WHAT'S THE DEAL?

STANDARDIZING CONTRACTS FOR PUBLIC-PRIVATE PARTNERSHIPS

MARTIJN VAN DEN HURK

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Cover: bridge under construction as part of the A11 Bruges project, which concerns the construction of a ring road section south of the port of Zeebrugge (original photo: © airManiacs).

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Preface

Public-private partnerships are renowned for the complexities and challenges they bring in for both governments and private parties. Therefore, it is no surprise that efforts are put forth to facilitate or even simplify the management of these endeavors, particularly regarding the processes that need to be completed before the shovel hits the ground. This can be considered a good thing, since actors are aiming for improvement. So why would it be interesting, let alone relevant, to examine these efforts? Or, to put it bluntly: *what's the deal?* In my view, we should not be indifferent about what is going on here. The values and practices that underlie simplification through standardization are anything but neutral. There can be serious consequences for clients (i.e., governments), end users (e.g., drivers and athletes), and the society at large (i.e., taxpayers), in both the short and long run. The application of standard terms and clauses can steer contractual negotiations into a certain direction and thereby largely define the content of an infrastructure deal from the outset. This dissertation reveals some of the issues that arise as governments try to move forward in PPP policy and practice. While I would be the first to admit that my empirical work is just a start, I do think it is important to realize that standardizing contracts is not nearly an obvious activity. We should try to acknowledge and better understand its role in determining the delivery of infrastructures and facilities today, and in the decades to come.

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Martijn van den Hurk
Antwerp, December 2015

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Acronyms

ADB	Asian Development Bank
AUV	Algemene Uitvoeringsvoorwaarden (General Contracting Conditions)
AWV	Agentschap Wegen en Verkeer (Agency for Roads and Traffic)
CCPPP	Canadian Council for Public-Private Partnerships
DBFMO	Design-build-finance-maintain-operate
EPEC	European PPP Expertise Centre
FSIP	Flemish Sports Infrastructure Program
HM Treasury	Her Majesty's Treasury (UK)
IBRD	International Bank for Reconstruction and Development
IDB	Inter-American Development Bank
MAPPP	Mission d'Appui aux Partenariats Public-Privé
NAO	National Audit Office (UK)
NHS	National Health Service (UK)
NPV	Net present value
PFI	Private Finance Initiative
PLC	Public limited company
PMV	Participatiemaatschappij Vlaanderen
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public-private partnership
PPS	Publiek-private samenwerking
PPPIRC	Public-Private Partnership in Infrastructure Resource Center
SPV	Special purpose vehicle
VfM	Value for money
VRP	Vereniging voor Ruimte en Planning (Association for Space and Planning)
UNECE	United Nations Economic Commission for Europe

1 Introduction

As the power of money and finance relative to economic life has grown over the past few decades (Farazmand, 1999; Leyshon & Thrift, 2007), financial markets and institutions have increased in size (Aglietta & Breton, 2001; Boyer, 2000), and so has the importance of finance and markets in conventionally non-financial sectors and interactions (Castree, 2008a, 2008b; Krippner, 2005; Orhangazi, 2008). In light of these developments, governments have created and monetized public infrastructure as an asset class and have started welcoming private financiers and investors to take care of its provision (Ashton et al., 2012; O'Neill, 2010, 2013). As a result, there has been an increase in the popularity of public-private partnerships (PPPs), a specific approach to the construction and maintenance of infrastructure in which the private sector finances a project, takes on an expanded role for facility design, construction, operations, and/or maintenance, and bears a considerable amount of risk.

Governments have had different motivations to embark on public-private trajectories. PPP offers an interesting opportunity to buy infrastructure now and pay for it later; it can thus serve as a welcome mega credit card for cash-strapped governments (Hodge & Greve, 2007). Another promise of PPP has been that it offers better value for taxpayers' money. Granting the private sector more responsibilities in infrastructure development is often automatically believed to incur better efficiency. Consequently, the government is expected to pay less (or the same) for equal (or better) services (see Grimsey & Lewis, 2005; Hodge, 2010, pp. 94-104; Hodge & Greve, 2009).

As great as the promises of PPP have been, the harsh reality is that it has caused decision makers and public managers major headaches regarding infrastructure delivery. The rise of PPP has brought in numerous political, organizational, and technical challenges for governments. Many difficulties manifest themselves during the contracting process, the stage in which

government actors try to find a private partner, figure out a way to deal with each other for the duration of several decades, and lay down their arrangements in an extensive contractual agreement of thousands of pages. These processes are often signified by difficult negotiations and high costs. In order to remedy these issues, governments are showing increasing interest in facilitating the contracting process. A most prevalent measure has been their attempt to standardize the contractual documents involved in PPP deals so that a shorter negotiation process can be enabled and less effort is required from the actors involved. However, although standard contracts are globally promoted and widely used in an increasing number of places and sectors, there remains a remarkable lack of analysis of how they are developed, let alone what their actual benefits and drawbacks are. Therefore, this study examines the standardization of contracts for PPP.

This chapter introduces the topic of contracting in public-private partnerships and serves as a reading guide for this dissertation. It begins by defining the concepts that form the basis of the puzzle of this research and addressing the gaps in the academic literature that formed my motivation to explore this specific subject matter. Following that, I articulate the objectives and research questions of this study. The remainder of this chapter explains the research approach I applied in order to answer those questions, including brief discussions of the study's theoretical background and methodology. The final section contains a thesis outline. Since the theoretical and empirical chapters are a collection of articles, the outline is the glue that holds this dissertation together.

1.1 Background and focus

1.1.1 What is a public-private partnership?

Time and again, scholars have tried to define and classify the concept of a public-private partnership, but it remains difficult to arrive at a generally accepted understanding (Donahue & Zeckhauser, 2011; Hodge et al., 2010a; Weihe, 2008). There is agreement, though, that cooperation between public and private actors goes back centuries. Wettenhall (2005) discusses a number of historical examples of activities in which it was common to mix public and private efforts, such as privateer shipping, mercenary warfare, colonial trade, treasury management, and railway exploitation. Some of these practices date back to the Middle Ages or even further (see also Grimsey & Lewis, 2007b). PPP is thus a relatively old phenomenon. However, societies have changed, and PPP has experienced rebrands and revisions on a continual basis (Bovaird, 2010; Wettenhall, 2003). Today's public-private endeavors are a different ballgame, as they are mostly seen as

a form of project finance wherein the private sector handles the upfront costs for the provision of public infrastructures—such as roads, ports, public transit, hospitals, schools, prisons, courthouses, and sports facilities. It came into vogue as a delivery model in the 1990s, starting in Australia and the United Kingdom.[1] It then spread to other Anglo-Saxon countries and Continental Europe, and eventually became well-known worldwide (Pollitt, 2005; Savas, 2000; Yescombe, 2007).

PPP has become an umbrella term for a variety of partnership forms (Osborne, 2000; Skelcher, 2005). Hodge and Greve (2010) distinguish five different families: (1) institutional cooperation for joint production and risk sharing, (2) long-term infrastructure contracts that emphasize a tight specification of outputs in long-term legal contracts, (3) public policy networks in which loose stakeholder relationships are emphasized, (4) civil society and community development, and (5) urban renewal and downtown economic development. In this dissertation, I use the second family as a basis for my definition of PPP. In the most typical PPP model within this family, a single private concessionaire is contracted to design, build, finance, and maintain (DBFM) an infrastructure asset on behalf of a government. The concessionaire typically holds a lease on the asset from the government for a period of 20 to 50 years, after which time control of the facility reverts back to the public sector. A PPP thus involves a *one-covering contract* that covers the life cycle of an infrastructure asset and includes *private financing*. Additionally, in a PPP deal a significant amount of project *risk* is transferred from the public sector to the private sector, such as financial risk, the risk of cost overruns and delayed completion (construction risk), and the risk of subpar service delivery (availability risk).[2] If the private concessionaire fails to meet a requirement set in the contractual agreement, it has to fix the problem at its own expense, or it may face financial penalties and thus not recoup its initial investment in the project. Finally, the government will not pay for the asset until it is built, and after completion it will pay periodically recurring fees to the private sector partner over the life cycle of the contract, reflecting the degree of *service delivery*. These elements distinguish DBFM from the approach governments have traditionally taken to develop public infrastructure (see

[1] The British model of PPP is officially called *Private Finance Initiative* (PFI) and was implemented under the John Major administration in 1992.

[2] As an example, financial risks include a lack of capital and inappropriate debt management. Changes in borrowing costs or general economic conditions or fluctuating exchange rates are just a few possible causes of these problems, and could eventually lead to insolvency. Examples of construction risks are delays due to unanticipated construction problems or site conditions, and faulty construction techniques. Risks like these can result in cost overruns (Lammam et al., 2013; Sabol & Puentes, 2014).

Table 1). Although there are various other PPP models within Hodge and Greve's family of long-term infrastructure contracts—such as build-finance (BF) and design-build-finance (DBF) contracts, which require less private sector involvement, and design-build-finance-maintain-operate (DBFMO) contracts, which require more—I limit my definition to DBFM. The academic literature generally sees this model as a strong example of public-private partnership, and it fits the specific empirical context of this research—I will explain this in the methodological section of this chapter.

Table 1 Public infrastructure provision: traditional approach versus PPP[3]

Traditional approach	**PPP**
Short-term, separate contracts—usually design and construction contracts	Long-term, one-covering contract—package deal which integrates design, construction, financing, maintenance and/or operation, depending on project scope
Contracting authority pays for capital costs at beginning of project	Capital costs are often financed by private sector borrower and amortized over the life cycle of the asset
Contracting authority bears risk of construction delays, cost overruns, and other problems	Significant share of risk is transferred to private sector partner
Contracting authority pays for costs of construction, maintenance, and services as they arise	All costs are fixed over duration of contract, i.e., life cycle of project, and contracting authority does not pay until construction is complete and requested services are delivered

Governments have developed PPP policies for a variety of reasons, including ideological and political ones, and their motivations have evolved over time. One of the most common rationales supporting the use of PPP is that the private sector is assumed to act more efficiently than the public sector. As such, PPP would enable governments to do more (or better) with fewer (or equal) financial resources (see Grimsey & Lewis, 2005; Hodge, 2010; Hodge & Greve, 2009). Private companies with their own money at stake are believed to have a better track record of managing projects, and involving them heavily in all stages of infrastructure provision achieves better value for taxpayers' money. It is assumed that a risk-bearing private

[3] PPP is often mixed up with privatization and contracting out. However, in the case of privatization a private sector actor takes over from a government the control and ownership of an asset or company. In a PPP, public ownership remains unscathed (Linder, 1999). Contracting out is a temporary business relationship in which the government contracts a private partner for a particular service. It follows a well-defined project structure in which a determined task is formalized in a specific and separate contract, following a principal-agent relationship between public and private actors (Teisman & Klijn, 2002). In contrast, a PPP allows to integrate different tasks in a package deal with a one-covering contract.

sector partner is incentivized by a desire to recoup its initial investment to identify and manage project risks so that infrastructure assets will be delivered on time, on budget, and in compliance with the specifications set (Grimsey & Lewis, 2004). These would be great achievements for governments that want to continue developing infrastructure in times of austerity. It also creates opportunities to decrease cost overruns and time delays, two problems that have been paramount in traditionally procured infrastructure projects (Flyvbjerg, 2014; Flyvbjerg et al., 2003). Various other motivations have been used for PPP, including (but not limited to) the promises of better accountability, more innovation, and improved care of public assets (see Greve & Hodge, 2013 for an extensive list).

1.1.2 The need to facilitate complex contracting

Despite all of the high hopes and expectations, PPP fails to perform consistently well around the world. Critics contend that questions should be asked about the actual achievement of value for money (Akintoye & Beck, 2009; Siemiatycki & Farooqi, 2012), the burdening character of decision-making procedures (Yescombe, 2007), excessive private returns on investment (Shaoul et al., 2006; Vecchi et al., 2013), and dubious public accountability (Bloomfield, 2006; Willems & Van Dooren, 2011). In addition to the evidence that casts doubt on the achievements of PPP, empirical research has linked it with severe uncertainties, ambiguities, and risks that are difficult to manage due to the involvement of multiple actors, high political salience, and complicated technical requirements (Cruz & Marques, 2013; Flyvbjerg, 2006b, 2009; Gransberg et al., 2013; Salet et al., 2013; Sanderson, 2012; Van Marrewijk et al., 2008). Nevertheless, PPP is fast becoming a key instrument in the world of public infrastructure provision because, among other reasons, political decision makers increasingly recognize the merits of projects being delivered on time and on budget. This is an area in which PPP has shown improvement compared to conventional procurement, as was already shown in early reports on the experiences in the United Kingdom (HM Treasury, 2003, 2006; NAO, 2003).

Several figures illustrate the increasing popularity of PPP. Based on an international survey, the journal *Public Works Financing* (2010) reports that between 1985 and 2010 governments set up more than 1600 major infrastructure projects using a public-private approach, amounting to a combined value of over 700 billion US dollars. European governments are closing PPP contracts at a total value of roughly 15 billion euro a year (EPEC, 2014). PPP is bound to become a more important delivery model as a result of governments' tightening budgets and the inevitable rise of grand societal challenges (e.g., climate action, energy transitions, and health and

demographic change) that do not leave governments much of a choice but to cooperate with the private sector. The performance issues, management difficulties, and increasing role in infrastructure provision of PPP make the examination of its implications a continuing concern.

I focus on one particular aspect of PPP that is a major area of interest within the field of infrastructure provision: *contracting*, which in this dissertation is understood as the drafting, negotiating, and signing of long-term infrastructure agreements by public authorities (i.e., clients) and private actors (i.e., contractors).[4] A contract specifies each party's obligations, delineates what is and what is not allowed, and inflicts penalties for inappropriate behavior (Ring & Van de Ven, 1992; Vincent-Jones, 1994). As such, a contract makes sure that the parties are mutually protected against acts of opportunism (Williamson, 1979). It also coordinates the public-private relationship by assigning roles and responsibilities and regulating monitoring (Brown et al., 2010; Schepker et al., 2014), and it specifies contingency plans so that the actors involved know how to adapt to changing conditions (Luo, 2002).

Van der Veen and Korthals Altes (2012) argue that a signed contract ideally reduces the inherent complexities and uncertainties of infrastructure projects (see also Friedman, 1965). However, closing a contract is one of the most challenging tasks involved in PPP. Compared to traditional infrastructure projects, PPPs are characterized by a more advanced and complex contractual relationship between the public sector and the private sector. The more risks involved (and thus that need to be shifted) and the longer the contractual term, the more difficult it becomes to align the interests of the actors involved and make them sign an agreement that is packed with demanding mutual commitments—not to mention the impossibility of making present decisions about all future aspects of a contractual relationship, i.e., *presentiation* (Macneil, 1980, 1983). PPP requires greater vigor in risk assessment, and private financing brings along an extra layer of due diligence that is undertaken by equity investors and lenders. Furthermore, it requires the government to fulfill a role that is significantly different from its role in traditionally procured projects. For instance, in a PPP the government is no longer the infrastructure provider but becomes the client of the infrastructure provider. Consequently, public officials need to acquire new competences and focus on other considerations than usual. PPP more or less forces them into the role of director rather than executor and

[4] There is also a practice of contracting after contracts are signed. This is called *contract management*, and it includes activities like monitoring and documenting performance. This dissertation focuses on the process toward the signing of a contractual agreement.

incentivizes them to focus on output (what do we want the contractor to deliver?) instead of input (how do we want the contractor to deliver?), while the private financing approach necessitates that they build a technical understanding of a novel type of project development (Brown & Potoski, 2003, 2005; Hartmann et al., 2010; Joaquin & Greitens, 2012).

Due to the complicated circumstances, the road to contractual agreement in a PPP process is often characterized by difficult negotiations and high transaction costs. Even though these costs typically form only a fraction of the total costs of a newly constructed infrastructure asset, they can amount to millions of euros of taxpayers' money, since the asset is often of a major size (Dudkin & Välilä, 2005; NAO, 2007; Yescombe, 2007). The recurring nature of these problems has heightened the need for better manageable procurement. Therefore, in recent years there has been increasing interest in facilitating the contracting process to decrease the amount of time and money that is spent on these activities and to develop contractual knowledge and expertise among public professionals (see e.g., European Commission, 2003; UNECE, 2008). This dissertation discusses this facilitation process and zooms in on the creation and use of *standard contracts*.

Standard contracts are modularly structured documents providing standard terms for common elements of PPP deals. A few examples of themes (or clauses) that are usually included in these documents are definitions, core obligations, contract duration, output specifications, payment mechanism, sanctioning, guarantees, termination, conflict resolution, and insurance. Standard contracts have been promoted globally and are emerging in a variety of places and sectors. The United Kingdom is one of the first countries in which guidance on project agreements has been issued through standard contracts (HM Treasury, 2007, 2012b; NHS Executive, 1999; UK Ministry of Defence, 2001; UK Treasury Taskforce, 1999). Countries that have followed include the Netherlands (Janssen et al., 2010; Rijksvastgoedbedrijf, 2013, 2014; Rijkswaterstaat, 2013, 2014), France (MAPPP, 2011), Ireland (Central PPP Unit, 2015), New Zealand (The Treasury, 2015), and many others (IBRD/World Bank et al., 2014; PPPIRC, 2015). Yet as the practical use of these documents increased over the past two decades, there has been a remarkable lack of reporting on how they are developed and what the actual benefits and pitfalls of using standard contracts are. This is striking because the standardization of long-term contractual agreements essentially implicates a paradox of finding an increasingly modular way to deal with increasingly complex challenges. Questions arise as to who decides what is (and what is not) included in those standard contracts and what they are actually used for, how governments deal with standard contracts in different sectors, how they keep their

standard contracts up to date over time, and how standard contracts help public executives get acquainted with PPP—which is often a completely new experience to them—and learn to practice complex contracting. In addition to these practical issues of interest, I will address a related lacuna in the academic literature in the next section.

1.1.3 Literature gap

This dissertation fills the literature gap that exists on the nexus of (1) the governance and complexity of PPP, (2) contracting, and (3) standardization.

In the past two decades, many researchers have explored the governance and complexity of PPP (as partly shown in the previous section). A large number of contributions have focused on policies and practices in Anglo-Saxon countries, particularly the United Kingdom (Ball et al., 2007; Bing et al., 2005a, 2005b; Hellowell, 2010), Australia (Hodge, 2005; Hodge & Greve, 2010; Macdonald, 2012), Canada (Roberts & Siemiatycki, 2015; Siemiatycki, 2009; Vining & Boardman, 2008), and to an increasing extent the United States (Geddes & Wagner, 2013; Ortiz & Buxbaum, 2008). There have also been studies in other countries where PPP has become a well-known approach to public infrastructure provision (e.g., the Netherlands and Spain), as well as focused and rather abstract international comparisons (Dewulf, Blanken, et al., 2012; Hodge et al., 2010b; Osborne, 2000; Ysa, 2007). However, the aforementioned countries have developed considerable expertise on PPP over time, so it is difficult to extrapolate the results of this published research to other countries. There remains a significant lack of studies of PPP in various other jurisdictions. Belgium is an example of this; although its federal, regional, and local governments have invested billions of euros in PPP programs and projects, literature on how these ventures are governed is remarkably scarce (De Schepper et al., 2014; De Schepper et al., 2015; Van Gestel et al., 2014). This jurisdiction thus remains a largely unbeaten track, even when it comes to merely descriptive research. Moreover, academic studies of PPP have generally focused on horizontal infrastructures like roads and railways and not nearly as much on social infrastructure types, e.g., hospitals, schools, and sports facilities. Nor have researchers conducted time series analyses that aim to illuminate processes of learning or other developments within PPP programs. The literature leaves much to be explored.

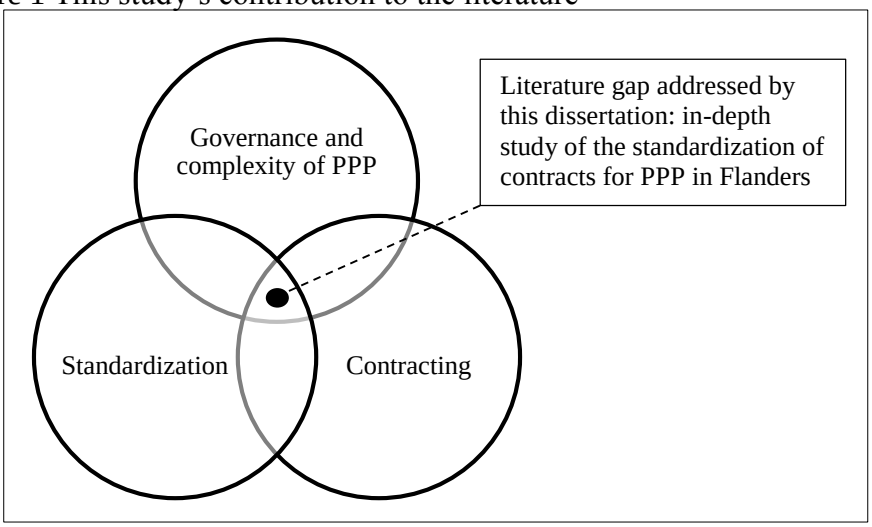
Of the three main topics that are covered in this dissertation, contracting has arguably been the most prominent one in the academic literature. Scholars have extensively discussed (and debated about) the increasing role of contracts in contemporary societies and public management (Bouckaert et al., 2010; Cooper, 2003; Hefetz & Warner, 2004; Savas, 2000), transaction

costs and contractual decisions (Brown & Potoski, 2005; Williamson, 1979, 1985), the importance of trust in contracting (Brown et al., 2007; Faems et al., 2008; Gulati, 1995), the presentiation question (Bolton & Dewatripont, 2005; Campbell & Harris, 1993), and contractual learning (Argyres & Mayer, 2007; Ariño et al., 2014; Zollo & Winter, 2002). Debate continues about these issues, as is shown by recent contributions of Brown et al. (2015), Malatesta and Smith (2014), and Schepker et al. (2014). The past two decades have also seen increasing scholarly interest in the link between contracting and PPP, which is reflected in the work of Albalate et al. (2013, 2015), De Bettignies and Ross (2009), Hart (2003), and Whittington (2012).

Finally, by discussing the topic of standardization I will illuminate some of the most compelling literature gaps that are filled by this dissertation. A considerable amount of literature has been published on standardization in the field of economics. These studies discuss product compatibility (Farrell & Saloner, 1986; Katz & Shapiro, 1985), product and service quality (Beck & Walgenbach, 2005; Boiral, 2012; Gulbrandsen, 2008), competition (Besen & Farrell, 1994; David, 1985), and international politics, trade, and financing (Büthe & Mattli, 2011; Higgins & Tamm Hallström, 2007; Kerwer, 2005; Mattli & Büthe, 2003). A much less impressive number of studies have covered the nexus of standardization and contracting. In this area, most contributions have been generated by law scholars reporting on ethical-moral issues (Dugan, 1978, 1980; Mair, 1984; Stedronsky, 1975), complemented by a special issue of the *Michigan Law Review* on the rise of modularity in contracting (Ahdieh, 2006; Baird, 2006; Gilo & Porat, 2006; Radin, 2006). Additionally, Petsoulas et al. (2011) have recently furthered this area with their British case study on standard contracts applied by the National Health Service, but this is only one contribution to a field that leaves many opportunities to be explored—not only in the United Kingdom, but also in other countries. In addition, the overlap between standardization and PPP has received far too little attention. Farrugia et al. (2008) discuss government agencies that aim to promote and assist in the application of PPP—so-called PPP(-supporting) units. They notice that governments are applying increasingly similar (i.e., standard) business models for these agencies, yet also argue that the success and power of these agencies still depends largely on elements like the volume, size, and specificity of a PPP policy, the political environment, and government objectives and priorities. Jooste et al. (2011) also point to the importance of contextual factors in PPP policy and project management as they argue that governments should not just try to copy and paste international standards and disregard localities. Be that as it may, these contributions are restricted to relatively abstract comparisons and are largely drawn on anecdotal evidence.

All in all, while there have been many separate studies on PPP, contracting, and standardization, as well as considerable research on the nexus of two of the three subjects, no studies have attempted to investigate the three together. Figure 1 presents a schematic overview of this gap in the literature and indicates this dissertation's contribution to the field.

Figure 1 This study's contribution to the literature



1.2 Objective

The contribution of this dissertation lies in seeking to remedy the literature gap I indicated in the previous section and gaining insight into the practice of creating and using standard contracts. The literature gap is particularly striking because law and economics scholars have extensively discussed the pros, cons, and challenges of standardization in many sectors and have been clear on the limits of standardizing contracts, yet in the field of PPP the merits of standard contracts seem to be taken for granted. In point of fact, international and non-profit organizations emphatically promote standardization (Sabol & Puentes, 2014; UNECE, 2008; World Bank Group & PPIAF, 2015). However, since looking for modular solutions to such complex challenges as PPPs is likely to raise significant governance issues for governments, it is problematic that this topic has remained a black box. There is a need for unveiling the potential challenges of standardizing contractual agreements for PPP and for empirical research on the practice of creating and using these standard contracts. The main purpose of this study has been to develop an understanding of the creation and use of standard contracts in the field of PPP through a critical and in-depth examination of public-private contracting processes. I have sought to achieve this goal by answering three research questions (RQs), starting at the relatively general

level of the governance and complexity of PPP and moving toward the more specific topic of standardization. The subjects of the following chapters of this dissertation follow the sequence of these questions, and Section 1.5 (Thesis outline) further explains how the chapters have been synthesized.

RQ1: How are governance, complexity, and performance related in public-private partnerships? (empirical question, discussed in Chapter 2)
Given that governments continue to struggle in their attempts to make PPP successful, doubts surface regarding whether they are applying the most appropriate approach given the objectives at hand. By scrutinizing the governance and performance of a specific PPP program in a complex context, I wanted to gain insight into the difficulties of preparing and implementing such programs and their affiliated projects. The answer to the abovementioned question would help me acquire a better understanding of the importance of matching governance approaches with project complexities, the Flemish PPP landscape, and the urgent problems in public-private trajectories that require solutions. The findings would serve as a point of departure for the second research question of this dissertation, which would elaborate on the promises and pitfalls of trying to resolve complexity issues and facilitate the contracting process through the standardization of contracts. As such, the answer to RQ1 could make a case for the need of standardization.

RQ2: What are the rationales and potential benefits and challenges of using standard contracts in the contracting process of public-private partnerships? (theoretical question, discussed in Chapter 3)
RQ2 picks up where the answer to RQ1 left off. It discusses a specific measure that is taken by many governments to move forward in the field of PPP: the creation and use of standard contracts. Standardization is essentially meant to reduce the complexity of PPP and often seen as a solution to the abundant governance challenges. I wanted to *theoretically* explore the rationales, promises, and pitfalls of this development by extending theoretical notions on standardization to the field of PPP—hence the word "potential" in the research question; it is essentially about a thought exercise. The answer to RQ2 would be a research agenda that would serve as a guide for the remainder of this study. I found it important to formulate this research agenda, as standardization and PPP had hardly been brought together in critical examinations, and I thought it highly unlikely that there would only be positive experiences with the standardization of contracts. In addition to fulfilling the need for a critical reflection, the answer to RQ2 would provide a starting point for empirical research through a conceptualization and delineation of standard contracts in the world of PPP.

RQ3: How can we explain the creation and use of standard contracts in public-private partnerships? (empirical question, discussed in Chapters 4 and 5)

Finally, I wanted to scrutinize empirically and in depth two of the issues that were put forward in the research agenda about the standardization of contracts in PPP. Based on the early concerns that were expressed in the answer to RQ2 and a more elaborated theoretical consideration of these issues, I formulated a number of propositions and tested them in two case studies. The general objective of this empirical research question was thus to look into two different aspects of the standardization of contracts, which is why I approached each case from a different angle and split the process to answer RQ3 in track 3a and track 3b. I looked at the first case study, the Flemish Sports Infrastructure Program, from the perspective of *transaction costs* (track 3a). Bearing in mind the objective of governments to facilitate the contracting process for PPP and thereby lower transaction costs, I aimed to discuss the importance of a match between (a) how standard contracts are used during the procurement process and (b) the characteristics of the transaction that is being procured. The second case study investigated the link between standardization and contractual *learning* in the Flemish Via-Invest Program for road infrastructure investments (track 3b). Both case studies contained rich empirical material on various aspects of the actual creation and use of standard contracts in PPP programs and projects. Furthermore, it needs to be clear that the focus has been on addressing different aspects of standardization, not on seeking to determine which aspects are most promising or important in regard to successfully creating and using standard contracts. That is one of the reasons why the cases have not been subjected to a comparison—other reasons are explained in Section 1.4 (Research design).

1.3 Theory

Unlike many doctoral dissertations, mine does not start out with a generic theoretical framework. Given the focus of this study on the case of Flanders—to be explained in Section 1.4—and the alleged specificity of the Flemish PPP policy and practice, the first step was to acquire an understanding of PPP in this particular jurisdiction and to concurrently gain insight into the link between the governance and complexities of PPP. After that, I did an exercise in putting the empirical results in perspective and linking them with the potential pros and cons of standardization. Even though Chapter 3 conceptually defines standard contracts and discusses various theoretical considerations concerning the creation and use of standard contracts in PPP processes, its main objective is to give an overview of the literature and address potential avenues for research on this

subject matter. As such, this dissertation is not built upon a grand, multifaceted theoretical framework that is based on a one-off literature review. Instead, it is in the empirical chapters that I really elaborate on theoretical notions and use the case studies to test these notions (Rohlfing, 2012).

Three aspects require a bit more explanation in light of the theoretical decisions made during this dissertation project: (1) basic assumptions, (2) a conceptualization of a standard contract for PPP, and (3) the focus on particular aspects of standardization. First, this study adheres to two (related) basic assumptions: man is bounded in rationality, and man's activities are embedded in a social context. These underpinnings are crucial in regard to my position in the academic debate on contracting. As opposed to what is assumed in classical contract law, human individuals are not able to act rationally due to their cognitive limitations (Simon, 1957). Nor do they have full and verifiable information about others or about what could possibly happen in the future (Macneil, 1980, 1983; Williamson, 1985). This uncertainty pervades the activity of contracting: actors will try to protect themselves as well as possible against the opportunistic behavior of peers, hence tight contractual clauses need to be formulated and transaction costs rise. Uncertainty also causes contracts to be incomplete; it is too complex and too costly to incorporate all possible contingencies in a contractual document that covers decades (Dye, 1985; Goldberg, 1976; Hart, 2003; Hart & Moore, 1999). In addition, as much as Granovetter (1985) states that actors are embedded in a social context, contracting is a social activity that cannot be studied without considering relational elements (Macneil, 2000, p. 889). Discrete transactions do not exist; every contract involves a wider social and economic context. By incorporating these underpinnings in this dissertation, I consistently bear in mind real-life complexities and uncertainties.

Second, this dissertation uses a conceptual understanding of standard contracts that deviates from earlier definitions in the field of standardization. In Chapter 3 it is explained that standards can differ very much in terms of type and form, and therefore in how they are created and used. For instance, the standards we know best are those that refer to quality requirements or other parameters and that we define as product standards, e.g., ISO standards and accreditation requirements. These are often of a private sector nature (Brunsson & Jacobsson, 2000; Krislov, 1997; Tamm Hallström, 2004; Timmermans & Epstein, 2010). In contrast, standard contracts for PPP are usually drafted by public sector bodies with law firms' assistance. As a consequence, the standard contract that is used as a starting point for contractual negotiations is likely to aim at comforting the public sector

(Cargill & Bolin, 2007). Another difference between my conception and other understandings of standards relates to usage. As for product standards, isomorphic pressures such as the effort for competitiveness often push businesses toward aligning their products with established standards while still following a voluntary path (Botzem & Dobusch, 2012). The use of standard contracts for PPP occurs through a top-down process: the model or template is hierarchically set, and the contractual negotiations will happen in a setting where the public actor acts as a principal and the private actor as an agent. Following that, Chapter 3 addresses how this constellation could incentivize the public actor to exercise (too much) control and thereby hamper contractual negotiations rather than ease the process.

Third, before we proceed it is important to explain why this dissertation focuses on certain elements of standardization. Chapter 3 provides an elaboration on three core motivations of the use of standard contracts in PPP: creating a common understanding (i.e., learning), lowering transaction costs (i.e., swifter and cheaper contracting processes), and improving competition (i.e., lower product prices) (Akintoye et al., 2003; HM Treasury, 2003; Iossa et al., 2007b, pp. 9-10). There are obviously more reasons to standardize contracts, for instance because they are believed to create opportunities for striking a balance between consistent national policy and local flexibilities for the benefit of legitimacy and transparency. However, the three aforementioned aspects have been most prevalent in government documents and are therefore considered the most important ones. Moreover, learning, transaction costs, and competition have been studied by many scholars, who offered plenty of opportunity to collect earlier work, use it as guidance, and finally embed the results of this study in extant literature. As for my decision to pick the theories of transaction cost economics and learning for the empirical chapters of this dissertation and to drop competition, I refer to Section 6.6 of this dissertation (Research agenda and reflections) for an explanation.

1.4 Research design

1.4.1 Case study strategy and case selection

The literature on PPP depicts the use of a wide range of research designs, including statistical and mathematical work (Albalate, et al., 2015; Rouhani et al., 2015), survey research (Bing, et al., 2005a; Edelenbos & Klijn, 2009), comparative case studies (Alexander, 2012; Jooste & Scott, 2012; Koppenjan, 2005), and single case studies (Edelenbos & Teisman, 2008; Grimsey & Lewis, 2002). In this study, I illuminated social processes relative to public-private partnerships by employing a qualitative mode of

enquiry: the case study strategy. In his influential article *What is a case study and what is it good for?*, Gerring defines a case study as an "in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena" (2004, p. 341). Following this approach, I conducted a longitudinal, retrospective, and in-depth analysis of two Flemish PPP programs, i.e., two cases: the Flemish Sports Infrastructure Program (FSIP), which was aimed at resolving Flanders' severe shortage of sports facilities, and the Via-Invest Program, an extensive plan of the Flemish Government[5] to improve the Region's road network. The case studies were conducted separately and were not compared to one another, since they concerned different research questions.

The reason to conduct a case study was threefold. First, public-private partnerships are complex social phenomena, and I sought to reconstruct the process as rigorously as possible by taking into account contextual matters. The results would then be reported in the form of a narrative (Flyvbjerg, 2006a) or *thick description*, originated and so named by Geertz (1973). The case study strategy is generally considered a useful approach when it comes to this type of work (Eisenhardt, 1989; Gerring, 2007; Yin, 2009). According to George and Bennett, case study research has the "ability to accommodate complex causal relations such as equifinality, complex interaction effects, and path dependency" (2005, p. 22).

Second, by conducting case studies I created ample opportunity for theory building, particularly since I conducted research on the relatively unexplored nexus of PPP, contracting, and standardization in an underinvestigated geographical region (Eisenhardt, 1989; Flyvbjerg, 2006a; George & Bennett, 2005). Every case study took off with a notion of possible hypotheses grounded in a theoretical framework (Lijphart, 1971, p. 692). I sought to refine these hypotheses on the basis of my findings. While conducting the case studies, as a researcher I had an intimate connection with the empirical reality which permitted theoretical developments, which is one of the merits of case study research according to Levy (2008, p. 5): "Given their close proximity to and familiarity with the data, case study analysts are well positioned to suggest additional explanatory and contextual variables, causal mechanisms, interaction effects, and scope conditions" (see also Collier, 1999).

[5] In this dissertation, the *Flemish Government* (in Dutch: "Vlaamse Regering") is defined as the government cabinet of the Flemish Community and the Flemish Region of Belgium. In contrast, the *Flemish government* (single capitalization) is understood as the civil service of Flanders (in Dutch: "Vlaamse overheid" or "Vlaamse administratie").

Third, research findings based on a single case or a few cases can form a strong foundation for analytical generalization (Yin, 2009). Flyvbjerg states that the knowledge gained can feed into a "collective process of knowledge accommodation in a given field, sector, or society" (2006a, p. 227). Two conditions are required for this to happen, however: a thoughtful selection of cases (Eisenhardt & Graebner, 2007; Gerring, 2007) and a clearly indicated range of the study's generalizability (Mahoney & Goertz, 2006). For each case study that is discussed in this thesis, in the respective chapters I reflect on the external validity of my findings by discussing explicitly the geographical and substantial scope and limitations of the research (see also Konisky & Reenock, 2013, p. 14). I discuss the case selection in one of the next paragraphs.

The case study strategy enabled me to delve into depth about the historical path, the context, and the nitty-gritty of two separate PPP programs in one jurisdiction (Flanders). Consequently, the study achieved a high degree of internal validity (Gerring, 2007). A way to further enhance this type of validity would have been to systematically compare these cases (Rohlfing, 2012). However, as I already mentioned in Section 1.2 (Objective) it has never been my intention to go down that road. I wanted to scrutinize cases separately, using different sets of questions and different theoretical lenses, and thereby examine the various issues that come up when combining the field of PPP with notions of contracting and standardization. Thus comparability was never a criterion for the selection of cases—let alone were the cases I eventually selected comparable; the following paragraphs on case selection will show that they were different in many ways. Instead, I improved this dissertation's internal validity by employing multiple types of evidence (triangulation), which is common in this type of research (Eisenhardt, 1989).

Here I make a couple of notes on the selection of the cases. Flanders was fairly unknown in terms of academic PPP research when I started this doctoral study. Therefore, in regard to the first case study I wanted to select a program or project that would allow me to get a grasp of the dimensions of governance and complexity in the Flemish PPP landscape (RQ1)—i.e., a typical case (Rohlfing, 2012). The Flemish Sports Infrastructure Program provided a case to fulfill this assignment. It contained three characteristics that made it a typical Flemish public-private venture. First of all, it showed a bundled procurement of projects, and secondly, it involved a participatory role of the government through equity financing—both of which are not as common in the world of PPP as they are in Flanders. Third, the processes surrounding the FSIP took place in the same time frame as the processes of a couple of other large-scale PPP programs in Flanders, such as the Via-

Invest Program and the Schools of Tomorrow Program (a catch-up movement to resolve the shortage of school infrastructure). Hence I would have an opportunity to stretch the external validity of my findings to the level of Flanders as a whole. In addition, the FSIP provided for research into the use of standard contracts, and more specifically their effect on transaction costs (track 3a). It comprised branches of diverging complexity within the sports sector, ranging from artificial pitches to multifunctional sports centers in which standard contracts were used by the Flemish government. In light of that governance approach, it was interesting to look for different degrees of success in terms of using standard contracts across a range of transaction types. This would help me acquire a deeper theoretical understanding (Eisenhardt & Graebner, 2007).

The second case study had to be a relatively mature PPP program that would spread across a number of years, since the objective was to unravel the learning process of the government while it was using model agreements and working toward a standard contract (track 3b). I expected the Via-Invest Program to show considerable processes of learning, since it had been able to mature for over eight years and over four projects. Moreover, the procurement processes of three of these projects overlapped in timing. Therefore, I expected this program to show considerable processes of learning not only within specific procurement processes but also between them, thus on a more programmatic level.

Pragmatic and logistical considerations also played a role in my selection of the FSIP and the Via-Invest Program (Seawright & Gerring, 2008, p. 296). As an example, the contracts for projects within the programs had already been signed by the time of analysis. Consequently, it was possible to do a retrospective analysis. It was my expectation that this would open doors to previously sensitive or even undisclosed information. Furthermore, I was able to control for potentially disturbing factors since all cases subjected to analysis were constructed within one geographical region (Flanders), under the umbrella of a PPP program, and led by one and the same public actor, i.e., the Flemish government. More information about the selection of cases is given in the empirical chapters of this dissertation, and Table 2 lists some relevant characteristics of the two cases that were selected.

Finally, I exerted effort to be transparent about the research process, which is important in regard to the replicability of this study (King et al., 1994). Each empirical chapter explains many of the methodological and analytical steps I took to arrive at the findings. Furthermore, I have written interim reports on my observations and analyses, and I kept a record of the research activities I conducted over time. Social scientists who aim to (partly)

replicate my research—whether in Flanders, in other jurisdictions, or in other sectors—can do so if they consult my extensive logs and other guiding material.

Table 2 Characteristics of PPP programs selected for analysis

Program characteristics	**Flemish Sports Infrastructure Program**	**Via-Invest Program**
Contracting authorities	Mostly municipalities	Departments within Flemish government
Type of infrastructure	Social (sports facilities)	Transport (roads)
Number of projects	> 50	6
Construction costs per project	Between 0.5 and 40 million euro	Between 50 and well over 500 million euro
Procurement "density"	High; many projects at a time, including bundled procurement trajectories	Low; nearly on a project-by-project basis with relatively little overlap in timing
Standardization	Differentiation in standardization across project types	Rather unified approach
Research approach	Analysis of governance, complexity, and performance; analysis of the use of standard contracts in a range of sports facility projects	Analysis of contractual learning over time, both within projects and between projects

1.4.2 Data collection

The data used in this thesis were drawn from three main sources: government documents and other publicly available material, non-disclosed project documents, and semi-structured interviews. Table 3 (page 20) presents an overview of this triangulated approach.

With regard to my study of the Flemish Sports Infrastructure Program (Chapters 2 and 4), among the gathered public material were parliamentary proceedings, parliamentary questions and ministerial answers, annual government reports on alternative financing, policy notes, evaluation studies, and press releases—well over 150 documents in total. The four non-disclosed project documents that I consulted in this case study were model DBFM(O) agreements for the facilities selected for analysis: artificial pitches (two bundles, one model agreement), sports halls (one bundle, one model agreement), and multifunctional sports centers (two separate model agreements).

As for the study of the Via-Invest Program (Chapter 5), the focus was on non-disclosed project documents since the scope was limited to contractual design and the changes therein. I was given access to both model and signed

DBFM agreements on four projects that were procured within this PPP program—making a total of eight non-disclosed project documents that were analyzed. Although I consulted various publicly available documents as well, these were mainly used to disentangle the context of the policy program: annual government reports on alternative financing, project websites, and press releases.

Finally, in both case studies I conducted interviews in order to unravel the whys and hows of the PPP programs under investigation as well as to verify my preliminary observations as I presented them to the informants during our conversations. The interviews generally took 60 to 90 minutes and followed a topic guide that indicated the subjects for discussion. I allowed the respondents to bring up issues and information outside the predefined scope (Liamputtong & Ezzy, 2005). Generic versions of the topic guides of both case studies can be found in Appendices A and B. All interviewees had been actively involved in one of the PPP programs, and I tailored the questions specifically to each individual's role. The public sector was represented by 21 respondents, and the private sector by 17 respondents (there was 1 respondent from a non-profit organization). Appendix C provides an overview of their backgrounds. All interviews were held after the contractual close of the PPP of concern. I expected that this condition would make it easier to obtain sensitive or confidential information. Except for one, all interviews were conducted face to face, and except for two respondents who objected to being interviewed on the record, all interviews were recorded and fully transcribed. As for the non-recorded interviews, I reverted to minuting as accurately as possible the respondents' statements right after the interviews finished.

In addition to the data collection related to the two Flemish cases, in the past few years I have spoken to 37 foreign respondents during research stays in the United Kingdom and Canada—see Appendix D for an anonymous overview—and I have studied publicly available documents on PPP policy in these countries. Although the data I collected abroad have not been explicitly included in this dissertation, they have certainly helped me determine my position in the debate on PPP, contracting, and standardization by giving insights into the respective practices elsewhere. Therefore, I give an impression of this data collection in the dotted lined part of Table 3. The group of foreign interview respondents included public, private, and non-profit sector professionals (public officials, contractors, financiers, architects, consultants, lawyers, and chairs of non-profit associations) and a handful of academics. The United Kingdom being one of the most experienced jurisdictions when it comes to PPP and standardization, I visited this country in an early stage of this doctoral study.

The ideas and inspiration I got from this research stay would indirectly feed into the theoretical chapter on the challenges and dilemmas of standardizing contracts (i.e., RQ2). The data collection in the Canadian province of Ontario served as a first step in confronting the case-specific results of the Flemish case studies with experiences elsewhere. Ontario provided an interesting case for comparison due to its vast PPP experience and the fact that its PPP policy matured and changed considerably over time. The findings of the research I conducted over there will be presented via outlets other than this doctoral dissertation as I continue to research PPP and the standardization of contracts in the near future.

Table 3 Overview of data collection and analysis[6]

	Flemish Sports Infrastructure Program	**Via-Invest Program**	**Other data collection**
Time of data collection	May 2013-October 2013	September 2014-February 2015	November 2012 (United Kingdom); March-May 2015 (Canada)
Period under scrutiny	2003-2013	2006-2015	Early 1990s-present
Publicly available documents	> 150	~30	~30 (United Kingdom); ~50 (Canada)
Non-disclosed project documents	4	8	n/a[7]
Interview respondents	22	17	10 (United Kingdom); 27 (Canada)
Analysis	Extensive reconstruction of PPP process; thematic analysis of interviews	Limited reconstruction of process; qualitative and quantitative content analysis of contracts; thematic analysis of interviews	Brief policy analysis; thematic analysis of interviews

Finally, in a more informal way of collecting data, I attended various public seminars and events on PPP in Flanders and kept in touch with the Flemish PPP Knowledge Centre about ongoing developments in policy and practice.

[6] The dotted lined column shows data collection conducted abroad, which is not explicitly included in this dissertation.

[7] The studies conducted in the United Kingdom and Canada were primarily aimed at gaining a better general understanding of PPP policies and practices in these jurisdictions. Therefore, it was not necessary to meticulously investigate program-specific or project-specific contractual developments.

1.4.3 Data analysis

The data analyses conducted in this study were of a qualitative sort: I moved from the qualitative data that had been collected into a form of explanation of the cases I investigated (Taylor & Gibbs, 2010). I started the reconstruction of each case by composing an overview of the program's main events and dates (e.g., tender, contractual close, and financial close) and project-specific details (e.g., participating governments, constellation of consortia, and duration of the contractual agreements), and of the policy and project problems that I was able to deduce from the data I subjected to content analysis during my desk research. Due to the different research objectives of the two case studies (see Section 1.2), this reconstruction was a more extensive task in the first case study than in the second one, since the former applied a wider scope.

I used QSR NVivo, a software package that assists in the analysis of qualitative data, for the analysis of the interviews (Bazeley, 2007). Once I had familiarized myself with the data by thoroughly reading and rereading the transcripts, I started a systematic two-phased coding process. First, I arranged the large amounts of data by labeling the statements of the interviewees. I linked the statements to the positions of the respondents (e.g., sector, occupation, project type), and categorized them into themes (Braun & Clarke, 2006; Gibson & Brown, 2009, pp. 127-144). These themes had either been identified upfront following a theoretical framework (i.e., deductive coding) or were developed merely on the basis of the empirical data (i.e., inductive coding). Second, I conducted assignments querying the aggregated data in order to uncover specific patterns, co-occurrences of themes, and recurring issues (Boyatzis, 1998). I used the results of these queries to interpret the collected views.

In addition to the former analysis, I used QSR NVivo to code the contractual clauses of the DBFM agreements belonging to the second case study. In combination with a limited quantitative analysis of the complexity of these contracts, this helped me capture the contractual developments in the Via-Invest Program—an operationalization of which can be found in Chapter 5.

1.5 Thesis outline

The remainder of this dissertation consists of five parts: a theoretical chapter, three chapters on the empirical findings of the study, and a conclusion. Chapter 2 provides some first empirical insights into the complexities of PPP and lays bare a number of challenges that will feed into the theoretical framework later on. More specifically, in Chapter 2 I

investigate the contradictory achievements of the Flemish Sports Infrastructure Program and show that the form of governance as applied by the Flemish government was inadequate and led to interferences of political, multi-actor, and technical complexities, which in turn compromised the performance of the program. The chapter reveals a mismatch between the complicated governance approach of the program and the relatively straightforward infrastructures that were to be developed. Following these findings, I argue that a sense of contingency is required in future PPP programs—not just in Flanders, but also elsewhere. Furthermore, I recommend governments to think twice before embarking on PPP programs that include such elements as bundled procurement and the use of mandate agreements, since these can be a recipe for severe complexities if not adequately coordinated.

Next to providing a better understanding of PPP in Flanders and helping to set a research agenda for this specific jurisdiction, Chapter 2 is another indication of the struggle of governments with the governance of PPP. Although public actors may have the best intentions, a lack of systematic or structured preparation and coordination can cause serious problems. This is where Chapter 3 comes in and links the first empirical chapter with the other empirical chapters. It serves as the agenda-setting piece of this dissertation in that it follows up on the call to make PPP a better manageable activity. It discusses the increasing use of standard contracts, which is expected to facilitate PPP procurement by creating opportunities for learning, lower transaction costs, and better competition. The contribution of this chapter lies in formulating a definition of the concept of standard contracts, delineating it as a new avenue for PPP research, and unfolding the potential impact of standard contracts on the basis of an extensive literature review. The main message is to emphasize that even though the standardization of contracts could bring in a number of advantages, caution is advised for governments that draft and use them. The benefits of standardization may not be as straightforward as they look at first sight, particularly when taking into account that the powerful, control-oriented role of contracting authorities could instigate a rigid use of standards when contingent, informal contracting is required. Unlike the other chapters of this dissertation, Chapter 3 has an international scope.

In Chapter 4, I go back to the Flemish Sports Infrastructure Program and explore the creation and use of standard contracts in this program. Based on the theoretical explorations presented in the previous chapter, I formulate a number of propositions and scrutinize the case following a conceptual framework that is inspired by these expectations. Chapter 4 specifically focuses on the use of standard contracts during a procurement process and

links it with non-monetary transaction costs. Whereas proponents argue that these costs are expected to drop by using standard contracts that limit the room for contractual negotiations and create a common contractual understanding among actors involved, this promise only partly materialized in the Flemish Sports Infrastructure Program. For instance, the program was characterized by a poorly managed interference from local governments, as these were granted more voice in the process instead of being held to a (cheaper and easier) standardized approach. There appeared to be significant room for improvement in the application of standard contracts. This chapter indicates that there needs to be a match between the characteristics of infrastructure projects and the way in which standards are used, and so it confirms the need for contingency that was already addressed in Chapter 2.

Chapter 5 is the final empirical chapter and deals with a second prime topic that is discussed in the agenda-setting piece of this dissertation (Chapter 3): contractual learning. Although the subject of this chapter differs from the previous one, I define the puzzle following a similar approach: I use the research questions posed in Chapter 3 to develop a theoretical framework, conduct a case study, and then reflect on the theoretical expectations. In my investigation of the Flemish Via-Invest Program, I disentangle the learning process of the Flemish government by unfolding the contractual changes that are applied both within and between the projects that were developed under the umbrella of this program. The empirical findings reveal a learning process that is characterized by an open attitude to learning of the government and private sector actors—primarily financiers—playing an influential role in proposing or even requiring change. Rather than using model contracts as a means to ensure that public sector interests are served, the government continuously tested whether these were in line with market practice. It laid down the lessons learned in an ever advancing contractual document. In this chapter, I also raise questions about how systematically this learning process evolved.

Finally, Chapter 6 begins by laying out a summary and a discussion piece that tie up the various theoretical and empirical strands. The concluding chapter also lists practical recommendations and identifies areas for further research. Table 4 summarizes the outline of this dissertation.

Table 4 Outline of this dissertation

Chapter	**Content**	**RQs**	**Status**
1. Introduction	Research context, puzzle, and research approach	-	-
2. The governance of public-private partnerships in sports infrastructure: interfering complexities in Belgium	Empirical: case study 1, Flemish Sports Infrastructure Program	1: How are governance, complexity, and performance related in public-private partnerships?	Published in *International Journal of Project Management*
3. The challenge of using standard contracts in public-private partnerships	Theoretical: literature review and research agenda	2: What are the rationales and potential benefits and challenges of using standard contracts in the contracting process of public-private partnerships?	Published in *Public Management Review*
4. Public-private partnerships in social infrastructure: using standard contracts	Empirical: case study 1, Flemish Sports Infrastructure Program	3, track a: How can we explain the creation and use of standard contracts in public-private partnerships? (focus: transaction costs)	Submitted to a journal
5. Making progress or standing still? Learning to contract in public-private partnerships for road infrastructure	Empirical: case study 2, Via-Invest Program	3, track b: How can we explain the creation and use of standard contracts in public-private partnerships? (focus: learning)	Forthcoming in *Policy Sciences*
6. Conclusion	Conclusions, theoretical and practical implications, and reflections	1, 2, and 3	Submitted to a journal

2 The governance of public-private partnerships in sports infrastructure: interfering complexities in Belgium[8]

2.1 Introduction

It has been ten years since an official policy strategy on public-private partnerships (PPPs) for the development of long-term infrastructure was established in Flanders (the northern part of Belgium) (Flemish Parliament, 2003). PPPs are services or ventures which are financed and operated through a cooperation between governmental and private sector actors, and which involve substantial risk sharing between these two partners. Although PPP has gained foothold in the Flemish Region over time, it remains subject to suspicion and controversy. Realized project volumes do not correspond with the target set and PPP decision-making procedures are behind schedule (Flemish Parliament, 2012a). In fact, PPP fails to perform consistently well around the world (Akintoye & Beck, 2009; Yescombe, 2007). It is linked with many uncertainties, ambiguities and risks due to the involvement of multiple actors, high political salience, and difficult technical requirements, particularly when projects of large scale are at stake (Flyvbjerg, 2006b, 2009; Salet, et al., 2013; Van Marrewijk, et al., 2008). Additionally, the recent financial-economic turmoil has made things worse. Organizational and managerial factors play a vital role in dealing with these difficult circumstances, and we apply the term *PPP governance* to cover these factors (Edelenbos & Klijn, 2009).

If in PPP governance one fails to deal adequately with the imminent or potential complexities mentioned above, policy failure is looming. As we see that governments continue to struggle in their attempts to make PPP successful, doubts surface regarding whether they are applying the most appropriate approach given the objectives at hand. This chapter scrutinizes

[8] This chapter has also appeared as Van den Hurk and Verhoest (2015).

the governance of PPP in a complex context, and its impact on PPP performance. We investigate whether the performance of a Flemish PPP program has been compromised due to the use of an unsuitable governance approach given the present or imminent complexities. The dilemmas of the Flemish Sports Infrastructure Program (FSIP) are discussed in depth through a longitudinal, retrospective description. This PPP program was officially launched in 2008 by the Flemish Government and encompasses tens of projects aimed at resolving the severe shortage of sports infrastructure in Flanders. It offers a particularly complicated and interesting example of PPP governance as it includes a bundled approach, implying that a number of projects at lower government levels are jointly procured and tendered to a single private partner who designs, build, finances, and maintains the infrastructure for a fixed period. A second interesting feature of the FSIP is its hybrid nature: it cannot be qualified as a contractual PPP, nor can it be seen as a participative PPP. This hybridity is rarely seen in other countries, but has evolved into a typical aspect of Flemish PPP (cf. Willems, 2014a).

The contribution of this study is manifold. It complements the literature by addressing a curious case of PPP governance that is rarely seen in other countries or regions but requires attention given its serious implications at project level. Moreover, although the case is typical to the Flemish PPP landscape, its relevance goes beyond regional and national borders. With a total value of 225 million euro, it is a European social PPP of considerable size. Furthermore, hybridity and bundled procurement are considered potential contributors to the advancement of PPP. As an example, hybridity issues have come across in the United Kingdom, where a larger public sector equity share in public-private ventures has been advocated recently (HM Treasury, 2012a). As for bundling procurement, Grimsey and Lewis (2007a) address the benefits of combining small projects in one large tender in order to spread transaction costs. Finally, this chapter is useful to both policy makers and private contractors in that it provides an empirical explanation for the performance of a PPP program.

Our argument takes off with an introduction of PPP and a theoretical discussion of performance, governance and the interference of complexities. Following that, we outline the case study strategy and methods used to reconstruct and critically examine the FSIP. The next sections provide the results of the analysis of the FSIP as they explain the poor performance of the Program. We conclude with a summary of the interplay between governance and complexities, and topics to be considered for further research.

2.2 Conceptual-theoretical framework

Public-private partnership is an act of cooperation between a public party and a private party aimed at the development of infrastructure. PPP policies and projects diverge widely in terms of focus, type, and size, hence it is claimed that an unambiguous definition of PPP is not available (Donahue & Zeckhauser, 2011). In this chapter, we use Hodge and Greve's (2010) interpretation of PPP as a long-term infrastructure contract and amend it slightly on the basis of the definition provided by the European PPP Expertise Centre (EPEC, 2011). As a result, our understanding of PPP shows a resemblance with the concept of design-build-finance-maintain (DBFM) contracts. Five elements form the basis of this definition. First of all, in a PPP the cooperation between the public partner and the private partner is relatively enduring. It encompasses the life cycle of an infrastructure asset: a signed contract is to last at least ten to twenty years, and often longer. Secondly, the design, build, finance and maintenance (and in some cases also operation) stages are integrated in a one-covering contract. Third, risk sharing is a crucial part of the deal. A number of risks that are borne by the public actor in conventional projects are transferred to the private actor. Fourth, both public and private actors make a financial contribution, which implies private financing of the project of concern. The fifth and final element is that the public sector party—i.e., the contracting authority—pays periodically recurring fees for the services delivered once a project is operational. These five elements juxtapose with the characteristics of less complicated conventional public procurement methods which hardly allow for a life cycle approach, let alone risk transfer and private financing.

2.2.1 PPP performance

Scholarly disagreement on how to classify PPP is omnipresent (Kwak et al., 2009; Tang et al., 2010; Weihe, 2008). Hodge and Greve (2007) and Teisman and Klijn (2002) come up with a dichotomy so as to create an overview. On the one hand, PPP can be seen as a "governance tool that will replace the traditional method of contracting for public services through competitive tendering" (Hodge & Greve, 2007, p. 545), whereas on the other hand, PPP is a political phenomenon, i.e., a means for governments and politicians to exercise power or to appeal to the electorate (see also Flinders, 2005). In this chapter, PPP is classified as a governance tool, which narrows the view on PPP but also enables a more detailed focus on the interplay between complexities, governance, and performance.

Given the different views on PPP, the challenging task of governing PPP is clear, and the same goes for measuring the performance of PPP. Unilaterally determined substantive criteria do not exist (Akintoye, et al., 2003). We

employ a twofold approach in order to assess its performance as we make a distinction between (1) the pre-production process performance which comprises the establishment and management of a PPP and (2) the product performance of a PPP (cf. Bult-Spiering & Dewulf, 2006; Voets et al., 2008). In applying this approach we acknowledge that PPP should not be judged exclusively upon its outputs or outcomes in terms of financial-economic achievements. Process performance brings in dynamic aspects as it concerns the multi-actor setting of a PPP and how this setting is dealt with over time. It comprises two economic aspects: competition and transaction costs. *Competition* is an important factor of performance, as contestability in the procurement phase allows the public sector to harness efficiency. For the public party organizing the tender, competition induces lower bid prices, more available options, and eventually better quality bids and projects. The degree of competition is indicated by the bidders involved (number, size and composition), but also by the tendering process (criteria and selection process). As a rule of thumb, solid competition is indicated by a large number of diverse bidders and a rigorous process including multiple stages.

Transaction costs can be reported in both monetary and non-monetary terms. Since the former remain confidential in this study, we focus on non-monetary transaction costs. These are indicated by the time taken to arrive at a specific decision. PPP procurement is often characterized by lengthy procurement times. A relatively short tender (duration in months, from tender call to start of works) is considered a low cost compared to a relatively long procedure. Tough negotiations often play a significant role in the postponement of tenders and lead to an increase in transaction costs. The duration of negotiations with bidders (from start of negotiations to grant of tender) is a second indicator of transaction costs. Third and finally, the duration of preparatory works (from grant of tender to start of works) serves as a proxy indicator for any transaction costs made between the contractual close and the start of the works. A lengthy preparatory period could indicate issues related to a building permit or, more importantly, the financial close of a project.[9]

Concerning the product performance dimension, evaluations have mostly focused upon the aspect of value for money: doing more (or better) with fewer (or equal) financial resources (Grimsey & Lewis, 2005). Although

[9] The character of a procurement procedure is important as well: how intense have negotiations been? How many meetings between negotiators were required to arrive at a consensus? Although not mentioned explicitly in our conceptualization of transaction costs, we will refer to this indicator of transaction costs if the analysis proves that it has been relevant to the process performance of a PPP.

value for money is a problematic performance indicator for its ambiguity and limited measurability and objectivity (Edwards et al., 2004; Pollock et al., 2007), it usually contains two aspects that are useful in determining the product performance of PPP: the timing of project delivery (estimated construction schedule at the time of contractual close versus actual construction schedule) and cost overruns (estimated budget plan at the time of contractual close versus actual expenses).[10] These two aspects form the core of the goal attainment of a PPP and address clear-cut outputs (Toor & Ogunlana, 2010).[11] The timelier project delivery and the lower cost overruns, the higher the degree of goal attainment. A third and final indicator of goal attainment is the project delivery ratio. We define this ratio as the number of projects delivered as of mid-2013 against the number of projects originally planned and selected in the plans of the government that were to be delivered as of mid-2013; it serves as a proxy for policy effectiveness. This conceptualization of PPP performance is summarized in Table 5.

Table 5 Conceptualization of PPP performance

Dimensions	**Variables**	**Indicators**
Process performance	Competition	Bidders
		Tendering process
	Transaction costs	Total procurement time
		Negotiations
		Preparatory works
Product performance	Goal attainment	Timing
		Cost
		Project delivery ratio

2.2.2 PPP governance

PPP governance is the phenomenon of steering and coordinating (i.e., governing) PPP by setting up organizational structures, running decision-making procedures, and using instruments such as contracts and agreements that do not rest solely on the authority and sanctions of government (Guo et

[10] Whereas this chapter refers to the construction phase while unveiling the degree of on-time and on-budget delivery, scholars have used other bases for comparing actual values with estimated values. For example, Flyvbjerg et al. (2002) compare actual costs with estimated costs at the time of decision to build, which means that they use rather early estimates and seek to find delays and cost overruns over an entire decision-making procedure.

[11] Service delivery, as in output specifications versus actual quality of service, is often mentioned as a third indicator of value for money (cf. Atkinson, 1999). However, as the cases selected for this study only entered the operational phase very recently (from 2012 onwards), this indicator would not be properly measurable.

al., 2013; Reeves, 2013). The term *governance* is multifaceted and can be considered from different theoretical perspectives (Klijn, 2008). However, some basic assumptions have remained the same: human individuals are limited in terms of bounded rationality, they are likely to show self-interest seeking behavior, and they are of a social (networked) nature (Ahola et al., 2013). Additionally, actors are embedded in a social context (Granovetter, 1985) and a legal framework (Rhodes, 1997).

Theories of governance emphasize that policy making has become an inter-organizational activity over time, hence policies—e.g., PPP programs or projects—need to be understood as the result of an interaction between a multitude of actors (Conteh, 2013). A shift in government has occurred indeed, "from organizational and uni-centric power to emphasizing the process through which outcomes are achieved" (Klijn, 2008, p. 508). PPP fits the governance thesis in that it can be understood as a governance network: "more or less stable patterns of social relations among mutually dependent actors, forming around programs and/or single projects that are formed, maintained, and changed through series of processes" (Edelenbos et al., 2011, p. 420). As multiple objectives, discourses, and disciplines are involved in PPP, the evaluation of PPP governance is a particularly opaque activity (Hodge, 2010), especially in the case of complex environments (Aubry et al., 2013).

Three elements constitute PPP governance: structure, procedure, and instruments. First, structure concerns the constellation of actors and institutions involved in a PPP (Scharpf, 1991). Procedure brings in dynamics and covers PPP decision-making procedures as they are run from initiation phase to operational phase (see Verhoest et al., 2012). The procedural element also allows to illuminate more specifically than the structure element the actual relationship between actors over time. Finally, instruments are the tools used by government to steer a PPP toward the achievement of objectives. Governments can use a mix of tools that are based upon fundamentally different governance mechanisms: hierarchies, markets, and networks (Bouckaert, et al., 2010). Market logic often remains the most important mechanism, which is reflected in the extensive use of highly juridified contracts between contracting authorities and private partners (Eversdijk & Korsten, 2008). This chapter limits its scope to tools related to competition and contractual agreements that proved to play a significant part in the Flemish case.

2.2.3 The interference of complexities

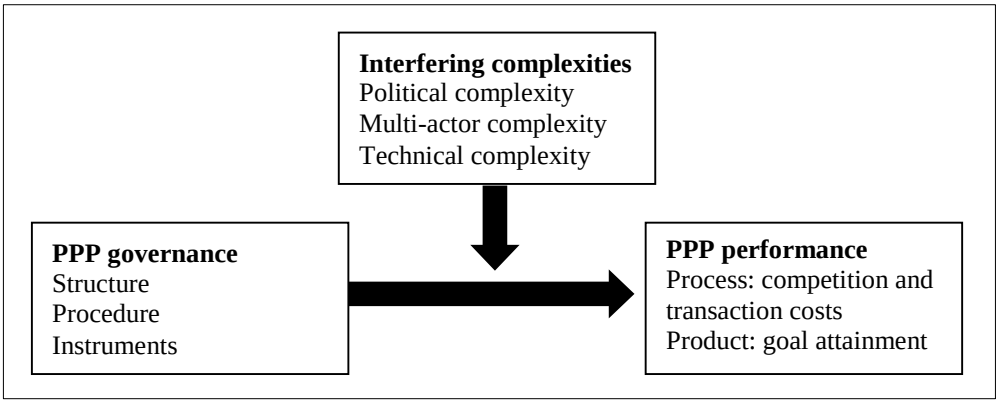
Recent studies have stressed the importance of appropriate and effective governance of PPP, but also the difficulties of governing PPP (Klijn et al.,

2010; Liu & Wilkinson, 2014). One of the complexities and uncertainties that are inextricably and explicitly linked with long-term infrastructure contracts is the tension between the life cycle approach and the likelihood of political and opportunistic interferences over time. Moreover, the inherent difficulty of thinking and calculating aimed at the longer term is more present than in conventional projects, and complicated project structures are more likely to be used. According to Van Marrewijk et al. (2008), PPP often fails to meet cost estimations, time schedules and project outcomes due to uncertainties, ambiguities and risks of different kinds. Complexities are unavoidable and cause the task of governing projects to be of a particularly challenging and delicate character (Salet, et al., 2013). As Provan and Kenis (2008, p. 241) argue, "the greater the inconsistency between critical contingency factors and a particular governance form … the less likely that that particular form will be effective." The complexity of an environment affects PPP governance, as the latter preferably aligns or respects the former.

Complexity is a multidimensional concept (Koppenjan et al., 2011) and has allowed for a number of definitions over time (see Shenhar & Dvir, 1996). We address the imminent presence of multiple complexities by distinguishing three types of complexity and underlining its importance regarding PPP as it creates a fragmented and dynamic environment. We scrutinize further the conceptualization proposed by Verhoest et al. (2012), who make a distinction between political complexity, multi-actor complexity and technical complexity. Political complexity refers to the degree to which PPP is politically salient and is related to the extent to which PPP corresponds with the ambitions and interests pursued by policy makers at different government levels. Large-scale and long-term infrastructure projects are often full of political salience and epitomize the divergent, yet usually short term-oriented ambitions and interests of political decision makers. Second, multi-actor complexity encompasses actor-related elements: the number, nature and goals of the actors involved in a PPP, as well as their mutual relationships. Given the active presence of a multitude of actors in PPP, this type of complexity is likely to be pervasive, and it increases when actors are more diverse and deal with highly contested issues (Turrini et al., 2010). Third, technical complexity refers to such technical project characteristics as construction and financing requirements and specifics. Since long-term infrastructure projects typically include complex design and technology, the progress of procurement is generally put at stake. This chapter investigates further the argument that PPP performance depends largely on the interference of complexities in the governance of a program or project. If imminent or potential context-specific complexities, e.g., political interests, actor preferences, and

technical concerns, are not sufficiently taken into account when developing or managing a PPP program or project, there is a severe risk of policy failure. Figure 2 displays the conceptual framework of this study.

Figure 2 Conceptual framework of this study



2.3 Methods

This research is based upon a case study design, which is particularly useful for studies that aim to explain social phenomena through extensive, in-depth description (Flyvbjerg, 2006a). We apply the method of process tracing in order to link our observations "in particular ways to constitute an explanation of the case" (George & Bennett, 2005). The case study strategy also enables to employ an embedded or multi-leveled design (Eisenhardt, 1989). Since the FSIP encapsulates a number of smaller cases, being sports infrastructure projects at local government level, an analysis at multiple levels is vital to understand the bigger picture. The case of the FSIP was selected for two reasons. First of all, we were looking for Flemish PPP projects given the background of the overarching research. Second, since the FSIP is a relatively matured program, it allows to consider cases that have entered the operational stage. These cases are usually less sensitive and therefore more suitable for a comprehensive and replicable analysis. Based on varying assumptions, the embedded cases were subjected to a structured, focused comparison (George & Bennett, 2005). In order to maximize analytical leverage, we selected diverse cases. Diversity was sought by stretching variation in terms of (1) the complexity of the specific sports infrastructure projects and (2) the timing of the projects. The criteria were met by selecting three types of sports infrastructure projects: artificial pitches, sports halls, and multifunctional sports centers. These project types range from low technical complexity to high technical complexity and differ in maturity.

Validity requirements were met by using triangulation as the key principle for data collection. Two data collection methods were used in this study: desk research and semi-structured interviews. As for desk research, the data-gathering process was aimed at a combination of sources at the national and subnational levels, covering the period between 2003 and mid-2013.[12] These included publicly available, official central government documents[13] and project-specific documents at either central, provincial, or local government level. Over 150 documents were subjected to qualitative content analysis in order to reconstruct the case, which resulted in a large time frame of events and partial explanations for the courses of action undertaken by different actors. In order to verify and enrich the preliminary explanations stemming from the document analysis, 20 semi-structured interviews with 22 experts were conducted. Respondents were selected on the basis of their key involvement in the FSIP and/or in the specific projects that were selected. Furthermore, we chose interviewees with divergent backgrounds: government authorities and agencies on the one hand (n = 15)[14] and private sector parties on the other (n = 7).[15] The final prerequisite for selection was that the respondents had to cover the interests of entities at central, provincial, and local levels so as to cover all government levels involved in the FSIP. The interviews were transcribed and subjected to content analysis. Confidentiality requirements preclude the publication of the names of informants.

2.4 The Flemish Sports Infrastructure Program: how it is governed

Flanders had been struggling with a severe shortage of sports infrastructure for many years when a political initiative was launched in the early 2000s to start a program of refurbishment and renewal on the basis of public-private procurement (Flemish Parliament, 2006). The FSIP was officially accepted

[12] The oldest documents that are relevant to this study date back to 2003 since the official Flemish PPP policy strategy was initiated in that year.

[13] The documents were obtained through a search query in the online database of the Flemish Parliament. The keyword "Sportinfrastructuurplan" (Sports Infrastructure Program) was used as search term (more than 120 hits between 2003 and mid-2013).

[14] Six respondents from public parties that participate in Sportfacilitator, eight respondents from contracting authorities and one respondent from the Flemish Institute for Sports Management and Leisure Policy (ISB). We did not conduct interviews with public officials at each local authority involved in the FSIP, since this would take too much time and lead to an oversaturation of information.

[15] Five respondents from private sector partners and two respondents from law or consultancy firms. Due to the partly bundled character of the FSIP, the 35 artificial pitches and nine sports halls delivered to date have been realized by only two overarching SPVs. Consequently, the pool of private sector partners was significantly smaller than the pool of contracting authorities.

by the Flemish Parliament and the Flemish Government in 2008. Given its total value of 225 million euro, it was an unseen investment in Flemish sports infrastructure. In this section, we elucidate the governance of the FSIP by discussing elements of structure, procedure, and instruments.

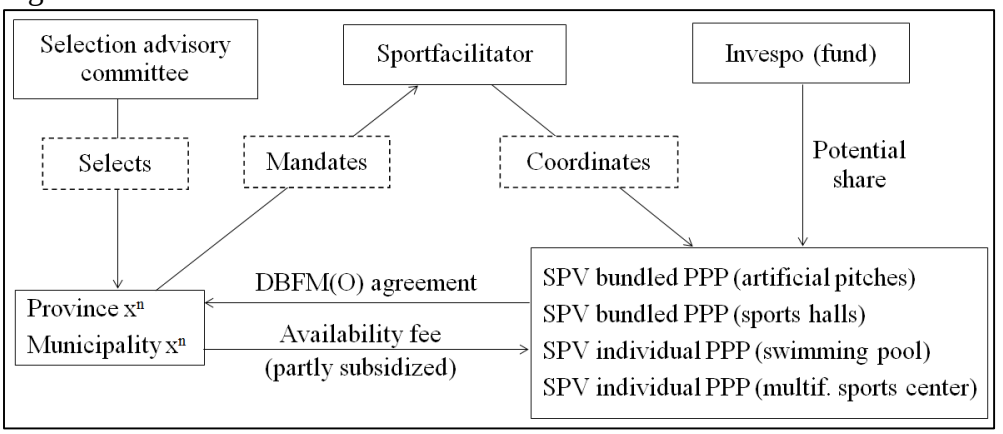
The structure of the FSIP comprised three types of actors. First of all, the Flemish central government served as the coordinator of the Program. Within the central government, a taskforce named *Sportfacilitator* was established in 2008 in order to take the lead in facilitating the respective sports infrastructure projects. Five public actors participated and cooperated in Sportfacilitator and constituted the core of the executive branch of the FSIP on behalf of the public interest. The five incumbent parties were as follows: (1) PMV, a publicly owned, yet independent investment company, which was responsible for the project management; (2) the Flemish Department of Culture, Youth, Sports, and Media, which acted as the advisory branch of the Ministry of Finance, Budgeting, Labor, Spatial Planning and Sports; (3) the Cabinet of Sports, which belonged to the overarching Cabinet of the Minister of Finance, Budgeting, Labor, Spatial Planning and Sports; (4) the Flemish PPP Knowledge Centre, a supporter of the Flemish PPP policy; and (5) Bloso, an autonomous agency that promotes sports in Flanders and has technical expertise on the construction and maintenance of sports infrastructure.

The two other types of actors involved in the FSIP were (1) provincial and local governments—i.e., contracting authorities—and (2) private sector parties, and discussing these actors allows to bring in the procedural element of the governance of the FSIP. The contracting authorities were active on the demand side of the policy arena: as they were requested by Sportfacilitator to submit project proposals for sports infrastructure, they could apply for participation in the Program. Successful applications could count on receiving a subsidy for the development of the required infrastructure. The selection of submitted proposals was decided upon by a selection advisory committee. Once a project proposal had been selected, the government on the demand side mandated Sportfacilitator to try to select a private sector party that would actually develop and maintain the sports infrastructure. As soon as this private partner had been granted the assignment, a special purpose vehicle (SPV) was established and put in charge of designing, building, financing, and maintaining (and operating) the infrastructure. The arrangements were laid down in a design-build-finance-maintain(-operate) (DBFM(O)) agreement between the SPV and the contracting authority. In return for the delivery of the DBFM(O) services, the contracting authority paid a periodically recurring availability fee to the private partner during the operational phase of the PPP life cycle.

Depending on the type of sports infrastructure that was developed, the duration of this cycle varied from ten years to thirty years. A maximum share of 30 percent of the availability fee was subsidized by the Flemish government (Flemish Parliament, 2006). If necessary, additional funding support to SPVs could be rendered by PMV through an investment fund connected to the FSIP (Invespo). Once projects had been completed and were operational, Sportfacilitator remained an important public actor over the course of the PPP life cycle.

In terms of governance instruments, typical to the FSIP was the bundled procurement of projects: the joint procurement of a number of similar projects that were granted to a single private partner. In order to respect the versatility of the sports sector, four domains were distinguished: (1) artificial pitches, (2) sports halls, (3) swimming pools, and (4) multifunctional sports centers.[16] Projects belonging to the first and second domains were subject to bundling. Once the private partner for a specific bundle was selected, an SPV was established for this bundle. This SPV closed DBFM(O) agreements with each single contracting authority involved. Projects concerning swimming pools and multifunctional sports centers were excluded from the bundled approach and were developed on an individual basis. Figure 3 shows the governance structure of the FSIP. Table 6 summarizes the decision-making procedure for a sports infrastructure project as it was run from initial project proposal to operational stage.

Figure 3 Structure of the FSIP



[16] For two reasons, we have decided not to discuss further the domain of swimming pools. First, artificial pitches, sports halls, and multifunctional sports centers already cover the continuum between low complexity and high complexity. Second, as only one swimming pool was under construction when the data collection took place, it was unlikely that valuable information on several swimming pool projects would be accessible—respondents would not have been ready (or allowed) to reveal project-specific sensitivities.

Table 6 Procedure of the FSIP

Project stage	**Activities (chronologically ordered)**
Preparatory stage	Provincial or local government submits project proposal
	Selection advisory committee selects or withdraws project proposal on the basis of several criteria
	Provincial or local government whose project is selected signs mandate and subsidy agreement and thereby mandates Sportfacilitator to take over project procedure
Selection stage	Sportfacilitator drafts and announces selection guideline; private bidders apply for selection
	Sportfacilitator selects bidders for second part of selection stage and drafts and announces tender guideline; selected private bidders apply for tender
	Sportfacilitator negotiates with private bidders; private bidders submit best and final offer (BAFO)
	Sportfacilitator selects private sector partner
Realization stage	Selected private sector partner establishes SPV
	Selected provincial or local government signs DBFM(O) agreement with SPV
	SPV takes care of project construction while Sportfacilitator monitors works
	Sportfacilitator approves availability certificate
Operational stage	SPV bears responsibility for Maintain element (and Operate element in the case of a DBFMO project)

2.5 How PPP governance collides with complexities—and vice versa

As we look at the performance of the FSIP (Table 7[17]), several issues arise. In terms of the process performance, the competition involved in the procurement of the FSIP was limited. For example, only a few bidders were able to find the necessary debt funding, and there have been situations in which only one private actor was eligible to win the bid. As for transaction costs, the FSIP is characterized by procurement times of severe length.

[17] The figures apply to the situation as of mid-2013.

Table 7 Summary of the performance of the FSIP

Governance		Artificial pitches (bundled PPP)		Sports halls (bundled PPP)		Multifunctional sports center A	Multifunctional sports center B
Indicators		Bundle 1 (29)	Bundle 2 (6)	Bundle 1 (9)	Bundle 2 (3)		
Competition	Bidders	4 applications received; 3 applicants selected; 2 bids received	2 bids received	5 applications received; 3 applicants selected; 3 bids received	n/a	3 applications received; 3 applicants selected; 3 bids received	5 applications received; 4 applicants selected; 2 bids received
	Tendering process	Negotiation procedure; limited competition as only two bidders remained and one of these could fully finance bundle 1 with own resources	Request for quotation—no negotiations involved; limited competition as tender was swiftly granted to bidder that was already responsible for bundle 1	Negotiation procedure; limited competition due to the fact that only one bidder was able to deliver a solid financial paragraph	Request for quotation—no negotiations involved; tender terminated due to discrepancy between mandate price and market price	Negotiation procedure; limited competition since only one bidder could offer financial guarantees—it had established its own financial institution	Negotiation procedure; limited competition as major competitor was not selected; two bidders remained and only one was able to find commitment from bank
Transaction costs	Entire tender	17 months	8 months	21 months	n/a	25 months	38 months
	Negotiations	6 months	n/a	8 months	n/a	8 months	11 months
	Prep. works	1 month	1 month	4 months	n/a	1 month	7 months
Goal attainment	Timing	On time	On time	On time	n/a[19]	On time	n/a[18]
	Cost	On budget	On budget	On budget	n/a	On budget	n/a
	Project delivery	35/73 = 0.48		9/43 = 0.21		1/10 = 0.10	

[18] This facility was under construction at the time this chapter was written and accepted as an article (2013 and 2014). It has been operational since the spring of 2015.

[19] This bundle was never granted to any private sector partner, since the tender was terminated in the summer of 2013.

Since the official launch of the Program in 2008, a number of sports infrastructure projects have been developed, yet a skewed distribution is noticeable if we compare the different domains. All in all, the planning of projects has been modified and impaired more than once, which led to delays in decision-making procedures. Next to the delays in the implementation phase of the FSIP, there has been the issue of dropouts. Whereas 130 project proposals were picked and considered for tender by the selection advisory committee on the brink of 2009, a large share of the selected contracting authorities had exited the decision-making procedure as of mid-2013. Since project delays and dropouts have occurred from the outset, the project delivery ratio is relatively low. Members of the Flemish Parliament tend to qualify the FSIP as a failed PPP program (Flemish Parliament, 2011d, 2012c, 2013c). However, the projects that were concluded were constructed on time and on budget if we use the contractual close as a benchmark, and the respondents were clear in stating that these projects were received with satisfaction (Flemish Parliament, 2011c).[20] In other words, low project delivery ratio need not necessarily indicate low product performance in general. In the remainder of this section, we explain the interplay between complexities and the governance of the FSIP and how this negatively affected the performance of the Program.

2.5.1 Political complexity: policy making at central level versus local government interests

We find a partial explanation for the lagging goal attainment of the FSIP in the political context in which the Program was developed and implemented, especially in terms of (1) the limited preparedness of those who led the Program at central government level and (2) opportunistic attitudes of provincial and local governments that were to sign the DBFM(O) contracts.

The limited preparedness at central government level refers to two admissible factors. First of all, an issue arose in the legal foundation of the Program. As was addressed correctly by a Flemish Member of Parliament in 2007, the establishment of the Program required the enactment of a decree (Flemish Parliament, 2007). Despite the fact that this decree was not yet ordained by the end of 2007, the Flemish government distributed a call for applications across regional and local governments, enabling them to show their interest to participate in the Program and to submit project proposals.

[20] Member A of Sportfacilitator, Brussels, 27 May, 2013; Member B of Sportfacilitator, Brussels, 9 July, 2013; Manager at private sector partner B, Antwerp, 30 July, 2013; General manager at private sector partner C, Hoeselt (Belgium), 12 August, 2013; Commercial director at private sector partner D, Hasselt (Belgium), 21 August, 2013.

As this call for applications was actually illegitimate, a renewed call for applications was required once the decree was officially accepted by the Flemish Parliament. This renewed call appeared in the summer of 2008 (Flemish Parliament, 2008a), thus the implementation of the FSIP was suspended before it actually took off—not to mention the uncertainties that had spread across governments at lower level due to limitedly available information on the schedule of the Program in the first half of 2008. The second issue that abated preparedness relates to elections at central government level in 2009. A new minister of Sports was appointed, and he appeared to have different ideas than his precursor. As many engagements with provincial and local governments had already been made, he took the decision to continue the Program, yet not with similarly grand ambitions as his predecessor (Flemish Parliament, 2011c).[21] Moreover, new staff had to be introduced into the FSIP, which took considerable time. More delays were bound to occur and did so indeed.

The second politically-instigated complexity that obstructed a swift implementation of the FSIP was of a bottom-up nature and particularly related to the bundled PPP approach. As soon as the call for applications for sports infrastructure projects was distributed in late 2007 and once again in the summer of 2008, regional and local governments acted opportunistically in that they recognized a window of opportunity and submitted as many applications as possible, hoping to be awarded some of the projects.[22] While submitting their proposals, many applying governments were not fully aware of the implications of PPP regarding financing and maintaining infrastructure.[23] Members of the Flemish Parliament warned the minister of Sports for any false expectations he could have created by announcing the Program so soon and on such a large scale: provincial and local governments would drop out if the projects would eventually prove to be less interesting or beneficial to them than expected (Flemish Parliament, 2007, 2011d). Time has told that multi-actor and technical complexities caused many delays and financial uncertainties (see Sections 2.5.2 and 2.5.3), which triggered an increasing number of provincial and local governments to take their hands off the FSIP and exit the decision-making procedure. Moreover, they suffered from a lack of financial resources and

[21] Member A of Sportfacilitator, Brussels, 27 May, 2013; Member E of Sportfacilitator, Brussels, 26 July, 2013.
[22] Project coordinator at contracting authority A, 18 July, 2013; Member D of Sportfacilitator, Brussels, 22 July, 2013; Sports advisor at contracting authority B, 31 July, 2013.
[23] Member B of Sportfacilitator, Brussels, 9 July, 2013.

land ownership rights, hence the initial enthusiasm among local politicians ceased (Flemish Parliament, 2008b, 2010b).[24]

As Sportfacilitator had to deal with diverse political interests, the only way to move forward and lose as little time as possible was to follow a standardized procedure that would limit the voice of the applying governments. A direct implication of this condition was that applying governments got stuck in a rigid procedure that did not allow for a tailored approach to every single artificial pitch or sports hall. However, they were asked to sign an irreversible mandate agreement for this infrastructure which would obligate them to pay annual availability fees (Flemish Parliament, 2008a). This revealed another aspect of the political salience of the FSIP: provincial and local governments were supposed to partially give up their own interests for the sake of a large infrastructure program, and this was a particularly unwelcome issue for policy makers.[25]

2.5.2 Mandating to deal with multi-actor complexity: comforting market actors or governments?

As the FSIP has been characterized by the involvement of many actors, multi-actor complexities have been of great relevance to its performance. We refer to two important aspects of the interplay between governance and multi-actor complexity: (1) the employment of a mandate strategy and (2) the competences and expertise at provincial and local government levels regarding long-term infrastructure contracts. In every project, Sportfacilitator was mandated to lead the entire decision-making procedure from the moment that provincial and local governments signed a so-called mandate agreement. One of the arguments behind this strategy was that it would comfort potential private sector partners: as long as private bidders would set their price offer below the mandate price set, public partners would be obligated to proceed with the project of concern.[26] In case bidders failed to set their price offer below the mandate price, public partners would have the opportunity to no longer participate and exit the procedure free of charge. In 2009, the then minister of Sports described this mandate agreement as a relatively new and unusual tool for provincial and local governments: “As they delegate the selection of the private partner to a third party, they give up a part of their autonomy, yet they also become officially involved in the FSIP” (Flemish Parliament, 2010a, p. 17).

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[24] Member A of Sportfacilitator, Brussels, 27 May, 2013; Member B of Sportfacilitator, Brussels, 9 July, 2013; Member C of Sportfacilitator, Brussels, 9 July, 2013.
[25] Member E of Sportfacilitator, Brussels, 26 July, 2013; Member F of Sportfacilitator, Brussels, 26 August, 2013.
[26] Member C of Sportfacilitator, Brussels, 9 July, 2013.

The mandate agreement turned out to be a major obstacle for both public authorities and private actors since the mandate prices set (prior to the tendering process) often did not correspond with actual market prices.[27] The first and second bundles of sports halls provide an example of this discrepancy. Sportfacilitator initially set the mandate price for a single sports hall at 1.5 million euro: as long as the bids did not exceed this price, a mandating government was obliged to continue the project. Whereas the original plan was to include 20 sports halls in the first bundle, only 9 mandate agreements were eventually signed (Flemish Parliament, 2010a). Other than that, it took a while before these signings took place. The number of 20 applying local governments was first reduced due to the refusal of some of them who found the 1.5 million euro mandate price too expensive. An immediate and logical consequence of these refusals was that the mandate price had to be raised, since scaling opportunities had decreased. The mandate price was raised to 2.2 million euro, which led to another wave of exits by provincial and local governments.[28] The threat of refusals all the way through the tendering process affected the negotiations between Sportfacilitator and the preferred bidder. The envisaged debt provider, a Belgian bank, required strong guarantees if it was to join the deal, but as the preferred bidder actually prepared a bid that would exceed the mandate price of some of the sports halls that were to be developed, uncertainties were obvious.[29] The problem was finally solved by investing financial resources from the Invespo fund in the SPV so that the necessary amount of debt funding was reduced—due to which the bid did not exceed the mandate price anymore.[30]

The problems with the mandate strategy and market prices that were higher than expected did not only occur in the domain of sports halls, but also in the domain of multifunctional sports centers. Moreover, the latter reveals the limited PPP-related competences and experience in provincial and local governments. In this domain, mandate prices were not in accordance with market prices either; the ambitions pursued by contracting authorities were not feasible given the mandate prices set. As the demands were very high, private sector bidders had no choice but to exceed the mandate price (Flemish Parliament, 2011d). In the case of multifunctional sports center B, bidders had to deal with a project proposal that started out from an annual

[27] Ibid.

[28] Eventually the total value of a single sports hall landed on nearly 3 million euro, which is almost two times higher than the original estimates.

[29] Commercial director at private sector partner D, Hasselt (Belgium), 21 August, 2013; DBFM manager at private sector partner D, Hasselt (Belgium), 21 August, 2013.

[30] Commercial director at private sector partner D, Hasselt (Belgium), 21 August, 2013; Project coordinator at contracting authority G, 10 October, 2013.

availability fee of around 1 million euro, whereas a proper bid which would include all requirements of the demanding government would easily exceed an annual availability fee of 2 million euro.[31]

Next to their high and unrealistic demands in some projects, provincial and local governments caused delays due to their lack of in-house experience with PPP or similar long-term infrastructure contracts. Some governments needed more time than others to provide a construction permit or to prepare the construction ground (Flemish Parliament, 2008b).[32] Public sector respondents repeatedly stressed their struggle with PPP.[33] As it was completely new to many of them, it brought along puzzling legal and technical discussions and contracts. Given that many inexperienced public officials had to deal with these circumstances, and given that every FSIP-related decision had to be discussed and approved in periodical meetings of often equally inexperienced provincial and local councils, it should be no surprise that it took long to sign all mandate agreements and actually implement the Program.[34]

2.5.3 Technical complexities and financial requirements

Third and finally, we address the interplay between governance on the one hand, and technical complexities on the other, that negatively affected the performance of the FSIP. Again, we focus on two aspects of particular importance: (1) technical specifications versus the quest for standardization and (2) the tension between financial requirements and competition. As the Flemish government aimed to develop a bundled PPP, standardized documents were employed. A standard DBFM agreement was designed and then disseminated among contracting authorities and private actors, and every signed FSIP contract was based upon this standardized agreement. The impact of this agreement has been mixed. It worked very well with regard to artificial pitches, most probably because these were relatively straightforward projects in technical terms. Standard contracts became a more delicate issue as the technical complexity of a project increased. At first sight, this seems logical: the more technically complex a project, the higher the risks that are involved, and the more complicated the agreement.

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[31] Commercial manager at private sector partner A, Ghent, 25 July, 2013.

[32] Manager at private sector partner B, Antwerp, 30 July, 2013; Sports advisor at contracting authority B, 31 July, 2013.

[33] Project coordinator at contracting authority A, 18 July, 2013; Sports advisor at contracting authority B, 31 July, 2013; Project coordinator at contracting authority D, 23 August, 2013; Project coordinator at contracting authority E, 18 September, 2013; Project coordinator at contracting authority F, 23 September, 2013.

[34] Project coordinator at contracting authority C, 2 August, 2013; Project coordinator at contracting authority E, 18 September, 2013.

But it was not only due to these circumstances that negotiations became more challenging. The interview respondents mentioned that the standard contract was particularly composed of elements stemming from DBFM agreements in the road infrastructure sector. The direct implications of its origin were reflected in very strict penalty clauses.[35] Despite the use of standardized contracts, which should ideally leave less room for negotiations thus a shorter decision-making procedure, negotiations were not speeded up at all (Flemish Parliament, 2011d).[36]

Finally, we arrive at the tension between financial requirements and competition. The basic argument is as follows: the more technically complicated a project, the higher the financial risk and the less opportunities for small market actors to make a promising bid. Although the Flemish government preferred a competitive tender, it certainly did not create the perfect environment for competition. First of all, the bundled approach toward the construction of artificial pitches and sports halls immediately outran relatively small private actors due to their limited capacity to handle the project volume. For example, with regard to the first bundle of artificial pitches, only one of three selected bidders was able to finance the pitches completely on its own, leaving the other two contestants with no actual chance of winning the bid right from the start of the negotiations. Financial issues also compromised competition in the tender for the first bundle of sports halls. Given the uncertainties that had arisen due to the mandate strategy, only one of three selected bidders was able to get a loan commitment from a bank. As for both multifunctional sports centers, competition was limited due to early dropouts of some of the bidders, also as a result of financial issues. All in all, we notice that the FSIP has struggled with a tension between financial considerations and competition. Whereas multifunctional sports centers are inherently prone to tough negotiations due to difficult technical and financial facets, these facets ought to be less explicit in the case of smaller projects, but in fact they were at least as explicit in the smaller projects as in the larger ones.

Regardless of any issue related to the scale of projects, the financial prerequisites set by the Flemish government were very demanding. According to some of the respondents, the financial terms set at the beginning of procurement procedures were too strict to allow for

[35] Commercial manager at private sector partner A, Ghent, 25 July, 2013; General manager at private sector partner C, Hoeselt (Belgium), 12 August, 2013.
[36] Member E of Sportfacilitator, Brussels, 26 July, 2013; DBFM manager at private sector partner D, Hasselt (Belgium), 21 August, 2013.

competition.[37] Since the Flemish Government aspired a budget neutral development of sports infrastructure, it decided not to assume responsibility for the debt obligation of a borrower, i.e., a private sector partner, if that borrower would default. This condition seriously hampered negotiations as it triggered debate on the financial sustainability of the projects (Flemish Parliament, 2008a, 2011d).

2.6 Discussion and conclusions

In this chapter, we have explained the peculiar case of a Flemish PPP program by illuminating the interplay between how it was governed and how complexities interfered. The study addresses practical shortcomings and raises some theoretical points for further research. Practically, the results raise the significant point that PPP governance should be contingent to be effective. Although this conclusion is not new as it accords with recent research findings (Conteh, 2013; Emerson et al., 2012; Sanderson, 2012), the analysis proves that it is not easy to actually implement this way of thinking; practitioners are still struggling to find proper governance forms for divergent infrastructure programs and projects given the complexities at hand (see also Salet, et al., 2013). The Flemish context proved to be highly complex and did not fully allow for the governance approach that was taken by policy makers at central government level. Political complexities that impeded the governance and the performance of the FSIP were the limited preparedness at central government level, which induced a false start of the FSIP, and the opportunistic behavior of provincial and local governments, as many of these were not willing to give up their own interests for the sake of a large volume of projects. The multi-actor complexities surrounding the FSIP have been compelling due to the use of a mandate strategy and a lack of competences and experience of contracting authorities' staff regarding long-term infrastructure contracts. The mandating strategy inflicted cautious and laborious negotiations as financial uncertainties were omnipresent. Furthermore, contracting authorities seemed to pursue ambitions that were not in line with the financial resources they actually had—or wanted to spend. Finally, technical complexities that struck the governance and the performance of the FSIP were the collision between project-specific technical requirements and standardized DBFM(O) agreements, which delayed tenders, and the negative relationship between financial requirements and competition, which stemmed from the act of bundling and the aspiration of budget neutrality. Due to the interference of these issues,

[37] Managing director of ISB, Sint-Niklaas (Belgium), 4 July, 2013; Commercial manager at private sector partner A, Ghent, 25 July, 2013; General manager at private sector partner C, Hoeselt (Belgium), 12 August, 2013; Project coordinator at contracting authority E, 18 September, 2013.

the catch-up movement in sports infrastructure as pursued by the Flemish Government has not nearly achieved its targets.

Our findings provide new and conclusive proof that many of the notions put forward by Van Gestel et al. (2012) also apply to the context of the Flemish Sports Infrastructure Program. Van Gestel et al. question the appropriateness of implementing a bundled, thus complex Flemish PPP program as a solution to an even more complex problem. As in the FSIP, delays and waned project delivery were clearly recognizable in other Flemish PPP programs, particularly regarding school infrastructure. If PPP programs are developed within a similar regional-institutional context, a number of variables and outcomes are likely to be analogous indeed. However, the peculiar case of Flemish PPPs may point at too ambitious and therefore precarious political and managerial decisions on PPP in the past. Hence these findings provide food for thought and discussion on how Flemish PPPs are being decided upon and how they are managed.

The conceptual framework of this study has proven useful in specifying and linking the governance, complexities, and performance of the FSIP. We have revealed a performance-inhibiting mismatch between the governance of the Program on the one hand, and the complexities within and surrounding the Program on the other. Although the inherent complexity of sports infrastructure projects is generally considered to be relatively limited—particularly in comparison with megaprojects—the Flemish government relied on a burdensome body of governance structures, procedures, and instruments while implementing the policy. This mismatch triggered the interference of political, multi-actor, and technical complexities, whereas ideally the complexities are to guide the governance approach that is used. We conclude that a less complicated governance approach, or a simple governing structure, as Flyvbjerg et al. (2003) put it, would have incurred a better manageability of the FSIP. Giezen (2012) explores this venue of reducing complexity in project planning, and we recommend investigating further under which conditions the reduction of complexity benefits or threatens the governance—and eventually the performance—of PPP. By doing further research on this topic, the conceptual framework can be improved so that it increasingly becomes a theoretical framework with a stronger causal component and a more normative character. In addition, governments across the globe are advised to think twice before stepping into expectedly advantageous, but practically complicated ventures such as bundled procurement and mandate agreements.

Finally, this chapter opens up avenues for studying a PPP governance tool that has not been studied in depth before and has been rarely observed in practice, namely the bundled procurement of PPP and the use of mandate agreements. In the case of the FSIP, the main argument for bundling PPP projects has been the logic of economies of scale: as a critical project volume is attained by procuring a group of similar projects and granting them to a single private partner, bundled PPP would provide private partners with higher cash flows, and public partners with lower transaction costs. However, according to Estache and Iimi (2011) the effort for economies of scale collides with competition. Large contracts create opportunities for scaling, yet they simultaneously hamper competition as potential bidders could be constrained by their technical skills, capacity, or financial resources. If tenders of bundled PPP are indeed likely to show weak competition, this leads us to the proposition that bundling instigates a higher periodically recurring availability fee since the market logic is not able to work perfectly well during the procurement phase. Our analysis has proven that bundling PPP does not always live up to the expectations, hence it would be beneficial to scrutinize other cases of bundled PPPs and evaluate in which political, multi-actor, and technical context it is an expedient tool and in which context it is not.

3 The challenge of using standard contracts in public-private partnerships[38]

3.1 Introduction

A severe lack of agreement on the financial and operational performance of public-private partnerships (PPPs) has not discouraged governments from formulating and implementing a large number of PPP policies and projects (Hodge & Greve, 2007). PPP is an act of cooperation between a public party and a private party that is aimed at the development of infrastructure and involves substantial risk sharing between these two partners. It is a well-known and regularly used procurement method for infrastructure development nowadays. Be that as it may, governments continue to struggle with all kinds of managerial and operational PPP issues. This struggle is reflected in a large number of programs and projects that fail to proceed swiftly and deliver sufficiently. In this chapter, we shed light on one particular challenge involved in PPP, namely that of contracting, which is often burdened with high transaction costs and poor competition (Akintoye & Beck, 2009; Yescombe, 2007).

Whereas contracting is already a complex activity by nature as it is aimed at aligning the opposing interests of different actors and making these actors sign a long-term agreement that is packed with demanding mutual commitments, PPP is inextricably linked with major complexities and uncertainties that add to the challenge. In comparison with public-public and private-private contracting (which can also involve long-term infrastructure investments), public-private contracting raises several additional complicating elements. For instance, there is the integration of different stages of an infrastructure asset's life cycle into a one-covering contract, the private financing of public projects, considerable risk transfer, and an advanced redistribution of public and private responsibilities. Recent

[38] This chapter has also appeared as Van den Hurk and Verhoest (2016).

examinations have confirmed the persistent problems of PPP contracting caused by these elements (Cruz & Marques, 2013; Gransberg, et al., 2013; Sanderson, 2012; Van Marrewijk, et al., 2008). In order to simplify such difficult ventures as public-private contracting, governments and international organizations have put effort in developing guidance documents and tools (see e.g., European Commission, 2003; UNECE, 2008). A particularly interesting development has been the global promotion and emergence of standardized contracts (or standard (form) contracts or template contracts). These are believed to contribute to the distribution of best practices and the development of a common and consistent understanding of risks—i.e., they facilitate learning. Moreover, using standard contracts is said to lower transaction costs and enhance competition during tenders.[39]

The subject of standardizing contracts has been addressed by quite a number of scholars, yet the lion's share of these contributions focuses on either private or public sector contracting (see e.g., Beck & Walgenbach, 2005; Haack et al., 2012; Petsoulas, et al., 2011; Timmermans & Berg, 1997). In fact, none of them discusses the standardization of PPP contracts in particular. This is striking because public-private contracting is different from private and public sector contracting, and because the complex and specific world of PPP is in great need of a simplification of projects and a facilitation of learning. In addition, public-private procurement is here to stay, if not increase in importance: uncomfortable financial-budgetary conditions and the rise of grand societal challenges (e.g., climate change) do not leave governments much of a choice but to cooperate intensively with private actors. Thus while the practical relevance of standard contracts in PPP increased over time—and will increase in the foreseeable future—the academic literature is lagging behind, leaving many aspects to be explored. It remains to be seen whether these contracts actually fulfill their promises or not, and in this chapter we address this literature gap. The objective is to delineate the field of standard contracts in PPP, to elucidate the assumptions underpinning the increasing use of these contracts, and to challenge the alleged contributions by discussing the potential limitations and dysfunctions of using standard contracts. This endeavor is guided by two

[39] In addition to these motivations, standard contracts are used to strike a balance between consistent national policy and local flexibilities, and to point toward specific contract drafting techniques or tools that can be pulled off the shelf for use in individual contracts (Timmermans & Berg, 1997). However, in this chapter we discuss the three motivations we consider the most important ones in the field of PPP—that is, creating a common understanding, lowering transaction costs, and improving competition. Although this focus limits the comprehensiveness of our contribution, it allows us to discuss in detail the three motivations we picked.

questions: (1) Why are standard contracts increasingly being used in PPP? (2) How to explain the impact of standard contracts on PPP? This study complements the literature by addressing an understudied topic in the field of PPP and formulating an agenda for theoretical and empirical research. Moreover, it reveals the practical relevance of understanding how standard contracts affect PPP, which is useful to both policy makers and private contractors who are active on the public-private continuum.

The chapter takes off with a discussion of the nebulous concept of PPP, its convoluted character, and the complex form of contracting it requires. After that, we present our general understanding of standards and address the increasing use of standard contracts in PPP. We integrate various branches of the academic literature as we discuss economic and socio-legal views on contracting. The remaining sections unravel the motivations to use standard contracts and the asserted practical advantages on the one hand, and the potential limitations and the disrupting role of standard contracts on the other. The chapter concludes with a discussion of research implications that are raised by the increasing use of standard contracts in PPP.

3.2 The complex nature of PPPs

Public-private cooperation for the provision of public infrastructure has been around for many centuries, in many forms, and on many different locations (Dewulf, Blanken, et al., 2012). Given the variations of the PPP concept in use, an authoritative or unambiguous definition is not logically possible (Weihe, 2008). In this chapter, we use Hodge and Greve's interpretation of PPP as a long-term infrastructure contract (2010) and amend it slightly on the basis of the definition provided by the European PPP Expertise Centre (EPEC, 2011). As a result, our understanding of PPP shows a resemblance with the concept of design-build-finance-maintain (DBFM) contracts. The first element of a PPP is the relatively enduring cooperation between the public partner and the private partner as it encompasses the life cycle of an infrastructure asset. A signed contract lasts for at least 10 to 20 years, and often for a longer period. Secondly, in a PPP the design, construction, financing, and maintenance (and operation) of an infrastructure project are integrated in a one-covering contract. A third element is risk transfer: some of the risks that are usually borne by the public actor in conventional projects are transferred to the private actor (e.g., construction risk and commercial risk). Fourth, both public and private actors contribute financially to the project; thus PPP includes private financing. Fifth, as soon as a project has entered the operational stage, the public partner pays periodically recurring fees to the private partner. These payments reflect the degree of service delivery.

In the academic literature, PPP is seen both as a governance tool and a political phenomenon (Hodge & Greve, 2007). Many motivations have appeared over time and primarily emphasized the advantages of incorporating private sector skills, e.g., equitable risk sharing (i.e., reduced public sector risk), better on-time and on-budget delivery, and improved service delivery (Greve & Hodge, 2013). However, empirical research has questioned whether the actual merits of PPP correspond with its promises. PPP is inconstant in achieving value for money and often makes an insufficient contribution to innovation, flexibility, and competition (Akintoye, et al., 2003). Moreover, PPP involves high financing and transaction costs, and demanding negotiations (Akintoye & Beck, 2009; Yescombe, 2007). The ambiguous performance of PPP is related to the complexities inherent to *PPP governance*. PPP governance is the activity of steering and coordinating PPP by setting up organizational structures, running decision-making procedures, and using instruments such as contracts and agreements that are not based solely on the authority and sanctions of government (Reeves, 2013). Since this activity involves interaction between a multitude of actors, PPPs can be understood as governance arrangements: patterns of social relations among mutually dependent actors. These arrangements come up around projects that are formed, maintained, and changed through series of processes (cf. Aoki et al., 1990; Edelenbos, et al., 2011; Williamson, 1979). The implication of PPPs being governance arrangements is that multiple actors, objectives, discourses, and disciplines are involved. This multi-actor complexity makes PPP governance a challenging task (Conteh, 2013; Verhoest, et al., 2012).

In addition to multi-actor complexity, infrastructure projects are confronted with uncertainties, ambiguities, and risks of political and financial-technical origin (Salet, et al., 2013; Van Marrewijk, et al., 2008). PPP is often full of political salience and epitomizes the divergent, yet usually short term-oriented ambitions and interests of political decision makers. As for financial-technical complexity, the technical characteristics of a PPP—e.g., construction and financing requirements and the fact that it is about the delivery of a service rather than a good[40]—compromise the progress of procurement. All in all, if in PPP governance one fails to deal adequately with imminent or potential complexities, project failure is looming.

[40] As Macneil states, "services are inherently relational, and inherently less subject to exact prior planning" (1974, p. 763), hence Vincent-Jones claims that "contracting for services is inherently more difficult than contracting for goods" (1994, p. 379).

3.3 Long-term infrastructure contracts as governance tools

While steering infrastructure projects toward the achievement of objectives, governments can use a mix of tools that are based upon fundamentally different governance mechanisms: hierarchies, markets, and networks (Thompson et al., 1991). In the world of infrastructure development, we have seen a shift from hierarchy to market as the leading governance mechanism. This move is reflected in an increasing use of long-term infrastructure contracts between public authorities and private actors (Bouckaert, et al., 2010; Cooper, 2003). Since infrastructure projects generally involve large sunk investments, which do not come on a frequent basis and often exhibit high degrees of asset specificity and uncertainty, both public and private actors tend to show opportunistic, rent-seeking behavior (Williamson, 1979). By drafting a contract, parties can be mutually protected against acts of opportunism. A contract specifies each party's obligations in an exchange, delineates what is and what is not allowed, and inflicts penalties for inappropriate behavior. As such, it fulfills a safeguarding role (Ring & Van de Ven, 1992; Vincent-Jones, 1994). Contracts also serve the purpose of relationship coordination in that they assign roles and responsibilities and regulate monitoring (Brown, et al., 2010; Schepker, et al., 2014). Furthermore, through the specification of contingency plans, contracts help actors adapt to changing conditions if need be (Luo, 2002). By laying down these kinds of rules in contracts, exchanges between public and private actors for long-term investments can be encouraged (Weber & Mayer, 2011; Williamson, 1985). Van Der Veen and Korthals Altes (2012) add that a contract ideally reduces the inherent complexities and uncertainties of infrastructure projects (see also Friedman, 1965).

The act of drafting long-term infrastructure contracts is particularly delicate since it is aimed at achieving *presentiation*: making present decisions about all, including future, aspects of the contractual relationship (Macneil, 1980, 1983). Should actors think and act completely rational and have full information on what could possibly happen in the future—as assumed by classical contract law which is merely based upon economic theory—they would write a "contingent contract specifying exactly which good is to be delivered in each state," i.e., a complete contract which would achieve the goal of presentiation indeed (Hart & Moore, 1999, p. 115). However, this "extreme caricature of contract in its purest form has no real world counterpart" (Goldberg, 1976, p. 428) as it glosses over aspects of contractual complexity. In the wake of real-life complexity and uncertainty, actors do not have full and verifiable information about what could possibly happen in the future (Williamson, 1985). Moreover, full presentiation would

be too expensive (Dye, 1985), and therefore it is "a quite illusory goal" (Campbell & Harris, 1993, p. 169). Actors have no choice but to write incomplete contracts that "do not deal explicitly with all possible contingencies and leave many decisions and transactions to be determined later" (Bolton & Dewatripont, 2005, p. 36).

In addition to the fact that actors are not as rationally gifted as classical contract law suggests, contracting is not nearly an exclusively economic activity that can be studied using *ceteris paribus* and without considering relational elements (Macneil, 2000, p. 889). Instead, contracting is a relational phenomenon *par excellence* hence contracting research ought to go beyond the sphere of economics into the world of actual behavior, particularly in the fields of public administration and social policy (Macneil, 1980; Vincent-Jones, 2006). As Campbell and Harris put it, individual utility-maximizing behavior is not a tenable explanation of contractual relations since "long-term contractual behavior must be understood as consciously cooperative" (1993, p. 167). It is embedded in social relationships (Granovetter, 1985).[41] The implication is that there is no such thing as a truly discrete transaction.

Qualifying contracting as a relational activity does not necessarily imply that long-term contracts predominantly include soft or informal clauses. The form and content of a contract will vary depending on the transaction type and the prevailing economic conditions (Vincent-Jones, 1994, p. 374). In some cases, the most appropriate contract will incorporate a significant number of formal, discrete clauses, thus achieve a relatively high score on presentiation. For instance, the more specific, complex, and uncertain an infrastructure project, the greater the likelihood of opportunism and rent seeking. In such a difficult situation, actors are inclined to aim for completeness in order to decrease the number of unexpected and undesired situations. Other cases of contracting may require more looseness in terms of the character of the contract that is used, which will be reflected in an incorporation of rather informal, relational norms. As an example, a number of scholars argue that when the complexity of a contractual exchange increases, actors tend to supplement or even replace formal contractual clauses with informal mechanisms—e.g., relational management, mutual trust, and commitment (Faems, et al., 2008). By leaving out a strict application of contractual clauses in favor of a pragmatic approach, actors can pay more attention to context and history (Gulati, 1995). This informal

[41] See also Macneil (1983, p. 348): "Man is both an entirely selfish creature and an entirely social creature, in that man puts the interests of his fellows ahead of his own interests at the same time that he puts his own interests first."

way of contracting is highly efficient since trust reduces transaction costs by "replacing contracts with handshakes" (Adler, 2001, p. 219); there is less need to engage in detailed and expensive legal discussions. Poppo and Zenger (2002) argue that formal and informal contracting function as complements. Whereas the formal elements of a contract promote cooperative, long-term, trusting relationships by narrowing the domain and severity of risks, in reverse direction informal elements provide opportunities of using trust and cooperation as a safeguard against hazards poorly protected by the contract.

In PPP, actors often rely heavily on formal contractual elements. As PPP transactions are not made very often, trust between contractual actors is generally lacking, which instigates difficult processes of contracting and higher transaction costs—the costs associated with organizing competitive tendering as well as writing, monitoring, and enforcing contracts (Rahman & Kumaraswamy, 2002).[42] It is here that one of the main motivations of using standard contracts comes into play: the aspiration to settle agreements more quickly and at lower cost.

3.4 Standardization

In Brunsson and Jacobsson's seminal work *A World of Standards* (2000), a standard is defined as a form of regulation, i.e., a specific type of rule, which is formed on the basis of a degree of common understanding among standard-setting actors. It comprises a set of solutions to actual or potential problems and is meant for common and repeated use (Brunsson et al., 2012). Standards are usually laid down in a document that is approved by a recognized body. They provide rules, guidelines or characteristics for activities (process-oriented) or results (output-oriented), and thereby coordinate interaction (Botzem & Dobusch, 2012)—Timmermans and Berg metaphorically speak of standards as "carrier[s] of prescriptions for good practice" (1997, p. 296). Daily-life examples are easy to find and include statistical standards for measuring a country's GDP, etiquette, and the international currency of the euro. The subject matter of standards originated from the fields of economics and has strong ties with globalization, which is reflected in the worldwide creation and use of standards for the sake of improved product compatibility (Farrell & Saloner, 1985), information and communication technology (David & Greenstein, 1990), international trade (Swann et al., 1996), product and service quality (Beck & Walgenbach, 2005), and corporate responsibility (Haack, et al., 2012).

[42] Ironically, this is at odds with the common understanding of partnership (Cruz & Marques, 2013; Edelenbos & Teisman, 2008; Reeves, 2008).

As of today, we also see a development of standards in the world of PPP. In order to improve the manageability of PPP procurement, in a number of countries efforts have been exerted to develop tools and practices that are alleged to simplify (and eventually improve) PPP governance. Standard contracts have received considerable attention in this respect. In these modularly structured documents, standard terms are provided for those elements of PPP that are common to all procurement processes—making them well understood in the industry and ideally maintaining flexibility for an individual project to set its needs and requirements (Brown et al., 2006). According to Bajari and Tadelis, "[t]here is a surprising amount of standardization in the contracts used in building construction" (2001, p. 390), typically covering a set of documents on bidding, general conditions, specifications, drawings, and investigative reports. Recurring themes are definitions, core obligations of actors involved, contract duration, output specifications, payment mechanism, sanctioning, guarantees, termination, conflict resolution, and insurance, to mention but a few examples.

The United Kingdom is one of the first countries in which guidance on project agreements has been issued (NHS Executive, 1999; UK Ministry of Defence, 2001; UK Treasury Taskforce, 1999). In similar vein, other countries have come up with handbooks for standard contracts, for instance Belgium (Flemish PPP Knowledge Centre, 2009) and the Netherlands (Rijkswaterstaat, 2012). The use of a standardized approach to infrastructure projects is clearly increasing and signifies its practical relevance. Interestingly, the literature on PPP is lagging behind, with the exception of a few academic accounts. Farrugia et al. (2008) argue that the success of standards in PPP depends on the volume, size, and specificity of PPP deals, the political environment, and government objectives and priorities. Jooste et al. (2011) also point to contextual factors as explicit determinants of the success or failure of PPP standards, as their findings indicate that a one-size-fits-all approach to PPP is deemed to collide with real-world complexity and uncertainty. Finally, Börzel and Risse (2002) overtly question some presumed advantages of the large-scale use of PPP standards. They hypothesize standards to impede problem-solving capacity, and their empirical findings confirm that the impact of standards on PPP governance varies. Although these contributions evidently place in dispute the use of standards and emphasize the topic's relevance, a gap in the literature remains in that they merely apply a pragmatic approach to describing and explaining standards in PPP.

3.5 Standard contracts in PPP: a delineation

The rise of standard contracts in PPP fits the background of what is increasingly a "world of standards" as presented by Brunsson and Jacobsson in 2000. However, standards can differ very much in terms of type and form, and therefore in how they are created and used. Standard contracts cannot just be compared with any other standards. Before we explain the specific promises and potential disadvantages of standard PPP contracts, we discuss these differences and their implications.

The most common standards are those that refer to quality requirements or other parameters. We define these as product standards, e.g., ISO standards and accreditation requirements. However, standard contracts in PPP are not quite the same as product standards. Serving as guidelines, they typically form a preferred model or a prescribed template. The parties involved are required to adopt this model or template, but this does not necessarily have any implications for the quality of the product or service that is to be delivered.[43] However, it does imply that standard contracts are created and used in a different way compared to product standards, and therefore different issues are likely to come up. First of all, when it comes to creation, product standards are often of a private sector nature. This is reflected in the remarkably large number of industry and business standards that have been drafted over time (Brunsson & Jacobsson, 2000; Krislov, 1997; Tamm Hallström, 2004; Timmermans & Epstein, 2010). Standard contracts for PPP are usually drafted by public sector bodies with law firms' assistance, and they are to serve as a guideline for the negotiations between the public sector partner on the one hand and the private sector partner on the other. The implications for the content of standard contracts are evident: if a governmental authority acts as the main standard setter (i.e., top-down standardization), the guiding standard contract is likely to fulfill the public sector partner's needs rather than the needs of the private sector partner (Cargill & Bolin, 2007).

Second, and related to the previous discussion, is the difference between product standards and standard contracts in terms of how they are used. As for product standards, isomorphic pressures such as the effort for competitiveness and reasons of legitimacy often push businesses toward aligning theirs product with established standards—although the use of standards remains voluntary (Botzem & Dobusch, 2012). The

[43] Although product standards may be included in a standard contract and a meta-relationship between the two types of standards is imaginable, we leave this aspect outside the scope of this chapter because the core objective is to delineate and discuss issues of standard contracts *per se*.

standardization of PPP contracts usually occurs through a top-down process; as the contracts are hierarchically set, the contractual negotiations on an infrastructure contract will happen in a principal-agent constellation with the public sector on the principal's side and the private sector on the agent's side. Given that PPP comprises high degrees of complexity and uncertainty, and assuming that the public sector partner (i.e., the principal) wants to minimize the likelihood of opportunistic behavior of the private sector partner, the principal will be inclined to formulate and use the standard contract as a hierarchical arrangement aimed at maintaining control over the situation. As Deakin and Walsh put it, the principal is "placed in the paradoxical position of creating a market that works like an organization" (1996, p. 38). In these situations, the standard contract will no longer be a guidance tool aimed at facilitating learning, lowering transaction costs, and enhancing competition. It will rather be a control tool that helps the principal protect his own goals, which will be reflected in a significant number of mandatory and non-variable clauses and discrete norms that are likely to overrule relational norms (see Petsoulas, et al., 2011; Vincent-Jones, 2006 on the cumulative imposition of government policy through contract structures). On the basis of these assumptions (Table 8), we discuss the potential benefits and costs of using standard contracts in PPP in the following sections. The considerations focus on learning, transaction costs, and competition.

Table 8 Product standards versus standard contracts in PPP

	Most common origin/creation	**Reasons of use**	**Examples**
Product standards	Private sector	Voluntary; isomorphic pressures	ISO standards, accreditation requirements
Standard contracts in PPP	Public sector (top-down with private sector assistance)	Mandatory; contracts are already used during bid preparation	Model contracts applied by UK Ministry of Defence and National Health Service
Implications for PPP	Standards are inclined to benefit actor who created them, i.e., contract drafter (public actor)	Standard contracts are likely to be used as control tools instead of guidance instruments	Contract includes significant number of mandatory and non-variable clauses and discrete norms

3.6 Standard contracts and learning: ideal type versus reality

Governments have emphasized the simplification of PPP governance through learning as one of the promising consequences of using standard contracts. The initial intention has been that standards provide guidance so that actors involved—particularly on the side of the contracting authority—know better what to deal with during negotiations and the operational phase

of a PPP. Iossa et al. (2007b, pp. 9-10) state in a World Bank report that "mistakes at the contract drafting stage have often arisen simply because of lack of experience of public administrations on the writing of PPP contracts." According to HM Treasury in the United Kingdom (2003), standard contracts help spread best practice and promote a common understanding of the main risks encountered in PPP. Iossa et al. confirm this promise: "to the extent that experience with PPP in a specific sector accumulates, the public authorities could standardize parts of the contracts for that specific sector as a means to reduce the likelihood of contract and output misspecification" (2007b, p. 10). By institutionalizing in PPP practice, standard contracts contribute to a normalization of procurement activities. Habituation becomes evident, routines arise, and public actors can afford to spend less money on external support from private companies—although a certain degree of external support from law firms and consultancies will always be necessary to close infrastructure deals. These promises correspond with research findings on contracting and learning effects in the management literature (Argyres & Mayer, 2007; Wright et al., 2012).

One of the core tensions in standardization is that of "transforming work practices while simultaneously being grounded in those practices" (Timmermans & Berg, 1997, pp. 297-298). Past experiences with infrastructures, procedures, and practices, whether good or bad, form the basis of the standards that are made today. Both public and private actors have to get used to the prescriptions provided by standard form contracts and go through a process of learning. Standard contracts themselves are also constantly in flux as they are adapted to changing conditions over time. Moreover, they need to be dynamic with regard to their application across different countries or sectors. We refer to Timmermans and Berg's notion of *local universality* for an explanation. According to them, a standard contract cannot be considered universal *tout court* as that would imply highly improbable and undesirable *ceteris paribus* conditions. Local universality is about "being in several locales at the same time, yet being always also located as a product of contingent negotiations and pre-existing institutional and material relations" (Timmermans & Berg, 1997, p. 297). Standard contracts that are tailored to one country or sector often serve as an inspiration for the creation of standard contracts in other countries or sectors. Although this cross-border transmission of standard documents initially contributes to the learning process, caution is advised regarding the actual application of these external standards. Since there can be major differences between infrastructure sectors, parts of standard contracts have to be adapted in order to be appropriate for procurement. For instance, a contract for road infrastructure is expected to comprise stricter price

mechanisms, availability requirements, and penalty clauses, than a contract for a sports hall, simply because the risks involved in the former are severe compared to the latter. Furthermore, even within a certain infrastructure sector there can be significant differences between projects in terms of risk. As an example, within the sports infrastructure sector, the construction of an artificial football pitch is hardly comparable with the construction of a multifunctional sports center. In other words, learning concerns not only the accumulation of knowledge over time, but also the development of the capacity to understand different cultures or practices across countries or sectors, and to tailor standard contracts.

Given the dynamics of standard contracts over time and across borders, Iossa et al. (2007b) champion a process of standardization that is guided by general guidelines on how to write contracts—thereby facilitating learning—rather than creating and using standard contracts that trigger rigidity and inertia. Faems et al. (2008) prescribe a similar degree of looseness in using standard contracts so as to enable learning: a flexible application of contracts, in combination with high levels of trust and relational governance, is likely to induce free knowledge exchange and shared value creation. Finally, Timmermans and Berg (1997) state that the ongoing subordination and (re)articulation of a standard is a *sine qua non* for the functioning of the standard in the first place.

All in all, the literature sketches an ideal type of using standard contracts for the benefit of learning. However, based upon our assumption that standard contracts for PPP may very well be used as control tools, it can be expected that learning over time and across boundaries will not nearly be obvious. If they do not cater to learning, or if they are not used with the purpose of learning, standard contracts are more likely to jeopardize than benefit the improvement of PPP (Van der Veen & Korthals Altes, 2012).

3.7 Standardized contracts, lower transaction costs?

The second main promise of standard contracts lies in their alleged capacity to trigger shorter decision-making and negotiation procedures, and thereby lower transaction costs. Akintoye et al. (2003, p. 469) notice a call for standards in PPP among public and private sector professionals in the United Kingdom that is based on this promise: "[P]ublic sector respondents believe that the PFI process has to be standardized further, in order to reduce time delays and professional fees. … [P]rivate companies anticipate that a more harmonized approach will avoid inefficient time and resource allocation." Preparatory costs for both public and private actors are presumed to drop drastically since areas for negotiation are expected to

become less extensive. If certain issues are simply swept off the table, this will reduce the time and effort put in negotiations.

However, unlike the promise that areas for negotiation become less extensive, standardization does not imply harmonious negotiations, let alone a sudden decrease in procurement times. By providing guidance, a standard contract only offers negotiators the opportunity to recognize or admit more quickly the need to include certain clauses (e.g., concerning guarantees or contract termination). The actual project-related complexities, uncertainties, and risks remain, and the relationship between public and private partners retains its transactional nature (see also Hughes et al., 2011; Petsoulas, et al., 2011). As Rahman and Kumaraswamy explain, "an appropriate contracting method coupled with clear and equitable contract documents do not by themselves ensure project success where people work together in the face of uncertainty and complexity with diverse interests and conflicting agendas" (2002, p. 45).

In addition to the previous reservation, we emphasize once more the key role of the position and behavior of the public sector partner. The progress of contractual negotiations is most likely to benefit from a constructive attitude of both the public and private actors at the table. However, a negative atmosphere can be expected when it comes to negotiating over standard contracts since the point of departure will be a template that favors the public side of the table, and the public sector partner will not be particularly eager to give up or deviate from the standard contractual clauses. The term *boilerplate* comes into play here. Boilerplate provisions are standard clauses of language in a legal document (Gilo & Porat, 2006). The purpose of these provisions is to save negotiators time and money with commonly used and understood language. Cooper (2003) says that many (standardized) public contracts contain a great deal of boilerplate provisions. In order to satisfy policy requirements or reduce risks, governments have inserted them in basic contracts. Negotiators on the public side of the table are expected to defend the public interest because they will be held accountable if the final contract insufficiently fulfils collective interests. The implication of using boilerplate provisions is that negotiators on the public side of the table are less willing to give up their standard clauses—i.e., they use the contract as a control tool. In these cases of legal coordination, opportunities for partnering will be hampered, the interference of lawyers will grow, and an increase in transaction costs can be expected.

3.8 Standard contracts, competition, and excess inertia

The third and final main promise of standard contracts is that they enhance competition. Competition is an important factor of PPP performance; contestability in the procurement phase allows the public sector to harness efficiency. For the public actor who organizes the tender, better competition leads to lower prices, more available options, and eventually bids and projects of better quality.[44] By standardizing contracts, the competition among bidders for PPP is expected to increase. Blind (2004) states that standards help to remove entry barriers in markets and reduce the unequal starting position for new market entrants: since the required standards already exist, the clarity of a bidding procedure increases, and companies no longer have to invest in capital facilities and research and development to arrive at the same level of competition as others. Information asymmetry between bidders reduces considerably, allowing even small firms to enter the bidding arena without exerting too much effort and spending too much money. Hence the claim that using standard contracts engenders the potential number of and diversity between bidders—which is particularly interesting to public sector partners given their struggle with limited competition in PPP procurement.

The use of standard contracts is also said to enhance competition by creating opportunities for economies of scale, which is an interesting aspect for private sector partners. PPP is often considered too costly to be an option for small projects; potential private sector partners "will not be forthcoming until there is a large and sustained volume of projects requiring the involvement of the private sector" (Flyvbjerg, et al., 2003, pp. 104-105). Governments have sought solutions to this problem by combining small-scale infrastructure projects, i.e., by bundling procurement: a number of small and similar projects at lower government levels are jointly procured and tendered to a single private sector partner. This act of bundling is said to contribute to the dispersion of transaction costs across a number of projects—thereby minimizing the net transaction costs per project and inducing economies of scale. This would not be possible without using a standard contract; a potential private sector partner would never enter a

[44] There is also criticism on the role of competition in PPP. For instance, Vincent-Jones (1994) argues that increasing competition impedes the development of long-term relations. The larger the pool of private competitors, the more difficult it becomes for a public sector partner to build a trust-based relationship, since actor constellations are different in every project (Dubois & Gadde, 2000). However, a high degree of competition is always better than a negligible degree of competition. As Petsoulas et al. (2011) state, limited competition incurs such a high degree of mutual dependence between the public and private sector partners that they will be locked into a relationship where non-cooperation is not an option. Under these circumstances, the private sector partner is in a powerful position.

bidding procedure for a large number of similar small-scale projects if it was expected to sign contracts that are entirely customized to the interests of each contracting authority involved. By reducing the variety between these projects, the production and service requirements are deduced to a limited range of characteristics such as size, quality, and other technical specifications. Bundled procurement predominantly benefits the private sector partner. Public sector partners will generally suffer from a utility loss as their degrees of freedom decrease, and the discrepancy between the demand posed (by themselves) and the supply offered (by the private sector partner) increases.

A major concern with regard to bundled procurement is the phenomenon of *excess inertia* (Choi, 1996; Farrell & Saloner, 1985). The larger the number of projects brought together in a bundle, the larger the need for capital-intensive production technologies, which in turn diminishes the pool of eligible private sector partners. As small and potentially innovative firms are excluded from market entrance, only large and resourceful firms remain. Not only does this undermine competition, it also puts innovation and technical change at stake: a collective switch from using a common, yet suboptimal technology standard to using a better standard can be impeded by an existing balance of power. A famous example is the worldwide institutionalization of QWERTY keyboards. Many keyboard types other than QWERTY would have done a better job if they could have afforded to seriously compete with the advocates and producers of QWERTY (David, 1985). The example shows that some firms have superior resources, which allows them to control or at least influence the market better than others (Tassey, 2000). As such, regulation through standardization protects existing producers from competing technologies (Kahn, 1988). In line with these thoughts, a combination of standard contracts and bundled procurement is bound to instigate unequal competition in PPP procurement. Surprisingly, empirical accounts on this topic are particularly rare and have never been discussed in the academic literature.

3.9 Conclusion

This chapter addresses important theoretical shortcomings. It approaches the field of PPP and standard contracts by discussing relevant historical, conceptual, and theoretical backgrounds. Based upon these accounts, it argues that although standard contracts play an increasingly important role in PPP practice and are generally seen as tools that simplify governance, profound scholarly efforts on this topic have been scarce. It remains to be seen whether standard contracts actually fulfill their promises, and questions arise as to who wins and who loses in the standardization game. Without an

in-depth investigation of the creation and use of standard contracts in PPP, an analysis of their impact will remain incomplete. Therefore, several avenues for research require attention. We define a research agenda by discussing the potential advantages and disadvantages of using standard contracts and posing several topics to be considered for further investigation (Table 9).

Table 9 Standard contracts in PPP: toward a research agenda

PPP concerns	**Promises**	**Reservations**	**Research agenda**
Poor expertise; lack of common and consistent understanding of risk	Promotion of best practices and common and consistent understanding of risk	Learning processes are not necessarily triggered by standard contracts; public sector actors might see standard contracts as control tools	- Changes in standard contracts over time and across national and sectorial borders - Public and private actors' perceptions of standard contracts - Involvement of private actors in creation of standard contracts
Lengthy negotiations, high transaction costs	Concise negotiations, lower transaction costs	Complexity of PPP remains; boilerplate instigates juridification	- Attitude of public actor toward tinkering with standard clauses during negotiations - Progress of procurement when contracts are standardized
Limited competition	Better competition	Variety-reducing standard contracts can hamper competition (excess inertia)	- Private actors' position and behavior toward bundled procurement - Public actors' opinion on bundled procurement given loss of local specificity of projects

There are multiple answers to the question why standard contracts are used in PPP. Standard contracts offer opportunities for lowering transaction costs and fostering competition, and they are said to render learning. Although these are the three primordial motivations, they do not exclude the possibility that contracting authorities use them for other reasons. A lot depends on whether public sector partners define standard contracts as guiding documents or control tools. PPP-related complexity, uncertainty, and asset specificity are key to the standard setter's attitude on how a contract should be used.

By studying the literature on contracting, PPP, and (product) standardization, we disentangled a number of propositions with respect to the impact of standard contracts on PPP procurement. The first proposition

we addressed is the promising role of standard contracts as promoters of best practices and a common understanding. Contrary to the alleged contribution to learning of the use of standard contracts, learning over time and across boundaries (i.e., local universality) will not be easy to achieve when standard contracts are used as control tools. The successful use of standard contracts comes with public sector partners that are both eager and able to learn—a condition which is not always present. Further investigation and refinements are required here, particularly on the balancing act between formal, discrete contractual clauses and informal, relational contractual clauses. It would be interesting to scrutinize the differentiation in creating standard contracts, and changes in standard contractual designs over time and across national and sectorial borders. It would also be useful to address the perceptions of standard contracts among public and private actors, particularly because private actors are not always adequately involved in the standardization process. This relates to the tendency of public actors to pursue their own goals—e.g., policy requirements and risk reduction—while drafting template contracts.

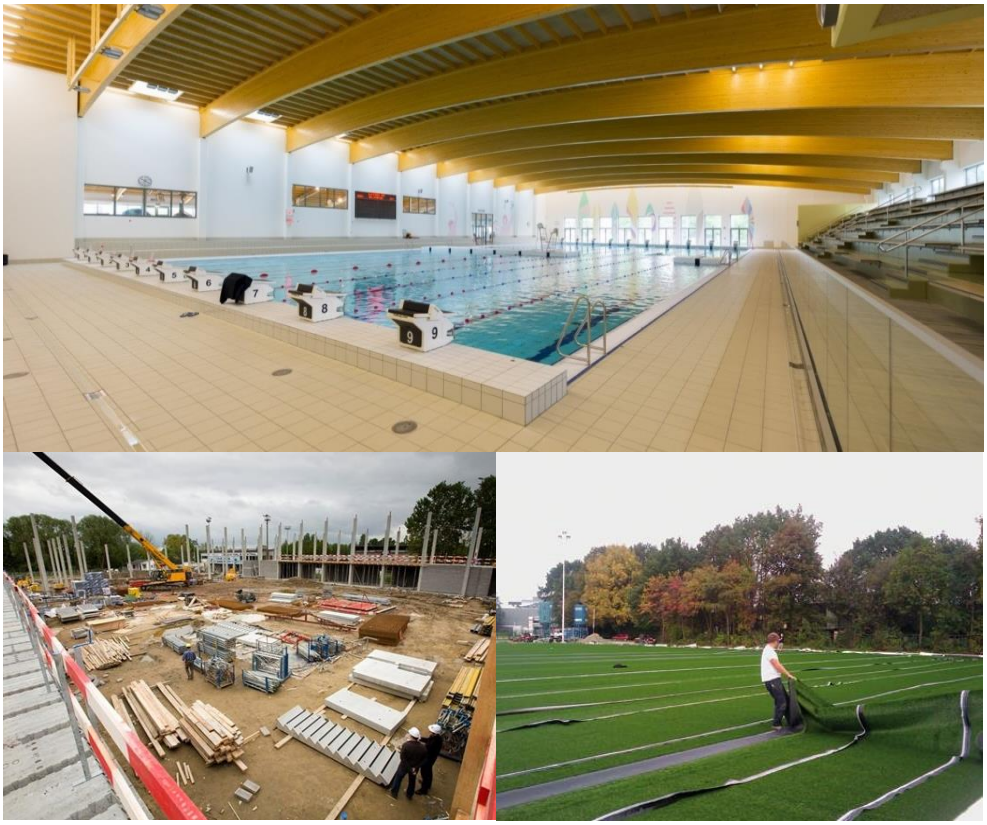
The presumed capacity of standard contracts to help restrain transaction costs makes them a particularly welcome tool in the world of PPP because these costs form a serious burden for both public and private sector partners. Unlike the general assumption that standard contracts will cause certain issues to be swept off the negotiation table and create a better atmosphere for contractual negotiations, these advantages cannot be guaranteed. Using a standard contract as a guidance instrument will not lead to a decrease in the intrinsic complexity of a PPP, and applying it as a control tool will result in boilerplate provisions which obstruct negotiations. Negotiations for PPP are often characterized by formal contracting, and this cannot be expected to change with the use of standard contracts. We advocate research that focuses upon the actual processes of negotiation so as to unveil whether standard clauses are applied rigidly or flexibly by contracting authorities, and how this application affects the progress of procurement.

Finally, an important promise of standard contracts is that they encourage competition by increasing the number of potential bidders. Moreover, they are vital to the joint (i.e., bundled) procurement of PPP projects. In the latter case, however, the net effect of using standard contracts on competition can actually be negative as only a few resourceful and powerful bidders will survive the “cut” of a tendering process. We raise a number of research implications with respect to bundling projects. It would be interesting to see whether potential private sector partners are interested in bundled PPP in the first place, as it implies severe complexities. It is likely that even large firms are not interested in closing this kind of deals since they prefer to avoid the

risk of losing efficiency while dealing with a high degree of uncertainty. In these cases there would be a further decrease of the pool of competitive bidders that are willing to partner. Bundled procurement could also be less attractive to public actors than is often assumed: the use of variety-reducing standard contracts has a negative impact on the local specificity of the infrastructure asset that is to be constructed. In other words, the producer's right is protected rather than the consumer's right.

On the whole, we expect to see a volatile contribution of standard contracts to the proliferation of PPP. A tension emerges between the general tendency of PPP to be dealt with through common contractual frameworks on the one hand, and the importance of tailoring contractual arrangements on the other. As a matter of fact, a paradox is laid bare here: whereas one would expect learning to occur, transaction costs to decrease, and competition to prosper, these things are not likely to appear in practice very often as public sector partners will be inclined to use standard contracts as control tools. The real challenge lies in balancing the opposite forces of guidance and control and using them as complements. Thus, if the aim is to improve PPP, we are not even close to simplifying the governance of PPP. The standardization of contracts is no equivalent of reducing complexity.

4 Public-private partnerships in social infrastructure: using standard contracts[45]



Collage of projects that were built within the purview of the Flemish Sports Infrastructure Program—which will be discussed in this chapter. Top: an Olympic-size swimming pool in a multifunctional sports complex in Bruges (photo: Henk Rogiers) (source: S&R Olympia, 2015). Bottom left: the construction of a multifunctional sports complex in Heist-op-den-Berg (source: Provoost, 2012). Bottom right: the construction of an artificial sports pitch in Antwerp (source: Krinkels Sport, 2015).

[45] This chapter has been submitted to a journal.

4.1 Introduction

Over the past few decades governments have increasingly embarked on public-private partnerships (PPPs) for the provision of public infrastructures, such as roads, ports, public transit, hospitals, schools, and sports facilities (Pollitt, 2005; Savas, 2000; Yescombe, 2007). A PPP is a specific approach to the construction and maintenance of infrastructure in which the private sector finances a project and bears a considerable amount of risk. One of the most prevalent rationales behind this approach is that the private sector is assumed to act more efficiently than the public sector. Private companies with their own money at stake are believed to have a better track record of managing projects; it is assumed that a risk-bearing private sector partner is incentivized by a desire to recoup its investment to identify and manage project risks so that an infrastructure asset will be delivered on time, on budget, and according to the specifications set (Grimsey & Lewis, 2004). The result would thus be that governments can do more (or better) with fewer (or equal) financial resources, i.e., deliver better value for taxpayers' money (see Grimsey & Lewis, 2005; Hodge, 2010; Hodge & Greve, 2009).

PPPs involve large sunk investments with long-term time frames and require new management capacities from governments (see for instance Brown & Potoski, 2003, 2005; Joaquin & Greitens, 2012). Empirical research has linked PPP with severe uncertainties, ambiguities and risks that are difficult to manage due to the involvement of multiple actors, high political salience, and complicated technical requirements (Cruz & Marques, 2013; Flyvbjerg, 2006b, 2009; Gransberg, et al., 2013; Salet, et al., 2013; Sanderson, 2012; Van Marrewijk, et al., 2008). It usually takes considerable time and effort to arrive at contractual agreements—i.e., to "close" contracts—between public and private actors, which is reflected in high transaction costs (Akintoye & Beck, 2009; Bloomfield, 2006). These governance difficulties, and the fact that PPP is fast becoming a key instrument of public infrastructure provision, make the study of the PPP approach a relevant effort.

This chapter focuses on contracting toward PPP deals, which we define as the drafting, negotiating, and signing of long-term infrastructure agreements by public authorities and private sector partners.[46] Contracting is a subject that continues to interest scholars and practitioners in the field of infrastructure provision. We delve into depth about one of the measures

[46] There is also a practice of contracting after contracts are signed. This is called *contract management*, and it includes activities like monitoring and documenting performance. In this chapter, we focus on the process toward the signing of a contractual agreement.

governments are increasingly taking in order to ease and shorten the contracting process: the standardization of contracts (see e.g., European Commission, 2003; UNECE, 2008). Standard contracts are modularly structured documents providing standard terms for common elements of PPP deals, and they are used to facilitate the procurement process. Examples of themes that are typically included in these documents are definitions, payment mechanism, variations, termination, and conflict resolution. Standard contracts have been promoted globally and are emerging in various places and sectors. The United Kingdom is among the first countries in which guidance on project agreements has been issued through standard contracts (NHS Executive, 1999; UK Ministry of Defence, 2001; UK Treasury Taskforce, 1999), and many other countries have followed. However, while the practical use of these documents has been promoted recently, there is a remarkable lack of theoretical and empirical analysis on its benefits and drawbacks. Scholars have made a few contributions on the nexus of PPP and standardization, but they define standardization differently (Dewulf, Duffield, et al., 2012; Jooste, et al., 2011), remain on a practice-oriented level (Farrugia, et al., 2008; Hebly & Lorenzo van Rooij, 2007), or apply a political scope in their research (Börzel & Risse, 2002).

The objective of this chapter is to examine the practice of standard contracts in PPP. First, we explain why and how they are created. Second, bearing in mind the objective of governments to facilitate the contracting process, we discuss the importance of a match between (a) how standard contracts are used during the procurement process and (b) the characteristics of the transaction that is being procured (i.e., the infrastructure asset that is to be built). To this end, we investigate the Flemish Sports Infrastructure Program (FSIP), which is a Belgian PPP program that was launched by the Flemish Government in 2008 with the objective of resolving a severe shortage of sports facilities (Flemish Government, 2008). We use an analytical framework that is grounded in contracting theory, transaction cost economics, and strands of standardization theory to conduct an embedded case study that contains three subunits of analysis: artificial pitches, sports halls, and multifunctional sports centers—these are types of projects that were realized within the purview of the FSIP. The results emphasize that it is not so much the character of an infrastructure asset that determines whether a standard contract can be used successfully or not. More important is the willingness of the standard setter (in this case a public sector taskforce that leads the procurement process) to accept changes to the original standard contract for the benefit of a swift process, and the ability to decide when this will actually merit the process and when it will not. This finding improves our understanding of complex contracting.

The chapter begins by defining PPP and linking the complex PPP process with the theoretical background of contracting and standardization. Next, it provides an introduction of the FSIP and outlines the research strategy and methods used to scrutinize the contracting processes in the FSIP. Following that, we elaborate on our empirical findings. The conclusion synthesizes our argument and proposes venues for further research.

4.2 PPP and contracting

PPPs have been around for centuries and in various forms and locations across the globe. Likewise, varied conceptions of PPPs are in use (Donahue & Zeckhauser, 2011; Hodge & Greve, 2007). We interpret a PPP as a *long-term infrastructure contract* (Hodge & Greve, 2010), and we complement it with insights from the European PPP Expertise Centre (EPEC, 2011). As a result, five elements of PPP become evident. The first element is the relatively enduring cooperation between the public partner and the private partner as it encompasses the life cycle of an infrastructure asset. Secondly, the design, building, financing, and maintenance (and operation) stages of the project are integrated in a one-covering contract. A third element is risk transfer; some of the risks that are usually borne by the public actor in conventional projects are transferred to the private actor. Fourth, both public and private actors have to make a financial contribution, hence private financing is required. Fifth and finally, as soon as a project has entered the operational stage, periodically recurring fees are to be paid to the private partner that reflect the degree of service delivery. All in all, our understanding of PPP corresponds to the concept of design-build-finance-maintain(-operate) (DBFM(O)) contracts.

We define *contracting* as the drafting, negotiating, and signing of long-term infrastructure contracts by public authorities (i.e., principals) and private actors (i.e., agents). In this chapter, we limit our scope to the process in which contracts are drafted, negotiated, and eventually signed during a procurement process. A contract specifies the obligations of each contractual party, delineates what is and what is not allowed, and inflicts penalties for inappropriate behavior (Ring & Van de Ven, 1992; Vincent-Jones, 1994). As such, it makes sure that the parties are mutually protected against acts of opportunism, such as rent-seeking behavior (Williamson, 1979). A contract also serves the purpose of relationship coordination by assigning roles and responsibilities (Brown, et al., 2010), and specifies contingency plans so that the actors involved know how to adapt to changing conditions (Luo, 2002). Finally, contracting is a relational activity: “long-term contractual behavior must be understood as consciously cooperative” (Campbell & Harris, 1993, p. 167), and there is no such thing

as a truly discrete contractual exchange, since contracting is embedded in social relationships (Granovetter, 1985).

Bringing a contracting process to a close is easier said than done. Many actors are involved, hence public sector managers are required to deal with diverging objectives, discourses, and disciplines—multi-actor complexity (Conteh, 2013). Furthermore, a PPP process raises uncertainty and ambiguity of a political nature due to its political salience and the presence of decision makers that behave opportunistically (Salet, et al., 2013). Finally, PPPs are complicated in terms of financing, technicalities, and long time frames, and they give rise to financial risks. These circumstances make the PPP procurement process a typical case of *complex contracting* (Brown, et al., 2015). All in all, a DBFM(O) contract will often require a significant number of formal clauses and demand detailed and expensive legal discussions. These circumstances cause the procurement process to be burdened with cumbersome negotiations and thus high transaction costs (NAO, 2007). Transaction costs are the costs associated with organizing competitive tendering as well as writing, monitoring, and enforcing contracts (Rahman & Kumaraswamy, 2002).[47] Given our focus on the procurement process, we exclude the final element of contract enforcement.

Transaction costs usually account for 5 to 10 percent of the value of a PPP deal (Dudkin & Välilä, 2005; Yescombe, 2007), so they can amount to millions of euros or more of taxpayers' money since we are talking about major projects. Transaction costs can also be measured in non-monetary terms, i.e., as the time spent to arrive at a contractual deal. In this chapter, we focus on the non-monetary aspect for two reasons. First, time is a very important matter if there is an urgent need for new infrastructure, and if many different contracts have to be signed simultaneously by a variety of governments that are involved in one particular PPP program—so-called *bundled procurement*. A stagnant process will negatively affect the commitment of these governments and thus endanger the deal that lies on the negotiation table.[48] Second, the data on the monetary aspect are often lacking. This is due to the immaturity of the PPP, the application of high levels of confidentiality (due to the involvement of the private sector), technical difficulties in aggregating the costs, or simply the non-existence of data (De Schepper, et al., 2015).

[47] In line with this definition, Dudkin and Välilä refer to the "legal, financial, and technical advisory costs incurred by both public and private sectors in the procurement and operational phases of a project" (2005, p. 3).

[48] See also Ariño et al. (2014), who emphasize that it is not only important what goes into the contract, but also how long it takes to craft the contract.

4.3 Standardization of contracts

Against the backdrop of high transaction costs in PPP trajectories, one of the main motivations to standardize contracts has been to settle agreements more quickly. We see standard contracts as model or template agreements that are preferred or prescribed by a government and therefore serve as strong guidance documents for infrastructure deals. A standard contract is typically drafted by one or more public sector bodies with assistance from law firms. It serves as a starting point for the negotiation process between the principal, i.e., the contracting authority, and the potential agents, i.e., private sector bidders—typically large-sized consortia of financiers, builders, and their subcontractors. Table 10 provides an illustration of clauses that are generally incorporated in a standard contract.

Table 10 Clauses and appendices included in standard contracts

Clauses	**Appendices**
Definitions and interpretation rules	Definitions
Obligations and duration of contract	Payment mechanism
Commitments over life cycle of contract	Communications protocol
Transition	Management plan
Variations	Output specifications
Relief events	Variation procedure
Early termination	Compensation on relief events
Liability and indemnities	Compensation on early termination
Non-compliance	Consultation committee
Contractors and shareholders	Financial close certificate
Intellectual property rights	Guideline for adapting financial model
Confidentiality	Insurance
Dispute resolution and applicable law	Dispute resolution regulation

Scholars argue that standard contracts have the capacity to bring about shorter decision-making and negotiation procedures (Akintoye, et al., 2003, p. 469). They allow both public and private actors involved in a PPP to better know what to deal with during the procurement phase. As such, HM Treasury (2003) believes that standard contracts help spread best practices and promote a common understanding of the main risks encountered in a PPP, so that negotiators will recognize or admit more quickly the need to include certain clauses. In doing so, the likelihood of contract and output misspecification can be reduced, and unforeseen costs (e.g., through time delays) can be reduced to a minimum (Iossa, et al., 2007b). Furthermore, transaction costs are presumed to drop since negotiation spaces become

narrower, which will lead to more concise negotiations.[49] However, the merits of using standard contracts are not as straightforward as they may look at first sight. We present two determining aspects that need to be aligned if a standard contract is to alleviate the process: (1) the control-oriented attitude of the principal and (2) the characteristics of an infrastructure project. If there is a lack of fit between these two aspects, the use of a standard contract will aggravate the contracting process rather than easing it, which will be reflected in a longer procurement process (i.e., higher non-monetary transaction costs). The remainder of this section couples these aspects and formulates propositions.

(1) Attitude and behavior of the principal

Rahman and Kumaraswamy argue that "an appropriate contracting method coupled with clear and equitable contract documents do not by themselves ensure project success where people work together in the face of uncertainty and complexity with diverse interests and conflicting agendas" (2002, p. 45). As a governmental authority usually acts as the main standard setter, in the early phase of a negotiation process a standard contract is more likely to fulfill the public sector partner's needs than the needs of the private sector partner (Cargill & Bolin, 2007). Moreover, due to the desire of the public sector to minimize the likelihood of opportunistic behavior of the private sector partner, the standard setter will be inclined to formulate and use the standard contract as a hierarchical arrangement aimed at maintaining control. The public sector partner may not be keen on conceding or deviating from the standard contractual clauses. The term *boilerplate* comes into play here.

Boilerplate provisions are standard clauses of language in a legal document that ideally save negotiators time and money with commonly used and understood language (Gilo & Porat, 2006). According to Cooper (2003), many (standardized) public contracts contain these provisions. Ironically, boilerplate can obstruct the contracting process. It can help the principal protect its own goals, for instance to satisfy policy requirements or reduce risks, which will be reflected in a significant number of mandatory and non-variable clauses and discrete norms—i.e., boilerplate—that are non-negotiable (Petsoulas, et al., 2011; Vincent-Jones, 2006).[50] There are situations in which boilerplate provisions and a rigid attitude of the public

[49] Reeves et al. (2015) mention the development of exemplar designs for repeat building types in order to reduce procurement times.

[50] See also Lenferink et al. (2014, p. 92), who refer to the competitive dialogue as a standard procurement procedure and DBFM as a standard PPP model. Both are supposed to create legal and financial certainties.

sector partner can be helpful in easing the procurement process, but there are also situations in which they can incur a difficult process and thus increase transaction costs (Korthals Altes & Taşan-Kok, 2010; Lenferink et al., 2013). We will elaborate on this below.

(2) Project characteristics

The extent to which a rigid application of a standard contract by the public sector partner benefits or harms a procurement process depends on the characteristics of the infrastructure that is on the negotiation table. Our proposition is that it is crucial that the way a standard contract is used matches the context and specifics of a project (cf., Giezen, 2013 on the importance of matching governance and complexity; Giezen et al., 2014). Some projects may require a strong dependence on boilerplate provisions while others will benefit from a looser or tailored use of standard contracts. By discussing two concepts that Williamson (1979) argues to be critical for describing transactions, *asset specificity* and *uncertainty*, we explore under which conditions public sector partners are likely to choose one approach (e.g., a loose application of a standard contract) over another (e.g., a strict application of a standard contract) to help reduce transaction costs.

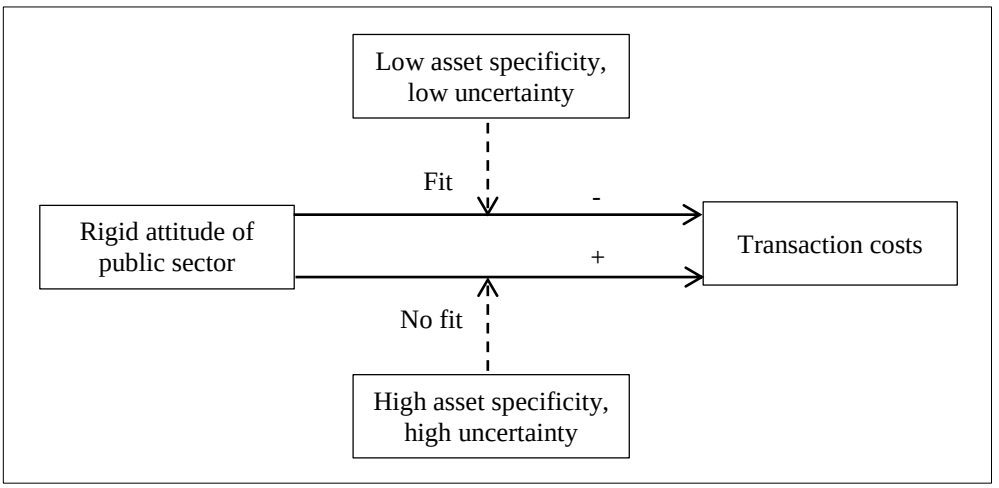
Asset specificity can be defined as the extent to which the investments made to support a particular transaction have a higher value to that transaction than they would have if they were redeployed for any other purpose (McGuinness, 1991). These can be physical or human investments that are specialized and unique to a transaction (Brown, et al., 2015; Williamson, 1985). The more specific the asset, the less transferable the investment to either another provider (i.e., another bidder offering this specific asset) or another purchaser (i.e., another public sector partner who is looking for this specific asset). As such, asset specificity makes parties on both sides of the negotiation table vulnerable and therefore committed to negotiating contracts very carefully. Moreover, once the contractual deal is closed and the investment has been made, both contractual partners will be operating in a bilateral exchange relation for a considerable period thereafter. “[W]here asset specificity is great, buyer and seller will make special efforts to design an exchange that has good continuity properties,” says Williamson (1981). This implicates high transaction costs. Contracts for the provision of public infrastructure often require a lot of specialized investment due to their technical specifics and the fact that they form a relative novelty to public officials. As such, they stimulate governments to invest in creating knowledge about new and complicated ways of financing, maintaining, and paying for services (Williamson, 2005). There is differentiation in asset specificity across and within sectors, however. For instance, some major civil engineering projects are a different ballgame than other construction

projects (Winch, 1989), and different sports infrastructure projects will likewise show variation in terms of asset specificity.

Transaction costs can further increase if contract negotiators face high degrees of uncertainty. Contract drafting is about making present decisions about future aspects of a relationship—*presentiation* (Macneil, 1980). However, since actors do not have complete and verifiable information on what could possibly happen in the future (Williamson, 1985), they can only write incomplete contracts that "do not deal explicitly with all possible contingencies and leave many decisions and transactions to be determined later" (Bolton & Dewatripont, 2005, p. 36). The uncertainty involved in PPP is positively related to the duration of the contract that is signed. In addition, uncertainties can be incurred by sector-specific characteristics. For instance, a hospital will generally involve more uncertainty than a school, since technological developments in the medical world are going faster, are more difficult to foresee, and have a bigger impact on costs. In this vein, the sports sector demonstrates variations in foreseeability across a range of sports and facilities; some of them are constantly popular while others are more prone to fluctuating demand, and in some cases it is easier to develop parameters than in others.

We hypothesize that public sector partners will use standard contracts differently across various sports infrastructure projects, and that they will match their attitude and behavior to the characteristics of a particular project in order to pay the lowest possible transaction costs. The propositions are that projects with low asset specificity and low uncertainty are more fit for a rigid use of a standard contract: in line with the relatively common product the government wants to procure, it can set clear boundaries on what the projects should comprise and try to remain within these boundaries as well as possible. The more specific and uncertain a project, the more difficult it will be to apply a rigid application of a standard and still keep transaction costs down. These propositions are well-suited for falsification, and one or more empirical deviations will allow us to modify our thesis. Figure 4 illustrates our theory-based expectations at a general level, and we will tailor these propositions to the FSIP after the section on the methodology of this study.

Figure 4 Theory-based expectations on the use of standard contracts



4.4 Methods

This study was conducted in Belgium in 2013 and involved an embedded case study of the FSIP. It incorporated three subunits of analysis (i.e., subcases) in order to achieve a more detailed level of inquiry and increase the explanatory power of the research (Miles & Huberman, 1994, p. 172; Yin, 2009, p. 46 on Type 2 designs for case studies). The subcases were the contracting processes toward (1) artificial pitches, (2) sports halls, and (3) multifunctional sports centers—three of the four types of sports facilities that were built within the purview of the FSIP. By taking the results on these subcases together, we are able to return to the FSIP as a whole.

The study explains the use of standard contracts within the subcases through extensive, in-depth description (Eisenhardt, 1989). This *thick description*, originated and so named by Geertz (1973), is a common method of presenting empirical findings that enables accounting for causal complexity, considering contextual factors in detail, and putting findings in perspective. These considerations are important in regard to achieving a high degree of internal validity when examining such a complex social phenomenon as PPP. Moreover, as long as a case is thoughtfully selected (Eisenhardt & Graebner, 2007; Gerring, 2007), the case study strategy facilitates theory building and testing in unexplored fields (e.g., the nexus of PPP and standard contracts) and underinvestigated jurisdictions (e.g., Belgium) (Eisenhardt, 1989; Flyvbjerg, 2006a; Rohlfing, 2012). We started out with a few hypotheses which we sought to refine by exploring the academically unknown field of standard contracts in PPPs and gathering and analyzing rich, qualitative data. The hypotheses are posed in the next section.

Eventually, we matched the empirical patterns with our theoretical expectations (Cao et al., 2004).

We mainly selected the FSIP for reasons of theoretical replication (Yin, 2009). The FSIP comprised projects with varying characteristics (i.e., our subcases), hence it was expected to demonstrate differences regarding the impact of standard contracts. This would assist in providing a deeper theoretical understanding (Eisenhardt & Graebner, 2007). Thus we predicted contrasting results for the different projects, yet for predictable reasons—see our theoretical propositions. Evidentiary support for our theory would increase our confidence in the theory's validity, and a failure to find support would induce significant modifications (Rohlfing, 2012). We were able to control for potentially disturbing factors since all examined projects were constructed within one geographical region (Flanders), under the umbrella of one PPP program, and led by one and the same public actor, i.e., a taskforce established within the Flemish government.

In addition to the previous and rather theoretical motivation, as a relatively matured program the choice of the FSIP allowed a retrospective analysis of the projects involved. We thought it more likely that a mature program would open doors to previously sensitive or undisclosed political or business information, and therefore it would be more suitable for a comprehensive and replicable analysis. Furthermore, by studying the FSIP we focus on a country (Belgium) and a sector (sports infrastructure) that have only been marginally examined in terms of PPP and contracting. Although Belgium's federal, regional and local governments have invested billions of euros in PPP programs and projects, literature on how these ventures are governed is remarkably scarce (De Schepper, et al., 2014; De Schepper, et al., 2015; Van Gestel, et al., 2014). Moreover, academic studies of PPP have generally focused on horizontal infrastructures (e.g., roads) and not on social infrastructure types, let alone sports facilities. Finally, scholarly work on PPP and sports infrastructure development has mainly dealt with investments related to mega sports events (Cabral & Silva Jr., 2013) and sports leagues (Long, 2013). Less sizable developments have received much less academic attention. This is striking because these are the projects average local governments deal with most regularly.

As we unfold the assumed relationship between standardization and transaction costs, we address the link between the use of standard contracts and project characteristics on the one hand, and the transaction costs of the procurement phase on the other. We operationalized these variables as follows (see also Table 11 on page 77). The use of the standard contract was measured on the basis of extensive descriptions that focused on answering

typical “how” and “why” questions: who was involved in drafting the standard contract? Where did the standard contract find its origin? What attitude did the public actor assume during the negotiation phase? Was the standard contract suitable for this specific project? What changes have been applied to arrive at a workable contract? We also collected information on the intensity and atmosphere of the contractual negotiations.

Project characteristics were measured using indicators of asset specificity and uncertainty. It is important to note that we interpreted these indicators in a relative manner. That is, we put the asset specificity and uncertainty of every subcase in the perspective of the other two subcases. First, as for asset specificity, we resorted to gaining insight into the highly specialized human skills that were needed across the range of different projects (see Williamson, 1983 on human asset specificity). We determined the relative positions of the subcases by considering the investments in specific financial and technical knowledge that was required in every subcase. These investments would be larger in projects that involve higher capital costs, major risk management issues (financial aspects), and larger contracts (technical aspect), but lack comparative precedents (thereby requiring an extensive learning-by-doing process). Second, uncertainty was measured on the basis of each subcase’s relative position in terms of the duration of the contract, and the robustness of the respective sports branch in which a project was built. The latter served as a proxy indicator of the project’s sensitivity to changing circumstances in the sports sector; the lower this sensitivity, the lower the degree of uncertainty.

The dependent variable, non-monetary transaction costs, was measured on the basis of the time actors needed to arrive at specific decisions in the procurement process. We distinguished four time periods. First, in a procurement process there usually is a pre-tender phase in which contracts and other tendering documents are drafted. This period is reflected as the gap between the announcement of a project and the actual launch of a tendering process (tender call). The size of this gap could indicate difficulties in the drafting of a (standard) contract. Second, we looked at the total duration of tendering processes; the time it took actors to get from tender call to financial close.[51] Third, the contractual negotiations between the public sector and the private bidders form a key part of the tendering

[51] The finalization of PPP arrangements involves a contract close and a financial close, which are typically executed on different dates. The period between these dates varies from days to weeks or even months. In this chapter we only refer to the financial close since in each project contract close and financial close took place within the time frame of a few days or less.

process. They can incur delays if the contractual clauses drafted upfront do not fit the context in which they are used. Fourth, we measured the duration of the periods in which preparatory works were executed—these take place after financial close and before the start of construction. A lengthy preparatory period could indicate issues related to obtaining a building permit. Finally, we also measured the duration of the procurement process as a whole, i.e. from proposal acceptance to the start of the construction works.

Table 11 Operationalization of variables

Variables	**Operationalization**
Use of standard contract	- Reasons for creating standard contract - Origin of standard contract - Actors involved in creating standard contract - Negotiation specifics: attitude and behavior of public and private actors involved; contractual changes applied; intensity and atmosphere of negotiations
Project characteristics	- Relative human asset specificity: investments in developing financial and technical knowledge specific to project; (absence of) comparative precedents - Relative uncertainty: contract duration; sensitivity of project to changes in sports sector
Non-monetary transaction costs	- Gap between proposal acceptance and tender call - Duration of tendering process, from tender call to financial close - Duration of contractual negotiations - Duration of preparatory works, from financial close to start of works - Total duration of procurement process, from proposal acceptance to start of works

Two data collection methods have been used in this study: desk research and semi-structured interviews. As for desk research, the data-gathering process was aimed at a combination of sources at national and subnational levels, spanning the period between 2003 (when the official Flemish PPP policy strategy was initiated) and mid-2013. These included publicly available, official regional government documents, which were obtained through a search query in the online database of the Flemish Parliament, and project-specific documents at the central, provincial, and local government levels. We reconstructed the case of the FSIP on the basis of these documents, which resulted in a timeline of events and partial explanations for the courses of action undertaken by different actors. In order to verify and enrich these preliminary explanations, we spoke to 22 experts through semi-structured interviews. The respondents had been directly involved in one or more of the projects that were constructed. We spoke to 14 public officials who either were members of Sportfacilitator or responsible for an FSIP project within their jurisdiction (regional, provincial, or local level).

We also interviewed 5 respondents from private sector entities that were assigned to build one or more FSIP projects. The remaining 3 interviews concerned respondents with other professional profiles. Confidentiality requirements preclude the publication of the names of informants, but Table 12 gives an indication of their backgrounds.

Table 12 Overview of interview respondents

Respondent	**Organization**	**Date**
A.	Sportfacilitator	27 May, 2013
B.	Law practice	19 June, 2013
C.	Non-profit organization	4 July, 2013
D.	Consultancy firm	8 July, 2013
E.	Sportfacilitator	9 July, 2013
F.	Sportfacilitator	9 July, 2013
G.	Contracting authority	18 July, 2013
H.	Sportfacilitator	22 July, 2013
I.	Private sector partner	25 July, 2013
J.	Sportfacilitator	26 July, 2013
K.	Private sector partner	30 July, 2013
L.	Contracting authority	31 July, 2013
M.	Contracting authority	2 August, 2013
N.	Private sector partner	12 August, 2013
O.	Private sector partner	21 August, 2013
P.	Private sector partner	21 August, 2013
Q.	Contracting authority	23 August, 2013
R.	Sportfacilitator	26 August, 2013
S.	Contracting authority	18 September, 2013
T.	Contracting authority	19 September, 2013
U.	Contracting authority	23 September, 2013
V.	Contracting authority	10 October, 2013

The interviews were conducted in the summer of 2013 and lasted 85 minutes on average. We had defined upfront a topic guide covering a wide range of issues, including the creation and use of the standard contract, the complexity of the projects at hand (e.g., asset specificity and uncertainty), and the overall performance of the FSIP in terms of transaction costs and effectiveness. In addition to this non-exhaustive list, the interviewees had the opportunity to reflect upon issues outside this predefined scope (Liamputtong & Ezzy, 2005). The conversations were recorded and fully transcribed, and after familiarizing ourselves with the data by thoroughly reading the transcripts we started analyzing the content through a systematic

coding process using QSR NVivo 10 software (Bazeley, 2007). The data were arranged by labeling the statements of the interviewees and categorizing these into themes (Braun & Clarke, 2006; Gibson & Brown, 2009, pp. 127-144). These themes had either been identified upfront, on the basis of our theoretical framework (i.e., deductive coding), or were developed on the basis of the empirical data (i.e., inductive coding). In order to uncover specific patterns, co-occurrences of themes, and recurring issues, we conducted assignments querying the aggregated data (Boyatzis, 1998). The results of these queries were used to interpret the collected views. Our interpretations were shared with the interviewees to ensure empirical accuracy.

4.5 The Flemish Sports Infrastructure Program

In the early 2000s, Flanders launched a policy initiative for the renewal of sports infrastructure by commencing public-private partnerships: the Flemish Sports Infrastructure Program or FSIP (Flemish Parliament, 2006). The Flemish government served as the coordinator of the Program, and within that government a taskforce named *Sportfacilitator* was set up as the leading executive body. Five public actors participated in Sportfacilitator: (1) PMV, a publicly owned but independent investment company; (2) the Flemish Department of Culture, Youth, Sports, and Media; (3) the Cabinet of the Minister of Sports; (4) the Flemish PPP Knowledge Centre; and (5) Bloso, an autonomous agency with expertise in the construction and maintenance of sports infrastructure.

Two other types of actors were involved in the FSIP: contracting authorities—i.e., provincial and local governments—and private sector partners. The contracting authorities were active on the demand side of the policy arena; they applied for participation in the FSIP by submitting project proposals for sports infrastructure. Once a proposed project was selected for construction, the demanding local government mandated Sportfacilitator to search for a private sector partner that could actually develop the sports infrastructure. As soon as this private partner had been found, a privately held special purpose vehicle (SPV) that was in charge of designing, building, financing, maintaining, and sometimes also operating the infrastructure, was established. The arrangements were laid down in DBFM(O) agreements between the SPV and each contracting authority. In return for the delivery of the DBFM(O) services, the contracting authority paid a periodically recurring availability fee to the private partner during the operational phase of the PPP's life cycle. If necessary, additional funding for SPVs could be rendered through a public investment fund connected to the FSIP (Invespo). All projects involved in the FSIP contained the five

elements of PPP that we discussed in the theoretical section of this chapter. The Flemish government divided the works into four domains: (1) artificial pitches, (2) sports halls, (3) swimming pools, and (4) multifunctional sports centers. For practical reasons, we do not discuss the third domain in this chapter. As indicated earlier, artificial pitches, sports halls, and multifunctional sports centers are the subcases of this embedded case study.

An important feature of the FSIP was the bundled procurement of projects: the procurement of multiple similar projects in one group so that they could be granted to a single private partner and be constructed more or less simultaneously. This strategy was applied in the subcases of artificial pitches and sports halls. Although bundling is not a new phenomenon in the field of procurement, it certainly has remained a relatively uncommon scheme in the field of PPP. By bundling the procurement of artificial pitches and sports halls, a layer of standardization was added to these domains; not only would there be an extensive use of standard contracts, but also a standardized design. We did not foresee this evolved type of standardization in our theoretical framework. However, as we encountered it during our data collection and became aware of its importance to the performance of the FSIP, we decided to include it in our analysis, assuming that it would allow for a more comprehensive account of the impact of standardization. In contrast with artificial pitches and sports halls, the multifunctional sports centers were developed on an individual basis.

We refer once again to Figure 3 (page 35) which summarizes schematically the organizational structure of the FSIP. By the time of the analysis (end of 2013), the FSIP had delivered the following infrastructure: 35 artificial pitches (a bundle of 29 pitches and a bundle of 6 pitches), 9 sports halls (all in one bundle), and 1 multifunctional sports center (A). A second multifunctional sports center (B) had just entered the construction phase and was included in the analysis.[52] Table 13 provides specific information about the projects involved in the FSIP. The data were extracted from the Flemish Parliament's annual report on alternative financing (Flemish Parliament, 2013a). Compared to most PPPs, the projects involved in the FSIP are of a relatively small size; their capital costs range from barely half a million euros for an artificial pitch to 40 million euro for a multifunctional sports center.

[52] Multifunctional sports center B has been operational since the spring of 2015.

Table 13 General information about FSIP projects

Project specifics	**Artificial pitches**		**Sports halls**	**Multifunctional sports centers**	
	Bundle 1	**Bundle 2**	**Bundle 1**	**A**	**B**
Number of projects	29	6	9	1	1
Contract duration in years	10	10	30	30	30
Capital costs in euro, incl. VAT (project average)	13.996.000 (482.620)	2.913.000 (485.500)	32.399.000 (3.599.888)	10.828.000	39.701.000

Sports facilities and standard contracts: some expectations

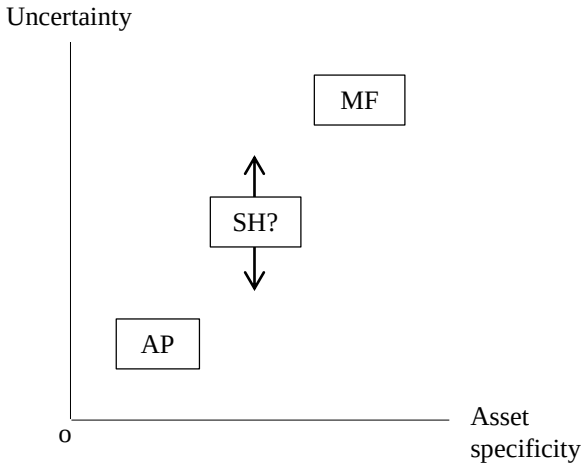
In terms of our expectations for the use of standard contracts in the FSIP, we discuss asset specificity and uncertainty in regard to the three subcases (see Table 14 on page 83 for an illustration). First, in the domain of artificial pitches we foresee low levels of asset specificity and uncertainty. An artificial pitch requires relatively limited financial resources, and it is straightforward in terms of technical specifics. Moreover, many (local) governments have built up experience with this kind of projects over time. Therefore, projects in the domain of artificial pitches will require relatively little investments that are specific to their construction. The short duration of the DBFM agreement limits the uncertainty of the deal; the bilateral exchange relationship hardly incurs a "shadow of the future." This uncertainty is further limited by the characteristic of artificial pitches being a highly adaptive type of sports venue: they can be used for any field sports, which are arguably the most robust branch of sports. This is not likely to change within a time frame of a decade, and if it does—say rugby drastically increases in popularity at the expense of football—this will not be an unsolvable problem. All in all, artificial pitches are a perfect fit for a rigid use of standard contracts, hence we expect the Flemish government to handle this domain of facilities accordingly by falling back extensively on boilerplate provisions in order to ease the process as much as possible and keep transaction costs to a minimum.

Sports halls require slightly more specialized investments than artificial pitches, yet overall we still consider their asset specificity to be relatively limited. The capital costs, and therefore the financial risks, are higher than in the domain of artificial pitches, hence it requires actors to acquire a deeper understanding of this aspect. In terms of technicalities and materials, sports halls remain simple building endeavors that are typically built the same way across different locations, and many local public executives have

experience with sports halls projects. A sports hall project will raise more uncertainties though, particularly due to the long-term contract (30 years) and the fact that indoor sports (e.g., gymnastics, volleyball) are smaller sports that may be more vulnerable to fluctuations in popularity than, for instance, historically robust field sports. All in all, it is more difficult to delineate the degrees of asset specificity and uncertainty in this domain than it was in the former domain. Therefore, we expect the Flemish government to struggle with its procurement approach: how to make the standard contract, as well as the way of using it, feasible with a bundle of sports halls within one contractual deal? Would it be better to focus on lowering transaction costs and thus apply a strict approach including heavy reliance on standardized content, or do sports halls bring in too much asset specificity and uncertainty to follow a standardized approach? The latter approach would definitely incur lengthier procedures than the former.

Finally, relative to the former two domains, the domain of multifunctional sports centers contains the highest degrees of asset specificity and uncertainty. Multifunctional sports centers are capital-intensive and atypical assets that are not built on a regular basis; only a few local governments can afford to build them, and even less governments (already) have the capacity to understand how projects like these work. Local government officials will struggle significantly with the financial and technical complexities that come up during the procurement of multifunctional sports centers, hence they will experience an intensive learning-by-doing process. In addition, there is the uncertainty inherent to a 30-year contract which further increases due to the incorporation of an operation component in the contract. Calculations and extrapolations of customer figures and tariff setting need to be included in the contractual agreement, which is a challenging task because one has to consider different market development scenarios. We expect the Flemish government to refrain from using standard contracts in a rigid manner in this domain. Applying an approach that is aimed at sustaining boilerplate provisions would aggravate the burden of transaction costs in cases like these. The public sector partner would not be open for discussion on aspects of asset specificity that require tailored decisions. This would be a prelude to tough negotiations.

Table 14 Asset specificity and uncertainty in FSIP projects, complemented with expectations on the use of standard contracts

Project characteristics	**Theoretical expectations**
	Artificial pitches (AP): strict contracting process, swift negotiations
	Sports halls (SH): project characteristics are more difficult to delineate, hence difficult decision for government to apply rigid approach or not
	Multifunctional sports centers (MF): standard contract will be used unsuccessfully unless public sector partner applies it loosely by dropping boilerplate

4.6 Why and how a standard contract was drafted

In this section and the next one, we explain the impact of the use of standard contracts on the non-monetary transaction costs of the FSIP. We argue that the contribution of standard contracts has been variable; they worked very well in the domain of artificial pitches, but burdened both public and private actors involved in the other two domains due to what we argue to be a lack of fit between the use of the contract and the specifics of the transaction. We start out with a number of important remarks concerning the creation of a standard contract for the FSIP.

Early PPP projects in Flanders used to be characterized by lengthy decision-making procedures and tendering processes, the public sector's need for external assistance, and tough, juridified contract negotiations. With the inception of the FSIP in 2008 came the plan to draft a model contract that would serve as a basis for all projects to be developed within the program. First, it was claimed that a standard contract would enable swifter negotiations. Second, a standard contract would create opportunities for achieving a common understanding regarding PPP procurement among both public and private actors. As for the local governments involved, they would not be burdened with the difficult task of drafting long-term infrastructure contracts entirely by themselves. Hence, they particularly welcomed the support provided by Sportfacilitator in taking up this task and helping them become familiar with the largely unknown PPP phenomenon. With regard to the private actors involved, it was assumed that "if they know well what to

expect of a contract, they would be inclined to wield lower risk premiums and include less contingencies" (respondent F).

The two previous arguments that advocate the use of standard contracts agree with those put forward in the theoretical section. However, there is a third and final argument that has hitherto not been discussed in this chapter, namely that using a standard contract was a necessity for projects to be procured in bundles. A private actor would never enter a bidding procedure for a large number of similar small-scale projects if that actor was expected to sign contracts that are entirely customized to the interests of each contracting authority involved—the transaction costs would be too high to allow for an efficient venture. Variety-reducing standard contracts were required to make feasible the bundled procurement of small-scale projects, "otherwise we would have ended up in considerably confusing situations for the private sector partner," said respondent A. Respondent B confirmed this statement by drawing a parallel with a Flemish PPP program that involved a bundled procurement strategy for the construction of 170 schools: "It would be totally unacceptable to have 170 different DBFM contracts with different terms, grace periods, or penalties. That would be unmanageable." Various other respondents agreed on this.

As soon as the FSIP was given the green light and local governments were encouraged to apply for inclusion in the program, the process of drafting a standard contract was initiated. Within Sportfacilitator, a working group was established consisting of representatives of the participating organizations and a number of external advisors from major law firms. It decided to start by creating a model DBFM contract for the construction of artificial pitches. In order not to reinvent the wheel, the team took existing contracts from outside the sports infrastructure sector as the point of departure, namely DBFM contracts for large road infrastructure projects in Flanders. In turn, the contract for artificial pitches paved the way for standard contracts in the domains of sports halls and multifunctional sports centers. Respondents E and F argued that "contractual amendments or changes from one project to another are only minimally required. If business cases are mostly identical, the contract should be mostly identical as well." A look into the standard contracts indeed shows that every procurement process took off with more or less the same model agreement. Most elaboration was required in the domain of multifunctional sports centers, since in this domain the standard DBFM contract had to be expanded to have an operation component.

Informants who were directly involved in the contract drafting process stated that it took considerable time and effort to arrive at acceptable model contracts. Additionally, interviewees based at local governments whose

project proposals were selected for construction complained that there was a significant time gap between the announcement of their proposal being selected and the next steps of the procedure, i.e., mandating Sportfacilitator and commencing the tendering process (see Table 15). After their proposals for artificial pitch infrastructure had been selected for the program, local governments had to wait 6 months before the tender call for the first bundle of artificial pitches was actually promulgated. Moreover, as this bundle was considered a pilot case, other FSIP projects were put on hold indefinitely. For instance, in the domain of sports halls the gap between proposal acceptance and the next procedural step was 21 months. According to respondents A and R, these periods of standstill were partly due to the fact that it took more time than expected to create standard contracts and other documents required to start the tendering process (e.g., a mandate agreement and tendering guidelines). Informant R admitted that "the period between the moment of informing local governments of their selection and the moment of signing the mandate agreement and launching the tender call was far too long." Six other respondents also referred to the fact that documents required for mandating, tendering, and contracting were not ready in time to ensure a swift procedure. "It would have been better if the entire procedure, including those documents, had been elaborated before local governments were asked to come up with project proposals," said respondent V.

4.7 How standard contracts were used

As we look at the non-monetary transaction costs involved in the projects of the FSIP (Table 15), it becomes clear that these projects have been characterized by procurement periods of considerable, even excessive length. In almost every subcase selected for analysis, decision-making procedures took more time than expected, and tough negotiations required partly unexpected efforts on both sides of the negotiation table. In discussing the FSIP as a whole, Respondents E and F affirmed that "in terms of contracting, it took considerable effort to come to a solution. We had searched for a long time when we finally arrived at the contracts we use now." This message was reinforced by respondent J, who emphasized that "the administrative follow-up of the program has cost more than initially foreseen," in terms of both time and money. As the impression is that the procurement processes within the purview of the FSIP have not been walks in the park, the stage is set to discuss the role of the wide and systematic use of standard contracts in the program. Our contribution to the debate is to address the main dilemmas encountered in the three subcases.

Table 15 Non-monetary transaction costs of FSIP in number of months

Variable	Indicators	Artificial pitches		Sports halls	Multi. sports center A	Multi. sports center B
		Bundle 1	Bundle 2	Bundle 1		
Non-monetary transaction costs	Proposal acceptance – tender call	6	26	21	13	14
	Tendering process / of which concerned negotiations	17 / 6	9 / n/a[53]	23 / 8	25 / 8	39 / 11
	Preparatory works	2	1	4	2	7
	Total[54]	23	34	46	38	58

4.7.1 Artificial pitches: successfully maximizing simplicity

All interviewees emphasized the relative simplicity of artificial pitches regarding their construction. Based upon the experiences with the 35 artificial pitches that were developed within the FSIP, there was agreement on their suitability to be procured in a strictly standardized and bundled fashion. The general success of projects in this domain was acknowledged, especially when compared to the other projects. What has been the role of standard contracts in this domain?

Given both the low asset specificity of artificial pitches and the involvement of many local governments, mostly with limited PPP expertise, Sportfacilitator aimed to develop a relatively simple standard contract as a starting point for the negotiation phase regarding the first bundle. Respondent K, who was involved in the negotiations on behalf of the private sector partner, confirmed that the contractual documents provided by Sportfacilitator were sufficiently clear and thorough to enable a proper bid. This clarity certainly helped ease the procurement process, but it is likely that another element has made an equally significant contribution here, namely the fact that the preferred bidder was able to finance the entire bundle of 29 artificial pitches with its own capital, i.e., without the involvement of a bank. This condition allowed negotiators on both sides of the table to be flexible, as respondent B indicated. Once the negotiation phase was finished, it was up to the private sector partner to sign a DBFM agreement with each local government involved. Respondent K described

[53] There were no negotiations in this process, since a different procurement method was applied (request for quotation).

[54] As for the previous indicators, numbers were leveled up as months were only counted as a whole. With regard to the total non-monetary transaction costs, possible double months were filtered out, hence the numbers do not add up. It is also important to note that the numbers differ slightly (i.e., a month or two) from those presented in Table 7 (page 37) since I applied a different way of counting in that chapter.

the great lengths the private sector partner had to go when dealing with this contract signing process, having to establish its "own express mail service, since public sector partners all over Flanders had to sign the contracts and send them back to our company." This requested time and effort, but there was no alternative given the approach of mandating and bundling.

It took much less time to procure the second bundle of artificial pitches—9 months, if we only consider the tendering process. According to respondents E and F, this was mainly due to two reasons. First of all, there were no negotiations involved at all, since a different procurement method, a request for quotation, was applied. Second, potential bidders knew what they were dealing with when the tender call went out. Sportfacilitator used the same standardized contracts and related tendering documents as before, hence no misunderstandings arose among market players. All in all, even though it took 23 months to procure the first bundle of artificial pitches (and even 34 months in the case of the second bundle, if we include the gap between proposal acceptance and tender call), there have been neither controversies nor conflicts in this domain. The necessity of drafting and strictly using standard contracts was quickly acknowledged by all partners involved.

4.7.2 Sports halls: bringing local interests in and losing the benefits of a standard contract

In the domain of sports halls, the interviewees disagreed on the use of standard contracts—just as we expected the government to struggle with making a decision to apply a strict or a loose approach. Some explained that contracts for sports halls are not fit for standardization due to the widely diverging interests of local governments, which are likely to overrule the standard format. Others advocated the use of standard contracts, with the proviso that a sufficient degree of rigidity should be involved so that the voices of local governments are subdued, to put it bluntly. We elaborate on this debate by explaining a delicate issue facing the FSIP: the immanent tension between the use of mandate agreements and standard contracts on the one hand and local governments' interests (which affect the asset specificity and uncertainty side of the equation) on the other.

In each sports hall project, Sportfacilitator was mandated to lead the entire decision-making procedure from the moment that local governments signed a so-called *mandate agreement*. If the preferred bidder set its price offer below the mandate price set, local governments would be obligated to proceed with the project. If the preferred bidder failed to set its price offer below this mandate price, local governments would have the opportunity to exit the procedure free of charge. Initially, Sportfacilitator allowed local governments to choose from three standardized types of sports halls (small,

medium, and large in size), and each type had a specific mandate price attached to it. At this moment, the asset specificity of the sports halls thus was relatively low. It was only after the negotiations between representatives of Sportfacilitator and the preferred bidder that local governments would see the specific plans for their sports halls. When this finally occurred, it appeared that the differences in requirements of local governments went further than just the size of their anticipated sports halls. Sportfacilitator responded to this situation by giving local governments more room to determine technical specifications and conditions. As such, it considerably increased the degree of asset specificity. Accordingly, it loosened the format of three standardized types of sports halls and started to consider each hall as its own case. Respondent D commented on this with a metaphor, saying that the domain of sports halls moved from "off-the-peg clothing to custom-made suits," and respondent H aptly articulated that "due to this lack of standardization, the initial promise of attractive pricing could not be kept."

Sportfacilitator lost track of the initial technical specifications and conditions of the three standardized sports hall types, and by allowing local governments to push their interests through, the room for negotiation was expanded instead of curbed. Consequently, the standard contract lost its impact and was not able to keep its cost-saving promise. "There is no point in standardizing contracts if you refuse to standardize the specifications and conditions," said respondent O. Several respondents argued that lengthy procurement phases could have been avoided if Sportfacilitator had taken a much more rigid attitude toward local governments from the very beginning—by not allowing them to interfere.

4.7.3 Multifunctional sports centers: standard clauses versus asset specificity

The interviewees unanimously saw the domain of multifunctional sports centers as the most controversial branch of the FSIP. At the time of the analysis, only one out of nine planned sports centers was operational, which hints at the difficulties involved in procuring these projects with significant asset specificity. Standard contracts played a key (and much-disputed) role in the two multifunctional sports center cases we examined. We will argue that the origin of the standard contract and the attitude of Sportfacilitator at the negotiation table collided with the characteristics of the transaction, resulting in lengthy and costly decision making.

As we mentioned earlier in this chapter, the FSIP's standard contracts originated from the road infrastructure sector. However, according to respondent C, "a multifunctional sports center is not nearly the same as a

bridge or a tunnel." He thereby hinted at the technical and financial simplicity of sports infrastructure in relation to road infrastructure. As the negotiations took off with a relatively complicated model contract, tensions between public and private negotiators arose very soon. Respondent I, who was directly involved as a private actor in the negotiations concerning multifunctional sports center B, emphatically said that the origin of the standard contract has been one of the major stumbling blocks: "The initial document was packed with requirements and guarantees that would be primordial to such economically important projects as roads, bridges, and locks, but not to sports infrastructure projects." For example, the model agreement included strict penalty clauses that were deemed inappropriate in the sports sector. Respondent I was clear on the implications of this:

> If a highway is closed for a day, it will have severe economic effects, so there is no doubt that heavy penalty clauses are required in the contract. Should a swimming pool be closed for a day, that would be inconvenient, but not an economic disaster. If you intend to attach heavy penalties to the temporary closure of a swimming pool, you are likely to end up with an unnecessarily expensive project since we [the private sector partner] will calculate the risks incurred by these strict clauses. (Respondent I)

Respondent P, who was involved in the field of sports halls, also addressed this issue by pointing to the commonplace of "copying and pasting" clauses from one contractual document to the other: "As a result, the contract includes elements that are actually not applicable."

Respondent N strongly agreed with the points made above. He stated that due to the high initial risk to be transferred to the private sector partner—as indicated in the standard contract—it was not possible to speak of a well-balanced contractual agreement at the start of the negotiation phase. Several public sector respondents backed this argument. For instance, respondent M explained that "a number of contractual clauses had to be modified during the negotiations to deliver a workable contract." Eventually, the penalty clauses and the associated system of reduced availability fees in case of underperformance were loosened, as there was a high probability of "the preferred bidder throwing in the towel and leaving the negotiation table" (respondent S).

Based upon the interview findings, we have reasons to believe that in the domain of multifunctional sports centers, standard contracts were used rather strictly by Sportfacilitator to defend the interests of the public sector. As respondent S commented, "we have experienced that the standard contract was nearly unalterable. We gave much effort formulating

comments with regard to amending the standard contract, only to find out that in most cases Sportfacilitator retained the standard clauses." A typical example of the rigid attitude of Sportfacilitator can be drawn from a major topic that frequently arose during negotiations, namely a conflict concerning the inclusion of public guarantees in the contract. The negotiations began with a standard contract that prohibited the inclusion of public guarantees. Respondent F explained this as follows: "The project was explicitly required not to burden the public budget, meaning that a full governmental guarantee was out of the question." Nevertheless, this highly rigid financial clause was anything but feasible due to the deplorable state of the financial market and the high risk profile of multifunctional sports centers. Sportfacilitator did not immediately acknowledge the severity of this issue and refused to step away from its starting point for a long time in an attempt to defend the public sector's interests as much as possible. However, as time passed and negotiations failed to make any progress, Sportfacilitator ultimately had no choice but to assume a more flexible attitude and permit governmental guarantees in the DBFMO agreement.

In the domain of multifunctional sports centers we have seen the perverse and undesirable effects of using standard contracts in a strictly manner where asset specificity and uncertainty are omnipresent. The strict penalty clauses and the prohibition of governmental guarantees can be considered typical boilerplate provisions, and Sportfacilitator was not keen to make concessions on these issues. In sacrificing too soon too much of its own preferred terms, Sportfacilitator would have threatened too quickly the objective of the Flemish Government to keep large capital expenditures off its balance sheet. As the preferred bidder soon condemned the position of Sportfacilitator regarding these boilerplate provisions, the negotiations quickly took a legal twist and transitioned to a lawyer's playground: "Juridical aspects started to prevail at the cost of sports aspects" (respondent C), and the complexity of the contractual agreement started to increase.

4.8 Conclusion

In this chapter, we have discussed at length the use of standard contracts in a Belgian PPP program in the sports sector. We address a number of vital issues relative to the nexus of using standard contracts and transaction specifics (asset specificity and uncertainty) that governments need to consider when programs involve extensive public-private cooperation. This concluding section summarizes the findings and ties up the theoretical and empirical strands of this study.

Our argument has shown that the ways of using standard contracts diverge across domains, and that making decisions on how rigidly or loosely a standard should be applied is not nearly as easy or straightforward as one would think on the basis of our theoretical expectations. We observed both successful and unsuccessful cases due to (in)consistencies between transaction characteristics and the way in which standard contracts were used. While the rigid use of standard contracts was feasible in the bundled procurement of artificial pitches, problems arose in larger and riskier projects as these lacked a match between the type of use and the type of transaction. In addition, some doubts can be raised as to the origin of the standard contracts used; the documents were based on contracts designed for the road infrastructure sector, which some respondents found odd. Yet we do not attribute the dilemmas encountered in the FSIP to poor contract drafting, but to a problematic use of contracts.

We began our study of the FSIP by identifying theory-based expectations about how the government would use standard contracts, and how it would fit the type of use (either rigid or loose) to the infrastructure asset that was to be built. As we confront the theoretical patterns with the empirical findings, a couple of remarks can be made on the basis of the domains of sports halls and multifunctional sports centers (see Table 16 on page 93). A mistake in using standard contracts can be a too-rigid, too-loose, or too-versatile application of the standards involved. In the FSIP we have seen examples of two of these. As for the bundle of sports halls, we noticed a somewhat versatile application. The procurement was disrupted because Sportfacilitator let local governments interfere in the process and granted them a louder voice in the decision-making process. By loosening the use of standardized contracts and designs, Sportfacilitator unintentionally triggered uncertainty about the financial package attached to the entire bundle of sports halls. Had Sportfacilitator retained its rigid, standardized plan for these sports halls, there might have been less severe delays. On the other hand, holding on to the original plans would have incurred a wave of project dropouts, so either way there would have been undesirable effects. We foresaw this struggle of the government, as the asset specificity and uncertainty of sports halls are not as clear-cut as they are on artificial pitches (both low) and multifunctional sports centers (both high). The procurement of the multifunctional sports centers laid bare the rigid attitude of Sportfacilitator as it kept itself from loosening standard contractual clauses on penalties and guarantees for a considerable period of time, thereby further complicating the already challenging negotiations of facilities that require very specialized investments. Our respondents criticized Sportfacilitator for its persistently rigid attitude during the negotiations. However, Sportfacilitator had to try to arrive at a contract that would be

compatible with the Flemish Government's objectives of major risk transfer and off-balance-sheet financing. All in all, the use of standard contracts became problematic where the principal found itself involved in larger and riskier projects, and retained a strict attitude so as to try to keep transaction costs down (i.e., in the domain of sports halls, before local governments expressed their concerns) or defend the Flemish Government's policy (i.e., in the domain of multifunctional sports centers).

Theoretically, this study can be seen as a starting point for more elaborate research on the nexus of standards and PPPs. Although the relevance and importance of standard contracts for PPPs have been increasing for more than a decade, in-depth analyses remain scarce. In fact, to our knowledge this is the first academic contribution addressing this topic. Hence despite this research having a very region-specific and sector-specific focus, it plays a critical role in further refining the hypotheses about this subject. On the basis of the findings, we retain the proposition that rigidly using a standard contract for the purpose of lower transaction costs will work in projects with low asset specificity and low uncertainty. Nevertheless, the sports sector is a relatively unorthodox and novel area of PPP, so we need to be careful about the external validity of this argument. Sports facilities account for just a minor share of PPP activities, so it would be enlightening to scrutinize other PPP programs and projects in different asset classes—not to mention the benefits of further examining the consequences of using standard contracts in locations other than Belgium. For instance, in jurisdictions that have many years of PPP experience (e.g., the United Kingdom and Canada), governments may have been able to successfully apply a rigid application of standard contracts in sectors that have historically been more "prone" to PPP, despite the fact that these sectors require specialized investments and cause a lot of uncertainties (e.g., road infrastructure). In order to further our understanding of using standard contracts in complex arrangements, it is worthwhile to explore these venues and see whether our propositions can be falsified, and if yes, where there are opportunities for international learning.

As for the practical implications of this chapter, the results raise the salient point that drafting and using standard contracts do not serve as a guarantee of eased procurement. Projects within the FSIP went through lengthy and laborious procurement processes. Governments are advised to bear in mind that a number of conditions have to be present before they can start using standard contracts. Standardization requires a fit between use and transaction specifics, a linkage that was not always considered in the FSIP. As for complex infrastructures, using standard contracts as guidance tools, leaving much room for sector- and project-specific interpretation, may be an interesting way to go. But as seen in the FSIP, the stakes are high and so are

the incentives for a principal to use standard contracts as strategic instruments aimed at defending policy objectives and transferring risks. Moreover, political motives will always remain an issue if a lot of money is at stake. There are also circumstances in which we advise governments to assume a rather rigid attitude. We refer particularly to the case of bundled procurement, as sticking to standards may be helpful in avoiding interference from local political interests and the respective delays.

Table 16 Theoretical expectations and empirical findings about FSIP

FSIP domain	**Theoretical expectations**	**Empirical findings**	
		Notes on use of standard contracts	**Impact on transaction costs**
Artificial pitches	Strict contracting process, swift negotiations	- Standard contracts necessary given large number of similar and simple projects to be constructed - Reduced sensitivity of negotiations due to financing ability of preferred bidder	Negotiations still took a considerable amount of time, yet respondents did not refer to issues with the standard contract; in fact, given the large number of realized projects collected in bundles this domain is considered a success by both public and private stakeholders
Sports halls	Asset specificity and uncertainty are difficult to delineate, hence difficult decision for public sector partner to apply rigid approach or not	- Use of mandate agreements and standard contracts versus local governments' interests - Sportfacilitator reverted to customizing projects, thereby affecting uncertainty	As expected, public sector partner struggled with decision on how to procure this transaction type; switch from rigid to loose use of standard designs triggered delays in PPP process, yet prevented a further increase in project dropouts
Multifunctional sports centers	Standard contract will be used unsuccessfully unless public sector partner applies it loosely and drops boilerplate	- Lack of fit between standard contract and characteristics of projects to be constructed, mainly due to origin of standard - Rigid attitude of Sportfacilitator trying to retain original contract	Public sector partner used standard contract in a rigid manner, thereby inducing juridification and thus further complicating an already convoluted project; opposite approach would have been more successful with regard to lowering non-monetary transaction costs

5 Making progress or standing still? Learning to contract in public-private partnerships for road infrastructure[55]

Bridge under construction as part of the R4 South project, which concerns the extension of the southern section of the R4 road near Ghent. This project is one of the six road infrastructure projects that have been or are being realized within the frame of the Via-Invest Program (source: Fietsersbond Gent, 2013).

[55] This chapter has been accepted for publication (Van den Hurk, forthcoming).

5.1 Introduction

Large-scale public infrastructure projects—e.g., highways, railway stations, and hospitals—have historically been challenging endeavors to public sector managers. More often than not they turn out as disappointments due to the paramount presence of cost overruns, construction delays, and eventually unfulfilled ambitions. In recent years, governments have increasingly embarked on public-private partnerships (PPPs) to provide new infrastructure on time and on budget (Pollitt, 2005; Savas, 2000; Yescombe, 2007). Compared to a conventional infrastructure project, a PPP is characterized by a more advanced and complex contractual relationship between the public sector and the private sector: the project partners commit themselves to a long-term contract according to which the private partner takes care of the design, construction, financing, and maintenance of an infrastructure asset (design-build-finance-maintain, i.e., DBFM) (Hodge & Greve, 2010).[56] The main rationale for this approach is that the private sector acts more efficiently than the public sector. By transferring a considerable amount of project responsibility and risk to a private sector partner, and given that it can only recoup its investment by properly identifying and managing the risks, it will be incentivized to act accordingly and thus deliver a project on time and on budget (Grimsey & Lewis, 2004).

While PPPs are often reported to indeed take care of timely construction in alignment with the prescribed budgets, they are a different ballgame than conventional projects and bring in plenty of new challenges to government. A most prevalent one is the need for public executives to acquire new contracting capacities. For example, instead of executing project management in a conventional project, PPP requires them to act as directors—"steering" instead of "rowing"—and they have to bear this in mind while negotiating a contract. PPP also implies that public executives have to be output-oriented rather than input-oriented, which requires a different management focus. Furthermore, the aspect of private financing necessitates that they build a technical understanding of a nearly unprecedented type of project development (Brown & Potoski, 2003, 2005; Hartmann, et al., 2010; Joaquin & Greitens, 2012). Unless public executives succeed in acquiring the knowledge and competencies (such as management capacities) that are required to successfully fulfill their new role, their cognitive biases will put at stake the quality of the contracts they close. This acquisition of knowledge will not happen overnight, however. As an

[56] Various other PPP models have been used over time, such as build-finance (BF) and design-build-finance (DBF) contracts, both of which require less private sector involvement, and design-build-finance-maintain-operate (DBFMO) contracts which require more of that. In this chapter, I focus on the DBFM model.

example, most public executives deal with PPP only once in their career, hence it is practically impossible for them to learn from their own prior mistakes and reuse knowledge of a previous project. Thus PPP marks an important learning challenge for the public sector.[57] The urgency of this challenge increases as PPP grows in popularity; European governments are already closing PPP contracts at a total value of roughly 15 billion euro a year (EPEC, 2014), and these figures are bound to increase in the future.

Several national governments have acknowledged the need to facilitate and coordinate learning in such difficult public infrastructure endeavors as PPPs. In an increasing number of countries, standard contracts are used to promote a common understanding among public authorities of the risks involved in PPP (HM Treasury, 2007, 2012b; Rijkswaterstaat, 2012; UK Ministry of Defence, 2001). A standard contract is a modularly structured document that provides standard terms for elements of PPP that are common to all procurement processes. It is typically drafted by a public sector body, forms a preferred model or template, and serves as a starting point for the negotiations between public and private actors. It is argued that standard contracts play an important role in codifying new knowledge and preventing repetitive mistakes: "public authorities could standardize parts of the contracts … as a means to reduce the likelihood of contract and output misspecification" (Iossa, et al., 2007b, p. 10). Cycles of repeated use and rewriting will make the standard contract more sophisticated over time; it will become more contingent as core elements are reinforced by elaborating elements (Argyres et al., 2007; Mayer & Argyres, 2004).

Strikingly, despite the increasing use of standard contracts in general—not just in the field of PPP but in many other areas—to my knowledge there are only a few academic contributions that address the nexus of standardization and learning, or the way standard contracts are developed through a process of learning (Petsoulas, et al., 2011; Timmermans & Berg, 1997; Wright, et al., 2012). Furthermore, while many management scholars discuss contractual learning, their work is predominantly in business and organization studies, certainly not in public-private endeavors (see e.g., Argyres, et al., 2007; Mayer & Argyres, 2004; Vanneste & Puranam, 2010), and often refuses to pay attention to learning as part of the contracting process (for some exceptions, see Lumineau et al., 2011; Van der Veen & Korthals Altes, 2012). In addition, whereas much has been written on PPP management, financing, and risk transfer issues (Akintoye & Beck, 2009; De Vries & Yehoue, 2013; Yescombe, 2007), major literature gaps remain

[57] Learning as in "the acquisition of new knowledge by actors who are able and willing to apply that knowledge in making decisions" (Miller, 1996, p. 486).

in terms of learning in PPP. Hence the question: how are the lessons learned by public executives during public-private contracting processes incorporated through a process of standardizing contracts? In this chapter, I aim to fill this lacuna by explaining the learning process governments go through as they manage PPP processes over time and revise their model contract in an attempt to eventually arrive at a standard contract. To this end, I select a Belgian road infrastructure PPP program (the Via-Invest Program), analyze the contractual agreements on four of its projects, and seek to disentangle the advancements that were made over time, both within project-specific procurement processes and on a more programmatic level.

This chapter is organized as follows. First, I explain on the basis of existing theories why practitioners have difficulties closing long-term contractual agreements efficiently and successfully—particularly in the field of PPP. Following that, I discuss how the current tendency of standardizing contracts can be seen as an outcome of learning processes in PPP trajectories, and I come up with a number of testable propositions. Then I provide a brief introduction of the Via-Invest Program and outline the methodology applied in this study. The remaining sections elaborate on the empirical findings, and I conclude by recapitulating my argument and discussing the theoretical implications of this study.

5.2 Complex contracting

Indispensable for setting up a successful PPP is a contractual agreement that makes actors confident about the long-term relationship to which they commit themselves. Formally laying down the rules of engagement will protect a partner from opportunistic, rent-seeking behavior of another partner, which signifies the safeguarding role of a contract (Ring & Van de Ven, 1992; Vincent-Jones, 1994; Williamson, 1979). In addition, a contract coordinates relationships by assigning roles and responsibilities (Brown, et al., 2010; Schepker, et al., 2014), and it includes contingency plans that help actors adapt to changing conditions (Luo, 2002). Scholars notice an increase in the number of long-term infrastructure contracts that are closed between public and private actors, and they foresee a continuation of this process (Bouckaert, et al., 2010; Cooper, 2003).

The larger the sunk investments and the more specific the infrastructure that is to be constructed, the greater actors' concerns regarding the manageability of a project. They will typically opt for using sophisticated contracts in order to confine the complexities, uncertainties, and risks involved (Van der Veen & Korthals Altes, 2012). Thus a contract is seen as a necessary governance tool for undertaking public-private endeavors in

infrastructure. However, drafting and closing contracts are probably the least obvious aspects of these ventures. According to Macneil (1980), contracting is a matter of making present decisions about all, including future, aspects of a contractual relationship (i.e., *presentiation*), but since human actors are not rational and do not have full information on what could possibly happen in the future (Williamson, 1985), presentiation is a non-achievable goal (see also Campbell & Harris, 1993). Therefore, actors have no choice but to write incomplete contracts. Furthermore, contracting is not just an economic activity, but a social phenomenon (Macneil, 1980; Vincent-Jones, 2006). These aspects make contracting a challenging and costly task, particularly in such highly complex, uncertain, and risky undertakings as PPPs. Actors will typically fall back on trying to make a contract as complete as possible, which implies drafting and negotiation processes that are not resolved overnight and are a serious burden for both governments and private sector partners in that they are time-consuming and require significant efforts. The contracting process toward a PPP deal will generally evolve into a typical case of *complex contracting* (Brown, et al., 2015).

5.3 Standardization: a venue of learning

Governments have undertaken action aimed at easing the burdensome contracting processes that usually come with PPP deals. They have started to standardize contracts to lay down the lessons learned in previous trajectories. To put it briefly, they formulate a model contract that is to be used as a point of departure for a contractual negotiation, and as time goes by and as experience builds up, this model contract undergoes revisions until it forms such a solid basis that it becomes known as a standard. As such, standardization plays an important part with regard to the learning challenge that I discussed in the introduction of this chapter. A standard contract can serve as a state-of-the-art body of knowledge about what a PPP deal could or should comprise and it can help public executives make better informed contractual decisions during a contracting process. In the remainder of this section, I link aspects of learning with the standardization of standard contracts as I formulate propositions on (1) the openness toward learning on the part of public executives who are building a standard contract for PPP and the possibility that lessons are learned and incorporated in a revised and more standardized contract for future use; (2) the type of learning that is most likely to occur given the public executives' knowledge and expertise that have already been turned into standards over time; and (3) the transfer of project-specific lessons to the general program level.

(1) Openness to learning
The extent to which learning can be achieved, and contractual clauses are refined either during a specific negotiation process or for future projects, depends on how receptive a standard setter (i.e., a principal, typically a contracting authority) is to both acknowledging the mistakes it made and accepting the recommendations delivered by its agents in the PPP process (e.g., contractors and financiers). The principal could be inclined to use a standard contract as a hierarchical arrangement aimed at maintaining control over the situation (Van den Hurk & Verhoest, 2016, p. 9). The principal is often also the standard setter, hence the model contract is likely to fulfill the public sector partner's needs (Cargill & Bolin, 2007), protect policy requirements, or reduce risks (Petsoulas, et al., 2011; Vincent-Jones, 2006). In this situation, the principal could be hesitant to concede standard clauses and inclined to rigidly defend its own interests. Using model contracts in this way will be at the cost of opportunities for learning, and complicate the codification of new knowledge toward a solid standard. In the opposite situation, a model contract would be employed as a guiding tool, which would be reflected in an accumulation of knowledge that would be codified in revised versions of that contract until an acceptable standard was reached. In that case, the model contract is constantly in flux as it is adjusted on a continual basis to changing conditions (cf. Timmermans & Berg, 1997 on crystallization and local universality).

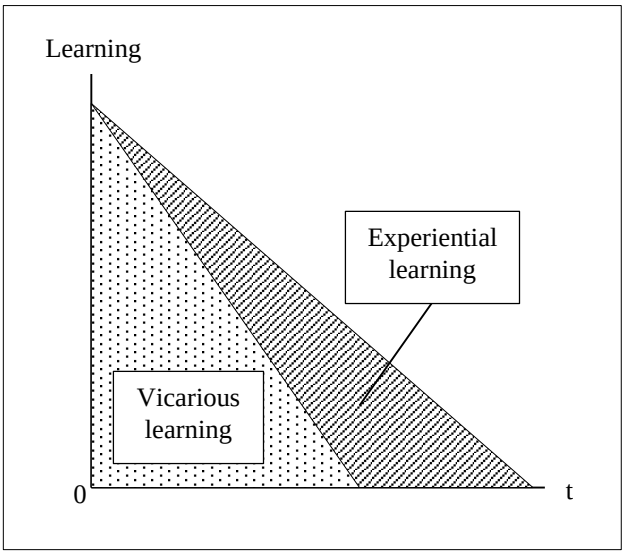
My proposition is that the standard setter is more likely to use its model contract for guidance when it lacks experience. In the early phase of a PPP program, the public sector partner will allow more contractual changes to the contract it proposed upfront, assuming that model contracts need to be tested before they can actually be imposed. As the model contract increasingly aligns with market practice and becomes more generally accepted by market players, the public sector partner gains confidence in its approach. Therefore, the public sector partner will increasingly use the model contract as a control tool, i.e., as a standard, and the number of contractual changes applied during a negotiation phase will drop over time.

(2) Different types of learning
Although the learning potential is usually high in the early stages of a PPP program, learning is not easy to achieve since the object (e.g., a complicated road infrastructure PPP) is not related to what the public executives already know. Their *absorptive capacity* is then considered to be low (Cohen & Levinthal, 1990, p. 131; see also Zollo & Winter, 2002 on dynamic capabilities). Where there is a lack of basic knowledge, most contractual changes will be the result of the government's strong reliance on other

parties' knowledge: *vicarious learning*, which is defined by Lumineau et al. (2011) as learning on the basis of interventions by external parties.

The absorptive capacity of the public partner increases over time as the object of learning becomes more related to what is known. For instance, mistakes that have been made in the first project will be avoided in the second project by revising the model contract that was used. Similar actions will be undertaken in light of the subsequent projects. Zollo and Winter (2002) speak of *knowledge evolution*: once experience accumulates, problems will be recognized by the actors involved (*knowledge articulation*) and finally be laid down in contracts (*knowledge codification*). This process of trial-and-error is called *experiential learning* (Doz, 1996; Faems, et al., 2008; Vanneste & Puranam, 2010). By building up relevant expertise and in-house capacity (i.e., manpower) to deal with contracts, the public partner will require increasingly less external support. Therefore, I expect that as time and projects go by, the share of vicarious learning will decrease, and the share of experiential learning will increase. Thus the extent to which certain learning mechanisms are active in a PPP program depends on the phase of concern: vicarious learning will overrule experiential learning in the early years of the program, but this will turn around as the program matures and the public sector partner gains expertise (cf. Ariño, et al., 2014; Lumineau, et al., 2011). Figure 5 illustrates the two propositions discussed above.

Figure 5 Propositions on learning during a process of standardization



(3) Transferring lessons from project level to program level
If neither the first nor the second proposition is supported by my empirical data, this could be an indication of both (a) a continuing learning process on the side of the public sector and (b) a continuing reliance of the public sector on external advice, despite the use of increasingly complete model contracts. While this would certainly indicate a willingness of public executives to keep learning, which is essentially a positive thing, it would also raise questions about the character of the standardization process: to what extent are the lessons learned in one project incorporated in a more elaborated version of the model contract, thereby helping forward the future contracting processes within a PPP program? What would a lack of transferring lessons learned say about the overarching coordination (cf. Hartmann & Dorée, 2015)? And to what extent can we actually speak of standardization if the learning process does not reach a point of saturation? What if the model contract continues to be subject to change and therefore never gets used in a highly rigid manner, that is, as a true standard, in line with the logic of "comply or explain"?[58] I will further discuss these questions in the closing section of the empirical part of this chapter.

5.4 The Via-Invest Program

This chapter focuses on the learning processes within a policy program consisting of a number of road infrastructure projects, all developed through PPP and established by the Flemish government. In October 2006, a Flemish public limited company (PLC) was established going by the name of Via-Invest. This investment company would serve as a holding for a range of special purpose vehicles (SPVs) that were to be founded as part of a program incorporating a series of PPPs in road infrastructure: the Via-Invest Program. It comprehended six separate projects concerning either the construction of new roads or the reconstruction of existing roads. The construction costs of each of these projects ranged from 54 million euro to 539 million euro and amounted to well over 1.5 billion euro in total (Flemish Parliament, 2013a). In terms of the organizational structure and business model of the Program, two Flemish public actors were shareholders of the PLC: PMV (a public investment company) and the Flemish central government (hereafter abbreviated to Flemish government). PMV can be defined as an autonomous agency under private law that is fully owned by the Flemish government. Its tasks in the field of PPP have been to support economic investment initiatives in the Flemish Region by setting up and investing in a number of PPPs, and by assisting other public entities that are active in the landscape of PPP—i.e., it provides risk capital,

[58] This expression is widely used in countries where standard contracts are common, for instance the United Kingdom, Canada, and the Netherlands.

which is not a common activity for a government actor (Belgian Court of Audit, 2009; Flemish Parliament, 2011a). PMV holds 51 percent of the PLC's shares. The remaining 49 percent are held by the Flemish government, more specifically by the Agency for Roads and Traffic (AWV by its Dutch acronym). By integrating the efforts of these agencies into one PLC, the company was expected to achieve higher scores in terms of expertise on financing and PPP (through PMV) and technical expertise on public works (through AWV).

In this chapter, I will focus on four projects envisaged under the Via-Invest Program for reasons addressed in the methodological section. Three of these projects had entered the operational phase by the time of the analysis (early 2015); the fourth project was in the construction phase. Table 17 provides an overview of the four projects. For each of the first three projects, Via-Invest launched two separate tendering processes: one procedure that invited (consortia of) contractors to come up with bids concerning the design, construction, and maintenance of the project, and one procedure aimed at tendering the financing of the project. As soon as private partners had been selected in both procedures, Via-Invest would bring them together to finalize the arrangements. It would set up an SPV that would sign three types of contracts: (1) a finance (F) agreement with the financial partner—usually banks (debt financing) and private investors (equity financing);[59] (2) a design-build-maintain (DBM) agreement with the consortium of contractors; (3) a comprehensive, back-to-back design-build-finance-maintain (DBFM) agreement with the Flemish government. Figure 6 (page 105) depicts the organizational structure of these first three projects. The fourth project was procured in a different manner as it included a single tendering trajectory which incorporated the design, construction, financing, and maintenance of an infrastructure asset.[60] Therefore, a back-to-back arrangement as used in the former three projects was not necessary; there was simply one private consortium that would establish and lead an SPV and take care of the entire life cycle of the infrastructure asset by closing a contractual deal with the Flemish government.[61]

[59] Although debt financiers and equity providers can (and often will) bid together during the procurement process, they will eventually sign separate contractual agreements with the SPV. External financiers like banks and/or bond providers typically sign a credit contract. The shareholders of the SPV (including Via-Invest) sign a shareholders' agreement that links to various underlying credit contracts.

[60] In the fourth project, the financier was part of the private consortium, hence the private sector partner himself brought together DBM and F. In the three other tenders, the contracting authority took care of this task.

[61] Due to a different tendering approach than the first three projects, the contractual agreement on the fourth project included a number of clauses that had not been used in the

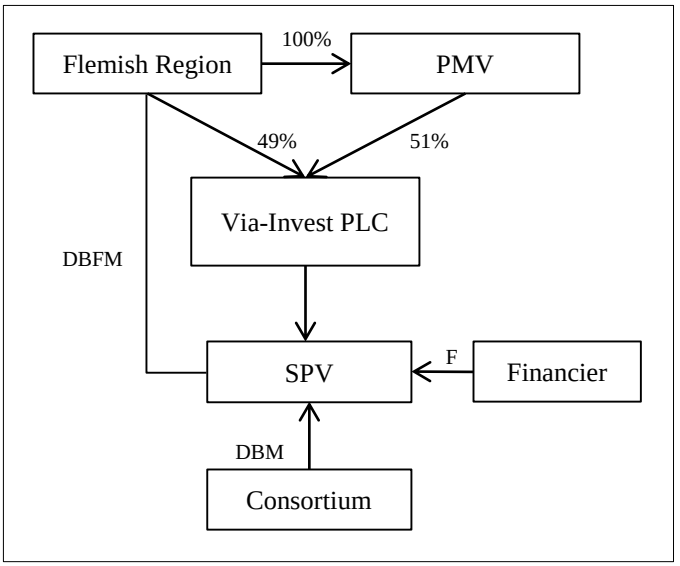
Table 17 Overview of Via-Invest projects selected for analysis[62]

Project	Description	Procurement approach	Construction (€ mln)	Annual availability fee (€ mln)	Financial close	Date of completion
1. Zaventem	Improvement of northern road access to Brussels International Airport	DBM+F (30 years)	53.8	5.62	September 2007	February 2012
2. North South Kempen	(1) Extension of N19g road between Kasterlee and Geel; (2) reconstruction of 23 Geel-West junction	DBM+F (30 years)	190.04	18.9	October 2011	February 2014 (1) and June 2014 (2)
3. R4 South	Extension of southern section of R4 road near Ghent	DBM+F (30 years)	84.42	8.29	February 2012	April 2014
4. A11 Bruges	Construction of A11 ring road section south of port of Zeebrugge	DBFM (30 years)	539.4	53.27	March 2014	Expected September 2017

agreements on the preceding projects. In order to make the fourth project fully comparable with the other three projects, I have not taken into consideration those highly project-specific clauses. Instead, I have focused my study on clauses that would be applicable regardless of the degree of project specificity.

[62] Data have been extracted from the most recent annual report on alternative financing of the Flemish Parliament (2015). Costs and fees include VAT.

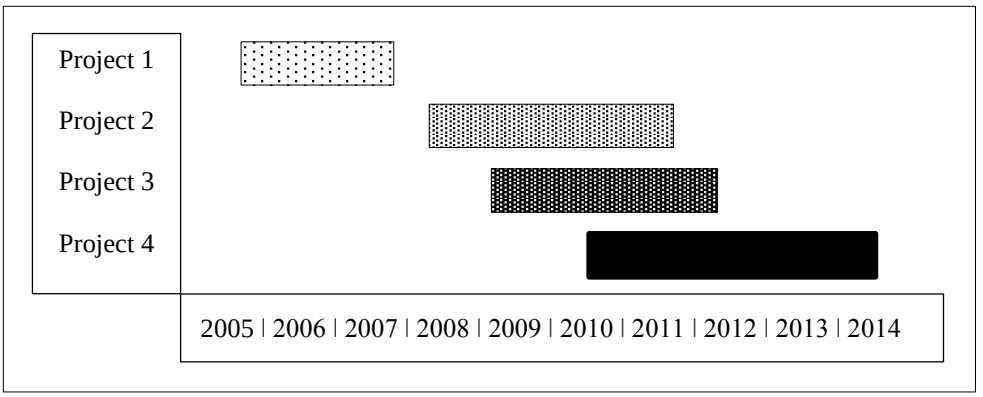
Figure 6 Common constellation of a PPP within the Via-Invest Program



5.5 Methods

In order to examine my propositions on the nexus of standardizing contracts and learning, I subjected the four aforementioned Via-Invest projects to an in-depth comparative analysis. The Via-Invest Program has been able to mature for over eight years and over four projects, and three of these projects overlapped in terms of the timing of their procurement processes—the periods between tender call and financial close (see Figure 7). I expected this program to show considerable processes of learning within specific procurement processes, but also between the different procurement processes, because the program has been led by one and the same public actor (the Via-Invest PLC). Moreover, even though the four projects I selected differed considerably in terms of capital costs, they were particularly suitable for comparison because all of them were procured in one and the same region and under the umbrella of one and the same infrastructure investment program. In fact, by the time of the analysis the contracts for all four projects had been closed, hence I expected these projects to be less sensitive in terms of political and business information, and thought it more likely that I would be able to retrieve previously undisclosed information.

Figure 7 Chronology of Via-Invest procurement processes



I conducted a case study (Eisenhardt, 1989; Flyvbjerg, 2006a) aimed at (1) unveiling the differences between the DBFM agreements both within and between the four projects over time (dependent variable) and (2) explaining the learning processes behind these dynamics (independent variable) in order to disentangle the role of learning and its interaction with standardization. In the first part of the study, I was given access to the DBFM agreements used and signed in the four projects. Eight DBFM agreements were included as units of analysis, i.e., two agreements for each project involved: the version that was sent to the market once it had been approved by the Flemish government (the model contract), and the version as signed by the Flemish government and the SPV on contract close (the final contract). In order to measure the differences between the contracts and unravel *whether* and *what* was learned in the Via-Invest Program, I used two indicators. First, I looked at dynamics of contractual *complexity* (Lumineau, et al., 2011). I gained insights into this indicator by measuring the length of the contracts (Poppo & Zenger, 2002) and the number of clauses included in the contracts (Parkhe, 1993). An increase in contractual complexity would be interpreted as a result of a learning process: I assumed that newly retrieved knowledge would be incorporated by adding it to an existing contract or at least replacing existing text—not by shortening the document. The second indicator concerned the *content* of the contracts. I investigated which clauses were amended and set up an inventory of these changes. Three types of developments were considered as changes: (1) addition of an entirely new (sub)clause; (2) change of an existing (sub)clause; (3) removal of a (sub)clause. It is important to emphasize that the public sector partner (Via-Invest PLC) led the process of drafting and revising the model contract and thus acted as the standard setter. Therefore, every contractual change would denote a possible achievement of learning on the side of the public sector.

The second part of the study comprised semi-structured interviews and additional desk research aimed at illuminating the learning process behind the evolution of the DBFM agreements, i.e., explaining *why* and *how* the government learned in the Via-Invest Program. I spoke to persons who played a key role in one or more of the four projects: public sector managers, contractors, and financiers. In addition, I collected the views of five respondents who had a rather general overview of the Via-Invest Program. The interview questions were aimed at revealing how contractual changes came about, with a focus on the most prevalent and notable changes. I asked the interviewees who initiated changes, for what reason (i.e., knowledge articulation), and how a solution was found and put in the contract (i.e., knowledge codification). For confidentiality reasons I preclude the publication of the informants' names, but I have included their professional profiles in Table 18.

Table 18 Overview of interview respondents

Respondent	**Position**	**Affiliation**	**Date**
A.	Project director	DBM partner	7 January, 2015
B.	Director project finance	F partner	12 January, 2015
C.	Project director	DBM partner	16 January, 2015
D.	Project director	DBM partner	16 January, 2015
E.	Investment manager	Via-Invest	19 January, 2015
F.	Investment manager	Via-Invest	19 January, 2015
G.	Project manager	AWV	22 January, 2015
H.	Associate partner	Law practice	21 January, 2015
I.	Project manager	AWV	21 January, 2015
J.	Project manager	AWV	26 January, 2015
K.	Director	F partner	27 January, 2015
L.	Investment director	F partner	29 January, 2015
M.	Legal counsel	Law practice	4 February, 2015
N.	Project manager	AWV	6 February, 2015
O.	Advisor	PPP Knowledge Centre	10 February, 2015
P.	Project director	DBFM partner	16 February, 2015
Q.	SPV manager	SPV	2 March, 2015

The interviews (16 in total)[63] took place in 2015 and lasted between 45 and 120 minutes (80 minutes on average). They were taped and fully transcribed, and after reading the transcripts thoroughly and repeatedly, I started a systematic coding process using QSR NVivo 10—qualitative

[63] In one of the interviews, I spoke to two respondents (E and F), making a total of 17 respondents.

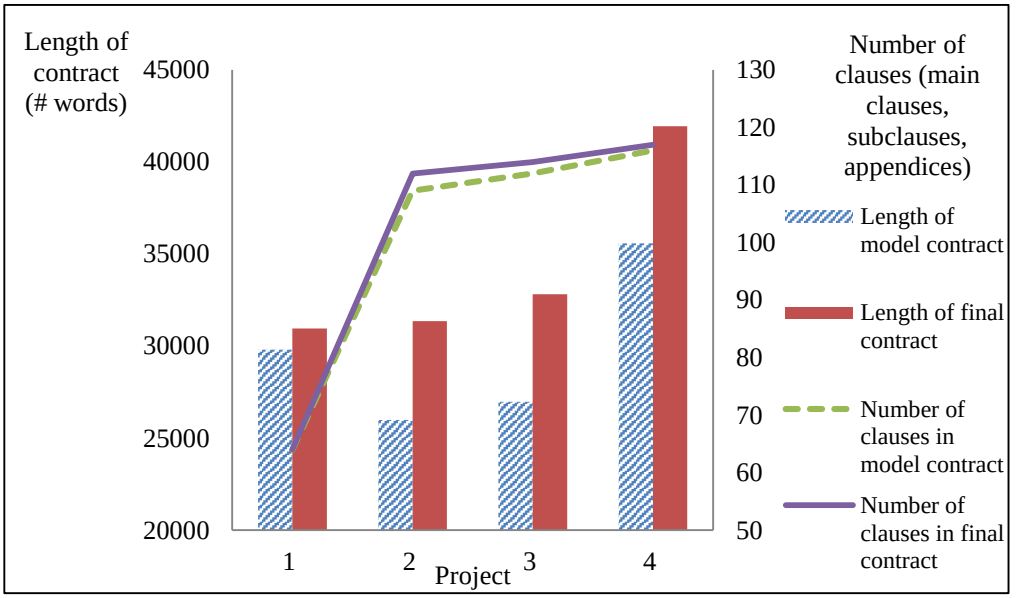
coding software—in order to arrange the large amounts of data (Bazeley, 2007). The largest part of the data was coded deductively. I recognized vicarious learning on the basis of the interviewees' references to an initiating role of a private sector partner as the basis for contractual change, for instance a contractor or a financier, and I noticed experiential learning where they referred to a public sector partner's growing expertise or trial-and-error as causes of change. In addition, I inductively coded a number of other elements during the coding process in order to contextualize the information. For instance, I would code the reason for a particular change if a respondent mentioned it (e.g., a lack of certainty or comfort for a particular actor, a lack of clarity, a change of market conditions, and a lack of conformity with market practice), and I would do the same in regard to the question about how the result of a learning process was laid down in a revised contract (e.g., a better protection of the interests of a particular actor, a clarification of responsibilities or expectations, and a creation of consistency) (cf. types of changes as dinstinguished by Mayer & Argyres, 2004, p. 399).

Finally, I interpreted the data by developing matrices on the (co-) occurrences of codes, which enabled me to unveil patterns and recurring issues (see Boyatzis, 1998 on thematic analysis). The interpretations were shared with the respondents for the sake of empirical accuracy. Table 19 provides an overview of the indicators used in this study. In the remainder of this chapter, I report my explanatory findings of a systematic analysis of the contracting and learning processes in the Via-Invest Program.

Table 19 Indicators used in this study

Dependent variable: learning outcomes, or *whether* anything has been learned, and if yes, *what*?	**Indicators**
Contractual complexity	Length of contract in number of words; number of contractual clauses in contract
Contractual content	Qualitative inventory of contractual change: addition, change, or removal of clauses
Independent variable: learning processes, or *why* and *how* has been learned?	**Indicators (for deductive coding)**
Type of learning	(a) Vicarious learning: contractual change initiated by private sector partner (contractor, financier) (b) Experiential learning: contractual change initiated by public sector partner (AWV or PMV)
Contextual matters	**Indicators (inductively coded)**
Reason for change	(a) Lack of certainty or comfort for particular actor (b) Lack of clarity (c) Change of market conditions (d) Lack of conformity with market practice
Type of change	(a) Better protection of interests of particular actor (b) Clarification of responsibilities or expectations (c) Creation of consistency

Figure 8 Contractual complexity over time



5.6 The evolution of contracts

The figure and tables presented in this paragraph serve as guides for my explanatory analysis as they indicate which developments have been prevalent or striking. Figure 8 illustrates my analysis of contractual complexity.[64] A number of issues stand out. The first notable development concerns a change that occurred between project 1 and project 2. While the length of the model contract decreased, the number of clauses showed a strong increase. Second, we see that in projects 2, 3, and 4 a larger number of words was added to the contracts between the model versions and the final version in comparison with the additions made in project 1. Third, we see that the length of the contract increased significantly between projects 3 and 4, but this development does not exclusively refer to another wave of learning; as I already mentioned in the methodological section, the fourth project was considerably larger than the first three projects, hence the need to bear in mind its higher degree of specificity. All in all, we see a clear increase in contractual complexity over time, so the question *whether* anything has been learned in the Via-Invest Program can be answered positively. The next question to be answered is: *what* has been learned?

As for contractual content, Table 20 and Table 21 (see pages 112-113) provide insights in the changes applied over time. Table 20 shows which clauses and appendices were added or removed. Every pair of *a* and *b* connected to a specific project signifies the additions and removals conducted during the tendering process of that project, i.e., on the way from model contract *a* to final contract *b* (e.g., between 1a and 1b). Table 20 also shows the development of the model contract over the various consecutive projects. It shows the differences made between model contract *a* of one project and model contract *a* of the consecutive project (e.g., between 1a and 2a). While aggregating the data, I checked for clauses and appendices that seemed to be added or removed at first glance, but only appeared to be relabeled or relocated once I had delved further in the data. The developments shown in Table 20 are similar to those in contractual complexity (Figure 8). Again, a first line can be drawn between projects 1 and 2 as we see that some (sub)clauses and appendices were removed (e.g., 'Conditions precedent', 'Configuration') and many were added (e.g., 'Termination for exceptional disturbance of financial markets', 'Equivalent project relief'). We can draw a second line between projects 3 and 4 as we notice a second wave of new clauses (e.g., 'Interruption or delay of construction works by contractor', 'Bonus points for energy efficiency')

[64] In regard to this figure, the length of the contracts excludes title page, table of content, and signing pages; the number of clauses excludes annexes containing technical specifics, e.g., terms and specifications for construction.

while other clauses, which were used in previous projects, were actually removed (e.g., 'Dispute resolution regulation', 'Termination for exceptional disturbance of financial markets'). Between these two virtual lines, projects 2 and 3 involve contracts with a largely similar content in terms of the presence of specific clauses. The tendency seems to be that an increasing number of clauses and appendices have become generally accepted over time. Table 21 gives an impression of the number of contractual changes applied within each tendering process, including some examples. It provides a clear indication of the clauses that changed often and those that did not,[65] and the pattern largely aligns with the former observations. It is confirmed that project 1 is relatively atypical since the number of changes applied in this project (13) has been much lower than the figures observed in the other three projects (40 or more), and no new clauses were included during its procurement process as opposed to the other projects.

Table 21 helps us further as we draw a line between clauses that have been the subjects of repeated discussion, and clauses that have barely received attention over the course of nearly a decade and thus hardly changed. For instance, the clauses 'Conditions precedent' and 'Configuration' were included in the contract on project 1, but they did not come back in the other projects. Other clauses have been present in all contracts and have been discussed and amended every now and then. Examples include clauses on non-compliance, payment, and to a larger extent clauses on termination and variations. Finally, some topics have always been subjects of debate as we see that a number of clauses were changed in every project, for instance dispute resolution, relief events, and subjects that fall under general clauses—e.g., insurance, permits, and the issuance of availability certificates. These clauses show a high degree of learning if we use the number of changes as the only indicator.

[65] While making this comparison, I controlled for clauses that were included, changed, or excluded merely due to a different procurement approach ('Insurance', 'Intellectual Property Rights') or project specificity ('Guideline for adapting financial model', 'Financial close certificate'). Including these clauses would have skewed the analytical results.

Table 20 Clauses and appendices incorporated in Via-Invest contracts[66]

Core contract (DBFM agreement)	**Project**							
	1a	**1b**	**2a**	**2b**	**3a**	**3b**	**4a**	**4b**
Contractors and shareholders; Liability and indemnities; Relief events; Communications protocol; Confidentiality; Non-compliance; Transition; Insurance; Variations	■	■	■	■	■	■	■	■
Commitments over life cycle of contract – General	■	■	■	■	■	■	■	■
- Management plan and quality			■	■	■	■	■	■
Definitions	■	■	■	■	■	■	■	■
- Interpretation			■	■	■	■	■	■
Early termination	■	■	■	■	■	■	■	■
- Termination for (long-term) delay; Termination for grounds for immediate termination			■	■	■	■	■	■
- Termination for exceptional disturbance of financial markets				■	■	■		
Obligations and duration of contract	■	■	■	■	■	■	■	■
- Equivalent project relief; Subprojects				■		■		
Other provisions	■	■	■	■	■	■	■	■
- Surplus profit sharing	■	■	■	■	■		■	
- Continuous obligations			■	■	■	■	■	■
Dispute resolution and applicable law	■	■	■	■	■	■	■	
Completion certificates			■	■	■	■	■	■
Intellectual property rights						■	■	■
New assistants; Conditions precedent; Object	■	■						
Applicable law, consultation committee, and courts								■
Appendix of core contract	**1a**	**1b**	**2a**	**2b**	**3a**	**3b**	**4a**	**4b**
Communications protocol; Definitions; Guideline for adapting financial model; Compensation on relief events; Compensation on early termination; Variation procedure	■	■	■	■	■	■	■	■
Payment mechanism	■	■	■	■	■	■	■	■
- Disputed amounts			■	■	■	■	■	■
- Bonus payment for early availability			■	■				
- Interruption or delay of construction works by contractor								■
- Bonus points for energy efficiency							■	■
Dispute resolution regulation	■	■	■	■	■	■	■	
Financial close certificate; Consultation committee; Supplied data			■	■	■	■	■	■
Configuration	■	■						
Protocols						■		■

[66] The shaded areas indicate the incorporation of a clause or appendix in the contract. Contracts marked with an *a* are model contracts, contracts marked with a *b* are signed (i.e., final) contracts.

Table 21 Number of clauses changed between model and final contracts

Subject	**Clauses**	**Examples of change**	**Project**				**Total**
			1	**2**	**3**	**4**	
General clauses	Commitments over life cycle of contract – General; Other provisions	Decrease of maximum period of uninsurability of risk borne by private sector partner before public sector partner steps in; new obligation for private sector partner to obtain ISO-certified management plan; clarification of refinancing process	3	11	12	13	39
Responsi-bilities	Contractors and shareholders; Definitions; Liability and indemnities; Obligations and duration of contract	Price cap on maximum liability of private sector partner; new clause on equivalent project relief; insertion of possibility for subcontractors to lead or monitor project; splitting of project into partial projects	3	9	6	5	23
Relief events	Relief events; Compensation on relief events	Addition of several elements to calculation of compensation of relief events, e.g., swap breakage costs and commitment fees; clarification of procedure on compensation of financial disadvantage	4	4	6	8	22
Certificates, protocols	Communications protocol; Completion certificates; Expiry transition procedure; Protocols; Confidentiality	Stricter deadlines for reports on completion requirements and transition; clarification of procedures regarding failure to meet completion requirements	0	3	4	5	14
Dispute resolution	Dispute resolution regulation; Dispute resolution and applicable law; Consultation committee; Dispute resolution procedure	Clarification of procedure when disputes simultaneously come up in DBFM and DBM agreement; inclusion of possibilities to go to court; modifications regarding constellation of dispute resolution committee	0	4	4	4	12
Variations	Variations; Variation procedure	Stricter deadlines for public sector partner to respond to variation proposals; more possibilities for private partner to propose variations	0	2	5	3	10
Termina-tion	Early termination; Compensation on termination	Addition or modification of elements for calculation of compensation on termination; stricter delineation of grounds for early termination	1	5	1	2	9
Payment	Payment mechanism	Better protection of contractor's right in event of late payment; clarification of indexation procedure and renegotiations	2	1	1	2	6
Non-compliance	Non-compliance	Clarification of private sector partner's responsibility in event of non-compliance emergency	0	1	1	0	2
Various remaining clauses	Configuration; New assistants; Conditions precedent; Supplied data; Object	Not applicable	0	0	0	0	0
Total			**13**	**40**	**42**	**42**	**137**

5.7 Changing contracts explained

5.7.1 The open attitude of the public sector partner

As the former figure and tables show, the contracts have constantly been in flux. There has been a significant amount of contractual change during procurement processes. The respondents stated that the lion's share of the contractual changes was facilitated by the public sector partner's openness to listen to the concerns expressed by the private actors involved in the process. They referred to vicarious learning 38 times, while experiential learning was mentioned 16 times. These numbers are an indication that vicarious learning has been the predominant type of learning. The contracts that were used were continuously tested on their adherence to market practice, and according to the respondents, PMV typically provided significant room for manoeuver during the procurement process. Many respondents offset PMV's approach in the Via-Invest Program against the more rigid approach applied in other countries. They referred to (1) the relatively young age of Belgium's PPP policy and (2) PMV's "skin in the game" (i.e., having incurred monetary risk by being invested in achieving a goal). First, Belgium has been a late adopter of PPP policy, and therefore the standardization of contracts has been a very recent process in which the public sector had to be cognizant of market practice in order to arrive at workable contracts. One of the respondents mentioned how the opposite is often the case in countries where PPP policy is more mature, and he addressed the respective counterproductive effects of the use of standard contracts:

> Generally, the Anglo-Saxon approach is the most elaborated one. When I was working on projects in England, the public sector partner referred to the standard contract all the time. It also occurred to me in the Netherlands. You would have negotiations wherein the public sector partner always said: "This is not market practice and this is not standard," thereby stalling the discussions. … Standardization has its merits, but if you use it to stall a discussion, you are overshooting the mark. (Respondent K)

The model contracts for the Via-Invest projects were not directly fit for use. They required significant additions and amendments. Respondents H and M argued that many clauses were initially aimed at a high level of protection of the public sector's interests. "These contracts are typically made with the best intentions, but always undergo a transformation through market testing," said respondent M. Respondent H added that "at the very beginning, you do not have a standard contract. You always have to test the contract before you can actually deliver a standard." This will sometimes involve a reduction of the level of protection of the public sector's interests.

Second, as a majority shareholder in Via-Invest PLC—which in turn was a minority shareholder in the SPV of each Via-Invest project—and in its role as the "leader" of the procurement process, PMV always had a strong incentive to close the most beneficial deal possible for the government, and to combine the achievement of this goal as well as possible with aligning with the private sector and searching for workable contracts for both the public and private partners. To a certain extent, the public sector partner had an incentive to cooperate with the private sector partner as it would be able to claim a part of the revenue that would be generated—after all, Via-Invest was a risk capital provider. The interviewees made clear that in comparison with public sector partners in other countries, PMV was more flexible and willing to act cooperatively with the contractors and the financiers in order to achieve the best deal for the contracting authority. Now that the contract on the fourth Via-Invest project has been closed and the model contract has matured, PMV is likely to be more confident in imposing its clauses to the private parties involved in a bid.

5.7.2 Financiers drive the process

As for initiating contractual change, the financiers played a key role. They were explicitly mentioned as initiators of change twice as many times as the contractors were mentioned. About 90 percent of the financing of the projects was financed by the lenders, so they had a powerful bargaining position. Financial requirements and market practices had to be followed for a potential project to become a bankable and thus realizable project. The clause 'Compensation on relief events' provides an example here. In the early model contracts for the Via-Invest projects, the calculation of the compensation on a relief event did not include elements such as swap breakage costs and commitment fees. However, since the swap breakage costs in a relief event can run into millions of euros, the financiers expressed their concerns on this issue. In fact, "this was simply a fierce requirement set by the financiers, who argued that they would not finance the project as long as those elements were not included in the contract" (Respondent M).

The financiers also successfully raised red flag issues relative to other clauses. For example, clauses on step-in rights were amended so that the financier could exercise more power over the contractors in the event of a default. Furthermore, in the second and third projects, a clause on equivalent project relief was inserted in order to avoid that the SPV could be squeezed between the arrangements laid down in the DBM agreement (i.e., between the SPV and the contractor) and the arrangements included in the DBFM agreement (i.e., between the Flemish government and the SPV). Respondent L explained that the incorporation of this clause ensured that the liability of the SPV to the contractor(s) could not be any greater than the entitlement it

had against the Flemish government through the back-to-back DBFM agreement. A final example concerns the uninsurability of risks. If a certain risk that is borne by the private sector partner becomes uninsurable, there typically is a maximum period of uninsurability in which the private sector partner needs to find a solution and get the risk insured again. If the private sector partner does not succeed, the risk has to be transferred to the public sector partner until it is insurable again. In the model contracts this period was set at 60 days, yet in every final contract it had been shortened significantly to 10 or 15 days. Again, the financiers had been the drivers of these changes:

> There is always the tension between desirability and feasibility. A 60-day period is probably a more feasible period for us [i.e., the SPV] to find a solution [than 10 or 15 days] … But it is not desirable that the SPV is uncertain of the risk it bears for a period of two months. The longer this time span, the bigger the chance of something happening that will end up in no man's land, or worse actually, that will become a burden for us. Because we have to bear the responsibility, even though we are no longer able to insure the risk. (Respondent L)

Not all clauses that were enforced by financiers continued to be part of the contracts over time. A clear example of this is the clause 'Termination for exceptional disturbance of financial markets,' which was included in the contracts on projects 2 and 3 during the aftermath of the global financial crisis. It essentially incurred a higher level of protection of the financiers, as the risk of an exceptional disturbance of financial markets was borne by the public sector partner. Interestingly, this clause was no longer included in the contract on the fourth project. Eurostat[67] came to interpret an exceptional disturbance of financial markets as a commercial risk event, rather than a force majeure event. Therefore, if the government wanted to finance a PPP off its balance sheet, it made more sense to transfer this risk back to private sector partners. So even though financiers played a pivotal role in the learning process, the public sector partner sometimes revised earlier decisions in light of new circumstances, policies, and projects, and then transferred more risk to the private sector partner.

5.7.3 Contractors have no choice but to go along

The driving role of financiers in PPP embodied a difficult change for the contractors. The respondents often referred to the fact that contractors struggled with PPP, since they had to distance themselves from the

[67] Eurostat is the Directorate-General of the European Commission that is responsible for (1) providing statistical information to EU institutions and member states, and (2) promoting the harmonization of statistical methods across Europe.

conventional and familiar method of outsourcing and get used to having a less influential role. The contractors had difficulties abandoning the use of the General Contracting Conditions (AUR by their Dutch acronym), which are the general specifications used by the government in public procurement, issued by Royal Decree in 1996 and updated in 2013. The AUR are aimed at conventionally procured projects, hence not directly applicable to PPP. For instance, as the availability-based payment mechanism in a PPP is totally different than the one-off payment mechanism in a conventional project, the AUR cannot apply to this element. The logic of the PPP model forces the government to deviate from the AUR in some cases, and the consequence is that contractors face a number of terms and conditions that are completely new to them. In the Via-Invest Program, the DBFM agreement prevailed over the AUR, and the following quote illustrates the feelings contractors had about this:

> The financiers do not know the AUR. They simply look at the contract. We had discussions with them on the use of sections of the AUR that we had claimed in the beginning of the process and that would be applicable in the deal. But it just did not get off the ground. The AUR were always overruled by the contract. And given the fact that the AUR is essentially legislation, you could say that [the financiers] lay aside legislation. (Respondent C)

The AUR typically form a strong protection of the rights of contractors. As the use of large parts of the AUR is abandoned in PPP, the contractors' comfort is significantly reduced, and their bargaining position weakened. The contractors involved in the Via-Invest Program did not get used to their new role and the new approach overnight. Respondent K said that the contractor did not always understand why the financiers asked certain questions or came up with certain requirements, and he added that "[contractors] used to be in a more advantageous position in the past, when they could easily come up with contract extras [after they had been assigned the job] without further consequences." However, in a PPP, the risk of contract extras is typically borne by the private sector partner, and the contractor in particular. As respondent B indicated, "this was something the contractors did not automatically recognize. … But the major players are now familiar with the structure of PPP, and they recognize that it brings in additional obligations compared to classical public procurement."

Despite their weakened position, contractors were able to generate some contractual changes to their advantage. The respondents referred to changes that had been advocated by the contractors who found that the initial clauses lacked clarity or disproportionally jeopardized their comfort. The solution was often to clarify definitions, responsibilities, and procedures—for

instance on the payment mechanism—and upgrade the level of protection of the contractors' rights. As an example, based on the input of the contractor, the clause 'Interruption or delay of construction works by contractor' was inserted in the contract on the fourth project. This clause allows the contractor to delay or shut down the works if the client fails to pay on time. However, even though there were some positive changes for the contractors, they remained critical of their loss of influence for the benefit of the financiers. As respondent D put it, "the financiers requested a lot of things from us. It is supposed to be a matter of give-and-take, but from their side it was mostly just the taking."

5.7.4 Progressive insights and practical experience

Next to the predominant presence of vicarious learning, the analysis revealed a number of cases of experiential learning in the Via-Invest Program. It was not until the second and third projects that this type of learning was mentioned by the respondents. According to respondent F, public sector managers at PMV asked themselves the following questions: "What did we learn in the second project, how should we integrate these lessons in the third project, and what would be the best way to formulate it, and to put it in better, clearer, or sharper words?" Experiential learning was either based on (1) progressive insights or (2) the lack of practical use of a contractual clause. An example of the first type is the decision PMV made to split the Via-Invest projects into subprojects. During the procurement process of the second project, PMV found out that this was an interesting venue. It would enable the use of different completion dates so that one part of the project could already be available to the public while another part or other parts would still be under construction. As the construction of the second project had been underway for quite some time when PMV came up with this solution, there was no longer an opportunity to create separate availability certificates. Therefore, PMV developed a system of bonuses and penalties to incentivize the private sector partner on this matter. However, as the third project was initiated a few months later, PMV was able to include in the final contract on this project a clause on different availability certificates: "A payment of x percent when the first availability certificate is issued, and a payment of the remaining percentage upon the issuance of the second availability certificate" (Respondent F). This is an example of a lesson learned based on progressive insights.

An example of the second form of experiential learning was the recognition that the formulation of certain clauses caused so much discussion during the negotiation phase, or that the use of these clauses was so limited, that they were deleted from the model contract. Table 20 (page 112) reports that clauses on dispute resolution were no longer included in the final contract

on the fourth project. The respondents said that the establishment of a dispute resolution committee always sparked debate during the contractual negotiations because it needed to be an impartial structure, yet "none of the actors involved has the right people to do that job. … You will get committee members who, in one way or another, are tied to one of the parties. What is the point of that?" (Respondent L). The irony of the often heated debate during the negotiation of dispute resolution clauses is that, once a contract is closed, no one actually cares about this clause anymore. In fact, in some projects the dispute resolution committee was not even established, even though the formal agreements required this. A partner in a PPP will do as much as possible to avoid a dispute resolution procedure, said respondent Q:

> Nobody wants to establish a dispute resolution committee. Just look at the establishment procedure. It requires that the members of the dispute resolution committee have to be appointed within 30 or 60 days after the commencement of the construction phase. That never happens. … Because everyone knows: once you go to the dispute resolution committee in order to settle an argument, the floodgates are open. … If you call in the dispute resolution committee to sort out an issue, it will trouble the partnership anyway. (Respondent Q)

The former experiences and considerations led to the decision to no longer include clauses on dispute resolution in the contract. Alternatively, the parties established an informal consultation committee that would deal with arising disagreements.

5.8 Learning at a programmatic level

In the previous sections, I have argued that the public sector continued to apply a considerable number of contractual changes to its model contract both during project-specific negotiations and from the model contract used in one project to another. I also observed repetitiveness across the different projects in terms of the content of the changes that were applied. Some clauses were included in the model contract for a new project despite the fact that they had been a recipe for debate in an earlier procurement process. Finally, I have emphasized that most contractual changes have been the result of vicarious learning, both in the early stages of the Via-Invest Program and more recently. It was shown that the model contracts were tested by the market on a continual basis. These findings are not in line with my expectations (see again Figure 5 on page 101). This is where I come back to my third proposition, which was on transferring project-specific lessons to a higher, programmatic level: to what extent were the lessons learned within a specific project automatically laid down in a revised version of the model contract, i.e., for future use?

The first project within the Via-Invest Program was procured well before the other projects in the program were procured. The respondents argued that this project was atypical compared to the other projects: it was procured in a completely different period (before the global financial crisis), it was incorporated in a much bigger project that involved the construction of a railway tunnel, and the initial intentions had been to procure it as a conventional project rather than a PPP. It was only after the financial close of the first project that the programmatic approach to Via-Invest projects gained momentum, hence the differences between the model contract on project 1 and the model contracts on the other projects.

The procurement processes for projects 2, 3, and 4 overlapped in terms of timing (see again Figure 7 on page 106). The process of project 3 was initiated when the process of project 2 was still ongoing, and according to the respondents, a lot of information was exchanged between these projects. Furthermore, the Flemish government launched the tendering process of project 4 while neither the second nor the third procurement process had been completed. However, despite these overlaps in timing, not nearly all lessons learned in one project were automatically codified in the model contract for the next project. As an example, the procurement processes of the second and third projects took off with the exact same definitions on typically important subjects, such as the compensation on relief events and the grounds for immediate termination. In both tendering processes, these definitions had to be changed significantly before a contractual deal was achieved. Interestingly, even though (1) one and the same public sector entity sat at the negotiation table for these projects, (2) the negotiations for both projects started with similar contractual bases, and (3) the timing of both procurement processes overlapped, the definitions and many other clauses included in the final contracts on these projects were rather dissimilar. Some contractual changes were applied in both projects, some were only applied in one of them. This raises questions about how systematically the lessons were transferred in this particular period. There may have been too little time for public executives to adequately or systematically process the lessons learned (see also Hartmann & Dorée, 2015), or the learning process may have been compromised by the internal organizational structure of Via-Invest PLC. After all, not all projects were led by the same people. The tendering process of the fourth project was launched later, and the model contract used in this process was significantly different than earlier model contracts, so the timing of the fourth project may have created more room for knowledge codification based on previous projects.

By procuring four Via-Invest projects within a short period of time, the public sector partner also limited the possibility of codifying knowledge relative to the construction and operational phases. A striking example of this refers to the clause 'Variations' and the definition of a variation in particular. In each project, disagreements came up between the public sector partner and the private sector partner on the distinction between a variation on the one hand, and the design freedom of the contractor on the other. The core question in these disagreements was: to what extent can a contractor revise the design of an infrastructure asset without having to report this as a variation to the public sector partner, and thus without bearing any financial consequences? The public sector partner has logically been inclined to apply a wide definition of a variation, because a variation on behalf of the contractor typically incurs a financial compensation for the public sector partner. Conversely, the contractor preferred a very narrow definition of a variation, because every design modification that lowers the construction costs, and that is not considered a variation, increases the contractor's profit margin. The disagreements revealed that the definition of a variation was not clear enough, but as they only came up during the construction phase and the projects were procured within such a short time frame, the model contract had not been changed yet. As the dispute has recently been solved in one of the projects, the clause 'Variation' will likely be changed in a revised model contract.

5.9 Conclusion

PPP forms a challenging endeavor for the public sector as it aggravates the complexity of infrastructure deals. Many governments have focused on the standardization of contracts to codify the knowledge that is developed in PPPs and improve the contracting process by transferring the lessons learned on the way to a generic, standard contract. The aim of this chapter has been to deliver a contribution to the study of the learning process of governments that are looking to standardize contracts for public-private partnerships. I examined the contractual agreements on a major PPP program in Belgian road infrastructure by unveiling what, why, and how contractual changes occurred over time, and interpreting the findings in light of standardization. The study offers important insights into the maturation process of the Belgian PPP market: it shows how public sector partners used model contracts to test their approach, and to what extent they transferred the lessons learned to an advancing model contract that gradually became a standard.

One of the determinants of learning in the Via-Invest projects has been the open mind of the public sector partner relative to changing clauses that had

been included in the model contract it drafted, and particularly to ideas and recommendations from other actors involved in the process. The contracts used in the Via-Invest Program were constantly in flux, which I had not expected as I assumed that by gaining PPP expertise the Flemish government would increasingly use its model contract as a control tool (i.e., a standard), and as such leave increasingly limited room for negotiation or change. The model contract has definitely become the basis for the negotiations within procurement processes of the Via-Invest Program, but the Flemish government has not yet used it as strictly as governments in other jurisdictions have been doing. Furthermore, I expected to see a strong reliance of the public sector partner on vicarious learning in the early phase of the PPP program. There were indeed strong indications of vicarious learning being the primary type of learning in the program, but I did not notice a gradual decrease in this type of learning. In both early and recent projects, the Flemish government relied strongly on external knowledge. Most striking was the strong influence of the financiers on the form and content of the contractual agreements. I also observed contractual changes that had been the result of experiential learning, but this type of learning was less dominant.

The continuing learning process of the Flemish government indicates that it takes both time and project-specific experience for public executives to formulate a model contract that can truly be seen as a standard. Whereas the Via-Invest projects that have hitherto been procured undeniably helped the Flemish government mature in terms of project-specific knowledge, questions remain as to how systematically lessons learned were transferred to a programmatic level in order to strengthen the model contract and give it more of a standardized character. It requires further research on the timing of the procurement processes, as well as internal organizational structures, to confirm these doubts.

5.9.1 Theoretical implications

This chapter advances the understanding of the microdynamics of contracting, a research area that was championed by Ryall and Sampson (2009), Lumineau et al. (2011), and Ariño et al. (2014). What distinguishes this study from earlier works is its focus on PPP. Scholars have mainly addressed contracting in inter-firm relationships (see e.g., Vanneste & Puranam, 2010) and alliance governance (see e.g., Faems, et al., 2008). Although I applied a different scope in this study, many conclusions of works in other areas were supported. As we saw an increase in contractual complexity in the Via-Invest Program, this study strengthens the findings of Mayer and Argyres (2004), Argyres et al. (2007), and Kim and Brown

(2012), who show that contracts become more complete as projects go by and actors build up experience.

The study adds to the literature on the impact of standardization. It depicts a generally positive interaction between contractual learning and standardization in the field of PPP, and it supports scholarly arguments on standardization as a means to process change or innovation. The public sector partner did not manage the process in a very rigid way. On the contrary, there seemed to be a strong will of the government to learn from actors outside the public sector. This finding contravenes theories that relate standardization to rigidity and resistance to change (see Wright, et al., 2012 for an account of the ambiguity of the literature on this matter). My argument on the Via-Invest Program also contradicts the common phrase that contractual parties often have to experience an adverse situation before they address problems and contingencies in a revised contract (Mayer & Argyres, 2004; Vanneste & Puranam, 2010). By consulting market actors, the public sector partner got informed on a number of essential aspects and incorporated these in revised versions of its model contract, without having to experience problematic events.

Finally, PPP is often understood as something that is gratefully implemented by decision makers as a procurement instrument that combines off-balance-sheet financing with a better on-time and on-budget delivery of infrastructure projects. Thus PPP can be an interesting political tool, and scholars have elaborated on this topic (Coghill & Woodward, 2005; Flinders, 2005; Hodge, et al., 2010b). However, as most of the lessons learned in the Via-Invest Program were the result of financiers' remarks or requirements, it is indicated that PPP is essentially a financial model in which decision making is largely driven by banks and lenders. Therefore, this chapter contributes to the growing awareness that the way in which infrastructure assets are being developed today is an expression of a wider phenomenon called *financialization* (Ashton, et al., 2012; Torrance, 2008).

5.9.2 Limitations and future research

This research has a number of limitations. First, it has been difficult to captivate contractual changes *between* different projects. My initial intention was to make a distinction between internal learning, i.e., contractual changes applied within a specific project negotiation, and external learning, i.e., contractual changes applied in the period between the financial close of one project and the launch of the tendering process of the next project. By analyzing the difference between internal and external learning, I would have been able to report on the possibly varying openness toward contractual change on the part of the public sector partner. However, as the

Via-Invest Program was characterized by overlapping procurement times of different projects and highly mutual and iterative learning processes between these projects, I had to let go of this linear way of measuring external change. This remains a venue for research in the field of PPP.

Second, a classical limitation of the study would be that it only reports on a very specific program (Flyvbjerg, 2006a). However, to my knowledge there has not been a study of contractual learning in a PPP program before. As such, this chapter sets the stage for research aimed at gaining a better understanding of how governments actually learn in PPP, and it could serve as a point of reference for future studies. It would be interesting to see whether the arguments I raise also apply to PPP programs that are larger, situated in a different policy area, or situated in a different jurisdiction. In countries like the United Kingdom and Canada, contractual evolution in PPP stretches over a decade. Does having a longer history of public-private ventures in infrastructure development limit contractual change? Will public sector partners in these countries be more inclined to defend their standard contracts? And if they are more hesitant to changing their standards, is that because they are confident of the quality of their contracts, or do they need to adhere to the standard for the sake of meeting specific policy requirements?

Third and finally, I have paid limited attention to non-changing clauses, although these could indicate an important lack of learning. As an example, I was only able to notice the dysfunctionality of clauses on dispute resolution because these were eventually omitted from one of the contracts in the Via-Invest Program. Other than the removal, I had no direct indications of the issues this subject used to cause—apart from the minor modifications that used to be made during the contractual negotiations. Moreover, it was only in the fourth project that the clause on the dispute resolution committee was omitted, despite the fact that the clause had not been actively pursued in any other project. This makes it interesting to look for other standard clauses that are not being used but remain included in the agreements as time and projects go by. What happens if a clause that has obviously become obsolete, but has remained in the standard contract, is brought up by one of the actors at a certain point in time? This type of boilerplate provisions deserves further scholarly attention.

6 Conclusion[68]

As governments have started to see public infrastructure as an asset class and increasingly welcomed private financiers and investors to take care of its provision, the popularity of public-private partnerships (PPPs) has skyrocketed over the past few decades. Nevertheless, PPP is packed with governance challenges and has not delivered all its promises, hence the examination of its implications is a continuing concern. An aspect that has caused practitioners major headaches over time is the contracting process involved in PPP: it typically involves difficult negotiations and high transaction costs. In order to remedy these challenges, governments are showing increasing interest in facilitating the contracting process. This dissertation has delved into this endeavor in depth by closely examining the creation and use of standard contracts. Globally promoted and widely used in many places and sectors (IBRD/World Bank, et al., 2014; PPPIRC, 2015), standard contracts are increasingly becoming common governance tools, yet a remarkable lack of analysis remains regarding how they are developed, let alone what their actual benefits and drawbacks are.

In this thesis, I have improved the understanding of the creation and use of standard contracts through a critical and in-depth examination of the contracting process in PPP. This chapter incorporates the findings and summarizes the general argument of this dissertation. Although the chapters included in this dissertation have been the result of independent studies (i.e., a theoretical exploration, two separate analyses of the FSIP, and one analysis of the Via-Invest Program), they are complementary in that they follow a sequence of research questions. I began this research by discussing the link between the governance, complexity, and performance of PPP programs and projects in order to gain insight into the difficulties involved in these public-private endeavors. As such, I was able to improve my understanding of the importance of matching governance approaches and

[68] A shorter version of this chapter has been submitted to a journal.

complexity, the Flemish PPP landscape, and urgent problems in public-private trajectories (RQ1). The first section of this concluding chapter recapitulates my findings on these aspects.

The second section of this chapter picks up where the first section left off: it briefly discusses the potential benefits and challenges of the standardization of contracts for PPP, which is often seen as a means to resolve some of the struggles of governments (RQ2). The second section also summarizes the empirical answers to RQ3 (track a and track b). In the remaining sections, I put my findings in perspective by explaining their position relative to earlier theoretical and empirical work, explicate practical recommendations to policy makers and public managers, explore avenues for further research, and reflect on some of the decisions I made over the past few years as I conducted this study. Although this chapter does not contain new empirical information or analyses, I will sometimes refer to anecdotal evidence to re-illustrate or re-emphasize a problem or argument.

6.1 Governance and complexity of PPP in Flanders

As Flanders was relatively unknown in terms of academic PPP research when I started this doctoral study—despite the practical experience that had been built over the years—the first assignment I gave myself was to come to grips with the dimensions of governance, complexity, and performance of PPP in this jurisdiction. The Flemish Sports Infrastructure Program (FSIP) provided a case to fulfill this assignment and allowed for an analytical generalization of the findings to the wider literature on governance and complexity, thereby addressing the first research question of this study: how are governance, complexity, and performance related in public-private partnerships?

I have argued in Chapter 2 that the FSIP lacked a feasible form of governance. The approach applied by the Flemish government spurred an interference of political, multi-actor, and technical complexities that in turn compromised the program's performance in terms of the swiftness of the procurement process and the overall volume of projects delivered. For instance, political complexities were instigated as provincial and local governments were asked to give up their own interests for the sake of large project delivery through bundling. However, since it soon appeared that the Flemish government was not able to keep up with the pace of the decision-making process due to its limited degree of preparedness, many provincial and local governments lost interest in the program and started to drop out. The mandating strategy was another governance tool that caused complexity: it inflicted cautious and onerous negotiations and brought in

considerable financial uncertainty. These and other issues caused the FSIP to not nearly achieve the targets that were once set by the Government.

The case study of the FSIP provided me with a better understanding of the governance and complexity of PPP in Flanders, and it ended up being another indication of the struggle of governments with the governance of PPP. Two findings stood out and would be of critical importance to later phases of my research. First, the major coordination problems in the PPP program, which led to high transaction costs, severe procurement delays, many project dropouts, and a doubtful degree of competition during the bidding phase, clearly indicated the fierce governance challenges that governments face in PPP processes. Second, on a more general level, Chapter 2 delivered a contribution to the academic debate on the necessity to match the governance of a policy program or project—its organizational structure, the affiliated decision-making procedures, and the various governance tools that are used, primarily contracts when it comes to PPP—with the characteristics of the assets that need to be delivered (Lumineau, et al., 2011). I unveiled a mismatch between (1) the complicated governance approach that was applied by the Flemish government and (2) the relatively straightforward infrastructure assets that had to be developed within the purview of the FSIP. Although the technical complexity of artificial pitches, sports halls, and even multifunctional sports centers is generally considered to be relatively limited in comparison with that of other public infrastructure projects, the Flemish government relied on a heavy governance scheme in its attempt to remedy the Region's severe lack of sports infrastructure.

In hindsight, the FSIP is arguably a case that embodies the culture of PPP in Flanders; not only in terms of its characteristics that I knew upfront, but also regarding the empirical findings. Although I am aware that caution is advised when generalizing findings on the basis of case study research, the findings align with earlier work. The results add to evidence of problems with all kinds of aspects of PPP in Flanders that have been put forward in recent academic research (De Schepper, et al., 2014; De Schepper, et al., 2015; Van Gestel, et al., 2012; Van Gestel, et al., 2014; Willems, 2014a, 2014b), political debates, newspaper articles, opinion pieces, and other media outlets (De Boeck & Van Horenbeek, 2015; Hall, 2015; Martens, 2006; Van Horenbeek & De Boeck, 2015)—not to mention the increasing load of anonymous anecdotal evidence that I have been collecting over the past few years. Similar to several other public-private endeavors of the Flemish government, the FSIP involved complicated procedures, led to dissimilar results, and sparked controversy in a variety of ways. While PPP is complex by definition, in Flanders this complexity worsened due to the use of relatively untested governance structures that fit neither the context

nor the characteristics of the infrastructure assets that were constructed. As such, the case study was another confirmation of the notion that the governance of PPP should be contingent in order to be effective (Conteh, 2013; Emerson, et al., 2012; Sanderson, 2012). Less complicated governance approaches, or simple governing structures, as Flyvbjerg et al. (2003) put it, can be a perfect fit in certain contexts.

6.2 Standardizing contracts: a recap of the empirical findings

The first part of the case study of the FSIP helped me formulate a number of governance and complexity issues of PPP. It served as a point of departure for my exploration of the standardization of contracts, which is essentially a governance tool to reduce the complexity of PPP and thereby facilitate the procurement process. The objective of the next step was to answer the second research question of this dissertation: what are the rationales and potential benefits and challenges of using standard contracts in the contracting process of public-private partnerships?

As I extended the literature on standardization to the sector of PPP, I elaborated on the basis of the pros and cons that had been put forward over time in other studies on standardization in different disciplines, jurisdictions, and sectors. In Chapter 3 I focused on three of the most dominant issues that had come forward over time: learning, transaction costs, and competition. Moreover, I emphasized the role of government in initiating standardization and raised some doubts as to the merits of standard contracts in situations where a government assumes a too powerful or control-oriented position. This thought exercise resulted in a list of topics worth analyzing (see Table 9 on page 62) and set the agenda for the second empirical part of my dissertation, in which I limited the scope to two of these topics: (1) transaction costs and (2) learning.

Following this agenda, I conducted case studies in which I elaborated further on parts of this agenda, formulated theory-based expectations, and empirically tested them. The following two sections recapitulate the results of the case studies that were aimed at answering the third and final research question: how can we explain the creation and use of standard contracts in public-private partnerships? They also serve as a prelude to a wider discussion in Section 6.3 and Section 6.4.

6.2.1 Matching standards with project characteristics

In the second part of my case study of the FSIP, I looked at the program from a perspective of transaction cost economics (RQ3, track a), and I combined this view with notions of standardization theory. The analysis was

aimed at standard contracts: how were they created and used, and what was their role in regard to the process of the FSIP? It appeared that the creation and use of standard contracts in the FSIP were not equally successful in all three domains of sports facilities. Whereas the use of standard contracts for artificial pitches was never said to be problematic, problems arose in the other two domains. For instance, in the domain of sports halls the Flemish government encountered interference from local governments' interests opposing the high degree of standardization. In the domain of multifunctional sports centers, there were indications of a persistently rigid attitude at the negotiation table of the same public actor. Many respondents considered this a major obstacle to a swift process.

I attributed the less successful applications of standard contracts to the inappropriate ways in which they were used by the standard setter, i.e., Sportfacilitator. While a relatively strict application of the standard was used in the domain of multifunctional sports centers—which was contrary to my expectations—a looser approach would have made more sense in terms of matching the contract with the specificity and uncertainty of the asset. I expected to see a rather versatile way of using standard contracts in the domain of sports halls, since the characteristics of this asset class were more difficult to define. The empirical findings in the latter domain corresponded to my expectations: Sportfacilitator significantly changed its approach during the procurement process by getting rid of its initial system of highly standardized types of sports halls and assuming a more customized approach instead. This new approach made the process even more challenging to manage because it introduced financial uncertainties.

The roots of both aforementioned problematic cases of the use of standard contracts are to be found in two aspects that are often closely related to standardization issues: policy and politics. First, the policy aspect came to the fore in the domain of multifunctional sports centers, where Sportfacilitator was under a lot of pressure to keep governmental guarantees out of the DBFM(O) agreement in order not to burden the balance sheet of the Flemish Government. It is no secret that off-balance-sheet financing has long been—and probably still is—the prime reason for the Flemish Government to invest so much in PPP. In this vein, the reason for Sportfacilitator to not include governmental guarantees in the standard contract, and to hold tight to this standard for a very long time, has at least partly been related to policy objectives. Second, the domain of sports halls has seen a classical juxtaposition between standardization and the need for customization due to diverging (political) interests. As local governments were threatening to drop out of the program if they were not granted more voice in determining the design of their sports halls, Sportfacilitator had to

abandon a highly standardized approach and allow for tailored solutions—even though this would spark financial uncertainties among private bidders. Had this decision not been made, an even lower volume of sports halls would have been delivered, and a policy failure like that was something the Flemish Government did not need. Section 6.4.2 further elaborates on the aspects of policies and politics in regard to standardization theory.

6.2.2 The long way to a standard

The second case study (Via-Invest Program) was to help me gain a better understanding of a different aspect of the creation and use of standard contracts (RQ3, track b). I sought to reveal the learning process governments go through while they are managing the procurement trajectories of PPPs over time and revising the model contract they use, thereby gradually moving toward the formulation of a standard contract.

The results indicated a learning process that was characterized by an open attitude toward learning on the part of the public sector actor (i.e., PMV which acted on behalf of the Flemish government). I observed the private sector actors—primarily financiers—playing an influential role in proposing and often even requiring change (vicarious learning). Contrary to my theory-based expectations on the learning process, the Flemish government continuously tested its model contract's adherence to market practice rather than increasingly limiting the room for negotiation as it built up expertise. The contracts used in the Via-Invest Program were constantly in flux, and my impression is that hitherto the Flemish government has not used them as strictly as public actors in the United Kingdom, the Netherlands, and probably other jurisdictions have been doing.

I also found that it cost the government an intensive process of building up PPP expertise to eventually arrive at a contract that could be considered a standard, and I raised questions about how systematically this process evolved. Although the Flemish government (and PMV in particular) has undeniably matured in terms of project-specific knowledge by procuring several Via-Invest projects, the dense timing of the respective procurement processes made it difficult to systematically transfer the lessons learned to a programmatic level in order to strengthen the model contract and give it more of a standardized character. Other than aspects of time, every Via-Invest project was managed by a different group of executives, which could raise some doubts on the learning process. The latest version of the model contract is probably the first contract that has fully benefited from previous experiences so that it can be applied more rigidly.

6.3 Taking an outside view

The empirical results of this dissertation provide an important opportunity to put in perspective the governance and complexity of PPP in Flanders. Various public-private ventures in Flanders have been characterized by such elements as bundled procurement and a hybrid organizational structure. The Flemish government took this approach from the day it started to implement an official PPP policy strategy (in the early 2000s) and has been biased toward resolving significant infrastructure shortages through PPP ever since. The Flemish Region has distinguished itself from many other jurisdictions in a couple of ways. For instance, little is known about foreign examples of the so-called hybrid PPP model that has been used several times in Belgium. This model combines elements of both contractual PPP (which includes a DBFM agreement) and a more participative model (in which public and private actors jointly establish a company). Van Gestel et al. (2014) consider this structure a novelty and express criticism on the decision to apply this approach. A second example of the specificity of the Flemish PPP landscape is the use of bundled procurement in the FSIP and the Schools of Tomorrow Program. This, too, is an approach that does not have many parallels in Europe. A similar approach was applied in the Building Schools for the Future Program in the United Kingdom, but there has been no reason to cheer about this program; it was criticized for failing to achieve its targets and eventually scrapped by the British Government (NAO, 2009; Richardson, 2010).

A third and final illustration that indicates the rather odd character of PPP in Flanders is the fact that it made a large investment in day-to-day sports facilities through a PPP program. To my knowledge, this approach is uncommon as seen from an international perspective. I am aware of public-private investments in complex, large-scale sports infrastructure in relation to major sports events (e.g., Cabral & Silva Jr., 2013; Searle, 2002) and sports leagues (e.g., Crompton et al., 2003; Long, 2005, 2013). Endeavors like these attract the interest of private financiers because they can be turned into lucrative investments due to their considerable size (preferably larger than 100 million euro). As such, one could probably have seen from afar that the FSIP was no perfect fit for public-private investments. The largest projects involved in the FSIP barely exceeded a total value of 40 million euro. Furthermore, given the relative simplicity of sports facilities there must have been other ways to make structural, sustainable investments in this sector. A full-fledged system of subsidization and strict maintenance contracting would probably have done the job as well, and would not have burdened local public executives with massive contracts they hardly understood, let alone given them contract management tasks they did not

know how to do. For instance, even though the domain of artificial pitches was considered a success compared to the other domains of the FSIP, projects of such simplicity (i.e., low asset specificity and low uncertainty) do not have to be procured through such intense governance structures as PPPs. One of the respondents made a comparison with Flemish subsidization programs for the construction of running tracks and sports courts. These programs were launched only a few years ago and the realization of the projects happened swiftly and to the satisfaction of the players involved. The contrast with the FSIP is clear on this matter.

In addition to the impression that the Flemish approach has been different from approaches applied in other jurisdictions, there are reasons to believe that within the Flemish government a range of PPP approaches has evolved. There is an important issue in regard to this diversification aspect. The knowledge and expertise relative to PPP is fragmented across the wide range of Flemish public authorities, be it at the regional or the local (municipal) level. More importantly, the distribution of knowledge and expertise is skewed.[69] This notion is not new, nor does it make Flanders an exceptional case. After all, capabilities always reside differentially across and within layers of government. But this fragmentation and skewness do indicate the need for governmental players to get to know each other's strengths and weaknesses and start sharing knowledge in order to enable a learning process. In an attempt to contribute to the policy debate, I dedicate a few words to this issue.

Several Flemish public actors that are active at the regional level have developed significant PPP expertise over the past few years. For instance, the Flemish public transit company De Lijn has procured a number of tramway infrastructure PPPs. PMV has built experience with its direct involvement in the FSIP, the Via-Invest Program, and several other programs and projects. Government bodies like AWV and the autonomous agency for the maintenance, operation, management, and commercialization of the eastern waterways[70] ("nv De Scheepvaart" in Dutch) have also become involved in PPP programs and projects. One could argue that a considerable number of actors have partial knowledge and that they could help each other in trying to move forward. While some actors may have more capabilities in the financial department of PPP, others are most

[69] It is important to re-emphasize that I looked into two PPP programs at the level of the Flemish government, not into specific local government-led projects and the related policies and politics. Therefore, as this discussion section proceeds, the focus will be on the level of the Flemish government.

[70] These waterways include the Albert Canal, the Kempen Canals, the Scheldt-Rhine Canal, and the River Maas.

necessary in regard to strictly technical requirements, such as the determination of output specifications. For example, as De Lijn's core business has always been in the technical aspects of public transit and not in making private financing deals, it is not difficult to imagine the struggle it went through while making its way to closing its first few DBFM agreements. It is in these situations that the respective knowledge from other public actors would be most welcome. As an example, even though tramway infrastructure is a different ballgame than a highway or a school building, the logic of all availability fee-based DBFM models is the same. That being said, engaging in a cross-sectorial learning process is likely to be useful, especially because most public executives who sign off on a PPP deal (or any other type of major infrastructure project) do this only once in their career, which makes it practically impossible for them to learn from their own prior mistakes and reuse knowledge of a previous project (Flyvbjerg et al., 2009; Mayer, 2006). If the risks incurred by their cognitive biases and optimistic delusions remain, PPP is bound to remain a subject of debate. Therefore, it is important to minimize the role of coincidence in learning processes.

The Flemish government has taken policy measures that indicate that it recognizes and acts upon the need for inter-sectorial and inter-departmental learning. Various initiatives have been noticeable over the past few years, including events and workshops aimed at knowledge sharing and the standardization of instruments and contracts by the Flemish PPP Knowledge Centre (Flemish Parliament, 2011b, 2013b; Flemish PPP Knowledge Centre, 2014). Several model contracts have been developed as the result of collaboration between two or more public actors, e.g., PMV and the Flemish PPP Knowledge Centre, and built upon earlier model contracts that were used in other sectors. Furthermore, the results of a number of standardization exercises have been put to use by local governments. As of today, three main standard contracts are used in practice. There is the road infrastructure contract for the Via-Invest Program, a tramway infrastructure contract for projects initiated by De Lijn, and a model contract for projects of a smaller size (mostly social infrastructure, e.g., sports facilities and school buildings).

Some government initiatives have been more successful than others. For instance, in 2012 the Prime Minister of Flanders mentioned that there was a lack of awareness among governments regarding the availability of (standardized) PPP instruments (Flemish Parliament, 2012b). Additionally, while significant progress has been made over time, some opportunities for capturing lessons learned may not have been (fully) used, and some initiatives are struggling to get off the ground. There is (or sometimes was)

room for improvement here. I argue that these missed opportunities trace back to (1) the fragmented character of the Flemish administrative constellation and (2) the lack of a robust PPP policy strategy at the regional level.

(1) Technically it should not be difficult to arrange regular meetings or establish a taskforce that systematically evaluates past experiences and formulates lessons learned, thereby fostering a structural improvement process of contracts across a range of public departments. Again, however, while some parties have undertaken initiatives like this in order to bring parties together, knowledge sharing and distribution are easier said than done. Public actors like PMV, De Lijn, and on a federal level the Belgian Buildings Agency may be inclined to stick with their own agendas and their own standard contracts. They are not necessarily willing, let alone obligated, to share information with their peers. The Flemish PPP Knowledge Centre is trying to get the different departments together with the aim to create some sort of convergence by comparing and revisiting the contractual clauses that are used in different departments, but this process takes a lot of time. It is argued that some parties do not see the usefulness of a generic model contract that overarches sectors. One of the respondents who belonged to the latter group of skeptics argued the following:

> What is the point of creating a generic contract? We have based our model on an international standard. We took the standard of Rijkswaterstaat[71] as a point of departure. We benchmark regularly with new standards in the United Kingdom. We work with lawyers that are active at an international level. … What else should we do? … Other departments have their own contracts. … We cannot just impose our standard on them. … Every department has a certain degree of freedom and applies a certain approach.

As one of the interview respondents compared Flanders to other jurisdictions, he emphasized its administrative exceptionalities, including the high degree of compartmentalization of knowledge and expertise:

> Within Flanders, within one and the same region, there are different contracting authorities at the same policy level. PMV, De Lijn, AWV … And even within one and the same contracting authority, for instance De Lijn, the contracts that are used are not the same. I do not understand that. In terms of standardization, so in terms of time, negotiations, and project studies, there are many opportunities for savings.

[71] Rijkswaterstaat is the executive agency of the Dutch Ministry of Infrastructure and the Environment that is responsible for the main transportation network.

Several respondents expressed their criticism on the situation put forward in the former quote. One of them literally labelled the existence of different standard contracts among different departments as a bizarre situation, but also a logical consequence of the fact that the Flemish institutional landscape is highly fragmented. However, it would be too easy to blame this variety in standard contracts and standardization processes merely on this fragmented landscape.

(2) A great deal of the aforementioned diversification in standardization could probably have been avoided if the Flemish PPP activities had followed a more structured or tighter approach from the very beginning, for instance under the supervision of a public authority that would be in charge of the coordination of standardization. This is where I argue that a robust policy strategy for PPP has been missing from the outset. Instead of following a prescribed, centralized trajectory, departments were free to apply an individual approach and call in the help of different external advisors, and that is where the diversification started. The fact that the current initiative of the Flemish PPP Knowledge Centre to get departments together is progressing slowly suggests that these departments do not see the necessity of this exercise. "They are now confident with their own standard. … So it is difficult to find a generic model," argued an interview respondent. One could argue that it is now too late to try to converge the existing standard contracts. But while it might be too late for convergence, it has only become more useful to exchange experiences now that different public actors have taken significant steps in procuring and operating public-private partnerships.

Despite Flanders' late uptake of PPP and therefore ample opportunity to learn from other jurisdictions, some departments have probably been reinventing the wheel. As one of the respondents indicated, "exercises in lessons learned are rarely performed. There is slow or little feedback from projects that are under construction or in operation toward new projects and contracts." This is an area where Flanders does not deviate from the international reality of public policy, public management, and infrastructure planning. Across the globe, governments (at all levels) keep struggling with public infrastructure provision as they continue to fail in choosing appropriate governance schemes and delivery models for public products. They make the same wrong decisions over and over again, despite many opportunities to learn from the past, whether it is their own past experience or that of others. While many problems can easily be prevented by a quick look over a jurisdictional border, a brief exercise in historical sense making, or even a proper sense of what is going on within a specific government

itself, governments generally fail to review evidence or conduct evaluations and due diligence in a systematic manner (Flyvbjerg, 2013).[72]

6.4 Theoretical considerations

In this dissertation, a first attempt has been made to uncover the possible challenges and tensions propelled by the standardization of contracts in the context of PPP. As such, I have tried to enrich the debate on standardization and provide new theoretical and empirical insights. Previous studies have not tried to connect the bodies of literature on PPP, contracting, and standardization. Early contributions may have fulfilled an important role when it comes to highlighting the nexus of standardization and PPP, but they did not bring in the element of contracting, nor did they discuss aspects of learning, transaction costs, and competition—the work of Iossa et al. (2007a; 2007b) seems to be the only exception here. Furthermore, early contributors defined standardization differently (Dewulf, Duffield, et al., 2012; Jooste, et al., 2011), remained on a practice-oriented or relatively superficial level (Farrugia, et al., 2008; Hebly & Lorenzo van Rooij, 2007), or applied a strictly political scope in their research (Börzel & Risse, 2002). As I elaborate on the theoretical implications of this study, I make a distinction between standardizing contracts for the sake of better projects and standardizing contracts with other goals in mind.

6.4.1 Standardizing contracts, improving projects?

The review of the literature on standardization unveiled major similarities across disciplinary, jurisdictional, and sectorial boundaries in terms of the functions that actors see in standardization, as well as the challenges they encounter while standardizing and actually putting standards to use. Whether the literature concerned the fields of economics, international trade, or legal studies or issues of local, national, or supranational relevance; the merits of standardization were often sought in its promise to facilitate information sharing and learning, incur economies of scale, and improve competition. The expectations expressed in Chapter 3 were further developed in Chapters 4 and 5, and then tested through case studies. Since this dissertation applies a very specific focus, I have to be careful about generalizing the findings, but there are some important reflections as to how the case studies contribute to existing theory.

Many motivations I found in PPP practice were in line with insights from branches of the standardization literature. For instance, in the FSIP standard contracts were believed to trigger economies of scale because there would

[72] Some governments have taken steps to break this pattern (Band, 2014) but there is still a long way to go.

no longer be a need to draft a contract from scratch every time a PPP process was launched (cf. Farrell & Saloner, 1986; Katz & Shapiro, 1985). Furthermore, the bare necessity of using standard contracts was obvious in the cases in which a bundled procurement process was applied (artificial pitches and sports halls). This motivation was based on the principle of variety reduction (Blind, 2004). The variety-reducing element was also expected to generate interest from the private sector and thus incur better competition, but as the findings show, this promise was not met. Although I did not examine the effects on competition, there were indications that an adverse effect occurred (cf. Besen & Farrell, 1994; David, 1985).

The results of the analysis of the FSIP also confirmed the expectation that using standard contracts in PPP is not easy, and that it is not equal to simplifying the road toward constructing infrastructure assets. Contractual negotiations do not just start to happen in a more harmonious manner, nor do procurement times decrease overnight. Similar to infrastructure projects in general, standardization requires thorough preparation. Moreover, we have seen the need for a match between project characteristics and the extent to which a principal is willing to deviate from a prescribed standard contract during the negotiation phase of a project—or a bundle of projects, for that matter. The findings support Rahman and Kumaraswamy's advice not only to look at an appropriate contracting method coupled with clear and equitable documents, but also to take into account the tensions that inevitably surface when people work together "in the face of uncertainty and complexity with diverse interests and conflicting agendas" (2002, p. 45). The public sector actor (i.e., Sportfacilitator on behalf of the Flemish government) hesitated to let go of some its initial contractual clauses, which illustrated the importance of policy objectives at a higher level (off-balance-sheet financing)—even though it would eventually be necessary to abandon these initial clauses in order to make projects bankable and thus realizable. This was one of the situations that showed how standard contracts may actually complicate the procurement process and certainly do not automatically create a better atmosphere for contractual negotiations, let alone better conditions for swifter negotiations. Other process requirements for public infrastructure provision, such as a solid project definition and financial awareness among contracting authorities, remain crucial in avoiding an escalation of timing and cost (see for instance Flyvbjerg, et al., 2003 on scope creep). Furthermore, as I restate the obvious argument of Jooste et al. (2011), a one-size-fits-all approach does not work anywhere and anytime. The Flemish government was aware of this from the outset, which was reflected in the differentiation it applied in the degree of standardization of the FSIP's procedures and contracts.

The results of the second case study (the Via-Invest Program) provided evidence to suggest that the role of the public actor as a standard setter need not always incur rigidity, as in trying to stick as much as possible with the contractual clauses it drafted. It was shown that the standardization process was used as a means to generate knowledge by building up experience. I observed a willingness of the public actor (Via-Invest PLC, 51 percent of which was owned by PMV and 49 percent by AWV) to change its model contract on a continual basis while procuring subsequent road infrastructure projects. The character of the process catered to both vicarious and experimental learning, as well as customization of contractual documents to the road infrastructure sector. Therefore, the study supports the suggestion that standardization does not exclude innovation. It contravenes studies that relate standardization to rigidity and resistance to change (see Wright, et al., 2012 for an account of the ambiguity of the literature on this matter). Furthermore, the increasing complexity of the model contracts supports the notions of Mayer and Argyres (2004), Argyres et al. (2007), and Kim and Brown (2012), who argue that contracts become more complete as projects go by and as experience builds up. Finally, while Mayer and Argyres (2004) and Vanneste and Puranam (2010) state that contractual parties often need to experience an adverse situation before they address problems and contingencies in a revised contract, the Via-Invest program indicates that contracts may very well be changed without actors having to experience problematic events. To the public sector partner it was rather a matter of consulting market actors, retrieving information on a number of essential aspects, and incorporating these in a revised version of the model contract. This practice shows similarities with the type of standardization that is advocated by Timmermans and Berg (1997), who find that an ongoing (re)articulation of a standard is key to its success. Good standards may well have a surprisingly dynamic character, and the paradox is that path dependency (i.e., a path of standardization) is required in order to be able to handle new challenges.

6.4.2 A different perspective on standardization

In the agenda-setting piece of this dissertation (Chapter 3), I formulated a definition of the concept of standard contracts and proposed it as a new venue for PPP research. A significant part of this definition emanated from literature on private sector standards. Critics may contend that there is a risk in applying notions from the (private) management and organization literature in the setting of PPP, since the latter is characterized by public management considerations and brings in legal mandates and rules. I have argued that it is important to bear in mind the differences between the standards for PPP contracting and the typical private sector standards that have been discussed in seminal works and other contributions in the field of

standardization (Botzem & Dobusch, 2012; Brunsson & Jacobsson, 2000; Krislov, 1997; Tamm Hallström, 2004; Timmermans & Epstein, 2010). However, I also firmly believe that the logic of standardization partly transcends the boundaries of the two realms. This is particularly reflected in issues of power and control and legitimacy and transparency. I am aware of the fact that these issues were not always incorporated in my analyses. To be sure, standardization is largely about making practices understood in the infrastructure industry and among public actors, and the motivations for lower transaction costs and better competition are clear as well. But it would be inappropriate to ignore power and legitimacy concerns. Therefore, I present some reflections on these issues below.

Chapter 3 discussed the risks of using standard contracts in PPP, assuming a control-oriented position of public sector actors when they set standards and apply them in contractual negotiations. One could argue that I took a rather antagonistic stance in this chapter. I partly did this on purpose because I felt that the promises of standardization were often taken for granted in policy making and practice. But most importantly, I had a sound reason to take this position: the public sector nature of standard contracts simply helps governments into a powerful position at the start of contractual negotiations. It is their self-developed standard that will be used, not a model contract with a private sector background that has been approved by a recognized body. Moreover, the confidence of governments in their standards will increase because they build up contracting experience over time, so they will be increasingly inclined to impose standards rather than offer them as guidelines.

In line with the aforementioned notion, it can be said that standardization is not nearly an objective activity. Hence it is interesting to scrutinize it from a perspective of power and control. Timmermans and Berg may refer to standards as “carriers of prescriptions for good practice” (1997, p. 296), but they can just as often be carriers of prescriptions to fulfill someone’s interests or political or policy objectives. After all, policy makers and public executives set the bar. We could be talking about relatively small-scale issues here, such as the hesitation of the Flemish government to incorporate in contractual agreements several public guarantees. In this vein, Janssen et al. (2010) list a number of examples of standardized clauses that put at stake the fairness of standard contracts used in the Netherlands. But the policy aspect exceeds the micro-level context and can also be found at a supranational level. For instance, the World Bank has shown interest in developing template contracts for PPP that can be employed by governments in developing countries. In a high-level conference session organized during the 2014 Law, Justice and Development Week in

Washington, DC, questions were raised about this idea: who is going to create the standard contracts? How universal can a standard be? How can inexperienced government staff impose externally determined standards within their own jurisdiction? What about problems or challenges that arise unexpectedly? Therefore, while the idea to internationally distribute PPP knowledge may come across as a noble plan, it takes a lot of elaboration and triggers an important debate. Against this backdrop, I have difficulties following Cargill and Bolin's (2007) argument that the public sector is essential in harnessing the future of standards. They qualify standardization as a failing paradigm due to the short-term focus of private sector standardization. However, standardization in a top-down manner by state or other public actors certainly does not guarantee that a long-term focus is applied, nor that contextual information is taken into consideration. A standard should be the result of an expression of the market so that it can be used directly. The creation of a market should not be an objective of standardization.

Finally, standardization can be used to strike a balance between national and international policy and local flexibilities for the benefit of legitimacy and transparency. Botzem and Dobusch briefly mention the role of legitimacy in standardization (2012, p. 757). They refer to the work of Tamm Hallström and Boström (2010) on the importance of transparency and that of Quack (2010) on procedural fairness and impartiality. Stone (2006) argues that standardization can introduce clear lines of accountability, transparency of outcomes and performance, and clarity as to the roles and responsibilities of the contracting parties. A normalization of procurement activities and contractual clauses results in certainty for PPP players, and if a government is willing to clarify to the public how procedures are routinely followed, it creates opportunities for more legitimacy. A compelling issue regarding these aspects is the balancing act between standardizing and tailoring. While basically everyone is aware that infrastructure projects ask for a tailored approach depending on their degree of complexity and specificity, (central) governments understandably feel the pressure to not outsource too many of their responsibilities and risk a lack of oversight or a departure from prescribed (international) standards (Dewulf et al., 2015). There are opportunities for further research in this area.

6.5 Practical recommendations

I suggest a number of pathways for policy makers and public managers who are seeking to improve the practice of PPP in Flanders. The evidence obtained in this study emphasizes how important it is that governments understand the PPP puzzle and respect the complexity it brings along. There

is room for improvement on this matter. I recommend that the Flemish government, possibly in a collaborative effort with other levels of government, make an investment in professionalizing the way it deals with PPP (and infrastructure provision in general). This investment consists of three steps: (1) a generic policy strategy for public infrastructure that applies a different motivation for the use of PPP, (2) the establishment of a public organization that takes responsibility for procurement tasks and centralizes relevant competencies and activities, and (3) training public managers. At the end of this section, Table 22 summarizes my ideas for improvement.

(1) The process toward better PPP starts with a generic, clear, and structured long-term policy strategy on public infrastructure provision. This strategy should openly abandon off-balance-sheet financing as a motivation for PPP (which other jurisdictions have done years ago). Instead, governments should embark on PPP if it involves a higher probability of an on-time and on-budget delivery of projects, and most importantly better value for taxpayers' money. As soon as the focus is on achieving value for money, the decision making on whether to use a PPP approach or not is likely to become more careful, since it can only be based on a proper comparison with public alternatives. In order to avoid poor governance decisions, governments need to think twice before launching large-scale PPP programs (think of the use of highly complex structures, procedures, and instruments in the wrong context as an example of such a poor decision).

By developing an integrated policy strategy on public infrastructure provision in general and not on PPP as such, the Flemish Government could create an opportunity to remove the current bias toward favoring PPP solutions to their infrastructure problems. Public-private partnership has to be one of the potential solutions that are offered, not automatically *the* solution. Furthermore, a long-term oriented, programmatic way of working that integrates all relevant departments of the Flemish government would create a better financial overview of current and future expenditures on infrastructure projects. It would also enhance opportunities for inter-departmental collaboration by bringing proposals, plans, and projects together. This integrated approach could prevent situations in which different departments hear about their plans to develop infrastructure in the same geographical area at rather late notice. An apt example of this is the combined construction of the Diabolo railway tunnel and the improvement of the northern access road to Brussels International Airport (Via-Invest Zaventem). Although the two responsible contracting authorities (railway provider Infrabel and AWV) were able to merge activities to benefit their projects and the limit the nuisance to residents, they only became aware of

their plans when their project preparations were about to enter the tender phase.

It would reflect a sense of vision and ambition if the Flemish Government provided an answer to the question of which direction it wanted to go in terms of building and maintaining economic infrastructure in the longer term. Comparative endeavors have been undertaken in other PPP-minded jurisdictions, such as the United Kingdom (HM Treasury, 2013, 2014; HM Treasury & Infrastructure UK, 2010), the Netherlands (Dutch Ministry of Infrastructure and the Environment, 2015), and some Canadian provinces (Government of British Columbia, 2015; Ontario Ministry of Infrastructure, 2011). I would not recommend simply copying these approaches, but they certainly deserve close consideration by policy makers and public executives. Furthermore, I follow Willems and Van Dooren's (2014) argument that the Flemish Government should use this proposed policy strategy to explain and defend its stance on public-private partnership in general.

(2) Next to a solid policy strategy, professionalization thrives on the establishment of an organization with competent, high-caliber staff who know the ins and outs of public infrastructure deals. This organization could serve as a procurement agent on behalf of the Flemish government and embody a centralization of procurement tasks and competencies. While I have earlier referred to PMV, De Lijn, and a couple of other organizations as relatively experienced actors in the public realm, other public actors are lagging behind even though they have also been closing DBFM agreements or other PPP contracts—think for instance of the small municipalities that have closed 30-year deals for the construction and maintenance of sports halls. The problem with these smaller public actors is that they will only build marginal up experience with PPP in the future. They do not have sufficient financial resources to procure many projects, and as a result they will struggle to maintain, let alone improve their level of experience-based PPP knowledge. Actors like these will continue to depend on expensive external support, while many other public parties will build an impressive body of knowledge over time. In order to avoid that the same mistakes are made over and over again by different actors, I suggest setting up a public agency that specializes in the procurement of public infrastructure and can assume an active role in guiding public actors through procurement processes. The involvement of this agency could either be mandatory for projects above a certain threshold and voluntary where the project value remains below a predefined level. In both cases, the proposed agency should be able to deliver top-class process management teams that have the legal, financial, and technical knowledge to help public executives move forward

in the process toward the construction and operational phase of a public infrastructure project.

Project proposals beyond a threshold value of 50 million euro typically generate interest from the private sector and make public-private partnership a viable option.[73] In these cases, the agency should always conduct a systematic, quantitative value for money (VfM) assessment and help the government decide whether to go PPP or not. A VfM assessment involves a comparison of the assumed net present value (NPV) of both the public approach and the public-private approach. The alternative with the lowest NPV will be picked and put into practice by the government. This type of assessment is non-existent in Flanders. Governments in a number of other jurisdictions have employed VfM assessment tools which probably provide them with a better sense of when to partner for public infrastructure. However, I am formulating with caution here, as the performance of VfM assessment tools has always been a subject of heated debate. "Methods of evaluation commonly used to determine when public-private partnerships are appropriate, such as calculations of net present value, also rely on estimates and are … just as likely flawed," says Whittington (2012) as she offsets them against the estimates used in conventional trajectories (see also Siemiatycki, 2007, 2010). Moreover, some scholars argue that VfM assessment is susceptible to the manipulative strategies of policy cheerleaders (Flyvbjerg, 2009; Hodge & Greve, 2009; Pollock, et al., 2007). I cannot blame these scholars for their skepticism, since details of VfM calculations are usually not publicly available and thus remain a black box. Therefore, although the development of a quantitative VfM assessment tool would essentially be a step toward better PPP policy, I would also strongly advise the Flemish government to keep an eye on transparency here.

Furthermore, the establishment of an agency would create opportunities to build a proper overview of activities in the development of public infrastructure. As of today, there is no such clear and exhaustive overview. For instance, although the Flemish Parliament receives annual reports on the Flemish government's involvement in alternatively financed projects, these reports lack modularity and oversight, and they only provide insight into projects at the regional level. The many PPPs that have been implemented at the provincial and local levels are not listed. The proposed agency should have the resources to improve both the collection and distribution of PPP knowledge by setting up an online database that gives basic information about projects, including capital costs, type of contract, timeline, location,

[73] See for instance the Canadian province of Ontario, where this bar is set at 100 million Canadian dollars (approximately 75 million euro) (Infrastructure Ontario, 2015).

and sector (cf. CCPPP, 2015). Contracting authorities should inform the agency of their contractual activities at milestone achievements, such as the launch of a tender, the financial close, and the completion of a project. The agency could also manage a knowledge repository on the tools, procedures, and best and worst practices of public infrastructure provision that are available in Flanders. The Flemish PPP Knowledge Centre currently plays an important role in this field, but whether it will receive the information it wants often depends on the goodwill of public departments.

The objectivity of the proposed agency can only be guaranteed if it is placed at a distance from political decision makers and if the board of the organization is not politically appointed. Moreover, it should only act as a procurement agent and should not be able to acquire a stake in infrastructure projects through equity capital. Its main job should not be to boost PPP but to better accommodate the procurement of public infrastructure projects. A central procurement agency like this is not an unseen phenomenon in the world of infrastructure provision. Infrastructure Ontario and Partnerships BC are two Canadian players in this field. Both Ontario and British Columbia have strongly standardized procurement processes and contracts, as well as a solid deal flow of infrastructure projects. While perfect solutions to the challenge of facilitating and improving public infrastructure projects do not exist, these Canadian examples provide interesting practices that could be useful in the Flemish environment.

The risky part of establishing a central procurement agency is that it could generate overhead and pull context-specific (i.e., local, situational) knowledge out of the procurement process. However, as I mentioned earlier, agency staff should work side by side with local public executives to achieve a high degree of knowledge transfer and to protect the element of locality during the procurement process. Other than that, I foresee opportunities for cost savings: the agency could coordinate the standardization of long-term infrastructure contracts in-house. It would have the financial and professional resources to compare different procedures and contracts, as well as to formulate a true standard contract that allowed contracting authorities and private sector bidders to scrap clauses to their liking. By taking a strong position in the landscape of Flemish public departments, it would probably be more successful in bringing those departments together and setting up a more systematic trajectory of learning.

(3) Third and finally, the findings suggest that it is important to raise the level of PPP knowledge of public executives at all levels of government. Standard contracts for PPP may be a very helpful tool for actors that have been down the PPP road before (e.g., managers at PMV or De Lijn, private

financiers, and contractors), but the reality is that almost no local public executive involved in the FSIP or the Via-Invest Program had any experience with DBFM agreements. They were barely aware of the technicalities at the start of the tendering phase and were confronted with difficulties during the contracting process. A most important challenge for them lay in defining exactly what they needed in the output specifications. Most public executives had not dealt with setting output specifications in the past, and it was difficult for them to understand this new logic and let go of the traditional, input-oriented approach. Moreover, they had to make difficult decisions on the desired quality level of the planned infrastructure. How high should you set the bar for highway maintenance for a period of 30 years when governments have traditionally been doing maintenance on an ad-hoc basis? And how do you know that you are paying the right price for a certain level of maintenance? The higher the requirements, the higher the charge, and this charge will be fixed for decades to come. Anecdotal evidence collected in this study suggests that some governments may have set the bar too high. To quote one of the private sector respondents:

> I think the government sets its maintenance requirements was too high. … Shouldn't the government ask for more basic maintenance? We are dealing with performance requirements that make me think the government has lost its mind. … [One of the contracts] states that we have to remove graffiti from the walls within six weeks. … You should have a look at conventionally maintained roads and see how long it takes before graffiti is removed over there. It usually takes a year, or maybe even two years. … The government simply sets the bar too high in PPP and makes it really expensive that way.

Iossa and Martimort (2012, p. 464) confirm that it is difficult for public actors to determine technical specifications and set an appropriate price level in advance. It will be for the benefit of future PPP deals that public executives know better what they are dealing with. Absent developments in the right direction, chances are that deals will be made that do not serve the public interest but unnecessarily burden the public budget. I recommend investing in resources to train (local) public managers and make them more aware of the nitty-gritty of PPP and other types of major infrastructure projects so that they are better able to recognize specific situations and handle them effectively. Themes that deserve thorough attention here are project and process design, output specifications, risk allocation, and contract management, to mention but a few key topics. Interesting programs are already offered by Leuven University and the Association for Space and Planning (VRP), but the scope of these master classes is limited to urban development and does not consider major infrastructure projects.

Table 22 Possible improvements for public infrastructure provision

Recommendations	Actions
Generic and robust policy strategy for public infrastructure	1. Abandon motivation of off-balance-sheet financing for PPP 2. Look for on-time and on-budget delivery and value for money 3. Long-term orientation, programmatic approach, integration of sectorial plans 4. Vision and ambition regarding development of economic infrastructure
Central procurement agency	5. Active role for high-caliber process management teams in guiding public actors through procurement of public infrastructure 6. Solid quantitative VfM assessment tool 7. Overview of public infrastructure projects 8. Repository of tools, procedures, and best and worst practices; systematic learning trajectory
Education and training of public managers	9. Master class in public infrastructure provision 10. Focus on project and process design, output specifications, risk allocation, and contract management

6.6 Research agenda and reflections

This dissertation serves as a starting point for further exploration of the creation and use of standard contracts. Future research can unpack explanations in other jurisdictions, other infrastructure sectors, and other aspects of the standardization of contracts for PPP.

First, I have emphasized more than once the specificity of the Flemish Region when it comes to PPP policy and practice (see Section 6.3). Chances are that this study's findings on standardization are rather odd in comparison to the experiences of countries that have more or better experience with PPP. However, it has been beyond the scope of this study to examine standardization in other jurisdictions. Hence one option to examine the "force of example" (Flyvbjerg, 2006a, p. 228) of this dissertation is to see whether the findings hold in similar case studies that are conducted in other geographical areas. Another option would be to compare across jurisdictional borders the experiences of different governments with the standardization of contracts for PPP: what has been the motivation to start building standard contracts, how have they been created and used, and how do actors involved in PPP perceive the usefulness of standard contracts? These are just a few exemplary questions that could help refine our understanding.

Second, it is important to bear in mind that by investigating a program in sports facilities for daily use, this dissertation focused on an unorthodox area of PPP. We can further our understanding of the relationship between the use of standard contracts and transaction costs by scrutinizing programs and projects in different sectors, such as highways, healthcare facilities, and

school buildings. Considering that hospitals form one of the most complex asset classes in public infrastructure provision, how do governments use standard contracts in the healthcare sector, and what has been the effect on transaction costs here? This question is relevant not only in regard to the technical specificity of an asset but also in terms of political and multi-actor complexity. This was shown in this study's account of the FSIP, which demonstrated the difficulties of governing a PPP program where there may be a limited degree of technical complexity—after all, sports infrastructure projects are relatively small investments compared to megaprojects—but all the more complexity in terms of political salience and the involvement of many actors. Future research could further explore this venue by making a distinction between social infrastructures (e.g., hospitals and schools) and infrastructures that require "hardcore" civil engineering (e.g., highways, tunnels, and public transit infrastructure systems) and comparing the success of applying standard contracts in these two categories.

Third, and in line with the aforementioned suggestion, it would be interesting to analyze whether governments in jurisdictions that have many years of PPP expertise and demonstrate a wide use of standard contracts have succeeded in lowering transaction costs in sectors that are packed with asset specificity and uncertainty. As an example, while the British government may have increasingly applied a rigid approach to complex projects—its standard contract has more and more become the norm—to what extent are contractual clauses taken for granted by private bidders? Do they fully accept the standard and thus help the government save a lot of time and money by signing the agreement faster? By exploring venues like these, scholars can put in perspective the argument presented in this dissertation. As well, due to pragmatic choices, this dissertation has focused on non-monetary transaction costs. The Flemish PPP market is too immature to provide complete data (no PPP project has gone through an entire life cycle), the transaction costs of the private sector remain confidential, and the public sector does not have aggregated data about its transaction costs. It is likely that more experienced jurisdictions are more transparent and provide more reliable information about monetary transaction costs. This offers opportunities for further investigation.

Fourth and finally, while this dissertation showed that standardization and learning have gone hand in hand in the Via-Invest Program, future studies are well advised to test this theory in jurisdictions that have a longer history of public-private ventures in infrastructure development. In countries like the United Kingdom and Canada, the standardization of contracts for PPP has been going on for more than a decade now. Following theoretical notions on the learning process, one would expect the number of contractual

changes to drop as the standard is increasingly accepted by market players and the public sector's confidence in its standard contracts increases over time. Thus the net effect will be that the learning process decreases. Consequently, some clauses are taken for granted in future contracting processes because they were incorporated in earlier projects and have become part of the standard. The risk of clauses flowing through to subsequent contracts, particularly when they do so from one policy sector to another, is that they may be less relevant or less applicable and that parties may not recognize this *lack of fit* because they no longer fully scrutinize the standardized documents. This remains a theoretical problem until a contractual partner involved in a PPP deal actually decides to invoke such a clause and sets a precedent. We still know little about this topic, but as we have seen in this dissertation that a match between the standard contract and the transaction type is key, it is worth examination. The topic of transferring lessons learned is also of great importance to inexperienced players that are active in the PPP market—think of the idea of the World Bank to propagate the use of standard contracts in the developing world.

In concluding this dissertation, I would like to reflect on some of the decisions I made while conducting this study. Case study research is a highly iterative activity, meaning that it is characterized by a continuous back-and-forth process between theory and empirical findings, and sometimes by changing one or more elements of a research design on the basis of progressive insights (Eisenhardt, 1989; Mahoney & Goertz, 2006). As I look back on the early phase of this research and the process all the way through writing the final chapter, some decisions deserve a few words of attention. A first thing that comes to mind is the decision not to fully take into account the aspect of competition in the empirical part of this research. Chapter 3 mentioned better competition among private bidders as a potential outcome of the standardization of contracts. By creating clearer procedures and documents and thereby generating a sense of certainty among potential private sector partners, a government could expect more market interest in public infrastructure projects. However, I also brought up the potential problem of excess inertia as I referred to the opportunity for economies of scale by bundling standardized projects. In the first round of my analysis of the FSIP, it turned out that market competition had indeed been relatively limited. However, the use of bundled procurement had probably had a bigger impact on competition. I did not have a solid enough basis to directly link the low degree of competition with the use of standardized procedures and contracts. In retrospect, you could argue that I should have selected another case to scrutinize the relationship between standardization and competition, but I doubt whether there was a good alternative at that time.

The scope of this study has narrowed significantly since I started my dissertation project in March 2012. Some of the early goals of this study were overly ambitious. For instance, one of the initial plans was to use trust as a variable in the project and to use theories on markets, hierarchies, and networks as a point of departure. I do not want to discuss the details of these plans here, but I certainly want to make clear that I quickly found out that it would be unrealistic to try to incorporate all these elements. The same argument holds true for some early ideas on case selection and analysis. In my opinion, these have all been issues that belong to the problem mess that characterizes an early research phase. One of the decisions deserves a bit more attention, however. I originally intended to divide the project into a track aimed at analyzing a number of domestic cases in depth and an international track for a more superficial type of analysis. While I collected material within the latter track, I encountered serious difficulties in trying to find data of sufficient quality on the topic of standardization. Fortunately, I was able to conduct another type of analysis (outside the scope of this dissertation). The results have been published in the *Journal of Comparative Policy Analysis* (Van den Hurk et al., 2015).

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Appendices

A. Interview guide: Flemish Sports Infrastructure Program

Topics	**Questions**
Validation of process observations	Dates, duration, progress, and problems relative to candidacy procedure, tendering process, contractual close, financial close, and permits and approvals: what can be confirmed, what needs to be refined, and what information is missing?
Complexity of the program or a specific project within the program	Political complexity: political whims, local interests, subsidies, austerity measures?
	Multi-actor complexity: Flemish government versus local governments?
	Technical complexity: characteristics and specifics of infrastructure asset, market conditions?
Performance of the program or a specific project within the program	Process performance: competition (e.g., comments on bidders, tendering process), transaction costs (e.g., procurement time, duration and intensity of negotiations, duration of preparatory works)?
	Product performance: goal attainment (e.g., timing, cost, project delivery ratio)?
Creation of standard contract	What have been the motivations to create a standard contract?
	Where lies the origin of the standard contract
	Which contractual clauses have been standardized?
	Who led the standardization?
	How was the standard contract drafted?
Use of standard contract	Which modifications were (not) applied during the procurement process?
	How feasible was the standard contract in light of the asset class and market practice?
	How feasible was the standard contract regarding the (local) political and multi-actor environment?
	What has been the effect on the transaction costs of the use of a standard contract?
	When it comes to both creating and using standard contracts, which improvements could be made?

B. Interview guide: Via-Invest Program

Topics	Questions
Validation of observations concerning contractual changes	The first task was to verify with the respondent the contractual changes that I found to make sure that my initial observations were correct. In other words, I would ask the interviewee: what can be confirmed, what needs to be refined, and what information is missing?
Learning within project (internal learning)—the questions listed in the right column would be asked in regard to verified contractual changes (e.g., in definitions, payment mechanism, relief events, dispute resolution)	Who recognized a problem, and who proposed a solution for this problem, i.e., a contractual change?
	Why was the change applied (e.g., lack of certainty or clarity, change of market conditions, lack of conformity with market practice), and how?
	What were the consequences of the change (e.g., better protection of interests of particular actor, clarification of responsibilities or expectations, creation of consistency), and who took the benefits?
	What was the role of the respondent in this process?
Learning between projects (learning on programmatic level, external learning)—these questions are pointed toward contractual changes that are seen on a general level	Why do the contracts increase in size over time?
	Why are some contractual changes made on a programmatic level (i.e., clauses on refinancing), and what is the role of market conditions and regulation?
	To what extent do we observe changes as a result of negotiation tactics, and which changes are to be seen as the results of newly gained insights, i.e., lessons learned?
	How far stretches the role of certain actors, particularly financiers, in the process of contractual change?
Cases of limited or no learning	Which changes were proposed, but not (fully) implemented, and why?
Via-Invest Program in general	Which lessons can be drawn from the differences between DBFM procurement and DBM+F procurement?
	What can be said about the abandonment of the General Contracting Conditions for the sake of the procurement of DBFM deals?
	How do you perceive the use and necessity of the various clauses included in the DBFM agreements?
	Is the coordination of the government to standards when it comes to the creation, use, and evaluation of standard contracts for the provision of public infrastructure?
Reflections	Which changes that have not been discussed are worth mentioning?
	What are currently the biggest challenges or debates in regard to contractual learning in the Via-Invest Program?
	How can the learning process be improved?

C. List of interviews conducted in Flanders

Date	Affiliation of respondent	Case
27 May, 2013	Flemish government	FSIP
19 June, 2013	Law practice	FSIP
4 July, 2013	Non-profit organization	FSIP
8 July, 2013	Consultancy firm	FSIP
9 July, 2013	Flemish government (2 respondents)	FSIP
18 July, 2013	Municipality	FSIP
22 July, 2013	Flemish government	FSIP
25 July, 2013	Construction firm	FSIP
26 July, 2013	Flemish government	FSIP
30 July, 2013	Construction firm	FSIP
31 July, 2013	Municipality	FSIP
2 August, 2013	Province	FSIP
12 August, 2013	Construction firm	FSIP
21 August, 2013	Construction firm (2 respondents)	FSIP
23 August, 2013	Municipality	FSIP
26 August, 2013	Flemish government	FSIP
18 September, 2013	Public utility	FSIP
19 September, 2013	Municipality	FSIP
23 September, 2013	Municipality	FSIP
10 October, 2013	Municipality	FSIP
7 January, 2015	Construction firm	Via-Invest
12 January, 2015	Financier	Via-Invest
16 January, 2015	Construction firm	Via-Invest
16 January, 2015	Construction firm	Via-Invest
19 January, 2015	Flemish government (2 respondents)	Via-Invest
21 January, 2015	Flemish government – local branch	Via-Invest
21 January, 2015	Law practice	Via-Invest
22 January, 2015	Flemish government – local branch	Via-Invest
26 January, 2015	Flemish government – local branch	Via-Invest
27 January, 2015	Financier	Via-Invest
29 January, 2015	Financier	Via-Invest
4 February, 2015	Law practice	Via-Invest
6 February, 2015	Flemish government – local branch	Via-Invest
10 February, 2015	Flemish government	Via-Invest
16 February, 2015	Construction firm	Via-Invest
2 March, 2015	Consultancy firm	Via-Invest

D. List of interviews conducted abroad

Date	Affiliation of respondent	Country
6 November, 2012	Non-profit organization	United Kingdom
7 November, 2012	Private sector	United Kingdom
12 November, 2012	Non-profit organization	United Kingdom
13 November, 2012	Non-profit organization	United Kingdom
15 November, 2012	Non-profit organization	United Kingdom
16 November, 2012	Non-profit organization (2 respondents)	United Kingdom
21 November, 2012	Private sector	United Kingdom
23 November, 2012	Private sector	United Kingdom
4 December, 2012	Private sector	United Kingdom
31 March, 2015	Non-profit organization	Canada
2 April, 2015	Architecture firm (2 respondents)	Canada
6 April, 2015	Architecture firm	Canada
7 April, 2015	Architecture firm	Canada
9 April, 2015	Private sector	Canada
9 April, 2015	Private sector	Canada
13 April, 2015	Non-profit organization	Canada
14 April, 2015	Private sector	Canada
15 April, 2015	Non-profit organization	Canada
15 April, 2015	Architecture firm	Canada
16 April, 2015	Non-profit organization	Canada
17 April, 2015	Architecture firm	Canada
20 April, 2015	Non-profit organization	Canada
20 April, 2015	Public sector	Canada
21 April, 2015	Architecture firm	Canada
22 April, 2015	Public sector	Canada
22 April, 2015	Architecture firm	Canada
23 April, 2015	Architecture firm	Canada
28 April, 2015	Architecture firm	Canada
28 April, 2015	Non-profit organization	Canada
30 April, 2015	Private sector	Canada
1 May, 2015	Architecture firm	Canada
4 May, 2015	Architecture firm	Canada
5 May, 2015	Architecture firm	Canada
12 May, 2015	Architecture firm	Canada
22 May, 2015	Public sector	Canada

Summary

Introduction

Over the past few decades, governments have come to consider public infrastructure as an asset class and increasingly welcomed private financiers and investors to take care of its provision. As a result, the popularity of public-private partnerships (PPPs) has grown significantly. A public-private partnership is a specific approach to the construction and maintenance of infrastructure in which the private sector finances a project, takes on an expanded role for facility design, construction, operations and/or maintenance, and bears a considerable amount of risk. One of the promises of these partnerships lies in their assumed capacity to offer better value for taxpayers' money: granting the private sector more responsibilities is expected to lead to improved efficiency so that the government will eventually pay less (or the same) for equal (or better) services.

However, public-private partnership is packed with policy and management challenges. The harsh reality is that PPP has not lived up to its expectations, and that it has caused decision makers and public managers major headaches regarding infrastructure delivery. Many difficulties turn up during the contracting process, i.e., the stage in which government actors try to find a private partner, figure out a way to deal with each other for the duration of several decades, and lay down their arrangements in an extensive contractual agreement of thousands of pages. This process typically involves onerous negotiations and high transaction costs. In order to remedy this challenge, governments are showing increasing interest in facilitating the contracting process. The creation and use of standard contracts is one of the measures that governments have recently been taking. Standard contracts are modularly structured documents that provide standard terms for common elements of partnership deals. It is expected that by creating and using standard contracts, governments can create a common understanding of PPP and lower the transaction costs of contracting processes.

While standard contracts are promoted and widely used around the world, there remains a remarkable lack of analysis of how they are developed, let alone what their actual benefits and drawbacks are. This thesis improves our understanding of creating and using standard contracts in public-private partnerships by presenting a critical and in-depth examination of the contracting process in Flemish public infrastructure programs and projects. As such, a connection is made between three areas of research that have not been jointly addressed in the past: the governance and complexity of public-private partnerships; contracting; and standardization. Moreover, by looking into the case of Flanders, a jurisdiction is discussed that has hitherto mostly remained under the radar.

Empirical research

Bearing in mind the objective to enhance the understanding of standardizing contracts in PPP, this dissertation answers three research questions. The first question is an empirical question: *how are governance, complexity, and performance related in public-private partnerships?* By scrutinizing the governance and performance of a specific PPP program in a complex context, the dissertation provides an insight into the difficulties of preparing and implementing such programs and their affiliated projects (Chapter 2). The program of concern is the Flemish Sports Infrastructure Program (FSIP): a large-scale public-private investment program aimed at resolving the severe shortage of sports facilities in Flanders. The answer to the first question also provides an indication of the importance of matching governance approaches with project complexities, the Flemish PPP landscape, and the urgent problems in public-private trajectories that require solutions.

The output of the first research question is used as input for the second one, which is of a theoretical nature. Given the challenges encountered and the need to move forward in the field of PPP, Chapter 3 picks the standardization of contracts as a possible solution and presents a discussion of the following question on the basis of a literature review: *what are the rationales and potential benefits and challenges of using standard contracts in the contracting process of public-private partnerships?* The answer is presented as a research agenda that brings together the strands of literature on PPP, contracting, and standardization. Furthermore, it conceptualizes and delineates the phenomenon of standard contracts in the world of PPP and unfolds the potential impact of standard contracts. Chapter 3 thus provides a starting point for the subsequent empirical part of this dissertation.

Following the research agenda, Chapter 4 and Chapter 5 empirically examine the practice of standardizing contracts and address the third and final question of this study: *how can we explain the creation and use of standard contracts in public-private partnerships?* Each chapter scrutinizes a specific aspect of standardization that is put forward in the research agenda, starting with a couple of propositions and then testing these through empirical analysis. Chapter 4 revisits the case of the Flemish Sports Infrastructure Program and focuses on the role of creating and using standard contracts toward facilitating the contracting process and lowering transaction costs (track 3a). It delves into depth about the link between how strictly standard contracts are used given the characteristics of the asset that is being procured, and the policy objectives that guide the procuring authority. Chapter 5 brings in the case of the Via-Invest Program, an extensive plan of the Flemish Government to improve the Region's road network. This chapter looks at standardization from a different perspective as it considers its role with respect to contractual learning (track 3b). It disentangles the learning process of the Flemish government by unfolding the contractual changes that are applied both within and between the projects that were developed under the umbrella of the Via-Invest Program.

Various types of data were collected and analyzed in this study. The empirical findings on the two Flemish PPP programs were built on analyses of rich empirical material: government documents and other publicly available material, non-disclosed project documents such as contractual agreements, and interviews with the actors that were involved in the programs. In addition to the domestic data, research stays abroad have delivered insights into foreign practices on the nexus of PPP, contracting, and standardization. The analyses conducted in this study were of a qualitative character and included the reconstruction of decision-making processes and coding exercises of the gathered data.

Findings

The empirical findings of this study can be divided into three parts. First, the research provides valuable insights into the governance and complexity of PPP in Flanders. The general case study of the Flemish Sports Infrastructure Program indicates the struggle of governments with the governance of PPP. The (probably overly) ambitious approach that was applied by the Flemish government triggered an interference of political, multi-actor, and technical complexities that in turn compromised the program's performance in terms of the swiftness of the procurement process and the overall volume of projects delivered. For example, a political complexity turned up as a result of an involvement of many provincial and local governments in an attempt to enable a large volume of similar projects at a time through bundled

project deals. It appeared that the Flemish government was not able to keep up with the pace of the demanding decision-making process attached to the bundling of procurement. Delays came up, and many provincial and local governments started to lose interest in the program and decided to drop out. These and other issues caused the Sports Infrastructure Program to not nearly achieve the targets that were once set by the Flemish Government.

As the major coordination problems in the Flemish Sports Infrastructure Program led to high transaction costs, procurement delays, project dropouts, and limited competition among private bidders, the case perfectly illustrates the fierce challenges governments face in PPP processes. Furthermore, the case study emphasizes the need to match the governance of a policy program or project—structure, procedure, and instruments—with the characteristics of the assets that need to be delivered. The FSIP indicates a mismatch which is reflected in the application of a complicated governance approach while straightforward infrastructure assets had to be developed. The findings of the general case study of the FSIP support earlier critical perspectives on PPP in Flanders.

Second, this thesis provides evidence to suggest that the use of standard contracts is no guarantee for swifter contractual negotiations. In the Flemish Sports Infrastructure Program, the promise of lower transaction costs only partly materialized. The creation and use of standard contracts in the FSIP were not always successful. Whereas the use of standard contracts for artificial pitches was never said to be problematic, problems arose in regard to the processes toward the construction of sports halls and multifunctional sports centers. For instance, in the domain of sports halls the Flemish government came across local governments' interests opposing the high degree of standardization, which caused significant uncertainty as to whether the projects would actually proceed and be built. In the domain of multifunctional sports centers, there were indications of a rigid attitude at the negotiation table of the public actor, which was said to hinder a swift process. The results clearly refer to policy and politics as important factors in the world of standardization. They also show that there is more to using a standard contract than just applying it to any type of asset in different contexts. Differences in asset characteristics require different approaches in terms of contractual rigidity versus flexibility.

Third and finally, the case study of the Via-Invest Program unveils the learning process governments go through while managing the procurement trajectories of PPPs over time and revising the model contract they use, thereby gradually moving toward the formulation of a standard contract. The findings show an open attitude toward learning on the part of the

government, and an influential role of private sector actors—primarily financiers—in proposing or even requiring change during procurement processes. Rather than using model contracts as a means to ensure that public sector interests are served, the government continuously tested whether these were in line with market practice. It laid down the lessons learned in an ever advancing contractual document. However, the study of the Via-Invest Program also raises questions about how systematically this learning process evolved. It took an intensive process of building up PPP expertise to eventually arrive at a contract that could be considered a standard. Although the Flemish government has matured in terms of project-specific knowledge, the dense timing of the consecutive Via-Invest projects may have made it difficult to systematically transfer the lessons learned to a programmatic level so as to strengthen the generic model contract and enhance its reputation as a standard.

Implications

This thesis does not intend to determine which aspects are most promising or important in regard to successfully creating and using standard contracts. Instead, it provides different perspectives on standardization and shows that it is not nearly a straightforward or objective practice. As such, this study indicates the need to apply a more critical perspective and not just take for granted the propagated perks of standardization. The field of PPP does not differ from other areas in which standardization has arisen: there are major similarities in terms of the functions that actors see in standardization, as well as the challenges they encounter while standardizing and actually putting standards to use. In some cases, standard contracts may actually complicate the procurement process. Using them is not equal to creating a better atmosphere for contractual negotiations. Nor can standards simply be defined as carriers of prescriptions for good practice, since political or policy objectives are always involved, as is subjectivity. After all, policy makers and public executives set the bar.

In offering reflections on the Flemish PPP experience, this dissertation discusses the fragmented character of the Flemish administrative landscape and the lack of a robust PPP policy strategy at central government level. These aspects may have hampered opportunities for the creation of a generic standard contract for PPP deals in Flanders, and a systematic learning process among public managers. Although the Flemish government has been taking valuable policy measures aimed at achieving inter-sectorial and inter-departmental learning, there is room for improvement. This thesis presents a couple of suggestions. The Flemish Government is advised to develop a generic long-term policy strategy for the provision of public infrastructure; establish a central procurement agency that takes

responsibility for procurement tasks and centralizes competencies; and invest in the education and training of public executives involved in infrastructure deals.

This dissertation serves as a starting point for further exploration of the creation and use of standard contracts. Future research can unpack explanations in other jurisdictions and other infrastructure sectors, and illuminate other aspects of standardizing contracts for PPP. For instance, the findings presented in this thesis may be exceptional in comparison to the experiences in countries that have more PPP expertise. Therefore, it is recommended to see whether the findings hold in case studies in other geographical areas. A similar call for action is advocated with regard to the comparison of PPP for social infrastructure with PPP that requires 'hardcore' civil engineering, such as tunnels and public transit infrastructure systems.

Samenvatting

Inleiding

De overheid is de ontwikkeling van publieke infrastructuur de laatste jaren steeds meer gaan zien als een interessante manier van beleggen. Private financiers en investeerders zijn daardoor steeds meer betrokken geraakt bij de levering van die infrastructuur, en de populariteit van publiek-private samenwerking (PPS) is sterk toegenomen. In publiek-private samenwerking neemt de private sector een grotere rol in bij de ontwikkeling van infrastructuur in vergelijking met conventionele infrastructuurprojecten. Zo kan ze meer verantwoordelijkheden en risico's naar zich toe trekken die te maken hebben met het ontwerp, de financiering, de bouw, het onderhoud, en/of de exploitatie van de infrastructuur. Het veelgehoorde argument voor PPS is dat de belastingbetaler er meer waar voor zijn geld mee zou krijgen. De aanname is dat een risicodragende private partner efficiënter te werk gaat dan de overheid. Het idee is dus dat de overheid uiteindelijk minder hoeft te betalen voor gelijke diensten, of even veel voor betere diensten.

PPS staat bol van beleids- en managementuitdagingen. De realiteit is dat het vooralsnog niet heeft kunnen voldoen aan alle verwachtingen en dat beleidsmakers en overheidspersoneel er behoorlijk mee worstelen. Zo duiken er vaak moeilijkheden op in het aanbestedingsproces, de fase waarin de overheid probeert een private partner te vinden met wie zij een contractuele overeenkomst kan sluiten voor de lange termijn. Dit proces kenmerkt zich regelmatig door moeizame onderhandelingen en hoge transactiekosten. Om deze problemen op te lossen zijn overheidsinstanties op zoek gegaan naar maatregelen die het aanbestedingsproces moeten vereenvoudigen. Het creëren en gebruiken van standaardcontracten is één van die maatregelen. Standaardcontracten zijn modulair ingerichte documenten die standaardtermen en -clausules bieden voor aspecten die doorgaans voorkomen in PPS-deals. De verwachting is dat standaardcontracten de overheid helpen in het creëren van een algemeen

begrip van PPS. Op die manier wordt de aanbesteding van PPS-projecten verbeterd en misschien ook goedkoper.

Hoewel standaardcontracten wereldwijd worden gepromoot en gebruikt is er een opvallend gebrek aan analyse over hoe ze worden ontwikkeld, laat staan wat de daadwerkelijke voor- en nadelen zijn van de toepassing ervan. Dit proefschrift verbetert ons begrip van de ontwikkeling en het gebruik van standaardcontracten. Het presenteert een kritisch onderzoek over de PPS-processen in Vlaamse PPS-programma's en -projecten. Daarmee brengt het drie onderzoeksthema's bijeen die niet eerder zijn samengebracht: de governance en complexiteit van PPS; aanbesteding; en standaardisatie. Bovendien is de regio Vlaanderen tot nu toe vaak onderbelicht gebleven in onderzoek over PPS.

Empirisch onderzoek

Om een beter begrip te krijgen van de standaardisatie van PPS-contracten beantwoordt dit doctoraat drie onderzoeksvragen. De eerste vraag is een empirische vraag: *hoe zijn governance, complexiteit en performantie met elkaar verbonden in publiek-private samenwerking?* Op basis van een onderzoek naar de governance en prestaties van een complex PPS-programma biedt dit doctoraat een inzicht in de problemen die spelen bij de voorbereiding en de implementatie. Er wordt een analyse gepresenteerd van het Vlaams Sportinfrastructuurplan, een grootschalig investeringsprogramma dat een ernstig tekort aan sportfaciliteiten moet wegwerken. Het antwoord op de eerste vraag geeft ook een indicatie van het belang om de governance van een programma te laten overeenkomen met de complexiteit die speelt. Bovendien geeft het een algemeen beeld van de problemen die PPS treffen.

Het antwoord op de eerste onderzoeksvraag fungeert als input voor de tweede onderzoeksvraag, welke van een theoretische aard is. Met de verschillende PPS-uitdagingen in het achterhoofd kijkt hoofdstuk 3 naar de standaardisatie van contracten als één van de mogelijke oplossingen. Op basis van een literatuurstudie wordt een discussie gepresenteerd van de volgende vraag: *wat zijn de beweegredenen om standaardcontracten te gebruiken in publiek-private samenwerking en wat zijn de potentiële effecten van de toepassing van standaardisatie?* Het antwoord wordt gepresenteerd in de vorm van een onderzoeksagenda die de literatuur over PPS, aanbesteding en standaardisatie samenbrengt. Bovendien bevat hoofdstuk 3 een conceptualisatie en afbakening van het begrip 'standaardisatie' binnen de thematiek van PPS. Op die manier biedt het een vertrekpunt voor het vervolg van dit doctoraat.

Hoofdstuk 4 en hoofdstuk 5 presenteren de empirische resultaten van het onderzoek naar de praktijk van standaardisatie. Daarmee beantwoorden ze de derde en laatste onderzoeksvraag: *hoe verklaren we de ontwikkeling en het gebruik van standaardcontracten in publiek-private samenwerking?* Elk hoofdstuk bespreekt een aspect van standaardisatie dat naar voren werd gebracht in de onderzoeksagenda, formuleert een aantal veronderstellingen, en toetst deze veronderstellingen aan de empirie. Hoofdstuk 4 gaat nog eens in op het Vlaams Sportinfrastructuurplan en focust daarbij op het maken en gebruiken van standaardcontracten met het oog op de vereenvoudiging van het PPS-proces en de verlaging van transactiekosten (onderzoeksspoor 3a). Hierbij wordt onder andere gekeken naar hoe strikt standaardcontracten worden gebruikt gezien de kenmerken van de infrastructuur die ontwikkeld moet worden en de beleidsdoelstellingen die leidend zijn voor de aanbestedende overheid. In hoofdstuk 5 komt Via-Invest aan bod, een uitgebreid plan van de Vlaamse overheid om haar wegennet te verbeteren. In dit hoofdstuk wordt standaardisatie op een andere manier belicht, namelijk vanuit de notie dat het een rol speelt bij het leerproces van overheidsinstanties (onderzoeksspoor 3b). Op basis van een analyse van contractuele wijzigingen (zowel binnen als tussen verschillende aanbestedingsprocessen) wordt het leerproces van de overheid tijdens de ontwikkeling van een standaard ontrafeld.

Tijdens dit onderzoek zijn verschillende typen data verzameld en geanalyseerd: overheidsdocumenten en ander openbaar materiaal, vertrouwelijke projectdocumenten zoals contracten, en interviews met betrokkenen. Daarnaast zijn er via buitenlandse verblijven inzichten verkregen over buitenlandse praktijken op het snijvlak van PPS, aanbesteding en standaardisatie. De data is geanalyseerd op kwalitatieve wijze, via reconstructies van besluitvormingsprocessen en codering.

Bevindingen

De onderzoeksresultaten bestaan uit drie delen. Ten eerste levert dit onderzoek waardevolle inzichten in de governance en complexiteit van PPS in Vlaanderen. De algemene casestudy van het Vlaams Sportinfrastructuurplan toont aan dat er grote uitdagingen voor de overheid schuilen in het managen van PPS-programma's en -projecten. De zeer ambitieuze aanpak van de Vlaamse overheid zorgde voor een tussenkomst van complexiteiten gerelateerd aan politiek, de multi-actor setting en de techniciteit van de projecten. Deze complexiteiten brachten de prestaties van het Sportinfrastructuurplan in het gedrang. Het resultaat was een traag proces en een beperkte realisatie van het vooropgestelde aantal projecten. Eén van de politieke complexiteiten was de betrokkenheid van veel provinciale en lokale overheden binnen zogenaamde geclusterde contracten.

De bedoeling van deze opzet was om een groot aantal soortgelijke projecten op één moment te ‘closen’ en daarmee schaalgrootte te creëren. Het was voor de Vlaamse overheid echter lastig om gelijke tred te houden met het vooropgestelde (veeleisende) besluitvormingsproces voor die geclusterde deals. Vertragingen staken de kop op, waardoor enkele betrokken provinciale en lokale overheden hun interesse verloren en afzagen van deelname. Als gevolg van dit probleem en andere problemen heeft het Vlaams Sportinfrastructuurplan niet alle doelen kunnen verwezenlijken.

Het Vlaams Sportinfrastructuurplan illustreert de uitdagingen waar overheidsinstanties mee te maken krijgen in PPS-processen. Daarnaast toont de casestudy nog maar eens aan dat het van belang is om bij het vaststellen van de governance van een programma of project rekening te houden met de eigenschappen van de infrastructuur die geleverd moet worden. Volgens dit doctoraat is daar onvoldoende over nagedacht in het Vlaams Sportinfrastructuurplan en daarmee ondersteunt het eerdere kritieken die geuit zijn op PPS in Vlaanderen.

Ten tweede biedt dit doctoraat bewijs voor het feit dat het gebruiken van standaardcontracten geen garantie is voor soepeler contractuele onderhandelingen. Zo was het gebruik van standaardcontracten in het Vlaams Sportinfrastructuurplan niet altijd even succesvol. Er waren nauwelijks kritische geluiden te horen over de aanbestedingen van kunstgrasvelden, maar des te meer over die van sporthallen en multifunctionele sportcomplexen. Om een voorbeeld te geven: bij de aanbesteding van sporthallen werd de Vlaamse overheid geconfronteerd met lokale politieke belangen die soms haaks stonden op de voorziene standaardisatie. Dit zorgde voor onzekerheid over welke projecten daadwerkelijk gebouwd zouden worden en welke niet. Bij de aanbesteding van multifunctionele sportcomplexen werd gesproken over een moeilijke houding van de publieke actor ten opzichte van wijzigingen die de projecten mogelijk beter financierbaar zouden maken (zoals het opnemen van overheidsgaranties in de contracten). Die houding droeg niet bij aan de voortgang van het proces. De resultaten wijzen op het belang van beleid en politiek in de wereld van standaardisatie. Ze laten ook zien dat standaardisatie veel meer is dan het simpelweg toepassen van eenvormige standaardcontracten in een variërende context. Verschillende typen infrastructuur vragen om verschillende benaderingen tussen rigiditeit enerzijds en flexibiliteit anderzijds.

Ten derde en laatste is er de casestudy van Via-Invest die ingaat op het leerproces van overheidsinstanties en laat zien hoe modelcontracten door de jaren heen worden gewijzigd in het proces naar een daadwerkelijke

standaard. De resultaten tonen aan dat de overheid hier een open houding heeft aangenomen en private partijen ruimte heeft gegeven om veranderingen voor te stellen. In sommige gevallen waren contractuele wijzigingen zelfs een vereiste voor de private sector. In elk Via-Invest-project toetste de Vlaamse overheid de toepasbaarheid van het gehanteerde modelcontract aan de marktpraktijk. Daaruit werd lering getrokken en de lessen werden verwerkt in een gereviseerde versie van het modelcontract dat daarmee steeds meer op een standaard ging lijken. De studie van Via-Invest roept ook enkele vragen op over hoe systematisch dit leerproces zich voltrokken heeft. Zo kostte het veel tijd en inspanning om te komen tot een modelcontract dat als een standaard gezien kon worden. En hoewel met zekerheid gezegd kan worden dat de Vlaamse overheid door de jaren heen veel expertise heeft opgebouwd, heeft de strakke timing van de opeenvolgende Via-Invest-projecten het wellicht niet eenvoudig gemaakt om projectspecifieke lessen zo veel en zo goed mogelijk door te voeren op programmaniveau en daarmee het generieke modelcontract te versterken.

Implicaties

Het doel van dit doctoraat is niet om aan te tonen welke aspecten van het creëren en gebruiken van standaardcontracten de belangrijkste of meest veelbelovende zijn. Deze studie biedt echter wel verschillende perspectieven op standaardisatie en laat zien dat het hier niet om een voor de hand liggende of objectieve activiteit gaat. Er is behoefte aan een kritische kanttekening bij standaardisatie; men moet de veelgehoorde voordelen ervan niet zomaar aannemen. Hierin verschilt PPS niet of nauwelijks van andere thema's waarin standaardisatie wordt toegepast. De functies die in PPS aan standaardcontracten worden toegekend en de uitdagingen die ze met zich meebrengen in die specifieke context komen overeen met de algemene tendens. Het gebruik van standaardcontracten is niet gelijk aan het creëren van betere condities voor onderhandelingen. Evenmin kunnen standaarden zomaar gedefinieerd worden als 'dragers' van voorschriften voor een goede manier van handelen, want politieke doelen of beleidsdoelen zijn altijd betrokken en dus is er subjectiviteit in het spel; uiteindelijk zijn het beleidsmakers en overheidspersoneel die de lat op een bepaald niveau leggen.

Er worden enkele reflecties geboden op de Vlaamse ervaringen met PPS. Hierin worden twee aspecten benadrukt: het gefragmenteerde bestuurlijke landschap en het ontbreken van een centrale beleidsstrategie voor PPS. Deze condities hebben er mogelijk voor gezorgd dat Vlaanderen geen generiek standaardcontract kent voor PPS en dat overheidspersoneel geen systematisch leerproces heeft doorgemaakt. Hoewel de Vlaamse overheid waardevolle maatregelen genomen om leren over sector- en

departementsgrenzen heen mogelijk te maken is er ruimte voor verbetering. Zo wordt geadviseerd om een overkoepelende langetermijnstrategie op te stellen voor de ontwikkeling van publieke infrastructuur. Daarnaast zou het interessant zijn om een agentschap op te richten dat de taak krijgt om aanbestedingen aan te sturen en waarin competenties worden gecentraliseerd. Tot slot zou het lonen om te investeren in de opleiding en training van publieke managers die betrokken zijn bij PPS-deals en andere (grootschalige) infrastructuurprojecten.

Dit doctoraat kan gelden als een uitgangspunt voor verder onderzoek naar de ontwikkeling en het gebruik van standaardcontracten. Zo zou dit onderwerp geanalyseerd kunnen worden in andere landen en sectoren, en het zou interessant zijn om andere aspecten van de thematiek rond standaardcontracten te belichten. Wellicht blijkt uit nieuw onderzoek dat de bevindingen van dit doctoraat een uitzondering vormen op de regel die in landen met meer PPS-ervaring geldt. Een andere mogelijke piste voor verder onderzoek is het vergelijken van standaardisatiepraktijken van sociale infrastructuurprojecten met die van civiele projecten zoals tunnels en openbaarvervoerssystemen.

About the author

Martijn van den Hurk studied Spatial Planning (MSc, 2010) and Public Administration (MSc, 2011) at the Radboud University Nijmegen, and Political Science at the University of Agder (2009). In March 2012, Martijn joined the Department of Political Science at the University of Antwerp to embark on a PhD trajectory with a focus on the governance and contracting of public-private partnerships for the provision of public infrastructure.

As a PhD candidate, Martijn was a visiting researcher at the University of Central Lancashire (2012) and the University of Toronto (2015). His work has been published in various academic journals in the fields of planning and public administration, including *Land Use Policy*, *International Journal of Project Management*, *Environment and Planning C: Government and Policy*, and *Public Management Review*. He was actively involved in COST Action TU1001 on PPPs in transport (2012-2014) and the organization of an international PPP conference in Antwerp (2013).

Martijn currently works as a postdoctoral researcher in the Department of Geography, Planning, and International Development at the University of Amsterdam. He is involved in an international research project on private sector involvement and the public interest in urban regeneration projects. Furthermore, he continues working on governance and contracting, public-private partnerships, and infrastructure projects.

List of publications

Peer-reviewed articles

- Van den Hurk, M. (forthcoming). Learning to contract in public-private partnerships for road infrastructure: recent experiences in Belgium. *Policy Sciences*.
- Van den Hurk, M., & Verhoest, K. (2016). The challenge of using standard contracts in public-private partnerships. *Public Management Review*, *18*(2), 278-299. doi: 10.1080/14719037.2014.984623
- Van den Hurk, M., & Verhoest, K. (2015). The governance of public-private partnerships in sports infrastructure: interfering complexities in Belgium. *International Journal of Project Management*, *33*(1), 201-211. doi: 10.1016/j.ijproman.2014.05.005

Under review

- Public-private partnerships in social infrastructure: using standard contracts (together with Koen Verhoest).
- Making policy for public-private partnerships: a critical perspective.

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- Van den Hurk, M. (2015). Bundling the procurement of sports infrastructure projects: how neither public nor private actors really benefit. *Environment and Planning C: Government and Policy*. doi: 10.1177/0263774X15614672
- Van den Hurk, M., Brogaard, L., Petersen, O. H., Lember, V., & Witz, P. (2015). National varieties of public-private partnerships (PPPs): a comparative analysis of PPP-supporting units in 19 European countries. *Journal of Comparative Policy Analysis: Research and Practice*. doi: 10.1080/13876988.2015.1006814

WHAT'S THE DEAL?

STANDARDIZING CONTRACTS FOR PUBLIC-PRIVATE PARTNERSHIPS

Martijn van den Hurk