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The price of sustainability: climate change and public funding, research perspectives for administrative law*.

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Sommario

1. Climate public cost: reasons for research. – 2. Climate monitoring strategies and instruments in EU budget. - 3. Climate sustainability and budgetary constraints: the uncomfortable position of public administrations. - 3.1 Long term expenditure planning: the necessary adaptation to the environment's reaction. - 3.2 Monitoring good governance and environmental and economic public management. - 4. Climate change and Recovery Fund: new opportunities hovering in the balance.

Abstract

The analysis aims to give an account of developing complex and articulated relationships between public funding and climate sustainability. Specifically, it addresses issues of climate spending strategies in EU budget, role of national administrations in maintaining the complex balance between spending constraints and climate and, finally, it analyses the role of climate within 2020 Recovery Fund.

1. *Climate public cost: reasons for research.*

Studies and the search for a complex balance[1] between climate sustainability and public funding represent a privileged observatory of analysis and point of identification of various areas of interest for public law, not only from a national perspective.

In public law, issue of government performance activities and budgetary constraints has been very incisive in relation to effective protection of rights[2], especially where fundamental rights are concerned, and the awareness of climate change and its central role in the debate is perfectly in line with this line of investigation.

Prior to examining different sensitive issues for this survey, it seems appropriate to make a few defining and analytical delimitations.

In relatively recent times[3], climate sustainability has come to the attention of scholars and is an independent but coherent element of sustainable development[4], with which it must not be superimposed in any case.

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* This text includes, updates and adapts with bibliographical references the lesson held by two authors, entitled '*Climate sustainability and public funding*', during '*Summer School Gcrc 2020.Governing Climate Resilient Cities. Challenges, Opportunities And Best Practices*', held at the University of Pisa on 7 October 2020. Despite reproducing shared reflections by two authors, paragraphs 2 and 4 were drafted by Vanessa Manzetti and paragraphs 1 and 3 (3, 3.1, 3.2) were drafted by Vinicio Brigante.

[1] E.g. OECD, *Funding environmental compliance assurance. Lesson learned from International Experience*, Paris, 2005, avaible at *www.oecd.org/environment*, 3, "authorities responsible for enforcing environmental regulations and promoting compliance with environmental requirements are operating in the context of financial constraints. Such constraints can be a consequence of the general pressures on the state budgets or the changes in government policies, which may result in shifting the resources to address short-term priority problems away from environmental protection".

[2] On this subject, reference should be made to the survey conducted by P.L FERRARO, S.K. PATTANAYAK, *Money for nothing? A call for empirical evaluation of biodiversity conservation investments*, in *Plos Bil.*, 2006, p. 105 ff.; M. LUCIANI, *Costituzione, bilancio, diritti e doveri dei cittadini, in Scritti in onore di Antonio d'Atena*, III, Milano, 2015, p. 1673 ff.; D. BEVILACQUA, *Le misure per gli investimenti delle amministrazioni centrali, per l'ambiente e il mezzogiorno*, in *Giorn. dir. amm.*, 2020, p. 190 ff.

[3] Cf. D. SINISCALCO, *La governance del clima*, in *Equilibri*, 2019, p. 268, 269, modern debate on climate change is about thirty years old. Before then, the issue of climate sustainability and the need for public intervention was only one of many issues discussed by the environmental economy. Awareness of the theme in the public, also due to extreme events becoming more and more intense it becomes progressively greater and finally acute. In this way, the climate issue gains in importance and finally the role of priority in the political debate. Please refer to this paper for a summary of historical and institutional stages related to the debate on climate sustainability; L. RE, *Politica e istituzioni al tempo del cambiamento climatico. Il paradigma della vulnerabilità come proposta di trasformazione*, in *Materiali per una storia della cultura giuridica*, 2020, p. 291 ff.; S. NESPOR, *L'adattamento al cambiamento climatico: breve storia di un successo e di una sconfitta*, in *Riv. giur. amb.*, 2018, p. 29 ff., climate change has always been tackled with two strategies, mitigation and adaptation. Mitigation addresses the causes of climate change and consists of active interventions - which as such have a cost - to contain harmful emissions, the pathological expression of change. Adaptation consists of interventions to reduce the negative effects and exploit the positive aspects, from an environmental and economic point of view; recently, with specific reference to soil consumption and the protection of water resources, cf. M.A. SANDULLI, *Cambiamenti climatici, tutela del suolo e uso reponsabile delle risorse idriche*, in *Riv. giur. ed.*, 2019, p. 291 ff.; L. NATHAN, M. FERMEGLIA, *Investment protection and unburnable carbon: competing commitments in international investment and climate governance*, in *Dir. comm. Int.*, 2018, p. 945 ff.

Climate trends in sustainability, and the theme as a whole, have acquired semantic importance, and a central role not to be underestimated in the implementation of public policies, following the signing of the '*Paris Agreements on Climate Change*' in 2015[5], the first historic universal climate agreement.

These Agreements, to quote one of the first comments after the historical date, 'are a worldwide pact for the climate that changes the face of economy forever'[6], to clearly highlight the repercussions between two aspects under investigation[7].

Beyond the controversial character and binding force of the obligations set out in the Agreements[8] - an issue that affects the analysis carried out - the general objective of mitigation, as set out in art. 2 of Agreement, is defined with reference to containment of the global average temperature increase, identified on the basis of the results of IPCC studies. In particular, the objective agreed by all parties is to contain the increase in the global average temperature in the shortest possible time.

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[4] With regard to this subject, limited to Italian legal literature, please refer to F. FRACCHIA, *Lo sviluppo sostenibile: la voce flebile dell'altro tra protezione dell'ambiente e tutela della specie umana,* Naples (2010), 32 ff., awareness of the need to preserve the environment has imposed a change of perspective, which has brought to market attention issues of natural resource depletion and intergenerational outlook, not only from an environmental but also from a social point of view; R. BIFULCO, *Diritto e generazioni future. Problemi giuridici della responsabilità intergenerazionale*, Milano, 2008; F. FRACCHIA, *Il principio dello sviluppo sostenibile*, in M. RENNA, F. SAITTA (eds), *Studi sui principi del diritto amministrativo*, Milano, 2012, 437 ff.; G. MONTEDORO, *Spunti per la 'decostruzione' della nozione di sviluppo sostenibile e per una critica del diritto ambientale*, in *Amministrazione in cammino*, 2009, p. 2 ff.; M. MONTINI, F. VOLPE, *Sustainable development as a turning point*, in *www.federalismi.it*, 2016, 3 ff.; M. MONTINI, *Investimenti internazionali, protezione dell'ambiente e sviluppo sostenibile*, Milano, 2015, 27 ff.; V. PEPE, *Lo sviluppo sostenibile tra diritto internazionale e diritto interno*, in *Riv. giur. amb.*, 2002, p. 209 ff.; B. SAVIOLI, *Ambiente e sviluppo sostenibile tra diritto internazionale e ricadute interne*, in *Percorsi costituzionali*, 2016, p. 589 ff.; on judicial protection and the role of the administrative judge, cf. M. ANTONIOLI, *Sviluppo sostenibile e giudice amministrativo tra tutela ambientale e governo del territorio*, in Riv. it. dir. pubbl. com., 2019, p. 201 ff.; S. QUADRI, *Alcune considerazioni sul valore dello sviluppo sostenibile nel diritto internazionale ed europeo dell'ambiente e dell'energia: il Clean Energy Package*, in *Riv. giur. amb.*, 2019, p. 533 ff.

[5] Among many studies, please refer to D. BODANSKY, *The Paris Climate change agreement: a new hope?*, in *American Journ. Int. L.*, 2016, 288 ff.; J. Rogelj et al., *Paris Agreement climate proposals need a boost to keep warming well below 2 °C*, in *Nat. Clim. Ch.*, 2016, 631 ff.; L. ARISTEI, *L'Accordo di Parigi: obiettivi e disciplina*, in *Riv. quad. dir. amb.*, 2017, 73 ff., for an overview of intermediate stages that led to the agreements being finalised, cf. D. Bodansky, *The Copenhaghen Climate Change Conference*, in *American Journ. Int. L.*, 2010, 230 ff.

[6] A. CIANCIULLO, *A Parigi l'accordo sul clima che cambia il volto dell'economia*, La Repubblica (12 Decemeber 2015), avaiable at *www.repubblica.it*, quoted by S. Nespor, *La lunga marcia per un accordo globale sul clima: dal protocollo di Kyoto all'accordo di Parigi*, in *Riv. trim. dir. pubbl.*, 2016, p. 81; A. MURICHO ONENCAN, *From Paris agreement to action: enhancing climate change fmailiarity and situation awareness*, in *Sustainability*, 2018, 1929 ff.

[7] B. BUCHNER, A. CLARK, *Global landscape of climate finance*, Berlin (2019), avaiable at *www.cliamtefinancebd.com*, 9 ff.

[8] On the subject, see D. BODANSKY, *The Legal Character of the Paris Agreement*, in *Review of European, Comparative & International Environmental Law RECIEL*, 2016 (Special Issue: The Paris Agreement), p. 142 ff., which notes that the binding or non-binding nature of the Agreements covers several aspects, and therefore of interest in this analysis, "The issue that received the most attention in the Paris negotiations concerned the legal character of parties' nationally determined contributions (*NDCs*): would the Paris Agreement make NDCs legally binding or not? But the choice between 'shall' and 'should' cropped up in many other parts of the agreement as well, including the provisions addressing adaptation, finance and transparency"; M. MONTINI, *Riflessioni critiche sull'accordo di Parigi sui cambiamenti climatici*, in *Riv. int. Int.*, 2019, p. 719, 730 ff.

In the context of the Agreements, particularly relevant to the analysis carried out are art. 2, under which is necessary 'Making finance flows consistent with a pathway towards low greenhouse gas emissions[9] and climate-resilient development', and, above all, art. 9 which provides for 'As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts'.

In other words, it is worth noting the importance, among others, of planning investments and financial flows so as to encourage development based on reduced greenhouse gas emissions: it is, of the three objectives (the other two concern mitigation and adaptation processes), perhaps the most innovative one as it announces a challenging change of direction on two of its issues that have always been a friction point between developed and developing countries: the use of financial instruments and the use of fossil fuels.

As this text uses a non-random expression, since it does not make a reference to public funding to preserve sustainability, but refers to 'financial flows'[10]; the expression, carefully studied, means that investments will have to come not only from developed countries, but, in general, from public and private investments.

These reflections lead to the need to place climate sustainability among the financially conditioned rights widely studied by scholars, since supporting the programmatic objectives of the various climate agreements involves a cost, for the state budget and for European spending balances, which should be taken into account.

In this line of research, the aim here is to address some particularly sensitive issues due to the overall (and complicated) balance between these values at stake, i.e. performance activity to ensure climate sustainability while respecting budgetary constraints, the renewed role of national and European institutions (in the context of

[9] On the subject, recently, EUROPEAN COMMISSION, *2030 climate & energy framework*, full text avaiable at *www.ec.europa.eu*, "the Commission proposed in September 2020 to raise the 2030 greenhouse gas emission reduction target, including emissions and removals, to at least 55% compared to 1990. It looked at the actions required across all sectors, including increased energy efficiency and renewable energy, and it starts the process of making detailed legislative proposals by June 2021 to implement and achieve the increased ambition", "The EU has adopted integrated monitoring and reporting rules to ensure progress towards its 2030 climate and energy targets and its international commitments under the Paris Agreement".

[10] Cf. J. REED, T. SUNDERALAND, *Bridging funding gaps for climate and susainable development: pitfalls, progress and potential of private finance*, in *Land U. Pol.*, 2018, p. 70, "global and local capital markets have powerful potential as development funding tools and offer the world the ability to move beyond traditional development assistance and philanthropy to structures and solutions that leverage public funding."

EU public policies aimed at providing for climate expenditure accounts)[11], and brief concluding reflections on the prospects of the '*Recovery Fund*' with regard to possible impacts on the climate.

2. *Climate monitoring strategies and instruments in EU budget.*

The EU is committed to ambitious long-term climate change objectives and has adopted a related package of policies through which these objectives are to be attained. This policy agenda extends beyond the realm of environmental policy and encompasses the wider transition of our economies and infrastructures, the creation of safe and sustainable jobs, promotion of innovation, and maintaining competitiveness[12].

Objectives set in multi-annual spending plans define a key role for the EU in the implementation of public policies, in search for long-term balances.

There are basically two options that have been considered in plans to define the role of European institutions in respecting climate sustainability, namely creating large-scale dedicated funds to support climate change and energy investments, building upon the experiences made with the European Economic Recovery Plan and mainstreaming these priorities into different programmes and already existing funding instruments[13].

One of main points of policies, both at European level and in relations between the EU and Member States, is maintaining coherence of strategies and the non-contradiction in terms of expenditure forecast to be devoted to climate change issue[14].

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[11] J. DELBEKE, P. VIS, *Eu's climate leadershi in a rapidly changing world*, in ID (eds), *EU Climate policy explained*, Bruxelles, 2016, p. 4 ff., 9, (full tex avaiable a*t www.ec.europa.eu/clima/*), "EU climate policy basically started as part of environmental policy, which had a sound legal basis established by the Single European Act, which entered into force in 1987. Through that Act, new provisions were added to the EU Treaty dealing with the environment. These provided that the Council (i.e. representatives of the EU Member States) could, together with the European Parliament, decide upon environmental laws on the basis of qualified majority, a provision that is now called the 'ordinary legislative procedure".

[12] In this sense the term '*climate proofing*' is used, cf. K. MEDAROVA-BERGSTROM et al., *Strategies and instruments for climate profoing the EU budget*, Bruxelles, 2011, 13 ff., "It is important to note that a focus on climate change proofing does not neglect the relevance of the EU budget to other critical environmental policy areas such as the protection of the natural environment or environment and health".

[13] T. ADELLE, *Turning the EU Budget into an instrument to support the fight against Climate Change*, Stockholm, 2009, p. 113 ff.; A. JORDAN, A. LENSCHOW, *'Greening' the European Union: What can be learned from the leaders of EU environmtal policy?*, in *European Environment*, 2000, p. 109 ff.

[14] EUROPEAN COMMISSION, *Climate mainstreaming in the EU Budget: preparing for the next MFF*, avaiable at *www.trinomics.eu*, 2017, 14, it was detected, but the options are fully valid, that for the improvement of the overall climate mainstreaming process, "The Commission should carry out an analysis of all EU programmes and identify those which are the most capable of delivering climate objectives. For this process, we suggest the use of a traffic-light system, reflecting on the total budget of the programmes, the climate contributions, and their potential to deliver climate outputs in the short and the long-term. This analysis would lead to a Commission-wide process to identify priorities for climate expenditure in the post-2020 MFF and has the potential to significantly increase the coherence of climate mainstreaming and to actively encourage the integration of climate objectives into EU funds" and, "In order not to limit climate mainstreaming to direct climate allocations but to

The definition of ceilings and expenditure to be dedicated to climate change is and must be the result of inter-institutional coordination, since the introduction of a climate tracking methodology in the 2014-2020 MFF, in response to the political commitment by the EU institutions, was a major undertaking, requiring cooperation among Commission services, and decisions on a wide range of judgements[15].
In this sense, as a consequence it is deduced that climate proofing the EU-budget is not a one-off exercise, but a process that needs to be pursued over time.
Within this awareness, requirements to be met fall within the scope of three actions, respecting a balance between budget constraints and spending for climate sustainability[16].
First, to guarantee and respect a spending strategy, the so-called 'multi-annual financial perspective', in order to foresee strategic objectives in programmatic terms and to identify specific areas of risk to which to dedicate implementing and spending decisions more consistent with the actual conditions[17].
Secondly, the need to provide for flexibility and adaptation clauses in long-term public financing policies, allowing for the redefinition of climate objectives according to the changed context[18].
Thirdly, undifferentiated application on the territories of the expenditure items aimed at guaranteeing climate sustainability, to be broken down according to the characteristics of the territories, the need for urgent interventions, the extent of interventions to be carried out and the relative expenditure ceilings to be envisaged[19].

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also encourage broader mainstreaming we suggest that specific reporting requirements should be introduced in the legal basis of relevant programmes on more general mainstreaming of climate into other investment areas. For the ESI Funds - similarly to the current framework - the potential for broader mainstreaming could be outlined in the Partnership Agreements, while detailed programme documentation could identify more specific contributions"

[15] G. BACHNER et al., *The effects of climate change impacts on public budgets and implications of fiscal counterbalancing instruments*, in *Env. Mod. ass.*, 2019, p. 121 ff., on the subject it is noted that the common frameworks tend to focus on output indicators. Outputs are relatively easy to define, monitor and report, and can be tailored to the specific characteristics of the budget programmes. This has led to a large number of indicators, and only limited harmonisation across different budget programmes. Moreover, these output indicators only provide a partial picture of the actual results from the climate-relevant indicators.

[16] K. MEDAROVA-BERGSTROM et al., *Strategies and instruments for climate profoing*, quoted, p. 27, "a climate-proofing strategy needs to engage the relevant EU institutions at this stage of the budget lifecycle in view of setting out clear objectives and strengthening overall policy coherence and integration".

[17] Cf. EUROPEAN COMMISSION, *A Roadmap for moving to a low carbon economy in 2050,* avaiable at *www.ec.europa.com,* 2011; J.G. CARTER, *Climate change adaptation in European cities*, in *Curr. Opi. Environ. Sustain.*, 2011, p. 193 ff.

[18] In accordance with this, see B.C. O'NEIL et al., *A new scenario framework for climate change research: the concept of shared socioeconomic pathways*, in *Clim. Chan.*, 2014, p. 387 ff.

[19] Cf. I. BEGG, *Fiscal federalism, subsidiarity and the EU budget review*, Stockholm, 2009, p. 33 ff., 39; H. FORMAYER et al, *Climate change scenario: from climate model ensemble to local indicators*, in K.W. STEININGER et al. (eds), *Economic Evaluation of Climate Change Impacts*, Berlin, 2015, p. 55 ff.

These three pillars need to be reassessed according to the pressing spending needs that the Covid-19 pandemic crisis has brought to Europe, and beyond, to assess what role climate sustainability will play in spending programmes (see *infra* par. 4).
It has been argued that public and administrative regulation of these aspects is necessary and that the choice of budgetary mechanisms aims to make climate change protection more efficient. This does not mean, however, that climate sustainability should only be foreseen as expenditure income from upstream choices, since, in reality, this is only a prediction of economic science, since intervention, especially European one, and the Recovery Fund proves it, appears to be non-deferrable and necessary.

3. *Climate sustainability and budgetary constraints: the uncomfortable position of public administrations.*
Multiannual expenditure objectives must be pursued, in concrete terms, by Member States and various public institutions, which are the final destination of long-term planning rules that move on an unstable balance.
In this section of the survey, an attempt will be made to account for uncomfortable role of national public administrations in pursuing policy objectives set at international and global level, which tend to make climate change sustainable, often underestimating the spending restrictions that administrations[20] have to face for the concrete solution of the problem.
In this part of the survey it is intended to underline the role that public administrations of different European states actually have in balancing climate protection and public funding management, without specific references to any national experience (even if the bibliographical references are mainly linked to the Italian legal context), in full awareness that these are aspects that cannot be addressed unilaterally, by each individual state, within its own territory, but are involved in a sort of necessary communion of goods and interests, at least in context of Europe, but it would be more appropriate to broaden the territorial and conceptual horizon of the problem.
Right to a healthy environment, which is a corollary in the background, as an ultimate goal to be guaranteed with the sustainability of climate change and the related obligations imposed (even if, as mentioned above on enforceability of the

[20] In order to perceive the importance of role of public administrations, national and local, please refer to what analyzed by F. DE LEONARDIS, *Politiche e poteri dei governi locali nella tutela dell'ambiente*, in *Dir. amm.*, 2012, p. 779 ff., 784, local authorities have a duty to build, maintain and renew economic, social and environmental infrastructure, oversee planning processes, establish environmental policies and regulations and contribute to the implementation of national and regional environmental policies; in a compliant sense, see M. CAFAGNO, *Principi e strumenti di tutela dell'ambiente*, Torino, 2007, spec. 295 ff.; F. ANNUNZIATA, *L'atmosfera come bene negoziabile. I contratti di cessione di quote di emissione tra tutela dell'ambiente e disciplina del mercato finanziario*, in M. LAMANDINI, C. MOTTI (eds), *Scambi su merci e derivati su commodities. Quali prospettive?*, Milano, 2006, p. 779 ff.

same, opinions are discordant), especially on a national level, which entrusts to administrations the uncomfortable role of ensuring usability of these rights, in a constant shortage of funds to make them so[21].

Respect for climate sustainability requires administrative action, requires planning of activities in the long term.

Such reflection generates from the lack of incisiveness of agreements that have no cogency[22], which remain fundamental to set targets and objectives, record progress and provide corrections, but it is necessary a political action and administrative activity[23] (in this paragraph it will be discussed) that makes the programmatic character effective.

Administrations therefore have an active role in the concrete management of activities that lead to the sustainability of climate change.

Environment (and therefore interest in its protection and, in this context, sustainable climate change and public funding[24] needed to ensure it) as the fourth essential component of the concept of the 'three E's' (effectiveness, efficiency and economy) represent today the result indicators of administrative action and define what is called value for money.

A combination that leads to the creation of the concept of the 'four E's' (*Economy*, *Effectiveness*, *Efficiency*, *Environment*), and therefore the figure of sustainable environmental results[25]. This aspect presents not a few tensions since it requires a shared balance between the various often conflicting public interests and these are,

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[21] Cf. D. SICLARI, *La tutela del diritto ad un ambiente salubre tra attività prestazionale dell'amministrazione e vincoli di bilancio*, in *Nomos*, 2017, 3 ff., the task of achieving a fair distribution of resources within the framework of the complexity of public interests is a matter for politics. However, such a process, where it is intended to affect fundamental rights, must necessarily take into due consideration the existence of an impassable limit of these very rights, which can be found in respect of an unfailing core of guarantees for those concerned, into which the subject under investigation is grafted.

[22] Please refer to D. SINISCALCO, *La governance*, quoted, p. 275; A. GRATANI, *Salute, salubità e vincoli di bilancio*, in *Riv. giur. amb.*, 2018, p. 710 ff. (spec. par. 2), the environment and the issue of sustainability is one of those areas where there is a latent conflict between austerity and welfare state. The environmental issue can represent a legitimate alteration of European stability constraints; Court of Justice of the European Union (CJEU), 27 November 2012, *Thomas Pringle/Government of Ireland, Ireland and Attorney General*, C-370/12, full text of the ruling avaiable at *curia.europa.eu*.

[23] In a different sense, see S. DE NIGRIS, *Debt-nature swaps: finanza e ambiente*, in *Equilibri*, 2000, p. 381 ff. (spec. p. 391), most of environmental problems that plague planet have a global relevance and a close correlation with the economic sphere. Some phenomena also have implications that go beyond administrative borders of states and cannot be solved by unilateral actions, but require a process of international consultation and cooperation. This requires that the environmental issue is therefore placed in a broad context that considers, in addition to the strictly environmental effects, the economic aspects.

[24] On the search for a balance between public and private funding for the sustainability sector, see the current survey conducted by G. MASTRODONATO, *Gli strumenti privatistici nella tutela amministrativa dell'ambiente*, in *Riv. giur. amb.*, 2010, p. 707, 711 ff.; for a timeline analysis, please refer to I. VERONESI (ed), *Ambiente: legislazione e pubblica amministrazione*, Rovigo, 1988.

[25] Cf. R. STEWART, *A new generation of environmental regulation?*, in *Cap. U. L. Rev.*, 2001, p. 23 ff.; A. OGUS, *Regulation. Legal form and economic theory*, Oxford, 1994, p. 24 ff.

interest in environmental protection, social development, economic development and healthier public finances.
Achieving these objectives has a cost that single administration must balance with this stringent spending constraints to which it is subject[26].
In this sense, flexibility mechanisms[27] are provided to allow individual countries, and their public administrations, to achieve their objectives of stabilisation and reduction of gas emissions at a lower cost, through the financing of emission reduction projects.
In other words, this challenge arises as to how the administration should act and which instruments to use, in compliance with the political direction, and in achievement of two objectives that are set in an antithetical logic, but have the same rank in relation to the hierarchical value.
The main awareness assumed concerns the need to seek this objective of balance in the long term, through the adoption of flexible administrative choices. Public funding and its effective implementation for the enforcement of public policies in the climate sector is ultimately directed to public administration, which defines expenditure lines and makes the indications of international agreements concrete.
In the context of this awareness, the demand for public accountability of people or entities managing public resources has become increasingly evident so that there is an increased need to implement accountability and controls to accept it, including in the environmental sector.
Climate issues are becoming significant for a growing number of governments and entities as there are areas where environmental issues could have a significant impact on financial reporting.
Administrative role, in the choice of the operations to be satisfied through the public funding received, must be focused in a perspective that must respect the cycle of three necessary steps[28], i.e. planning[29], programme implementation (administrative

[26] On this subject, recently, see G. MOCAVINI, *Il prezzo del consenso. Il ruolo delle compensazioni amministrative nel governo dell'ambiente e del territorio*, Milano, 2020, p. 49 ff., on using the compensation tool as part of the balance between both values; M. CLARICH, *La tutela dell'ambiente attraverso il mercato*, in *Dir. pubbl.*, 2007, p. 219 ff., 223; L. PARDI, *Gli strumenti di mercato a tutela dell'ambiente*, Napoli, 2012.; L. DE PAOLI, *L'amministrazione dell'interesse ambientale*, Milano, 2002, p. 35 ff.; G. PERICU, *Tutela dell'ambiente nel diritto amministrativo*, now in *Scritti Scelti*, Milano, 2009, p. 14 ff.

[27] *Ex multis*, M. MONTINI, *Le politiche climatiche dopo Kyoto: interventi a livello nazionale e ricorso a meccanismi di flessibilità*, in *Riv. giur. amb.*, 1999, p. 133 ff., such mechanisms, and their underlying logic, relate to the exploitation of existing differentials in the marginal cost of greenhouse gas emission reduction interventions in the different member states of the Framework Convention on Climate Change; V. JACOMETTI, *La direttiva linking: il collegamento tra il sistema comunitario di scambio di quote di emissioni e i meccanismi flessibili di Kyoto*, in *Riv. giur. amb.*, 2005, p. 43 ff.; ID., *Rivalutazione degli strumenti proprietari e tutela dell'ambiente: tradable pollution rights e emissions trading*, in *Riv. giur. amb.*, 2003, p. 275 ff.; M. D'AURIA, *L'emission trading e la negoziazione policentrica*, in S. CASSESE, M. CONTICELLI (eds), *Diritto e amministrazioni nello spazio giuridico globale*, Milano, 2006, p. 247 ff.

[28] In these terms, reference is made to the analysis, fully current, carried out by A. CRISMANI, *Per un sistema di controlli esterni (finanziari e sulla gestione, nazionali e internazionali) sul buon governo dell'ambiente e delle risorse naturali*, in *Riv. giur. amb.*, 2004, p. 394 ff., (sepc. par. 2), guidelines of sustainability policy are inspired by three

management strictly speaking) and the fundamental - but often underestimated - importance of controls, issues that require an autonomous, albeit synthetic, treatment.

3.1. *Long term expenditure planning: the necessary adaptation to the environment's reaction.*

Issues mentioned above, namely the need to find a long-term balance and the demand to find instruments that are flexible, adaptable and modifiable over time on the basis of responses and updates that climate change proposes to attention of public policies, find the perfect synthesis within planning of interventions and therefore of public spending.

Programming interventions to be carried out, both from a remedial point of view (think of the complex issue of land drainage [30]and related costs for public expenditure) and from the point of view of planning ordinary administrative activities, is a fundamental factor because, as pointed out by authoritative Italian scholars[31], planning and scheduling represent the obligatory step when the public administration is faced with problems that have a long-term dimension, and involve coordination between administrations, public and private bodies and require orderly use of various kinds of resources[32].

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basic criteria: the progressive dematerialization of the economic system, i.e. the reduction of the quantities of natural resources, renewable and non-renewable, used to feed the production apparatus and current consumption models; the reduction of risk related to specific forms of pollution or environmental degradation by overcoming the logic of emergency and bringing back the environmental concern already in the context of strategic choices in the early stages of planning and the conscious participation of all actors involved in the planning and implementation of current processes; cf. A. FOSS, *Divergent responses to sustainability and climate change planning: the role of politics, cultural frames and public participation*, in *Urb. Stud.*, 2018, p. 332 ff.

[29] On this aspect, in a partially differing sense, M. CLARICH, *La tutela*, quoted, p. 220, planning and programming acts, which in theory can be regarded as fundamental rationalization tools, often fail to work as a matter of fact. Planning acts require a huge amount of information that can hardly be acquired and processed by legislator; M. CAFAGNO, *La cura dell'ambiente tra mercato ed intervento pubblico: spunti dal pensiero economico*, in *Atti del primo colloquio di diritto dell'ambiente promosso dall'AIDU*, Milano, 2006, p. 191 f.; R.B. STEWART, *Markets versus Environment?*, Jean Monnet Chair Papers, 1995, p. 19 ff., 21.

[30] D. SICLARI, *La tutela del diritto*, quoted, p. 4, European and national legislators have provided for instruments (such as drainage) to protect primary values (such as health) which, given the quantitative importance of polluting phenomena and the significant impact on public budgets, highlight the need for careful planning of interventions and a reasonable balance between the interests at stake; about this issue, see F. DE LEONARDIS, *Le bonifiche tra semplificazione e necessità di risorse*, in Il libro dell'anno del diritto, Roma, 2015, p. 12 ff., reclamation operations are practically at a standstill and the reasons can be sought in the consideration that those operations have a very high cost and it is not possible to identify the entity that should bear costs of the drainage.

[31] Reference is made to the study conducted by M.S. GIANNINI, *Il pubblico potere*, Bologna, 1986, p. 131, 152, 158 ff.

[32] Cf. R. DI PACE, *La logica della prevenzione nella disciplina della programmazione e progettazione dei lavori pubblici*, in *Riv. giur. ed.*, 2018, p. 445 ff., 452, programming is an external phase, prior and functional to administrative activity, to the rationalization of public administration choices, possible only through a careful assessment of the situation as a whole, which requires the administration to make choices in the sense of priority, given the stringent spending constraints. With the planning activity, public administration is bound to its own choices and

Administrative choices aimed at guaranteeing administrative activity in line with the objectives of climate sustainability (in terms of imputation but also in terms of responsibility) must comply with objective of rationalizing strategic choices, within the framework (and within relating limits) of the correct allocation of financial resources that has become primary according to the chronic deficit situation of the public coffers.

The planning activity, in this sense, is an essential factor in identifying the priorities in terms of the activity/sustainability/expenditure ratio that the administration must support in the long term[33].

Obviously, the programming activity will have to include flexibility clauses that allow for redirecting spending decisions (and therefore territorial planning) on the basis of changed legal requirements (think of the current pandemic crisis situation that has led to the enactment of various legal texts that affect expenditure ceilings for administrations, or the changed international context on the subject, without prejudice to the problem of cogency) or in fact, if the requirements of environmental sustainability should lead to different choices.

Planning of activities is an exercise in good governance to orient the administration towards rational and long-term management, respecting the environment and its corollaries but respecting expenditure ceilings too.

Assessment of the environmental sustainability of projects (both in terms of new activities and remedies for existing pollution) during planning represents the maximum expression of preventive logic in relation to an assessment of sensitive interests. The interest in environmental sustainability is one of the parameters that guides programming activity of public administrations.

3.2. *Monitoring good governance and environmental and economic public management.*

After planning activities and subsequent administrative choice, beyond the chosen model of action (authoritative, consensual or contractual) it is necessary to recover the meaning of the legal framework of administrative inspections.

Administrative control is the downstream control of what was planned in the first phase (analyzed *supra* 3.1) and carried out in the operational phase; these three phases highlight the connection between the financial and the administrative-

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this is a guarantee of the satisfaction of social needs and public interests to which administration has to wait. In other words, it is boundary territory between the moment in which choices are made and the moment in which they are carried out; to stick to the example given in terms of remediation of polluted sites by the administration, as shown by studies carried out (DOSSIER LEGAMBIENTE, *Bonifiche dei siti inquinati: chimera o realtà?*, Roma, 2014, p. 7 ff.), the quantitative consistency of the above mentioned interventions has repercussions in terms of pervasiveness on general taxation, requiring, in terms of investment expenditure, disbursements equal to about 30 billion euros for the implementation of the interventions deemed necessary to counteract the phenomena of pollution, therefore limited to the logic remedial of administrative activity.

[33] Cf. *'Leggere' la spesa pubblica in chiave ambientale*, in *Ecoscienza*, 2015, p. 17 ff. avaiable at *www.arpae.it*.

management phase[34], which is based on an administrative action that, besides being legitimate, according to the new conception of administration that widens the field of action to predetermination until the thresholds of the result, must also be useful, oriented to the respect of budget constraints and oriented to the objectives of environmental and climate sustainability[35].

The real critical knot of this aspect is that entities in charge of control (especially external ones), from an institutional point of view (in Italy the Court of Auditors[36], but the assumption can also be found at a European level), have always been considered a foreign body with respect to environmental protection.

It should be noted that compliance with climate protection or their mission to make improvements relates to a part of the system, i.e. organization, and not to environmental protection itself. In fact, notion of sustainability mainly refers to observable changes in the natural environment, while the self-regulating rhythms envisaged by the controls refer to the organisation of resource management necessary to achieve sustainable development.

Audits of activities in the context of maintaining climate sustainability do not differ from the classic system of external controls (carried out by Court of Auditors, whose role will be briefly described), since, on the one hand, they are concerned with strategic evaluation of budget policy results and, on the other, with evaluation of public policy outcomes in the sector, i.e., they verify the effective implementation of the choices contained in planning laws and programmes, directives and policy guidelines of government bodies where, as noted and noted above, the issue of climate sustainability is also included.

In this sense, as a monitoring system, a compliance report could be opted for, as a systemic rule, to relate current results to budget or planned results and to fulfil a function of promoting legality and regularity or providing greater assurance of compliance with existing and upcoming environmental policy and legislation.

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[34] Cf. MINISTRO DELL'AMBIENTE E DELLA TUTELA DEL TERRITORIO E DEL MARE, *Fondo per lo sviluppo e la coesione 2014-2020. Piano operativo ambiente, descrizione del sistema di gestione e controllo*, avaiable at *www.minabiente.it*, p. 15 ff., 18, the protection and enhancement of the environment must be considered as cross-cutting factors of all sectoral policies in the relevant programming (*planning*) and subsequent interventions (implementation) and that Public Administrations will pursue the envisaged objectives (within the financial resources authorised under current legislation and the budget appropriations allocated for this purpose (management).

[35] Synthesis between these objectives is underlined in many international treaties, among others in the Treaty of Amsterdam (1997), avaiable at *www.eur-lex.europa.eu*.

[36] On the subject, the first critical profiles, the reflections are current, P. MADDALENA, *Nuovi indirizzi della Corte dei Conti in materia di ambiente*, in *Foro It.*, 102, 1979, p. 191 ff.

This means that, beyond having chosen a different control model, also financial resources concerning the environment and, ultimately, environmental sustainability as defined above can be included in the financial controls[37].

Compared to Italian model, with respect to European sample or other European experiences, Court of Auditors holds a specific mission to monitor environmental policy and, in consideration of its institutional role, it summarizes an optimal organizational choice for a precise analysis of environmental policy (and related expenditure) and climate management.

Specifically, monitoring activity focuses on investment expenditure to protect environment and territory, which comprises interventions for soil protection, water resources, waste disposal structures and infrastructures, environmental monitoring systems, actions for recovery of contaminated and degraded sites (see supra), and more generally, structures and infrastructures for protecting and enhancing environmental heritage, as underlined in recent published report[38].

Another new feature, crucial in terms of the economy of this survey, is the inclusion in the budget law for 2020 (l. 160/2019) of *'Green New Deal'* programme[39], which will be subject to control by Court of Auditors itself.

The shift in public resource use in line with sustainability objectives can only be gradual and necessarily requires prioritising interventions, especially in relation to environmental emergencies.

Accordingly, Court of Auditors contribution in this direction should aim, on giving priority to verifying coherence with specific regulations, and on the other hand, to monitoring overall redesign, which, in addition to resources, should include environmental and climate-sustainability measures.

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[37] A. CRISMANI, *Per un sistema di controlli*, quoted, certain annual operating costs are environmental by type. For example, energy costs can be considered as environmental costs because using fossil fuels is a source of carbon dioxide and air pollution. Governments may need to acknowledge environmental obligations as liabilities in the financial statements.

[38] Cf. CORTE DEI CONTI, SEZIONI RIUNITE IN SEDE DI CONTROLLO, *Programmazione dei controlli e delle analisi della Corte dei Conti per il 2020*, avaiable at *www.corteconti.it*, 2020, p. 9 ff., Green New Deal objective must be verified according to the achievement of six objectives (mitigation of the effects of climate change; adaptation to climate change; sustainable use and protection of water and marine resources; transition to a circular economy, reduction of waste and recycling of materials; containment of pollution and protection of ecosystems).

[39] Cf. A. SOLA, *Sviluppo sostenibile e Green New Deal*, in *www.federalismi.it*, 2020, p. 462 ff., term 'Green New Deal' is used to refer to all state and supranational decisions aimed at protecting the environment through measures to reduce pollution Achieving a sustainable future, the Green New Deal, means placing protection of nature and biodiversity at its core not only in public investment, but also in private ones, encouraging socially responsible behaviour on the part of companies; E. FERRERO, *Decreto 'Clima': contrasto ai cambiamenti climatici e miglioramento della qualità dell'aria, in attesa del Green New Deal*, in *Amb. Svi.*, 2020, p. 103 ff.; EUROPEAN COMMISSION, *A European Green Deal. Striving to be the first climate-neutral continent*, avaiable at *www.ec.europa.eu*; UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *A Global Green New Deal for Climate, Energy and Development*, 2009, avaiable at *www.sustainabledevelopment.un.org*.

The entire control structure of climate sustainability objectives and related public investment cannot disregard two main factors, an operational one and an organizational one: the use of technical criteria based on scientific evidence and active involvement of the Regional Control Sections, to make role of administrations effective in achieving these objectives.

4. *Climate change and Recovery Fund: new opportunities hovering in the balance.*

Detailed objectives outlined in the previous paragraphs must move in a long-term logic and the long process that led to the adoption of the Recovery Fund is a starting point for reflection as the economic situation imposed by the Covid-19 pandemic makes it possible to rethink the relationship between public funding and climate as a guiding criterion for spending at European level[40].

This aspect, however, is perfectly in line with planning activity, for which European guidelines are unavoidable and which will be taken into account in this paragraph.

The transition towards defining the Next Generation EU, a multi-annual plan to support the economy of states, which must also be taken into account for approving funds to tackle climate change, was not easy, and in fact only at the extraordinary meeting of the European Council, held in July 2020 in Brussels, was an agreement reached[41], thus overcoming the initial impasse that had found approval of the May proposal at the European Council in June 2020[42].

The current problem, at European programming level is that the current climate tracking does not really measure spending 'on' climate objectives as such

Beyond quantification of resources and their distribution, however, it is the concrete process of implementation of the Recovey Fund, which is structured according to a particular process of approval of the so-called national plans for recovery and resilience, an essential condition for actual disbursement of resources; this is strongly linked to the pursuit of a series of sensitive objectives, closely linked to the logic of the European Green Deal[43], which sees among its pillars precisely 'climate change' and public funding to guarantee and safeguard the process.

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[40] Cf. V.M. SBRESCIA, *Politiche energetiche comunitarie e dinamiche socioeconomiche di sviluppo sostenibile. Possibili direttrici nell'era della pandemia*, in *Riv. giur. mezz.*, 2020, 449 ff.

[41] The agreement on the subject reached a compromise between the parties, since, on the one hand, it confirmed the total amount proposed by the European Commission in the NGEU (750 billion euros), on the other hand, it differed from the original proposal due to the different distribution of the sum between grants and loans; in this sense, notes J. Pisani Ferri, Europe's recovery gamble, in *www.projectsindacate.com*, 2020, that although the resources available are substantial, there are doubts about the actual monetary entity in relation to its ambitions, including the US response to the issue, "Although €390 billion in grants may look like a large sum of money, it actually amounts to less than 3% of *EU GDP*, to be spent over several years".

[42] On this subject, please refer to V. Manzetti, *Politiche monetarie e fiscali europee ai tempi del coronavirus. Riflessioni a margine*, in *Scritti in onore di Eugenio Picozza*, Napoli, III, 2020.

[43] M. DOLMANS, *A sustainable recovery for Europe: the EU's Green Deal*, avaiable at *www.clearygottlieb.com*, 2020.

Precisely for this reason, as well as the first stages of implementation, the Recovery Fund's logic represents an observatory of analysis to examine in depth the issue of the relationship between public funding and climate change, its evolution in the coming years and what obligations will be incumbent on Member States[44].

Drawing up the National Recovery and Resilience Plan, in Italian system in perspective of Recovery Fund, is not at all easy, as it is like an intertwining of competences between Government and Parliament[45]. The Government is responsible for drawing up the Plan, but Parliament seems to be given a key role, as it has to participate in various interlocutory phases prior to the adoption of the Plan, and thus to be able to evaluate, disagree with or direct and contribute to the choices proposed by the Government[46].

In view of launching an informal dialogue with the European Commission, starting from October 2020, the Government has drawn up Guidelines to define the National Recovery and Resilience Plan, to be submitted to Parliament for approval. This will have the task of formulating guidelines for Government, which should allow for creation of a more shared recovery and resilience plan, aimed at forecasting national investment projects and reforms, with a view to maintaining the balance about main issues, including the climate one.

It is precisely in these guidelines that the Government has to identify and isolate core of the National Plan, dictating its 'structure', which seems to follow a sequence that unravels through the individuation of challenges that Italy has to face, missions of this program, subdivided into clusters (namely *sets*) of projects aimed at carrying out six missions articulated according to the identified thematic areas of intervention, among which point #2, i.e. green revolution, ecological transition, takes prominence.

In relation to this aspect, that of green revolution and ecological transition, it is intended that national action should also be integrated with the objectives of climate neutrality by 2050 set by the European Green Deal[47]. In addition to this, it is also specified that Government will seek the implementation of an extensive investment programme functional to achieving compliance with objectives of the European Green Deal.

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[44] L. MONTI, E. PINTORE, *Politica energetica*, in L. MONTI (ed), *Politiche dell'Unione Europea. La programmazione 2014-2020,* Roma, 2016, 193 ff.

[45] On the subject, in general terms, see N. RANGONE, *Le programmazioni economiche. L'intervento pubblico tra piani e regole*, Bologna, 2007

[46] The Italian government, in the National Reform Programme 2020, has highlighted how Next generation EU represents a great step forward for Europe and for relaunching investment and reforms in Italy. This National Reform Programme was presented by the Government on 8 July 2020, included in the documents and procedures that makeup the European Semester, listing the reform priorities defined by the Government on the basis of the Specific Recommendations for Italy which, on a proposal from the Commission, were adopted by the EU Council in July 2019. Implementation of the Recovery plan depends on the elaboration of the national plan, and for this reason the Government seems to have adopted a very tight schedule.

[47] S. TRYPSTEEN, *How green is the EU budget and recovery deal?*, avaiable at *www.think.ing.com*, 2020.

As a consequence, proposed projects, at government level as a guideline and at administrative level as a concrete implementation, should be part of a coherent reform and investment package in order to be eligible. As already mentioned, such projects must also be in line with the Recommendations that are addressed by EU Council to Member States and with priorities identified by European Semester in particular for green transition.

Well, opportunity to receive public funding for Italy is more than ever conditioned by competence and professionalism of Italian administrations, and in climate sustainability the margin of error seems to be minimal[48].

Pending final plan, which will have to be constructed by collecting proposals made by administrations, local and regional authorities and potential co-investors, selecting them according to objective criteria such as to allow the achievement of fundamental missions and to ensure fair treatment to all proposals submitted, with need and awareness that health emergencies must not eclipse climate change, also in terms of funding.

On this aspect, precisely from a climate and so-called green competences point of view, risk is also due to widespread information asymmetries between central administrations and local authorities, typical and endemic of Italian administrative system, and to which the Plan would like to give an answer by expanding the system of digitization of administrative processes, proposed as a transversal solution for all administrative problems, although it is difficult to understand what kind of impact these solutions can have on climate sustainability.

The risk is therefore to enter into a 'vicious circuit' whereby administrative inefficiencies of Italian model are affecting the shortcomings of the Plan itself, thwarting climatic needs that are urgent and unavoidable because they are subject to continuous worsening.

It will then be possible to verify how the 'generic' missions have been translated into concrete projects, what role has been attributed to climate policies, and how they can contribute to providing a response to the process of environmental resilience, which seems to be based on ability of governments to demonstrate their expertise to make good use of funds that EU funds have made available to them and to assess how climate needs have been placed and what specific role has been envisaged for administrations.

At present, due to lack of a solid set of indicators in presenting Italian government guidelines, unlike that of the French government[49], which is already detailed also in

[48] See G. RUGGIERO, *I soldi ci sono, ora bisogna «correre»: cosa deve fare l'Italia per non perdere i 209 miliardi del Recovery Fund*, avaiable at *www.openonline.com*, 2020; K. ABNETT, *EU budget plan falls far short on climate goals, researchers say*, avaiable at *www.reuters.com*, 2020.

terms of resources allocated and number of projects, many cautions about the effectiveness of the objectives pursued have been raised, and intermediate and *ex-post* evaluations risk becoming a matter for political guidelines and, recent history teaches us, that climate needs are those that pay the highest price.

[49] Cf. F. BOSCO, *L'amaro confronto tra il piano italiano per Next Generation EU e quello francese: quando le idee non passano solo dal numero di progetti*, avaiable at *www.openonline.com*, 2020; S. TREYER, *France's recovery plan: will support for emissions-high sectors compromise a new Green economy?*, at *www.energypost.eu*, 2020.