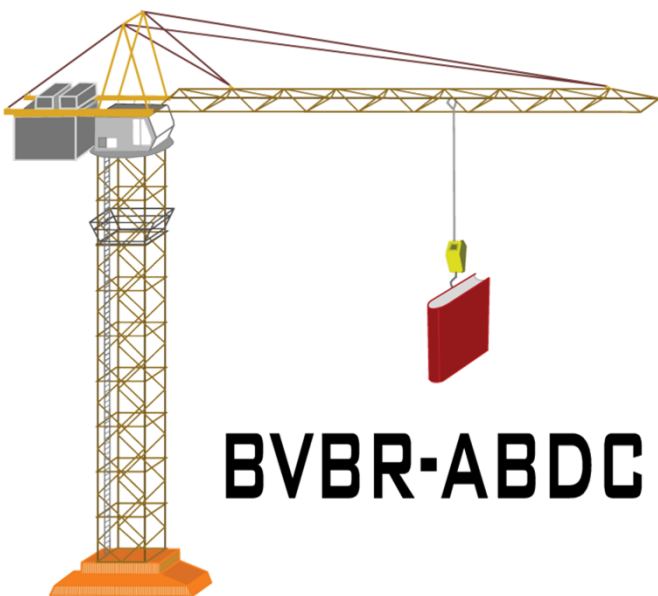


**Belgian Society of Construction  
Law (BSCL)**



**BVBR-ABDC**

# Belgian report on PPP

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**National Confederation of the  
Belgian Construction Industry**

**Sofia,  
17th of June 2022**



**Construction Confederation**  
Construction, Energy & Environment

# OUTLINE OF THE PRESENTATION

1. The public procurement regulation in Belgium for PPP
2. Approach and position of the National Confederation of the Belgian Construction Industry
3. Concrete projects: “The Schools of tomorrow” and “Prisons”
4. Conclusion and other points of attention

# 1. The public procurement regulation

## Classical contracts

Law of 17 June 2016 (transposition of the directive 2014/26)

Royal Decree of 18 April 2017 (procurement rules)

Royal Decree of 14 January 2013 (implementation rules)

→ financing, design and execution of works as well as any related services benefit from a flexible derogation regime. Only requirement to be met: derogations must be specified at the beginning of the specifications (art. 9 RD of 14/01/2013)

Flanders: PPP decree of 2003, Charter Cooperation in PPP's, Policy Paper on Public-private cooperation

# 1. The public procurement regulation

## Concession contracts

Law of 17 June 2016 (transposition of Directive 2014/23/UE)  
Royal Decree of 25 June 2017 (procurement and implementation rules)

→ only applicable if there is an exploitation risk i.e. revenue from third parties (e.g. in the case of toll tunnel)

**Conclusion:** almost all PPP in Belgium fall under classical contracts and the Civil Code applies additionally

## 2. Approach and position of the CC

### Context

- Government agreement of September 30<sup>th</sup> 2020
- The Recovery and Resilience facility
- The Green Deal → promote sustainable investments

### The added value of PPP

- More “value for money”
- Greater incentive for innovation

## 2. Approach and position of the CC

### Keys to a successful PPP

1. Opting for PPP as a conscious and positive choice
2. Sufficient support within politics and the society
3. Good preparation, including making optimal choices according to the project specificities
4. Taking into account the specific features of PPP (realistic timeline, bidding fees and compensation of intellectual property rights)
5. Reduce transaction costs (standardization, information sharing and being selective)
6. Balanced allocation of tasks and risks

## 2. Specific issue to resolve: the independence of the architect

### The statute of the architect:

- The Belgian architect has a monopoly on two levels (art. 2 of the Law of 20<sup>th</sup> of February 1939)
  - Conception of the work (elaboration of design plans) being subject to an obligatory building permit;
  - Verification of the performance of the work.
- According to the Case Law of the supreme court of appeals (judgment of the “Cour de Cassation” of 19<sup>th</sup> of May 2016) the monopoly can be limited to aspects related to the stability of the project.

## 2. Specific issue to resolve: the independence of the architect

### The independence of the architect:

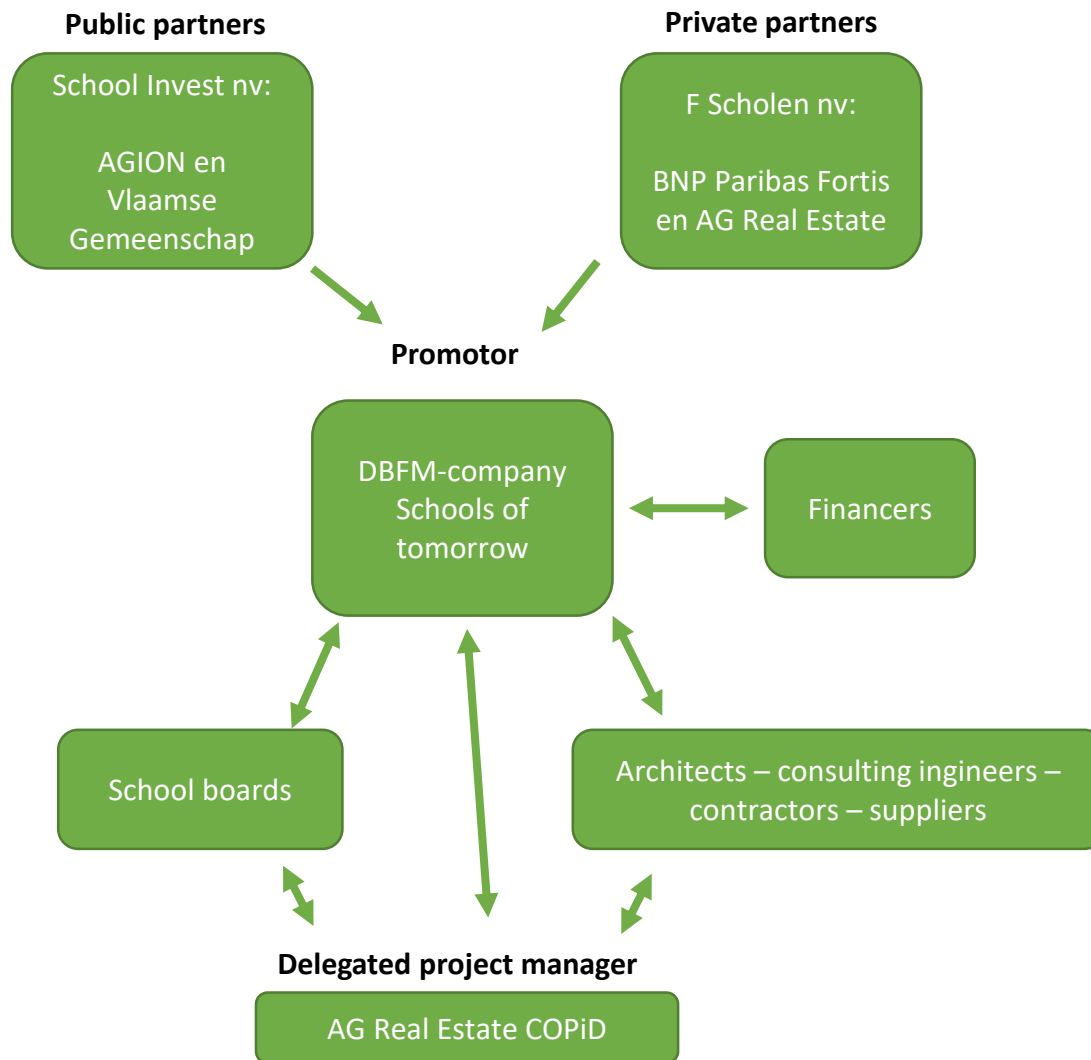
- Art 6 of the Law of 20<sup>th</sup> of February 1939 provides that the profession of architect is incompatible with the profession of the building contractor in public and private works.
  - the architect has to remain independent;
  - this rule can impede the success of PPP, because the projects are realized in DBFM(O) form.
- Solution:  
adaption of the law to make derogation from art. 6 possible so that the collaboration between constructors and architects can take place fluently in DBFM(O) contracts



# 3. Concrete : Schools of tomorrow - Flanders

- “Schools of Tomorrow” is a public-private partnership between the Flemish government on the one hand and AG Real Estate and BNP Paribas Fortis on the other, jointly structured via DBFM Scholen van Morgen nv.
- The program includes design, construction, financing and 30-year maintenance of 182 school projects.
- AG Real Estate acts as the delegated principal. Each School of Tomorrow is a unique project, based on local needs and vision, and meets all modern requirements in terms of sustainability, comfort and flexibility.

# 3. Concrete : Schools of tomorrow - Flanders



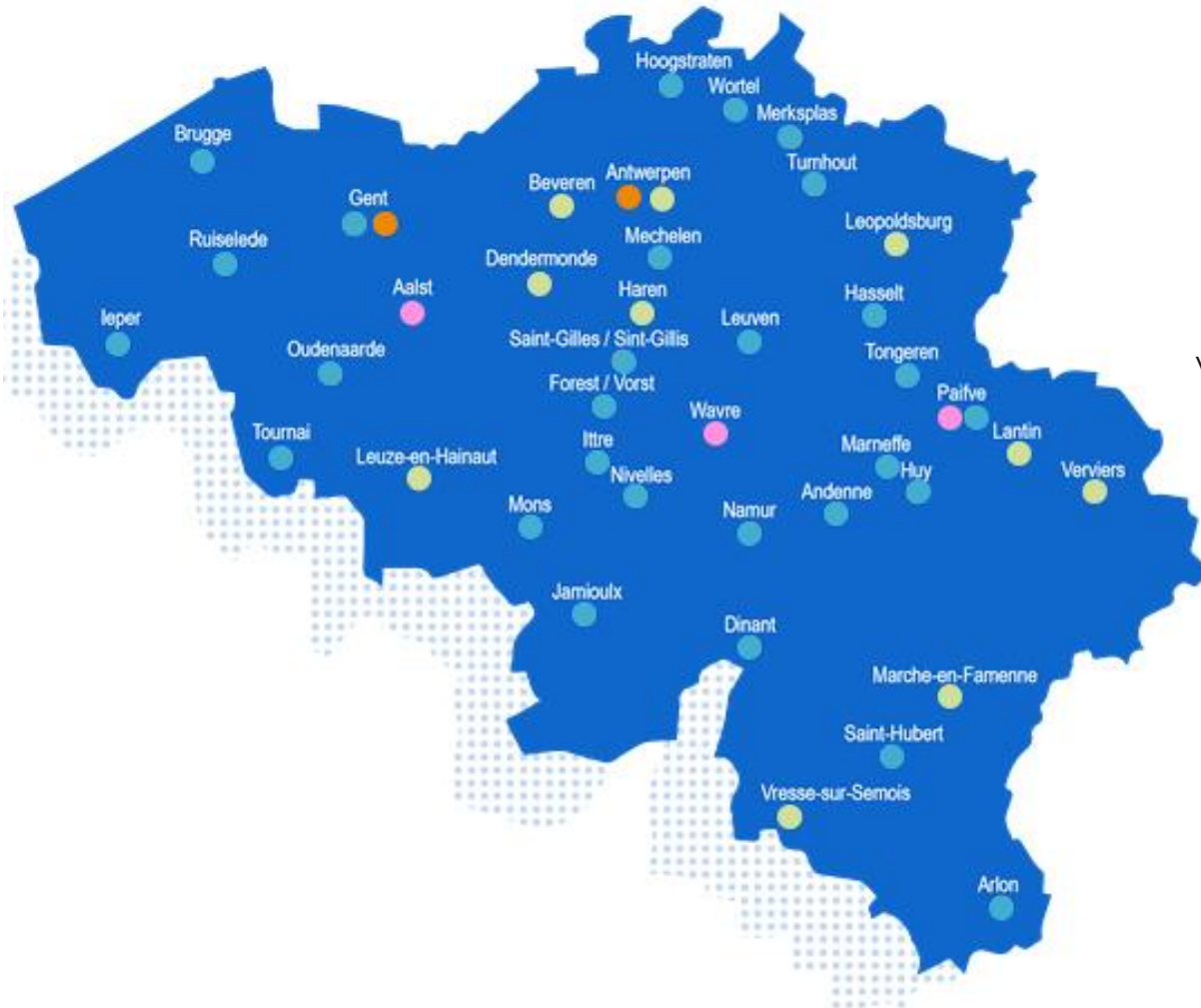
# 3. Concrete : Schools of tomorrow – evaluation

- Longer preparation phase
- Space needed for program-specific adjustments
- Realisation within the agreed time and budget
- Maintenance requirements with positive impacts on the quality and maintenance of the building
- Reduction of energy costs through energy performance requirements
- Importance of a sustainable project organisation
- Result of cost price comparison of regular versus DBFM execution in favour of DBFM due to reduced costs, more subsidies and certain risks with private partners

# 3. Concrete : prisons – at federal level

- Master Plan (3) of the Federal Public Service Justice's setting out an action plan for detention under human conditions.
- The Belgian Buildings Agency is the federal state's property manager. Its mission consists of management and maintenance of existing federal real-estate as well as construction, renovation and restoration works.

# 3. Concrete : prisons – at federal level



## DBFM

Haren		👤 1090		° 2022
Dendermonde		👤 444		° 2022
Antwerpen		👤 440		° 2025
Vresse-sur-Semois		👤 312		° 2026
Leopoldsburg		👤 312		° 2026
Région de Liège		👤 312		
Verviers		👤 240		

## DBFMO

Aalst		👤 120
Wavre		👤 250
Paifve		👤 250

# 3. Concrete : prisons – at federal level - evaluation

- Clearly defined project definition
- Fast execution - integral procedure for D - B - M
- Responsibility of private partner
- Transfer of certain risks to the private partner (budget, availability, timely delivery)
- Financial reasons
- Focus on core tasks - private partner provides the logistical support
- Permit problems persisting

# 4. Conclusion - Other points of attention

To improve:

- Balanced task & risk-allocation, realistic timeline and bidding fees
  - importance of balanced contracts
  - New: regulation concerning unfair terms in accession contracts (Book 5 of the new Civil Code – entry into force end 2022 – supplementary law)
- Permit problems

To validate the added value from a financial point of view:  
questioning the PPP because of Belgium's public debt - audits by the Court of Audit on financial aspects of prisons

# QUESTIONS ?

THANK YOU FOR YOUR ATTENTION





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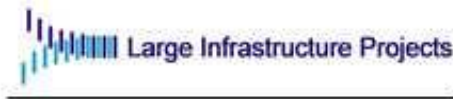
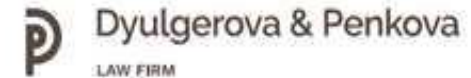


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