

MECHANISMS FOR IMPLEMENTING EU LAW AT REGIONAL LEVEL IN ITALY

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The essay analyzes the mechanisms adopted by the Italian regions in order to implement EU law. Indeed, under the Italian Constitution the regions must contribute to the implementation of EU law. The regional rules (regional charters, laws and administrative acts) are used to adapt the national provisions to the different territorial realities.

1. The regions and the EU

The Italian Constitution of 1948 introduced regions as an intermediate level of government between central government and local government formed by municipalities and provinces. The Italian regions were endowed with statutory, legislative, administrative and financial autonomy. The first two forms of autonomy are the most characterizing: on the one hand through the adoption of *regions' charters* (*statuti regionali*), each region determines its own form of government and the basic principles of organization and work (1); on the other hand, through legislation, regions expresses its own policies which must, however, comply with those at national level (a reason for which regional lawmakers can never exceed the limits and boundaries of legislative principles set by the state).

The Constitution also confers the *task of contributing to the implementation of EU law to the regions* although this competence lies primarily with the State (2). The intervention of the regions in the implementation of EU law, which can be more or less ample depending on the cases, allows them to adapt national provisions to the different territorial realities. To this end, the regions employ various tools: regional charters, laws and administrative acts. In this essay, we shall focus in particular on those rules adopted by the regions in order to implement EU law, and on the mechanisms they have developed.

2. The instruments

The Italian Constitution states that the regions "provide for the implementation of international agreements and European acts" (Article 117.5). Following constitutional provisions, *regions' charters* include some rules for implementing EU law. For instance, the possibility for the President of the Region to ask for a vote of confidence "on the implementation acts of EU law" [3, 49]; or to underline the need to provide for rapid implementation [7, art.10.4]; or even the mandatory establishment of a Council committee for EU Community Affairs (*Commissione consiliare per gli affari comunitari*) [7, art. 32.1]. Abrogative referendums are not allowed within the implementation process, in order to prevent the possibility that the referendum could result as being responsible for EU law non-implementation [8, art. 10.2].

At the same time, *regional laws* enforce regions' charters developing specific rules for the implementation of EU law (*procedural laws*) (3). The Italian Constitutional Court confirmed regional procedure of implementation - in the scope of procedural laws established by national laws - saying that regions can regulate through law "a specific internal procedure aimed at establishing the method" of implementation at a regional level (Case no. 372/2004). The relevance of procedural law is highlighted by, on one hand, the fact that regional laws can be abrogated only in a stipulated manner [14, Art. 10].

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3. Subjects and pre conditions

The regional implementation of EU law involves both the *Regional Council (Consiglio regionale)*, which is the legislative body, as well as the *Regional Executive (Giunta regionale)*, which is the executive body, chaired by the President of the Region who is elected directly by the inhabitants of the region. However, executive body is better equipped to deal with this task since it has more offices and more data available. For this reason, "the Council's right to precautionary and subsequent information on community affairs" is enforced and establishes that the Council committees can ask the Regional Executive to refer on the state of implementation [2, art. 42.2 and 31.3]. Subject to the regional government bodies, acting as the main players in the implementation procedures, the independent territorial authorities (municipalities and provinces) are also involved as are economic and social authorities [9, art. 39.6].

The Council of local government (*Consiglio delle autonomie locali*), that is a consultation body between the region and local government (municipalities and provinces) as provided by the Constitution, is also involved but only regarding some particular matters (local territorial organization, competences and attributions of local authorities, revenues and local authority expenditure) [1, art. 4.3].

The pre-condition of the implementation is the *assessment of the compliance* of the regional law with the EU law. Different options are available. On one hand, some regions establish that the assessment of non-compliance lies with the Regional Council; more precisely, they attribute the "constant assessment" of compliance to the competent Council committee [13, art. 4]. On the other hand, several regions attribute the assessment to the regional executive body in its various components: to the Regional Executive [12, art. 5.1], or the President of the Region [21, art. 6], or even to the regional departments which "communicate the outcomes to the President of the Region [19, art. 6.3]. An alternative way of determining the state of compliance takes into consideration the administrative practices: the Regional Executive presents a bill to substitute the regional dispositions which the administration decides not to apply due to incompatibility with EU law [14, Art. 8.1].

4. Legislative implementation

The regions have two tools to implement EU law. The first is the law that adapts the regional law following a change in EU law. Se-

eing as this is approved when needed, it can be defined as an *occasional law*. According to the legislative procedure the Regional Executive has to present the bill "at least three months prior to the adjustment time limit as set out in the Directive" [15, art. 4.2]. Furthermore, in order to speed up the process, it is possible to opt for the urgent procedure which involves the reduction of preliminary reviewing and the possibility to transcribe the text in the Assembly agenda even if the Council committee has not yet completed the review within the prescribed time limits (4).

The second tool is the law that adapts the periodic regional legal system (*Periodic law or Community law*) (5). Its distinctive characteristics are defined by the Region's Charter or procedural law: the yearly periodicity and the discussion in a special session of the Regional Council. Some regions add specific functional rules to this model in order to shorten the legislative procedure (we will come back to this later). However, the procedural law of the Region of Tuscany is slightly different from this model since, despite its periodicity, it does not precisely establish that the Law must be yearly and does not institute a specific session. Another distinctive characteristic of the Periodic law should be its heterogeneous content in so far as it enforces EU law of the preceding year. However, if we look at the standard procedure, we discover that sometimes even occasional laws regulate a great variety of subjects (6).

Observing the standard procedure, there are cases in which the Region's Charter introduces the Periodic law, although the law has not so far been effectively approved (Piemonte Region), and cases in which the region have used this tool even if it was not provided for by the Charter (Tuscany, Calabria, Marche, Puglia, Friuli Venezia Giulia, Valle d'Aosta). Other data emerge from the standard procedure: the regions which choose the yearly periodicity may encounter difficulties in respecting it, therefore some of them have still not adopted the Community laws (7).

Finally, it is worth to notice that the regions which have adopted the Periodic law do not consider it as an exclusive tool [9, arts. 39.1 and 5]. Occasional laws are usually enacted when it is necessary to implement an EU act in a time of the year which does not coincide with a Community session. However, occasional laws could also be used (as an alternative to the Periodic laws) when a reform of an entire sectorial law is preferred to ad hoc implementation.

5. Community law

Community law is discussed in a specific *council work session* held every year within the date previously set by the Region's Charter or the procedural law (so-called "Community session"). The bill is presented annually by the President of the Region, or by the Regional Executive (8).

The proposal bears the title "Regional Community law" and shows the year of reference [17, art. 3.1]. In the report attached to the bill, the Regional Executive reports on the compliance of the Community law and on the infringement proceedings which are ascribed to the regions [17, art.3.3]. It also reports on the state of implementation of Community law of the previous year [21, art. 8.3] and it lists the directives to be implemented as prescribed by regulatory or administrative rules [14, art. 3.3 letter b].

As mentioned before, some regions have introduced *functional rules to speed up the approval procedure* of Community law. These rules aim to predetermine the duration of the proceeding stages, beginning with the discussion by the relevant committee with regards to relations with the EU and which must be concluded within forty days of the bill approval [5, art. 38]. Where Assembly's examination is required there are a number of possibilities regarding who is competent to decide. This could be the Bureau of the Regional Legislative Assembly (*Ufficio di Presidenza dell'Assemblea*), which approves the work agenda of the assembly establishing a time limit for the final voting on the proposed bill [11, Art. 19.3] or the Council President, who "sets beforehand the day and the hour of the final vote" [10, art. 43.3]; or even the Conference of groups of the Regional Council (*Conferenza dei gruppi consiliari*), which sets the time limit for the final vote "after which the work of the Assembly, following a majority resolution, continues beyond the scheduled timetable until all votes have been cast" [6, art. 128]. There is also the possibility of a fixed time limit, directly indicated by the procedural law (9). It must also be pointed out that in practice the regions do not seem to follow effectively of the fast track procedures, which in fact depend on the capacity of the Council majority to respect the established procedure times (10).

As far as *content* is concerned, Community law sets out "provisions a) repealing or modifying regional laws in contrast with Community regulations or acts, b) implementing and enforcing the Directives and the Community acts, c) enforcing the sentences of the Court of Justice and other Council measures or those of

the European Commission compelling regions to comply" [20, art. 7.2]. Other procedural laws provide further indications, in particular the indication of acts which can be implemented from an administrative standpoint and the authorization for implementation by means of regulations. However, the implementation cannot defer to such acts, and therefore the law must provide directly when "the fulfilment of Community obligations means an increase in costs and a reduction in revenues, the individuation of administrative penalties or the institution of new governing bodies" [16, Art. 8.3 letter h]. An annex to the law set out the directives where the Regional law is already compliant with EU law [19, art. 8.3].

6. Regulatory implementation

Regions have two options to carry out regulatory implementation: 1) regulations set out by the Regional Council; and 2) those set out by the Regional Executive.

The *model of regulatory implementation by the Regional Council* allows it to make use of both the law and the regulations, whereby the Council's preference will inevitably be that of the law. In fact in the three-year period between 2009 to 2011 only one regulation was approved in Abruzzo Region, which, furthermore, was not related to the implementation of European Directives; a somewhat modest performance compared to the 87 regulations approved over the same period by the Regional Executive of Puglia (some of which implement European laws on the environment: e.g. R.L. 10/2010 on the energy certification of buildings, R.L. 24/2010 on plants fuelled by renewable sources). In the Marche Region, the situation is slightly different, also because the Region's Charter, while assigning regulatory competence to the Council, unlike the Abruzzo Region's Charter, allows the individual law to authorize the Regional Executive to adopt regulations, consequently, in the three-year period sixteen regulations were approved, nine of which by the Regional Executive.

The *model of implementation through regulations of the Executive Committee* is suitable for the executive function which characterizes this body. In this specific framework, it is worth distinguishing between the idea that the Regional Executive can adopt the regulation only subsequent to legislative authorization [7, art. 11.4], from the idea that it can proceed independently from such authorization [22, art. 42].

In the second hypothesis the law can give the Council competence to implement regulations [9, art. 42.1 letter c], and provides for

the reasoned opinion of the competent Council committee (11). This is a way to limit Regional Executive's power to be implemented through regulations. However, in one case there is the possibility to implement the urgent procedure allowing for the acquisition of the Council committee's opinion after the adoption of the regulations [Art. 8.2 letter b)].

More extensively, beyond the two hypotheses of the *general authorization* (by the Region's Charter) or by the *specific authorization* (by individual laws), the implementation of regulations by the Regional Executive is limited on the basis of various measures. Firstly, the previously mentioned exclusion of the regulation thorough the discipline of certain objectives reserved to Community law. Secondly, the Assembly's reasoned opinion on the compliance of the regulation with respect to the region's charter [4, art. 28.4 letter n]. Thirdly, the establishment of limits by the Regional Law [4, art. 49.2]. Finally, the submission of the regulation for the approval of the Council (12).

With regards to *types of regulation*, in most cases they regard implementation regulations, *i.e.* acts required to make EU law operative in regional fields. However, it is also necessary to make a distinction as to whether the regulations can directly implement the EU acts [10, Art. 27.4], or whether legislative intermediation is necessary, for which the regulations implement the Regional Community law which sets out criteria and principles [16, art. 8.3 letter b)]. In some regions, Community law authorizes the adoption of regulations (*regolamenti di delegificazione*) in the subject matter not covered by legal reserve [18, Art. 5.3]. This means that Community law determines the abrogation of the law which disciplines the subject matter of the deregulation from the moment the regulation is adopted. However, Community law establishes that the criteria the regulation must follow and significantly reduces the Regional Executive range of action: furthermore, the Council committee competent for the matter expresses a prior "binding opinion" on the text [14, Art. 5.3].

7. Administrative implementation

The last type of implementation consists of administrative acts. This course of action can also be divided into Acts by the Regional Executive and Acts by the Regional Council, which can be adopted according to the respective competences defined by the Region's Charter, always when the implementation does not require "a prior regulation of the subject matter" [4, art. 12.1 letter b)].

As far as the acts of the Regional Council are concerned, it is sufficient to note that the majority is put forward by the Regional Executive which has specialized offices available, and that they refer to "general provisions" [23, Art. 33.3 letter e)].

Regarding the Regional Executive instead, there are two different options available. In the first, Regional Executive independently chooses the acts to be implemented on the basis of a *general authorization*. One example is provided by the procedural law of the region of Tuscany according to which the Regional Executive implements the EU Directives which modify "exclusively technical characteristics of Directives and of other Community acts already transposed into national or regional Community regulations" and provides "the administrative implementation of Community Acts" [20, rt. 8]. Another form of general authorization is linked to the adoption of temporary acts for emergency situations: the President of the region has the power to adopt "urgent and temporary administrative precautionary measures and primary adaptation to the Community acts to be immediately enforced" [7, art. 41.7]. A general form of authorization is also to be found in the laws on regional organization which assign the competence to issue general Directives and guidelines to the bodies of political - administrative management.

In the second alternative, it is the individual law which indicates which EU laws the Regional Executive must implement administratively. The *specific authorization* is contemplated by some procedural laws which refer to the Community law for the reference to which EU acts are to be implemented administratively, setting out the relative principles and criteria, as well as the various time limits (13). Naturally, the indication of the EU acts can also be implemented by occasional laws which in a few cases concede a wide time margin within which the Regional Executive can intervene (14).

8. Regulatory and administrative acts

The implementation process requires regions to follow specific procedures made by regulatory and administrative acts. EU law are usually first implemented at a national level (through Community laws, legislative decrees, governmental regulations, decrees by the Prime Minister, ministerial decrees etc.); subsequently they are implemented at a regional level by regional law and then by regulatory and administrative acts.

However, the combination among the acts can vary from case to case. The following two cases can serve as an example.

Case I (relating to the control of urban waste water treatment plants). There are six steps in the legal sequence: EU directives, national transposition act (environmental code), regional laws, regional regulation, resolution by the Regional Executive of Region of Lombardy, protocols between the actors involved in the control.

Case II (relating to the overseas destination of waste originating from disposal plants). A Deliberation by the Regional Executive (*delibera della Giunta regionale*) of Veneto temporarily suspends the efficacy of a previous Deliberation referred to an EU directive which was in the process of being transposed. Such circumstance creates a situation of interpretative uncertainty. The suspended resolution refers to European normative acts (including those which have not yet been transposed on a national level) as well as national ones, therefore the legal sequence only goes through three stages: EU directive, national transposition act (environmental code), Regional Executive Deliberation.

Notes

1. The regions are provided with a legislative body, the Regional Council (*Consiglio regionale*) and with an Executive body, the Regional Executive (*Giunta regionale*), chaired by the President of the Region (Art. 121.1 of the Italian Constitution), who, according to the regions' charters, is elected directly.

2. As is well known, EU law is divided into 'primary' and 'secondary' law. *Primary law* refers in particular to the Treaties that are the basis for all EU action. *Secondary law* is derived from the principles and objectives set out in the Treaties and includes regulations, directives and decisions. Member States have primary responsibility for the correct application of EU Treaties and legislation.

3. Most of the regions have their own *procedural law*: R.L. 44/1995 Liguria; R.L. 10/2004 Friuli Venezia Giulia; R.L. 8/2006 Valle d'Aosta; R.L. 14/2006 Marche; R.L. 3/2007 Calabria; R.L. 18/2008 Campania; R.L. 16/2008 Emilia-Romagna; R.L. 32/2008 Molise; R.L. 22/2009

Abruzzo; R.L. 31/2009 Basilicata; R.L. 26/2009 Tuscany; R.L. 13/2010 Sardinia; R.L. 10/2010 Sicily; R.L. 17/2011 Lombardy; R.L. 24/2011 Puglia; R.L. 26/2011 Veneto. From this point, when a regional law is referred to without indicating the number and year, it will be a procedural law. Moreover, only a single regional act will be referred to in the examples even if this provision can be found in other regional law systems.

4. Art. 82 Int. reg. Council of Region of Lombardy; for the same purpose Art. 8.2 R.L. of Puglia foresees the use of the priority proposal.

5. This legal tool is mentioned in Art. 8.5 of the State Law 11/2005 which refers to "yearly transposition laws". Here the two names *Periodic law* and *Community law* shall be used indifferently.

6. For example, R.L. Liguria 14/2011 which implements the Directive concerning services on the domestic market but which also contains a reference dedicated to the provisions relative to environmental matters.

7. Molise, Calabria, Sardinia, Sicily.

8. The first hypothesis is provided for by Art. 39.3 st. Lombardy; the second by Art. 3.2 R.L. Basilicata.

9. Art. 5.1 R.L. Abruzzo according to which the law is to be approved "prior to the 31 July each year".

10. The rule of the Piemonte Region's Charter, according to which the Council President establishes the moment of the final vote, has remained on paper, because not even the legislative proceedings have been commenced; the procedural law in Abruzzo has not been respected, considering that the EU laws have been implemented after the time limit.

11. See Reg. Liguria 5/2011 on protection of the marine environment.

12. Art. 56.2 Campania Region's Charter. See Reg. Campania 1/2009 on the strategic environmental assessment.

13. In the first sense, see Art. 11.1 letter d) R.L. Sardinia; in the second, see Art. 8.4 R.L. Lombardy.

14. E.g. R.L. 3/2011 Lombardy according to which the Executive Committee "sets out provisions" limiting the use of heating systems.

References:

1. Abruzzo Region's Charter
2. Calabria Region's Charter
3. Campania Region Charter's
4. Emilia-Romagna Region's Charter
5. Int. Reg. Emilia-Romagna
6. Int. reg. Friuli Venezia Giulia
7. Lazio Region's Charter
8. Liguria Region's Charter
9. Lombardy Region's Charter
10. Piemonte Region's Charter
11. Reg. Int. Umbria
12. R.L. Calabria
13. R.L. Campania
14. R.L. Friuli Venezia Giulia
15. R.L. Liguria
16. R.L. Lombardy
17. R.L. Marche
18. R.L. Puglia
19. R.L. Sicily
20. R.L. Tuscany
21. R.L. Veneto
22. Tuscany Region's Charter
23. Veneto Region's Charter

МЕХАНИЗМ ИМПЛЕМЕНТАЦИИ ПРАВА ЕС НА РЕГИОНАЛЬНОМ УРОВНЕ В ИТАЛИИ

В статье анализируются механизмы, принятые итальянскими регионами в целях реализации законодательства ЕС. Действительно, в соответствии с Конституцией Италии регионы должны внести свой вклад в реализацию законодательства ЕС. Региональные правила (региональные уставы, законы и административные акты) используются для

адаптации национальных положений к различным территориальным реалиям.

Джованни ди Козимо,
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