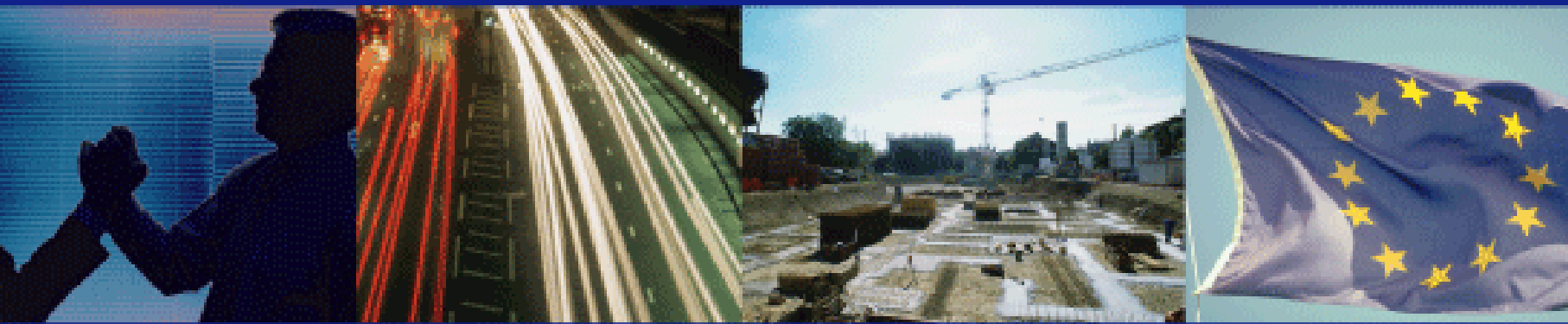


# Strategies and Instruments for PPP Development

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**Models and Strategies for Public-Private Partnerships (PPP):  
Experiences from Italy and Bulgaria**

Rome, 23<sup>th</sup> October 2007

**EU legislative framework: a focus on steps**

**Changes in the Legal Framework for PPP's (2006 - 2007)**

**UTFP activity “on the field”: institutional framework**

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

## **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

## ROSTAT Decision on the accounting treatment of PPPs (2004)

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*” covering 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

### 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 at the financing, construction, renovation, management or maintenance of an infrastructure or the provision of a service

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

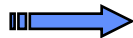
- the framework for the procedures of selection of private partners, and notably, the advantages in the context of the competitive dialogue procedure introduced by the new Directive on public procurement;
- the set-up of PPPs on the initiative of the private sector;
- the contractual framework and contract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

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

*“PPPs 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 including more traditional contract”*

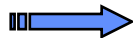
### Classification of PPP's

Contractual PPPs



Award of Concession

Institutional 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 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 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)”*

*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 implement a 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. 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 – Leasing

**Introduction of 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)**

## **UTFP activity “on the field” : institutional framework**

# TFP activity “on the field” : institutional framework

## Policy Statements

### 0-2003 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.”**

### 1-2004 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.**

### 2-2006 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.**

### 7-2011 Economic and Financial Planning Document

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

### 8-2011 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”**

## 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.



## **TFP Task-Force - Mission**

### **Educational Role**

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

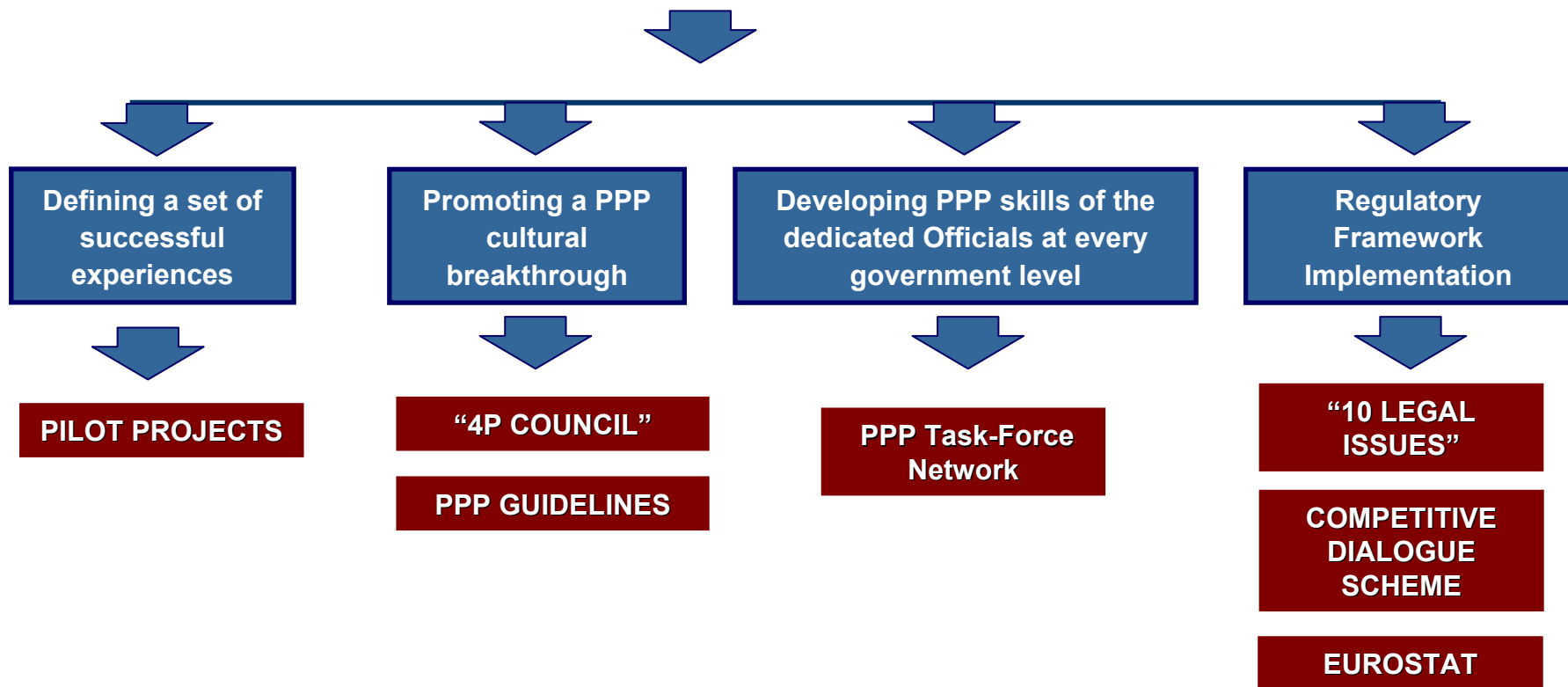
### **Assistance Role**

- 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)

## OUR RESULTS



## 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).

## PPP assistance for central, regional and local administrations

**TFP** aims to support promotion of PPP techniques at any level.

In compliance with law, it supports administrations “on request” 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 **74** public administrations and supported **110** 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**

## 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

## PPP cultural breakthrough

The 4P COUNCIL (Promotion of Public Private Partnership Council) was established by UTFP in 2004.

The organisation is composed of representatives from both public and private sectors. The Council and UTFP conduct research, publish findings, facilitate forums for discussion to develop PPP techniques. The Council also provides support to political officials and decision-makers in investigating and developing partnerships with the private sector.

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 and Project Rating;

- Private Participation in Infrastructure;

- Public Sector Comparator (“PSC”)

- Feasibility Studies

## 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

## Regulatory Framework Implementation

0 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.

A COMPETITIVE DIALOGUE SCHEME as an available option to select the business case by the public sector side.

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.

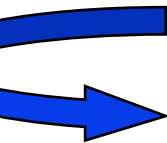
## Other public stakeholder



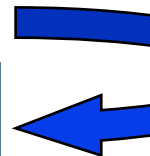
The “Cassa Depositi e Prestiti” società per azioni (CDP S.p.A.) is a joint-stock company arising directly from the transformation of the public institution set up in 1850. The share capital is held 70% by the Italian Ministry of the Economy and Finance and 30% by Italian banking foundations

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



**Galaxy Fund**



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

## 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.

### 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.

## 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:

- ❖ 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)
- ❖ Revolving funds
- ❖ 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

### Operational issues for the (near) future:

Implement strong project control for PPP projects in construction phase;

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

## **CONTACTS**

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