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# The Italian Parliament paves the way to "fiscal federalism"

by

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**Abstract**

This article examines law no. 42 of 2009 which, in accordance with art. 119 of the Constitution, opens the way to the introduction of "fiscal federalism" in Italy. The new law falls within the sphere of the Reform of Title V of the Constitution of 2001. Following a brief reconstruction of the genesis of the text, the author emphasises the choice of law of delegation to the Government for the implementation of fiscal federalism and examines the consequences. The Article analyses the most important principles and directive criteria contained in the law, tackles certain problematical aspects and highlights some unresolved issues within the text.

**Key-words:**

Fiscal federalism, art. 119 Const., law no. 42/2009, principles and directive criteria

## 1. Some initial considerations about law no. 42 of 2009 on "fiscal federalism"

The entry into force of Law no. 42 on fiscal federalism on 5 May 2009[I], - "Delegation to the Government on the matter of fiscal federalism, in accordance with article 119 of the Constitution" –undoubtedly represents a significant step in the process to adapt the Italian order to the Reform of Title V of the Constitution of 2001 which, up until now, has been decidedly complex and problematical[II]. The only organic legislative intervention to implement this significant constitutional reform, which completely redesigned the relationships between State, Regions and Local Authorities, launching a federalist process in Italy, dates back to the "La Loggia" law of 2003, which actually only allowed a partial and defective implementation of the new Title V of the Constitution[III].

The constitutional legislator of 2001 introduced deep changes to the relations between State, Regions and Local Authorities with regard to legislative and administrative competencies in order to increase the functions that fall under the jurisdiction of the autonomous entities (articles 114, 117 and 118 Const.). The attribution of new and significant competencies to Regions and Local Authorities required the possession by the Authorities of the financial resources needed to perform the functions assigned to them by the Constitution. To this end, the financial autonomy of Regions and Local Authorities is guaranteed and regulated by art. 119 Const.[IV], which was also amended by the Reform of 2001, but the new constitutional provision requires organic implementation by the state legislator to allow effective entry of what is known as "fiscal federalism" [V] into force in Italy.

Taking a brief look at the principles contained in art. 119 of the Italian Constitution, it must be said that it guarantees all the territorial entities of the Republic complete financial autonomy with regard to income and expenditure. On the basis of the constitutional measure, Regions and Local Authorities have three types of resources: own taxes, participation in the revenue from treasury taxes referable to their territory and portions of the standardising reserve set up by Government Law for territories with less

fiscal capacity per inhabitant. A law for the coordination of public finance and the tax system (matter of legislative jurisdiction between State and Regions pursuant to art. 117, par. 3, Const.) establishes the complex of these resources which must, however, allow the territorial bodies to fully finance the cost of the public functions assigned to them.

The failed legislative implementation of the constitutional design for the financial autonomy of the territorial authorities was undoubtedly one of the main reasons behind the difficult and insufficient application of the new Title V, which has distinguished, up to now, the period of time following the entry into force of the Reform of 2001. The territorial authorities must be put in a position to be able to effectively perform the functions assigned to them and, in order to do so, they need autonomy in terms of income and expenditure. As emphasised by the Constitutional Court – which has also pursued a form of "additional" jurisprudence to make up for the failed legislative intervention[VI], jurisprudence which the same Court has described as completely insufficient – the implementation of art. 119 Const. is of the utmost urgency "*in order to make the provisions of the new Title V of the Constitution tangible, because otherwise the different area of jurisdiction configured by the new provisions would be contradicted*"[VII].

The implementation of the financial autonomy of Regions and Local Authorities envisaged by art. 119 Const. forms one of the crucial nodes along the road of the federalist process underway in Italy. From this point of view, the legislative implementation of fiscal federalism can represent something brand new in the evolution of relations between State and Autonomous Entities in the Italian legal order.

Some brief considerations ought to be made in relation to the path which led to Parliament's approval of a text which is substantially shared. The "origins" of law 42/2009 can be traced back to a joint document approved by the Regions in July 2005, the so-called "Santa Trada Document", which laid the foundations for the approval, by the Prodi Government in 2007, of a project which was never examined by Parliament due to the early termination of the XV legislature. The bill approved by the Berlusconi Government in October 2008 (the "Calderoli Project" named after the Minister who proposed it)[VIII] contained much of the text previously drawn up by the Prodi Government.

The text has been amended several times, also to acknowledge requests forwarded by the territorial authorities, and was approved by all the autonomies during the State-Regions-Towns and Local Authorities Unified Conference ("Conferenza Unificata"). The

consensus of the Regions and Local Authorities was necessary to avoid the risk of opposition by the territorial authorities during the following implementing phase of a reform approved by Parliament against their will.

The proposed legislation was met with substantial consensus not only among the various institutional levels of government, but also, and this should be emphasised because it is rather unusual in recent Italian parliamentary experience, among the political parties present in Parliament[IX]. In the Chamber of Deputies and in the Senate too, the provision was unanimously approved by the parliamentary majority and also by one of the opposition parties – "*l'Italia dei Valori*". The main opposition party, the "*Partito Democratico*", presented no opposition to the provision, despite finally deciding to abstain from voting on the bill, and actively participated in the review of the text carried forward in Parliament, advancing numerous proposals, many of which acknowledged by the majority. During the various parliamentary passages, the bill underwent several amendments to the text approved by the Council of Ministers, as proven by the overall number of articles within it, which has risen to 29 from the initial 22. During the final voting session, the *Partito Democratico* explicitly emphasised its active contribution to the improvements made to the text[X]. The "*Unione di Centro*" was the only parliamentary group to vote against the bill.

The legislative measure used to implement art. 119 Const. is that of law of delegation to the Government, which gives the Government two years to adopt the legislative decrees for its implementation ("*one or more legislative decrees", art.* 2, par. 1)[XI]. This is a significant choice which opens the way to a definitely long and uncertain path towards the implementation of fiscal federalism in Italy. Unlike the decision, made with the aforementioned "La Loggia" law of 2003, to implement the renewed Title V of the Constitution through an organic law developed in Parliament, for the implementation of fiscal federalism the measure of law of delegation was preferred, prefiguring at least the work of an entire legislature[XII]. Said law no. 42, besides establishing the term of two years for the adoption of the legislative decrees, outlines a transitory period of five years before one of the qualifying points of the Reform comes fully into force, meaning the passage to the so-called criteria of "standard expenditure", which will be described in detail further ahead. Even after the entry into force of this law, the date for the effective implementation of fiscal federalism and, especially, the methods which will be used for its full implementation, still have to be established.

## 2. A "maxi-delegation" to the Government for the accomplishment of fiscal federalism

Law 42/2009 approved by Parliament to implement art. 119 Const. can be considered substantially as a very broad and articulate delegation given to Government[XIII]. The consequence of the decision to use the measure of the law of delegation and to limit action to the enunciation of general principles and directive criteria is the substantial exclusion of Parliament from the subsequent – and decisive – phase of effective implementation of fiscal federalism which will be assigned, using the delegated decrees, to the Executive. Consequently the Government, aided by the opinions of a special Parliamentary Commission[XIV], will establish the rules that will indicate the methods used to implement the financial autonomy of the territorial authorities envisaged in the Constitution. The exclusion of Parliament from the future decision-making process is undoubtedly one of the most critical aspects of the proxy law on fiscal federalism.

On this matter, there were also those who felt that the bill presented by the Government contained a "blank delegation" which gave the Government a free rein for the preparation of legislative decrees[XV], as the content of the provision was rather generalised in the identification of the principles and the guidelines to be complied with by the delegated legislator. Parliament amplified and, in some parts, specified the content of the proxy law bill in greater detail, prior to its approval and, while some parts of the final text do not contain sufficiently precise criteria to outline the main characteristics of the new financing system[XVI], generally speaking, the principles and directive criteria seem to be quite detailed, if a little hard to read.

The text approved by Parliament cannot therefore be classed as a blank delegation to the Government, but nor is it an organic law containing a direct and complete bill for the implementation of art. 119 Const. Law no. 42 can be considered as a "maxi delegation" full of principles and directive criteria which require translation into implementing measures by the successive delegated decrees issued by the Government. It is also worth highlighting that the law also excludes Parliament from the successive (if any) phase of

intervention to correct and improve the reform, as it entrusts the task of introducing additions and corrections to the legislative decrees previously adopted by the Government to further legislative decrees of the Executive (art. 2, par. 7)[XVII].

With the aim of compensating, at least partially, for the absolute marginalisation of the role of the body which directly represents the general will during the actual structuring of the reform process, the Senate amended the original government text assigning a supervisory role to Parliament during the fiscal federalism implementation process. The law sets up a special Bicameral Commission, known as the *Parliamentary Commission for the implementation of fiscal federalism* (hereinafter *Parliamentary Commission*) (art.3), which will be responsible for expressing opinions on the layouts of the legislative decrees drawn up by the Executive and checking the state of implementation of the provisions contained in the proxy law. In order to favour the link between the *Parliamentary Commission* and the territorial autonomies, a special "Committee" made up of the representatives of the Regions and Local Authorities is also created, and will meet at the Parliamentary Assemblies[XVIII]: every time it sees fit, the *Parliamentary Commission* may consult this Committee and hear its opinions[XIX].

The formation of this Committee as a link between Parliament and the system of autonomies must be seen in a positive light, especially considering the ongoing absence of a Second Chamber in Italy as the expression of the territorial autonomies. The best choice however would have been to finally implement art. 11 of Constitutional Law 3/2001 which allows the integration, via amendment of the parliamentary rules, of the Bicameral Commission for regional issues with representatives of the Regions and Local Authorities, entrusting this Commission the task of supervising the implementation of fiscal federalism[XX].

The law also sets up two more specific bodies created to carry forward the actuation and implementation of the reform. The *Permanent Conference for the coordination of public finance* (art. 5), of which the representatives of the different institutional levels of government are part, something which is definitely positive, has numerous important competencies, including the contribution to the definition of the objectives of public finance and the performance of functions of verification of the new financial arrangement, especially with regard to the decisive and innovative aspects of the law which will be described further ahead, such as the realisation of the path of convergence to standard

costs and the application of the mechanisms relating to sanctions and rewards. The *Joint Technical Commission for the implementation of fiscal federalism* (art.4), made up of thirty members, half of which are technical representatives of the State and the other half of which represent the territorial authorities, on the other hand will operate within the scope of the *Unified Conference* and is the body appointed to acquire the elements needed to prepare legislative decrees and to provide the *Permanent conference* with the technical assistance for performance of its functions[XXI].

The creation of these special supervising bodies and, particularly, of the *Parliamentary Commission*, does not however allow a solution to the critical node deriving from the exclusion of Parliament in the following implementation process of fiscal federalism. The envisaged subjection of the layouts of delegated decrees – on which it is necessary to reach an agreement during the *Unified Conference*[XXII] – in the advice of the *Parliamentary Commission* (art. 2, par. 3) cannot be considered sufficient as these advices are not considered binding by the Government, which can proceed and adopt the decrees even without conforming to the instructions expressed by the parliamentary control body[XXIII]. Moreover, the position of the *Parliamentary Commission* should be further weakened if we consider that it will have to express its opinions on the outlines of delegated decrees which will presumably go to Parliament "strengthened" by the prior agreement reached into the *Unified Conference.*

The law of delegation on fiscal federalism ends up stripping Parliament of its prerogatives. Consequently the decision to have assigned Government such extensive legislative delegation is one that it is hard to agree with. It would have been better to implement art. 119 Const. – on the model of the "La Loggia" law which also contained legislative powers of attorney – through the approval of an organic law which would enable Parliament to decide with regard to the decisive choices to be made, benefiting from the dialectic confrontation between the parliamentary majority and the opposition on a matter which, we ought to remember, deeply influences the effective level of independence of the territorial authorities and therefore also, in the last instance, on the form of State.

The substantial alienation of Parliament from the decision-making process which leads to the approval of numerous legislative acts and is implemented in the large-scale use by the Executive of the decreeing of urgency, the use of the instrument of confidence (*questione di fiducia*) or, as in this case, of laws containing very broad delegations, despite

having been common in Italy for some time and having undergone a considerable increase during the current legislature, shouldn't concern a matter such as this, which is potentially capable of completely rearranging the country's financial layout.

## 3. The principles contained in law no. 42

The law no. 42 contains several general principles which aim to draft the overall layout of the fiscal federalism model which this process of reform intends to accomplish.

The most innovative and important principle consists in the introduction of the so-called "standard cost" criterion[XXIV] in place of the "historical expense" criteria used so far to determine the costs necessary to the pursuit of the functions entrusted to the territorial bodies. The gradual elimination of the historical cost criterion, according to which the funding of the functions of territorial bodies is established on the basis of what they have effectively spent during the exercise of those functions within a given space of time, in favour of the standard cost criterion, on the basis of which the cost for the provision of a function is established on a preliminary basis and must be the same throughout the whole Country, represents something absolutely innovative.

The use of the standard cost criterion will not however regard all the functions of the Regions and Local Authorities, but only the regional functions connected to the essential levels of services concerning civil and social rights pursuant to art. 117, par. 2, lett. *m)* Const. (health, assistance and education, with the addition of local public transport) and the functions of Local Authorities related to "fundamental functions" – which have not yet been identified with a legislative intervention - to which art. 117, par. 2 lett. *p)* Const. refers. It should also be pointed out that costs for health, assistance, education and local public transport regard about ninety percent of the expenses sustained by the Regions.

The passage to standard costs encompasses the objective, claimed by the law (art. 1, art. 2, par. 2) to guarantee the principles of responsibility, effectiveness and transparency of democratic control with regard to those elected at all levels of government. This desirable passage is necessary due to the fact that it is no longer acceptable, especially considering the current economic crisis, for the same services to have such hugely different costs depending on the area in which they are performed. The final termination of this

system which has perpetuated government funding of bad management, has however been considerably delayed. The law envisages a transitory term of five years before the standard cost criterion becomes fully operational and finally replaces the historical expense criterion (articles 20 and 21).

The use of standard costs as a tool to enable the passage towards an effective and responsible financial independence of the territorial bodies is a principle that is undoubtedly one to be shared. However, the law only refers to this principle but supplies no indication as to the methods to be used to establish the standard costs of the functions connected to the "essential levels of service" and "fundamental functions". The tangible determination of the standard costs – a considerably complex operation which represents one of the crucial aspects of the implementation of the "design" of fiscal federalism prefigured by this law – is therefore entrusted entirely to the Government via the issue of delegated decrees, without the legislator having set any criterion to guide the action.

A second innovative principle, closely linked to the passage to the standard cost criterion and to the previously mentioned objective of the law to guarantee the creation of responsibility and transparency of democratic control for all levels of government, regards the introduction of responsibility by the directors of territorial bodies by envisaging rewarding and sanctioning mechanisms (art. art. 2, par. 2, lett. *z*) and art. 17, par. 1, lett. *e)*)[XXV]. The law envisages the introduction of a rewards system for Bodies that virtuously manage their regional and local budget policies but in this case too, it is still rather vague with regard to the new system's operating methods and mechanisms. The same goes for the sanctioning methods of government bodies which fail to respect the economic-financial balances or to guarantee the essential levels of services concerning civil and social rights, but in addition to the possibility of exercising the substitutive power pursuant to art. 120 Const., it is worth mentioning the ruling which heavily sanctions directors who lead the body into a situation of financial difficulty, with the identification of cases of non-election being requested.

These are principles which, despite being excessively generalised, can be agreed with considering that, to date, Italian history has been distinguished by the poor financial administration of various territorial bodies and by Government interventions *ex post* to balance the situation which, paradoxically, rewarded the policies of financial debts and waste[XXVI]. In preparing tangible sanctioning mechanisms, it will be necessary to ensure that

bad management by the authorities does not excessively penalise the community, at least as far as the enjoyment of social rights is concerned[XXVII].

Besides that mentioned above, the text contains other principles, some of which are less innovative, but which nevertheless contribute to providing a much clearer picture of the overall reform drawn up by the legislator. It would seem particularly appropriate to draw attention to the following points:

- the structural principle which refers to the link between autonomy of income and expenditure and the creation of administrative, financial and accounting responsibility at all levels of government is stated (art. 2, par. 2, lett. *a)*);
- the "principle of territory" based upon the territorial nature of the regional and local taxes and on the reference to the territory of the co-participations in revenue from state taxes is introduced ability (art. 2, par. 2, lett. *e*) and lett. *bb*)): in compliance with that envisaged by art. 119, par. 2, Const., therefore, it is established that the principle by which the co-participation available to Regions and Local Authorities has to be proportionate to the revenue generated in the territory of reference;
- the ban on double taxation (state and regional) of the same taxable amount is established (art. 2, par. 2, lett. *o)*). This is a fundamental principle of the federal orders which aims to prevent an increase in the fiscal weight placed upon the same asset;
- the principle of relationship between tax levy and benefit connected to the functions exercised on the territory is introduced, in order to encourage the correspondence between financial and administrative responsibility (art. 2, par. 2, lett. *p)*);
- regional tax autonomy is acknowledged (this guarantee was already contained in art. 119 Const.) and it is envisaged that the regional law can create regional and local taxes and determine changes in the rates and subsidies that the Local Authorities can apply in the exercise of their autonomy (art. 2, par. 2, lett. *q)*);
- margins of regional tax autonomy are acknowledged, also in the sense that it is possible to introduce exemptions, detractions, deductions and special subsidies (art. 7);
- the Regions are given the chance to set up co-participations in tax revenue in favour of the Local Authorities as well as regional co-participations (art. 2, par. 2, lett. *s)*);
- the principle of flexibility and fiscal manoeuvrability in the formation of combinations of taxes and co-participations is introduced (art. 2, par. 2, lett. *bb)*).

In implementing paragraph two, lett. *e*), of art.117 Const. and paragraph three of art. 119 Const., which assigns the state legislator the task of setting up a compensation fund – without restrictions in terms of designation – for territories with less fiscal capacity per inhabitant, law no. 42 of 2009 also establishes the directive principles and criteria in relation to determining a compensation fund in favour of the Regions and two funds in favour of the Local Authorities[XXVIII].

As regards the compensation fund in favour of Regions with less fiscal capacity per inhabitant (art. 9), it is fed by the revenue generated by a co-participation in revenue from "VAT" assigned for expenses relating to "essential levels of service"[XXIX] and by a part of the average balancing rate of the regional addition to the "Irpef" tax for expenses other than those at essential level. Consequently the regional fund will be financed both by the State and by the Regions. As far as the distribution of the resources deriving from compensation are concerned, the law introduces the general principle on the basis of which the job of compensation consists in properly reducing the differences between the territories, with varying fiscal capacity per inhabitant, without however altering the differences between Regions and without "preventing the alteration in time due to the evolution of the economic-territorial situation".

With regard to the compensation fund for Local Authorities (art. 13), the law envisages the setting up of two funds, the first in favour of the Municipalities and the second in favour of the "Provinces" and "Metropolitan Cities". The funds are set up in the budgets of the regions and must come from a State compensation fund fed by general taxes. The sharing of the compensation funds among the single Bodies takes place on the basis of two ratios: the first is a "financial requirement" ratio, calculated as the difference between the standard value of current expenditure net of interest, and the standard value of the revenue from general taxes and income; the second comes from the identification of "infrastructure requirement" ratios, in keeping with the regional programming for the sector and considering the extent of the European funds designation for infrastructures received by the Local Authorities.

## 4. The distinction between "typologies" of functions of Regions and Local Authorities

As regards the functions attributed to Regions and Local Authorities, the law makes a distinction between types of functions, envisaging a different coverage of costs on the basis of this differentiation. The law identifies two types of functions: for Regions, those traceable to essential levels of service relating to civil and social rights (to which local public transport is added) on one hand and all other functions on the other; for Local Authorities, the functions traceable to "fundamental functions" on one and all other functions on the other. The funding of functions which can be connected to essential levels of service with regard to the Regions and to fundamental functions with regard to Local Authorities must be calculated, as mentioned, on the basis of the standard cost criterion and must guarantee the complete coverage of the expenses necessary to finance these types of functions[XXX]. For the funding of other functions not traceable to this first category, the complete coverage of costs linked to their exercise is not expressly guaranteed by the law.

This distinction between types of functions made by the law does not appear entirely to be justifiable and, above all the guarantee of the complete financial coverage of only some of the functions that the territorial autonomies are required to perform raises doubts in terms of constitutional legitimacy. Art. 119, par. 4, Const., as mentioned earlier, envisages that the resources due, in accordance with the previous paragraphs, to Regions and Local Authorities have to enable the complete funding of the functions assigned to them, without any distinction between types of functions. The fact that only the regional functions connected to "essential levels of service" and the functions of the Local Authorities referable to "fundamental functions" are guaranteed complete financial coverage risks having a negative effect on the effective financial autonomy of the territorial bodies and seems to contrast with art. 119 Const.[XXXI].

## 5. Some issues which are not resolved by the law on fiscal federalism

The possibility of seeing fiscal federalism tangibly achieved in the Italian system also passes through the solution of certain important issues on which the text provides no precise answer, in some cases actually choosing not to decide.

As regards the question of relations between Regions and Local Authorities, the law chooses the path of continuity, referring to the system in force, and does not assign the Regions powers of connection and coordination of the fiscal activities of Local Authorities, simply envisaging two separate financial systems for Regions and Local Authorities. The system of regional taxes includes derivative taxes regulated by state laws, add-ons to the taxable bases of state taxes and regional taxes regulated by the Regions with a law in relation to the assumptions which are not already subjected to state taxation (art. 7). The Local Authorities on the other hand have their own taxes identified by state law, the tax related to road transport which must enable the coverage of the financial expenses of the Provinces, general taxes regulated by state law, local taxes regulated by regional law and tariffs for services offered also by request of single citizens (art. 12).

While the confirmation of a financial system operating on "several circuits" is undoubtedly in line with the picture envisaged by the constitutional Reform of 2001, which levelled all the Bodies that make up the Republic (art. 114 Const.) and did not establish hierarchical relationships between Regions and Local Authorities, the failure to introduce even slight forms of regional fiscal and financial coordination of the Local Authorities emphasises once again the "peculiarity" of the Italian federalist process. In countries like Germany and Spain, the parties involved in the distribution of financial resources are basically Central Government and the Federate or Regional Authorities. In Italy on the other hand, there is a plurality of institutional subjects – besides the Government and Regions, Regions with "special Statutes" (Special Regions) that benefit from a special financial regulations[XXXII], the Provinces, the Municipalities, the "Metropolitan Cities" and "Rome capital" for which a further special system is envisaged[XXXIII] - which is probably destined to make the determination of a consistent financial layout in the country targeting efficient fiscal federalism even more complicated. With the approval of this law, the Local

Authorities will continue to have the State as their main point of reference, also with regard to financial issues.

A second largely unresolved node is that regarding the difficulties of reconciling the implementation of fiscal federalism with the layout of funding for the Special Regions and Autonomous Provinces of Trento and Bolzano[XXXIV], considering that the construction of a new and consistent financial system articulated across several levels of government cannot be separated from the involvement of the Special Regions. These Regions enjoy a funding system which does not correspond to that envisaged by art 119, par. 4, Const., on the basis of which the financial resources allocated to the territorial body coincide with the costs necessary to the pursuit of the functions assigned to it, which is based on the allocation of very high percentages (in some cases 100%) of taxes ascertained within the territory, regardless of the functions performed and the relative costs. This system is obviously advantageous to the Special Regions, enabling them to enjoy a financial independence which lies outside the dictates of art. 119 Const.

The law no. 42, while establishing that the Special Regions concur to the pursuit of the aims of compensation and solidarity and are subject to the restrictions of the internal stability pact according to criteria to be defined with the laws implementing the respective statutes, has confirmed the financial "speciality" of these Regions, prefiguring the construction of specific financial systems for them (art. 27)[XXXV]. An amendment to the draft law approved by the Chamber of Deputies has introduced a rule which envisages the creation of special "tables" for confrontation between the Government and each Special Region: these tables will establish the methods by which the Authorities with differentiated autonomy concur to the pursuit of the aims of compensation and solidarity, as well as how to assess the congruity of the further financial allocations made after the entry into force of the respective statutes, verifying the consistency with the principles contained in the present law.

On the tricky issue of the system of financial autonomy of the Special Regions, the law has maintained the original special system enjoyed by the latter and has chosen not to choose, deferring the nodes of the issue to future laws for the implementation of the special statutes and, above all, to the new institutional seat of confrontation between Government and Special Autonomies. The plan for a financial system for the Special Regions which is consistent with art. 119 Const. and with its implementing laws is however

an essential condition to draw up a financial arrangement that guarantees the overall cohesion and unitary nature of the system[XXXVI]. Everything seems to have been postponed until further development take place and, also in this case, Parliament will be excluded from the decision-making processes that will have to clearly establish the financial and fiscal layout of the special autonomies in the fiscal federalism implementation process.

A further question which remains open even after the approval of the law on fiscal federalism regards the financial data and overall figures of this reform, which have not been characterised by the necessary transparency up to now. The rules of this law almost always refer to numbers and calculations that have to be carried out on the basis of tangible data in order to effectively implement the reform. In the law of delegation there is absolutely no reference to financial data and figures which should already have been made available to the legislator to guide the political choices and the collection of the data necessary to issue legislative decrees has been deferred until later – when Parliament will no longer have legislative power. The collection of the data will be managed by the Government, aided by the indications of the *Joint Technical Commission for the Implementation of Fiscal Federalism*[XXXVII]. Therefore the decision has been made to invert the logical order which should have meant that Parliament would have reliable financial data before approving the laws on the financial and fiscal reform of the system. The legislative body would also, in this case, have had the possibility to specify the content of the legislative delegation in various points, preventing Government from having so much room to manoeuvre.

The law no. 42 establishes, at a general level, that the implementation of the law and the delegated decrees must be compatible with the pact of stability and growth and, above all, via an amendment approved by the Chamber of Deputies, it introduces the principle according to which the reform must not give rise to new or higher charges for public finance (art. 28, par. 1 and par. 4). The aim is to achieve a financial and fiscal reform with "zero costs".

It must be remembered however that the choice to go ahead with Parliamentary approval of a regulatory text without the availability of precise financial data and figures has already been pursued to open up the way for an equally significant federalist reform in Italy, known as "administrative federalism"[XXXVIII]. The aim of that reform was the transferral of numerous administrative functions from the State to the Territorial

Authorities. In envisaging different delegations to Government in order to enable the implementation of said reform, law no. 59 of 1997 (the "Bassanini" law), also contained the principle of the reform at "zero costs" and failed to provide a precise indication of the overall figures relating to the implementation of the so-called administrative federalism.

## 6. Brief conclusive considerations

The law of delegation approved by Parliament cannot be considered as an arrival point for the financial independence of Regions and Local Authorities, but represents a first step on the path to the implementation of fiscal federalism in Italy.

The decision not to directly and effectively implement art. 119 Const., deferring this task to the Executive by using a "maxi delegation" – with all the criticalities that ensure and which are explained above – implicates a further delay (of at least five years) to the entry into full operation of fiscal federalism and the start of a long transition period[XXXIX]. Further procrastination of the lack of final implementation of art. 119 Const., which should have been one of the first areas of intervention of the legislator after the Constitutional Reform of 2001, can have negative consequences on the whole implementation of Title V of the Constitution, given the evident and indissoluble link – mentioned at the beginning – between the accomplishment of the financial autonomy of income and expenditure of the Territorial Authorities and their effective capacity to perform the functions assigned to them by the Constitution.

The text approved by Parliament also contains important innovative principles such as the introduction of the standard cost criterion and the envisaged rewarding and sanctioning mechanisms to create greater responsibility by the Territorial Authorities and their administrators, but although it brings innovation, it is also restricted to tracing the general outlines of a layout which has still to be tangibly defined in terms of its essential aspects[XL]. Taking a look, for example, at the definition of standard costs, which probably represent the core of the whole legislative design: the law does not tackle the issue of the possible diversification of the costs of the same function from one Body to another due to the structural differences between the territories or to their different demographic

composition and does not generally indicate the methods used to determine and quantify the standard costs.

Consequently we are still in an interlocutory phase which will lead to subsequent passages, the outcome of which cannot be taken for granted and is also linked to the positive resolution of certain systemic nodes of the new Title V of the Constitution that are still substantially unresolved and must be tackled by the legislator. These nodes include the redefinition of the holding of administrative functions to be divided among Government, Regions and Local Authorities on the basis of art.118 Const., the identification and the detailed definition of the "essential levels of service" and "fundamental functions" of the Local Authorities, the relationship between Regions and Local Authorities and the re-modulation of the Special Autonomies.

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I On law no. 42/2009 see Martines T., Ruggeri A. , Salazar C., 2009; Nicotra V., Pizzetti F., Scozzese S., 2009; Jorio E, Gambino S., D'Ignazio G., 2009.

II Further confirmation of the partial and incomplete implementation by the legislator of the new Title V of the Constitution also comes from law no. 42 of 2009 on fiscal federalism. In order to make the implementation of this law possible, law no. 42 has had to intervene with regard to the institutional profiles of the Local Authorities with a transitory ruling (art. 21) until a law implementing art.118 Const. is passed. The law in question also had to envisage a transitory ruling on the regulation (also at a financial level) of Metropolitan Cities, (art. 23) and of Rome Capital organisation (art. 24), in order to provisionally implement art. 114 Const. Both the institutions of the Metropolitan Cities and Rome Capital were envisaged by the constitutional reform of 2001 but the legislator has still not taken action to envisage an organic regulation of this Territorial Bodies.

III For complete details on law no. 131 of 5 June 2003 – known as the "La Loggia" law – see Various Authors, 2003.

IV On the regulation of financial independence contained in art. 119 Const., see, among numerous written materials, Antonini L. 2003; Giarda P., 2001; Pitruzzella G., 2002; Brancasi A. 2003; Covino F., 2001; Della Cananea G., 2006.
For an overview of the contents of the constitutional standards of the other European states on the subject of the financial independence of territorial bodies Various Authors, 2001; Covino F., 2005.

V In general, on "fiscal federalism" in Italy, Giarda P., 1995. On fiscal federalism from the point of view of its possible implementation in Italy in the light of the new art. 119 Const., see, among the numerous contributions, Bassanini F. Maciotta G.,2003; Bassanini F., 2008; Antonini L. 2005; Giarda P., 2005, *L'esperienza italiana di federalismo fiscale: una rivisitazione del decreto 56/2000*, Bologna.

VI Cf. Caretti P.- Tarli Barbieri G., 2007.

VII Cf. Constitutional Corte, ruling no. 370/2003. As regards the copious jurisprudence of the Constitutional Court on the matter of the implementation of art. 119 Const., see, amongst others, ruling no. 370/2003; 16/2004 37/2004; 381/2004; 431/2004; 397/2005; 455/2005, 2/2006. On the jurisprudence of the Constitutional Court on the matter, see Salazar C., 2004; Antonini L., 2003, *La prima giurisprudenza costituzionale sul federalismo fiscale: il caso dell'Irap (nota a C. Const. n. 296/2003)*, in *Rivista di diritto finanziario e scienza delle finanze*.,97; Morrone A., 2004.

VIII For a detailed and analytical comment on the draft law on fiscal federalism presented by the Government in Parliament see Bassanini F. - Maciotta G.,2008.

IX In the final election at the Chamber, out of 549, there were 319 votes in favour, 195 abstentions and 35 votes against. At the Senate, out of 248, there were 154 votes in favour, 87 abstentions and 6 votes against.

X In the declarations of the final election at the Chamber, Antonello Soro, Group leader of the PD for the Chamber, thanked the members of his Group for their commitment "which has enabled substantial

improvements to the provision under examination, with which however my party cannot fully identify" (Chamber of Deputies, Reports on session no. 151 held of Tuesday 24 March 2009).

[XI] Art. 2 par. 6 envisages that at least one of the legislative decrees has to be adopted within a year of entry into force of the present law.

[XII] Cf. Morrone A.,2008.

[XIII] For further analysis and comments on the draft law following the amendments made to it by the Senate, see the final report on the workshop coordinates by Bilancia P. and held within the sphere of the "P.R.I.S." (Project for study on the processes of institutional reform and economic-social modernisation of the country), entitled "*Federalismo fiscale e sistema delle autonomie* (21 January 2009), the text is available on the website www.giuripol.unimi.it/pris/pris.htm.

[XIV] Reference is made to the special Parliamentary Commission set up by the present law, reference to which is made further on in this same paragraph.

[XV] See, in this sense,Groppi T., 2008.

[XVI] Cf. Bassanini F. and the Astrid group, 2008.

[XVII] Any "corrective" legislative decrees must be adopted within two years of the date of entry into force of the delegated decrees envisaged by the present law. It is worth pointing out that any additional and corrective legislative decrees will be adopted with the same procedures envisaged for the legislative decrees that will implement the act of delegation envisaged by law.

[XVIII] The "Committee of representatives of the territorial autonomies" is made up of twelve members, appointed by the representatives of the Regions and Local Authorities within the context of the Unified Conference: six representing the Regions two the Provinces and four the Municipalities (art. 3, par. 4).

[XIX] On the redefinition of the system of parliamentary opinions enacted by Parliament with regard to the original government draft law and on the role of the Parliamentary Commission for the implementation of fiscal federalism, see Salerno G. M. , 2009. The author positively assess the introduction of the Commission, because it enables Parliament to create a specialised observatory which allows it to exercise its monitoring of the Executive, for the creation of a link between the Commission and the local autonomies by setting up the Committee for Territorial Autonomies and for its connection with the other bodies created especially to pursue the process of reform.

[XX] Cf. Groppi T., *Il federalismo fiscale nel quadro costituzionale*, cit.

[XXI] For more information on the functions of the permanent conference for coordination of public finance and the Joint Committee for the implementation of fiscal federalism, see Salerno G. M., 2009.

[XXII] The Unified Conference is the body that links the Government, Regions and Local Authorities. Set up by Legislative Decree no. 281 of 28 August 1997, the Conference works to encourage cooperation between the activities of the Government and the system of autonomies, examining matters and tasks of shared interest. However, it should be pointed out that, on the basis of the provisions of art. 2, paragraph three of the law, the Government may also proceed in the absence of an agreement by the Unified Conference, forwarding a report to the Chamber indicating the reasons why the agreement has not been reached.

[XXIII] On the basis of that envisaged by art. 2, paragraph four of the law. It does not however seem possible to assume, on the basis of art. 76 Const., the adoption by Parliament of opinions which, as well as being obligatory are also binding during the phase in which the Government exercises the powers delegated.

[XXIV] On the standardisation criterion relating to the costs of functions see Covino F., 2009.

[XXV] See, on the matter, Bin R., 2008. The author criticises the fact that, by introducing standards to make directors responsible, the Government elects itself tutor of the financial rigour of the territorial bodies but not of its own, as its financial sovereignty remains intact. A correct "multilevel" government should be based, in the author's opinion, on the utmost transparency and truth of all the public financial statements, starting with that of the State and not, as actually happens, only the financial statements of decentralised governments.

[XXVI] Just to list a few examples, think of the recent government interventions to make up foe the health deficits of certain regions and deficits of two municipalities such as Catania and Rome. On the relationship that exists between fiscal federalism and the aim to improve the efficacy and efficiency of public services (especially in the south of Italy), see the attentive analyses carried out by Viesti G., 2009.

[XXVII] See, on the matter,Falcon G., 2008. In asking whether the sanctions applied to the Bodies will be sufficient, the author also asks: "*Can social rights depend on the good or bad management of the authorities elected?*". On a more general level, as regards the delicate issue of the relationship between fiscal federalism and the principle

of equality of citizens, see Gambino S., 2009.

[XXVIII] On the presumed divergence of the model of the "three funds of compensation" created by the legislator in relation to the constitutional dictate which would rather contemplate a government fund for ordinary compensation, see Morrone A. cit.

[XXIX] See paragraph 4.

[XXX] On the basis of the law, the taxes that have to cover expenditure for functions connected to "essential levels" and to the fundamental functions of the Local Authorities are those indicated in art. 7 par. 1 lett. b) number 1, the regional supplement to the IRPEF tax, part of VAT and IRAP tax until it is replaced by other regional taxes.

[XXXI] See, on the matter, the observations of Cerulli Irelli V., 2008. The author highlights the evident contrast with art. 119 Const. which guarantees complete financial coverage for all the functions exercised by the autonomies, not just for some, and mentions how the reference to the essential levels of services and fundamental functions appears to be completely lacking in content because, on one hand, the essential levels have still not been established, apart from in a few sectors, and, on the other, there is still no national law identifying the fundamental functions of the Local Authorities. Groppi T., 2009, cit., in highlighting the breech of art. 119 par. 4 Const., speaks of an unjustified distinction between "first class and second class functions". See also Della Cananea G – Fransoni G., cit, 2006. According to this reading, the constitutional law in question does not oblige the Government to "cover" all regional expenses, meaning that every level of government is responsible for obtaining the missing resources needed to perform all the functions assigned to it.

[XXXII] Attention should be paid to the considerations made further ahead in this same paragraph. In Italy there are five "Special Regions": Friuli Venezia Giulia, Sardegna, Sicilia, Trentino-Alto Adige, Valle d'Aosta. Constitution recognizes these Regions particular forms of autonomy (Art. 116 Const.).

[XXXIII] Art. 23 of the law contains transitory standards for the institution of Metropolitan Cities (envisaged by art. 114 Const.), until the approval of the specific law regulating its operation; art. 24 does the same for the transitory order of the territorial body of Rome Capital. Specific financial systems are envisaged for both the metropolitan cities and Rome Capital.

[XXXIV] On the matter, see Salerno G.M.., 2007. As regards the government draft law on fiscal federalism in relation to Special Regions, see Muraro G., 2009.

[XXXV] Par. 7 of art. 27 emphasise the need to ensure observance of the fundamental standards of the present law, but "respecting the particular features of each special region and each autonomous province"

[XXXVI] As emphasised by De Martin G. C., 2008, the question of the financial layout of the Special regions is a question which should not be overlooked in any way and it is important to guarantee the social-economic unity of the Republic. While believing that the special nature of these Regions can still be justified by an expansive vision of autonomy, the author highlights how this cannot translate into a system of financial privilege in contrast with art. 119 Const. According to Morrone A.,cit., the envisaged introduction of special principles to regulate the financial autonomy of the Special regions does not lead automatically to a systemic unitary consideration, but to prospects of increased fiscal and financial autonomy.

[XXXVII] On worries relating to the fact that all the tangible "ciphering" of the reform will take place outside of Parliament, see Manzella A., 2008.

[XXXVIII] On the process of implementation of "administrative federalism" in Italy, see Cittadino C., 2003, (by), *Dal federalismo amministrativo all'attuazione del Titolo V della Costituzione: l'evoluzione di un sistema,* Sant'Arcangelo di Romagna, 2003.

[XXXIX] Manzella A., 2009, envisages a transition time of seven years and highlights the extent of the power of attorney which now makes it substantially inconsistent: the author describes the text approved by Parliament as a "gambling law", considering it "*a gamble on the future and a high-risk gamble*".

[XL] Falcon G., 2008, cit., 767, critically emphasises the fact that the problem does not consist in the enunciation of these principles and criteria, but in their effective application.

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