

# Improving the Infrastructure

**Luigi De Pierris**, of UFP, the Italian public private partnership taskforce, provides an overview of PPP in Italy and outlines recent legislation that aims to facilitate a more successful working relationship between the public and private sectors.

**T**he Italian economy has long faced a high level of public debt with respect to its Gross Domestic Product and as compared to the OECD average. In the context of Italy's requirements to comply with the Maastricht convergence criteria, the management of this deficit is critical.

Although in the past decade Italy has seen a gradual shift towards greater private sector participation, today the public sector still accounts for over 25% of the economy. Regarding infrastructure expenditure, the level of public spending has lagged behind that of its EU partners. Recent comparisons of EU infrastructure levels have ranked Italy in 14th place (with a score of 54.1%), compared to 100% received by Belgium and 63.4% by the UK.

Against this backdrop, it is only recently that the political climate has changed sufficiently to embrace the concept of allowing greater levels of private participation in the ownership and management of the historically public infrastructure.

There is now a consensus on the benefits of introducing public private partnerships. In fact, introducing public private participations for the construction and operation of public infrastructure facilitates the optimisation of all the potential synergies between the public and

private sectors. This approach brings several advantages to both parties. Certainly, there is the positive impact on public finances, but there is also the relevant contribution that private sector skills and expertise bring to the optimisation of construction and operating costs of the new infrastructure.

The success of the programme of infrastructure investment is a crucial element of Italy's economic policy, which has singled out the development of national infrastructure as one of the main drivers of economic growth.

## Recent Reforms

In the Economic and Financial White Paper, approved by the Government for the five years from 2002 to the end of 2006, there are substantial references to the importance of establishing PPPs in the infrastructure sector, with a strong emphasis on the role of private sector in the construction and finance industries. There is also an estimate in absolute terms on the amount of investment expected to come from the private sector – as high as €25bn for the duration of the period.

The Economic and Financial White Paper for 2003 to 2006 (approved this summer) establishes other important principles. In particular, it is stated that public administrations are to deliver fewer and fewer

public services directly. Instead, an increasing proportion of public services are to be delivered by private entities operating in a competitive environment.

The principles stated in the White Papers have been embodied in a number of significant measures aimed at increasing the participation of the private sector in infrastructure:

- The enactment of Law 443/2001 (the so-called 'Legge Obiettivo').
- The identification of a first list of 'strategic infrastructure' (CIPE resolution 121/01).
- The enactment of Law 166/2002, reforming the Merloni Law.
- The enactment of Law Decree 190/2002 (secondary legislation complementing the Legge Obiettivo).
- The creation of a brand new financial institution (Infrastrutture Spa), entrusted with the mission of providing financing to infrastructure projects within Italy.
- The creation of Patrimonio Spa, a corporate entity that will introduce new market-oriented models in the management of public-owned assets (mainly land and property).

The Legge Obiettivo (Law 443/2001) was enacted in December 2001. This piece of legislation is intended to give

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impulse to infrastructure expenditure, placing the emphasis on strategic infrastructures (sizeable, important public works identified by central government in consultation with local governments). This creates a system characterised by a greater level of accountability of central government.

The importance of this legislation should be assessed in the context of the constitutional reform embodied in Law 3/2001, which devolves a fair amount of prerogatives to the Regions, including the power to issue legislation disciplining public works. It is perhaps too early to fully assess the impact of constitutional reform on the establishment of PPPs in Italy, but what is clear is that there was a need to reaffirm the accountability of central government for the development of the infrastructure of national interest, which might have been otherwise delayed if central government was no longer in a position to exert its influence.

Law 443/2001 establishes therefore a fast-track system for those infrastructure works identified by central government as strategic, and calls for the effective reduction of red tape through the establishment of new, simpler procedures for authorisations and permits.

Following the parliamentary approval of Legge Obiettivo, a first list of over 200 initiatives was identified in CIPE resolution 121/01, while the 2002-2006 Economic and Financial White Paper lists the first 21 strategic infrastructure projects to be governed by the provisions of Legge Obiettivo.

Law 166/2002 introduces several amendments to the law disciplining public works (the Merloni Law). The objective of the reform is to remove the bottlenecks evidenced in the past four years. In particular, the limit of 30 years as the maximum length of the concession period and the limit of 50% as the maximum level of public sector grants and subsidies have been abolished.

Law Decree 190/2002, complementing the Legge, has

introduced and disciplined the General Contractor. This new player, which has been modelled upon the EU Directive 93/37, will be responsible for “*the execution, by whatever means, of a work corresponding to the specific requirements by the contracting authority.*”

The above new contractual framework is intended to be very different from the traditional forms of procurement for the construction of public works, characterised by minimal risk transfer to the private sector contractor. The General Contractor will enter in a date-certain, fixed-price turnkey contract with the Awarding Authority, according to a design, build, finance and transfer scheme (DBFT). While the Awarding Authority will take care of outline design, the General Contractor will be responsible for developing final design, all the necessary authorisations and permits, performing the works (which can be sub-contracted [in whole or in part] to third parties), and for the prefinancing (in whole or in part) of the construction phase. Conversely, the General Contractor will not be responsible for the operation of the new infrastructure, which instead will be transferred to the Awarding Authority upon completion and acceptance of the works.

### ISPA and UFP

The White Paper also explains the role of Infrastrutture Spa (ISPA). ISPA is a new financial entity, especially designed to provide financial solutions to developers of PPPs and public administrations. The new entity – which is intended to remain 100% in public hands – will be managed commercially (ie it will be responsible for the quality of its assets) and will act as a co-financier with private sector institutions. The idea is that ISPA will supplement the lending capacity of private institutions, making available to the market loans with long-term maturities at attractive rates.

The Unità tecnica per la Finanza di Progetto (UFP) was established under legislation enacted in 1999 and began

operations in July 2000. The creation of this taskforce responded to the need of providing specific expertise to public administrations and assisting them in identifying projects capable of attracting private sector investment.

In order to fulfil this role, UFP can bring to the table its multidisciplinary skills and expertise: UFP members come mainly from the private sector and the group comprises financial, legal and technical experts. As a consequence, several angles can be covered when speaking to the administrations.

The taskforce has played a significant role in assisting public administrations tendering projects to the private sector. More than 120 local authorities/bodies have used the services of the unit, in connection with over 150 projects. However, in spite of the efforts, it is still difficult to push transactions through, the main obstacles being, on the one hand, the limited amount of analysis that administrations are prepared to carry out before tapping the market and, on the other hand, the sometimes opportunistic response of the private sector.

The negotiation process is a long one and only few transactions actually come to life. This explains why there are so few ‘success stories’ to build upon. The UFP still has a few tough years to face, if significant improvement is to be achieved in how public administrations approach the private sector. Having said that, however, it is to be recognised that there is a strong political will behind this effort. Many lessons have been drawn from experience and the reform process has already addressed and corrected a few inadequacies in the pre-existing legislation ■

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