



Living document on financial instruments and regulatory frameworks for the introduction of partnership with private sector

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Premise

FINCH project will help partner regions in improving their policies in the field of valorisation of cultural heritage. It will support the implementation of light financial instruments targeted to private actors and Public-Private Partnerships to enable local and regional policies move towards more sustainable models of cultural heritage valorisation.

As stated in the application form of FINCH project:

The issue addressed by the project is the protection, valorisation, management and exploitation of cultural heritage through the support of light financial instruments (as micro loans or loans with public guarantee, crowdfunding, revolving funds) to leverage the participation of private actors, mainly young and innovative entrepreneurs and non-profit organizations, in public-private partnership solutions. The need to preserve cultural heritage is widely recognized: as written in the European Commission Communication "Towards an integrated approach to cultural heritage for Europe", published in July 2014 (COM(2014) 477 final), Europe's cultural heritage, both tangible and intangible ... is an irreplaceable repository of knowledge and a valuable resource for economic growth, employment and social cohesion. As heritage sites become spaces that produce both social and environmental capital, the cities and regions that host them turn into drivers of economic activity...; in short they generate innovation and contribute to smart, sustainable and inclusive growth, in line with the objectives of the EU 2020 strategy. And, again: "under the European Regional Development Fund investment in culture and heritage should be part of integrated and sustainable economic development strategies. It can cover a wide spectrum of activities in the public, non-profit and private sectors (in particular SMEs), pursuing investments that contribute directly to the fund's objectives and investment priorities". Investments in cultural heritage, as part of a territorial strategy, should contribute both to the development of endogenous potential and to the promotion of social inclusion and quality of life. Anyway the availability of financial resources to do so is often deficient. Public institutions have tried to interrupt this trend introducing different instruments for increasing private sector participation in the cultural heritage protection and valorisation (like Public-Private Partnerships). Nevertheless, the shortage of financial resources and the problem of accessing finance hinder the participation of some private actors, above all non-profit oriented organizations or young entrepreneurs: the investment situation of these two types of actors is clearly sub-optimal, due to the presence of market failures and to their bankability profile. In this kind of integrated strategies is needed a financial support which only the public party can guarantee. Considering that the challenge of FINCH is common to the entire Europe, common solutions will only be met through an effective cooperation at interregional level, through exchange and policy-learning among the relevant policy organizations, leading to knowledge generation and improving the performance of regional development policies and programmes.

In order to achieve the objectives of the project, FINCH will set out a step-by-step approach, which allows to delineate more clearly the scope of the different project activities and what they bring to all partners. This step-by-step approach is needed to address all the challenging dimensions (economic, environmental, social and cultural) of the protection, valorisation, management and exploitation of cultural heritage through the support of light financial instruments and with PPPs. With regard to the project goals, the step-by-step approach realizes in:

- benefit from the diversity of approaches and experiences within the partners regions, through a policy learning process based on exchange of practices and experiences (integration, step 1);
- overcome the gaps in experience and expertise among the partners through transfer of knowledge and mutual learning (capitalisation, step 2);
- jointly face common challenges (improvement, step 3);
- join efforts to elaborate and implement regional action plans (cohesion 4).

Through step 2 (capitalization), the partnership develops this Living document on financial instruments and regulatory frameworks for the introduction of partnership with private sector and will periodically update it (each time after 2 workshops), after discussing main obstacles and challenges in implementing financial instruments and building linkages among actors operating in cultural heritage and financiers, faced by PPs. The intention is to lead the partners' staff to a network working method, creating a community of practices. This living document is structured as an action guide for activities, conceived to be directed and governed at central level, but nourished by partner contributions for the enhancement and step-by-step upgrade of skills.

Introduction: the Evolution of the Valorisation of Cultural Heritage

The notion of “cultural heritage” can be considered as the legacy of physical artefacts and intangible attributes of a group or a society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations¹.

Furthermore, Cultural Heritage stands for an all-encompassing vision of services (provided by public bodies – e.g. facility management, mobility, security, hospitality, tour guides, educational activities, disability support, music events, neighborhood initiatives) which go beyond the management of the individual building / monument, attracting users as actors of any cultural heritage re-use project. This process is complex and it requires the definition of a correct approach according to the characteristics of the relevant community, since traditional communication approaches tend to concentrate on the messages that pass from the heritage asset experts and managers to (potential) users while overlooking the potential of the reverse flows (from users to experts/managers) and horizontal flows (from users to users). Now, digitalization and data analysis provide both the possibility to improve the aforementioned process².

As part of human activity, Cultural Heritage produces tangible representations of value systems, beliefs, tradition and lifestyle.

The Universal Declaration of Human Rights of 1948 provides for a right of each individual to benefit from the cultural life in its community, setting up a right to participate in full freedom “in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”³. This statement was further specified in the International Covenant on Civil and Political Rights (adopted by the General Assembly of the United Nations in 1966)⁴, and in the Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005)⁵, seems to attribute an individual or collective right to enjoy the benefits of scientific progress and of Cultural Heritage⁶.

¹ In this view Cultural Heritage can be considered as an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, artistic expressions and values; from March 30 to March 31, 2017, in Florence, the first ever G7 meeting of Ministers of Culture, together with representatives of the EU and of UNESCO, took place under Italy’s Presidency of the G7, and resulted in the issue of a joint declaration on “Culture as an instrument for dialogue among Peoples.” See, L. Casini, *International Journal of Constitutional Law*, Volume 16, Issue 1, 12 May 2018, 1–10; C. Vitale, *La fruizione dei beni culturali tra ordinamento internazionale ed europeo*, in *La globalizzazione dei beni culturali*, a cura di L. Casini, Bologna, 2010, 171.

² See the section on “Heritage System Communication”. See also: J.-B. Auby, *Droit de la Ville*, LexisNexis, Paris, 2016 ; S. Andreani, F. Bianconi, M. Filippucci, A. Sayegh, *Responsive cities: tecnologie digitali, spazi interattivi ed esperienze urbane aumentate*, in (ed. by G. F. Ferrari) *La prossima città*, Mimesis Edizioni, Milano, 2017, 426 s.

³ art. 27 - R. Cavallo Perin, *Il diritto al bene culturale*, in *Dir. Amm.*, 4/2016, 495-510; E. Stamatopoulou, *Cultural rights in international law: article 27 of the UDHR and beyond*, Leiden-Boston, 2007, 37 s. At international level, see also the notion of “cultural asset” provided by the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, May 1954).

⁴ In Italy, see Law 25 October 1977, n. 881. E. Craig, *A right to cultural identity in a UK Bill of Rights?*, in *European Public Law*, 2013, 19 (4), 689 s.; Y. Donders, *Study on the legal framework of the right to take part in cultural life*, in Y. Donders and V. Volodin (eds.) *Human Rights in Education, Science and Culture: Legal Developments and Challenges*, UNESCO/Ashgate, December 2007, 231; R. Stavenhagen, *Cultural Rights: A Social Science Perspective*, in *Economic, Social and Cultural Rights*, ed. by A. Eide, C. Krause, A. Rosas, Dordrecht, 2001, 85 s.

⁵ Convention on the Value of Cultural Heritage for Society, 27 October 2005, art. 1, § 1 lett. a.

⁶ International Covenant on Civil and Political Rights, art. 15, co. 1, lett. b.; R. Cavallo Perin, *Il diritto al bene culturale*, in *Dir. Amm.*, 4/2016, 495-510.

To enhance Cultural Heritage's valorisation, it is necessary to ensure its conservation in a dynamic and productive perspective, thus by attracting and incubating new activities, by revitalizing the old ones, by improving people general wellness (*right to the fruition*) and by assuring environmental sustainability (*duty to assure the fruition*).

Moreover, globalization, development, economy and demographic change are the main factors that directly impact the preservation of historic urban environments, increasing the obsolescence of monumental, historic publicly-owned buildings, for which governments are obliged to find new contemporary uses⁷.

Indeed, a considerable part of cultural heritage resources is located in countries which are going through an economic stagnation-phase, where stringent budget constraints, high public debt and the contraction of public finance involve cultural heritage (museum collections, archaeological sites, palaces and historic houses, etc.), and deal with the lack of management expertise in the public sector.

At the same time, huge financial resources have accumulated in China, the Gulf or other emerging countries - which have emerged - thanks to economic progress, developing interest in the "heritage assets" of other countries, with the aim of promoting tourism and cultural exchange⁸.

A process of decentralization took place (particularly in European countries) reducing the role of central governments in the implementation of policies for the cultural heritage aimed to improve the intervention to other levels of government and, above all, to the private sector⁹.

Private contribution in financing public sector is called upon to play an increasingly active role financing and directly managing cultural institutions, so that cooperation between the business and culture worlds has become an established practise nowadays¹⁰.

Financing investments in cultural heritage has a direct impact on growth and a considerable potential for creating new jobs, which leads to long-term social and economic benefits encouraging also the search for alternative financing models. For example, so-called "cultural arbitrage" operations began to take shape, cross-border collaborations between governments, financial institutions and companies that allow countries with scarce financial endowments to protect, conserve and enhance some cultural heritage, sharing its economic and extra-economic benefits with rich countries, but relatively poor in heritage¹¹.

Lately more and more light has been shed on various public-private initiatives, including fiscal incentives (such as various tax relieves, percentage legislation, transfer of art *in lieu* of tax payment, earmarked taxes, vouchers), matching funds and the involvement of private

⁷ Council conclusions on cultural heritage as a strategic resource for a sustainable Europe adopted 21 May 2014, available at register.consilium.europa.eu/doc/srv?l=EN&f=ST%209129%202014%20INIT; EU Commission, *Towards an integrated approach to cultural heritage for Europe*, 22 July 2014, COM(2014) 477 final, http://ec.europa.eu/assets/eac/culture/library/publications/2014-heritage-communication_en.pdf.

⁹ A. Klamer, L. Petrova, A. Mignosa, *Financing the Arts and Culture in the European Union*, Brussels: European Parliament, 2006, available at http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-CULT_ET%282006%29375309.

¹⁰ European Parliament, Directorate General for Internal Policies, Policy Department B, *Structural and Cohesion Policies, Encouraging Private Investment in the Cultural Sector. Study*, 2011, available at www.europarl.europa.eu/RegData/etudes/etudes/join/2011/460057/IPOL-CULT_ET%282011%29460057_EN.pdf, in which it is stated that "mixed funding economy of arts and culture could raise new perspectives for the sustainability of cultural sector activities instigated a pressure for finding other sources to complement public funds and encourage their use".

companies in the management of cultural institutions¹². In this sector, public-private partnerships schemes have often been encouraged, ranging from individual and entrepreneurial investments or joint ventures to grant-giving foundations (e.g. banking institutions).

¹² THINK PAPERS COLLECTION / 07, Public-Private Partnerships for Cultural Heritage: Opportunities, Challenges, Future Steps, available at http://www.digitalmeetsculture.net/wp-content/uploads/2016/04/rch_thinkpapers_07.pdf.

Part 1 – Investments in the Cultural Sector: evaluation methods, dissemination and implications for the territory

The objective of the chapter is to identify the most important drivers to disseminate and evaluate the investments done in the cultural sector. The cultural sector is an important driving force for many countries but each country has specific characteristics that can influence the allocation of investments such as the number of tourists or the number of cultural sites. For this reason - from a theory and a practical point of view – there is not a unique method to measure the impact of investments done in the sector but, according to the single situation and the fixed goals, it is possible to share guidelines that help institutions to achieve success. Moreover, it is necessary to consider that it is fundamental to communicate and disseminate on the territory information about cultural events, investments done, goals achieved and make the cultural sites available to the community in order to achieve success. In the following paragraphs the authors will delineate the role of the culture and the main elements that can influence the cultural weight in a country, the investments process and the impact that can be generated and monitored by public and private institutions, and finally, the role of communication and the importance of involving the community in the cultural projects.

1. Culture: some definitions

"Culture may [...] be said to be the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. It includes not only the arts and letters, but also the modes of life, the fundamental rights of human beings, value systems, traditions and beliefs" (UNESCO, 1982:41). The definition proposed by UNESCO highlights the social, foundational and, identity nature of the concept of culture. This description is representative of regional and national diversities and specificities, but at the same time a basis for the identification of a shared community heritage (EU, 1992).

Culture is therefore a crucial element: the first form of patrimony that characterizes a more or less broad social group and that provides it with a common base. It is essential that cultural diversity be respected: "culture diversity widens the range of options open to everyone; it is one of the roots of development, not just in terms of economic growth, but also as a means of achieving satisfactory intellectual, emotional, moral and spiritual existence" (UNESCO, 2002:4). Thus, cultural heritage is just a legacy or a capital that remains immovable. Conversely, the heritage is a real resource for an economic and cultural development. This progress is nodal, since it allows the survival and sustainability of the community, therefore the durability of culture.

Two other descriptions underline the above picture.

The first is that of UNESCO, which defines heritage as "our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration".

The second one is that of "Council conclusions of 21 May 2014 on cultural heritage as a strategic resource for a sustainable Europe" (EU, 2014).

In the document the European Union regains and updates its strategic role: "cultural heritage consists of the resources inherited from the past in all forms and aspects - tangible, intangible and digital (born digital and digitized), including monuments, sites, landscapes, skills, practices, knowledge and expressions of human creativity, as well as collections

conserved and managed by public and private bodies such as museums, libraries and archives. It originates from the interaction between people and places through time and it is constantly evolving. These resources are of great value to society from a cultural, environmental, social and economic point of view and thus their sustainable management constitutes a strategic choice for the 21st century”.

Culture heritage can be described as all assets that have been significantly influenced by the past (Timothy and Boyd, 2003).

2. Culture as a driving force toward growth: from investments to tourism development

The role of culture is important for many countries because every expense in the cultural sector is able to influence the whole local economy affecting and contributing to develop other important industries (Re et al., 2006). Due to its role of connector between different sectors, it is possible to look at the culture as a starter of economic dynamism in the territory, as enabler of an accumulation process and repartition of value through the different players present in that area.

However, in the majority of the cases, culture is seen as a fundamental driver for the growth of a country because it can attract tourists on the territory that usually spend money and time for cultural activities (Mourato and Mazzanti, 2002). The economic dynamism is activated: the money coming from tourists start the process of added value creation in the local economy.

As a consequence, institutions and organizations invest their money in the cultural sector in order to rise the cultural level of the country and attract a higher number of tourists.

Is the role of culture the same in every country? Why the same amount of investments done in the cultural sector of different area does not correspond to the same return of value created?

First of all, the role and the presence of cultural sites in each country are different and this is highly depending on the cultural heritage of the country/area. There can be a high variance in terms of number of museums, cultural sites, cultural events organized, communication programs, etc.

All these factors have an influence on the popularity of the country.

Table 1. Numbers about culture and tourism in some countries

Country	Investments in culture (2015)	Museums (#)	Unesco Sites (#)	Turists/year (2017)
Italy	0.7% del PIL	4158	54	> 50.000.000
Romania	1.2% del PIL	1047	8	12.056.300
Germany	1.0% del PIL	6250	44	37.452.000
Spain	1.2% del PIL	518	47	10.493.440
Finland	1.5% del PIL	323	7	21.000.000
Greece	0.8% del PIL	292	18	3.673.000
Poland	1.1% del PIL	800	15	18.257.800

In some cases, although if the cultural heritage of a country is not so high, the investments done by institutions and organization can influence the result obtained. Every country has a spending program dedicated to culture and, in some cases it can be an element able to launch a territory in the cultural industry or leave it in the middle. Cultural investments are not coming just from institutions and organizations but also from donations and sponsorships, for example. It is important to note that the level of diffusion of these instruments is very different from one country to another one.

A research conducted by the World cities culture finance (Sole24Ore, 2017) has underlined the role of the cultural policies in 16 global cities around the world studying the relationship

between the direct public investments (i.e. funds of institutions often used to make cities more attractive), the indirect public investments (i.e. fiscal facilitation) and donations/sponsorships. In USA donations and sponsorships are the first sources of investments (in New York donations and sponsorships represent the 70% of all investments done in the sector) while in Paris, Moscow and London are characterized by the majority of direct public investments. In this short highlights it is possible to understand the different approach used by countries.

Another important aspect is linked to the number of tourists that culture can move: the relevance of the cultural heritage can move a lot of tourists all over the country. Tourists can spend their money and contribute to the economic dynamism above mentioned. Tourists can be of different nature and it is important to distinguish between them: according to the reasons of their visits different elements can influence their choices. This is segmentation and target market: if you know why someone has chosen your territory you can control the effect of a strategic decision more easily.

It is possible to identify some categories of tourists: generic tourists, cultural tourists, occasional tourists and local tourists. Generic tourists are tourists coming in a specific territory just to visit it, they are on holiday and they have different interests among which culture; so, if they heard about events, museums and important sites they can decide to visit them. Cultural tourists are tourists whose main interest is the culture so they look for specific information and often they decide the destination according to the culture possibilities offered by that country; in this case they are active part of the process of research. Occasional tourists are tourists that have some free days and decide to spend some money for a travel, in this case a specific event can influence their decision on the destination; just an important cultural site or museum or event can convince them. Finally, the local tourists are tourists already present in the territory that are moved by single initiatives, often they go to visit a city nearby and in this case also minor events or cultural sites can be important in taking the decision to visit a city or a museum.

Tourists, however, typically include in their trips visits to cultural sites i.e. from a walk in an historical town to a museum, and they benefit from experiences, memories and feelings offered by heritage assets (Mourato and Mazzanti, 2002).

Cultural tourism is one guideline of the Commission as a promoter and a means of what is called "a unique tourist destination", in which values and heritage can be shared and used. A significant project inside of this line is that of the Cultural Routes of the Council of Europe Council of Europe cultural routes, launched in 1987 with the Declaration of Santiago de Compostela, that puts into practice the values of the Council: human rights, cultural diversity, intercultural dialogue, etc. The routes are 31 and are certified on the basis of certain items, including:

- enhancing European heritage and help give a reading of the present cultural diversity;
- supporting cultural and educational exchanges;
- developing innovative projects in the field of cultural tourism and sustainable development, as well as accessible to all types of users.

It is thus clear that culture and tourism can be a combination for a sustainable development. In Italy, cultural and creative production system represent the 6.0% 6.1% of total employment and wealth products in Italy. Core culture jobs account for 3.8% of value added and employment for 3.7% manufactured in Italy.

More specifically, the cultural industries produce 33.6 billion euros of added value (2.2% of the National Assembly), thanks to the use of 488,000 workforce (the 1.9% of total employees) (Symbola, 2018).

Considering one last aspect concerning tourist offers based on culture, in addition to cross-contamination between culture and economy, this mix can allow a continuous improvement

of intellectual capital: involved human resources in services related to cultural touristic products improve their skills, know-how, competencies (Erickson and Rothberg, 2015). Ultimately, there is a constant growth of different capitals that allows the enhancement of local heritage, the creation of jobs and the production of revenues, then a marriage that needs to be maintained and strengthened.

3. The importance of a sustainable approach

Culture is an input for the economic growth, because of its role of non-replaceable resource, allowing local innovation, transformations and generating positive impacts (Anderson e Hardwick 2017; Favre-bonté e Thevenard-puthod 2013). This meaning of culture is linked to the concept of sustainable development that is a coevolution of human needs - to which an economic approach responds - that must be respectful of natural resources and assess its social impact (Elkington 2013; 1997).

It is clear how this could be the fundamental input of the tourism sector: tourism is based on local resources, which become an attractor for visitors. This industry is typically considered sustainable (Dini, 2008) and follows the direction of Brundtland report "Our Common Future" (Brundtland, 1987) integrating economic, environmental and social goals. UNWTO - United Nations World Organization, the United Nations World Tourism Organization that in 2005 collects the legacy of the Brundtland Report in 2005, proposes two considerations:

- the increase in tourism significantly contributes to global economy, but necessarily assumes a greater use of the natural environment and its resources, because it significantly increases the impact on the ecosystem;
- tourism can contribute to improving, over time, the tenor of life of countries and mostly of lower-income areas (UNWTO, 2016).

Accordingly, it is necessary to manage two opposing tensions to find an effective balance: sustainable tourism "takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities" (UNEP, 2005:12).

It is necessary:

- to make an optimal use of environmental and cultural resources, because these are a key factor. This results in a conservative, attentive approach to biodiversity;
- to enforce the authenticity of host communities respecting their cultural heritage;
- to ensure economic actions that are feasible in the long run transferring socio-economic benefits to all stakeholders starting from employment, opportunities for revenues and social services for host communities.

The Travel and Tourism industry, becomes a trigger for the economic development, as well as a vehicle for a cultural dissemination and sharing.

The potential achievement of these goals can be explained by some important data:

- in 2015 international tourism has generated 161.5 trillion dollars, reaching 2.3 trillion dollars for the following year (WTTC , 2017a);
- Tourism covers 10% of GDP – Gross domestic product
- The 7% of global export depends by tourism and 30% of global export of services.

According to data of the WTTC (2017b) forecasts of growth in tourism are conceivable over the next 10 years and should lead, in 2030, to 1.8 billions of international arrivals.

In 2016, the Travel industry and Tourism has directly contributed to the global economy with 109 million jobs worldwide; the growth in the year was 1.8% and generated nearly 2 million new jobs.

This results in 1/11 jobs globally due to the tourism sector. In addition, the direct contribution to GDP grew by 3.1%, compared to a global economic growth of 2.5%. The results represented a outperformance for 6 consecutive years.

Taking into account the indirect and induced effect the contribution in 2016 is 7.6 trillion and 292 million of loans or 10.2% of global GDP and 1/10 jobs. The total new positions created in 2016 is 6 million: about 1/5 (23% of the total) of all new jobs in the year is related to Travel and Tourism.

In Europe, due to the historical, artistic and natural characteristic, the tourism is an economic, cultural resource as well as a conservation and enhancement tool and an engine of sustainable development.

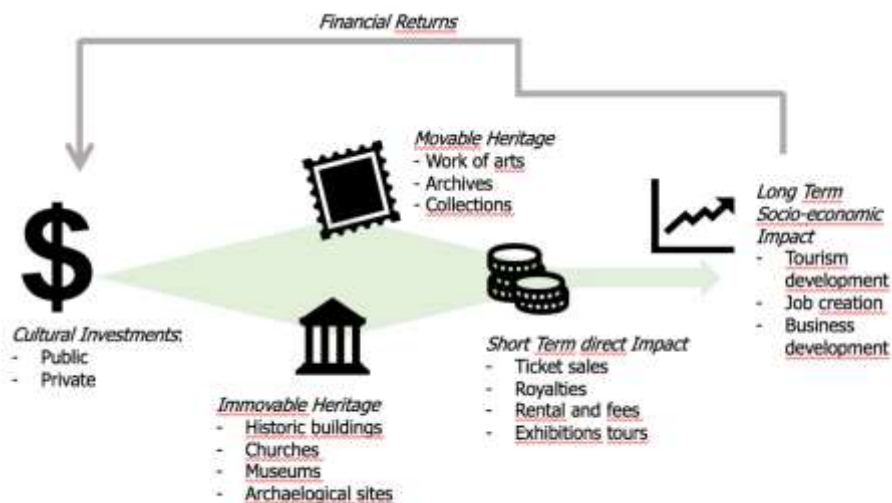
The Sustainable Development Goals of the United Nations establishing sustainable development goals for 2030 devote a declination to tourism, highlighting, in particular the role of culture (ONU, 2015).

4. The flow of the investments' process

There are different sources of possible investments in the cultural sector but, independently from the source of the investments, every euro invested in the sector has some consequences on the territory (Re et al., 2007). In this case, the difficulty is to determine the effect of investments. There is not a rule or a method that can be applied to every situation but it can be of help to create scenarios, maintain a conservative approach and perform a data analysis specific for each country/area.

Before creating possible scenarios it is necessary to understand the process followed by investments in the cultural sector and, consequently, identify the elements to consider to estimate a possible impact.

Figure 1. The flow of investments in culture: a simple representation



Cultural investments can be made by public and private sectors and they can be used to improve the movable or the immovable heritage patrimony. When investments are done in movable heritage improvements are made on archives, collections, work of arts and everything that can be “transferred”. On the other side, when investments are done in immovable heritage improvements are made on historic buildings, churches, museums and everything that is fixed in a certain location.

However, investments' effect can be measured considering two different perspectives: the short and long term impact. The short term impact can be also called direct impact and it is possible to monitor it through the ticket sales, the number of exhibitions tours sold, the number of jobs created in a museum, etc. (Bowitz and Ibenholt, 2009).

On the contrary, the long term impact – or the indirect impact – is referred to the socio-economic implication of investments done in a certain area. Tourism development, job creation in the area, business development are some of the aspects that can be improved. In this second case, it is more complex estimates the impact (Bowitz and Ibenholt, 2009).

It is widely acknowledged that from a business and economic perspective, the awareness of the relationship between the enterprise and the territorial context in which it operates determines continuous and mutual connections between different environments concerned - natural, social, political, economic, cultural - and the enterprise itself, generating constraints and/or opportunities (Asif et al., 2011).

Moreover, in considering the effect of investments done there is also the multiplier effect that has to be taken into account or the Keynesian effect (Re, 2006) and the ancillary spending are the money spent by tourists in accommodation, food, retail goods and this kind of spending contribute to the business developments in the area (Bowitz and Ibenholt, 2009).

5. The impact of cultural investments

“At certain moments and during certain periods economic value will be the center of attention. Then everything appears to revolve around profit, wealth, income, economic growth, and so on. When someone exclaims ‘it’s all for the money’, people acquiesce. In such a climate profits are it, people are valued by their income, or wealth; and the purpose of getting an education is to be worth more than labour market. When cultural producers have to justify a new theatre, the expansion of a museum, or the conservation of an archaeological site in this climate, their best argument is to point at the income that the investment will generate, by way of jobs created and additional tourist spending in the local economy. Such a justification requires an economic argumentation. Economists have complied and developed ‘economic impact’ analyses, contingent valuation methods and willingness to pay studies” (Klamer, 2001).

The literature about economic impact measurement is extensive (Getz and Page 2016; Mair and Whitford 2013) and engenders a constant debate but in all the cases is necessary to use data post events/investments to obtain a more precise results.

Two of the most important standards for assessment of special and touristic events are typically the Input-Output (I-O) analysis and Cost-Benefits Analysis - CBA (Dwyer and Forsyth 2009). Some scholars (Matheson & Baade, 2003; Porter, 1999) criticize the economic impact based I-O because of their tendency to optimistic estimations; on the contrary, CBA requires too much data and therefore it is difficult to apply (Dwyer and Forsyth 2009). A possible way to overcome this problem is the triple bottom line approach (Getz, 2009; Fredline et al., 2005; Elkington, 1994) that represents a new paradigm for a more holistic evaluation. The integration of economic, social and environmental impact assessment is functional in enlightening “the externalities associated with business activities and therefore to promote sustainability through planning and management practices which ameliorate negative outcomes and promote positive ones” (Fredline et al., 2005). The triple bottom line approach has the problem that requires too much time of observation of the phenomenon before being implemented.

Finally, the Economic Impact Method (EIM) considers direct and indirect effect. This method was explained by Leontief in the ‘30s and it needs statistics data coming from the elaboration of the effect that industries have on each other when inputs are modified. It was used in the

cultural sector above all in USA but it is difficult to be implemented due to the data and information needed.

In the cultural heritage system, before considering the possible application of those methods, there is the necessity to map the segments of people/tourists present in an area (ie. generic tourist, local tourist, cultural tourist and occasional tourist) and, understand people preferences, their spending and willingness to pay.

From this point of view, Klamer and Throsby (2000) suggested to start the economic valuation considering that tourist are willing to pay for their cultural experience and more they value things for cultural reasons more they will be willing to pay for them.

The economic valuation has to consider the travel costs for tourists (Thorsby, 2007) and the sponsorship (Timothy and Boyd, 2003) and the additional expenses. Those elements are relevant in an economic valuation because if tourists spend a lot of money for they travel to visit a cultural site it means that they are willing to pay and, on the other side, if a cultural site is relevant sponsorship can finance it and have a positive impact.

Figure 3. Methods that can help in measuring the willingness to pay of customers

Revealed Preference	Stated Preference
<ul style="list-style-type: none"> • <i>Travel cost method</i> <ul style="list-style-type: none"> ➤ It includes any entrance fees for the visit to the site, other expenses, wear, costs for the car, etc. • <i>Hedonic pricing</i> <ul style="list-style-type: none"> ➤ It helps to identify the value that people gives to the differen parts of the good so that is possible to understand to what extent individual elements contribut to the overall value. 	<ul style="list-style-type: none"> • <i>Contingent valuation method</i> <ul style="list-style-type: none"> ➤ People are asked to say how much they are willing to pay considering a specific scenario and a specific good. • <i>Choice modeling method or conjoint analysis</i> <ul style="list-style-type: none"> ➤ It asks consumers to choose between different alternatives. It identifies the value of attributes. • <i>Focus group</i> <ul style="list-style-type: none"> ➤ It is a discussion between a selected group of people (10/12)

To measure the willingness to pay there are two methods: the revealed preference (rp) and the stated preference (sp). While the revealed preference draws data from the choices made by individuals in the real world, the stated preference collects data from people’s answers to hypothetical questions (Bateman et al., 2002; Re, 2006; Lvova, 2013).

In conclusion, the first step to start an economic evaluation is to know the situation “as is” (i.e. number of tourists in the area, amount of money spent for culture and additional services/products, number of nights spent in the area, etc.) and their willingness to pay (i.e. for new cultural possibilities, additional services, etc.).

Starting from that information, that are specific for each destination, institution and organization can estimate the possible impact of and investments more precisely.

6. The role of communication and dissemination on the territory

6.1. Heritage should enable sustainable service systems that (re)generate value for many communities of potential users.

Traditionally, heritage communication has been conceived as a dissemination and promotion issue mainly. Today, conversely, dissemination and promotion are increasingly considered only a part of a much wider communication issue. This shift mirrors the ongoing transition to a service-oriented approach to cultural heritage.

In the light of the service-oriented approach, cultural heritage creates value to the extent it serves as the engine of a sustainable and resilient service system. It is this service system, rather than the cultural good per se, that creates (or destroys) value.

For example, the services in and around an architectural monument may include facility management, mobility, security, hospitality, tour guides, educational activities, disability support, music events, neighbourhood initiatives, and so on.

According to the service system approach, the system's users are expected to play a much more active role than traditional models' customers and taxpayers. The users' collaboration may increase the system's performance dramatically. For example, users' behaviours during the visiting time may significantly change the users' experience, along with the service system's sustainability and robustness to crises.

For this reason, the individual people, communities and organizations that are involved in an activity system can be described as the system's actors, rather than mere stakeholders. In fact, all the system's users and beneficiaries do not just bring in interests and money as (potential) customers and/or taxpayers: they (may) also bring in work, that is, they (may) contribute to the activity system with their choices, behaviours, data, content production and learning efforts. For example, users' readiness to share visiting data, respect the other visitors' needs, adapt to new visiting solutions and provide constructive feedbacks may be essential to the quality of the service system.

In this light, a successful heritage service system can only be built if users' interests, resources, capabilities, needs and preoccupations are reconciled and transformed into coordinated action for the common purpose of perpetuating a viable heritage to the next generations, while improving the territorial system's competitiveness and quality of life.

In this scenario, communication is not a corollary, but an integral part of any project of architectural heritage re-use. Any project of cultural heritage re-use, in fact, consists in designing a new service system that is capable of both attracting users and transforming them into actors that actively contribute to maximize the system's resilience and sustainability.

6.2. Heritage service systems are becoming increasingly complex due to globalization and digitization

In our increasingly globalized context, designing heritage service systems poses complex challenges. Even a heritage service system with a local audience, such as that enabled by a neighbourhood library with a cafeteria, is likely to include potential users with very different cultures, languages, backgrounds and technological capabilities. Different communities of

potential users may require different approaches and techniques for transforming these potential users into beneficiaries and active contributors of the activity system. Communication processes play a pivotal role in pursuing this goal.

Digitization, on the other side, makes the scenario even more complex. A heritage+context+people system (constituted by a heritage asset and its physical context, the people working for it and those using it) increasingly owes its service generation capacity to the data that the system is able to generate. The services generated by the system may generate further data which, in turn, may generate further services. For example, the Rijksmuseum digitized its collection of historical naturalistic illustrations. Then, in collaboration with the Free University Amsterdam, Center for Mathematics and Informatics, and Technical University of Delft developed a campaign and a digital tool to get experts in domains like birds, ships, castles, etc. involved in annotating art and enrich the museums' metadata with expertise that is not available internally. These experts contributed for free in a "niche sourcing" process that allowed the system to involve further people in art annotation while controlling the accuracy of the process. Thanks to this data-service-data-service loop, the museum has dramatically increased its capacity to answer to visitors' curiosities on the arts displayed (<http://accurator.nl/#Intro>). This project is a good instance of how, in today's digitized scenario, (online) communication is at the core of service strategies, rather than a corollary to launch them.

However, the data-service cascade of digitized service systems has also its dark side. In the model described above, most of the fixed costs affect the heritage asset layer (for building restoration and maintenance, for example), whilst a lot of potential profits concentrate in the service and meta-service layers. For example, while a local government spends a lot of money for the infrastructures and workforce that enable its heritage service systems, digital players (such as tourism web portals) make a lot of money by using the data generated by those service systems and their users. If these digital players are not local, they are unlikely to compensate for their cream-skimming through the traditional channels such as taxes or employment.

6.3. Heritage service systems are vulnerable to (potential) users' disregard, disengagement, and/or misuse

Due to the data-service cascade layers described above, heritage service systems are now much more complex than in the past. The system's beneficiaries today include not only the people that use the services directly linked to the heritage asset, but also the people that benefit from the data and knowledge directly or indirectly generated by the system.

This deeply interconnected structure of the heritage service system constitutes its greatest potential, but it is also a driver of fragility. For the system to thrive, all the beneficiaries should contribute to it. Therefore, the system is vulnerable to its beneficiaries' lack of collaboration, in terms of disregard, misuse, and disengagement.

- *Disregard* occurs when potential users do not become users. It may stem from unawareness and lack of interest.
- *Disengagement* occurs when the system's users/beneficiaries do not actively contribute to it: for example, if visitors do not give feedback or tourism portals do not contribute to promote the service system's initiatives.
- *Misuse* occurs when users become resource predators instead of co-creators. Examples of heritage systems' misuse include over-exploitation, depletion, inappropriate use, and the cream-skimming use described above.

6.4. Cultural heritage communication should address all of the possible fragilities of the cultural heritage service system at stake, far beyond the traditional purposes of dissemination and promotion

Traditional communication plans and actions in the cultural heritage sector usually consist in dissemination and promotion, thus mainly concentrating on fighting the first source of fragility listed above, that is, disregard, while overlooking misuse and disengagement as sources of system fragility. In other words, traditional approaches to cultural heritage communication focus on transforming potential users into actual users, but tend to overlook the need of transforming users into engaged users and protecting the system from misusers.

In order to enhance the heritage service system's sustainability and resilience, it is important that communication strategies target all of the possible sources of system fragility. A viable service system is the best way to protect the heritage asset at its core.

6.5. Today, communication strategies should consist of feedback-based, double-way interaction strategies that co-evolve with the digital environment and the system's service model

Traditional heritage communication approaches tend to concentrate on the messages that go from the heritage asset experts and managers to (potential) users, overlooking the potential of the reverse flows (from users to experts/managers) and horizontal flows (from users to users).

Digitalization, conversely, provides great opportunities of leveraging all of these three communication flows to enable the service model and to collect information for improving it. In particular, a service system cannot remain viable unless it continuously evolves based on effective feedback and users' empowerment. This new approach is increasingly needed to complement the traditional mechanisms of market and taxation to make the maintenance of heritage assets sustainable.

In this light, it is essential that a heritage service system remains connected, through multi-way communication channels, to the ever-evolving innovations of the digital age, including online communities, urban commons, new-generation digital tools and social media.

The conception of high-level communication strategies for user-centred experiences, user empowerment and content production is at the core of the heritage communication management for the years to come.

Part 2 - The Financial Instruments for cultural heritage

The study of financial instruments is not easy and requests a deep knowledge about the instruments used. Here we will try to give a short description about the fundamental ones.

1. What is a 'Financial Instrument'

It is important to specify exactly what is actually meant by a financial instrument in EU accounting rule, that applies to accounting for all financial instruments (financial assets, financial liabilities, equity instruments, and financial guarantees):

“A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity”.

This means that financial instruments are financial contracts of different nature made between institutional units, or assets that can be traded. They can also be seen as packages of capital that may be traded. These comprise the full range of financial claims and liabilities between institutional units, including contingent liabilities like guarantees, commitments, etc.

These instruments can be cash, a contractual right to deliver or receive cash or another type of financial instrument, or evidence of one's ownership of an entity.

For an entity that is raising finance it is important that the instrument is correctly classified as either a financial liability (debt) or an equity instrument (shares). When raising finance the instrument issued will be a financial liability, as opposed to being an equity instrument, where it contains an obligation to repay. Thus, the issue of a bond (debenture) creates a financial liability as the monies received will have to be repaid, while the issue of ordinary shares will create an equity instrument. In a formal sense an equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. It is possible that a single instrument is issued that contains both debt and equity elements. An example of this is a convertible bond – i.e. where the bond contains an embedded derivative in the form of an option to convert to shares rather than be repaid in cash.

In particular the term “financial instrument” is now firmly embedded in Cohesion Policy parlance, but in fact embraces an array of financial products that not only operate in diverse ways, but are of widely differing orders of scale, address a variety of policy objectives, use various modes of governance and function within assorted socio-economic, institutional and geographic contexts. The common thread is essentially that **financial instruments provide funding that is intended to be repayable**.

Regulations for the 2014-2020 programming period reinforced the role of financial instruments, providing comprehensive provisions regarding the requirements and options for their implementation. The definition used in the financial regulation¹³, and therefore applicable to all budgetary areas, is the following:

“Article 2, (29), ‘financial instrument’ means a Union measure of financial support provided from the budget to address one or more specific policy objectives of the Union which may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing

¹³ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.

instruments, and which may, where appropriate, be combined with other forms of financial support or with funds under shared management or funds of the European Development Fund (EDF)".

So financial instruments are meant as a delivery tool to provide financial support from the EU budget through loans, guarantees and equity (or quasi-equity) investments for the implementation of projects, which underpin one or more policy objectives of the EU.

So, in light of any definitive unpacking of the term, but to better focus the objectives of this Living Document, the following notion will be used:

“Financial instruments are public policy instruments such as subsidised loans, credit guarantees and equity finance schemes designed to overcome market failures experienced by micro, small and medium-sized enterprises to promote investments in a way that would not result through market interactions alone”.

2. Categories of 'Financial Instrument'

LOAN	GUARANTEE
<p>“Agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time**”.</p> <p>Under a FI, a loan can help where banks are unwilling to lend on terms acceptable to the borrower. They can offer lower interest rates, longer repayment periods or have lower collateral requirements.</p>	<p>“Written commitment to assume responsibility for all or part of a third party’s debt or obligation or for the successful performance by that third party of its obligations if an event occurs which triggers such guarantee, such as a loan default**”. Guarantees normally cover financial operations such as loans.</p>
EQUITY	QUASI-EQUITY
<p>“Provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm’s profits**”.</p> <p>The financial return depends on the growth and profitability of the business. It is earned through dividends and on the sale of the shares to another investor ('exit'), or through an initial public offering (IPO).</p>	<p>“A type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity**”.</p> <p>The risk-return profile typically falls between debt and equity in a company’s capital structure.</p>
<p>*European Commission (2015). Guidance for Member States on Financial Instruments — Glossary.</p>	

2.1 LOANS

“Agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time”.

In general, for commercial loans, the interest charged on the loan is the market rate plus a risk premium that reflects the likelihood of a lender getting their money back. The risk premium includes credit risk which varies with the borrower’s credit history and expected cash flow.

One way to decrease the risk premium is through collateral, where the borrower offers assets such as property, receivables, or investments as security which become the property of the lender if the borrower defaults (does not repay the loan).

Risk completely ceases only on the date the loan is fully repaid, the maturity date. Therefore the later the maturity date, the higher the risk premium is. Individual repayments must cover the interest due, but the sooner the principal of the loan is repaid then the lower the total payments will be.

Loans are the traditional and most common form of funding mechanisms used by MSMEs because there is no loss of control or ownership, as with equity, but they can lack the flexibility required by young firms.

Loans are offered almost everywhere in domestic and/or co-financed economic development policies; loans are also widely used by other project promoters, such as local authorities, for upgrading public buildings and spaces and other capital investments, and householders and landlords for energy renovation. Loans are comparatively easy to administer from a public administration perspective, to the extent that the implementation of a loan fund can be “outsourced” or funds can essentially be used to increase the volume of finance available through existing commercial sources.

Loans in the European Structural and Investment Funds

Regarding the use of loans for the implementation of ESI Funds, Risk sharing loans are financed in ESIF programmes and additional resources provided by one or more Financial intermediary. Thus the same Financial Intermediary may be a fund manager and a co-investor. The losses, recoveries and benefits are borne and shared by the ESIF programme contribution and the additional resources provided by Financial Intermediary in agreed proportion. Very small loans (microcredit) are available for final recipients who do not have access to credit, typically because they lack collateral and a credit history. These microcredits are normally less than EUR 25 000 and can finance micro enterprises.

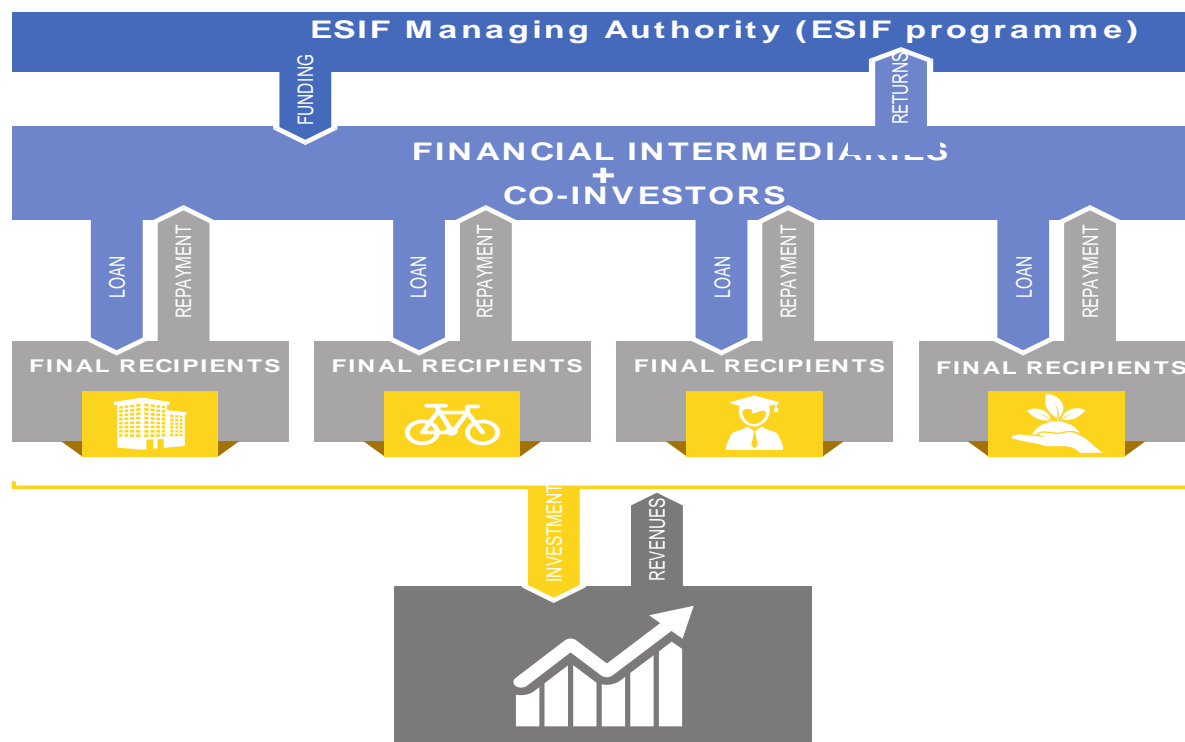
Under an ESI Financial Instrument, a loan can help where banks are unwilling to lend on terms acceptable to the borrower. They can offer lower interest rates, longer repayment periods or have lower collateral requirements.

The leverage effect for loans depends on the resources co-invested in the fund in addition to ESI Funds. It is important to distinguish the leverage effect from the revolving effect when borrowers repay the loans and these funds can be reinvested in new projects.

Use of loans in ESI Funds implementation usually results in loans that are offered at lower than market interest rates, with longer repayment periods, the possibility of grace periods,

when loans do not need to be repaid in the first years or with reduced collateral requirements; these are called soft loans.

Loans – How does it work? (European Investment Bank, 2015)



NOTES:

- 1 In addition to disbursing loans through F.Ints (in an implementation structure with a Fund of Funds (FoF) or without), MAs may undertake implementation tasks directly (see CPR, Art. 38(4)(c)).
- 2 Co-investment may come from the same F.Int or a third party investor, contributing either to the fund or to individual projects.
- 3 Resources returned from repaid loans, which are attributable to the support from ESI Funds, i.e. excluding national co-financing, have to be re used for purposes defined in Articles 44 and 45 of the CPR.

Subcategories and types of investment

Risk sharing loans are financed by both the ESIF programmes and additional resources provided by one or more F.Ints. Thus the same F.Int may be a fund manager and a co-investor. The losses, recoveries and benefits are borne and shared by the ESIF programme contribution and the additional resources provided by F.Ints in agreed proportion.

Very small loans (**microcredit**) are available for FRs who do not have access to credit, typically because they lack collateral and a credit history. These **microcredits** are normally less than EUR 25 000 and can finance micro enterprises in farming, commerce, handcraft, food, etc.

Technical features

The involvement of ESI Funds results in loans that are offered at lower than market interest rates, with longer repayment periods, the possibility of grace periods, when loans do not need to be repaid in the first years or with reduced collateral requirements; these are called soft loans.

In general, for commercial loans, the interest charged on the loan is the market rate plus a risk premium that reflects the likelihood of a lender getting their money back. The risk premium includes credit risk which varies with the borrower's credit history and expected cash flow.

One way to decrease the risk premium is through collateral, where the borrower offers assets such as property, receivables, or investments as security which become the property of the lender if the borrower defaults (does not repay the loan).

Risk completely ceases only on the date the loan is fully repaid, the maturity date. Therefore the later the maturity date, the higher the risk premium.

Individual repayments must cover the interest due, but the sooner the principal of the loan is repaid then the lower the total payments will be.

PROS	CONS
<ol style="list-style-type: none">1. Not particularly difficult to administer (so there are limited management costs/fees).2. A defined repayment schedule makes budgeting easier.3. The lending mechanism is well understood, reducing the need for capacity building and the risk of misunderstandings.4. Loans preserve the equity of the FRs as there is no claim on the ownership of the enterprise.	<ol style="list-style-type: none">1. Funded products such as loans require more initial resources than unfunded products such as guarantees.2. It is sometimes difficult to establish the probability of default, especially with a lack of history of FRs.3. The advantage for the FRs is almost entirely financial. There are limited additional benefits as know-how is not transferred.

2.2 GUARANTEES

“Written commitment to assume responsibility for all or part of a third party’s debt or obligation or for the successful performance by that third party of its obligations if an event occurs which triggers such guarantee, such as a loan default”.

Guarantees normally cover financial operations such as loans.

Credit guarantees seek to expand funding to MSMEs by underwriting the risks associated with the loan. These are essentially risk transfer and risk diversification mechanisms which guarantee repayment of part of the loan upon a default event.

The guarantor issues a direct guarantee for an agreed amount of debt to cover the losses of the lender in the event that the final recipient does not repay the debt. Guarantees may be capped only on a loan-by-loan basis to ensure that the lender bears some risk (e.g. a guarantee rate of 70% would mean that 70% of the loss incurred due to a loan default will be covered by the guarantor). The guarantees may also be capped at the level of the loan portfolio (e.g. a cap of 20% at the portfolio level would mean that losses incurred due to default of individual loans may be covered until their aggregate value reaches 20% of the total loan portfolio value) therefore limiting the total exposure to losses.

A **first loss default/portfolio guarantee** is a guarantee where first the guarantor covers the losses of a loan portfolio until the cap is reached. Therefore the lender is exposed to losses greater than the capped amount of the guarantee, rather than both lender and guarantor sharing the risks of every default in proportion.

An **uncapped guarantee** is a guarantee where no cap at portfolio level is foreseen. According to capital adequacy requirements in force, this guarantee can reduce the capital required for the lending bank.

A **capped guarantee** would indemnify the lender up to a pre-defined percentage or amount of the loan and for the portfolio in default.

Counter guarantees allow a guarantor to seek reimbursement if they have to pay a claim under a guarantee they issued for a loan in default.

The **multiplier** is the ratio between the amount of resources set aside to cover expected and unexpected losses from new loans to be covered by the guarantees and the total amount of new loans disbursed to final recipients. The multiplier shall be established on the basis of a prudent *ex-ante risk assessment* for the specific guarantee product taking into account the specific market conditions, the investment strategy of the financial instrument and the principles of economy and efficiency, amongst others. For example, a multiplier of 4 means the fund can provide 4 times that amount in loans.

The revolving effect of guarantees depends on the individual contract. For normal loan guarantees, repayments of the loan then release that proportion of the guarantee and free up this amount for reinvestment.

Guarantees in the European Structural and Investment Funds

Technical features

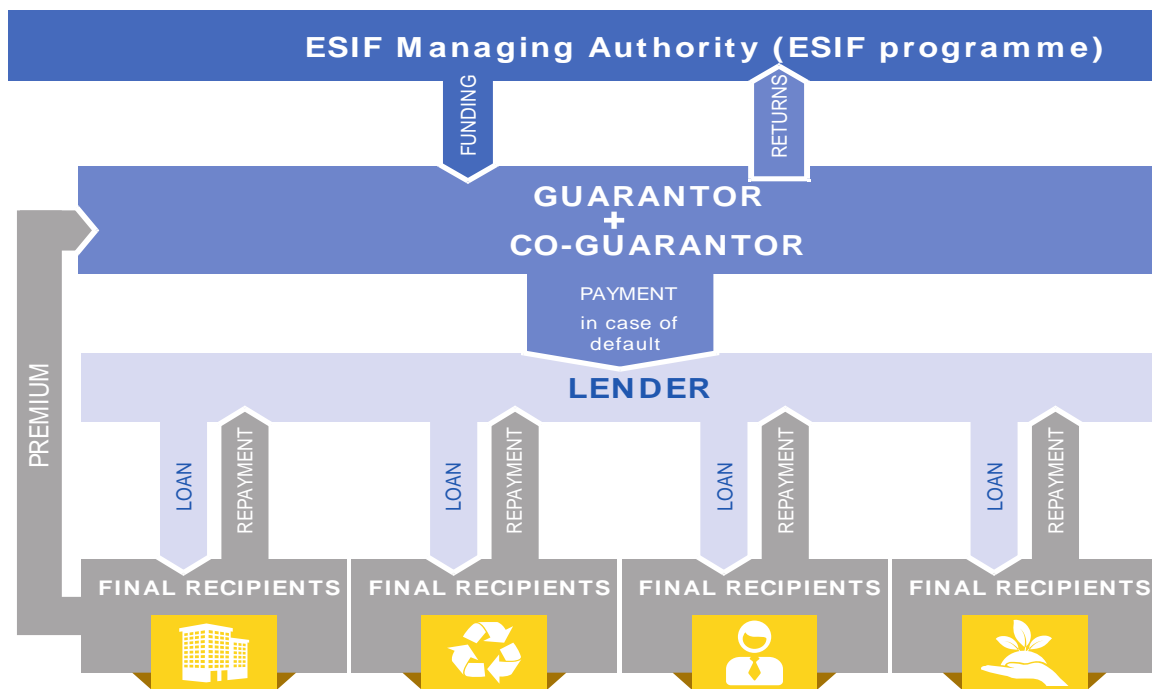
Key elements in defining a **guarantee instrument** are:

- **Portfolio volume:** the aggregate amount of the underlying transaction, such as loans to be disbursed by the lender which are covered by the guarantee.
- **Guarantee Rate:** the maximum portion of the value of each loan covered by the guarantee.
- **Guarantee Cap Rate:** the maximum portion of the total portfolio covered by the guarantee. In other words, the guarantee will cover losses at the guarantee rate up to the maximum determined by the guarantee cap rate applied to the total portfolio.
- **Capped amount:** the maximum liability under the capped guarantee. It is calculated as the product of the i) total portfolio volume, ii) the guarantee rate and (iii) the guarantee cap rate. In other words, the capped guarantee will cover losses at the guarantee rate up to the maximum determined by the guarantee cap rate applied to the total portfolio volume. This amount plus

expected management costs and fees related to the instrument will be set aside from the OP resources.

Other important elements for the definition of a guarantee are:

- **Eligibility criteria:** conditions which regulate the access to the guarantee regarding three layers: FR, F.Int and the relevant underlying transactions. A breach of any of the eligibility criteria will result in an exclusion of the underlying transaction from the portfolio.
- **Timing:** termination of the guarantee.
- **Payment claim:** conditions under which payment demands are valid (e.g. losses incurred by a lender in respect to defaulted loans).
- **Loss recoveries:** the F.Int should take recovery action in relation to each defaulted loan.
- **Responsibilities for managing the repayments due and collateral of defaulting borrowers:** what happens to funds recovered after a complete or partial default has been accepted.



NOTES:

- 1 In addition to issuing guarantees through a body implementing FI who acts as the guarantor (in an implementation structure with a FoF or without) MAs may undertake implementation directly (see CPR, Art. 38(4)(c)).
- 2 ESIF programme resources could also be used for counter-guarantees for a commercial lender who guarantees the loans given to FRs by a commercial lender.
- 3 Resources returned from guarantee fees and released uncalled guarantees, which are attributable to the support from ESI Funds, i.e. excluding national co-funding, have to be re-used for purposes defined in Articles 44 and 45 CPR.

PROS	CONS
<ol style="list-style-type: none"> 1. Guarantees can preserve the equity of FRs as there is normally no claim on the ownership of the enterprise. 2. Potential benefits for FRs could include <i>inter alia</i>, lower or no guarantee fees, lower or no collateral requirements as well as lower risk premiums. 3. Since programme contributions cover only certain parts of loans (appropriate multiplier ratio), there is a high leverage effect. 4. The investment risk for third party lenders is reduced (because they only bear part of the risk of default). 5. Unfunded products such as guarantees require less initial support than funded products such as loans. 	<ol style="list-style-type: none"> 1. The guarantee represents a risk reserve for the lender and does not provide liquidity. It can however, in some cases, provide capital relief to the lender. 2. Estimating the appropriate cap, or maximum limit, can be challenging. 3. There is no transfer of business expertise to FRs.

2.3 EQUITY

“Provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm’s profits”.

The financial return depends on the growth and profitability of the business. It is earned through dividends and on the sale of the shares to another investor (‘exit’), or through an initial public offering (IPO).

Equity finance occurs when firms exchange share capital in return for liquidity. This can include venture or risk capital and early-stage (seed and start-up funding). Equity finance is much less common and is typically associated with risky high-tech ventures. In the main, this type of finance is commonly associated with very innovative and/or high-tech firms that are often unable to obtain funding from banks. The return depends on the growth and profitability of the business and is earned when the investor sells its share to another investor or through an exit, such as an initial public offering or trade sale.

In equity investments the exit means the liquidation of holdings including a trade sale, sale by public offering (including IPO), write-off, and repayment of preference shares or loans, sale to another venture capitalist or sale to a financial institution.

There is full insolvency risk for the invested capital in the target companies. Thus, a high risk is borne by the Financial Intermediary. However this can be mitigated by portfolio investing and by having private sector co-investors.

The types of equity investment normally depend on the stage of a company's development (new vs. mature) and on the investment model (co-investor in the fund portfolio or in individual investments, on a deal-by-deal basis).

Investments are often described by the relevant phase, starting with Pre-seed, then Early stage which includes Seed and Start-up, followed by Growth and Expansion. Investment in newly established enterprises can finance the study and development of a concept or prototype. Given the unproven business models of new enterprises, these investments are often needed to pursue strategic developments, complementary technology or new opportunities for the firm. Targeted enterprises are generally high tech (biotech, ICT, hi-tech energy, creativity, nanotechnology, applied mechanics, robotics, etc.) or pursuing innovative products or services with expensive R&D projects. Mature companies with proven business models may need equity investment to fund new projects, including the penetration of new markets.

In relation to the investment model, a typical 'deal-by-deal' investor is a Business Angel. This is normally an individual with business experience, who invests their personal assets and provides management experience at the very early stage of a company. Venture Capital is similar, investing their own capital and providing business and management assistance in high development potential sectors.

The rationale behind more risky investments is the expectation of higher than average returns. These investments can be time-consuming and cost-intensive (due diligence is carried out for several potential business plans before investment). Typically there are few target firms and large amounts in each transaction.

Publicly backed equity or venture capital is the least used of the four "conventionally defined" financial products and is often regarded as a "niche" product for potentially fast-growing innovative firms. Private equity markets vary widely across Europe and equity and venture capital are not prominent sources of finance for MSMEs, especially smaller ones. Indeed, across Europe, over 80% of MSMEs consider that "equity is not applicable to my firm" (European Central Bank, 2017). Equity products can provide significant amounts of medium- to long-term capital but imply at least some loss of management control by founders and are typically more difficult to manage for public authorities.

Equity in the European Structural and Investment Funds

Subcategories and types of investment

The types of equity investment normally depend on the stage of a company's development (new vs. mature) and on the investment model (coinvestor in the fund portfolio or in individual investments, on a deal-by-deal basis).

Investments are often described by the relevant phase, starting with **Pre-seed**, then **Early stage** which includes **Seed** and **Start-up**, followed by **Growth** and **Expansion**. Investment in **newly established enterprises** can finance the study and development of a concept or prototype. Given the unproven business models of new enterprises, these investments are often needed to pursue strategic developments, complementary technology or new opportunities for the firm. Targeted enterprises are generally **high tech** (biotech, ICT, hi-tech energy, nanotechnology, applied mechanics, robotics, etc.) or pursuing innovative products or services with expensive **R&D** projects. **Mature companies** with proven business models may need equity investment to fund new projects, including the penetration of new markets.

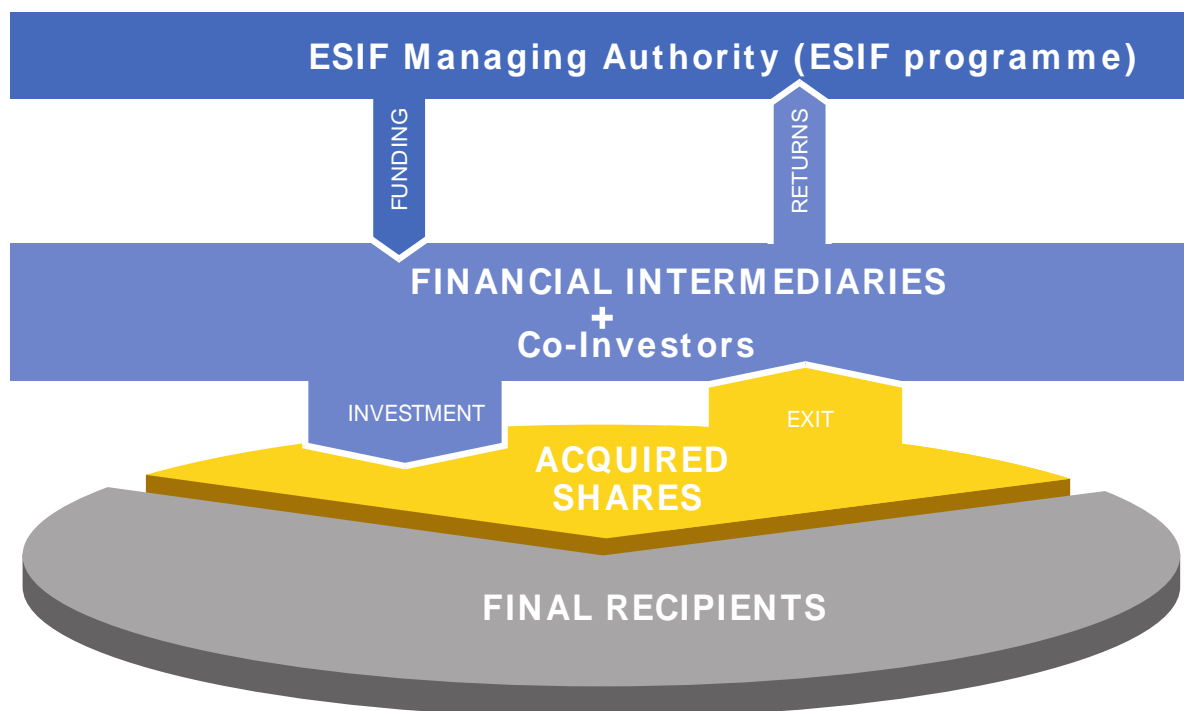
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Technical features

In equity investments the **exit** means the liquidation of holdings including a trade sale, sale by public offering (including IPO), write-off, repayment of preference shares or loans, sale to another venture capitalist or sale to a financial institution.

There is full insolvency **risk** for the invested capital in the target companies. Thus, a high risk is borne by the FI. However this can be mitigated by portfolio investing and by having private sector co-investors.



PROS	CONS
<ol style="list-style-type: none"> 1. There are higher potential returns compared to pure debt instruments. 2. There is an active role in project management and access to shareholder information for the investor. 3. Stimulates investment by local private equity industry also in riskier areas not previously serviced. 4. The need for equity investment might prompt changes in regulatory framework to encourage a private equity market. 5. The company can benefit from investor's management expertise. 6. Public investors can influence the configuration and mission of a company. 	<ol style="list-style-type: none"> 1. There is insolvency risk for all the invested capital. 2. Time-consuming and cost-intensive investment. 3. These investments are more difficult to administer than normal loans (high set-up and operational costs), more time-consuming and cost-intensive. 4. Short-term financing is not possible, since returns are feasible only in the long term. 5. Establishing the process for the investment can be challenging. 6. Compared to debt instruments, equity can be less attractive to FRs due to the obligation to yield control.

2.4 QUASI-EQUITY

“A type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity”.

The risk-return profile typically falls between debt and equity in a company's capital structure.

The different forms of quasi-equity (also known as mezzanine capital or mezzanine finance) are classified as closer to equity or debt capital according to the level of ownership acquired and the exposure to loss in the event of insolvency. The risk profile will also change with the duration of capital commitment and the remuneration conditions. In general quasi-equity investments are more difficult to administer than classic debt instruments (loans and guarantees).

- Subordinated loans have a lower repayment priority than normal (senior) loans. In the event of default all other lenders are repaid before the holders of subordinated loans. Since the interest payments as well as the capital repayments are subordinated, the risk of loss in the event of default is substantially higher than for senior loans. In

addition, generally, there is no collateral (security) required so interest rates are higher to cover the higher risks.

- Convertible bonds are debt where the initial investment is structured as a debt claim, earning interest. At the discretion of the investor, the debt can be converted into equity at a predetermined conversion rate. A convertible bond is essentially a bond combined with a share option where the holder may exchange the bond for a predetermined number of shares at a predetermined price. Because convertibles can be changed into shares they have lower interest rates.
- Preferred stocks are stocks that entitle the holder to a fixed-rate dividend, paid before any dividend is distributed to holders of ordinary shares. Holders of preferred stock also rank higher than ordinary shareholders in receiving proceeds from the liquidation of assets if a company is wound up.

Underpinning the distinction between these financial instruments and other forms of public financial provision (i.e. grants) is that capital is **repayable** when using these financial instruments. However, it is important to note that the structure of each of the three instruments is fundamentally different. Therefore, while these financial mechanisms all fall under the overarching heading of financial instrument, the ***underlying principles and dynamics of these vehicles are quite heterogeneous.***

First, in some cases these instruments are repayable, such as the case of subsidised loan instruments. Under these circumstances MSMEs obtain loans from a bank or public sector intermediary which they may not have been able to obtain from a purely private sector bank. In some cases, the costs of borrowing are subsidised by the managing authority.

Second, in the case of equity finance, the public sector receives shares in the firm in return for the capital sum provided to the MSME. These tend to be higher risk companies, such as young innovative start-ups, which often require risk capital from business angels or venture capital to fund their expansion activities. Often these programmes co-invest in tandem with other private sector funders such as business angels and venture capital.

Third, there is a variety of specialisation among partial credit guarantee funds. Most are restricted to smaller firms and often to MSMEs located in specific regions. The risk management and risk assessment also differ across different schemes.

Fourth, there are different institutional arrangements in place for managing these initiatives across different EU member states. In countries that receive Cohesion funding, a Managing Authority oversees the use of these available resources. This either takes place through a fund of funds or another financial intermediary that manages the eligible projects which are financed.

For each financial instruments, Pros and Cons for the Managing Authorities of the ESIF Programmes can be also highlighted (table 9 and 10).

Table 9: Pros for ESIF Managing Authorities (European Commission, 2015).

LOANS	GUARANTEES	EQUITY	QUASI-EQUITY
<p>1. Not particularly difficult to administer (so there are limited management costs/fees).</p> <p>2. A defined repayment schedule makes budgeting easier.</p> <p>3. The lending mechanism is well understood, reducing the need for capacity building and the risk of misunderstandings.</p> <p>4. Loans preserve the equity of the financial recipients as there is no claim on the ownership of the enterprise.</p>	<p>1. Guarantees can preserve the equity of FRs as there is normally no claim on the ownership of the enterprise.</p> <p>2. Potential benefits for final recipients could include inter alia, lower or no guarantee fees, lower or no collateral requirements as well as lower risk premiums.</p> <p>3. Since programme contributions cover only certain parts of loans (appropriate multiplier ratio), there is a high leverage effect.</p> <p>4. The investment risk for third party lenders is reduced (because they only bear part of the risk of default).</p> <p>5. Unfunded products such as guarantees require less initial support than funded products such as loans.</p>	<p>1. There are higher potential returns compared to pure debt instruments.</p> <p>2. There is an active role in project management and access to shareholder information for the investor.</p> <p>3. Stimulates investment by local private equity industry also in riskier areas not previously serviced.</p> <p>4. The need for equity investment might prompt changes in regulatory framework to encourage a private equity market.</p> <p>5. The company can benefit from investor's management expertise.</p> <p>6. Public investors can influence the configuration and mission of a company.</p>	<p>1. For co-investors, there are higher returns compared to pure debt instruments.</p> <p>2. Addresses specific risk capacity constraints in a particular market segment.</p> <p>3. Stimulates investment by local private equity industry, also in riskier areas not previously serviced.</p> <p>4. Might prompt changes in the regulatory framework to encourage a private equity market.</p>

Table 10: Cons for ESIF Managing Authorities (European Commission, 2015).

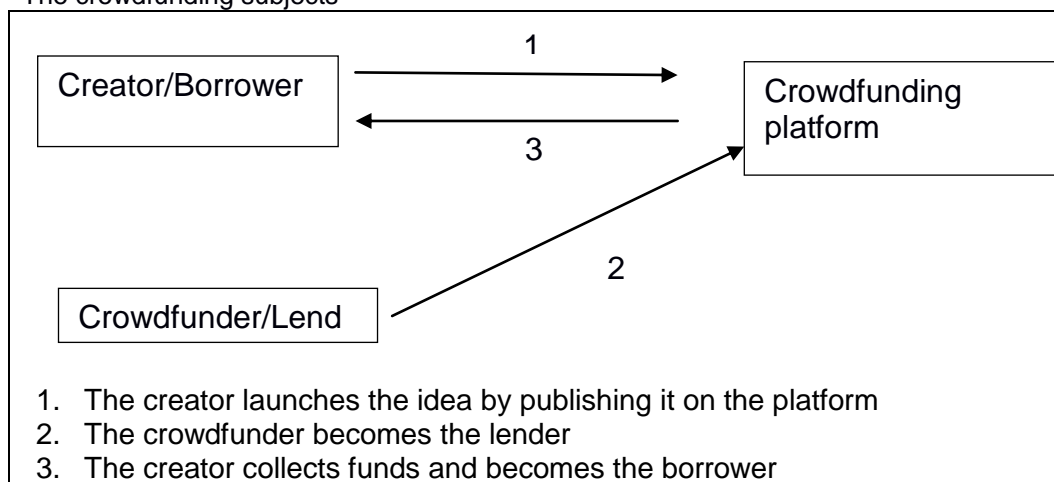
LOANS	GUARANTEES	EQUITY	QUASI-EQUITY
<p>1. Funded products such as loans require more initial resources than unfunded products such as guarantees.</p> <p>2. It is sometimes difficult to establish the probability of default, especially with a lack of history of financial recipients.</p> <p>3. The advantage for the financial recipients is almost entirely financial. There are limited additional benefits as know-how is not transferred.</p>	<p>1. The guarantee represents a risk reserve for the lender and does not provide liquidity. It can however, in some cases, provide capital relief to the lender.</p> <p>2. Estimating the appropriate cap, or maximum limit, can be challenging.</p> <p>3. There is no transfer of business expertise to final recipients.</p>	<p>1. There is insolvency risk for all the invested capital.</p> <p>2. Time-consuming and cost-intensive investment.</p> <p>3. These investments are more difficult to administer than normal loans (high set-up and operational costs), more time-consuming and cost-intensive.</p> <p>4. Short-term financing is not possible, since returns are feasible only in the long term.</p> <p>5. Establishing the process for the investment can be challenging.</p> <p>6. Compared to debt instruments, equity can be less attractive to final recipients due to the obligation to yield control.</p>	<p>1. These investments are more difficult to administer than normal loans (high set-up and operational costs), more time-consuming and cost more.</p> <p>2. Short-term financing is not possible, since returns are feasible only in the long term.</p> <p>3. Any ancillary services such as management expertise would be an expense for the company.</p> <p>4. There are typically a low number of investors and final recipients, while the investment amounts are high.</p> <p>5. Compared to debt instruments, they may be less attractive to final recipients as they may involve loss of control when bonds are converted into equity.</p>

2.5 The crowdfunding

Crowdfunding is a funding tool that may be accessed by individuals, SMEs, non-profit organizations, innovative start-ups and Public Sector, which allows to obtain funds from individuals or groups to finance projects, whether reward based or not.

Contact with investors occurs through an online platform, which excludes traditional banking intermediation. Figure 2 describes the subjects involved.

Figure 2 – The crowdfunding subjects



There are essentially four types of crowdfunding: donation, reward, equity, and lending. In donation, the participation is not reward-based; it is a gift for the promoter of the initiative. In reward, the funder receives a non-monetary reward, such as a gadget, a discount, or a trial sample of the project sustained. Equity crowdfunding involves share-based participation, and gives the funder both equity and administration powers. When rewards are provided in the form of interest, crowdfunding is called lending, with funds being an alternative to bank indebtedness or bonded debt. The majority of Italian platforms are reward-based, though the greatest sums are collected through hybrid types, including reward/donation and donation/lending.

Example 3

In Italy the crowdfunding developed later with respect to other countries¹⁴, but it is among the EU countries with most legislation on the matter, though limited to equity crowdfunding. The first legal document is the Decree-Law n° 179/2012, amended by Law n° 221/2012. Later, they have been followed by CONSOB Regulations n° 18592/2013; Decree-Law n° 3/2015, amended by Law n° 33/2015; Law n° 232/2016; CONSOB Regulations n° 19520/2016; Decree Law n°50/2017, amended by Law n°96/2017. Currently the Italian equity crowdfunding is therefore an instrument accessible by both innovative start-ups and SMEs.

Table 6 and 7 offer the values about the concluded equity and lending campaigns, showing the obtained funds and the realized projects. Data come from the national literature¹⁵, updated as at

¹⁴ It was born in 2005, but the number of platforms grew by 63% only in 2013-2014.

¹⁵ See Politecnico di Milano (2016 – 2017 – 2018), *1° - 2° - 3° Report italiano sul CrowdInvesting*; Università Cattolica del Sacro Cuore (2015), *Il Crowdfunding in Italia*; Rovera C. (2016), *Banche italiane e piattaforme crowd*, Impresa Progetto, 2, 1 – 26; Rovera, C., Damilano, M. (in printing), *The crowdfunding: a new financial instrument for the start-ups?*,

30th June 2018. They do not refer to the total Italian system - only to the subjects concluding the projects or replying to the interviews – but they represent 52% (equity) and 64% (lending) of the total panels, so they are clearly representative.

Table 6 – The equity project campaigns and funds

Platform	Project campaigns	Funds (Euros)	Success rate (%)
Unicaseed.it	4	158,000	25%
Starsup.it	31	3,538,000	43%
Actioncrowd.com	5	928,000	40%
Nextequity.it	8	1,453,000	40%
Crowdfundme.it	47	6,859,000	72%
200 Crowd	17	2,261,000	79%
Investi-re	2	117,000	50%
Wearestarting	15	719,000	54%
Backtowork24	16	1,433,000	73%
Opstart	33	3,580,000	86%
Muumlab.com	4	100,000	50%
Mamacrowd.com	38	9,305,000	90%
Cofyp	1	214,000	100%
Walliance.eu	4	2,390,000	100%

Close analysis must be nonetheless made of the number of projects published. To give an example, Cofyp presented a single proposal, which is not representative of true absolute efficiency, even if its success rate is 100%. In comparison, the result shown by Crowdfundme (positive results for 47 projects), is much more significant, even if its success rate is 72% and not 100%.

Data in table 7 come from the interviews of lending platforms, as at the end of June 2018. They are distinguished in function of the borrower (target user), that can be either consumer or business.

Table 7 – The lending project campaigns and funds

Website	Target	Loans (Euros)	Project campaigns	N° Lenders
Motusquo.it	Consumer	80,000	15	350
Prestiamoci.it	Consumer	12,796,000	1,510	943
Smartika.it	Consumer	28,976,000	5,449	5,991
Soisy.it	Consumer	1,902,000	1,172	466
BorsadelCredito.it	Business	37,701,000	482	1,144
It.lendix.com	Business	19,583	40	456
Housers.com	Real estate	2,986,000	12	2,500

The higher success is that realized by BorsadelCredito and Smartika, which offered loans for 38 mln and 29 mln euros, granted by 1,000 and 6,000 lenders. The phenomenon is interesting, because the two platforms are accessed by an opposite target: business and consumer.

To conclude the analysis, figure 3 paints the increase of the Italian crowdfunding (for collected funds), without distinguishing the individual types. The Compound Annual Growth Rate (CAGR)¹⁶ is +49%, since 2013 to the end of June 2018. The Italian crowdfunding is certainly growing at a fast pace.

Figure 3 – The growth of the Italian crowdfunding (collected funds)



2.6 Sponsorship

The sponsorship contract is not explicitly regulated by the civil code, but the legislation is reflected in Art. 1321 of the Civil Code, this atypical nature allows the parties a free negotiation according to the main needs.

The relevant legislation is included in the Code of Cultural Heritage and Landscape, it provides that "cultural heritage is sponsored by any contribution, even in goods or services, granted by private entities for the design or implementation of initiatives in order to protection or enhancement of cultural heritage"¹⁷.

Compared to a first restrictive interpretation of the first level norm, in recent years, thanks to a greater awareness of the principle of subsidiarity, more public-private cooperation has been expressed in the management and protection of Italian cultural heritage.

Sponsorship refers to an atypical contract between a "sponsee" subject who is obliged to associate his business with the name or distinctive sign of a "sponsor" counterparty, all towards a consideration in terms of goods, services, works, money or mixed.

The role of the "sponsee" consists in being a means of communication aimed at favoring, through available means, the positive projection and the image return of the sponsor.

The contract and the obligations that the parties stipulate recall:

¹⁶ The CAGR is the mean annual growth rate of an investment over a specified period of time longer than one year.

¹⁷ Art. 120 D.Lgs January 22, 2004 n°42 Code of Cultural Heritage and Landscape: "è sponsorizzazione di beni culturali ogni contributo, anche in beni o servizi, erogato da parte di soggetti privati per la progettazione o l'attuazione di iniziative in ordine alla tutela ovvero alla valorizzazione del patrimonio culturale"

- for the sponsee an obligation of good faith and correctness;
- for the sponsor an obligation in terms of means and not of return of result, it is therefore excluded from the practice the possibility that this subject can in any way refer to the sponsee in case of non-return.

The main best practices of sponsorship have allowed through tangible examples that on the one hand there is a need to respect and enhance cultural heritage, on the other hand, to maintain in all cases always the attention to public evidence and good performance of the Public Administration activity.

The Decree of December 19, 2012¹⁸ establishes that the sponsorship of cultural assets is in effect a relationship of public-private partnership, specifying three different types:

1. "technical" sponsorship, which consists of a form of partnership extended to the design and implementation of all or part of the intervention (the type foresees that the sponsor takes charge of the works, services also instrumental to the existing contract);
2. "pure" sponsorship, in which the sponsor assumes the role of financier of the transaction, also by way of taking over, the obligations to pay the fees of the contract due by the administration;
3. and finally, "mixed" sponsorship in which the sponsor can directly provide the design services and provide funding only for the activities carried out.

The sponsors in the Italian legal system can be natural or legal persons under private law and have the possibility to stipulate sponsorship contracts with public bodies or private entities. The qualified subjects are:

- partnership and corporate enterprises: law partnership (in Italian law – società semplice s.s); general partnership (società in nome collettivo - s.n.c); limited partnership (società in accomandita semplice - s.a.s); limited liability partnership (società a responsabilità limitata - s.r.l); joint stock company (società per azioni - s.p.a); limited joint-stock partnership (società in accomandita per azioni - s.a.p.a).
- cooperatives (ex art. 2511 c.c).
- consortia (ex art. 2602 c.c).
- association and foundation.
- public bodies provided the procedure is carried out in accordance with the legislation on sponsorships.

In the Italian tax regime, the sponsorship configures the purchase of services and is subject to VAT, in this sense the Sponsee must issue an invoice to the sponsor¹⁹. According to tax legislation, sponsorship costs are similar to advertising and representation expenses, for this reason, they are entirely deductible according to the methods established by law²⁰.

Sponsoring in the cultural sector, what benefits?

¹⁸ Accessible to the website:
http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-03-12&atto.codiceRedazionale=13A02045&elenco30giorni=false.

¹⁹ d.P.R of October 26, 1972 n° 633, Art. 74, paragraph 6.

²⁰ TUIR, Art. 108 paragraph 2.

The start of partnerships between private companies and the cultural world dates back to the '70s when particularly “enlightened” entrepreneurs began to launch projects of patronage. In recent years, as stated, patronage interventions have given way to wider sponsorship projects.

Sponsorships of the Italian artistic, cultural and landscape heritage can generally include:

- projects and initiatives with social and economic impact on the territories;
- exhibitions, short reviews, seasons or individual events in the cultural, musical, theatrical, choreutical, cinematographic and performing arts;
- or in the event of major conservation and enhancement interventions that may involve movable and immovable property.

In particular, for the last case, it is useful to note that the private target must be particularly high, partly selective, and with a clear objective.

All this is carried out with the aim of increasing visibility in the medium to long-term and referring to the concept of social impact and fallout that such interventions may have on the community of reference.

According to the latest available research in the sector, the value of cultural sponsorships in Italy in 2014 was € 159 million²¹, down compared to previous years.

The benefits for companies that decide to start a sponsorship process lie in the return of image and in the visibility that this operation brings; through the association of the name of the company, of the image and of the brand, it is possible to promote its activity and provide greater visibility. In many cases, companies are able to establish medium-long term links with the territory hosting the cultural asset.

In addition, the operation creates innovation and research, it is possible to create forms of collaboration between public cultural bodies and private companies with the aim of obtaining facilities in the research and development of its products.

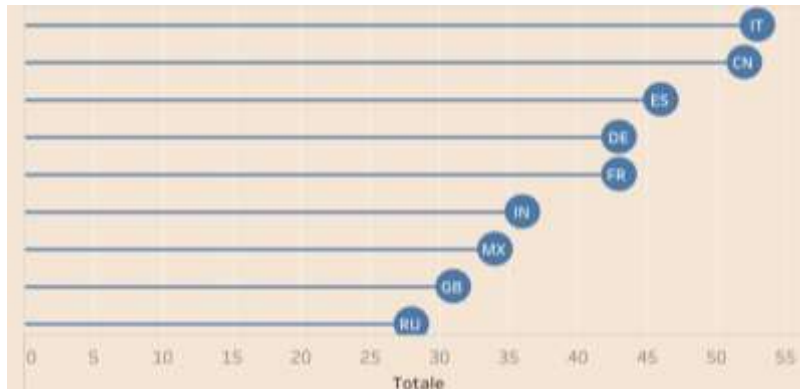
The potential demand

Italy is the nation that holds 53 UNESCO sites in the world and holds the record; recognition places the cultural, landscape and naturalistic sites in front of countries with much larger geographical extensions than Italy²².

²¹ StageUp, “Il futuro della sponsorizzazione”, 2014

²² <https://whc.unesco.org/en/statesparties/it/>

Figure 1: number of world heritage per country



Source: *Il sole 24 Ore*, "Italia record per numero di patrimoni dell'umanità. La mappa globale della bellezza", January 2018.

Next, to the "registered" beauties there are then more than 60.000 historic buildings such as castles, towers, historic villas, noble palaces. The experience of the last 10 years raises examples of patronage and sponsorship by private Italian and foreign subjects towards the Italian heritage. For example:

- the Egyptian Museum of Turin benefited from the help of local private foundations;
- the restoration of the Trevi's Fountain in Rome through the private company Fendi;
- the conservative restoration of the Colosseum in Rome carried out through a sponsorship contract between the superintendency of Rome and Tod's group;
- the restoration of the Ercolano's archaeological site by the British School at Rome.

2.7 Tax benefit

Contributions made by individuals

Italian tax legislation applicable to individuals provides the following rules:

Tax credit on contributions

- Italian Tax law provides for a tax benefit in case of contributions made to State, Regions or local administrations or foundations who carry out or promote activities of study, research and documentation of significant cultural and artistic value or that organize and implement cultural activities, carried out on the basis of a special convention, for the purchase, maintenance, protection or restoration of the things indicated in the article 1 of the law 1 June 1939, n. 1089, and in the decree of the President of the Republic September 30, 1963, n. 1409, including the disbursements made for the organization in Italy and abroad of exhibitions of significant scientific and cultural interest in the aforesaid things, and for the studies and researches necessary for this purpose, as well as for any other manifestation of significant scientific-cultural interest also for didactic-promotional purposes, including studies, research, documentation and cataloging, and publications related to cultural heritage. Cultural initiatives must be authorized, after consulting the competent sectoral committee of the National Council for Cultural and Environmental Heritage, by the Ministry for Cultural and Environmental Heritage, which must approve the expenditure forecast and the final account. The Ministry for Cultural and Environmental Heritage establishes the time necessary for the donations made in favor of the legally recognized associations,

institutions and foundations to be used for the purposes indicated in this letter and controls the use of the donations themselves. These terms may, for reasons not attributable to the recipient, be extended only once. The donations that are not fully used in the assigned terms flow to the State budget, or to the regions and local territorial bodies, in the case of activities or events in which they are directly involved, and are allocated to a fund to be used for the planned cultural activities for the following year. The Ministry for Cultural and Environmental Heritage informs, by March 31 of each year, at the information center of the Department of Revenue of the Ministry of Finance, the list of the suppliers, as well as the amount of disbursements made by December 31 of the 'last year;

- b) In addition to the above tax benefit, Italian tax law provides for a tax deduction from the tax burden of the price or the fair value of the good donated to subjects indicated to above lett. a). Such a deduction can be asked if the free grant of the good is made according to a specific agreement between the individual who grant the good and the receiving institution.

Tax benefit of above lett. a) and lett. b) amounts to 19% of the donations amount.

Taxes paid and request to assign it to cultural activities

Italian tax law provides for a specific protection, promotion and enhancement of cultural and landscape assets.

Tax payers can ask that 5 per thousand taxes levied on their taxable income will be assigned to:

- a) the Ministry of Heritage and Cultural Activities and Tourism;
- b) the institutes of the ministry endowed with special autonomy (ie the institutes and places of the state culture and the competent offices on complexes of assets distinguished by exceptional archaeological, historical, artistic or architectural value);
- c) non-profit organizations that carry out activities of protection, promotion or enhancement of cultural and landscape heritage and demonstration of operate in this field for at least 5 years. By February 28 of each year the subjects who want to enroll in the list of beneficiaries must do so by following the online procedure accessible from the ministry website. To allocate one of these subjects their 5 per thousand taxpayers must enter the tax code of the institution or institution in the Tax return.

Donations made by enterprises

Contributions

Cash contributions in favor of the State, Regions, local territorial authorities, public bodies or institutions, foundations and legally recognized associations, for the performance of their institutional duties and for the implementation of cultural programs in the culture and entertainment field are deductible for income tax purposes.

The Minister for Cultural Heritage and Activities identifies periodically, on the basis of criteria that will be defined after hearing the unified Conference referred to in Article 8 of the Legislative Decree of 28 August 1997, n. 281, the subjects and the categories of subjects that can benefit from the aforementioned liberal donations; determines, according to the amount indicated for the purpose, the quotas assigned to each beneficiary institution or entity; defines the information obligations of the donors and beneficiaries; supervises the use of disbursements and communicates, by 31 March of the year following the one in reference to the Revenues Agency, the list of lenders and the amount of the contributions made. In the event that, in a given year, the total amount disbursed have exceeded the sum for the purpose indicated or determined, the individual beneficiaries who received sums of an amount greater than the share allocated by the Ministry for cultural assets and activities pay at the entrance of the State an amount equal to 37 percent of the difference.

Tax benefit applicable to both enterprises and individuals. The so called “ART BONUS”

The Art bonus is a tax credit to support cultural patronage established by Article 1 of the D.L. n. 83/2014 and amended by the 2016 Stability Law (No. 2018/2015), which transformed the

temporary measure (valid for the three-year period 2014-2016) to final and at the same time raised the benefit measure to 65%. The tax benefit is granted to both individuals and corporations, regardless of the nature and legal form, which make the donations in favor of culture and entertainment.

In order to grant the tax benefit, equal to 65% of the donations made, it is necessary that the donation is made through bank, post office, debit or credit cards and prepaid, bank checks and circulars. It is not possible, on the other hand, to benefit from the tax credit in the case of payment methods other than the previous ones (for example in cash). It is also mandatory to keep a copy of the document certifying the cash dispensation, containing the indication in the reason for the "Art bonus" - object of the disbursement - subject / beneficiary body. The maximum limits for the benefit are different depending on the qualification of the patron. In any case, for all subjects the tax credit must be divided into three annual installments of the same amount

3. Under what conditions do financial instruments work/don't work?

From the review of theory combined with the assessment of empirical evidence, it is very much apparent that "context matters". When considering the conditions which will influence the structure, conduct and performance of financial instruments, policy makers need to bear in mind the following three main issues: institutional and regulatory context, timing, and targeting (normal Micro, Small, Medium Enterprises versus high-growth firms).

The first important point to make is the crucial importance of the **domestic institutional and regulatory context** within different EU economies. The manner in which the banks operate is obviously a crucial distinction in this regard. The overall structure of banks, together with the levels of banking competition, state ownership of banks and bank regulation are vastly different across various EU member states. Research shows that the levels of banking concentration also vary markedly across the EU, which will obviously shape the ability of MSMEs to access finance in certain countries more than others.

Additionally, the nature of the funding landscape for entrepreneurial finance is also highly varied across the EU. In countries such as France, Germany and the United Kingdom, there are well-developed sources of entrepreneurial finance from both institutional and private investors. Within these countries there are also a range of various tax incentives to encourage investors to invest in early-stage companies which stimulates the supply side of the venture capital and business angel market. Consequently, firms are aware of the opportunities presented using risk finance as a source of funding.

These distinctions have important implications, but are often overlooked by regional policy makers keen to undertake localised policy instruments. In other words, the institutional context within which policy making is formulated is very important in the context of interventions in the credit market.

The second point concerns the issue of **targeting**. In the main, governments adopt a relatively wide-ranging approach when designing financial instruments in terms of sectoral coverage, stage of company development, company growth orientation, etc. Observers have noted that in many of these regionally funded projects, financial instruments have very different eligibility criteria (start-ups versus MSMEs, R&D-based firms, social innovation, etc.) and sectoral orientation. While there may be very solid theoretical and pragmatic reasons for this kind of targeting, this may not always be the case. This is a crucially important issue, however, as the funding requirements of MSMEs

are not homogenous, above all in the cultural sector. Policy makers therefore have to pay considerable attention to the precise issues within the intended target market for different financial instruments.

There is also likely to be a trade-off between the economies of scale achievable and the specificity of different programmes within various types of financial instrument schemes. In other words, narrowly focused schemes targeting specific types of MSMEs (either high-tech or in cultural sectors) may incur higher set-up and operational costs, which reduces their overall cost-effectiveness.

Another consideration related to targeting is the impact this has on the private sector. The evidence on various types of financial instruments is the fact that they can effectively “crowd out” the private sector in some instances. The use of hybrid schemes whereby the public sector co-invests with the private sector seems to be one relatively successful approach to help “crowd in” the private sector. However, co-investment with the private sector may not be feasible within some economically disadvantageous economies where the private sector investment community is absent or nascent.

A final issue concerns the issue of **timing**. A key instance in this regard concerns the nature of market conditions: in other words “timing matters”. At times of extreme economic recession, such as the recent global financial crisis, the problems facing MSMEs when attempting to obtain credit clearly markedly worsened. These kind of temporal factors have clear implications for the direction of public policy. During this time, concerted efforts were made to quickly increase the supply of liquidity to the MSME population in many countries. In many countries, directly increasing the supply of funding through loan instruments may be a very appropriate course of action. However, during normal circumstances, bank liquidity increases and lending conditions to MSMEs can improve. Therefore, schemes could tighten their eligibility criteria during periods of economic growth; for example by restricting the types of usage of the associated loans to prevent MSMEs using loans for working capital, etc. Conversely, there could be a case for increasing the levels of partial credit guarantees for MSMEs during economic downturns and perhaps consequently accepting a higher level default rate. In other words, the nature of market imperfections is cyclical, meaning that a temporal approach towards policy making is required.

4. Preconditions and Requirements for the use of financial instruments from a policy design perspective

From a policy design perspective, financial instruments are an alternative delivery mechanism to grants. It is important to highlight this since the use of financial instruments is often cast in terms of addressing a “gap” in access to finance – typically difficulties that MSMEs (in cultural sector in particular) have in accessing loan funding or investment capital. However, grants can also be used to address gaps in access to finance and the key issue here lies not in the objective of funding *per se*, but rather in what difference the delivery mechanism can make to the achievement of that objective and wider policy effects.

In practical terms, a role for financial instruments is only feasible where the ultimate investment is income-generating or cost-saving, enabling the initial support to be repaid. This means that where public intervention is justified by the need for public goods, repayable support is unlikely to be well-suited. In other words, appropriate forms of finance need to be tailored to the market imperfection

being addressed. Three principal benefits of financial instruments as opposed to grants are conventionally highlighted (European Commission, 2012b).

First, financial instruments are more sustainable because funds are repaid, creating a legacy to invest again. For policy makers with long experience of financial instruments, this is often regarded as the key benefit, even if it is not always the primary consideration among newer practitioners. Importantly, however, the scale of returns depends not only on the presence of sufficient numbers and scale of viable projects that are not commercially funded and the scope for timely exits and repayments, but also on the extent to which management costs and fees, defaults and losses erode returns.

Second, financial instruments can improve project quality – this may be partly through the due diligence involved in private sector project assessment, but also because the recipient is more focused on project viability because of the obligation to repay. This rationale is partly founded on the idea that the level of deadweight involved in financial instruments is lower than for grants; there is also a psychological dimension as both investee and investor share the risk, though how this is distributed will depend on how the instrument is designed. In addition, the use of financial instruments is influenced by the view that private sector expertise in assessing business plans improves the viability of projects compared to grants.

Third, financial instruments can make more cost-effective use of public funds partly because funds may be recycled, but also because of their potential to attract private funds. This argument was particularly significant in the context of the financial crisis, which affected not only public spending, but also the willingness of the private sector to lend and invest. That said, there is limited evidence of the capacity of public financial instruments to draw in private capital, and many ESIF co-funded instruments use public capital alone.

That said, grants are generally considered easier to administer by policy makers, though there is not necessarily a substantial difference between the two for recipients and some policy makers note that good-quality applicants may prefer loans because a larger proportion of their cost can be covered. Moreover financial instruments are not universally considered more complex by managing authorities, noting that they can be simpler than grants at the audit stage, provided that procurement processes are compliant. The scope to combine different forms of support has been given limited consideration in Cohesion Policy, but blending loans and grants has become common practice in international development finance. This involves the combination of grant aid from official development assistance with other public or private sources of finance such as loans and risk capital.

This approach is perceived to offer a number of advantages, in particular:

- the scope to do “more with less”, as already mentioned
- the possibility to ensure the uptake of international political and technical standards
- the ability to enhance “ownership” through close involvement in the design and implementation of the funding
- the capacity to open up and provide incentives for entry into new or otherwise too risky markets for the private sector, and lever in private funds.

Potential downsides are also identified, including:

- the risk that financial incentives outweigh development objectives
- the possibility that finance becomes too concentrated on certain sectors if funding follows “market-led” trends

- ill-defined monitoring and evaluation inefficiencies in the way in which private investment is incentivised.

Financial instruments should not be viewed in isolation, or purely as part of a funding package; instead, a holistic approach that combines advice and other support, whether training, consultancy, energy audits, etc. is needed to optimise intervention.

It is important to note that financial instruments are not suitable for all types of intervention. As outlined earlier, the justifications for intervening vary and these in turn affect the choice of delivery mode (whether non-repayable or financial instruments). In practice, however, the academic and policy literature reveals little research on the relative merits of grants versus financial instruments in different situations. A recent “think piece” posited that there should be a presumption in favour of using financial instruments in supporting MSMEs, but that grants might be appropriate in four scenarios:

- 1) For early-stage research and development (where there is an established precedent for the provision of grants to new ventures to support proof of concept and provide seed funding, and grants may be appropriate for early rounds of funding for young, small technology-based MSMEs).
- 2) To encourage change in behaviour, such as investment in energy-saving measures (using a grant to incentivise behaviour change to tackle an important market failure and to deliver public goods).
- 3) At key points in their development, for social enterprises and charities (some of which will never be traded on markets or be financially self-sustaining).
- 4) Addressing a viability gap to enable a project to proceed (where own contributions and commercial sources are insufficient but additionality and value-for-money criteria are met). In these circumstances there may be a case for a grant to fill the viability gap and enable the project to go ahead, if additionality and value-for-money criteria are met.

FINAL WARNING

Framework Conditions relevant to the implementation of financial instruments include the existing financial ecosystem/economic context, institutional capacity, the regulatory framework and a range of more operational issues. In considering these contextual issues in the discussion that follows, the main focus is on support for MSMEs, where there is most experience in the use of financial instruments across EU member states, but these factors are also relevant to the use of financial instruments in other policy areas, together with more specific elements.

The context within which financial instruments are implemented will affect how and how well they work. Circumstances vary between member states and regions, so there is no “one-size-fits-all” approach. Financial instrument models are seldom transferable without modification to take local, regional or national conditions into account. These include differences in local economic conditions, in banking and legal systems, previous experience with implementing financial instruments, etc. The financial instrument model must be shaped by local circumstances and needs.

Part 3 - Public-private partnership (PPP)

Over the past few decades public-private partnership (PPP) has become a new way for delivering and financing public sector projects, involving investment in fully economic (e.g. highways, railways, airports, seaports, etc.) or social (e.g. schools, hospitals, museums and other significant and historical buildings of public interest) infrastructures²³.

Compared to the concept of “privatisation” conceived as sharing or selling public assets to private companies interested in making profit, often raising concerns because of the possible implication of losing the ownership over public goods, PPP is generally limited to a specific project and it tends to be more accepted and understood by the general public.

Economic operators act as the financial backers and technical partners, by offering their know-how for the strategy of implementation and management of a work or service, in order to preserve and improve the sector, but also allow more value to be distributed among all stakeholders.

As a result, PPP guarantees:

- a. quality and efficiency of the services as a result of a complete and timely evaluation of the projects, costs, revenues and benefits over appropriate time horizons compared to the technical life of the works (i.e. respect for the project's timing and methods of implementation as conditions for achieving the expected cash flows);
- b. effectiveness (according to the specific parameters of the expected 'public' investment);
- c. transparency (due to the series of *ex-ante*, *in itinere* and *ex-post* controls that are activated in these operations);
- d. the distribution of the risks borne by both partners, even though the so-called "business risk" essentially passes on to private operators;
- e. benefits for citizen, the final recipients of works and services.

PPPs categories

- **Concession contracts:** the final user of the service/work pay the private partner directly, with no (or reduced) remuneration from the public sector
- **Institutional PPPs (joint venture):** where both the public and private sector become stakeholders in a third company
- **Contractual PPPs:** where the relationship between the parties is governed by a contract

²³THINK PAPERS COLLECTION / 07, *Public-Private Partnerships for Cultural Heritage: Opportunities, Challenges, Future Steps*, cit.; S. Macdonald and C. Cheong, *The Role of Public-Private Partnerships and the Third Sector in Conserving Heritage Buildings, Sites, and Historic Urban Areas*, The Getty Conservation Institute, Los Angeles, 2015.

1. The International Legal Framework on PPPs

PPPs have gained popularity over the last twenty years and these partnerships have already been employed in the main infrastructure areas of energy, water, telecommunication and transportation to deliver necessary public services.

Although the preservation of the historical urban environment raises questions and challenges which makes necessary a strategic multidisciplinary approach²⁴, nowadays also the protection and the valorisation of cultural heritage begins to require the involvement of multiple actors both in the public, and private, and non-governmental-sectors to carry out the conservation and to sustain the place²⁵.

In the cultural heritage sector, PPP takes place in various forms / contractual models, such as support to museums (as in Austria), support to museum collections and heritage policy development (for example in the Netherlands) and protection of historical heritage by bank foundations (Spain)²⁶, playing a key role in the social and economic development of a city, namely in the promotion of new business operating in the cultural sector and ultimately in job creation.

Cities will promote the adoption of this type of financial innovation on their territories, learning from others' experiences to support new long-term agreements.

Over the years, a number of different definitions of PPP have been developed.

At the international level **UNESCO** (2013) pointed out that "the cultural sector offers a great and unexplored potential for partnerships. Partnerships in the area of culture can bridge the funding gap of public entities and provide interesting investment opportunities for the private sector, but, at the same time, PPPs require environmentally and socially sound approaches apt to respect and benefit local communities"²⁷.

The **United Nations Economic Commission for Europe (UNECE)**, set up in 1947 by the United Nations Economic and Social Council with the aim to promote pan-European economic integration, strives to improve the expertise of governments in identifying, negotiating, managing and implementing successful PPPs projects²⁸.

The **Organisation for Economic Co-operation and Development (OECD)**, considers the PPP as "long term agreements between the government and a private partner whereby the private partner delivers and funds public services using a capital asset, sharing the associated risks"²⁹.

Moreover, the **National Council (of America)** defines PPP as a "contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the

²⁴ See, further, C. Ventura, G. Cassalia, L. Della Spina, *New models of public-Private Partnership in cultural heritage sector: Sponsorship between models and traps*, in *Procedia-Social and Behavioral Sciences* 223, 2016, p. 257 ss.; R. Cavallo Perin – G. M. Racca, *Caratteri ed elementi essenziali nelle sponsorizzazioni con le pubbliche amministrazioni*, in *Dir. Amm.*, 2013, pag. 583.

²⁵ World Bank, *A Framework for Disclosure in Public-Private Partnership Projects*, 2016.

²⁶ See, I. Rizzo, A. Mignosa, *Hand book on the Economics of Cultural Heritage*, *passim* ma spec., p. 48 s.

²⁷ available at <http://www.unesco.org/new/en/culture/themes/culture-and-development/hangzhou-congress/public-private-partnerships-in-culture-sector/>.

²⁸ See <http://www.unece.org/ceci/ppp.html>. This activity is realized by the Committee on Innovation, Competitiveness and Public-Private Partnerships. This is done through exchange of knowledge and experiences of PPPs between member States, including experts from public and private sectors, particularly in the identification and testing of best practices. The activities will result in guides on best practice, studies and innovative tools that can be used in capacity-building programmes and training. M.T. Adekilekun, C.C. Gan, Cao Fuguo, *International legislative frameworks for public-private partnerships: an evaluation*, in *P.P.L.R.* 2018, 1, 33-50.

²⁹ OECD, *OECD Principles for Public Governance of Public-Private Partnerships*, 2016, available at www.oecd.org/gov/budgeting/oecd-principles-for-public-governance-of-public-private-partnerships.htm.

use of the general public. In addition to the sharing of resources, each party shares the potential risks and rewards emerging from the delivery of the service and/or facility”³⁰.

This definition provides three key elements:

- a. the presence of public bodies and private entities;
- b. the sharing of skills and assets, risks and rewards;
- c. benefit for citizens.

The **Council of Europe** stated in 2005 the important aspects of heritage, as it relates to human rights and democracy, and promotes a wider understanding of heritage, communities and societies encouraging the recognition that objects and places are not, *per se*, what is important about cultural heritage³¹.

The Council of Europe recognized the emerging role of the private sector in heritage management in the mid-2000s and recommended to develop guidelines for best practice regarding public-private partnerships.

According to the Council of Europe policies, PPPs introduced a new approach to public provision: a private economic operator finances and builds a public work or delivers a public service.

The private party is entrusted with the operation and maintenance of the asset or service upon performance and availability standards throughout the contract life, offering financial and human resources as well as experience and expertise. Instead, the public sector, once defined the project's objectives in terms of public interest, quality of services and pricing policy, monitors the compliance by the private party with such objectives, providing administrative support and facilitate investments.

Certainly, the collaboration between the public and private sectors is one of the most evident expressions of the principle of horizontal subsidiarity³², in addition to what provided for in the TEU³³, while at the same time envisaging a change in the role of the public administration.

³⁰ National Council (of America) for PPP, 2010.

³¹ Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), 2005. In the Preamble of the Faro Convention (Recital 4) it can be read as follows: «The member States of the Council of Europe, [...] [...] Recognising that every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right to freely participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966)».

³² Horizontal subsidiarity takes place within the framework of the relationship between authority and freedom, state and social formations, and expresses the criterion for the distribution of competences between local authorities and private entities, based on the assumption that the care of collective needs and activities of general interest are directly provided by private individuals and the public authorities intervene in accordance with subsidiary, programming, coordination and, where appropriate, management activities. For the Italian legal framework see: Italian Constitution, art. 118, par. 4, for which "the State, Regions, Metropolitan Cities, Provinces and Municipalities shall promote the autonomous initiative of citizens, individuals and associates, to carry out activities of general interest, on the basis of the principle of subsidiarity". See, v. G. U. Rescigno, *Principio di sussidiarietà orizzontale e diritti sociali*, in *Diritto pubblico*, 2002; A. Albanese, *Il principio di sussidiarietà orizzontale: autonomia sociale e compiti pubblici*, in *Dir. pubbl.*, 2002; P. Duret, *La sussidiarietà "orizzontale": le radici e le suggestioni di un concetto*, in *Jus-Rivista di scienze giuridiche*, 2000; G. Arena, *Il principio di sussidiarietà orizzontale nell'art. 118 u. c. della Costituzione*, in *www.astridonline.it*, 2003.

³³ art. 11, first paragraph, according to which Institutions shall give citizens and representative associations, through appropriate channels, the opportunity to make known and publicly exchange their views in all areas of action of the Union.

2. The EU Legal Framework on PPPs

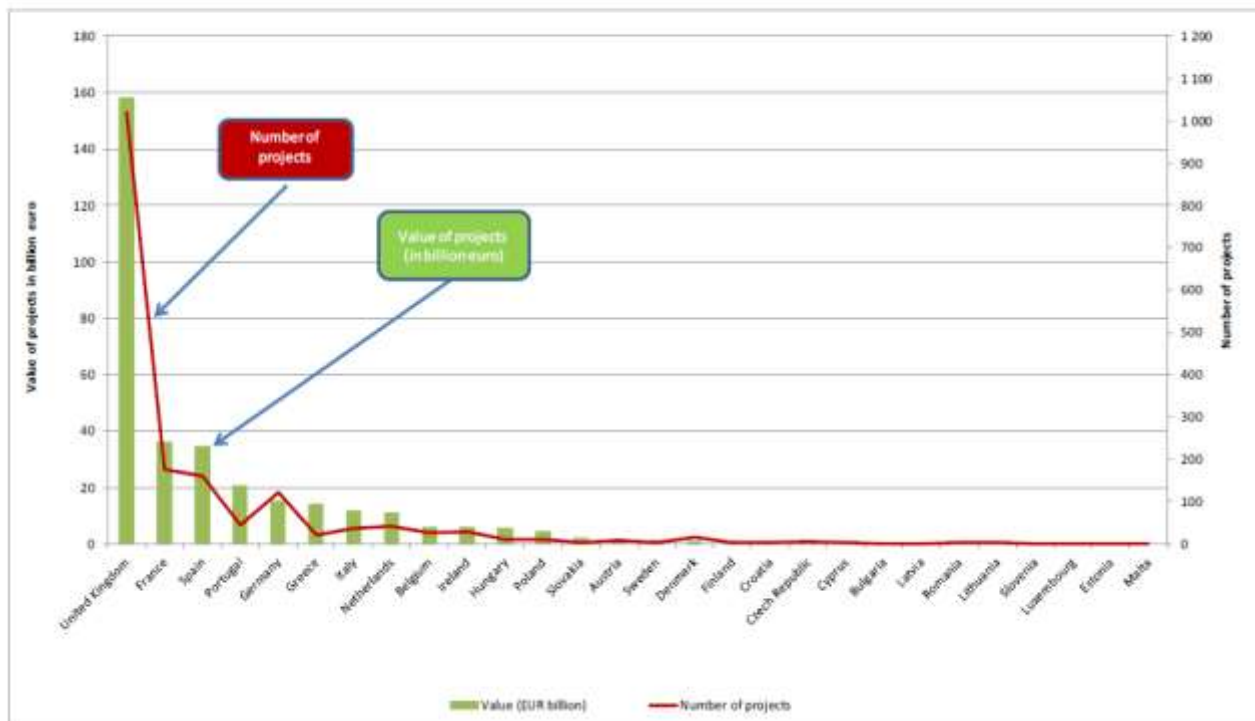
“Since the 1990s, 1749 PPPs worth a total of 336 billion euro have reached financial close in the EU”.

EU PPP market from 1990 to 2016



Source: European Court of Auditors based on information provided by EPEC.

EU PPP market per Member State from 1990 to 2016



A first definition of PPP was given by the European Commission which in 2003 referred to a “cooperation between the public and private sectors for the development and operation of infrastructure for a wide range of economic activities”³⁴.

The Green Paper approved by the European Commission in 2004 has discussed the phenomenon of PPPs from the perspective of the EU legal framework on public contracts (public procurement and concessions contracts), emphasising that the development of the PPP can be generally considered as part of a more general change in the role of the State in the economy, moving from a role of direct operator to one of organiser, regulator and controller³⁵.

The EU Commission gave a general and wide definition of PPPs in 2008, based also on a list of elements identified as normally characteristic of a PPP, later specified taking into account the peculiar features established by other international organizations (and in particular the above mentioned 2010 definition of the National Council of America for PPP³⁶)³⁷.

³⁴ European Parliament, Directorate General for Internal Policies, Policy Department B, *Structural and Cohesion Policies, Encouraging Private Investment in the Cultural Sector. Study*, cit.; EU Commission, *Guidelines for Successful Public-Private Partnerships*, March 2003.

³⁵ EU Commission, *Green Paper on public-private partnerships and community law on public contracts and concessions*, 30.4.2004, COM(2004) 327 final.

³⁶ National Council (of America) for PPP, 2010.

³⁷ *2010 European Digital Libraries Initiative*, May 2008. “By PPPs we mean any partnership between a private-sector corporation and a public-sector body, through which the parties contribute different assets to a project and achieve complementary objectives.”; “- The relatively long duration of the relationship, involving cooperation between the public

As a result, the definition given in 2010 by the European Digital Libraries is certainly more exhaustive and interesting, focusing on the sharing of three core “Rs”: Resources, Responsibilities, and Risks³⁸.

In the last years, many other EU documents were approved on PPPs³⁹, but now a comprehensive definition of PPP is contained in the 2013 regulation on the *European system of national and regional accounts*, in which PPPs are defined as “long-term contracts between two units, whereby one unit acquires or builds an asset or a set of assets, operates it for a period and then hands the asset over to a second unit. Such arrangements are usually between a private enterprise and government but other combinations are possible, with a public corporation as either party or a private non-profit institution as the second party”⁴⁰.

Since PPPs are also strictly connected with Public Contracts, it appears relevant to consider the EU Directives adopted in the sector of public procurement and concession contracts⁴¹. The new Public Procurement Directives⁴², repealing the previous 2004 Directives⁴³, and the Concessions contracts Directive⁴⁴ are innovative pieces of legislation reflecting the EU's wish to regulate concessions more closely⁴⁵.

partner and the private partner on different aspects of a planned project.

- The method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players. Nonetheless, public funds - in some cases rather substantial - may be added to the private funds.

- The important role of the economic operator, which participates at different stages in the project (design, completion, implementation, funding). The public partner concentrates primarily on defining the objectives to be attained in terms of public interest, quality of services provided and pricing policy, and it takes responsibility for monitoring compliance with these objectives.

- The distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. However, a PPP does not necessarily mean that the private partner assumes all the risks, or even the major share of the risks linked to the project. The precise distribution of risk is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with this risk”, EU Commission, *Green Paper on public-private partnerships and community law on public contracts and concessions (presented by the Commission)*, 30.4.2004, COM(2004) 327 final. In the Green Paper, the European Commission has also stressed a dual purpose, that of guaranteeing public works and services, even in situations of budget restriction and that of ensuring the use of private-sector methodologies, so to improve this safeguard with a view to achieving a better price/performance ratio without prejudice to the interest of public

³⁸ THINK PAPERS COLLECTION / 07, *Public-Private Partnerships for Cultural Heritage: Opportunities, Challenges, Future Steps*, cit.

³⁹ Communication from the European Commission of 15.11.2005 on PPPs and the law on public contracts and concessions, COM 2005, 569; the European Parliament Resolution of 16.10.2006 on public-private partnerships and Community law on public contracts and concessions; the interpretative communication of the Commission on the application of Community law on public contracts and concessions to institutionalised public-private partnerships (IPPPs) of 5 February 2008, COM 2007 6661. The 2011 Green Paper on the modernisation of EU public procurement policy to make the European procurement market more efficient, COM 2011 15.

⁴⁰ EU Regulation No 549/2013 of 21 May 2013 on the European system of national and regional accounts in the European Union, Art. 15.41. See also C. H. Bovis, *Efficiency and Effectiveness in Public Sector Management: The Regulation of Public Markets and Public-Private Partnerships and Its Impact on Contemporary Theories of Public Administration*, in *European Procurement & Public Private Partnership Law Review*, 2013, 186.

⁴¹ This new public procurement package was adopted in 2014 with the aim of simplifying procedures and making them more flexible in order to encourage access to public procurement for SMEs, and to ensure that greater consideration is given to social and environmental criteria.

⁴² 2014/24/EU, so called “Classic Directive” and 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

⁴³ 2004/18/EC and 2004/17/CE.

⁴⁴ 2014/23/EU.

⁴⁵ The particular subject of concessions was brought forward from the documents now mentioned in the Commission's Interpretative Communication of 12 April 2000 on concessions in Community law.

Even though the Commission recognized the “increasing importance of public-private partnerships”⁴⁶, the EU Directives on public contracts does not explicitly mention public-private partnership, albeit in the short space of a decade (2004-2014), the critical debate on PPPs has been so intense that it has led the European Union to change its policies⁴⁷.

PPP – Overviews of potential benefits and risks	
European Court of Auditors, Special report, Public Private Partnerships in the EU: Widespread shortcomings and limited benefits, n. 9/2018	
BENEFITS	RISKS
May enable to implement large-scale projects in one go	Affordability illusion, i.e. use of the State budget for more or bigger projects than would normally be affordable.
Bringing together the design, financing, building, operation and maintenance phases of a project in a single contract may ensure whole life approach for long-term benefits	Financing the full cost of construction through the private partner may complicate and delay financial close, increase financial costs and expose the private partner to increased financial risks; Combining different phases in a single contract adds elaborated requirements and risks to the procurement procedure and may lead to delays; Long-duration contracts not compatible with the rapid pace of technological change.
Risk sharing and risk allocation to the party best suited to manage them	Risk allocation may be influenced by the negotiation skills of the parties involved, with unsatisfactory results; Risk allocation may be influenced by considerations regarding the statistical treatment of the project.
Cost and time efficiency	Additional requirements are likely to increase the duration of procurement, offsetting any efficiencies during construction; Causes of delay are often independent from whether the project was procured traditionally or as a PPP. Impact of shortcomings in the project planning and implementation are amplified and may result in considerable payments borne by the public partner.

⁴⁶ EU Commission, *Green Paper on the modernisation of EU public procurement policy Towards a more efficient European Procurement Market*, 27 January 2011, COM(2011) 15 final. In order to improve the statistical framework Eurostat, in cooperation with the EPEC, has produced a Guide on the Statistical Treatment of PPPs, which has received a very positive response from all public and private stakeholders, including the ECOFIN Council, and it is undertaking the promotion of this Guide in Member States, available at <http://ec.europa.eu/eurostat/documents/1015035/7204121/epec-eurostat-statistical-guide-en.pdf>.

⁴⁷ M. P. Chiti, *Il Partenariato Pubblico Privato e la nuova direttiva concessioni*, in *Riv. It. di dir. pubbl. com.*, 2016.

More realistic and robust assessment of the required infrastructure needs and its future usage	Public partner may rely on assessments made by private partners and lenders, whose objectives may not be in the public interest; Paying for the infrastructure in multiple instalments and, in some cases, without putting the infrastructure on-budget may dull the incentive to scale projects appropriately to requirements.
Better standards of maintenance and service	Lack of automatic penalty adjustments, especially in long contracts may reduce the incentive for the private to ensure good quality maintenance.
Under certain conditions, the EU accounting framework may allow public involvement in PPPs to be registered as off-balance sheet items, thus incentivising their use for enhanced compliance with the Euro Convergence Criteria.	Potential lack of a level playing field between different procurement options may result in biased selection. Less consideration of value-for-money aspects when selecting the PPP option; Keeping PPP projects off-balance may provide incomplete information.
Comprehensive legal and institutional frameworks can support the implementation of PPP projects.	Lack of appropriate strategies for the use of PPPs within an overall investment policy, and of adequate PPP laws and standard contracts, together with the lack of appropriate administrative capability, may lead to a less implementation of PPP projects.

The relevance of PPPs in pursuing the EU policies is highlighted by project supported and funded on this topic and on the possibility of combining PPPs with EU funds (eg. Structural and cohesion funds)⁴⁸.

Another reason for selecting the PPP option is the possibility of allocating risks (such as construction, demand, availability) according to the principle that they should be borne by the partner that is best suited to manage them.

Depending on the risk/reward allocation between the public and private partners , the rules allow for two possibilities:	
a) PPPs can be recorded on the government balance sheet in a similar way as traditionally procured projects. This option treats the PPP	b) PPPs can be recorded off the government balance sheet by shifting the investment costs from the capital budget to the annual operating

⁴⁸ Interreg: Central Europe, RESTAURA: Revitalizing Historic Buildings through Public-Private Partnership Schemes (CE339), Country Report available at <https://www.interreg-central.eu/Content.Node/RESTAURA.html>.

asset as a public investment that generates an increase in government debt in line with the investment and therefore has an impact on compliance with the Maastricht criteria	budgets for future years. The advantage is that the share of debt relating to the PPP is not taken into account for purposes of compliance with the Maastricht criteria
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Recently, the European Court of Auditors has expressed very strong doubts about the general use of public-private partnerships in the EU, highlighting its criticalities and denouncing a generalized lack of expertise of public administrations in planning and managing initiatives that compromises, at the operational level, the achievement of results legitimately expected from the application of PPPs⁴⁹.

Recommendations of the European Court of Auditors (ECA)	
1. Do not promote a more intensive and widespread use of PPPs until the issues identified by ECA are addressed and their recommendations successfully implemented	“Improving the institutional and legal frameworks and project management and increasing assurance that the choice of the PPP option is the one that provides most value-for-money and that PPP projects are likely to be managed in a successful manner”.
2. Mitigate the financial impact of delays and re-negotiations on the cost of PPPs borne by the public partner	“In order to better share the cost of delays and re-negotiations between the partners, with the aim to mitigate the financial impact of delays attributable to the public partner and contract re-negotiations on the final cost of PPPs borne by the public partner, we recommend that: (a) Member States identify and propose standard contractual provisions that limit the amounts of possible extra costs to be paid by the public partner. (b) Member States assess any early contract re-negotiation to ensure that consequent costs borne by the public partner are duly justified and in line with value-for-money principles”.
Base the selection of the PPP option on sound comparative analyses on the best procurement option	“In order to ensure that the PPP option is the one that maximises value-for-money, we recommend that: (a) Member States base the selection of the PPP option on sound comparative analyses, such as Public Sector Comparator, and appropriate approaches that ensure that the PPP option is selected only if it maximises value-for-money also under pessimistic scenarios. (b) The Commission ensures that the Court of Auditors has full access to the necessary information in order to assess the choice of the procurement option and the related

⁴⁹ Special report, Public Private Partnerships in the EU: Widespread shortcomings and limited benefits, n. 9/2018, in https://www.eca.europa.eu/Lists/ECADocuments/SR18_09/SR_PPP_EN.pdf.

	procurement by the public authorities even where EU support is provided directly to private entities through financial instruments”.
Establishment of clear PPP policies and strategies	<p>“In order to ensure that Member States have the necessary administrative capability and clear PPP policies and strategies are in place to implement successful EU-supported PPP projects, we recommend that:</p> <p>(a) The Member States establish clear PPP policies and strategies that clearly identify the role that PPPs are expected to play within their infrastructure investment policies, with a view to identifying the sectors in which PPPs are most suitable and establishing possible limits to the extent to which PPPs can be effectively used.</p> <p>(b) The Commission proposes legislative amendments to concentrate financial support to future PPPs in sectors that it considers of high strategic relevance and compatible with the long-term commitments of PPPs, such as the Core TEN-T network”.</p>
Improved EU framework for better PPP project effectiveness	<p>In order mitigate the risk of bias towards selecting the PPP option, to promote further transparency and to ensure that PPPs can be effectively supported by EU funds, the Court recommends that:</p> <p>(a) The Commission links the EU-support to PPP projects to the assurance that the choice of the PPP option was justified by value-for-money considerations and thus not unduly influenced by considerations relating to budgetary constraints or to their statistical treatment.</p> <p>(b) The Member States improve transparency by publishing periodic lists of PPP projects, including sufficient and meaningful data on the assets financed, their future commitments and their balance-sheet treatment, while preserving the protection of confidential and commercially sensitive data.</p>

3. PPP models in EU Member States

PPP includes variegated and heterogeneous set of different contracts, many of them defined at National level, within which subjects can find different roles and functions.

An important distinction between contractual PPPs and the so-called institutionalised PPP was made with the Green Paper of the 2004 and in the following EU communication of 2005⁵⁰.

So, according to contractual PPPs, the public entity and private individuals regulate their relations exclusively on a conventional basis. The best-known model is, indeed, the “concessive model”, characterised by “the direct link that exists between the private partner and the final user: the private partner provides a service to the public, “in place of” the public partner”⁵¹, albeit under the control of this latter, and the operating risk of economic nature is transferred to the private economic operator⁵². The remuneration for the private economic operator consists solely in the right to exploit the works (or of charges levied on the users of the service)⁵³.

In a contractual PPP the selection of the private partner can be realized through the common award procedures provided for concession contracts⁵⁴ or for public procurement⁵⁵, according to the relevant contractual model.

In the second type, the so-called institutionalized PPPs, the cooperation takes place through a legal entity (i.e. *ad hoc*) distinct from the parties, entrusted with the task of ensuring the execution of a work or the management of a service in favour of the public, jointly owned by both private and public part, allowing the latter to maintain a relatively high level of control on the conduct of operations.

An institutionalised PPP can be put in place, either by creating an entity jointly held by the public sector and the private sector, or when the private sector takes control of an existing public undertaking (e.g.: the Kooperationsmodell, joint PPPs, Joint Ventures).

The selection of a private partner in a mixed entity/company “can therefore not be based exclusively on the quality of its capital contribution or its experience, but should also take account of the characteristics of its offer – the most economically advantageous – in terms of the specific services to be provided. Thus, in the absence of clear and objective criteria allowing the contracting authority to select the most economically advantageous offer, the capital transaction could constitute a breach of the law on public contracts and concessions”⁵⁶.

⁵⁰ EU Commission, *Public-Private Partnerships and Community Law on Public Procurement and Concessions*, 15.11.2005, COM(2005) 569 final.

⁵¹ EU Commission, *Green Paper on public-private partnerships and community law on public contracts and concessions*, 30.4.2004, COM(2004) 327 final.

⁵² Even if a part of the risk remains with the contracting authority or contracting entity

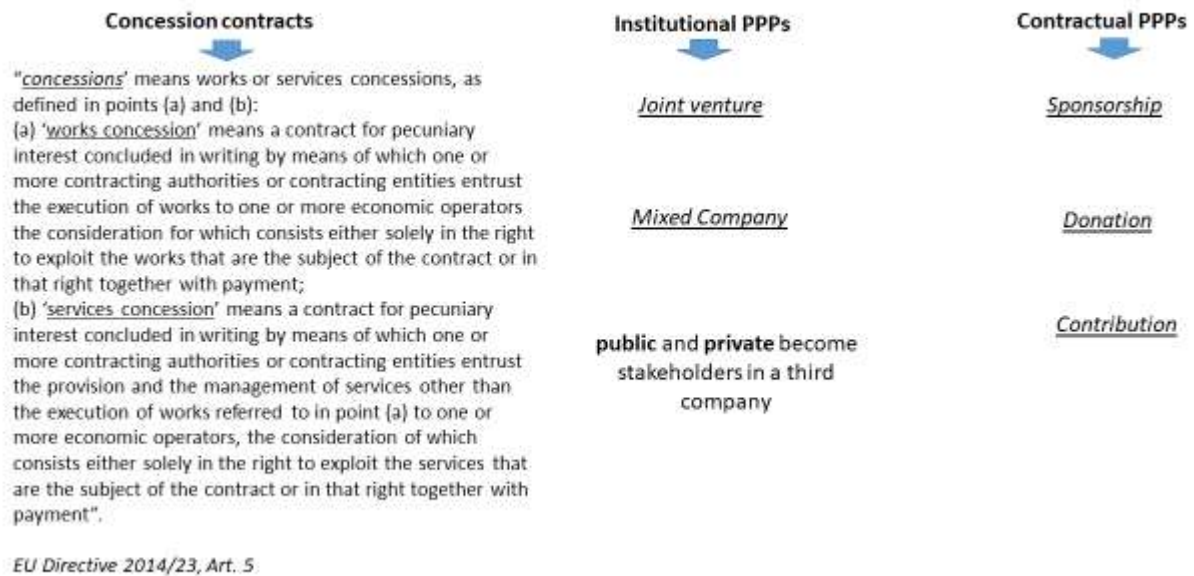
⁵³ EU Directive 2014/23, Art. 5, 1(a) and 1(b). If necessary the remuneration can be supplemented by subsidies from the public authorities. An example can be the Private Finance Initiative.

⁵⁴ EU Directive 2014/23, Artt. 30 et seq.

⁵⁵ open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, innovation, partnership, negotiated procedure without prior publication.

⁵⁶ EU Commission, *Green Paper on public-private partnerships and community law on public contracts and concessions*, cit.

Public-Private Partnership



The EU Directives on public procurement and concessions do not automatically apply to the transaction creating a mixed-capital entity. However, when such a transaction is accompanied by the award of tasks through a public contract, or even a concession, it is important that it is compliant with the rules and principles arising from EU procurement law in all the PPP phases.

In both models the principles given by EU Treaties (free movement of goods, free movement of persons, services and capital, non-discrimination, equal treatment, proportionality and competition)⁵⁷ and by EU public contracts directives (non-discrimination, equal treatment, transparency, proportionality and competition)⁵⁸ have to be taken into account according to the contractual model used in the relevant case.

Given the diversity among EU Member States as well as the tendency of the EU to evolve towards the harmonization of the legal framework, the examination of PPPs from a worldwide comparative perspective may be an interesting point.

Several local governments have given priority to fostering citizen initiatives. They developed new forms of governance, leading to the outsourcing of public tasks and services to volunteer organisations, community associations, non-profit organisations, foundations, and private firms⁵⁹.

The participation of communities as non-institutional and non-profit actors allow renovating, operating and managing civic spaces. Instead of expressing consent or dissent on a planned development project, many communities have taken the initiative into their own hands and have become developers – urban pioneers, spatial entrepreneurs or city makers – themselves. In recent years, cultural, social, community and educational spaces within cities have become laboratories of new forms of living, working, learning and collective exchange.

⁵⁷ Treaty on European Union - TEU, Art. 3; Treaty on the Functioning of the European Union – TFEU.

⁵⁸ EU Directive 2014/24, Art. 18; EU Directive 2014/25, Art. 36 ; EU Directive 2014/23, Art. 2 et seq.

⁵⁹ OECD, *Culture and local development*, 2018, 32 et seq.

3.1. The Italian legal framework, case studies and best practices

The Italian Constitution provides that “the Republic shall promote the development of culture and scientific and technical research”. Moreover, “It shall safeguard natural landscape and the historical and artistic assets of the Nation”⁶⁰.

The Italian Constitution reserve to the State the exclusive legislative powers in a list of sectors in which are included the “protection of the environment, the ecosystem and cultural heritage”⁶¹.

The valorisation of cultural and environmental assets, with the promotion and organisation of cultural activities, are included in the “concurrent legislative powers” among State and Region⁶². In these sectors, the State determines, with a National law, the fundamental principles and Regions can exercise their legislative powers providing detailed rules.

The intervention of private economic operators in the valorisation of cultural heritage is admitted and indeed encouraged by the Italian Constitution, by numerous provisions of the Code of Cultural Heritage and Landscape⁶³ and/or by regional provisions⁶⁴, establishing a “private-business” approach, shaped on the criteria of economy, effectiveness and efficiency of cultural heritage, as means for its best public use and valorization, pursuing the constitutional principles of the good management of public entities and of the necessary balance of the public budget⁶⁵, thence leading to the horizontal subsidiarity principle⁶⁶.

The funding of public interventions in the valorization of cultural heritage is implemented through two alternative and often competing systems: the one of liberal donations made by individuals and private companies who allocate resources to art realizing a “cultural patronage”, which is related to *ad hoc* tax system of exemptions and tax breaks; and the other, that concerns the business operation of sponsorship, carried out by private individuals for particular cultural goods⁶⁷.

Since the second system appears to be more convenient, the Italian legal framework, like other European Member States⁶⁸, has governed sponsorship in cultural heritage through several provision set out especially in the Code of Cultural Heritage and Landscape⁶⁹.

Indeed, a specific provision of the Code refers to sponsorship contracts, defining them as: “any contribution, including in goods or services, made (by the *sponsor* to the *sponsee*) for the design or implementation of initiatives in relation to the protection or enhancement of cultural heritage, with

⁶⁰ Article 9, Italian Constitution.

⁶¹ Article 117, second par., (s), Italian Constitution.

⁶² Article 117, third par., Italian Constitution.

⁶³ P. Rossi, *Partenariato pubblico-privato e valorizzazione economica dei beni culturali nella riforma del codice degli appalti*, in *Federalismi.it*, 17 gennaio 2018; G. Aedon, *Il ruolo dei privati nella valorizzazione dei beni culturali: dalle sponsorizzazioni alle forme di gestione*, in AEDON online, 1-2/2012; M. Cammelli, *Pubblico e privato nei beni culturali: condizioni di partenza e punti di arrivo*, in *Aedon*, n. 2/2007.

⁶⁴ See the recent regulation of the Piedmont Region No. 7 of 2015, as amended in July 2018 and in which are provided the maximum extension of concession contracts on public goods.

⁶⁵ Art. 97, Italian Constitution

⁶⁶ Art. 118, par. 4, Italian Constitution

⁶⁷ The system of liberal donations has not worked for insufficient fiscal convenience, lack of visibility and/or return of image for the donor, bureaucratic burdens that contradict the principle of simplification of administrative procedures, competition between these tools and other forms of donations (e.g. those for medical research, poverty, etc..) that are more capable of attracting capital. See: R. Cavallo Perin – G. M. Racca, *Caratteri ed elementi essenziali nelle sponsorizzazioni con le pubbliche amministrazioni*, cit.

⁶⁸ E. Borin, *Public-Private, Partnership in the Cultural Sector. A Comparative Analysis of European Models*, Peter Lang, 2017.

⁶⁹ Legislative Decree No. 42 of 2004, Artt. 6, 111, 112, 115 and 117. Art. 6, paragraph 3 of the Cultural Heritage Code states, precisely, that “The Republic favours and supports the participation of private individuals or associates in the enhancement of the cultural heritage”; G. Piperata, *Sponsorizzazione e interventi di restauro sui beni culturali*, in *www.aedon.mulino.it*, n. 1/2005.

the purpose of promoting the name, trademark, image, activity or product of the activity of the dispensing party⁷⁰.

The sponsorship contract in cultural sector must necessarily provide the duration of the relationship itself, the obligations (determination and modality of the contribution) of the *sponsor* and those of the *sponsee* (the obligation to grant the use of the advertising space to the sponsor in relation to the cultural asset object of the sponsorship), as well as allowing the sponsor's control of the finalization of the contribution paid for the initiative⁷¹. Moreover, the sponsorship must always be justified by the contribution of the private sector to the design or implementation of an institutional initiative for the protection or enhancement of the property in question.

The rules also sets out that the initiative subject to sponsorship can proceed not only from the Ministry for Cultural Heritage and Activities, or the Regions and other local authorities, but also from other public entities, private non-profit entities and private entities on cultural property owned by them.

Moreover, the sponsorship can lead to significant economic returns to compensate for the strength trend of public administration to allocate fewer and fewer resources to culture and for companies shall be provided the full deductibility of investment in culture⁷² and tax relief in favor of fair patronage⁷³.

As for liberal donations, even in the case of sponsorships, the role of the private subject remains confined to the mere financing of a certain operation relating to a cultural good, so that is the public entity which maintains its traditional role of *protection* and *enhancement* of the cultural asset⁷⁴.

The provisions on sponsorship in the Code of Cultural Heritage and Landscape have to be coordinated with the Italian Public Contracts Code that provide a general provision⁷⁵ and a special provision on sponsorships and forms of partnership in the cultural sector⁷⁶.

Criticism of coordination with the rules on cultural heritage sector were identified in application of the previous code of public contracts⁷⁷.

The Italian Ministry for cultural heritage and activities in 2012 provided guidelines on the procedure to conclude a sponsorship contract. According these provisions the public entity have to publish the notice of the activities for which it intends to obtain private financing on its own website (without particular formalities). In case a private economic operator (sponsors) formulate a proposal, the public entity can negotiate directly with the private economic operator only in the case of contracts of an amount less or equal to 40,000 Euros, or concerning sponsorships of services or supplies not connected to works of any amount⁷⁸.

For sponsorship of a value above 40,000 Euros, the provision of article 19 of the 2016 Italian Public Contract Code shall apply. This article govern sponsorship relating to cultural assets, as well

⁷⁰ Legislative Decree No. 42 of 2004, Art. 120.

⁷¹ Legislative Decree No. 42 of 2004, Art. 120, last par. R. Cavallo Perin – G. M. Racca, *Caratteri ed elementi essenziali nelle sponsorizzazioni con le pubbliche amministrazioni*, cit.

⁷² Law No. 342 of 2000.

⁷³ d.l. No. 83 of 2014, Art. 1.; P. Rossi, *Partenariato pubblico-privato e valorizzazione economica dei beni culturali nella riforma del codice degli appalti*, cit.

⁷⁴ Even in the case of the so-called technical sponsorship of the cultural asset, the contribution of the private individual is limited to the purely executive aspect, as a contractor of the public administration for works, services or supplies.

⁷⁵ The general rule on sponsorship is provided in Legislative Decree, No. 50 of 2016, Art. 19.

⁷⁶ Legislative Decree, No. 50 of 2016, Art. 151.

⁷⁷ see the case of the sponsorship for the work at the Colosseo in Rome of 2010. Cons. St., VI, No. 4034 of 2013. The criticalities that emerged in the "Colosseo" case had urged the legislator to intervene, introducing, with d.l. n.5 / 2012 converted in Law n. 35/12, art. 199 bis in the previous Italian Public Contract Code, with which the cultural sponsorship was regulated, especially with regard to the methods for selecting the sponsor.

⁷⁸ Decree of the Ministry for cultural heritage and activities and for Tourism of 19th December 2012 on the guidelines on sponsorship contracts.

as to sponsorship contracts aimed at supporting institutions and cultural structures, of lyrical and symphonic foundations and traditional theatres⁷⁹.

The contracting authority entrusted with the safeguard of cultural assets imparts adequate prescriptions in relation to the design, execution of works and/or supplies and the direction of works and their testing⁸⁰.

Another Communication of the Italian Ministry for cultural heritage and activities was provided in 2016 in order to coordinate the Code of Cultural Heritage and Landscape and the 2016 Public Contracts Code⁸¹.

In order to "ensure the enjoyment of the cultural heritage of the Nation" and "promote scientific research applied to its protection", simplified procedures for the selection of the sponsor may be implemented by the Ministerial authority in relation to the promotion of "special" forms of public-private partnership aimed at the restoration, recovery, scheduled maintenance, management, as well as the public enjoyment and valorisation of cultural heritage⁸².

The Italian Public Contracts Code provide other specific provision for the public contracts in the sector of cultural heritage on qualitative selection of economic operators⁸³, levels and contents of the design⁸⁴, the award of the contracts⁸⁵, on the modifications of the contract during its execution⁸⁶

⁷⁹ pursuant to Article 101 of the Code of Cultural Heritage and Landscape.

⁸⁰ Legislative Decree, No. 50 of 2016, Art. 151(1 and 2).

⁸¹ Communication of the Ministry for cultural heritage and activities and for Tourism of 9th June 2016.

⁸² Art. 151, par. 3, of Legislative Decree no. 50 of 18 April 2016.

⁸³ Legislative Decree, No. 50 of 2016, Art. 146,

⁸⁴ Legislative Decree, No. 50 of 2016, Art. 147.

⁸⁵ Legislative Decree, No. 50 of 2016, Art. 148. Works concerning movable assets, decorated surfaces of architectural assets and historicized materials of immovable assets of historical, artistic or archaeological interest, archaeological excavations also of submarine nature, as well as those relating to villas, parks and gardens referred to in Article 10, paragraph 4, letter f) of the Code of cultural heritage and landscape, shall not be awarded in conjunction with works related to other categories of general and special works, except where justified and exceptional exigencies of coordination of works, certified by the responsible of the procedure and however not related to the security in workplaces pursuant to legislative decree n. 81 of 9 April 2008, do not make necessary the joint award. This is without prejudice to what provided for in Article 146 on the possession of the qualification requirements established in this Chapter. Under no circumstances specialized works referred to in paragraph 1 shall be absorbed in another category or be omitted in the indication of the works composing the intervention, irrespective of the percentage that the value of specialized interventions retains on the total amount. To this end, the contracting authority separately identifies, in tender documents, the activities related to monitoring, maintenance and restoration of assets referred to in paragraph 1 with respect to those of structural, installation and functional adaptation nature related to immovable assets safeguarded by the Code of cultural heritage and landscape. For contracts having as their subject-matter the establishment of institutes and cultural structures pursuant to Article 101 of the Code of cultural heritage and landscape, and for the maintenance and restoration of villas, parks and gardens pursuant to Article 10, paragraph 4, letter f) of the Code of cultural heritage and landscape the contracting authority, following a substantiated decision of the responsible for the procedure, may apply the legislation relating to services or supplies, where services or supplies assume a qualitatively preponderant relevance in relation to the subject-matter of the contract, irrespective of the amount of the works. The subjects executing the works referred to in paragraph 1 shall possess in any case the qualification requirements established in this Chapter. For what not differently provided in paragraphs 1, 2 and 3, Article 28 shall be applied. Works referred to in paragraph 1 shall be generally contracted on a time and material basis, independently from the relevant amount. For works in this Chapter, by way of derogation from Article 95, paragraph 4, may be used the criterion of the lowest price for works with an amount equal to € 500,000 or less. The execution of works in this Chapter shall be allowed in cases of extreme urgency when every delay may be prejudicial to public safety or to the safeguard of the asset, up to €300,000, according to the modalities provided for in Article 163 of this Code. Within those same limits of amount, the execution of works of extreme urgency shall also be allowed in relation to particular kinds of intervention identified by the decree referred to in Article 146, paragraph 4.

⁸⁶ Legislative Decree, No. 50 of 2016, Art. 149. Interventions decided by the director of works shall not be considered as modifications of the contract during its execution if adopted to address questions of detail, with the aim to prevent and reduce risks of damages or deterioration of the safeguarded assets, that do not qualitatively modify the work and do not imply a variation in increase or decrease exceeding 20% of the value of each category of work, within the limits of 10% of

and testing activities⁸⁷ are provided for public contracts in cultural sector and other relevant regulation has been laid down by the Italian in 2007⁸⁸. PPPs in the sector of cultural heritage valorisation represent in Italy a privileged alternative to direct management, an explication of the principle of horizontal subsidiarity and an exploitation of the division of responsibilities between State and regions, as the Italian Constitution provides.

Considering the Italian legal framework of PPPs, several measures contain specific rules on this instrument⁸⁹, starting from the Italian Code of Public Contracts⁹⁰.

Number and value of PPP in Italy

the total amount of the contract, in case the economic framework has the required financial availability in relation to the sums available to the contracting authority. modifications of the contract during its execution, within the limits of an increase of 20% with respect to the total contracted sum, shall be admitted when deemed necessary given the nature and specificity of the assets on which the intervention is planned, for facts occurred along the way, for discoveries unforeseen and unforeseeable in the design phase, to adjust the design project in case this is made necessary to safeguard the asset, and for the achievement of the goals of the intervention. Equally, modifications of the contract justified by the evolution of criteria regulating the restoration shall be allowed.

⁸⁷ Legislative Decree, No. 50 of 2016, Art. 150. 1. For works relating to assets in this Chapter it is mandatory to conduct a testing in progress, provided that the conditions for the issuance of a certificate of regular execution do not subsist. The decree referred to in Article 146, paragraph 4, shall establish specific provisions concerning the testing of interventions on cultural assets in relation to their features.

⁸⁸ Law No. 296 of 2006, modified the Decree Law No. 351 of 2001; subsequently amended by the Decree Law No. 95 of 2012.

⁸⁹ See L. Perfects - C. Montagna, *Cultural sponsorships, everything still to be done*, Interview in *Il Sole 24 Ore*, July 9, 2016, who believe that what would really give space to partnerships is to acknowledge that this is a form of cooperation already provided for in principle in Community law, so that an ad hoc rule is not always necessary that specifies the single case, being instead possible to create new ones in relation from time to time, because in accordance with the principles.

⁹⁰ Art. 180 (2), Legislative Decree No. 50 of 2016, as amended by Legislative Decree No. 56 of 2017 in force from 20 May 2017.

Anni	Bandi PPP		Percentuale bandi PPP su OO.PP.	
	Numero	Importo (Mln €)	Numero	Importo
2002	331	1.424	0,9%	6,0%
2003	513	3.767	1,5%	11,5%
2004	800	2.136	2,6%	6,6%
2005	966	5.412	3,2%	16,9%
2006	782	8.394	2,9%	28,1%
2007	948	4.828	3,7%	17,2%
2008	1.292	5.697	5,4%	18,5%
2009	1.852	4.777	10,0%	18,6%
2010	2.991	7.338	16,2%	26,6%
2011	2.787	9.646	16,7%	35,8%
2012	3.014	7.148	19,0%	32,4%
2013	2.852	4.065	20,3%	23,3%
2014	3.086	3.676	17,6%	13,2%
2015	3.334	7.203	17,9%	24,3%
2016	3.187	13.318	18,8%	53,0%
2002-16	28.735*	88.830*	10,4%**	22,1%**
<i>*Somma. **Media.</i>				

Fonte: elaborazione IFEL-Dipartimento Studi Economia Territoriale su dati infopp.it, anni vari

The Italian Parliament defining the principles that the Government had to respect in the transposition of 2014 EU Directives on public contracts⁹¹ provided for, "innovative and specific financial instruments and technical support to the contracting authorities" to enhance the use of PPPs⁹² and the simplification of PPPs procedure⁹³, in compliance with the provisions provided by the Code of Cultural Goods and the Landscape⁹⁴.

PPP contracts are defined by the Italian Public Contracts code as a contract stipulated in writing, in which one or more contracting authorities confer to one or more economic operators, for a determined period, a set of activities consisting in the implementation, transformation, maintenance and operational management of a work in exchange for its availability, or its economic exploitation, or the provision of a service related to the use of the work itself, with the assumption of risk by the operator in accordance with procedures identified in the contract⁹⁵.

⁹² Delegated law of 28 January 2016, No. 11; delegations to the Government for the implementation of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, public contracts and the procurement procedures of entities operating in the water, energy, transport and postal services sectors, as well as the reorganization of the existing rules on public contracts relating to works, services and supplies, Art. 1(ss).

⁹³ Delegated law of 28 January 2016, No. 11, Art. 1(tt).

⁹⁴ Delegated law of 28 January 2016, No. 11, Art. 1(o).

ment of a work, or its economic exploitation, or the provision of a service related to the use of the work, with the assumption of risk according to methods identified in the contract by the operator".

In PPP contracts, the operating revenues of the economic operator shall come from the fee paid by the lending institution and/or from any other form of economic compensation received by the same economic operator, even in form of direct income for the management of the service with external users⁹⁶. In this perspective, the transfer of risk to the economic operator implies the allocation to the latter, in addition to the risk of construction, of availability or, in cases of activity generating external incomes, of the risk of demand of the services provided, for the period of the work⁹⁷.

The content of the contract is defined between the parties in a way that the recovery of the investment made and the costs incurred by the economic operator, to execute the work or provide the service, shall depend on the effective supply of the service or usability of the work or the volume of the services provided in correspondence to the demand and, in any case, on the respect of the contracted quality levels, provided that the assessment is conducted *ex ante*.

Against the availability of a work or the demand of a service, the contracting authority may choose to pay a fee to the economic operator that is proportionally reduced or cancelled in periods of less or absent availability of the work, or periods of less or absent provision of the service⁹⁸. The contracting authority may also choose that against the availability of the work or provision of services, a different economic utility – however stipulated *ex ante* – shall be paid and/or the remuneration of the service shall be connected to the direct exploitation of the availability to the economic operator, which takes the risk of the negative fluctuation of the market of demand of the same service⁹⁹.

The economic and financial balance¹⁰⁰, represents the precondition for the correct implementation of risks sharing between public and private partner¹⁰¹.

In any case, the possible recognition of the price, summed to the value of potential public guarantees or other mechanisms of financing borne by the public administration, shall not exceed 49% of the cost of the total investment, including possible financial burdens¹⁰².

In Italy PPPs may be concluded with different models having the mentioned characteristics he 2016 Italian Public Contracts Code, as well as the previous code, provides for a merely indicative list of contracts belonging to the PPP domain, open to further hypotheses (i.e. the project financing¹⁰³; the concession of work and management¹⁰⁴, with the possibility to establish project companies¹⁰⁵, or of services¹⁰⁶; the financial leasing of public works¹⁰⁷; availability contracts¹⁰⁸; the

⁹⁶ Legislative Decree, No. 50 of 2016, Art. 180(2). The PPP contract may be used by public entities for each kind of public work.

⁹⁷ As defined, respectively, in Legislative Decree, No. 50 of 2016, Art 3, par. 1, letters aaa), bbb) and ccc)

⁹⁸ Legislative Decree, No. 50 of 2016, Art. 180(4). Where the reduced or absent availability of the work or provision of the service is imputable to the operator, those variations of the fee shall, in any case, be able to significantly impact on the current net value of the total investment, costs and revenues of the economic operator.

⁹⁹ Legislative Decree, No. 50 of 2016, Art. 180(5).

¹⁰⁰ Defined in Legislative Decree, No. 50 of 2016, Art. 3, par. 1(fff).

¹⁰¹ Legislative Decree, No. 50 of 2016, Art. 180(6). A right to use may also be recognized as a title of contribution, whose utilization is instrumental and technically connected to the work to be awarded in concession. The modalities of use of immovable assets shall be defined by the contracting administration and shall constitute one of the preconditions determining the economic and financial balance of the concession.

¹⁰² Legislative Decree, No. 50 of 2016, Art. 180(8).

¹⁰³ Legislative Decree, No. 50 of 2016, Art. 183. The project financing is provided for the realization of public works or works of public utility, including those works related to facilities dedicated to boating, inserted in the programming instruments formally approved by the contracting authority on the basis of the legislation currently in force.

¹⁰⁴ Legislative Decree, No. 50 of 2016, Artt. 3(uu) and 164 et seq.

¹⁰⁵ Legislative Decree, No. 50 of 2016, Artt. 184 and 185. In order to realize a single infrastructure or a new service of public utility, the project companies as well as the companies holding a public-private partnership, may issue bonds and debt securities.

¹⁰⁶ Legislative Decree, No. 50 of 2016, Artt. 3(vv) and 164 et seq.

¹⁰⁷ Legislative Decree, No. 50 of 2016, Art. 187 financial leasing contracts represent a public procurement of works, when those contracts do not have a merely accessory nature with respect to the main object of the contract itself.

administrative barter¹⁰⁹; the transfer of public property in exchange of works¹¹⁰, etc.). The flexible structure of PPPs allows to choose the most appropriate cooperation model to the cases to be dealt with.

Concerning institutionalised PPPs, the Italian Public Contracts Code provides also for the possibility to resort to a mixed company (public-private). In this case the private partner has to be selected according to a competitive procedure¹¹¹.

With regard to the Italian legal framework, the guidelines issued by the national Anticorruption Authority (A.N.AC.) should also be mentioned¹¹². They provide indications on the legal framework;

¹⁰⁸ Legislative Decree, No. 50 of 2016, Art. 188. The awardee of the availability contract shall be remunerated through the subsequent means, subject to monetary adjustment according to the provisions in the contract:

a) availability fee, to be paid only in correspondence with the actual availability of the work; the fee is proportionally reduced or cancelled in periods of reduced or lacking availability of the same for maintenance, defects or any other reason not falling within the risks borne by the contracting authority pursuant to paragraph 3;

b) the possible recognition of a contribution during the execution of the work, however not exceeding 50% of the cost of construction of the work, in case of transfer of property of the work by the contracting authority;

c) a possible price of transfer, determined in relation to the already paid fees and to the possible contribution during the execution of the work provided in the previous letter b), and to the residual market value of the work, to be paid, at the end of the contract, in case of transfer of the property of the work to the contracting authority. The awardee takes the risks related to the construction and technical management of the work for the period of provision to the contracting authority. The contract shall determine the modalities of subdivision of the risks between the parties, that may imply variations of the remuneration due for the events impacting on the project, on the realization or technical management of the work, deriving from the occurrence of norms or binding measures by the public authorities.

¹⁰⁹ Legislative Decree, No. 50 of 2016, Art. 190. Territorial entities shall define by means of an *ad hoc* deliberation the criteria and conditions for the realization of social partnership contracts, on the basis of projects submitted by individual or associated citizens, provided that they are identified in relation to a specific territorial ambit. Contracts may regard the cleaning, maintenance, refurbishment of green areas, squares or streets, as well as their exploitation through different cultural initiatives, urban decency interventions, recovery and re-use with finalities of general interest of unutilized areas or assets. In relation to the typology of the interventions, territorial entities shall identify reductions or exemptions from tributes corresponding to the kind of activity performed by the private or association or however useful to the reference community with a view to the recovery of the social value of participation by citizens.

¹¹⁰ Legislative Decree, No. 50 of 2016, Art. 191. The call for tender may provide in place of total or partial remuneration, the transfer to the awardee or, in case the awardee has an interest in it, to a third subject indicated by the awardee, provided that it possesses the requirements referred to in Article 80, of the property of premises pertaining to the contracting authority, already identified in the triennial programme for works or in the pre-information notice for services and supplies and that do not perform, according to a justified assessment by the contracting authority or entity, functions of public interest.

2. Properties already included in programmes of dismissal, insofar as the inclusion precede the publication of the tender or notice for alienation, or if the procedure for dismissal had a negative outcome, shall be object of transferral.

2-bis. The value of the premises to be transferred following an award procedure is established by the sole responsible of the procedure on the basis of the market value determined through the competent offices holding the property of the premises object of transfer.

¹¹¹ Legislative Decree, No. 50 of 2016, Art. 5(9).

¹¹² A.N.AC. Guidelines no. 9 were approved by the ANAC Board on March 28, 2018 by Resolution no. 318/2018. As clarified by the Italian Council of State (Consiglio di Stato, with consultant and judicial functions in the Italian legal framework), in the past EU directives on public contracts were implemented by laws of the Parliament and legislative decrees of the Government, followed by more detailed regulatory interventions by the Government (D.P.R. No. 207 of 2010). At present, the Italian legislator provides for different measures and types of administrative provision in order to pursue flexibility: a) decrees adopted by the Prime Minister or by the Ministers (secondary sources in the Italian legal framework); b) binding resolutions by ANAC with *erga omnes* applicability (guidelines with the legal effect of general administrative acts); c) non-binding resolutions by ANAC (guidelines from which the public administration can deviate upon presentation of a valid justification). ANAC guidelines are generally provided as tools to clarify the content of the IPPCCC. General guidelines proposed by ANAC are approved by the Minister of Infrastructure and Transport, which are then transmitted to the relevant parliamentary committee for an opinion before their adoption (Law No. 11 of 2016, art. 1, par. 8).

risk analysis and allocation, any revision of the economic and financial plan; contract contents and any changes; monitoring and information flows.

In September 2018 the Italian Ministry of Economy and Finance put in consultation a Guide on the use of concession contracts for PPPs with a contract template in order to enhance the use of PPPs.¹¹³

As said, Italian heritage, both cultural and natural, is highly diverse and diffused throughout the national territory: its “cities of art” – such as Rome, Florence, Venice, Milan, Turin, Naples etc.- are only some notable examples of a mixture of tangible and intangible heritage spread all over the peninsula.

More specifically, Italy is a country where immovable heritage has been predominantly of public domain for ownership and management. Like many other European countries, it is currently facing the price to be paid for the technical and administrative oversights made during the gradual shift from in-house conservation staff (expertise and workers) to the outsourcing of nearly all preservation and enhancement services to freelance specialists and private contractors.

As well-known all decision-making for cultural heritage has been traditionally kept in the hands of the upper levels of the public heritage administrations, although recent legislative changes in Italy are leading to greater involvement of the private sector at the management level¹¹⁴.

In relation to the privatisation of museums, the benchmark comes from the English-speaking countries and the United States¹¹⁵.

In particular, Turin hosts several Foundations operates in the cultural heritage sector (e.g.: Turin Museums Foundation, the Egyptian Antiquities Foundation of Turin, the Venaria Reale Foundation, the Fondazione di San Paolo, the Fondazione CRT - Cassa di Risparmio di Torino) supported by banks such as the Compagnia di San Paolo and the Fondazione CRT, which include the Italian Ministry for Cultural Heritage and Activities, the Piedmont Region, the Province and City of Turin, representing, as said, the new frontier of alliance between the public and private sectors.

Moreover, the pilot projects of the “Museo Egizio” in Turin and of the “Museo delle Navi” in Pisa , as well as the mature experiences of the Nuovi Uffizi in Florence and La Scala in Milan, show that mixed networks can achieve, in a very short time, results that public institutions alone have not been able to achieve.

In addition to the abovementioned experiences, the Grande Brera project represents another demonstration of how the privatizations entrusted to mixed foundations are able to revitalize and requalify places of fundamental cultural, historical and artistic importance for our country.

It seemed useful to focus on a mixed public-private system, pursuing public ends with instruments that mimic private ones.

¹¹³ Italian Ministry of economy and Finance, *Guide for public administrations for the drafting of a contract for the concession of design, construction and management of public works in private public partnership standard contract scheme placed in consultation*, 21 September 2018.

¹¹⁴ J. Thompson, *Engagement in public-private partnerships for cultural heritage: the case of Herculaneum, Italy*, in ICCROM (ed.) *Proceedings of the International Forum on Privatisation and Cultural Heritage*, Catania, 13 - 15 September (2007). ICCROM, Rome (2007) 120-134.

¹¹⁵ In Europe, the Netherlands have been privatising nationally-owned museums since the end of the 1980s. In Italy, the D.L. 20-10-1998, n. 368 provided that the Ministry for Cultural Heritage and Activities could establish or participate in associations, companies or foundations and draw up agreements with public and private subjects and bodies (art.10); the following Code of Cultural Heritage and Landscape, Legislative Decree of 22-01-2004, n. 42 provided for the direct or indirect management of the enhancement of cultural assets where: "indirect management is implemented through the concession to third parties of the activities of enhancement, even in a joint and integrated by the administrations to which the assets belong ..." (art.115).

An example is the mixed foundation, which recomposes all the skills that were previously disintegrated, and gives the possibility of calling on the private sector to contribute. This is what has been experimented with the Egyptian Museum in Turin, aiming to expand the experience.

Representing the first Italian example of private participation to the management of a public cultural heritage, the Fondazione "Museo Egizio" was founded in Turin in 2004 by the Ministry of Cultural Heritage and Activities, the Piedmont Region, the Province of Turin, Compagnia di San Paolo and Fondazione CRT. Rapidly the Fondazione showed from the outset great potential for further development¹¹⁶.

In 10 years of activity of the Fondazione, indeed, the Museo Egizio has managed to establish itself as a scientific research centre of international renown for the quality of the projects undertaken and as one of the main national tourist attractions.

The Fondazione "Museo Egizio" enjoys the economic subsidies allocated from its founding members: the collection and real estate, an ordinary endowment fund (quinquennial initially, then annual) and a € 50 million dedicated endowment fund for the renovation and refitting of the Museum.

Another example is provided by the "Herculaneum Conservation Project"¹¹⁷, a conservation and restoration project promoted by the collaboration between the US Packard Humanities Institute and the Special Superintendence of Naples and Pompei.

But many other initiatives could be launched to enhance the immense cultural heritage that today is only partially workable.

3.2. The British legal framework, case studies and best practices

Despite in UK there is neither a unified concept of cultural heritage nor an organic regulatory apparatus (probably because of the propensity to delegate to both public and private body institutional powers), since the beginning of the last century the **British** legislator not only favoured but even considered as indispensable the contribution of private actors in order to ensure and enhance the existing cultural heritage.

The key role of the private sector in the conservation of the cultural heritage is therefore part of a rather complex general framework which is flanked by a heterogeneous regulatory system composed, to a lesser extent, of legislation at primary level, and for the remainder of secondary legislation, both general and individual administrative measures and consensual forms.

Among private entities, associations differs from private law foundations generally set up in the form of charities or trusts. Still, both entities have been a fundamental part of the British legal system.

3.3. The French legal framework, case studies and best practices

As far as the **French** experience concerns in the protection, revaluation and circulation of cultural goods, the concept of *patrimoine* gives a suitable idea of inheritance and, therefore, shows an image of the transmission of historical-artistic heritage to future generations¹¹⁸.

¹¹⁶ The main goal of the Fondazione was to "endorsing, promoting, managing and adapting the structural, functional and expositive facets of the Museo, of the cultural assets received or acquired in any capacity and the promotion and enrichment of museum activities"

¹¹⁷ <http://www.herculaneum.org/>.

¹¹⁸ Unlike the term *bien*, É. Penalva-Icher - E. Lazega, *Remplacer l'Etat ? Promotion et réseaux des Partenariats Public-Privé en France*, *La nouvelle revue du travail*.

In recent years, France, like the rest of Europe, has faced many problems linked to the economic and financial crisis which led to favour the entry of capital by companies and individuals and to introduce very advantageous tax breaks. Indeed, France has been a forerunner trying to achieve the objective of modernising museums by focusing on hybrid management tools, capable of reconciling the interests of the various players involved in the cultural sector.

In France PPP refers to a vast array of forms of partnerships, also because the national law is traditionally organised according to a typology of contracts among which none of them bear the very name of “PPP contract”¹¹⁹.

More precisely, in the case of a public service delegations (SDRs) the private partner is paid for by the service operation (e.g. cases of management of a theatre or a cinema belonging to the city), but the most criticised form is the Partnership Contracts (PCAs).

Introduced in 2004, this legal form allows the State or a local authority to delegate in all or in part a series of actions: financing, maintenance, restructuring, management, maintenance and management of works or equipment necessary for a public service.

It has to be notice that in France was realised one of the most advanced example of “cultural arbitrage” operations by the partnership between Agence France-Museum (a specially created consortium involving all the major museums and major French cultural institutions) and the Abu Dhabi Investment Council. The aim of the 15 years lasting agreement is the creation of a new museum called “Louvre Abu Dhabi”, which - thanks to an investment of 27 billion dollars – is going to be the new cultural district and tourist landmark in the Gulf, providing for fees exceeding one billion dollars in exchange for the transfer of the right to use the Louvre brand, loans, exhibitions and scientific, managerial and organizational assistance¹²⁰.

3.4. The German legal framework, case studies and best practices

In **Germany**, there is not a single set of laws governing public-private partnerships (PPPs), but a plethora of acts, rules and regulations¹²¹.

In 2013 the German Federal Court of Auditors published a critical report in which the accuracy of the value for money assessments conducted by the German Ministry of Transport whenever opting for a PPP procurement has been questioned¹²².

However, federal and state legislators are increasingly appreciating the importance of PPPs as useful tools for future development in the public sector¹²³.

Traditionally, the municipal level has been the most active in Germany carrying out projects on lands, and the main type of financing for municipal PPP projects in Germany is non-recourse forfaiting with instalments. Indeed, most of the small-to-mid-size PPP building-construction projects

¹¹⁹ B. du Marais, *PPP Contracts in France through the 2015-2016 “Big Bang Reform”*, in *European Procurement & Public Private Partnership Law Review*, 2018, 39.

¹²⁰ B. Bortolotti, *Nuovi modelli di finanza e nuovi investitori per i Beni culturali italiani: il Cultural Arbitrage*.

¹²¹ M. Ruhlmann, *Public-Private Partnership (PPP) in Germany - Current Developments Eyeglasses – Previously viewed in last 30 days for current Client ID*, in *European Procurement & Public Private Partnership Law Review*, 2016, 145.

¹²² The report concluded that it would have been more convenient for the taxpayer if the respective motorway projects had not been implemented as PPP procurements. The report prompted the German federal parliamentary financial committee to put the topic on its agenda for 2014. M. Ruhlmann, *Public-Private Partnership (PPP) in Germany - Current Developments Eyeglasses – Previously viewed in last 30 days for current Client ID*, cit.

¹²³ As evidenced by the enactment of a number of laws to facilitate the deployment of PPPs in Germany, including the 2005 PPP Acceleration Act; R.W. Mcquaid, W. Scherrer, *Public Private Partnership in the European Union: Experiences in the UK, Germany and Austria*, in *Uprava, letnik VI*, 2/2008.

are so-called 'three-phase projects', i.e. the private investor only has to finance the construction stage whereas the subsequent management of the building is financed by the municipality¹²⁴.

3.5. The Spanish legal framework, case studies and best practices

In **Spain**, the first PPP model was created in relation to the national railway infrastructures, and was later developed with regard to the motorways sector. The final step forward was taken in 2003, by means of a regulation that generally deals with PPPs in any sector.

In the Spanish framework, several contracts may be encompassed under the concept of PPP, through which a contractor builds and maintains an infrastructure operating and receiving benefits derived from its exploitation, and/or through which a contractor manage a public service that, in turn, may require the construction of a certain infrastructure.

Both cases must be privately funded (whether fully or partially) and they may be framed within the concept of design-build-finance-maintain-operate contracts.

There is no specific legislation regarding PPPs, but the Spanish Procurement Law¹²⁵ envisages an extensive general regulation referring to aspects such as: rights and obligations of contractors; powers of the public administration; the economic-financial regime; the modification of the agreement; and termination causes.

Furthermore, since specific administrative clauses are approved for each PPP, it has to be considered that there is not a centralised PPP authority and projects may be tendered by central, regional or local authorities, depending on their competencies and the relevant activity sector.

It has to be noticed that 2015, the Spanish National Evaluation Office was created for the sole purpose of analysing the financial sustainability of existing and new PPPs.

3.6. The Greek legal framework, case studies and best practices

After the law of 2005¹²⁶, the PPP Unit of the **Greek** Ministry of Economy and Finance planned a programme to excite interest at national and international level, implementing a successful approach, judged from the number of international economic operators attending the recent conferences to promote the PPP programme.

The aforementioned law introduced a stable legal framework providing incentives for both public and private entities to be engaged in partnerships for infrastructures or services, mainly through the simplification of relevant procedures, and it established two new administrative bodies, aiming at the support of Public Authorities, in order to improve the effective preparation and management of PPP projects:

¹²⁴ M. Ruhlmann, *Public-Private Partnership (PPP) in Germany - Current Developments Eyeglasses – Previously viewed in last 30 days for current Client ID*, cit. In which it is pointed out that “at the municipal level, not only large consortia but also German mid-size firms seem to profit directly from PPP projects. A recent report by the German ÖPP Deutschland agency (a joint venture between the State and the German industry)⁷ points out that within the municipal project portfolio medium-sized companies have achieved a solid award share (facilitated by the fact that hardly any of these projects exceed the amount of €25 m)”.

¹²⁵ P. Alonso Góme, *Las “public private partnerships” como colaboración público privada en el contexto europeo*, Madrid, 2014; Joan Ridao I Martín, *La colaboración entre el sector público y el sector privado en proyectos omplejos de infraestructuras y servicios públicos. Una revisión crítica del marco legal en España*, in *Revista Española de Ciencia Política*. Núm. 34, March 2014, pp. 89-117.

¹²⁶ Law No. 3389 of 2005; D. Tziovas, *Greece in Crisis: The Cultural Politics of Austerity*, e-book, 2017; V. Delitheou, M. Vinieratou, M. Touri, *The contribution of public and private investments to the growth of conference tourism in Greece*, in *Management research and practice* vol. 2 issue 2 (2010) pp: 165-178.

a. the Inter-Ministerial Committee for Public-Private Partnerships (IM PPP Committee), a collective governmental body that defines and specializes PPP policy, approves projects, coordinates and monitors the implementation of PPP projects;

b. the Special Secretariat for Public-Private Partnerships (PPP Unit), established within the Ministry of Economy and Finance, that promotes implementation and provides support and assistance to IM PPP Committee and to the Public Entities in the context of all necessary procedures for the finalization of a PPP project¹²⁷.

3.7. The Polish legal framework, case studies and best practices

In the last years the level of infrastructural development in **Poland** as well as the level of public services improved significantly, as a result of modernization of the country.

On 26 July 2017, the Polish Council of Ministers adopted "the Government Policy for the Development of Public-Private Partnerships" in order to "increase the scale and efficiency of infrastructure investment implemented through the PPP"¹²⁸.

"PPP Policy" identifies a series of activities, most of which already implemented, provided by the Polish Government for PPP development, with a view to 2020.

On the initiative of the Ministry of Infrastructure and Development, It has been created a PPP Platform with the aim of favouring the exchange of information, experiences and best practices among local authorities through the implementation of specific projects in order to increase the number of implemented and signed contracts of PPP¹²⁹.

Several activities defined in Polish policies are:

a. proposing the necessary legal amendments that are needed to improve the development of PPP in Poland;

b. developing and monitoring a PPP project pipeline (a database of investment plans);

c. carrying out educational and information dissemination activities including the development and implementation of a communication strategy, guidelines, recommendations and good practices;

d. providing comprehensive advisory services to public bodies at the preparation and tendering stages;

e. developing and implementing an obligatory opinion (so-called "PPP test") on the formula to be used to implement large projects (i.e. over PLN 300 million of investment from the Government/State budget);

f. analysing and establishing a system of warranties and guarantees for the public and private sectors and other possible financial instruments that reduce the costs of preparing and implementing PPP projects.

PPP in Poland is also regulated by the Act on Public-Private Partnership dated 19 December 2008 and by the Act on Concessions for construction works or services of 9 January 2009, further referred to as "the Act on Concessions"¹³⁰.

¹²⁷ Ministry of Economy and Finance, *Special Secretariat for Public – Private Partnerships, Guide for the implementation of Public Private Partnerships in Greece*, 2005.

¹²⁸ Public-Private Partnership Platform, *Polish Government adopted Policy for the Development of PPP*, available in http://www.ppp.gov.pl/English/News/Strony/Policy_for_PPP_in_Poland.aspx.

¹²⁹ <http://www.ppp.gov.pl/english/strony/default.aspx>.

¹³⁰ See the English version of the Act on Public Private Partnership of the 19th of December 2008 and the English Version of consolidated text of Public Procurement Law was prepared by the Public Procurement Office, available at https://www.ppp.gov.pl/English/Documents_and_publications/Strony/default.aspx.

3.8. The Romanian legal framework, case studies and best practices

In **Romania**, public-private partnership is one of the main alternative ways to finance strategic projects of national interest, foreseen in the Governance Program 2017-2020 under the responsibility of the Ministry for Business Environment, Commerce and Entrepreneurship and the Ministry of Public Finance.

The Law on Public-Private Partnership, also known as the New PPP Law, came into force at the end of 2016¹³¹, and established premises for the implementation of PPP projects in Romania.

However, the aforementioned law lacked of the implementation norms, thus is not currently functional and the Romanian Government approved Government Emergency Ordinance (“GEO 104”)¹³² to amend it.

On May 24th 2018 was adopted a list of strategic partnerships to be carried out in public-private partnership, including three highways and a large medical complex near Bucharest.

¹³¹ Law No. 233 of 2016.

¹³² Law No. 104 of 2017.

Some European example of financial instrument for culture

BGK (Bank Gospodarstwa Krajowego - The State Development Bank of Poland)-managed UDF in Pomorskie, Poland

Funding source

ERDF (as the source of EU funding within Pomorskie ROP)

Type of FI

Loans

Financial size

The loan's final interest rate must not be lower than 0.25% p.a. Loan repayment can be up to 20 years and the grace period can be up to 12 months following the project's completion.

The final recipient must provide own contribution equal at least to 25% of the eligible expenditure when receiving regional aid, or 15% in the case of de minimis aid. The average loans worth EUR 12.9 million.

Thematic focus

Urban development

Type of final recipient

Public organisations, social and economic partners, non-governmental organisations, commercial companies, housing associations or communities, public-private partnership operators, other partnerships of the above entities.

Project types

BGK-managed UDF supports urban projects in the region's four major cities: Gdańsk, Gdynia, Sopot and Słupsk with low-interest rate long-term loans.

Projects eligible and implemented within the UDF include:

- construction, expansion, remodelling, or renovation of buildings to create or develop science and technology parks, advanced technology centres, centres of excellence, education and implementation centres, business incubators and similar institutions, including technical infrastructure and surroundings;
- projects for comprehensively regenerating degraded urban areas such as brownfields, former military installations, railways, ports, housing, or commercial sites, including the construction of new, expanded or remodeled public infrastructure for economic, educational, social and recreational functions;
- construction, expansion, remodelling, renovation, adaptation and fitting out of public buildings (excluding the seats of local government units), historical sites and metropolitan and trans local functions including sports, convention, cultural, exhibition and fair facilities, together with development of their surroundings;
- comprehensive thermal modernisation of public buildings and multifamily residential buildings, also connected with the transformation of existing heating systems and the use of renewable energy

“New Széchenyi” Combined Micro Credit and Grant scheme (CMCG), Hungary

Funding source

Operational programmes “Economic Development Operational Programme“ and “Central Hungary Region Operational Programme“, co-financed under ERDF

Type of FI

Combination of loans (micro credit) and grants.

Financial size

SMEs could receive up to 45% as a grant (from EUR 3,000 to EUR 33,000), up to 45% as a micro credit (Loan Max 66,000 EUR) and would contribute a minimum of 10% of the total investment from their own resources.

Thematic focus

SME support

Main results

9,389 final recipients received combined micro credit to enhance their businesses

Project types

It provided micro financing opportunities to those micro enterprises that did not make use of credit or had limited access to financial resources, and made them capable of growing their businesses. The CMCG, in general, has no explicit targets, sectorial or other policy goals. The aim is to focus on financial segments where the supply of financing is low, those enterprises that are below the banks' credit limit: businesses that need loans, but to whom commercial banks would not provide credit without a risk-sharing scheme.

Entrepreneurship Promotion Fund, Lithuania

Funding source

ESF (OP for the Development of Human Resources 2007-2013)

Type of FI

Loan combined with training and consultations (final recipients can also make use of other related instruments, i.e. guarantees, interest rate subsidies and subsidies for employee salaries)

Financial size

Loans of up to EUR 24,907; final recipients have to finance 10% of the project value from their own funds, the average loan amounts to EUR 15,900.

Thematic focus

Social enterprises

Type of final recipient

Micro and small enterprises younger than one year, entrepreneurs and business-oriented social enterprises. Priority given to unemployed people, disabled people, young people under age 29 and individuals over 50.

Main results

New jobs created: 1,758 (up to March 2014)

Individuals / enterprises using the scheme: 1,017 (up to September 2014)

Project types

The instrument provides loans at better-than-market conditions in combination with free training. The primary aim is to promote self-employment and entrepreneurship as a sustainable way of keeping people active in business and the labour market and to create jobs. As mentioned, the

loans target micro and small enterprises that have been operating for less than one year, as well as individual entrepreneurs and social enterprises. The combination of loans and training is a very important aspect of the strategy.

Although training is not obligatory, it is very popular among final recipients. It has been shown that providing training on different aspects of business development improves final recipients' entrepreneurial and management capacities. From the EPF perspective, providing training increases the scope for creating jobs and reduces the probability of loan defaults by the final recipients.

The economic sectors of projects were very diverse. Food and typical products, wholesale and retail fair trade were very popular. Innovative services and cultural and creative industries were also supported.

Mikromezzaninfonds, Germany

[Funding source](#)

ESF OP at federal level in Germany 2007-2013, ERP Special Fund1

[Type of FI](#)

Mezzanine capital in the form of silent partnerships (a hybrid form of finance that combines elements of both debt and equity, having advantages for the final recipient; the investment is normally treated as a loan but the investor participates in the profits of the enterprise)

[Financial size](#)

Investments of up to EUR 50.000 under the de minimis regulation and for up to 10 years. During the grace period for repayment of the principle, the enterprise has to amortise an annual fixed premium of 8%, which is paid quarterly in arrears. Depending on the economic viability of the enterprise, the mezzanine investor receives up to 1.5% of the profits per annum.

[Thematic focus](#)

Promoting employment and social inclusion

[Type of final recipient](#)

SMEs as well as enterprises led by disadvantaged people – e.g. women, migrants or the unemployed – that are excluded from financial services due to insufficient equity or no credit history

[Main results](#)

From September 2013 to December 2015, 1.781 enterprises have been supported with approximately EUR 74.5 million. Around 7.775 jobs have been secured. Some 2%, or 35 of the 1.781 supported enterprises, are social enterprises.

[Project types](#)

Enterprises pursuing a social or ecological mission

SELFIEmployment, Italy

[Funding source](#)

ESF NOPs 2014-2020

[Type of FI](#)

Microloans, small loans

[Financial size](#)

Small loans up to EUR 50.000 and targeted services to promote project implementation and to support the development of specific entrepreneurial ideas (these business development services are covered by a grant of up to EUR 5.000 for each application). Average loan of EUR 35.000. No collateral is required and no interest is to be paid.

Thematic focus

Increasing employability of NEETs (people Not (engaged) in Education, Employment or Training)

Type of final recipient

Self-Employment individuals and disadvantaged groups.

Project types

The eligible sectors are producing and trading goods, tourism, culture, health and social care, ICT, manufacturing, renewable energy, energy efficiency and services.

Cultural Impact Development Fund, UK

Funding source

Private (Big Lottery Fund and Big Society Capital)

Type of FI

Unsecured loans (and revenue participation agreements, where appropriate)

Financial size

Investments between £25,000 and £150,000 with repayment term of one to five years and interest rates ranging between 5.5% and 8.5%.

Thematic focus

Enable organisations in the arts and cultural sector to take on small-scale repayable finance in order to achieve social outcomes

Type of final recipient

- Arts and cultural venues
- Museums, libraries and archives
- Non-venue based organisations (e.g. touring organisations, production companies, festivals, etc.)
- Sector support organisations (e.g. development agencies, workspace providers, cultural education organisations)

Organisations registered in England and primarily benefiting communities in England.

Project types/Areas of work

- Music and performing arts
- Visual arts, including graphic design
- Film and Broadcasting
- Literature
- Combined arts
- Crafts
- Fashion design
- Cultural heritage

- Architecture
- Digital arts and culture

Arts Impact Fund, UK

Funding source

Private (Bank of America Merrill Lynch, Esmée Fairbairn Foundation, Nesta and Arts Council England, with additional funding and support from Calouste Gulbenkian Foundation)

Type of FI

Unsecured loans (and revenue participation agreements, where appropriate)

Financial size

Investments between £150,000 and £600,000 repayable over a period of three to five years

Thematic focus

Social investment in the arts and cultural sector

Type of final recipient

Organisations registered in England and primarily benefiting communities in England. Charities, community interest companies and community benefit societies with a recognised charitable purpose are eligible for investment.

Project types/Areas of work

Organisations must work in one of the art forms recognised by Arts Council England. These are:

- Theatre
- Dance
- Music
- Visual arts
- Literature
- Combined or multi art forms
- Digital arts

Three social outcomes areas:

- Young people and educational attainment
- Citizenship and Community
- Health and Well-being