary (RAB) for public expenditure would be conducive to attracting potential foreign investors.

Develop a rigorous business case approvals process for the lifecycle of any project, from its inception through to operation, especially including programme and project appraisal.

Recommendation 18

The Ministry of Finance should take lead authority for all project approvals, whether procured through the PPP model or traditional. The procurement route should then be decided upon the basis of value for money and affordability.

A typical business case approval process for a PPP project is shown below in Table 5, with a more detailed breakdown of the process to Outline Business Case approval shown in Table 6.

Table 5 - Key stages of typical PPP project business case process

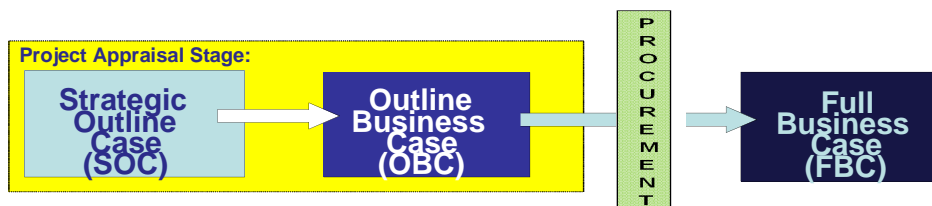
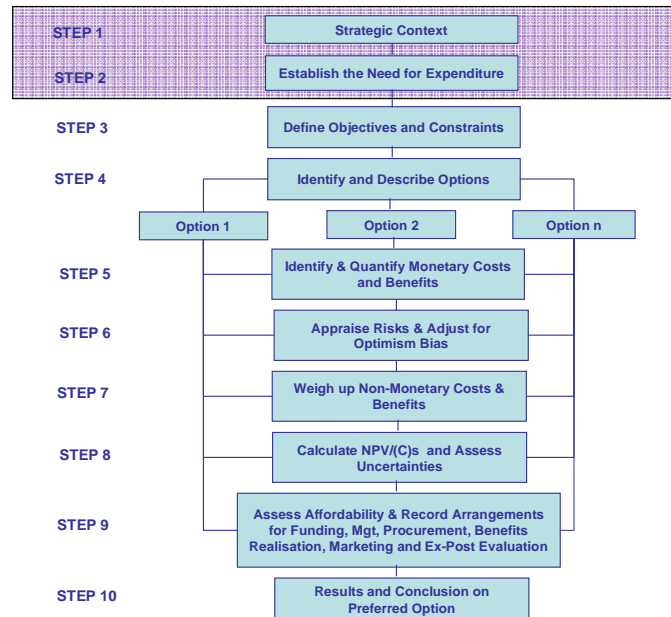


Table 6 - Typical Outline Business Case process for PPP Project



2.3.1.5 Legal Framework

Undertake an in depth study on the PPP legal framework in Belarus that could be divided in two parts:

- **part one to focus on a number of specific issues in the PPP legal framework (such as, land acquisition, dispute resolution, arbitration, procurement, contracts, insolvency legislation, insurance, taxation, health and safety etc); and**
- **part two benchmarks the PPP legal framework to international best practices, while at the same time comparing the PPP legal framework in Belarus with that in other CIS countries.**

The study will be used in the training and capacity building activities.

Recommendation 19

An in depth analysis should be carried out to assess whether the relevant legislation is sufficiently supportive of PPPs. For foreign investors, including international financial institutions, it is absolutely vital that the PPP agreement and the applicable law allow settlement of disputes through international arbitration outside the country concerned.

However, often, the applicable law stipulates that disputes in relation to land and other real estate shall be submitted to the exclusive jurisdiction of national courts. This would block international arbitration and therefore jeopardize the entire PPP concept. Table 4 above provide some key principles that should be present in the legal framework of a country for PPPs to flourish.

2.3.1.4 Regulatory Framework

Establish separate regulators in each of the main infrastructure sectors.	<i>Recommendation 20</i>
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2.3.2 Project identification, selection and procurement

<p>Enhance the identification, selection and procurement stages of infrastructure projects, in order to have a better chance of attracting external private sector interest:</p> <ul style="list-style-type: none"> • introduce Most Economically Advantageous Tender (MEAT) concept in bid evaluation; • develop the supply chain arrangements for PPP projects through policy intervention; • ensure that the Value for Money analysis also includes the non-monetary benefits; • introduce Environmental and Social Impact Analysis (ESIA) as matter of course for all infrastructure projects, irrespective of whether they would be procured as a PPP or traditionally; and • consider “bundling” small scale projects, especially at sub-national level. 	<i>Recommendation 21</i>
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2.3.3 Belarus Infrastructure Association

Establish the Belarus Infrastructure Association.	<i>Recommendation 22</i>
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The Belarus Infrastructure Association would include the inter-ministerial infrastructure board, local authorities, private sector parties and unions to work together to promote successful projects, including using examples of successful PPPs in transition economies and to improve the infrastructure investment climate in Belarus is recommended. This association would help to improve communications between Government and the market. It should organise seminars and knowledge sharing events to increase the expertise of its members. It should also look outwards internationally to network with expert associations such as the International Project Finance Association, in order to become knowledgeable in the shortest possible time.

2.3.4 Outsourcing

Develop a strategic performance and efficiency plan to outsource non-core services to the private sector under performance based contracts.

Recommendation 23

The Government, led by the Ministry of Finance, might want to consider this route in order to improve service quality and reduce costs. The savings made within such a programme could go a long way to funding national infrastructure. More mature PPP markets employ outsourcing as a first step to full PPP, in order to build confidence in a partnership model with the private sector. It would be easier to achieve than a full blown PPP and a good starting point and thus is worthy of serious consideration.

2.3.5 Local Autonomy

Afford greater autonomy and tax raising powers to municipalities and local authorities.

Recommendation 24

Some thought should be given to this possibility in order to enable municipal and local authorities to develop infrastructure more quickly at the local level, without the need to refer to central government and encounter the additional bureaucracy which that brings.

2.3.6 Potential Areas of PPP Activity in Belarus

PPP is a new concept to Belarus, hence a past record of successful completion of projects is not available. However, the stakeholders consulted in the RA did identify a number of possible projects for consideration in any future PPP exercise.

This section provides a summary of these proposals. It is envisaged that after participating in an in-depth training programme the various stakeholders will identify additional, currently unthought-of opportunities.

2.3.6.1 Transportation

A strategic roads programme currently exists called “Roads of Belarus” 2006 to 2015, where the focus would appear to be on the rehabilitation of the existing network as opposed to the development of new roads, although the Ministry of Transport did promote by-passes of the City of Vitesk, Grondo and the Bialowieza forest national park.

Outsource the maintenance of the roads

Recommendation 25

The capital for the rehabilitation of the roads network could be supplied by development banks, such as EBRD. Once the roads have been rehabilitated, then an opportunity to outsource the maintenance of the roads would be available to the Government. Whilst this is

not a traditional PPP DBFO¹¹ model, it appears to be a good opportunity for the government to introduce private sector competition and improved performance and service delivery into the maintenance of the national roads network using performance based contracts. Local companies can then learn from foreign companies and achieve expertise transfer. This approach may also be applied to city streets and traffic systems and has been adopted successfully internationally.

Procure the existing toll-paying road network, currently managed by state companies, as a PPP to a private sector concessionaire that will also maintain the road and be involved in ancillary revenue-generating road services (such as petrol stations, restaurants and other retail outlets).

Recommendation 26

The City of Minsk outlined a number of projects which would be suitable for a framework agreement with a construction management company. This for example could form the basis of array of mechanisms to deliver a longer term strategic infrastructure plan for Belarus.

2.3.6.2 Water and Waste Water

This is a good candidate for PPP development. Previous EU studies indicated the possibility of water and waste water infrastructure schemes with a capital value of up to €50m. Interest in water development was not expressed by any of the stakeholders but could work well at municipal level. Bankability may be a challenge as local public finance appears problematic. One solution to this may be greater autonomy for local authorities and higher levels of tax raising powers within municipalities, or else central government underwriting. Inter-municipal bundling may be required in order for any PPP to have the necessary scale.

Use the PPP model to improve the overall quality of water supply.

Recommendation 27

2.3.6.3 Solid Waste

This is also a good candidate for PPP development, again at a municipal level. Construction of communal waste processing plants was identified as a need for Minsk, Vitebsk, Bobryjsk, Borisov and Orsha, with various periods of implementation between 2013 to 2015. There is also interest in exploring this option and also the possibility of Energy from Waste and district heating. Bankability may be possible if familiar technology is employed and if economic tariffs are allowed. The same issues regarding local finance and scale apply to waste PPP as they do to water.

Use the PPP model to for solid waste treatment, including waste-to-energy options.

Recommendation 28

¹¹ Design, Build, Finance and Operate

2.3.6.4 Airports and river ports

Use the PPP model to redevelop airports into a pan-International logistics hubs. *Recommendation 29*

Belarus has eight airports, some of which could present an opportunity for this redevelopment. This seems a logical opportunity given the country's central location within Europe.

Use the PPP model to redevelop the historical strength of Belarus' waterways. *Recommendation 30*

There may also be potential to redevelop the waterways through PPPs, in particular a canal connection between Brest and Dnepro in the Ukraine, this could also help support an international logistics infrastructure.

Whether this, like the roads development, would require initial government capital for the development, with the operations subsequently outsourced, would require further examination.

2.3.6.5 Energy

Use the PPP model to develop cleaner, safer, and more sustainable renewable energy sources, including municipal waste to energy projects. *Recommendation 31*

The country is energy dependent upon the Russian Federation. To help rebalance this, steps have begun to develop a nuclear plant with funding agreed from the Russian Government. In addition to this, thought should be given to developing plans for cleaner, safer, and more sustainable renewable energy sources from within the borders of Belarus. PPP could help develop this strategic approach (municipal waste to energy projects could be included in the policy mix for green energy sources).

2.3.6.6 Industrial Park Developments

Develop municipal-led Local Asset Backed Vehicle PPPs (LABV) for industrial parks. *Recommendation 32*

Growth zones around cities could be a good candidate again for municipal-led Local Asset Backed Vehicle PPPs (LABV) where a joint venture company is established between the public and private partners. The public asset (land) is provided by the local authority and the

developer then brings the finance and development expertise. Both parties then share any profit generated from the rent roll within the development. This approach may require some central government subvention, dependent on the level of demand in any given area.

2.3.6.7 Healthcare

Use the PPP model to procure the following healthcare projects:

- 1. the Cardiology research centre in Minsk,**
- 2. the Pulmonology and physiotherapy centre in Minsk, and**
- 3. a molecular and genetic laboratory for carcinogenesis**

Recommendation 33

The Ministry of Health has identified three projects as possibly PPP suitable. These are the Cardiology research centre in Minsk, the Pulmonology and physiotherapy centre in Minsk and a molecular and genetic laboratory for carcinogenesis (location undefined). In addition to this the City of Minsk has identified a number of modernisation and reconstruction projects as possible PPP ready.

Develop a blend of PPP and outsourcing, performance based contracts in healthcare

Recommendation 34

These would most likely be a blend of PPP and outsourcing, performance based contracts. Any projects would be subject to health insurance receipts, Government affordability and scale. However, for example in the case of community care facilities, it would be quite straightforward to bundle these to achieve the necessary scale for a successful PPP. Other aspects are co-location of healthcare services with other public services such as social care provision.

2.3.6.8 Education

Use the PPP model to modernise the education estate.

Recommendation 35

The Ministry of Education is of the view that implementation of investment projects by means of PPP was not possible at this present time. However, given the high importance that the country places on education (literacy of 99%), and the wide spread of educational establishments, it is highly recommended to revisit this approach. Modernisation of the education estate would represent a major opportunity for PPP, if the modernisation planning is carried out properly. Schools and further and higher education accommodation projects are good candidates for PPP. Modernisation is not simply the refurbishment of existing schools and colleges but a large scale rationalisation and redevelopment of the estate, beginning with a modern schools and colleges service model. However, the Ministry of Education does not at present have an estate management agency so this work should be contracted out to those

with the necessary expertise. Any PPP development would be subject to Government affordability.

What is required, before any PPP projects are possible, is to better define what is actually required in terms of quantity and scale. This is, in effect, a schools modernisation programme, which should begin with examining the current schools estate and then moving towards what a modern schools estate for Belarus would look like. It is only at this point that a schools infrastructure plan could be sensibly developed. PPPs will be impossible within the education sector where a piecemeal approach to small scale development is undertaken. The planning must be carried out at the strategic level first before any capital development is undertaken.

2.3.6.9 Prisons

Develop an estate management plan before considering the PPP model as a possible procurement vehicle in the prisons and correctional facilities' sector.

Recommendation 36

Prisons have been successfully developed using PPPs internationally, just like hospitals and schools. The first step should be to develop an estate management plan to develop the scope and costs of the accommodation requirements, before considering the optimal procurement route. This sector is worthy of further consideration.

3. Infrastructure Needs in Belarus

International experience in the UNECE countries and beyond has consistently shown that infrastructure investment and development strategies and plans should begin with an understanding of the needs, be it on a national, regional, local or municipal level. Once the needs have been identified, strategic service models should then be developed for the delivery of public services and lastly an infrastructure plan developed for the delivery of the infrastructure required to support the delivery of the services. This sequence of needs, service model, and infrastructure represents international best practice for the efficient and cost effective delivery of infrastructure, which ultimately improves the quality of life of the citizen and the economic performance of a nation or region, in a meaningful way.

Typically, governments' needs focus on some or all of the following: growing a sustainable economy; creating opportunities; tackling the socially and economically disadvantaged; improving health and wellbeing; protecting the environment; safer communities; and the delivery of high quality and efficient public services.

Quite often public authorities tend to rush into “delivery” mode as they are naturally keen to see capital works commence, having made assumptions with respect to demand, without having first necessarily undertaken needs identification and subsequent programme and project appraisal, to ensure deliverability of solutions that address public needs.



Map of Belarus

One of the key challenges facing governments in the UNECE region and beyond is to achieve the right balance between social and economic infrastructure on the basis of available resources. It is therefore important for public authorities to get their priorities right vis-à-vis the economic and social needs in the country.

One of the key questions posed to stakeholders in Belarus during the consultations was precisely on what they considered as the key economic and social infrastructure needs today in Belarus, and which of the two needs, in their view, should be given priority.

In respect of economic infrastructural needs, there appeared to be widespread consensus among the respondents and stakeholders that significant investment was required in the sectors of:

1. transportation (roads, river ports and airports);
2. water and waste water;
3. waste management
4. energy; and
5. telecommunications.

The PPP model has been proven to work well, internationally in the first three of these sectors, and whilst investment in both the energy and telecommunications sectors would normally be a solely private sector activity linked to deregulation of these markets, the PPP model can be used in the energy sector in respect of Energy from Waste and some Renewable Energy developments.

In respect of social infrastructural needs, again there appeared to be widespread consensus that the following sectors were of priority: healthcare, education, housing, and prisons. All of these “accommodation” type projects are very well suited to the employment of PPP. Projects to develop facilities generally operate on an asset availability based contract,¹² which in turn leads to much improved service at reduced cost to the public sector.

Furthermore, there was identification of the need to develop infrastructure that would directly enable economic development, for example the development of industrial parks. This type of development can employ a type of PPP, whereby some public equity was concerned, or where public land and/or property would be used as the public sector’s contribution to the partnership.

When asked about the prioritisation of infrastructure needs in Belarus a slight majority of respondents indicated their belief that economic need was of a higher priority than social need in Belarus today. This view mirrored that of the PPP experts consulted during the peer review process, who argued that Belarus should focus on ‘hard’ (economic) infrastructural projects initially before moving to ‘soft’ (social) infrastructure projects.

Several challenges to the delivery of Belarus’s needs were raised by respondents. From a funding perspective these included: lack of public capital and of government underwriting; efficient use of public resources; difficulty in accessing foreign capital; lack of available debt especially beyond a tenor of ten years; and onerous lending terms. This is normal as the debt tenor does not match the lifetime of the assets being mooted. Refinancing and other methods could be used to overcome this within a PPP structure.

Political and institutional challenges identified included: need for closer working between ministries; decentralisation and increased local autonomy and municipal borrowing power; greater inter-municipality cooperation; greater consultation between government and private sector before decisions are taken; reform of public administration; reduced bureaucracy; improved PPP and commercial skills within the public sector; more transparent procurement

¹² Where unitary payments are effected on the basis of the asset availability. In other words, if 90% of the asset is available, the unitary payments are also reduced accordingly.

and greater liberalisation and independent regulation of existing markets; and increased outsourcing, to encourage improved performance through competition.

It was roundly confirmed by respondents that neither sectoral Strategic Service Models, nor a National Infrastructure Plan, existed in Belarus at the time of writing.

There was widespread agreement that the people at large knew very little about what PPP was and how it could benefit the country's economic and social development. This was however understandable taking into account the level of overall PPP knowledge in Belarus, and information campaigns aimed at raising public awareness, if properly implemented, would ensure that the public became better versed in the topic.

4. How is Belarus progressing in the PPP process?

PPP is a relatively new concept in Belarus and, as such, understanding and knowledge of its basic principles is understandably patchy across the public and private sectors. It is best understood within the Ministry of Economy, which is the lead Ministry in PPP and the focal point for PPP development in Belarus. Overall, the PPP process in Belarus is at its infancy. However, the feedback received from respondents indicate that there is the necessary political will to enact the necessary legislative framework and set-up the appropriate institutions that would eventually lead to project identification all the way to procurement and actual project development. The Presidential decree No.10 of 2009 ('on creation of additional conditions for investment activity in the Republic of Belarus'), which calls for the creation of a cohesive long-term sustainable economic growth by involvement of external investment, was seen by respondents as tangible proof of the political commitment at the highest level of the state to significantly increased private sector participation in infrastructure development in Belarus.

4.1 General consideration

It was observed that some confusion exists between the understanding of outsourcing of public services and the PPP model, even to the point where some respondents thought that any contract between the public and private sectors represented a PPP. All respondents duly accepted the need for greater knowledge of PPP within the public, private and civic sectors of society and indeed were unanimous in their desire and calls for support from others with this knowledge to help them develop a greater understanding. All in all, the entire situation is completely normal for a country setting out on its PPP "journey".

Good procurement and commercial knowledge and skills existed within the public and private sectors and these were readily transferable into the PPP area. On the private side, local banks, companies and firms in all likelihood would need to look to partner with foreign counterparts in order to achieve PPP skills transfer at the management level. Public sector stakeholders all expressed a need for greater expertise in the appraisal and preparation of projects.

Greater coordination within the public sector and also the inclusion of private sector parties became the norm in other countries with a more mature PPP process, and this coordination and level of engagement should be introduced in Belarus to help raise understanding more speedily and consistently across the board.

Political will was correctly identified by a number of stakeholders as the single most important aspect of successful PPP development. Closely followed, again correctly, by the availability of capital, that is, affordability. Also highlighted was a need for expertise.

Civic awareness of PPP was understandably low and this would normally follow in due course once the practitioners had sufficient subject matter expertise. The concept of *user pays* seemed to be understood and accepted by the public to a degree but also needed to be promoted, along with PPP understanding.

Unfortunately no records appear to exist recording the historical performance and delivery track record for previous public capital projects in Belarus procured traditionally. These statistics would be very helpful in setting the current benchmark for public works projects and give a good indication of what was achievable in respect of timescales and costs.

According to international best practice, the PPP model offers a number of advantages over ‘traditional’ public procurement, especially as it increases the certainty of outcomes (that is, ‘on time’ and ‘on budget’ delivery). The key differences between the two procuring methods are contained in Table 7 below.

Table 7 PPPs and ‘traditional’ public procurement

PPPs as an alternative to ‘traditional’ public procurement

There are different ways in which the private sector can invest in public infrastructure projects. On one end of the spectrum we find the ‘traditional’ public procurement, while on the other end, we find outright privatisation. PPPs are essentially what comes in-between, and are different from both ‘traditional’ public procurement and privatisation of public assets. In the case of privatisation, for example, accountability for service delivery and ownership is transferred on to the private sector, while accountability in the PPP model remains vested in the public sector.

The key differences are:

- specifications in PPPs are measured in terms of ‘outputs’ rather than ‘inputs’ as in ‘traditional’ public procurement;
- the private sector is responsible to finance, build and operate the asset;
- the public sector ‘purchases’ the services through regular payments (service payments) or income generated (user fees) over the life of the contract;
- in a PPP, any costs overruns remain at the private sector’s risk;
- risks associated with costs of design, construction, operation and maintenance, and demand for the use and service provided by the asset, are transferred from the public to the private sector in a PPP project;
- in a PPP, construction costs are funded by the private sector, thus relieving the pressure on government funding for infrastructure projects requiring significant capital investment; and
- the whole life-cycle approach in the PPP model vis-à-vis traditional procurement ensures that the private sector selects the most efficient and sustainable solution for the long term rather than the cheapest solution in the short term.

It was also observed that public services have been contracted out to the private sector in order to achieve better value for money for the public purse. This is encouraging for PPP development as PPP is a simple extension of this concept. It would be beneficial to understand the Service Level Agreements (SLAs) and contract management arrangements for these services.

4.2 PPP Capacity – Public and Private Sectors

As expected at this stage of PPP development, Belarus does not yet have the necessary subject matter expertise or skills within either the public or private sectors, to develop and deliver a major PPP programme.

The development of a PPP Inter-Ministerial Infrastructure Board, under the overall responsibility of the Ministry of Economy and comprising representatives from across government ministries should be created to support the successful development of PPP. One

or more PPP focal points from the line ministries and other relevant public entities (such as the National Bank) would need to be nominated. The focal points would also act as entry points for PPP training and institutional capacity building in their respective sector. This network of focal points will make it easier for international agencies to interact with the line ministries and other public entities when sector-specific activities are planned both in and outside Belarus.

Overall, despite some organised training in place, there is a clear need for upskilling within the public sector and this point was universally identified by all stakeholders. Not just in the area of PPP but also in project appraisal, feasibility, business case development, legal issues, procurement, value for money, affordability and budgetary management, approvals processes and contract management (see recommendation on capacity-building and training).

It was observed that there was also a lack of formal PPP co-ordination and knowledge sharing between ministries and government departments. The Ministry of Economy has access to international best practice but this is not enough for Belarus to develop any meaningful PPP activity.

Within the private sector there are several construction companies, which by partnering with foreign companies have the capacity to undertake large capital projects. However, locally there is a shortage of Facility Management companies, while the lenders, as it will be highlighted below, do not seem inclined to lend long term.

There were no replies on the local architecture market capacity for infrastructure development but one would assume that local firms would partner with leading foreign firms as is normal international practice at the beginning. There appears to be quite good PPP understanding and corporate financial and legal expertise amongst the local advisory market, which can of course use its international network effectively to import any required skills.

As with the public sector, all private sector stakeholders unanimously called for the opportunity for training and education with respect to PPP. They also agreed that a public education process was important.

4.3 PPP Project Identification, Selection and Procurement

All stakeholders concurred that there was no National Infrastructure Plan currently in place. This is needed to identify the priorities for public infrastructure (see further the 'Recommendations' section above).

It was not certain whether the Cost Benefit Analysis (CBA) concept has been employed for specific project identification, to date. Infrastructure plans would not appear to be costed, a vital aspect in successful implementation as they need to be linked to budgetary affordability. The Ministry of Finance would normally have ultimate sign off on any plans as they will carry the budgetary accountability role. PPP project budgets would normally be ring-fenced by the Ministry of Finance once the Outline Business Case was completed and before the procurement begins, otherwise bidders will be disincentivised.

“Bundled” procurement, whereby a number of small scale projects are packaged into a single, larger procurement for efficiency and value for money, appears not to have been employed in

Belarus, to date. This can be particularly effective when used on co-location / community projects in sectors such as solid waste management.

There would not appear to be clear decision making criteria with respect to deciding which procurement path was followed for any given procurement, that is, how to decide whether a project was procured traditionally or through PPP. Value for money analysis appears to be purely monetary, not including the important non-monetary benefits. One aspect of the training and capacity building programme will include practical sessions on the various tools available to assess procurement options, such the Public Sector Comparator, which is a quantitative benchmarking tool used by the public sector to maximise the value for money concept by allocating risks optimally.

Some work appears to have been carried out regarding the pre-procurement stages of PPP but not much beyond that. A milestone project procurement and delivery plan was yet to be developed. There was no external oversight in place at the time of writing. Environmental and Social Impact Analysis (ESIA) have been advised but it is uncertain as to whether they have been carried out for any projects to date. The post award aspects have still to be addressed, such as contract management arrangements.

The supply chain arrangements for PPP projects are undeveloped at this stage. This will be an important aspect to be addressed for any prospective foreign parties. The Government can play an important role in addressing this through policy intervention.

Thinking on refinancing would not appear to have been developed as there has been no need for it in the past. It is not clear if this is being considered in the draft PPP legal and policy framework.

In bid evaluation, the concept of Most Economically Advantageous Tender (MEAT) is not currently employed, or indeed recognised. MEAT represents good practice internationally.

4.4 PPP - Post Award, Delivery, Operations and Performance Management

As with the other sections, the key point that arose when considering the post award, delivery, operation and permanence management of infrastructure projects was a general lack of understanding. This is understandable given the lack of experience with PPP in the country.

It was also observed that there appears to be no consideration of a Performance Management System (PMS), post contract, for example, the use of Key Performance Indicators (KPI) such as delivery milestones and operational availability. This would need to be addressed in any developed Post Award or Contract Management documentation.

The variation / claims process is in place but more clarity is required to better understand how it worked. It would be vital that this process was transparent in order to successfully attract foreign investors and to prevent “low balling”, where a bidder submits a low priced tender to win the work and then submits significant claims post award to ensure profitability, and where the outturn cost to the public purse ultimately ends up higher than the unsuccessful bids.

The Dispute Resolution Process (DRP) is also present and involves the Ministry of Economy but a better understanding of its machinations would be necessary and set out in the Post Award, for foreign investors to be convinced. International arbitration has been used in the past for non-PPP projects.

The concepts of Force Majeure and Change in Law appear to be well understood by all stakeholders. Again, these would need to be set out in any PPP Post Award.

The question of prompt payment by Government was not covered by any of the stakeholders. Given the large sums involved in typical PPP projects, cash flow and therefore prompt payment is vital to success, otherwise bidders will be disincentivised. Acceptable payment terms, linked to the Key Performance Indicators, should be set out in any Post Award.

4.5 The PPP enabling environment in Belarus

The enabling environment of a country can be loosely defined as the complex sum of conditions that allow or limit its economic and social development, depending on the actions and policies of various actors, especially governments. Conditions vary enormously across countries, ranging from a disabling or even oppressive environment in some cases, over restrictive or problematic environments, to models of good practice to be followed.

The section should not be construed as providing a comprehensive overview of the enabling environment in Belarus, but instead it focuses on those elements in the enabling environment that might have a bearing on the successful development of PPPs in Belarus. While the analysis highlights areas in the enabling environment that are conducive to effective PPP development, it also provides a critique (see Section 2 - Recommendations) of the areas where policy intervention should be considered to improve the overall environment, which is so important to attract private capital to finance infrastructure projects in Belarus.

The relationship between the existing enabling environment and PPP development

A Government wishing to implement a PPP programme will need to consider early on in the project development whether there are any aspects of the existing enabling environment that would limit the scope of the PPP programme, and ultimately, the infrastructure projects.

All relevant elements of the enabling environment need to be considered, including the macroeconomic, business and financial climates, as well as the governance, legal and regulatory frameworks.

A brief analysis of individual aspects of the enabling environment in Belarus relevant to PPP development is considered next.

4.5.1 Macro Economic Climate

The population of Belarus in August 2012 stood at be 9.46 million¹³, and is split as follows;

Age Group	Percentage of Total Population
0-14	21
15-64	64
65 +	15

The relatively small percentage of young people could represent a potential barrier to future economic growth and could also indicate that emigration might be an issue, as the young might be seeking opportunity and prosperity outside the country. The relatively low elderly population indicates low life expectancy. In contrast to developed countries in Western Europe, where circa 70% of healthcare spent is directed to elderly care and the management of chronic conditions such diabetes, given the small elderly population the majority of care would be required by the very young and those of working age.

The 2010 life expectancy figures provided are summarised below:

	Male (years)	Female (years)
Total population	65	76

As expected, female life expectancy is higher than that of males, however overall life expectancy is relatively low compared to developed countries. The UK for example, has a male life expectancy of 78 years and female life expectancy of 82 years. Given the maxim that “a wealthy society is a healthy society”, it is clear that greater overall economic development is required to address the underlying causes of shorter lifespans within the population such as improved health and social care infrastructure and improved health promotion. Modern infrastructure would be one of the key elements in increasing Belarus’s economic prosperity, and PPPs, if properly developed, can play a significant role in achieving this goal.

The unemployment rate in Belarus is 0.6% of the active population, with the Government’s goal to increase this to 1.5% by the end of 2012. By international standards this is extremely low, especially when compared to the lowest rates in developed countries in the European Union, such as Germany, which currently has an unemployment rate of 5.6%. The unemployment figures of Belarus can be part explained by the absence of unemployment benefits (hence no incentive to register). Views were expressed in certain quarters that there was a lack of growth and under-investment in Belarus. However, the unemployment statistics would not appear to reflect this.

Belarus is a well-educated country, with a literary rate of 99%. Education is officially compulsory for nine years, and teaching is mainly in Russian. University education is of a high standard with some 55 higher education institutions of which 45 are state-owned, 10 are private. According to the results of the census in 2009, 18.9% of the Belarusian population aged 15 and over have higher education. As with any economy, it is important that the courses on offer at the further and higher educational institutes are relevant to improving

¹³ Source: <http://belstat.gov.by/homep/en/indicators/press/demographics.php>

economic growth and are aligned with industry needs, otherwise the highly skilled workers will emigrate to other economies where opportunities exist for them to apply their skills.

Belarus' natural resources are potassium salt, granite, lignite and wood. Belarus top goods exports and imports were reported as:

Exports: Potash fertilizers, petroleum products, timber, food products, machinery

Imports: Oil, gas, electricity, spare parts for machinery, household goods.

Belarus' largest trading partners are: the Russian Federation, the Netherlands, Ukraine, Latvia, and Venezuela.

Belarus imports most (85%) of its energy.¹⁴ Responses to the questionnaire indicated that a lack of investment in electricity generating stations and renewable energy led to such dependency on imported energy. Obviously national security of supply was an issue with such high levels of imported energy as well as the economy's exposure to imported inflation.

In early 2011, Belarus experienced severe balance of payments crisis. In response to this crisis, Belarus entered negotiations with both the IMF and the Eurasian Economic Community, and in order to address the rapid decrease of hard currency coupled with rapid increase in inflation, the country opted to sell its ownership of the gas pipeline infrastructure.

Belarus's transportation network was described in the questionnaire as inadequate, in need of upgrading and investment, to ensure better routes for exports and to attract investment from foreign countries. This was in addition to the emphasis on roads infrastructure expressed in the needs identification section. The transportation network is dominated by road (52,131km), with low levels of rail (5,503km), and waterways (2,500km). Historically, waterways played an important part in transportation internally through Belarus. An opportunity exists to redevelop the network through the PPP model, particularly the development of a connection between Brest and Drepr in neighbouring Ukraine. This would present an opportunity for the country to showcase a sustainable, environmentally friendly infrastructure development.

Belarus' credit rating as defined by Standard & Poor is B-, which is below investment grade. The largest City, Minsk, also shares the same credit rating.

Year	2002	2004	2006	2008	2010
US \$ billions	14.59	23.14	36.96	60.76	54.71

Table 8: Belarus GDP 2002 to 2010

Year	2002	2004	2006	2008	2010
% Annual growth	5.05	11.45	10	10.25	7.61

Table 9: Belarus GDP growth 2002 to 2010

¹⁴ Belarus sources up to 15% of its heat and energy needs from local sources (renewable resources – peat, biomass, hydroenergy and through tiny oil reserves). The state programme for the development of local and renewable energy resources for 2011-2015 aims to double this to 30% by 2015.

The tables above suggest a country experiencing rapid economic growth. However, the macroeconomic situation in Belarus deteriorated sharply in 2011. In 2010, the authorities increased public sector wages and pensions and expanded directed lending and subsidy programmes. These policies, which provided benefits to the citizens, eroded competitiveness gains from the devaluation of early 2009, were a contributing factor to a further increase of the current account deficit to 15.5 per cent of gross domestic product (GDP) in 2010, and led to the erosion of central bank reserves to less than 1.5 months of imports. The authorities pursued administrative foreign exchange control measures and tapped commercial banks' external assets via currency swaps with the central bank. Loose monetary and fiscal policies have enabled the government to maintain a high but unsustainable rate of growth.

In May 2011 the central bank devalued the rouble exchange rate in relation to the dollar by 56 per cent; established a new official exchange rate of which it has been unable to support with interventions due to the low level of reserves; and increased the refinancing rate by 16 percentage points to 30 per cent in September 2011, with a further rise to 35 per cent in October of the same year. At the same time, the authorities have resorted to administrative measures in the currency and consumer markets. Multiple exchange rates have emerged in the retail and wholesale markets.

Historically Belarus has had a major inflationary problem peaking in 1994 at 1945%.

Year	1994	1996	1998	2000	2002	2004	2006	2008	2010
Inflation Rate %	1945.11	53.72	76.58	185.29	44.89	22.68	10.75	21.16	10.18

Inflation soared to 61 per cent year on year in August 2011, and there was a risk that this might rise further as most imports were re-priced at depreciating unofficial exchange rates. Although the latest data continue to record robust growth, there were signs that output was likely to slow as the central bank withdraws the stimulus and the government cuts back on its directed lending programme. The true quality of assets in the state-dominated banking system remained uncertain given the history of directed lending.

As the government's ability to stimulate domestic consumption and investment was affected, output growth was expected to decelerate. Credit growth was also expected to decline as the government reduced the directed lending programmes. It looked likely that medium-term growth prospects hinged on the authorities' ability to rebalance the economy without destabilising the financial sector and, at the same time, to implement structural reforms needed to increase productivity in the existing industries and support labour migration to new sectors. Uncertain future energy prices remained a source of macroeconomic risk, as Belarus remained one of the most energy-intensive and import-dependent economies in the region.

It is noteworthy that the asset register provided indicates that a high majority of all assets in Belarus were owned by the public sector, either wholly or in the form of Joint stock companies. It was advisable that this be rebalanced to reflect a more developed economy. Governments typically established a central asset management unit, whose objective was to realise benefit for the public purse through disposal of surplus assets and looking at PPP / Corporate Joint Venture development opportunities, with a private sector development partner.

There was overwhelming agreement between the stakeholders that the Government of Belarus had insufficient public capital available to it and also that infrastructure investment needs far exceed the budget possibilities.

Belarus has pursued deeper integration in the Customs Union with Kazakhstan and the Russian Federation. After a transition period, in July 2011 the authorities adopted the new common tariff on all products. In April 2011 internal borders were eliminated and in July 2011 Belarusian citizens were allowed freedom of movement within the customs union. In December 2010 the three countries signed a Declaration on the establishment of the Single Economic Space launched on 1 January 2012.

A number of potential restrictions to the smooth PPP development in Belarus were discernible from the analysis of the macroeconomic climate, and were identified in Table 10 below. A number of recommendations were made in 'Section 2 – Recommendations' with a view to address some of these potential restrictions,

Table 10 – Potential restrictions to PPP development – Macroeconomic Climate

Areas to be addressed in the macroeconomic climate for a smooth PPP development in Belarus

The deterioration of the macroeconomic climate in 2011 could constitute a barrier to attract external private sector capital investment in infrastructure projects in the short term. Policy intervention aimed at improving the macroeconomic climate, especially those aimed at stabilising the rate of inflation and tightening fiscal measures, would be highly beneficial to the development of PPPs in Belarus.

4.5.2 Business Climate

In recent years the Government has actively sought to increase the attractiveness of the economy to private enterprise. With this in mind the Government took positive steps by reducing corporate tax from 24 per cent to 18 per cent. To support this, an approach termed 'amortised premiums' has been implemented. This is an ability to write off expenses versus the original cost and intangible assets rather than it is stipulated by the accounting process. Regionally and internationally the corporate tax rate is competitive (with for example, Ukraine and the Russian Federation, whose rate is 20 per cent, and Poland, at 19 per cent). However, it lags both Latvia and Lithuania who have a 15per cent tax rate.

The view among stakeholders was that it was relatively easy for a company, local or foreign, to establish itself in Belarus, despite the fact that some barriers to 'doing business' in Belars were identified. Having said that, a number of incentives to overcome the real or perceived barriers were also highlighted by the stakeholders, including the following:

- Favourable corporate tax rate;
- Belarus's geo-economic placing, access to EU, CEE, SES and CIS;
- Ability to develop production of new products and services;

- System of guarantees and property rights protection;
- Quality of transport infrastructure and logistics;
- Terms of business termination;
- Pricing regulations; and
- Speed of business registration;

There was a general agreement amongst the stakeholders regarding their views as to what they considered to be the key factors that an investor considered when assessing a country. They pointed out that investors expected further steps on economic liberalisation to take place, stability of government and economy, reduction in the level of corruption and also removal of administrative barriers. This mirrored the opinion of the IMF in its recent report on Belarus.¹⁵

Belarus does not place any restrictions on foreign investors in respect of repatriating profits, once the necessary taxes have been paid. This is very attractive to potential investors and obviously good news for the Government in its attempts to attract private capital for PPPs. To date, there does not appear to have been any major difficulty experienced by commercial enterprises regarding foreign exchange transactions and repatriation to and from the state.

Profit repatriation: Belarus

Profit repatriation is defined by the Webster's New World Finance and Investment Dictionary, as "to return foreign-earned profits or financial assets back to the company's home country."

Unrestricted profit repatriation once all the tax liabilities are met remains one of the most crucial decisive elements for prospective investors in a country. This does not only entail the legal restrictions, but also other restrictions as a result of bureaucratic and administrative obstructions.

Belarus legislation allows for profits to be repatriated. The availability of hard foreign currency resources is crucial for private sector participation in infrastructure development. In its quest for private sector participation in its infrastructure, Belarus should ensure that no real or perceived barriers – legal or otherwise – to profit repatriation are in place, and that prospective investors are confident that they would be able to repatriate their profits derived from their investment unhindered.

According to the World Bank report "Doing Business – 2012", Belarus is part of the group of states that have managed to get the best results in terms of creating favourable conditions for businesses. Although improvements have been made, some respondents thought that there was still more improvement needed in respect of: improved transparency, enhance political stability, reduce government inefficiency, tackling corruption and improve access to finance.

¹⁵ Source: <http://www.imf.org/external/np/sec/pn/2012/pn1250.htm>

Businesses expressed the view that personal guarantees sought by lenders were so onerous as to deem most development projects impossible. They sought Government support to underwrite any PPP developments and to provide gap funding where required.

Corruption in Belarus: real or perceived?

According to the Corruption Perceptions Index of Transparency International, Belarus currently is ranked 143 out of 183 in the world, and rank joint-sixth in the Commonwealth of Independent States. This level of corruption, even if just perceived, acts as a significant disincentive in attracting private capital to the country. Greater transparency in the courts and also public procurement processes is normally required in this case. Without transparency external investors are unlikely to invest in Belarus given the other investment alternatives available elsewhere.

The trades unions in Belarus are represented by the Federation of Trades Unions of Belarus (FTUB). On 1 January, 2010, the structure of the FTUB comprised 28 branch unions, 6 regional trade unions and the Minsk City Association of Trade Unions, 93 regional committees (councils) and 508 municipal and district trade union organizations. The FTUB affiliates more than 4 million union members. Labour relations of 9.4 per cent of workers are regulated by means of collective agreements. The FTUB is a member of the International Trade Union Confederation, which is helpful in that it would be able to assimilate best practices from its fellow members in respect of PPP and infrastructure development and could represent its members accordingly.

There was unanimous agreement among stakeholders that Belarus business was currently protective and insular and needed to be outward facing to exploit international opportunities.

In the case of bankruptcy, some protection was afforded to creditors but there was no limited liability for shareholders.

Regarding market capacity, it was reported that there were currently 6,853 construction organisations and 84,164 small businesses within Belarus, with open contract auctions the most common form of tender. Therefore, it appeared that sufficient local capacity existed to man the supply chain for a future infrastructure plan, with local companies partnering with major foreign companies, having the requisite expertise.

In March 2011 the Government approved plans for the privatisation of 245 state-owned enterprises and corporatisation of 134 companies. The privatisation list included enterprises in the machine building, chemical, energy, textile, transport, food-processing and forestry sectors. However, this list did not include the main blue chip companies in the petrochemical and machine-building sectors. The agency for privatisation and investment became operational in June 2011. Privatisation suffered a reversal in January 2011, as the government re-nationalised a major furniture manufacturer after an industrial accident. Privatisation will for the foreseeable future be led on a case-by-case basis, and the practice of drawing up lists of public assets earmarked for privatisation has been discontinued.

There was a belief in both the public and private sectors that there was currently a highly skilled and well educated workforce, with language skills seen as the main barrier. Given the newness of the concept of PPP to Belarus, it was reasonable to assume that the skill

requirements were untested as the need has not been previously there. With this in mind an assessment of best practices from other countries with successful PPP programmes would prove valuable. A national programme of public works would allow skilled workers the opportunity to stay at home and also develop the economy.

No detail was provided on payment terms, this is an important area of concern due to the potential financial impact on a company's cash flow position.

SMEs appear to be able to bid for large government contracts and also be able to form partnerships with other SMEs to jointly bid for public contracts as enshrined within the law "on support of small and medium enterprises". Internationally, in the majority of countries, SMEs were very often not legally barred from bidding but in practice, due to the onerous nature of public procurement, they were in effect barred. This aspect would be worth further analysis in an effort to improve competition within the local market.

Some thoughts of stakeholders around encouraging business growth in Belarus were:

- Reduce the administrative burden on business environment;
- Optimise the tax system;
- Ensure a competitive market;
- Raise the appeal and prestige of the businessman and business;
- Continue state support for indigenous SME development;
- Strengthen the institutions of law;
- Improve access to finance; and
- Promote foreign investment.

A number of potential restrictions to the smooth PPP development in Belarus were discernible from the analysis of the business climate, and were identified in Table 11 below. A number of recommendations were made in 'Section 2 – Recommendations' with a view to address some of these potential restrictions.

Table 11 – Potential restrictions to PPP development – Business Climate

Areas to be addressed in the business climate for a smooth PPP development in Belarus

Although the general view was that it was relatively easy to set up a company in Belarus, there were still a few real and perceived barriers to doing business in Belarus that warranted close attention. These included: high level of state bureaucracy; active state intervention; heavy fines; system of currency regulations; instability of normative legal framework for business; system of sanctions; business conduct procedure; level of tax burden; access to financial resources; level of consulting; and other professional services support.

Another area where there was a clear barrier (real or perceived) was related to corruption. Furthermore, a barrier highlighted by the business community related to the onerous guarantees sought by lenders, some of which are State-owned, which limited access to finance and increased its cost, which in the PPP context, would ultimately jeopardise public sector affordability and ultimately the viability of any potential PPP projects.

4.5.3 Financial Climate

The banking system was represented by 32 commercial banks with total authorized capital of 27.6 trillion roubles, and a total of 36.6 trillion roubles of equity capital as at 1 January 2012. Overall responses to the questions pertaining to the current banking system were positive, though might have masked a number of recent developments which warranted particular attention.

In July 2011 the National Bank stopped direct lending operations to banks. A month earlier in June 2011, the Government created the state-owned Development Bank of the Republic of Belarus. Over time, the new bank will take over financing of projects under the state-directed lending programmes currently undertaken primarily through the state-owned banks, Belarusbank and Belagroprombank. This should introduce greater transparency to the directed lending programmes, help account for their fiscal costs and strengthen competition in the banking sector as a whole, provided access to the directed lending programmes is competitively rationed. However, an orderly transfer of directed loans from commercial banks to the new bank will be necessary to ensure that it improves banks' balance sheets and does not disrupt their operations.

In response to the devaluation of the local currency in 2011, a large scale bank recapitalisation took place, when taking this into account with the passing of a law in 2008 to guarantee bank deposits (Presidential decrees of 30th June 2008 No.359), it can be concluded that the banking system in Belarus still needed to be strengthened further through Government policy intervention.

Soured loans amounted to 0.39 per cent of total loans, and this seemed very low when compared to international benchmarks. In general bad debts of this level either reflected a position where only low-risk projects were financed or actually figures that were not reported. The banking sector will need to accept more risk in order to develop the economy.

Currently the market for credit was characterised by high cost due to significant growth of refinancing of the National Bank under high inflation and devaluation of the national currency in 2011. For all categories of borrowers availability of credits, both in Belarus roubles, and in foreign currency has been essentially limited since the second half of 2011. Specifically, requirements for borrowers have been raised, while more rigorous price controls and restrictions on volumes and terms of credit have been put in place.

There was a common view expressed that lenders were quite cautious towards long term investments but that generally there was strong competition in the short to medium term. Some also said that there was a degree of flexibility available with respect to tenor. Some Government bullet payment or sharing of refinancing risk may therefore be necessary for some PPP projects, as in DBFM¹⁶/DBFO, to be viable in Belarus.

Further to the issue of long term debt availability, the margins currently charged by the local debt providers, between 22 per cent and 50 per cent, could seriously jeopardise public sector affordability and therefore the viability of any potential PPP projects, to the point where it would be impossible to bring them forward.

From the consultations, it emerged that private capital has been invested in infrastructure projects in the past within the areas of cellular communication and financial institutions. It also emerged that as a general rule, project finance was not available in local currency.

To prevent inflation and tensions at currency exchange markets at the end of 2011 banks requirements became much more severe upon crediting. The price for borrowed funds increased significantly. An average full interest rate for new bank credits in Belarusian Roubles amounted to 51.1 per cent per annum in December 2011.

There was agreement between all banks that long term debt has been exclusively provided to the state by the International Financial Institutions, to date, rather than through special purpose vehicle instruments from commercial banks. However the National Bank made it clear in the consultations that such funding was time limited and the need to attract private capital was becoming increasingly urgent.

The bond market is at a formative stage. The incomes from operations with corporate bonds between 2008 and 2013 were free of taxation. Both business entities and individuals have the opportunity to carry out transactions in bonds, and it seems that the potential for project bonds for PPP or infrastructure appear to be low.

Insurance companies existed in Belarus but there was no pensions fund market to attract into operational and steady state infrastructure projects. Some interest was expressed in seeing if the pensions fund market could be stimulated by the National Bank.

A number of stakeholders stated that the National Bank operated a system of control that was considered to be very severe. The Government might want to consider reviewing this policy in order to facilitate some risk taking for economic growth.

A number of potential restrictions to the smooth PPP development in Belarus were discernible from the analysis of the financial climate, and were identified in Table 12 below.

¹⁶ Design, Build, Finance, Maintain

A number of recommendations were made in ‘Section 2 – Recommendations’ with a view to address some of these potential restrictions.

Table 12 – Potential restrictions to PPP development – Financial Climate

Areas to be addressed in the financial climate for a smooth PPP development in Belarus

All categories of credit availability in both roubles and foreign currency remained limited since the second half of 2011, and given that lending was a fundamental element in any PPP project, this restriction or burden might constitute a formidable barrier to PPP development in Belarus.

Linked to the above, local banks are currently somewhat reluctant to provide long-term lending for infrastructure projects commensurate to the duration of a typical PPP project of 25 to 30 years. The absence of long term debt availability does constitute a problem to PPP development, especially given that as a rule of thumb, the post-financial crisis debt/equity ratio in a typical PPP project is 80-20.

Further to the issue of long term debt availability, the margins currently charged by the local debt providers, between 22 per cent and 50 per cent could seriously jeopardise public sector affordability and therefore the viability of any potential PPP projects.

4.5.4 Governance Framework

It was observed that Government budget setting processes in Belarus were similar to those in other countries whereby the strategic element was centrally agreed and set out in the annual plan after which each ministry was responsible for the delivery of the planned works and the control of the budget, with the Ministry of Finance having overall budgetary control. However, it was noted that during a budget year a number of corrections were possible.

All respondents agreed that a large majority of public infrastructure was developed at central government level, with a small amount decentralised to local government.

There was some difference of opinion regarding the development of public works on the basis of need. However all stakeholders agreed that the project appraisal process could do with improvement, especially in the area of PPP, which was not surprising given the lack of experience of this type of procurement.

A greater role for the Ministry of Finance to act as gatekeeper, overseeing the appraisal process was called for and this would indeed represent normal practice elsewhere.

There was some divergence of view regarding current public procurement. Some thought that on the whole it was competitive, transparent and fair, whilst others argued strongly that current processes and procedures needed to be reformed and improved. Procurement plans and procedures are published on state internet sites, with usually two to three companies taking part in competitive bidding processes.

Simple construction contracts, or “Design & Build”, are the normal procurement procedures employed for major public works. This was entirely expected. Competitive Dialogue was “in place” but has not been employed to date due to its complexity and the lack of public sector skills required in its implementation.

The majority of the respondents declined to answer the question on the clarity and transparency of evaluating criteria used in major public works contracts, while all respondents said that public contracts did not include terms to favour local businesses over foreign ones, though the penetration of foreign firms within Belarus remained weak, with only 2.4 per cent of those present being characterised as foreign owned.

It was observed that the government provided financial support for low-income users of infrastructure and transportation in the form of state social benefits, provision of soft loans and travel exemptions.

Regarding pricing, it was observed that the Government does provide protection for low income households in respect of home heating and transportation. In the case of a PPP project, this would be factored into the project feasibility financial model during the assessment process.

Environmental protection appears to be in place for major public contracts albeit they do not appear to be co-ordinated through a single agency. To enhance this element, it is good practice to integrate environmental and social impact assessments within the Government’s project appraisal and business case approvals processes.

All parties agreed that there existed freedom of the press to investigate the award of major public contracts. In general press freedom helped improve investor confidence.

A number of potential restrictions to the smooth PPP development in Belarus were discernible from the analysis of the governance framework, and were identified in Table 13 below. A number of recommendations were made in ‘Section 2 – Recommendations’ with a view to address some of these potential restrictions.

Table 13 – Potential restrictions to PPP development – Governance Framework

Areas to be addressed in the governance environment for a smooth PPP development in Belarus

It was observed that International Financial Reporting Standards (IFRS) and Resource and Accounting Budgetary (RAB) accounting for public expenditure were not sufficiently used. This might act as a deterrent to potential foreign investors and the Government should consider appropriate policy intervention.

There was strong agreement among respondents that a rigorous business case approvals process, with integrated elements related to environmental and social impact assessments, needed to be introduced to provide transparency and better informed decision making with respect to major public expenditure programmes and projects, and that Government policy intervention in this respect would bring Belarus in line with international best practice.

4.5.5 Legal Framework

The enactment of a PPP law will constitute a substantial improvement of the legal framework for concessions and PPPs. Such a framework PPP law has to incorporate provisions constituting international legal best practices in order to provide the necessary incentives to the private sector to participate in infrastructure projects.

Belarus does not have a specific concession Law, though the Investment Code of 2002 as amended in 2006 does contain detailed provisions regulating concessions (Section III-articles 49 to 76). Despite the Code, the first list of concession objects was specified by the Decree of the President in 2008, and it was mostly centred on the development of mineral deposits that was offered for concession.

The Ministry of Economy is developing a draft PPP law. A first draft was sent to UNECE for reviewing, and a number of comments and recommendations were made by international PPP legal experts within the UNECE PPP network. It is understood that a number of these recommendations are being considered in the revised draft. The analysis on the legal framework in this section is very preliminary and is based entirely on the first draft PPP law. There is therefore a need and scope for a more in-depth study on the PPP legal framework in Belarus that could be divided in two parts:

- part one to focus on a number of specific issues in the PPP legal framework (such as, land acquisition, dispute resolution, arbitration, procurement, contracts, insolvency legislation, insurance, taxation, health and safety etc); and
- part two benchmarks the PPP legal framework in Belarus to international best practices, while at the same time comparing the legal framework in Belarus with that in other CIS countries. The study will be used in the training and capacity building activities.

When reviewing the draft PPP law, the team of international legal PPP experts within the UNECE PPP network¹⁷ concurred that although a number of provisions in the draft law complied with best international PPP practice, nevertheless, there were a number of provisions that needed further clarification and amendments to avoid any ambiguity and confusion.

The UNECE, having reviewed all the comments provided by the team of international legal PPP experts, would like to reiterate some of the key issues, which it considers warrant immediate attention.

1. **Forms of PPPs** - depending on the degree of involvement of the private entity in infrastructure projects, PPPs can take diverse forms. However, the draft PPP law fails to differentiate between the types of PPP (e.g. contractual and institutional) and the

¹⁷ The UNECE is grateful for the support provided by the following international PPP legal experts in providing comments and recommendations to the Government of Belarus on the draft PPP law: Mr. Bruno de Cazalet, partner at Gide Loyrette Nouel in France; Mr. Anthon Smith, solicitor at Farne Project Consultancy in the UK; Mr. Wim Timmermans, partner at Timmermans & Simons Int'l Business Lawyers in the Netherlands; Mr. Spyros Panagopoulos, partner at Panagopoulos & Partners in Greece; and Ms. Tetiana Bessarab, partner at Bessarab and Partners Attorneys at Law in Ukraine.

forms of PPP contracts/agreements, which vary depending on the extent to which risk is being transferred from the public to the private partner (e.g. Design-Build, Design-Build-Operate, Build-Own-Operate-Transfer, Lease, Concession, etc.). Therefore, it is suggested that PPP shall be used as an umbrella term and identified through one of its forms.

2. **Initiation of PPPs** - one of the important measures in undertaking PPP projects is to clearly indicate the procedures of preparation of PPPs in the legislation (namely, how PPP projects are identified, who undertakes feasibility studies, should the decision on initiation of PPPs need to be agreed or confirmed with any other government bodies, etc.). Although the draft PPP law mentions the state authorities in charge for initiating PPPs, it fails to provide 'main criteria and clear process for the assessment and approval of PPP projects'. In addition it is not clear 'how and by whom the overall process will be coordinated'. Therefore, it is recommended to establish a public body or central unit with an overall responsibility of practical guidance on PPPs and coordination of the work of main public authorities involved in PPPs. (e.g. PPP Unit). Such a PPP Unit was established in most PPPs successful countries, and plays a crucial role in assisting the national and local governments in the selection of projects, in their development process, in the drafting of the proper instruments and documentation and the building of the capacity of the contracting authorities, the selection of investors process all in order to make PPP to happen.
3. **Unsolicited proposals** - the importance of unsolicited proposals has been recognised internationally and is universally considered as best practice. One of the main reasons to include provisions on unsolicited proposals is to provide an incentive for the private sector to submit innovative proposals for the management of infrastructure facilities and public services. However, the draft PPP law fails to specify the procedures for handling the unsolicited proposals and whether there are any benefits for the initiators of the unsolicited proposals in approaching the public authorities with their project.
4. **'Step-in' rights** - the draft PPP law does not provide step-in rights for lenders in the event of a default by the private partner contractor. Since this right in most cases is a vital condition for lenders to provide finance for the private partner contractors, it is recommended to introduce the opportunity for the lenders to substitute the private partner (e.g. Special Purpose Vehicle) in the event of failure of the latter to follow the contractual obligations as one of the required terms of the PPP agreement. Although the concept of 'step-in' rights originates in English common law, it has been successfully adopted by civil law countries in Western Europe and Latin America. This concept was also recently introduced in the CIS when Kyrgyzstan enacted its new PPP law in February 2012. Kyrgyzstan remains so far the only CIS country which has statutorily enhanced lenders' rights through the inclusion of 'step-in' rights in its law.

The UNECE strongly recommends that the draft law undergoes a thorough revision before it is processed further.

4.5.6 Regulatory Framework

International best practice suggests that in order to achieve strong private sector participation in infrastructure projects, a gradual shift in the role of the state from service provider to policy maker, planner, coordinator, facilitator, and buyer of infrastructure services should take place. In line with this shift, the existing regulatory arrangements should be assessed, and the possibility should be considered of devolving the regulatory functions to newly-created independent bodies, with the line ministries keeping the responsibility for policy making and planning in their respective sector. This separation of responsibilities would enhance the credibility of economic regulation and provide the necessary level of confidence to investors that important issues, such as those related to tariff matters, are handled without undue political interference and other pressure. There are essentially two options available to implement such a strategy: either having a separate regulator in each of the main infrastructure sectors; or setting up a single cross-sector regulatory body. International best practice suggests that the first option would be attain better results.

Economic regulation has two main objectives: (i) to ensure that consumers have access to essential services on a sustainable and affordable basis, and (ii) to encourage private sector participation in the development of an infrastructure to provide those services. The functions of the regulatory body are elicited in Table 14 below.

Table 14 - Typical functions of the regulatory bodies:

1. setting tariffs and other service charges;
2. establishing standards for the terms and conditions of the services provided;
3. setting and enforcing market rules for the sector;
4. monitoring the performance of the regulated entities;
5. issuing, reviewing and cancelling licenses;
6. reviewing agreements; and
7. arbitrating disputes within the sector.

The success of such restructuring will depend to a large extent on public and investor confidence in sector regulators. This confidence will be based on perceptions regarding their technical expertise, efficiency, transparency, consistency and predictability of regulatory processes and decisions, and susceptibility to political and other pressure. To be able to withstand any pressure, the regulatory bodies should have administrative and financial autonomy. The latter can be achieved through use of fees levied from regulated utilities. Good sector regulation also relies on the competence and reliability of other sector participants. If regulated entities fail to submit requests for tariff adjustments, or do so with incomplete or inaccurate data, the regulators will be unable to act, or will act with incomplete information, or be forced to delay proceedings while waiting for the parties to complete the information.

It was observed that, no such regulatory bodies with the functions elicited in Table 14 exist in Belarus at the time of writing. This state of affairs is not conducive to public sector participation in infrastructure projects, and appropriate policy intervention should be considered to address this limitation in the enabling environment.

5. Conclusion

The Government of Belarus has quite rightly identified modern infrastructure development as a key element in the successful transition of its economy and in its goal to improve the prosperity and quality of life of its citizens.

A sizeable infrastructure deficit exists and it will require significant political will, together with significant capital, both public and private, if a national infrastructure plan is to be successfully implemented. Transparency and addressing some of the issues raised in the recommendations above will be essential if Belarus were to successfully attract foreign investment for infrastructure development from international markets.

It is advisable that the Government does not to rush into “doing projects” before it has addressed a number of issues in the recommendations, especially those related to the legal framework, as well as having the correct systems and processes in place. In other words, it is necessary to fully understand the project scope, or the (“what”), before initiating procurement and delivery, (the “how”). Such a course of action perfectly fits within the UNECE’s philosophy of combining formal training and capacity building to address the “what”, with doing projects that represent the “how”. This however requires professional service planning. Otherwise, as has happened in many places before, projects risk failing, capital will leave the country and the opportunity to improve the country’s infrastructure will be lost for many years.

It is therefore recommended that while addressing the PPP legislation, the Government’s first step would be to develop PPP skills and institutional capacity, along with a long term, cross-sectoral, inter-ministerial NIP, whilst at the same time putting in place robust and transparent appraisal, procurement and approvals processes. Once these are in place, and with the appropriate dose of political will, Belarus would stand a very good chance of attracting the private capital it will need in order to achieve its infrastructure and wider social and economic goals, to address the needs of its citizens.

Annex 1

Detailed description of the ‘six steps’ to the UNECE National PPP Readiness Assessment

Readiness Assessment Step 1 – Fact Finding Mission

The Fact Finding Mission is carried out by the UNECE Team together with the host country, and consists of three key elements;

1. Understanding the enabling environment;
2. Comprehensive pre-visit questionnaire;
3. Extensive programme of meetings with decision makers and stakeholders.

Normally during the Fact Finding Mission, the national PPP unit, or lead government entity, helps to manage the responses to the questionnaire, arrange the itinerary for the fact finding mission and accompanies the UNECE Team throughout the time spent in the host country.

The pre-visit questionnaire (contained in Annex II) is a key component of the UNECE National PPP Readiness Assessment. It provides a thorough, clearly recorded and systemic approach to gathering the requisite information required to make the subsequent meetings with stakeholders and decision makers more targeted and productive, ensuring that the interviewees are familiarised with the relevant topics and well prepared before the meetings occur. Given the tight timelines involved in the meetings itinerary, this is a major benefit of the approach adopted.

The questionnaire was developed in such a way as to ensure requisite participation and input from both the public and private sectors. Some of the questions relate specifically to the public sector, some to the private sector and some to both. Respondents are not expected to answer all of the questions but rather only those they feel compelled to answer, or sufficiently qualified to do so.

The questionnaire is comprised of 372 questions, contained in two main parts, viz; National Overview and PPP Focus, both of which are outlined below. The numbers in parentheses represent the number of questions within the questionnaire relating to each topic.

Part1 National Overview

- 1.0 Economic & Social Need – Drivers for Change (18)
- 1.1 Macroeconomic Climate (29)
- 1.2 Business Climate (36)
- 1.3 Financial Climate (24)
- 1.4 Legal & Governance Environment (33)

Part 2 PPP Focus

- 2.0 General PPP Matters (35)
- 2.1 PPP Legal & Regulatory Provision, including Financial Risks (63)
- 2.2 PPP Policy Framework (21)
- 2.3 PPP Capacity – Public & Private (51)

- 2.4 Project Identification, Selection and Procurement (44)
- 2.5 Post Award; Delivery, Operations and Performance Management (18)

The programme of meetings was designed to engage all of the major stakeholders in Belarus who are involved in infrastructure development, both in the public and private sectors. In order to encourage interviewees to speak freely and openly about all issues in a way that made them comfortable, it was decided not to formally minute the meetings, verbatim but rather to record the main points made by interviewees apropos the questions asked by the UNECE Team. In this way the sensitive nature of some points is respected and protected, whilst at the same time the issues are addressed.

The list of decision makers and stakeholders to whom the pre-visit questionnaire was issued and subsequently participated in the meetings, during the week of 19 – 23 March, 2012, is contained in Annex III.

Readiness Assessment Step 2 – Preliminary Report

Following the fact finding mission a draft report of preliminary findings and recommendations for inclusion in the Action Plan, is prepared by UNECE Team for peer reviewing. This report identifies barriers within the enabling environment and provides a number of recommendations as to how they may be overcome, as well as considering potential projects where pilot PPP projects could be considered.

Readiness Assessment Step 3 – Consultation and Peer Review

At this point the draft preliminary report is shared with selected international PPP practitioners. The feedback received is used to quality assure the content of the draft report and to ensure the strategic context is correct. Once this review has been completed, the report is then sent to the Government of the host country.

Readiness Assessment Step 4 – Working Level Workshop

At this point the UNECE Team together with the national PPP unit/lead ministry conducts a two day workshop with middle management within lead ministries and other stakeholders to discuss the preliminary findings and recommendations with a view to obtain feedback for inclusion in the final report and to jointly develop a draft action plan for national PPP development, while at the same time identify priority projects.

Readiness Assessment Step 5 – Improvement and Final Report

The UNECE Team incorporates the feedback received from the various stakeholders involved in the Working Level Workshop to make final refinements and amendments to the Preliminary Report in order to produce the Final report.

Readiness Assessment Step 6 – Strategic Action Plan

The UNECE PPP Advisory Board presents the Final Report and the Action Plan for national PPP infrastructure development to the decision makers within the requesting Government. The Action Plan clearly sets out responsibilities for actions (owners) together with agreed timelines and target completion dates (TCDs).

Annex II

Pre-visit questionnaire

STRUCTURE

PART 1 - NATIONAL OVERVIEW

- 1.0 Economic & Social Need – Drivers for Change
- 1.1 Macroeconomic Climate
- 1.2 Business Climate
- 1.3 Financial Climate
- 1.4 Legal & Governance Environment

PART 2 – PPP FOCUS

- 2.0 General PPP Matters
- 2.1 Legal & Regulatory Provision for PPP, Including Financial Risks
- 2.2 PPP Policy Framework
- 2.3 PPP Capacity – Public & Private
- 2.4 Project Identification, Selection and Procurement
- 2.5 Post Award; Delivery, Operations and Performance Management

PART 1 - NATIONAL OVERVIEW

1.0 Economic & Social Need – Drivers for Change

- 101 What are the greatest needs affecting Belarus today?
- 102 Where are the areas of greatest need, geographically?
- 103 Have these needs been researched and identified?
- 104 If so, which social and economic indices have been employed?
- 105 Are these identified needs documented and widely available?
- 106 Have these needs been agreed upon and reflected in government policies?
- 107 Do national sectoral Strategic Service Models exist for the location of public services across Belarus, or at a regional level?
- 108 Does Belarus have an existing National Infrastructure Plan?
- 109 What do you consider to be greater; economic need or social need?
- 1010 What is the reason for your opinion?
- 1011 What, in your opinion, are the top five priorities for economic infrastructure?
- 1012 What, in your opinion, are the top five priorities for social infrastructure?
- 1013 What is your opinion based upon?
- 1014 In your opinion, is the electorate supportive of the use of private capital for infrastructure development?
- 1015 How do the needs of your country compare to those of your neighbours?
- 1016 Do you believe there is potential for collaboration with neighbouring countries to develop required infrastructure, where there is mutual benefit?
- 1017 If so, in what geographical areas, and in which sectors?
- 1018 Has any dialogue been had to date regarding such potential collaboration?

1.1 Macroeconomic Climate

- 111 What is the age profile of the 9.5 million population?
- 112 What is the current life expectancy in Belarus?
- 113 What are the current and projected net migration figures?
- 114 What is the current unemployment rate?
- 115 What is the future projected rate?
- 116 How many universities does Belarus have?
- 117 What % of the population is university educated?
- 118 What are Belarus's natural resources?
- 119 Does Belarus import its energy?

- 1110 What is the energy % split; indigenous / imported?
- 1111 What are Belarus's top areas of economic activity?
- 1112 What are Belarus's top exports /imports?
- 1113 Who are Belarus's largest trading partners?
- 1114 How would you describe Belarus's transportation network?
- 1115 What is Belarus's current credit rating? (source?)
- 1116 Is it "Investment Grade"?
- 1117 Do credit ratings exist for local regions or municipalities?
- 1118 What have been the GDP annual figures for each of the last five years?
- 1119 What are the annual GDP projections for the next 2, 5 and 10 years?
- 1120 What is the GDP split; public sector / private sector activity?
- 1121 What is the current public sector cost of capital?
- 1122 What is the current and projected rate of inflation?
- 1123 What is the current fiscal budget balance?
- 1124 What is the current public debt position as a percentage of GDP?
- 1125 Do you believe that the Government has sufficient public expenditure available to it, to deliver a major infrastructure programme?
- 1126 Has Belarus historically failed to meet any of its debt obligations?
- 1127 Has a local or municipal government within Belarus failed to meet any debt obligations?

1.2 Business Climate

- 121 What is the current corporation tax rate?
- 122 Do you believe this to be the correct rate? Please state why, or why not.
- 123 What is the commercial sectoral activity by %?
- 124 What is the size of the total workforce and how is it spread geographically?
- 125 How easy is it for a company, local or foreign, to establish itself in Belarus?
- 126 To your knowledge, what barriers, real or perceived, exist?
- 127 In your opinion, what are the main incentives available to attract foreign investment?
- 128 What are the main barriers to attracting foreign investment into the country?
- 129 What key factors do you think investors consider when assessing a country?
- 1210 How many companies are registered in Belarus?
- 1211 How many of these are indigenous?
- 1212 How many are foreign?
- 1213 What incentives does Belarus offer foreign companies?

- 1214 Are there any restrictions on foreign companies to repatriate profits, also referred to as “transfer and convertibility” (T&C) risk?
- 1215 Do many Belarusian companies have Joint Venture, exclusivity or sub-contracting relationships with major international companies?
- 1216 How would you describe business confidence in Belarus right now?
- 1217 What are the reasons underpinning your opinion?
- 1218 How would you describe the business culture in Belarus?
- 1219 Is corruption a problem?
- 1220 Would you say corruption exists more in the public or private sector?
- 1221 Are trades unions prominent in Belarus?
- 1222 Would you say Belarusian business culture is protective and insular, or confident and outward looking?
- 1223 How are most businesses constituted?
- 1224 Is there effective provision for bankruptcy and limited shareholder liability?
- 1225 How many major Construction / Development companies are present in Belarus?
- 1226 How many SMEs are registered in Belarus?
- 1227 Does the supply chain operate effectively in Belarus?
- 1228 Do mandatory payment terms exist in public contracts, e.g. 60 days?
- 1229 Do SMEs have access to large government procurements through effective subcontracting arrangements?
- 1230 Are there a sufficient number of educated / skilled workers available?
- 1231 Does the educational system provide workers with the correct skills?
- 1232 If not, where are the skills shortages?
- 1233 How can they best be addressed?
- 1234 Is the physical infrastructure fit-for-purpose, for business needs?
- 1235 Would you describe Government policies as “business friendly”?
- 1236 What changes, if any, would you like to see, to encourage business growth in Belarus?

1.3 Financial Climate

- 131 Is the banking system adequate for business and corporate activity?
- 132 Do you have confidence in the current banking system?
- 133 Please elaborate on your answer.
- 134 How would you describe the strength of the banks’ balance sheets?
- 135 Are the banks sufficiently capitalised?
- 136 Has the government offered any underwriting, guarantees or safeguards to commercial banks?

- 137 Is there sufficient liquidity in the current lending market?
- 138 If so, to what sector(s)?
- 139 How would you describe terms currently offered by lenders?
- 1310 What is the maximum term for which debt is / has been lent (years)?
- 1311 What pricing terms are offered for long term debt?
- 1312 How do these compare with international markets that you are familiar with?
- 1313 To your knowledge, has any private capital ever been invested in infrastructure projects, in Belarus, (equity or debt)?
- 1314 How available and reliable are long term debt instruments for infrastructure financing?
- 1315 Is project finance available in local currency?
- 1316 How would you describe government oversight of banking activity?
- 1317 Are you confident that the oversight is of the correct order?
- 1318 Are you confident that the banking sector can meet debt demand?
- 1319 Are local equity providers accessible?
- 1320 Is there an established bond market in Belarus? If so, is it accessible?
- 1321 Have you experienced or are you aware of any difficulties regarding commercial foreign exchange activity?
- 1322 Is there a well developed insurance and pensions market?
- 1323 Is it meeting business needs? If not, how could it be improved?
- 1324 Are credit ratings available for Belarusian businesses? (source?)

1.4 Legal & Governance Environment

- 141 Does senior political will exist within Government to support the development and delivery of a National Infrastructure Plan?
- 142 Please describe the current Government process for setting the national public budget and in particular the budget for infrastructure development and specifically the role of the Ministry of Finance.
- 143 Is public infrastructure development currently managed centrally or at a local government level?
- 144 Are all major public infrastructure programmes and projects identified on the basis of need?
- 145 Are all major public infrastructure programmes and projects prioritised using a rigorous Government appraisal process?
- 146 Are all major public infrastructure programmes and projects subject to a rigorous Government business case approvals process prior to procurement?
- 147 Is Government procurement competitive, transparent and fair?
- 148 What is the most common form of procurement for major infrastructure projects in Belarus, e.g. construction? Design & Build?

- 149 Has “Competitive Dialogue” ever been employed in public procurement in Belarus?
- 1410 Are public contract award criteria and tender scoring methodologies clear and transparent?
- 1411 How are major public contracts advertised?
- 1412 Do public contracts include terms to favour local businesses over foreign?
- 1413 Is there effective protection for Intellectual Property Rights?
- 1414 Do you believe the judiciary exhibits independence and competence?
- 1415 Are unsuccessful bidders fully notified and given the right of appeal?
- 1416 Do adequate Dispute Resolution procedures exist?
- 1417 Is access to third party arbitration available as part of these procedures?
- 1418 Are labour laws and workers’ rights well established?
- 1419 Is Government and corporate corruption being targeted and eradicated by political leaders?
- 1420 Is there standardisation of major contracts between Government and suppliers?
- 1421 What do you believe the advantages of standard contracts might be to the state?
- 1422 Do you believe there is sufficient community engagement in the development of infrastructure projects?
- 1423 Do major public contracts contain social clauses to benefit local communities?
- 1424 Does the Government provide financial support for low-income users of infrastructure or transportation?
- 1425 Do major public contracts contain clauses to protect the environment?
- 1426 Do major public contracts contain clauses to promote re-skilling and employment of unemployed citizens, by successful bidders?
- 1427 Do major public contracts contain the provision of apprenticeships for young people by successful bidders?
- 1428 Do you believe the press is free to investigate matters of public interest with respect to the award of major public contracts?
- 1429 Are environment laws clear and effective, and all available from a single source?
- 1430 Does Government use Resource and Accounting Budgetary (RAB) accounting and employ international accounting standards (International Financial Reporting Standards)?
- 1431 If so, for how long has it used RAB accounting for public expenditure?
- 1432 Do concessions currently exist and, if so, are they treated on or off balance sheet?
- 1433 Is co-location of public services a Government policy or objective?

PART 2 – PPP FOCUS

2.0 General PPP Matters

- 201 What would you say PPP is?
- 202 How do you think PPP works?
- 203 How would you describe “risk transfer” or “risk allocation”?
- 204 What risks are normally transferred in a PPP?
- 205 Are you familiar with “output based” specification?
- 206 How would you describe “Value for Money” for the public purse?
- 207 What is your understanding of the “project lifecycle”?
- 208 How would you describe “successful project delivery”?
- 209 What is the best way to ensure performance of the service provider?
- 2010 Are you familiar with “DBFOM”? If so, what does it mean to you?
- 2011 When and why, do you think PPP should be employed?
- 2012 What do you think the benefits of PPP are?
- 2013 What do you think are the main disadvantages and / or risks of PPP?
- 2014 What range of PPPs are you familiar with?
- 2015 What would you say is the single most important aspect of a successful PPP?
- 2016 Is the concept of “user pays” understood and accepted in Belarusian civic society?
- 2017 Are communities encouraged to commercially participate in PPPs or major public contracts? If so, how?
- 2018 How is community resettlement and rehabilitation currently provided for in PPPs or other major public infrastructure projects in Belarus?
- 2019 Would you say PPP is well understood within the public sector in Belarus?
- 2020 In Belarusian civil society, would you say PPP is understood and accepted as a means to deliver 21st century infrastructure?
- 2021 Are the public aware of the benefits of PPP?
- 2022 What would you say are the main misconceptions, if any?
- 2023 In your opinion, would a public educational programme re PPPs be worthwhile?
- 2024 What has been the traditional relationship between Government authorities and the private sector, in Belarus?
- 2025 Do you think the traditional procurement model has delivered positive economic and social outcomes for the citizens of Belarus?
- 2026 If not, what improvements could be made?
- 2027 Do you have, or know of, any statistics showing the historical delivery track record of public capital projects in Belarus, by cost and on-time delivery?
- 2028 Do you have any direct experience in the development or delivery of a PPP project?

- 2029 If so, was that on the public (Government) side, or the private (bidder) side, or both? Please explain your role.
- 2030 To your knowledge, has any PPP activity ever been undertaken in Belarus?
- 2031 If so, what was the experience?
- 2032 To your knowledge, are different levels of Government (local and municipal, as well as national) involved or interested in PPP procurement?
- 2033 How are public services, as opposed to infrastructure, currently provided in Belarus?
- 2034 Are any public services provided to the Government by the private sector, e.g. estate management, facilities management, municipal services?
- 2035 What would you consider to be the three greatest challenges to PPP development in your country?

2.1 Legal & Regulatory Provision for PPP, Including Financial Risks

- 211 Do you know if Belarus has a concessions or a PPP law?
- 212 If so, are PPP contracts designed to be output based?
- 213 Does the PPP law prevail over any other laws dealing with concessions?
- 214 If not, does the Constitution, or other laws, recognise the principles of concession and regulate the granting of concessions in such a way that concessions are legally possible?
- 215 If the country has a Public Procurement Law, is it clear to what extent it applies or not, to the granting of concessions or PPPs?
- 216 Does Belarus have a local public services law for municipalities or local authority concessions or PPPs, and is it clear?
- 217 How do you think the current provision of PPP law reflects on political support for PPP development and the perception of foreign capital investors?
- 218 How many laws currently apply to PPP?
- 219 Can you think of any benefits that a single, clear and attractive PPP legal framework might bring?
- 2110 Have the existing laws been reviewed to ensure they present no barriers to successful PPP development in Belarus?
- 2111 Do the laws / regulations identify the public authorities that have the vires to award concessions and enter into project agreements?
- 2112 Do the laws / regulations make a clear distinction between PPPs and public procurement contracts regarding the transfer of risk to the private sector?
- 2113 Do the laws / regulations make a clear distinction between PPP and licence to operate?
- 2114 Do the laws / regulations make a clear distinction between PPP and privatisation?
- 2115 Can a concession or PPP be granted to a domestic and/or foreign person, or can the shareholders of the PPP Special Purpose Company be domestic and/or foreign?

- 2116 Do the laws / regulations identify the sectors and/or types of infrastructure or services for which concessions or PPPs may, or may not, be granted?
- 2117 Do the laws / regulations provide that a notice of award of a project is to be published and that the public authority maintains records of the selection and award proceedings?
- 2118 Does the public authority have the right to award a PPP without undertaking a competitive process?
- 2119 How does the Government manage unsolicited bids from the private sector?
- 2120 Is the legal basis for private sector participation in PPP clearly defined?
- 2121 Do you think investors are, or would be, comfortable with existing laws and financial regulations which currently apply to PPP?
- 2122 In your opinion, does the judiciary understand PPP?
- 2123 Does the judiciary accept PPP?
- 2124 Do clear procedures exist for acquiring rights of way?
- 2125 Are land and property issues dealt with in a timely way?
- 2126 In most cases would the public sector provide the land for PPP projects?
- 2127 Is planning consent granted for infrastructure developments in a timely way?
- 2128 How many steps does the planning consent process have?
- 2129 How many statutory bodies are involved in the planning consent process?
- 2130 Does a strategic "fast track" planning consent team exist for projects of national significance?
- 2131 If not, do you know if there is any intention to establish one?
- 2132 In a PPP, which party is responsible for obtaining planning consents, licences and approvals?
- 2133 Are the interests of communities, the poor and marginalised protected in the planning process?
- 2134 Are there any provisions limiting foreign participation in investment and/or PPP activity specifically?
- 2135 Are there any barriers to repatriation of profits by PPP investors (T&C)?
- 2136 Has the Government ratified, and does it in practice follow, international conventions on protection of foreign investment?
- 2137 Are there any PPP-specific tax regulations that may deter international PPP investors?
- 2138 Is there a clear system for compensating PPP investors for acts of public sector authorities that change sector-specific economic conditions that were unforeseen during bidding and which are beyond the control of the private sector partner?
- 2139 Is there a clear system for compensating PPP investors for scope changes introduced by the public procuring authority?
- 2140 Is there a clear system for compensating PPP investors for procurements cancelled by the public authority during the bidding process?
- 2141 Are termination rights clearly set out in PPP or major infrastructure contracts?
- 2142 Are all major public contracts subject to EU procurement regulations?
- 2143 Which institutions are, or would be, involved in the PPP process?

- 2144 Which national Government body has, or would have, ultimate responsibility for PPP project approval?
- 2145 Do private sector investors have access to this body and other agencies, prior to procurement?
- 2146 How does PPP, or major infrastructure, delivery governance work?
- 2147 Is the regulatory authority and decision-making hierarchy clearly set out, for each sector of expected PPP activity?
- 2148 Is price regulation sufficiently flexible to allow for major cost changes, e.g. due to scope expansion?
- 2149 Are PPP related laws and regulations for national projects consistent?
- 2150 Do regulations establish clear requirements and oversight mechanisms for project implementation?
- 2151 Is, or would, risk clearly be allocated to different parties according to their abilities to manage them, within a PPP?
- 2152 Has the allocation of risk between the public authorities and the private sector been successful in recent years, for projects of national significance?
- 2153 What do you think are the key factors in the risk rating of a typical PPP project using project finance?
- 2154 Where does "Demand Risk" normally lie, with the public or private sector?
- 2155 Do investors currently have the right to appeal against the decision of a regulator's office?
- 2156 Are property rights enforceable and do they provide proper compensation for expropriation in practice?
- 2157 Do standardised public infrastructure contracts (Standard Form of Contract) exist in Belarus?
- 2158 If so, for which sectors?
- 2159 If not, do you know if there is any intention to develop one?
- 2160 What level of autonomy exists within local authorities or municipalities to initiate PPP projects, which are not considered "strategic" at a national level?
- 2161 How do you see national / local / municipal governments interacting during PPP development, or the delivery of a PPP project?
- 2162 How do public authorities create, or intend to create, the right incentives to attract investment of private capital into PPPs?
- 2163 Are there any general business regulations or practices which might affect the smooth implementation of a PPP?

2.2 PPP Policy Framework

- 221 Is PPP development clearly supported in current central Government policy?
- 222 Does a policy framework exist that identifies PPP as an important tool for the development and delivery of infrastructure?

- 223 Do policy framework documents exist?
- 224 Is there a PPP Model Agreement, or PPP Standard Form of Contract?
- 225 Is PPP policy clearly distinct from privatisation policy?
- 226 Do current procurement procedures accommodate the employment of PPP?
- 227 Institutional Design - does policy clearly allocate authority and responsibility within Government agencies, including oversight?
- 228 Does current policy clearly set out a process for the identification, approval, procurement and implementation of a PPP or major infrastructure project?
- 229 Does current policy dictate transparency in programme and project selection?
- 2210 Are Government ministries encouraged to develop PPP programmes as part of their overall infrastructure investment plans?
- 2211 Does a current PPP pipeline of projects exist?
- 2212 If so, what is the total value, capex, of this programme?
- 2213 Does the current policy framework generate financially viable public proposals?
- 2214 Is project affordability rigorously tested before procurement starts?
- 2215 Has the Balance Sheet treatment of PPP projects been determined by policy makers?
- 2216 Does the policy support a free market, promoting competitive tension?
- 2217 Do stakeholders, including communities, currently have meaningful engagement in major project development?
- 2218 Is Government prepared to offer Viability Funding to support certain PPP developments of national importance?
- 2219 Does policy apply to local and municipal authorities?
- 2220 What factors do you think investors consider when assessing a PPP project?
- 2221 What do you think would be an investor's top priority when assessing a project in Belarus?

2.3 PPP Capacity – Public & Private

- 231 Is there a recognised PPP “Champion” within the Belarusian Government, at ministerial level?
- 232 Are the necessary PPP interaction processes well developed?
- 233 In your opinion, do Government agencies and state bodies currently have sufficient skills and understanding of PPP to successfully develop and deliver a national PPP programme?
- 234 Does the public sector possess any meaningful project, contract, legal, financial or commercial management acumen?
- 235 Are staff capable of routine operations in PPP development?
- 236 Do public agencies and authorities employ proper accounting practices when considering Value for Money and liabilities?

- 237 Do public agencies have asset management skills, e.g. the use of Asset Registers and Asset Backed Vehicles (ABVs) for development?
- 238 In which sectors do you believe public sector personnel to be strongest, and weakest?
- 239 Do public agencies have the requisite skills to conduct feasibility studies and risk apportionment studies, including PPPs?
- 2310 Do public agencies have the required skills to develop a rigorous project appraisal and PPP business case?
- 2311 Do public agencies possess the required methods and criteria for awarding PPP contracts?
- 2312 Do public agencies have sufficient skill to successfully engage the private sector in commercial and PPP negotiations?
- 2313 Do public agencies have contract management expertise? (Types?)
- 2314 Is professional training and documentation available to public agency personnel in order for them to improve their skills set?
- 2315 Do local Government agencies possess the same skills profiles as central Government?
- 2316 Are ministries encouraged to develop in-house PPP expertise rather than continually employ external consultants? If so, how is this achieved?
- 2317 Has central Government supported PPP development through the creation of specialist institutions and advisory units?
- 2318 What would you see as the benefit of a specialist PPP unit?
- 2319 Does the Ministry of Finance have sufficient PPP expertise?
- 2320 Does Belarus have a national PPP Centre of Excellence (CoE)?
- 2321 If so, is its interaction with other Government bodies clearly set out and understood within Government?
- 2322 How many FTEs does the CoE have and is it sufficiently resourced?
- 2323 What sectoral experience do its personnel have?
- 2324 Does the CoE have a projects lawyer within it?
- 2325 Does it contain any ex-private sector personnel with commercial expertise?
- 2326 Is the CoE's role clearly set out in public policy and regulations?
- 2327 Does the CoE have access to PPP international best practice and advice?
- 2328 Do other Government agencies meaningfully interact with the CoE?
- 2329 Is there any intention to establish sector-specific PPP units?
- 2330 In your opinion, does sufficient capacity exist in the Belarusian private sector to help deliver a large scale, multi-sectoral, National Infrastructure Plan?
- 2331 How many large scale construction companies exist in Belarus?
- 2332 What was their annual turnover for the last financial year?
- 2333 How many staff do they currently have?
- 2334 What sectors have they experience of?
- 2335 Do these companies have any management experience of PPP projects?
- 2336 Does sufficient skilled labour exist locally, or would labour immigration be required?

- 2337 Does the local banking sector have sufficient lending capacity to satisfy the debt requirements for such a programme?
- 2338 Does the local financial sector have sufficient expertise to structure complex PPP transactions?
- 2339 How many large Facilities Management (FM) companies exist in Belarus?
- 2340 What sectoral experience do FM companies have?
- 2341 Are there private sector transportation or water operators in Belarus? (List)
- 2342 Is the local professional advisory market experienced in project development and deal transaction? (financial, legal, design, technical, insurance, technology)
- 2343 Have any of these local companies partnered with, or been sub-contracted by, foreign companies, on past projects?
- 2344 Do any of the local companies, banks and firms have access to knowledge exchange with international PPP experienced companies?
- 2345 Do any of these local companies have offices outside Belarus?
- 2346 Do any of these companies have any PPP experience from abroad?
- 2347 Please list the names of the major utilities in Belarus
- 2348 Are these publicly or privately owned?
- 2349 Are these monopolies or does competition exist?
- 2350 What were their respective turnovers in the previous financial year?
- 2351 Are there any energy capacity constraints that would impact negatively on PPP development?

2.4 Project Identification, Selection and Procurement

- 241 Are all public infrastructure programmes identified, appraised, prioritised and approved using Multi Criterion Analysis (MCA)? If not, then how?
- 242 Are all major public infrastructure projects identified, appraised and approved using Cost Benefit Analysis (CBA)? If not, then how?
- 243 How is the National Infrastructure Plan developed?
- 244 Which bodies are involved in project identification?
- 245 How is project identification linked to public budget allocation?
- 246 Who is the senior public person responsible, the “Accounting Officer” for a major project?
- 247 What role does the Ministry of Finance play?
- 248 Are projects ever “bundled” together in order that they can be delivered in a faster and more economic way?
- 249 How is the procurement path, (PPP or traditional), decided upon?
- 2410 Are PPP projects ever promoted simply to ensure that they do not appear on the public Balance Sheet?

- 2411 Is the PPP process, from inception to appraisal, approval, procurement, delivery, operation and end; set out in transparent and well articulated stages?
- 2412 Are there key milestones clearly shown in each of the PPP stages?
- 2413 Do these stages include appropriate external oversight and peer QA reviews?
- 2414 Are Environmental and Social Impact Assessments (ESIA) carried out for each major public infrastructure project?
- 2415 Is optimism bias (OB) calculated for each major public infrastructure project?
- 2416 Is project affordability stress-tested within each major public infrastructure project?
- 2417 How is Value for Money determined?
- 2418 How is risk analysis carried out?
- 2419 How is legal analysis carried out?
- 2420 Are comprehensive Business Case approvals processes, with accurate budgets, in place for PPP projects? If so, please provide details.
- 2421 Who has lead responsibility for speedy approval of each Business Case?
- 2422 Upon PPP project outline approval, is project funding ring fenced within the appropriate Government budget?
- 2423 Are public officials required to declare any conflicts of interest? How?
- 2424 Are local authorities encouraged to participate in the procurement process?
- 2425 What procurement procedure is used, or intended to be used for PPP procurements?
- 2426 Does this reflect the complexity of PPP projects?
- 2427 Does the construction sub-contractor within a PPP procurement; receive appropriate incentives to deliver on time and to budget?
- 2428 Is the construction sub-contractor liable for defects in the works, for a defined period of time?
- 2429 Do procurement regulations for PPP projects unfairly favour certain bidders over others?
- 2430 Is soft market testing carried out before procurement is commenced for each major project to demonstrate that the project is “bankable” and that sufficient bidder appetite exists, in order to avoid failed and costly procurements?
- 2431 Are bidders given sufficient tendering information, including timescales, in a timely way, to permit them to respond to the best of their ability?
- 2432 Are procurement and scoring / evaluation methodologies clearly set out for the bidders from the beginning?
- 2433 Is the project scope / output specification clearly set out from the beginning of procurement?
- 2434 How is a request for advanced works managed in the procurement?
- 2435 Is the payment mechanism clearly set out from the beginning of procurement?
- 2436 How is refinancing treated within public procurement of PPPs?
- 2437 How is gain / pain share treated within public procurement of PPPs?
- 2438 Are the project management and contract management arrangements clearly set out from the beginning of procurement?

- 2439 Is the concept of Most Economically Advantageous Tender (MEAT) applied in the scoring and awarding of all public contracts?
- 2440 At announcement of Preferred Bidder (PB), is a “Standstill” period applied, to allow unsuccessful bidders leave to appeal?
- 2441 Are there fair and transparent mechanisms in place at PB stage to resolve any challenges from unsuccessful bidders?
- 2442 Between PB and Financial Close (FC), which Government agency will lead negotiations for the public sector?
- 2443 Is the public sector held accountable for its decisions? How?
- 2444 Is the public sector Contract Manager part of the public sector team from the beginning of the procurement?

2.5 Post Award; Delivery, Operations and Performance Management

- 251 In Belarus, do you believe that PPP and other major public contracts are properly implemented and effectively monitored by the public sector agencies?
- 252 On contract award, which agency takes lead responsibility for contract management during the delivery and operational phases?
- 253 Is the PPP CoE / Ministry of Finance involved in project implementation, post award?
- 254 Are the public sector contract management costs clearly set out in the Full Business Case, for approval by central Government just before Financial Close and contract award?
- 255 Is a clearly defined Output Specification developed and made available to bidders as part of the bidding process?
- 256 Have Performance Management Systems (PMS) been developed in Belarus, for the operational phase of PPP projects?
- 257 Is a relevant PMS reflected in the Project Agreement (PA) and in the Contract Management (CM) documentation?
- 258 What are the key metrics / Key Performance Indicators (KPIs) used to manage performance of a PPP, or other large public contract?
- 259 What penalties / deductions are applied for non-performance by the private sector partner / supplier?
- 2510 How are variations and claims by the private sector partner normally managed in Belarus?
- 2511 How are conflicts or disputes typically managed within CM arrangements for PPP, concessions or other major public contracts in Belarus?
- 2512 Would you say disputes are settled fairly and speedily?
- 2513 How is “Force Majeure” provided for in Belarusian PPPs or major public contracts?
- 2514 How is “change in law” provided for in PPP or other major public contracts?
- 2515 Does a mechanism exist for sharing the risk of “change in law” events?
- 2516 Has international arbitration ever been employed for such disputes?

- 2517 Have any major public contracts ever been terminated? If so, under what circumstances?
- 2518 In your experience, are private sector partners / suppliers normally paid fully and promptly by Government in the case of major public contracts?

Annex III

List of consultative meetings

1. Public Sector

Representatives of the Ministry of Economy of the Republic of Belarus

- **Anton Kydasov**, Deputy Minister,
- **Kiril Koroteev**, head of the chief investment department,
- **Elena Perminova**, head of the international investment cooperation and free economic zone department,
- **Tatiana Harlap**, deputy head of the international investment cooperation and free economic zone department,
- **Sergei Vajtehovskiy**, deputy head of the department on methodology of business planning and state complex expertise of investments projects business plans,
- **Olga Malaya**, key specialist of the international investment cooperation and free economic zone department,
- **Yuri Chebotar**, head of the chief industry, transport and communications department,
- **Tatiana Drozdova**, deputy head of the department on chief fuel and energy complex, chemical and pharmaceutical industry,
- **Petr Aryshanianz**, deputy head of the entrepreneurship department,
- **Viktor Shirej**, adviser at the construction and housing department,
- **Oksana Tsemnitskaya**, head of the legal department.

Representatives of the State Research Institution „Institute for Economic Research of the Ministry of Economy of the Republic of Belarus”

- **Alexander Chervyakov**, Director of the Institute,
- **Victor Pinigin**, Deputy Director,
- **Ludmila Borovik**, Deputy Director,
- **Dmitry Chizh**, Deputy Director,
- **Evgeniy Borushko**, team leader on PPP questions
- **Ekaterina Kuzmich**, research fellow of the state control over the property relations department.

Representatives of the Ministry of Finance of the Republic of Belarus

- **Yuri Seliverstov**, head of the chief budgetary policy department,
- **Anatolij Ignatiev**, head of the economic analysis department,
- **Tamara Stanko**, head of the property relations and trade finances department,
- **Anna Larina**, deputy head of the property relations and trade finances department.

Representatives of the Ministry of Architecture and Construction of the Republic of Belarus

- **Irina Arhipova**, first Deputy Minister,
- **Vyacheslav Kytirlo**, head of the economic department,
- **Sergei Martinov**, first Deputy Director of the Research Institution “Strojeconomika” OJSC.,

- **Vsevolod Adamovich**, head of the research laboratory on competitive environment and information and methodological support in construction “Research Institution “Strojeconomika” OJSC

Representatives of the Ministry of Housing and Communal Services of the Republic of Belarus

- **Alexander Terehov**, first deputy minister,
- **Edmund Grishkevich**, head of the housing department,
- **Vyacheslav Shmidt**, head of the communal services and energy department.

Representatives of the Ministry of Transport and Communications of the Republic of Belarus

- **Vladimir Dervenkov**, first Deputy Minister,
- **Igor Sirotko**, deputy head of the department of strategic development, coordination, investment of transport systems and licensing,
- **Vladimir Levitsky**, head of the rail transport and logistics department,
- **Andrei Chernobilez**, deputy head of the marine and river transport,
- **Alexander Sachivko**, adviser of the passenger traffic department,
- **Alexander Subko**, adviser of the foreign-economic activity and licensing systems department,
- **Nikolai Podlozhevich**, head of the economic and investment sector of the of the economic, finance and accounting department at the Avia Department,
- **Aleksei Chernuk**, deputy head of the traffic development sector of “Belavtodor” Department,
- **Fedor Tarasuk**, head of the economic and state property disposal sector of “Belavtodor” Department,
- **Andrei Olejnik**, head of the technical policy and investment services of the Belarusian Railway Administration,
- **Elena Kyligina**, adviser at the strategic development, coordination, investment of transport systems and licensing department,
- **Anna Sheleg**, leading specialist at the strategic development, coordination, investment of transport systems and licensing department.

Representatives of the Ministry of Culture of the Republic of Belarus

- **Victor Kurash**, Deputy Minister,
- **Aleksei Bezygly**, deputy head of the video-cinematography department,
- **Ludmila Borshevskaya**, chief legal adviser of the legal department,
- **Snezhana Golovchiz**, deputy head of the economic department,
- **Mikhail Kozlovich**, head of the art department,
- **Olga Kononuk**, head of the economic department,
- **Mikhail Mazko**, head of the capital constructions and material support department,
- **Natalia Nagibina**, lead specialist of the foreign relations department,
- **Igor Chernyavsky**, head of the protection of historico-cultural heritage and reconstruction department,
- **Vadim Sherbich**, head of the cultural establishments and folk department.

Representatives of the Ministry of Education of the Republic of Belarus

- **Viktor Yakzhik**, Deputy Minister,
- **Irina Bebeh**, head of the social and economic development department,
- **Eduard Gonchar**, head of the vocational technical training department,
- **Svetlana Mihnevich**, acting as a head of the informational and analytical department,
- **Vasilij Safonov**, head of the science and innovation activities department,
- **Vladimir Shapurov**, head of the international relations department,
- **Eduard Shevzov**, deputy head of the higher and specialized secondary education department.

Representatives of the Ministry of Health of the Republic of Belarus

- **Tatiana Talajko**, chief specialist of the foreign relations department,
- **Oleg Kruglikov**, head of the capital constructions department,
- **Dmitry Kalistratov**, head of the entrepreneurship and pricing department,
- **Elena Krytova**, acting as the head of the planning and health economics department,
- **Ivan Ryzhko**, head of the chief medical aid activities department.

Representatives of the National bank of the Republic of Belarus

- **Igor Mogilevich**, deputy head of the department,
- **Oleg Karachun**, head of the currency analysis and forecasting department.

Representatives of Minsk city executive committee

- **Alexander Kohan**, deputy chairperson of the constructions and investment committee of Minsk city executive committee – head of the constructions department,
- **Zhanna Birich**, deputy chairperson,
- **Denis Eremenko**, deputy chairperson of the economic committee,
- **Natalia Alexandrovich**, head of the macroeconomic analysis and forecasting department,
- **Nikolai Ahramenko**, head of the investment department of the economic committee,
- **Alexander Kalinovsky**, deputy chairperson of the economic committee of Minsk city executive committee – head of the entrepreneurship department,
- **Alexander Petrov**, chairman of the architecture and municipal engineering committee,
- **Dmitry Antonevich**, deputy head of the chief justice department,
- **Raisa Sycheva**, deputy head of the financial department of Minsk city executive committee – head of the budgetary section,
- **Vladimir Prozorovsky**, director of the utility unitary enterprise «Minsk city executive committee Tender centre»

Representatives of the House of Representatives of the Republic of Belarus

- **Sergei Semashko**, Chairman of the Permanent Commission of the House of Representatives,
- **Evgenij Obolensky**, member of Permanent Commission,
- **Vitalij Ledakovich**, head of the economic activities of the Permanent Commission department,

- **Natalia Nikolaeva**, chief specialist of the department.

Representatives of the Academy of Public Administration under the aegis of the President of the Republic of Belarus

- **Anatoly Morozevich**, Rector,
- **Anna Ryabova**, instructional work pro-rector,
- **Igor Goncherenok**, instructional work pro-rector,
- **Vitaly Petrushkin**, director of the Institute,
- **Irina Novikova**, head of the chair.

2. Private Sector and Industry

Representatives of the Belarusian Constructors Association

- **Oleg Bykovsky**, director of the “Institute “Minskgrazhdanproekt” OJSC, member of the Board of Directors of the Association,
- **Sergei Karpov**, director of the State “Institute “Voenproekt” enterprise,
- **Nikolai Miloshevsky**, director general of the GPO “Minskstroj”, member of the Board of Directors of the Association,
- **Viktor Sys**, deputy director “DSPPMK-94», CJSC, member of the Board of Directors of the Association,
- **Vladimir Tarasik**, executive director of the Constructions Association, member of the Board of Directors of the Association,
- **Vasilij Ystinchik**, Chairperson of the Supervisory Council «10 YNR-invest» OJSC,
- **Dmitry Chymachev**, director of the Republican unitary enterprise «Belstrojzentr”,
- **Nikolaj Sheremet**, member of the Board of Directors of the Association,
- **Ivan Yancharsky**, director general of the “MAPID” OJSC, Deputy chairperson of the Board of Directors of the Association.

Representatives of “Triple” Ltd.

- **Oksana Hrystaleva**, Deputy director on international cooperation issues.
- **Vladimir Botvinko**, first deputy director general.

Representatives of “Minsk capital association of entrepreneurs and employers”

- **Vladimir Karyagin**, Chairperson, executive director,
- **Lilia Koval**, vice Chairperson.

3. Banking Community

Representatives of „Belagroprombank” OJSC

- **Pavel Vasilevsky**, Deputy Chairperson of the Board of Directors,
- **Sergei Silkov**, deputy head of the strategic development department,
- **Sergei Yablonsky**, head of the strategic development department,
- **Oleg Kyprejchikov**, head of the active banking operations department.

Representatives of “Belarusbank” JSSB

- **Dmitry Kuleshov**, head of the projects department,
- **Natalia Shevko**, chief specialist of the investment crediting department.

Representatives of „Belinvestbank” OJSC

- **Sergei Kovalevsky**, Deputy Chairperson of the Board of Directors,
- **Alexander Pyzikov**, Executive Director,
- **Andrej Sokirko**, Director of the credits risks department

Representatives of “Priorbank” OJSC

- **Andrei Silazafovich**, head of the investment department,
- **Oleg Leontiev**, head of the department of investment and banking operations.

Representatives of the Association of the Belarusian Banks

- **Felix Chernyavskiy**, head of the scientific and methodological centre

4. International Organizations

Representative of UNDP in Minsk

- **Ludmila Istomina**, economic projects coordinator

Representatives of the European Union Delegation to Belarus

- **Llewellyn Edwards**, Head of Section - Operations
- **Aliaksei Vavokhin**, Project coordinator – Economic and Trade relations.

Representatives of the European Bank for Reconstruction and Development

- **Francis Delaey**, head of office.
- **Alexander Evsejchik**, banker

Representative from International Finance Corporation

- **Valerij Fadeev**, legal adviser