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GIUSEPPINA LOFARO^(*)

THE PUBLIC-PRIVATE PARTNERSHIP MODELS
IN THE IMPLEMENTATION OF STRATEGIC OBJECTIVES
OF NATIONAL RECOVERY AND RESILIENCE PLAN

ABSTRACT: The essay analyzes the institution of the PPP as a tool for implementing the projects financed by the PNRR, offering, preliminarily, the defining data, also in the light of the historical-reconstructive profile of european origin, as well as an updated technical-juridical framework, both in terms of regulatory and jurisprudential, focusing *funditus* on the application areas and the respective peculiarities of the contract under question. The aim of the research is to highlight the critical and advantageous aspects in PPP relationships, also from a *de iure condendo* perspective, in support of the ongoing reform processes.

SUMMARY: 1. Introduction. – 2. Historical-reconstructive aspects of the public-private partnership. – 3. Partnership tools in the National Recovery and Resilience Plan. – 4. Critical considerations and advantage aspects on public-private partnership relationships in the italian experience. – 5. For an administrative system favorable to the development of partnership initiatives: concluding considerations.

1. — *Introduction.*

Starting from the transformations characterizing the role of public authorities in the economic sphere in the current context, this technical-legal analysis focuses on the prospects of the public-private partnership for the purpose of strengthening and stabilizing the objectives of the PNRR (Recovery and Resilience Plan). The reflection that follows is aimed to highlight the critical issues and limits in the italian experience of public-private partnership, also underlining the need to enhance the peculiarities and the logic

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of partnership instruments with respect to the discipline of other public contracts as well as to guarantee an adequate strengthening of the negotiating capacity of the administrations.

The collaboration between the public and private sectors⁽¹⁾ is increasingly connected to economic policy choices. In fact, there is an emerging tendency to consider public contracts as an internal policy tool in the public sector⁽²⁾, under an historical-reconstructive profile, initially aimed at satisfying the needs of the State-person, resulting today as a tool of stimulating the innovation, promoting social welfare and creating new markets⁽³⁾.

The perspective in question has been favored by Community law, which has enhanced the economic-functional dimension of public contracts⁽⁴⁾, initially for the purpose of building the single market and, more recently, as a tool for promoting collective welfare⁽⁵⁾.

⁽¹⁾ A. BARTOLINI, *Lo statuto della Città d'arte*, in *Aedon*, 2015, 2, reperibile in www.aedon.mulino.it/archivio/2015/2/bartolini.htm; L. MERCATI, *Pubblico e privato nella valorizzazione del patrimonio immobiliare*, Turin, 2009, pp. X-281.

⁽²⁾ G. CALLENDER, D. MATTHEWS, *The economic context of government procurement: New challenges and new opportunities*, in *Journal of Public Procurement*, 2002, 2(2), p. 216 ff.

⁽³⁾ R. CARANTA, P.C. GOMES, *Public procurement and innovation*, in *ERA Forum - Journal of the Academy of European Law*, 2021, p. 371 ff.

⁽⁴⁾ P. TREPTE, *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation*, Oxford, 2004, p. 59.

⁽⁵⁾ It is significant that the *New European 2020 Strategy* already identified public contracts as a vehicle for promoting innovation and research and development activities to promote «intelligent, sustainable and inclusive» growth. See in this regard the *Communication of the European Commission*, Europe 2020. *A strategy for smart, sustainable and inclusive growth*, 3 March 2010, COM/2010/2020 final, in www.eea.europa.eu/policy-documents/com-2010-2020-europe-2020, as well as Recital 47 of Directive 2014/24/EU, in eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024, in which it states that «research and innovation, including eco-innovation and social innovation, are one of the main drivers of future growth»; hence, the need for public administrations to «use public procurement strategically in the best possible way to stimulate innovation. The purchase of innovative products, works and services plays a fundamental role in improving the efficiency and quality of public services and at the same time in tackling the main challenges of a social value».

The propulsive role of the public authorities in the economic field⁽⁶⁾, which already started through the *European Green Deal*⁽⁷⁾, is now strengthened also following the approval of the *EU Next Generation*⁽⁸⁾ and the remodulation of the function of public contracts emerges *ictu oculi*. This aims not only to guarantee the optimal spending of public resources and the promotion of competition, but also to support the ecological and digital transition processes of the economic and production systems⁽⁹⁾.

The dynamics described above transversally affects all the negotiating tools available to the public authorities and significantly involves the complex negotiating relationships, especially public-private partnership contracts.

Pursuant to art. 3 of the public procurement code (Legislative Decree 19 April 2016, n. 50), the public-private partnership contract is stipulated in writing for a consideration with which one or more contracting authorities grant one or more economic operators for a specific period based on the duration of the amortization of the investment or of the established financing methods, a complex of activities consisting in the construction, transformation, maintenance and operational management of a work in exchange for its availability, or its economic exploitation, or the supply of a service connected to the use of the work itself, with the operator assuming risk in accordance with the methods identified in the contract.

2. — *Historical-reconstructive aspects of the public-private partnership.*

Since the 1990s, the development of the public-private partnership⁽¹⁰⁾

⁽⁶⁾ M. MAZZUCATO, *The Entrepreneurial State. Debunking Public vs. Private Sector Myths*, London, 2013, *passim*.

⁽⁷⁾ E. CHITI, *Managing the ecological transition of the EU: The European Green Deal as a regulatory process*, in *Common Market Law Review*, 2022, 59, 1, p. 19 ff.

⁽⁸⁾ F. FABBRINI, *Next Generation EU. Il futuro di Europa ed Italia dopo la pandemia*, Bologna, 2022, p. 110 ss.

⁽⁹⁾ M. ANDHOV, R. CARANTA, A. WIESBROCK (ed.), *Cost and EU Public Procurement Law. Life-Cycle Costing for Sustainability*, London, 2020, *passim*.

⁽¹⁰⁾ M. DUGATO, *Il partenariato pubblico-privato: origine dell'istituto e sua evoluzione*, in F. MA-

has been closely linked to the process of the reduction of the role of the public authorities⁽¹¹⁾ in the economic field of Western democracies. The use of public-private partnerships for the construction of infrastructures and for the management of public services⁽¹²⁾ appears to be attributable to the greater prominence assumed by the private sector in the economic field, not only on a technical and financial level, but also in defining the direction and objectives of development, in the face of public powers that should have preserved the guarantee of juridical-institutional conditions for the spontaneous functioning of the markets.

Following the pandemic emergency, the financial crisis has gradually led to the re-emergence of a greater leading role of the public authorities in the definition of industrial policies as well as in the planning of the goals and direction of development processes⁽¹³⁾.

In the context of the PNRR⁽¹⁴⁾, there is an economic planning, oriented towards the other public powers in function of coordination, which tends to identify the scopes and objectives also from a quantitative nature⁽¹⁵⁾, prefixing the punctual times for achieving them through control and periodic follow-up systems. The planning in question identifies privileged paths to take, but at the same time allows private individuals and the market to propose new solutions,

STRAGOSTINO (ed.), *La collaborazione pubblico-privato e l'ordinamento amministrativo: dinamiche e modelli di partenariato in base alle recenti riforme*, Turin, 2011, p. 55 ff.

⁽¹¹⁾ Communication from the European Commission, *On Public-Private Partnerships and Community Law on Public Procurement and Concessions*, COM (2005) 569 final, 15 November 2005; M.P. CHITI (ed.), *Il partenariato pubblico-privato: concessioni, finanza di progetto, società miste, fondazioni*, Naples, 2009.

⁽¹²⁾ F. FIGORILLI, *Servizi pubblici*, in F.G. SCOCA (ed.), *Diritto amministrativo*, Turin, 2017, *passim*.

⁽¹³⁾ F. BASSANINI, G. NAPOLITANO, L. TORCHIA (eds.), *Lo Stato promotore. Come cambia l'intervento pubblico nell'economia*, Bologna, 2021.

⁽¹⁴⁾ M. CLARICH, *Il PNRR tra diritto europeo e nazionale: un tentativo di inquadramento giuridico*, in *Astrid on line*, 2021; N. LUPO, *Il Piano Nazionale di Ripresa e Resilienza (PNRR) e alcune prospettive di ricerca per i costituzionalisti*, in *Federalismi.it*, 2022, n. 1, p. 4 ff.

⁽¹⁵⁾ On the question of the relationship between planning and regulation, M. D'ALBERTI, *Diritto pubblico dei mercati e analisi economica*, in *Riv. dir. comm.*, 2007, p. 239 ff.

especially in terms of innovation⁽¹⁶⁾. The need to maintain conditions of competition clearly remains. As underlined in the Communication on the *European Industrial Strategy* (2021), a European industrial policy is based on competition, open markets, world-class research and technologies and a strong single market that breaks down barriers and reduce administrative burdens. Simplistic temptations of protectionism or market distortions must be avoided, however, without perplexity in view of harmful unfair competition.

While putting huge public resources on the field, this planning presupposes a converging response from private capital.

These transformations affect various and contextual factors that have characterized the experience of public-private partnership in the last twenty years.

In fact, the strengthening of public powers in the predetermination of development objectives tends to reduce the role of private individuals in identifying needs and objectives of public importance, with a consequent reduction in the margins of uncertainty and randomness with reference to the worthiness of the private proposal. The evaluation of the private project will essentially be aimed at verifying the coherence of the project with the objective already identified upstream by the programming tools (Tar Catania, 11 October 2021, n. 3057).

In any case, it is believed that the market and the private sector continue to have an unfailing role in the prospecting of innovative design solutions, capable of declining the macro-purposes consistently with the predefined timing at European level, however within the context of a framework of public safety which will have to contribute to generating a safer assessment of the compatibility of the single project with the general interest⁽¹⁷⁾.

⁽¹⁶⁾ See *European industrial strategy* (Updating the 2020 New industrial Strategy: Building a stronger Single Market for Europe's recovery, 5.5.2021 COM(2021) 350 final), in commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en, based on the so-called *industrial alliances*, aimed at attracting and accompanying private investors with a view to identifying technological and production solutions that can ensure full support for the ecological and digital transition processes and, at the same time, the strategic autonomy of the Union.

⁽¹⁷⁾ Operators' confidence in the stability and coherence of the direction of development strengthens the space for partnership initiatives based on medium-long term timescales.

The current PNRR programming phase⁽¹⁸⁾ is characterized by a sharp increase in public funding for investments, unlike what occurred in the last thirty years. In the perspective in question, the partnership instrument becomes functional not only to guarantee the mere private funding of works public, as for setting in motion the so-called “leverage effect”, i.e. a virtuous process of convergence of private capital in the multiplier function of public resources which is indispensable in order to encourage a substantial change in the structure of the economic system, which neither the market nor the public sector alone can guarantee.

Therefore, in the current macro-economic context the public-private partnership seems to take on, a new guise as a complementary tool for the purpose of strengthening and stabilizing the development choices taken by the public authorities on the impulse of the supranational order.

The increasing role of the public powers in the economic field is part of a market economy which involves stability and credibility in line of economic and industrial development traced by the public decision-maker, but also with the long-term and transparency dimension – in the commitments, risks and responsibilities – which distinguish public-private partnership operations.

3. — *Partnership tools in the National Recovery and Resilience Plan.*

In order to identify the concrete spaces that the PNRR opens to public-private partnership relationships, it seems appropriate to firstly start from an analysis of the objectives of the Plan in which reference is made *expressis verbis* to the partnership tools.

⁽¹⁸⁾ As underlined in the “*Italy Tomorrow*” *National Recovery and Resilience Plan* (PNRR), p. 3, in www.gop.it/doc_pubblicazioni/939_aeez2tkik5_ita.pdf, «in the twenty years 1999-2019, total investments in Italy grew by 66 per cent compared to 118 per cent in the euro area. In particular, while the share of private investment has increased, that of public investment has decreased, going from 14.6 percent of total investment in 1999 to 12.7 percent in 2019». See also the report of the Senate of the Republic, *Partners wanted (for investment purposes). Where, how and how much does public-private partnership work in Italy?*, in www.senato.it/service/PDF/PDFServer/BGT/01078796.pdf.

A first area concerns support for research and innovation and technology transfer processes, as part of the M4C2 Mission «From research to business». Furthermore to support research in the so-called *Extended Partnerships*⁽¹⁹⁾, the logic of the partnership also concerns the main profiles of research, development and innovation to give continuity to initiatives implemented through the Fund for Sustainable Growth (FCS) as well as to enable synergies between levels of government and different financial sources. Specifically, support concerns partnerships on *High Performance Computing, Key digital technologies, Clean energy transition, Blue oceans - A climate neutral, sustainable and productive Blue economy, Innovative SMEs*⁽²⁰⁾.

A widespread reference to Partnership tools, exists in order to enhance the offer of education services: Mission 4 «Education and Research». These instruments are explicitly referred to as the promotion of university building works and projects⁽²¹⁾. Other references are contained in the M5C1 Mis-

⁽¹⁹⁾ See, in particular, the investment 1.3 on «Enlarged partnerships extended to Universities, research centers, companies and funding of basic research projects».

⁽²⁰⁾ See investment 2.2 on “*Partnerships - Horizon Europe*”, aimed at supporting research, development and innovation projects, identified with specific tenders for participation in partnerships for research and innovation (European Partnerships) within the framework of the Horizon Europe. In particular, the support will focus on the following partnerships: 1) High Performance Computing, 2) Key digital technologies, 3) Clean energy transition; 4) Blue oceans - A climate neutral, sustainable and productive Blue economy; 5) Innovative SMEs. The measure, implemented by the MiSE, will make it possible to give continuity to initiatives implemented through the Fund for Sustainable Growth (FCS), enabling synergies between different levels of government and financial sources. The measure is intended for companies and research centers.

⁽²¹⁾ In particular, reform 1.7 is dedicated to student accommodation and the reform of the legislation on student accommodation, with «the aim of encouraging the creation, by private entities, of new university building structures through advance coverage, from part of the MIUR, of the costs corresponding to the first three years of management of the structures themselves. From a legislative point of view, the regulation on student accommodation is expected to be revised (pursuant to Law 338/2000 and Legislative Decree 68/2012), through the opening of participation in the loan also to private investors or partnerships public-private, as well as support for the sustainability of private investments, with the guarantee of a tax regime inspired by that for social housing, but which allows for the flexible use of housing».

sion relating to «Employment Policies», where the logic and structure of the partnership is referred to in an expressed though-technical perspective. This in order to set the transformation of the labor market with adequate tools, to facilitate “employment transitions”, improve the employability of workers and increase the level of protection.

The reference made by the PNRR to partnership tools in relation to urban development and regeneration projects is significant, with the aim of activating collaborative processes, even in the planning phase, to promote social well-being⁽²²⁾. The reference in question not only confirm the undoubted centrality of partnership but also highlight the relevance of upcoming partnership instruments at the local level⁽²³⁾. This also in order to pursue the objectives of the *European Green Deal*, in the context of the *ONU 2030 Agenda* for sustainable development⁽²⁴⁾.

⁽²²⁾ See investment 2.2 on *Integrated Urban Plans*, which is dedicated to the suburbs of Metropolitan Cities and provides for participatory urban planning, with the aim of transforming vulnerable territories into smart and sustainable cities, limiting the consumption of building land. Specifically, «the interventions may also make use of co-planning with the third sector pursuant to art. 55 legislative decree 3 July 2017 n. 117 (Third Sector Code, pursuant to art. 1, paragraph 2, letter b) of Law 6 June 2016, n.106) and the participation of private investments to the extent of up to 30 percent with the possibility of resorting to the instrument financial institution of the BEI “Fund of Funds”. The primary objective is to recover existing urban spaces and areas in order to improve the quality of life by promoting processes of social and entrepreneurial participation». The projects will have to restore the community’s identity through the promotion of social, cultural and economic activities with particular attention to environmental aspects.

⁽²³⁾ See the fourth edition of the Report of the IFEL Foundation *Municipalities and Public-Private Partnership*, Studies and researches, 2021, which shows a substantial doubling of investments at the municipal level and an increase in the amount of individual tenders, in www.fondazioneifel.it/documenti-e-pubblicazioni/item/10657-i-comuni-e-il-partenariato-pubblico-pri-vato-quarta-edizione-2020.

⁽²⁴⁾ See, in particular, *The new Partnership Agreement 2021-2027 and the new programming of the Fund for Development and Cohesion (FSC)*, which directs the available funds towards the most fragile contexts from a socio-economic and geographical point of view, with a view to contributing to the achievement of the objectives set at European level «for a climate-neutral economy (*European Green Deal*) and for a just and inclusive society (*European Social Pillar*) in the broader context of adherence to the *ONU 2030 Agenda* for sustainable development and in line with the national and regional strategies for sustainable develop-

Especially at local level, it seems useful to point out that the partnership logic is both functional to stimulate a more consistent or qualified contribution from the private sector in financial terms (or in terms of expertise in the planning phase), and able to guarantee a greater correspondence of the interventions to the substantial community needs. Within the context of the objectives of recovery of the smaller cultural heritage⁽²⁵⁾ it is underlined the reference to special partnership instruments that facilitate the contribution of the third sector in the co-planning phase. This guarantees the widespread involvement of civil society in the development choices with the greatest impact on the management of the territory or cultural heritage⁽²⁶⁾. The pro-

ment». In order to avoid the fragmentation of interventions, the draft Agreement aims to enhance the coordination of policies and the development of partnerships in the provincial and metropolitan areas, to promote integration and complementarity between ordinary intervention policies and additional interventions envisaged by the cohesion policy, promoting «the maximum inclusion, in the entire programming cycle, of the associations and representatives of the subjects potentially influenced by the use of the cohesion policy funds or who are bearers of knowledge and instances of support for decision-making processes concerning the use of these funds, in order to guarantee informed participation and continuous discussion aimed at improving the preparation and implementation of the Agreement and the Programmes».

⁽²⁵⁾ See Mission «M1C3.2 *Regeneration of small cultural sites, cultural, religious and rural heritage*» and, therein, in particular «Investment 2.1: *Attractiveness of villages*», which will be implemented «through the *National Village Plan*, a support program for the economic/social development of disadvantaged areas based on the cultural regeneration of small towns and on the revitalization of tourism. The actions are articulated on integrated local projects on a cultural basis. In the first place, interventions aimed at recovering the historical heritage, at the redevelopment of open public spaces (e.g. by eliminating architectural barriers, improving street furniture), at the creation of small cultural services, including for tourism purposes, will be activated. Secondly, the creation and promotion of new itineraries (e.g. thematic itineraries, historical itineraries) and guided tours will be encouraged. Lastly, financial support will be introduced for cultural, creative, tourist, commercial, agri-food and artisanal activities, aimed at relaunching local economies by enhancing the products, knowledge and techniques of the territory».

⁽²⁶⁾ The public notice of the Ministry of Culture of 20 December 2021, in cultura.gov.it/borghi, aimed at implementing Line A dedicated to “*Pilot projects for the cultural, social and economic regeneration of villages at risk abandonment and abandoned*” and Line B dedicated to “*Local Projects for Cultural and Social Regeneration*”: this line of funding provides for greater rewards for those projects capable of directly involving both local communities and productive

vision, for some objectives, of the 30% limit to private, also aimed at facilitating the involvement of subjects – although less so financially endowed – more deeply rooted at a social level and therefore capable of intercepting the concrete needs of local communities in a more timely manner.

Regardless of the references expressed in the PNRR, the partnership instruments appear to be functional in guaranteeing the pursuit and optimal realization of many of the objectives underlying the individual missions. The medium-short period of 2026 within which European funding must be spent is based on a logic of results which seems more in line with the tout court dimension of public clients⁽²⁷⁾, in which the administration simply requires the private sector to do something. It should also be considered that the six missions that make up the PNRR often form part of long-term objectives⁽²⁸⁾ that go beyond the time frame of 2026, involving clear transformations to the structure of the administrative, infrastructural, production and social that the PNRR will be able only to put in the mere start-up phase.

Therefore, it is essential that public investments are able to ensure the so-called leverage effect, to act as a multiplier of invested public resources, in order to consolidate and stabilize development objectives beyond 2026, also through financial instruments capable of facilitating the entry of private capital, or the combination of the latter with other public funds.

organizations, businesses profit and non-profit and their intermediate organizations in order to stimulate collaboration, integration and partnership, both in terms of co-planning and collaborative forms of management, in particular in the case of the so-called “special public private partnership”.

⁽²⁷⁾ F. CINTIOLI, *Risultato amministrativo, discrezionalità e PNRR: una proposta per il Giudice*, in www.giustizia-amministrativa.it.

⁽²⁸⁾ The measures and reforms envisaged can be traced back to six fundamental pillars: 1) green transition; 2) digital transformation; 3) smart, sustainable and inclusive growth, including economic cohesion, employment, productivity, competitiveness, research, development and innovation and a well-functioning single market with strong SMEs; 4) social and territorial cohesion; 5) economic, social and institutional health and resilience, also with a view to increasing resilience and crisis preparedness; 6) policies for the next generation, children and youth, including education and skills.

The recent recourse to the public-private partnership instrument for carrying out the so-called project implementation falls within this perspective. *National Cloud (National Strategic Pole)*⁽²⁹⁾, i.e. a new dedicated cloud infrastructure, completely private or hybrid, located throughout the country and at the forefront of performance and security. It seems appropriate to point out that, in the absence of an explicit provision to this effect in the PNRR, for the purpose of creating and managing this infrastructure, a public-private partnership initiative was launched pursuant to art. 183 of Legislative Decree 19 April 2016, n. 50 (Public Contracts Code), with a view to combining investments and know-how of private operators with the public investments foreseen for the construction of the infrastructure, also assigned to the administrations at the local level for the migration of their data⁽³⁰⁾.

Clearly, the whole sector of digitization and the development of technologically advanced infrastructures can benefit from the peculiarities of the partnership: by way of example, we refer to the processes of strengthening technological infrastructures in public buildings such as hospitals or, again, to interventions on infrastructures on the diffusion of broadband connection. Even the energy transition objectives – in Mission 2, *Green revolution*

⁽²⁹⁾ See G. NAPOLITANO, *Il partenariato pubblico-privato per la realizzazione del Polo strategico nazionale*, in *Giorn. dir. amm.*, 2021, p. 703 ss., as well as A. SANDULLI, *Lo “Stato digitale”. Pubblico e privato nelle infrastrutture digitali nazionali strategiche*, in *Riv. trim. dir. pubbl.*, 2021, p. 581 et seq.

⁽³⁰⁾ Following the presentation of the *Strategia Cloud Italia, Summary strategic document for the implementation and control of the Cloud of the PA*, in assets.innovazione.gov.it/634299755-strategiacloudit.pdf, the Department for Digital Transformation has received and examined three Public Private Partnership proposals pursuant to art. 183, paragraph 15 of the Public Contracts Code. On 27 December 2021, the Department «identified in the proposal of TIM S.p.A., Enterprise Market, as agent of the ATI to be set up with CDP Equity S.p.A., Leonardo S.p.A., Sogei S.p.A., the one that fully and satisfactorily reflects the requirements expressed in the Cloud Italy policy presented on 7 September». On 28 January 2022, the tender for the construction of the National Strategic Pole (PSN) was therefore published and the procedure was entrusted to Defence Services S.p.A., an in-house company of the Ministry of Defence, as central purchasing body. In particular, the tendered proposal envisages the investment of 723 million euros by the successful tenderer for the provision of “public” and “private” cloud services capable of guaranteeing supervision and control by the competent authorities on strategic data and services.

and ecological transition – appear suitable for the logic of partnership, both to encourage the diffusion of new generation renewable energy sources, e.g. the off-shore energy generation systems, and to foster the energy efficiency not only of public infrastructures, but also of private homes. In this regard, the doctrine⁽³¹⁾ has highlighted that on the other hand there are areas in which the logic of the public-private partnership has already been successfully tested through the model of the Energy performance contract, *ex art.* 180, paragraph 2, d.lgs. n. 50/2016. By leveraging the guarantee of contractual stability deriving from the setting of medium-long terms, it proved to be suitable for guaranteeing high levels of energy efficiency, an increase in asset value and cost savings in annual management costs, both public and private⁽³²⁾.

Within each mission of the PNRR, the concrete level of usability of the partnership instruments will depend on a series of factors connected to the financing system of the intervention to be implemented and specifically to the possible need to provide a fee for availability in favor of the private sector. In this context it must be taken into account that the availability fee is considered a current expense and cannot be paid by the administrations through expenditure destined for investments. Moreover the partnership instruments are also linked to the level of the intervention envisaged in the Plan: the spaces for the effective use of the partnership are wider in the presence of investments that are not described in a precise manner but

⁽³¹⁾ A. MOLITERNI, *Le prospettive del partenariato pubblico-privato nella stagione del Pnrr*, in *Dir. amm.*, 2022, 2, pp. 441-469.

⁽³²⁾ As specified in the art. 180, paragraph 2, of the Public Contracts Code, «in the case of energy performance contracts or energy performance contracts (EPC), the operating revenues of the economic operator can be determined and paid according to the level of improvement of energy efficiency or other contractually established energy performance criteria, provided that they can be quantified in relation to consumption; the energy efficiency improvement measure, calculated in accordance with the rules on certification of the energy performance of buildings and other energy-intensive infrastructures, must be made available to the granting administration by the economic operator and must be verified and monitored during the entire duration of the contract, also making use of special IT platforms used for the collection, organisation, management, processing, evaluation and monitoring of energy consumption».

which leave a multiplicity of open options, as in the case of the objective of digitalizing cultural heritage or investments in green communities; on the other hand, these spaces appear reduced in relation to particularly detailed investments which already identify precise objectives upstream which seem to justify the use of tender contracts or, in any case, contracts of less complexity. In this regard, we can mention the investments in specific sections of the high-speed network or, again, of some developments of the mass rapid transport network in certain cities⁽³³⁾.

4. — *Critical considerations and advantage aspects on public-private partnership relationships in the Italian experience.*

On the one hand the current context is certainly favorable to the development of public-private partnerships, but on the other hand enters a legal-institutional framework that has not encouraged the use of these negotiating tools by the public sector in the recent decades. Considering other European countries just a small number of PPP (Public Private Partnership) contracts have been concluded in Italy⁽³⁴⁾. Most of the partnership initiatives have been started at the local level, for smaller amounts and in relation to “opere tiepide” (*luke-warm works*), like kindergartens and sports facilities, above all to overcome budget constraints⁽³⁵⁾.

⁽³³⁾ As highlighted by F. CINTIOLI, *Risultato amministrativo, discrezionalità e PNRR*, cit., p. 15, referring to some interventions of Mission 3 (M31.1), such as those relating to the works to be carried out on the Naples-Bari, Palermo-Catania-Messina and Salerno-Reggio Calabria lines.

⁽³⁴⁾ see the Report on the activity carried out by DIPE in 2020 and 2021 on *Public-private partnership and project finance*, in www.programmazioneconomica.gov.it/pubblicazioni-ppp/.

⁽³⁵⁾ As underlined by the Analysis Document n. 15 of the Senate of the Republic, *The Italian municipalities and the Public Private Partnership*, in www.senato.it/service/PDF/PDFServer/BGT/01068955.pdf, especially p. 6, 22, 25: «between 2002 and 2016 about 80% of the tenders was their responsibility, for a total amount of more than 33 billion euros. For the Italian municipalities, spectators of a reduction in their room for manoeuvre, the PPP market is in fact an opportunity to support their investment needs, and 100% of the municipalities

This results from several factors. First of all, many aspects of uncertainty remain in relation to the start-up phase of partnerships, especially with reference to the treatment to be reserved for proposals received from the private sector and not solicited by public administrations. Furthermore, starting from the moment in which the private proposal is received, the times to reach the assignment of the PPP contract, to the so-called financial closing and the start of the construction phase. Furthermore, there is a very high number of unfinished proceedings, also due to the poor technical-planning quality of the proposals or the calls for tenders which implement them⁽³⁶⁾. In consideration of all this, the political-administrative risk of failure of the initiative of partnership is still perceived very high for the private sector, also due to the absence of qualified public interlocutors as well as the reduced propensity for negotiation in the administrative system.

In addition to what has been noted up to now, there are significant and numerous uncertainties in the substantial definition, allocation and manage-

with over 20,000 inhabitants have resorted to it at least once to public-private cooperation». In particular, «starting from 2010, PPP tenders exceeded 20% of public works, with a peak of 28.1 in 2013. In terms of amounts, the situation appears even more variable: we went from 8, 4% in 2002 to about 67 in 2016». As for the types of interventions, the largest number of municipal PPP tenders in the period 2002-2016 concerns «lukewarm works, which include, for example, nursery schools and sports facilities: they are characterized by fields that do not allow full coverage of the costs related to management»; in particular, «around a quarter of the initiatives refers to sports facilities (24.8%). This is followed by tenders relating to urban furniture and public green areas (18.5%) and social and public housing (18%). However, on the resources front, the PPP initiatives of the municipalities were concentrated mainly in the energy and telecommunications sector and in the transport sector (respectively 34 and 11% of the amounts of the PPP tenders held by the municipalities)».

⁽³⁶⁾ As always underlined in the Analysis Document n. 15 of the Senate of the Republic, p. 31, the Italian municipalities and the Public Private Partnership, cit., «against approximately 33,164 PPP procedures detected and archived by the National PPP Observatory, between 2002 and 2016, the “interrupted procedures”, i.e. canceled tenders and deserted or non-awarded tenders due to irregularities, concern 4,429 procedures, equal to 13%, with peaks exceeding 30% in the case of tenders with a unit value of over 15 million euros. The suspended proceedings have a value of 48 billion euros, 35% of the amounts of the activated proceedings. This percentage varies at territorial level: in the South it reaches almost 54%, against an average of 23 and 28% respectively for Northern and Central Italy».

ment of risks and of the economic charges that contribute to conforming the risk⁽³⁷⁾ that the economic operator is required to take⁽³⁸⁾. Specifically, it concerns critical aspects attributable to the question of finding a balance between private risks and public guarantees, but also to the difficulty of the administrations to formulate the comparative judgment on the economic benefits of the partnership⁽³⁹⁾ in order to the use of ordinary contractual instruments. Some of these critical issues can be traced back to structural problems of the administration that involve the entire sector of public contracts, starting with the very significant one of the limited administrative capacity in the management of negotiation operations⁽⁴⁰⁾. However, this

⁽³⁷⁾ On which see the report of the International Monetary Fund, *How to Control the Fiscal Costs of Public-Private Partnerships*, Washington, DC, October 2018, where it is underlined that, in order to ensure informed use of the instrument, «strong governance institutions are needed to manage risks and avoid unexpected costs from PPPs. While in the short term, PPPs may appear cheaper than traditional public investment, over time they can turn out to be more expensive and undermine fiscal sustainability, particularly when governments ignore or are unaware of their deferred costs and associated fiscal risks. To use PPPs wisely governments should (1) develop and implement clear rules for their use; (2) identify, quantify, and disclose PPP risks and expected costs; and (3) reform budget and government accounting frameworks to capture all fiscal costs comprehensively».

⁽³⁸⁾ Cons. St., 13 April 2022, n. 2809, where it is underlined that «if the operator is not made aware of all the obligations of the service that he will have to perform, he will not be in a position to evaluate whether, due to his business organization, he is able to bear the risk without incurring in losses of business and his offer will inevitably turn out to be unreliable, it could happen that he is induced to revise downwards the quality of the service offered during the relationship only to avoid losses».

⁽³⁹⁾ P.A. requires highly complex and specific assessments with regard, for example, to the complex of assessments and in-depth analyzes to verify the presence of conditions of convenience for the public sector (value for money), the verification of possible design alternatives, the identification and allocation of the risks connected to the project, the verification of the economic-financial sustainability of the investment and of the acceptability of this by the credit institutions called to make the loans available. Finally, in the planning phase, the public administration should work to mitigate or eliminate, as far as possible, the administrative risk factors.

⁽⁴⁰⁾ *Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds*, Final report, in op.europa.eu/en/publication-detail/-/publication/d1082259-0202-11e6-b713-01aa75ed71a1,

profile, as repeatedly reported by the supervisory authorities and by the European Court of Auditors⁽⁴¹⁾, takes on a particularly significant in relation to very complex transactions and negotiating instruments such as partnerships.

Some complexities have been fueled by a certain approach and certain legislative options that have characterized the regulation of partnership instruments in the Italian legal system.

In particular, the systematic claim of existence of a unitary code of public contracts, differently from other European countries – like Germany or the United Kingdom, which have not created a unitary code for the purpose of transposing the three directives of 2014 –, has substantially led to the subjection of each negotiating instrument to the logic of greater rigidity, typical of traditional public procurement contracts⁽⁴²⁾. The traditional model of public evidence represented the reference scheme with which the negotiating instruments characterized by an intrinsic flexibility, such as concessions and partnership contracts, were also governed.

p. 117, in particular, the second part relating to the analysis of individual European legal systems, where it is underlined, in relation to Italy, that «Administrative capacity has been identified as a key area of weakness in Italy's public procurement, as contracting authorities often lack the professional skills to draft procurement documentation and manage tendering procedures». Traditionally, the skill/set of procurement practitioners has been limited to administrative and legal curricula, and therefore lacks an important economic focus.

⁽⁴¹⁾ See Special Report no. 9/2018 of the European Court of Auditors, *Public-private partnerships in the EU: widespread shortcomings and limited benefits*, 2018, where it is underlined that often the potential advantages of PPPs do not materialize due to the limited administrative capacity of most Member States: «Successful implementation of PPP projects requires considerable administrative capacity, which can only result from appropriate institutional and regulatory frameworks and long experience in implementing PPP projects. The Court found that such capabilities currently exist in only a limited number of EU Member States'.

⁽⁴²⁾ This is an issue aggravated by the internal choice to subject the PPP to the logic of public contracts – given the natural vis expansion of general instruments on special instruments –, but also by the very uncertainty of the postponement made in art. 179 of the Public Procurement Code to the discipline on concessions and to part II of the Procurement Code. In this sense, A. MASSERA, *Il quadro della trasposizione delle direttive europee tra obblighi di armonizzazione e opportunità di riordino della normativa nazionale*, with particular reference to work and service concessions, is expressed in A. FIORITTO (ed.), *Nuove forme e nuove discipline del partenariato pubblico privato*, Turin, 2017, p. 41 et seq.

This state of affairs has inevitably led to giving greater importance to the procedure with respect to the content and success of the negotiation operation, not only on the part of the legislator, but also on the part of the operators, interpreters and the supervisory authorities themselves.

Such a perspective clearly goes against the trend of those legal systems which, on the other hand, have paid less attention to regulatory and procedural aspects and in which partnership initiatives have been more successful: think, by way of example, of the experience of the British legal system⁽⁴³⁾, in which the public-private partnership has received minimal attention on a legislative and procedural level, against a great deal of attention in the definition of adequate public policies capable of guiding and supporting the various initiatives promoted at a decentralized level.

Moreover, from the point of view of partnership, it is the very idea to compete for a market – with a view to promoting competition or fighting corruption – that appears not fully adequate with respect to the logic with which the collaboration between public and private, which above all requires the presence of actors – public and private – able to carefully foresee the risks and to face, responsibly and with adequate incentives, the difficulties that arise during the management of the relationship.

Instead, the Italian experience of partnership seems to have been characterized *in peius* by a certain narrowness on the axiological level, which, combined with an economic context of contraction of public investments and rigidity of constraints on budgetary policies, has contributed to enhancing above all the dimension financing of private sector collaboration⁽⁴⁴⁾.

⁽⁴³⁾ A.C.L. DAVIES, *Public-private partnerships in English Law*, in A. FIORITTO (ed.), *Nuove forme e nuove discipline del partenariato pubblico privato*, cit., p. 389.

⁽⁴⁴⁾ Also due to the reference made by the general rule on partnership to Eurostat criteria 69, the accounting profile of the possibility (or not) of entering the negotiating operation in the public budget has often become the main *raison d'être* of partnership operations and, above all, the main interpretative parameter for the legal (and economic-functional) reconstruction of the related negotiating instruments. The reference is contained in the art. 3, paragraph 1, lett. eee) of the Code of Public Contracts, which defines the “public-private partnership contract”.

In relation to the exceeding (or not) of the maximum limit of 49% to the public con-

The multidimensional logic that should distinguish the use of partnership instruments seems to have been reduced solely to the possibility of carrying out public works and interventions – not necessarily complex – with the prevalent use of private funds. This has contributed to causing a placement on the margins of the many opportunities that these tools could manifest for the public sector under the main aspects of innovativeness of the project proposals, greater adherence to the needs and requirements of the community, but also under the profile of the ability to mobilization of additional resources and synergies, not only economic, at a local level.

The prevailing attention to the accounting dimension of the partnership operation also seems to find confirmation in the weak attention that has been paid, both in the scientific field and in terms of legislative recognition, to those “atypical” partnership experiences⁽⁴⁵⁾. These, although characterized by a lesser financial relevance, assume an ever greater importance for

tribution in PPP operations, pursuant to art. 180, paragraph 6 of the Code of public contracts: see, in this sense, the multiple interventions of the administrative and accounting jurisprudence and, recently, the resolution of the Court of Auditors, section reg. Emilia Romagna control, no. 3/2021, which – in relation to a financial leasing proposal for a public work relating to the redevelopment and management of a municipal sports center – reiterated that «for the correct allocation of risks between the public and private parties, for the achievement of the economic and financial balance, the institution is required, in addition to the risks of construction, availability and demand, to evaluate in advance all the additional risk cases envisaged in the EUROSTAT decisions and referred to in the 2018 ANAC guidelines, through the careful analysis of each agreement which may have reflected on the public budget; the local authority is required, making use of an in-depth investigation, to the preliminary verification of the convenience of resorting to the instrument of public-private partnership, compared to the traditional contract in terms of optimizing the costs charged to its own budget». See also A. ANTONELLI, *Il partenariato pubblico-privato nelle dinamiche di finanza pubblica: “interferenze” reciproche ed esigenze di bilanciamento*, in A. FIORITTO (ed.), *Nuove forme e nuove discipline del partenariato pubblico privato*, cit., p. 170.

⁽⁴⁵⁾ See C. IAIONE, *Il diritto all'innovazione sostenibile per l'investimento nelle infrastrutture sociali. Un'analisi empirica*, in *Riv. giur. ed.*, 2021, p. 301; on the importance of flexible and “special” partnership models, such as the one envisaged by art. 151, paragraph 3 of the Code of public contracts, could have in relation to the valorisation of “minor” cultural heritage, referral to A. MOLITERNI, *Public and private in the discipline of cultural heritage: the structure of the system, the problems, the challenges*, in ID. (ed.), *Patrimonio culturale e soggetti privati. Criticità e prospettive del rapporto pubblico-privato*, Naples, 2019, p. 39 ff.

the activation of virtuous models of collaboration between the public sector, the private sector and civil society, both for the purposes of better management of public assets, and for the purposes of the broadest satisfaction of the civil and social rights of the community. Such a trend has certainly not been favored by a part of the jurisprudence⁽⁴⁶⁾ oriented towards bringing any atypical partnership relationship within the logic and legislation of public procurement.

5. — *For an administrative system favorable to the development of partnership initiatives: concluding considerations.*

In the current season of strengthening of the public function, promotion and coordination of the economic system, the public-private partnership is responsible for ensuring a reinforcement as well as a stabilization of development objectives, with a view to contributing to achieving those structural transformations of the system economic and social, pursuable only through the link between public and private.

Even in the context of a more decisive protagonism of the public authorities in the definition of the strategic objectives of economic and social development, the competence, know-how and innovation of the private sector can play a decisive role in the prospecting of solutions capable of accelerating the ecological and digital transition of the administrative and industrial system. This leads to evident positive implications also for the optimal satisfaction of social rights: here the reference is made to the potential of new technologies in the sectors of integrated mobility, home assistance and healthcare or telemedicine⁽⁴⁷⁾.

⁽⁴⁶⁾ Consider the experience and discipline of co-planning in the social sphere and with third sector bodies that only the Constitutional Court, 26 June 2020, n. 131, decided not to lead back to the pro-competitive logic of public procurement, after some opposing positions of the Anac and the Council of State in opinion no. 2052 of 26 July 2018.

⁽⁴⁷⁾ C. SURACI, V. DE ANGELIS, G. LOFARO et al., *The Next Generation of eHealth: A Multi-disciplinary Survey*, in *IEEE Access*, vol. 10, 2022, pp. 134623-134646.

Moreover, the involvement of the private sector extends and consolidates the incentives to ensure the best achievement of the objectives of public importance⁽⁴⁸⁾ underlying the partnership operation.

The private sector, especially in the social sphere, could favor greater adherence of projects, which directly impact the territory, to the concrete needs of the community. This with regard to regenerative processes and enhancement of the forsaken or disused public heritage, including cultural heritage, that the public administration often fails to manage adequately because of the lack of resources, adequate planning and management skills. At this point it would be appropriate to welcome a vision in which the public, private and social private sectors contribute synergistically, also through partnership, to the concrete shape of development processes⁽⁴⁹⁾ that directly affect land management and the enjoyment of civil and social rights.

This perspective, seems to extend the logic of partnership in the complex management of public goods and services even beyond the more traditional infrastructural interventions for the construction of public works. Thus it should be assisted by a legal-institutional system truly capable of encouraging the use of partnership instruments and to simplify the legal framework, as recently proposed by the draft enabling law for the reform of the discipline of public contracts.

To this end, in the forthcoming process of reforming the regulations on public contracts, it will be essential to fully implement, when exercising the delegation contained in Law 21 June 2022, no. 78 (Delegation to the Government on public contracts), the criterion which aims to ensure a «strong incentive to resort to flexible procedures, such as competitive dialogue, partnership for innovation and competitive procedures with negotiation, for the stipulation of complex and long-term public contracts, in compliance with the principles of transparency and competitiveness» (letter z); as well

⁽⁴⁸⁾ As pointed out by A.C.L. DAVIES, *Public-private partnerships in English Law*, cit., p. 391, if the private individual must not only build but also ensure the optimal functioning of a hospital, he will have greater incentives to build it better and in the shortest possible time.

⁽⁴⁹⁾ C. IAIONE, *L'azione collettiva urbana tra partenariato pubblico-comunità e pubblico-comunità-privato*, in P. CHIRULLI, C. IAIONE (eds.), *La Co-Città*, Naples, 2018, p. 17 ss.

as the criterion which aims to ensure the «rationalisation, simplification, also through the provision of model contracts, and extension of the forms of public-private partnership, with particular regard to service concessions, project finance and the financial leasing of works public or public utility, also in order to make these procedures actually attractive for professional investors, as well as for operators in the public works market and in the provision of services rendered under concession, guaranteeing the transparency and publicity of the deeds» (letter aa).

Against this background, it appears essential to restore the discretion of the administrations, both at a regulatory level and in terms of interpretation, by going beyond the traditional logic of suspicion and distrust towards everything that is not duly regulated by the legislator but left to the autonomy of the parties. With regard to complex negotiating relationships and within the scope of the objectives of the PNRR, it would be necessary to give greater value to the result logic of the negotiating operation, with respect to the traditional attention paid solely to the procedural aspects⁽⁵⁰⁾.

The poorly formalized phase that precedes the decision on the feasibility of the private proposal should not turn into an advance public procedure⁽⁵¹⁾, especially in a context in which the presentation of a plurality of projects for the pursuit of the objectives already identified⁽⁵²⁾ is becoming more and more frequent from the PNRR.

Of course it is necessary to preserve transparency⁽⁵³⁾ and the prohibition

⁽⁵⁰⁾ M. CAFAGNO, *Flessibilità e negoziazione. Riflessioni sull'affidamento dei contratti complessi*, in *Riv. it. dir. pubbl. com.*, 2013, p. 991 ss.

⁽⁵¹⁾ See Tar Catania, section I, 11 October 2021, n. 3057, for which the preliminary phase of the «choice of the promoter, even if proceduralized, is characterized by very wide administrative discretion, such as not to be made enforceable in the administrative judgment of legitimacy, since it is intended not already to choose the best among a plurality of offers on the based on preordained technical and economic criteria, but on the very evaluation of a public interest which justifies, like the planning of public works, the acceptance of the proposal formulated by the aspiring promoter».

⁽⁵²⁾ Cons. St., 26 July 2018, n. 2729.

⁽⁵³⁾ On the extension to this phase of the principles of I. 7 August 1990, n. 241, see the resolution of the National Anti-Corruption Authority, 21 April 2021, n. 329, concerning

of unjustly discriminatory treatments, above all through the publicity of the motivation that supported the choice, but without transforming the phase preceding the competitive confrontation into a further and distinct public procedure. As the structural complexity of the contract grows, spaces for flexibility in the management of negotiations must be recognized, with progressive offers and continuous learning processes from the public to the private sector and the other way round, minimizing the automatisms and rigidities operating at a legislative level.

Also in relation to the subsequent management of the relationship, margins of flexibility and inevitable progressive adjustment of the negotiating structure should be preserved, assuming that a certain level of incompleteness of the contract is ingrained to the same complex logic of the partnership operation.

Therefore, it seems appropriate to analyze the partnership tool in a different way with respect to the that used for the public procurement, i.e. avoiding the temptation to uncritically transfer the rigidity and logic of suspicion, which have often characterized the Italian approach to the issue of public procurement, in the context of complex relationships. On the contrary it appears necessary to encourage the development of a cooperative logic which facilitates, through the appropriate incentives, the assumption of greater responsibilities by both public operators and private operators.

After all, since the market can offer truly innovative solutions only if it is adequately stimulated by the public sector, the public administration must be able to exercise “active commissioning”, also through the development of a correct attitude for negotiation, even if in a context of transparency.

As recently underlined in the report accompanying the approval of the

the *Publication of the final provisions of the feasibility assessment procedures of the proposals for the construction under concession of project financing works, pursuant to art. 183, paragraph 15, Legislative Decree 50/2016*, in www.anticorruzione.it/-/delibera-numero-329-del-21-aprile-2021 where it is underlined that «the administration, at the conclusion of the feasibility assessment procedure of the proposal received pursuant to art. 183, co. 15 of the code, is required to adopt an express and motivated administrative provision pursuant to articles 2, paragraph 1 and 3, co. 1 of law 241/1990».

standard partnership contract, this instrument should contribute to improving the negotiating capacity of the Administrations, especially of the territorial ones, and to avoid that the use of the PPP is essentially motivated by the need to bypass the constraints of a financial nature⁽⁵⁴⁾. This certainly implies the need for a strengthening of the administrative skills and capacity in the field of public contracts⁽⁵⁵⁾ even more urgent, through a strong technical specialization of the personnel⁽⁵⁶⁾, which will certainly be favored by the unification and aggregation of contracting authorities, also in order to ensure economies of scale in the procurement of goods, works and services⁽⁵⁷⁾.

The logic of aggregation would be more easily pursued in relation to contracts characterized by greater simplicity, a higher level of standardization and for which it appears essential to ensure the adequate support mechanisms in the construction and management of partnership relationships by the administrations.

Adequate support would be essential for both the phase of definition of the risk matrix – in order to prevent the political community from remaining conditioned and constrained for a long time by irrational choices – and for the purposes of the concrete operational translation of the specific objectives to be achieved and tools to evaluate its actual achievement.

⁽⁵⁴⁾ Thus in the explanatory report to the outline of «*Concession contract for the design, construction and management of public works for the direct use of the Public Administration, to be carried out in public-private partnership*», jointly approved by the ANAC (resolution no. 1116 of 22 December 2020) and by the State General Accounting Office (resolution no. 1 of January 5, 2021), in www.rgs.mef.gov.it/.

⁽⁵⁵⁾ In the 2017 Report on the Coordination of Public Finance, in www.corteconti.it/Home/Organizzazione/UfficiCentraliRegionali/UffSezRiuniteSedeControllo/RappCoord/RappCoord2017, it is underlined that «the fundamental prerequisite for the PPP market to grow within a policy of relaunching investments in infrastructure and services is also constituted by the quality of the projects, where the combination capacity and public and private capital, the sharing of risks, the exchange of experiences manage to build an effective framework for cooperation».

⁽⁵⁶⁾ C. BARBATI, *La decisione pubblica al cospetto della complessità: il cambiamento necessario*, in *Dir. pubbl.*, 2021, p. 15 ss.; M. RENNA, *Il cambiamento necessario: una contraddizione o una sfida?*, *ivi*, p. 155 ss.

⁽⁵⁷⁾ B.G. MATTARELLA, *La centralizzazione delle committenze*, in *Giorn. dir. amm.*, 2016, p. 613.

Additionally, it is necessary to further strengthen the initiatives and support mechanisms envisaged at a central level⁽⁵⁸⁾ – also for the implementation of the PNRR⁽⁵⁹⁾ –, taking as reference point the most advanced international experiences which, in many cases, have envisaged the establishment of real specialized agencies to support local administrations in the management of public-private partnership relationships.

In the comparative context, a plurality of tools has been made available to local administrations (guidelines, economic-financial plans, standard contracts, analysis models to evaluate the convenience of PPP), but above all a more solid institutional framework evolved, through the use of Agencies, task forces, support companies. For example, the UK has set up a specialist unit of the Treasury, a general care company (now Infrastructure UK) and a local partnership company.

⁽⁵⁸⁾ The Department for Economic Policy Planning and Coordination of the Presidency of the Council carries out an important support activity in the field of public-private partnership and project finance (based on the powers assigned by l. December 28, 2015, n. 208), although the assistance carried out in 2020 concerned only 18 initiatives, above all relating to local authorities and municipal administrations: these subjects have activated 60% of requests for assistance in recent years. Among the main institutional tasks of the DIPE in the field of PPPs, there are, in fact, the assistance and support to all the central and local public administrations that request it, the collection of data and the classification of the operations falling under the Eurostat Decision 2004, the promotion and dissemination of PPP models for the construction and management of public works or public utility works. The DIPE has assumed the tasks previously performed by the Project Finance Technical Unit (UTFP), established by law 17 May 1999 n. 144, art. 7 at the Interministerial Committee for Economic Planning (CIPE).

⁽⁵⁹⁾ Pursuant to article 11, paragraph 1, d.l. 31 May 2021, no. 77, converted, with amendments, into l. July 29, 2021, n. 108, first of all, the possibility is envisaged for the administrations «to increase the effectiveness and efficiency of the procurement activity and ensure rapid implementation of the projects of the PNRR and the other interventions connected to it» to resort to Consip S.p.A., which «makes specific contracts, framework agreements and technical support services available to public administrations» and «creates an information, training and tutoring program in the management of specific purchasing and planning procedures for the evolution of the National System of e-Procurement and the strengthening of the administrative and technical capacity of public administrations»: on the activation of this support, also for the purpose of defining needs, see now circular letter no. 6/2022 of the State General Accounting Department (Central Service Pnrr).

The transition process of the administrative, economic and social system towards the strategic objectives of the PNRR⁽⁶⁰⁾ reveals unprecedented spaces for the use of public-private partnership instruments and operations. However, the logic of partnership would really be able to ensure the strengthening and stabilization of the development choices implemented by the public authorities only if it were adequately supported by structural administrative reforms, which ameliorate the technical capacity of the administrations.

Furthermore it would require the overcome of the distrust perspective affecting the traditional legal and cultural approach to public contracts and the public-private relationship.

From a *de iure condendo* perspective, it would also be appropriate to make the use of public-private partnerships by the Administrations subject to the prior drafting of at least a three-year program of public needs capable of being met through forms of PPP as well as to a serious prior assessment of the convenience and feasibility.

⁽⁶⁰⁾ C. ADESSO, *Strumenti di attuazione del PNRR e di rafforzamento della capacità amministrativa: il partenariato pubblico-privato e l'in house*, 5 July 2022, in www.giustizia-amministrativa.it; E. SCOTTI, *Le società miste tra in house providing e partenariato pubblico privato: osservazioni a margine di una recente pronuncia della Corte di giustizia*, in *Foro amm. - C.d.S.*, 2005, p. 665 ss.; Id., *Organizzazione pubblica e mercato: società miste, in house providing e partenariato pubblico privato*, in *Dir. amm.*, 2005, p. 915 ss.

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