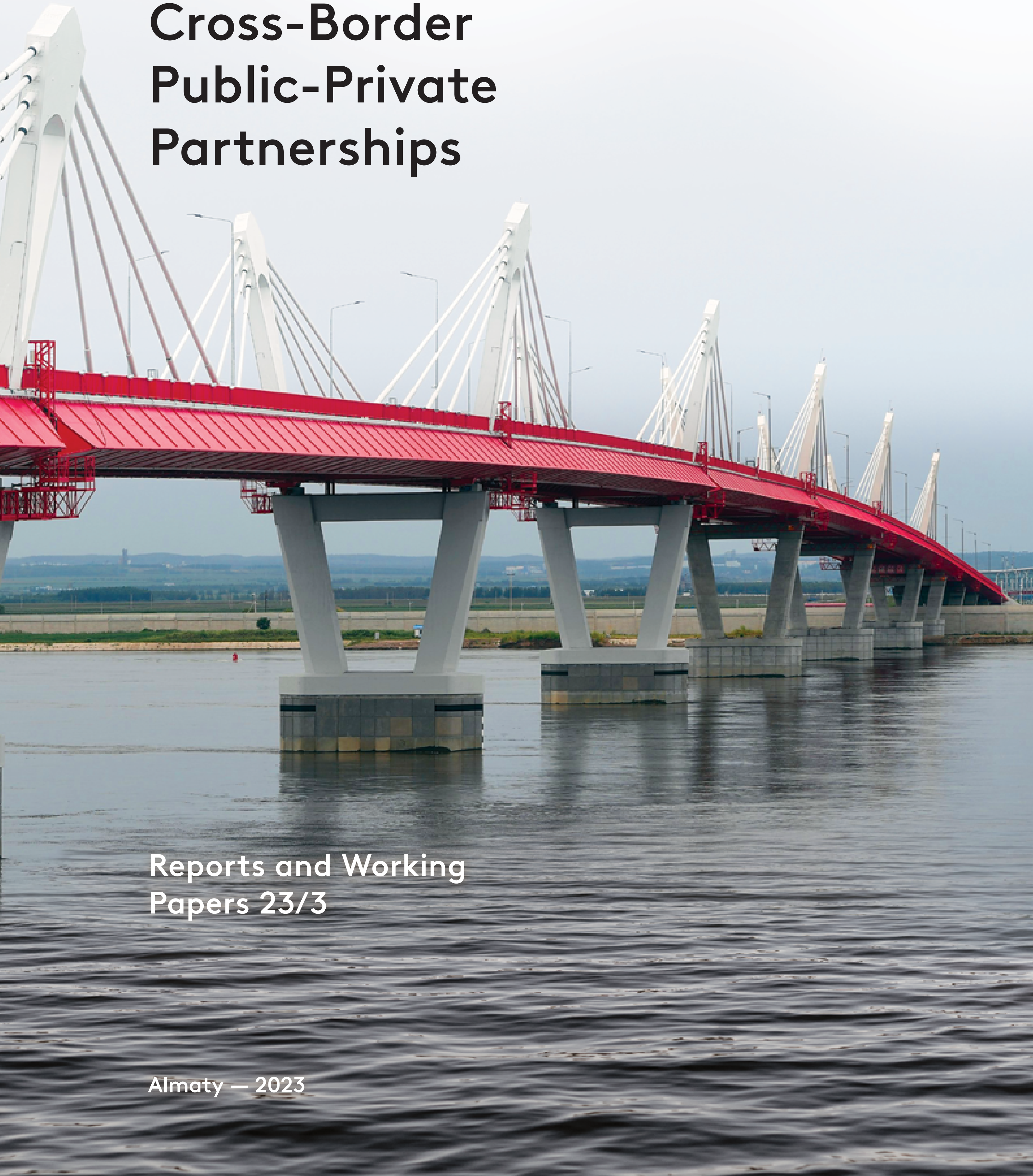
Eurasian Development Bank

Cross-Border Public-Private Partnerships



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KEY CONCLUSIONS

WHAT IS CROSS-BORDER INFRASTRUCTURE, AND WHAT ARE CROSS-BORDER PPPs?

Cross-border infrastructure is located at the border between two or more countries and/or **crosses their borders,** and comprises multiple **technically interconnected** facilities.

Criteria		
Mandatory Criteria	Object	Cross-border infrastructure
	Multiple participants	Two or more states on the side of the public partner
	International legal framework	Intergovernmental agreement among the states involved in the project
Supplementary Criteria	Integration objectives and impact	Joint utilisation by the states of economic, transport, energy, and other potential, and increased integration impact
	Extended risk matrix	Additional legal, commercial, financial, and political risks

WHAT ARE THEIR ADVANTAGES?

- They enable coordination of activities related to the construction and operation of cross-border infrastructure
- They make it possible to resolve problems caused by differences between the laws of the two countries
- They give rise to synergies related to the pooling of material and financial resources of the countries acting as the public partners
- They facilitate coordinated discharge by the private partner of its obligations under the PPP agreement on both sides of the border

GLOBAL BEST PRACTICES

18

completed or ongoing projects

South and North America, and Eurasia —
1 CPPP project each.
Asia-Pacific, Europe, and Africa —
5 CPPP projects each.

14 Transport 3 Energy 1 Telecom

GUIDELINES FOR CROSS-BORDER PPPs

1. Ensure that political decisions are made, and cross-border PPPs are planned, in line with regional co-operation priorities
2. Maintain cohesion of national cross-border infrastructure development plans
3. Develop special international and national legal frameworks for cross-border PPPs
4. Establish bilateral and multilateral institutional mechanisms to support cross-border PPPs
5. Work in partnership with regional economic associations and multilateral development banks to improve the effectiveness of cross-border PPPs
6. Improve financial stability and reduce risk exposures of cross-border PPPs
7. Encourage and support cross-border PPPs that contribute the most to the Sustainable Development Goals (SDGs)

ROLE OF INTERNATIONAL DEVELOPMENT BANKS

They have the largest potential for promoting cross-border PPPs.

Their involvement helps to ensure success of cross-border PPP projects.

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Cross-border infrastructure comprises facilities that are spatially divided by the border between two or more countries. Due to the ongoing intensification of regional co-operation and economic integration, cross-border infrastructure projects acquire special significance, particularly for landlocked developing countries. These projects require massive investment capital and a coordinated approach, and cross-border public-private partnerships (CPPPs) may serve as a mechanism of such coordination with the participation of private capital. Several dozen cross-border PPP-based infrastructure development projects have already been completed around the world, while only the first steps are being taken in that direction in the Eurasian region. To a large extent, this is because cross-border PPP projects use sophisticated structuring and financing arrangements, and have relatively more extensive risk profiles. That is why the authors have designed a list of principles to govern the operation of cross-border PPPs. Their application will make it possible to accelerate and facilitate the setup and launch of cross-border PPP projects in Eurasia, to reduce related risks in their implementation, and thus contribute to the continued development of regional co-operation and regional economic integration.

Keywords: infrastructure, cross-border infrastructure, public-private partnership, PPP, cross-border PPP, CPPP, key investment mega-projects, EAEU, Central Asia, economic integration.

JEL: F15, F21, H54, L32, L92, L94, P33, R11.

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SUMMARY

As interstate and regional economic ties continue to expand and diversify, **development of cross-border infrastructure acquires special significance, primarily for landlocked developing countries (LLDCs)**. Cross-border infrastructure projects imply involvement of two or more countries, and require massive private investment and effective coordination of the activities of numerous stakeholders. One of the best mechanisms that can be employed to implement such projects is the **cross-border public-private partnership (CPPP).**

Several dozen CPPP-based infrastructure development projects have already been completed around the world in such sectors as Transport (railways, roads, pipelines), the Water and Energy Complex, and Telecom. **However, there are very few cross-border PPPs in the Eurasian region**, with the exception of the Russian–Chinese project for the construction and operation of a road bridge across the Amur. That is why the EDB attaches special significance to development of the principles governing the operation of cross-border PPPs. It is necessary to increase the awareness of governments and private investors regarding the opportunities offered by cross-border PPPs, which, in turn, will drive expansion of cross-border infrastructure in Eurasia, facilitate and accelerate the launch of cross-border PPP projects, and minimise risks in their implementation.

The **advantages of cross-border PPPs** are associated with the combined use of the resources available to governments and their private partners, which makes it possible to make up for the shortage of public funding required for the expansion of cross-border infrastructure, and to deal with problems arising from disparate investment potentials and dissimilar national legislative systems. Joint activities and the pooling of material and financial resources of the countries acting as public partners in cross-border PPPs produce **outcomes that could not have been achieved by individual countries through national PPP projects.** Involvement of a private partner (as a rule, one partner) ensures coherent and consistent discharge of obligations under the PPP contract on both sides of the border.

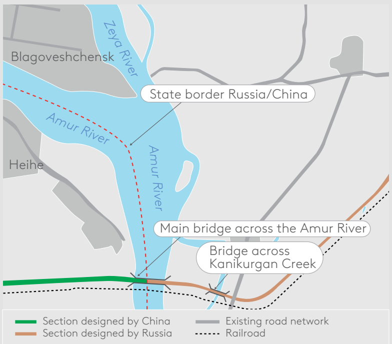
Cross-border PPPs are special in terms of their stakeholder setup. Most notably, there are **multiple public partners,** including the governments or authorised government bodies of two or more countries. **Cross-border PPP projects go beyond the boundaries of the national legal systems,** which requires the design of special norms and rules for all partners. Those norms are negotiated by the countries and fixed in an **international treaty,** which is then used as the legal framework for the preparation and implementation of cross-border PPPs.

This report reviews five of the most typical cases of cross-border PPPs in Transport and Energy (see Box A).

Box A. Examples of Cross-Border PPPs Reviewed in the Report

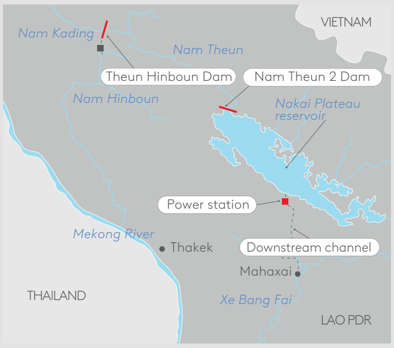
China–Laos High-Speed Rail Line.

Participating Countries:
Laos, China.



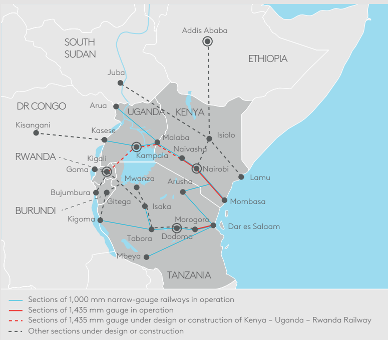
Road Bridge Across the Amur (Heilongjiang) between Blagoveshchensk and Heihe.

Participating Countries:
Russia, China.



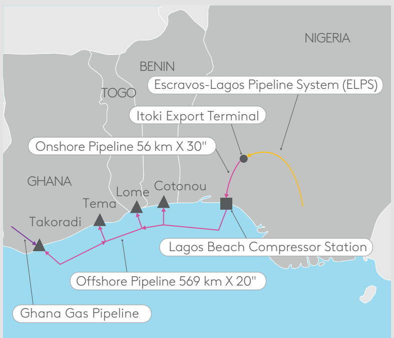
Nam Theun 2 Dam.

Participating Countries:
Laos, Thailand.



Kenya–Rwanda–Uganda East African Railway.

Participating Countries:
Kenya, Uganda, Rwanda.

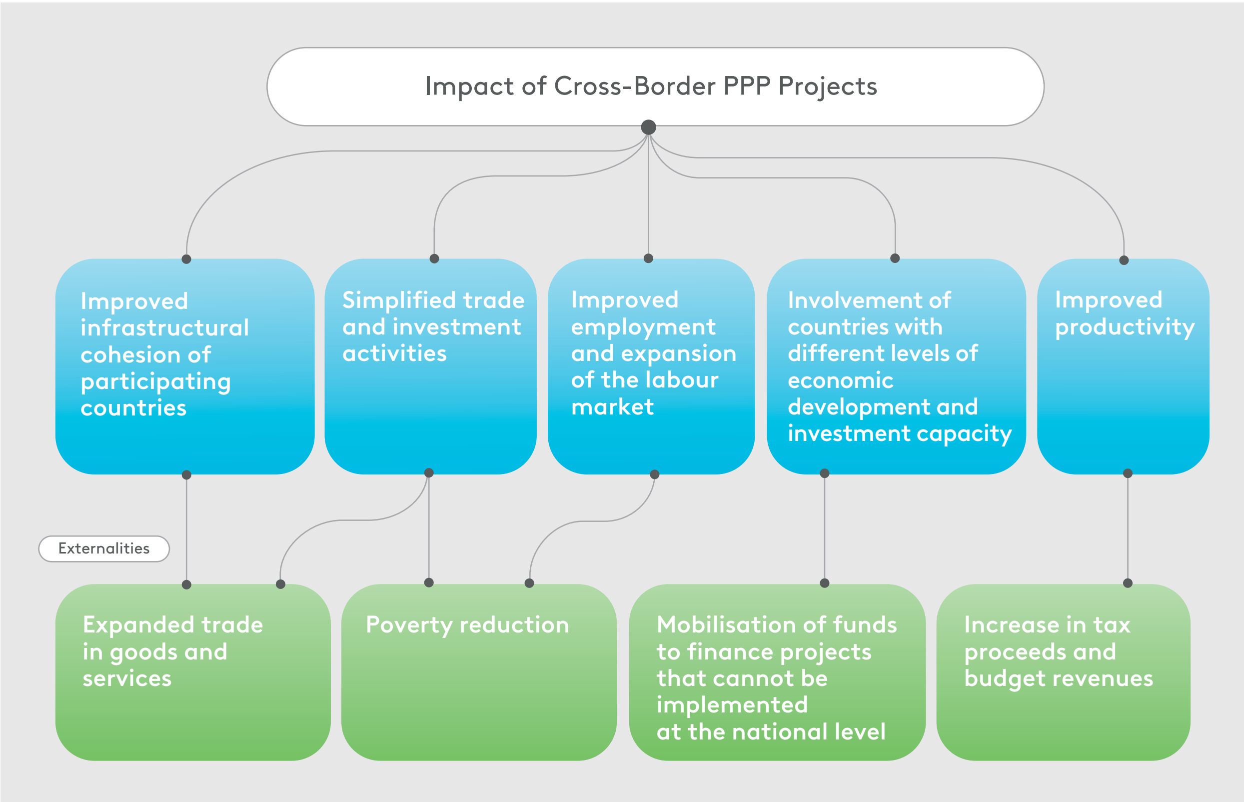


West African Gas Pipeline.

Participating Countries:
Nigeria, Benin, Togo, Ghana.

Two important criteria for cross-border PPPs are **the project initiation goals, normally linked to regional economic co-operation, and the outcomes achieved.** These are critical for the countries initiating cross-border PPP projects, especially for LLDCs, which are particularly dependent on physical and economic connectivity. Creation of cross-border infrastructure drives trade in goods and services, mutual investment, and workforce movement — the key components of economic integration. By the same token, there are important cumulative cross-border PPP effects in the countries engaged in the regional economic co-operation (see Figure A).

↓ **Figure A. Impact of Cross-Border PPP Projects**



Source: EDB.

Infrastructural connectivity created by cross-border projects is an important argument in favour of their implementation by the EAEU member states, as well as by the countries of Central Asia and the South Caucasus, due to their geographic position, length of state borders, structure of economic and transport links, and the importance of the water and energy complex. Matters related to the continued improvement of infrastructural connectivity — primarily transport connectivity — are included in *Strategic Development Areas of the Eurasian Economic Integration until 2025*, *Coordinated Transport Policy Priorities*, and other policy documents adopted by the EAEU. For the Central Asia countries, development of non-transport cross-border infrastructure is particularly relevant for the water and energy complex.

Potential cross-border PPPs in the EAEU member states and Central Asia countries include the projects for the construction and subsequent operation of the China–Kyrgyzstan–Uzbekistan railway, the Kambarata-1 HPP, the alternative Almaty–Issyk-Kul road, the Russia–Southern Kazakhstan direct current transmission line, the railway crossing point at the Kazakhstan–China border, and others.

To ensure successful development of cross-border infrastructure and effective management of CPPP implementation in the EAEU member states and in the countries of Central Asia and the South Caucasus, the EDB developed a set of **guidelines based on the international best practices for cross-border projects** (see Figure B). The guidelines are designed to balance the aspiration to improve cross-border infrastructure and the need to consider the interests of each participating country; in addition, they can be employed as points of reference to ensure financial stability and attractiveness of those projects for investors and creditors, to assist in the identification of activities required to support uninterrupted and safe operation of cross-border infrastructure facilities on both sides of the border, and are necessary to adapt the CPPP legal framework with a view to maximise the benefits produced by the projects and their contribution to the SDGs achievement.

↓ **Figure B. Guidelines for Cross-Border PPPs**

GUIDELINES FOR CROSS-BORDER PPPs

1. Ensure that political decisions are made, and cross-border PPPs are planned, in line with regional co-operation priorities
2. Maintain cohesion of national cross-border infrastructure development plans
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Source: EDB.

Cross-border infrastructure development decisions always have a political dimension, and are determined by the foreign policy and foreign economy strategies of the stakeholder countries. Important political prerequisites include initiatives for regional economic co-operation, and expansion of trade and investment. After the political decision is made to go ahead with the project, the parties can proceed to develop the feasibility study and negotiate an intergovernmental cross-border PPP project agreement. It is particularly important that **national infrastructure development plans be aligned** over the medium and long term. Where two or more countries have well-aligned infrastructure development plans, cross-border projects can be completed more quickly and with greater cumulative impact (example: China–Laos High-Speed Rail Line, see Section 2).

Cross-border PPPs require a special legal framework. **Intergovernmental agreements affirm an agreed-upon declaration of intent of the parties regarding the creation of the cross-border infrastructure using the cross-border PPP mechanism,** fill in regulatory lacunae, and establish the international legal framework underpinning the operation of cross-border PPPs. Such agreements make it possible to factor in the special features of each particular cross-border PPP facility, and the international relations arising among the stakeholder countries. **National PPP laws should provide detailed coverage of the operation of cross-border PPPs.** Certain problems arise in the course of cross-border PPP projects because national PPP laws of the Eurasian countries regulate domestic PPP projects, overlooking the possibility of joint implementation of PPP projects by several countries. Furthermore, many countries have different laws regulating PPP formats, procedures used to select the private partner, provision of government support, resolution of disputes, and selection of the applicable law, all of which hinder negotiation of uniform legal and financial PPP project parameters. It seems expedient **to apply international agreements rather than national PPP laws to the relations arising out of the operation of cross-border PPPs, and/or to incorporate a common (uniform) legal framework for cross-border PPPs in national PPP laws.**

Harmonisation of rules and procedures is necessary for successful cross-border PPP projects and effective operation of the cross-border infrastructure. This will ensure efficient interoperability of newly created cross-border infrastructure facilities and their compatibility with national infrastructure networks, and simplify access to the market for goods, machinery and other equipment, technologies and labour resources required for the project. It is important to **harmonise and standardise not only the rules and procedures applicable to cross-border PPPs, but also cross-border treaty practices.** Standardised terms and conditions using the most convenient wording, already tested and certified as effective, may be included by the participants of cross-border relations in PPP agreements and other project agreements in the form of complete ready-to-use blocks.

One of the key factors for the success of cross-border PPPs is the establishment of an institutional implementation mechanism: **joint work teams, committees and commissions created by the governments of the participating countries** to coordinate and monitor the implementation of the project at all stages. Such joint work teams should mostly consist of representatives of the ministries and agencies directly involved in the preparation and support of the cross-border infrastructure project, representatives of stakeholder entities, private businesses, research and public organisations, and civil society.

Integrative effects generated in the course of implementation, review, and assessment of cross-border infrastructure projects should be regarded as one of the key factors. It is important to take them into consideration when designing multilateral infrastructure development plans and programmes, as well as lists of "projects of common interest".

Cross-border PPPs regarded as a means of achieving the SDGs are a form of "sustainable" investment in the creation of "sustainable" infrastructure capable of generating not only the economic, but also the social and environmental impacts envisaged by the SDGs and the ESG standards, and contributing to the climate and social agenda.

Cross-border PPPs require dedicated resources and coordinated financial planning across stakeholder countries. This means that **multilateral development banks (MDBs) and their syndicates can play an important role in that process.** MDBs have multilateral membership, and are used as venues for the alignment of national positions, while the environmental and social standards developed by them can be used to prepare cross-border project feasibility studies. Participating countries can jointly approach multilateral development banks to request technical assistance in the development of feasibility studies and preparation of the texts of intergovernmental agreements, and to obtain loans to finance the projects. Accordingly, the Eurasian Development Bank is becoming increasingly important as the "mediator" of cross-border PPP projects, as it has long-standing collaborative links to all member states, a tried-and-true risk management policy, extensive in-house PPP expertise, and special financial tools to ensure the financial viability of cross-border PPPs.

The EDB is promoting PPPs as a collaboration model based, on the one hand, on linking prospective infrastructure projects to the joint development of infrastructure facilities of interest to all EAEU member states and countries of Central Asia and the South Caucasus, and, on the other, on the multilateral partnership of the EAEU member states and countries of Central Asia with the EDB, private and institutional investors, and development institutions for the financing of such projects.

Relying on its earlier analyses and previously developed guidelines, the **EDB will prepare a draft model agreement to reflect the best cross-border PPP treaty practices for its member states.** Its use by the stakeholders will facilitate and accelerate the international negotiating process, adding certainty to the formation and alignment of positions of the contracting countries. The Bank can also act as a centre of expertise under its 2022–2026 Strategy envisaging provision of legal advisory services, by helping stakeholder governments to develop intergovernmental agreements on infrastructure projects using the cross-border PPP mechanism.