

**AGREEMENTS BETWEEN LOCAL AUTHORITIES AND
BETWEEN LOCAL AUTHORITIES AND PRIVATE INDIVIDUALS
WITH REFERENCE TO TERRITORIAL GOVERNMENT**

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1. REGULATORY FRAMEWORK FOR TOWN PLANNING AGREEMENTS

The role of town planning creates, in the majority of cases, the need to finalise agreements with private individuals either for property or for business reasons. The complex framework of interests plus the need to purchase public works or facilities are the main reasons why basic agreements have become part of “territorial government”¹

Town planning agreements usually cover:

a) “town planning conventions”, followed by implementation plans which state planning decisions defining how they should be implemented and the commitments on both sides; the reference model is the “*parcelling out agreement*” according to art. 28 law N. 1150/1942² whose completion influences the completion and the effectiveness of the implementation plan³.

¹ **TERRITORIAL GOVERNMENT:** P. STELLA RICHTER, Functional profiles of town planning (*Profili funzionali dell'urbanistica*), Milan 1984; The evolution of town planning and construction doctrine (*L'evoluzione della dottrina in materia urbanistica ed edilizia*), in *Riv. Giur. Ed.*, 2009, The relationship between national and regional legislation (*I rapporti tra la legislazione statale e regionale*), in *Riv. Giur. Urb.*, 2008; G. MORBIDELLI, Town and land management (*Pianificazione territoriale ed urbanistica, ad vocem*), in *Enc. Giur.*, vol. XXIII, Roma 1990; V. MAZZARELLI, Town and land management in an economic sense (*L'urbanistica e la pianificazione territoriale in La disciplina dell'economia*), (edited by) S. CASSESE, Treaty of administrative law (*Trattato di diritto amministrativo*), Milan 2003; A. CROSETTI, A. POLICE, M.R. SPASIANO, Town planning and public works laws and regulations (*Diritto urbanistico e dei lavori pubblici*), Turin 2007; V. CERULLI IRELLI, Territorial government in the new constitutional organization (*Il governo del territorio nel nuovo assetto costituzionale*), in S. CIVITARESE MATTEUCCI – E. FERRARI – P. URBANI (edited by), Territorial government (*Il governo del territorio*), Conference Notes -Atti del VI Convegno AIDU, Milan, 2003, 499.

² **The 1942 town planning law** has been modified by special and sectional laws such as: the “interim law” n. 765/1967, and law n. 865 /1971 dealing with house building and business units, law n. 10 /1977, law n. 457 del 1978 and law n. 493 /1993 inner city development plans, law n. 122/1989 on public and private car parks

b) *Agreements* in the field of planning procedures between authorities and private individuals who compete to define urban decisions (also including *equalizing agreements*) and *multifunctional agreements* of plans and special programmes⁴.

c) *Agreements* between authorities aimed at planning or oriented in favour of public interventions which have repercussions on town-planning⁵.

The difficulty of outlining an equal reconstruction of such agreements suffers due to their functional differences, different attitudes of public interest (strictly urban and

appurtenant to public land, law n. 179/1992 dealing with inner city development plans. See also art. 5 decree-law n 112/2008 converted into L. 133/2008 “development decree”.

³ **TOWN PLANNING CONVENTIONS:** V. MAZZARELLI, *Town planning conventions (Le convenzioni urbanistiche)*, Bologna, 1979; A. CROSETTI, *Parcelling-out plan (Piano di lottizzazione)*, in *Nov. Dig. It. Appendice*, vol. V, Turin, 1984; P. URBANI - S. CIVITARESE MATTEUCCI, *Town planning law. Organization and relationships (Diritto Urbanistico. Organizzazione e rapporti)*, Turin, 2004.

⁴ In reference to **planning agreements**, functional also to equalizing agreements, the most significant references are represented in art. 18 Regional Law Emilia Romagna, n.20/2000 and by art. 6 of the Regional Law Veneto n. 11/2001. More complex definitions, not only town-planning ones, are present in agreements to realize integrated intervention programmes and regeneration programmes see law n. 457/1978 (articles. 28 and 30); *integrated programmes of intervention and urban regeneration programmes introduced in law n. 179/1992 (art. 16)*; *district agreements (1998)*; *innovative programmes in urban spheres (2002)*; *programmes of urban regeneration – see law n. 166/2001*. More recently for dispositions regarding urban regeneration see “*Housing Schemes*” (Decree law 112/2008 converted into L. 133/2008 and Decree law 70/2011 converted into law 106/2011) also the following regional laws: VENETO: L.R. 14/2009 and L.R. 13/2011; TUSCANY: L.R. 24/2009; L.R. 65/2010; EMILIA ROMAGNA: L.R. 6/2009; LOMBARDY: L.R. 27/2009; CAMPANIA: L.R. 19/2009 e L.R. 1/2011; PIEDMONT: L.R. 20/2009 and L.R. 1/2011; UMBRIA: L.R. 13/2009 and L.R. 27/2010.

⁵ The main reference is represented by art. 34 law n. 267/2009 then adopted by regional town planning legislation (sub note 12).

“alternative”⁶), by the business imprint on the property (from “demesne” to “business-owned”)⁷, new equal distribution rules (equalizing by reward, equalizing by compensation, negotiation of building rights)⁸ and by the weak framework of authorities. One must also add, the lack of a national reform on town planning plus the ambiguous distribution of national and regional functions in this field even indirectly to “local government” (see for example, Constitutional Court Sent. 121/2010 “Housing scheme”; and also Constitutional Court Sent. 303/2003, 401/2007 and 411/2008 in the subject of public works).

2. LEGAL DEFINITIONS AND PROFILES OF CONVENTIONS AND TOWN PLANNING AGREEMENTS (BETWEEN AUTHORITIES AND PRIVATE INDIVIDUALS)

Legal definitions of town planning agreements on the one hand offer, as always, forms of uncertainty regarding different doctrinal views; in comparison with civil-contract proposals, which seem however to be predominant to their renewal – for essential elements and function – to the category of *conventions* and *public law* agreements, and in particular to the *procedural agreements* according to art.11 law n.241/1990⁹ thus recognizing in this

⁶ **DIFFERENTIATED INTERESTS:** V. CERULLI IRELLI, *Town planning and differentiated interests*, in *Riv. Trim. Dir. Pubbl.*, 1985, 386.

⁷ **RELATIONSHIP PLANNING-PROPERTY:** S. AMOROSINO, *The government of local land management – the new town planning legislation* Padua, 2008.

⁸ **EQUALISATION** read A. BARTOLINI, *Large land areas and equalization, Report 2011*, on website www.ius-publicum.com.

⁹ **AGREEMENTS BETWEEN LOCAL AUTHORITIES AND PRIVATE INDIVIDUALS.** Among the numerous important contributions on a classic theme, a reconstruction of public law and procedures may be found in A. AMORTH, *Observations on the limits of local authority’s activities and legislation (Osservazioni sui limiti dell’attività amministrativa di diritto privato)*, in *Arch. Dir. Pubbl.*, 1938, 465; G. FALCON, *Public law*

field the synthesis between administrative power on one hand, autonomy and a conventional-pactional structure on the other.

With the exception of those pactional regulations with a mere conceptual content of planning decisions, a “quota” of planning functions (and thus administrative power) in the majority of such agreements, defined in a consensual way rather than enforced, with the contribution of the will of the private party that however, does not influence the efficacy of public will but instead becomes an essential cornerstone.

The procedural environment of town planning agreements has been revised on several occasions by case law of the Supreme Court and by administrative judges, assuming

conventions – acceptability and definitions (*Le convenzioni pubblicistiche. Ammissibilità e caratteri*), Milan 1984; G. GRECO, Administrative agreements regulations and contracts (*Accordi amministrativi tra provvedimento e contratto*), Turin, 2003; F.G. SCOCA, Agreements (*Gli accordi*), in F.G. SCOCA (edited by), Administrative law (*Diritto Amministrativo*), Turin, 2008; E. BRUTI LIBERATI, Administrative agreements (*Accordi amministrativi*), in *Enc. Dir., Aggiornamento*, V, Milan, 2001, 2; A. MASUCCI (edited by), The agreement of administrative action (*L'accordo nell'azione amministrativa*), Rome, 1988. E. STICCHI DAMIANI Consensual administrative activity and programmed agreements (*Attività amministrativa consensuale e accordi di programma*), Milan, 1992; G. PERICU, The consensual activity of the civil service (*L'attività consensuale della pubblica amministrazione*), in L. MAZZAROLLI, G. PERICU, A. ROMANO, F.A. ROVERSI MONACO, F.G. SCOCA (edited by), Administrative Law (*Diritto Amministrativo*), Vol. II, Bologna, 2004, 1635 ss.; M. RENNA, The regime of obligations borne from administrative agreements (*Il regime delle obbligazioni nascenti dall'accordo amministrativo*), in *Dir. Amm.* 2010, 1.; F. MERUSI, The correct administrative proceedings code (*Il codice del giusto processo amministrativo*), in *Dir. proc. amm.* 2011, 1, 1; A. MALTONI, Reflections on procedures and activity in private law regarding the civil service (*Considerazioni in tema di attività procedurali a regime privatistico delle amministrazioni pubbliche*), in *Dir. amm.* 2011, 1, 97. F. PELLIZZER, Public-private agreements in territorial government (*Gli accordi pubblico-privato nel governo del territorio*), in F. MASTRAGOSTINO (edited by), Public-private collaboration and administrative regulations (*La collaborazione pubblico privato e l'ordinamento amministrativo*), Turin, 2011.

A contract-civil law explanation can be found here: COMPORI, Infrastructural coordination (*Il coordinamento infrastrutturale*), Milan 1996, 317; G. MANFREDI, Agreements and administrative action (*Accordi e azione amministrativa*), Milan, 2002; S. CIVITARESE MATTEUCCI, Contribution to the study of the contract principle in administrative activity (*Contributo allo studio del principio contrattuale nell'attività amministrativa*), Turin, 1997; G. MONTEODORO, The new agreement discipline (*La nuova disciplina degli accordi*), website www.giustizia-amministrativa.it.

the general scope of the whole category of agreements ex art. 11 law n. 241/1990 and its relative legal regime. The latter is actually appropriate to constitute a public and discretionary nature of authority with a partially consensual definition of the structure of interests; and also to allocate full awareness to an administrative judge, which has repercussions on the execution of administrative functions, although via conventional forms (Supreme Court 16/7/2008 indirectly Supreme Court. S.U., 22 December 2009, n. 26972; Council of State, IV, 2 March 2011, n. 1339; Supreme Court., S.U., 5 May 2011, n. 9843; Council of State, Section. V, 26 October 2011, n. 5711; Regional Administrative Court (subsequently written as R.A.C) Liguria Genoa, 5 July 2011, n. 1054; R.A.C. Emilia Romagna Parma, I, 22 February 2011, n. 45; also on conventions in general R.A.C. Veneto, II, 31 May 2011 n. 920; R.A.C. Lombardy Brescia, I, 27 May 2011 n. 770; R.A.C. Lombardy Milan, II, 18 May 2011, n. 1281).

Obviously differentiations descend from a wide variety of agreements regarding both the qualifying angle and from a disciplinary position, but always allowing for the tendential uniqueness of the general principles in this sector.

2.1 Town planning conventions

In comparison to the classic conventional model, the predominant doctrinal reconstruction, supported by consolidated laws, has qualified such agreements as necessary substitute agreements (in the sense that they are not facultative and therefore not alternative to unilateral action) in that they were formulated ex lege dating back to the 1942 Town Planning law, which also ties in with the procedural pattern art. 11 of law n. 241/1990 rather than merely contractual typologies, or “government laws” of an exclusively consensual discipline.

In particular, according to the legal system, the conventional structure is always embedded within a specific administrative procedure (parcelling-out approval and issue of planning permission), aimed at adopting a measure specified by means of an agreement or a substitute, although different to other consensual models due to its inherence to the

application of a public authority to which individuals may contribute towards the manner and the outcome of the venture (Supreme court sentence n. 7573 30/3/2009).

As a result, there are several legal consequences. While trial judges can only deal with compensation claims if a local authority is found guilty of overlooking an approval of a detailed plan which had in fact passed all the necessary stages, all other legal issues are addressed by an “administrative” judge who oversees all other non-compliances of agreements by authorities, although with limited, discretionary judgement (Supreme court sentence n. 1538 01/7/2009).

The aim of conferring “exclusive jurisprudence” in this subject matter is in fact aimed at attributing full administrative legal powers to an “administrative” judge, even when they are carried out in conventional terms, deemed indifferent to the formal legal draft of authoritarian power (Council of State, V, 8 October 2008, n.4952; Council of State, IV, 12 November 2009, n. 7057; Supreme Court, sent. 29 April 2009, n.9952).

Some uncertainties remain due to the frequent expansion of the field of town planning agreements in comparison to the standard classic model, emphasizing the extensibility of the legal system ex art. 11 law n. 241/1990 and further obligations borne by the executor. If we leave behind standard agreements, then a more general question is raised if in procedural town planning agreements authorities are able to negotiate further aspects which lie outside the jurisdiction of administrative power expressed by a given function and which would assume a position of private autonomy in line with situations of subjective law.

Beyond specific legal prohibitions, there is no evidence of any impediment in this sense, although it is undeniable that the standard model and the same procedural context constitutes a parameter to assess the compliance – in the sense of reason, adequacy, proportion and in a civil view the “worthiness” ex art. 132 Civil code, in the interests of the general public.

One must remember regarding “unilateral termination” ex art. 11, comma 4 law n. 241/1990, different from “contractual termination” – how the prevailing jurisprudence,

even though it links its authority to the logic of impossibility to crystallize town planning strategies (R.A.C. Genoa, I, 11 July 2007 n. 1377), considers that the pre-existence of a conventional and bilateral legislation linked to the previous planning act worsens— in reference to assumptions, terms and conditions – a new use of the same administrative power employed in those situations which arise in virtue of the assurance generated by the initial “approved” town-planning choice (Council of State, IV, 12 November 2009, Council of State n. 7057; IV, 27 June 2008, n. 3255; Council of State, IV, 29 July 2008, n. 3766; Council of State, IV, 19 February 2008, n. 534; Council of State, IV, 12 March 2009, n. 1477; R.A.C. Piedmont, Turin, I, 20 November 2008, n. 2900; R.A.C. Lazio Rome, III, 1 February 2010, n. 1275; R.A.C. Liguria Genoa, I, 17 November 2011, n. 1575; R.A.C. Emilia Romagna Parma, I, 11 May 2011, n. 141).

2.2 Town planning agreements and agreements regarding the implementation of sectional plans and programmes

In relation to other types of *town planning agreements* – used in planning or instrumental to the implementation of interventions in the public interest (social construction plans, urban regeneration plans, equalization-compensatory agreements) – minor uncertainties have been registered in the public-procedural definition and therefore in reference to the framework outlined in art. 11 law n. 241/1990.

For the first ones, the procedural collocation in full respect of the limits of the guarantee of public law specified in art. 13 of the same law n. 241/1990 (R.A.C. Tuscany Florence, 13 March 2009, n. 303) while in reference to the latter which boasts complex contents (not only in terms of planning), highlights, indeed as how a consensual discipline cannot deplete administrative power, leaving margins of discretion which do not permit the integral application of civil law institutions.

Therefore we can confirm that in endo-procedural town planning agreements which are used to approve across-the-board urban planning¹⁰, the consensual element expresses the interest of both parties in favour of a possible town-planning solution of which the local authority must appraise via a written approval document during the final planning stages.

From here stems the preference, in line with jurisprudence, to the theory of incomplete availability towards the negotiation of town-planning functions, instead of adhering to the theory of the “consensual or contracted town planning” founded on the de-standardization of the general category ex art.11 law n. 241 and its assimilation of instruments used in the authority’s legal activity. At this point, the stance adopted in 2010 by The Council of State (Council of State, IV, 13 July 2010 n. 4545) following (R.A.C. Lazio Rome, 4 February 2010, n. 1524) relating to the acceptance of several estimates by the planning department of Rome Council required for private individuals, interested in exploiting building capacities assigned conditionally to privately-owned land, the obligation to join a predefined instrument (more specifically, “integrated plan”) also accepting, by means of agreement, predetermined equalization/compensatory measures (in particular the relinquishment of certain areas and extraordinary contributions for works of urbanization).

According to the administrative judge, a planning authority cannot disregard the “reserve” officially recognized to local authorities in terms of town planning and by the limited amount of planning instruments, in such a way that when detailed variations on

¹⁰ **PLANNING AGREEMENTS:** G .PAGLIARI, Town planning agreements between local authorities and private individuals (*Gli accordi urbanistici tra P.A. e Privati*), in *Riv. giur. Urb.* 2008; M. MAGRI, Agreements with private parties in the creation of structural urban plans, (*Gli accordi con i privati nella formazione dei piani urbanistici strutturali*) in *Riv. Giur. Ed.*, 2004, 539 also P. URBANI, Planning for agreements (*Pianificare per accordi*), in *Riv. Giur. Ed.*, 2005, 177 ss. and P .URBANI - S. CIVITARESE M., Local authorities and private individuals together for town planning (*Amministrazione e privati nella pianificazione urbanistica*), Turin, 1995.

town planning discipline are introduced, these deviations however are not accepted from the legal model in observance of “cause” and “content” as defined by law. Hence the possibility that the implementation phases are disciplined by the usage of flexible consensual instruments which are also multi-functional, public or private venture, legally provided for, but always referring the planning responsibility to the local authority, even in line with the obligation imposed by art.11 comma 4 bis, law n. 241/1990, subject to an administrative determination which anticipates and legitimates the recourse of the agreement as an instrument.

Therefore “unnecessary” agreements are being dealt with, although in many cases they are essential in order to create minimum feasibility conditions of general planning decisions; for this reason it is also important to notice how subjective positions of private parties who cannot consider themselves particularly protected against the dissimilar or non-adoption of the lay-out agreed upon in the planning instrument of which the agreement constitutes an integral part (see art. 18 Regional law Emilia Romagna 24 March 2000, n. 20; regarding the necessity of agreements in order to implement equalizing forms R.A.C. Basilicata, I, 21 October 2011, n. 530; R.A.C. Veneto, 10 January 2011, n. 11; R.A.C. Veneto, 10 January 2011, n. 11; R.A.C. Tuscany Florence, 1 March 2011, n.367).

Finally, it must be remembered that the complexity of endo-procedural town planning agreements and their increasing entrepreneurial definition deriving from their equalizing function which has almost inevitably allowed for the integration of relative disciplines with competitive principles typical of public contracts (although undoubted functional differences remain between “town planning” and “calls for tender” as revealed by the Court of Justice, Section III, 25 March 2010, in case C-451/08, Helmut Muller)¹¹, in line with what is registered in complex implementation agreements of sectional plans and

¹¹ **LAND MANAGEMENT AND COMPETITION:** F. PELLIZZER, Urbanisation works among competition and territorial management (*Le opere di urbanizzazione tra concorrenza e organizzazione del territorio*), website www.giustamm.it.

programmes; in the latter the town planning function in a narrower sense assumes an indirect importance, almost servient in comparison with sectional public interest and differential implicating the implementation of forms of effective public private assistance (according to the Supreme Court Sent. 23 March 2009, n. 6960, however ascribable to the schedule ex art. 11 law n. 241/1990).

At this point the possibility of an agreement between a local authority and private parties does exist, but is not ascribable exclusively to endo-procedural town planning agreements (with the exception of those revolving around the remuneration of private services through forms of urban equalization), Indeed also lending definitions and a (mixed) legal system which is actually formed of various models of contractual partnership (in particular concessions of public works finalized following the outcome of a project finance procedure). In these cases, which are in fact very topical, the “mixed” disciplinary context is reflected in particular in the methods of realization of public works or in the public interest for which the principles affirmed in the field of realization of town planning must stand by, following the necessary legal steps in a call for tender. (Court of Justice, VI, 12 July 2001, case C-399/98 and 28 February 2008 in case C-412/04; as well as Constitutional Court 28 March 2006, n. 129 Regional law Lombardy n. 12/2005 and 13 July 2007, n. 269 law of the self-governing province of Trento n. 16/2005; with reference to public works contemplated in town planning agreements, see R.A.C. Emilia Romagna, Parma, 12 March 2010, n. 82 and R.A.C. Lombardy Brescia, 15 January 2008, n. 7).

One may observe that an articulated and evolving framework can be acknowledged; it is equally clear to see that the evolutionary line, closely followed by jurisprudence in order to guarantee that in those cases where “the public authority – part of an agreement” does not have any residual margin of discretion, both in the execution phase of the agreement, complete legal protection must be guaranteed through the application of “compatible principles in the subject matter of obligations and contracts” (in reference to the opening of the Council of State, IV, 15 May 2002, 2363; Council of State, V, 19 October 2011, n.5627; R.A.C Piedmont Turin, I, 16 June 2011, n.630; R.A.C. Sardinia, I, 12 May 2011, n. 478).

Several sentences are collocated within this prospective with which, for example, it has not been excluded that the public law regime of agreements could be integrated by other hypothesis of contractual invalidity and however by all those invalidity hypotheses regarding the inexistence or unlawfulness of the case or subject matter (R.A.C Lombardy Brescia, I, 12 October 2010, n. 4026 on the same theme as Civil code art. 1341 and oppressive clauses, with application of Civil code articles n. 1338 and 1339). Strictly speaking one must also take into account those rulings which have put the spotlight onto the acceptability of actions of mere judgment of non-fulfilment with regards to a compensation claim, or that have faced the topic of pre-contract responsibility (ex art. 1337 Civil code) and of non-fulfilment by the authority in terms of non-adoption of an act provided for or for the adoption of an act which is dissimilar to the original agreement.

In the first instance we find essentiality, in order to acknowledge a sentence of *facere*, of a judgment regarding the exhaustion of any margin of discretion which lies with the public authority (R.A.C. Lazio Rome, II, 14 January 2010, n. 268).

A decisive judgment even in the second instance to enable, therefore, through the application of general rules regarding the interpretation of contracts, the investigation of the effective wishes of all parties, sentences ex art. 2932 Civil code (R.A.C. Lombardy Brescia, II, 16 July 2009, n. 1504).

In the third instance, on the contrary, an attempt has been advanced in favour of an action of annulment for violation of the agreement with consequent compensatory protection for breach of contract. (R.A.C. Lombardy Brescia, I, 12 October 2010, n. 4026).

3. AGREEMENTS BETWEEN PUBLIC AUTHORITIES

Town planning agreements between public authorities may include those perfectible among different levels of local government within the scope of planning procedures (with the function of unification and procedural simplification or with the outcome of co-planning), co-planning agreements and those with the aim of accomplishing

public works entailing variants to town planning instruments and that find a paradigmatic model in the outline of the programme agreement ex art. 34 Legislative decree n. 267/2000 and repeated in regional legislation for local governments¹².

The first agreements display a strictly organizational nature, only partially clear in the following ones in which a programmatic function is accompanied by the definition and detailed discipline of interventions in the public interest mostly involving private implementation parties (Council of State, IV, 4 April 2011, n. 2104; Council of State, VI, 10 March 2011, n. 1534; Council of State, IV, 16 September 2011, n. 5220; Council of State, IV, 7 September 2011, n. 5029; Council of State, VI, 31 October 2011, n. 5816; R.A.C. Lazio Rome, I, 21 July 2011, n. 6559; R.A.C. Lazio Rome, I, 13 October 2011, n. 7916)¹³.

¹² At a regional level, taking into account the most up-to-date literature we can recommend: EMILIA ROMAGNA: Regional Law 20/2000 General legislation on land protection and use. "*Disciplina generale sulla tutela ed uso del territorio*"; Regional Law 24/2001 General legislation of public intervention in the housing sector "*Disciplina generale dell'intervento pubblico nel settore abitativo*"; Regional Law 19/1998 Rules regarding urban regeneration "*Norme in materia di riqualificazione urbana*"; CAMPANIA: Regional Law. 16/2004 Rules for territorial administration "*Norme sul governo del territorio*"; FRIULI VENEZIA GIULIA, Regional Law. 5/2007 Reform of town-planning and legislation on construction and landscapes "*Riforma dell'urbanistica e disciplina dell'attività edilizia e del paesaggio*"; LIGURIA: Regional Law. 36/1997 Regional town-planning legislation "*Legge urbanistica regionale*"; LOMBARDY: Regional Law. 12/2005 laws for territorial administration "*Legge per il governo del territorio*"; MARCHE: Regional Law. 34/1992; PIEDMONT: Regional law. 56/1977 Land Protection and use "*Tutela e uso del territorio*"; PUGLIA: Regional Law. 20/2001 General rules of territorial administration and use "*Norme generali di governo e uso del territorio*"; TUSCANY: Regional Law 1/2005 Rules for territorial administration "*Norme per il governo del territorio*"; VENETO: Regional Law. 11/2004 Rules for territorial administration "*Norme per il governo del territorio*"; UMBRIA: Regional law 13/2009 Rules for territorial administration "*Norme per il governo del territorio*".

¹³ **AREA AGREEMENTS AND PROGRAMMES:** there is a vast choice on this topic, this is just a selection E. STICCHI DAMIANI, Consensual administrative activity and area programmes (*Attività amministrativa consensuale e accordi di programma*), Milan, 1992; R. FERRARA, Area agreements (*Gli accordi di programma*), Padua, 1993; R. FERRARA, Cooperation, conventions and administrative agreements (*Intese, convenzioni e accordi amministrativi*), in *Digesto disc. pubbl.*, VIII, Turin, 1993, 543; GRECO, Aree programmes and administrative

The main problems that concern the second type of agreement have in fact dealt with, on one hand, their qualification as procedural agreements ex articles 15 and 11 law n. 241/990 (Council of State, IV, 12 November 2009, n. 7057 and R.A.C. Tuscany Florence, I, 3 March 2009, n. 303, R.A.C. Campania Naples, I, 17 June 2011, n. 3241), yet on the other, the position of private parties in various capacities in reference to the outcome of the completion of the agreements of the programme entailing variations to town planning instruments: both for reasons directly linked to effects of the latter but also more generally in relation to their direct participation in the agreement, as creators or material accomplishers of their involvement (R.A.C. Veneto, 7 October 2011, n. 1502; R.A.C. Piedmont Turin, II, 15 April 2011, n. 378; R.A.C. Puglia Bari, I, 10 February 2011, n. 250).

In particular a subject of close scrutiny by administrative judges has been the preconditions and limits of programmed agreements in every hypothesis in which, apart from the realization of public works, were also subject to private interventions or rather a determinist alternative to town planning instruments even for this purpose. In this respect referring to the ductility of the instrument, pre-arranged to rapidly conclude relevant proceedings and therefore becoming an efficient public action, administrative law maintains that the general rule legitimizing local area plans – art. 24 Local Authorities Act n. 267/2000, together with corresponding dispositions introduced in regional legislation of “local government” – legitimates the completion of agreements even by private initiative regarding interventions of important public interest (which, for example, the localization of a business unit which modifies town planning instruments, as in the case examined by Council of State, IV, 29 July 2008, n. 3757 reforming R.A.C. Emilia Romagna Parma 29

procedure (*Accordi di programma e procedimento amministrativo*), in AA.VV., *The relationship between citizens and institutions after the recent reform of local authorities and administrative procedures (I rapporti tra cittadini e istituzioni nelle recenti leggi di riforma delle autonomie locali e del procedimento amministrativo)*, Milan, 1992; G. MANFREDI, *Agreements and administrative actions (Accordi e azione amministrativa)*, Turin, 2001; S. VALAGUZZA, *Area programme, the distinctiveness of the model, the use of the principles of civil code and its application (L'accordo di programma: peculiarità del modello, impiego dei principi del codice civile e applicazione del metodo tipologico)*, in *Dir. Amm.*, 2010, 395

November 2007, n. 11; see Council of State, IV; 27 June 2011, n. 3833 regarding programmes and sectional plans; R.A.C. Lazio Rome, II, 14 September 2011, n. 7273; R.A.C. Lombardy Milan, IV, 19 July 2011, n. 1937).

For the sake of completeness, it must be underlined however how public authorities, in order to bring to fruition any possible/feasible/sustainable public works only via private interventions, complete with prudence those planned agreements that only deal with those public works “repeated” in town planning agreements within specific procedures of town planning variations in reference to those interventions of private interest (Supreme Court of Sent. 20 July 2011 n. 15871).