

FISCAL FEDERALISM IN ITALY. BETWEEN NECESSITY AND SUSTAINABILITY

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INTRODUCTION.—1. THE EVOLUTION OF FINANCIAL AUTONOMY IN ITALY.—2. THE IMPLEMENTATION OF FISCAL FEDERALISM: 2.1. *Characteristics and needs*. 2.2. *Sustainability and critical*.—CONCLUSIONS.—REFERENCES.

INTRODUCTION

The issue of fiscal federalism is, nowadays more than ever, at the center of a lively political and institutional debate on a general reform of the State order.

Among some characteristic features of the Italian model, in particular, the constitutional position of local governments helps to create, rather than the two level-system, characteristic of the federal States or otherwise, of the classical federal systems, a polycentric order based on the principle of subsidiarity. The fundamental nature of our «federalism», unlike that of other European countries, is that it is based on the plurality of the bodies of territorial government: Regions, provinces and municipalities, all political institutions (public powers) of our communities. They are holders of powers, functions and duties set by the Constitution that guarantees them, at the same time, the mutual institutional position and defines the relations between them to the exercise of their functions of government. Unlike what happens in other European systems, a subordination of an institutional nature of the local governments (municipalities and provinces) to the region is excluded. Local governments are not part of the regional law, their organization and their core functions are determined by the laws of the State on the basis of constitutional principles that also ensure broad

legislative autonomy to the institutions themselves. Therefore, they are partly authors of their own law.

It is a delicate and difficult institutional choice that definitely complicates the implementation of «federalism» in Italy, compared to other countries.

It is more difficult to organize a system of institutional relations established by a very fragmented plurality of actors, unlike systems in which political actors are basically two, central State and Regions, that in turn have local government.

So each experience that is characterized both by the distribution of power between the center and one or more federal suburbs, and by the presence of institutional mechanisms that prevent the central government to limit the autonomy that the system guarantees to the exponential bodies of individual sub-state communities can be defined as federal. In his *Federal Government*, Wheare reminded that the «federal principle» is achieved if the separation of powers allows the central government and regional authorities to be coordinated and each independent (1). Once aware of this, you can see that the coexistence between independence and coordination should also cover the methods of finding the resources for the central State (federation), the individual states or regions and other territorial autonomy.

1. THE EVOLUTION OF FINANCIAL AUTONOMY IN ITALY

The analysis of the lines of the implementation process of regional and local finance has highlighted the difficulties that the structure of regional finance in Italy historically came across. The evolution of fiscal federalism in Italy have seen different levels of government as the basis for its implementation: 3 in pre-Republican period (State, provinces and municipalities), while in 1948 foresaw 4 with the inclusion of the Regions. But there are experiences that can concern us more closely: in 1859 the Kingdom of the Two Sicilies had different tax systems and expenditure for Sicily and the lands of the continent. Sicily was managing the fees and expenses in full autonomy and was only obliged to contribute to the overall costs of the Kingdom of the extent of 20% taken in Sicily. This already shows that fiscal federalism in Sicily has origins much older than we think, and can be observed that before Italy's unification, the income per capita between north and south was identical.

(1) WHEARE, Keneth. C. (1997), *Del governo federale*, Bologna, pág. 9.

The history of Italy can provide numerous legislative initiatives aimed at decentralization and financing of municipalities and provinces.

In our system of public finance the highest degree of «fiscal federalism» has paradoxically been reached under the fascist regime with the «Consolidating Act of Local Finance» of 1931, where local tax revenues were structured on a broad base of autonomy: the family tax, consumption taxes, surcharges on land revenue and general income. However, the text was no means of adjustment or assumptions of solidarity, but was offering tools such as the tax imposed on families (a sort of personal income tax), excise taxes, tax or supertax on business income and professional activity, and finally the land supertax. Even then there was the possibility of self-determination of the rates within ranges established by law and instruments were used with different intensity in different parts of the country (2).

Other instruments were subsequently developed to allow local governments to finance their investments, in the sense of their responsibility.

To reach at *fiscal federalism* as we know it today, it is important to cross some steps, more or less questionable: massive funding of the '50s authorizing local authorities to take out loans for rehabilitation of the budget, legislation that was initially aimed only at South (those regions most affected by the crisis of the land supertax) then to other regions.

The present situation of Italian public finances in the relationship between central government and the regions, provinces and municipalities can only be understood by going back in time and considering two basic steps:

- a) its almost total centralization, made in the early '70s;
- b) decentralization / federalism, introduced between 1997 and 2001.

The old regime was removed between 1971 and 1977, principally by two laws: first, the Tax Reform Act of 1971 (Legislative Delegation to the Government of the Republic for Tax Reform) and then the so-called Decrees Stamatii 1 and 2 of 1977 (Consolidation of short-term banks' exposures of municipalities and provinces).

Summarized in the «centrality of Parliament», the main political formula was applied in particular public finance sector, with its almost nationalization-

(2) Sicily has played an important role in 1946; it has opened the season of special statute of regions and special regions were set up in 1948 as organs of government with legislative powers. We must briefly mention the issue that has deeply affected the south in those years. In fact, the failure to adjust for inflation of land prices produced by the financing of the war, determine a crisis of the land surcharges which represent the major source of income for Sicily and in general for all regions of the south.

centralization. Only Parliament could decide only the Parliament could tax. Under this scheme was made the almost total abolition of the old local taxes, replaced by the transfer of public funds operated by the center to the periphery and / or a transfer of tax revenues (3). The idea of a centralized levy and a decentralized of expenditure, which was realized with a system of financing of Local Government had two objectives: on the one hand, try to ensure the homogeneity of supply of local services aimed at reducing the gap between the North and South of the country; on the other hand, to monitor the dynamics of public expenditure, already a source of great concern.

The Italian financial system has become the only European financial system almost completely centralized, with vast and negative political and economic effects.

This has produced a high degree of asymmetry between fiscal power and spending power. The fiscal power has become a central power and public expenditure is rather remained, in large part, local power.

The transfer from the periphery to the center axis of the charging has, consequently, excluded from the fundamental democratic principle «*no taxation without representation*» a vast share of public expenditure. This asymmetry was due to the exponential dynamics of our public debt. The central government was responsible for everything, in fact before he had to yield to the growing and unsustainable political pressure on it and then in the public debt has found the easiest way out.

The «Great Inflation» of the '70s and the negative evolution of our democracy into a deficit democracy have also pushed and accelerated the dynamics of Italian public debt, soon came to be the third world debt. Today, the run of the public debt is finished and it is no Italian exception. Today we are calling the next generation to pay for the other, and this is the first reason of fiscal federalism: the necessary removal from our future of the constant of distorting.

Between 1997 and 2001, within our institutional structure were then developed two additional movements which further marked asymmetry between the power of taxation and spending powers. The first movement has developed in the direction and form of the so-called devolution. It's been so with the so-called

(3) Transfers to local authorities have never been attributed with objective criteria, but on the contrary, in a non-transparent and, above all, discretionary method. The resources, in fact, were conferred on the simple principle of those who had spent more than in previous years, but often, very often, were divided between who had the best relationship with the Central Government. These facts are the basis, at the political level, the emergence and affirmation, first, of the Lombard League and the Northern League later. Phenomenon so-called «rude», «folk» and lacking adequate cultural level.

Bassanini Laws, laws that have moved from the center to periphery vast administrative skills. Skills that have been financed mainly by further increments of transfers of public funds.

The relative linearity of this first direction of reform based on the relation-central state administrative decentralization was completed then, and just a few years later, by another reform: federalism contained in the new Title V of the Constitution.

The process of *fiscal federalism* has been through some reform measures that had the objective of strengthening a system of self-government in the autonomous local authorities, causing a significant change in the structure of financial resources available to regional and local governments, and reducing the derived character that has long characterized their financial system.

The reform process started in Italy in the early '90s has set itself the goal of transformation into a federal Italian state, recognizing the need to accompany the evolution of form of the State and the architecture of the administrative system to the federal model with a parallel and coherent reform of the regional and local finance, based on the principles of so-called *fiscal federalism*: financial responsibility of local authorities, autonomy in the supply of resources, sufficiency of resources allocated to the tasks, autonomy and spending responsibility, equalization and solidarity (these principles, in truth found in every federal experience, are among the most important characteristics of the variant adopted in Italy, as inspired by models of the cooperative federalism).

The issue of federalism in Italy has been assumed by way of formal rules in relation to health with the Legislative Decree no. 502/92, as supplemented in 1999 with the Legislative Decree no. 229. The definition was placed with the will expressed in terms of reaching a model of responsibility of those acting of health; the system in conjunction with the Legislative Decree no. 56/2000 was subsequently set up, amending equalization system linking it to a partnership to VAT in an attempt to stabilize the regional finance permanently after the reforms of the 1990, which was followed, however, the substantial non-application in relation to the (deemed) unfair equalization between regions.

Indeed even before the constitutional reform of 2001, Law no. 549/95 took the form of a substantial system of «taxation» in place of the resources being transferred from the State to the regions; it also established an equalization fund «*for payment in favor of the regions by an amount equal to the difference between the amount of revenue realized [...] and the amount of transfers (suppressed)*», or a smoothing in the cases where the tax does not guarantee the same amount of resources transferred first from the State.

The issue of greater autonomy of local governments and the substantial excess over the model of derivative financial, in terms of a responsibility even on revenue and not just as cost centers, was already the subject of attention and cognition of the legislature.

The reference, however, that gave birth to the issue, before that constitutional reform of 2001, is the financial crisis running through Italy since 1990.

In subsequent years the topic has developed in a different way, apart from its bad or good functioning, as affirmation of the Northern League and his political issues introduced in the political arena; the substantial demand, with provocative and unsophisticated formulas (to the limits of penalty) was the secession. So you went from federalism, whose beginnings were initiated by the State, to secession, as disrupted request of the most productive in the Country. The complex institutional and political event of the following years have reported a new «evolution» of the theme, which meant that the «federalism» —in part intended to mean the previous model to «secede»— was taken in the Country as a priority issue by all political forces. It has become an argument for the doctrine, interest of scholars, news relevant to the press and public opinion. The principle has been elevated to constitutional status with the reform of Title V (Article 119), except regulate its declination. The reconfiguration of the leading political party of the request —the Northern League (Lega Nord)— as a governing body (but not just for «fight») has provided substantial support to achieve stable and reliable government against the implementation of federalism (Lanchester, 2004, p. 124), given that it has become the overcoming of the centralized State and the need to allow new autonomy and a new central to local governments.

The rules introduced by the constitutional reform of the Title V, in particular those contained in the new Article 119 of the Constitution, are aimed at strengthening the role and status of financial institutions and regional and local authorities, prefiguring a pattern of financial autonomy, which revolves around two fundamental principles: *the self-determination* of regions and local authorities and equalization of the total available resources, with appropriate mechanisms to maintain and safeguard the solidarity between regions. They are principles that, in the text of constitutional reform, are a balance.

The fundamental reason for the choice of recent years to emphasize the fiscal autonomy of local authorities to the detriment of the transfers, was to attack one of the structural causes of the creation of public debt in Italy, that is the complete *lack of responsibility* and above all caused by the financial split between those who decide how much and what to take and who decides how and where to spend.

Besides, the implementation of the new article 119 of the Constitution is, within the more general process of reform towards federalism, in order to match the trend also globally defined as the *global-local* impulse, a necessary condition for the draft constitutional reform to develop fully. It is an element that the constitutional case law has already had occasion to highlight: in Case no. 370/2003 reads, in fact, «*it is clear that the implementation of Article 119 of the Constitution is very urgent in order to realize the provisions in Title V of the Constitution, because otherwise it would contradict the different division of responsibilities set by new provisions.*»

The goal then is to carry through the reform of the federal, and, on the side of the «Finance», raise in revenue and assist the local governments, which are still paralyzed by lack of responsibility, inefficiencies, waste and constraints imposed by power superordinate.

Fiscal federalism and federal institutions are not the first prerequisite to the other and vice versa. It will then set up a federal republic capable of representing a more advanced units and national cohesion only to the extent that it will build over time a just system balanced and efficient, in which subjects that make up the republican order, each for their part, know how to play the role and tasks that the Constitution and laws of the award, while fully respecting the autonomy principle in Article 5 of the Constitution.

The experience of the Legislative Decree no. 56 of 2000 is a good proof of the extent and difficulty of the problems to be addressed; it remained on paper, after having first introduced in our system of law the term «*fiscal federalism*»: ultimately, perspective has proven inadequate to the complexity of the open questions. Now, this complexity lies in the new framework provided by Law no. 42/2009 concerning *Delegation to the Government on fiscal Federalism, pursuant to Article 119 of the Constitution*. A framework which would be also integrated with the adjustment to the constitutional reform of Title V of a compelling series of institutional profiles. There is now a government bill, dedicated to these profiles, presented as linked to the 2009 Budget on the *Determination of the fundamental functions of provinces and municipalities, simplification of the regional and local authorities, as well as delegation to the Government regarding the transfer of administrative functions, Charter of Local Self-rationalization of provincial and territorial offices of the Government. Reorganization of agencies and decentralized bodies* (AC 3118, January 13, 2010) (4).

(4) For more information AC 3118 at <http://www.astrid-online.it/~le-trasf/Atti-parla/Carta-dell/A-C--3118-/A-C--3118-/index.htm>.

In some ways, the sequence of adoption of these texts seems to mark a logic and systematic inversion, including financial aspects and institutional profiles (the provision of resources of various levels of local government requires a prior definition of the structure and function of each level). It's necessary to check carefully if the generality of certain predictions, the reference to a wide range of implementing measures and the length of time required for the implementation of fiscal federalism will allow, in fact, to harmonize the two processes, avoiding uncertainty and improper advances.

The federal question seems thus to have become the inescapable horizon of Italian political system: this now seems to be little disagreement. However the ideological dimension of federalism seems to prevail heavily on the cognitive and technical one yet.

Pending a structural framework of the financial system that will support the new federal structure of the country, the balance between autonomy and coordination in the relationship between levels of government, in fact, was given to transitional instrument or at least partial, based largely on the adaptation of the existing facilities to the new form assumed by the public sector. This has revealed a system still largely unstable as to guarantee financial autonomy, and decentralized with respect to the rules of coordination of the public finance. The regulatory uncertainty, the high degree of heterogeneity present in the territory and not favorable cyclical conditions have helped to establish emergency conditions, extemporaneity measures, overlapping roles and inertia in the process of decentralization.

2. THE IMPLEMENTATION OF FISCAL FEDERALISM

2.1. *Characteristics and needs*

Within the constitutional framework of Italy is the overlapping between two different architectures: decentralization and federalism. Decentralization, as the name suggests, is in fact variation on the word «center», the decentralization presupposes the existence of a center and, consequently, assigns to local governments, although extending it, a function that, persisted and assuming a strong center of government policy, it is only administrative. Compared to this scheme, the formula of federalism contained in the new Title V of the Constitution is a new and radical distinction. Compared to the simple devolution, federalism has in fact a higher political consequence.

We have tried to reconstruct in detail a process that has changed, and not in better, our structure of government finance.

The enabling Law no. 42/2009 establish the institutional framework of financial relationships between the various levels of government in particular by fixing the start of a process, characterized by a transitional phase, intended to return to the rational distribution of resources, making it consistent with the standard cost of the services provided. To build on the positive impact of federalism, it is provided the gradual overcoming, for all institutional levels, the criterion of historical expenditure, which goes to benefit substantially less efficient institutions and promotes irresponsibility. The historical spending, in fact, reflects both the real needs, (standard ones) related to the mix of goods and services offered by the regions and other local authorities, both inefficiencies. While the first element has a significant economic and social value, the last one is a «negative» element that certainly does not deserve recognition.

With the approval of the Law no. 42 of May 5, 2009, laying down the principles and criteria for the implementation of fiscal federalism, Parliament has initiated a process of redefinition of the economic and financial relations between State, Regions and local authorities, aims to complete the transition process of our legal system into a complete value system of local government.

The Law no. 42 of May 5, 2009 lays down the principles and criteria for implementation of Article 119 of the Constitution, giving special legislative delegation to the Government.

The new set of economic and financial relations between the state and territorial autonomy outlined by law is focused on overcoming the derived finance system and on attribution of greater autonomy of revenue and expenditure to local governments, respecting the principles of solidarity, regional redistribution and social cohesion that underlie our constitutional system.

To this purpose, the law establishes the basic structure of a timely income of regions and local authorities, sets out the principles that govern the allocation of resources equalizing institutions with lower cash flows, and outlines the means by which will ensure coordination between the different levels of government in public finance.

Defining the basic principles of the financing system of local government, the law distinguishes the costs that affect the fundamental rights of citizenship, such as health care, education, and those inherent in the basic functions of local authorities (for which it provides the full financial) from those which are financing with the tools of fiscal autonomy (for which it provides an equalization of fiscal capacity, which mean funding that takes into account the different levels of wealth of territories).

For those functions relating to civil and social rights, the State define the basic level of benefits, which must be guaranteed throughout the national territory

in a condition of efficiency and appropriateness; costs associated with them are needed to define the relative standard requirements, functions or other types of expenses will instead be paid under a decentralized model of equalization which should result in a trend towards convergence of the resources available to different territories, but without altering the order of their fiscal capacity.

A different treatment, intermediate compared to the previous functions, is provided for local public transport, as well as for the special in the 5th paragraph of Article 119 of the Constitution.

Regarding the financing of functions, it is stated, as a general principle, that the normal exercise of them is financed from resources derived from taxes and from income of their regions and local authorities, partnerships and the tax revenues from equalization fund.

The law lays down the guiding criteria are intended to identify its own taxes and partnerships to be assigned to different levels of government according to the principle of territoriality and the principles of subsidiarity, differentiation and adequacy of Article 118 of the Constitution, and the terms of allocation of capital resources. This is to define a framework aimed at facilitating the exercise of a real fiscal autonomy of the devolved governments and an appropriate level of fiscal flexibility.

Regarding the overall state tax system, the objective must be to not alter the criteria of its progressiveness, respecting the principle of ability to pay in the competition to public expenditure.

In general, it establishes the principle according to which the taxation of the State shall be reduced accordingly to the widest range of incomes of regions and local authorities.

It also provided the mechanisms of rewarding good behavior and efficient—in terms of balanced budgets, quality of services, low level of fiscal pressure and increased employment— or sanctions for institutions that fail to meet fiscal targets public, including possible to identify cases of disqualification against directors responsible for states of financial distress.

The implementation of the law must be consistent with the financial commitments made by the European Stability and Growth Pact, should also be avoided duplication of functions and costs, and safeguarded the aim of not producing increases of overall tax burden.

The Law no. 42 outlines the procedure for adopting of legislative decrees by fixing the deadline for the approval, of at least one of them, within twelve months from the date of entry into force of the law (May 21, 2009) and in twenty-four months, the general term for the adoption of other decrees. This deadline was subsequently increased to 30 months from Law June 8, 2011, no. 85.

It provided, also, that until June 30, 2010 and prior to submission to Parliament of the proposal of legislative decree concerning taxes, partnerships and equalization of local authorities, the Government submits a report to both Houses on the general framework for financing of local authorities and the possibility of defining, on a quantitative basis, the fundamental structure of the financial relationship between state, regions, autonomous provinces and local authorities, indicating the possible distributions of resources. This Report (Doc. XXVII, No. 22) was presented to both Houses as indicated.

The proposals of Decree —each of which must be accompanied by a technical report that highlights the financial effects— are adopted by the Government after agreement reached in the Joint Conference State-Regions-Local Government and forwarded to the Houses for the expression of opinion by:

- Bicameral Commission (consists of 15 deputies and 15 senators) for the implementation of fiscal federalism, March 17, 2010;
- Parliamentary Committees responsible for the financial profiles (ie the budget committees of both Houses).

Adoption of decrees may also proceed even if the agreement is not reached in the Joint Conference: in this case, and after 30 days from the first session of the Conference in which the proposal of legislative decree are on the agenda the Council of Ministers may decide to transmit to both Houses, however, simultaneously approving a report is produced explaining the reasons for which the agreement was not reached.

Both the bicameral commission that the budget committees are called upon to express themselves within 60 days (extendable by 20 days) from the transmission of texts; reached this deadline, the decrees can still be adopted. The Law June 8, 2011 n. 85 has set a single deadline of 90 days, not extend, for proposals of decree whose adoption process will begin after the date of entry into force of Law no. 85 (ie after June 18, 2011).

It also provided a case in which the Government does not intend to comply with parliamentary advice: in this case, it retransmits the proposals to the Parliament with its remarks and amendments; after 30 days of this communication, the legislative decrees may be adopted.

Following the opinion expressed by the Parliamentary Commission (5) for the implementation of fiscal federalism, there have been adopted the following decrees:

(5) See more at: <http://federalismo.sspa.it/?p=4005>.

— Legislative Decree 28 May 2010, n. 85 — Allocation to municipalities, provinces, metropolitan cities and regions of their own resources, pursuant to Article 19 of Law n. 42 of May 5, 2009, so-called Federal State Property (sent to the Parliamentary Commission for the fiscal federalism in March 18, 2010, Act of the Government no. 196, opinion by the Commission May 19, 2010);

— Legislative Decree 17 September 2010, n. 156 — Provisions on implementation of Article 24 of Law n. 42 regarding transitional agreement for Capital Rome (submitted to the Parliamentary Commission for the fiscal federalism on 8 September 2010, the Government Act n. 241, opinion by the Commission September 16, 2010);

— Legislative Decree 26 November 2010, n. 216 — Provisions on standards costs and needs of municipalities, metropolitan cities and provinces (forwarded to the Parliamentary Commission for the fiscal federalism on 8 September 2010, the Government Act no. 240, opinion by the Commission November 10, 2010);

— Legislative Decree 14 March 2011, no. 23 — Provisions on Municipal Federalism (Government Act n. 292; transmitted to the Commission on November 9, 2010, it has completed its deliberation on February 3, 2011 without approval. On February 9, 2011 the Council of Ministers, adopting the final text of the decree — Government Act no. 292-bis — on February 15, 2011 submitted the text to the Houses. The Senate and Chamber of Deputies, on 22 and 23 February and respectively, 1st and 2nd March 2011, approved the text with a resolution).

— Legislative Decree of 6 May 2011, n. 68 — Provisions on autonomy of incomes of the ordinary regions and provinces as well as standard costs and needs of the health sector (Government Act no. 317 of January 10, 2011, opinion issued by the Commission on March 24, 2011).

— Legislative Decree 31 May 2011, no. 88 — Provisions on additional resources and special interventions for the removal of economic and social imbalances, in accordance with Article 16 of Law no. 42/09 (Government Act no. 328 of February 2, 2011, opinion issued by the Commission May 5, 2011).

— Legislative Decree 23 June 2011, n. 118, provisions on the harmonization of accounting systems and financial statement of the regions, local authorities and their agencies, in accordance with Articles 1 and 2 of Law no. 42/09 (Government Act no. 339 of March 14, 2011, opinion issued by the Commission on June 8, 2011).

— Legislative Decree 6 September 2011, n. 149 — Mechanisms of sanction and reward related to regions, provinces and municipalities (Government Act no. 365 of May 19, 2011, opinion issued by the Commission July 27, 2011).

On November 30, 2010 the Commission approved the first report on implementation of the enabling law on fiscal federalism (DOC XVI-a, n. 3), based on the provisions of Article 3, paragraph 5, of Law no.42 of 2009. On July 21, 2011 was approved the second report (DOC XVI-a, n. 5).

On a political and institutional level the changes that the federalism seeks, essentially relate to the configuration of a model focused on the autonomies with a role of responsibility, clear and fundamental, of the State to protect them and guarantee the rights of citizens making due Essential Level Assistance and Services either through their definition (by State Law) or in relation to penalties for defaulting entities, and finally with regard to the quality of the services referred to the functions by Article 117 of the Constitution [let. m.) and let. p.)].

In social terms, in theory, the repercussions can be considered positive with regard to the system of companies and citizens. If a process of simplification was made on companies you could start a positive path of clarity and unity of actors and attracting new investment (one of themes of much debate with regard to the lack of «attractiveness» of the Country notably in relation to foreign investment).

So for the citizen, if one assumes the enforceability and the legal certainty, it is clear that the prerogative of the federalist model adds a more direct control and possible penalties arising from the proximity of the decision maker that you can call to account of the choices and/or failures.

It is apparent, however, the need to understand how the legislative function is linked to the public policies and, in this case, to the fiscal policies (not only in terms of allocation of power between the different levels of government, but also in relation to the selection of the subject-taxable situations. The principle from which everything is moving is —as mentioned— the provision contained in Article 119 of the Constitution: the financial autonomy of income and expenditure of regions, municipalities, provinces, metropolitan cities. The purpose of the enabling act, in implementing the above pronouncements, is also to rationalize the fiscal system (and tax one) on the principle of direct correlation between taxation and accountability, through transparency in allocation of revenues and use of the same, subject to the penalty of the citizen that can control.

At this point you open the two issues —with strong social repercussions— closely linked to these principles: the first one concerns the definition of enforceable rights, the same admonition to the rules of the administration held their supply, with the definition, also, of the standard cost of these functions-intended as a spending level allowed for the effective and efficient delivery.

The second issue is represented by resources. One can summarize that the needs and rights in question are substantially the *Welfare System* —the complex

design that sets the boundaries within which the Country is moving, assistance, health, education etc. in other words the public perimeter of the new order which is configured; then it should be paid attention to the mechanisms and tools with which we proceed to the «redistribution» of resources either among the territories or in relation to the targeting of the different features, namely the allocation within or outside the welfare, for the benefit of such subjects.

The founding principles of the Italian model of fiscal federalism are the standard costs and the determination of the need standard; the definition of these principles can not be separated from the identification of Essential Levels of Benefits in the letter m.) of Article 117 of the Constitution, nor by the update of the essential levels of assistance, as well as the Stability Pact rules on internal or by listing the basic functions of provinces and municipalities in the Charter of Autonomy. So far, even net acceleration in the implementation process of enabling Law no. 42/2009 —this overall framework of rules and institutional system of the Country remains unfinished. Measures, that are intertwined with each other in terms of content, follow different procedures with time and different methodological approaches, in the absence of a coherent and systematic framework.

It is important to underline that the Law no.42/2009 stated in Article 16 the principles and guidelines aimed at removing circumstances of economic and social imbalance. As is obvious the aforementioned Article 16 is not applicable to Special Regions, but this regions contribute to achieving the objectives and principles of federalism process related to them, «*according to criteria and procedures established by rules of implementation of their statutes (6), to be determined with the procedures provided by the statutes themselves*» (Article 27) (7) and the implementing rules of fiscal federalism of special statutes must take into

(6) The Valle d'Aosta had received special conditions of autonomy in September 7, 1945 (Monarchy Decree Law n. 545); Sicily approved its statute of autonomy in May 15, 1946 (Royal Legislative Decree. n. 455); Trentino Alto Adige's agreement of September 5, 1946 had granted special protection to the German-speaking minority; Sardinia was governed on the basis of Monarchy Decree Law December 28, 1944, n. 417.

(7) Article 1, paragraph 2 of the Law has introduced a principle of statutory reserve, intended to restrict the applicability and effectiveness of the law and to integrate the principles, making compatible and consistent the rules of fiscal federalism with the special prerogatives of autonomy. The article lists the Articles 15, 22 and 27 that apply only to regions with special statute. See Judgment of Constitutional Court n.201/2010 which, in answer to the question of constitutionality raised by the Region of Sicily in relation to Articles 11 and 12 of Law no.42 of 2009, pronounced that «*the only principles of the law applicable to Special Regions are those contained in Articles 15, 22 and 27*». There have already been issued rules implementing the principles of fiscal federalism and , in particular, Article 27 of the law, in respect of three regions with special statute: Trentino Alto-Adige and autonomous provinces, Valle d'Aosta and Friuli Venezia-Giulia.

account «*the size of the finance of the above regions and autonomous provinces compared to the overall public finance, the functions were actually performed and related expenses in consideration of the permanent structural disadvantages, the costs of insularity and levels of income per capita that characterize their territories or any part thereof, with respect to those corresponding to the same functions supported by the State*».

The Law on fiscal federalism (no. 42/2009) took into account the demands of Special Regions, referring to the confrontation between the government and each special region the coordination between the provisions of the law and the principles and peculiarities of the Special Regions and autonomous Provinces; it should be up to the rule of implementing of Statute to establish the procedures and criteria by which the regions contribute to the special achievement of equalization and solidarity, the Internal Stability Pact and EU obligations, having also to regulate in its own sphere of competence, the coordination of public finance and the tax system with regard to regional and autonomous provinces legislative powers.

Special Regions have begun negotiation *one to one* with the State. The contents of the agreements are different for each region according to forms of special «federalism with special statute» which has promoted not by the legislature, but by the Constitutional Court. The financial and tax autonomy awards has found important recognition in the more recent case law. With its judgment no.102/2008, the Court has recognized the immediate availability of their power to impose their own taxes, while the Ordinary Regions have yet to wait for the State regulation of public finance and taxation, as clarified by the Court, with the judgment no. 37/2004. Subsequently, the judgment no.357/2010 recognized in Trentino-Alto Adige and Friuli-Venezia Giulia also ample prerogatives on state taxes or entirely allocated allowing amendment of tax bases and tax rates, establishing in this way important measures of tax advantages.

The impulse to rationalize the allocation of financial resources, even in regions with Special Statute (which, however, regards the «poor» Special Regions-Sicily and Sardegna) still has not found concrete expression in the legislative decrees of the reform implementation, containing the regulation that applies only to the Ordinary Regions. Sicilian specialty provided by the Statute is not only a extensive political autonomy, legislative and administrative, but also financial and the functions assigned can be effectively carried out only if there are financial resources are sufficient to guarantee the exercise.

The rules relating to financial autonomy of the Sicilian Region are contained in Articles 36, 37 and 38 of the Statute providing the region's own revenue. The finance model outlined by Statute is based, by one hand, on independent sources

of funding and, by other hand, on ordinary tools of financial equalization, justified by reference to the principle of national solidarity. The power to establish and enforce «own taxes and revenues» in the light of the reform of Title V, pursuant to paragraph 2 of Article 119 of the Constitution is recognized to ordinary regions, although the Constitutional Court has subsequently blocked this power. But the Region, pursuant to Article 36, considers that this power should be recognize for more reasons to Sicily, as it would represent one of the extensive forms of autonomy established by Article 10 of Constitutional Law no.3/2001, which providing a mechanism of regulation of the special statutes to the new constitutional reality, establish that its provisions are applicable to Special Regions where stipulate forms of autonomy more comprehensive than those already assigned. Article 10 of the 2001 Law, in addition to Article 36 of the Statute, therefore, seems to substantiate the legitimacy of tax autonomy of Sicily. The Region of Sicily considers that there is a «emptying process» of the financial autonomy and claims violation of its tasks and those of local Sicilian authorities (8) because «pursuant to the Decree no.23/2011 all this entities will not have sufficient revenues for the fulfillment of their duties». With the recent judgment no. 64 of March 30, 2012, the Constitutional Court reconfirms that the Law of fiscal federalism no.42/2009 contains all safeguards for the special autonomy and, because the law in question is not yet implemented, it may not already have caused injuries.

2.2. *Sustainability and critical*

In terms of institutional relations, Regions, since the enactment of the Law no. 42/2009, have highlighted many critical, but the basic decision was to proceed in the substantial unanimity. Surveys, inquiries, amendments have been raised then only if shared by all and approved unanimously, this is also part of the compromise that ultimately led to the approval, in fact, through the unanimous adoption of the law referring to the content of decrees.

In Italy there are in fact and at the same time the «representation» as the «taxation». But at local level who «represents» and spends, does not tax. At the central level, it is tax but does not «represent» and spend entirely, being the central government in this role and in large part asymmetrically substituted by regional and local governments.

(8) In order to legitimacy of the Regions to challenge for the infringement of the powers of local authorities, see the judgments of the Constitutional Court no.196 of 2004, no. 417 of 2005, no. 95 and 169 of 2007 and no. 298 of 2009.

In addition to the above mentioned distortion of the fundamental democratic relationship «no taxation without representation» (relationship that is present, albeit in different forms, in all other European countries), in the Italian constitutional framework exist also the following additional «anomalies»:

A) Proliferation of society: it is the phenomenon of the «Great Towns Holding» and «Regional Holding».

Large municipalities and regions have gradually split and / or «outsourced», creating parallel, often endless galaxies company. Also has exponentially grown the presence of variously organized venues «foreign» organized in different ways, both in Brussels and in the world.

B) The inactivity at the expense of the South.

Critical matters of substance arise as to the capacity and quality of spending of the regions in supervise the «special supports» of development, mainly for the South.

For example, in April 2010, about three and a half years after EU Program 2007-2013, was spent by the regions only a twelfth of the funds: 3.6 billion euros of about 44. Even more, remarkable is that, at the same date, only one-sixth of the total resources was already committed.

Furthermore, information on the effectiveness of interventions in terms of quality of services, measured for the 8 regions of the South, showing the severe limits of the action performed (especially services for citizens, such as care services for children and elderly people, waste and water).

In late 2009, it was provided a «grant» for the regions that, in these fields, have shown adequate progress. Only 50% of the resources available for the award, despite everything, has been assigned.

Particularly serious is (with one exception) the delay of implementation for municipal waste and kindergartens.

Also there are not use all resources allocated to the regions in 2000-2006 by the Fund for Underdeveloped Areas (about 21 billion euro).

This shows that the rate of effective implementation of regional operations amounted to less than 40% which means that, in recent years, paradoxically, the South has had more and spend less. More the South received in terms of financial allocations (leave in box), it is less developed in terms of gross domestic product. And this is an unacceptable reality, even in the post-2014 perspective; so it is reasonable the expectation by the Italian government to a further increase in resources from the European Union;

C) Pensions (so called) of disability.

As effect of the transfer of full responsibilities for social welfare (under Title V), the number of invalids is almost suddenly increased from 3.3% to 4.7%

of the population. The current cost is almost suddenly increased from 6 to 16 billion euro. Excluded that in such a short period of time, there has been a so strong structural social mutation in Italy in the form of proliferation on a large scale debilitating diseases, it is evident that the cause of the phenomenon was due to a policy.

D) Irrationality of derived finance.

In the forms and for the reasons indicated above were distributed in Italy legislative and administrative functions for a volume equivalent to that of Canada, but, in the sense of funding, has remained in Italy within a model of substantial «financial derivative» (9).

E) Anomalies in the health sector.

The health service organization (which on average absorbs about 80% of regional budgets) is, by case law, exclusive jurisdiction of region. But the state has continued as in 80s. For example, the decree called save-deficit of June 2007 and the 2008 Budget has allocated a huge sum of 12.1 billion euros in favor of five regions in red in this field. (Abruzzo, Campania, Lazio, Molise, Sicily).

F) The anomalies of the accounts.

In some regions there were serious shortcomings in actual cognitive data on actual expenditure and budget. In Calabria (actually an exception) has been such a need to appoint external auditors to try to reconstruct the accounts, so this was unreliable. Finally, to obtain a minimum of clarity, the tables are due to close monitoring of health spending based on incredible «certified oral statements» of the Directors of Local Health Agencies (ASL).

The action of bodies (or monocratic bodies) revision, if and when established, however, rarely reaches an acceptable level of assertiveness;

G) The tax on transfers.

The tax system of local government is now made up of as many as 45 sources of revenue, layered and mixed with areas of para-fiscal duties that provide for enormous proceedings, without guaranteeing the traceability of the actual taxes that is indispensable to make the transparency against of voters.

The enactment of Decree Law no. 78 of May 31, 2010, has opened another front of the breakdown in relationships between State and Regions. On the regional front, the analysis was a serious problem from the outset and over time has lead to the definition of a series of initiatives designed to represent the negative position to the measure and approval, in the Region Conference (June 15, 2010), of a document of strong denunciation with regard to the iniquity of

(9) See the mechanism of the rate of the partnership, initially equal to 25.7% (in the text of Legislative Decree no. No. 56/2000) has gradually reached 44.72% in 2008.

the operation and the decision to return delegations on regional matters arising from the transfer operation of pursuant to Law «Bassanini» because of the substantial reset of the resources of allocated and transferred to the management of these.

The aspect of greater impact with regard to the issues raised by the Regions is on the controversial interpretation of substantial sinking of fiscal federalism: the maneuver, in fact, exerts its effect on the year 2011—which is also the year of initiation of federalism as provided by Law no. 42 of 2009; the cutting of the transfers of all (or almost) the resources that the federalism should exempt implies that the base are gone. The underlying assumption is the provision of the Delegated Law no. 42/2009 that substantially, at the start of reform, «takes the picture» of the current situation (year zero) with regard to the resources, transferred, that will no longer be derived by the State: the overcoming of transfers starts, realizing the autonomy of institutions with the understanding that the «exemption» gives the same amount of resources.

So, you must identify standard parameters of spending for which, the expenditure requirements should not simply coincide with the historical spending, as indeed is the case today. In this framework it develops the plan of equalization, which translates the constitutional principle of solidarity combining it with that of good administration. For functions not allocated to basic levels (related to health, education and social assistance)—for which, however, the uniformity in the level of services across the country is deemed, not only unnecessary, but even counterproductive—there is a equalization system based simply on reducing disparities in fiscal capacity.

Ultimately, there is:

- a. full coverage of demand (expenditure) to standard cost for the function of letter m, the second paragraph of Article 117 of the Constitution (ie health, education, assistance);
- b. equalization of fiscal capacity for the cost of function referred to «other» (that is unread. m);
- c. mixing mode in relation to Local Public Transport, for which it provides full coverage of requirements in the standard cost for the capital expenditures, the equalization of fiscal capacity relative to current expenditure.

Two characters are relevant, in this regard: Article 119 of the Constitution assumes a model of federalism aimed at mitigating the differences between the territories, where related to the same fiscal capacities, establishes, in fact, the equalization fund for the territories in which fiscal capacity is less than other areas (ie in fact insufficient to ensure the coverage of costs); it then provides that the resources resulting from its own taxes, partnerships—and equalization

fund— should allow «*the Municipalities, the Provinces, the metropolitan Cities and the regions to fully finance the public functions attributed to them*», the reference is, therefore, all the functions assigned to institutions. The Law no. 42/2009, confirms the first highlighted character of a model aimed at mitigating the differences between the territories, but limits the second character in relation to the principle of full funding only for the functionality provided constitutional protection (Article 117 of the Constitution, let. m., section II), so profiling risk of unconstitutionality of the enabling act (10).

It also regulates the coordination between different levels of government by providing that the legislative decrees introduce innovative solutions such as making clear the ranking of fiscal capacity and that the Regions, in order to achieve the objectives on public finance balances, can adapt, after consultation with their own autonomy, the constraints imposed by the national legislature, differentiating the evolution rules of the cash flows of individual local authorities in relation to the diversity of financial situation.

According to the latest data according by the various bodies of expertise, there is sufficient certainty that in Italy today:

- the level of government debt of the public Administration amounts to 60-70 billion euro against firms (ISTAT) (11);
- regional health budgets record deficit of 30 billion euro (12);
- the level of public debt amounts to 1,800 billion euro compared with a total GDP of 1,500 billion euro (ISTAT) (13);
- there is compliance with the Maastricht criteria, a deficit/GDP ratio of around 6% and a debt/GDP that is moving towards 120%;
- the data of tax evasion, amounting in 2008 to about 17% of GDP (ISTAT) (14).

(10) BASSANINI, Franco, «Una riforma difficile (ma necessaria): il federalismo fiscale alla prova della sua attuazione» [Online] at http://www.astrid-online.it/il-sistema1/Studi-e-ri/Bassanini_FedFisc-Una-riforma-difficile.pdf, accessed July 27, 2010.

(11) MACCIOTTA, Giorgio, «Il ritardo dei pagamenti dei debiti commerciali delle pubbliche amministrazioni: quale dimensione e quale soluzione» [Online] at http://www.oipamagazine.eu/public/my_files/ASTRID.pdf, accessed September 15, 2010.

(12) Court of Auditors Section of Autonomy — Resolution no. 17/2010; Report on financial management of the Regions — 2008-2009 [Online] at http://www.corteconti.it/opencms/opencms/handle404?exporturi=/export/sites/portalecdc/documenti/controllo/sez_autonomie/2010/delibera_17_2010_e_relazione.pdf&.

(13) ISTAT, October 4, 2010, at <http://www.istat.it/it/archivio/4215>.

(14) ISTAT, July 13, 2010, at <http://www.istat.it/it/archivio/13996>.

Many writers and political actors—as well as many corporate documents—show federalism as a sort of *panacea* intended to solve most of the ills above. Surely there is a point in favor of such an interpretation: critical and negative aspects of the current system are so many that any initiative will be welcome and could produce improvements. However there is also a reflection against it, or at least, critical with respect to the above: the root causes that have lead (lead) the Country under these conditions can not certainly be explained by the absence of a federal system and not, however, by the substantial and structural circumvention of the rules, or lack of controls or, non-imposition of sanctions—even if provided—from a widespread culture essentially aimed at circumventing the law and evading responsibility.

Finally, there is a notation that strongly supports the launch of federalism: if the implementation will not be distorted it becomes necessary to survey data and accounts before any other operation on all levels of government in the Country. The system and the model of public accounts register a complex reading that, unfortunately, allows each level of administration of putting the blame on the other level in relation to: increasing debt, the waste, the lack of investment, the substantial inefficiency of spending.

The official data that from time to time are made public by Istat, Bank of Italy, Confindustria, the Court of Accounts, record numbers and realities often at odds with each other or very different in terms of responsibilities between different levels of administration.

CONCLUSIONS

The federal reform is configured, then—at least in theory—as a reform of extraordinary importance to overcome the waste and above all to identify a new accountability in financial management of the resources available, to counter the growth of uncontrolled spending, and finally to «think» a model that effectively guarantees certain rights equally to all citizens.

The implementation of fiscal federalism can and must then be an opportunity to set in motion a process of modernization of the Country, its institutions and Public administration, rehabilitation and containment in terms of efficiency and effectiveness, economic and social development based on a greater accountability of political, business and social elites in the use of environmental, economic, natural and human resources present in various territories.

If the characters are, therefore, solidarity, non-competitiveness, but also the territoriality, the appropriateness and sustainability, through the elements of the

standard cost and requirements, the crux of fiscal federalism is the financial autonomy of local authorities, that is, the taxes entities (15) that follows the political obligation, even when not legal of the responsibility, *accountability* required since long time in politics and public administration.

Indeed today —checking measures that are prepared in accordance with Law no. 42/2009— increases the number of commentators that consider the reform «useless» on many fronts. The comments referred to are obviously of a technical nature; the political discussion is on two areas: the Parliament and the headquarter of consultation with the regions.

In any case, the start of the reform will require a reorganization of the structures: they are expected to increase for resources and staff in local government (new duties, assessments on taxes, law enforcement powers to tax evasion, etc.) and a decrease for the State.

The necessity that the principles of federalism and the standards provided in the reform of Title V of the Constitution had be implemented fully and correctly, overcoming the situation of uncertainty in which we lived too long, mainly due to excess of conflictuality on concurrent legislation in front of Constitutional Court, which had determined in our country a sort of «wild federalism»: certain initiatives are taken in Sardinia, and other adopted in Sicily, different other actions that are being developed in other regions (16).

Ultimately it can outline two sceneries:

1. The federalism is realized in the «strongest» terms (and also more consistent, considering the fiscal federalism as competitive model) in other words there is a demand to reduce the available resources (mainly for the South) and the amount of the resources needed. This is calculated using mathematics in relation to better performance (and cheaper) and without regard to context data that enable that result. It takes place, also, in terms of full autonomy of the regions to establish reductions/increases in rates of the different taxes (VAT,

(15) JORIO, Ettore, «Il federalismo fiscale verso i costi standard» [Online] at http://federalismi.it/ApplMostraDoc.cfm?Artid=16385&content_auth, accessed June 15, 2010.

(16) See Judgment of Constitutional Court no. 74 of 2009: for ordinary regions, the autonomy of revenue and expenditure is defined by the ordinary law; for special regions, the only sources, relevant to complement and modify the financial autonomy, are the statutes and the rules implementing the statute, written, in the case of Sicily, by a special Joint Commission under Article 43 of the Statute of Sicily Region.

It may, therefore, say that with respect to special regions, the ordinary law can not fulfill the coordination of public finance and the taxation system where recourse to the same procedures and forms that apply to ordinary regions.

income tax, IRAP) and therefore on taxable, shifting among the different stakeholders (consumers, workers and companies).

It's clear that such a model of federalism represents a danger because it will only increase and substantiate an actual split in the Country and the gap between north and south; in addition to the substantial risks of unfairness and iniquity that can be created and/or exacerbate.

2. Federalism is realized in terms of how you go setting: blurred compared to what was presented and almost «neutral» in relation to the many processes on which states should affect. The issue also relates substantially to the responsibilities for fiscal policies. It means that the chosen tax (VAT, income tax, IRAP) correspond to three different categories of taxable persons (consumers, workers and company); the balance achieved also adhere to the compromise made with the partnership in relation to the commitment of the Government that the federalism doesn't translate the tax burden between taxable persons; this was achieved largely through the attenuation of the effective autonomy of local authorities.

It is evident, in this case, how such a model of federalism is configured as a *bluff* because the unique character of substantial federalism is related to margins of «handling» related to the additional rates on taxes whose revenue is not intended to cover expenses for function of letter. m, which is related to the fiscal capacity equalization. The possibility of effective action and exercise of real power, even on this single-sided on the part of local governments is certainly limited compared to what is envisaged by the reform.

Therefore, it will be really interesting to see the farther development of the «long march» of fiscal federalism, a topic that still raises troubling prospects for further reduction of levels of equality between the different areas of the Country, but that, conversely, may open new possibilities of accountability in the management of public interests, progress in the management of the administration and the delivery of services, the elevation of the living conditions of communities.

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ABSTRACT

The issue of fiscal federalism has been much discussed in the last period in several European countries. This paper aims to identify and analyze the reform of the Italian fiscal federalism with various consequences to local and regional levels. The study has highlighted the decision making process of fiscal federalism by describing the evolution of financial autonomy. Specific needs were identified after the constitutional reform of 2001 and the new financial system has contributed to the reorganization of the State in

favor of local governments, but its implementation has triggered a major conflict between the state and local authorities.

KEY WORDS: fiscal federalism; financial autonomy; territorial autonomy; Italian reform.

RESUMEN

El tema del federalismo fiscal se ha discutido mucho en el último período de varios países europeos. Este documento tiene como objetivo identificar y analizar la reforma italiana del federalismo fiscal con diversas consecuencias a nivel local y regional. El estudio ha puesto de manifiesto la toma de decisiones del federalismo fiscal mediante la descripción de la evolución de la autonomía financiera. Necesidades específicas fueron identificadas tras la reforma constitucional de 2001 y el nuevo sistema financiero ha contribuido a la reorganización del Estado a favor de los gobiernos locales, pero su aplicación ha provocado un gran conflicto entre las autoridades estatales y locales.

PALABRAS CLAVE: federalismo fiscal; autonomía financiera; autonomía territorial; reforma italiana.