

## Seminar organised by the Hellenic Council of State and ACA-Europe

Rhodes, 15-16 May 2026

### New elements in the organisation and functioning of the Public Administration and Administrative Justice

#### Questionnaire

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Responses from the Italian Council of State

#### I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

#### A. Delegation of administrative tasks to private individuals

##### 1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers



## 2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision .....
- General provision of a legislative nature .....
- Specific legislation .....

In the Italian legal system, the phenomenon of private entities exercising public functions or providing public services is not mentioned at constitutional level. Nevertheless, this phenomenon has been studied by legal scholars since the last century, when it was first observed that in certain situations, private entities, both natural and legal persons, who were neither or public officials nor organs of public bodies, carried out public functions or services in their own name. Initially considered a hybrid and anomalous form, the exercise of public functions and services by private entities has become increasingly frequent over the decades, and at present it is no longer an exception but an ordinary form of administrative organisation. Currently, there are several provisions of primary legislation that recognise this phenomenon in various ways.

Law No. 241/1990, which is the general law on administrative procedure, states in Article 1, paragraph 1 ter, that “private entities entrusted with the exercise of administrative activities shall ensure compliance with the principles referred to in paragraph 1, with a level of protection not lower than that required of public administrations pursuant to the provisions of this law”; the same law also recognises that the right of access may also be exercised vis à vis “public service operators” (Article 23 of Law No 241/90) and that, for the purposes of exercising the right of access, “public administration” means “all public law entities and private law entities limited to their activities of public interest governed by national or EU law”.

At a general level, Article 2 of Presidential Decree No. 445/2000 provides that the provisions on administrative documentation apply both to ‘public administration bodies’ and to ‘public service operators’.

At the procedural level, the objectification of administrative activity has been recognised by Article 7(2) of the Administrative Trial Code, which equates public administrations with entities ‘required to comply with administrative procedures’, conferring administrative jurisdiction over disputes concerning the administrative acts of private entities.

Turning to sector specific legislation, it should be noted that the primary field which private entities exercise genuine, is that of certification: various professionals (notaries, solicitors, accountants) are, for example, recognised as having the power to certify the authenticity of signatures and statements made by their clients, and similar powers of certification are traditionally recognised for ministers of religion and ship masters.

Presidential Decree No. 445/2000 confers upon private entities the power of digital signature certification. Moreover, as early as Law No. 104/1990 (the first piece of legislation to introduce



comprehensive framework for public procurement) a system was established for the qualification of companies intending to participate in public procurement procedures. This system is based on so-called 'SOA certifications', issued by Società Organismo di Attestazione, which are private entities accredited for this purpose: this quality certification system is still in force and is currently governed by the current Public Contracts Code set out in Legislative Decree No. 36/2023.

Significant certification bodies also operate in the agricultural and food sector, in particular for the certification of geographical indications and quality schemes, such as PDO (Protected Designation of Origin), PGI (Protected Geographical Indication) and TSG (Traditional Speciality Guaranteed), which are primarily regulated by Regulation (EU) No. 1151/2012, Article 53 of National Law No. 128/1998 and the Ministerial Decree of 14 October 2013.

Further important examples of private exercise of public functions include: (i) in the field of expropriation for public use, Article 6 (8) of the Presidential Decree No. 327/2001, provides for the possibility of conferring expropriation powers on private concessionaires; (ii) in the field of assessment, liquidation and collection of taxes, where the public authority as holder of taxing powers, designates a concessionaire to exercise such functions on its behalf; (iii) in the field of the regulation of activities of particular economic relevance such as the regulatory functions of the Italian financial markets entrusted to Borsa Italiana S.p.A., which is vested with autonomous regulatory powers deriving from the Consolidated Law on Finance (Legislative Decree No. 58/1998) and from its status as the concessionaire of the market management service; (iv) in the field of inspection of motor vehicles and motorcycles, where the Ministry of Infrastructures and Transport grants accreditation to entities having the requisite technical expertise, pursuant to Law No. 264 of 1991, which provides for the entrustment to private entities meeting certain requirements of "consultancy activities relating to the circulation of means of transport"; (v) specific legislative provisions also allow for the attribution of sanctioning powers to private entities. By way of example, Article 17 (132) of Law No. 127/1997 provides that "municipalities may, by order of the mayor, confer functions of prevention and ascertainment of parking-related infringements on municipal employees or on employees of parking management companies, limited to the areas subject to concession."

In addition to the cases mentioned above, there are also situations in which a private entity performs a public service. These essentially concern: a) entities resulting from the privatisation of public economic bodies or national entities (such as, Intelsat; Eurosat; Trenitalia S.p.A.; Enel S.p.A.; Poste Italiane S.p.A. and several others); b) entities resulting from the privatisation of non-economic public bodies (for example, Legislative Decree No. 367/1996 governing the transformation of so-called "lyrical" foundations, operating in the music sector, into private-law foundations governed by the Civil Code, unless otherwise provided; Legislative Decree No. 509/1994 governing the transformation into private-law associations or foundations of bodies managing mandatory social security and welfare schemes); c) legal persons established specifically for the exercise of public power (for example, Sviluppo Italia S.p.A., established by Legislative Decree No. 1/1999 in order,

inter alia, to support central and local public administrations in financial planning, development project design and consultancy in the management of national and EU incentives; Consip S.p.A., Concessionaria Servizi Informativi Pubblici, a company wholly owned by the Ministry of Economy and Finance, which, pursuant to Article 26 of Law No. 488/1999, has been entrusted with the management of the procurement of goods and services for public administrations, acting as a national central purchasing body); d) pre-existing private legal persons utilised by the administration for the provision of services to third parties, including all accredited private entities performing activities falling within the remit of public authorities, such as, training institutions, private schools and universities, entities accredited within the National Health Service, and companies and consortia holding concessions for public transport services or waste management services.

Finally, it should be noted that, in the current historical context, public administrations make extensive use of the so-called outsourcing in the exercise of their powers and competences, which is considered an evolution of the private exercise of public functions. Outsourcing is also utilised to carry out certain stages of the administrative procedure, or solely to execute specialised preparatory or fact-finding activities, the results of which are then used by the administrative authority in adopting the final measure. This is the case, for example, of mapping the municipal territory through satellite imagery – an activity that a municipality is generally unable to carry out with its own resources – which is preliminary to urban-planning functions or to the identification of existing buildings or of technical assessment carried out to the evaluation of projects prior to the grant of public funding. Outsourcing is also used for the performance of material activities, such as global service contracts for the maintenance of property owned by public bodies. In this area, as well the relevant legal framework essentially laid down in primary legislation, which has provided for the outsourcing of services as an instrument both for the modernisation of public administration and, above all, for the containment of public expenditure and compliance with obligations relating to the stability pact. In this respect, reference may be made to the framework agreements concluded pursuant to Article 26 of Law No. 488/99 with Consip S.p.A. for the supply of goods and services to state administrations; to Article 24 (7), of Law No. 448/2001, which extended to provinces, municipalities, mountain communities and consortia of local authorities the possibility of acceding to Consip framework agreements for the procurement of goods and services, and to paragraph 8 of the same provision, which specifies that such entities ‘shall promote appropriate measures aimed at implementing the outsourcing of services in order to achieve cost savings and improve management efficiency’. In other cases, recourse to outsourcing stems from the enactment of legislation expanding the powers of a given public administration. An example is provided by Article 10 of Legislative Decree No. 368/1988, which established the Ministry of Culture and provided that ‘for the purpose of the most effective exercise of its functions and, in particular, for the enhancement of cultural and environmental heritage’, the Ministry may conclude agreements with public administrations and private entities, and may also establish or participate in



associations, foundations or companies, according with criteria laid down by subsequent regulation. That regulation was adopted by Ministerial Decree No. 491/2001, which introduced the model of the 'participation foundation', allowing the Ministry to contribute assets to the endowment of foundations, to grant cultural property for use, to exercise powers relating to the approval of statutory provisions and to adopt general guidelines.

In conclusion, the exercise of public functions, services and activities by private entities within the Italian legal system was recognised *de facto*, for several decades, in the legal theory and case law; it subsequently found recognition, albeit implicitly, in certain provisions of general nature and later evolved into the model of outsourcing. This model is, in turn, expressly authorised by primary legislation of general nature, as well as, by sector specific provisions identifying categories of functions that may be entrusted to a private entity.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

It should be noted that in Italian administrative/public law, the term "delegation of functions" refers to the legal instrument that allows a public entity to transfer the exercise of functions to another public entity. We speak of inter-organic delegation when the delegation is in favour of another body of the same administration, while we speak of inter-subjective delegation when we refer to a delegation in favour of a different public entity. According to the majority view, which was adopted by the Constitutional Court in judgment no. 39 of 1957, the delegation of functions only entails the temporary transfer of the exercise of functions, which remain the responsibility of the delegating party, who retains the power of supervision, control and revocation of the delegation. According to a minority view, the administrative delegation of functions entails the definitive transfer and conferment of functions to the delegated entity (Civil Court of Cassation, ruling no. 9284 of 20 April 2006; Regional Administrative Court for Lazio - Rome, ruling no. 10908 of 12 May 2010).

The instrument of delegation also exists in civil law. The inter-subjective delegation of administrative functions is recognised in Article 118 of the Constitution, which explicitly provides, in paragraph 2, that "Municipalities, Provinces and Metropolitan Cities are responsible for their own administrative functions and those conferred by state or regional law, according to their respective competences." Thus, inter-subjective delegation must be expressly provided for by primary state or regional law. An example of such a delegation can be found in the field of landscape protection, where the Cultural Heritage Code (Article 146 (6) of Legislative Decree No. 42/2004) assigns to the regions the power to issue landscape authorisations, specifying that they can 'delegate the exercise of such powers, for their respective territories, to provinces, forms of association and cooperation between local authorities as defined by the applicable provisions on the organisation of local authorities, park authorities, or municipalities, provided that the entities

receiving the delegation have structures capable of ensuring an adequate level of technical and scientific expertise and of guaranteeing the differentiation between landscape protection activities and the exercise of administrative functions in urban planning and construction matters'.

Having clarified that in Italian administrative law, the “delegation of functions” refers to the transfer of the exercise of functions between public administrations, in the case of the exercise of public functions by private parties, there is a delegation in a non-technical and substantive sense, which is often directly provided by law (e.g. the certification powers of notaries or lawyers). In such cases, it is the law itself that sets the criteria and conditions for the exercise of these public powers by private parties, without the need for further enabling acts.

Outside of cases directly governed by law, this substantive delegation must be formalised in a written administrative act, which primarily aims to express the entity's intention to assign the task to the private party and to identify the party itself, in compliance with regulations concerning public contracts and concessions. Depending on the case, this act may be called an “act of assignment” or “award” of a contract or concession; such acts are normally followed by a written agreement or contract. It should be noted that already under the general public accounting law of 1865, it was required that every contract entered into by a public administration must be in writing *ad substantiam*, and this principle has been incorporated into Article 18 of the current Public Contracts Code (Legislative Decree No. 36/2023).

Where the exercise of a public service or functions involving the adoption of administrative acts is at issue, the delegation of such functions must necessarily be implemented by means of a concession act, in favour of a private operator selected in compliance with the rules governing the award of public contracts and concessions. In certain cases, however, a public service may be performed in absence of a concession; however, a preliminary assessment of the operator's suitability to comply with specific quality standards is always required. Such standards are certified through the so-called accreditation act, followed by an agreement. This is the case, as regulated by Article 8-*quater* of Legislative Decree No. 502/1992, of private healthcare providers delivering healthcare services on behalf of the National Health Service; it is also the case of car workshops authorised to carry out periodic vehicle inspections, governed by Law No. 264/1991 and by implementing ministerial decrees. In such cases, it is typically the sector-specific legislation that lays down the criteria for verifying compliance with the required quality standards. It should be noted that in the latter cases, the award is essentially “direct”, that is to say it is not preceded by a public selection procedure, as this is expressly provided for by law. As a general rule, however, the conferment of functions or the entrustment of services by a public administration to a private party presupposes, as already specified, the adoption of an administrative act expressing the authority intention to “delegate” the exercise of functions to a private operator by means of a contract or concession: unless otherwise provided by law, such award must therefore comply with the rules governing the award of public contracts and concessions.

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- Directly by law .....  X
- By an administrative act .....  X
- By contract .....  X
- Other .....

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- Preparation of the administrative act .....  X
- Issuance [adoption] of the administrative act .....  X
- Implementation of the administrative act .....  X
- Other .....

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?

Please provide specific examples from legislation and case-law.

- Advisory tasks .....  X
- Decision-making tasks .....  X
- Control and verification tasks:
  - Establishment of the facts .....  X
  - Legal qualification of the facts .....
  - Other .....

As noted in the answer to question (i), at the present, private operators may occur at different stages: during the preliminary phase of procedures for the purpose of gathering information relevant to the decision-making, for the purposes of adopting administrative decisions, such as an act establishing an infringement and imposing a penalty for the failure to pay tax or for a violation of the Highway Code, and for the purposes of enforcing the administrative decision.

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

- No .....
- Yes (please specify ..... )  X

If yes, which legal instrument provides for the corresponding prohibitions?

- Constitution .....  X
- Legislation .....  X
- Other .....

Please indicate any relevant case-law.

The need to ensure the impartiality and good governance of public administration, as required by Article 97 of the Constitution, leads to the affirmation, as general principle, that the delegation of

public functions to a private operator is prohibited, particularly when authoritative powers are involved. The Italian Constitutional Court has addressed this issue several times and has stated that such delegation is constitutionally legitimate only if limited by strict boundaries based on the principles of legality and public accountability, meaning it must be accompanied by close supervision by the administration. The Constitutional Court first ruled on this issue in judgment no. 103/1989, in which it clarified that the delegation of public functions to private entities is legitimate as long as the activity is regulated by law and aimed at pursuing the interests of the community, ensuring that the private entity operates with the same objectivity as the public administration. In judgment no. 466/1993, the Constitutional Court reaffirmed that the conferment of authoritative powers to external entities (at the time, public entities transformed into joint-stock companies) should not exempt these entities from controls of legitimacy and compliance with the principles of impartiality. In judgment no. 131/2020, while addressing the legislation concerning the so-called “third sector”, the Constitutional Court acknowledged the role of private entities, distinguishing between “activities of general interest” and “authoritative powers”. The Court recognised that private entities can co-plan and co-design with the public administration on the basis of Article 118 of the Constitution (horizontal subsidiarity). In such cases, the private entity is not a mere executor but a partner participating in the exercise of a non-authoritative public function. In judgment no. 363/2003, the Constitutional Court dealt with the distinction between purely technical activities carried out by private entities and those that involve the exercise of administrative powers (such as determining violations or issuing sanctions), confirming that only the law can grant such powers to private entities. In judgment no. 207/1987, the Court stated that when a private entity receives public funds for the exercise of public functions or services, it must be subject to the control of the Court of Auditors, as the “private nature” of the entity does not shield the public origin and purpose of the funds and the power exercised.

The principle of legality therefore constitutes a cornerstone for assessing the legitimacy of delegating public functions to private entities, such that delegation not permitted by law is prohibited. However, if a primary law allows for such a power, delegation of authoritative functions to private entities is also permitted.

It can thus be stated that where the law does not explicitly allows for such delegation, or limits it, the delegation is either entirely prohibited or prohibited if exercised beyond the established limits. For example, concerning state civil functions, Article 1 of Presidential Decree No. 396/2000 establishes that these functions belong to the mayor or their legal substitute: the mayor may delegate the functions to a permanent municipal employee or, “in case of extraordinary and temporarily needs”, to other individuals, including “Italian citizens who are eligible for election as municipal councillors”: in this case, the possibility of delegating functions, both to other administrative entities or to private individuals, is confined by the law to specific conditions, and, in the absence of these conditions, the delegation is prohibited.

### 3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- Participation in examinations .....  X  
Selection based on criteria .....  X  
Other .....

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register .....   
Selection from a list/register based on criteria .....  X  
Absolute discretionary power of the Administration .....  X  
Selection by the citizen [upon a declaration] .....   
Other .....

As already clarified, the entity entrusted with the exercise of public functions must be identified in compliance with the general principles outlined in the Public Contracts Code. The latter, even for contracts below the EU threshold, requires that the principles of rotation in invitations and awards are respected. If the contract value is below €40,000.00, the award can be made directly and the private operator may be chosen with absolute discretion. However, if the value exceeds €40,000.00, the administration must consult several operators or proceed with negotiated procedures. Moreover, there are sectors excluded from the application of the Public Contracts Code, for which the administration must still apply the general principles of result, trust and market access, as well as the principles of transparency, competition and impartiality.

In conclusion, the selection of a private entity is subject (i) to the compliance with principles and criteria set out in the Public Contracts Code or in the documents of selection procedure, or (ii) may be made entirely at the discretion of the administration in the assignment or contract involves a very limited value.

In the Italian legal system, there are no instances in which a private operator entrusted with public functions is appointed by the citizens.

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No .....   
If yes, .....  X  
General normative act (e.g. Code of Administrative Procedure)  X



- Specific normative acts .....  X  
 Codes of Conduct, good practices (soft law) .....   
 Other .....

As already clarified (see above, answer to question I.A.2), some provisions contained in the general law on administrative procedure, No. 241/90, also apply to private entities exercising public functions: Article 1(1-*ter*) states that “private entities responsible for performing administrative activities shall ensure compliance with the principles set out in paragraph 1, with a level of guarantee no lower than that required of public administrations pursuant to the provisions of this law”; Article 23 recognises that the right of access can also be exercised in relation to “public service operators” and that, for the purposes of exercising the right of access, “public administration” includes “all public law entities and private law entities limited to their public interest activities regulated by national or EU law”. Moreover, Article 2 of Presidential Decree No. 445/2000 provides that the provisions on administrative documentation apply also to ‘public service operators’.

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

- Incompatibilities .....  X  
 Impediments .....  X  
 Criminal or disciplinary liability .....  X  
 Other .....  X

Legislative Decree No. 39 of 2013 lays down provisions ‘on the non-eligibility for and incompatibility of, positions within public administrations and private entities under public control, pursuant to Article 1(49) and (50), of Law No. 190 of 6 November 2012’.

For the purposes of that Decree, Article 1(2), establishes that “private law entities under public control” means “companies and other private-law entities that perform administrative functions, produce goods or services for public administrations or manage public services, and which are subject to control, pursuant to Article 2359 of the Italian Civil Code, by public administrations, or in which public administrations, even in the absence of a shareholding, are vested with the power to appoint the top management or members of the governing bodies”. It follows that entities, governed by private law, entrusted with the exercise of public functions or services are subject to the rules on non-eligibility and incompatibility applicable to positions in public administrations.

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

- Withdrawal of the certification .....  X  
 Disbarment from the professional association .....  X  
 Imposition of a fine or other penalty .....  X  
 Personal liability of the private individual (civil, criminal, disciplinary) .....  X

- Revocation of the administrative act in the issuance of which the private individual collaborated
- Civil liability of the State
- Other

#### 4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

- Yes
- No

ii. If yes, at what stage are the checks carried out?

- A priori
- A posteriori
- At any time

Depending on the circumstances and the complexity of the delegated functions, checks may be carried out only at the initial stage, or may also be carried out after the activity has commenced. Generally speaking, the more complex the functions delegated, the more continuous the supervisory activity required, especially if the delegation entails the exercise of authoritative powers.

iii. How are checks activated?

- Following a complaint/administrative appeal
- Ex officio

In many cases, checks are periodic and required by the relevant legislation. For example: periodic inspections and re-certifications.

iv. How extensive are the checks?

- Checks based on sampling
- Mandatory checks for all actions

In many cases, the supervisory activity requires the delegated entity to periodically submit certain documents (e.g., financial statements) to the delegating administration which may decide to conduct further inquiries after reviewing them.

v. What is the nature of the checks?

- Of legality
- Of the substance, of appropriateness

vi. What is the type of checks?



- On persons  X  
On actions

vii. Are the conclusions of private individuals binding on the Administration?

- Yes   
No  X

## 5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

- No   
Yes  X

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se) .....  X

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration) .....  X

In proceedings relating to the grant or revocation of public subsidies, the preliminary assessment is usually delegated to private entities. Where, on the basis of an unfavourable report issued by such entities, the subsidy is denied or revoked, the interested party generally challenges both the final decision and the report issued by the private entity.

i. What types of disputes arise when challenging the actions of private individuals?

- administrative disputes  X  
private disputes

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

Reference is made to the judgments of the Constitutional Court indicated in the answer to question I.A.vi.

Civil Court of Cassation, judgment No. 31243 of 2 December 2015, held that a service relationship exists between the professional appointed by the enforcement judge to carry out the compulsory sale of a property and the State administration, since that professional objectively contributes to the exercise of judicial functions during the enforcement sale phase.

The Criminal Court of Cassation, in determining whether a person is to be classified as a public service employee, recognised that status in respect of an employee of Trenitalia S.p.A., since the transformation of the State Railways into a joint-stock company had not remove the features

reflecting the entity's original public nature. The status of public service employee must be assessed exclusively on the basis of the rules governing the activity objectively considered and regardless of whether its exercise is entrusted to the State or to other public or private entities. (Criminal Court of Cassation, judgment No. 23465 of 26 April 2005). An employee of a company that is a concessionaire of works or services of public interest and has access to funds restricted for the achievement of public purposes must also be considered a public service employee (Criminal Court of Cassation No. 10399 of 13 January 2010).

According to the Joint Chambers of the Civil Court of Cassation, judgment No. 4424 of 27 February 2002, *"When Ferrovie dello Stato S.p.A. enters into contracts for public works or public services, it assumes the status of contracting authority"*, having the dual nature of a public enterprise in the technical sense and a private entity which, for the exercise of the activities referred to in Articles 3 to 6, makes use of special or exclusive rights and is expressly included among the contracting entities in the railway services sector listed in Annex VI to the aforementioned Legislative Decree. *"The dispute concerning the measure adopted by Ferrovie dello Stato S.p.A. to enforce the security deposit issued to guarantee the bid submitted for the tender for cleaning services for buildings relating to the transport sector (governed by Article 7(1)(c) of Legislative Decree No. 158 of 1995), as it is a consequence of the exclusion from the tender relating to the contract award procedure."*

The Council of State, in its Plenary Session Judgment No. 9 of 23 July 2004, ruled that *"Ferrovie dello Stato S.p.A. can be classified as a public-law entity and contracting authority because it has the dual nature of a 'public undertaking" and a "private entity exercising special or exclusive rights" for the purpose of operating railway services.*

The public nature of the entities that issue PDO, PGI and TSG certifications has been affirmed several times in case law: see, for example, the judgment of the Emilia-Romagna Regional Administrative Court, Parma, Section I, 8 July 2015, No. 20, and the Civil Court of Cassation, 10 January 2008, No. 355: the latter also specified that the control and certification activities carried out by these private entities constitute *"the exercise of public administrative powers and not the exercise of private business activities" and that the exercise of these functions is 'an alternative to the direct exercise of the same by public bodies, as well as... permitted by Community law', with the consequent equivalence between the tasks performed by private bodies and those performed by the public authorities designated for that purpose'.*

## **B. Integration of private-sector methods and organisational models into the functioning of the Administration**

### **1. Recruitment of senior managers outside the hierarchy of the civil service**

i. What are the objectives of recruiting private individuals as senior managers within the Administration?



The aim is often to promote more efficient and effective administrative action by applying business methods to public administration.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

The Consolidated Law on Public Employment, Legislative Decree No. 165/2001, provides for the possibility of assigning fixed-term management positions, with a maximum duration of 3-5 years, also to individuals outside the administration. This provision applies to all public administrations, including all state administrations, local public entities and related consortia, universities, educational institutions, chambers of commerce, etc. However, it does not apply to personnel governed by public law, such as magistrates, state attorneys, police and military forces, diplomatic and prefectural careers, university professors and prison governors, who are governed by their respective regulations.

iii. What criteria does the Administration use to select external senior managers?

Professional skills, previous achievements, organisational skills

iv. What is the nature of the duties of external senior managers?

- |                 |                                     |
|-----------------|-------------------------------------|
| Decision-making | <input checked="" type="checkbox"/> |
| Advisory        | <input checked="" type="checkbox"/> |
| Other           | <input type="checkbox"/>            |

v. Does error on the part of a senior manager give rise to:

- |   |                                     |
|---|-------------------------------------|
| Civil liability of the State                                      | <input checked="" type="checkbox"/> |
| Personal liability of the manager (civil, criminal, disciplinary) |                                     |

Public managers may incur various forms of liability. First, there is managerial liability, which arises from the failure to achieve institutional goals and objectives and to comply with directives: this liability entails the non-renewal of the managerial position. Managerial liability has subsequently been extended to further cases: "culpable violation of the duty to supervise compliance by staff assigned to their offices with the quantitative and qualitative standards set by the administration" (Article 21(1-bis), of Legislative Decree No. 165/2001), the recruitment or employment of workers in breach of mandatory provisions (Article 36(5) and (5-quarter) of Legislative Decree No. 165/2001); the unlawful use of collaboration contracts (Article 7(6) of Legislative Decree No. 165/2001); the unlawful assignment of higher duties (Article 52(5) of Legislative Decree No. 165/2001);

the failure to activate the annual procedures for identifying surplus staff (Article 33 of the Consolidated Law on Public Employment); the failure to initiate disciplinary proceedings (Article 55-sexies of the same Decree); the breach of the time limit for concluding administrative proceedings



(Article 2-bis of Law No. 241/1990), where the administration loses a public class action; the failure to implement the Digital Administration Code (Article 12(1) of Legislative Decree No. 82/2005); as well as the failure to use electronic mail (in particular certified electronic mail), to update official email addresses, to ensure the implementation of digital administration, to use Consip and/or MEPA framework agreements, and to initiate proceedings following electronically submitted applications and declarations.

In addition to managerial liability, managers, like all public officials, may also incur civil, criminal, administrative-accounting and disciplinary liability.

2.

## Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Undoubtedly, since the 1990s, the Italian administration has undergone reforms inspired by the principles of New Public Management (NPM), with the aim of increasing the productivity of public employees. For example, public employment was brought under the general rules of the private labour law in order to increase the flexibility and productivity of human resources; correlatively, the employment relationship came to be governed by individual employment contract. Public administrations were required to assess the staff workload, which were to serve as the basis for rationalising staff recruitment and distribution across offices and career levels. Finally, the new Agency for the Negotiation Representation of Public Administrations (ARAN) was entrusted with the task of negotiating collective agreements with trade unions on a technical and neutral basis, while specialised bodies were set up to evaluate performance. Other NPM-inspired measures concerned the organisation: for example, ministries were rationalised by merging the former directorates-general into departments responsible for policy formulation, and agencies - partially autonomous from ministries and specialised in the implementation of specific tasks - were created (such as the Revenue Agency; the State Property Agency; the State Monopolies Agency and the Customs Agency). Finally, greater autonomy was granted to local and functional administrations such as local health authorities, chambers of commerce, schools and universities.

In Italy, the principles of collaboration that inspire the New Public Governance (NPG) model have been developed mainly at local level, particularly in experiences of shared administration. At the national level, this model has been applied to a limited extent, in particular to strengthen two



institutions: (i) the State General Accounting Office (RGS) within the Ministry of Economy and Finance, which oversees public expenditure subject to increasingly stringent European constraints; (ii) the network of offices working in close support of ministries, which provide coordination functions not only in relations between politics and administration, but also among different public institutions. Legislative Decree No. 300/1999 then sought to rationalise the organisation of several ministries by reducing and merging peripheral state offices.

An attempt to address administrative fragmentation was also made through the establishment of the Single Desk for Productive Activities (SUAP), governed by Legislative Decree No 112 of 31 March 1998 (Conferral of administrative functions and tasks of the State upon the Regions and local authorities, in implementation of Chapter I of Law No 59 of 15 March 1997). The SUAP was intended to assume responsibility for coordinating and mobilising the numerous public offices involved in the adoption of administrative decisions. However, this innovation proved effective only in those territories where relations among public administrations were already sufficiently well developed. A further genuine attempt to introduce the NPG principles into the administrative organisation was the services conference governed by Law No. 241 of 7 August 1990, which allows for the simultaneous examination of a plurality of public and private interests involved in one or more proceedings, with the aim of enhancing coordination among public administrations and reaching a concerted settlement of interests.

As for Digital Era Governance, the first e-government Action Plan was adopted in 2000 in response to initiatives promoted by the European Commission, as part of the Bassanini reform. However, digitalisation has been affected by several limiting factors. The establishment of the Ministry for Technological Innovation in 2001 effectively led to the loss of a single entity overseeing the process of digital innovation in the administration and the bureaucratic modernisation project, which had previously been coordinated by the Department of Public Administration.

A further constraint stemmed from the delegation of strategic guidance for the digitalisation to technical structures - such as agencies and task forces led by special commissioners, often recruited from the private sector - which encouraged governments to adopt a selective intervention strategy. Rather than pursuing comprehensive coordination of digital transformation across the public sector, the focus shifted pragmatically to break the deadlock in innovation projects that citizens perceived important. This approach accentuated the uneven distribution of digital solutions in the public sector, producing a patchwork pattern of successful but isolated initiatives. Additional limitations to the digitalisation of public administration have included the adoption of ad hoc funding, within a general framework of public spending cuts; the adoption of technical solutions that do not take into account the multi-level network of public sector operators; and the tendency to regulate the timing and methods of innovation by law. Digital innovation regained momentum with the adoption of the National Recovery and Resilience Plan (PNRR) under the European Next Generation EU programme. The “Italia 2026” strategy promotes the expansion of digital identity systems and the provision of online public services, while also pursuing the more ambitious



objective of investing in infrastructure to ensure interoperability and data sharing among public administrations. In particular, the transition to cloud computing has been promoted to overcome the fragmentation and recurrent obsolescence of public sector IT infrastructure.

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

Law No. 241/90; Legislative Decree No. 112 of 31 March 1998; Law No. 59 of 15 March 1997; Legislative Decree No. 300/1999; Consolidated Law on Public Employment, Legislative Decree No. 165/2001; Digital Administration Code, referred to in Legislative Decree No. 82/2005; National Recovery and Resilience Plan.

iii. In which public services and agencies is this type of organisation used?

- |                                  |                                     |
|----------------------------------|-------------------------------------|
| The Administration stricto sensu | <input checked="" type="checkbox"/> |
| Public enterprises               | <input checked="" type="checkbox"/> |
| Other public entities            | <input checked="" type="checkbox"/> |

iv. Are the policies for achieving the objectives designed:

- |   |                                     |
|---|-------------------------------------|
| At national level                               | <input checked="" type="checkbox"/> |
| At regional level                               | <input type="checkbox"/>            |
| By subject-matter                               | <input type="checkbox"/>            |
| By taking into account specific public entities | <input checked="" type="checkbox"/> |
| Other   | <input type="checkbox"/>            |

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Many specific objectives have been defined in the National Recovery and Resilience Plan.

If yes, is their accomplishment:

- |           |                                     |
|-----------|-------------------------------------|
| Optional  | <input type="checkbox"/>            |
| Mandatory | <input checked="" type="checkbox"/> |

Does failure to meet these objectives lead to:

- |  |                                     |
|--|-------------------------------------|
| Personal consequences for the senior managers        | <input type="checkbox"/>            |
| Legal consequences for the assessed organisation     | <input type="checkbox"/>            |
| Financial consequences for the assessed organisation | <input checked="" type="checkbox"/> |

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- Compliance with the regulatory framework
- Effectiveness
- Efficiency
- Economy
- Achievement of strategic objectives
- Other

## II. Alternative methods for resolving administrative disputes

### 1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

- Arbitration
- Mediation
- Other .....

Certain conciliation proceedings before independent authorities are provided for by law; however, they are generally not fully interchangeable with, nor strictly alternative to judicial remedies. Only in one instance there is perfect fungibility and alternativeness, namely the recourse to the Data Protection Authority pursuant to Article 145 of the Personal Data Protection Code. In other cases, an attempt at conciliation constitutes a condition for the admissibility of an action for annulment before the Administrative Court (e.g., Article 1(11), of Law No. 249/97). More generally, mediation can be activated only in disputes falling within the jurisdiction of the Ordinary Court, that is, essentially disputes in which the administration acts on the basis of a bilateral or contractual relationship.

Formal arbitration is permitted in disputes falling within the exclusive jurisdiction of the Administrative Court

The Public Contracts Code, Legislative Decree No. 36/2023, provides in Articles 210-220 for several forms of extrajudicial dispute resolution: the Technical Advisory Board, which supports the parties in preventing disputes by issuing opinions or settling them through arbitration, if the parties do not object; the Amicable Agreement, designed to settle reservations entered in the accounting records; Settlement, allowed only for matters concerning subjective rights; Arbitration, allowed only where an arbitration clause has been agreed.



ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

*\* Please elaborate on your answer, citing any relevant legislation and/or case-law*

There are no rules that a priori exclude the use of ADR in administrative disputes: the limits derive from the system or from the provisions that specifically provide for this possibility, circumscribing it.

## 2. Settlement and Mediation

*\* Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

In some cases it is expressly provided for, in other cases it is derived from general principles (see answer to question II.1.1.).

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

There are cases in which ADR is intended to prevent legal disputes (e.g., attempts at conciliation before independent administrative authorities or opinions issued by the Technical Advisory Board in matters arising during the performance of procurement contracts), while in other cases it may lead to the termination of pending legal proceedings.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Yes. Traditionally, in Italy the Administrative Judge exercises limited review of administrative acts, limited to checking their legitimacy, and may exercise a broader review of administrative merit (i.e., the manner in which the administration has exercised its discretion) only in specific cases. Article 134 of the Code of Administrative Trial lists these cases: proceedings for compliance



with judgments of the Administrative Court (including final judgments); electoral disputes; disputes concerning financial penalties falling within the exclusive jurisdiction of the Administrative Court; disputes concerning the boundaries of local authorities; and, finally, proceedings concerning the refusal of film clearance.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?X

Specific legal provisions generally determine whether and under what condition ADR can be used (see answer to question II.1.1.) and lay down the procedural phases. Generally, a request or complaint must be submitted by one of the parties to the authority/body responsible for attempting conciliation or issuing an opinion. The settlement is governed by the Civil Code, and if permitted by the nature of the case, the parties arrange it themselves, agreeing directly, without the mediation of any other party. It should be noted that, in principle, the settlement, which requires mutual concessions, is not suitable for resolving disputes involving a public administration, which, in principle, should not make concessions that are not strictly justified by public interest. Furthermore, a public administration cannot compromise on non-transferable rights or on the content of discretionary administrative acts or acts with binding content, but can only make concessions on strictly financial matters (compensation, indemnities, contractual claims). For this reason, a public administration should only compromise on the basis of a compliant legal opinion, which is in fact mandatory under Article 212 of the Public Contracts Code for concessions worth more than €100,000.00 or €200,000.00.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

Under Italian law, settlement agreements that are not signed before a public official are generally not immediately enforceable and require prior judicial review. Such review falls within the jurisdiction of either the ordinary court or administrative court in accordance with the general principles governing the allocation of jurisdiction, in order to ascertain their binding effect on the

parties. However, such agreements may also be examined incidentally in the course of proceedings where they are relevant to the dismissal of a claim or to a party's defence. ADR will be considered invalid, and therefore subject to challenge, if the parties have resorted to it outside the cases provided for by law or if consent was given by a natural person who did not have the power to represent one of the parties. With regard to arbitration, the Code of Civil Procedure expressly provides for contestation on grounds of nullity (in Articles 828 and 829).

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

See answer given to the precedent question.

Which court has jurisdiction over disputes concerning such enforcement?

Enforcement proceedings before the Administrative Court (so called "ottemperanza") may also concern judgments of the ordinary courts, provided that they are final, or formal arbitrations that can no longer be appealed.

If the aim is to recognize the validity of a settlement not executed before a public official, it is necessary to verify the general principles governing the allocation of jurisdiction: as a rule, the Administrative Court will only have jurisdiction if the settlement relates to a matter subject to the exclusive jurisdiction of the Administrative Court.

- ib.** If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:
- |                            |                          |   |
|----------------------------|--------------------------|---|
| a legislative provision    | <input type="checkbox"/> | X |
| a general principle of law | <input type="checkbox"/> | X |

**ii.** Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

*\* The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*



Yes  X  
No

**ii.a.** If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

In some cases (for example, in the Public Contracts Code), the rules expressly provide for this possibility. However, it can also be said that, based on general principles, a public administration, like all other legal entities, may enter into agreements where the situations in dispute are available to them.

Is it mandatory or optional?

In cases falling within the jurisdiction of civil courts, mediation may be mandatory or optional. There are no cases of mandatory mediation in disputes falling within the jurisdiction of administrative courts.

If it is optional, does it require:

The mutual agreement of the parties  X  
Only the intention of the Administration   
Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee   
By the administrative authority involved in the dispute  X  
Other

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings   
At any stage of the litigation proceedings  X

Is there a specific piece of legislation governing the mediation process?

Yes  X  
No



If yes, please specify:

Mediation has been regulated by Legislative Decree No. 28/2010 to resolve civil and commercial disputes, and can be conducted before public or private entities registered in a special register kept by the Ministry of Justice. A public administration can therefore only resort to it to resolve civil or commercial law issues, which generally do not fall within the jurisdiction of the Administrative Court.

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer)?

Impartiality and neutrality of the mediator; informality and flexibility; personal attendance of the parties and technical assistance by legal counsel; voluntary nature of the procedure; confidentiality, insofar as any statements made or documents produced during the meetings before the mediator may not be relied upon in judicial proceedings, and the mediator is bound by a duty of secrecy.

How is the impartiality of the mediator ensured?

Mediators must be registered in a special register kept by the Ministry of Justice. Mediators must meet specific competency requirements and attend qualifying courses.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

Mediation involves the suspension of proceedings in cases where it is mandatory or delegated by the judge hearing the case, for a maximum period of six months, which may be extended.

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

If the mediation is successful, a report is drawn up which becomes enforceable if signed by the parties' lawyers, and therefore allows for compulsory enforcement.

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?



Pending legal proceedings are resumed: both the Code of Civil Procedure and the Code of Administrative Trial generally provide for a time limit within which the suspended proceedings must be resumed, after which the proceedings are automatically terminated.

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

Please refer to the information provided in the previous answers.

**iiB.** If no mediation process is provided for, is this exclusion provided for in:

a legislative provision

a general principle of law

### 3. Arbitration

*\* Please elaborate on your answers, citing any relevant legislation and/or case-law.*

**i.** In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

**ia.** If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

The possibility of referring a dispute to arbitration is provided for by the Code of Civil Procedure and by Article 12 of the Code of Administrative Trial; however, it is limited to the disputes concerning subjective rights, falling within the exclusive jurisdiction of the Administrative Courts. As already noted, the Public Contracts Code (CCP) also provides for the possibility of referring disputes to arbitration: this option may already be provided for in the tender notice or may, in any event, be agreed by the parties during the performance of the contract. Where the tender notice includes an arbitration clause, such clause must be authorised and may be declined by the successful tenderer within 20 days of the award (Article 212 of the Public Contracts Code).

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

Only for the resolution of disputes concerning subjective rights falling within the jurisdiction of the Administrative Court or in other cases established by law (see *supra*)

Is it mandatory or optional?

OPTIONAL

**ib.** If arbitration is not permitted, is this prohibition due to

- A legislative provision
- A general principle of law

**ic.** If arbitration is optional, does it require:

- The mutual agreement of the parties
- The sole intention of the Administration
- The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

**ii.** For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

As already specified, arbitration is provided for in Article 213 of the Public Contracts Code, which contains certain clarifications. Insofar as they are compatible, the provisions of Article 825 of the Code of Civil Procedure shall also apply.

**iii.** Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Yes, arbitration is provided for in such contracts.

**iv.** How are the independence and impartiality of the arbitrator ensured?

Article 213 of the Public Contracts Code provides guidance on the persons who may be appointed as arbitrators and their respective powers. Any violation of the rules governing the selection of arbitrators shall render the arbitral award null and void. The award may be challenged on the grounds of nullity or for infringement of the rules of law applicable to the substance of the dispute. The action for annulment shall be brought within 90 days of notification of the award and shall, in any event, be inadmissible after the expiry of 180 days from the date of filing of the award with the Arbitral Chamber (Article 213(14) of the Public Contracts Code). The Court of Appeal may suspend the effectiveness of the arbitration award at the request of the parties.

**v.** Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

The Code of Civil Procedure provides that, from 2022, arbitrators may grant interim measures. Prior to 2022, this possibility did not exist.

**vi.** In arbitration concerning administrative disputes:

	yes / no
Is there an obligation to make publicly available the basic information and documents relating to the proceedings?	<input type="checkbox"/> <input checked="" type="checkbox"/> X
Is the participation of third parties permitted?	<input type="checkbox"/> <input checked="" type="checkbox"/> X
Is legal representation mandatory?	<input type="checkbox"/> X <input type="checkbox"/>
If yes, is legal aid available?	<input checked="" type="checkbox"/> X <input type="checkbox"/>
Is the hearing public?	<input type="checkbox"/> <input checked="" type="checkbox"/> X
Is the arbitral tribunal obliged to give reasons for its award?	<input type="checkbox"/> X <input type="checkbox"/>
Is the arbitral award made publicly available?	<input type="checkbox"/> <input checked="" type="checkbox"/> X

**vii.** During the proceedings, the applicable system is:



the adversarial system  X  
the inquisitorial system

**viii.** What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature   
Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)   
Annuls/amends an administrative act of a non-pecuniary nature   
Annuls/amends an administrative act of a pecuniary nature  X  
Addresses only recommendations to the Administration   
Restricts itself to awarding compensation for damages  X

Does the arbitral award have effect:

Erga omnes (with regard to all)   
Inter partes (between the parties)  X

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes  X  
No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

The arbitration award may be challenged, pursuant to Articles 828 and 829 of the Code of Civil Procedure, on the grounds of nullity, which occurs when: the arbitration agreement has been violated, the arbitrators have not been duly appointed, the award has been rendered outside the limits of the agreement, the principle of adversarial proceedings has been violated, the award lacks essential requirements, or rules of law have been violated. The award may be challenged before the Ordinary Court (Court of Appeal), which does not re-evaluate the merits of the case but merely verifies the existence of grounds for nullity.

Is it possible to waive the right to judicial review?

Arbitration is entirely alternative to judicial proceedings: if the parties opt for arbitration, there is an implicit waiver of the right to take legal action. In the event of the invalidity of their arbitration, the waiver of jurisdiction remains valid if arbitration has been provided for in an arbitration clause included in the contract.

Which courts have jurisdiction?

The Ordinary Judge, in particular the Court of Appeal

What is the scope of the judge's review according to case-law?

The judge may only verify the existence of grounds for nullity of the arbitration award, as identified by the Code of Civil Procedure.

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

NO

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* and C-168/05 *Mostaza Claro v Centro Móvil Milenium SL*, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

There are no similar precedents (also because arbitration awards are not published).

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

An arbitration award may be enforced either before an ordinary court or before an administrative court, through compliance proceedings (Article 112 of the Code of Administrative Trial).