ARTICLES

IS THERE REALLY A FISCAL FEDERALISM IN ITALY?

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Abstract

The provisions under comment do not prefigure full financial independence of the regions and local bodies (even if most of which are free of allocation restrictions) for the following different reasons. Taxes decided by regions are only a few. Besides, the State intervenes in favour of poorer institutions through two different means "an equalization fund" and "additional financial resources". The latter are bound to be used only for certain objectives. To ensure equality, the State identifies "basic performance levels" that must be guaranteed throughout the country, without being able- to date- to determine their costs, but by referring to a yet undefined, "cost standard". Finally, the contents of the law are not well-defined and insufficient to satisfy the constitutional requirements concerning legislative delegation.

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1. Financial independence of territorial governing bodies

In order to present a correct scenario of the context for fiscal federalism, the guidelines of which are included in law 42/2009, one must observe that its introduction, implemented through the reform in Title V of the Constitution, was preceded by considerable decentralisation in the '90s: administrative, political and financial, addressed to giving local bodies more independence and responsibility[1]. This involves a combined number of extremely vast interventions that introduced large-scale changes under an "unaltered constitution" into the function and activities of the aforesaid bodies. Hence, the confirmation that the federalism trying to be implemented today, foreseen through various constitutional provisions, does not appear new so much as intervening on a basis of governing bodies, already supplied with a wide margin of independence[2].

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1 In the '90s, financial decentralisation was accompanied by considerable simplification that led to the abolition of some minor regional taxes, among which was Local Income Tax (ILOR). In general, see P. Liberati, *Il federalismo fiscale. Aspetti teorici e pratici* (2003) 96, in addition to law 133/99 "Disposizioni in materia di perequazione, razionalizzazione e federalismo fiscale", followed by the implementation law 56/2000. These years also saw the provisions concerning the financial difficulties of municipalities. Note that also the system created through the consolidation act of 1931, concerning local finances, was characterised by giving increased responsibility to persons in authority, able to impose various taxes, for example, taxes on consumer goods, authorised by the State.

2 The financial independence of local governing bodies, condensed in the TUEL (decree 267/00, Art. 149-269), was developed as a consequence of State legislation, without constitutional interventions. Tax independence received a decisive boost through the institution of the Local Property Tax; see G. D'Auria, *Funzioni amministrative e autonomia finanziaria delle regioni e degli enti locali*, 5 F. I. (2004) 218. According to Assonime, *Elementi di riflessione sull'attuazione del federalismo fiscale*, an unpublished document from December 2008, the share of expenses managed by local self-governments in 2006 was 31% of overall public expenditures (e.g. health expenditures are almost totally administrated on a local level). On the subject of financial decentralisation, see, lately, V. Visco, *Federalismo, come migliorare*, in "Il Sole 24Ore" of 14 February 2009. According to Visco, local expenses

The motivating theme behind this law, which distinguishes it from previous measures, is that of attributing considerable financial independence to local bodies to emphasise their responsibility[3]. From this point of view, the law foresaw the abolition of transfers without indicating the costs for federalism that the Minister of economy and finance declares having been ignored to date. Under these conditions, the cancellation of transfers has not led to the identification of other revenues acquired independently, which, in any case, should have been preceded by identifying the administrative functions to be financed, particularly those involving municipalities.

In addition, in 2008 verification was made of a reversal in the trend to reduce the financial responsibility of local governing bodies asserted during the 1990s. In fact, the necessity to acquire resources induced the government to abolish the Local Property Tax (ICI) on the first home and keep the municipalities from using any additional Personal Income Tax[4]. These measures had a negative impact on the financial independence of the bodies. To be complete, independence must concern expenditures carried out without allocation restrictions. However, even before this, investments must be made of revenues[5] that can be called independent with respect to the centre, when all of the tax components can be determined at a local level:

based on own revenues rose from 5 to 45% of global expenses from the Nineties to date.

[3] Apart from this attempt, which does not reach the results announced by the legislature, one should remember that the reading of the same Art. 119 of the constitution, which may now be legally implemented, appears to suggest that the constituent legislature willingly let the ordinary legislature define the forms and limits of independence, leaving the constituent legislature with its mere acknowledgement. On this subject, see G. D'Auria, *Funzioni amministrative*, cit. 219. For a general examination of the scope of Art. 119, see G. Fransoni and G. della Cananea, *Commento all'art. 119*, in *Commentario alla Costituzione*, edited by R. Bifulco, A. Celotto, M. Olivetti (2006) 2358.

[4] About this aspect, see the comment by Franco Ancillotti, in *Questa rivista*.

[5] A. Pedone, *Finanza pubblica e decentramento nella forma di Stato*, in *Valori e principii del regime repubblicano*, vol. 1, II, *Sovranità e democrazia* (2006); P. Liberati, *Il federalismo fiscale:* cit. 91.

persons, purpose and rates. It is lessened if the governing body is only able to act on one of these components and is further restricted if the body is only able to act within ceilings predetermined by the regulations.

However, it is necessary to add that the financial independence of local bodies is to be expressed in observance of the principles connoting concurrent regulations, such as those requiring the achievement of substantial equality among citizens and the progressiveness of the tax. Also acting on the financial independence of all governing bodies are the interventions on the budget required by the European Union and those that impose revenue redistribution[6]. Hereto are added the provisions of our constitutional charter, directed at implementing a tax equalisation (Art. 117, para. 2, letter e) of the Italian Constitution and 119, para. 3), said provisions being necessary for civil progress, social cohesion, the political and economic unity of the country as well as to guarantee the effectiveness and overall upholding of the legal system[7].

Consequently, when reference is made to the financial independence of local governing bodies, one should keep in mind the obstacles that hinder its full execution. Although the legal systems are progressively recognising more expansive independence to local governing bodies, they simultaneously require that those needs, qualifiable as essential, are uniformly protected across the country. Furthermore, they require that some infrastructures, which guarantee the economic and cultural development of Italian society, i.e. telecommunications or transport, are gu215aranteed throughout the country[8].

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[6] R. Musgrave, *The theory of public finance* (1959); W.E. Oates, *The political economy of fiscal federalism* (1977).

[7] G. della Cananea, *L'insostenibile onerosità dell'attuale "federalismo fiscale", gli accorgimenti per porvi rimedio*, Introduction to the Svimez Conference of 4 December 2008 on *Il federalismo fiscale preso sul serio: differenze, perequazione, premialità*, 20 Quad. Svimez (2009) 9.

[8] One deduces from this that, in the current economy, financial independence cannot concern all spending carried out without allocation restrictions. On an international level, a so-called fiscal unbalance is observed in all federal systems, meaning that no sub-

In addition it is necessary to state that the Italian federalism, in order to avoid the risk of deepen the geo-economics divide, belongs to the category of cooperative federalism, adopted to avoid a deep division between North and South. In this perspective, in order to share legislative competences between State and regions, different instruments of cooperation in political decision have been introduced. The first is the principle of "fair cooperation" between State and regions, often referred to the relationships with local government too. By enforcing it, the political decision should be preceded by a formal agreement between State and regions, regarding shared competences or social or economic interest.

Secondly, it should be mentioned the principle of subsidiary, that allows administrative activities to be developed close to the citizens and managed by local government bodies, unless these activities are better performed at a superior level. Some scholars think that cooperative federalism is opposite to competitive federalism. This idea is not completely correct because the opposite of cooperation is conflict, while the competitive federalism means that regional or local governments compete with other regional or local government. Furthermore, it is difficult to conceive a competitive federalism in a legal system like the Italian one, in which the State, intending to avoid differentiating between rich and poor regions has set up several tools to even out disparities between different geographical areas.

2. Independent regional resources

The constitutional reform of 2001 had to take this double culture into account. On one hand, Art. 119 asserts that financial independence become a means for governing bodies to fix and apply their own taxes[9]. On the other, the existence of an equalising fund is provided for that is

central governments are financially independent. To different degrees, all of them depend on the federal government for substantial transfers.

[9] Art. 119, of the Italian Constitution para. 2.

legally fixed by the State for each territory as well as "additional resources" and special interventions from the State budget, restricted to reaching determined purposes, as indicated in paragraph 5.

The law that sets forth the implementation of Art. 119 did not, however, find a satisfactory formula that allows governing bodies to have financial independence, even anchored to the European community, equalising above-mentioned needs and substantial equality. Instead, it appears to lean much more towards State interference in local finances than was expected, without such interference constituting an effective counterweight against the local nature of the taxes, hence resulting in the danger of reinforcing the inequalities between the North and South.

Actually, it seems as though the law aims at only protecting the wealthy regions through the local nature of the taxes, leaving the State responsible for fixing the taxes, which the other regions will adapt to their own needs, as well as responsible for distributing the equalising fund.

The most significant provisions, which deal with the financial independence to be attributed to the bodies indicated in Art. 114, para.1, of the Italian Constitution, are those contained in Art. 7, "Principles and directive criteria concerning regional taxes and sharing in tax revenues" and Art. 9, "Principles and directive criteria with regard to determining the entity and distribution of the equalising fund to the benefit of the regions". The foregoing clash with the central theme of fiscal federalism and point out the uncertainties of the legislature, which appears to promise, in words, what is then denied in fact. Other sections to be mentioned are 8 and 10 to 14, in which the various principles and directive criteria are indicated, particularly those regarding the financing of regional functions and other local bodies, in addition to Art. 27, dedicated to the finances of regions with a special status.

Among the provisions noted above, Art. 7, dedicated exclusively to the finances of ordinary-status regions, is the most relevant. Section 7 sets forth that the regions "dispose of their own taxes and shares in tax revenues" (able to finance expenditures derived from the exercise of offices

entrusted to their exclusive and concurrent jurisdiction, as well as expenses relative to matters under exclusive State jurisdiction, over which the regions exercise administrative power).

The shared funds (essentially concerning VAT, which produces a very high, constant revenue) are shares of taxes, as per State law, even if they may refer to an agreement made at the State/Regions Conference. Specifically, the State identifies the revenue and extent of the share to be transferred to the region. The transfer of funds is based on indicators that may concern fiscal capacity, exigency, etc., made explicit by law. As one can see, the shared funds[10] are not very different from the old transfers, which were expressly abolished through Art. 8, para.1, letter f) of law 42/09, except for the fact that, contrary to the transfers, the resources received through shared funds have no allocation restriction. However, assessing this freedom of expenses, it is difficult to see these taxes as an expression of financial independence of the recipient. In fact, through fund-sharing, the amounts regions can collect depend exclusively on central government choices (on shares and basis of taxation). On the other hand, the Constitutional Court confirmed[11] that a tax fixed through State law cannot but belong to the State.

One might observe that the region can only indirectly influence the share funds. Given the circumstance that this is a tax anchored in the territory in which it was levied, the wealthiest region will benefit from a higher share. Hence, the system favours the North over the South.

Aside from the shared funds, the legislature regulates taxes known as "regional taxes". In particular, according to the legislature (Art.7, para. 1, letter b)), regional taxes are understood as:

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[10]According to P. Bosi and M.C. Guerra, *I tributi nell'economia italiana* (2009) the shared funds are shares of a tax from a level of government ascribed to another level of government. The same meaning is also attributed to own derived taxes. See note 11.

[11] Decision no. 296/03. See F. Gallo, *Ancora in tema di autonomie tributarie delle regioni e degli enti locali nel nuovo titolo V della Costituzione*, 4 Rass. Trib. (2005).

1) own derived taxes, set up and regulated by State laws, the revenue of which is attributed to the regions;

2) additional of State taxes reserved for the regions;

3) own taxes of the regions.

Concerning own derived taxes, first of all, by lexical definition, one can see that, if the taxes are regional, they are not derived, and if they are derived they are not own taxes. The characteristics of taxes regulated by law confirm this last observation. In fact, the own derived tax regulated through Art.7, para. 1, letter b) is not imposed by regional law[12]. In this case, the tax is set up through State law and the revenue is allocated to the regions that can change some aspects of the share within the limitations indicated by State law. Hence, this tax is not very different from the fund-sharing. But if own derived taxes are similar to the shared funds and the latter to the transfers, one can assert that most of the financings are, even now, based on taxes not unlike the (old) transfers that generated derived financing. The conclusion is that the reform only changed the name of the transfers. The definition of own derived tax given in the economic doctrine does not help clear up this situation. It is actually quite neutral, describing it as a tax regulated by a law "the revenue of which is allocated at a lower level of government"[13].

The second group of taxes, placed within the denomination "regional taxes", is made up of additional taxes. These are generally on Personal Income Tax (IRPEF) and regional taxes on production activities (IRAP) and are also set up through State laws, in which a State tax is recognized. This law sets forth a share that varies from a minimum to a maximum ceiling, within which regions may

[12] From a general point of view, it is also possible for the region to set up an own, allocated, derived tax in favour of a lower government level. The tax is usually set up through a State law (or regional) and its revenue is allocated on a lower government level.

[13] Thus, the State can enact an own, derived tax, the revenue of which is transferred to the regions and the latter could do the same to the benefit of their municipalities. See, P. Bosi and M.C. Guerra, *I tributi nell'economia*, cit. 222.

act. Unlike the fund shares, regional discretionary power over additional taxes, although limited, does exist. In practice, it consists of the possibility of choosing the share, within the ceilings indicated by the State, and providing for exemptions detractions, deductions or reductions for some categories of taxpayers, through regional law, within the limits and according to the criteria fixed by State law. In this theory, too, the amounts supplied are not restricted and the tax is always based on the principle of territoriality ex sect. 119 of the Italian Constitution[14]. With reference to municipalities, in 2007 over 2,100 out of 8,100 municipalities did not apply the share allowed by an additional tax and only 1,300 applied the minimum share[15].

The third group of regional taxes regulates those that can be unquestionably defined as the governing body's. These taxes are set up by the regions, through their own laws, on matters not covered by State taxes[16]. Among these fall "target taxes", introduced through the finance act for 2007. The target may be represented by a public works operation, in which case it would be reasonable for their introduction to be preceded by a declaration of consent from the citizens. It could also be a tax on tourism, which penalises non-residents.

For example, in 2006, the region of Sardinia imposed a tax law[17] on second homes and tourist layovers, called a "luxury tax". The Constitutional Court intervened on this

[14] In the past, too, some regions provided for an additional tax with progressive connotations, others provided for categories.

[15] Almost 3,500 municipalities exceeded the minimum ceiling, but remained within the ceiling allowed (0.9-2%). A further 1,200 exploited the higher possible increase. (Data from ISAE – Institute for economic, analytical studies), Report in *Finanza pubblica e istituzioni*, Rome, June 2009. Also in 2007, 30% of the municipalities varied the share compared to the previous year.

[16] See F. Gallo, *Il nuovo articolo 119 della Costituzione e la sua attuazione*, in F.Bassanini and G.Macciotta (eds.) *L'attuazione del federalismo fiscale* (2003).

[17] Region of Sardinia: l. no. 4/06, various provisions concerning revenues, social policies and development, and no. 2/07, finance act for 2007.

tax, which can be linked to "advantageous taxation"[18], through decision 102/2008. Regarding the tax on tourist layovers, burdening persons or organisations, domiciled outside the regional territory for tax purposes, the Constitutional Court posed the question of whether an exemption might be seen as State aid to residential businesses on the island, that are burdened by lesser charges[19]. It resolved its own doubt by recalling the very clear orientation of Community jurisprudence[20].

2.1. Specifically, the equalising fund

Another financial resource for the regions is the one provided for in Art. 9, which regulates revenues derived from the equalising fund, fed by VAT. Here, too, the fund is set up through State law, which also determines the methods to follow in distributing the amounts, and is not ascribed to regional financial independence. As one can see in the preliminary documents of the law, the setting up of the fund, already provided for in Art. 119, para. 5, of the Italian Constitution, reasserts the will of the legislature to stress the central role of the State in the equalisation process[21]. That is why vertical equalisation between the State and the regions was chosen, instead of horizontal

[18] The decisions on tax policies, addressed to reducing tax levies in a particular territory, in order to support the localisation of economic or production activities, are ascribed to advantageous taxation.

[19] Having considered the margins of interpretive uncertainties, the Constitutional Court handed over the documentation to the Court of Justice.

[20] Through the Azores decision, the European Court of Justice (6 September 2006, case no. C. 88/03) issued a declaration on a fiscal regime arranged for the independent region of the Azores, which provides for a reduction of income tax to the benefit of local economic operators. It clarifies that, in order to decide whether or not a tax reduction is a State aid, one must evaluate: the true degree of autonomy of the local government; the participation (or absence of participation) of the State in the decision-making process; and non-compensation of the lower local income through State transfers.

[21] See Calderoli, in the House on 15 January 2009.

equalisation[22]. The Constitution leaves two tasks to the State legislature: identification of territories with a lower fiscal capacity, who shall be the beneficiaries of the fund, and determination of the extent of the equalisation. This is traced back to two constitutional provisions. The first, Art. 117, para. 2, letter m), provides for the State assuring the financing of essential levels of services concerning civil and social rights. The second, contained in Art. 119, para. 4, stipulates that the entirety of the resources derived from the revenues of local governing bodies, including the equalisation share, must allow for the total financing of attributed public functions. So, the entirety of the resources described up to now would be used to finance the services that fall within essential levels of services and other public functions.

The fund functions to reduce, not eliminate, the different fiscal capacities of inhabitants among the territories. Reduced fiscal capacity is measured on the regions with more fiscal capacity, or, rather, those in which the tax revenue per capita exceeds the national average and which, for this reason, do not receive resources from the fund. In this specific case, the region of Lombardy was excluded from the distribution[23].

More specifically, the equalising correction does not occur by following a territorial criterion, but, rather, exigency. It ensues when regional resources do not cover standard requirements as a result of reduced, per capita fiscal capacities, hereby avoiding that governing bodies with lower fiscal capacities benefit from surplus resources upon receipt of the equalisation share. This way a strict relationship between equalisation and need emerges.

As regards the amount of *per capita* fiscal capacity, one can further observe that an insufficient fiscal capacity

[22] According to some commentators, this is mixed equalisation: neither completely vertical nor completely horizontal.

[23] An equalisation was theorised to benefit poor regions with 50% of the differences. Since the taxable basis of Calabria is 40 and that of Lombardy is 100, the difference between the two regions is 60 points; with an equalisation of 50%, this difference would be reduced by half (30) which, added to 40, becomes 70.

coincides, indeed, with a low rate of taxes paid, but the low rate may result in scant incomes received from taxpayers, or be derived from a more or less sizeable tax evasion or merely inefficiency. Thus, the law (Art. 9, letter b)), in agreement with Art.119, of the Italian Constitution, para. 4, correctly provides for revenues from the equalizing fund serving to reduce the differences between rich and poor regions, not fill up resources. If action should be taken in the second direction, regions with lower fiscal capacities would not have any interest in fighting against evasion and inefficiency [24].

The revenues described until now, coming from shared funds, derived taxes, own taxes and the equalising fund, are of a territorial nature, as regards both receipt and supply, except for the equalising fund; the resources of the latter are distributed on the basis of need. Furthermore, all supplied resources are free from allocation restrictions.

Vice versa, revenues regulated by sections 8 and 16 of the law have restricted allocations. Through these provisions, the legislature refers to the aims indicated in Art. 119, of the Italian Constitution, para. 5, concerned with the promotion of economic development, cohesion and social solidarity in favour of some territories. The purpose of the above is to remove economic and social imbalances, support the effective exercise of rights of the person or provide for aims differing from the normal exercise of the functions. These interventions, among which are those co-financed by the European Union, constitute additional resources or special interventions benefiting particular territories. They are not set apart by their purpose, but by the source of their financing (the State), the fact of being special and, thus, do not involve all territories and have a restricted allocation.

To be mentioned among the sources of revenue is borrowing, which can be used solely for investments, in accordance with Art. 119, of the Italian Constitution, last paragraph. Of course, the magnitude of the resources that

[24] The regions with only a few inhabitants, resulting in lower revenues, will receive a higher share from the fund.

can be received by the governing bodies indicated in Art. 114 will depend, in this case, on the magnitude of the investment expenditure, which positive law and, above all, case law shall accept[25].

3. Regional expenditures

Having identified the types of revenues, the law indicates their allocation, founded on tripartition.

In the first place, those resources used to finance the essential levels of services laid down by State law are taken into consideration. All other functions follow under the residual category of non-essential levels of service. Finally, there are special contributions for the implementation of Art. 119, of the Italian Constitution, para. 5. In general, the aspects of the latter are not problematic, being relative financial interventions, if any, allocated to individual territories for pre-established purposes[26].

As for the first group, health and welfare fall under the essential levels of services as well as some aspects of local transport. With regard to education, this only concerns the carrying out of administrative functions ascribed to the regions by the laws in force. Nonetheless, paragraph 3 of Art. 8, which poses the "principles and directive criteria regarding the operating methods for legislative jurisdiction

[25] See the National audit office, case law section. Umbria, 8 April 2008, no. 87/E.L./08. The decision of Umbria distinguishes between capital account expenses, within which the prevailing concept is the company element of using financial resources allocated to production processes, and investment expenditures, where the patrimonial vision of expenses for producing goods not allocated to consumption prevails, constituting true permanent endowments for use by local communities. Recourse to borrowing may occur: through taking out a standard loan, a bond loan, securitisation or opening a credit. See M. Smiroldo, *La garanzia degli equilibri di bilancio degli enti della finanza pubblica allargata: la costituzionalizzazione della* golden rule *e la sanzione per l'inosservanza del divieto di ricorso all'indebitamento per il finanziamento di spese diverse da quelle d'investimento*, 4 LexItalia.it (2006) para. 4.

[26] Numerous matters are assigned to the legislative and administrative jurisdiction of the regions by the Constitution. Among these, and apart from health care, are tourism, the hotel industry, local city and rural police and viability.

and means of financing", seems to qualify all expenses related to the aforementioned matters as essential. This would imply that the entire health expenditure would fall within essential levels of services. But it is not like that, since Art. 117, para. 3, refers the "protection of health" to the concurrent jurisdiction of State and regions[27].

All other expenses which are not used to guarantee the essential level of care belong to the residual category of expenses for non-essential services. But expenses for non-essential services may, in turn, be divided into two groups: belonging to the first group are expenses that concern obligatory functions, such as the running of statutory bodies. In accordance with Art.119, para.5, these, too, must (or should) be completely financed through the revenues indicated above[28].

A second group of expenses for non-essential services includes those referring to non-obligatory functions that may only be carried out if there are sufficient revenues. For example, quality improvement of health treatment not included in essential levels of services[29].

4. Standard costs

Having mentioned the expenses to be covered, it is necessary to examine the basis for the financing. Article 8, para.1, letter b) instructs that the expenses for essential services are determined in observance of the standard costs to be supplied throughout the regional territory.

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[27] Similar considerations may be formulated apropos welfare, a matter of residual jurisdiction of the regions, and education, a matter over which the State has exclusive jurisdiction concerning general regulations.

[28] Section 119, of the Italian Constitution, para. 4, instructs that "Resources derived from sources as per the paragraphs above allow Municipalities, Provinces, metropolises and Regions to entirely finance the public functions ascribed to them".

[29] According to G. Stornaiuolo, *La* devolution *nella Sanità*, 1-2 Riv. ec. Mezz. (2002) 47, this may occur if the regions use the tax independence acknowledged to them.

The standard cost, the true "Silent guest of the law"[30], should be determined on the basis of the costs that more efficient administrations[31] bear for services rendered[32]. Once identified, these costs are extended across the country. Moreover, the text of the law does not reveal any forecast of other factors that might directly influence the standard cost[33], such as the infrastructural deficit, population density, percentage of elderly residents requiring more health services, and the morphological characteristics of the regions, all elements on which the cost for producing goods and services depends[34].

Since the standard cost reflects real need and does not integrate levels of inefficiency, in order to meet the needs of less efficient regions, this cost, if referred to essential levels of service, is identified in full collaboration with regions and local bodies[35]. Calculation of each service cost based on expense levels for average efficiency should stimulate less worthy governing bodies to improve the quality of the services supplied. But this still does not solve the case of the region whose revenue does not cover the supply of services indicated in the essential levels of

[30] The definition "Convitato di pietra", i.e. "Stone guest in the feast", is from Fabio Pammoli in "Il Sole 24 Ore" of 25 March 2008. It has been used by Molière in "*Don Juan, ou Le festin de pierre*".

[31] That adopt criteria of efficiency, appropriateness and validity.

[32] The problem hits the necessary standardisation of services that do not change their value even if they follow methods of supply that differ from authority to authority.

[33] See F. Puzzo, *Prime considerazioni intorno alla legge delega di attuazione dell'art. 119 della Costituzione*, in www.astrid.eu (May 2009); on standard costs, see. E. Buglione, *Il finanziamento delle regioni nella legge delega in materia di federalismo fiscale: alcune prime osservazioni*, 2 Riv. Trim. Isle (2009) 465.

[34] A regime, differing from the one indicated, is provided for local public transport. Hereto, other than the standard cost, the "supply of an adequate service throughout the country" is taken into account" (Art. 8, para. 1, letter c)). However, as observed by E. Buglione, *op.ult.cit.*, 476, concerning local transport, for which the regions carry out an important role, the law made under delegate power "is extremely vague how this function is to be financed".

[35] Although one might doubt that a region exists, in which all services are uniformly efficient.

services. In this theory, if the difference between standard cost and real cost of obligatory services should be covered by the region through its own revenue, could the region finance the essential levels of services by introducing a tax for this purpose? Could it use the contributions provided for in Art. 119, of the Italian Constitution, para. 5, for the same purpose, if they pertain to "social solidarity" and "benefit the exercise of effective rights of the person"? In this sense, clarification must be supplied by delegated decrees[36].

Regional finance is also mentioned in Art. 14 of the law, which provides for the "additional forms and particular conditions of independence", provided for in Art. 116, of the Italian Constitution, para. 3, being financed through the same law that acknowledges them.

All these questions, till now without an answer, rise the problem of the reform's enforcement. In addition, is necessary to take in account that, different variables should be evaluated with attention because they will play an important role on the success of the reform. Among these crucial variables, there is the amount of the "equalising fund" e the concrete definition of other relevant equalising mechanism to promote the economic development or for social tasks and, eventually, the definition of standard costs, till now unknown.

5. Finances of special-statute regions

Article 27, "Coordination of the finances of special-statute regions and independent provinces" is dedicated to the finances of special-statute regions. It specifies that special regions and the independent provinces of Trento and Bolzano also contribute to achieving the objectives of equalisation and solidarity, as well as the convergence

[36] One must remember that 41% of the municipalities have effective expenses higher than the standard. This can be seen in Basilicata (in 63.57% of the municipalities), in Campania (in 55.7%) and in Emilia Romagna (in 55%). On the contrary, 78% of the municipalities in Liguria and 77% of those in Veneto have effective expenses lower than the standard. See Rapporto Isae, *Finanza pubblica*, cit. 2009, 9.

agreement as per Art. 17. These same regions must also discharge Community obligations, according to the methods provided for in the respective statutes, in order to define the surmounting of historic expenses and pursuit of solidarity objectives. However, the obligations thereto may not be imposed on special regions through ordinary law, since their statutes have outstanding importance with regard to the Constitution. As a result, in order to reach the objectives mentioned here, the institution of a negotiating table between the government and each special-statute region, in order to discuss reforms, federalism, simplification of regulations and European policies, is provided at the permanent State/regions and independent provinces Conference, for implementing the principle of fair collaboration[37]. Based on this discussion, the regions shall apply the special statutes and the implementation regulations will take on the configuration of acts containing functional principles, guaranteeing the effectiveness of constitutional laws. Consequently, the law which poses the principles of coordination of public finances, absurdly does not apply to special regions, as resulting also from the decisions of the Constitutional Court[38] that subjects special regions only to the general regulatory principles. This way, the law does not face the central theme of local finances, represented by an inequality of treatment between ordinary-statute and special-statute regions (which, after item V, no longer has any reason to exist), attributing, to the latter, privileged financial positions, such as those of regions benefiting from them, i.e. Trentino Alto Adige that keeps 100% of the taxes.

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[37] The requirements contained in the law are to be adopted "according to the criteria and methods set forth in the implementation regulations of the respective statutes, to be defined through the procedures provided for in the same statutes within 24 months" of the law coming into force.

[38] The implementation regulations will have to take into account the financial size of the governing bodies; the functions the latter actually perform and the costs thereto, as well as, if applicable, "insularity costs" and ranges of per capita income that typify the respective territories or parts of them, compared to the costs sustained by the State for the same functions.

6. Finances of local governing bodies

The legal system provided for in law 42 (sections 12 and 13) to finance local governing bodies provides (in Art. 12, para. 1, letter a)) that State law identify municipal and provincial taxes, hereby defining their prerequisites, taxable persons and taxable bases, supplemented by VAT and Personal Income Tax. The regulation also allows State law the possibility of replacing or transforming existing taxes and attributing taxes or parts of State taxes to the governing bodies.

Furthermore, continuing with State law, it regulates the issuing of "target taxes" by territorial bodies. These are own taxes that give the body the possibility of creating and applying them, hereby referring to particular purposes, such as the construction of public works, long-term investments in social services or the financing of charges derived from tourist flows. One must note, however, that, within their own legislative power, the regions may, through laws, institute new provincial and municipal taxes, referable to metropolises within the local regional territory, by specifying the range of independence attributed to governing bodies, in accordance with Art. 1, para. 1, letter g). The difference is that the State law, Art. 1, para. 1, letter a), may identify local taxes (whether already existing or new), while regional law may only institute new taxes.

Since the target taxes of other territorial bodies may also be instituted by the regions, one might think of a future expansion of the principle that increases their financial independence, within a by and large flexible structure, in which the reserve clause ex sec 23 of the Italian Constitution, might also be satisfied through a regional law.

As concerns the allotment of funds and the functioning of the equalising fund, Art.13, para.1, letter a), provides that the regions set up a budget with two funds, one benefiting the municipalities and the other the provinces and metropolitan cities. These funds are supplemented by an equalising fund from the State, in which resources from general taxation are deposited. This clarifies the vertical character of the equalisation in

performing essential functions according to the criteria set forth in letters c), d) and e).

The delegating law sets up the financing by distinguishing among various functions, but limiting the integrated cover to only the essential functions as per letter p) of Art. 117 of the Italian Constitution, para. 2[39]. Based on letter f), the fund can also be used for financing non-essential functions; however, in this case the resources tend to reduce the diversity among the per capita fiscal capacities in the various territories.

The cost of the functions for local bodies is also based on standard costs that, with reference to the territories, take into account: size of the population; territorial characteristics, with attention paid to mountainous zones; and population and production characteristics. In addition, the law acknowledges full independence to governing bodies regarding the fixing of rates for work done or services, also offered upon request from individual citizens.

The expenses of the governing bodies are classified into three groups: essential expenses, as set forth in Art. 117 of the Italian Constitution para. 3, letter p), for example, rubbish collection, city registry office, running government offices, for which integrated coverage of the costs is provided; non-essential costs; special expenses or co-financed with the EU.

7. Conclusions

The anxiety of federalism, which motivated speedy approval of the delegating law, generated a regulatory system, the principals of which can be fully shared (simplification, financial independence, responsibility), but are quite debatable in the sections that should release those principles for implementation.

First of all, criticism must be made about the excessive participation of the State (in share-funds, additional taxes, regional taxes, distribution of the revenues

[39] These functions have not yet been identified. See F. Puzzo, *Prime considerazioni,* cit, in www.astrid.eu (May 2009).

derived from the equalising fund, actions benefiting economic development and social cohesion and other forms of independence ex Art. 116, of the Italian Constitution, para. 3) that contributes to outlining an ambiguous institutional structure. The presence of the State hinders regions from having a substantial taxation capacity and limits their sphere of responsibility[40] to solely target taxes, while the tax that best expresses the independence of the municipalities, more suitable, thanks to almost a millennium of experience, to best represents federalism[41], i.e. the local property tax (ICI), was eliminated a year ago[42].

As far as the role of the State is concerned, of great relevance will be the contents of the essential levels of services, these being periodically set forth through ordinary law. Moreover, one might observe that what happened to the basic principles, through past finance acts, may also happen to the essential levels of services. The finance acts by the legislature transformed even the most detailed instructions[43] into basic principles. In the sense of an excessive expansion of the essential services, one fear arises from reading the Brunetta decree, that is, the implementation of law no. 15/2009, recently approved. Section 72 of this law identifies a good 27 items of the decree itself, such as merit assessment, criteria for differentiating the assessments and awarding instruments, to be considered essential levels of services[44]. In both the first and second examples, it is the State that defines the contents of the principles and essential services through

[40] Also as a result of the reluctance with which the delegating legislature accepted that the saving clause provided by Art. 23, of the Italian Constitution, could also be respected through the issuing of regional laws.

[41] See M. Vitale, *Un federalismo troppo contabile*, in "Il Sole 24Ore" of 15 march 2009.

[42] The reduction of revenues that resulted from this caused a reduction of revenues of 3.7 billion euro to municipalities. To compensate for this loss, there have been thoughts about increasing the rates on parking and rubbish collection. Or even a 20% tax on home rentals, but this would cause a decrease in State revenues.

[43] Like, for example, the methods to be followed for collecting truffles.

[44] While a further 15 sections were defined as essential principles.

laws. This indicates a supremacy of the State, confirmed by the Constitutional Court in decision 214/1987, in contrast to that set forth in Art. 114 of the constitution itself.

In the second place, the territorial aspect of the tax (attributing a larger revenue percentage to territories with more fiscal capacity), does not respect the principle of increasing the sacrifice, correlated to increasing the income, to be implemented through the progressiveness of the tax (sec 53 of the Italian Constitution). In addition, by favouring the wealthier regions, the territorial aspect potentially increases the gap between the North and South[45], since it drives weaker persons, who need more services, to moving from one territory to another, thus creating rifts, already visible in the health sector, among the territories.

In the third place, based on Art. 114, of the Italian Constitution, para.1, all governing bodies are of equal importance (State, special-statute regions, ordinary regions, municipalities, provinces, metropolitan cities), since they equally constitute the Republic; but they do not benefit from equal treatment. In fact, special-statute regions and independent provinces continue to benefit from special treatment that, after the new Title V, no longer has a reason to exist. To say nothing of the fact that six levels of government are excessive for successful federalism, even just administrative.

Moreover, and remaining on the subject of diversity as regards financial coverage, the law makes a distinction concerning the nature of the functions. Regions only attain total financing for essential services, whereas other governing bodies should receive coverage of the expenses for essential functions (Art. 117, of the Italian Constitution para.2, letter p)). Then what about the non-essential functions of the regions? For example, those related to running the regional council? Is that not also a public function the constitution certainly refers to, when it alludes to "total financing of attributed public functions"?

In the end, the law does not clearly identify anything. What is missing is the extent of financial

[45] See Piero Giarda in "Il Sole 24Ore" of 19 April 2008.

independence to be attributed to the governing bodies in observance of the Constitution on one hand, and the needs for redistribution and equalisation on the other. There is no specification of the correlation between functions and costs, nor any assessment of the possible increase in fiscal pressure that implementation of the reform may cause. Standard needs and standard costs are not easy to determine. The specification of many of these aspects was referred to the delegated lowmaker. Due to the insufficiency of the contents, one might raise a doubt about full compliance of the law with the Constitution due to "lack of delegation". In fact, its purpose is not final and an excessive number of decisions was referred back to the government.