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THE ITALIAN EXPERIENCE OF AGGREGATION IN PUBLIC AUTHORITY PROCUREMENT

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Abstract

This paper analyses the Italian experience of aggregation in public authority procurement, taking regulatory developments and their precise effects into account. It highlights the advantages of aggregating public procurement, but also the specific difficulties arising from a conflict of interest with the need for aggregation. Starting from the beginning of the Italian experience at the end the 1990s, the paper analyses the more recent attempts at reorganisation. In particular, it analyses the situation before various laws were passed in connection with the start of the economic crisis (known in Italy as the "spending review laws"), which strongly favoured procurement aggregation because of its related spending savings but without a clear plan for organising public procurement demand. The paper then analyses the most recent changes, mainly the result of the new Public Procurement Code approved in early 2016, and which were aimed at reorganising the aggregation of public procurement through a structural management mechanism.

Key words: central purchasing bodies; aggregation of public procurement; public authority procurement; public procurement; aggregator subjects.

L'EXPERIÈNCIA ITALIANA DE COMPRA COMPARTIDA EN LA CONTRACTACIÓ PÚBLICA

Resum

Aquest article analitza l'experiència italiana de compra compartida en la contractació pública, tenint en compte els avenços normatius i els seus efectes. Subratlla els avantatges de la compra compartida en la contractació pública, però també les dificultats específiques que sorgeixen d'un conflicte d'interès amb la necessitat d'agregació. Començant des dels inicis de l'experiència italiana a final dels anys noranta, l'article repassa els intents més recents de reorganització. En concret, examina la situació abans que s'aprovessin diverses lleis arran de l'esclat de la crisi econòmica (conegudes a Itàlia com les "lleis de revisió de la despesa"), les quals van afavorir fortament la compra compartida a causa dels estalvis que es generaven però sense disposar d'un pla nítid per organitzar la demanda de contractació pública. Tot seguit, l'article analitza els canvis més recents, derivats principalment del nou Codi de contractació pública aprovat a principis de 2016, i que tenien per objectiu reorganitzar la compra compartida en la contractació pública a través d'un mecanisme de gestió estructural.

Paraules clau: centrals de compra; compra compartida; contractació pública; agència de contractació pública; matèries compartides.

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Summary

1 Reasons for the legal complexity of the framework

The issue of centralising public procurement is not new but the legislative approach has changed over time.

Since the mid-1990s, numerous legislative measures have been adopted in an attempt to rationalise public spending. These have mostly been the result of short-term decisions, often responding to sectoral interests. The result has been a varied and often contradictory regulatory framework in which the different interests involved have not reached an effective agreement.

It is well-known that cutting expenditure on second-tier public authority consumption is the main reason underlying the rules governing the aggregation of public authority procurement. This expenditure accounts for a large part of total public spending: €88 billion or 8.1% of GDP in 2015.

Cutting it results from the savings produced by so-called "economies of scale", which cause a downward trend in procurement prices and increase the authorities' procurement power.

Added to this is the contextual reduction in the direct and indirect operating costs of individual authorities, due to such factors as fewer staff being involved in public procurement procedures and avoiding or reducing dispute costs, among others. Moreover, the greater use of electronic tools means purchasing procedures will become more transparent (taking less time, with fewer errors than in hard-copy documents, etc.). In general, there is a gain in terms of innovation and efficiency, the so-called "economies of scope"(Marra, 2007; Piga, 2009; Comba, 2016).

The greater transparency and automaticity of procedures, together with a simultaneous decrease in their number, should also lead to a reduction in the frequent examples of corruption in the public procurement sector. Consequently, there should be a reduction in the so-called "hidden costs" (Manganaro, 2014; Di Cristina, 2012; Mattarella, 2016).

However, while this is true, it should be noted that although there are fewer incidences of illicit agreements, the impact on dishonest entrepreneurs can be minor due to the fact that the cost of the "cut" is often low in proportion to the value of the contract, which in some cases (in Italy, for example) can exceed €1 billion. Therefore, the problem of corruption has not been completely resolved and its impact, in terms of the cost to the system, may be similar even with the aggregation of public procurement .

Besides the undoubted advantages described above and highlighted by scholars the rules for public procurement aggregation have implications for other equally deserving interests (Bandiera, Prat, Valletti, 2009; Di Maria, Provenzano, 2012).

The concentration of purchasing demand has had non-univocal effects on the market and competition.

The increased in the size and volume of "contract notices" has restrictive effects on the market and, in particular, on small and medium-sized enterprises, for which it becomes more difficult, if not impossible, to be awarded a public procurement contract (Sánchez Graells, 2015). However, at the same time, demand aggregation, by reducing the number of contract notices below the established European threshold, may lead to competition in areas of the market that were previously not open to competition, while making the whole system more transparent.[1]

It is difficult to balance opposing needs and this is clear in the body of rules. Besides rules aimed at enhancing the participation of small and medium-sized enterprises in "contract notices", it includes rules aimed at promoting and rewarding public procurement aggregation mechanisms.

In Italy, this already delicate issue has been complicated by some specific institutional rigidities in the legal system.

1 As highlighted by Luigi Fiorentino "purchasing bodies where used in a balanced manner (...) will favour the emergence of areas of public expenditure previously subtracted to competition, since, if considered individually, they are smaller than the European thresholds" (Fiorentino, 2004: 272).

Following the reform of the Constitution in 2001, which redefined the competences between the State, regional and local authorities and enhanced the financial autonomy of regional and local authorities, uncertainties arose beginning with the constitutional legitimacy of a State law aimed at strengthening the aggregation of public procurement.

The issue arises because the new division of powers between the State and the regions does not effectively define the boundaries of the areas of State and regional competences. Public demand aggregation is not explicitly vested in the State, so it falls within regional legislative competence (so-called "residual competence"). However, due to the implications of competition and public spending cuts, it also falls within two State competences.

One is "competition protection" which, according to the Italian Constitution, is the exclusive responsibility of the State. The other is "public finance coordination", which comes under the so-called "concurring State competence", whereby the State settles only rules of principle while the Regions settle detailed rules.[2]

The fact that public procurement was clearly neither one of the State's legislative powers nor one of the regions' powers led to conflicts between them being brought before the Constitutional Court.[3]

All this made it impossible to adopt long-term rules on the aggregation of public procurement and amplified the uncertainties linked to the normal dialectic between conflicting interests.

The recent economic and financial crisis reduced the available financial resources, further complicating the issue as the need to make drastic public spending cuts was quickly added to the previous planning uncertainty (Fidone; Mataluni, 2014).

Recent public spending rationalisation and reduction laws (known in Italy as "spending review laws")[4] also affected public procurement, in particular the aggregation of public authority procurement.

This led to an immediate strengthening of the rules governing public procurement aggregation and the role of central purchasing bodies (Fracchia, 2015). However, it appeared that these rules were imposed because of the need to ensure cost savings over a short period of time rather than the result of an organic design for rationalising public procurement demand, as a strategic instrument in public authority activity.

All this helps to explain the fragmentary and contradictory nature of the evolution in the Italian regulatory framework for aggregating public procurement, which is the result of an uncertain and incremental regulatory approach.

In any event, the scarcity of financial resources and the need to cut spending, due to the economic crisis and European rules on public expenditure, led to a start being made in rationalising procurement aggregation.

And various laws passed in the last four years go some way to a reorganisation of public procurement aimed at creating a real system of public authority purchasing.

In the same vein we have the new, recently approved Public Procurement Code (Legislative Decree 50/2016, in force since 20 May 2016), which implemented the European directives on public procurement

2 In order to overcome the difficulties in distinguishing between State and regional competences, a draft constitutional law (known as the Renzi-Boschi project, after the names of the ministers who were its authors) provided for the cancellation of concurring State-Region legislation and shifting the "coordination of public finance" to the matters of exclusive State competence, thus limiting the role of regions. The referendum required by the Constitution was held on December 4, 2015 and did not support the reform project.

3 In an effort to achieve a balance between the role of the State and regional autonomy, the Constitutional Court ruled that the national rules on concentrating public procurement did not violate the division of constitutional powers, reconnecting the State rules with the issue of "competition protection" (Article 117 (2)(e)). Thus, the intervention of the State legislator "if contained within the limits of adequacy and proportionality" (Sentence 345/2004) was legitimised. Furthermore, the Constitutional Court held that the spending cut rules did not violate the limits imposed on State legislation in the concurring powers, such as "public finance coordination", where the State cannot impose specific rules. Therefore, the duty to use the Consip price conventions as the basis for a downward auction for their contract notices (Sentence 417/2005) was held to be correct.

4 Decree Law 52, 7 May 2012 ("first spending review"); Decree Law 95, 6 June 2012 ("second spending review"); Decree Law 66, 24 April 2014 ("third spending review").

(Directive 2014/24/EU, Directive 2014/25/EU, and Directive 2014/26/EU). Italian scholars had pointed to the implementation of the European directives as an "opportunity for a reorganisation of the subject".[5]

A brief reconstruction of the evolution in the regulatory framework for public procurement aggregation will be provided in the following paragraphs, together with a focus on the most recent developments that give a more organic picture than the last few years.

2 The evolution of the regulatory framework: the creation of the central purchasing body at national level (the so-called Consip model)

National rules, preceding European rules, created the first example of a central purchasing body.[6]

The 2000 Finance Law (488/1999, Article 26, amended in 2006 by Law 296) , entrusted the Ministry of the Treasury (now Economy and Finance) with the role of stipulating national agreements for public authority procurement of goods and services in a more general programme. The goal was to rationalise and cut public expenditure through the aggregation of purchase demand and the enhancement of innovative IT and telematic tools.

The functions aimed at implementing the framework agreements system were vested in a joint stock company fully owned by the Ministry of the Economy, the Public IT Services Company (Consip S.p.A).

Consip S.p.A. uses open procedures to select e-suppliers of products and services. It signs framework agreements by which it undertakes to guarantee supply for a certain period, at the prices and conditions established in the agreement (and until the pre-established maximum quantity is reached), to the authorities that decide to adhere to the conventions (voluntarily or legally bound).

The supply contract is between the supplier and the authority adhering to the agreement and which proceeds with the order without committing Consip S.p.A.

Procurement procedures are performed at national level or subdivided by geographical lots according to the type of product and service. They select the necessary suppliers to fulfil all the orders required by public authorities, through the telematic public authority procurement portal (*www.acquistinretepa.it*), at prices and conditions indicated in the contract.

Consip S.p.A. also performs the tasks of a central purchasing body for single authorities based on specific conventions.

Furthermore, Consip S.p.A. arranges and manages the electronic platform of the public authority e-market (e.g. MePA), used for sub-threshold purchases by all public authorities.

MePA is not a purchasing procedure, but a technological instrument through which purchases below the European threshold indicated in the directives are handled.

It is a virtual market in which public authorities procure products and services by consulting catalogues entered by companies previously authorised to log into the system. Consip S.p.A. in this case is not a contracting authority, but manages the IT platform on which market is created and procedures are carried out.

Since the law allows all central purchasing bodies to create their e-market, Consip S.p.A. is not the only type of e-market.

5 As stressed by Laura Mascalli "the current legislation not only presents itself as already being in line with European guidelines, but also, in some cases, as complementing and reinforcing them. There are therefore reasonable grounds for saying that, in this context, the implementation effort must be aimed mainly at reorganising and unifying the provisions already in force in a single legislative text" (Mascalli, 2014: 8).

6 It is well known that directives 2004/18 /CE and 2004/17/CE (implemented in Italy by the first Public Procurement Code, Legislative Decree 163/2006) introduced purchasing aggregation and central purchasing bodies into European legislation for the first time (see Caranta, 2008). These are now regulated by the new Public Procurement Code (Legislative Decree 50/2016, Article 37) and in other specific regulations. The new Code implemented 2014 European directives 24, 25 and 26.

It is not a tool for aggregating or centralising public procurement demand but serves the same purpose of transparency, efficiency and reducing direct and indirect costs for the authorities involved as well as overall public spending.

Unlike the centralisation of purchases, the public authority e-market mainly concerns small and medium-sized companies. This partly compensates for the concentration of the public authority procurement market in the hands of large companies able to participate in large contract tenders.

3 The development of central purchasing bodies at regional and local level

Based on the experience at national level, forms of public purchasing aggregation were also introduced at regional level.

The 2007 Finance Act [see [10]] introduced a regional model similar to that of Consip. In order to contain and rationalise public expenditure, by working together, the regions could also form central purchasing bodies with administrations and authorities (as well as the National Health System) based in the region.

Therefore, the regional and national level models were similar: *mutatis mutandis*, the single region assumes the role of the Ministry of Economy, and the central regional purchasing body the role of Consip.

The 2006 Finance Act had previously stated that aggregations of local authorities or decentralised entities could fulfil the role of central purchasing bodies for authorities and regional or local bodies based in the same territorial area. Notwithstanding the right to adhere to the Consip framework agreements and, in the case of autonomous purchases, using the related quality and price parameters.

Regional and local procurement bodies also create and manage specific e-markets in various sectors, used by authorities based in the region, either legally bound or through choice, both for individual purchases and for managing common contract tenders, which can also be delegated to the central purchasing body of the region.

The regional and local experiences, based on the aforementioned regulations, have gradually been consolidated and different experiences have matured in the context of regulatory autonomy.

So the definition of the regional model is "the result of a two-fold process: on the one hand, the effect of a network system, and on the other hand, the result of exercising regulatory autonomy" (Gasparri, 2013: 153).

However, this development did not follow a uniform trend for several reasons.

Firstly, the previously mentioned difficulties linked to the uncertainty surrounding the relationship between national and regional legislation did not allow the development of long-term decisions.

Secondly, there was a lack of real coordination between national and regional experience, which frustrated efforts to create the networked system necessary for avoiding duplication of the available products and to facilitate overall integration and interoperability between the various national and regional IT systems, and the related databases. In fact, what happened was that various central purchasing bodies of the same region were present in the same area, or even in the same commodity sector, with the evident overlap and waste of resources.

Thirdly, a serious structural problem for public authority efficiency is the fragmentation of the contracting stations. According to some studies (Cottarelli, 2015:43; Barba, 2016:141), it is estimated that there are about 36,000 contracting authorities with no real coordination between them and a situation arose where there were big differences in the purchase price of the same product in Italy's various regions. In 2015, there were differences of up to 300% for the purchase of a Des-type heart stent.[7]

However, over the last few years, due to the financial crisis and the simultaneous need to cut public spending, the use of Consip agreements and the Electronic Market for Public Administrations (MePA) has been strengthened.

7 Data source, 2017 Report of the Ministry of Economy, "Review of Expenditure: objectives, activities and results 2014-2016", p. 12, Table 7.

In 2006 the Consip agreements achieved a share of the "practicable expenditure" for goods and services of more than 90% (it was 71% in 2012, and 65% in 2011). "Practicable expenditure" is the part of public authority expenditure on goods and services which, given their features, can be offered through the national and local conventions or framework agreements. Experts calculate that, at most, this can reach approximately one-third of total public authority expenditure on goods and services, which amounts to about €130 billion. "Practicable expenditure" in 2015 was €40 billion, compared to €36 billion in 2013, €30 billion in 2012, and €25 billion in 2011. Therefore, it is almost completely covered.

The value of the actual purchases made by public authorities through the national and local agreements ("intermediated agreements") in 2015 was about €7 billion in contrast to €5.7 billion in 2014, €4.2 billion in 2013, and €3.4 billion in 2012.

The so-called "potential savings", i.e. the savings obtainable if the Consip agreements were fully utilised, was about €3.5 billion in 2013, about €3 billion in 2014 and in 2015.

Furthermore, the average price reduction achieved by Consip conventions compared to the prices charged to public authorities calculated annually by the National Institute of Statistics (ISTAT) for comparable goods and services is around 23%, in line with previous years.

The size of the Electronic Market for Public Administrations (MePA) has also grown in recent years and it has become the biggest e-procurement entity in Europe.

The total value of products offered in 2015 was about €7.5 million, in contrast to more than €3 million in 2013, €1.4 million in 2012 and €1.2 million in 2011.

The volume of purchases in 2015 was about €2 billion, in contrast to €1.46 billion in 2014, €810 million in 2013, and €360 million in 2012. There were nearly 54,500 authorised companies, compared to 36,051 companies in 2014 and 21,440 in 2013.[8]

Despite the growth described, the framework is characterised by many contradictions, a lack of coordination and the presence of a large number of contracting authorities. So there is a real risk of frustrating the expected benefits of purchasing aggregation and the efforts to create a competitive and efficient system.

4 Recent initiatives to rationalise and coordinate central purchasing bodies and expand their role

The purpose of most recent laws[9] was to rationalise the structure of central purchasing bodies at national and local level and, in general, to achieve a reorganisation of the public procurement system.

Under the pressure of the economic crisis, the role of the central purchasing bodies was reinforced by reorganising the legislative framework in order to bring about a reduction in the total number of contracting bodies.

The first instrument was the establishment of a National List of "aggregating bodies" including Consip S.p.A. with only one central purchasing body for each region, from among those already in existence or, otherwise, specifically constituted.

Furthermore, if specifically requested, the National Anti-Corruption Authority includes other central purchasing bodies in the List if they meet the requirements identified by the Prime Minister's Decree. This includes "the stable nature of the centralisation activity, as well as the values of expenditure considered significant for the acquisition of goods and services with reference to areas, including territorial ones, considered to be optimal for the aggregation and centralisation of demand".

Some local bodies, such as metropolitan cities, provinces or municipalities, carry out the activities of central purchasing bodies (pursuant to Article 33 of the Public Procurement Code) with stability and organisation

8 Data source, 2013-2016 Consip balance sheets and the report on the annual needs of public authorities for products and services and on savings achieved by the framework agreements system, appended to the 2014 Economics and Finance Document.

9 Legislative Decree 66/2014, Article 9, and following additions and amendment; and Legislative Decree 50/2016 (Public Procurement Code, articles 37-40).

dedicated to performing the tasks of a central purchasing body, to meet all local authority requirements for goods and services.

However, the total number of "aggregating bodies" present in the national territory may not exceed thirty-five.

A special body, the "Technical Table of Aggregating Bodies" (coordinated by the Ministry of Economy), carries out an annual expenditure analysis. The purpose of this is to define, with a Prime Minister's Decree, the categories of products and services and the related thresholds for which regional bodies, their consortia and associations, as well as National Health Service bodies, are obliged to join the framework agreements of Consip or other aggregating bodies.

Therefore, the aggregators are a group of central purchasing bodies (at national and local level). They carry out procurement procedures for the categories of products and services annually identified by the Table of Aggregating Bodies, and for the relative thresholds, for concluding framework agreements that public authorities will be obliged to join.

The aggregating body plays a central role for regional public authorities because, generally speaking, the geographical area within which they can operate coincides with the regional territory. However, with regard to the product categories (and related thresholds) identified by the Technical Table, public authorities of other regions can also decide to use their framework agreements (Law 208/2015, Article 1 (c) 499).

The idea is for a simplification of the existing framework and greater coordination between national and regional procurement bodies, in which the aggregating bodies are required to manage the procurement tenders considered strategic and identified annually by the aforementioned Technical Table.

The other central purchasing bodies operate outside the procurement tenders indicated annually by the Technical Table and managed by the aggregating bodies, and, in accordance with the new Procurement Code, as can be seen below, they must be in possession of specific technical qualifications.

For instance, at a local level, in the case of municipalities that are not provincial capitals, a compulsory form of procurement aggregation is envisaged. These municipalities proceed to the acquisition of works, goods and services by resorting to different types of procurement aggregation: either through the association of municipalities, if one exists, or by resorting to another aggregator in accordance with current legislation.

The enlargement of the central purchasing bodies' role and of the share of public expenditure managed by them is accompanied by a widening of the number of subjects obliged to make use of them.

While in the past, the binding nature of the framework agreements was limited only to State authorities (central and local), today it involves, albeit in different ways, all other public authorities and as well, for some types of products and services, publicly-owned corporations included in the "public authorities consolidated income statement", the so-called National Institute of Statistics list (ISTAT list).

Even where there is no specific duty, it is still necessary to refer to the price-quality parameters provided for by the central purchasing bodies. Their non-compliance results in the nullification of the contract and the employee responsible for the violations is liable before the Court of Auditors for "damage to the treasury", commensurate with the difference between the price in the agreement and that of the contract.

In addition, since 1 October 2014 (through the national database of public contracts) the National Anti-Corruption Authority has been responsible for the so-called "reference prices" taking into account the price dynamics of the various goods and services, among those with a greater impact in terms of cost to the public authority. The Authority publishes the unit prices paid by public authorities for the purchase of such goods and services on its website.

These prices (updated by 1 October each year) are used for planning the contractual activity of the public authority and constitute the maximum price for the award, as well as for the tender procedures awarded to the most advantageous offer, in all cases in which there is no convention stipulated by a central purchasing body at national level or in the reference territorial area.

Reference prices are few if we consider that there are only reference prices "for about 600 medical products, in contrast to the United Kingdom where there are 50,000" (Mattarella, 2016: 615)..

The binding nature of the rules described is mitigated by the possibility for public authorities to carry out independent procedures by providing for a 10% lower starting price than those of the framework agreements (or 3% for some specific categories of products). However, this faculty has been suspended for the period 2017-2019 (Law 208/2015, Article 1 (494))

In addition, for purchases with a value below the threshold set by the European procurement directives, the use of the Electronic Market for Public Administrations (MePA) or other electronic platforms is mandatory for purchases of more than €1,000. Starting from 1 January 2019, the € 1,000 limit has been increased to € 5,000 by 2019 budget law (Law 145/2018).

5 Central purchasing bodies and the new qualification system for contracting authorities

A further strengthening in the role of central purchasing bodies should be determined by the establishment of a new qualification system for contracting authorities introduced by the new Public Procurement Code (Legislative Decree 50/2016). The Code does not only concern central purchasing bodies but also gets them fully involved.

The legislation states that, notwithstanding the constraints imposed by membership of national and local central purchasing bodies, for contracts above a given threshold (€40,000 for supplies and services, €150,000 for works), central purchasing bodies must possess a specialised legal qualification.

If contracting authorities do not possess the required qualification, they must procure works, goods and services either from a specific central purchasing body or by means of an agreement with one or more qualified entities. Furthermore, they are not permitted to carry out tender procedures above certain established thresholds.

The Law also provides for a list of qualified contracting authorities, in which central purchasing bodies are included, which is at the National Anti-Corruption Authority (ANAC). It specifies that the qualification shall be achieved in relation to the fields of activity, territorial areas, types and complexity of contracts and amounts. Some entities (such as Consip or "regional aggregations") are included in the List *ex officio*, whereas other contracting authorities must successfully pass a verification process conducted by the National Anti-Corruption Authority.

The new Code delegates to a presidential decree identification of the technical and organisational criteria required for the registration, also valid for central purchasing bodies, the implementation procedure and the date new legislation becomes effective. The requisites are identified using five basic parameters and five rewarding parameters (Article 38(c)(4)). Basic parameters refer to: the existence of stable organisational arrangements, personnel with specific expertise, professional refresher courses, the amount of tendering procedures during a three-year period, showing complexity rates, respecting time frames, as well as awarding and testing, and meeting payment obligations towards companies and suppliers. Rewarding parameters refer to: positive assessment from the ANAC with regard to the establishment of measures to prevent corruption and promote legality, a quality management system certified by appropriate bodies, information technology in handling tender procedures, the number of disputes and social and environmental sustainability criteria in planning and awarding contracts.

The implementation decree, despite the fact that the Law stipulated adoption by the end of August 2016, has not yet come into force.[10] Therefore, the whole qualification system of contracting authorities is still not in place.

However, the objective pursued by the legislator is straight forward (Fiorentino, 2016).

On the one hand, to improve the professionalism in carrying out procedures in order to reduce the volume of disputes and, on the other hand, to reduce the number of contracting authorities in above-threshold procedures, by aggregating the procurement of non-authorised procuring entities.

10 When this article was sent for publication, the decree had not been issued. There is a draft of the decree which is the subject of ongoing debate, due to the numerous concrete difficulties and resistance from both private companies and public authorities.

As highlighted by some scholars (Lamberti, 2016; Guerra, 2016) new discipline will demand a clear effort to reorganise internal procedures and enhance employee professionalism.

6 Concluding remarks

The existing regulatory framework for centralised purchasing by public authorities is still evolving and is the result of various pieces of national and regional legislation which, over time, have laid out the model of centralised purchasing, partly anticipating the adoption of European laws and partly implementing those subsequently issued.

We are faced with a system which does not derive from the implementation of a clear, previously conceived project, but rather the stratification of uncertain legal texts adopted in a European legal framework. These have varyingly focused on competition policy, protecting small and medium-sized enterprises, the need for uniform procedures, cutting expenditure, the independence of the bodies involved in aggregating their demands, and so on.

This fragmented legal framework is the result of overlapping regulatory amendments and it has not resulted in cohesive choices.

Some of the uncertainty is either due to the inflexibility of the Italian institutional system or the difficulties involved in every regulatory decision, where certain interests must be sacrificed for the benefit of others. The economic and financial crisis, rendering public finance issues more urgent, has increased all these uncertainties.

The aggregation of public authority purchasing seems to have been viewed as part of the kind of austerity policies prevailing in Europe, deemed necessary to reduce the level of public expenditure.

At present, an advantage of this is that regulatory measures are rendered less uncertain. In balancing opposing needs, the centralisation of public requirements for goods and services and the standardisation of choices have been maximised, in contrast to the contractual autonomy of the authority, needs of small and medium-sized enterprises and the enhancement of specific local features.

The priority given to the mere exigency of reducing public expenditure reinforces the recourse to centralised procurement. However, the simultaneous reduction of resources in the wake of the crisis makes investment more complicated, so the development of IT infrastructures designed to rationalise purchasing aggregation is essential in terms of the need for a single authority, procedure transparency and the overall technological modernisation of the country, as stressed by scholars (Racca, 2011).

The issue of procurement aggregation is likely to face a paradoxical situation of going through a period of maximum enhancement, prevailing over all other exigencies that have also been taken into consideration in the past, but only because of its intrinsic suitability for reducing public expenditure and not because it is a serious strategic means of action and organising public demand for goods and services

The Consip system therefore risks having "a low impact" on rationalising and simplifying administrative organisation in terms of decreasing bureaucracy and personnel expenditure.[11]

This situation risks amplifying all the concerns expressed in the past by scholars and control bodies that enhancing the tendering of goods and services might either "not satisfy a real need of the public administration",[12] or that the "exceptional standardisation of tendering could affect the quality of goods and services".[13]

11 This comes from Raffaella Briani who highlights the little impact that the Consip system has had on rationalising and simplifying the administrative organisation in terms of reducing staff and cutting expenditure (Briani, 2013: 71).

12 The phrase in the text is by Luigi Fiornetino who had highlighted that "any agreement concluded by a public authority is not based on its exigencies but increasingly on independent choices made by Consip management" (Fiorentino 2004: 71).

13 The Court of Auditors highlighted that "extreme standardisation could adversely affect the quality of goods and services" and "the risk that an unsuitable agreement could become the instrument for disposing of obsolete products" (Court of Auditors, decision 20 june 2003, n. 26/2003/G).

The latest legislation, and more recently, the new Public Procurement Code, seems to go some way towards preventing any risk connected to such a paradox and facilitating the ongoing process.

In last few years there has been a substantial increase in big contracts and a reduction in the total number of procurement procedures. Studies on the subject confirm that in the period 2011-2014 procurement procedures for amounts exceeding €25 million increased in number (+16%) and overall value (+65%). Furthermore, the average value of the lots rose from about €600,000 to €800,000.[14]

Thus, the aggregation of expenditure for products and services compared to the total value of procurement of the same nature at national level has progressively grown to nearly a quarter of the total, more precisely 22.7% (Barba, 2016: 142).

Until a few years ago, while innovative in this field, Italy was not in the habit of aggregating procurement decisions, in contrast to the United Kingdom, Denmark or Austria, where the amount of aggregated decisions related to above-threshold contracts ranges from 25% to 40% in the respective markets. As regards the number of contracts and the amounts, Italy was on the same level as Belgium, while in the case of framework agreements, it was still on the level of Cyprus.[15]

The new discipline is still under implementation. It also requires work to train and professionalise civil servants.

Apart from cases of malfeasance or corruption, staff training and professionalism are crucial for the success of the current legislative reform. The complexity of these matters, and above all the specific risk of incurring liability due to procedural errors, can generate inefficiencies, affect the overall flexibility and effectiveness of administrative activity and in public procurement management as stressed by some scholars also about the precedent legislation (Racca, 2010).

It will therefore require time before a more comprehensive assessment can be made. Indeed, it is not easy to predict, even with the alleviation of the economic and financial crisis, whether sectoral interests will prevail, downsizing the current legislation well beyond all the amendments recommended by practical application.

This is an inevitable scenario if the policy of aggregating public purchases is imposed by exogenous factors, such as the economic and financial crisis and budgetary restraints, and not by a specific policy of reorganising public demand.

Legislation on centralising public procurement is destined to fluctuate and be distorted until there is a shift from "necessary and emergency" to "structural" procurement demand aggregation.

At the same time, this is both a challenge and an opportunity for Italian legislators in a period when the economic and financial crisis has made it easier to overcome the resistance of opposing interests and when even EU legislators have strengthened all the instruments for aggregating public demand with the 2014 directives.

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