

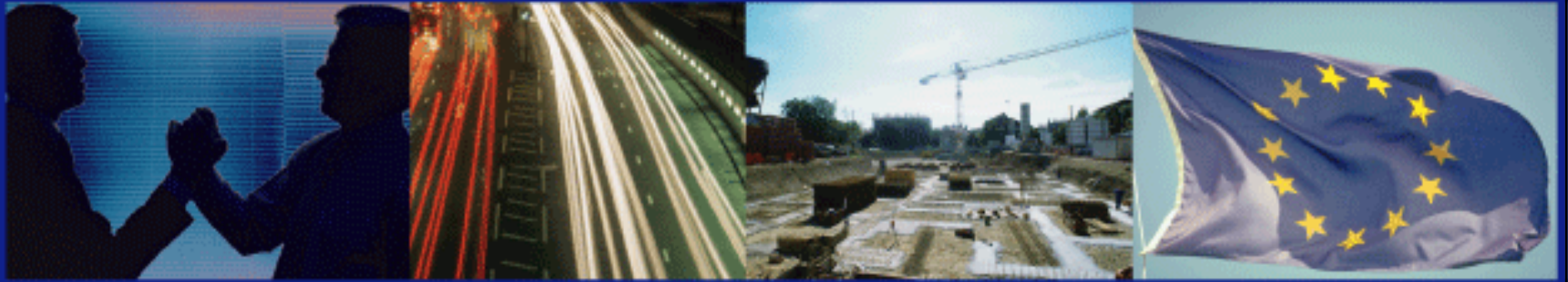
Institutional and Regulatory Framework

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PPP Task Force



**Development of Financial Markets in the Russian Federation -
EuropeAid/121435/C/SER/RU**

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Agenda

- **Background**
- **EU legislative framework: a focus on steps**
- **Changes in the Legal Framework for PPP's (2006 - 2007)**
- **PPP types in Italy**
- **Unità Tecnica Finanza di Progetto (UTFP) activity “on the field”**
- **The way forward: UTFP commitment for the near future**



Background



Key figures

ANNO	INDICATORE	UNITÀ DI MISURA	ITALIA	UE 25
	Superficie	.000 km2	301	3978
2005	Popolazione	Milioni di abitanti	58,4	461,5
2005	Pil pro capite	Dollari USA	28.000	28.640 (1)
2004-06	Pil reale	Var. perc.	0,1	2,4
2004-06	Tasso d'inflazione	Var. perc.	2,2	2,1
2006	Indebitamento pubblico	% del PIL nominale	- 4,4	-1,7
2006	Debito pubblico	% del PIL nominale	106,8	62,2

Fonte: Elaborazioni su dati EUROSTAT.
(1) UE 15



Rationale of involvement of private sector in infrastructure investments

- ✓ Utilize private sector expertise
- ✓ Obtain Value for Money
- ✓ Achieve cost efficiency
- ✓ Comply with EU budget rules (EDP)
 - ✓ EU Stability and Growth Pact
 - ✓ Maastricht Treaty constraints :
 - ✓ Deficit Cap of 3 % of GDP
 - ✓ Debt Limit of 60 % of GDP
- ✓ In order to pursue these goals, European governments have increasingly resorted to long-term contracting with private counterparts providing public services, giving rise to so-called “Public Private Partnerships”



EU legislative framework: a focus on steps



EU legislative framework: a focus on steps

2000	Interpretative Communication on Concessions under Community law
2003	<i>Guidelines for Successful PPPs</i> - EU Commission – DG Regio
2004	EUROSTAT Decision on the accounting treatment of PPPs
2004	EU Directives coordinating the procedures for award of public contracts
2004	Green Paper on PPPs and Community Law on Public Contracts and Concessions
2004	White Paper on general interest services
2005	EU Communication on PPPs and Community Law on Public Procurement and Concessions
2006	EU Parliament resolution on PPPs and Community Law on Public Procurement and Concessions



EU legislative framework: a focus on steps

Green Paper on PPPs and Community Law on Public Contracts and Concessions (2004)

Definition of PPPs : forms of cooperation between public authorities and the business sector aiming to ensure either funding, construction, renovation, management or maintenance of an infrastructure or provision of a service

The Green Paper addresses various topics directly linked to the public procurement aspect of PPPs, in particular:

- ✓ The framework for the procedures of selection of private partners, and notably, the advantages in this context of the competitive dialogue procedure introduced by the new Directive on public procurement;
- ✓ Set-up of PPPs on the initiative of the private sector;
- ✓ The contractual framework and contract amendments over PPP duration;
- ✓ Sub-contracting



EU legislative framework: a focus on steps

EUROSTAT Decision on the accounting treatment of PPPs (2004)

The assets involved in a Public-Private Partnership should be classified as non-government assets, and therefore recorded off balance sheet for government, if both of the following conditions are met:

- ✓ The private partner bears the construction risk, and
- ✓ The private partner bears at least one of either availability or demand risk

“*Construction Risk*” covers events such as late delivery, non-respect of specified standards, additional costs, technical deficiency, and external negative effects.

“*Availability Risk*” whereby the partner may not be in such a position to deliver the volume that was contractually agreed or to meet safety or public certification standards related to the provision of services to final users, as specified in the contract

“*Demand Risk*” covering variability of demand (higher or lower than expected) irrespective of the private partner’s management





EU legislative framework: a focus on steps

EU Communication on PPPs and EU Law on Public Procurement and Concessions (2005)

“PPP’s are not a miracle solution: for each project it is necessary to assess whether partnership really adds value to the specific service or public works in question, compared with other options such as concluding more traditional contract”

Classification of PPP’s

- | | | |
|---------------------|---|---|
| ✓ Contractual PPPs |  | Award of Concession |
| ✓ Insitutional PPPs |  | Establishment of undertaking jointly held by both a public and a private partner so as to perform public services |

“The consultation (i.e. Green Paper) showed the demand for a stable, consistent legal environment for the award of concession at EU level, in particular to reduce transaction costs (by decreasing legal risk) and more generally to enhance competition”

Follow-up measures in the field of PPPs



EU legislative framework: a focus on steps

EU Parliament resolution on PPPs and EU Law on Public Procurement and Concessions (2006)

- ✓ *“Calls on the Commissions to give serious consideration to regional self-government interests and to involve representatives of regional as well as local interests in drawing up future rules”*
- ✓ *“Opposes the creation of a separate legal regime for PPPs but considers that there is a need for legislative initiatives in the areas of concessions and for clarification with regard to institutionalised PPPs (IPPPs)”*
- ✓ *“Opposes the establishment of a European agency for PPPs, but welcomes other ways of sharing experience concerning best and worst practices, such as the networking of national and regional authorities responsible for the management of PPPs”*
- ✓ *Calls on the Commission to clarify the condition of ‘legal and financial complexity’ in which it is possible to adopt competitive dialogue scheme*
- ✓ *Considers that a comprehensive approach to procurement (the life-cycle concept) and competition between tenderers in terms of innovation result in efficiency gains, when projects are carried out jointly, risk-sharing is optimised and there are functional specifications and a highly incentivising payment mechanism*



Changes in the legal framework for PPP's (2006 - 2007)



Changes in the legal framework for PPP's

Legislative Decree n. 163/2006 "Public Procurement Consolidated Text"

The new rules implement EU procurement directives (17&18/2004) and replace the previous set of regulation, thus consolidating in 257 articles the legal framework regarding public works, services and supplies both in traditional and special activities

- ✓ **ART. 30** Definition of service concessions
- ✓ **ART. 58** Competitive Dialogue. A flexible awarding procedure for technical, legal or financial complex contract particular suited for PPP scheme
- ✓ **ART. 61** Special proceeding to develop housing infrastructures with PPP scheme
- ✓ **ART. 142** Concession under public initiative
- ✓ **ART. 153** Concession under private initiative



Changes in the legal framework for PPP's

Law n. 286/2006 and Budget Law 2007 - "New Rules for Motorway Concession Contract"

Such rules represent a valid pattern to any possible concession contract:

- ✓ **Provision of dedicated public body monitoring and controlling concessionaire obligations throughout the concession**
- ✓ **Provision of wide range of penalties relating to various degrees of defaults up to revoke of entire concession**
- ✓ **Disclosure of existing extra-profits relating exploitation of secondary activities**
- ✓ **Retrocession of extra-profits not directly linked to the risk actually borne by the concessionaire**
- ✓ **Tariff increase directly related and proportional to the investments planned and actually performed**

Budget Law 2007 – Legislative Decree n. 163/2006 – Leasing

- ✓ **Leasing as an available tool for the construction, purchase, management or maintenance of infrastructures.**



Changes in the legal framework for PPP's

Law n. 223/2006 and Decree of the President of the Council of Ministers 31/1/2007

- ✓ **Transfer of UTFP from Ministry of Economy and Finance to Presidency of the Council of Ministers following the transfer of Inter-ministerial Committee for Financial Planning (CIPE)**



PPP types in Italy



PPP types in Italy

Contractual PPP

Institutional PPP

Works Concession

Public-Private Joint
Venture

Service Concession

Urban Regeneration
JV

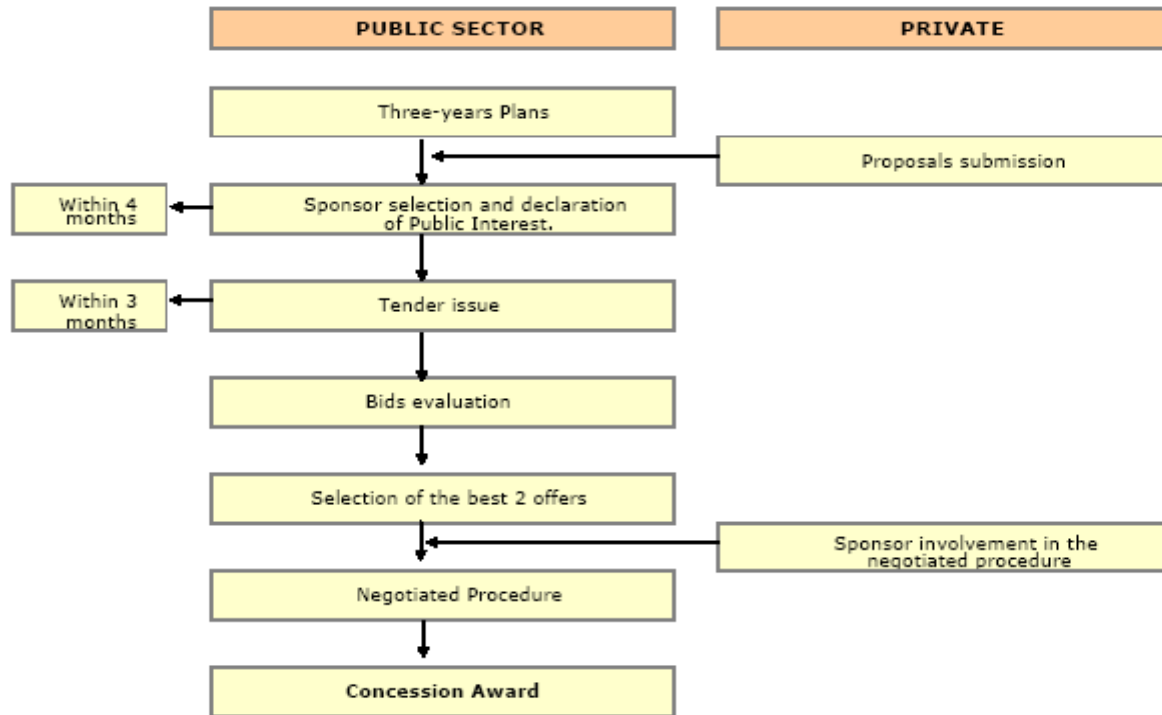
Sponsor

Leasing

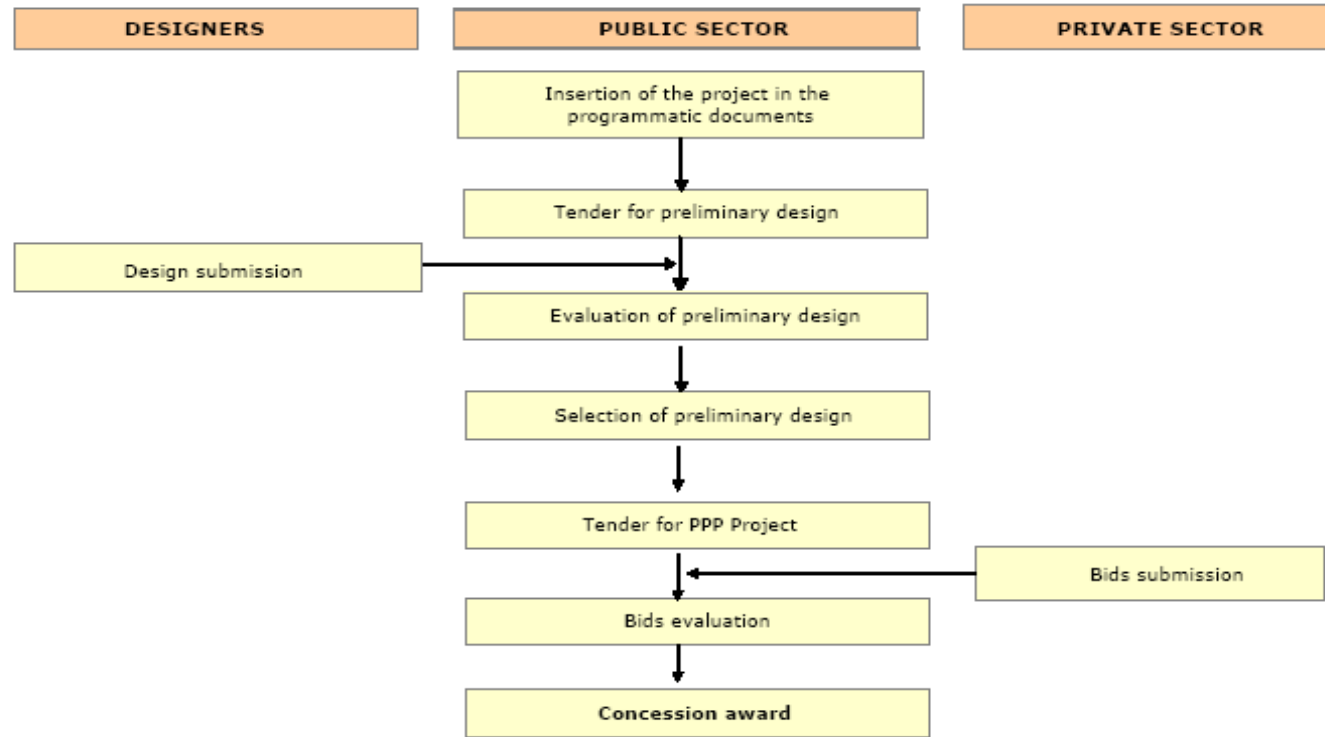
PPP



Concession under private initiative (art. 153 decree 163/2006)



Concession under public initiative (art. 143 decree 163/2006)



UTFP activity “on the field” : institutional framework



UTFP activity “on the field” : institutional framework

Policy Statements

2000-2003 Economic and Financial Planning Document

“The involvement of the private sector in financing, building and operating infrastructures and public utility services is a priority for the South of Italy and the rest of the Country”. It is recognised that Private Sector Participation (“PSP”) in public services brings better design, construction and operational skills, enhancing the quality of the services offered to the end-users.”

2001-2004 Economic and Financial Planning Document

- ✓ **The Government expects to finance € 9 billion of new infrastructures through private funds.**
- ✓ **The private sector is expected to provide debt financing as well as equity capital.**

2002-2006 Economic and Financial Planning Document

- ✓ **Strong emphasis on infrastructure investment as one of the main drivers for economic growth.**
- ✓ **Private Sector expected to play a pivotal role in the construction, financing and management of new infrastructures, contributing € 25 billion over five years.**
- ✓ **Further progress in the process of liberalisation and privatisation of public services.**

2007-2011 Economic and Financial Planning Document

- ✓ **”Optimising private co-financing and adjusting tariffs will make therefore it possible to anticipate or expand priorities”**

2008-2011 Economic and Financial Planning Document

- ✓ **“It is necessary – within the limits of available financial resources – to develop a regulatory framework in coordination with the regional regulatory framework to launch strategic programmes, mainly aimed at boosting the housing supply, to be built not only with public funds, but also through PPPs”**



UTFP activity “on the field” : institutional framework

the Task-Force – Organization

- ✓ Inspired by the UK PFI Taskforce
- ✓ Established by law
- ✓ Previous consultation with the main parties involved
- ✓ Group of 15 professionals:



Legal, financial, technical expertise selected from both private sector and public sector.



UTFP activity “on the field” : institutional framework

the Task-Force - Mission

Educational Role

- ✓ Promoting PPP techniques
- ✓ Developing a PPP Methodology
- ✓ Identifying workable PPP projects to be repeated
- ✓ Database of successful PPP deals

Assistance Role

- ✓ PPP assistance for central, regional and local administrations
- ✓ From the identification of suitable projects to the evaluation of offers
- ✓ Multidisciplinary skills and expertise

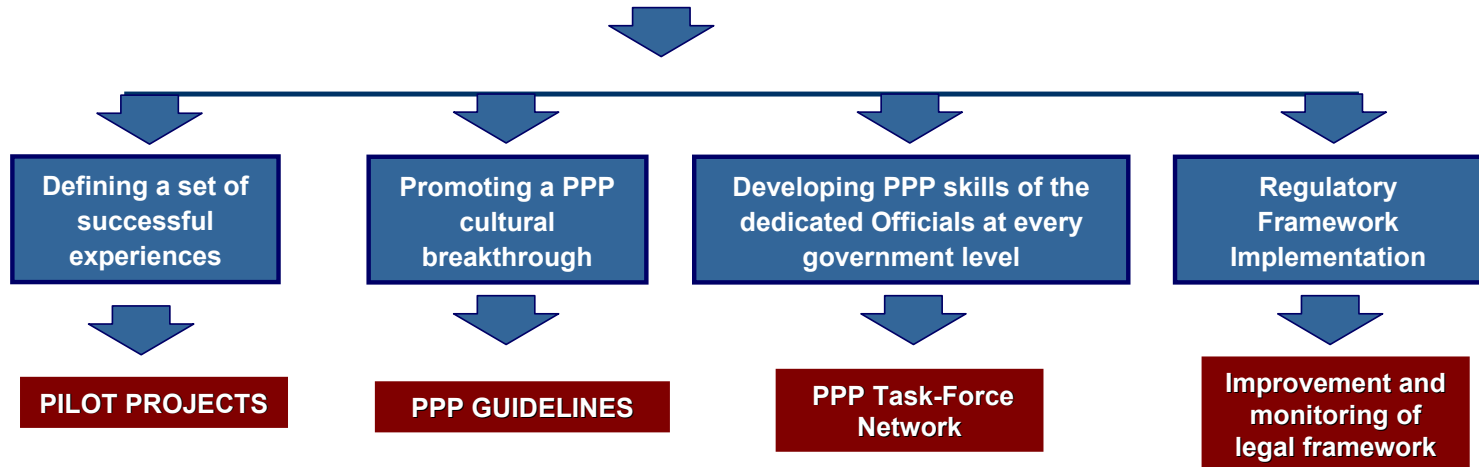
“Policy Making” Role

- ✓ Improvement of legal framework
- ✓ “Best practices” (standardisation of practices and contracts)



UTFP activity “on the field” : institutional framework

OUR RESULTS



UTFP activity “on the field” : institutional framework

Successful experiences

PILOT PROJECTS aimed to support the promotion of PPP techniques. This is one of the main activities of the UTFP and develops selected pilot projects at national level.

The UTFP has accompanied pilot projects, contributing and documenting project experience, helping to solve questions (legal, financial, etc.) which occurred during the project process and providing the results for future PPP projects.

The selected projects were:

- ✓ Salerno-Reggio Calabria (Motorway);
- ✓ Intermodal Terminals Roma-Napoli-Milano (Logistics infrastructures);
- ✓ Torino-Lione (Railway);
- ✓ Quadrilatero Marche-Umbria (Motorway).



UTFP activity “on the field” : institutional framework

PPP assistance for central, regional and local administrations

UTFP aims to support promotion of PPP techniques at any level.

In compliance with law, it supports administrations “on demand” in any phase of the procedure:

- ✓ Three year infrastructure planning
- ✓ Evaluation of proposal (i.e. legal, financial, etc.)
- ✓ Bid preparation
- ✓ Contractual agreement
- ✓ Contract implementation

Between **June 2004 and December 2006** UTFP assisted **108** public administrations and supported **150** projects. Request came:

- ✓ 84% from local administrations
- ✓ 9% from regional administrations
- ✓ 7% from central administrations

- ✓ More than **330** projects assisted over UTFP's life **since 2000**



UTFP activity “on the field” : institutional framework

Strategic infrastructure assistance

2005-2006 UTFP STRATEGIC INFRASTRUCTURE ASSISTANCE		ACTIVITY
Water Supply	Acquedotto Montescuro Ovest Potabilizzatore di Conza Acquedotto del Sinni Acquedotto Molisano centrale Acquedotto Molisano destro	renewing construction construction of a new tank increasing power increasing power
Transport	City of Parma City of Naples City of Bologna City of Rimini-Riccione City of Naples - Capodichino City of Naples - line 6 City of Milan - line 5 City of Teano City Of Modena	transport system railway metro change metro station railway connection construction of metro station construction construction renewing station area construction
Motorway	BRE.BE.MI. - Brescia/Bergamo/Milano CISA - Parma/La Spezia Arcea - Roma/Latina Nord	Motorway construction Motorway construction Motorway construction



UTFP activity “on the field” : institutional framework

PPP cultural breakthrough

The PPP GUIDELINE is one of the UTFP special task. The goal of guidelines is to help ensure the success of future PPP projects.

UTFP develops guidelines on:

- * PPP Test
- * Risk Analysis
- * Private Participation in Infrastructure
- * Feasibility Studies



UTFP activity “on the field” : institutional framework

PPP Regulatory Framework Improvement

10 LEGAL ISSUES to improve private sector participation in financing, building and operating infrastructures and public utility services. The document recommends “soft-law” solution proposals to remove main burdens now in national legislative framework and aimed at proper use of PPP schemes.

Implementation of EUROSTAT Decision 11 February 2004 on the accounting treatment in national accounts of contracts undertaken by government units in the framework of PPPs. The decision specifies the impact on government deficit/surplus and debt.



UTFP activity “on the field” : institutional framework

Developing PPP skills

Task Force Network (“Network”) was established by UTFP. Network and UTFP develop:

- ✓ Solution proposals for improvement of PPP framework conditions;
- ✓ Uniform procedures and tools for implementation of PPP projects;
- ✓ Training programmes for public sector representatives



UTFP activity “on the field” : institutional framework

Other public stakeholder



The “Cassa Depositi e Prestiti” società per azioni (CDP S.p.A.) is a joint-stock company arising directly from the transformation of the public institution set up in 1850. The share capital is held 70% by the Italian Ministry of the Economy and Finance and 30% by Italian banking foundations

The CDP’s mission is to foster development of public investment, local utility infrastructure works and major public works of national interest, ensuring adequate returns for its shareholders while preserving long-term financial and economic balance.

A specific “business area” of CDP is devoted to the funding of works, plants, networks and equipment for provision of public services. The CDP may raise funds through the issuance of securities, borrowing and other financial operations without State guarantees. So as to perform such operations the CDP may deploy funds deriving from market placement of specific financial products



**The way forward:
UTFP commitments for the near future**



The way forward

General issues for the (near) future:

- ✓ Consider PPP approach systematically. Avoid stop-and-go-policies;
- ✓ Complete the “cultural change” in the Public Administration: “ *From asset ownership to service delivery*”;
- ✓ Improve competence and know-how of Public Administration in considering and assessing PPP approach.



The way forward

Legal issues for the (near) future:

- ✓ Reduce total duration and complexity of the actual concession PPP awarding process (from three-stage to one-stage procurement procedure), considering the opportunities of recent EU issues (i.e. “competitive dialogue” procedure);
- ✓ Consider the option to set-up a tailored legal framework for PPP contracts.



The way forward

Financial issues for the (near) future:

- ✓ Increase the efficiency of the public spending through a reduction of public upfront funding in favour of availability-based payments;
- ✓ Reduce the need of public granting introducing alternative sources of financing:
 - ❖ Private equity funds (Fin.OPI, Cassa Depositi e Prestiti, Banking Foundations, specialty funds – Galaxy -)
 - ❖ Public participations (see Fund for Healthcare investments made by Tuscany Region, advised by Merrill Lynch)
 - ❖ New financial tools, in cooperation with international and EU financing institutions (i.e. guarantee instruments, risk capital funding, managed by EIB)
- ✓ In the PPP procurement, link the concession contract to the evidence of financial closing;
- ✓ Implement a secondary market in PPP/PFI equity



The way forward

Operational issues for the (near) future:

- ✓ Systematically implement accurate risk assessment and allocation.
- ✓ Possible stronger involvement of EU Commission and EIB in PPP (EPEC)
- ✓ Need to have a clear picture of the risk transferred to the Government by PPP operations



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