G. Giappichelli Editore

Francesco Merloni
Alessandra Pioggia *Editors*

European Democratic Institutions and Administrations

Cohesion and Innovation in Times of Economic Crisis

Springer

Administrative Cooperation in the Public Contracts and Service Sectors for the Progress of European Integration

Roberto Cavallo Perin and Gabriella M. Racca

Contents

Abstract Administrative cooperation might become a strategic tool for the European integration and the effectiveness of citizens' rights. As such, it requires actions to support, coordinate, and supplement Member States' activities in order to develop integrated networks of national and European public administrations. An integrated system of mutual-benefit interactions among public administrations within the European framework might help to develop common experiences for the effective implementation of the EU provisions on public contracts and services. By overcoming National borders as well as legal and linguistic barriers, a similar model of cooperation could contribute to innovate the National organizational models pursuing the best solutions through innovative economic operators and for the benefit of citizens.

R. Cavallo Perin (✉)
Department of Law, University of Torino, Torino, Italy
e-mail: roberto.cavalloperin@unito.it

G. M. Racca
Department of Management, University of Torino, Torino, Italy
e-mail: gabriella.racca@unito.it

F. Merloni, A. Pioggia (eds.), *European Democratic Institutions and Administrations*, https://doi.org/10.1007/978-3-319-72493-5_12

1 Administrative Cooperation for the Progress of European Integration

Administrative cooperation represents an important tool for implementing the European Union principles and for ensuring the effectiveness of the citizens' rights established by the Lisbon Treaty.[1] The principle of sincere cooperation and mutual recognition[2] and the subsequent provisions on administrative cooperation[3] have favoured the Union and Member State relations development.[4]

Administrative cooperation is one of the new areas of competence of the European Union, together with protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport.[5] These are defined as "supporting competences" related to areas where the European Union has already intervened by means of cross-cutting policies. In these areas the European Union has not acquired a new legislative power and is not required to harmonize national law. Nonetheless it is possible to support the actions of Member States in such areas in order to achieve relevant objectives and actions.

Professionally adequate organizations, capable of pursuing the public interests and of ensuring the effectiveness of public authorities, are required.[6]

The lack of professionalism and skills determines inadequacy in correctly performing public activities.[7] Professionalism thus becomes the essential prerequisite of a structural reorganization and allocation of functions, including the cooperation among European administrations.[8] Such capacities are needed to avoid that "substantial ineffectiveness—even if not formal—of European law" determines inefficiencies of administrative structures, thus resulting in "asymmetries" in the implementation of European law.[9]

The introduction of new European institutions and new levels of governance require a redefinition in the competences of the different institutions at all levels[10] in

[1]Treaty on the Functioning of the European Union—TFEU arts. 6 and 197.

[2]Armstrong (2002), p. 231; Galetta (2010a), pp. 191–202 and in *Rivista italiana di diritto pubblico comunitario*, 2009/6, 1689–1698.; Lottini (2012), p. 131 and ff.; and Pizzetti (2000), p. 331 and ff. E.C.J. 10 February 2000, FTS, C-202/97, *Fitzwilliam Executive Search Ltd. v. Bestuur van het Landelijk instituut sociale verzekeringen*; E.C.J. Presidential ordinance, 19 April 2005, C-521/2004, *Tillack v. EC Commission*.

[3]Treaty on the Functioning of the European Union—TFEU arts. 6, pp. 74–76 and 197.

[4]Chiti (2012), p. 19 and ff; Macchia (2010), Ibid., p. 87.

[5]Treaty on the Functioning of the European Union—TFEU art. 6.

[6]The forms of cooperation allow for the application of EU law and related policies: Hofmann (2008), p. 31. On the public procurement sector: Racca (2010), pp. 119–133.

[7]In Italy, the principle of adequacy is set out in the Constitution, Art. 118(1).

[8]See, EU Commission, Commission of 3 March 2010—Europe 2020 A strategy for smart, sustainable and inclusive growth COM(2010) 2020 final.

[9]Sorace (2010) cit., pp. 82 and ff.

[10]Cavallo Perin et al. (2016). Racca (2015), cit., p. 489 et seq. and Racca (2014a), p. 11 et seq.

the "European administrative space"[11] in order to favor "integration between national administrations and with the EU institutions which, while respecting national autonomy", pursue integrated administration models and "have the effect of defining common principles", while also favoring the convergence of organizational models.[12]

Although gradually, an "open, efficient and independent"[13] European administration is going to be established and should progress in ensuring the right to good administration[14] as provided by the Charter of Fundamental Rights and by "administrative citizenship".[15] Therefore, within a further reorganization of the public administrations, cooperation assumes importance as a legal tool that might ensure effectiveness of European Union law and of its national implementation, thus favoring integration between public administrations and their legal systems.[16]

Administrative cooperation—both as vertical cooperation between the European and national levels and horizontal collaboration among national administrations—is developing as a new competence of the European Union which does not limit the responsibility of the Member States but is an internal policy that requires actions to

[11]Chiti (2011), p. 163 et seq; Id. Chiti (2012), *cit.*, p. 19 et seq.

[12]Cfr. Turk (2009), p. 218; Deirdre Curtin (2007), pp. 523–541, and Lottini (2012), *cit.*, p. 129 et seq.

[13]TFEU, art. 298: "*(1) In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. (2) In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end*". Cfr. Schwarze (2012), pp. 297–298; EU Parliament, *Towards an EU Regulation on Administrative Procedure?*, 2010, in http://www.europarl.europa.eu. Art. 41, Charter of Fundamental Rights of the European Union codifies the principle—deriving from the Court of Justice—not qualifying good administration as a principle governing the actions of the administration, but as a general principle of law (J. Schwarze, Ibid., 298). The right to a good administration "*is one of the general principles of the rule of law common to the constitutional traditions of the Member States" [and in which they find expression rights such as the] "right of diligent and impartial treatment of a complaint"* (E.C.J., 30 January 2002, case T-54/99 *Max.Mobil v. Commission* Racc. II-313, par. 48 and 49) enshrined in the law even before the entry into force of the Charter (E.C.J., 18 September 1992, T-24/90, *Automec v. Commission*, Racc. II-2223, § 79, 15 September1998, T-95/96, *Gestevisión Telecinco v. Commission*, Racc. II-3407, § 53). See also E.C.J., 22 February 2005, C-141/02, *Commission v. Max.Mobil*, Racc. I-1283, par. 72; Nieto-Garrido and Delgado (2007), p. 26; Lenaerts (2004), pp. 317–343.

[14]Charter of Fundamental Rights of the European Union, art. 41. Rabinovici (2012), p. 149 et seq; Trimarchi (2011), p. 537 et seq.; Ponce Solé (2011), Part 2, p. 133 et seq.; Cartabia (2010), p. 221 et seq.; Galetta (2010b), p. 601 et seq.; Perfetti (2010), p. 789; Trimarchi Banfi (2007), pp. 49–86; Chiti (2005), p. 3940 and Nicoletti (2006), p. 776 et seq.

[15]Cavallo Perin (2004), pp. 201–208.

[16]Macchia (2012), p. 85.; Chiti (2010a), p. 241 et seq.; Lottini (2012), pp. 127–147, where cooperation is considered as an integration tool, which aims to ensure the proper application of EU law and the protection provided by the E.C.J.

"support, coordinate or supplement the actions of the Member States".[17] Indeed, such competence "shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission".[18]

It might, therefore, support the efforts of Member States in the exercise of those functions not necessarily requiring a harmonization of the provisions among the different legal systems of Member States.[19] The aim of such a cooperation is the creation of an integrated system of public administrations, whether national or European.[20]

The wording "to supplement the actions of the Member States"[21] might be interpreted as an effort to create a system of reciprocal interactions among administrations within a European framework that could develop common experiences and principles in the implementation of EU provisions on contracts, goods and services. Such cooperation could innovate organizational models pursuing the most favorable solutions for further integration of different public administrations.[22]

[17]TFEU, art. 6: *"The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; (g) administrative cooperation"*. EU Commission, *Commission staff working paper concerning the application of EU public procurement law to relations between contracting authorities ('public-public cooperation')*, 4 October 2011, SEC(2011) 1169 final. See Wiggen (2012), pp. 225–233.

[18]See TFEU, art. 197(3).

[19]Cortese (2012), cit., p. 168 and Schwarze (2012), p. 287.

[20]Chiti (2012), *cit.*, p. 19 et seq. See EU Parliament, *European administrative law in the light of the Treaty of Lisbon: introductory remarks*, 2011 (on line: http://www.europarl.europa.eu), Id., *Towards an EU Regulation on Administrative Procedure*?, 2010, available at http://www.europarl.europa.eu, where the convergences between the evolution of European administrative law and of the national administrative laws are highlighted. At the very beginning the legal traditions of the Member States have influenced the E.C.J. case law in the formulation of General principles in the matter of "circular motion"; then, the principles of law established by the E.C.J. have influenced the administrative law of the Member States and, increasingly, the European legislation and secondary sources, at times pushing Member States to change their internal administrative laws in compliance with European standards even in areas outside the Union's competence.

[21]TFEU, art. 6.

[22]TFEU, art. 298: *"(1) In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. (2) In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end"*. Craig *A General Law on Administrative Procedure, Legislative Competence and Judicial Competence, European Review of Public Law*, 2013, 503 (on line: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2298610), where the legitimacy of the European institutions the adoption of a general regulation on administrative procedure is brought back to the rules of the Treaty expressly confers on the regulatory power in certain sectors: telecommunications, waste management, protection of competition.

Direct interventions of the European Union on administrative cooperation were traditionally limited by the principles of subsidiarity and proportionality.[23] Administrative cooperation will advance through European interventions to support Member States' administrations in order to increase the "administrative capacity to implement Union law",[24] whose effectiveness becomes a matter of public interest.[25]

Administrative cooperation becomes, as such, an essential tool for the proper functioning of the European Union.[26]

The forms of cooperation are of "common interest" to reduce the peculiarities of the national legal systems,[27] considering that the competitiveness of European countries also depends on the performance of public administrations and the quality of services assured to citizens and companies.

Therefore the intervention of the European institutions should aim at completing national actions so to ensure "European quality" services to citizens.[28]

[23]TEU, art. 5; Treaty of Lisbon, annex protocol 2.

[24]TFEU arts. 6 and 197. See Lafarge (2010), pp. 597–616, qualifies administrative cooperation as an essential element for the proper functioning of EU policies and related European legislation, particularly with regard to matters related to the internal market. Administrative cooperation is the instrument to ensure free movement of goods, persons, services and capital, and to reduce barriers between the public administrations of the States. In this context, the transition from the concept of a common market to that of the single market implies a higher level of cooperation. See Directive 2006/123/EC, 12 December 2006, on services in the internal market, which states that *"administrative cooperation is essential to make the internal market in services function properly. Lack of cooperation between Member States results in proliferation of rules applicable to service providers or duplication of controls for cross-border activities, and can also be used by rogue traders to avoid supervision or to circumvent applicable national rules on services. It is, therefore, essential to provide for clear, legally binding obligations for Member States to cooperate effectively."* See *The Internal Market after 1992. Meeting the Challenge. Report to the EEC Commission by the High Level Group on the Operation of the Internal Market*, 28 October 1992, accessible at http://aei.pitt.edu/1025/1/Market_post_1992_Sutherland_1.pdf, referring to the need of "enforcing the rules through partnership".

[25]TEU, art. 4, *"The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union"*.

[26]See TFEU, arts. 6 and 197. Cortese (2011), pp. 140 and 141 and Macchia (2010), cit., p. 94, pointing out that the ability to effectively implement EU law exceeds the "formal complying with the law" finally coming to the definition of a "cohesion between law and social reality". Cfr. Chiti (2010b), p. 221, where it is stated that art. 197 TFEU seems to be posing a new 'constitutional' attention to the issue regarding national public administrations' capacity, qualifying the effectiveness of enforcement as a question of common interest and acknowledging that it should be ensured by a system of cooperation at the EU level.

[27]Galetta (2010a), p. 1689 et seq. and Chiti (2004), p. 175 et seq.

[28]On this issue: D'astoli and Dotto (2012), 7; Galetta (2009); Chiti (2012), *cit.*, pp. 26–27; Macchia (2010), therein, p. 109. See Schwarze (2012), p. 294, where the 'voluntary' nature of cooperation is highlighted, as governed by art. 197 TFEU where the European Union action is used to support the Member States in order to "improve their administrative capacity to implement Union law" (TFEU art. 197(2)) helping to ensure their effectiveness.

The European Union's general competence on administrative cooperation (Art. 6 TFEU) "shall [...] be without prejudice to other provisions of the Treaties providing for administrative cooperation among Member States and between them and the Union".[29] Such cooperation includes: customs cooperation[30]; coordination and cooperation between police, judicial and other competent authorities and the recognition of judgments in criminal matters[31]; the creation of an area of freedom, security and justice with respect for fundamental rights, safeguarding the peculiarities of the different jurisdictions and different legal traditions of the Member States.[32] Moreover, it might be of interest the special provision of the TFEU which concerns cooperation in tax[33] and civil matters,[34] which favors the possible harmonization of national legislations in order to ensure "the establishment and functioning of the internal market and to avoid distortions of competition".[35] Such provisions might also be of interest for the award and execution of public contracts. Cooperation among contracting authorities might become an effective tool to spur the single market of public procurement to develop new award and execution procedures that will inevitably tend to integrate and harmonize the practice and acts of the public administrations involved.

The Treaty provides for actions aimed at "the exchange of information and of public officials" and at "supporting training programs"[36] to overcome inadequate systems that are inefficient and unable to properly implement the EU law and to meet

[29]TFEU, art. 197(3).

[30]TFEU, art. 33. "*Within the scope of application of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission*".

[31]TFEU, arts. 82 et seq. See Selvaggi (2015), p. 3800B and Spiezia (2015), p. 1614C.

[32]TFEU, art. 67. See also art. 87 TFEU, where it is affirmed that "*The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences*". Lafarge (2010), p. 600 et seq.; *The Internal Market after 1992. Meeting the Challenge. Report to the EEC Commission by the High Level Group on the Operation of the Internal Market*, cit.

[33]TFEU, arts. 113 and 115; Directive 2011/16/EU, 15 February 2011, on the obligations of national authorities to send information to the competent authorities of the other Member States.

[34]TFEU, art. 81, where it is provided that "*The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States*".

[35]TFEU, art. 113. Lafarge (2010), *cit.*, pp. 602–611, where it is made a distinction between the duties of cooperation provided for by the EU legal framework (TFEU, art. 33 in the field of customs cooperation; TFEU, art. 46(a), in the field of free movement of workers; TFEU, art. 74, in the field of an area of freedom, security and justice; TFUE, art. 81 in the field of judicial cooperation on civil matters) and optional tools aimed to favor cooperation.

[36]TFEU, art. 197(2), with regulations approved by the Parliament and Council.

the needs of the communities.[37] Cooperation in the training of public officials[38] allows for the dissemination of information and best practices for the pursuit of the common goal of the effectiveness of European law[39] even beyond the effects of legislative harmonization.[40]

The European administrative space has developed in different sectors, identifying the administrative cooperation tools that allow to define a model of "integrated administration".[41] Such model favors the effectiveness of the internal market and the competition among economic operators, both fundamental rights (in view of a European administrative citizenship)[42] particularly in the public contracts and services sectors.

Cooperation and networking strategies among European public administrations involve an inevitable comparison between the services rendered by national administrations (benchmarking), the circulation of best practices in order to develop qualitative performance standards (minimum and uniform), supranational parameters and the definition of European indicators, the levels of performances, and the accountability of public administrations in the implementation of "the right to good administration".[43] Cooperation provides a balance between the exercise of economic

[37]Cavallo Perin (2000), cit., p. 613, on the distinction between the judgement of validity (necessarily referring only to the act, i.e. the activity) and the judgement on efficiency, which concerns the organization as a whole, where it is noted that an efficient administration determines an efficient activity. Caretti (1994) and Pinelli (1994), therein; Corso (1995) and Hofmann (2008), cit., p. 662 et seq.

[38]Among the forms of cooperation in the training of public officials in Europe, we can recall the European Institute of Public Administration (EIPA) which, through a network among public administrations (European, national and local), offers integrated training with activities of research and applied consultancy; the European Public Administration Network (EUPAN), which is a type of informal cooperation among the public administration ministers of the Member States, the EU Commission and possible observers, carrying out its activities at the political, managerial and technical levels (including through special groups of work): Common Assessment Framework, 2013, http://www.eipa.eu/en/topic/show/&tid=191; EUPAN, http://www.eupan.eu/en/content/show/&tid=188. Ponzio (2012), p. 22 et seq.; Colaiacomo (2009), p. 186; Rolli and Comite (2008), p. 326 and Bianchini (2003), p. 349.

[39]Galetta (2010a), *cit.*, p. 1689 et seq.

[40]Cassese (1987), p. 155; Merusi (1993), p. 21 et seq; Franchini (2007), p. 245 et seq and Bachelet (1957), p. 23.

[41]Hofmann (2008), *cit.*, pp. 665–668.

[42]Charter of Fundamental Rights of the European Union, art. 41. Romano Tassone (2008), p. 112. Cfr. Schwarze (2012), *cit.*, pp. 298–299, where it is clarified that the choice of founding "European administrative law" on the concept of rule of law has made it possible to define the development of the protection of fundamental rights including the right to good administration (Charter of Fundamental Rights of the European Union, art. 41) and the right of access to documents (Charter of fundamental rights of the European Union, art. 42). Bassanini (2012), *cit.*, p. 16.

[43]See Charter of Fundamental Rights of the European Union, art. 41. See: Bassanini (2012), *cit.*, pp. 15 and 16, with reference to the creation of a "Maastricht public administration" and to the possible setting in the Treaty of "quality standards and minimum efficiency while respecting the diversity of the choices made by each country with regard to the institutional and organizational models and the status of civil servants".

freedoms and the principle of solidarity—with an effective implementation of social rights, already recognized in the legal systems of the Member States—pursuing a social and economic cohesion.

This may encourage the development of European public services, even through forms of European aggregation of public contracts in order to favor innovation, growth and sustainable development. The implementation of the European administrative space might determine a progressive overrun of the organizational, administrative and judicial autonomy of legal entities, as defined by the national legislation. Administrative cooperation, improved by the increasing use of technology,[44] might develop a number of European networks to improve the quality of administrative action at the European and national levels.

[44]To exploit the full potential of these means, tools can be used that are designed for all sectors and include the exchange of information between institutions, agencies and national public administrations, the so-called IDABC Interoperable Delivery of pan-European eGovernment Services to Public Administrations, Business and Citizens whose objective is the development of e-government services to public authorities, economic operators and citizens; the Internal Market Information System which is the European cooperation tool aimed to facilitate the exchange of information among public administrations of EU States: see the Growth DG Communication: http://ec.europa.eu/growth/toolsdatabases/newsroom/cf/itemdetail.cfm?item_id=8235&lang=en&title=European-Commission-launches-IMIpublic-procurement-pilot-project, 20 April 2015. "Once registered in the system and depending on the national organisation of the use of IMI, they can: remove doubts surrounding the authenticity of a document or certificate provided by a tenderer; check that a company has the required technical specifications (fulfills national standards, labels, conformity assessments, etc.) or is suitable for carrying out the contract in question; verify that a company does not fall under any grounds for exclusion such as having been convicted for fraud; confirm the information from a previously submitted European standardised self-declaration of a tender". In addition, the EU Commission has unified in one program—the Interoperability Solutions for European Public Administrations—ISA program—forty actions related also to activities carried out in previous EU-funded projects aimed at interoperability of information of public administrations and standardization content (see The ISA program, http://ec.europa.eu/isa/actions/index_en.htm, whose budget is about 160 million Euros) in which special interests have taken those specifically aimed at simplifying the formalities relating to public contracts (see: "Supporting cross-border accessibility and interoperability in eProcurement", http://ec.europa.eu/isa/actions/02-interoperability-architecture/2-11action_en.htm and "Towards a simple procurement eligibility assessment" http://ec.europa.eu/isa/actions/02-interoperability-architecture/216action_en.htm) especially of cross-border and transnational character. As part of the ISA program on interoperability tools for public administrations on public contracts, we can find the action called "Greater clarity of evidence requirements in the EU public procurement" aimed at developing computer tools (e-Certis) to facilitate participation in the selection procedures for a contractor, including for SMEs. On this point see: http://ec.europa.eu/isa/actions/02-interoperability-architecture/2-17action_en.htm. Lafarge (2010), pp. 612–613; Lafarge (2010), *cit.*, pp. 612–614, on the forms of administrative cooperation developed in Europe since the mid 1990s through the use of databases.

2 The New Provisions on In-House Providing and the European Public Administrations

The new EU directives on public contracts and concessions have, for the first time, expressly excluded from their scope[45] both the awarding of the in-house providing[46] and a cooperation agreement with other public authorities for the performance of public services of common interest.[47]

The rules on competition apply only when the provider is a third-party organization.[48] It is of no relevance whether the provider is a non-profit organization not having a corporate structure or not ensuring its normal activity on the market,[49] or a public entity,[50] because what is relevant is that such an entity intends to meet the economic demand of a contracting authority.[51]

It has been stressed[52] that the grounds for exclusion mentioned in the Directives are to be clearly distinct from the exemption allowed for negotiated procedure,[53] as in the first hypothesis a relationship with the market is completely lacking, while in the second, the encounter between supply and demand can find an exemption from

[45]Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, *on the award of concession contracts*, art. 17; Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014, *on public procurement*, art. 12; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014, on the so-called excluded sectors, art. 28; See Wiggen (2014), p. 83 et seq.

[46]The expression "in-house contract" was used for the first time in the 1998 White Paper, in which the European Commission considers *in-house* procurements as those awarded within the Public Administration, between central and local public administrations and between the Public Administration and a company which is wholly owned by it. See the Opinion of Advocate-General S. Alber, in E.C.J., 9 September 1999 in Case C-108/98, *RI.SAN Srl v Comune di Ischia*, and then E.C.J., 18 November 1999, in C- 107/98 *Teckal srl* v. *Comune di Viano and AGAC*; the dispute is reconstructed in Cavallo Perin and Casalini (2006), pp. 51–97; Noguera De La Muela (2010), p. 159 et seq.; Capantini (2004), p. 801; Casalini (2003), p. 248 and Alberti (2001), p. 511, p. 47 et seq.

[47]Among which, with a special set of norms, every joint venture that has been established for at least 3 years between the contracting authorities is included: Directive 2014/23/EU, *cit.* Art. 14; Directive 2014/24/UE, *cit.*, art. 12.

[48]E.C.J., 7 December 2000, in case C- 94-99, *ARGE Gewässerschutz* v. *Bundesministerium für Land und Forstwiertschaft* (par. 38) denying a discrimination or a restriction contrary to the Treaty in the possibility for a body governed by public law and receiving public subsidies to participate in a public tender submitting bids at prices that are considerably lower than those of others (see. Discipline on abnormal supply or the prohibition on aid to businesses). E.C.J., 18 December 2014, in case C-568/13, *AO-Universitaria Careggi-Firenze* v. *Data Medical Service S.r.l.*, according to which it is contrary to European law to exclude a public hospital from participating in tendering procedures because of its nature of public economic entity.

[49]E.C.J., 23 December 2009, in case C-305/08, *Conisma* v. *Regione Marche*, par. 30 and 45.

[50]See State Council, section VI, 18 May 2015, No. 2515.

[51]Equally indifferent is the system of ownership, and directive 2014/24 takes care of clarifying that it does not require the privatization of public entities providing services to the public.

[52]The opinion of Advocate-General *V. Trstenjak*, 23 may 2012, in case C-159/11, *Asl Lecce* and *Università del Salento* v. *Ordine degli Ingegneri della Provincia di Lecce*, par. 49.

[53]Directive 2014/23/UE, *cit*, art. 31, par. 4 et seq.; Directive 2014/24/UE, *cit*, art. 32.

competition. Such exemption rules obey to the principle of national, regional and local autonomy (self-organization)[54] that the Directives themselves expressly provide for,[55] to freely[56] organize the execution of their work or services in accordance with national and European law,[57] according to the proportionality principle. It is worth noting that such legal autonomy is recognized not to the Member States, but directly to the national, regional and local entities,[58] which can choose among the different models of production of goods or services provided for by law. The same principle has been applied by the ECJ, which recognized the discretion of contracting authorities in the choice of the criterion for the selection of tenderers.[59] Together with such discretion, the accountability of public administration requires to ensure a high level of quality of services, equality and universal access[60] to public services[61] of general economic interest (arts. 28 and 54, Italian Constitution).[62] National, regional and local authorities can decide to carry out their activities according to well-known alternatives, now provided for in the Directives: using their own resources, individually or in cooperation with other contracting authorities, or awarding them to economic operators. Using their own resources means that they can perform these activities, both through their own offices and through organizations without a legal personality or more generally through legal entities that have been defined as in-house providing.[63] Using their own resources include in-house providing and administrative cooperation also with contracting authorities of other

[54]There is no duty to liberalize or externalize services of a general economic interest (*Opinion of the European Economic and Social Committee of the 26 April 2012 on the 'Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts'* COM(2011) 897—2011/0437 (COD)). Directive 2014/23/EU, *cit.*; European Charter of Local Self-Government, 15 October 1985, art. 2, ratified in Italy with Law of 30 December 1989, no. 439, arts. 1–3.

[55]Directive 2014/23/EU, *cit*, art. 2.

[56]After the repeal referendum of art. 23 *bis*, Law Decree of 25 June 2008, no. 112, converted into Law of 6 August 2008, no. 133, as well as the unconstitutionality of art. 4 Law Decree of 13 August 2011, no. 138, converted into Law of 14 September 2011, no. 148, the in-house goes back to being regulated by EU law principles and specific rules. State Council, section V, 30 September 2013, No. 4832; State Council, section VI, 11 February 2013, No. 762; State Council, 26 January 2011, No. 24; *amplius* Cavallo Perin (2011), pp. 119–135, Id., (2014a), pp. 23–40.

[57]State Council, section V, 22 January 2015, No. 257; State Council, section V, 30 September 2013, No. 4832; State Council, section VI, 11 February 2013, No. 762.

[58]Romano (1987), p. 31 et seq.

[59]E.C.J., 7 October 2004, *Sintesi S.p.A.* v. *Autorità per la Vigilanza sui Lavori Pubblici*, in case C-247/02; E.C.J., V, 26 March 2015, *Ambisig* v. *Nersant*, in case C-601/13.

[60]Directive 2014/23/EU, *cit.*, art. 2.

[61]The expression "public services" is not common in European Law; for public service obligations: see EU Commission, Commission Staff Working Paper, *The Application of EU State Aid rules on Services of General Economic Interest since 2005 and the Outcome of the Public Consultation*, 23 March 2011, SEC(2011) 397.

[62]Merusi (2006), p. 1 and Sardelli (2015), p. 464.

[63]E.C.J., 18 November 1999, in case C-107/98, *Teckal* v. *Com. Viano e AGAC*; State Council, section V, 6 May 2002, No. 2418; State Council, section VI, 11 February 2013, No. 762; State Council, section VI, 25 January 2005, No. 168; State Council, section V, 11 May 2007, No. 2334.

Member States or of the European institutions themselves, all of them falling within the scope of PPP (Public-Public-Partnership)[64] as they contribute to the definition of the European public administration.[65]

The in-house provider is not a third party[66] because it is under a "similar control"[67] to the one provided by the contracting authority on its services[68] and activities and also because its activities are not intended for the market. This "similar control" is carried out in a way that is similar to the one they have on their own services, e.g. the power of "direction and control" over management activities (see for Italy Legislative Decree of 30 March 2001, no. 165, art. 4). "Similar control" means a decisive influence in the definition of strategic objectives and significant decisions of the provider.[69]

The European discipline overcomes two other interpretive issues: one on the full public participation and the other on the "joint similar control" of a plurality of public authorities over the in house provider.

The absence of private capital in the subsidiary company is now set by the Directive as a general further requirement, although closely related to the effectiveness of a "similar control".[70]

[64]EU Commission, *Commission Staff Working Paper concerning the application of eu public procurement law to relations between contracting authorities ('public-public cooperation'), 4 October 2011*, SEC(2011) 1169.

[65]Art. 5, art. 6, art. 197, TFEU on which supra § 1.

[66]Trimarchi Banfi (2010), p. 339; Iera and Villari (2014), p. 525; Mazzamuto (2014), p. 550; Ursi (2014), p. 557 and Volpe (2015), in www.astrid-online.it/.

[67]E.C.J., 18 November 1999, in case C-107/98, *Teckal* c. *Com. Viano e AGAC*, par. 26.

[68]See E.C.J., 8 May 2014, in case C-15/13 *Politecnico di Amburgo HIS* v. *Datenlosten Informationssysteme GmbH*; E.C.J., 13 November 2008, in case C- 324/07, *Coditel Brabant SA* v. *Commune di Uccle;* E.C.J, 10 September 2009, in case C-573/07, *Sea Srl* v. *Comune di Ponte Nossa*; E.C.J., 17 July 2008, in case C –371/05, *Commissione delle Comunità europee* v. *Repubblica Italiana*; E.C.J., 11 May 2006, in case C-340/04, *Carbotermo S.p.A. Consorzio Alisei* v. *Comune di Busto Arsizio e Agesp Holding S.p.A.*; E.C.J., 13 October 2005, in case C-458/03, *Parking Brixen GmbH* v. *Comune di Bressanone ASM Bressanone S.p.A.*; Court of Cassation, United Civil Sections, 28 January 2014, no. 3201; Court of Cassation, United Civil Sections, 25 November 2013, No. 26283; Court of Audit, Section for the Supervision of Lazio, Deliberation 20 January 2015, c.2015c.PRSP; State Council, section III, 27 April 2015, No. 2154; State Council, Opinion, section II, 30 January 2015, No. 298; State Council, section VI, 26 May 2015, No. 2660; State Council, section V, 14 October 2014, No. 5080; State Council, section V, 8 March 2011, No. 1447; State Council, section V, 26 August 2009, No. 5082.

[69]Goals, priorities, plans, programs and general directives for administrative action and management: Legislative Decree no. 165, 2001, art. 4(1b). See Legislative Decree no. 165 of 2001, *cit.*, art. 7, par. 6, where it is provided, as a condition for the award of tasks to external personnel, that the administration has *"preliminary assessed the objective impossibility to use the human resources available within the administration"*. It is a constraint, also introduced in various specific disciplines, that is considered as an expression of the principle of good administration and the violations of which constitute a legal basis for administrative liability.

[70]See E.C.J., 11 January 2005, in case C-26/03, *Stadt Hall* v. *RPL Lochau*, excluding that an authority can exercise a control similar to the one exercised over its own departments even if a private company owns a minimum share; E.C.J., 13 November 2008, in case C- 324/07 *cit.*; see E.C.J., sez. III, 10 September 2009, *Sea Srl* v. *Comune di Ponte Nossa*, in case C-573/07, where the

Strictly speaking, the similar control provision concerns the management, while the public or private ownership of the investment defines the property on the legal entity and has the function to provide adequate guarantees to third party creditors.[71] Each user or citizen that wants to acquire shares of the in-house provider is not competing with others since no one can be excluded. Everyone has the opportunity to participate in the company managing the public service, without any competing tender.[72]

A similar joint control is achieved when the contracting authorities: (1) have a representative in the governing bodies of the provider that might be in common to most or all of the other authorities; (2) exercise decisive influence over the strategic objectives and significant decisions of the provider; (3) do not see the provider as pursuing interests in contrast to their own. It is accepted for the first time the ECJ case-law[73] of joint similar control of a plurality of contracting administrations over the same in-house provider. It is not necessary that the similar control is exercised by each of the contracting authorities,[74] since it is sufficient that the legal instruments of public or private law—with others—are adequate to grant an effective power to direct

mere possibility that privates participate in the capital is not sufficient to exclude a similar control; E.C.J., 6 April 2006, in case C-410/04 *Anav* v. *AMTAB;* Cassation, United Civil Sections, 25 November 2013, no. 26283 where the wholly-owned public capital is considered as one of the three conditions after which it is possible to establish an in-house providing relationship; State Council, section VI, 26 May 2015, no. 2660 where it is said that the wholly-owned public capital is the necessary, though not sufficient, condition to exert a similar control; Opinion State Council, No. 298 of 2015; State Council, section VI, 25 November 2008, No. 5781; State Council, section V, 30 August 2006, No. 5072; State Council, section V, 11 September 2015, no. 4253; State Council, section VI, 26 May 2015, No. 2660; State Council, section VI, 25 November 2008, No. 5781; State Council, section V, 30 August 2006, No. 5072.

[71]*Amplius:* Cavallo Perin (2011), *cit.*, pp. 124–125. See Goisis (2004), p. 48.

[72]The discipline on the local public services which requires for the tender to allocate capital shares of the companies managing services to privates is not an obstacle: Legislative Decree of 18 August 2000, no. 267, art. 115.

[73]See E.C.J., section I, 13 October 2005, in case C-458/03, *cit.*; E.C.J., section III, 13 November 2008, *Coditel Brabant SA* v. *Commune d'Uccle* e *Région de Bruxelles-Capitale*, in case C-324/07, where, dealing with the question of in-house with joint control, it was stated that "the possibility for the public authorities to use their own instruments to fulfill their public service missions can be used in collaboration with other public authorities", with comment of Ferrari (2009), p. 354; E.C.J., 10 September 2009, in case C-573/07 *cit.*, about the representatives of the company and the exercise of trustees in the exercise of statutory powers of interference on major decisions; E.C.J., 29 November 2012, in case C-182/11 and C-183/11, cit., for a similar joined control, the participation of the awarding authority in both the capital share and the governing bodies is considered to be valid. In the case law: State Council, section V, 26 August 2009, No. 5082; State Council, section V, 25 June 2002, No. 3448, asserting that the low participation of some municipalities is not relevant; State Council, section V, 19 February 2004, No. 679; State Council, section V, 10 September 2014, No. 4599, where the representative in the board of directors is not relevant in case its tasks are directed to implement the board's orientation and for non-classified acts.

[74]*Amplius* Cavallo Perin and Casalini (2006), *cit.*, p. 80: the "similar control" is "relative" and "not absolute" and the "excessive fragmentation" of capital shares does not prevent the continuation of a relationship of in-house providing, imposing vice versa that the latter shall have powers to influence the choices of society; Cavallo Perin (2011), *cit.*, pp. 124–125.

the activities of the provider.[75] The European directive requires that every public authority has a representative in the governing bodies of the provider, also in common with others, so that all public authorities may exercise decisive influence over the strategic objectives and on the most significant decisions of the in-house provider.[76]

The European Union Directives consider public holdings as a single organization within which the rules on competition are irrelevant, since the intra-group relationship must be considered internal, regardless of the multiplicity of legal entities that constitute it and of the role of each one as controlling or controlled entity. Once defined the scope of the public holding—through similar control and 80% of the activities carried out on behalf of the holding companies—each internal relationship between the parties is subject to competition, for the essential reason that controlling and controlled entities are considered as a single group in the public holding.

3 The New Legal Framework on Cooperation among Public Administrations in Europe

Administrative cooperation among public authorities[77] differs from the *in-house providing* since the latter realizes a demand aggregation and assumes the task to satisfy it[78] through its own activities.[79]

[75]See Lolli (2005), p. 1942; La Porta (2002) pp. 1, 12 et seq and Olivero (2003), pp. 4, 847 et seq.

[76]See E.C.J., section V, 8 May 2014, *Technische Universität Hamburg-Harburg, Hochschul-Informations- System GmbH* v. *Datenlotsen Informationssysteme GmbH*, in case C-15/13, *cit.*, which hints at the possibility to consider the requirement of similar control satisfied even in the case where the awarding is between two subsidiaries of the same administration through operations known as horizontal in house.

[77]E.C.J., 9 June 2009, *Commission of the European Communities* v. *Federal Republic of Germany*, in case C-480/06. See Kotsonis (2009), p. 212.

[78]E.C.J., 9 June 2009, *Commission* v. *Federal Republic of Germany*, in case C-480/06, known also as "Hamburg case"; E.C.J., Grand Chamber, 19 December 2012, *Asl Lecce e Università del Salento* v. *Ordine degli Ingegneri della Provincia di Lecce*, in case C-159/11, par. 2 (where it is clarified that they were dealing with a contract for consultancy signed between a Local Health Authority and the University, regarding the study and the evaluation of the seismic vulnerability of hospital infrastructures in the province of Lecce) and par. 37; E.C.J., section X, 16 May 2013, *Consulta Regionale Ordine Ingegneri della Lombardia e a./ Comune di Pavia /Università degli Studi di Pavia*, in case C- 564/11; E.C.J., section V, 13 June, 2013, *Piepenbrock/Kreis Duren-Stadt Duren*, in case C- 386/11; Cons. St., section III, 13 November 2014, no. 5587, *Farmacie Comunali di Torino S.p.a.* v. *Comune di Vinovo e Azienda Speciale Multiservizi di Venaria Reale*; State Council, Opinion 11 March 2015, no. 1178. See EU Commission, *New rules on Public contracts and concessions simpler and more flexible*, 2014, on line: http://ec.europa.eu/internal_market/publications/docs/public-procurement-and-concessions_en.pdf, p. 5; Burgi (2012).

[79]See the long legal tradition on local public services in convention or consortium (Legislative Decree no. 267 of 2000, *cit.* Arts. 30 and 31; l. 8 June 1990, no. 142, arts. 24 and 25) which later became a general rule of administrative action (Law of 7 August 1990, no. 241, art. 15).

The legal forms which can be used to establish administrative cooperation among public authorities are normally left to the Member States' own legal frameworks.[80]

Cooperation may take institutionalized forms (joint venture, consortium, public company, public holding, foundation, etc.) or can be enforced by public or private law convention, insofar as the concentration of a demand for goods and services does not circumvent the legal framework on competition,[81] so that the scope and object of cooperation shall not coincide with those for procurement or concession contracts.[82] In this regard, if a contracting authority assigns a particular activity (e.g. a service) to another public administration, this can be considered as a violation of the limits of cooperation,[83] and should require the submission to the rules on competition.

Within the conventional cooperation a contracting authority indeed merely bounds itself to aggregate demand and to make it available for a joint satisfaction, in compliance with one of the modalities allowed by the legal framework on competition, be it the organizational form of in-house providing or the out-sourcing to third subjects.

The authorities involved in the cooperation use the capacities of one or all of them to pool the demand, also for public interest purposes: the result is a legal tool that maximizes the synergies without establishing a common organization.

The scope of cooperation is thus oriented to the realization of synergies among contracting authorities in the public interest, with rights and obligations among the parties, arising exclusively on the demand side, including criteria for its joint satisfaction, able to define the conditions and limits of the choice between one or the other form, according to the rules on competition,[84] in the same way as it happens in agency-contracts or in consumers' buying groups.

[80]E. C. J., in case C-480/06, *cit.*, par. 33, 47; 18 November 1999, in case C-107/98, *Teckal s.r.l.* v. *Comune di Viano e Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*, par. 50; 13 January 2005, in case C-84/03, *Commission* v. *Spain*, par. 40; section I, 11 January 2005, in case C-26/03, *Stadt Halle* and RPL *Lochau Recyclingpark GmbH* v. *Arbeitsgemeinschaft Thermische Restabfall und Energieverwertungsanlage TREA Leuna*, par. 48. See G. M. Caruso *La collaborazione contrattuale fra pubbliche amministrazioni. Unità e frammentazione della sfera pubblica fra logica del mercato e obiettivi di contenimento della spesa*, in *Riv. It. Dir. Pubb. Com.*, 2015, p. 775.

[81]E.C.J., Grand Chamber, 19 December 2012, in case C-159/11, *Asl Lecce* and *Università del Salento* v. *Ordine degli Ingegneri della Provincia di Lecce*, par. 35; Opinion Advocate General *V. Trstenjak*, 23 May 2012, in case C-159/11, *Asl Lecce* and *Università del Salento* v. *Ordine degli Ingegneri della Provincia di Lecce*, pars. 66 and 67.

[82]The same principles are affirmed in E.C.J., 19 December 2012, *ASL Lecce* v. *Univ. Salento* and *Ordine Ing. Prov. Lecce*, in case C-159/11; E.C.J., Opinion of the 16 May 2013, *Consulta Reg. Ord. Ing. della Lombardia* v. *Comune di Pavia, Univ. degli Studi di Pavia*, in case C-564/11; E.C.J., Section X, 20 June 2013, *Cons. Naz. Ing.* v. *Comune di Castelvecchio Subequo, Univ. degli Studi di Chieti Pescara – Dip. Scienze e Storia dell'Architettura, Cons. Naz. Ing., Comune di Barisciano, Scuola di Architettura e Design Vittoria dell'Univ. di Camerino*, in case C-352/12; E.C.J., 13 June 2013, in cases C- 159/11 and C-386/11, *Piepenbrock Dienstleistungen GmbH & Co. KG* v. *Kreis Duren, Stadt Duren.*

[83]E.C.J., 15 October 2009, in case C-275/08, *Commission* v. *Federal Republic of Germany.*

[84]EU Commission, *Staff Working Paper concerning the application of EU public procurement law to relations between contracting authorities ('public-public cooperation')*, SEC (2011) 1169, p. 15.

The principle of self-organization of public authorities leaves the contracting authorities free to cooperate in the public service sector.[85] The purpose of the agreement which aims at the implementation of a public interest should be common to all participants[86] as well as consistent with the institutional purposes of the contracting authorities. In the cooperation agreement, a division of tasks and responsibilities on the parties must be defined while it is not permitted to conclude an agreement in which only one of the parties is held responsible. The financial flows among the contracting authorities should be evaluated as mere compensation for the activities or services delivered and not as payments for the service.[87]

4 The Legal Framework for Cooperation Agreements Among Contracting Authorities of Different Member States for the Award and Execution of Public Contracts

As mentioned above, the public-public partnership has its own special legal framework, while cooperation among administrations of different Member States relates to the award and execution of a public contract for the joint satisfaction of a common public interest.

Also in this case, the solution has been inspired by the ECJ[88] case-law—due to the aforementioned constitutive cause of the relationship—thus anticipating the general and abstract rule contained in the new Public Procurement Directive (Directive 24/2014/EU, art. 12), but above all affirming a principle of institutional culture of the public administration which is common to many countries of continental Europe and that from the EU legal framework goes back to framework of the Member States.[89] Such principle recalls the national legislation that since the early years of the last century, excluded associative acts establishing consortiums from the obligation to take part in competitive tenders.[90] The new rules[91] explicitly allowed the contracting authorities to develop participation procedures accessible to the authorities of other Member States, aggregating or coordinating the public demand for services thus favoring the achievement of a European internal market of public

[85]Law of 7 August 2015, no. 124, *Deleghe al Governo in materia di riorganizzazione delle amministrazioni pubbliche*, art. 19.

[86]State Council, Section V, 30 September 2013, no. 4832; ANAC, Opinion, 30 July 2013, AG 42/2013; ANAC, Opinion, 23 April 2014, AG 20/2014.

[87]Gideon and Sanchez-Graells (2016).

[88]E.C.J., 9 June 2009, C-480/06, *Commission v. Federal Republic of Germany*, also known as "Hamburg case", which ruled out the obligation to tender for the establishment of the public buying groups; see amplius: Cavallo Perin (2014a), pp. 23–40.

[89]Cavallo Perin (2014b), p. 38.

[90]De Gaspare (1989) and Civitarese (2006), p. 182.

[91]Directive 2014/24/EU, arts. 37, 38 and 39.

procurement.[92] The cooperation from the public demand side may also contribute to the growth of competition among economic operators from different Member States, since the provided forms of cooperation on the supply side (e.g. temporary associations) have not been adequate to the purpose. Integration among national contracting authorities and with the European institutions (demand side) well before integration among companies (supply side) can contribute to the "integration of the relevant markets", in a context where cooperation in a system of competences organized as a network permits to identify the legal systems capable of overcoming administrative nationalism.[93]

Cooperation from the public demand side can help overcome legal barriers related to "conflicts between different national provisions"[94] and practical obstacles linked to language barriers,[95] which have limited[96] this cooperation, yet they are implicitly admitted already by the previous Directive 2004/18/EC and by the European Union principles.[97]

[92]Directive 2014/24/EU, recital no. 71 et seq.; Cavallo Perin et al. (2016), cit.

[93]In these terms: Cavallo Perin (2016), p. 6.

[94]Directive 2014/24/EU, recital no. 73: *"Joint awarding of public contracts by contracting authorities from different Member States currently encounters specific legal difficulties concerning conflicts of national laws. Despite the fact that Directive 2004/18/EC implicitly allowed for cross-border joint public procurement, contracting authorities are still facing considerable legal and practical difficulties in purchasing from central purchasing bodies in other Member States or jointly awarding public contracts. In order to allow contracting authorities to derive maximum benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, not least for innovative projects involving a greater amount of risk than reasonably bearable by a single contracting authority, those difficulties should be remedied. Therefore, new rules on cross-border joint procurement should be established in order to facilitate cooperation between contracting authorities and enhancing the benefits of the internal market by creating cross-border business opportunities for suppliers and service providers".*

[95]See the Commission's announcement: *To increase transparency in public procurement opportunities, an online machine translation service will be available, free of charge, for all public procurement notices published in Tenders Electronic Daily* (TED) *from 15 January 2016.* This service will be available from and to all 24 EU official languages.

[96]To stimulate the development of innovation and ensure the full realization of the internal market, the support for establishing networks of cooperation between contracting authorities from different Member States is strategic. The EU Commission has supported the creation of three transnational networks: "Enprotex", to stimulate innovation of textile protection products through public procurement aimed at meeting the future needs of fire and rescue services (http: //www.firebuy.gov.uk/home.aspx); "Sci-Network" to take advantage of building sustainable innovations in relation to the restructuring of existing buildings, innovative building materials, the analysis and the use of life-cycle analysis (LCA) and life-cycle costing (LCC) (http://www.iclei.org/index.php?id=796); "Lcb –Healthcare" to stimulate the creation of innovative solutions with low emissions for the health sector. Lafarge (2010), cit., p. 600, on the so-called Sutherland report (cit.) for the establishment of a general system of administrative cooperation.

[97]In the context outlined recalling programs such as the Competitiveness and Innovation Framework Programme (CIP—Competitiveness and Innovation Framework Programme, http://ec.europa.eu/cip/. See also: Programme for the Competitiveness of enterprises and SMEs (COSME) 2014–2020) and the Framework Programme for Research and Technological Development (FP7—Framework Programme for Research and Technological Development (FP7), http://ec.europa.eu/research/fp7/index_en.cfm), then in the Europe 2020 strategy for the identification, development and testing of joint innovative solutions, with a support to SMEs, particularly innovative ones, the reference markets, arguing with dedicated budget, the Member States in the acquisition of innovative products. Among the most advanced testing of innovative joint procurement across borders, the project HAPPI (Healthy Ageing—Public Procurement of Innovations, http://www.happi-project.eu/), which aimed to favor product innovation, enabled significant change in the contractor selection process, being carried out with a joint framework agreement among several Member States and also open to accession by others, and anticipating solutions today governed by the new directive on public procurement (Directive 2014/24/EU, cit., Title II, Chapter II, Techniques and Instruments for Electronic and Aggregated Procurement (esp. Art. 39). Directive 2014/24/UE, cit., recital no. 97).

The provisions of the new directives on joint procurement may prefigure forms of coordination directed to the definition of common technical specifications related to separate procedures for competitive bids, award procedures delegated to other contracting authorities, purchase of goods and services from central purchasing bodies of other Member States or even the establishment of European joint subjects including European Groupings of Territorial Cooperation, or other entities established under national or Union law.[98] These are new models of horizontal public-public cooperation among different contracting authorities that develop a system of joint procurement, overcoming the individual award procedure model of a single contracting authority.

This cooperation can be developed primarily through occasional joint procurement which—even if not constituting "systematic and institutionalized acquisition systems" such as the central purchasing bodies (Directive 24/2014/EU, § 71)—allows two or more contracting authorities (Directive 24/2014/EU, art. 38) to "jointly perform certain specific procurements", aiming to specific common interests and to the development of innovative projects.

The joint implementation of the contract procedure on behalf and in the name of the interested administrations or performed by a central purchasing body on behalf of other contracting entities determines a joint liability for the fulfillment of obligations under the Directive and the European principles (Directive 2014/24/EU, § 71 and art. 38).

Conversely the contracting entity will be held responsible for the parts of the procedures that have not been jointly implemented.[99]

These forms of cooperation among public entities have normally been funded on the national legal traditions in the administrative agreements among them.

[98]Directive 2014/24/UE, recital nos. 71 and 73. See EU Commission, Staff Working Paper concerning the application of EU public procurement law to relations between contracting authorities (public-public cooperation), cit., where it distinguished between cooperation for the performance of tasks of public interest in the proper sense, and assigned activities that would require a competitive tendering within the market.

[99]Directive 24/2014/EU, recital no. 71: *"Each contracting authority should be solely responsible in respect of procedures or parts of procedures it conducts on its own, such as the awarding of a contract, the conclusion of a framework agreement, the operation of a dynamic purchasing system, the reopening of competition under a framework agreement or the determination of which of the economic operators party to a framework agreement shall perform a given task".*

In the Italian legal system, the legal basis is found in the agreements among public authorities covered by the general law on administrative procedure (art. 15, Law of 7 August 1990, no. 241) and at the local level in conventions among municipalities (art. 30, Consolidated Act on Local Authorities).[100] In European law this possibility is connected to European principles regarding the internal market and the protection of competition, through the aggregation of a "public demand" at the European level,[101] and in the public interest to the cooperation among central purchasing bodies.[102]

This might favor the adequacy of the procuring entities in terms of capacity of human resources[103] and technology in order to favor the participation of enterprises, for the development and innovation of the internal market.[104]

Cooperation among contracting authorities is functional for the identification of the appropriate level of aggregation, even beyond national aggregation which might be inadequate for the acquisition of innovative goods or services or in relation to markets where significant price differences highlight failures in competition (horizontal agreements among economic operators, other agreements, cartels).[105]

In the public procurement market, demand aggregation allows to obtain economies of scale, lowering prices and transaction costs, but also to develop adequate professionalism and strategies in defining specific objectives to be pursued through public tenders (social, environmental, innovation, favoring SMEs' participation, with the provision of adequate lots).[106]

[100]Respectively: Law of 7 August 1990, no. 241, *Norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*; and Legislative Decree of 18 August 2000, no. 267, *Testo unico delle leggi sull'ordinamento degli enti locali.*

[101]Directive 2014/24/EU, recital no. 73. See: EU Commission, Staff Working Paper concerning the application of EU public procurement law to relations between contracting authorities (public-public cooperation), cit. See: Cavallo Perin and Casalini (2009), pp. 227–241; See also: Bassi (2007), p. 551 et seq. and Tátrai (2015).

[102]Racca (2014b), pp. 234–235. The use of central purchasing body is a form of public-public cooperation, with reference to which the EU Court of Justice has already had occasion to rule on the risks that may result from collusion among public entities: ECJ, 14 October 2004, EC *Commission v. Kingdom of the Netherlands*, in Case C-113/02, excluding in some cases: CGCE, 11 July 2006, *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v. EC Commission* in Case C-205/03, § 26; ECJ, 26 March 2009, *Selex v. EC Commission—Eurocontrol*, in C-113/07 P, § 102. In both cases, the Court held that "*in order to assess the nature of that purchasing activity, we should not separate the activity of purchasing goods from the subsequent made of them, and that the economic or not next use the income of the product purchased necessarily determine the character of purchase.*" *Contra*: Sánchez Graells (2011), pp. 150–151 and pp. 165–166.

[103]Racca (2014a), *cit.*, p. 12.

[104]Cavallo Perin (2014b), *cit.*, p. 37; Albano et al. (2008), p. 3; Fiorentino (2011), p. 18; Mazzantini (2011), p. 53 et seq and Racca and Cavallo Perin (2011), p. 197.

[105]See Directive 24/2014/EU, *cit.*

[106]Strategies already described in Racca (2014b), *cit.*, especially p. 14 et seq.

The forms of cooperation among contracting authorities from different Member States allow the award of contracts also through framework agreements which can encourage risk-benefit sharing in developing innovative procurement.[107]

The Directive provides that, unless international agreements between the Member States concerned are established, the necessary elements of the legal relationship among the contracting authorities shall be determined by an agreement among contracting authorities.[108]

This agreement—establishing a collaborative procurement organization—defines the responsibilities of the parties and the relevant national provisions, the internal organization of the procurement procedure, the distribution of works, services and supplies which are object of the contract and the conclusion of contracts, responsibilities and the law or the national laws applicable to be indicated in the tender documents.[109] Those elements also open the path to forms of competition between legal frameworks of different legal systems, for the selection of the applicable law, fostering integration through the necessary harmonization of the tender documents and contract clauses that is developing for the joint implementation of tender procedures and the definition of parallel conditions for the execution.[110]

This model has recently been implemented in a project funded by the European Commission (HAPPI project)[111] which is the first concrete experience of a cross-border joint public procurement, whose implementation has been developed by a consortium of European partners consisting of procurement organizations (central purchasing bodies) in the health sector, by experts in the field of public procurement and by innovation agencies and academic institutions.[112]

This first example of cross-border joint procurement has concerned the purchase of innovative solutions in the field of healthy and active ageing and has been

[107]Directive 2014/24/EU, § 73.

[108]Directive 2014/24/EU, art. 39, § 4; Directive 2014/25/EU, art. 57, § 4.

[109]Directive 2014/24/EU, art. 39, § 4; Directive 2014/25/EU, art. 57, § 4.

[110]On these issues see Racca (2014a), cit., p. 11 et seq.; R. Cavallo Perin, *Relazione Conclusiva*, therein, p. 38.

[111]Healthy Ageing—Public Procurement of Innovations (HAPPI) (http://www.happi-project.eu/ funded by the EU Commission—DG Enterprise and Industry within the Competitiveness and Innovation Framework Programme (CIP)—ref. Call ENT/CIP/11/C/N02C011.

[112]HAPPI has 12 European partners from France (Réseau des Acheteurs Hospitaliers d'Ile-de-France, Ecole des Hautes Etudes en Santé Publique (EHESP), BPIFRANCE), the United Kingdom (NHS Commercial Solutions, BITECIC Ltd), Germany (ICLEI—Local Governments for Sustainability), Italy (University of Turin and the Piedmont Region Client Company, SCR), Belgium (MercurHosp—mutualisation hospitalière), Luxembourg (Fédération des Hôpitaux Luxembourgeois (FHL), Austria (the Federal Procurement Agency (FPA)—Associate partner) and Spain (FIBICO—Associate partner). For a description of the project activities, see S. Ponzio, *Joint Procurement and Innovation in the new EU Directive and in some EU founded projects*, in *Ius Publicum Network Review*, 2/2014, available at http://www.ius-publicum.com/repository/uploads/ 20_03_2015_13_12-Ponzio_IusPub_JointProc_def.pdf, p. 1 et seq.

preceded by a thorough market analysis, as well as the realization of a legal study on several national and European models of aggregation to identify the most suitable one for a consortium. The legal model chosen has led to the establishment of a European collaborative procurement organization made up of the central purchasing bodies that were partners to the project and is open to other Members States relying on the French institution of the *Groupement de commandes* according to Article 8 of the French *Code des marchés publics*.[113] The agreement's object was the delegation to the French central purchasing body of the competence to carry out the selection procedure for the award of a closed Framework Agreement, with several lots, (without a commitment to buy) with a unique economic operator, in compliance with European Union law and French national law, with a considerable harmonization of the award requirements and tender documents for overcoming the legal and linguistic barriers also ensuring the publication of the tender notice in three different languages. The tender documents provide for the application of the national law of each country of destination of the service that is object of the specific contract or order, with a consequent execution.[114]Among the forms of cooperation between public administrations of different Member States, including non-institutionalized or conventional cooperation, there is the opportunity to join the activities *offered by central purchasing bodies located in another Member State* (Arts. 37 and 39, § 2 Directive 2014/24/EU). The Directive expressly forbids Member States to prohibit its contracting authorities from using centralized purchasing activities offered by central purchasing bodies located in another Member State. Art. 39 § 2, Directive no. 24/2014/EU[115] is of the utmost importance exactly to foster innovative procurement of supranational interest.[116]

The express provision of the "prohibition to prohibit" explicates the European support for this form of cooperation that can improve the results and seize all the advantages of the internal market.[117]

This perspective opens the path to different forms of competition that can develop through the public demand side aggregation, which is the logical-legal antecedent of

[113]Racca and Ponzio (2011), pp. 7–12 and Ponzio (2011), cit., p. 254 et seq.

[114]See the award of the framework agreement HAPPI: http://www.happi-project.eu/news-events/news/139-the-happicontracts-are-awarded.

[115]A similar provision is found with reference to procurement procedures of entities operating in the water, energy, transport and postal services sectors (Art. 57 § 2, Directive 25/2014/EU) in order to overcome "conflicts between the different national laws." See also § no. 82.

[116]Directive EU, art. 4 par. 1, letters (a) and (b). Directive 24/2014/EU recital no. 69. G.M. Racca, Le centrali di committenza nele nuove strategie di aggregazione dei contrati pubblici, in Italiadecide—Rapporto 2015, cit., S. Arrowsmith, The Law of Public and Utilities Procurement. Regulation in the EU and UK, London, 2014, I, pp. 380–381.

[117]EU Commission, reform of public procurement, certificate no. 3: simplification of the rules for contracting authorities, available at http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/reform/fact-sheets/fact-sheet-03simplification-public-purchasers_it.pdf.

the tenders. It allows contracting authorities to adhere to the framework agreements concluded by the central purchasing bodies in another Member State, as an alternative to their own need-satisfaction process, as a prelude to a "tender of the tenders" or second-tier award procedure (competition).[118]

It is clear that similar forms of collaboration require an express provision in the tender documents from the contracting authorities willing to ensure such opportunity to the economic operators participating in their award procedures, opening up to new freedoms of movement of goods and services already "tendered" that will be able to access different markets in other Member States more easily. The implementation of similar forms of cooperation allows the creation of networks among contracting authorities or among central purchasing bodies in the European administrative space. These new forms of administrative cooperation among contracting authorities from different Member States might complete and give effectiveness to the entire *corpus* of rules on public procurement, which have redesigned national procedures as well as remedies (Directive no.66/2007/EC). Such rules imposed the correction, the annulment and compensation for damage in case of violations, thus recognizing to the economic operators' rights directly protected and therefore not subjected to the will of Member States and the powers of public administrations.[119]

The objective of such set of rules—still not achieved—was to open the internal market in a context where cross-border participation in other Member States' award procedures remains low and even multi-national corporations have maintained their territorial supply chain. The language and legal barriers remain high. Cooperation among contracting authorities from different Member States, especially if central purchasing bodies, represents a tool for the implementation of the internal market of tenders. It may promote structural reorganization and redistribution of purchasing capacities for innovation and sustainability by promoting the companies' transnational activities,[120] in particular those of the innovative SMEs through the re-structuring of the European tenders in lots on territorial or product-related basis, which is suitable to the reference market thus contributing to the pursuit of the related objectives of growth and development in the European administrative space.

[118]Cavallo Perin(2014b), cit., p. 36. Cavallo Perin (2016), p. 7.

[119]Directive 2007/66/EC of 11 December 2007 amending Directives 89/665/EEC (which coordinated the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts) and 92/13/EEC (which coordinated the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, energy, transport sectors and that the authorities operating in the telecommunications sector) of the Council with regard to improving the effectiveness of review procedures concerning the award of public contracts. Racca (2012), p. 2650; Id., (2003), p. 38 et seq; Romano Tassone (2004), Sandulli (2010), pp. 67–102; Sandulli (2012), p. 3156; Ponzio (2013), p. 1085.

[120]Cavallo Perin (2016), p. 7. Mattarella (2014), p. 61 e s.

5 The European Grouping of Territorial Cooperation (EGTC) Among Contracting Authorities or Public Authorities for Efficiency, Integrity and Innovation in Public Contracts

The new directives on public procurement (both the so-called "Classical Directive"[121] and the so-called "Utilities Directive"[122]) introduce a modality of cooperation that provides for the establishment of a specific joint legal entity which is the European Grouping of Territorial Cooperation (EGTC) or other entities established under Union law.[123]

In European Union law, the EGTC is a subject with legal personality set up to promote cross-border, transnational[124] and interregional cooperation.

Territorial cooperation—a priority objective of the programming of the 2014–2020 structural funds for the promotion of synergies among the territories of different Member States in the implementation of joint projects—provides for the exchange of experiences and networking, allowing public administrations to identify the legal tools for cooperation.[125]

The administrative integration of functions among transnational territorial levels has been hindered by the complexity of the national legal framework for the

[121]Directive 2014/24/EU, art. 39, § 5.

[122]Directive 2014/25/EU, art. 57, § 5.

[123]Directive 24/2014/EU, art. 39, § 5: *"Where several contracting authorities from different Member States have set up a joint entity, including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council (1) or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following Member States: (a) the national provisions of the Member State where the joint entity has its registered office; (b) the national provisions of the Member State where the joint entity is carrying out its activities."*

[124]Regulation 1082/2006/CE of 5 July 2006; EU *Commission, European Territorial Cooperation. Building Bridges Between People*, 2011, available at http://ec.europa.eu/regional_policy/sources/information/pdf/brochures/etc_book_lr.pdf. Lanzoni (2011), p. 503; Cocucci (2008), p. 891 et seq; Soverino (2009), p. 17 et seq and Dickmann (2006), p. 2901.

[125]In the new cohesion policy priorities are: the "Investment for growth and employment", with the national and regional programs being funded through the ERDF (European Regional Development Fund), the ESF (European Social Fund) and the Cohesion Fund, aiming to cross-border and transnational cooperation programs, also inter-financed by the ERDF. Regulation 1303/2013/EU of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Fund for Maritime Affairs and Fisheries and general provisions on the European regional development Fund, the European social Fund, the cohesion Fund and the European Fund for Maritime Affairs and Fisheries, and repealing Regulation (EC) No. 1083/2006 of the Council; Regulation 1304/2013/EU of 17 December 2013 on the European Social Fund and repealing Regulation (EC) No. 1081/2006 of the Council.

establishment and membership of the EGTC,[126] maybe maintained to preserve the "sovereign prerogatives" of Member States, which have so limited the application.[127]

From this consideration, it is possible to understand how the recent European Union regulatory intervention was aimed at simplifying the rules on the establishment and functioning of such legal subjects.[128]

The intervention has introduced tacit approval (tacit consent) by the competent national authorities in case of lack of disapproval (which must be properly justified),[129] as well as an extension of the maximum period for the establishment of the EGCT.[130]

It is clarified that EGTC can be set up by public administrations (state and local), public enterprises, bodies governed by public law and enterprises entrusted with the operation of services of general economic interest,[131] with a provision that renews the previous discipline, by introducing also Member States and national authorities among the proponents.

European cooperation is very important and exceeds the context of regional and territorial areas and the limitations related to agreements that identified cross-border cooperation exclusively between territorial neighboring areas (regions, departments, etc.),[132] opening to bodies governed by public law to merge public interests and structural cooperation together developing networks which can even extend over the entire European Union.

[126]EU Parliament, European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe, July 2015, pp. 36–37; Committee of the Regions, Conclusions of the Committee of the Regions about the Joint Consultation. The Review of Regulation (EC) 1082/2006 on the European Grouping of Territorial Cooperation, available at http://cor.europa.eu/en/archived/documents/366960dd-3c03-4efa-9230665455fa6bb5.pdf.

[127]They may be based on national legal forms (associations, for example) in which partners from different countries participate, or cooperation is realized with a valid bilateral agreement by the regional border.

[128]Regulation 1082/2006/EC and Regulation 1302/2013/EU.

[129]After 6 months by national authorities. See Regulation 1302/2013/EU, art. 4, par. 3, which provided that at least the Member State where the registered office of the EGTC proposal would be located formally approves the Convention.

[130]From 3 to 6 months. This extension is justified by the fact that the current period of 3 months was rarely respected and this is an obstacle to the creation of new EGTCs.

[131]Regulation 1082/2006/EC, art. 3, as amended by EU Regulation 1302/2013. The approval of participation in an EGTC composed by public law, by the competent authorities at the national level, requires the submission to the competent national authorities of a proposal for the EGCT Convention, where an indication of the activities that have to be performed. In Italy, the Community Law of 2008 (Law of July 7, 2009, no. 88, Provisions for the fulfillment of obligations deriving from Italy to the European Communities—Community Law 2008, published in *Gazzetta Ufficiale* no. 161 of 14 July 2009) provided for rules on the participation of the national authorization procedure in an EGCT, which will have to be adapted in the light of the renewed European framework of the EGCT by a new Regulation.

[132]Examples of such agreements are the Karlsruhe agreement (1997), Mainz agreement (1998), Isselburg-Anholt agreement (1991) and the Benelux agreement (1986).

The establishment of these legal entities as a cooperation agreement[133] on initiative of its members, which identifies objectives, duration and conditions of dissolution, and the methods of carrying out the activity, which may involve the realization of programs that are co-financed by the EU[134] or cross-border cooperation projects that can be transnational and interregional[135] and even not funded by the EU,[136] including cooperation for the realization of contracts or public services.[137] The agreement also establishes that the applicable law is the one of the Member State where the registered office of the group is located[138] or where the activity is performed.[139]

[133]Regulation 1082/2006/EC, art. 8 as modified by Regulation 1302/2013/EU. The agreement: the name of the EGTC and its registered office; the extent of the territory in which the EGTC may carry out its duties; the goal and the tasks of the EGTC; the duration of the EGCC and the conditions for its dissolution; the list of the EGTC's members; the list of the EGTC's organs and their competencies; the applicable Union law and the one of the Member State in which the national EGTC has its registered office in the interpretation and application of the Convention; the applicable Union law and that of the Member State in which the national organs of the EGTC operate; the arrangements for the participation of members from third countries or the OCT, where appropriate including the identification of the applicable law where the EGTC carries out tasks in third countries or in the OCT; the applicable Union and national law directly relevant to the grouping's activities conducted in accordance with the tasks specified in the agreement; the rules applicable to the EGTC's staff as well as the principles governing the arrangements concerning personnel management and recruitment procedures; the provisions regarding the liability of the EGTC and of its members; the appropriate provisions on mutual recognition, including with regard to the financial control of the management of public funds; the procedures for adopting the statutes and amending the convention. The tasks of the EGTC are defined by the convention agreed by its members. Their boundaries, delicate point of balance between the aspirations of the Regions and the integrity of sovereignty and state control, is specified by a number of available but remains in the open complex of extended cooperation and progressive processes. The members may decide by unanimity to empower the execution of tasks to one of its members. Carrea (2012), p. 611.

[134]EU Commission, *Note for guidance on the funding of joint EDF-ERDF projects 2014–2020*, 2014, available at http://ec.europa.eu/regional_policy/sources/docgener/guides/guidance_fed_feder_en.pdf. Cfr. TFUE, art. 159.

[135]On the discipline establishment and operation: EC Regulation 1082/2006, as a modified by Regulation 1302/2013/EU, in force since 22 June 2014.

[136]Regulation 1082/2006/EC, recital no. 7.

[137]In general, it has members in at least two Member States, although specific provisions are provided when neighboring countries and overseas countries and territories are involved.

[138]Within ten working days from the registration or publication of the convention and statutes of the country where the EGTC has its registered office, the EGTC shall notify the Committee of the Regions (CoR), which maintains a register of EGTCs. The CoR then transmits the information to the Office of the European Union, which publishes a notice in the Italian *Gazzetta Ufficiale* announcing the establishment of the EGTC.

[139]The internal organization and functioning of the EGTC is instead governed by its Statute: EC Regulation 1082/2006, Art. 9 as amended by EU Regulation 1302/2013. The Statute of each EGTC governing the internal organization identifies: the tasks of the organs and how they work; decision-making procedures and language/and work; the methods of operation and employment contracts; financial contributions, the rules on accounting and financial statements. The statutes specify a minimum for: the operating mode of its organs and powers of these bodies, as well as the number of representatives of the members in the relevant organs; its decision-making procedures; its language or its working languages; the arrangements for its operation; the procedures concerning the

Within the territorial cooperation supported by the European Union it is possible to distinguish among EGTCs that deal with "programs" with a broad cross-border content and EGTCs referring to "projects" of cooperation, regarding individual issues specifically identified.[140]

Further differences may relate to the legal form of the establishment of EGTCs,[141] the applicable law (public[142] or private) and the system of liability to which these bodies are subjected (limited and unlimited liability).[143]

Until now[144] EGTCs' setups have mainly aimed at achieving cooperation in limited geographical areas[145] and in some sectors.[146] Administrative cooperation is realized in tourism,[147] for the pursuit of sustainable development in the agricultural

management and staff recruitment; the provisions concerning the financial contribution of its members; the applicable rules of accounting and budget for its members; the appointment of an independent external auditor of the accounts; the amendment of its articles of association procedures. The statutes set up an assembly composed of representatives of each EGTC's members and a director who represents the EGTC itself, also establishing an annual budget based on the legislation of the country where it has its registered office. They also characterize any other organs by defining their competencies: Regulation 1082/2006/EC, art. 11 as amended by Regulation 1302/2013/EU. The preparation of accounts including the annual report accompanying them, and the checking and publication of those accounts shall be governed by the national law of the Member State where the EGTC has its registered office. The budget is divided into a component of operating costs and, if necessary, an operational component.

[140]The EGTC Regulation in relation to the object of cooperation, discipline is pretty generic with reference to "actions" general cooperation without distinguishing between issues of cross-cutting interest and a long period or by activities.

[141]EU Parliament, European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe, July 2015.

[142]Committee of the Regions, EGTC Monitoring Report 2012, 2013, where it is reported that most of the EGTCs are legal entities of public law.

[143]Regulation 1082/2006/EC, art. 12, as amended by Regulation 1302/2013/EU. An EGTC shall be liable for its debts. In the event of insolvency, the members are responsible depending on their contribution (fixed in the statutes). It can, however, impose a "limited EGCT" (including the phrase in their name), provided that at least one of its members is a limited liability entity.

[144]In November 2015, there were 57 EGCTs, including 24 constituted in 2013.

[145]Example: Hungary and France. See EU Parliament, European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe, cit., p. 53 et seq.

[146]EGTCs established with specific thematic focus: Big Région EGTC was established to manage a cross-border project; EGTC TATRY Ltd. as an agency for the management of the Small Project Fund (SPF). Cf. also the EGTC: Secrétariat du Sommet de la Grande Région, European Park/Parc Européen Maritime Alps—Mercantour and Hospital de la Cerdanya.

[147]See: – EGTC Pirineus – Cerdanya; – EGTC ArchiMed; – EGTC TRITIA Ltd.; – ZASNET EGTC; – Territorio dei comuni: Comune di Gorizia, Mestna Občina; Nova Gorica e Občina Šempeter-Vrtojba; – EGTC "Espacio Portalet"; – EGTC Spoločný region Ltd.; – EGTC "Euregio Senza Confini r.l. – Euregio Ohne Grenzen; mbH"; – Karst-Bodva EGTC; – ABAÚJ-ABAÚJBAN EGTC Ltd.; – EGTC Pons Danubii; – Rába-Duna-Vág EGTC Ltd.; – EGTC Gate to Europe Ltd.; – BODROGKÖZI EGTC Ltd.; – Eurocity of Chaves-Verín EGTC; – EGTC Parc européen/Parco europeo Alpi Marittime; – Mercantour.

sector,[148] in the integration between urban and rural areas,[149] for the construction of infrastructures for economic and social development,[150] or for the management of cross-border transport systems or the creation of hospitals, development of cross-border projects, while always ensuring the circulation of experiences and good practices.[151]

It is particularly interesting to highlight how such a tool can be applied for the "joint management of public services", particularly with regard to services of general economic interest, so opening, as proposed,[152] to achievements that may lead to the establishment of EGTCs among in-house companies for the development of innovative forms of cooperation in the field of public services, in order to strengthen the economic, social and territorial cohesion of the European Union.[153]

In the public procurement sector, the EGTC may contribute not only to develop cooperation between traditional contracting authorities (State and local authorities), but also between bodies governed by public law (central purchasing bodies), ensuring innovative developments of the procuring function with institutionalized forms of cooperation between contracting authorities from different Member States[154] that allow to develop activities beyond their territorial borders.[155]

The new European procurement directives specifically indicate the EGTC, or other joint subjects covered by Union law, as subjects of administrative cooperation institutionalized for the award and execution of public contracts.[156] The ETCG agreement settles the joint entity subsequently can be defined the rules on the procurement phase and the rules on the contract management and execution. The applicable law on the procurement phase can be the one of the Member State wherein the registered office of the group is located or the one of the Member

[148]See: – EGTC Euroregion Aquitane-Euskadi; – EGTC "Euregio Senza Confini r.l. – Euregio Ohne Grenzen mbH"; – Banat-Triplex Confinium Ltd. EGTC; – Raba-Duna-Vag EGTC Ltd.

[149]See: – EGTC TRITIA Ltd.; – EGTC TATRY Ltd.; – EGTC Spoločný region Ltd.; – EGTC Karst-Bodva; – Pons Danubii EGTC.

[150]See: – EGTC TRITIA Ltd.; – EGTC Hospital de la Cerdanya – Karst-Bodva EGTC; – Territorio dei comuni: Comune di Gorizia, Mestna Občina Nova Gorica e Občina Šempeter-Vrtojba; – EGTC "Espacio Portalet"; – Arrabona EGTC Ltd.; – Bánát-Triplex Confinium Ltd. EGTC; – Douero-Douro EGTC – EGTC Parc européen/Parco europeo Alpi Marittime –Mercantour.

[151]EU Parliament, European Grouping of Territorial Cooperation as an Instrument for Promotion and Improvement of Territorial Cooperation in Europe, cit.

[152]V. *supra* Par. 2.

[153]Racca (2014b), cit., pp. 225–254; Regulation (EU) no. 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) no. 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the rules regarding the constitution and functioning of such groups, art. 1, c. II.

[154]Directive 2014/24/EU, art. 39, § 5.

[155]This possibility is expressly provided by the Regulation1302/2013/EU.

[156]Regulation 1302/2013/EU, § 8; § 11; § 24: *"The convention should also list the applicable Union and national law directly relevant to the EGTC's activities carried out under the tasks specified in the convention, including where the EGTC is managing public services of general interest or infrastructure".*

State where the activity is performed. The identified legal framework can be applied for an indefinite period, if it is so provided in the act of establishment, or for a limited period, for certain types of contractor for single tender procedures. That legislation is supplemented by the European rules of international private law on conflict of laws,[157] rules allowing for the choice of a different law to be applied in the execution phase of the contract, which is beyond the scope of the application of European directives, thus promoting integration among legal systems and stimulating a "competition" in the choice of applicable national law.

The administrative cooperation models may develop further forms of "second level" horizontal cooperation with the conclusion of agreements[158] and the establishment of networks of central purchasing bodies through an EGTC. Also, networks of similar EGTCs might develop joint strategies for the implementation of the European administrative space in the public contracts area, ensuring efficiency, quality and integrity to European citizens with the risk-benefit sharing connected to innovation. Public-public cooperation, especially cross-border, can strengthen the capacity of public administrations to pursue public interests and to establish a "positive collusion"[159] that, unlike the one between private entities, strengthens the ability to pursue the public interest and the objectives of growth, innovation and integrity of the European Union.

References

Albano GL, Dini F, Spagnolo G (2008) Strumenti a Sostegno della Qualità negli Acquisti Pubblici. Quaderni Consip I:3

Alberti C (2001) Appalti in house, concessioni in house ed esternalizzazioni. Riv it dir pubbl com, p 47 et seq

Armstrong KA (2002) Mutual recognition. In: Barnard C, Scott J (eds) The law of the single European market: unpacking the premises. Hart, Oxford and Portland, p 231

Bachelet V (1957) L'attività di coordinamento nell'amministrazione pubblica dell'economia. Milano, Giuffrè, p 23

[157]Directive 2014/24/EU, recital no. 73: *"Those rules should determine the conditions for cross-border utilisation of central purchasing bodies and designate the applicable public procurement legislation, including the applicable legislation on remedies, in cases of cross-border joint procedures, complementing the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and the Council (Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6)".*

[158]See Regulation 1302/2013/EU, § 5: *"Under Regulation (EC) No 1082/2006 EGTCs have in each Member State the most extensive legal capacity accorded to legal persons under that Member State's national law, including the possibility of concluding agreements with other EGTCs, or other legal entities, for the purposes of carrying out joint cooperation projects to, inter alia, provide for more efficient operation of macro-regional strategies.*

[159]Racca and Cavallo Perin (2014), p. 23 e s.

Bassanini F (2012) Prefazione. In: Chiti MP, Natalini A (eds) Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona. Il Mulino, Bologna, p 16
Bassi N (2007) Appalti pubblici comunitari (gli accordi internazionali in materia di). In: Chiti MP, Cartei GF, Greco G (eds) Trattato di diritto amministrativo europeo. Giuffrè, Milano, p 551 et seq
Bianchini M (2003) L'attività della pubblica amministrazione: principi di efficienza e di efficacia e il progetto di qualità in atto. Risorse umane nella p.a., p 349
Burgi M (2012) The reform of EU directives on public procurement, speech at the conference 'The reform of EU directives on public procurement: towards more flexibility', London, 27 September, 2012
Capantini M (2004) Contratto di servizio e affidamenti in house. Riv it Dir Publ Comunit, p 801
Caretti P (1994) Commento all'art. 97, I comma, parte I, Cost. In: Branca G, Pizzorusso A (eds) Commentario della Costituzione, Bologna
Carrea S (2012) The discipline of the European Grouping of Territorial Cooperation (EGTC) between European Union law, statutory autonomy and private international law: an attempt at synthesis. Dir comm internaz, p 611
Cartabia M (2010) I diritti fondamentali in Europa dopo Lisbona: verso nuovi equilibri? Giorn Dir Amm (3):221 et seq
Casalini D (2003) L'organismo di diritto pubblico e l'organizzazione in house. Napoli, p 248
Cassese S (1987) Concentrazione e dispersione dei poteri pubblici. In: Studi in onore di Biscaretti di Ruffia, vol I. Giuffrè, Milano, p 155
Cavallo Perin R (2000) Validità del provvedimento e dell'atto amministrativo. Digesto delle Discipline Pubblicistiche, UTET Giuridica, Torino, vol. XV, p 613
Cavallo Perin R (2004) La configurazione della cittadinanza amministrativa. Dir Amm pp 201–208
Cavallo Perin R (2011) Il modulo "derogatorio": in autoproduzione o in house providing. In: Bonura H, Cassano M (eds) L'affidamento e la gestione dei servizi pubblici locali a rilevanza economica, Torino, pp 119–135
Cavallo Perin R (2014a) I servizi pubblici locali: modelli gestionali e destino delle utilities. In: Portaluri PL (ed) L'integrazione degli ordinamenti giuridici in Europa. Edizioni Scientifiche Italiane, Napoli, pp 23–40
Cavallo Perin R (2014b) Concluding the report, the Conference Proceedings: Appalti pubblici: innovazione e razionalizzazione. Le strategie di aggregazione e cooperazione europea nelle nuove direttive, State Council, Rome, 14 May 2014, available in Ius Publicum Network Review, p 38
Cavallo Perin R (2016) L'organizzazione delle pubbliche amministrazioni tra Stato nazionale e integrazione europea. In Cavallo Perin R, Police A, Saitta F (ed) A 150 anni dall'Unificazione amministrativa in Italia. L'organizzazione delle pubbliche Amministrazioni tra Stato nazionale e integrazione europea. Firenze University Press, Firenze, pp 3–36
Cavallo Perin R, Casalini D (2006) L'in house providing: un'impresa dimezzata. Dir Amm, pp 51–97
Cavallo Perin R, Casalini D (2009) Control over In-house providing organisations. Public Procurement Law Rev pp 227–241
Cavallo Perin R, Police A, Saitta F (2016) A 150 anni dall'Unificazione amministrativa in Italia. L'organizzazione delle pubbliche Amministrazioni tra Stato nazionale e integrazione europea. Firenze University Press, Firenze
Chiti MP (2004) A rigid Constitution for a flexibile Administration. Eur Rev Public Law p 175 et seq
Chiti E (2005) Il principio di buona amministrazione. In: Chiti E, Franchini C, Gnes M, Savino M, Veronelli M (eds) Diritto amministrativo europeo—Casi e materiali, Milano, p 3940
Chiti E (2010a) La cooperazione amministrativa. Giorn Dir Amm, p 241 et seq
Chiti E (2010b) Il Trattato di Lisbona. Giorn Dir amm, p 221
Chiti MP (2011) Lo spazio amministrativo europeo, in Studi in Onore di Alberto Romano. Editrice Scientifica, Napoli, p 163 et seq

Chiti MP (2012) Introduzione. Lo spazio amministrativo europeo. In: Chiti MP, Natalini A (eds) Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona. Il Mulino, Bologna, p 19 and ff
Civitarese S (2006) Art. 31. In: Cavallo Perin R, Romano A (directed by) Commentario breve al testo unico sulle autonomie locali. Breviaria Iuris, CEDAM, Padova, p 182
Cocucci V (2008) Nuove forme di cooperazione territoriale transfrontaliera: il Gruppo Europeo di Cooperazione Territoriale. Riv it dir pubbl comunit, p 891 et seq
Colaiacomo C (2009) Economicità. Riv corte conti (1):186
Corso G (1995) Le norme costituzionali sull'organizzazione, in Aa. Vv., La pubblica amministrazione nella Costituzione. Riflessioni e indicazioni di riforma. In: Varenna Conference Proceedings, 1993, Milano
Cortese F (2011) Il coordinamento amministrativo. Dinamiche e interpretazioni, Milano
Cortese F (2012) Gli strumenti per la cooperazione amministrativa verticale. In: Chiti MP, Natalini A (eds) Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona, Il Mulino, Bologna, p. 168
D'Astoli PV, Dotto D (2012) L'evoluzione dell'amministrazione europea, in www.astrid-online.it/, 7
De Gaspare G (1989) Consorzi amministrativi. Dig disc pubbl
Deirdre Curtin D (2007) Holding (quasi-)autonomous EU administrative actors to public account. Eur Law J 13:523–541
Dickmann R (2006) Il gruppo europeo cooperazione territoriale (gect). Foro amm CDS, p 2901
Ferrari GF (2009) Affidamento di servizi pubblici locali: la Corte apre la strada al consorzio tra Comuni. Dir pubb comp eur, p 354
Fiorentino L (2011) Introduzione, in L. Fiorentino (eds. by), Gli acquisti delle amministrazioni pubbliche nella repubblica federale, Il Mulino, Bologna, p. 18
Franchini C (2007) Les notions d'administration indirecte et de coadministration. In: Auby JB, Dutheil De La Rochére J (eds) Droit administratif européen. Bruxelles, Bruylant, p 245 et seq
Galetta DU (2009) L'autonomia procedurale degli Stati membri dell'Unione europea: "Paradise Lost?". Giappichelli, Torino
Galetta DU (2010a) Coamministrazione, reti di amministrazioni, Verwaltungsverbund: modelli organizzativi nuovi o alternative semantiche alla nozione di "cooperazione amministrativa" dell'art. 10 TCE, per definire il fenomeno dell'amministrazione intrecciata? In: Contieri A, Francario F, Immordino M, Zito A (eds) L'interesse pubblico tra politica e amministrazione. Editoriale Scientifica, Napoli, I, pp 191–202 and in Rivista italiana di diritto pubblico comunitario, 2009/6: 1689–1698
Galetta DU (2010b) Diritto ad una buona amministrazione e ruolo del nostro giudice amministrativo dopo l'entrata in vigore del trattato di Lisbona. Dir amm, p 601 et seq
Gideon A, Sanchez-Graells A (2016) When are universities bound by EU public procurement rules as buyers and providers?—English universities as a case study, in Ius Publicum, no. 1, available at http://www.ius-publicum.com/pagina.php?lang=it&pag=articoli&n=1
Goisis F (2004) Contributo allo studio delle società in mano pubblica come persone giuridiche, Milano, p 48
Hofmann HCH (2008) Mapping the European administrative space. West Eur Polit 31:662–676
Iera R, Villari A (2014) Natura giuridica, disciplina applicabile e spazi di operatività delle società pubbliche. Il dir dell'econ, p 525
Kotsonis T (2009) Co-operative arrangements between public authorities in the pursuit of a public interest task: Commission of the European Communities v Federal Republic of Germany (C-480/06). Public Procurement Law Rev, p 212
La Porta U (2002) Dal tipo contrattuale al modello di società: autonomia contrattuale e norme inderogabili nel nuovo diritto societario. Soc, pp 1, 12 et seq
Lafarge F (2010) Administrative cooperation between member states and implementation of EU law. Eur Rev Public Law 16:597–616
Lanzoni L (2011) Le forme della democrazia partecipativa nell'ambito della cooperazione transfrontaliera. Riv it dir pubbl comunit, p 503

Lenaerts K (2004) "In the union we trust": trust-enhancing principles of community law. Common Mark Law Rev (2):317–343
Lolli A (2005) Servizi pubblici locali e società in house: ovvero la collaborazione degli enti locali per la realizzazione di interessi omogenei. Foro amm Tar, p 1942
Lottini M (2012) From 'Administrative Cooperation' in the Application of European Union Law to 'Administrative Cooperation' in the Protection of European Rights and Liberties. Eur Rev Public Law, p 131 and ff
Macchia M (2010) La cooperazione amministrativa come "questione di interesse comune". In: Chiti MP, Natalini A (eds) Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona. Il Mulino, Bologna, p 87
Macchia M (2012) Questione amministrativa e cooperazione dopo Lisbona: un nesso inscindibile. Riv It dir Pub Com, p 85
Mattarella BG (2014) The Italian efforts on anti-corruption. In: Racca GM, Yukins CR (eds) Integrity and efficiency in sustainable public contracts. Balancing corruption concerns in public procurement internationally, Bruxelles, p 61 et seq
Mazzamuto M (2014) Fallibilità o meno delle società in house tra diritto privato e diritto pubblico, garanzia statale dei debiti degli enti pubblici (CEDU) e divieto di aiuti statali (UE). Il dir dell'econ, p 550
Mazzantini G (2011) La spesa per consumi finali nella pubblica amministrazione: analisi del trend delle sue componenti e ruolo di Consip. In: Fiorentino L (ed) Gli acquisti delle amministrazioni pubbliche nella repubblica federale. Il Mulino, Bologna, p 53 et seq
Merusi F (1993) Il coordinamento e la collaborazione degli interessi pubblici e privati dopo le recenti riforme. Dir Amm, p 21 et seq
Merusi F (2006) Pubblico e privato nell'istituto della responsabilità amministrativa ovvero la riforma incompiuta. Dir amm, p 1
Nicoletti F (2006) Il principio di "buona amministrazione" nell'Unione europea tra garanzia ed efficienza. Il diritto dell'economia (4):776 et seq
Nieto-Garrido E, Delgado IM (2007) European administrative law in the constitutional treaty. Oxford, p 26
Noguera De La Muela B (2010) Los encargos "in house" en la Ley de Contratos del Sector Público (LCSP). Revista de administración pública (182):159 et seq
Olivero F (2003) L'autonomia statutaria nella nuova disciplina dell'assemblea delle società per azioni. Riv not, pp 4, 847 et seq
Perfetti LR (2010) Diritto ad una buona amministrazione, determinazione dell'interesse pubblico ed equità. Riv it dir pubbl com, p 789
Pinelli C (1994) Commento all'art. 97, I, parte II, e II comma. In: Branca G, Pizzorusso A (eds) Commentario della Costituzione, Bologna
Pizzetti FG (2000) Il Principio di leale cooperazione nell'ordinamento europeo. In: Mangiameli S (eds) L'ordinamento europeo I, I principi dell'Unione, Milano 2006, p 331 and ff
Ponce Solé J (2011) EU law, global law and the right to good administration. In: Chiti E, Mattarella BG (eds) Global administrative law and EU administrative law. Relationships, legal issues and comparison, Part 2, p 133 et seq
Ponzio S (2011) I modelli organizzativi di mutualisation degli acquisti nel settore sanitario e ospedaliero in Francia per la modernizzazione e professionalizzazione della fonction achat. In: Pioggia A, Civitarese Matteucci S, Racca GM, Dugato M (eds) I servizi sanitari. Organizzazione, riforme e sostenibilità: una prospettiva comparata, p 254 et seq
Ponzio S (2012) La valutazione della qualità delle amministrazioni pubbliche. Nel Diritto editore, Roma
Ponzio S (2013) Il comportamento contraddittorio nella revoca dell'aggiudicazione di un appalto pubblico: la responsabilità precontrattuale e il danno risarcibile. Urb e app, p 1085
Rabinovici I (2012) The right to be heard in the charter of fundamental rights of the European Union. Eur Public Law 18(1):149 et seq

Racca GM (2003) Responsabilità della pubblica amministrazione e risarcimento del danno innanzi al giudice amministrativo. In: Garofoli R, Racca GM, De Palma M (eds) Responsabilità della pubblica amministrazione e risarcimento del danno innanzi al giudice amministrativo, Milano, p 38 et seq
Racca GM (2010) Collaborative procurement and contract performance in the Italian healthcare sector: illustration of a common problem in European procurement. Public Procurement Law Rev 3:119–133
Racca GM (2012) Le responsabilità delle pubbliche amministrazioni nella fase che precede la stipulazione del contratto pubblico. In: Scritti in Onore di Giuseppe Palma, III, Torino, p 2650
Racca GM (2014a) Relazione al convegno Appalti pubblici: innovazione e razionalizzazione. Le strategie di aggregazione e cooperazione europea nelle nuove Direttive, Consiglio di Stato—Roma, 14 May 2014, in http://www.iuspublicum.com/repository/uploads/21_05_2015_18_30_Atti_del_Convengo_Consiglio_di_Stato_14_05_2014.pdf, p 11 et seq
Racca GM (2014b) Joint procurement challenges in the future implementation of the new directives. In: Lichère F, Caranta R, Treumer S (eds) Modernising public procurement: the new directive. DJØF Publishing, Copenhagen, pp 234–235
Racca GM (2015) Le centrali di committenza nelle nuove strategie di aggregazione dei contratti pubblici. In: Italiadecide—Rapporto 2015, cit, p 489 et seq
Racca GM, Cavallo Perin R (2011) Organizzazioni sanitarie e contratti pubblici in Europa: modelli organizzativi per la qualità in un sistema di concorrenza. In: Pioggia A, Civitarese Matteucci S, Racca GM, Dugato M (eds) I servizi sanitari: organizzazione, riforme e sostenibilità. Una prospettiva comparata. Maggioli Editore, Rimini, p 197
Racca GM, Cavallo Perin R (2014) Corruption as a violation of fundamental rights: reputation risk as a deterrent against the lack of loyalty. In: Racca GM, Yukins CR (eds) Integrity and efficiency in sustainable public contracts. Balancing corruption concerns in public procurement internationally, Bruxelles, p 23 et seq
Racca GM, Ponzio S (2011) La mutualisation des achats dans le secteur de la santé publique: les centrales d'achat et les accords-cadres dans une perspective comparative. Droit Administratif, pp 7–12
Rolli R, Comite U (2008) Efficienza, efficacia ed economicità: "percorsi aziendali" per la pubblica amministrazione (Note to State Council, section V, 4 March 2008, no. 862). Giust amm, p 326
Romano A (1987) voce Autonomia nel diritto pubblico. In: Digesto disc. pubbl., Torino, II, p 31 et seq
Romano Tassone A (2004) La responsabilità della P.A. tra provvedimento e comportamento (about a recent book)" in Dir Amm
Romano Tassone A (2008) I "diritti" tra ordinamento interno ed ordinamento comunitario. Diritto e processo amministrativo, p 112
Sánchez Graells A (2011) Public procurement and the EU competition rules. Hart, Oxford
Sandulli MA (2010) Il risarcimento del danno. In: Greco G (ed) Il sistema della giustizia amministrativa negli appalti pubblici in Europa, Milano, pp 67–102
Sandulli MA (2012) Il risarcimento del danno. In Greco G (ed) Il sistema della giustizia amministrativa negli appalti pubblici in Europa. Conference papers, 20 May 2011—Università degli Studi di Milano, Milano, p 3156
Sardelli S (2015) Danno diretto o indiretto: la Suprema Corte ribadisce il discrimine tra giurisdizione contabile ed ordinaria. Giur Comm, p 464
Schwarze J (2012) European administrative law in the light of the treaty of Lisbon. Eur Public Law, p 294 et seq
Selvaggi E (2015) Rapporti per la cooperazione penale fra Stati, Osservazioni a CGUE, 16 luglio 2015, n. 237, in Cass. Pen., 3800B
Sorace D (2010) Una nuova base costituzionale europea per la pubblica amministrazione. In: Chiti MP, Natalini A (eds) Lo spazio amministrativo europeo. Le pubbliche amministrazioni dopo il Trattato di Lisbona, cit., pp 82 and ff

Soverino L (2009) I servizi pubblici nell'Euroregione: nuove prospettive di diritto comunitario per la cooperazione transfrontaliera, tra Consiglio d'Europa e potere estero delle Regioni. Riv it dir pubbl comunit, p 17 et seq

Spiezia F (2015) La proposta di regolamento del 17 luglio 2013 per la creazione dell'agenzia dell'unione europea per la cooperazione giudiziaria penale. Lo stato dei negoziati e le prospettive per il futuro di Eurojust, in Cass. Pen., 1614C

Tátrai T (2015) Joint public procurement. J Acad Eur Law

Trimarchi Banfi F (2007) Il diritto ad una buona amministrazione. In: Chiti MP, Greco G (eds) Trattato di diritto amministrativo europeo, Milano, I, pp 49–86

Trimarchi Banfi F (2010) La gestione dei servizi pubblici locali e tutela della concorrenza. Amministrare XL(3):339

Trimarchi M (2011) L'art. 41 della Carta europea dei Diritti Fondamentali e la disciplina dell'attività amministrativa in Italia. Dir Amm, p 537 et seq

Turk AH (2009) Judicial review of integrated Adminstration in the EU. In: Hofmann HCH, Turk AH (eds) Legal challenges in Eu Adminstration law. Edward Eglar, Cheltenham, p 218

Ursi R (2014) Il cammino disorientato delle c.d. società in house. Il dir dell'econ, p 557

Volpe C (2015) Le nuove direttive sui contratti pubblici e l'in house providing: problemi vecchi e nuovi. In: "La nuova disciplina dei contratti pubblici tra esigenze di semplificazione, rilancio dell'economia e contrasto alla corruzione" 61st Conference on Administrative Studies, Villa Monastero, 17–19 September 2015, in www.astrid-online.it/

Wiggen J (2012) Public Procurement Law and Public-Public cooperation: reduced flexibility but greater legal certainty ahead? A note on the Commission's Staff Working Paper on the application of EU public procurement law to relations between contracting authorities and proposal for a new directive. Public Procurement Law Rev, pp 225–233

Wiggen J (2014) Directive 2014/24/EU: The New Provision on Cooperation in the Public Sector. Public Procurement Law Rev, p 83 et seq