D4.5 Legal Toolkit

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The gE.CO Legal Toolkit

Description and methodology

The law is traditionally considered as one of the crucial issues when it comes to urban commons.
The management of the commons is in fact, in the end, an institutional issue, since it requires to submit to a model of governance one or more goods and to organize, around this latter, the management of a community and its relationship with public actors and other public and private stakeholders.
Also, the legal issues related to the commons are often very complex. Indeed, the commons tend to undermine the logics at the core of the architecture of both private and public law, thus calling for new lenses able to see and use the law in a transformative and empowering way.
If these aspects were clear since the beginning of the project, which are the legal issues most common in both communities and public administration engaged in the management of the commons in Europe and how gE.CO could support their solution is something the consortium had to work on for quite a long time, relying on different tools.
The starting point of this work traces back to the gE.CO survey.
During the first phase of the project, the Consortium had chosen 55 experiences of urban commons among the 250 originally present in the gE.CO database. Those experiences, divided into communities and public policies, underwent an interview, which results were presented into a long and comprehensive memo.
One of the main goal of the interviews was to understand the main legal issues and questions faced by the experiences of urban commons in Europe from the perspectives of both: communities and public administrations. These results, in the architecture of the project, were intended to be used (and have actually been used) as the basis for the construction of the work needed for the implementation of the legal toolkit.
With respect to the law, in the gE.Co survey the following elements have emerged:

- The legal aspects are usually considered by both communities and public administrations as the main and most important hurdle when implementing an experience/policy of urban communing
- For communities, the difficulty is twofold: i) how to implement the governance of the organization? Which legal vest should this latter be given? What are the legal options at hand? Which are the differences among them, advantages and disadvantages? ii) Which model of stewardship should be used (or proposed to the public counterpart) in the management of the space in order to respect the principles of the commons? Which institutions can we rely on? Which are their difference, advantages and disadvantages?
- For public administrations the problems were, symmetrically, related to the following issues: i) How to select the manager of public goods or services after a process of co-design in which public administrations and private individuals or entities work together to co-define objectives and solutions of management? How to carry out the direct attribution of the management of public goods or services to non-profit entities without the organization of a competitive selection? How can the management of public goods or services be attributed to informal communities, namely groups of persons not incorporated in specific legal vests?

These issues, together with the results of the survey, have been the subject-matter of long and comprehensive confrontation within the consortium and also constituted the focus of a public debate held online on March 2021. In this occasion, the results of the survey and the legal issues mentioned above were described and discussed with some of the public administrations and communities involved in the survey. Also, these results were further elaborated and worked on by the consortium and represented the core of the policy brief submitted in June 2020.

After this work was done, these results were the subject-matterof discussion within the consortium in order to find a feasible and useful structure for the legal toolkit. These discussions were held on a regular basis and took place in both meetings held in Zaragoza (in September) and Vienna (in October) and also

during ongoing online meetings held on Fridays specifically meant for debating the work on the toolkit among all the partners working on those.

The results of these discussions led to an architecture of the legal toolkit composed by two different parts, mirroring the two main stakeholders it aims at reaching: communities and public administrations.

The first part, meant for communities wishing to implement an urban commons or already engaged in the governance of an urban commons, is a Q&A. The Q&A is structured as a list of questions, which formulation derives from the main questions emerged in the gE.CO survey, and a list of entries. For each question one or more entries are indicated, which crossed reading constructs the answer. The Q&A covers three main aspects: i) general legal questions at the cornerstone of urban commons (what is a urban commons, what kind of legal issues it implies etc.); ii) Different legal institutions available for both giving a legal vest to the communities and govern the good as well as to implement a legally structured cooperation with the public administration; iii) Possible legal hurdles that may emerge during the governance of the commons (e.g. liability for damages).

The second part of the toolkit is composed by a legal brief, meant for public administrations willing to engage in projects of urban communing. The legal brief deals with the issues mentioned above, and focuses on EU law. EU law is in fact the law applicable to all Member States, and it represents the general framework shaping all the legal systems of the European Union with respect to the issues at stake. This allowed us to design guidelines useful for all public administrations, independently from their country of operation.

The legal toolkit will be accessible as both: an autonomous toolkit as well as an integration of other two toolkits: the Governance Toolkit and Temporary Uses Toolkit.

In fact, as mentioned, the issue of governance is also an institutional matter since communities, when facing governance, must choose among different legal structures and different legal models. This is why the Q&A will be integrated in the Governance Toolkit where it will be a fundamental part of the "Commons and Dragons" game, functioning as the guideline for the gamified discussion between participants when players have to debate their legal strategy. In fact, the final version of the Q&A also derives from a day of experimentation of the Commons and Dragon game during the "European Night of Researchers" held in Torino on the 26th of September 2021.

Also, the issue of how can a public administration assign a good to a community to implement a temporary use in the logic of the commons implies the analysis of the issues mentioned above and thus guidelines for public administration involved in such processes is needed.

ENACTMENTS OF URBAN COMMONS
LEGAL GUIDELINES FOR MUNICIPALITIES

When a municipality is faced with the enactment of urban commons (see Q&A→ "urban commons" and "commoning") many legal hurdles emerge. These legal hurdles are mostly related to the core of the structure of administrative law proper of most European legal systems. Indeed, administrative law is mostly rooted around the idea of hierarchy and competition, while urban commons are founded on the logic of horizontal subsidiarity, co-design, collaborative administration (see Q&A→ "horizontal subsidiarity", "co-design", "collaborative administration").
These legal hurdles can be summarized in the following topics:

1) Selection of the manager of public goods or services after a process of co-design in which public administrations and private individuals or entities work together to co-define objectives and solutions of management;

2) Direct attribution of the management of public goods or services to non-profit entities without the organization of a competitive selection;

3) Attribution of the management of public goods or services to informal communities, namely groups of persons not incorporated in specific legal vests.

This report aims at supporting public administrations willing to promote one or more projects of urban commons, analysing the aforementioned topics in the light of EU law. EU law is in fact the law applicable to all Member States, and it represents the general framework shaping all the legal systems of the European Union with respect to the issues at stake. This will allow us to design guidelines useful for all public administrations, independently of their country of operation.

The analysis will rely on the following pillars.

Analysis of the regulatory framework. The regulatory framework will be described and, in particular, relevant EU Directives and Regulations will be selected and analyzed. Points of strength and weaknesses will be highlighted in relation to the forms of collaborative management.

Public procedures in theory and praxis. The analysis of the regulatory framework will allow to summarize public procedures described at EU ground and to compare them with the ones implemented by municipalities to design collaborative forms of management.

Guidelines for municipalities, Guidelines will be prepared in order to help public administrations in finding possible solutions to the critical issues raised. To facilitate the use of the guidelines, they will be structured as practical recommendations.

A. In the first part of the guidelines, the first two issues mentioned in the above will be analysed, namely: i) Selection of the manager of public goods or services after a process of co-design in which public administrations and private individuals or entities work together to co-define objectives and solutions of management; ii) Direct attribution of the management of public goods or services to non-profit entities without the organization of a competitive selection.

The transformation of public neglected open areas and of public buildings which need to be rehabilitated is often delegated from local authorities to non-profit entities who obtain the management of these public spaces through a direct attribution. This model of reuse and of regeneration raise questions of compatibility with both the regulation of concession contracts and public procurement.
In paragraph 1.1, basic principles of public procurement will be summarized and stages normally implemented to award contracts will be described. Then, paragraph 2 will show the reason why direct attribution of public spaces to non-profit entities can clash with the legal arrangement; basic principles and the stages in the process of attribution will be pointed out in paragraph 3. Finally, in paragraph 3 the issue of reimburses and State aid will be faced.

1. Analysis of the regulatory framework – identification of the legal challenges

1.1 Public procurement basic principles

To regulate the field of public procurement the EU has adopted three important procurement Directives:

- Utilities Directive 2014/25/EU;
- Public Sector Directive 2014/24/EU; and
- Concessions Directive 2014/23/EU.

With regards to the topic analyzed in this report, Directives 2014/24/EU and 2014/23/EU will be taken into consideration.

Both the Directives have been introduced to harmonize the Member States national regulations in the field of procurement; nevertheless, Member States can maintain or adopt substantive or procedural rules not in conflict with the EU Directives.

A set of core principles inspires the EU regulation.

> **Competition** operates as a principle ensuring efficient and economic procurement results. Economic operators can present their tenders communicating the price at which the goods or the services are available on the market. Competition aims at giving public administrations the greatest possible choice in the provision of a certain service.
>
> **Equal treatment and non-discrimination** indicate two different but converging strategies to maintain equality between economic operators who shall be evaluated exclusively for the tenders they have presented; no other elements can influence the award decision of public administrations. Thus, equal treatment means objective assessment of tender prices and tender qualities. The principle of non-discrimination adds to this consideration that economic operators' nationality is irrelevant in the common procurement market.
>
> **Transparency** is one of the core principles of public procurement and at the same time, as we will show later on in this report, it is one basic principle in the EU context which operates independently of the application of a specific legislation. It forces public administrations to advertise requirements and technical specifications relevant for the selection process, as well as to adopt all the means to ensure the full assessment of the public action.

Most economically advantageous tender criterion to award contracts requires that all contracts shall be awarded by considering cost-related and non-cost related factors.

Beyond these principles specifically working in the field of public procurement, public administrations shall always respect a set of general principles which inspire all public actions. In addition to **transparency**, this list is composed as follows:

Equality of treatment: The general definition of this principle establishes that all the suppliers/service providers shall be treated at the same conditions.

Mutual recognition: In the EU, reports and certificates issued by the authorities of any member state shall also be valid in all other EU states.

Proportionality: Public authorities shall establish requirements and conditions that are reasonably proportional to the object of their public action.

According to this legal framework, procedures compliant with basic principles are generally organized as follows.

1. **Specification stage.** Public administrations describe the requirements needed for the selection. The description shall fulfill the principle of equality and non-discrimination, so that the list of requirements does not favor or eliminate particular providers. The new Directive admits requirements specifically devoted to deal with social and environmental issues.
2. **Assessment and selection.** Tenders are evaluated according to cost-related and non-cost related factors; technical capacity and ability to provide the good or the service shall be taken into consideration.
3. **Award stage.** The award of contract is established according to the MEAT criterion; social and environmental requirements are included if needed.

2. Public procedures in theory and praxis

In general, the attribution of the management of public spaces permits to achieve one of the objects of a **'public contract'** according to Directive 2014/24/EU, and in particular the **provision of services**.
In fact, non-profit entities use to organize in the public space the provision of different services – such as cultural activities, inclusive practices for migrants and other underrepresented groups, initiatives in the field of education or training, etc. – which are generally devoted to the collectivity and are of general interest.

The non-profit nature of the provider does not avoid the application of procurement principles and rules, since "economic operators should be interpreted in a broad manner so as to include any persons and/or entities which offer the execution of works, the supply of products or the provision of services on the market, irrespective of the legal form under which they have chosen to operate"[1]. According to the CJEU ("Court of Justice of the European Union"), running an economic activity within an existing or potential market is the necessary and sufficient condition to apply competition law[2].
Thus, in this scenario, public administrations should manage a public action inspired by the basic principles of procurement based on a competitive and selective process for assign the public space.
However, in the last few years in the praxis of many European local public administrations, important divergences related to both principles inspiring the procedure and management of this latter can be pointed out.

[1] Directive 2014/24/UE Recital 16.
[2] CJEU 23 April 1991, Klaus Höfner and Fritz Elser v Macrotron GmbH, C-41/90.

Several European municipalities are organizing **collaborative procedures** to attribute the management of public spaces. These procedures generally are not regulated by specific national laws; sometimes, local acts have been adopted to regulate these processes (See Q&A → "Regulation for the co-management of urban commons"; "Uso civico"; "Civic management"; "Collaboration pact").

This process is generally based on the following principles (see Q&A → "Horizontal subsidiarity" and "Co-design").

> **Cooperation**: municipalities work together with non-profit entities, without managing a selective procedure.
>
> **Transparency**: municipalities ensure that all the materials related to the co-design phase are available for the evaluation. Thus, reports are collected and shared.
>
> **Qualitative criteria**: municipalities can highlight particular qualitative criteria for defining the process of rehabilitation of the public space employed for the provision of the service.

All the general criteria inspiring the public action as defined in par. 1.1 can be applied to these procedures.

The process starts with the **identification of the public spaces** which is generally promoted by the municipality; sometimes, it can result from a bottom-up identification through which citizens can point out abandoned open areas or neglected public buildings. Municipalities often organize a **co-design process** during which they involve non-profit entities in planning the future of the space and in defining the services that can be helpful for the local community. At the end of this process, **the public space is attributed directly to the non-profit entity** involved in the co-design process and an **agreement** between the parties is signed.

3. Guidelines for municipalities and EU bottlenecks

The compatibility of direct attributions of the management of public spaces can be justified as follows.
First, there is general argument: both the EU directives on procurement and concessions leave Member States free to assess which is the juridical person more able to provide a certain service between a non-profit and a for-profit entity.
Second, the legal reasoning developed by the CJEU in the decision of the "Spezzino" case[3] represents an interesting tool for demonstrating the compatibility of direct attributions with public procurement principles.

The "**Spezzino" judgment** faced the issues of exemptions to the principle of competition in the case of provision of social services.
The Azienda Sanitaria Local n. 5 based in the Liguria Region (Italy) established an agreement for the provision of urgent and emergency health transport service with non-profit associations. However, according to the claimants promoting the legal action before the Italian administrative court, this agreement was not-compatible with EU law in particular with regards to the principles of competition, equal treatment and non-discrimination. The claimants argued that the reservation of the provision of the services to non-profit associations discriminated entities working in the same sector but pursuing profit.
A **second problematic issue** related to the direct attribution was represented by the fact that the service was delivered for free, since the associations received only a reimbursement of the expenses suffered in

[3] CJEU, 11 December 2014, Azienda sanitaria locale n. 5 'Spezzino' and Others v San Lorenzo Soc. coop. Sociale and Croce Verde Cogema cooperativa sociale Onlus.

the contract execution. The doubt of compatibility in this case derived on classification of such reimbursement as a State aid.

The **CJEU held that reservation of contracts for the provision of social services to non-profit entities could be admitted if two conditions occur**.
First, the reservation to non-profit entities must not modify the financial balance of the social security system and must maintain "on grounds of public health, a balanced medical and hospital service open to all" (par. 57).
Second, the reservation must contribute to "the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency on which that system is based" (par. 60).

This last point shall be stressed for supporting the direct attribution of the management of public spaces to non-profit entities.
In case of an administrative contentious, municipalities before national courts shall be able to proof that the direct attribution contributes:

1) to achieve social purposes;
2) to pursuit objectives of the good of the community; and
3) to ensure the budgetary efficiency.

1.
Accordingly, the legal act establishing the direct attribution shall deal with all these three points; it is worth noticing that to strengthen this evaluation, solidarity services managed by non-profit entities shall not substitute public services provided by local authorities, but enrich the public offer.

The demonstration of the budgetary efficiency could require a significant effort, considering that this element can be difficult to be assessed with regards to the management of public spaces. However, in this case, municipalities shall enhance the social impact and the community benefits of the direct attribution more than the economic efficiency. In this sense**, it could be helpful to establish legal framework fixing criteria for a common assessment of the social impact**.

Municipalities are recommended to adopt a legal act to introduce special criteria to evaluate the social impact, or to promote at least a regional legal framework.

By the way, municipalities shall always fulfill the general principles governing their action, namely equality of treatment, transparency, proportionality, and mutual recognition, so that all the legal acts and the procedures devoted to carry out a direct attribution shall be correctly communicated and always available for the public. **Publication of the materials produced during the co-design procedure**, as well as the **preferential criteria according to which the choice is finalized** is warmly required. **Recording and reporting** shall be taken into consideration.

Thus, to summarize:

1) the direct attribution of the management of public spaces shall be justified in a public act stressing that this choice ensures **to achieve social purposes; to pursuit objectives of the good of the community; and to ensure the budgetary efficiency.**
2) in the case of a co-design stage, all the activities developed in this phase shall be documented: reports or audio registrations of the meeting are recommended. Documents and materials shall be easily accessible, so that their publication on a specific webpage is encouraged.

A last clarification shall be advanced.

In the Directive on public procurement**, articles 74-77 establish a special regime for social services** (so called "light regime) which are more lenient than the general one. The rules introduce the possibility to reserve the right to participate in public procurement procedures to those entities defined in art. 77 "Reserved contracts for certain services" who are both non-profit and for-profit entities responding to

the hybrid definition of social enterprises. However, the special regime establishes a process of selection with its own rules about the publication of notices and its own principles of awarding the contract.
In particular, the light regime has two different sections depending from the value of contracts.

- In case of contracts below EUR 750.000, national authorities are entirely free to regulate and conduct tendering procedures for these same services.
- Above that value, "EU rules require contracting authorities to comply with rules on transparency by making their intention to tender out one of these services known at EU level, prior to the start of the procedure, and to equally announce its conclusion and outcome through a contract award notice".

In the **field of urban regeneration** and especially for awarding contracts for the provision of educational and cultural services, community, social and personal services furnished by youth associations[4] the light regime could be interesting; however, the Directive does not establish particular rules of procedures, but requires Member States to introduce specific national regulations related to these general provisions.

4. Reimburses and State aid

To support the provision of these services which are generally neighborhood-based, municipalities use to assign the public space for free, even if these open areas or buildings have a pecuniary value. Moreover, public administrations use to reimburse expenses sustained by non-profit entities to manage the space, if correctly documented.

Reimburses can raise the issue of their compatibility with the EU regulation of state aid. According to art. 107 TFUE, State aid is defined as "'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods […], in so far as it affects trade between Member States".

Some notions included in this definition or deriving from it shall be clarified:

- **undertakings** are entities engaged in economic activities, regardless of their legal status. Thus, national distinctions based on the non-profit/for profit dichotomy are not relevant;
- an **economic activity** consists in offering goods or services on a market;

- the **existence of a market** for offering services depends on political choices, and in particular on the way in which Member States have organized these services. For this reason, a list of economic activities is not provided in EU law, even if some clarifications are collected in Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union.

According to this definition, non-profit entities managing public spaces are undertakings if Member States introduce a market mechanism for the corresponding services.

By the way, **the management of public spaces cannot be considered as an economic activity by showing that it is part of the essential functions of the state or it is connected with those functions by its nature, its aim and the rules to which it is subject**.
In the above-mentioned Commission Notice, a list of examples is provided and among these activities, the development and revitalization of public land by public authorities is claimed. This latter can include an activity such as urban regeneration, considering that the management of local urban and spatial

[4] These three services are mentioned in the Annex XIV of the Directive 2014/24/EU with regards to the application of the light regime.

development plans represents one of the essential functions of public authorities[5]. Moreover, regenerating and taking care of abandoned buildings and neglected areas can be conceived as two activities apt to ensure environmental protection that is another essential public function[6].

Thus, to avoid the application of State aid law, **municipalities** shall clarify in the legal act establishing the attribution of the management of public spaces the **main public function** that the activity carried out by non-profit associations permit to ensure.

[5] Commission decision of 27 March 2014 on State aid SA.36346 — Germany — GRW land development scheme for industrial and commercial use

[6] Court of Justice of 18 March 1997, Calì & Figli, C343/95

B. In the second part of the guidelines, the third issue mentioned in the above will be analysed, namely: the attribution of the management of public goods or services to informal communities, namely groups of persons not incorporated in specific legal vests.

1. Analysis of the regulatory framework

The main differences existing between informal communities and formal groups can be summarized as follows:

- **informal communities do not adopt a formal legal structure**. Accordingly, they do not adopt formal bodies, but use to meet up in a general assembly. The most important consequences of the lack of a formal structure are both the impossibility to distinguish the group from its members, and the lack of a legal representative who expresses the will of the group.
- **informal communities are fluid groups**, so that membership is generally open and criteria for membership are not defined. Thus, they can change periodically in such a way that influences the group's way of working.

2. Public procedures in theory and praxis

In the last few years, the management of public spaces has been involving **informal communities**, namely **groups of persons not adopting a juridical vest** characterized by a permanent structure such as an association, a foundation, a committee and any other juridical forms belonging to the so called "third sector".

Urban regeneration practices especially in those cases in which are neighborhood-based and launched by grassroot initiatives are able to foster the raise of informal groups who take care of public spaces – generally opened spaces. Moreover, in many European municipalities, **experiences of illegal occupations** managed by informal groups are moving forward a legal arrangement, finding an original legal framework.

The main problems deriving from involving informal communities in the management of public spaces are the **allocation of responsibilities** (See Q&A→ Responsibilities (allocation of)) and the **definition of the group's representation** in the relationship with public authorities.

a) Allocation of responsibilities

The lack of a juridical structure which allows to isolate a juridical subject autonomous from its members, implies that all the members of the informal community are responsible for the activities managed by the group. Thus, all the members are responsible for the payment of debts deriving from the management of the place, including expenses for the routine maintenance or for realizing community's activities; similarly, all the members are held responsible in law for any damages suffered by visitors in the public space. This latter profile is particularly important in case of unsafe conditions of the place.

b) Definition of the group's representation

The lack of legal representation can be filled in throughout the attribution of single and specific mandates related to an identified activity. Thus, representation is not permanent and established in official acts adopted by the group, but it's defined case-by-case. By the way, in those cases in which the representative identified with a specific mandate signs a legal act implying legal consequences, all the members of the group can decide together to remain jointly responsible.

Municipalities who want to establish contractual relationships with informal communities **are recommended** to adopt one of these two solutions:

Solution A) The municipality supports the group in the process of juridical formalization, providing **specific facilities and services** for their transformation into a juridical entity before the starting of any public procedure related to the management of the public space.

Solution B) The municipality admits the group with no change in the organization by requiring specific cautions. In particular, public authorities can prepare a **standard minute** which the group can complete after an assembly. The minute can deal with the following issues:
- appointment of a contact person with a specific mandate; and
- definition and extension of the mandate.

gE.CO Legal Q&A

Questions

1. What kind of situations/goods may be suitable for a process of urban communing? (active citizens; urban voids; commoning; regeneration)
2. What is an urban commons? (urban commons; active citizens; commoning)
3. Who is entitled to claim a good as a urban commons asking for its management according to the principles of communing? (urban commons; active citizens; urban voids; urban regeneration; public services).
4. What is the role of the public sector and the one of the citizens in the governance of urban commons? (active citizens; civic management; co-design; horizontal subsidiarity; collaborative administration; commoning)
5. How to start a process of urban commons? (commoning; active citizens; co-design; collaborative administration).
6. Which legal institutions can we rely on for the governance of urban commons? (Association; foundation and trust; community land trust; collaboration pact; regulation on urban commons; civil management; uso civico).
7. We want to take care of a good in public property. Which institutions can we use for the governance of the good? (collaboration pact; regulation on urban commons; civil management; uso civico).
8. Which tools can we rely on in order to enact a partnership between communities and the public sector to manage a commons? (foundation and trust; community land trust; collaboration pact; regulation on urban commons; civil management; uso civico)
9. Which path does a public administration and a community need to undertake to manage a urban commons? (active citizens; urban commoning; collaborative administration; horizontal subsidiarity; ; collaboration pact; regulation on urban commons; civil management; uso civico).
10. We want to take care of a good in private property. Which institutions can we use for the governance of the good? (association; foundation and trust; community land trust)
11. What legal vest can we give to a community who wants to manage a commons? (association; foundation and trust).
12. How do we ensure that a good remains for the long termed governed according to the principles of the commons and not submitted to speculative processes? (foundation and trust; community land trust).
13. How do we ensure democracy and efficacy in the decision making process of a urban commons? (deliberative procedures; foundation and trust; community land trust)
14. What kind of procedures can we adopt to make decisions in a community managing a urban commons? (deliberative procedures)
15. Who bears legal liability in the management of urban commons? (liabilities, allocation of).

Answers

ACTIVE CITIZENS

Active citizens are the people who decide to take initiative in order to co-create, co-produce and co-manage urban commons and public services. Their practices are not for profit. Citizens take action in order to create, expand and reproduce social cohesion. In particular they aim at providing themselves and local communities at large with affordable and non-market access to goods and services. As individuals or as communities (associations as well as informal groups), they also experiment forms of direct and bottom up management within the public sphere, beyond rather traditional bureaucratic models. In this respect, active citizens are not only long-term inhabitants of a neighborhood or of a city: even foreign people (who don't take part in local elections) and other city users (such as students at University) can always become active citizens.

By taking action in such an inclusive manner, active citizens produce participative innovations in urban democracies. They bring Public Administrations to adopt new mentalities and approaches toward citizens' wills and expectations as well.

The increasing acknowledgement of the legal relevance of the contributions offered (as well as of the social, environmental and economic values generated) by active citizens, especially at the municipal level, is part of a broader paradigm shift. Indeed since 2016, with the adoption of the Urban Agenda in the framework of the Pact of Amsterdam, EU urban policies have been enhancing the role of participative democracy and of ecological awareness as two among the major pillars of a new urban life, based on long-term sustainability and social cohesion.
In this respect, collective actions and social practices carried out by citizens - often in informal manners - are currently seen far differently than in the past. According to the former conception, such activities used to be challenged by Public Administrations. In some cases, they eventually could - and they still can, of course - be deemed to be relevant to criminal law by the judiciary. Nevertheless, alongside such a negative approach a new positive view of citizens' direct initiative is arising. Bottom up and cooperative attempts to improve life quality and social cohesion within neighbourhoods and cities are more and more acknowledged and empowered by local authorities.
In many European local contexts sets of innovative legal arrangements have been tested. For instance, under Italian law more than 200 Municipalities adopted local Regulations about the care and co-management of urban commons (see → "Regulation on the co-management of urban commons"). Lacking national statutory provisions in this regard (at the State level, the first acknowledgement of practices and experimentations relevant to urban commons occurred with Art. 10 Decree Law 16 July 2020, no. 76, providing a regulation of temporary uses), local Regulations have revealed a great potential by allowing thousands of citizens to take care of their neighbourhoods and cities, in the framework of innovative and legally binding quasi-contractual relationships with Public Authorities (see→ "Collaboration pact"). In other countries similar initiatives are ongoing, among which one can notice the experimentation in Barcelona (Spain), which has been promoting a comprehensive policy called "Citizen Asset Programme", and the major example of Ghent (Belgium), with its ambitious "Commons Transition Plan". Of course, other challenges are at issue throughout European urban systems. This is the case of the delicate dialectic between the emergence and the need for protection of temporary collective uses - that is commons-oriented relationships between citizens and urban spaces - and frequent conflicting capital-driven city developments, where the latter ones often tend to exploit the use values generated in a neighbourhood by communities and to transform them into exchange values to be accumulated.
The increasing centrality of active citizens in European discourses about the renovation of democracies, as well as in the everyday life of cities, is the product of a variety of factors. First, widespread structural transformations in urban systems - such as deindustrialisation and long-term demographic changes - have been the bases for the rise of issues like the diffusion of urban voids and their externalities. Large discussions on the potential and the ambiguity of urban regeneration and tactical urbanism have arisen in such a context, leading to an increasing number of theoretical and practical contributions in the domains of law, sociology, urbanism etc. Another element must be considered. The overall institutional crisis that has been characterising the current century - with huge difficulties for public budgets, as well as for the role of "community organizers" played in the past by political parties - has produced strong incentives for the research of innovations in the methods and the tools of democracies.

ASSOCIATION

In law, an association is a group of people who join through a common structure for a particular purpose, usually meant to be a continuing organization. In most jurisdictions, associations amount to mandatory non-profit organizations. This means that associations cannot distribute profits to their members. In associations, commercial activities can be carried out, however they cannot constitute the main tasks of the entity and what is earned through such commercial activities must be re-invested for the scope of the association.
An association usually has legal capacity and capacity to act (i.e. it can participate to a public procurement, sign contracts, have employees), however, in most jurisdictions associations do not have legal personality, namely those who act in the name of the association remain personally liable for debts before third parties. Some legal systems allow associations to undergo to a public procedure of recognition which may end up with the granting of the legal personality.

The model of governance of associations is really flexible, and it usually relies on two main organs: the assembly, grouping together all the members of the association, and the board of directors, elected by the assembly and bearing the executive power.
Differently to what happens in the foundation, the trust and the community land trust (see→ "Foundation and Trust" and "Community Land Trust"), the association is not able to set forth a lien of a proprietary nature on the good, since the members of the association may at any time, respecting the deliberative provisions set forth in the articles of association, decide to change its scope. However, when the constitution of such a lien is not needed, namely in those cases in which the governance of urban commons takes the form of a co-management of the good between the community and the municipality, the association may be a good solution for the formalization of the community of reference. Indeed, the constitution of an association is usually very easy – not requiring a lot of formalities - fast and cheap. Association is thus the recommended institution to formalize the community of reference in cases of collaboration pacts or temporary uses.

CIVIC MANAGEMENT (Gestiòn Civica)
The municipality of Barcelona has implemented the model of civic management to attribute the management of public spaces or the regeneration of public goods belonging to the local cultural heritage to non-profit entities. The attribution is based on an agreement of collaboration which defines the rights and the obligations of both the parties; specific rules regulate the circulation of information. The agreement creates a public-civic partnership (público-asociativo/comunitario) which is based on innovative social and democratic criteria that make this solution very different from the traditional models of public-private partnership.
The civic management is regulated by Article 34 of the 'Carta municipal de Barcelona' and by Article 12 of the 'Normas reguladoras de la participación ciudadana'. The model has been improved with the introduction of specific provisions to coordinate the civic management with public procurement and to avoid that for-profit entities get ahead of non-profit entities.
In 2015, a new regulation of the civic management has been adopted; it establishes that the civic management does not represent a public contract and accordingly that the basic principles on public procurement cannot be applied. The regulation establishes general principles for managing a selective process between non-profit entities, and criteria are defined; moreover, direct attribution is admitted. For the latter, no general rules have been introduced, since it depends on a case-by-case evaluation. However, a list of situations in which the direct attribution can be decided is provided.

CO-DESIGN
Co-design can be seen as the most important methodological innovation and the major procedural tool in the field of collaborative administration and in the broader domain of the co-creation, co-production and co-management of urban commons and public services.
Where public authorities and private actors (citizens, associations, NGOs) choose co-design an innovative and cooperative legal relationship is established. Instead of building profit-based and market-oriented contractual relationships, with co-design Public Administrations and privates adopt a transparent and cooperative approach whose aims can be either the collaborative provision of public services and the co-management of commons. The parties to such contractual relationships do not pursue conflicting interests, since public authorities do not conceive the privates as selfish counterparties acting in the market and the private parties do not enter such contracts in order to make as much profit as possible.
In light of these structural elements, co-design can be seen as a set of procedures and legal arrangements that take place out of the domain of competition law. In this respect, it is worth noticing that in principle private actors involved in co-design are not in an exclusive legal position: on the one hand, they could have to accept possible contributions (suggestions, interventions and the like) coming from other subjects aiming at collaborating in the co-production of a public service and/or in the co-management of commons; on the other hand, they cannot extract exclusive economic utilities from the activities of public interest they carry out by virtue of a cooperative contractual relationship with a Public Administration.

Meaningful confirmations about the relativity of competition can be seen at the EU level, so that the competitive market cannot be regarded as the sole and basic institutional criterion in the sectors of public services and collective utilities. In fact, the Treaty on the Functioning of the European Union contains two major provisions in Art. 14 and in Art. 106. According to the former, the crucial role of services of general economic interest "in promoting social and territorial cohesion" is explicitly acknowledged. The latter is even more important, since its second paragraph provides that "undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them" (see→"Public Services").
Under Italian law a number of experimentations of co-design occurred in the last years. By building on a new reading of the principle of horizontal subsidiarity, revaluated in light of solidarity and social cohesion objectives (see→ "Horizontal Subsidiarity"), co-design has been implemented in the Italian legal framework in two manners. On the one hand, a statutory regulation of co-planning and co-design of some social services is provided by Art. 55 Legislative Decree , no. 117 (so-called Third-Sector Code). On the other hand, co-design is implemented as a process of transparent and cooperative negotiation, having a pivotal role in the law of urban commons and in the most effective experimentations in the field of the co-management of such goods. Such a systemic role of co-design has been approved by the Constitutional Court in two major judgments delivered in 2020 (judgments no. 131 and no. 255). According to the Italian Constitutional Court, co-design procedures allude to "a path of shared administration, alternative to profit and market: "co-planning", "co-design" and "partnership" (...) are steps of a complex procedure, which is expression of a new relationship between public and social-private sectors, not based on a simple *do ut des*".

COLLABORATION PACT

A collaboration pact is a quasi-contractual agreement between one or more Public Administrations and one or more active citizens. Such pacts have been increasingly acknowledged in the Italian legal framework since they are one of the major tools of the strategies of shared care and co-management of urban commons. The parties to a collaboration pact identify part of the city (e.g. a square, a park, a building) and/or an intangible good (e.g. the "atmosphere" of a neighborhood, the data generated by urban population) as urban commons, define the duration and the objectives of the collaborative relationship, distribute specific tasks and possible liabilities.
According to the Italian experience, the collaboration pact can be either a bilateral or a multilateral agreement. The basic type of pact is the first one, regardless of the number and quality of the subjects (individuals, informal groups, non profit organisations) that constitute the "active citizens" party to the pact. However, if the urban commons which is the object of the agreement is a private property the private owner must enter into the pact (trilateral agreement). Likewise, if the object of the pact is relevant to the cultural and historical heritage the relative public Agency can become party to the (trilateral) agreement.
In general terms, active citizens are the main actors of a collaboration pact. The choice to take initiative, by individuating urban commons and/or by proposing a draft agreement, is usually up to the citizens (although solicitations carried out by Public Administrations can be possible). Moreover, active citizens are both the promoters and the first (but not sole) beneficiaries of those social practices of co-management of urban commons and co-production of public services (see: "Commoning") regulated by the collaboration pact. That said, the role of Public Administration is crucial too. Public managers and/or civil servants are the subjects mostly called to sign a pact on behalf of a Municipality. However, sometimes the conclusion of an agreement can be decided by political bodies: for instance, the urban commons that is the object of the pact has a huge symbolic value for the imaginary of a city; or there is the need for dealing with rather complex activities proposed by active citizens. Within such a cooperative framework, public bodies can also contribute to the best execution of the pact by making various supportive commitments, such as the provision of personal protective equipments or other tools as well as the contribution to the costs of energy bills (see: "Collaborative Administration").
Being centered on the legal status of urban commons as well as on their co-management, the collaboration pact constitutes an innovative legal relationship between public sector and privates. In

particular such agreements are regulated and governed by contract law, even though they fall out of the domain of competition law.
Indeed, "standard" contracts between Public Administrations and privates are usually characterised by conflicting interests among the parties; by the fact that the formers provide the latter ones with exclusive legal entitlements over goods in public property; and/or by the public need for purchasing works, services and supplies from private companies active in the marketplace. In this respect, competition principles and rules (namely public and competitive procedures relevant to EU legal sources and implemented for selecting the private party to the contract) are generally welcome for these contractual relationships. On the contrary, a collaboration pact is concluded by building on converging interests, in order to arrange forms of inclusive and collective use for urban commons, and with the aim to provide urban people with non-market access to goods and services. In this respect, the collaboration pact aims at being a generative legal infrastructure, capable of putting in place innovative public policies, of fulfilling fundamental rights of the involved citizens, and eventually of creating inclusive communities.
From a more technical point of view, these peculiarities are at the base of the procedures that bring to the signature of a collaboration pact. Negotiations between Public Administrations and active citizens are a public and transparent space, which whoever is interested in the future co-management of the urban commons can access and participate in (see: "Co-design"). The pact itself, conceived as a quasi-contractual agreement, cannot be traced to the principle of privity of contract. The relationship between the parties to a pact is rather characterised by its openness. For instance, citizens of the neighbourhood where the pact is executed, who have been enjoying the positive effects of the care for urban commons, can decide at any time to become active citizens and to formally enter into the pact.

COLLABORATIVE ADMINISTRATION

Collaborative administration is an administrative pattern based on the research of cooperation and mutual trust between public authorities and citizens. The institutional choice of these actors to share resources and responsibilities is at the core of this set of practices and policies.
Collaborative administration is governed by a set of general principles. Some of them can be traced to the broader domain of administrative law. This is the case of publicity and transparency: according to this principle, Public Administrations assure to the greatest extent the public knowability of all proposals, procedures, decisions and evaluations. Moreover, transparency is strictly connected with the openness of all procedures and the principle of inclusion and access, so that citizens (individuals, associations, informal groups etc.) can get involved at any time in collaborative initiative carried out by others. Further traditional principles are the equal opportunities and the non-discrimination ones, as well as the reference to trust and good faith, and to adequacy and differentiation.
Other principles seem more specifically relevant to the innovative framework of collaborative administration. In this respect, this administrative pattern enhances ecological methodologies and is governed by the idea of sustainability. Other recurring principles are informality (according to which cooperative relationships between public authorities and privates should comply with bureaucratic formalities only when the latter are mandatory) and civic agency. This last principle is remarkable because it shows how the aim of collaborative administration is to foster citizens' empowerment to the greatest extent. Nevertheless, as a kind of counterbalance for the potential of some implementations of civic agency, the principle of non-subrogation is provided as well. According to such a provision, in the application of collaborative administration public authorities are prevented from giving up their duties (e.g. those concerning the organisation and provision of basic public services), so that privates involved in collaborative projects cannot become integral substitutes of Public Administrations.
Of course, collaborative administration is a challenge both for Administrations and for citizens. Indeed, public and private actors of urban systems usually see themselves as counterparties in the socio-economic development of cities. This approach has been capable of creating a very mentality, fostering trends of institutional fragmentation and mutual skepticism and thus affecting democratic quality and effectiveness of urban governance. On the contrary, the collaborative administration paradigm gives incentives to restructure such traditional views, in order to reach more inclusive local democracies, to provide active citizens with clearer legal acknowledgment of their proposals and actions, to find new ways to solve conflicts about the transformation of neighborhoods and cities.

For these reasons, collaborative administration is an innovative paradigm, compared to those traditional conceptions of Public Administration based on the hierarchical and unilateral action of public authorities. It is also different from other relational models of administration, such as the "new public management" paradigm or those policies that foster privatisation and liberalisation of the production and provision of public services. In this respect, the rise of urban commons as a major legal institution has given concrete chances to conceive and implement new relationships among Public Administrations and privates. Such a model is somehow alternative to the institutional paradigm of market and competition law, being based on cooperation and inclusion. As the CO3 project is showing, the use of disruptive technologies can create unprecedented opportunities to enable citizens' agency and to experiment new cooperative ways of producing and managing urban commons and public services.

COMMONING

Commoning is the relationship between the utilities offered by commons (on the side of the objects) and the interests of each and every member of a community of reference (on the side of the subjects). This overall concept highlights that such relationships are structurally "mutual". Indeed, both commons and communities are not abstract entities. Some goods can be regarded as commons by virtue of the collective utilities specifically generated by some of their possible uses. Likewise, individuals can perceive themselves as part of a larger community of reference thanks to the collective use of some goods.

In this respect, commoning can be seen as that relational practice that leads to simultaneously isolate the capability of goods to generate and offer some crucial resources, and the connection between such utilities and some fundamental rights of individuals and communities. By building on these findings, some of the major theoretical contributions on commons have been arguing that commoning should be qualified as a generative and open relationship even in the domain of law.

From such a perspective, the "generative" element is about the capability of commoning of assuring the flourishing of communities, without endangering the sustainable reproduction of the utilities generated by the commons. In other words, collective and inclusive use of a resource can be seen as an ecological legal relationship.Through adequate arrangements in terms of governance as well as of remedies, it should not end up creating the conditions for selfish over-consumption and irreversible depletion of the resource (according to Garrett Hardin, this scenario is known as the tragedy of commons). Moreover, the openness of this relationship is relevant to two practical outcomes. On the one hand, the legal construction of commons tends to refuse exclusive and identity-based conceptions of a community, although Elinor Ostrom showed with her work the importance of assessing criteria for defining the scope of a community emerging around commons (see: "Urban Commons"). On the other side, an open view of the community means that in principle each and every member should be entitled to access the commons in order to enjoy the utilities it offers, so that for the property rights concerning commons inclusion is the basic rule and exclusion is the exception.

The importance of such a dynamic and collective conception of commoning is particularly apparent in contemporary urban contexts. In fact, in recent times huge socio-economic transformations in Western cities and the rise of issues like the one of urban voids determined a renovated modernity of urban policies. In this framework, the urban regeneration paradigm has shown its ambiguity. At a general and rhetorical level, some very discussed urban processes, such as gentrification, are usually presented as vehicles of social innovation, aimed at providing a city or a neighborhood with sustainability and smartness. However, many scholars, social movements and citizens have been noticing some negative "side effects" of this form of regeneration, namely processes of dispossession of former inhabitants, risks of growing inequalities in the areas touched by urban transformations, and cases of *de facto* privatisation of public space. In this sense, the enhancement of legal and social relevance of commoning means that urban commons can become relevant to the framework of regeneration. As a consequence, a new model of intervention in urban contexts - a cooperative, inclusive and solidarity-based one - becomes possible and desirable (see: "Regeneration").

COMMUNITY LAND TRUST

In its traditional definition, the CLT is a non-profit organisation, whose aim is to promote access to housing for low to medium income people, through the sale of property at a price below market value, and to create a participatory governance of the urban space, combining the interests of the owner with

the wider needs of local communities and the territory. The structure of the CLT is based on three elements: i) the dissociation between the title of ownership of the land and the title of ownership on the improvements; ii) a strong conformation of the property rights of the home-owner; iii) an open associative model, based on participatory mechanisms involving not only those who have rights over the assets placed in the trust, but also other stakeholders.

An essential element in the creation of a CLT is the ownership of land by the non-profit organisation. The position of the CLT in relation to the land it owns is, generally, that of trustee (see → foundation and trust), who must administer it for the purposes of the trust and in the sole interest of its beneficiaries. These bonds can be either created by establishing an actual trust (see → foundation and trust), and thus through a deed of trust, or by relying on specific clauses contained in the bylaws and articles of association of the non-profit corporation. These acts impose a number of further and more precise limitations on the CLT, the first of which is a lien of inalienability on the land held in trust. This allows to combine permanent subtraction of the land from individual appropriation and from the dynamics of the market with the advantage of an instrument that removes the good from the possible mercantilist choices that could come from public administration, given the private nature of the owner.

If the CLT retains ownership of the land on a permanent basis, it will, functionally, sell the houses which stand on it. It is precisely this subjective dissociation of the title of property (ownership of the land/ownership of the improvements) that allows that mechanism of socialization of land rent that is at the heart of the model. Such a mechanism permits the CLT to generate resources to be invested in reducing the costs of access to housing and in the redevelopment of the area. In fact, the CLT, while retaining ownership of the land, can legally intervene to shape the property interests on the improvements.

The homeowners are in fact bound to the CLT by a ground lease. The ground lease not only legally allows the inhabitants of the CLT to maintain their construction on the land belonging to the CLT, but also establishes a series of rights and obligations of the owners towards the trust, as well as certain limits on the exercise of its property rights, which thus appear conformed in such a way as to reconcile the needs of individuals with those of the community.

The ground lease provides, in the first place, that the homeowner cannot re-sell the improvement at any price, but at the fixed price resulting from the application of the criteria contained in a specific clause (the so-called resale formula clause), and grants the CLT a purchase-option. The objective of the formula is to divide the land rent among all the participants in the transaction, allowing the seller to obtain, in addition to the capital, an adequate return on their investment and, on the other hand, the buyer to buy the property at a price below the market value of the good.

The formula most commonly applied provides that the lessees cannot sell the home at a price higher than the sum of the amount they paid to purchase it, revalued in line with inflation, and a fixed percentage (usually 25%) of the increase in value the estate had acquired between the purchase and the selling.

Both elements of the equation deserve some clarification.

As regards the first, it must be said that the price at which the seller bought the good was also below its market value. This is because if you go back through the chain of sales of a CLT-home, you always come to a first purchase in which the price had been reduced through the payment of a subsidy, usually public. Since all buyers in the chain are bound by the ground lease, and therefore to the resale formula, normally *all* purchases after the first one will be made at a price below the market value.

The market value of the home is not, however, completely exempted from the equation, but is part of the calculation of its second term, that is, the appreciation acquired by the improvement over the time between the two sales. This variable, in fact, is obtained by subtracting the market value of the good at the time of the first purchase, revalued in line with inflation, from that estimated at the time of its sale.

However, it should be noted that both these values, of course, are determined by deducting the value of the land from the market price of the property unitarily considered (land + improvement), since the seller has a fee simple interest only in the building while, as we have seen, with respect to the land they have a mere leasehold interest for a limited time (usually ninety-nine years, renewable).

Of the plus-value thus identified, the seller is entitled to obtain only 25%, the remainder being distributed between the buyer and the CLT. The buyer is usually allocated 70%, in the form of a reduction in the purchase price, and the CLT the remaining 5%, which is used to cover the transaction management costs and, above all, is invested in the redevelopment of the area.

In this way, a virtuous circle is created, permitting the CLT to permanently subtract the properties from the speculation of the real estate market and which fosters, in the wake of a single initial investment which surplus value is constantly distributed, a system of permanent affordable housing (lock-in effect of the initial investment).
The ground lease then imposes on the inhabitants of the CLT obligations relating to the ordinary maintenance of the building and the care of the surrounding space. Further clauses are also designed to curb absentee ownership and to hinder the use of market mechanisms that could distort the ultimate purpose of the institution. From this last point of view, ground leases usually set rules that commit the owner to inhabit the property personally, in a constant and stable way, and provide binding limits to the lease of the property in favour of third parties.
The legal structure of the CLT allows it to enjoy a certain economic and financial stability. Firstly, by appropriating part of the plus-value produced by each re-sale, the CLT can keep its equity stable. In addition, the ground lease requires the homeowners to pay the organization a fee, commensurate with the income and economic capacity of each inhabitant, thus ensuring the entity a concrete financial autonomy.
Part of these revenues are invested in the regeneration of the territory. In the CLT's traditional model, the governance of the territory is therefore accompanied by the need to respond to the housing crisis, as a further element that qualifies the model. This is a participatory and open form of governance, guaranteed by precise institutional mechanisms. The first consists of the open membership which characterizes the non-profit entity that supervises the CLT. In fact, anyone (and not only the homeowners) can become a member, and take part to the assembly of the CLT. The executive body of the organization is the board of director. Thus is usually composed, in equal measure, of representatives of the homeowners, representatives of the public interest and representatives of the inhabitants of the surrounding areas. The organs of the CLT adopt, in a democratic manner and following the procedures provided for by the organisation's bylaws, all decisions relating to the governance of the territory: use of space, investments, usage restrictions, cultural initiatives, etc.
Originally invented in the US, the CLT has been transplanted into many other jurisdictions (UK, Australia, Belgium, New Zealand, Kenya, Australia) where activists, public administrations and local housing organizations have relied on their domestic law to recreate the model. The CLT is compatible with almost all civil law legal systems.

DELIBERATIVE PROCEDURES
Deliberative procedures are those procedures governing decision-making processes in organizations.
Deliberations can be structured according to different procedures and each organization may decide to adopt diverse procedures according to the organ involved in the decision and or to the subject-matter of the decision to be taken.
Such procedures often imply a trade-off between interests to be protected: most of them can indeed very well protect certain interests, at the same times jeopardizing certain others.
A first procedure often adopted in urban commons (see→ Urban commons) and in commoning experiences (see → Commoning) is "Consesus". "Consensus" provides that a decision needs to be taken at the unanimity of all the participants. Consensus certainly bears the advantage of forcing the parties to mediation and to in depth discussions, and to promote the maximum level of democracy, very important in the commons. At the same time, it may lead to lock-in situations where a decision cannot be taken since consensus cannot always be reached. Also, it may force parties to endless discussions on decisions which may often bear a certain grade of urgency.
At the opposite of consensus is majority. Majority implies the decision to be taken is the one which gains more votes between the participants to the assembly. The principle of majority is quick and it certainly guarantees that a decision is taken in due time. However, it may partially jeopardize democracy since the taken decision often does not represent the result of mediation of different instances but only the expression of the "strongest minority". For instance, if, for the issue X, we have four possible decisions: A, B, C, D, in a situation where A gets 9 votes, B 8, C 7 and D 6, the decision taken (A) would only represent the consensus of 9/21 participants to the decision making process.
Precisely for these reasons: i) consensus is generally largely applied in the commons but never as the only viable decision-making strategy; ii) usually in formal and informal decision-making procedures it is stated

that the parties need to try to find consensus and that if consensus is not reachable the organ can decide applying the principle of majority; iii) the pure principle of majority, especially with reference to decisions which subject-matter is particular important, is often corrected through strategies promoting discussion, mediation and a wider agreement among the participants.
With specific reference to point iii), these strategies may consist of: i) submit the decision to a "qualified majority", i.e. the decision is approved when at least 50%+1 of the voters (absolute majority) or even a higher number of voters (e.g. 2/3 or 3/5) have voted in its favour; ii) the decision is submitted to a "double step" procedure whereby in the first round all the proposals are voted and then the organ has to vote, again, over the two proposals which gained more votes; iii) the decision is submitted to a double vote so that, for example, it has to be approved by the organ twice, in two different voting procedures held in two different days: this is to ensure and promote a higher level of reflexion over the implication of the decision and the proposed solutions. All these correctives are not mutually exclusive and can be combined in very creative matrix, in order to reach the decision-making procedure more suitable both the organization and different object of the decisions that needs to be taken.

FOUNDATION AND TRUST

The notion of foundation is common to most of the systems belonging to the Western legal tradition, where a substantial convergence is found mainly in continental jurisdictions.
The foundation can be defined as the establishment of assets earmarked for a general interest purpose as a legal person. From a technical point of view, the typical effect of the establishment of a foundation is, therefore, twofold: i) the creation of a lien of a proprietary nature on one or more assets; ii) the elevation of the intended assets to an independent legal person.
It is precisely these aspects that make the foundation a particularly useful tool in the management of urban commons. In fact, the foundation can be used to assign, on a permanent basis, an immovable property to the collective use registered in the bylaws and in the articles of association, thus protecting it, in the long term, from the extractive pressures which might come both from the state and the market. The foundation, in most western legal systems, also bears a certain flexibility, a flexibility that allows private autonomy to build participatory and democratic governance mechanisms.
With respect to the first aspect, a pivotal role is to be attributed to the scope set out in the bylaws and in the articles of association, as well as in any further and more precise use restrictions provided for by such documents.
Most of the legal systems provide that whether an act is adopted by the foundation's governing bodies in breach of the bylaws or the articles of association such act is null and void and, in the case of a breach of a use restriction that clearly stated in such documents (which are usually published and registered), such nullity is enforceable against third parties.
The effects of this rule are extremely relevant for the purposes of urban commons. Let us take as an example a foundation set up to manage, as a commons, an urban property, a good which, when the articles of association of the foundation are drawn up, is declared to be used for theatrical and cultural activities. Imagine, now, that the board of directors of the foundation resolves, in contravention of the purpose recorded in the articles of association and of any more precise restrictions of use included in specific clauses of the bylaws, to sell a part of the real estate holdings to a for profit corporation, to establish a luxury shop there. In a case such as this, in most legal systems, not only would the resolution of the board of directors be considered invalid, but equally invalid would be the contract of sale entered into with the company, given that the latter would lack the necessary power of attorney (due to the invalidity of the resolution authorizing the transfer). The invalidity of the contract of sale would be enforceable against the company, given the manifest contrast between its object and the foundation's articles of association. The effect would be the retrocession of the good to the foundation (as well as the possible removal of disloyal directors, especially where this is expressly provided for in the articles of association).
In most legal systems, it is stated that an indefectible element of the foundation is, in fact, precisely the scope (and therefore the usage restrictions) recorded in the bylaws and in the articles of association. The scope is not only unchangeable, but also *cannot be disposed of* by the bodies of the entity. This limit must be understood both in its direct meaning (it is not possible to approve an amendment of the bylaws or of the articles of association aimed at changing the scope) and indirect (any act or resolution adopted in

violation of the scope is null and void). It is, moreover, precisely this constraint thatdistinguishes the foundation from the association. The association is an "organization of men" who agree to pursue a common purpose. Precisely for that, the scope is at the members' disposal and they can modify it. This is not the case with the foundation, which, on the contrary, is usually defined as an *earmarked good* that becomes a legal person.
With respect to governance, the law usually provides for one single organ of the foundation: the board of director. However, in most (although not all) jurisdictions this is considered as a merely default rule, meaning that the community may, in the process of constitution of the foundation, add to the board of directors other bodies and organize its governance in very variegated matrix, including, for example, an open assembly structured according to participatory and democratic mechanisms.
It is thus quite possible to imagine that the community of reference comes together in an assembly, which is characterized by those open and participatory mechanisms that ensure that *anyone* can take part in it and that the latter (considered as the highest deliberative instance of the entity and the holder of the power of political direction) elects the members of the board of directors, depositary of the classic executive and managerial powers.
This flexibility also makes it possible for the board of directors to be structured in such a way as to reflect the various stakeholders of the good and the activities that take place in it. And so, to return to our example, there is nothing to prevent a foundation, to which a property previously belonging to the municipality has been ceded so that it can be used for cultural and theatrical activities, from constituting a board of directors composed partly of representatives of the assembly, partly of representatives of the city council and partly of representatives of the local theatre association.
When the foundation is used to manage a good that was originally in public ownership, the public original owner would have to assigns ownership of the good to the foundation. This means that it cannot in any way change its intention to administer it according to the criteria related to the commons (for example, by deciding to sell it on the market) through a simple administrative act. The administration will at most be able to participate in the management of the good in the forms provided for by the foundation's articles of association and bylaws (and thus, for example, exercising its right to be represented in the executive body) and will, therefore, also be bound by the scope provided for by the acts constitutive of the legal person.
The only way for the public to regain ownership of the good is through expropriation. In such a case, however, it would be subjected to the burden of proving the requirement of public interest, and would therefore be required to prove that the use it intends to make of the good is more socially desirable than that envisaged by the foundation's bylaws (and activities).
Similar results to those achievable with the foundation can be accomplished through a *charitable trust*, in an arrangement in which the trustee takes the form of a non-profit organization (e.g. an association) structured according to an open and democratic model of governance.
A trust is an institution according to which the owner of a good (settlor) gives it to another person or entity (trustee) who must keep it and use solely for the purpose, the scope, and with the limits provided for in the deed of trust (the act which originates the trust).
It is known that the trust, institution typical of common law systems, has, since the late 1990s, started to be recognized in many civil law jurisdictions too.

HORIZONTAL SUBSIDIARITY

Horizontal subsidiarity is an implementation of the broader principle of subsidiarity. In a traditional perspective subsidiarity has been conceived just in a vertical dimension. In this first sense, missions of public interest and administrative functions should be carried out by the institutional body which is closer to a local context and citizens, unless the intervention of a higher level Public Administration is found necessary (e.g. public services must be managed and provided by Municipalities, unless a specific service demands a broader organisational effort for geographic and/or economic reasons). The horizontal sense of subsidiarity is more recent and it is about the possible role of private actors (citizens, associations, NGOs, companies, and the like) in the public sphere. In particular, horizontal subsidiarity aims at overcoming the rather bureaucratic organisational models in the management and provision of welfare and public services by promoting private initiatives. Thus the implementation of horizontal subsidiarity

incentives either privatisations (with an increasing institutional role of the market and for profit private actors) or more complex public-private partnerships.
In the just mentioned meaning the subsidiarity principle is not regarded as embedded in EU primary lay, since the Treaty on European Union, Art. 5 par. 3, concerns subsidiarity solely in vertical relationships between the Union and Member States (see CJEU 24 October 2019, European Federation of Public Service Unions (EPSU) vs. European Commission, Case T–310/18).
Nevertheless, horizontal subsidiarity is often acknowledged in the European legal frameworks at the State and local levels. For instance, such a principle is explicitly proclaimed by Art. 118 par. 4 of the Italian Constitution. According to this provision, introduced in the Constitution in 2001, "by building on the subsidiarity principle the State, Regions, Metropolitan Cities, Provinces and Municipalities facilitate autonomous initiatives carried out by individual or associated citizens for the performance of activities of general interest". In a first period, the horizontal subsidiarity principle has been read as the constitutional base for massive market-oriented policies. The Italian legislator went far beyond EU Treaties provisions (see: "Co-design"; "Public Services") in fostering huge processes of privatisation in the welfare state and in considering competition as the major organisational criterion to be promoted and enforced in social and economic activities.
After 2010 the situation has changed. A more nuanced conception of horizontal subsidiarity arose, to the extent that solidarity-based direct initiatives carried out by privates started to be considered as such (see: "Active Citizens") and as an alternative to competitive and profit-based forms of management of public heritage and the welfare. This latter interpretation of horizontal subsidiarity has been increasingly successful in the Italian legal framework, and in its implementations it seems very close to those European policy directives aimed at promoting citizens' direct involvement in the co-management of common goods and public services as well as at fostering participative democracy and social cohesion at urban levels. Nevertheless it is worth making a last general remark, since the growing role of privates acting not for profit cannot result in a parallel withdrawal of Public Administrations from their functions and their duties. In this respect a sort of "non substitution principle" can be envisaged in order to empower citizens' solidarity-based contributions in the public sphere while avoiding any shrinking of public authorities' institutional responsibility.

LIABILITIES (ALLOCATION OF POSSIBLE)
While fostering active participation and sociability among citizens, the co-creation, co-production and co-management of commons and public services can present some specific issues about risk. In fact, the choice to facilitate open and public relationships between Public Administrations and citizens as well as among citizens means that it can be difficult to find a subject capable of effectively governing risk factors. In such situations it's arduous to find a sole and efficient risk bearer, so that in case of damages it would be problematic to apply a strict liability rule.
Public Administrations and private actors have to deal with the above-mentioned elements if they want the experiments on collaborative administration and commoning to evolve into a durable institutional framework. One possible solution is to put aside the strict liability rule and to follow the different fault liability rule. In this respect each subject engaged in collaborative administration (active citizens, Public Administrations, even occasional users) could be held liable depending on his or her fault; likewise, under a fault liability rule everyone is somehow risk bearer, so that it's possible to have no compensation for injuries that occur without the fault of the subject who is deemed to be liable. In spite of this possible interpretation, Italian experimentations on collaborative administration tend to consider the citizens that take care of urban commons as the custodians of such goods, thus applying the strict liability rule to those who are supposed to be the risk bearers in case of damages connected to commoning.
In light of the importance of promoting citizens' activation and social cohesion with reasonable legal incentives, the fault liability regime seems the preferable one. On the one hand, it is true that sometimes - e.g. when persons suffering damages do not give proof about the supposed liable's fault - injuries can lie on the victims without compensation (except for possible assurances). On the other hand, alongside such possible inconveniences it is worth noticing that the lack of strict liability is *per se* an incentive for more active behaviours, so that the fault liability rule seems much more compatible than the strict liability one with policies aimed at reinforcing and fostering direct participation as a major goal for local democracies.

NETWORK OF NEIGHBOURHOOD HOUSES (RETE DELLE CASE DEL QUARTIERE)

The Network of Neighbourhood Houses (Rete delle Case del Quartiere) is a longstanding social and institutional experimentation which has been taking place in Turin (Italy) since 2007, when a first Neighbourhood House opened. The Network is currently composed of eight Houses operating throughout different neighbourhoods in Turin. To tell the truth, attempts to provide citizens with both an overall political framework and concrete administrative measures capable of enabling their direct action became a priority for the Public Administration since the end of the last century. In those years, local decision makers observed successful policies carried out in Italy as well as throughout Europe and became convinced that a growing participation at the very local level could be considered as means of democratic renovation and social cohesion. By building on such previous experiences, the Neighbourhood Houses project constitutes a more innovative local policy.

A Neighbourhood House aims at being a cooperative and inclusive point of reference for a part of the urban territory and for the population living there, regardless of differences of age, cultural and ethnic background, social conditions and the like. Such spaces can be considered as social and cultural hubs, tending to trace diversities to a framework of social cohesion. Openness and public use are the main features of a Neighbourhood House, so that individuals and groups (associations, informal groups) can freely propose several activities and projects to be realised in a House. As a consequence, citizens tend to get increasingly involved in the collective management of the Neighbourhood House. A variety of cultural initiatives as well as mutual services takes place in a Neighbourhood House, so that these collective sites can be regarded as one among the major examples in the domain of urban commons (see: "Urban Commons"), thus demanding articulated forms of cooperative governance.

The creation itself of a Neighbourhood House can often be a positive example of urban regeneration, with renovations and requalifications of buildings and public spaces carried out thanks to the collaborative contribution of local authorities, banking foundations, social enterprises, associations and citizens. In this respect, many Houses in the municipality of Turin are eventually located in regenerated buildings (e.g. two Houses are former public washrooms).

From 2017 to 2020 the Network of Neighbourhood Houses was part of the Co-City UIA (Urban Innovative Action) project. In this context, the Network was charged with the facilitation, the engagement and the support of citizens and communities aiming at taking action for the care of urban commons. In the framework of CO3 the Network of Neighbourhood Houses has been hosting the Italian pilot site. Some disruptive technologies have been implemented in Neighbourhood Houses in order to ameliorate their democratic functioning and thus to make their management a very innovative experiment of commoning (see: "Commoning"). Liquid feedback has been used to boost transparency and openness in decision making processes. Tokens (see: "Token/Tokenization") have been created and distributed as digital awards for the contributions that individuals and associations have been offering to the overall framework of the Neighbourhood House. In particular, such tokens are supposed to be the base of a digital ecosystem characterised by circularity and cooperation. A citizen remunerated with CO3 tokens for his/her contribution to the common sphere is allowed to "spend" these tokens to access goods and services provided by the Neighbourhood House's community at large, so that exchange and sharing processes take place in innovative manners and out of a market system.

Although the covid-19 pandemic has been a major obstacle for a large experimentation (due to sanitary reasons Neighbourhood Houses have been completely closed for a long time), the development of CO3 eventually entails meaningful insights. For instance, a compromise between the limitations due to social distancing and the initial will to foster people's *phygital* presence in the ACA has been arranged with respect to the tokens exchange mechanism. In this sense, alongside the initial system (which requires contemporary interactions between citizens and their devices through QR codes) a new method has been put in place, thus allowing citizens to exchange tokens in the Neighbourhood House ecosystem even without being in co-presence.

PUBLIC SERVICES

Public services are one of the building blocks of the welfare state, since the provision of affordable and high quality utilities is crucial for granting effective protection of the fundamental (civil and social) rights of individuals and communities. Many activities that are crucial for everyday life lie at the core of the

traditional concept of public service: network services such as electricity and access to water, urban services like mobility and housing, not to mention healthcare and personal care.
In a rather traditional view, organisation and management of public services were the mission of Public Administrations, so that such activities used to be traced to a clear public framework. Particularly in continental Europe, public bodies applying specific administrative rules and procedures were charged of the effective implementation of the welfare state through a good provision of public services. Sometimes the responsibility for a service could be assigned to formally private companies, although even in such cases Public Administrations used to keep total control over companies' economic and industrial strategies.
In the last two decades of the Twentieth Century the neoliberal turn arose in Western societies and this paradigm shift entailed deep consequences in the domain of public services. Instead of keeping qualifying the whole sector of public services as the task and the responsibility of public bodies, an age of privatisations and deregulation was launched on the assumption that a competitive market was, both for Administrations and for citizens, the most adequate institutional context for the management of such economic activities. In these years open competitive procedures became the basic rule in order to find private for profit companies to be in charge of the production and provision of public services, so that market-oriented organisational criteria have become widespread even in this domain. As a consequence a new regulatory role was assigned to the State, since direct economic initiatives carried out by public bodies were deemed to be rather inefficient and bureaucratic. The major outcome of this process has been that in many European legal systems both substitutable services (e.g. personal care) and so-called natural monopolies (such as network services) have been traced to competition law and to the market as an institutional framework.
These trends have gone somehow beyond the very provisions of EU primary law, since the Treaty on the Functioning of European Union does not proclaim such a market-oriented view in the domain of public services. According to Art. 106, par. 2 of the Treaty, the sector of services of general economic interest can be traced to the rules on competition "in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them". Moreover, Protocol no. 26 on services of general interest contains some interpretative provisions relevant to Art. 14 of the Treaty. On the one hand it proclaims that "the shared values of the Union in respect of services of general economic interest (...) include in particular: - the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users; (...) - a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights". On the other hand, it clarifies that Member States keep their full competence in organising and managing non-economic services of general interest.
Although some remarks about the inefficiencies of the traditional bureaucratic models were proper, the market-oriented competitive legal regime of public services proved to have some troublesome implications. Contracts between Public Administrations and private companies can be affected by strong information asymmetries in favour of the private parties. The public sector tends to lose competences and know-hows in the long term. Affordability of some public services is not always granted.
For these reasons, in the last years a new and more nuanced view of public services as economic and social activities arose. According to this conception every subject involved in the domain of public services - Public Administrations, citizens, workers, companies - should take efforts to go beyond both bureaucratic State and competitive market, in order to experiment the new frontier of co-creation, co-management and co-production. While it's important to reaffirm the basic responsibilities of Public authorities (see: "Horizontal Subsidiarity"), this new approach to the organisation and provision of public services enhances the possibility to have shared responsibilities through cooperative and no profit governance arrangements. In this respect, the management of public services could be open to the participation of different actors pursuing convergent interests and goals, with possible positive outcomes in terms of affordability, inclusion and social cohesion (see: "Co-design").

REGENERATION
In urban systems, the word "regeneration" (also known as "renewal" or "redevelopment") alludes to a set of policies, planning strategies and legal devices that have become widespread since the end of the

XXth century. Indeed, in the last 35 years many cities all around the world have been facing similar challenges, due to structural socio-economic trends emerging at a global level. For instance, many traditional industrial cities or even "company towns" (e.g. Turin, Detroit) have been forced to deal with huge processes of deindustrialisation, capable of upsetting former urban identities and of creating large urban voids within the so-called industrial heritage (see: "Urban voids"). Conversely, relocation of industrial productions has often been a major input for unprecedented strategies of renewal in those urban systems chosen by multinational companies to host new factories. From a second perspective Western cities, especially in Europe, have been facing crucial issues such as the one of ageing population (e.g. the current average age in Italy is 45). Broader challenges come from huge demographic trends. At a quantitative level, decreases in urban populations have not been so rare: as a consequence, in many towns parts of the urban system (public spaces, commercial buildings, dwellings) have partially or totally lost their function, by becoming underused or even abandoned with predictable negative externalities. At a qualitative level, migrations and increasing flows of "city users" have often modified urban populations' composition, with unprecedented complexities like those connected to the welfare and the provision of public services, not to mention the serious problems of xenophobia and of spatial and ethnic segregations.

Urban regeneration has emerged as one of the major strategies to deal with such a delicate framework. In general terms, regeneration projects aim at providing specific urban sites (e.g. abandoned plants, old docks, unused public buildings) or broader neighborhoods with a new aesthetic and functional identity. Renewals can be "intensive" or rather "conservative": according to the first approach, large demolitions can be carried out and followed by the construction of totally new buildings and complexes; in the latter case, the development of the project consists in more attentive restorations of buildings and urban areas (so that, for instance, whole demolitions do not occur).

Although generally associated with major policy priorities such as environmental sustainability, energy efficiency and social cohesion, as well as to the overall discourse on "smart cities", urban regeneration is not neutral with respect to its possible distributive effects. Large debates about the connection between regeneration and gentrification highlight that delicate socio-economic and legal issues can be noticed beyond the rather rhetorical aspects of this topic. First, the goal of social cohesion could be put aside by the distributive impact of a regeneration initiative: for instance, long-term inhabitants of a regenerated neighborhood can be forced to move away because of the increasing costs of living (e.g. tenancy). Moreover, from a legal perspective one can ask whether and to what extent public authorities keep their institutional margin of political decision on urban planning, in those cases characterised by renewal projects promoted by private developers (namely, private real estate companies) and regulated through quasi-contractual agreements between privates and Public Administrations.

Apart from such critical findings, one can highlight that forms of urban regeneration based on participative cooperation and aimed at recovering and fulfilling social cohesion are an increasing reality throughout Europe. In this respect, a meaningful social dimension is becoming a pillar of the debates on regeneration, so that the role of active citizens and local communities have arisen alongside more traditional and powerful institutions (public authorities, private companies, universities). Current regeneration policies tend to facilitate people's empowerment and local communities' agency to the greatest extent. Sometimes, like in the Italian local legal framework, some experimentations eventually became a well-acknowledged model of regulation (see: "Regulations on the co-management of urban commons").

The CO3 project is a clear example of such efforts, thanks to its attempt to combine the innovative implementation of some disruptive technologies with the best practices and legal arrangements in the field of co-design and co-management of public services and urban commons.

REGULATIONS ON THE CO-MANAGEMENT OF URBAN COMMONS

Regulations on the co-management of urban commons are local administrative acts that have become widespread in Italy since 2014, when the first Regulation was adopted in the city of Bologna. These Regulations have proved to be a successful legal model: they are currently in force in more than 200 Italian municipalities; they have attracted much interest at the European and comparative levels as well.

Such acts provide municipalities and public institutions, private actors (owners, companies) and active citizens with a legal framework for the fulfillment of collaborative administration (see: "Collaborative

administration"). Regulations usually contain a set of definitions and principles relevant to the law of urban commons. Among these provisions it is worth noticing the wide scope of the concept of active citizens - whoever can take action, regardless of age and nationality (see: "Active citizens") - and the role of principles such as informality (in the relationships concerning urban commons rather bureaucratic formalities should be avoided, unless they are mandatory) and civic agency (one of the major aims of these innovative experimentations is to allow citizens' empowerment as much as possible).
Procedures leading to the signature of agreements between Public Administrations and active citizens are regulated too. Initiative can be up to the public sector, with open calls inviting individuals, associations and informal groups to take action with respect to certain goods that are supposed to be urban commons by the municipality. In principle, active citizens can take initiative as well, by assessing that a part of the city (e.g. a park or an empty building) should be regarded as urban commons and by proposing a collaboration draft. To comply with the general principle of transparency, such proposals and drafts are usually published in the online channels of the Public Administrations.
After these first steps, open and transparent negotiations take place between the parties to the future agreement; of course, participation of every other stakeholder is welcome. Regulations contain some rules on this topic: due to the principle of legality specific provisions regard public authorities' decisions (e.g. when and whether public managers are entitled to conclude agreements, and when and whether a decision of political bodies is necessary), whereas the very negotiations are rather informal. That said, the general aim of this phase is to reach a cooperative definition of the rules and the tasks for the inclusive governance of the urban commons (see: "co-design").
Most Regulations focus on a specific quasi-contractual agreement between Public Administrations and active citizens, namely the collaboration pact. The parties to such a pact organise the cooperative governance of urban commons by sharing responsibilities of care and management (see: "Collaboration pact"). Although collaboration pacts are very flexible legal tools, of course other institutional solutions can be possible for an effective governance of urban commons. For instance, the model of urban civic and collective uses (arising from the experimentation carried out in Naples) seems capable of providing active citizens and communities of reference with a broader margin of agency towards urban commons, so that Public Administrations share less responsibility in their governance. Moreover, very complex urban commons could be governed through the creation of a participatory Foundation (this tool is regulated by the recent Regulation of Turin no. 391). Such a legal entity could also become the formal owner of the urban commons, characterising a model of property based on stewardship, inclusion, long-term collective governance in the interests of the urban environment and of future generations.
Last, Regulations deal with possible difficulties in the co-management of urban commons. In this respect, there are always provisions about the allocation of possible liabilities, whereas rules about risks prevention could be better defined in order to avoid excessive disincentives for the actors involved in the co-management of commons (See: "Liabilities, Allocation of Possible -"). Default rules fostering cooperative disputes resolution are also provided. This choice is coherent with the whole view of urban commons and of collaborative administration. It is also remarkable since it contributes to fostering a general turn in the mentalities of public authorities and citizens as well as in the institutional functioning of their relationships.

TRUST (see → "Foundation and trust")

URBAN COMMONS
The commons are one of the major institutions in contemporary legal thought and in social sciences. Although the huge number of theoretical contributions as well as practical experimentations discourage the adoption of general and stable definitions in this field, according to the influential work of an Italian commission chaired by Prof. Stefano Rodotà commons can be regarded as those corporeal and immaterial "things capable of generating utilities which are relevant to the exercise of fundamental rights and to human flourishing". Due to such a functional and legal relevance, commons can be considered as the objects of collective and inclusive property rights, that is legal entitlements capable of challenging the individualistic and exclusive conception of subjective rights at the core of Western legal tradition. While suggesting deeply renovated views of property as a crucial legal institution, these resources should be "protected by the whole legal framework, even in the interests of future generations". Each and every

member of the communities of reference should be entitled to take care of commons: in this respect, a collective legal standing concerning remedies having a precautionary potential (e.g. injunctions) has been envisaged and sometimes experimented.
At a general level, a thorough understanding of commons depends on the insights offered by economic analysis of law. For instance, the idea that exclusive property rights are the most suitable legal institution for the overall governance (enjoyment, exchange, reproduction) of scarce resources is connected to the so-called "tragedy of commons". According to this metaphor (which is the title of a crucial article published by G. Hardin in 1968), where a limited resource is held in common and without constraints (such as effective prerogatives of exclusion) every member of the community will tend to use such a resource in order to maximise his/her individual utilities. As a consequence, according to this view in most cases the tragic destiny of commons can be overconsumption and depletion. From another perspective, critical remarks about the development of individualistic private property have been made by highlighting the scenario called the "tragedy of anti-commons". According to influential researches carried out by M. Heller in the last Nineties, excessive fragmentations of individual property rights tend to prevent efficient forms of governance of a given resource, because the proliferation of exclusive legal entitlements can result in many concurrent powers of veto and in disincentives for cooperative behaviours.
Such insights allow to underline that the efficient and sustainable governance of scarce resources cannot be granted by a priori legal arrangements, based on the allocation of exclusive property rights. On the contrary, as the Nobel Prize E. Ostrom has shown in her landmark works sophisticated forms of collective governance can be compatible with the construction of limited resources as commons. In this view, the identification of some design principles (such as the clear definition of group boundaries, and the necessity that the subjects affected by some rules can take part in changing the rules) is able to lead to an efficient governance of some resources, although the institutional framework organising the life of a community is neither the market nor private property.
In the last decade urban contexts have become one of the major laboratories for the emergence of commons as a legal institution. The reasons for this process are rather intuitive. While the development and the many transformations of cities have always been about the collective dimension of human life - since cities are probably the most ancient among the complex artifacts created by human communities - , unfortunately in the last fifty years urban systems have proved to be increasingly incapable of providing people with widespread social security. The increasing difficulty to grant social cohesion and a high quality public sphere is connected to broader structural changes in Western societies as well (see: "Active Citizens"; "Regeneration"). In this framework, the discovery (or the reevaluation) of urban commons can also be seen as a reaction to some huge processes of (explicit and soft) privatisation of public space. Many parts of a city can assume the legal qualification of urban commons: a square, an underused garden, an abandoned building can become urban commons, so that citizens can take action and care of these goods through diverse forms of collective governance in the interest both of the community at large and of future generations.
In fact, the effective care of urban commons demands some direct activation of the members of a local community, so that citizens are brought to invest in democratic cooperation, thus reinforcing mutual trust (in the community and in public institutions) and social cohesion. Moreover, the successful governance of commons in urban systems means that collaborative relationships between Public Administrations and active citizens (see: "Collaboration Pact") can be able to provide a local community at large with affordable and innovative access to shared goods and public services.
In this respect, the increasing success of several experimentations in the field of urban commons shows that another influential scholar, C.M. Rose, was right when she proposed the metaphor of the "comedy of commons" in response to Hardin's argument. In fact, enabling the collective care and the collaborative management of commons in urban systems means that administrative policies and legal experimentations aim at fostering the potential of commons in terms of sociability. Therefore, even at the urban level (and maybe mostly at this level, which is closer to the people and easier to deal with) commons can be appreciated as an institutional base for developing inclusion and solidarity, intergenerational fairness, social cohesion and participative democracy.

URBAN MODELLING

In urbanism, urban modelling is one of the major and most established approaches to deal with the processes of structural transformation within urban systems. In brief, through urban modelling decision makers can obtain simplified abstractions of a certain urban reality, so that they can build on such models in order to predict future trends and to arrange consequent measures in terms of urban planning and administrative policies. For instance, where urban modelling foresees the expansion of a certain neighbourhood, future needs for housing can be envisaged and localised, and investments in the sector of network services can be programmed as well. Likewise, where urban modelling highlights a trend toward the concentration of economic activities in a specific area of a city, the need for larger investments in transportation (or in other social infrastructures such as kindergartens) can be taken into account and involve that part of the urban system.
Urban modelling techniques have been evolving in their own methodologies and functioning. In a first phase, static and somehow deterministic views were dominant: these approaches could be traced to the overall traditional conceptions of urbanism, based on clear-cut functional spatializations of urban territories, on precise (and rather simplistic) models of human rationality and on a major role of local public authorities. On the contrary, during the last decades a different awareness arose, so that dynamic views have become a widespread reality in urbanism by enhancing multi-functional conceptions of urban development, more nuanced views of the rationality at the base of human flows, and the possibility of partnerships between Public Administrations and private actors. Alongside these changes, technological innovations have been a major stimulus for the evolution of the entire domain of urban modelling by creating unprecedented possibilities of collecting data and elaborating predictions.
In light of such remarks, it is easy to notice that nowadays urban modelling is becoming more and more complex. This trend is connected with the ongoing complexification of urban planning and social sciences from a theoretical perspective. In contemporary urban contexts modelling is an actual challenge, since it is currently clear that cities are recursive systems characterised by mutual influences between human actions and flows and the infrastructures provided by law, urbanism, technology. Such a complexification depends on material issues as well. In fact, the growth of cities in terms of population and their increasing complexity in terms of demographic composition are at the base of major issues, such as the environmental (e.g. risk of depletion of ecological resources within an urban system) and social (e.g. growing inequalities, saturation and/or privatisation of public spaces, and the like) ones. In this respect the models need to become more sophisticated, even through the adoption of innovative legal arrangements, social methodologies and technological tools.
CO3 has been trying to deal with some of the above-mentioned challenges through the interaction between a tactical recourse to urban modelling techniques and the implementation of disruptive technologies. By building on a small scale, the basic aim in the development of CO3 has been to somehow democratise urban modelling, since the use of disruptive technologies such as augmented reality and interactive democracy can make these processes more participatory. In particular, within the Paris 2 scenario the Consortium has experimented a particular articulation between non-professional and professional urban modelling tools with CO3 technologies. The Institut de Recherche et d'Innovation (IRI) developed *ad hoc* a Minetest server (the open version of the Minecraft games) for centralizing the different contributions made by young students with the help of their professors and local experts who intervene – coordinated by IRI – within ten schools situated in Plaine Commune, the northern suburbs of Paris. The main idea was to redesign parts of their schools or of their city through the game Minetest, then export the entity created as 3D models and import them in the CO3 app. CO3 technologies, particularly the Augmented Reality and the geolocated social network FirstLife, have been really appreciated by both students and professors.
In this respect, the consortium has witnessed the fact that even non-professional urban modelling technologies could become a tool that can be traced to the broader domain of co-creation, co-production and co-management of urban commons and public services if well designed and integrated in a technological and social milieux..

URBAN VOIDS
From a general perspective, one can define as urban voids all those spaces in the cities characterised by abandon, underuse, loss of a former functional identity (as well as lack of a future one). Urban voids are one of the major issues in contemporary urbanism because of some structural socio-economic trends

recurring in most Western urban systems. First, deindustrialisation processes have led many companies to restructure and/or relocate their businesses, thus to abandon factories and large industrial complexes. Such choices have often created gigantic urban voids and caused huge shocks for the functional equilibrium of a neighbourhood or even for the entire urban identity and economic stability of a city. Moreover, demographic trends are bringing many Western cities to face widespread challenges, such as ageing population, as well as unprecedented mixes in terms of socio-cultural composition and of language diversity. In some cities another outcome of demographic trends is the decrease in urban population, which can imply the creation of urban voids in the stock of residential dwellings. More recently, the Covid-19 pandemic has been the cause of the possible emergence of new urban voids, since the rise of flexible and smart working could determine a fall in demand for offices and commercial real estate in the city centres.

The issue of urban voids can be addressed from multiple perspectives. If some urban voids are not part of the built environment, a possible choice could be to let such spaces to their spontaneous development, this policy meaning not a lack of interest but, on the contrary, the awareness of the positive environmental role of spontaneous natural ecosystems within a broader urban context. Of course, even empty buildings, such as the industrial heritage, pose environmental issues. For instance, a former factory can be converted into other valuable uses only after decontamination, so that this element is one of the key challenges in the domain of urban regeneration (see: "Regeneration").

Environmental aspects can be traced to the broader discussion on the side effects of urban voids. In this respect, it is worth noticing that urban voids tend to generate negative externalities even at a social level. Empty dwellings can represent a distortion of the market of residential property. They also create incentives for occupations carried out by persons in need, and thus lead to the emergence of many delicate issues related to the social treatment and to the legal regime of squatting. At large, urban voids in the built environment are often the cause of negative side effects in terms of urban quality (abandoned buildings tend to determine a fall both in economic values and in the quality of life in the involved neighbourhood) and security (unlawful and/or dangerous activities can take place in such empty buildings).

In the framework of CO3 the issue of urban voids has been addressed by foreseeing the possible interactions between disruptive technologies and the democratic decision making process about the future uses of such spaces. As one of the scenarios experimented in the Athens pilot shows, through technological strategies combining Augmented Reality (see: "Augmented Reality") with gamification (see: "Gamification") citizens can be enabled to isolate specific urban voids within a certain Augmented Commoning Area, so that "digital proposals" can be made for possible new collective uses of these abandoned pieces of neighbourhoods. The interplay between the traditional legal regime of empty buildings (on the one hand) and the possible legal acknowledgment of digital proposals made by citizens (on the other hand) is an open question, however the emergence itself of such a topic is the proof of the innovative potential of the implementation of disruptive technologies in the domains of collaborative administration.

USO CIVICO (Civic usage)

Model of governance of urban commons created in Italy and based on public law, which became popular after its invention and use in the framework of an important experience of urban communing in the city of Neaples: the one of "Ex Asilo Filangieri".

The *uso civico* discussed here does not correspond, from a technical point of view, to the *uso civico* conceived by continental private law, the latter being an institution which moves integrally within the domain of private property, allowing a community access to a certain use of a good according to rules and principles of customary law.

With *this uso civico*, the "Neapolitan-style" *uso civico* shares the idea of collective access, but differs from a technical-legal perspective.

In the Italian experience, *uso civico* is conceived as a tool of governance of common goods *in public ownership* and, in particular, municipal ownership.

It provides that the community of reference of the good builds, autonomously and from the bottom up, the rules on the use of the spaces, on the deliberative and decisional procedures, on the organization of the activities, etc., joining them together in one document: the so-called "declaration of *uso civico*".

It is therefore up to the municipality to incorporate the declaration in an administrative act (which, in the Italian experience, takes the form of a deliberation of the city council). Such a deliberation has the dual consequence of giving some form of legal effect to the declaration and, above all, of legitimising the possession of the good by the community of reference, a possession which takes shape in the forms and ways provided for in the declaration itself.

The advantages of *Uso Civico* are: i) its flexibility; ii) its authentic bottom up nature; iii) from the perspective of the community, that a good portion of legal liability remains allocated to the administration.

However, *uso civico* bears also certain shortfalls.

The most relevant among them is that just as the municipality can grant *uso civico*, acknowledging by its own act the declaration drawn up by the community of reference, the same municipality, as owner of the property, can at any time, and *ad nutum*, ignore it, by simply adopting an equal and contrary act. From a strictly legal point of view, therefore, *uso civico* does not protect the good from public power, which may, at its sole discretion, decide to withdraw its effects and use the good for other purposes, for example by selling it on the market for commercial use. The risk, in other words, is that *uso civico*, granted during a favourable political climate, may be revoked at the first change of political majority. Put in other words, *uso civico* lacks of legal capacity to withstand the opposing pressures that, in the long term, could come from both the state and market.

Secondly, *uso civico* appears to be a scarcely scalable mechanism, given that, as already mentioned, tort liability for any damage related to the use of the good remains, at a large scale, with the municipality. Except in special cases where some civil servant, out of political passion and civic dedication, decides to take responsibility for damages, in the ordinary operations of a public entity it is difficult to expect it to maintain responsibility for the use of the good without, however, being able to exercise any control over it.