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## Italian Regions and Local Authorities within the framework of a new Autonomist System

by

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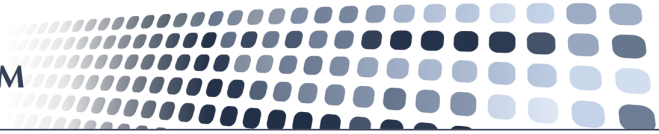
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## Abstract

The view prevailing among legal scholars - and endorsed in this paper - is that the coming into force of the reform of Title V, Part 2, of the Constitution introduced a multi-polar institutional framework in Italy, in which the various bodies making up the Republic are on an equal footing. Accordingly, this has made it necessary to re-consider the relationships between Regions and Local Authorities, which should rely on increasingly co-operative models. Regions are called upon to become policy-making bodies in charge of steering and planning activities for the respective territories. Given this scenario, the need is highlighted to introduce suitable decision-making, planning, and monitoring tools that can ensure an integrated system of governance. In particular, concerted action mechanisms should be implemented as regards the various entities concerned in order to determine the objectives, the procedures applying to Local Government, the responsibilities vested in the individual entities, and the co-operation mechanisms between Regions and Local Authorities. This is aimed at ensuring a certain degree of uniformity at regional level in a multi-tiered system that has to reconcile the requirements of differentiation resulting from the enhanced potential of locally autonomous bodies with the need to safeguard uniformity and consistency of the regional system.

## Key-words:

Reform of Title V, Part 2, of the Constitution; Relationships between regions and Local Authorities; Local Governance.



## 1. The Organisation of Public Authorities Following the Reform of Title V, Part Two, of Italy's Constitution

The reform of Title V, part two, of Italy's Constitution as brought about by Constitutional Act no. 3/2001 introduced substantial innovations into the organisation of public authorities in Italy. The Act marked the shift from a centralised to a multi-polar (Olivetti 2001: 37 et seq.) system of institutions - whose main feature, to quote wording that has been amply used by scholars over the past few years, consists in its being multi-level in nature<sup>I</sup>.

In this perspective, the role played by autonomies was especially highlighted in order to tangibly implement the relevant principle as set forth in Article 5 of Italy's Constitution.

This is unquestionably the direction in which the new wording of Article 114(1) of Italy's Constitution is going, since it reads as follows: "The Republic is comprised of Municipalities, Provinces, Metropolitan Cities, Regions, and the State."<sup>II</sup> The ultimate objective pursued by the lawmaker consisted in relinquishing the conventional pyramidal structure whereby the State was on top and shifting to a system where State, Regions, Provinces, Municipalities and Metropolitan Cities would be on an equal footing and jointly contribute to making up the Republic. The importance attached to autonomies was enhanced by building up a new institutional framework. Public authority was re-adjusted in accordance with a bottom-up approach - starting from the local level, which is closer to citizens, and going up the ladder to reach the levels of government covering the largest areas (Pastori 2001: 217 et seq.).<sup>III</sup> This allowed increasing the visibility of the bodies that deal with the smallest areas and are closest to citizens: the Municipalities. All the bodies at the various levels were afforded thereby equal standing, which did away with the differences between Regions and Local Authorities that most scholars had construed to be grounded in Articles 115 and 128 of Italy's Constitution<sup>IV</sup>, respectively - whereby Local Authorities were traditionally considered to be subordinate to the State and, partly, to Regions.<sup>V</sup>

The foundations were laid to move from the pyramidal concept of the various levels of government towards a horizontal, integrated concept of the relationships between



such levels. This entailed a shift from a system featuring multiple institutions to a system featuring what scholars termed "equalised institutional pluralism"<sup>VI</sup> - since the individual entities making up the Republic are on an equal footing and are recognised to have "the same institutional dignity, although the respective competences may differ" (Rolla 2004: 633; Piraino 2006) We share the view whereby this equalization pattern may not be challenged by paragraph 2 of Article 114 of the Constitution either, which provides that Municipalities, Provinces, Metropolitan Cities and Regions shall be "autonomous bodies with regulations, powers and functions of their own in accordance with principles set forth in the Constitution." In fact, this provision introduced a distinction between Regions, Provinces, Metropolitan Cities and Municipalities, on the one hand, and the State on the other hand - since the State is not included in the list of Article 114(2). Although the State is a component part of the Republic just like the entities below State level, it is the only holder of sovereign powers; all the remaining entities may only be considered to be autonomous as for their status.<sup>VII</sup>

It is accordingly impossible to view any entity, including the State, as placed above the remaining ones (Cammelli 2001a).

This multi-level institutional system was mirrored by several provisions introduced into the regulatory framework.

Article 117 of Italy's Constitution provides that the law-making power vested in Regions is of a general as well as residual nature, whilst that vested in the State is specific; additionally, a distinction is drawn between exclusive and concurrent law-making power. The former is reserved for the State via a list of subject matters contained in paragraph 2 of Article 117; the latter applies to Regions pursuant to a list of subject matters contained in paragraph 3 of Article 117 and in compliance with the fundamental principles set forth by the State. Finally, paragraph 4 of Article 117 provides that Regions have exclusive (or "residual") law-making powers in any area that does not fall under the scope of the State's exclusive and/or concurrent law-making powers. With regard to such areas, Regions have primary law-making powers, which are not limited by the fundamental principles set forth in the State's laws even though they must be exercised "in compliance with the Constitution and the constraints arising out of Community law and international obligations."<sup>VIII</sup>



The State's power to issue regulations (i.e. secondary legislation) was also downsized and limited to such matters as fall under the State's exclusive competence - subject to delegation of powers to the Regions.<sup>IX</sup>

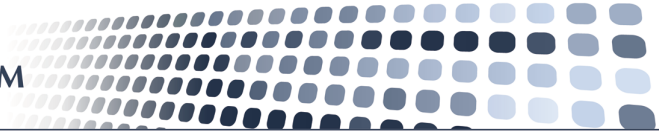
As for the relationships between Regions and Local Authorities, paragraph 2, letter p., of Article 117 provides that State laws may only regulate the following matters: "electoral laws, governing bodies, and fundamental functions applying to Municipalities, Provinces, and Metropolitan Cities" - whereby it is implicitly acknowledged that Regional laws may step in with regard to any areas that do not fall under the scope of the State's competence and/or the regulatory powers vested in the said Local Authorities.

Based on Article 118 of Italy's Constitution, administrative powers are conferred in general on Municipalities "except that they may be conferred on Provinces, Metropolitan Cities, Regions and the State in order to ensure that they are exercised uniformly on the basis of the subsidiarity, differentiation, and adequacy principles."<sup>X</sup>

Thus, the constitutional reform has changed the roles played by the bodies making up the Republic. There is no longer any general law-making and administrative competence vested in the State, as the law-making powers of Regions have been expanded, on the one hand, and general regulatory and administrative powers have been conferred, in principle, on the bodies below the State level.

The equalisation principle was also tangibly implemented via the repeal of Articles 124, 125(1) and 130 of Italy's Constitution, which regulated Government Commissaries and the supervision over the administrative activities of Regions and Local Authorities, respectively. This type of supervision made sense in a system where the various institutions were ranked hierarchically, whilst it could no longer be retained in the new constitutional framework - which is grounded, as already pointed out, in the equality of the individual components.

However, new provisions were introduced in the Constitution to regulate the possibility for the executive to step in the place of Regions and Local Authorities in especially serious instances of "non-compliance with international rules and treaties or Community laws, or serious danger to public safety and integrity, or whenever this proves necessary to safeguard legal and/or economic unity with particular regard to the essential levels of civil and social rights"; in any case, "the procedures aimed at ensuring that such substitution powers are exercised in compliance with subsidiarity and fair co-operation



principles" must be set forth by law (Marchetti 2005; Musselli, 2009).<sup>XI</sup> The above provisions can impact on the relationships between Regions and Local Authorities. In line with the concept whereby this reform has given rise to a multi-polar system which requires connecting links and concertation mechanisms between the various levels (Cammelli 2001b; Pizzetti 2001). we believe therefore that the substitution powers in question should work as a key connecting factor.

As part of this new constitutional framework, the co-operation mechanisms between the various components have been strengthened. Special importance should be attached in this regard to Article 123, last paragraph, of Italy's Constitution, whereby the Council of Local Autonomies (Consiglio delle autonomie locali) - which is the forum for consultation between Regions and Local Authorities - is to be regulated via regional statutes. This provision is meant to foster relationships between central and peripheral levels that are grounded in the direct relationship between Regions and sub-regional bodies - quite a long way from the conventional concept according to which the State was the sole counterpart of Local Authorities.<sup>XII</sup> In this regard, suffice it to mention that the drafters of Italy's Constitution in 1948 had not made a clear-cut decision as for the relationships between Regions and Local Authorities. Under Articles 118(1) and 128 previously in force, State laws were supposed to allocate functions to the various institutional levels in accordance with basically homogeneous standards. However, regional laws were expected to reduce this homogeneous regulation of local functions by entrusting Local Authorities - under Article 118(3) as previously in force - with the discharge of functions that the State law had already classed as regional in nature. Given this framework, the State has long countered the regionalization of the competences vested in Local Authorities,<sup>XIII</sup> by keeping separate relationships with Regions, on the one hand, and with sub-regional bodies on the other hand - as well as by reforming the system of local autonomies via regulations and legislation issued at central level<sup>XIV</sup> On the other hand, Local Authorities have never especially trusted Regions; being afraid of the "regional centralism", they have opted for requesting the State to provide them with increased autonomy from and protection against Regions. Thus, the State has implemented reforms over the years that were meant to meet widely different requirements. On the one hand, the reform of Regions in the 1970's enhanced Regions' administrative role whilst playing down their law-making, planning and co-ordination powers vis-à-vis Local Authorities - which in some cases resulted into



reducing the scope of Local Authorities' autonomy. On the other hand, the reform of Local Authorities brought about in the 1990's was aimed at defending their autonomy from Regions.

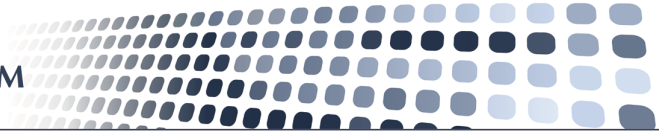
Finally, the principle of institutional pluralism is implemented via the constitutional rules that attach greater importance to Local Authorities - by affording full independence to Municipalities, Provinces, and Metropolitan Cities in drafting their by-laws;<sup>xv</sup> conferring regulatory powers on the said bodies as for the organisation and performance of the respective functions;<sup>xvi</sup> affording financial independence as for revenues and expenditures to Local Authorities;<sup>xvii</sup> enabling the latter to rely on autonomous financial sources, introduce and levy taxes and duties of their own, and obtain part of the State revenues pertaining to the respective territories.<sup>xviii</sup>

## 2. The New Role of Regions under the Constitution

The 2001 Constitutional Reform mirrors both the "autonomist" stance - whereby Regions and Local Authorities are placed on an equal footing in terms of their constitutional status - and the "regionalist" stance. The latter can actually be described in several instruments that have been briefly described above; they confer a leading role on Regions in reshaping the institutional, organizational and financial framework of regional and Local Authorities.

### 2.1. ....As for the Allocation of Administrative Functions

Regions have been given increased powers in the allocation process of administrative functions. The constitutional reform has outlined a highly flexible administrative model; without prejudice to the general principle that such functions lie with Municipalities whenever they are not to be conferred on higher-level administrative bodies to ensure that they are exercised uniformly in pursuance of subsidiarity, differentiation and adequacy principles,<sup>xix</sup> administrative functions may be discharged by each body. That is, each level of the administration may discharge administrative functions since none of them has exclusive administrative competence under the Constitution. The general principle



whereby such functions are to be allocated to Municipalities may be derogated from at any time in order to ensure that those functions are exercised uniformly.

It should be recalled in this connection that it had been questioned in the past that Article 128 of the Constitution as previously in force empowered Regions to pass legislation on the allocation of administrative functions. Only after the enactment of Act no. 142/1990 (Local Government Act) and, above all, Act no. 59/1997 (the so-called "Bassanini law") and legislative decree no. 112/1998 (which enacted law no. 59/1997) were Regions given significant powers in determining the administrative framework - foreshadowing, in a sense, the constitutional reform of 2001. Conversely, the new wording of Article 118 provides for both the State and Regions to be empowered to pass legislation on the allocation of administrative functions. Both may step in, within the sphere of the respective competence, to allocate administrative functions by taking account of the need for uniformity so as to allocate those functions to entities other than Municipalities - in compliance with the subsidiarity, differentiation and adequacy principles. Whilst administrative functions in general fall to Municipalities, the State should determine the fundamental functions applying to Municipalities, Provinces and Metropolitan Cities<sup>xx</sup> and possibly confer additional functions on the said bodies as for the matters falling under the State's scope of competence. Conversely, Regions are empowered to confer additional functions on Local Authorities as for those matters that fall within the Regions' scope of competence.

It should be pointed out in this connection that the Constitutional Court has construed the provisions in question restrictively, even though it does not consider any longer that the "functions" of Municipalities and Provinces in general should be determined by State laws or that the latter should allocate "exclusively local functions" to Municipalities and Provinces as for the matters falling within the regions' scope of competence - contrary to what was the case in pursuance of Articles 128 and 118(1) of Title VI as previously in force.<sup>xxi</sup> Indeed, the Constitutional Court has developed the principle of "upward" subsidiarity starting from its decision no. 303/2003, whereby the allocation of administrative functions to the State "follows" the passing of legislation - by way of derogation from the allocation of law-making powers set forth in the Constitution.<sup>xxii</sup>

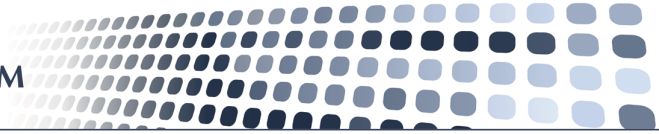




Nor should one forget that the subsidiarity principle - which could be expected to entail the re-allocation of functions in pursuance of the administrative model outlined above - has not yet been implemented in full. There are as yet no regulations in place to determine and allocate the fundamental functions applying to Municipalities, Provinces and Metropolitan Cities or to adjust the provisions concerning Local Authorities in the light of the overall reform.<sup>xxiii</sup>

Indeed, the determination of the fundamental functions applying to Local Authorities should have been a key step in implementing the constitutional reform, as it would have allowed setting the resources to be allocated to the individual government levels more precisely. Conversely, the reform in question is being implemented starting from the so-called fiscal federalism. Act no. 42 dated 5 May 2009 ("An Act enabling the Government in respect of fiscal federalism pursuant to Article 119 of the Constitution") sets forth what will have to be funded by which taxes, without first clarifying the functions to be discharged by the individual bodies.<sup>xxiv</sup> This Act sets forth the functions of Local Authorities only on a provisional basis and exclusively for the purposes of its implementation - as it only draws a distinction between fundamental and non-fundamental functions.<sup>xxv</sup> Transitional rules are also laid down on the setting up of Metropolitan Cities<sup>xxvi</sup> including the fundamental functions the latter bodies should discharge.<sup>xxvii</sup>

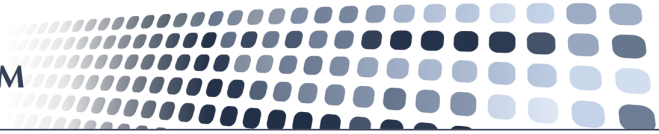
The Council of Ministers also adopted - at its meeting of 19 November 2009 - a draft decree containing "Identification of the fundamental functions of Provinces and Municipalities, simplification of the Regional and Local Legal system, delegation to the Government on the transfer of administrative functions, Charter of the Autonomies, streamlining of the Provinces and Local Government. Reordering of decentralized agencies and bodies". The time gap between passing of the Act to implement Article 119 of the Constitution and the adoption of the draft decree that is meant to adjust the legislation on Local Authorities to the new text of Italy's Constitution shows quite clearly that the reform process is not being tackled systematically. Conversely, this process should have followed a more streamlined approach and aimed not only at upgrading the Consolidated Statute on Local Authorities, but at the full-fledged implementation of the new constitutional rules.



## 2.2. ... As for the Regulations Applying to Local Authorities

The Constitution does not provide any clear-cut guidance concerning the legislative competence for the regulations applying to local authorities, as it only provides that State laws must regulate "electoral matters, governing bodies, and the fundamental functions of Provinces, Regions, and Metropolitan Cities."<sup>xxviii</sup> Although it is far from easy to clarify the scope of the legislation in question, it can be argued that the latter should only apply to the regulatory components that are expressly referred to without including other components, which should accordingly fall under the Regions' scope of competence. As well as being no longer subject to the State's law-making powers, the regulations applying to Local Authorities are therefore no longer liable to uniform approaches. Still, one should draw a distinction between the different aspects making up the legislation Regions are called upon to enact in regulating local authorities, since the lawmaker is required to abide by different constraints depending on the aspects at issue (Rolla 2002: 336).

As for the organisation and discharge of the functions allocated to local authorities, it can be argued that the State has no exclusive law-making powers except obviously for the legislation determining the governing bodies of Provinces and Municipalities. On the one hand, Local Authorities are entrusted with regulatory powers as for the organisation and discharge of their functions;<sup>xxix</sup> on the other hand, the State has exclusive law-making powers as for the organisation of administrative functions only with regard to State bodies.<sup>xxx</sup> By reading the Constitution in a global perspective and taking account that the legal basis requirement set forth in Article 97 is not absolute whilst it can be ruled out that the State's powers cover such matters, one might wonder what relationship features between, on the one hand, regional laws and regulations and, on the other hand, local regulations as for the matters at issue (Di Folco, 2007; Tosi 2002). In this connection, it should be recalled that the Constitutional Court has ruled that Local Authorities have reserved regulatory powers vis-à-vis regional regulations, whilst this not the case with regard to regional laws. This means that regional laws may step in, if this is found to be necessary on specific grounds, to ensure that local functions are discharged uniformly; conversely, regional regulations may not encroach on the regulatory powers of local



authorities, not even on a supplementary basis.<sup>XXXI</sup> The regulatory powers vested in Local Authorities as for the "organisation" of the functions allocated to such authorities should therefore apply to all the relevant components - except for the regulations concerning the respective governing bodies, which are subject to the State's exclusive law-making powers as already pointed out, as well as for the determination via the regional law of the principles applying to the organisation of local functions, whenever this is justified by the need to ensure uniformity. As for the "performance" of the functions in question, the regional law might step in to allocate administrative functions so as to ensure a co-ordinated stance; again, this would be limited to only setting forth the relevant principles, without taking up the room reserved for the decision-making of local authorities.

Furthermore, it can be reasonably argued that Regions have competence over regulating the organisation of functions at supra-municipal and/or supra-provincial level along with the forms of partnership among Local Authorities (Pantani 2000) - which might prove necessary in a few cases to allow discharge of the said functions. Indeed, Italian law allowed for the creation of partnership forms: joint management of functions (*esercizio associato di funzioni*, does not give birth to a new local body); Association of Municipalities (*Unione di Comuni*, an aggregation model of two or more neighbouring Municipalities); Merger of Municipalities (*Fusione di Comuni*, is a new local body); Mountain Community (*Comunità montana*, aggregation between Municipalities in mountain areas). It should be recalled in this connection that the implementation of the new administrative system is bound to rely on the enforcement of partnerships among Local Authorities (Bracci 2003; La Torre 2006). Small or very small Municipalities, at times devoid of the necessary financial, organisational, human and instrumental resources to discharge their administrative functions both effectively and efficiently, need to build partnerships in order to provide services (Cerulli Irelli 2004). This can only be made possible by the genuine willingness of the authorities concerned to overcome long-standing rivalries and undertake more streamlined management experiences.

Another law-making area that can be argued to fall exclusively to Regions has to do with the regulations applying to the bodies that are not considered to be autonomous under the Constitution - such as Mountain Community - including the power to set up and/or dismantle them. Indeed, the Constitutional court has repeatedly emphasized that Regions are competent for issuing legislation on the organisation and functions applying



not only to Mountain Community, but also to other forms of partnership among Local Authorities.<sup>xxxii</sup> From this standpoint, one might argue that every Region should define partnership forms and the promotion tools (benefits, contributions, transfers, tax relief). Additionally, Regions should regard the forms of partnership among Local Authorities in the broader perspective of institutional simplification - the ultimate objective being to ensure that a single body can discharge the functions that were previously distributed among several entities.<sup>xxxiii</sup>

The regional competence over the regulations applying to Local Authorities can be argued to include the regulations on the assessment mechanisms for such authorities. Far from envisaging the possibility for Regions to re-introduce the traditional control mechanisms on Local Authorities, which have been repealed by the reform, this is meant to point to the possibility of bringing about new types of assessment as an alternative to the conventional ones; these new mechanisms should rely on the co-operation between the bodies concerned without encroaching upon the prerogatives of lower-level bodies. The implementation of the new administrative system would appear to be related to the need for envisaging an innovative system to verify the actual discharge of the functions allocated to the given body also in terms of effectiveness and efficiency (Merloni 2006). The verification should concern two features inherent in discharging the functions in question - namely, whether the resources required to discharge them were managed appropriately, and whether the expected outcome could be achieved by discharging those functions. This would result into making the bodies in charge of administrative functions more accountable, partly because of the increasing constraints placed on public financing. The ultimate consequence of the verifications in question should consist in the Region's re-allocating the given function to another body that can rely on the appropriate human, financial, and organisational resources.

On the other hand, the need for Regions to provide for mechanisms aimed at verifying the discharge of administrative functions by Local Authorities in terms of their adequacy is closely related to the power vested in Regions to step in on a subsidiarity basis. The Constitutional court recognised - starting from its decisions no. 313/2003 and 43/2004<sup>xxxiv</sup> and continuing consistently with its subsequent case law<sup>xxxv</sup> - that Regions may legitimately substitute for local authorities; however, the Court pointed out that



suitable procedural safeguards were to be laid down in pursuance of the principle whereby Regions and Local Authorities should co-operate fairly.

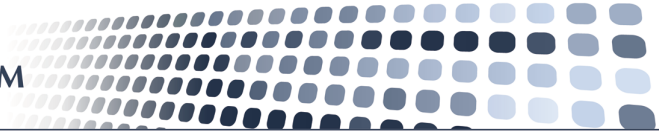
Finally, one should not fail to consider that the case law of the Constitutional court has construed the relevant provisions somewhat restrictively as also related to the regulations applying to local authorities. On several occasions the Court has re-affirmed the key role played by lawmakers and the legality principle - not only with regard to the re-allocation of administrative functions<sup>xxxvi</sup>, but also in regulating the discharge of such functions.<sup>xxxvii</sup>

### **2.3. ... As for the Regulations Applying to the Autonomous Resources and the Levying of Taxes by Local Authorities, the Regional Co-ordination of Public Spending, and the Equalization of Financial Apportionment within each Region**

The reform of Italy's Constitution has provided Local Authorities with financial autonomy as for revenues and expenditures, which was only applicable to Regions in the past; additionally, it has allowed Regions and Local Authorities to own assets and levy taxes of their own, whilst this power will have to be in compliance with the Constitution and respect the principles of co-ordinated public spending and the fiscal system.<sup>xxxviii</sup> Additionally, both Regions and Local Authorities are entitled to partake of the State revenue arising out of the respective territories.<sup>xxxix</sup>

It is therefore appropriate to clarify which areas fall under the State's exclusive law-making powers compared to those that fall within the scope of concurrent legislation as for determining local own taxes and the partaking of the State revenue. Under Article 117(2), letter e., exclusive law-making powers apply to the "State's revenue and accounting system" and the "equalization of financial resources". Regions have concurrent law-making powers with regard to the "harmonization of public budget and co-ordination of public expenditure and the fiscal system" (Article 117(3)).

The aforementioned constitutional provisions should be construed jointly with Article 23 of the Constitution, which requires any income and/or personal tax to be grounded in law.



Faced with the non-application of Article 119 of the Constitution, the Constitutional Court has repeatedly clarified the scope of the relevant provisions and their consequences. The Court has outlined the markedly unificatory role played by the State also in respect of financial autonomy, so as to ensure that a unified reference framework can be available. The State has not only to lay down the principles to be complied with by Regional law-makers, but also to set the major features of the fiscal system as a whole and determine the boundaries that apply to the taxation powers vested in the State, Regions, and local authorities, respectively.<sup>XLI</sup> Failing provisions that implement Article 119 of the Constitution, it is not to be permitted that individual Regions and/or local authorities<sup>XLI</sup> may issue separate regulations; accordingly, it is not possible to determine the taxes to be levied by Local Authorities on their own as "they may be regulated by regional laws and local regulations in compliance with co-ordination principles."<sup>XLII</sup> The Court has also clarified that, given the principle whereby any income and/or personal tax must be grounded in the law as per Article 23 of the Constitution and since no law-making powers are vested in local authorities, local taxes must be regulated by way of a multi-tiered system of legislation - namely, via the regulatory powers vested in Local Authorities and, on the other hand, via State and regional laws, which make up the upper tier of the regulations applying to local taxes.<sup>XLIII</sup> The regulatory framework applying to local taxes is therefore taking shape as either a three-tiered system (State legislation, Regional legislation, and local regulations) or a two-tiered system (State legislation and local regulations, or else Regional legislation and local regulations).<sup>XLIV</sup> However, Regional laws must comply with the fundamental principles of co-ordination of the fiscal system as set forth in "framework" State laws and/or resulting from the legal system.<sup>XLV</sup>

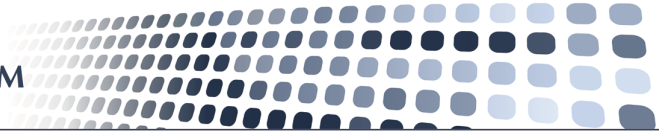
Although the Constitutional Court has provided an extensive interpretation of the State's power to co-ordinate public finance, it is unquestionable that Regions are bound to play a leading role vis-à-vis Local Authorities in the presence of State legislation applying to these matters. This will be the case as for co-ordinating the financial mechanisms of Local Authorities and harmonising their budget; regulating local authorities' own resources and taxes in compliance with the autonomous decision-making powers vested in Local Authorities as for taxation; the partaking in regional taxes; and equalizing financial resources within the given Region. The concurrent competence vested in Regions as for the co-ordination of public finance and the fiscal system has strengthened their powers to



co-ordinate regional and local finance. Regional legislation is a source of regulation, just like State legislation, with a view to the introduction of taxes by local authorities; conversely, the latter are empowered to decide whether such taxes should be introduced or not and lay down more detailed regulations with particular regard to the applicable rates and the taxable amount. As for the equalization of taxes, it can be ruled out that Regions may regulate, via their legislation, the equalization fund referred to in Article 119(3) of the Constitution; the latter provides expressly that the fund may only be set up "by State law".<sup>XLVI</sup> Additionally, the "equalization of financial resources" falls within the scope of the State's exclusive competence.<sup>XLVII</sup> However, this does not mean that Regions may not play any role in connection with equalization; in fact, Regions should regulate the taxes levied directly by Local Authorities and the partaking by the latter in the relevant revenues so as to bring about equalization and do away with any unbalances as for fiscal revenues within the given Region (Giarda 2001: 1468).

Another major principle was introduced into the Constitution, whereby the resources of non-State bodies - whether resulting from the levying of own taxes or from the partaking in the State revenue - must allow "financing the public functions allocated to them in full."<sup>XLVIII</sup> This would appear to support the concept that the survey of the functions allocated to the various levels of government should have preceded the assessment of the resources required to discharge such functions. It has already been pointed out that the route followed by Parliament goes actually in the opposite direction. Whilst the Constitution shows that the resources of Regions and Local Authorities should be enough to fully finance "all" the public functions allocated to them, the fiscal federalism legislation draws a distinction between two types of function - namely, the Regional functions that relate to fundamental requirements in connection with civil and social rights and the fundamental functions vested in local authorities, on the one hand, and all the remaining regional and local functions on the other hand. Only with regard to the former is the full coverage of "standard costs" envisaged, as opposed to the "historical expenditure" criterion that was used in the past, whilst the costs related to the latter functions are covered only in part.

For the purposes of this paper one should briefly dwell on the relationships between Regions and Local Authorities as for fiscal matters, which have been set forth in the recently enacted legislation on fiscal federalism. On the one hand, this legislation would



appear to confer important functions on Regions, which have been allowed to introduce local and regional taxes and determine the respective rates and/or the allowances local authorities may apply in pursuance of their autonomous decision-making powers;<sup>XLIX</sup> to introduce the possibility for local authorities to partake in the revenues from regional taxes and the quotas allocated to regions;<sup>1</sup> to set up two equalization funds of which one would be intended for Municipalities and the other one for Provinces and Metropolitan Cities, which are financed by the State but allocated to Local Authorities by Regions in accordance with criteria that are set forth via State legislation and may be modified up to a certain extent in accordance with specific procedures.<sup>11</sup> On the other hand, the financial relationships between the various bodies would not appear to have been outlined in a sufficiently clear-cut manner. No adequate regional co-ordination mechanisms have been provided for with regard to the fiscal and financial system applying to local authorities. The boundaries of the regional law-making powers have not been determined accurately as for the introduction of local taxes, (Carinci 2008; Groppi 2008) nor has the extent of the Regions' autonomy been defined precisely as for the taxes devolved to them and their power to directly manage the equalization funds that are fed to the Local Authorities in the respective territories.

Pending the implementation of the law on fiscal federalism,<sup>111</sup> on the one hand, and the determination of the fundamental functions along with the adoption of the "Charter of Autonomies", on the other hand, the implementing process of the whole constitutional reform has currently come to a standstill.

### **3. The Fair Co-operation Principle in the Relationships between Regions and Local Authorities and the Need for Governance Tools**

The Constitutional reform has made it necessary to reconsider not only the role played by Regions and their organizational structure, but also the relationships between Regions and local authorities. On the one hand, the foundations have been laid, generally speaking, for relinquishing the traditional hierarchical separation framework applying to the relationships between the various levels of government, which has been superseded by a framework featuring the enhanced integration of such levels. In a multi-polar, equalitarian





system of institutions, all the non-State institutions should be on an equal footing and called upon to participate in the decision-making process of the higher levels. On the other hand, it is exactly the new allocation of law-making, administrative and regulatory powers to State, Regions and Local Authorities that requires suitable governance tools to be introduced for the whole system in order to ensure veritable negotiating mechanisms between the various levels of government.<sup>LIII</sup> Regions will have to act increasingly as bodies in charge of governance, defining strategic policies and planning and control mechanisms for their respective territories. Indeed, the new administrative system should entail a reduction in the administrative functions that are discharged directly by Regions, which functions should be allocated, as a rule, to lower-level bodies.

Having said this, one cannot question that the steering function to be discharged by Regions with regard to the system of local autonomies (Merloni 2006) can only be made possible by re-defining the relationships between State and local autonomies as well as between local autonomies, on the one hand, and by adopting more suitable collaboration tools. The new constitutional model of administrative governance can only work if Regions undertake to make enhanced use of harmonization tools in respect of Local Authorities - i.e. by way of agreements, covenants, formal and informal agreement procedures, joint and negotiated administration mechanisms. The relationships between Regions and Local Authorities should rely ultimately on a sort of equalitarian pluralism grounded in new decision-making, planning and control mechanisms that can bring about an integrated government system.

Therefore, the new framework of public authorities should be grounded not only in the subsidiarity principle, but also in fair co-operation. Implementing the fair co-operation principle in the relationships between the various levels of government allows - in our view - implementing an efficient, democratic governance system at regional level.<sup>LIV</sup> One should not fail to consider in this regard that the Constitutional Court had initially worked out the fair co-operation principle only for the State-Regions relationships, whilst it subsequently reaffirmed the need for applying this principle to the relationships between Regions and Local Authorities as well.<sup>LV</sup>

Only by way of the tangible application of the fair co-operation principle <sup>LVI</sup> will it be possible to reconcile the principles of autonomy, differentiation, and subsidiarity<sup>LVII</sup> - which are aimed to allocate functions as a rule to the level that is closest to citizens - with



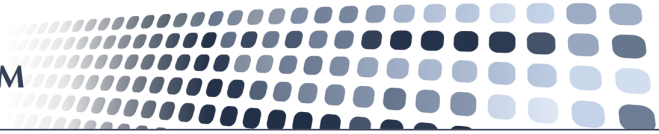
the unified framework of the Republic. This principle proves necessary in a multi-polar system in order to prevent excessive differentiation from breaking down the unity of the system as a whole - or else to prevent the need for uniformity and unification from making the new constitutional provisions devoid of tangible effects. Additionally, the increased co-operation of the entities at issue would prevent centralist and neo-regionalist views from taking root, which views would not be in line with the rationale underlying the Constitution - i.e. the valorization of Local Authorities. The participation of lower-level bodies in the regional decision-making process would also be instrumental in reducing confrontational stances - by expediting the implementation of constitutional reform and reducing litigation before the Constitutional Court - and in enhancing accountability of the bodies concerned when implementing the respective policies within their own spheres of competence.

#### **4. The Regional Decision-Making Processes That Require Regions and Local Authorities to Co-Operate**

It is high time to dwell more specifically on the areas where the enhanced integration between Regions and Local Authorities would appear to be appropriate.

One first area of co-operation between the entities in question should concern the various regional decision-making processes that have repercussions on lower levels of government. By the same token, the integration of the various levels of government should play a key role also at a later stage, i.e. following the taking of a joint decision, when the focus should be on verifying the activities performed by Local Authorities and possibly substituting for them.

In this connection, it can be reasonably argued that the degree of participation by Local Authorities in Regional decision-making should be made dependent on the impact of such decisions at local level - that is, the greater the impact of a Regional decision is on local competences, the stronger the co-operation between the entities concerned should be. Accordingly, especially strong co-operation mechanisms should be in place with regard to the exercise of law-making functions that concern Local Authorities as for planning, co-ordination and active management, which are more liable to impact on local policies. As regards any control functions to be discharged by Regions and/or the Regions' power to



substitute for local authorities, one might argue conversely that adequate procedural safeguards may be enough such as to enable the body under scrutiny and/or substituted for to voice the respective concerns vis-à-vis the higher-level body - without getting as far as envisaging "strong" agreements that might deprive Regions of any real powers.

#### **4.1. Drafting and Approval of Regional Laws**

Several regional laws impact on local authorities; accordingly, they require the involvement of the latter authorities in their drafting and adoption processes.

##### **a. ... Concerning the Allocation of Administrative Functions to Local Authorities**

The recognition of the key role played by Regions in the allocation of administrative functions should go hand in hand with co-operation mechanisms, agreements and covenants with local authorities. If the allocation of administrative functions requires careful assessment of the interests at stake - both regional and local - in order to determine what level of government is best suited to fulfil such interests, it is unquestionable that the relevant decisions should be agreed upon by all the entities involved (Gentilini 2003: 929 et seq.; Urbani 2003: 464 et seq.) In particular, it is necessary to co-operate with Municipalities so as to evaluate the functions they may discharge or not, whilst co-operation with other Local Authorities is required to decide on the most appropriate allocation of such functions. This would actually appear to be indispensable to protect Local Authorities against the danger resulting from the regional attempt to retain those functions that allegedly require unified approaches at regional level on account of merely political considerations.

##### **b... Concerning the Organisational Framework of Local Authorities**

Enhanced co-operation would appear to be also necessary between Regions and sub-regional bodies in connection with the approval of regional laws that regulate the



organisational framework of local authorities, whenever such regulations are believed to fall within a region's scope of competence.

### **b1. ...Concerning the Principles Underlying the Organisation of Regional and Local Administrative Activities**

As already pointed out, the fact that Regions have been afforded especially wide-ranging, incisive regulatory powers does not mean in any way that Regions should prevail over local authorities. Prior to adopting any laws that regulate regional administration and, on the other hand, lay down the principles applying to the local organisation and the coordinated discharge of functions, Regions should consult with Local Authorities and/or take concerted action to the greatest possible extent. The co-operation between the bodies in question is actually necessary to allow harmonization between regional legislation and the regulations Local Authorities are expected to issue so as to detail the organisation and performance of the functions allocated to them.

### **b.2. ... Concerning the Discharge and Organisation of Local Administrative Functions**

In allocating additional functions to Local Authorities on top of the fundamental ones set forth via State laws, Regions should follow different approaches. This differentiation should result from a carefully balanced analysis and take also account of the adequacy principle and - accordingly - of the possibility to foster partnership among Local Authorities in view of discharging the said functions. Again, it is necessary to develop co-operation mechanisms between Regions and local authorities. Regions will have to undertake to tangibly implement the subsidiarity principle, and therefore reduce the scope of the functions they discharge; Local Authorities will have to be consulted in respect of these matters so as to jointly determine whether a given local authority can appropriately discharge a certain function or it is preferable to foster partnership among Local Authorities (Meloni 2007).



In fact, the principle that the entities in question should co-operate in order to regulate joint management of functions was also set forth in the former section 33 of legislative decree no. 267/2000 (Maggiora 2000). The latter provides that Regions should foster the joint management of functions and also determine the top level of performance for such functions via tools and procedures grounded in agreements and networking. Additionally, Regions are required to agree with Municipalities, in the appropriate forums, on a programme to determine the scope of the joint management of functions and services at supra-municipal level; they should also introduce incentives to achieve joint management of functions by Municipalities within the framework of the aforementioned programme.

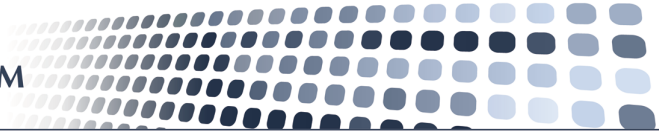
### **c. ... Concerning the Determination of the Overall Objectives to Be Pursued in Discharging the Allocated Functions**

The Regional law setting forth the overall objectives to be pursued in discharging the functions allocated to Local Authorities should respect the regulatory autonomy vested in the latter authorities as for the organisation and performance of the said functions; further, it should be approved by involving the authorities concerned. It is actually unquestionable that the objectives at issue impact considerably on the relevant area and should be agreed upon jointly with the authorities that are called upon to discharge administrative functions in practice.

### **d. ... Regulating Local Authorities' Own Resources and Taxes, Coordinating Public Finance at Regional Level, and Ensuring Equalization of Funding at Regional Level**

The taxation powers allocated to all Regional and Local Authorities make it necessary to implement collaboration and co-ordination mechanisms to ensure that the public financial system is shaped consistently.

In the first place, the Constitutional requirement that the "co-ordination of public finance" be regulated via concurrent legislation entails, by necessity, the co-operation between State and regional law-makers in enacting the relevant legislation. This legislation should be the



outcome of as shared decision-making processes as possible, involving all levels of government. By the same token, the regional legislation detailing the co-ordination of regional and local financial systems and harmonizing the budgetary resources of Regions and Local Authorities should be enacted on the basis of "concerted" decisions involving the said bodies. This is aimed at ensuring a unified financial system and preventing, at the same time, the taxation powers vested in Local Authorities from being downsized excessively.

#### **4.2. The Drafting of Regional Policies and Planning and Co-ordination Schemes**

The new steering role conferred on Regions as for the governance of Local Authorities is bound to further highlight the importance of the functions Regions should discharge in terms of monitoring, policy-making, planning and co-ordination. The latter functions are actually closely related to the other functions pertaining to regions - i.e. the administrative and legislative ones. Regional legislation contains the principles to be followed in discharging the functions of verification, planning and co-ordination allocated to Regions; such functions are translated tangibly into the administrative activities performed by Regions. The steering and planning role applying to Regions is also closely related to the administrative functions discharged by Local Authorities with a view to fostering the development of the respective communities. In other words, the policies and plans developed at regional level should take account of the development of the Region as a whole; however, they should also meet the requirements coming from local communities. Accordingly, it is fundamental that there should be unrelenting integration and interaction between Regions and sub-regional bodies when determining regional policies and plans - which activity is aimed obviously at fostering development in fundamental areas of citizens' life.<sup>LVIII</sup> An effective planning activity should fulfil both the unified interests vested in the Regional community and the more specific interests vested in Municipalities and Provinces. Therefore, we believe that Regions - being no longer called upon to directly discharge several administrative functions - are required in the first place to lay down the objectives to be pursued and shape their own policies in collaboration with local authorities.



### 4.3. The Decisions Concerning the Mechanisms for Supervision and Substitution Vis-à-Vis Local Authorities

Following the elimination of traditional controls, one should consider "new mechanisms for supervision" in order to ensure a minimum level of uniformity at regional level and prevent the functions allocated to Local Authorities from remaining dead letter. In other words, each Region will have to monitor ex post whether the administrative functions conferred on Local Authorities are being discharged in accordance with cost-effectiveness, efficacy, and effectiveness principles. In a multi-polar system it is necessary to devise new mechanisms for supervision that should be grounded in the collaboration between the different levels of government.

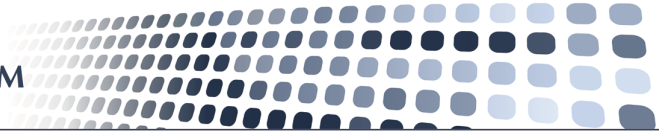
## 5. Considerations on the Co-Operation Tools Introduced by Regions

A precondition to implement a system that features multiple levels of government on an equal footing consists in streamlining the tools and mechanisms to achieve the co-operation between Regions and local authorities.

In the past Regions limited themselves basically to seeking the involvement of Local Authorities by asking for their opinions, which were not binding; however, a system that relies on the genuine collaboration between government bodies is bound to result into concerted decision-making mechanisms.

It is indispensable that tools be implemented to achieve the integration of sub-State bodies so as to ensure a certain degree of uniformity at Regional level and also fully benefit from the experiences of local authorities.

Given this new scenario, an effort was recently made to regulate the co-operation between Regions and sub-regional bodies. Reference can only be made here to the fact that Regions have basically introduced two mechanisms for Local Authorities to participate in their decision-making processes. On the one hand, Local Authorities have been empowered to step in within the framework of regional decision-making processes, including law-making activities, via permanent forums involving Regions and Local



Authorities - e.g. the Council of Local Autonomies referred to in Article 123, last paragraph, of the Constitution, or else the Multi-Stakeholder Conferences held by local authorities. On the other hand, procedural mechanisms have been developed to ensure consultation and co-ordination within the framework of the decision-making processes applying to certain policies and/or individual instruments, which are unrelated to the establishment of specific institutional forums; this applies, for instance, to the procedural mechanisms aimed at taking concerted decisions, which are typical of the public administration and consist in multi-stakeholder conferences and/or policy agreements. More or less informal consultation mechanisms have also been tested, featuring increased flexibility so as to expeditiously attain concerted decisions - see, for instance, the consultation/co-ordination conferences in which associations representing local authorities, Union of Italian Provinces (Unione delle Province d'Italia - UPI) and National Association of Italian Municipalities (Associazione Nazionale Comuni Italiani - ANCI), representatives from individual Municipalities and Provinces, etc. are invited to participate. In this connection, it should be pointed out that the said mechanisms might prove especially helpful to reconcile uniformity with multifariousness as well as the need to collaborate with the need to expedite decision-making.

However, one cannot but remark, to conclude, that the tools for concerted action described above will not allow averting the dangers that may arise if one or more levels of government are against to the specific decision. It is therefore fundamental for the individual entities that participate in decision-making processes to make a veritable effort in order to come to an agreement.

Regions have been provided with major powers in view of ensuring the development of the respective territories; they will have to act as co-ordinators for the various levels of government without prevailing over sub-regional bodies - as this would result into a neo-regionalist drift. Regions will have to become increasingly aware that exploiting the potential of sub-regional bodies for real is bound to make the regional administrative system both more streamlined and more efficient. Accordingly, Regions will have to implement decision-making and procedural mechanisms that take due account of the different regional and local interests. Resorting to co-ordination and collaboration mechanisms will have to be regarded as a way to reconcile the interests vested in the individual bodies so as to bring about the veritable governance of the system at issue.





Similarly, Local Authorities should overcome their long-standing mistrust of Regions and undertake to collaborate with them. It is well-known that disagreements between Regions and Local Authorities did contribute in the past to the establishment of centralist governance systems.

Only in this manner will reforms become possible that feature the increased harmonization of the various levels of government so as to implement a de-centralised, autonomist system that can fully meet effectiveness, efficiency, and cost-effectiveness requirements.

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<sup>I</sup> This is the stance taken by Rolla G., 2001, 162, where he points out that the new wording of Article 114 of the Constitution replaces *"a model based on a hierarchical and pyramidal structure... by another model that is multi-polar (or "network-based") in nature, pursuant to the modern multi-level constitutionalism approaches."* The wording "multi-level constitutionalism" was first used to refer to the European integration process, as is widely known, by Ingolf Pernice following the enactment of the Amsterdam Treaty. See Pernice I., 1999, 703 ff.; Pernice, 2002, 511 ff.; Pernice., 2009, 349 ff. Pernice's view is that every governmental level - regional, national, and supra-national - mirrors one of the two or more political identities applying to the citizens that are respectively concerned. Criticisms were levelled at the concept of "multilevel constitutionalism" by Besselink L.F.M. (2007, 6), who believes that *"Thinking in terms of 'levels'...involves inescapably the concept of hierarchy"* because levels imply *"by definition the existence of 'higher" and 'lower' levels, super-ordination and subordination, superiority and inferiority."*

<sup>II</sup> Article 114 was formerly worded as follows: "The Republic is comprised of Regions, Provinces, and Municipalities."

<sup>III</sup> Criticisms were levelled at the Article 114 by Frosini T.E., 2001.

<sup>IV</sup> Articles 115 and 128 of the Constitution were repealed by the Constitutional Act no. 3/2001; they provided as follows, respectively: "Regions are autonomous bodies having their own powers and functions in accordance with principles set forth in the Constitution"; "Provinces and Municipalities are autonomous bodies within the framework of the principles set forth in general laws of the Republic, which shall determine their functions."

<sup>V</sup> See Pizzetti F., 1979. The author had found that the former version of Article 114 placed Regions and Local Authorities *"on a basically equal footing"*.

<sup>VI</sup> However, there are scholars who do not consider the wording of Article 114 to place the various component parts of the Republic on an equal footing. This is the view held by Anzon A., 2002, 230, who believes that *"one should not construe the new wording of Article 114 differently from what was the case with the former Article 114. It is unquestionable that it does not lay down the principle of equality between the State and other components."* Doubts as for the equal dignity of the entities mentioned in Article 114 are also raised by Barone G., 2005, 340 ff.

<sup>VII</sup> This is the stance taken by Pizzetti F., 2001, 1176 ff. Conversely, other scholars (Anzon A., 2002) consider that exactly the wording of Article 114(2) of the Constitution rules out the equal footing status of the various component parts of the Republic.

<sup>VIII</sup> Article 117(1) of the Constitution.

<sup>IX</sup> Article 117(6) of the Constitution.

<sup>X</sup> It should be recalled in this connection that the administrative reform started by Act no. 59/1997 – know as "Bassanini reform", after the Minister who promoted it - had already allocated administrative tasks and functions to Municipalities, Provinces, and Mountain Community by having regard to the respective geographical areas and membership size.

<sup>XI</sup> Article 120(2) of the Constitution.

<sup>XII</sup> As for the relationships between Regions and Local Authorities both before and after the constitutional



reform, see Marchetti G., 2002.

<sup>xiii</sup> Indeed, the Constitutional Court has repeatedly taken a negative stance vis-à-vis the regionalization of Local Autonomies. See decisions no. 39/1957, 11/1959, 212/1991 and 343/1991.

<sup>xiv</sup> This is emphasized by Pastori G., 2001, 217 ff. and Merloni F., 2005, 95 ff.

<sup>xv</sup> Article 114(2) of the Constitution..

<sup>xvi</sup> Article 117(6) of the Constitution.

<sup>xvii</sup> Article 119(1) of the Constitution.

<sup>xviii</sup> Article 119(2) of the Constitution.

<sup>xix</sup> As regards subsidiarity in the new administrative system, see D'Alessandro D, 2004; Cammelli M., 2002, 453 ff.; Tondi della Mura V., 2007.

<sup>xx</sup> We share the prevailing view among scholars, whereby the functions "pertaining" to Local Authorities are the "fundamental" functions applying to Local Authorities, which should be set forth via a State law in pursuance of Article 117(2), letter p., of the Constitution. See, in this regard, Corpaci A., 2001, 1314 ff.; Falcon G., 2001, 1259 ff.; Pizzetti F., 2001, 1178 ff.; Tosi R., 2001, 1233 ff.

<sup>xxi</sup> See decision no. 16/2004 by the Constitutional Court.

<sup>xxii</sup> Concerning decision no. 303/2003, see: Anzon A., 2003; Bartole S., 2003; Camerlengo Q., 2003; Cintioli F., 2003; Morrone A., 2003; Ruggeri A., 2003; Violini L., 2003; Dickmann R., 2003; Moscarini A., 2003.

<sup>xxiii</sup> Act no. 131 dated 5 June 2003 ("Provisions to Adjust the Legal System of the Republic to the Constitutional Act no. 3 Dated 18 October 2001") enabled Government to implement Article 117(2) letter p. of the Constitution and adjust the provisions concerning Local Authorities to the constitutional reform (section 2); it also envisaged the implementation of Article 118 of the Constitution (section 7). However, the enabling powers were not used. Sections 2 and 7 of the Act are commented by Pizzetti F., 2003, 57 ff.; Cittadino C., 2003, 154 ff.

<sup>xxiv</sup> Initial considerations on the decree concerning the so-called fiscal federalism as subsequently enacted by Parliament can be found in Antonini L., 2008; Bassanini F., Macciotta G., 2008; Jorio E., 2008a; Jorio E., 2008b; Jorio E., 2009; Bin R., 2008; Salerno G. M., 2008; Salerno G. M., 2009. See also the presentation held at the workshop co-ordinated by P. Bilancia within the framework of the P.R.I.S. (Progetto di studio sui processi di riforma istituzionale e di modernizzazione economico-sociale del Paese - Study Project on Institutional Reform and Economic and Social Modernization Processes), concerning "Fiscal Federalism and System of the Autonomies" (21 January 2009), as available on the website [www.giuripol.unimi.it/pris/pris.htm](http://www.giuripol.unimi.it/pris/pris.htm). A commentary on Act no. 42/2009 can be found in Bifulco R., 2009; Buglione E., 2010; Jorio E., Gambino S., D'Ignazio G., 2009; Martines T., Ruggeri A., Salazar C., 2009; Nicotra V., Pizzetti F., Scozzese S., (eds) 2009; Ferrara A., Salerno G.M. (eds), 2010; Scuto F., 2010.

<sup>xxv</sup> Section 21, paragraphs 3 and 4 of Act no. 42/2009. As regards Municipalities, the following are regarded as fundamental functions: 70% of the administrative, management and control functions; local police; public education; roads and transportation; environmental protection and local management; welfare. As regards Provinces, the following are regarded as fundamental functions: 70% of administrative, management and control functions; public education; transportation; environmental protection and local management; job services and recruitment. All the remaining functions are regarded as non-fundamental for both Municipalities and Provinces.

<sup>xxvi</sup> Section 23, paragraphs 1 to 5 of Act no. 42/2009. Metropolitan cities may be set up in the metropolitan areas including the Municipalities of Turin, Milan, Venice, Genoa, Bologna, Florence, Bari, Naples, and Reggio Calabria, whereupon the respective Provinces shall be discontinued.

<sup>xxvii</sup> Section 23(6), letter f. of Act no 42/2009. As regards metropolitan cities, the following are regarded as fundamental functions: planning of local areas and networks of infrastructures; organization of co-ordinated systems for the management of public services; fostering and co-ordinating economic and social development.

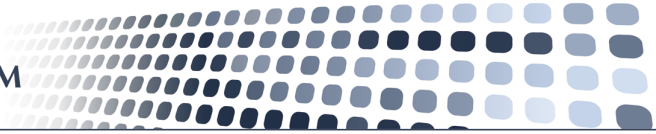
<sup>xxviii</sup> Section 117(2), letter p. of the Constitution.

<sup>xxix</sup> Section 117(6) of the Constitution.

<sup>xxx</sup> Section 117(2), letter g. of the Constitution.

<sup>xxxi</sup> See decisions no. 372/2004 and 246/2006.

<sup>xxxii</sup> See, in particular, decisions no. 229/2001 and 244/2005. See also decisions no. 456/2005 and 397/2006. Considerations on the recent case law by the Constitutional Court concerning Mountain



- Community can be found in Vipiana P., 2006, 699 ff.; Giupponi T.F., 2006, 544 ff.
- <sup>XXXIII</sup> This is the stance taken, for instance, by Umbria via its Regional Act no. 23/2007. See Di Folco M., 2007, 16 ff.
- <sup>XXXIV</sup> Decision no. 43/2004 was commented upon by Dickmann R., 2004; Groppi T., 2004; Parisi S., 2004; Marazzita G., 2004; Merloni F., 2004a.
- <sup>XXXV</sup> Reference is made, in particular, to decisions no. 69, 70, 71, 72, 73, 74, 140, 172, 112, 227, 173, and 240/2004, no. 167/2005 and no. 397/2006.
- <sup>XXXVI</sup> As well as the aforementioned decision no. 303/2003, see decisions no. 6/2004 and 423/2004, and no. 31/2005; as regards in particular the fundamental functions applying to Local Authorities, see decision no. 43/2004 (paragraph 3 thereof).
- <sup>XXXVII</sup> In particular, decision no. 303/2003 found that "the legality principle... requires that the functions one takes over in pursuance of the subsidiarity principle be organised and regulated by law" (here, State law). This issue is analyzed by D'Atena A., 2003, 2776 ff.; Salerno G. M., 2004.
- <sup>XXXVIII</sup> Section 119(1) and (2) of the Constitution.
- <sup>XXXIX</sup> Section 119(2) of the Constitution.
- <sup>XL</sup> Decision no. 423/2004 by the Constitutional Court.
- <sup>XLI</sup> Decision no. 427/2004 by the Constitutional Court.
- <sup>XLII</sup> Decision no. 37/2004 by the Constitutional Court, on which see Jorio E., 2007.
- <sup>XLIII</sup> See decision no. 37/2004 by the Constitutional Court.
- <sup>XLIV</sup> Decision no. 37/2004 by the Constitutional Court.
- <sup>XLV</sup> Decisions no. 372/2004 and 423/2004.
- <sup>XLVI</sup> In this connection, the Constitutional Court has reiterated that the role played by the State should not translate into the setting up of funds on whose use restrictions are placed, as regards any matters falling within the Regions' and Local Authorities' scope of competence. See, in this connection, decisions no. 370/2003; 16, 49 and 423/2004; 31, 51 and 231/2005; and 188/2006.
- <sup>XLVII</sup> Article 117(2), letter e. of the Constitution.
- <sup>XLVIII</sup> Article 119(4) of the Constitution.
- <sup>XLIX</sup> Section 2(2), letter q. of Act no. 42/2009.
- <sup>L</sup> Section 2(2), letter s. of Act no. 42/2009.
- <sup>LI</sup> Section 13 of Act no. 42/2009.
- <sup>LII</sup> Suffice it to say in this connection that it is rather difficult to foresee when the fiscal federalism reform can enter into force.
- <sup>LIII</sup> Origin and meaning of the word "governance" are expounded in Bilancia P., 2007. P. Bilancia (2004, 15) refers to the integration process "*between State level (including the respective non-State levels) and supra-national or international levels*" to point out that "*the shift from a unified State model to a composite unified State model*" requires "*by necessity sophisticated governance approaches to ensure that this complex, integrated system based on a multi-level framework always retains, both internally and externally, the fundamental balance between unity and diversity that is the very precondition for the existence of a politically organised community.*" See, in this regard, Cassetti L., 2003.
- <sup>LIV</sup> The need for governance at regional level was addressed by De Martin G.C., 2005, 981 ff.; De Martin G.C., 2006, 30 ff.; Merloni F., 2004b, 283 ff.
- <sup>LV</sup> See, in particular, decisions no. 313/2003 and no. 43/2004 (see paragraph 2.2).
- <sup>LVI</sup> As regards the fair co-operation principle following the constitutional reform, see Bilancia P., 2001, 67 ff.; Bifulco R., 2006, 3356 ff.; Bin R., 2007, 393 ff.; Ferraiolo G., 2006, 694 ff.; Gratteri A., 2004, 423 ff.; Merloni F., 2002, 827 ff.; Torchia L., 2002, 647 ff.
- <sup>LVII</sup> An analysis of the relationship between subsidiarity and fair co-operation from both the domestic and the EU standpoint can be found in Bin R, 2002a, 1009 ff.; Spadaro A., 1994, 1042 ff.; Cappuccio L., 2001, 342 ff.
- <sup>LVIII</sup> As for the steering and planning functions pertaining to Regions in the trade sector, see the considerations made by Bilancia P., 2005a, 753 ff.



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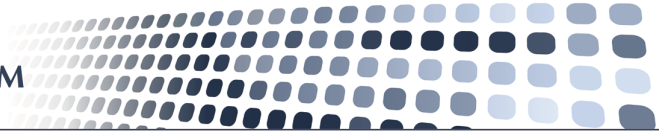
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