

PNRR Observer

Cultural enhancement through special forms of PPP: the call for Historic Boroughs of NRRP

I The Call for Historic Boroughs of NRRP: the guidelines of the intervention

Last March 18, 2022, the Ministry of Culture ("MiC") presented the National Boroughs Plan envisaged under Investment 2.1 of the National Recovery and Resilience Plan ("NRRP"), aimed at supporting the attractiveness of historic boroughs and promoting projects for the regeneration, enhancement, and management of historical, artistic, and cultural heritage, integrating protection objectives with the needs of social and economic and employment revitalization and contrast to depopulation.

The intervention is divided into two distinct lines of action:

- line A- the first, to which 420 million euros are allocated, will support pilot projects for the cultural, social and economic regeneration of villages at risk of abandonment or neglect, through the implementation of a limited number of exemplary interventions, one for each Region or Province.
Each Region or Autonomous Province examined the applications proposed by the various territorial realities and identified the pilot projects to which addressing the investment of 20 million euros, for a total of 21 interventions, one per Region or Autonomous Province, throughout the country;
- line B- the second line of action aims, instead, at the realization of local projects of cultural regeneration of at least 229 historical boroughs, integrating objectives of protection of cultural heritage with the needs of social, economic and employment

revitalization, and contrast to depopulation, through the allocation of 380 million euros (to be divided with the proportion 60-40 between the Center North and South), functional to the financing of individual local projects of recovery.

For this line of action, municipalities were invited by the notice from MiC (the "Notice") to submit applications for funding for cultural regeneration projects by March 15, 2022.

The projects submitted, which are 1791, will be evaluated by May 30, 2022, by a MiC Commission composed of a representative of the Regions, a representative of ANCI (i.e. the National Association of Italian Municipalities) and a representative of the associations participating to the Coordination Committee of Boroughs.

The Notice attributes a central role to the Public Private Partnership (PPP), which is explicitly indicated as the model to be adopted for the recovery of cultural heritage. In the description of the purpose and scope of the intervention, the Notice, in Article 1, states, in fact, that among the specific approaches and principles adopted there is "*a strong public-private partnership, in line with the Faro Convention on the value of cultural heritage for society and the European Framework for Action on Cultural Heritage, which calls for the promotion of integrated and participatory approaches in order to generate benefits in the four pillars of sustainable development: economy, cultural diversity, society and environment*".

To favor the use of PPP, the Notice establishes that the applicant municipalities may carry out the interventions of local regeneration projects also through private subjects selected through cooperation agreements in special public-private partnership (article 4, paragraph 11), recognizing that applications accompanied by partnership with effective forms of coordination and collaboration between public and private subjects, as well as with institutional levels, third sector entities and other relevant actors for the realization of the project will be considered deserving of a higher score (article 4, paragraph 13).

In particular, flexible and innovative forms of management in the cultural sphere through the use of public-private partnerships, already executed at the time of the submission of the application or to be executed within the terms provided by the individual project in compliance with the relevant legal provisions, also in accordance with the provisions of the **Code of Public Contracts** (Legislative Decree no. 50 of April 18, 2016,), the **Code of the Third Sector** (Legislative Decree no. 117 of July 3, 2017) and the **Code of Cultural Heritage and Landscape** (Legislative Decree no. 42 of January 22, 2004).

II **Forms of cooperation for the management of cultural heritage**

The above-mentioned Codes constitute, at present, the legal source of the forms of cooperation between the public administration and private subjects for the protection and enhancement of cultural heritage.

The first provision that opened to a form of outsourcing in the management and enhancement of cultural heritage is art. 115 of the Code of Cultural Heritage and

Landscape, providing two forms of management: direct management and indirect management - i.e., through entrustment of private parties - setting the criteria that the State, the Regions and other public territorial entities shall follow in choosing between the two forms of management.

Indirect management has undoubtedly been the most affected by legal amendments, which, according to the current wording of article 115, paragraph 3 of the Code of Cultural Heritage and Landscape, is implemented through entrusting third parties or through the award of public service contracts, also in a joint and integrated form, by the administrations to which the assets belong or by the legal entities established under article 112, paragraph 5 of the same Code, if they are the assignees of the assets, through public tenders, on the basis of a comparative evaluation of specific projects. More precisely, the provision recognizes the possibility that the concession encompasses more interventions and more actions, granting a greater economic profitability rather than the sole management of cultural assets.

On the other hand, article 71, paragraph 3 of the Code of the Third Sector provides for a form of collaboration concerning real estates owned by public bodies, without any fee owned and requiring restoration, which can be given in concession for a period of up to 50 years to third sector entity pursuing public interest aims of cultural relevance at a concessionary fee, undertaking to upgrade and convert of the same through recovery, restoration and restructuring, in compliance with the provisions of the Code of Cultural Heritage and Landscape.

For this type of collaboration, the legislator has established that the concessionaire is to be identified by means of the simplified procedures set out in article 151, paragraph 3, of the Public Contracts Code, which precisely governs this form of special partnership. This provision of the Public Contracts Code allows, as is well known, recourse to special forms of PPP (similar to contractual partnership) aimed at the restoration, recovery, programmed maintenance, management, as well as public use and enhancement of immovable cultural assets, through simplified procedures for identifying the private *partner* similar to or in addition to those provided for in paragraph 1, which concerns sponsorship contracts, specific to the cultural sector¹.

¹ Paragraph 1 of article 151 in turn refers to article 19 of the Public Contracts Code, which provides for an extremely simplified procedure for awarding sponsorship contracts. This assignment, in fact, "*is exclusively subject to prior publication on the website of the contracting authority, for at least thirty days, of a specific notice, with which the search for sponsors for specific interventions is made known, or the receipt of a sponsorship proposal is communicated, briefly indicating the content of the proposed contract. After the period of publication of the notice, the contract may be freely negotiated, provided that the principles of impartiality and equal treatment among operators who have expressed interest are respected (...)*". Similarly, art. 120 of the Cultural Heritage and Landscape Code governs the procedures for the sponsorship of cultural assets.

Due to its broad formulation and consequent lack of clarity, the provision was the subject matter of a Circular of the MiC (previously called MIBACT) in 2016², which noting how this provision responded to the need to ensure elasticity and adaptability of the peculiar experiences that emerged in practice, confirmed the nature of *"open rule that can gradually be filled with specific application contents on the basis of experience and good practices that may be carried out and tested."*

In the light of the above, the MiC initiative for the regeneration of Historic Boroughs will be the first effective implementation of public-private partnership, a form of cooperation that has not yet found adequate diffusion within the public sector and that could, however, play a fundamental role for the enhancement of Italian cultural heritage.

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² MIBACT Circular June 9, 2016 "Sponsorship of cultural assets - Article 120 of Legislative Decree No. 42 of January 22, 2004 - Articles 19 and 151 of Legislative Decree No. 50 of April 18, 2016," available at www.ministerobeniculturali.it