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# The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian Regionalism?

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## Abstract

This paper aims to provide a brief assessment of the legal framework of the newly established metropolitan cities in the Italian domestic legal order. After an historical overview of previous attempts to set up metropolitan cities in Italy (1), it summarizes the main statutory provisions of the Delrio Law (No. 56/2014) through which metropolitan cities finally came into operation (2) and it provides an analysis of its implementation, thereby attempting to make clear whether increased institutional pluralism and differentiation in the local government system will strengthen or weaken Italian regionalism (3). The conclusion will argue that, while the enactment of local government reforms combined with the entering into force of a significant constitutional amendment will increasingly diminish the role of the Regions, metropolitan cities, due to their ambivalent nature, still lack any propulsive thrust and face the risk of being marginalized until a consistent legal framework for their proper funding is laid down (4).

## Key-words

Metropolitan areas, Italian local government system, Italian regionalism, institutional pluralism, constitutional amendment



## 1. Metropolitan Cities as Territorial Autonomous Entities: Just Law on Paper (1990-2014)

The idea of establishing new institutional frameworks for governing metropolitan areas in Italy has become a significant political issue, since at least the 1980s, when the first legislative proposals were submitted to the Italian Parliament<sup>I</sup>. Yet, through the 1950s, and, increasingly, in the '60s and '70s, scholars from different disciplines, especially town planners, pointed out that several policies related to urban agglomerations, such as commuting, congestion and pollution could be better addressed through new administrative entities that would integrate large urban centers and satellite towns into new units, rather than sticking with a poor and fragmented system through inter-municipal co-operation<sup>II</sup>. However, after their establishment in the 1970s, the Italian Regions with Ordinary Statutes of Autonomy had to cope with the structural inadequacy of the tools and organisational schemes provided by administrative law at that time; the delegation of functions to municipalities and provinces occurred without any real chance of taking into account territorial, economic and social differences at their core (former Article 118 IC). For a long time, therefore, inter-municipal co-operation rather than the creation of new local government units was the only tool for addressing metropolitan problems<sup>III</sup>.

A first legislative reference to metropolitan cities as new territorial entities can be traced back to State Law No. 142/1990, which marked a relevant step towards the recognition of the principle of differentiation in structuring the Italian local government system. Until that time decentralised administrative authorities were structured following the principle of uniformity, whereby they ought to be charged with the same administrative tasks and endowed with the same organizational rules across the whole country (former Article 128 IC)<sup>IV</sup>. Homogeneity and uniformity, rooted in the Napoleonic model of public administration, were progressively abandoned in favor of differentiation, thereby enabling the establishment of *different* kinds of local authorities carrying out *different* tasks according to *different* rules in *different* areas of the territory of the Republic. As such, the principle of differentiation was conceived as a decisive means for fostering institutional pluralism and therefore also to promote local autonomy, as required by Article 5 IC.



Thus, one has to place the recognition of metropolitan cities by Italian legislation within this theoretical background. However, despite their formal legal recognition, metropolitan cities were not immediately brought into being because of the complicated procedure set out by State Law No. 142/1990 for their establishment, where Article 17 stipulated that ordinary Regions could demarcate the boundaries of the metropolitan areas upon consultation with municipalities and provinces. The exact definition of the areas, which was not binding but discretionary, had to occur *‘with reference to the municipalities of Turin, Milan, Venice, Genoa, Bologna, Florence, Rome, Bari and Naples and all other municipalities enjoying a high degree of connection and integration with the latter in terms of economic development, delivery of public services and territorial conformation’*. Because of Regions’ failure to comply with this procedure, metropolitan cities could not be established at that time. A further attempt, with the enactment of State Law No. 265/1999, failed once again. This time a definition of the metropolitan areas was made binding, but their territorial demarcation was more flexible, since it did not necessarily imply the creation of a new unit, but allowed for a bottom-up establishment of co-operational arrangements of a supra-municipal nature between the main urban center and a restricted area of municipalities<sup>v</sup>.

With the 2001 constitutional amendment metropolitan cities were entrenched into the Constitution and became, together with municipalities, Provinces, Regions and the State constitutive entities of the Italian Republic (Article 114, para. 1 IC). Even after this recognition by constitutional guarantee of metropolitan cities, no agreement could be reached as to their establishment. The constitutional legal framework was not as clear as it could have been since Article 114 IC did not provide any definition and/or demarcation of metropolitan cities, although Article 117, para. 2 lett. p) IC did set out the State’s requirement to act, and in particular to set out their electoral system, the governing bodies and their fundamental functions. These provisions notwithstanding, no clarity existed as to whether the State or the Regions enjoyed the ultimate power to formally establish them or whether municipalities should have played a proactive role in this process. The new self-governing entities were enumerated again by Articles 23 and 24 of State Law No. 42/2009 on ‘fiscal federalism’ and Reggio Calabria was added to the list. Therein, a first vague list of fundamental functions was sketched out and a bottom-up procedure for their establishment was provided by the law to ensure a quick implementation of the new legal framework governing fiscal relations among subnational entities. Yet, again, no



establishment of metropolitan cities followed. A last unsuccessful effort to set them up was made by the government of Mario Monti with the enactment of Law Decree No. 95/2012, which was eventually struck down by the Italian Constitutional Court on formal grounds<sup>VI</sup>.

As a consequence of the legislature's repeated failure to implement the Constitution, metropolitan cities thus remained for almost fourteen years the only '*constitutive entity of the Republic*' existing only on paper (Article 114, para. 1 IC). One of the main reasons for this striking failure was the cross-fire of vetoes on the part of the Provinces and of the Regions, fearing their marginalization, and the vetoes of the municipalities within the metropolitan areas, afraid of becoming mere subjects of the needs of the main urban center, or their amalgamation by the corresponding Region (Mantini 1996: 23 and ff.). Another issue was uncertainty as to the very concept of 'metropolitan area', so that the metropolitan city model was often conceived as a uniform and rigid one which had to fit in for all the different urban agglomerations in Italy without any clear scheme as to how relationships with other entities at the grassroots, in particular municipalities and Regions, should work.

## **2. The 2014 Local Government Reform (*Delrio Law*): Metropolitan Cities as New Provinces 'with Reinforced Powers'?**

With the enactment of Law No. 56/2014, the '*Delrio Law*'<sup>VII</sup>, metropolitan cities were finally established according to a relatively clear-cut and centralistic procedure (Article 1, § 5 and 6), thereby ensuring not only geographical contiguity but also that the new authorities could start operating with no delay. Here, Regions were kept out of this procedure; it was an ordinary State Law which set metropolitan cities up<sup>VIII</sup>.

The Law listed once again their names (Turin, Milan, Venice, Genoa, Bologna, Florence, Rome, Bari, Naples and Reggio Calabria)<sup>IX</sup> and mandated they would automatically supersede the corresponding provinces by January 1, 2015, therefore coexisting with all municipalities within their jurisdiction. In other words, municipalities would have not been pooled together into a big metropolitan city. Yet, they could have decided to opt out and be attached to one of the already existing Provinces nearby. Similarly, municipalities outside the jurisdiction of the old Provinces could have opted in and become part to the new metropolitan city. Since a final decision in this respect was in the State's purview, the boundaries of metropolitan areas were not changed at all<sup>X</sup>.



In its Judgment No. 50 (2015), the Italian Constitutional Court declared the aforementioned provisions as compatible with the Italian Constitution, by virtue of the nature of the matter: the establishment of a constitutive entity of the Republic can only reside within the State and not within the Region. No violation of the constitutional rule governing the procedure for changing the provincial boundaries could be found either, since the legislature effectively passed, so to say, a structural local government reform, whereas the constitutional provision providing for a bottom-up and proactive role of municipalities and provinces (Article 133, para. 1 IC) applies only when single boundary modifications are concerned [§ 3.4.1 and § 3.4.2]. These principles were eventually embodied in one of the constitutional amendments (Article 40, para. 4) of the constitutional reform awaiting confirmation by popular referendum next December<sup>XI</sup>.

The scope of powers and functions of metropolitan cities was roughly designed by the legislature drawing upon the example of the Provinces they had de jure superseded. Yet, metropolitan cities were also given additional responsibilities, in order to tackle problems typical of conurbations, including increasing commuting and immigration flows, pollution, economic development, social exclusion and misallocation of resources. In fact, according to Article 1, §§ 44 of the Delrio Law, they have been granted all the administrative functions already conferred to the Provinces as well as other basic responsibilities ranging from general spatial and strategic planning (thereby replacing or at least competing with the corresponding municipal and regional administrative competences), promotion of socio-economic development, informatization and digitalization of the metropolitan area, road network and traffic regulation and organisation and management of services of general interest. Further tasks have been conferred by the Regions within the scope of their legislative competence. Notwithstanding the fact that metropolitan cities were expected to be charged with these additional tasks their personnel has been reduced by 30 percent by means of the very same local government reform, similarly to what happened to the Provinces.

A residual, but not less important role, is played by administrative functions supportive of municipal activities (e.g. the: collection and analysis of data and technical and administrative assistance to local authorities). In this respect, municipalities and consortia of municipalities within the metropolitan jurisdiction are also explicitly allowed to both delegate tasks to the city, or to have functions delegated by it according to the subsidiarity



principle (Article 1, § 11, lett. b) Delrio Law). In particular, metropolitan cities are endowed with a very broad statutory autonomy enabling them (Article 1, § 57 Delrio Law) to discharge administrative functions on a more flexible basis (Article 1, § 57 Delrio Law). On these grounds, metropolitan cities can establish various ‘homogenous areas’ (*zone omogenee*) for carrying out given administrative functions due to specific territorial conformation specificities (e.g. for mountainous areas). These areas are not new local authorities, but rather geographical subdivisions in which tasks could be fulfilled in a more efficient and effective way by aggregations of municipalities or consortia of municipalities. For this purpose, specific bodies coordinating with the bodies of the metropolitan city will be set up following a possible agreement with the corresponding Region (Article 1, § 11, lett. c) Delrio Law), which therefore retains a role, though albeit marginal, in the organization of the territory within the metropolitan area. These ‘homogenous areas’ should thus serve as a means to disentangle possible overlaps of responsibilities or interferences between the city and municipalities. Pursuant to the Delrio Law, in fact, municipalities are expected to become the pivotal authorities of the Italian local government system, that is to say the only territorial authorities acting according to the general competence principle. They ought therefore to be set up in such a position as to organize provision of public services according to a bottom-up and flexible approach, and possibly continuing to rely on effective co-operational schemes they used before the establishment of the metropolitan city, such as public-private law agreements and conventions (*convenzioni e accordi di programma*). In contrast, the metropolitan city will no longer enjoy universal jurisdiction, but will only act according to the scope of its powers and functions as set out by law. As a newly established governing body, the metropolitan conference, an assembly of all mayors of municipalities within the metropolitan area (Article 1, § 7 and 8 Delrio Law), is aimed at further strengthening coordination between municipal and metropolitan activities. The marginal role of the Regions in this respect is confirmed by the pending constitutional amendment, which does not empower them with an exclusive legislative competence for regulating the general structure and organization of municipalities, but on the contrary upholds a restriction of their power to lay down general principles of inter-municipal co-operation (new Article 70, para. 1 combined with new Article 117, para. 2, lett. p) IC), as developed over the past years by the case-law of the Constitutional Court<sup>XII</sup>.



Finally, metropolitan cities are expected to inherit the tax revenues through which the superseded Provinces were funded; however it is still not clear whether additional taxing powers will be conferred upon to them by the legislature which, until now, has only committed the government to adopting new legislative decrees on funding for Provinces and metropolitan cities (Article 1, § 97 Delrio Law)<sup>xiii</sup>. The precise amount of resources available has, however, not yet been decided and as such the government has continued to finance Provinces and metropolitan cities on the basis of annual ad-hoc contributions<sup>xiv</sup>. Since 2015, the State has limited funding to what it is needed for the discharge of fundamental functions, with the Regions being liable for the remaining amount (State Law No. 190/2014). In this respect, financial autonomy appears to be an issue of the utmost importance, given that metropolitan cities, as the Italian Constitutional Court puts it, are *'entities also enjoying a supranational relevance when it comes to access EU funds'* [§ 3.4.1]. In this respect, the National Operational Programme (NOP) allocated approximately € 900 million euros (two thirds of which were committed under the EU structural and development funds) to finance projects in all metropolitan cities until 2020, including those in Regions with Special Statutes of Autonomy. Other projects are due to be funded through Regional Operational Programmes (ROP). Yet, the absence of a clear strategy as to how *'an EU Urban Agenda should help cities to implement European priorities'*<sup>xv</sup> makes clear that metropolitan cities cannot rely merely on direct European (co)-funding, but on the contrary that they also deserve adequate financial support also by from the State, as Article 119, para. 4 IC mandates<sup>xvi</sup>. However, at present only two out of ten metropolitan cities have budget surpluses, whereas the majority presents huge financial losses which could bring about sanctions by the central government on the grounds of a violation of the domestic stability pact (Trovati 2016)<sup>xvii</sup>. A recent, albeit totally insufficient, *una tantum* support by the central government, consisted in the 2 billion euros special funding of projects developed by metropolitan cities so as to regenerate their suburban communities<sup>xviii</sup>.

In essence, metropolitan cities are territorial authorities with their own powers and functions, distinct from those of the municipalities, by which whom they can however be delegated single tasks, which are likely to be funded not only via State or regional transfers but also by means of local taxes and charges<sup>xix</sup>, but in any case not by compulsory contributions of municipalities as it happens in other jurisdictions for second-tier local authorities (in Germany, for instance). On grounds of their territorial nature, one would



expect at least their main governing bodies, the metropolitan council and the mayor, to be elected by direct and universal suffrage. This, however, is not the case. Both bodies are in fact indirectly legitimized so as to avoid, insofar as possible, conflicting political views between municipal bodies and intermediate local authorities' bodies. Furthermore, for the sake of saving public money, political bodies of metropolitan cities will not receive any remuneration or reimbursement of expenses.

Article 1, § 25 of the Delrio Law, in fact, stipulates that the metropolitan council is elected by mayors and municipal councilors of the municipalities within the jurisdiction of the metropolitan city and not by the citizens living within the jurisdiction of the metropolitan city. Similarly, Article 1, § 19 provides that the metropolitan mayor is by default the mayor of the main urban center (*comune capoluogo*) and, since he is neither assisted by any executive body, nor he has to submit its acts for the council to approve, he enjoys even more power than the previous president of the Province. The Law provides for the direct election of the mayor and the council only as an exception (Article 1, § 22). However, the residual choice for direct election, which is devolved to the metropolitan city itself, but eventually requires the approval of a new electoral law by the Parliament, is subject to the fulfillment of two alternative conditions: the main urban center within the jurisdiction of the metropolitan city should be divided up into several municipalities or, alternatively, metropolitan cities having more than three millions inhabitants (i.e. Rome, Milan and Naples, for the time being) will have to establish 'homogenous areas' within their jurisdiction.

The very purpose of these provisions was probably to soften the strong monocentric features of the metropolitan city model which appears aimed at strengthening the main urban center as a propulsive thrust, to the detriment of the other municipalities. This phenomenon is particularly striking in the metropolitan city of Turin, in which there is the highest number of municipalities (316) and where the metropolitan area extends well beyond the 'narrow' urban agglomeration up to the mountains at the borders with France, being therefore more of a 'city-region' than a metropolitan city. Therefore, it was for cases like this that the Delrio Law provided metropolitan cities with tools for disaggregating and ensuring more pluralism and democratic participation. Notwithstanding the corresponding provisions already set out in the metropolitan Statutes of Autonomy of Bologna and Genoa, the actual chances to bringing about such a shift towards a different metropolitan



city model are very few at the moment, since the whole procedure is dependent upon the agreement of the most populated municipality or main urban center, which only very unlikely would accept such a break up. Only in the case of Milan, Rome and Naples it appears more likely that such a shift succeeds. A modest, yet significant attempt to enhance democratic tools wherever possible is to be found in numerous metropolitan Statutes of Autonomy envisaging prior citizens' participation and consultation at early stages for developing strategic, spatial and mobility plans, with participation drawn also at lower levels than the metropolitan one. However, given the basis of the electoral system designed by the aforementioned statutory provisions, which hardly can be deemed in conformity with Article 3, para. 2 of the European Charter of Local Self-Government<sup>xx</sup>, there is a strong argument that the metropolitan city model is based on a structurally weak form of local democracy in which peripheral entities have little representation whereas the main urban center is the dominant and pivotal actor.

To conclude, metropolitan cities have finally been established after almost fifteen years of non-implementation of the Constitution. The drive for their quick activation outweighed the necessity of complying with a strict bottom-up procedure, involving local communities in their establishment. Yet, by doing so, metropolitan areas ended up being designed not as 'narrow areas' (*aree ristrette*), but as territorial authorities 'over large areas' (*aree vaste*), that is to say also stretching to rural and mountain areas<sup>xxi</sup>, with little consideration for the underlying socio-economic structure and in particular for standards such as the overall population, commuting flows and territorial features. The new metropolitan cities are structured as provinces with 'reinforced powers'. In spite of their strategic importance for urban development, they do not enjoy legislative powers and are not democratically legitimized by direct popular election, and thus find themselves at an intersection between, on the one hand, territorial authorities with their own powers and functions distinct from municipal ones, and inter-municipal bodies, on the other hand<sup>xxii</sup>. Their unclear institutional nature is confirmed by the fact that metropolitan cities have abandoned the Union of Italian Provinces (UPI) as their umbrella organisation and have joined the Association of Italian Municipalities (ANCI), even if they are not, strictly speaking, 'municipalities' but rather coordinate municipalities tasks. The re-allocation of devolved sources of funding, combined with the establishment of a clearer framework on allocation of responsibilities between metropolitan cities and Regions, will tell whether the



former can act as new thriving forces of the local government system, as equals or possibly even as competitors of the Regions.

### **3. Reform Implementation and Constitutional Amendment: Metropolitan Cities vs. Regions?**

The actual impact of metropolitan cities on the Italian local government system firstly depends upon the full implementation of the Delrio Law and in particular on how Regions have been, and will be dealing with the allocation of administrative functions originally assigned to the old Provinces. It is, secondly, dependent on the entering into force of the constitutional amendment by means of which the Italian government cuts out the provincial layer of government as one of the constitutive layers of the Republic and upholds the guarantee of local autonomy for metropolitan cities only.

The two reforms, in fact, go hand in hand. The Delrio Law was conceived as a local government reform anticipating insofar as possible the constitutional amendment passed this year and that will enter into force after the aforementioned popular referendum. As a result, the Provinces were hollowed-out by means of ordinary law, whereas the structure of metropolitan cities was minimally sketched out, on the basis of the provincial model, thus leaving it up to the Regions and to metropolitan cities themselves the task as how to outline their governance model. In this article it will be brought to view that, whereas the Provinces might very well be amalgamated into new bigger entities by Regions, but will not be fully repealed, metropolitan cities will either be involved in co-operative frameworks of local governance with the corresponding Regions or turned into passive recipients of decisions issued at regional level. At present, metropolitan cities have been conferred powers and functions overlapping with regional ones, yet at the same time they are still partly subordinate to the regional government and mostly dependent upon it for funding. This will be made clear by surveying the different Regional Laws enacted by regional councils and the metropolitan Statutes of Autonomy approved so far by the mayors of the metropolitan areas sitting in the so-called 'metropolitan conference'<sup>xxiii</sup>.

First of all, it has to be clarified that as of 2016, only the metropolitan cities of Turin, Milan, Rome, Naples, Florence, Venice, Bologna, Genoa and Bari started operating on time after the corresponding local elections took place in autumn 2014. Reggio Calabria



has, by contrast, not yet been constituted and will be operating as soon as of January 2017. The Regional Laws passed in 2015, by which the Regions reallocated administrative functions, and decided whether some of them had to be carried out together by different levels of government upon agreement, are grounded in the State-Regions Settlement dating back to September 11, 2014. Here, the Regions committed to involve local authorities in the procedure as well as to take into account the corresponding financial needs necessary to fulfill their administrative tasks.

In the Piedmont Region, the legislative assembly passed a Law (Regional Law No. 23, October 29 2015) by means of which it set out the role of the metropolitan city of Turin as a territorial entity, both coordinating the initiatives of municipalities, and fulfilling old and new tasks of a supra-municipal nature. The same was done by the Liguria Region (Regional Law No. 15, 10 April 2015) and by the Tuscany Region (Regional Law No. 22, March 3, 2015), which stressed the double and therefore ambiguous nature of the city as both a territorial authority with autonomous powers and as a functional entity for coordinating municipal activities. In contrast, the Statute of Autonomy of Genoa underlined that the metropolitan city represents the territory, the communities and the entities of which it is composed. The terms employed by the Statutes of Autonomy of the metropolitan cities of Milan, Rome, Venice and Florence are quite similar. In Rome, the Statute also mentions the special constitutional status of the Italian capital city and its significant role in making sure that constitutional organs and international institutions that have their seat within its boundaries can properly operate. A specific issue is how will the relationship between the metropolitan city of Rome and the capital city will be settled; in fact, while the municipality of Rome will have a special constitutional regime, the metropolitan city is already endowed with the same functions as the other metropolitan cities. In Campania, Regional Law No. 66, November 10 2015 merely quoted the term used by legislation, whereby the metropolitan city is a ‘territorial authority over a large area’ (*ente territoriale di area vasta*). Very similar is also the definition provided by the Puglia Region with its Law No. 31, October 30 2015. In Emilia-Romagna, Regional Law No. 30 July 2015 defines it as an authority for governing the metropolitan territory in a unitary manner, whereas the Preamble to the Statute of Autonomy of Bologna stressed its role as a ‘federative entity’ of territories and communities. In the Lombardy Region the ambivalent nature of the metropolitan city is emphasized by Article 1, para. 1 of the Regional Law No. 32, 22 October 2015, whereby it



is defined as an entity aimed at developing the welfare of both the territory as a whole and that of the municipalities. Only the Statute of Autonomy of Bari, by contrast, goes so far as to portrait the existence of a single local metropolitan community. Finally, it needs to be said that all Regional Laws make reference to the need for enhancing and strengthening the role of the metropolitan city as part of the regional local government system, whereas all Statutes of Autonomy highlight the need for preserving the different local identities existing within the metropolitan area, thereby constituting 'homogenous areas' as administrative subdivisions for delivering public services more efficiently and strengthening democratic participatory tools.

As to the scope of powers and responsibilities, one has to consider, on the one hand, the additional administrative functions conferred upon to metropolitan cities by Regional Laws and, on the other hand, how metropolitan cities themselves structured their governance model.

As to the former aspect, one has to further distinguish between the city's own powers and functions, and mechanisms of co-ordination of municipal activities. As mentioned, most provincial functions have been reassigned to metropolitan cities by Regions. But, moreover, also additional powers and functions have been assigned to them. In this respect, in Piedmont the Law is pretty poor, since the Region conferred upon to the metropolitan city of Turin such minor additional tasks as: consultative powers, when decisions on ancient collective rights to use natural resources in private properties or collective rights over lands (better known as *usi civici*) are at stake, the powers to adopt the forestry and pastures plan (*piano forestale*), the organisation and management of the professional education and training system, the management of certain environmentally protected areas and previous provincial functions on public transportation. However, in the case of Liguria, the corresponding Law of Liguria was even poorer, since it retained many former provincial functions at regional level and conferred few additional functions to the metropolitan city, so as that the latter merely retains a consultative role on organisation of professional education and training. In the case of Bologna, the Emilia-Romagna Region deferred to further laws the adaptation of the legislative framework to the role of the metropolitan city. Nonetheless, the Regional Law does stipulate that, for instance, the regional plan of the metropolitan rail service should be passed in agreement with the metropolitan city of Bologna. By contrast, the Law of the Lombardy Region



provides for a detailed specification of fundamental metropolitan fundamental functions on spatial planning, but also on water supply and on the unified management of parks. In Lazio, spatial planning extends to waste disposal and mobility issues for the whole metropolitan city of Rome. In Puglia the regional legislative assembly confirmed the attribution of functions on ‘active policies towards employment’, whereas it deferred to a further piece of legislation a survey concerning the division of responsibilities on public transportation between the Region and the metropolitan city. No significant innovation can be found in Veneto for the former province and new metropolitan city of Venice, whereas in Tuscany the Region endowed the metropolitan city of Florence with consultative powers within the regional competence of landscape planning concerning its territory. It further allowed the metropolitan city to replace municipalities and pass the structural spatial plan (*piano strutturale*) and give instructions to them as to how implement it (*piano operativo*). Yet, the corresponding Statute of Autonomy is very moderate in this respect and did not implement the legislative provision. By contrast, in the metropolitan cities of Rome, Bari, Milan and Bologna the spatial plan is intended to work as a binding reference framework for municipalities within the metropolitan area and could apply specific constraints on the spatial plans issued by municipalities. The Statutes of Autonomy of Bari, Naples and Genoa, in particular, endorse the expansion of the scope of responsibilities of the metropolitan cities, since they aim towards the enactment of one single building by-law or code for the whole metropolitan area, or at least one for each ‘homogenous area’. Finally, the Piedmont Region recognized and committed to the promotion of the role of ‘homogenous areas’ as relevant subdivisions for avoiding fragmentation of public services delivery within the metropolitan city, and in which the strategic and spatial plans could be further detailed. These areas should be designed in accordance with the Region, but, as set out in the Statute of Autonomy, when there is a given majority within the metropolitan conference ‘homogenous areas’ could also be designed also without its consent. In this respect yet, it ought to be remembered that Regions retain the competence of defining the areas for optimal delivery of public services (*ambiti territoriali ottimali*) and thus conflicts with metropolitan cities might arise.

As to the governance model, unlike the Regional Law concerning the metropolitan city of Genoa, in those matters in which the Piedmont Region retains legislative competence (promotion of social and economic development, in particular when it comes to



mountainous areas), the metropolitan city and the Region are required to conclude ad hoc agreements (*intese*). In other words, the Piedmont Region favors a cautious and cooperative rather than a confrontational approach with the metropolitan city<sup>XXIV</sup>. If these agreements concern also actions and projects involving municipalities and consortia of municipalities the latter should also be able to sign the agreement. The role of coordination to be played by the metropolitan city in this respect appears therefore diminished, and bound to the ultimate will of the Region. Furthermore, a generic widespread collaboration is required where informatization and digitalization of the whole metropolitan area are concerned. The same applies to Tuscany and to the metropolitan city of Florence. In Bologna, cross-level agreement is required for measures related to the implementation of the strategic plan and is grounded in a Framework Agreement between the Region, the Provinces and the metropolitan city which was signed in January 2016. Co-operation is institutionalized from the outset also in the Regional Laws of both Tuscany and Lombardy, which foresee the establishment of a ‘Conference Region-Metropolitan City’. Whereas the Statute of Autonomy of Florence is overwhelmingly silent about the relations of the city with the Region, the Statute of Autonomy of Milan stipulates that agreements with the Region ought to be concluded by the metropolitan city for any kind of action planned on its territory, including building of new infrastructures. Moreover, in Lombardy, the regional government stressed its role of overseeing the relations between the metropolitan city and municipalities located outside the metropolitan area. In general, according to the same Regional Law, relationships between municipalities within the metropolitan area, the metropolitan city of Milan and the Region are under a very detailed co-operative framework. In Campania, the Region has not set out any co-operative framework, but it apparently aims neither to delegate functions to the metropolitan city of Naples, nor to endow it with a sufficient degree of autonomy with reference to the oversight of inter-municipal co-operation within the metropolitan area. The same applies to the metropolitan cities of Bari and Venice. In Campania and Veneto, the Statutes of Autonomy of Naples and Venice only generally endorse the activation of co-operative pathways with the regional government in order to define the corresponding competences, but without providing further details.

Metropolitan cities are further subordinate to the regional administrations in the sense that they depend upon them for funding. In fact, at present they are not endowed with



significant taxing powers and the Regions have been funding them using different schemes. Another important feature of the role to be played by metropolitan cities is their possible representation in the Senate, as modified by the pending constitutional reform. In fact, the new Senate is expected to represent various territorial entities, including possibly also metropolitan cities. Therefore, it might be argued that metropolitan cities will increase their political power not only towards the corresponding Region but also towards the State, insofar as metropolitan mayors or councilors will also be sitting in the new Senate together with seventy-four regional councilors; though, this depends on the final wording of the Law regulating the election of the new members of the House. At present, the constitutional amendment mandates that, out of one hundred new members, twenty-one mayors will be appointed by the regional councils of the corresponding Italian Regions with both Ordinary and Special Statutes of Autonomy. The Law, which will be adopted as soon as the amendment enters into force, could for instance foresee a specific quota for mayors of those big municipalities in which the mayor is *ex lege* also the mayor of the metropolitan city<sup>xxv</sup>.

#### 4. Concluding Remarks

More than twenty-five years after their first recognition by an ordinary State Law (Law No. 142/1990), metropolitan cities have finally been established, therefore aligning the Italian legal framework to that of other major European member States, and thereby re-orienting its institutional system towards the development of robust urban clusters aimed at solving connectivity problems<sup>xxvi</sup>.

Metropolitan cities are hybrid administrative entities within the Italian local government system, representing both a metropolitan community, coinciding with the old provincial one, and also the various municipalities located within the boundary of the metropolitan area. The legal order of metropolitan cities is grounded on the principle of differentiation, thus enabling each entity by means of its Statute of Autonomy to extend or restrict powers and functions, as briefly sketched out by State and Regional Laws. Yet, the principle of differentiation does not go as far as to allow for the establishment of completely different institutional frameworks, one for each metropolitan area (as it is the case in other EU countries such as France, Germany or Spain), nor is regional legislation



allowed to transform provinces into new metropolitan cities, even if similar problems exist in other areas of the Republic, for instance around mid-sized cities such as Bergamo, Brescia and Verona. Here, only inter-municipal or, more appropriately, inter-provincial co-operation schemes might help in addressing connectivity issues. Therefore, one could claim that the ten metropolitan cities established by means of law by the Italian Parliament in 2014 enjoy the same institutional features, the most prominent of which is the dominant influence of the main urban center and the rather limited scope of powers and functions which matches to a large extent with that of the Provinces. As it is the case for the Provinces, the funding of metropolitan cities by State and Regions is also precarious so that its overall inadequacy, as ascertained, limited to Piedmont, by the Italian Constitutional Court [Judgments No. 188 (2015) and No. 10 (2016)], has until now unlawfully prevented the full coverage of costs for carrying out properly their administrative functions<sup>xxvii</sup>.

At the same time, however, metropolitan cities are conceived as entities in charge of spatial, mobility and strategic planning. All three powers are expected to be used coherently and consistently with each other. Yet, whereas metropolitan spatial planning might sooner or later result in a competence of groundbreaking importance, mobility and strategic planning may have a softer impact on municipalities, being more of reference frameworks than binding legal acts. In particular, it appears that three years are too short of a period of time for a 'strategic' plan to be in force<sup>xxviii</sup>. Overall, metropolitan cities appear to enjoy in the first place powers aimed at avoiding fragmentation and bringing about harmonisation and simplification among different municipal rules and procedures as well as carrying out mergers and suppressions of a number of local utilities or other administrative structures (e.g. the reduction to one out of two water supply and/or sanitation public utilities within the metropolitan area of Milan or the merger of the ICT departments into one technical body within the metropolitan area of Turin or, furthermore, the appointment of one municipal secretary for both the metropolitan city and the municipality of Bologna). In a nutshell, they are more of planners of public policies than actors fulfilling specific tasks or public services for a given territorial community (Pizzetti 2015). Yet, Regions have been attempting, by means of legislation, to retain their role of coordination and direction: an overlapping of responsibilities appears therefore more than likely. In particular, at present, harmonisation and simplification of rules within metropolitan areas still await concrete implementation. While metropolitan cities, that is to say municipalities of the



metropolitan area, appear partly reluctant to take over the role of pivotal spatial and strategic planning actors, regional governments can play an important role in making this happen. However, together with the State, they can also make it fail. Thus far, in fact, they have been slowing down the process of empowerment of metropolitan cities (as well as of the new Provinces), by delaying the reallocation of the former provincial personnel and by denying or reducing adequate funding.

Upon confirmation of the constitutional amendment by means of popular referendum next December, the progressive ‘regionalization’ of the Italian local government system might be stopped and even reversed. Regions with Ordinary Statutes of Autonomy will probably enjoy less power than today when it comes to setting up and arranging their own local government systems (Gardini 2015; Sterpa 2016), even if they will still enjoy the power to confer administrative functions to the Provinces within their - albeit more limited! - scope of legislative competence. In addition, they might be endowed by the State with the new power to pool together the existing Provinces (current Article 133, para. 1 IC will be in fact repealed), thereby being able to more consistently coerce them into co-operation in order to fulfill certain tasks and achieve economies of scale (as set out already by State Law No. 78/2015). Yet, on the other side, the State will be conferred with the legislative competence to set out provisions concerning the general structure and organisation of ‘entities governing larger areas’ (*enti di area vasta*), i.e. the no longer constitutionalized Provinces (Article 40, para. 4) and, as mentioned, Regions will be prevented from passing legislative provisions setting out principles for the organization of inter-municipal co-operation. In this respect too, also the new Senate will have only a weak say, i.e. it will be able to provide the Chamber of Deputies with modifications proposals, but it will not enjoy any veto power (new Article 70, para. 2 IC). Furthermore, whilst still endowed with the power to establish new municipalities by means of Regional Law, Regions will not enjoy the corresponding legislative power to determine the differential organizations and structures of municipalities located under their jurisdiction and, more in generally, will not be able to depart from the legal framework designed by the Delrio Law by creating new local authorities, unless State legislation stipulates so.

Moreover, metropolitan cities will continuously enjoy a constitutional guarantee of autonomy and will be much more dependent upon the State than upon the Regions as to the regulation of their general structure and organization (even if the new Senate is fully



involved in the legislative procedure according to new Article 70, para. 1 IC), as to how each function should be carried out and to the demarcation of their borders, as well as also being dependent upon the European Union for direct funding. In their own jurisdictions, metropolitan cities might therefore increasingly replace Regions insofar as specific responsibilities in matters of planning and inter-municipal co-operation are concerned, yet the latter will probably continue resisting this trend of hollowing-out, for instance by requiring the conclusion of specific agreements on certain issues, by giving instructions or by exercising some sort of oversight on given acts which should be coherent with those issued by the Region.

To conclude, one might argue that two years after the enactment of the Delrio Law, the practice shows that, on the one hand, institutional pluralism at local level has been strengthened through top-down measures reinforcing the principle of differentiation, thereby making co-operative mechanisms between Regions and local authorities even more necessary. On the other hand, Italian regionalism as conceived by Italian constitutional reform in 2001 might be in crisis, not only on the grounds of the growing competition with metropolitan cities but most notably on the grounds of the constitutional amendment which is to enter into force as early as next year, if the referendum goes through. Over the past fifteen years Regions have not been able to stand out and gain appreciation and respect, neither for their innovative pieces of legislation, nor for the public policies they pursued, but they have evolved into decentralised entities of the State either delegating administrative functions to local authorities or carrying out administrative functions in their own name, therefore also competing rather than co-operating with Provinces and municipalities.

The Delrio Law and the pending constitutional amendment uphold this general trend of regional 'administrativization' (Gianfrancesco 2014, Ferrara 2014 and Morrone 2016), thus formally reframing Regions from being territorial entities conceived as legislators and managers of local public services into public authorities carrying out or delegating administrative functions to lower local authorities or, at most, exercising the power to direct, guide, coordinate and orientate local authorities and the conduct of their financial relations. In this respect, therefore, unlike what has been emphasized by the different Regional Laws so far, competition rather than fruitful co-operation between Regions and metropolitan cities appears all but unlikely, both being designed as major 'governance



bodies' with structurally overlapping responsibilities.

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<sup>I</sup> For pointed comments on some reform proposals of that time see Crosetti 1989.

<sup>II</sup> See for instance Aquarone 1961 and Trimarchi 1972.

<sup>III</sup> In this respect, it is no chance if even the Explanatory Memorandum to the Council of Europe Draft European Charter of Local Self-Government (1981) regarded inter-municipal co-operation as the current European '*solution to the problem of relations between an urban agglomeration and suburban communities*'. See: CPL (16) 6 - Explanatory Report to the Draft Charter (so-called *Harmegnies Report*), Article 9, 29. Over the years, however, the Council of Europe developed a more appropriate attitude towards the urban phenomenon. See in particular: the European Urban Charter (1992), the European Urban Charter II - Manifesto for a New Urbanity (2008) and Congress of Local and Regional Authorities Recommendation No. 188 (2006) on good governance in European metropolitan areas.

<sup>IV</sup> Except for Regions with special Statutes of Autonomy in which local government systems could be structured along different lines. See *inter alia*: Italian Constitutional Court, Judgments No. 61 (1958), No. 9 (1961), No. 52 (1969), No. 164 (1972), No. 62 (1973). So also Staderini 1989: 52 and ff.

<sup>V</sup> On the various past efforts to establish metropolitan cities in the Italian legal order see Brancasi and Caretti 2010.

<sup>VI</sup> Italian Constitutional Court, Judgment No. 220 (2013), in which the Court considered that a 'structural reform' involving the reorganization of the local government system as a whole cannot be passed by government by means of a Law Decree pursuant to Article 77 of the Italian Constitution, which is suited only for passing measures under extraordinary conditions of necessity and emergence. On this judgment see Boggero 2014.

<sup>VII</sup> Named after the then Minister responsible for Local and Regional Government, Graziano Delrio.

<sup>VIII</sup> As for Regions with Special Statute of Autonomy, they are empowered to establish and regulate themselves metropolitan cities. In particular, Sicily set up the metropolitan cities of Palermo, Catania and Messina (Regional Law 4 August 2015, No. 15), whereas Sardinia the metropolitan city of Cagliari (Regional Law 4 February 2016, No. 2). See: Di Maria 2016 and Riviezzo 2016. By contrast, the Friuli-Venezia Giulia Region aims at establishing the metropolitan city of Trieste after amendment of its Statute of Autonomy, which however requires a constitutional law to be passed by the Italian Parliament.

<sup>IX</sup> In this respect, it ought to be born in mind that the metropolitan city has not to be confused with the municipality of the main urban center which will continue existing. So, for instance, the municipality of Turin continues existing along with the metropolitan city of Turin.

<sup>X</sup> Critical towards this inflexible demarcation of the metropolitan areas were many constitutional lawyers including Spadaro 2015 and Lucarelli 2014.

<sup>XI</sup> On this judgment see *inter alia*: Patroni Griffi 2016 and Longo and Mobilio 2016: 15-18.

<sup>XII</sup> With enactment of the Law Decrees No. 78/2010 (Article 14) and No. 95/2012 (Article 19) the Italian legislature mandated that, for municipalities with a population under 5000 inhabitants, all basic administrative functions ought to be carried out by consortia of municipalities (*unioni di comuni*). The Italian Constitutional Court found that the legislative power of the Regions to regulate the subject matter 'inter-municipal co-operation' was not curtailed by State legislation [(Judgments No. 22 and 44 (2014))]. On the first judgment see the comment by Cortese 2014.

<sup>XIII</sup> In the past see already Article 15 of State Law No. 42 (2009) which delegated the central government to set out the framework for funding metropolitan cities by conferring them new taxing powers.

<sup>XIV</sup> Since 2012 for the Provinces and as of 2015 for the corresponding metropolitan cities the central government has dramatically cut transfers, thereby compromising their everyday operations. See e.g. Agnoletti, Ferretti and Lattarulo 2015.

<sup>XV</sup> Commission Staff Working Document – Results of the Public Consultation on the Key Figures of an EU Urban Agenda, SWD (2015) 109 final/2. As quoted by Pasqui 2016: 153-160.

<sup>XVI</sup> A proposal on how to finance metropolitan tasks was made by Bordignon and Ferri 2015.

<sup>XVII</sup> Most recently, a piece of legislation was passed by the government (Law Decree No. 113/2016), whereby financial sanctions were - at least temporarily - cancelled.

<sup>XVIII</sup> D.P.C.M. (Decree of the President of the Council of Ministers) 25 May 2016 – '*Programma straordinario di intervento per la riqualificazione urbana e la sicurezza delle periferie*', (GU Serie Generale n. 127 del 1-6-2016),



available at: <http://www.gazzettaufficiale.it/eli/id/2016/06/01/16A04166/sg>.

<sup>XIX</sup> Cf. Unione delle Province italiane (UPI), *L'attuazione della legge n. 56/2014: il riordino delle funzioni delle Province e delle Città metropolitane e l'accordo in Conferenza unificata*, available at: [www.upinet.it](http://www.upinet.it), 3 July 2014.

<sup>XX</sup> See most recently: Congress of Local and Regional Authorities, Resolution No. 407 (2016) *on good governance in metropolitan areas*, CG31(2016)17final, 21 October 2016, § 16, lett. d) and also Recommendation No. 392 (2016) *on good governance in metropolitan areas*, CG31(2016)17final, 21 October 2016, § 11.

<sup>XXI</sup> On the notion of 'area vasta' see the contribution by Luther 2014: 7 and ff., who claims that the term 'area vasta' evokes a functional rather than a political conception of local governance, whereby large spaces ought to be governed by administrative law, in particular through organs charged with planning and programming powers.

<sup>XXII</sup> See in this respect also Tubertini 2015.

<sup>XXIII</sup> In this respect see already: Lucarelli, Fabrizzzi and Mone (eds) 2015, and the supplement published in 2014 by the Italian law journal *Istituzioni del federalismo* (AA.VV. 2014).

<sup>XXIV</sup> See in this respect also: Orlando 2016: 5.

<sup>XXV</sup> A similar request was made by the Association of the Italian Municipalities (ANCI) while heard in the Italian Parliament on the merits of the constitutional reform back in 2014. See ANCI, *Riequilibrare composizione Senato con Sindaci Città metropolitane e capoluoghi*, available at [www.anci.it](http://www.anci.it), 21 October 2014. No such a provision can however be found in the draft law submitted to the Senate in January 2016. See Senato della Repubblica, XVII Legislatura, Disegno di Legge – Norme per l'elezione del Senato della Repubblica (presentato dal sen. Fornaro et altri), available at: [www.senato.it](http://www.senato.it).

<sup>XXVI</sup> On the European experience see most recently Carrer and Rossi 2014.

<sup>XXVII</sup> On the first of these two judgments by the Italian Constitutional Court see Boggero 2015.

<sup>XXVIII</sup> This is the reason why some scholars suggested that the strategic plan should be a 'work-in-process' and the three years time just a deadline after which the metropolitan city has to give a formal feedback and check whether the plan is still up to date and to what extent can be amended. So: Orioli and Martinelli 2016: 116-117 and 134-135.

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