



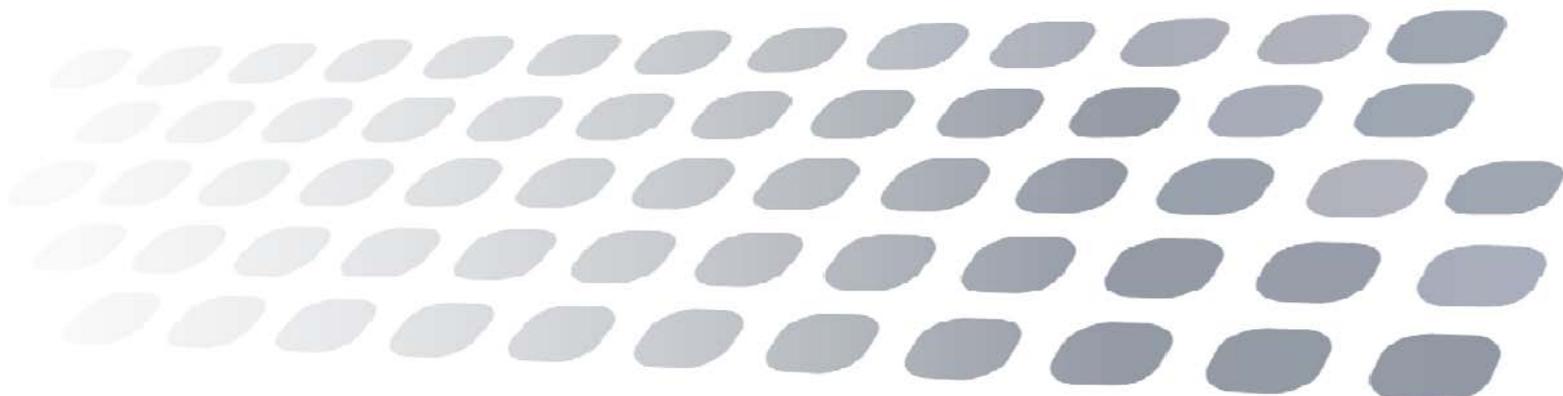
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CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



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## The Spinelli Group: an engine of the initiatives that Europe needs?

by Roberto Castaldi

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## **Abstract**

This paper analyses the importance of the creation of the Spinelli Group in the current context of the European unification process. If the Spinelli Group manages to take initiatives to advance the ability of the EU to cope with the many challenges it faces, it will provide a great service to the interests of the European Union's citizens.

## **Key-words:**

European Union, Spinelli, Spinelli Group, crisis, initiative, leadership, European economic government



## 1. Introduction

In the last editorial I suggested that “Europe needs initiative and leadership to overcome the crisis”. In that paper I applied the interpretative scheme “crisis-initiative-leadership” - developed with reference to the European unification process as a whole – to the current crises. The paper concluded that while crises are aplenty, effective initiatives and leaderships are badly lacking in the EU. From this perspective things may be changing. The creation of the Spinelli Group may suggest that new initiatives are indeed likely to be forthcoming.

A group of prominent MEPs from different parties has promoted this network, which includes personalities of civil society with a high profile and a long-standing commitment to the cause of European unity, such as Ulrich Beck, Jacques Delors, Mario Monti, Tommaso Padoa Schioppa and Amartya Sen. The Group is open to ordinary citizens who can sign the Group Manifesto (available at [www.spinelligroup.eu](http://www.spinelligroup.eu)) and will be invited to an open meeting at least once a year. The Group’s aims are presented in a clear and straightforward manner:

‘As indicated in the manifesto, at a time of interdependence and a globalised world, clinging to national sovereignties and intergovernmentalism is not only warfare against the European spirit, it is but an addiction to political impotence. Today we are moving in the opposite direction, towards a looser instead of a closer Union, towards a more national instead of a post-national Europe.

The aim of the Spinelli Group is to oppose this backward and reactionary direction. We believe that this is not the moment for Europe to slow down, but on the contrary to accelerate. Our goal is a federal and post-national Europe, a Europe of the citizens.

We want to make a network of those who choose the European interest above their national interest, those who want to push the federal project in their respective environments. Just like Altiero Spinelli did, we want to operate from the European Parliament, but not only from the European Parliament. The aim of the Spinelli Group is to become a network of citizens, politicians, academics and writers who are convinced it is time for Europe to move forward.’

And the Group has identified some principal paths of action to pursue its goals:



‘The Spinelli Group will come forward with suggestions it considers as the necessary next Big Steps Forward. There are a lot of themes and subjects on which the European Union should move forward but someone must put them on the agenda. Federal and post-national steps forward will be proposed about for example European defence, culture and education, European citizenship or energy.

One tool the MEP Spinelli Group will use is the Written Declaration in the European Parliament. The goal is to find a federal majority on important subjects. The Written Declaration will also be used to make clear what our red lines are on important negotiations. An obvious example in the near future is going to be the negotiations on the Budget 2011, the revision of the current financial perspectives 2007-2013 and the next multi annual financial framework 2013-2020, where the Spinelli Group is not going to accept a shrinking budget.

Once or twice a year all the members of the Spinelli Network Group will be invited to a Spinelli Meeting.

The Spinelli Group will also organise The Shadow Council. Today the European Council is opting for the intergovernmental method. This is of course a consequence of the situation that every Head of State or Prime Minister is defending their own national interest. The Shadow Council will do the opposite and look for solutions based on the interest of the entire European Union and its citizens. It will be a federalist and post-national Council working on European answers to European problems.’

I will try in what follows to describe out the possible implications of the creation of the Spinelli Group, drawing on lessons from the history of European integration that may be relevant to its activity.

## 2. The potential role of the Spinelli Group

The previous editorial discussed the idea that in the past crises provided occasions for Europe to advance thanks to the initiative of European personalities and organizations who convinced the political leaders that a European solution was required (see Monnet 1976; Spinelli 1979, 1984, 1987, 1989, 1992a, 1992b; Albertini 1961, 1965, 1966, 1968, 1973, 1979, 1980; Castaldi 2005, 2009, 2010). A successful initiative is built on the effectiveness of the proposal to answer a crisis as well on the credibility of the proposers and their ability to gather enough support around it.

The Spinelli Group explicitly wishes to take initiatives on crucial issues. Given its composition, it will certainly have the credibility to do so. Much will depend on its ability to



link its proposals with socially perceived crises, and to create a common front with pro-European organizations around Europe. History suggests that the campaigns of European organizations have tended to be ineffective without a linkage/alliance with a political initiative within the European institutions or national governments, and vice-versa.

For example the role of European and federalist personalities – such as Monnet and Spinelli - and movements – such as the Action Committee for the United States of Europe, the Union of European Federalists and the European Movement – was certainly important with regard to the ECSC, the ECD attempt, Euratom, the direct election of the European Parliament, the creation of the European Council, or the creation of monetary union, even if in other phases or over other issues they failed to play a significant role (see Albertini, 1985 and 1986; Bossuat, 1999 ; Burgess. 1986; Burgess, 1989; Burgess, 1995; Burgess, 2000; Caraffini, 2008; Dastoli and Pierucci 1984; Delors, 2009; Drake, 2000; Duchêne, 1994; Fontaine, 1988 ; Fransen, 2001; Graglia, 2008; Grant, 1994; Hallstein, 1972; Landuyt, Preda (eds), 2000; Levi, Pistone (eds.) 1973; Lodge, 1984; Loth et al., 1998; Malandrino, 2005;Majocchi, 1996; Milési, 1985; Monnet, 1976; Paolini, 1988; Paolini, 1989; Paolini, 1994; Paolini, 1996; Pasquinucci, 2000; Pinder, 1991; Pinder, 1993; Pinder, 1996; Pinder, 1997; Pinder, 1998; Pistone (ed), 1975; Pistone, 1982; Pistone, 1992; Pistone 1996; S. Pistone, 1999; S. Pistone and Malandrino (eds.), 1999; Preda, 1990 and 1994; Ross, 1995; Roussel, 1996; Spinelli 1979, 1984, 1987, 1989, 1992a, 1992b). In all successful cases they managed to create a strong link with one or more national governments or European institutions, often providing an original proposal and/or proof of popular support. This was the case for Monnet's initiative leading to the Schuman Declaration and the ECSC, and later for his proposal of a European Defence Community – when faced by the Korean war, and the American demand for German rearmament – and for the Euratom Treaty. The same applies to Spinelli's initiative to accompany the EDC with a European Political Community, based on a popular campaign linked to the political acceptance of the idea by De Gasperi (Preda 2004). Similar considerations apply to the post-1971 crisis, to Monnet's initiative to create the European Council as a “provisional European government”, and to the federalist campaigns for the direct election of the European Parliament and for monetary integration. Giscard D'Estaing's and Helmut Schmidt were clearly crucial in this latter phase (Collignon and Schwarzer 2003: ch. 2). The convergence of grass-root activists and of Spinelli's initiative within the first directed elected Parliament, reinforced by the



commitment of the Italian government led directly to the convening of an IGC to change the Treaty.

On the other hand, federalist campaigns without any linkage with initiatives within the European institutions and national governments, managed to keep those federalist organizations alive, but failed to reach their goals: from the European People Congress to the European People Voluntary Census. And the same applied to bold initiatives by European institution not linked with pro-European organizations. Spinelli noted that Hallstein's proposals had a substantially federal character, but complained that Hallstein's refusal to link with the pro-European organizations weakened his position vis-à-vis the national governments, and thus contributed to his defeat.

The Spinelli Group's openness to civil society suggests that it may be well-positioned to steer pro-European public opinion into an alliance with the most advanced elements of the European Parliament. At the same time, the very fact that the Group exists indicates the willingness of its proponents to start a federalist political initiative within the Parliament. This may provide some hope about the chances of success for pro-European campaigns that can accompany the Group's political initiatives within the Parliament. Neo-functionalists authors emphasise the role of European institutions to take the initiative, usually focusing on the Commission. History suggests that at different times both the Commission and the Parliament have been able to take the initiatives. And when they acted in the same direction, this was even more effective. However, the Barroso Commission has progressively weakened its ability to take European initiatives, almost becoming a secretariat of the Council. While the Prodi Commission put forward the most advanced proposal during the work of the Convention, the so-called Penelope Project, today it seems that a new initiative is likely to start only from the Parliament.

Since its direct election the Parliament has steadily increased its role and powers, and has proved willing and able to exploit them. The Lisbon Treaty endows the Parliament with a new crucial power: to propose amendments to the Treaties, on which a new Convention can be convened by a simple majority of the European Council. This is the power the Parliament lacked at the time of the adoption of the Treaty of European Union (the so-called Spinelli Project) in 1984. If the Spinelli Group can steer the Parliament into making use of this amendment proposal power, such an initiative in itself would also transform the Convention procedure. The Convention would not have an open mandate, but will have to



take the EP proposal as its initial working document, rather than those elaborated by the Presidium, as was the case in the last Convention. A bold amendment proposal by the EP would make a new Convention effectively “constitutional” in character. The use of this new power by the EP would once again open up a potential constitutional momentum and would be coherent with Spinelli’s lifelong struggle.

## 2. The Lisbon Treaty and beyond

The approval of the Lisbon Treaty and its lengthy ratification process brought many governments to consider closed the question of institutional reform for decades to come. The current crisis shows the insufficiency of the Lisbon institutional framework. Several proposals have been put forward to improve the EU economic governance, some of which would require a formal Treaty amendment. The parallel path of exploiting Lisbon to the full and of overcoming Lisbon altogether has thus been undertaken.

The Greek debt crisis and the consequent risks for the Euro-area itself have spurred new proposals from the Commission and the Central Bank, which substantially ignore the Parliament (for an analysis of these documents in this journal see also Castaldi 2010). The European Commission proposal “Reinforcing economic policy coordination” (Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the Economic and Social Committee, and the Committee of the Regions of 12/5/2010) considers coordination as the maximum possible objective. The European Central Bank proposal for “Reinforcing Economic Governance in the Euro Area” asks at least for some broader form of governance in the Eurozone. Many of the ECB proposals were convergent with those of the Commission, but often more detailed and nuanced, for example regarding the enlargement of the range of sanctions that can be used within the Excessive Deficit Procedure. The ECB also proposed to strengthen the Eurogroup role in financial surveillance of member states, to create an independent EU fiscal agency and to provide the Commission with the power to present proposals about sanctions that can be modified only by unanimity within the Council. Overall, the ECB proposals go further than the Commission in empowering Europe to deal with the crisis. However the underlying philosophy is absolutely



technocratic. The Parliament is never mentioned, and there is no recognition of the principle “no taxation without representation”. The idea of an independent fiscal agency and of a stricter European control over national budgets without any involvement of the European Parliament looks democratically inconsistent, and thus hardly practicable. For their part, France and Germany have put forward their proposal to reform the Stability and Growth Pact, a step which would necessarily involved a reform of the Lisbon Treaty as well.

### 3. A possible “Spinellian” strategy for the Spinelli Group

Monnet was always in favour of concentrating action on a decisive point, which could change the overall context. In his attempt to lead the first directly elected Parliament into taking a constituent initiative, Spinelli demonstrated to the Parliament that its powers were insufficient and that an institutional reform was needed by waging battle on the European budget.

The budget continues to be a crucial issue today and the EP has put on the table the issue of the flexibility of the Budget and of the EU “own resources” in place of the national contributions to make up the budget.

If it keeps these demands as a precondition for its acceptance of the budget – whose increase the Commission did not dare to propose – this can be the start of a qualitatively new phase. As the ECB Governor, Trichet, has declared on several occasions, a federal currency requires a federal budget, for which the Stability Pact is just a surrogate (interview, available at <http://www.ecb.int/press/key/date/2010/html/sp100713.en.html>)

The Stability Pact seeks to ensure that the member states, which in recent years have accumulated significant debts and deficits, keep their national budgets in order. But beside national austerity there is the widely recognized need for the EU to take upon itself the task of development and growth. This should be done by the EU through a reasonable budget, based on own resources, and the creation of Eurobonds. This is nothing new, as the first European Coal and Steel Community had both the possibility to levy taxes on coal and steel, and to borrow on the international market – and it used both powers. *Notre Europe* launched a debate on the budget issue in 2008, starting with a paper by Alfonso



Iozzo, Stefano Micossi and Maria Teresa Salvemini (available at [http://www.notre-europe.eu/uploads/tx\\_publication/Iozzo\\_Micossi\\_and\\_Salvemini\\_A\\_New\\_Budget\\_for\\_the\\_EU\\_2008.pdf](http://www.notre-europe.eu/uploads/tx_publication/Iozzo_Micossi_and_Salvemini_A_New_Budget_for_the_EU_2008.pdf)) and has produced several other useful papers on the issue.

To keep a single market and a single currency as they are without establishing a single European economic policy, focusing on research and development, is simply recipe for European decline, as it allows no capacity to boost the overall European economy in face of the current crisis. Although private and public savings in the US are lower than in Europe, the US has been able to launch a plan to sustain growth worth about 5,6% of their GDP. China did even more (7% of GDP), based on its high level of internal savings. Europe's national plans altogether amount only to 1,5% of GDP. This is partly due to the fact that Europe has more robust automatic stabilisers, inherent in its more generous social security provisions compared to other areas of the world. However, the significant difference with the other main economic areas remains striking and disappointing.

But the budget is just one aspect of the European issue, which must be placed in its global context. The world is experiencing a transition to a multipolar order where only continent-wide states can play a role. It is enough to consider the geography and demography of the US, Russia, China, India and Brazil to realize the impossibility for each European nation-state to stand alone. The structural reform of the international monetary system, with all its implications for the creation and distribution of wealth around the world, is on the agenda.

The Bank of China Governor has indicated the goal of a multipolar and multilateral monetary system, based on the use of the Special Drawing Rights of the IMF for international trade and transactions, building on Keynes and Triffin studies (see a series of speeches and short papers delivered by Zhou Xiaochuan, available at <http://www.pbc.gov.cn/english/detail.asp?col=6500&id=178>; see also Mosconi, 2009; and even before the crisis Iozzo, and Mosconi, 2006).

The current reform of the IMF goes in the same direction. It implies a reduction of the European states seats in the IMF board, but it has not triggered the unification at least of the Euro-area representation within the IMF, which would make it the single most important share-holder of the IMF. On the contrary, the current reform is fostering an intra-European parochial fight about which countries should give up their seats. The inability to consider this reform as a chance to strengthen the European role and voice on



the world stage testifies to the lack of vision and responsibility of current national leaderships in the European Union. Europeans continue to be divided and thus irrelevant on the world scene.

The Euro is the second currency of the world, but Europe is unable to adopt a single representation and policy on this crucial issue, which will contribute significantly to shaping the economic and political balance of power of the future.

Even so, some private initiatives in Europe show that some members of the political and economic elites are conscious of what is at stake (see the program of a seminar organised by the Triffin Foundation, which is available at the following link: [http://www.tommasopadoaschioppa.eu/wpcontent/uploads/2010/06/Triffin21\\_Turin\\_13-15May2010.pdf](http://www.tommasopadoaschioppa.eu/wpcontent/uploads/2010/06/Triffin21_Turin_13-15May2010.pdf)).

Europe's weakness is its own fault. It has all the capabilities to be a relevant player across all policy areas. Commissioner Bonino once said that Europe was an economic giant, a political dwarf, and a military worm. This is true about its present capabilities, not about its potential. In 2009 the EU 27 member states together had military expenditures of \$ 260.4 billions, i.e. 1,63 % of GDP and 17% of the world military expenditure. The US spent \$ 663 billions, i.e. 4,3% of GDP (with a 9,9% deficit) and 43% of the world military expenditure. China, Russia, India and Brazil had respectively 6,6%, 3,5%, 2,4% and 1,7% of world military expenditure: taken all together, they made up 14,2% of the world military expenditures, thus less than the European expenditures alone. Europe's irrelevance is not due to its limited spending but to its divided spending. A single European defence could at the same time increase Europe's military capabilities and political relevance, while significantly reducing overall military expenditure in Europe.

At stake is European civilization, not simply Europe's role in the world. Toynbee noticed the "dwarfing of Europe" already in 1948. He recalled that the Greek polis and the Italian city-states of the Renaissance had produced great cultures but then declined and were conquered, when new larger polities consolidated around them. European nation-states may follow the same fate. Europeans are accustoming themselves to the rhetoric of inevitable decline, which becomes a self-fulfilling prophecy. When people, and young people especially, start thinking that their future will certainly and inevitably be worse than the conditions of their parents, the situation is very dangerous. With little hope for the future it is impossible to adopt a long-term view and a purposeful strategy. The tendency



towards the closure of society and the identification of scapegoats, with the emergence of double standards, xenophobia, populism, etc. finds a propitious environment. The inability of the nation-state to cope with the main problems Europe is facing transforms national politics in a mere power-battle. The result is a lack of vision and the emergence of models of elites' behaviour which crystallises negative values, as the Italian case in particular shows. But Berlusconi is just a symptom, certainly not the cause, of a European malaise, which finds in Italy its most visible apex.

The whole values of the European civilization are at stake. A divided Europe cannot avoid declining, and will have difficulty in stopping the regressive tendencies which are already emerging. A federal Europe, combining unity and diversity, would be able to build on Europe's strengths to ensure a better future for Europe and the world. It is a matter of responsibility of our generation with regards to the future generations and the world at large. If completed, the European unification process will create both an international actor and an international example of the possibility for formerly sovereign states to pool and share their sovereignty to face common problems, a process which is required also to cope with the global problems we face as humanity. Europe normatively proposes this process to the world, but then falls into self-contradiction by not completing its own unification process. Only successful example are emulated, and Europe is at the moment only partially successful. It needs to acquire the capacity to act purposefully as a single actor on the global arena, to put forward effectively its peaceful integrative model.

The current world transition to a new order is the time left to Europe to complete its unification and take part in the shaping of the new international system. This requires more power, democracy and efficiency for the EU. The generalised abolition of unanimity within the EU, the application of co-decision between Parliament and Council to all policy areas, the transformation of the Commission into a fully-fledged federal government responsible to the Parliament and the Council, the already mentioned fiscal powers, and the creation of a single European defence structure all these are urgent necessities. The current impasse on the European budget – blocked by only three states – suggests that not all member states are willing and ready to go ahead along the federal path. A vanguard is necessary, just as it was for the establishment of the monetary union.

The current situation of a monetary union, not coupled by an economic and political one, is putting the very existence of the Euro and the EU at risk, as President Van



Rampouy observed during the last Eurogroup meeting. If this is the case, the European Parliament, which is the highest expression of European democracy and of the European citizens, should take a bold initiative to propose an overall reform of the EU to complete European political union and save European civilization. To pursue its aim the Spinelli Group will have to provide the initiative and leadership to steer the Parliament in this direction. Good luck!

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## The European fitness of Italian Regions

by

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## Abstract

What impact did Europeanization have on the governmental capacity of Italian regions? Are the regions successful in addressing the challenges and the opportunities of European integration? Is the participation in the EU a driving factor for decentralization in Italy? The paper, which reproduces a study commissioned by the Bertelsmann Foundation and the Compagnia di San Paolo, provides some answers to these questions. It is argued that the "European fitness" of Italian regions is highly asymmetric and so is their responsiveness to the challenges of multilevel governance. Moreover, while Italian regions have overall benefitted from the opportunities of European integration, there is still much to do in terms of institutional capacity, especially due to the overly complex system of intergovernmental relations.

## Key-words:

Italy, Regionalism, European Union, Intergovernmental Relations, Decentralization, Europeanization



## 1. Background of the national debate on territorial politics and recent changes

The territorial design provided by the Italian Constitution is marked by a high degree of decentralization and is best described as “polycentric” rather than as a proper federal system. Italy was the first country to experiment with devolutionary asymmetry. After World War II, the establishment of a strong subnational level of government was inevitable in at least five territories: Trentino-Alto Adige (Trentino-South Tyrol), Valle d’Aosta (Aosta Valley), Friuli-Venezia Giulia (three relatively small alpine *regioni* (regions) with a relatively substantial population of ethnic minorities), Sicilia (Sicily) and Sardegna (Sardinia). These latter two are the country’s main islands, both facing economic and social problems.

In order to avoid too strong an asymmetry between these territories and the rest of the country, and to experiment with a “third way” between a federal and a unitary system, the establishment of *regioni* was foreseen for the whole country, although others would enjoy a much lesser degree of autonomy than the previously mentioned five.

The development of Italian regionalism can be roughly divided into three stages: the early times (1948 – 1972), the implementation of regional autonomy (1972 – 1999), and the new constitutional frame (from 1999 on), which remains in the process of implementation.

*The early times (1948 – 1972):* In 1948, the democratic constitution established 20 *regioni* (Art. 131 Const.), five of which enjoy a higher degree of autonomy (Art. 116 Const.). These five so-called *regioni a statuto speciale* (special or autonomous regions) each have their own *statuto* (regional basic law), approved as a constitutional law of the *stato* (state). Each received considerably more legislative, administrative and financial autonomy than the other *regioni*, and the ability to negotiate their bylaws directly with the national government, bypassing the national parliament. The remaining 15—the so-called *regioni a statuto ordinario* (ordinary regions)—enjoyed only a limited legislative power in specific fields identified in the national constitution (Art. 117 Const.). They had less ability to develop autonomous *statuti*, as they fell formally under the ordinary law of the *stato*, and all had very similar if not identical governmental structures. Moreover, for complex political reasons, the *regioni a statuto ordinario* were not established before 1970. The first national



laws devolving some legislative power to these regioni a statuto ordinario were enacted only in 1972, and the subsequent process of implementation took another two decades.

*Legislative and judicial implementation (1972 – 1999):* Between 1972 and 1999, the autonomy regime was implemented in a long and complex process. In the early 1970s, the regioni a statuto ordinario were established, and elections to their various bodies were held (1970 – 1972). Effective powers began to be transferred to the regioni a statuto ordinario only in 1977. However, these regioni lacked both political culture and governmental experience. Moreover, no specific instrument of cooperation facilitating interaction between these regioni and the stato was provided. The more active regioni tried to “force” more autonomy from the central government, seeking a more benevolent interpretation of their individual powers, while the weaker were left behind. Thus, the case law of the Corte Costituzionale (Constitutional Court) ultimately became much more relevant in determining the real powers of the regioni than the laws and the wording of the constitution itself.

The political support for creating a system of regional self-government was increasing, but without practical results in terms of constitutional changes. However, many very important laws reforming public administration and the system of self-government have been approved over the last 20 years. Legislative reforms have succeeded in modifying the general administrative structure, thus encouraging the regioni to develop their potential for self-government. The largest set of reforms began with the law on reorganization of the ministerial bureaucracy (Law No. 400/1988, rationalizing decision-making procedures and formalizing the role of the *Conferenza permanente per i rapporti tra lo Stato, le Regioni e le Province autonome* -Standing Conference for Cooperation between the State, the Regions and the Autonomous Provinces; hereinafter *Conferenza Stato-Regioni* (State-Regions Conference)), a cooperative body established to discuss issues of regional interest. This law was followed by a reform of local self-government (Law No. 142/1990), which included a number of groundbreaking provisions aimed at improving the efficiency of the *comuni* (municipalities) and *province* (provinces). Law No. 81/1993 was politically a very significant step toward raising awareness of local self-government, with the introduction of direct elections for *sindaci* (mayors) and *presidenti di provincia* (provincial presidents). With an eye to the political obstacles standing in the way of constitutional reforms, a different alternative was chosen in 1997. Instead of amending the constitution, four ordinary laws (i.e., not requiring a



qualified majority for approval) were passed by the center-left majority, which collectively represented a real revolution in the relationship between the stato and the regioni (the so-called Bassanini laws, in particular Law No. 59/1997). These laws constituted a substantive, if not actually a formal constitutional change, because they redesigned the division of legislative and administrative competences, enumerating the competences of the stato and making the regioni responsible for the remainder.

*The new constitutional framework, and the 1999 – 2009 reforms:* The introduction of a *de facto* federal system by means of parliamentary (and to some extent even governmental) legislation bypassed some political problems, but obviously created legal ones. In particular, the constitutionalization of the new principles was necessary. Giving up—for political reasons—on attempts to effect an organic amendment of the constitution, single constitutional laws have been approved modifying specific aspects of regional self-government.

In 1999, in order to enhance political stability in the regioni a statuto ordinario, the first constitutional reform (Constitutional Law No. 1/1999) introduced direct elections for the *presidenti della giunta regionale* (regional presidents) and changed the procedure for approving regional statuti. All regioni a statuto ordinario now adopt their own statuto by means of a special regional law, approved by the *consiglio regionale* (regional council, essentially a regional parliament) rather than the national parliament, as before. This is done by means of a special procedure which resembles the one governing constitutional laws at the national level: Statuti must be approved twice by the consiglio regionale, each time with an absolute majority, and must go to public referendum if this is requested by a specific number of voters or by one-fifth of consiglio regionale members (Art. 123 Const.). Constitutional Law No. 1/1999 also institutionalized consultation between the regioni and the local authorities; in each regione, a *consiglio delle autonomie locali* (council of local autonomies) is established. This is composed of representatives of municipal authorities, and acts to support regional decision-making.

The second, related, reform was introduced in 2001 (Constitutional Law No. 3/2001), when the division of legislative and administrative powers between stato and regioni was drastically changed: From this time onward, the legislative powers of the stato and the fields of concurrent legislation (i.e., those in which the regioni can legislate only within the framework of general guidelines established in national law) were listed in the constitution



(Art. 117 Const.). All remaining legislation belongs to the regioni, in a way that resembles the typical residual power clause of federal constitutions. The 2001 reform plainly qualifies the regioni as “constituent parts” of the Italian Republic and as “autonomous level of government” (Art. 114 Const.).

The overall outcome of the constitutional reforms was an increase in the powers of the 15 regioni a statuto ordinario, reducing the gap between them and the five special ones. However, the 1999-2001 reform is not yet fully complete, for two main reasons. First, a national strategy for the implementation of the constitutional reform is still lacking; national laws for the implementation of articles 117, 118 and 120 of the constitution were adopted only in 2003 (Law No. 131, the so-called La Loggia law) and in 2005 (Law No. 11, the so-called Buttiglione law), while the financial provisions of the constitution (Art. 119 Const.) were implemented only in 2009 (Law No. 42). This will need to be followed by further *decreti legislativi* (legislative decrees) in coming years. Second, regioni have been slow to adopt their new statuti; as of August 2009, almost eight years after the constitutional reforms, only half of the regioni (11 out of 20) have seen their statuti come into force, with several important regioni still missing.

The constitutional reforms were certainly aimed at strengthening regional autonomy, in part by stressing the role of regional institutions vis-à-vis the central stato, notably by means of the new procedure for the direct election of the presidente della giunta regionale (Art. 122 Const.) and the establishment of new residual competences for the regioni. The election of the regional president by universal and direct suffrage, as well as his/her power to appoint and dismiss members of the regional government, enormously increased the political weight of the regioni and their leaders. Thus, it can be concluded that the role of regional institutions vis-à-vis the stato is certainly much more substantial than in the past.

These changes eventually influenced the Europeanization of the regioni. The constitution, as reformed in 2001, explicitly recognizes that regioni participate in the implementation of EU law and in European policy-making (Art. 117 Const.). In the fields of their legislative competence, the regioni have the power and the duty to implement EU law (Art. 117.5 Const.). Regional participation in European policy-making is provided for by the nation’s ordinary laws (Laws No. 131/2003 and 11/2005).



## 2. Impact of the EU on institutional governance capacities of regions

Overall, the EU always played a remarkable role in shaping the development of Italian regionalism. However, such role is sometimes rather perceived than real. In the political narrative but also in the legal provisions, very often the compliance with EU obligations is identified as the main reason for action. At the same time, especially in the less competitive regions, this proves to be rather a rhetorical exercise, and, for example, often EU funds are not properly used.

## 3. Domestic determinants of regional governance capacities

The institutional structure, the division of powers between the levels of government and the financial arrangements represent the main domestic determinants of regional governance capacities.

### *Scope of territorial autonomy*

After addressing the allocation of basic legislative and executive powers among the stato and the regioni, the distribution of financial resources will be examined. A rather complex picture in a state of flux will emerge.

### *Distribution of powers*

During the 1990s, a number of significant reforms affecting the local government system were enacted. Law No. 59/1997 sought a maximum of decentralization without encroaching on the constitution (the “federalism with unchanged constitution”). A broad decentralization of administrative and legislative competences was thus achieved, while a number of financial resources, civil servants, buildings and other sites were transferred from the stato to regioni, province and comuni to enable them to carry out their new responsibilities.

As a result of the 2001 reform, the constitution reserves exclusively to the stato the power to legislate on a range of specifically enumerated matters (Art. 117.2 Const.). These



include the stato's foreign policy and international relations, stato-EU relations, immigration, defense, currency, public order, citizenship, jurisdiction, determination of the basic level of civil and social benefits to be guaranteed throughout the national territory, protection of the environment and the ecosystem, and the safeguarding of cultural heritage.

In a number of issue areas, the stato and regioni are given concurrent legislative competence (Art. 117.3 Const). These include the regioni's international and EU relations, foreign trade, job protection and safety, education, scientific and technological research, health protection, land and water transportation infrastructures, improvement of the cultural heritage, and improvement of the environment. In these issues, the legislative power of the stato is restricted to the determination of basic principles, while the regioni have full legislative powers within the framework determined by the stato.

Residual competence is vested exclusively in the regioni (Art. 117.4 Const.); thus, all matters not specifically reserved for exclusive legislation by the stato, nor pertaining to the concurrent legislative competence of stato and regioni (as, for instance, commerce and tourism), fall under regional authority.

Limits to legislative power are the same for the stato and the regioni, and consist of compliance with the constitution and with any constraints associated with EU legislation or international obligations (Art. 117.1 Const.). Legal practice and theory have furthermore identified two general kinds of constraints affecting all regional laws.

First, the list of matters in which the stato holds legislative powers includes a number of "cross-cutting" matters (more precisely, they are less "matters" than "general principles" that can have a bearing on each matter). The most notable instance is Art. 117.2, lit. m of the constitution, which provides that the "determination of the basic level of benefits relating to civil and social rights to be guaranteed throughout the national territory pertains to the national legislation." As a consequence, irrespective of the matter at hand, whenever a regional law provides for benefits related to civil or welfare rights, it must be subordinated to the national law that establishes the minimum benefit standards with regard to those rights. Other cross-cutting constraints relate to the protection of competition, of the environment and of cultural heritage.

Second, the Corte Costituzionale has interpreted the distribution of powers broadly: In its seminal Decision No. 303/2003, the court established that the stato can take administrative responsibility away from the regioni on specific issues, even those where



power is vested in the regioni, if it believes that better results can be obtained through stato oversight. This decision was based on the principle of vertical subsidiarity. However, the stato is bound to obtain the assent of the affected regioni, in accordance with the constitutional principles of subsidiarity and good-faith cooperation.

This judgment has had substantial effect on the national political reality. On the one hand, it transforms a rigid catalogue of competences into a flexible one, based on the principle of subsidiarity. On the other, it forces cooperation between the stato and the regioni in some very important areas (such as, for example, in the realization of large transportation infrastructural projects), consequently helping to push stato and regional policies toward convergence.

Regulatory powers (Art. 117.6 Const.) on issues associated with the stato's exclusive legislative powers are vested in the stato (although the stato can delegate regulatory activity to the regional governments). Regulatory powers are vested in the regioni in all other subject matters. Comuni and province have regulatory powers associated with the organization and implementation of the functions attributed to them.

In compliance with the principle of subsidiarity, administrative functions are as a rule given by the constitution (Art. 118 Const.) to the comuni, as the territorial governing bodies closest to the citizens, and thus presumably best capable of implementing such functions. However, these functions can also be vested with the provinces, the regioni or the stato (in this order), pursuant to the constitutional principles of subsidiarity, differentiation and proportionality, if deemed necessary to ensure uniform implementation. It is therefore necessary to consider the various demographic, structural, and territorial characteristics of the individual provincia or regione; to consider its administrative adequacy to perform the function in question; and to privilege, where possible, the lower instead of the higher level of government, because of its "vicinity" to the citizens and their needs.

The regioni and the stato share the power to engage in "international and EU relations" (Art. 117.3 Const.). This external power can be exercised by the regioni in the fields of their internal competence, within the limits determined by stato law and by national foreign policy.

*Allocation of financial resources*

The public finances system established by the constitution as amended in 2001 is characterized by fiscal federalism. Recently, the national parliament approved a general framework law aimed at implementing a coordinated public finance system (Law No. 42/2009) and the principles of fiscal federalism but this law requires the adoption of additional decreti legislativi in the years to come. Therefore, the new system is not yet fully in effect and so far (summer 2010) only a few of those have been adopted and not yet the most important ones.

Today, the constitution's Article 119 grants comuni, province, città metropolitane ("metropolitan cities") and regioni full financial autonomy, both on the income side (by granting the power to set and levy taxes) and on the spending side (by affording them full freedom to decide how to spend available resources).

Local governmental bodies (comuni and province) can thus take part in determining both the make-up and the amount of their own revenues. They can determine both the level of taxation and the way that revenues will be spent. However, the imposition and expenditure of taxes and other revenues by local governmental are required to follow the principles laid out by the coordination of public finances and by the national tax system. These principles, as further defined by Law No. 42/2009, include the following:

- Rather than "historic expenditure" (transfers based on the last year's expenditure), a "standard needs" analysis will cover the essential levels of public services and of fundamental administrative functions (the standard costs of each activity will be presumed);
- The principle of territoriality will be used in allocating financial resources;
- "Double taxation" by different levels of government is prohibited;
- A link between tax levying and public expenses must exist, in order to promote administrative fairness and responsibility;
- Transparency in fiscal databases must be maintained;
- An awards system will be established rewarding regional and local governments that score better than others using their tax and spending power;
- The bureaucracy responsible for levying taxes will be simplified;



- Fair cooperation must be maintained between the different levels of government in the achievement of general financial goals; and
- Consistency in the overall tax system must be maintained.

The regioni can further avail themselves of a share of any revenue tax applicable on their respective territories. The constitution provides for financial aid or transfers from the stato to regioni and local governments, designed to achieve specific national economic and social policy goals. Article 117 of the constitution exclusively entrusts the national legislature with the “equalization of financial resources,” whereas the “harmonization of public accounts and coordination of public finance and the taxation system” is the object of the concurrent legislative power of stato and regioni.

In order to prevent the emergence of glaring financial disparities among territories that could undermine national unity, a balancing fund has been established in national law. This fund will provide areas with relatively low per capita tax revenues with additional resources.

In addition, the new rules aim at reducing debt held by the regioni and local governments. As of 2008, the regioni controlled (and spent) 43 percent of the national GDP and are responsible for, inter alia, the entire health care system (Unione Italiana del Lavoro 2007). This has produced debt amounting to €45 billion, which needs to be covered by the stato budget.<sup>1</sup> Today, local governments and regioni can accumulate debt only in order to finance investment expenditure (as in the case of infrastructure projects), provided that all the loans incurred by local governmental bodies are not secured by the stato.

The decisions of the Corte Costituzionale have played a very significant role with respect to regional finances. A number of decisions can be mentioned in this regard, such as No. 37/2004, concerning tax autonomy, Nos. 320 and 390/2004 (on spending autonomy), Nos. 16 and 19/2004 (on the role of regioni in local finance), and No. 425/2004 (limiting the debt that local governmental bodies can incur).

Table 1: Tax revenues of regions and autonomous provinces, 2007 (in millions of euros)

Regioni / Province Autonome	Own revenues	Transfers from stato	Total
Valle d'Aosta	194	766	1,520
Bolzano	527	3,003	4,409



Trento	471	2,820	3,670
Friuli-Venezia Giulia	933	2,591	4,316
Sicilia	2,220	8,330	14,243
Sardegna	1,038	4,769	8,642
Piemonte	4,934	3,458	11,540
Lombardia	11,021	5,934	21,175
Veneto	4,210	4,194	10,292
Liguria	1,365	1,898	4,637
Emilia-Romagna	4,338	3,792	10,937
Toscana	2,994	3,651	8,092
Umbria	621	1,010	2,366
Marche	1,275	1,588	3,581
Lazio	7,079	4,088	16,962
Abruzzo	1,019	1,542	2,866
Molise	246	456	1,321
Campania	3,170	6,336	13,333
Puglia	2,193	4,389	7,330
Basilicata	307	904	2,762
Calabria	1,045	2,436	4,213
<b>Total</b>	<b>51,202</b>	<b>67,954</b>	<b>157,955</b>
Total Regioni Statuto speciale	5,385	22,278	36,820
Total Regioni Statuto ordinario	45,817	45,676	121,135

Note: Smaller revenues such as mortgages or patrimonial revenues not included in total sums.

Source: Institute for the Study of Regionalism, Federalism and Self-Government (ISSIRFA), Osservatorio finanziario regionale, vol. 30, 2008 (data of 2007).

The amount of revenue originating from taxation (including regional levies and stato taxes that can be associated with the regional territory, and which are subsequently devolved to local authorities) is directly related to the amount of taxed wealth. The wealthier regioni can thus expect access to greater financial resources, whereas the poorest ones can count on relatively meager funds. Moreover, as the table indicates, there is a remarkable gap between special and ordinary regioni as well as between north and south.



For example, Liguria has roughly the same budget as the Provincia Autonoma di Bolzano, but has more than three times more inhabitants. All in all, the special regioni receive four times more revenue than they produce. Most of the industrial regioni in the north (Veneto, Lombardia, Piemonte) produce more revenue than they receive from the stato, while in the south the opposite is the case.

Moreover, most regional competences are inadequately funded: As a rule, the regioni manage to effectively discharge only their public health (which can take up to 70 percent of available financial resources) and transportation responsibilities. Other functions, such as those related to tourism or housing, are generally insufficiently funded or not funded at all, with negative effects in some strategic sectors of regional economies.

If we look at the data on revenues and expenditures, a close correlation can be inferred between the economic success of a regione (as reflected in growth rates, employment level, etc.) and the regional government's control of its finances.

Quite plainly, each regione can change its individual economic policies on the basis of other governmental bodies' experiences and results. Each regione is thus free to adopt what it deems to be the most promising strategies and the best solutions, both in setting taxation levels and in deciding how to use available resources. From this perspective, as a result of the constitutional reform of 2001, regional financial autonomy is markedly greater than in the past, although, as stated above, the increased level of financial autonomy is not yet fully implemented.

#### *Regional interest accommodation in national policy-making*

Traditionally, cooperation between the regioni and the stato and between regioni (interregional cooperation) was not strongly developed in the Italian system. Given the constitutional obstacle represented by the composition of the Senate, which does not perform any role in representing regional interests, coordination between the regioni and the stato has evolved along less institutional lines. Specific coordination procedures, designed to implement the statuti regionali, have been established for the regioni a statuto special; these are based on bilateral committees made up of an equal number of representatives from the regione and the stato. However, the other regioni have no mechanism of coordination provided by the constitution itself, by the regional statuti or



even by ordinary legislation. In 1983, a permanent forum, the Conferenza Stato-Regioni, was established to facilitate communication between the national and the regional governments. The Conferenza, originally vested only with consultative powers, has gradually increased its political importance. In the meantime, the Conferenza evolved into a more complex body, that meets in three different settings: the Conferenza stato-regioni, representing only these two layers of governments; the Conferenza stato-città-autonomie locali (meeting of representatives of the stato with representatives of towns, counties – province – and other local governments of minor importance); and the Conferenza unificata, where the three levels of government (stato, regioni, local government) are represented. Indeed, in a large number of cases, intervention by the Conferenza (in one of its forms) is now actually compulsory, although the group is vested only with advisory powers. The Conferenza provides both a political and technical forum where the interests of the regioni and the stato can be balanced against each other. Depending on the matter, the Conferenza may be also required to advise the national government on national bills, or may be a forum in which national and regional governments sign legally binding agreements on matters of concurrent competency (such as health care). The Conferenza, along with analogous advisory governmental bodies for multilateral cooperation, is thus the main institutional channel for representing regional interests in the national decision-making process. While the Conferenza has no legal power to veto a national bill, its political influence is significant and bills are rarely adopted against its advice.

Bilateral relations between the stato and each regione (institutionalized in the case of the regioni a statuto speciale, but not in other cases) are intense and fully developed, although mostly informal. Finally, political relations also play a significant role in determining the degree of influence a regione can exercise within the national decision-making process. That influence may be stronger when a regional government has the same political composition as the national government, as the national political majority will likely seek to avoid political conflict with a regione ruled by a “friendly” government. However, even when the majority of regioni are governed by political parties of the national opposition, the national parliamentary majority may seek compromise in order to prevent conflict.

In sum, opportunities for the regioni to participate in national decision-making processes are still rather limited, though increasing. Informal or bilateral activities are filling



the institutional gap, although to a still unsatisfying degree. The overall degree of interregional coordination in Italy is quite low; interregional coordination is generally seen as a second-best choice when bilateral negotiation is unsuccessful.

*Basic patterns of domestic intergovernmental relations*

At this point, the Conferenza does not yet serve as a wholly effective political forum for settling conflicts between the regioni and the stato, or between the regioni themselves. Indeed, due to a generally uncooperative attitude, and a complex and unclear division of competences between the levels of government, judicial conflict between the stato and regioni has doubled since the constitutional reform of 2001, and has now stabilized at around 30 percent of the overall workload of the constitutional court (Corte Costituzionale 2008).

Particularly the weakness of interregional cooperation reduces opportunities for substantial participation by the regioni in national decision-making. The regioni do not have formal veto powers as far as the adoption of national laws is concerned. However, the Conferenza Stato-Regioni has to be consulted in a significant number of cases.<sup>11</sup> Its opinion is not formally binding for the national government, although politically it plays a decisive role. Moreover, the bilateral committees established as a forum for negotiation between the government and the regioni a statuto speciale on topics relating to statuti implementation do play an important role also as veto-players: the Corte Costituzionale (Judgment Nos. 37/1989 and 109/1995) has ruled that the government cannot dismiss these commissions' opinions, even though their role is formally merely advisory. Finally, in some crucial policy fields such as immigration and public security, the constitution mandates that national law has to provide for coordination among the regioni and with the stato (Art. 118.3 Const.).

All in all, Italy's intergovernmental relations are not as developed as a modern and efficient system of multilevel governance requires. In particular, two elements are lacking: a sound institutional framework that could support more intense cooperation on the one hand, and a more cooperative culture on the other, both with respect to inter-regioni (horizontal) relations, and to interactions between the stato and the regioni (vertical). Nevertheless, progress in recent years has been remarkable. Traditionally selfish attitudes are changing rapidly, and the regioni are establishing more or less permanent forms of



alliance. They are increasingly engaging in joint promotion of economic interests, and coordinating economic and industrial policies. Institutional ties are also being created that make regional representation more effective and visible, as in the case of the establishment of a joint representation in Brussels by the five central Italian regioni (Emilia-Romagna, Toscana, Marche, Abruzzo and Lazio) in 2000, after Law No. 52/1996 enabled them to do so. Cooperation among the regioni is also improving in the context of Conferenza Stato-Regioni. Awareness is rising that only by cooperating more efficiently can the regioni take a qualitative step forward in terms of policy-making performance and securing their own interests.

#### **4. Europeanization effects on regional governance capacities**

Although slowly, regional governance capacity has been deeply influenced by the European level. More precisely, the necessity to conform with European obligations and some positive competition among the regioni in European issues (including in attracting European funds) have produced significant changes in regional policies.

##### *Scope of territorial autonomy*

The relationship between the European Union and Italian regioni has been formalized in the Constitution only in 2001. However, the impact of the process of European integration on Italian regionalism dates back from the beginning of the regional experience in the 1970ies. In addition to the institutional dimension, the Europeanization has had a considerable impact also in economic terms, in some case providing for a considerable part of the regional budget for the economically less developed regioni.

##### *Distribution of powers*

The EU integration process has had a significant impact on the distribution of competences between the stato and the regioni, with the effects of Europeanization being felt most keenly in the realm of environmental, transportation and agricultural policies, as well as in the use of cohesion funds and state aid.



Following the constitutional reform of 2001, the regioni improved their systems of EU law implementation, which can be done at either the legislative or administrative level. Several regional statuti introduced new instruments designed to ensure the regular implementation of EU directives. For instance, Piemonte, Lazio, Friuli Venezia-Giulia and Emilia Romagna every year adopt a legge comunitaria regionale (regional community law), in which all European directives concerning the areas in which the regioni have legislative competence are implemented in a single act. Regioni have also adopted additional mechanisms aimed at simplifying implementation by means of administrative regulations.

An *ex post* subsidiarity control mechanism for EU legislation is provided by Article 5.2 of Law No. 131/2003: Upon request of regioni or province autonome, the national government can appeal to the European Court of Justice to block implementation of EU legislation (including for violation of subsidiarity principle). It is obliged to do so if the Conferenza Stato-Regioni requests this by an absolute majority. To date, this new instrument has never been used. Another form of subsidiarity control is the “reservation” mechanism: The national government, upon request of the regioni, can formulate a “reservation” within the EU Council of Ministers (Article 5.1. Law No. 11/2005). The regioni are automatically informed by the government of community acts and proposals, by means that include access to an Internet portal called “Europ@”. When fully implemented, this mechanism will permit the implementation of the “early warning system” provided for by the Lisbon Treaty (see “overall assessment”).

Taking advantage of the new European opportunities to intensify interregional and transfrontier relations, all regioni have established representation in Brussels, and many (notably in the north) have intensified cooperation with other European regions. Within the framework of the European Region of Tyrol–South Tyrol–Trentino organization, the three alpine communities have developed common initiatives, established a joint office in Brussels, and have carried out joint sessions of their governments and assemblies. An even more ambitious plan is being prepared by Friuli-Venezia Giulia in cooperation with the Austrian Land (state) of Kärnten and Slovenia.

On 5 July 2006, the European Parliament and European Council adopted a regulation allowing new legal bodies called European Groupings for Territorial Cooperation (EGTC; Reg. 1082/2006) to be established. This new instrument aims to reduce the significant difficulties faced by regional and local authorities in implementing



and managing territorial cooperation within the framework of differing national laws and procedures. Some Italian regioni seem to be very interested in this new legal framework: Piemonte, Valle d'Aosta and Liguria have initiated the measures necessary to set up an EGTC with French territorial subnational entities (Euroregione Alpi-Mediterraneo). These activities have been prompted by developments on the broader European scene, and were institutionalized by the constitutional reform of 2001, which provided for direct links between regioni and the European Union and for regional treaty-making power with foreign states and their subnational entities (Art. 117.9. Const.).

#### *Allocation of financial resources*

As of December 31, 2007, according to the Community Support Framework - Program 2000 – 2006, €36.7 billion have been transferred to southern regioni including Basilicata, Calabria, Campania, Puglia, Sardegna and Sicilia. Under Objective 1 of the program, these are regioni with a relatively low level of investment, a high unemployment rate, a lack of services for businesses and individuals, and poor basic infrastructure. All other Italian regioni were included in Objective 2. The southern regioni depend strongly on EU structural funds and also on the national government, which provides additional funds by means of the *Fondo per le aree sottoutilizzate* (Fund for Underexploited Areas).

The EU's cohesion policy and its instruments for the 2007 – 2013 period focus on three new objectives: convergence, competitiveness and cooperation. According to recent European decisions, Calabria, Campania, Puglia and Sicilia (southern Italy) are eligible for the Convergence Objective, Basilicata is eligible for Statistical Phasing-out, Sardegna is eligible for Phasing-in Regional Competitiveness and Employment, and all other regioni are eligible for the Competitiveness and Employment objective. As of September 30, 2008, Community funds for Italian regioni have totaled €112.72 million for the convergence objective, €95.41 million for the competitiveness objective and €17.81 million for the cooperation objective.

In October 2006, the regioni reached an agreement within the Conferenza Stato-Regioni concerning the allocation of Community and national funds for the Competitiveness -Employment objective (see Table 2).



Table 2: Community and national funds to the regioni 2007 – 2013: “Competitiveness –Employment”

Regioni	FS final	FS final %	Final Cofin	Final Cofin %	FAS final	FAS final %	TOT final	TOT final %
Piemonte	307570389	15.1	991672629	14.3	624649763	12.0	2424092772	13.9
Valle d'Aosta	53540616	1.0	57763303	0.8	29168643	0.6	140470563	0.8
Liguria	319097837	6.0	524666881	7.6	240375847	4.6	1084130006	6.2
Lombardia	580301227	10.5	770371619	11.1	594588794	11.4	1925241640	11.0
Bolzano	35659752	1.7	112346289	1.6	80405018	1.2	261914039	1.5
Trento	32290711	1.5	130231522	1.9	40447355	0.8	252988588	1.4
Veneto	563739159	10.5	584227289	8.4	427623766	8.2	1575590215	9.0
Friuli V.G.	195776676	3.7	317345598	4.6	133757944	2.6	647881219	3.7
Emilia Romagna	433276621	8.1	723122178	10.5	200881294	3.8	1357280281	7.8
Toscana	555551152	12.2	795715977	11.5	532176422	10.2	1980442551	11.3
Umbria	249959816	4.7	330233670	4.8	179179682	3.4	758372568	4.3
Marche	220252488	4.1	285579490	4.1	169082252	3.2	675114230	3.9
Lazio	743512676	13.9	715517261	10.3	663590119	12.7	2122610056	12.1
Regioni minus Abruzzo and Molise	4975029321	92.9	6336285684	91.6	3894794921	74.6	15206109927	86.9
Abruzzo	268770183	5.0	395401238	5.7	847876000	16.2	1512047421	8.6
Molise	108702368	2.0	167313078	2.7	476260000	9.1	772275446	4.4
Abruzzo and Molise	377472551	7.1	562714316	8.4	1324136000	25.4	2284322866	13.1
Total	5252501872	100	6919000000	100	5218930921	100	17490432793	100

In 2007, the European Commission approved several operational programs for the period 2007 – 2013. Below, data on two regioni (Lazio and Lombardia) will be compared. Both operational programs fall under the Regional Competitiveness and Employment objective, and both programs aim to create new jobs and to decrease CO2 emissions. Tables 3 and 4 show financial allocations associated with the regional programs' objectives.

Table 3: Operational Program *Lombardia*/Breakdown of finances by priority axis

Priority axis	EU contribution	National public contribution	Total public contribution
Innovation and knowledge economy	104,198,930	158,661,070	262,860,000
Energy	19,820,233	30,179,767	50,000,000
Sustainable mobility	55,100,248	83,899,752	139,000,000
Protection/enhancement of natural and cultural heritage	23,784,280	36,215,720	60,000,000



Technical assistance	7,983,590	12,156,410	20,140,000
Total	210,887,281	321,112,719	532,000,000

Source: European Commission, Regional Policy - Inforegio: Intervention Type: Operational Program / CCI no: 2007IT162PO006 / Number of decision : C/2007/3784. Final approval date : August 1, 2008.

Table 4: Operational Program Lazio/Breakdown of finances by *priority axis*

Priority axis	EU contribution	National public contribution	Total public contribution
R&D, technology transfer, innovation and entrepreneurship	127,500,000	127,500,000	255,000,000
Sustainable environment	94,500,000	94,500,000	189,000,000
Accessibility	136,000,000	136,000,000	272,000,000
Technical assistance	13,756,338	13,756,338	27,512,676
Total	371,756,338	371,756,338	743,512,676

Source: European Commission, Regional Policy – Inforegio: Intervention Type: Operational Program/CCI no: 2007IT162PO004/Number of decision: C/2007/4584. Final approval date: October 2, 2007.

In sum, Italian regioni have recently improved their capacity to raise and spend EU funds, which used to be very weak. Most of the southern regioni depend heavily on EU financing, although less than before the 2004 and 2007 rounds of enlargement. For this reason, efforts are being made to increase the southern regioni's "attraction and spending" capacities with regard to EU funds. To date, EU funding has had no impact on regioni tax policies, although this could change when recently adopted financial regulations become fully operational (see "allocation of financial resources"). The central government and regioni share the costs of implementing EU law, according to their own competences. This means that, given the current division of competences and financial revenues, the stato still bears the majority of these costs (around 60 percent). However, the devolution of competences to the regioni in areas regulated by EU law implies additional costs in terms of infrastructure, organization and knowledge, as most regional administrations do not have the infrastructural, personnel or financial capacity to fully comply with European obligations.

*Regional interest accommodation in European policy-making*

Perception of the European Union varies considerably from regione to regione. In general, two main strands in the regional political discourse have emerged as to the role of the European Union in shaping regional potential. In some regioni, particularly in those with economic problems, the EU is seen primarily as a source of possible funds; the European debate is therefore focused on how funds can be better attracted and spent. In others, especially in those with a higher economic and institutional performance, the EU is perceived as offering opportunity for local entrepreneurs to expand, and regional policies compete in offering viable conditions for access to Europe.

Against this background, the influence that regioni can exert on national EU policy-making is essentially based on political criteria. There are no formalized bilateral mechanisms of cooperation focused on this particular point, and the multilateral forums for cooperation between stato and regioni on EU issues generally have an equalizing effect. In other words, regioni pushing for specific policy choices in European affairs can have their voice heard at the national level only indirectly, by exerting political rather than institutional pressure.

As to formal instruments, Article 5 of Law No. 131/2003 provides that regioni can participate in the activities of the European Council and its working groups, and can work with the Commission and its expert committees in areas of regional legislative competence (implementing Art. 117.3 and 4 Const.), following agreement in the Conferenza Stato-Regioni. Moreover, regional participation is subject to the principle of state unity, meaning that a unitary position must be achieved and represented in European institutions (thus, the central government is seen mostly as an ally by the regioni in this field). In March 2006, the national government and the regioni signed an agreement ensuring their participation in EU decision-making. In the Italian delegation to the EU Council, the regioni (and province autonome) can be represented by a regione president (or his/her deputy) or by the president of a provincia autonoma. In the areas of regional legislative competences (Art. 117.3 Const.), the head of the delegation is the government representative, unless decided otherwise on the basis of an agreement reached at the Conferenza Stato-Regioni level. So far, however, no use has been made of the opportunity provided by such an agreement.



With regard to regional participation within the state in relation to EU affairs, Italian law provides for instruments essentially focused on the principle of cooperation and on consensus. The Conferenza Stato-Regioni meets in *sessione comunitaria* (community meeting) devoted to European affairs at least twice a year. Its agreement is required for the adoption of laws implementing European obligations, called *legge comunitaria* (national community law). Furthermore, Law No. 11/2005 created the *Comitato Interministeriale per gli affari comunitari europei* (Ministerial Committee for European Community Affairs, CIACE). This new structure includes the prime minister, the ministro per le politiche comunitarie (minister of community policies), the *ministro per gli affari esteri* (minister for foreign affairs) and other ministers according to the topic involved. The president of the Conferenza dei Presidenti delle Regioni e delle Province Autonome or a president of a regione/provincia autonoma can ask to participate in meetings concerning European affairs where regional interests are at stake. The main aim of these procedural devices is to coordinate government positions during the EU decision-making process, as well as to take into account positions expressed by the regions. CIACE took up work only in February 2006; it is still too early to evaluate its efficiency (Annual Report from the government to the Parliament 2008). All these safeguards for regional participation in EU affairs aim at increasing coordination and avoiding direct initiatives by individual regions. As a consequence, regions are not involved in the daily work of the Italian permanent representation in Brussels, although relevant information is channeled to them by their own liaison offices.

Some regions have recently started to update their own legislative instruments in the effort to improve their “European capacity.” In this respect, it is worth mentioning Toscana’s Law No. 26/2009, which provides for a regional development program, and establishes a procedure for international promotion of the territory and internationalization of the regional economy.

#### 4. Balance sheet: scoring institutional governance capacities of regions in the EU

Table 5: Indicator scores for institutional governance capacities of Italian regions in the EU

Indicator	Score
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Legal status of regional self-government	2
Autonomy of regional institutions	1
Legislative powers of regions	1.5
Administrative powers of regions	0,5
Financial autonomy of regions	0,5
Role of regions in national and EU policy-making	1
Regional powers in external relations	1
Aggregate score of regional governance capacities ( $\Sigma$ )	7,5

(Score: strong/high = 2, weak/low = 1, non-existent = 0)

## 5. Top-down Europeanization: “EU policy-taking” and its impact on the regionalized system

Europeanization has been a driving factor for reforms in the Italian regional system, notably regarding regional participation in the implementation of EU law and in European policy-making. A number of instruments have formally been established, though not all have been put into practice. Most are based on cooperation with the stato. Thus, where cooperation is lacking, these instruments are likely to be disregarded in practice. Europeanization also has had effects on the distribution of competences between stato and regioni, creating some confusion as to the appropriate level at which European policies are to be implemented, and generating a number of cases before the Corte Costituzionale. The European Union’s impact on the allocation of resources is also of note; indeed, southern regioni today rely strongly on structural funding.

## 6. The “EU Performance” of regions: non-institutional determinants

In what follows, we first address “determinants of regional assertiveness in domestic policy-making” by examining a number of indicators that produce highly asymmetric regional capacities to assert specific interests during the national policy-making process. We follow this up with an analysis of the regional capacity to mobilize interests



within the multilevel European system under “indicators of successful regional mobilization in the EU’s system of multilevel governance.”

## 7. Determinants of regional assertiveness in domestic policy-making

The federalizing process of the country is very asymmetric and often purely driven by political considerations. This is the case of “regional assertiveness”, which largely depends on the self-perception of a regione within the evolving system. Moreover, the regioni are largely not homogeneous in terms of population, geography and economic capacity, letting aside history and culture.

### *Relative socioeconomic weight of regions*

As of 2008, Italy’s total population was 59,619,290 (increasing to more than 60 million in 2009). Regionally, it is distributed as seen in Table 6.

Table 6: Distribution of population in Italy (2009)

Regione	Resident population	%
Lombardia	9,742,676	16,5%
Campania	5,812,962	9,9%
Lazio	5,626,710	9,8%
Sicilia	5,037,799	8,7%
Veneto	4,885,548	7,7%
Piemonte	4,432,571	7,6%
Emilia-Romagna	4,337,979	7,5%
Puglia	4,079,702	6,9%
Toscana	3,707,818	5,3%
Calabria	2,008,709	3,0%
Sardegna	1,671,001	2,8%
Liguria	1,615,064	2,7%



Marche	1,569,578	2,5%
Abruzzo	1,334,675	2,2%
Friuli-Venezia Giulia	1,230,936	2%
Trentino-Alto Adige	1,018,657	1,7
Umbria	894,222	1,5
Basilicata	590,601	1%
Molise	320,795	0,6%
Valle d'Aosta	127,065	0,3%
Total	60,045,068	

Source: ISTAT – Italian institute for statistics – Population report 2009:  
<http://demo.istat.it/pop2009/index1.html>

According to Eurostat, real regional GDP growth rates in 2007 were the following: Italy as a whole showed 1.7 percent growth, Nord Ovest (Northwest) 2.5 percent, Lombardia 1,7 percent, Centro (Center) 2.4 percent, Lazio 3.3 percent, and the Sud (south Italy) 0.7 percent. Italy's overall unemployment rate for 2007 was 6.09 percent, while the regioni varied substantially, with Lombardia at 3.43 percent and Lazio at 6.38 percent. The regioni also differ as to their share in national GDP; for example, Lombardia, with 16 percent of the country's total population, accounts in 2007 for 21 percent of Italian GDP, while Calabria (3.4 percent of the population) accounts for just 2.1 percent of GDP. Lazio has about 9.3 percent of the country's population, and produces 11 percent of national GDP.

Government spending and the share of EU funds in the yearly budget in each regione are very indicative of the variance in socioeconomic weight. Valle d'Aosta budgets €11,744 per capita per year, 82 percent of which comes from its share in the national fiscal revenue system and 1.8 percent from EU contributions (including structural funds and other European initiatives). The Provincia Autonoma di Bolzano (Südtirol/South Tyrol) budgets €9,504 per capita, 8.6 percent of which comes from EU contributions. Piemonte budgets €2,484 per capita, 5.7 percent of which comes from the EU, Lombardia €7,631 (2.2 percent from the EU), Lazio €3,603 (3.2 percent from the EU), Calabria €3,783 (2.5 percent from the EU), Sicilia €4,452 (11.2 percent from the EU).<sup>III</sup> This means that the poorer regioni rely relatively more heavily on contributions from the stato and the EU.



Unemployment presents a very fragmented picture. While the national average was 6.09 percent in 2007, the unemployment rate was 3.24 percent in Valle d'Aosta, 2.59 percent in the Provincia Autonoma of Bolzano, 3.43 percent in Lombardia, 3.34 percent in Veneto, 2.85 percent in Emilia-Romagna, 6.38 percent in Lazio, 11.23 percent in Campania, 11.24 percent in Calabria and 12.95 percent in Sicilia. Furthermore, the yearly GDP per capita individual income in 2007 amounts to €29,800 in Valle d'Aosta, €33,800 in the Provincia Autonoma of Bolzano, €33,900 in Lombardia, €32,200 in Emilia-Romagna, €30,800,224 in Lazio, €16,600 in Campania, €16,600 in Calabria and €16,600 in Sicilia. The number of companies officially registered in Lombardia (with 10 million inhabitants) is 688,404, while 349,010 are registered in Veneto (4.7 million inhabitants), 294,395 in Lazio (5.3 million inhabitants), 222,351 in Campania (5.8 million inhabitants) and 91,345 in Calabria (2 million inhabitants). These data clearly indicate the profound socioeconomic cleavage between the north and the south (UIL 2006; for more data disaggregated by region, Camera dei Deputati 2005).

Growth rates have been severely affected by the recent economic crisis: In 2008 and 2009, GDP decreased in all regions. In 2008, Lombardia's GDP dropped by 0.3 percent. In terms of overall regional growth rates, Lazio showed the highest rate in 2008, followed by Emilia Romagna, Liguria, Trentino-Alto Adige, Toscana, Veneto and Lombardia.<sup>IV</sup>

The highest concentration of investment in tangible manufacturing goods can be found in the northwestern regioni (Piemonte, Lombardia, Liguria), followed by the northeast (Veneto, Friuli-Venezia Giulia, Trentino-Alto Adige) and the center (Emilia-Romagna, Toscana, Marche). Other central Italian regioni invest corresponding to their share of the national population (Lazio, Umbria, Abruzzo), while investment in the southern part of the country is considerably lower. In 2006, investments in Calabria made up less than 2 percent of the national total, while in Lombardia they were about 26 percent and in Veneto 14 percent of the whole.

The same type of variation applies to business research and development (R&D) funds. While Italy's R&D investments are in general limited in comparison to other European countries, the regional distribution of business concentrates R&D investments in regioni where industry is more developed, such as Lombardia (25 percent of national investment), Veneto (9 percent), Emilia-Romagna (10 percent), Lazio (8 percent) and



Toscana (8 percent). Most regioni have adopted specific programs to support companies' R&D investments; Toscana, for example, has adopted a R&D program as a part of its regional development plan, and in 2008 contributed €32 million to companies investing in R&D.<sup>v</sup>

Finally, national R&D and higher education funds are not distributed on a strictly regional basis, but are rather based on other criteria such as population and development strategies. In principle, therefore, each regione receives funds based on its population share. Traditionally, development strategies have benefited the southern regioni in relative terms. Regioni have recently been given a say in national higher education policy (the Conferenza stato-regioni must approve a number of bills affecting higher education and the right to study); in addition, most regioni provide funds for higher education and research, ranging from research projects to infrastructure development.

#### *Identity of regions as political space*

The following section deals with the political dimension of regional identity in the Italian context. Looking at the social environment and at the party system, it is argued that the federal potential of the political reality goes far beyond the federal potential provided for by the existing legal framework.

#### *Sociocultural embeddedness of regional identity*

Italian regioni are profoundly diverse in terms of their socioeconomic profiles, their culture and their history. For this reason, regional political cultures, and more broadly the very existence of regional social capital, also vary remarkably. This can also depend on the constitutive elements of identity; for example, language and ethnicity play a significant role in some regioni, notably in the small northern alpine regioni such as Valle d'Aosta and Trentino-Alto Adige, and a much more modest role in other parts of the national territory. However, a process of rediscovery of regional identities is clearly taking place throughout Italy. This process is also linked to a traditionally weak national identity, and has been reinforced by the country's negative performance.

The regioni containing a significant number of persons belonging to national minorities tend to have a stronger identity. These regioni also enjoy special autonomy



status, which makes it difficult to distinguish between the importance of sociocultural factors and legal factors as engines in creating this stronger identity.

In other regioni, identity-building is clearly under way, sometimes even artificially. For example, Sardegna recently started the process to amend its statuto by establishing a special commission tasked with drafting a “new statute on the autonomy and sovereignty of the Sardinian people.” The name suggested the existence of a Sardinian people, as distinct from the Italian people, and which had the right to self-determination. The Corte Costituzionale declared this terminology unconstitutional, ruling that it intended a derivation of autonomy not from the constitution, but from the free determination of a sovereign Sardinian people, which could also decide differently if they so wished (Judgment 365/2007). Another example is the recent law adopted by Friuli-Venezia Giulia for the protection and promotion of the Friulian language. The law stretched the limits of the stato protection given to regional or minority languages, mandating that the teaching of the language should be offered throughout the region’s territory, and not only in the comuni where it is spoken; that translations into Italian had to be expressly requested in administrative documents and debated in municipal councils; and that the place names of the Friulian area could be displayed in the minority language only. The national government appealed against the law and the Corte Costituzionale struck down most parts of it (Judgment No. 159/2009).

Aside from the recent resurgence of regional distinctiveness, many activities, including those organized by civil society groups, take place along regional lines. This does not mean that the political and economic elites support regional self-government; rather, while such support has undoubtedly increased, it is fair to say that the social and political cultures are still fairly centralized. This is particularly true of the party system.

#### *Structures of the party system*

In general, Italian political parties are mostly national, as is political competition. All main national parties compete in all regioni, and political debate is in general terms nationally oriented and dominated by national issues. Of course, the regional attitude towards national parties varies substantially. Traditionally, some parties are particularly strong in specific regioni and very weak in others, and it is fair to say that some smaller



parties are so strongly concentrated in some areas that they might well be considered *de facto* regional parties.

However, much has changed over the last 20 years. The regional issue has come to the fore, and regional parties have appeared on the political scene. It was in part due to their political pressure that the constitution was amended to strengthen the role of the region. Today, the country's political culture is still quite centralized, with little sensitivity to regional claims or even to a regionally oriented mentality. However, the regional issue's impressive and rapid increase in profile, in the Italian constitutional context and in the country's political discourse more broadly, was also prompted by (and occurred to a great extent as a response to) the action taken by regional parties. As a result, federalism (or more precisely, an increasingly decentralized constitutional and political system) has become rather popular, particularly in the political discourse. At least on paper, almost all main national parties declare themselves as "federalist" and advocate—with varying nuances—a decentralization of powers, although the practical support by political and economic national elites for regional self-government is less substantially than might appear from the political discourse.

The last two decades' legislative and constitutional reforms, and particular the beginning of popular regional presidential elections (in 1995, 1999 and 2001), helped dramatically increase the desire among regions to be considered as autonomous political spaces. Until the beginning of the 1990s, it was politically preferable to be a national backbencher rather than a regional president; this is no longer true today. This shift has profoundly affected the stability of regional governments. Whereas there were a total of 363 changes in regional governments before 1995 (bearing in mind that the ordinary regions were established only in 1972), and the average government duration was just 542 days, today almost all regional governments last for an entire mandate of five years.

Apart from numerous and politically irrelevant parties that appear and disappear at every election (national too, but mostly regional), there are at least five traditional regional parties, mostly representing the interests of an ethnic or national minority. Among them, the most important is the Südtiroler Volkspartei (South Tyrolean People's Party, representing the German-speaking minority in Italy), which has always had the absolute majority of seats in the South Tyrolean parliament (in the last elections, in 2008, it won 48.7 percent of votes, and 21 of 35 seats). Moreover, it appoints three of the four members



that South Tyrol sends to the national parliament's lower house, and all three senators. It also appoints 113 out of 116 mayors of the province. Other, though politically less relevant ethnic parties, include the party of the *Ladins*, a small alpine minority that until recently was represented exclusively by the People's Party in South Tyrol and by the national parties elsewhere, and Slovenska Skupnost (Slovene Union), the party of the Slovene minority in Friuli-Venezia Giulia, which as of this writing was being merged with a national party.

Another category of regional parties represents regional interests (more or less explicitly) regardless of the national or ethnic origin of their constituencies. The *Union valdotaine* has always been the dominant party in the small northwestern regione of Aosta Valley; the party won 18 seats out of 35 in the regional elections held in 2003, and 17 out of 35 seats in 2008. The *Partito sardo d'azione* is the traditional autonomist party of Sardegna, but is currently facing a deep political crisis, due to a number of local reasons. It can thus be said that there are at least five regional parties that play a crucial role in regional politics and a limited one in the national political arena.

Another category of political movements is difficult to qualify specifically as regional parties. These parties formally compete nationally and in all regions, although in practice they draw votes in only a small number of regions. The clearest example of this type is the *Lega Nord* (Northern League). This party, established in Lombardia in the early 1980s as a small autonomist group, first won representation in parliament in 1987; since then it has constantly increased its representation, winning more than 10 percent of the national vote in the 2009 European elections, and scoring above 30 percent in some northern regioni. In the regional elections of 2010 it was the party that grew more: it appointed the president in two key regioni of the north (Piemonte and Veneto), it scored about 30% of the votes in other important regioni such as Lombardia, and it increased its representation in several other regioni far beyond the north of the country (above 10% in both Emilia-Romagna and Toscana). More recently, a new party, *Movimento per le autonomie*, has been established in the south (with particular support in Sicily).

*Extent and quality of regional entrepreneurship*

The development of Italian regionalism owes its existence to more than simply the rise of regional identities; however, it is clear that these have played a substantial role in the asymmetric design of the political system's regionalism today. Regional identity also affects the character of political leadership and administrative capacity.

*Political leadership*

The direct popular election of regional presidents has contributed substantially to the establishment of regional political élites, who are able to contribute decisively to identity-building and the efficient accommodation of regional interests. However, few outstanding, high-profile regional political leaders have emerged, as political careers are still predominantly centered on national parties. Some exceptions can be made in areas where self-government is deeply rooted: for instance, no discussion of regional figures can be complete without the inclusion of South Tyrolean leader Silvius Magnago, who was president of the Provincia autonoma di Bolzano for 29 years (1960 – 1989), or Trentino Democrazia Cristiana leader Bruno Kessler, a popular politician who served as Trentino's president from 1960 to 1973. Both made remarkable contributions to creating the identity of their respective territories.

The importance of regional political leadership is growing, however. Surveys as recent as 2009 indicate that regional leaders are substantially increasing their popularity among voters. Given the political and cultural peculiarity of the Provincia Autonoma di Bolzano, it is not surprising that the most popular regional leader, with an 87 percent positive rating by residents, is province President Luis Durnwalder (who is also the longest-serving regional president by far, in office since 1989). Second most popular are the presidents of Sicilia (Raffaele Lombardo, with a 67 percent positive rating) and Lombardia (Roberto Formigoni, with 66 percent). In general, the support is lower in the southern regions.<sup>VI</sup>

Combining popular support with the political and economic weight of the regions, Lombardia's President Formigoni can be considered as one of the most successful and influential regional political leaders. He is the only President of ordinary regions who has been in charge since the direct election of the regional presidents was introduced in 1995



and was elected to his fourth consecutive mandate in 2010. Overall, regional leadership is strongly linked to continuity and it is not by chance that regional leaders are now emerging following changes to the rules governing their election.

#### *Administrative reform efforts*

A number of Italian regioni (such as Lombardia) follow a strategic approach designed to enhance their influence. In order to achieve this goal, they are focusing their legislative policies on specific areas where they have most of their powers, such as public health, education and training, and local public services. However, regional administrative reforms have not generally had significant effects on economic competitiveness, or given the regioni more influence on national policy.

The creation of the so-called *sportelli unici* (one-stop shops) appears to have helped simplify administrative procedures, mostly in the context of the approval of new economic activities. One-stop shops were established by State Law No. 112/1998, and gave comuni a number of competences related to business and industry. Citizens have recourse to these offices for any administrative measures associated with starting, enlarging or closing a business, as well as when applying for licenses and building permits. Regioni have used instruments such as the sportelli unici at different levels of efficiency, with consequently varying results for economic competitiveness; for instance, 475 sportelli unici are currently at work in Lombardia, only 65 in Lazio.

In terms of “good governance,” several regioni, in particular Toscana and Emilia-Romagna, score far better than others. This is due to a rooted administrative culture, to political stability, to an active civil society, and to modern and effective legislation. These regioni were among the first to experiment with new forms of participatory administration, to link regional administration with local universities and to invest in administrative capacity. These regioni also established a fully fledged regional administration well ahead of others. It is for this reason that their regional civil service operations are comparatively more successful than those of other regioni.

To date, the decentralization of powers and responsibilities initiated by the 2001 constitutional reform has had limited consequences on the structure of the public service. While most legislative powers now lie with the regions, and most administrative functions



belong to the comuni, the majority of civil servants (66.9 percent) are still state employees. Only 32.5 percent work for regional or local governments (Ministero per la pubblica amministrazione e l'innovazione 2007). The recently adopted law on fiscal federalism offers the possibility of entering into different types of contracts with civil servants in various parts of the county, with a view toward “ensuring a correspondence between the power to determine the regions’ own revenue and the autonomy in managing the related personal resources” (Article 2, Par. 2, lit ii Law No. 42/2009). In the future, regioni should therefore be allowed to obtain additional resources from the central government in order to increase the salaries of their civil servants; these resources will be made conditional on the overall performance of the regional administration.

#### *Active coalition-building*

The new constitutional and political profile of the regioni has enabled them to engage in more intense coalition-building. Not all regioni have taken advantage of this opportunity to the same degree, however. Lombardia in particular has developed a broad network of partnerships (including with foreign regions) across a variety of policy fields, with a varying degree of intensity and institutionalization.

Some regioni, such as Toscana and Emilia-Romagna, have traditionally supported a higher degree of internal cooperation between the public sphere and private actors, thus facilitating the decision-making process. Other regioni, such as Lombardia and Lazio, lack this intraregional, cooperative societal culture.

As mentioned above, Italian intergovernmental relations lack instruments and procedures for cooperation. Strategic cooperation among regioni thus often follows political lines more than functional, economic or other strategic patterns. Conferences representing regional (and sometimes local) governments, particularly the Conferenza Stato-Regioni, are contributing to better coordination and strategic coalition building, especially when dealing with specific subjects. However, much remains to be done to create a true institutional setting for efficient interregional cooperation.

The 2001 constitutional reforms introduced a new governmental body in the regions, the *Consiglio delle autonomie locali* (Councils for Local Governments), aimed at making it easier to establish permanent institutional links for intraregional cooperation by



involving comuni and other sub-regional actors in the broader regional decision-making process (Art. 123 Para. 4 Const.). The Consiglio bring together representatives of the comuni to play an advisory role, and must be consulted in the regional legislative process. In addition, the constitutional reforms formalized intese (regional agreements) as a binding instrument of policy; the new provision (Article 117 Para. 8 Const.) allows regioni to conclude agreements, to be ratified by regional law, aimed at improving the performance of regional functions. These agreements may also establish joint interregional bodies. Unfortunately, this instrument has been used only sparingly by the regioni, which normally prefer to establish informal bilateral relations with the stato.

*Basic patterns of regional interest articulation and representation in domestic policy-making*

The degree to which regioni can articulate their interests and represent them in national (and regional) policy-making processes is variable, as it depends on a number of (mostly political) factors.

Recent changes to the constitutional framework have enhanced the institutional linkage between regional and national interests. However, the institutional channels for regional interests' representation in domestic policy-making remain weak and overall ineffective. The weakness of the regioni's institutional involvement in national decision-making is supplemented by the still largely centralized party system; as a result, channels for promoting regional interest become politicized. This often occurs based on party affiliation and the personal relationships of regional political and economic leaders with their counterparts in the center.

From an institutional perspective, a decisive role in bridging this fragmented and random articulation of interests has been played by the Corte Costituzionale. In three decades of consistent adjudication, the court has essentially forced cooperation between the stato and the regioni, and has shown to the regioni that judicial challenge can be an effective instrument for asserting regional interests in absence of a political agreement.

Finally, it is worth mentioning that most regioni have recently put in place instruments for the selection and coordination of sub-regional territorial interests, with a view toward regional coordination and the creation of common regional objectives. Several regioni (including Piemonte, Toscana, Friuli-Venezia Giulia, Emilia-Romagna and Liguria)



have recently adopted innovative laws on regional governance, which provide for inclusive decision-making, by involving stake-holders and technical expertise in early-consultation mechanisms.

## 8. Indicators of successful regional mobilization in the EU's system of multilevel governance

The factors affecting the mobilization capacity of regioni within the context of multilevel European policy-making are of various nature. While generally low, such capacity varies considerably among different regioni and in some case it can be regarded as quite developed.

### *Economic competitiveness of regions in the internal market*

Lombardia is the best performing regione in terms of internal market competition. As the economic indicators cited under “relative socioeconomic weight of regions” show, there is a close relationship between the socioeconomic weight of the regioni and their performance (not only from an economic perspective) in the internal market. As the biggest, the most industrialized and the economically best performing Italian regione, Lombardia also scores better than all others regioni, both in the domestic and in the European market. The connection between socioeconomic weight and performance can be also observed in comparing Lombardia with other large northern industrialized regioni (see discussion under “allocation of financial resources”); this reveals analogous performances due to similar socioeconomic potential. For example, per capita revenues in Lombardia, Piemonte and Veneto are roughly similar (see data provided under “relative socioeconomic weight of regions”). Comparison with southern regioni such as Campania, Sicilia that are comparatively big but have a much lower socioeconomic potential also demonstrates that performance depends heavily on socioeconomic factors.

International competitiveness has relatively late become an important policy objective for Italian regioni. The socioeconomic structure of various territories did not originally depend on the regional factor; indeed, when the country experienced its strong economic growth,



mostly between the 1950s to the 1970s, the regioni (at least those with ordinary status) were not yet in place. Economic development was accompanied rather than guided, and this solely by the central government. When the regioni were established, they inherited an economic situation already in place. Furthermore, economic success was based largely on small and medium-sized enterprises, most of which had neither the interest nor the capacity to compete internationally.

Only since the 1980s has internationalization of the territories started to play a role. Some regioni—notably those marked by political stability, such as Emilia-Romagna and Toscana, or those with a strong economic background, such as Lombardia, Veneto and Piemonte—could develop a consistent strategy for internationalization. Others, being economically weak and/or politically unstable, could not do so. The strategic planning of the 1980s and 1990s prepared the regioni to place themselves as relevant actors in the internal market.

Lombardia, for example, started creating regional development programs in the 1980s, and continues to do so today. The current program is composed of 57 programmatic targets, 168 specific targets and 523 management targets, all aimed at fostering the competitiveness of the regione in the national and international arena.

#### *EU compatibility of political identity-building*

Public support for European integration is quite high at the regional level. Moreover, the regioni have been quite active, especially over the past two decades, in order to increase their visibility in Europe, although with variable success.

#### *Changing patterns of public support and social capital at the regional level*

People primarily identify with the municipal and national levels of government—although again, in some regioni, where regional identity is strong in political and symbolic terms, the picture is rather different. It follows that as a rule the people do not link the regional and European level. The increasing support for regional institutions is mostly linked to the increased powers these bodies have recently received, and above all to the introduction of the direct election of regional presidents. On the other hand, regioni often



tend to link themselves to the idea of Europe, thus trying to augment their popular support through association with European symbols, given the fact that the cause of European integration in general enjoys broad consensus in Italy.

Economic elites in particular are quite effective in networking and pushing for more effective presence of their regioni on the European scene as a means to expand economic opportunities.

#### *Improved visibility of regions in Europe*

The (slowly) increasing trend toward cooperation among regioni and between regioni and stato goes together with the rise in symbolic visibility of individual regioni. Even regioni that lack a clear historical and political identity are intensifying the process of regional identity-formation by means of symbols such as regional flags or, more importantly, by strongly supporting regional trademarks in selling and promoting regional products. Almost all regioni have developed individual trademarks and promote them at the European level. In several cases, regional trademarks have helped increase the Europeanization of the territory and of the economy, particularly in the case of agricultural, alimentary or tourism trademarks (in Toscana, Marche, Umbria and others).

#### *Europeanization of regional party competition*

The European discourse, while frequently used in rhetorical terms, is essentially ignored at regional level. Even when European issues are at stake (such as agriculture, which is among the most Europeanized policies, but belongs entirely to the regioni), they are not presented as such in political debate.

#### *Extent and quality of regional entrepreneurship*

This section deals with political and administrative leadership at the regional level as benchmarks for the European capacity of the regioni. It is argued that institutional capacity and coalition-building are growing, while political leadership remains limited to exceptional cases.



### *Political leadership*

Political leadership in Italy is rather weak, including at the regional level. In industrialized regions, political discourse is primarily focused on how public authorities can better help entrepreneurs by adopting favorable policies and creating necessary infrastructures. A few regional leaders have been very proactive in networking their region with other subnational European counterparts; this has been possible by combining political vision with important geographic and socioeconomic preconditions. Border regions in the north have more opportunity to Europeanize than do peripheral and less-developed areas. Against this background, important networking activities have been launched, such as Euroregions or the Four Motors for Europe (see the chapter below on European coalition-building activities). Several efforts stand out, particularly in those regions where political leadership has been stable (again, Lombardia can be considered the forerunner in this regard). Since not all regions with a stable political leadership have been equally active in establishing European networking activities, it can be concluded that some regional leaders have been more active and more successful than others in this activity, even under similar conditions (for instance, Piemonte former President Mercedes Bresso or Lombardia President Roberto Formigoni; see “extent and quality of regional entrepreneurship”).

### *Institutional capacity-building in EU policy-making*

Most regions have recently adopted organizational reforms designed to cope with the process of Europeanization. These reforms are mostly of a technical nature, taking such forms as specific task forces on European affairs within the regional administration, or processes aimed at better managing European funds. However, some regions (such as Emilia-Romagna) have organized permanent meetings of top civil servants to integrate mainstream European issues into regional administrative activity, while others have set up specific offices tasked with the elaboration of European and international strategies (such as Veneto, with its Directorate General for international relations).

Regions participate both directly and indirectly in Brussels itself. Indirect participation comes by means of the four regional representatives, appointed by the



Conferenza Stato-Regioni, that are part of Italy's permanent representation in Brussels (COREPER). However, the direct role comes from the representation that all Italian regioni except Basilicata maintain in Brussels (under Law No. 52/1996), with the aim of promoting their individual social and economic development within the broader process of European integration. These offices essentially perform an informational activity, and their practical relevance in enhancing the European capacity of their respective territory varies from regione to regione. The liaison office maintained by Emilia Romagna (the first such, established in 1994) has had particular success; this office also maintains quite good interregional relations, as it shares its building with a German Land (Hessen), with the French Province Aquitaine and with the Polish Wojwodship Wielkposka.<sup>VII</sup> Similarly, Tirol, Südtirol/Alto Adige and Trentino have a common liaison office, which has gained visibility for its lobbying activities.

The central regioni of Italy offer an example of interregional relations within a single state. Abruzzo, Lazio, Marche, Toscana and Umbria have a "common house" in Brussels, sharing premises, costs and information. The Veneto regional government's Brussels Department is quite peculiar: This structure has a specific and specialized detached office in Padova (Veneto in Europe, V.in.E), whose main objective is to develop and promote cooperation with the countries of Eastern and Southeastern Europe, to maximize international network creation, project management efficiency and Veneto's visibility as a regione, and to facilitate dialogue with international bodies such as EU delegations, the World Bank and the European Bank for Reconstruction and Development.<sup>VIII</sup> Lombardia has a liaison office in Brussels, but several local industrial and commercial sectors have established offices that complement the region's activity. Much lobbying and information exchange takes place through these additional channels.

Finally, Italian regioni have established new departments for European affairs. For instance, Lombardia has created a "Structure of International Relations" under the Directorate of Cabinet Affairs. This administrative unit also controls the regione's liaison office in Brussels. However, these reforms have not succeeded in increasing regional influence on EU policy. It is widely debated, especially in the press, whether regional representation offices are worth the money they cost, in terms of capacity to increase visibility at the European level, to attract investments and tourists, or to promote exports.

*European coalition-building activities*

Lombardia in particular is very active in building coalitions. Along with its involvement in the “Four Motors for Europe” project (a strategic alliance with Baden-Württemberg, Rhône-Alpes and Catalonia), it also signed the first EU tripartite agreement to be completed by an Italian regione on October 15, 2004. This agreement has been concluded between the Commission, Italy and the Regione Lombardia, following the framework provided by the Commission Communication of 11 December 2002 (COM (709)fin). The agreement (on sustainable mobility) included at least three political dimensions—transportation, the environment and research—while integrated strategies can be defined on a political-institutional level.

Lombardia is also the appointed managing authority for the Interreg III/A cross-border cooperation program between Italy and Switzerland. The primary objectives of this program are to strengthen cross-border cooperation, enhance integration of border areas, stimulate balanced and long-lasting development that will safeguard of the delicate alpine ecosystem, and increase exchanges between the border areas on the institutional, economic and social levels. Finally, Lombardia is a member of the Alps-Adriatic Working Community (ALPE ADRIA) and of the Working Community of Alpine Countries (ARGE ALP).

Several other regioni are increasing their active role in cross-border cooperation projects, through the Interreg initiatives, participation in working communities (ARGE ALP, ALPE ADRIA, COTRAO, etc.) and other means. Recently, the European Commission decided that Sardegna will host the Joint Managing Authority for cross-border cooperation within the European Neighborhood and Partnership Instrument (ENPI) 2007 – 2013.<sup>IX</sup>

All Italian regioni are involved in interregional networks such REGLEG, and are represented in the Assembly of European Regions ([www.aer.eu/en](http://www.aer.eu/en)). All are members of the Council of European Municipalities and Regions.

Regional participation in the Committee of Regions (CoR) has not seemed to bring practical benefits, partially due to the CoR’s mixed composition consisting of representatives from regional and local bodies (Article 303.3 TFEU). The Italian CoR delegation consists of 24 members and an equal number of alternates. The distribution of



seats is as follows: regioni and province autonome have 14 members (8 alternates), province have five members (4 alternates) and comuni have five members (12 alternates). A regulation passed on 11 January 2002 states that members of Italy's CoR delegation are proposed respectively by the Conferenza dei Presidenti Regionali (Conference of Regional Presidents, CPR), the Unione delle Province Italiane (Union of Italian Provinces, UPI) and the Associazione Nazionale dei Comuni Italiani (National Association of Italian Municipalities, ANCI). The ANCI and UPI, acting independently, appoint their members and alternates in such a way that the choice is geographically and politically balanced, even if this is not required by the decree. The Conferenza dei Presidenti generally appoints a representative for each regione and provincia autonoma. According to the decree, presidents of regioni/province autonome, presidents of province, mayors and members of municipal councils may be appointed as CoR members. CoR members are finally and formally appointed by the national Ministry for Regional Affairs. They have to be elected representatives of their territories, holding political office.

## 9. Impact assessment

The degree of Europeanization of different regioni can be ascertained from some indicative data as well as from recent legislative developments.

### *Selection of case studies*

Two Italian regioni can be used to show the variability of performance. Lombardia and Lazio are both ordinary regions. Lombardia, with its capital city Milano, is located in northern Italy and Lazio, with its capital city Rome, is located in central Italy.

Table 7: Economic data, Lombardia and Lazio, in 2007

Regional data	Lombardia	Lazio	Italy
Resident population	9,742,676	5,626,710	60,045,168
Gross Domestic Product (millions of euro, current value)	325,327.7	170,024.9	1,544,915.1



Total domestic employed (thousands)	4,305.3	2,215.1	23,221.8
Families expenditures in durables (millions of euro, current value)	16,222.7	8,135.3	83,391.8
Investment in the industrial sector (millions of euro, current value)	87,249.1	22,470.9	336,006.4

Source: Eurostat and ISTAT (Istituto Nazionale di Statistica), <http://demo.istat.it/pop2007/index1.html>

On the basis of the aforementioned data, it can be observed that Lombardia's GDP is almost twice as big as Lazio's, and that Lombardia alone accounts for about 21 percent of Italy's GDP as a whole. Lombardia is home to about twice the number of employed individuals as in Lazio; Lombardia's employed make up 18.5 percent of Italy's workforce (the regional population is about 16 percent the overall population).

Even in the case of family spending on durables, Lombardia's performance almost doubles that of Lazio, accounting for 19.5 percent of the national total. Lombardia's investments in the industrial sector are 3.9 times larger than the corresponding value for Lazio; indeed, Lombardia alone accounts for 26 percent of the national total in this sector.

On the basis of these figures and their proportional values, it can be observed that Lombardia can rightly be considered the leader or the driving force among Italian regioni. Its average performance is not only well above that of other ordinary regioni, but also higher than that of most of the special autonomy regioni (which benefit from much more generous financial arrangements). Lombardia was also the first regione to make use of European tripartite agreement. By contrast, Lazio appears to be somewhat EU averse, because it feels both the massive costs associated with Italy's capital city, and because Roma hosts the main bodies and institutions of the stato, with all the attendant drawbacks of proximity to the central seat of national power.

#### *Changing patterns of regional interest representation in EU policy-making*

This section presents some thoughts on how European integration has affected the representation of regional interests, both domestically and at the European level. It is contended that the European variable has been a key factor in promoting domestic



cooperation, despite the broad margins that remain for improving collective strategies and coordinating regional activity.

#### *Interregional relations*

To date, Italian regioni (like all other subnational entities) have been unable to directly and formally influence policy-making at the European level. However, the situation is changing at the national level. The regioni have shown converging interests in the EU policies affecting them most strongly, and the institutional and procedural framework is changing in order to give them a voice. In other words, Europeanization has been a driving factor in improving the Italy's traditionally uncooperative regional relationships.

For instance, within the framework of the Conferenza Stato-Regioni, the regioni reached a common stance with respect to Italy's negotiations on structural fund allocations for the 2007 – 2013 period (December 14, 2005). This common position strengthened the government's position, and ultimately contributed to the positive outcome of negotiations from the perspective of the regioni. Another positive example is the elaboration of the national strategic plan within the framework of the European cohesion policy

Aside from the slow but increasing development of cooperative procedures and political links, coalition-building between regioni in pursuing common interests on the European scene is also proving quite important. The previously mentioned establishment of joint liaison offices in Brussels is just one example of this trend. In recent years, the regioni have realized they can have considerably more influence on national and European policy-making by means of a collective strategy. However, regional interests are sometimes so diverse that a common strategy is impossible.

#### *Interaction between central government and the regions*

In general terms, the political relationship between stato and regioni has been profoundly (and positively) affected by the process of European integration. As noted above, Italy's political culture (and the associated institutional system) has not traditionally lent itself to cooperative strategies. However, the common framework of European integration has pushed the stato and the regioni to cooperate more closely. Political



cleavages are shifting and realigning, a process already underway due to the recent constitutional changes, but given new impetus by the challenges of Europe.

However, while European integration has enhanced political and institutional cooperation between stato and regioni, it has also stirred up interregional competition. In the best-performing, most competitive regioni, national and interregional solidarity is often politically called into question. The reform of financial arrangements adopted in 2009 has been one of the most visible outcomes of that political process, creating economic incentives for the more productive regioni and essentially disfranchising others. One could thus say that, paradoxically, Europeanization has made cleavages between the very heterogeneous regioni even more visible, while simultaneously spurring increased levels of cooperation among regioni and between regioni and stato. While the cleavages persist, and have even increased (through they are often overemphasized in the political discourse), a more mature administrative culture is developing which makes cooperation a necessity, since only by cooperating can individual regioni push for their agenda at higher governmental levels.

## **10. Bottom-up Europeanization: subnational “EU policy-shaping” and its impact on the regionalized system**

Overall, Europeanization of the Italian regioni is taking place, but this is generally not very visible. Politically, the European card is often played rhetorically but has no real impact in electoral terms. Votes are not cast with the Europeanization of the regional territory in mind, nor do voters have a chance to evaluate their individual region’s EU policies. Economically, European integration is seen as an opportunity, either to attract funds or to expand export markets and promote tourism (none of these goals, it can be noted, are quite the same as Europeanization). Where bottom-up Europeanization is having the most remarkable effects is in administrative culture and practice. Cooperative procedures have come into use, especially between the regioni and the stato, since regional interests in the European arena are more successfully channeled by the stato. Moreover, regional policy-making is taking more account of European issues, even though the EU performance of the Italian regioni remains below the European average.



Finally, some improvement can be noted in the field of European coalition-building. Some regioni in particular (such as Lombardia) have succeeded in networking activities, even though these seem to be more horizontally oriented (i.e. between governmental structures) than bottom-up, with limited inclusion of the civil society.

## 11. Overall assessment of the EU fitness of the regionalized system

The process of European integration has generally affected the traditionally uncooperative relationship between stato and regioni in a positive way. However, a relatively high number of conflicts remain, especially when compared to other European countries. The main conflict-prevention mechanism is the Conferenza stato-regioni, which brings national and regional governments together to draft general policy guidelines or for specific purposes (by means of specialized sub-conferences on varying subjects)<sup>x</sup>. The most relevant conflict-resolution mechanism in the case of tension between the central government and the regioni is still provided by the Corte Costituzionale; many cases heard here indeed regard EU affairs. Overall, the court has safeguarded regional prerogatives against stato interference, in part by ruling that it is unconstitutional for the stato to use its coordination role in EU affairs to take competences away from the regioni (Judgment No. 203/2003), at least without the regioni's consent (Judgment No. 68/2008).

Cooperative mechanisms that are in place are often undermined by a conflict-prone political culture. An example is the contested role of the regional liaison offices in Brussels, which do not create any effective synergy. On paper, the system in place seems relatively balanced in terms of providing both a coordination of regional interests at the national level and opportunities for the regioni to pursue their own European policies. However, these opportunities are not fully exploited. Increased cooperation is ultimately in the best interest of the regioni, as the institutional mechanisms in place give a privileged position to the role of the stato.

European integration was one of the main driving factors leading to the 2001 constitutional reform. This reform not only obligated both stato and regioni to comply with EU legislation (Art. 117.1 Const.), but it also made subsidiarity a fundamental principle in the relations between different levels of government (Art. 118.1 Const.).



However, the massive reallocation of competences did not increase policy efficiency, nor did it allow for a more efficient implementation of EU law in fields such as state aid, environment or public procurement.

Regioni activities—or lack of activities—in their areas of competence have sometimes left Italy temporarily out of compliance with EU rules. This is a problem for the national government, as it cannot then plead the existence of provisions, practices or circumstances in its internal legal system in order to justify a failure to comply with EU obligations and time limits (Case C-33/90, Case C-388/01). Indeed, infringement procedures against Italy have been initiated several times over the last decade in fields of regional or concurrent competence; that is, in policy areas where the fulfilment of European obligations requires legislative or administrative acts by the regions. This has been particularly troublesome in environmental matters (e.g., cases C-225/96, C-87/02C-466/99, C-248/02, C-139/04), but has also affected trade fairs, markets and exhibitions (Case C-439/99). The Eur-infra database (<http://eurinfra.politichecomunitarie.it/ElencoAreaLibera.aspx>), concerning pending cases at the European Court of Justice, supports this conclusion. Indeed, in at least six cases out of 40 concerning environmental policies, non-compliance was provoked by regional activity. Conflicts between regioni and stato on environmental issues often end up before the Corte Costituzionale. In order to prevent non-compliance with EU obligations, the stato has been vested with the power to execute by substitution in lieu of the regione (Articles 117.5 and 120 Const., Law No. 11/2005). In some cases, the stato is even given the authority to act in a preventive way (for instance, under the Constitutional Court's guidelines (Judgment No. 272/2005), the stato could legitimately adopt an urgency instrument in order to implement EU obligations (such as the milk quota), without involving the Conferenza Stato-Regioni. National acts aimed at avoiding non-compliance are temporary measures, and can be substituted for by properly adopted regional acts. Moreover, since 2007, the stato has also the power to hold the regione financially responsible for consequences provoked by the regional violation of EU law, and to ask for the reimbursement of any costs. The central government can compensate itself directly, by reducing the national funds allocated to the regione responsible for the violation.

The economic impact of European integration is extremely important, to the point of determining spending constraints for both stato and regioni. Since 1999, a Patto di



stabilità interno (national stability pact) has been in place, containing programmatic goals for the regioni (and local government units) aimed at coping with the EU Growth and Stability Pact criteria. The pact is adjusted and updated annually by the national financial law, in consultation with the regioni. However, the regioni do not have formal veto power over the pact. Moreover, the pact has not been entirely effective: Enforcement has proved rather problematic despite rather developed control mechanisms, and in several cases the stato has had to intervene financially to compensate for excessive regioni debt, especially with respect to health care.

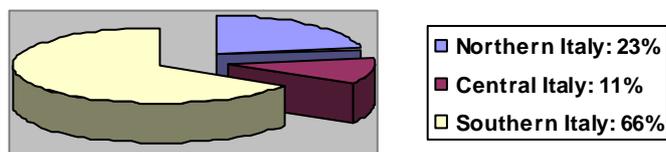
Italy is expected to be allocated about €28.8 billion from Structural Funds programs in the 2007 – 2013 period (the overall financial allocation for the EU27 countries is an estimated €347.4 billion). The allocation for the first objective, “Convergence,” is estimated at €21.2 billion, while the allocation for the second objective “Competitiveness and Employment”, which covers the majority of Italian regioni, is only €5.35 billion. Moreover, if we also consider national/regional resources, an additional €24.7 billion will be allocated to regional policy (Corte dei Conti – Italian Court of Auditors – Report 2007). The southern regioni rely strongly on European resources, and economic development, particularly in Sicilia, seems to have benefited from access to EU structural funding (see “relative socioeconomic weight of regions”).

Compliance with EU law in funds management is guaranteed by various mechanisms set up at the European, national and regional levels. The EU Commission maintains control of the implementation of projects involving EU funds. Member states are responsible for disbursing funds and monitoring expenditure under Community policies (within the European Agricultural Guidance and Guarantee Fund (EAGGF) framework), and the Commission is required to ensure that member states have made correct use of the funds. Recently, the European Court of Auditors expressed some criticism of these oversight mechanisms’ effectiveness (Annual Report 2007). All Italian regioni and province autonome have implemented the mechanisms required by EU law (e.g., Reg. 438/2001). Italian regioni and the national financial police (*Guardia di Finanza*) have signed an outline convention aimed at coordinating oversight and the information relating to structural funds. The Guardia di Finanza has signed *protocolli d’intesa* (agreements) with all regioni. With regard to the management of EAGGF, the Guardia has reached an agreement with Lombardia and Toscana. Synergy between different activities



has made it possible to discover and prosecute a large number of cases of fraud and waste of EU resources. The following figure, which is based on data from 2007, shows that the majority of fraud and mismanagement occurs in southern Italy.

Figure 1: Fraud and mismanagement in 2007



Source: Italian Court of Auditor Annual Report 2008  
([http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Procura/Documenti/Procura-Ge/Anno-2008/scritto-definitivo\\_2.doc\\_cvt.htm](http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Procura/Documenti/Procura-Ge/Anno-2008/scritto-definitivo_2.doc_cvt.htm))

Finally, as in all other EU member states, the process of European integration and the transfer of regional powers to Brussels has negatively impacted the role of Italy's regional parliaments. This is due to the fact that European integration remains a governmental and government-driven process. Since the main task of regional parliaments is to pass regional laws, it is obvious that when a piece of legislation with regional impact is adopted by the European Union, regional parliaments lose part of their power. This is ultimately a problem affecting national parliaments as well.

In recent times, especially after the entry into force of the Lisbon Treaty this problem has addressed, although it is far from being completely resolved. Since 2007, the government has used the "Europ@" web portal to transmit documents to the national parliament (6,999 documents in 2008) and to the Conferenza Stato-Regioni (38,066 documents in 2008 alone). Moreover other mechanisms (such as report and reservation) provided for by Law n.11/2005 have to be adapted to new Treaty rules concerning the involvement of national and regional parliaments in the decision-making processes and the "early warning" system with regard to the principle of subsidiarity <sup>XI</sup>



Regional parliaments have set up a coordination forum designed to enhance cooperation and elaborate joint strategies, which are not binding but might be relevant in political terms. Moreover, in several regioni (such as, in particular, Emilia-Romagna), newly adopted regional by-laws and legislative acts provide regional parliaments with a comprehensive right to be informed of all proposals, actions, policy strategies and other information affecting their region's European policy. This includes any proposed acts designed to comply with European law. Where appropriate, regional parliaments are given the time to express their positions, although in practice most actions are taken under time constraints, which makes it difficult for the parliaments to make effective use of these powers. Thus, the role of regional parliaments in European affairs remains marginal, despite recent efforts to grant them a more prominent voice.



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<sup>I</sup> Several studies on the health care system show that per capita expenses in the south are twice as much as in the north, while the quality of the service is much lower (Corte dei Conti 2008). For further information, see the Health Reports by the NGO Cittadinanza Attiva (<http://www.cittadinanzattiva.it/i-tuoi-diritti-pit-salute/il-rapporto/rapporto-2008-form.html> - last available report: 2008). In summer 2009, due to the high public debt incurred, the state placed the health care system for two regions under its direct administration.

<sup>II</sup> As to decision-making, the Conferenza works based on the consensus principle: the regions as a rule should come to a unanimous position, but if this lacks, the opinion of the regions is determined by majority vote (Article 2,2, decreto legislativo 281/1998).

<sup>III</sup> Data from 2007. Information comes from the official website of each region.

<sup>IV</sup> Data from SVIMEZ. Previsioni macroeconomiche per le regioni italiane 2008-2009, in <http://www.svimez.it/News/11122008.pdf>.

<sup>V</sup> [http://www.regione.toscana.it/regione/export/RT/sitoRT/Contenuti/minisiti/porcreo/news/visualizza\\_a\\_sset.html\\_1092505157.html](http://www.regione.toscana.it/regione/export/RT/sitoRT/Contenuti/minisiti/porcreo/news/visualizza_a_sset.html_1092505157.html)

<sup>VI</sup> [http://www.ilsole24ore.com/speciali/governance/governance\\_poll\\_tipologie\\_governatore.shtml](http://www.ilsole24ore.com/speciali/governance/governance_poll_tipologie_governatore.shtml) (Governance Poll 2008).

<sup>VII</sup> See the website, <http://www.spazioeuropa.it/ufficiobruelles>.

<sup>VIII</sup> See <http://www.regione.veneto.it/La+Regione/Sede+di+Bruxelles/English+version.htm>

<sup>IX</sup> [http://ec.europa.eu/europeaid/where/neighbourhood/regional-cooperation/enpi-cross-border/index\\_en.htm](http://ec.europa.eu/europeaid/where/neighbourhood/regional-cooperation/enpi-cross-border/index_en.htm).

<sup>X</sup> Within the framework of the Conferenza stato-regioni, the meetings can regard several different matters, from agriculture to culture, from health care to tourism and many others. See the list of "sub-conferences" within the format of the Conferenza stato-regioni in: <http://www.regioni.it/conferenze/>.

<sup>XI</sup> See proposals of the revision of Law no 11/2005 (bills no. C.2862 Stucchi and C.2888 Gozi).



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**EU's Projection of Security  
Peace Missions as a Tool either for Fusion or  
Fragmentation**

by

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## Abstract

If one looks at the rapid growth of the Common Security and Defence Policy (CSDP) since the Blair-Chirac meeting of Saint-Malo in 1998 and in particular at the launch of several crisis management missions it is worth asking, in the light of these experiences, whether and how far this area of cooperation has progressively moved into forms of communitarisation/fusion (to use a theory developed by Wolfgang Wessels) or whether, due to its strictly inter-governmental character, it might be turning into a tool of fragmentation between policies, forms of governance and institutions. The answer is not just to be found in the new articles of the Lisbon Treaty but rather in the willingness or otherwise of the member states to use these articles in the most coherent way.

## Key-words:

EU, Fusion Theory, Common Security and Defence Policy, Institutions, Crisis Management Operations.



## 1. Preliminary Remarks

Looking at the rapid growth of the European Defence and Security Policy (ESDP) since the Blair-Chirac meeting of Saint-Malo in 1998 and in particular at the launch of several crisis management missions, starting at the beginning of 2003, one might ask, in the light of these experiences, whether and how this area of cooperation has corresponded to the “fusion theory”, as “a dynamic product of rational strategies of European states faced with growing interdependencies and spillovers, furthered by the institutional logics of EU bodies” (Wessels, 1997) or whether, due to its strictly inter-governmental character, it might turn into a tool of fragmentation between policies, forms of governance and institutions.

In other words: which will be the appropriate analysis in the field of ESDP (now named, with the Lisbon Treaty ratified, Common Security and Defence Policy-CSDP) and, particularly, of crisis management operations?

- a) The Fusion theory as a process of progressive Europeanisation of national instruments and procedures.
- b) Or, on the contrary, a marked tendency toward a growing fragmentation of the whole ESDPs’ political and institutional system.

We intend, therefore, to investigate on the experiences made in the field and on their consequences both in theoretical and institutional terms on ESDP, with the aim of testing our two potential analyses and contribute to the debate about the Fusion theory.

A full test of the fusion theory, in its application to ESDP, has not yet been carried out, even by W. Wessels,. But his considerations on the Union’s external policies give us some indications. For example, in one of his first essays in June 1997 Wessels underlined that “the fusion within the EU must also be seen in light of alternative international set-ups; the EU has to compete with other arenas or ways of handling transnational and global problems”, having NATO clearly in mind as a competitive, more efficient institution in the security field. This perspective of Wessels has radically changed in recent years either



because of the difficulties encountered by NATO in redefining its post-Cold War mission, or in the light of the more consistent role of the EU in crisis areas. However, it remained unclear in 1997 whether “government-free competition on the ‘market’ could become another form of dealing with transnational problems outside one’s borders”. Wessels continued in 1997 by saying that “the role of the state, including its European extension, would thus been reduced”. Hence he saw in 1997, from one side, a move of ESDP as a new security actor towards some forms of fusion, or, on the other side, a process still largely open to fragmentation and ad hoc coalitions of states outside the EU framework.

More recently (2005) and at the structural-polity level, W. Wessels recognised the progress made within the Constitutional Treaty (CT) in the field of CFSP/ESDP. He focused his attention on the new figure of High Representative/Vice President of the Commission/President of the Foreign Affairs Council (in short, at that time, “Union Minister of Foreign Affairs”) in particular. In his judgment the “double hat” position of the new minister, vice President at the same time of the Commission (elected by the European Parliament) and of the Council (appointed by the European Council) “represent an almost ideal and/or typical instance of the trends predicted by fusion theory: legitimacy and functions are merged, while the office-holder is supposed to integrate several instruments and various procedures in a kind of hybrid function” (Wessels, 2005).

In the area of European security one moves therefore from the uncertainties and the absence of instruments and procedures of 1997, just prior to the insertion of Article 17 (the Petersberg Tasks) into the Treaty of Amsterdam, to a situation that in 2005 signalled a leap forward in the institutional design of the EU, with the proposal to fuse the functions of the “Minister of Foreign Affairs/ The High Representative”, the Community’s authority on external relations, with those of the CFSP, including those relative to the ESDP, making one person responsible for both. Is this a victory for Fusion theory? Is it really true, that, even in a classic case of national sovereignties’ *domaine reserve*, such as the ESDP has been, a merging between inter-governmental and Community methods has been brought about through the forces of circumstances and events?



In attempting to answer this question it is necessary to analyse how the ESDP has developed in concrete terms during the last decade, in the light of Fusion theory.

Based on the studies conducted by Wessels during recent years, it can be stated that Fusion theory is grounded in three fundamental characteristics:

- It develops thanks to a **dynamic process** which over the course of time may find points of temporary equilibrium, but which in actual fact is destined to continual modification and institutional adaptation according to the circumstances and course followed by both internal and international events;
- It is created through the **progressive extension of EU competences** and areas of intervention, both in functional and in geographic terms. New competences and new ranges of engagement beyond the EU borders are necessary elements to drive the fine tuning of Community and national decision-making processes, and to allow any consequent adaptation between the two;
- It results from the acknowledgement of the Member States **of their incapacity** to occupy themselves individually with a given problem, either particular or general, judging it to be therefore the responsibility of some or all of the EU members.

These basic characteristics of fusion theory are easily applied to the ESDP and, in particular, to one of its principal policies of recent years: crisis management operations, originally described as one of the areas covered by the Petersberg Tasks in the Treaty of Amsterdam (1997), to be confirmed in the Treaty of Nice (2000), elaborated later in greater detail in the European Strategy Security (ESS) paper by Javier Solana (2003) and, finally, recognised in the Lisbon Treaty (2009).

## 2. Dynamics

Few sectors of cooperation within the EU have experienced acceleration as rapid as that of the ESDP. In the few years since 1998, when Britain's and France's leaders decided



in Saint-Malo to take the initiative to push their partners along the road to military cooperation, progress has been noteworthy.

There was a preparatory phase involving declarations, promises, and analysis of the capabilities and objectives (the Headline Goals) in the military and civil camps.

During the second phase (2002-3) the doctrinarian and strategic frameworks of the common threats to and responsibilities of the Europeans were defined.

Then, from 2003, concrete operations began, through the launch of civil and military missions, designed to prevent and manage conflict.

All this developed within the space of 5-7 years, and in a manner which was largely unexpected (Bonvicini-Regelsberger, 2007). Initially, the meeting at Saint-Malo might have been considered to be one of the many attempts which were made from the beginning of the nineties, after the end of the Cold War, to give life to a European defence project. This objective was included in the Treaty of Maastricht in 1991, and repeated at Amsterdam, but it was never able to take off due to various political obstacles

It was this time the force of events (the conflict in the Balkans, specifically in Bosnia at the beginning of the '90<sup>th</sup>) and external pressure on the EU (above all from the United States) which put the virtuous mechanism of cooperation into gear. But the final push came through the realisation of the limited military capacity of the Europeans, in this case wearing their NATO hat, to restrain the violence of the Serbian paramilitary forces in Kosovo (1998). The fear of risking another genocide similar to that seen in Bosnia was a feeling widely shared by national public opinions in Europe, which considered the Union as the proper actor to take a rescue initiative. The limited European military operational capacity, which needed to be compensated for by the Americans and NATO with their bombardment of Serbia, was a shock to European public opinion.

This prompted the decision to begin a first analysis and definition phase, looking into the existing military capability of each individual EU Member State. It was aimed to define



objectives which could be developed within the shortest possible time span. Out of this, the Headline Goals were developed (Lindstrom, 2007).

- In the military camp there were moves immediately after the bilateral summit at Saint-Malo. Already, in December 1999 at the European Council meeting in Helsinki, the Governments of the EU had set themselves the objective of forming a common military capacity, consisting of a rapid intervention force of around 60,000 men, to support the aims of the Petersberg Tasks (Headline Goal 2003). Immediately after the adoption of the ESS (2003) the EU Member States decided to rethink their opinions in the light of the strategic and technological changes which had occurred in the meantime. In May 2004 the Ministers of Defence suggested Headline Goals 2010 (HG 2010), which were adopted by the European Council in June 2004, at Brussels. HG 2010 lays out a series of concrete points and actions which were planned to be put into practice during the following years, including, among others, the Civil Military Cell, the European Defence Agency (EDA), the European Lift Command and more recently the EU Battle Groups. Within the scope of peace missions, the HG 2010 identified the military capabilities and capacities that would be necessary: separation of parties by force; post conflict stabilisation; reconstruction and military advice to third countries; conflict prevention; joint disarmament operations; evacuation operations; assistance to humanitarian operations. This series of tasks renders the progressive fusion of military and civil functions inevitable.
  
- The crisis missions in the civil matters were subject to first analysis in June 2000 at the meeting of the European Council at Feira, Portugal. At the centre of attention was the formation of a corps of more than 5,000 police officers who would be sent to States in crisis. Successively, the European Council in Brussels in June 2004 adopted the Civilian Headline Goals 2008 (CHG 2008), aimed at concretizing post-conflict reconstruction, and at defining military operations more clearly. At this point the Civilian Response Teams (CTRs) were initiated, about which we will speak later. Finally, in November 2007, the new Civilian Headline Goal 2010 (CHG



2010) was adopted, with the objective of once more elevating the qualitative levels and the civilian capacity in crisis management.

The combination of these decisions, seemingly unconnected, has served to boost the capacities at the disposition of the EU Member States, to define the objectives of peace missions, and to study the procedures and mechanisms required to render them operative. The civil and military Headline Goals also constitute, together with the ESS from Solana, the conceptual-strategic base of the role of the EU as a global security actor, and help to define its identity.

It began, as we have seen, in the military field, with the first Headline Goals at Helsinki, and it was followed up in the civilian area at the European Council at Feira, and is significant how over times such decisions lead to a fusion of civil and military aspects. This act of coherence is due to the necessity of resolving problems of inter-pillar coordination, and to give substance to a concept of a European security based largely on a mix between the civilian and the military (Berger-Bartholomé, 2007).

There is no doubt, therefore, that one of the main elements which have shaped the area of crisis management has been the political and procedural dynamics. It has also given life, as we will see further down, to a significant number of new decision mechanisms and procedures, changes which had not necessarily been foreseen by the relevant Treaties.

The dynamics have been evidenced in extraordinary bottom up institutional developments, the like of which has rarely been observed in other European integration sectors. We have, in effect, added a large push from below, which found its impetus in experience acquired in the field, and in the obvious necessity for the three different pillars to combine their competencies and experience in order to achieve the desired results. We will return to this argument later.



### 3. Extension of the Competences

The extension of EU competencies and range of involvement of engagement is the second building-block on which the fusion theory is based. There is no doubt that the birth of the ESDP as a completely new area of EU responsibilities has significantly extended the political and competency spectrum of the EU. From the first definition on paper of the Petersberg Tasks at the beginning of the nineties, until the first mission in the field at the beginning of 2003 (EUPM in Bosnia and Herzegovina) the movement toward a definition of new tasks has been particularly clear.

It is not for nothing that the theme of all recent institutional debates and of the reforms of the institutions as foreseen by Nice (2001) and Lisbon (2009) has mainly been about the EU as a new world protagonist and the definition of its role as actor on the international security stage. This is the current central challenge for the EU: its capacity to extend its traditional economic/commercial role to a more consistent foreign and security policy action. The EU High Representative Javier Solana is a supporter of this need to play a greater role, and in his ESS paper he proposes an all-points review of the emerging profile of an EU which increases its range of responsibilities, including those in the area of security (Solana, 2003).

The ESS, in conjunction with the solidarity clause inserted in the Constitutional Treaty and later in the Lisbon Treaty (art. 222), defines the themes and threats that need to be confronted as a Union. In particular, it mentions the trans-national challenges that individual members have difficulty in confronting alone: terrorism, proliferation of weapons of mass destruction, regional conflicts, State failure, and organised crime. It is clear that these are new areas of cooperation in which the EU has never before acted concretely, but which, under the pressure of external events, it is now obliged to take into consideration.



The ESS imposes no geographic limits on European activities. Even if particular attention is given to the ‘ring of friends’, the bordering States, a direct EU responsibility in the rest of the world is not excluded.

A subdivision into geographic areas of the EU 25 peace missions conducted to date (beginning of 2010) allows an appreciation of the global range of European interventions. The list includes: seven in the Western Balkans, which remains one of the areas of special interest for the EU; ten in Africa, where the European missions participate without support from NATO; three in the Middle East; one in East Europe at the border between Moldavia and the Ukraine; two in the Caucasus (Georgia); one in Central Asia (Afghanistan); and one in Asia (Aceh/Indonesia) (Pirozzi-Sandali, 2008).

We see, therefore, new responsibilities, new competencies in the areas of security and defence, and an extensive range of engagement in distant areas of the globe (Grevi- D. Helly-Keohane (eds), 2009).

#### **4. Inadequate Responses on the Part of Single Member States**

Lastly, the third fundamental element of fusion theory derives from the realization that particular problems cannot be adequately and effectively responded to at the national level and that therefore the responsibility must be transferred to the level of Union cooperation. The foreign security of the EU can be regarded as a common responsibility for at least three main reasons:

The first is that the type of challenge to be confronted is by nature trans-national and that the national borders are not sufficient as protection: the challenges must be confronted collectively and require the use of Union’s competencies and instruments. The observation that a single State is not in condition alone to face a crisis external to its own borders is one of the principal reasons for a push towards forms of cooperation that are more effective in action. Of course, the transition towards closer modes of cooperation has not always been immediate. On certain occasions it may first be necessary to put the



political limits and difficulties of the national role to test. The French approach to the crisis in the Congo is typical of this process. The first European military mission in Africa, Artemis in 2003, was decided under direct French pressure and leadership, even if the mission fell under the umbrella of the ESDP. But the national character of the operation was clear. The second military mission to the same country (Eufor, RD 2006) was instead from the beginning a completely European mission under UN mandate. France, in other words, understood that European political backing must, apart from issuing declarations of support, take the form of a concrete Union's intervention. The later mission was thus developed under German command, with General Headquarters in Potsdam (H. Hoebeke, 2007). There are good explanations for this evolution towards authentically 'common' missions: in the first place, national public opinion spontaneously tends to consider crisis foreign to national borders to be a multilateral responsibility, and, in the case illustrated, of the entire EU. In addition, this type of mission normally takes place under UN mandate, and therefore requires the formation of a coalition of States to make it acceptable and understandable on the part of the third State, the object of the mission. But the truly new element experienced by the Europeans in cases such as "Artemis" is that the responsibility for the mission is accepted not by a coalition of a group of States, but by the EU itself, which approves the launch of the mission via the procedure of a joint action, as provided in the Treaties.

The second ground for the development of the Union's ESDP is that other multilateral organs, the UN, NATO, and the OSCE among them, may not always be in a position to react on their own or in alternative to the EU: quite the opposite, we see more and more examples of a tendency on the part of other international organs to directly appeal to the EU to be either a substitute or to carry the co-responsibility in the management of certain crises. NATO, particularly, has ceased to be considered the only security instrument available to the Europeans. The example of the Balkans is typical, where the EU found that it needed progressively to take over from NATO, both because of the Union's consciousness of a more direct political responsibility on the part of the EU towards the region, and because the nature of the crisis, a combination of civil and military elements, rendered the EU the actor best suited to carry the mission forward (P. Cornish, 2006).



The third reason concerns this last point; that the EU, much more than other multilateral institutions, has at hand the instruments best suited to confront the entire cycle of crisis management.

- Before the crisis, with civil policies and the diplomacy of conflict prevention
- During the crisis, with the possibility of military deployment, of diplomatic pressure, and of human intervention
- After the crisis, with long term development aid and peace-building policies.

For all three phases the EU has a variety of “civilian” instruments at its disposal: well tested aid and development policies, several models of agreements with Third Countries, a consistent common budget, well functioning decision making procedures and the image of a reliable partner. With the recent addition of some military competences in the ESDP field, the EU is moving towards completing the range of instruments needed to match the whole crisis management cycle. In fact, if we look to the three phases of the cycle, it is obvious that a military dimension might be needed for each of them (recognised also in the HG 2010, as reported above): to separate the parts in conflict through the interposition of military forces; to stop violence and enforce peace in the second one; to assure security and stability with the presence of military corps in the post conflict phase. A full combination of civil and military instruments represents therefore the right answer to the kind of crisis management missions that the EU is destined to conduct in its new function of fully- fledged security actor.

## **5. The Consequences at the Institutional Level: a bottom up development**

The push towards a role in crisis management for the EU and the manner in which the ESDP has developed in meeting these new responsibilities has led to an enormous complexity in the procedures and mechanisms of decision making.



The bottom up institutional development which has characterized the birth and evolution of the ESDP and its missions as a crisis management actor has brought with it some interesting consequences;

- It has given life to a notable number of new instruments both in the civil as well as the military fields; within the institutional framework of the Political and Security Committee (PSC), officially created in 2001 with the Treaty of Nice, it was decided to form two committees to take care of military aspects: the Military Committee (EUMC) with the assignment of military action management, and the EU Military Staff (EUMS) to carry out consultative functions for the PSC. The two Committees make use of a Planning Cell (2001), which must work together with (not substitute) the National Commands, and plan any EU military engagement for which the intervention of NATO has not been requested. Also of note was the decision to create the Battle Groups, a concept developed in HG 2010, and whose duty is to be available within 5 days and to complete missions of at least 30 days with a maximum number of 1,500 men (Lindstrom, 2007). Another decision relating to the military should also be remembered at this point; that of the Council in July 2004 to bring forward the creation of the European Defence Agency (EDA). The EDA had been already been foreseen in the Constitutional Treaty .

The initiatives in the purely civil sector have also been numerous. To guide the operations in the field and to plan the activities we have above all the Committee for Civilian Aspects of Crisis Management (CIVCOM), which in its turn depends on the PSC. Based on the HG 2008, the concept of Civilian Response Team (CTR) has been adopted, in order to accelerate intervention in the sector of Civilian Crisis Management (CCM). The CTRs reached operational status in January 2007: their role is to provide EU with experts on border policing, administration of justice, management of public administration services, etc. under the command of the PSC and the High Representative. More recently, in June 2007, the European Council decided to establish the Civilian Planning and Conduct Capability (CPCC). This is planned to serve as a civilian equivalent to the EU Military Staff and to provide assistance and support to CIVCOM in the planning and implementation of civilian ESDP operations. But perhaps, as far as the execution of the missions is



concerned, the most interesting aspect in terms of lessons learnt in the field was the creation in 2005 of a Civil-Military Cell within the EUMS, with the responsibility of providing a better link between the civilian and military dimensions of a mission conducted in the same area (Quille-Gasparini-Menotti-Pirozzi- Pullinger (ed.), 2006). The CivMil Cell is in turn subdivided into a Strategic Planning Branch and Operations Centre Permanent Staff. Of course, both the Commission and the Secretariat of the Council are also equipped to plan and carry out the operations both in the civil and military sectors, thereby increasing again the number of people and offices assigned to the task. In general, therefore, it can be claimed that the commencement of the crisis management missions has brought about a considerable proliferation of organs and procedures, making it extremely difficult to understand the decision making system of ESDP and to use it properly.

- It has created problems of coordination and efficiency within the single pillars (intra-pillar). There is no doubt that the new dimensions of EU foreign relations in the area of global security also create problems of consistency within their own areas of competence. In particular, as far as the civil aspects are concerned, there is a clear need for better coordination between the more significant of the Community's tools such as aid policy, trade, and humanitarian aid and development policy. These are extremely important in the reconstruction phase of post-conflict States. Their effect is seen in the medium- and long-term. In fact, these tools represent the third phase of the entire crisis management cycle. The well organised and well-knit use of these policies is therefore essential in consolidating on the ground any success of a crisis management mission. The same goes for the other two pillars, the CFSP/ESDP and Justice and Home Affairs. Especially in the second pillar the coordination between joint positions, joint actions and crisis management missions in the field must be well-meshed in order to lend credibility and efficiency the EU interventions.
  
- And above all, the delicate theme of the consistency of actions and decisions between the pillars (inter-pillar) has needed to be confronted (Berger- Bartholomé, 2007). This is the true challenge for the EU: that of presenting itself as a single



unit, internationally. This goes both for its image in dealings with third States, who find it difficult to distinguish between ESDP activities and those of the Commission, as well as for the efficiency of the engagement itself. Recently, a joint Council-Commission planning activity was developed in order to aid coherence between the first and the second pillars. This coordination function was suggested by the Commission itself, in a Communication on “Greater Coherence” (2006). But the most direct contribution to an improved coordination came from the development of two concepts relative to peace missions: the Security Sector Reform (SSR) and the Disarmament, Demobilization and Reintegration (DDR). These concepts owe their impulse to reflections within the Commission, and to the ESS of Solana, and were established in the CHG 2008. In effect, the policies relative to the two concepts transect the divisions between the Commission and the Council. However, the move to closer relations is difficult, even if in 2006 the EU adopted a Joint Policy Framework for the SSR. In reality the civil makeup of the Commission does not adapt well to that of the ESDP. The integration of activities which fall under the concept of the DDR is faring better. However, in general, many difficulties still remain to be overcome in order to achieve a desired level of coordination, even if there are positive signals to be seen, such as in the decision, taken in the case of Macedonia, to combine the figures of EU Special Representative with that of the Head of Delegation of the Commission in Third Countries. Much hope is focused therefore on two developments: the CivMil Cell, specifically created in order to combine civil and military aspects, and on new coherence procedures which will need to be tested in future missions.

- Lastly, making the picture even more complex, the new ESDP has created a necessity for a working partnership between national and EU procedures and resources. Within the ESDP, almost all resources at hand are in fact based on national resources which are then used in common for both civil and military missions. It is above all the theme of funding where the difficulties of using the Community budget are to be noted (Gowan, 2007). Firstly, even if in the latest financial perspectives for 2007-13 the budgetary resources for external affairs have reached the total of €50 billion over 7 years with an average increase of 29%, funds



are still insufficient: see for example the costs expected for the Kosovo mission (EU Lex Kosovo 2008). Remember, too, that this budgetary item (external policies) includes 7 different categories of expenditures, from ENP to Instrument of Pre-Accession. Secondly, words like ‘conflict prevention’ and ‘peace’ have been deleted from the 7 budgetary lines in order to avoid any interference by the Commission in ESDP budgetary control. Thirdly, ESDP continues to be considered a purely inter-governmental policy, and military missions are therefore funded externally from the EU budget. The usual path is via the Athena mechanism or the NATO principle<sup>1</sup>. A decision to bring ESDP under the common budget is needed, for reasons of transparency, efficiency and of legitimization, possibly under the budgetary control of the European Parliament (EP).

## 6. The ESDP and the Fusion Theory

The political-institutional consequences of the development of the ESDP as illustrated above, and of the peace missions, can be categorized, at least in principal, within the Fusion theory line of reasoning. The peace missions have, as seen, caused the creation of new organs and new procedures, expanding the decision-making system of the EU even further, and creating a spectrum of innovative competencies.

This significant institutional development has, however, also made the already cumbersome decisional system of the EU even more complex. If on one hand it has allowed a series of concrete problems in the field to be confronted, and has provided practical responses to obstacles which various missions from time to time have had to confront, on the other hand it has increased the confusion regarding the planning patterns for missions, regarding the inter- and intra-pillar coordination, and also the chain of command. The complexity and time-consuming processes of today’s institutional apparatus are important reasons why the Europeans have taken the lowest possible level of intensity and risk in EU peace operations. In other words, they have carefully avoided being directly involved in operations of high military and security risk. A recent and significant example of this can be seen in the UNFIL 2 mission in Lebanon (2007), where numerous



European States are present (and in full force) but not under the ‘flag’ of the EU (Gowan, 2007).

Finally, we have witnessed a long and controversial process of adaptation (still in progress) of the Member States and their national procedures to the decision making system in the area of ESDP, a process which conforms to the precepts of fusion theory. Above all, in the area of the military and those related to the funding of missions, the process of a Europeanization of national sovereignty is very slow and subject to many reservations and obstacles. The ESDP remains largely inter-governmental, despite the undoubted practical progresses in function seen during recent years.

Above all, the rapid and unmethodical growth of roles, competencies, organs, and procedures in the area of ESDP has brought about significant political and institutional tensions within the EU. The strategy of institutional growth based on a bottom up process can proceed only up to a certain point, beyond which the risk of paralysis and confusion becomes too high.

The problem of the political/institutional chain of command remains fundamental. A bottom up strategy cannot give a comprehensive framework of rationality and efficiency to decision-making. An institutional top down strategy must also be developed. This has been attempted through various Treaties in the past, but it was the Constitutional Treaty and then the Lisbon Treaty which made this strategy their particular objective. In the latter Treaty, the central figure in the chain of political/institutional command is the High Representative/Minister of Foreign Affairs. This position brings together the three principal points which are the final elements in the chain of command: the Presidency of the Council of Foreign Ministers, the double competency in foreign affairs as well as defence issues, and the European External Action Service (EEAS), which answers to his/her authority.

But his/her theoretically central position is weakened by the prevalence of inter-governmental aspects within the ESDP. In a comment regarding the figure of the new figure of “Minister for Foreign Affairs”, as foreseen in the Constitutional Treaty ,



Wolfgang Wessels underlined the precariousness of the role: “as a result, supranational and intergovernmental elements are mixed in a complex set of provisions, while the proactive instruments at the Minister’s disposal are rather limited in practice. The constitutional set-up envisaged in the TCE thus places the office-holder in the middle of a vortex of strong inter- and intra-institutional tensions and pressures” (Wessels, 2005).

Despite, therefore, a certain rationalisation of the decision-making system of the ESDP, which should come out of the difficult ratification of the Lisbon Treaty, many other institutional adjustments (once again, the concept of dynamism) are needed in order to balance the inter-governmental aspects with the supranational. Until then, Fusion theory will be applicable only partially to a sector of cooperation, the ESDP, that could potentially transform the EU into a global security institution with innovative and post-modern characteristics, but which might also lead toward a process of fragmentation in absence of a more coherent institutional set up.

Only time will show us whether the political and institutional experiences and innovations of recent years will bring us the positive results that fusion theory tends to predict..

The risk is that a mismanaged institutional process could again deliver models of fragmentation and of minimal integration: the role of the institutional figures foreseen by the Lisbon Treaty, not only that of the High Representative, but also that of an elected President of the European Council and of the Commission will be determinant in the future orientation of the EU towards the ambitious responsibilities required of a new actor in global security.

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<sup>1</sup> The Athena mechanism (February 2004) is based on national contributions proportional to each country’s GNP; the NATO principle says “costs lie where they fall”: each country pays for its own military contingent.



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## Ethno-regionalist parties in Europe: a typology

by

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## Abstract

There is barely any agreement in the literature on the way one should compare the political parties defending the interest of a specific community on a particular territory – the ethno-regionalist parties – and classify them. Based on the analysis of the ideological positions of ethno-regionalist parties in Western Europe, this article suggests a identification of these parties, partially relying on previous attempts of building typologies. Focusing on the essential dimension of the strength of the demands regarding the preferred state structure and the future of their region, we will suggest a renewed typology and we will demonstrate the neglected importance of the protectionist parties (soft demands) and of the secessionist parties (strong or radical demands) in such typology. This article will also clarify the terminology used when dealing with independentist, irredentist and rattachist parties by complementing the traditional approach with studies from international relations.

## Key-words:

Ethno-regionalist parties – Ideology – State Structure – Regionalism – Political Parties



## 1. Introduction : Regions and ethnicity

The parties that defend the interests of a particular community or a particular region are numerous in Western Europe.<sup>1</sup> With the exception of small countries such as Luxemburg or Malta, every European state has witnessed the presence of regionalist parties in its political history. Political parties are said to be mainly defined by two interrelated elements: cleavages and issues (Tursan 1998: 5). In their seminal work, Lipset and Rokkan (1967) identified the centre vs. periphery cleavage as one of the four fundamental cleavages. According to Seiler (2005: 34), this centre-periphery cleavage allows us to create an unambiguous categorization of parties: the parties of the defence of the territory and the periphery. But the contemporary rise of ethno-regionalist parties (ERPs) is not simply the re-emergence of this centre-periphery conflict or even a territorial protest against established political institutions' behaviour (Muller-Rommel 1998: 24). The question of the other identified element – the issues – can be found in the framework of demands for reorganisation of the national state structures. These demands are said to be 'the' issue of the ERPs and basically distinguish them from any other party family (De Winter 1998: 204).

This article will investigate the nature and variety of the demands and claims that ethno-regionalist parties all over Europe articulate and will lead to a classification of these demands into larger and common categories. The main typologies concerning such parties existing in the literature are indeed unsatisfactory and a renewed typology of ERPs based on ideology will be proposed. But these classifications need to be preceded by a short definition of such political movements and their main characteristics. There is a lack of commonly shared definition of what an ethno-regionalist party actually is. There is even little consensus on the term 'ethno-regionalist' itself<sup>II</sup>. As clearly indicated by its name, this party conciliates two main dimensions or characteristics: ethnicity and regionalism. The 'nationalism' of the ERPs<sup>III</sup> is therefore characterized by an ethnical distinction and territorial claims within established states (Tursan 1998: 5). In other words, ethno-regionalism is dealing with two interrelated dimensions: a community/membership space (based on some common socio-cultural characteristics) and geographical space (occupation of a territory and identification to it) (Urwin 1983: 237).



The first main characteristic of an ethno-regionalist political movement can be related to the sub-national territorial border and the identification with some pieces of territory. According to Strmiska (2005: 7), ethno-regional parties are only a sub-group of regional parties and this author refuses to treat regional parties as identical to ethnic parties and vice versa. Regional parties<sup>IV</sup> can be defined as an “autonomous party formation of regional obedience, whose ideological, program and organizational identity (...) are of regional nature” and, in this framework, the territorial aspect is clearly of crucial importance. Similarly, regionalism refers primarily to the project of a territorial-political organization carried out by a party (Urwin 1983: 237; Tursan 1998: 5; Strmiska 2005: 7). As territory is their most important feature, regional (or regionalist) parties may but do not have to be built along ethnic lines. Regionalism could be, for example, of a purely economic or geographic nature. In addition to these non-regionalist regional parties, regionalist parties have to be distinguished from non state-wide parties as this large concept also includes sub-regional and local parties. Some regionalist parties can also be considered as state-wide as they often compete at elections at the national level. State-wide parties may finally become “regionalist” movements under specific circumstances, i.e. “providing they assume a corresponding location in the continuum integration-separation or in the framework of territorial reorganization policies in general” (Strmiska 2003).

Secondly, besides these territorial aspects, ethno-regionalism requires an exclusive group identity or, in other words, a consciousness of group membership identity and belonging. This second characteristic – the ethnic aspect – is also important “because it indicates [...] ‘belonging’ to a group with shared experiences and history” (Urwin 1983: 225). An ethnic party could be therefore defined as a party that intends to protect the interest of the specific group it represents. The political expression of ethnical, cultural or linguistic differences is considered as a decisive and structuring force of a party system at the regional level. According to Muller-Rommel (1998: 18), this orientation can be found in the electoral platforms of such parties.

As a result, ethno-regionalist parties can be defined as “referring to the efforts of geographically concentrated peripheral minorities which challenge the working order and sometimes even the democratic order of a nation-state by demanding recognition of their cultural identity” (Muller-Rommel 1998: 19). To use Tursan’s words (1998: 5), these parties are “ethnically based territorial movements in Western European national states that aim to



modify their relations with the state.” This rather restrictive definition leads to the exclusion of two kinds of parties. First, it excludes parties that demonstrate a nationalist or a fascist nature or an ideology directed against migrants. This would obviously exclude parties such as the Belgian extreme-right party *Vlaams Belang* that has been often wrongly identified as an ERP in comparative studies on regionalism. Secondly, it also excludes regionalist parties for which the reorganisation of the national state structures is not the most important issue or objective as they might for example primarily favour socio-economic policies. Overall, the only accepted exception to this restrictive definition is the one of the Flemish regionalist parties. These parties constitute a unique case in Europe as they are parties representing a community that consists in a majority of the population of the country and not in a minority, as in any of the other observed states.

As we have seen, ethno-regionalism relies on both claims of regional identity and of ethnic distinction. In this regard, ideological and programmatic identities are of prime importance, not only for ethnic parties (Muller-Rommel 1998: 18) and for mini-nationalists (Snyder 1982: 13) but also for regionalist parties (Strmiska 2005: 7). According to De Winter, “the defining characteristic of ethno-regionalist parties’ programmes is undoubtedly their demand for political reorganisation of the existing national power structure, for some kind of ‘self-government’” (1998: 204). The most prominent and common feature of ERPs is therefore these claims for a reorganisation of the national state structure in the direction of more autonomy or decentralisation. They challenge the existing state and political-territorial order, its structure, its political systems, its boundaries and its distribution of power between the centre and the periphery. “By definition, they [ERPs] challenge the foundations of existing political systems” (De Winter 2006: 14). The centrality of this demand for empowerment of the regional group distinguishes this type of party from other party families (De Winter 1998: 241; Tursan 1998: 5). “What separates these parties out from the mass of European parties is the nature of their claim upon the state” (Urwin 1983: 232).<sup>v</sup>

Based on the analysis of the ideological stances of ethno-regionalist parties in Western Europe, this article suggests the identification of new types of parties, partially relying on previous attempts to build ideological typologies. Focusing particularly on the two extremes types when positioning the parties on a dimension of the strength of the demands regarding the preferred state structure, we will demonstrate the importance of the



protectionist parties (soft demands) and secessionist parties (strong or radical demands) in such typology. This article also intends to clarify the terminology used when dealing with secessionist, irredentist and ‘rattachist’ parties by complementing the traditional approaches with studies from the domain of international relations. In a first section, we will address the different typologies existing in the literature, particularly the ones based on ideology and positions of ERPs. Secondly, we will develop a new typology of ethno-regionalist parties based on their ideological claims regarding the state organisation and the autonomy of their territory. In a third section, we will further analyse each type of party, i.e. protectionist, decentralist and secessionist parties and several subtypes, before concluding with some general considerations on the ideology of ERPs.

## 2. Classifications

Even though some argue that any attempt to build a typology would be “self-defeating” as it would rely on an inductive process (Keating 1988: 8)<sup>VI</sup>, the classification of the ERPs in different categories is a recurrent exercise in the literature, although often based on divergent indicators. The purpose of these indicators is to cover the inherent characteristics of the ERPs, and to stress the most important features of these parties. The subsequent typologies that can be derived from these features are numerous. Nonetheless, the purpose of these typologies stays the same: to facilitate the understanding of a party ‘family’ that looks very diverse and whose members have sometimes opposite electoral and political destinies. The different typologies indexed in this section are based on ideology, party origin, geographical location, means and repertoires of action, electoral success, impact on the party system and government formation and composition.

Even if “regionalist parties are the most disparate in the specificity of their demands” (Urwin 1983: 227) and little common view of the structure of the society can be observed among them, the most common classification of these parties is the one based on ideology. As the defining characteristic of ERPs is their demand for ‘self-government’ and state reorganisation, the typology we propose in this article is based on these ideological claims and on their vision of the future of their territory. The analysis of the electoral manifestos reveals that the centrality of these claims and this vision, ideology or the



radicalism of their demands is the best division line between the ERPs. These classifications will be the basis of our attempt of building a renewed typology. Of course political demands and ideology are not the only way to distinguish between ERPs. Other kinds of classifications have been drawn, mainly related to the present situation - and not the scenarios for the future of the region..

Basically, the origin of the ERPs may be a useful tool for classification. Each party has a different political and sociological history that can sometimes be helpful for understanding its success or its ideology. Strmiska (2005: 9) distinguishes between several regional party models that we can easily translate into a classification based on the birth conditions and origins of all ERPs. To summarise, six main categories can be identified. Even if the first one may be the largest and the most obvious – i.e. a party created on autonomist demands or a party dissenting from an autonomist party – other types may occur. These types are those of a national party that becomes regional, a regional dissent from an national party, a dissent from an multi-regional party, the growth of a local party or the unification of several local parties, and the creation of a party due to exogenous factors (as the annexation of a territory by another state). Unfortunately, Strmiska does not provide us with examples of parties belonging to such classification. In addition, this typology renders difficult the distinction between regional parties and regional branches of state-wide parties.

Another classification related to the roots and the environment of an ERP is the question of its geographical location. Based on Rokkan's conceptual map, Seiler (2005: 45) observed that most of the ERPs – or parties defending the periphery vs. the centre – can be found in three precise places of Europe. First of all, the maritime periphery of Europe, where one can find examples of ERPs in the cases of the Canary Islands, the Basque country, Corsica, or even Northern Ireland. Probably, the cultural and linguistic particularities of these territories were preserved for centuries due to their peripheral location. Secondly, the oriental periphery of Europe is considered as a 'buffer' zone between Western and Eastern Europe. ERPs can be located in this region as in former-Yugoslavia, Romania, Estonia, etc. Finally, many other ERPs can be found alongside the so-called 'Brunet banana', i.e. this region going from South England to North Italy. This territory corresponds to the historical autonomous 'city-states' and includes regional examples as Flanders, Valle d'Aosta, the North of Italy, etc.



The means and repertoires of action are often used when one wants to distinguish political movements and actors, for example in the case of community conflicts. De Winter (1998: 207) and Schrijver (2006: 51) distinguish between pacific (or democratic) and violent means of action (i.e. the political organisations more or less close to terrorist groups such as HB - *Herri Batasuna*, IRA or even some Corsican parties). If bombings and other violent actions are often mediated, they are used by only a tiny minority of the ERPs and are often electorally sanctioned. These repertoires of action can also be threefold (Seiler 2003): 'governmental' when one uses the participation to the power in order to implement its programs; 'tribunitial', i.e. mainly based on political speeches and discourses; and 'out-system' when one uses non-conventional means such as demonstrations or terrorism. But these distinctions remain too vague and there is therefore room for a larger classification that would deal with the important diversity of repertoires of action. This could, for example, be done with the help of the typology of Barnes and Kaase (1979).

Regarding electoral success<sup>VII</sup>, four levels can be distinguished and related to a type of party (De Winter 1998: 212): hegemonic ethno-regionalist parties, large parties, medium-sized parties and small parties, and every ERP can be easily located into one of these categories. But one has to pay attention on the level of analysis of these electoral successes as the ERPs tend to perform differently depending on whether they participate in local, regional, national or European elections. The classification of these parties can therefore be carried out with the help of two dimensions: a dimension based on electoral results and a differentiation according to the level of the elections, i.e. which type – European, national, regional or local – of elections they participate (Müller-Rommel 1998: 20; Deschouwer 2006: 292; Barrio et al. 2009: 3 for the Spanish cases). For strategic, ideological or merely financial reasons, ERPs compete at elections in various but different ways: alone or in an alliance with another party (forming an electoral cartel). They can also compete at the regional level only, at the national level only, at both levels, or combined with all possible levels including local, European and other sub-national elections (Schrijver 2006: 52).

Regarding ideology and election strategies, Newman (1996: 10-11) distinguishes four ideal types of ethno-regional parties according to the type of voter or constituency: the 'neo-traditional ideology' that appeals to conservative nationalist constituencies (based on religion, culture, language, etc.), the 'classless-inclusive ideology' that indifferently appeals to all socio-economic groups of the region (based on the socio-economic opposition to



other regions), the ‘selective-protective ideology’ that appeals to a specific socio-economic group belonging to a declining sector of the region, and the ‘selective-developmental ideology’ that appeals to a specific socio-economic group belonging to a rising or promising sector of the region. On the other hand, Strmiska gives “preference to formative aspects related to the electoral ‘demand’ at the expense of factors related to party and electoral ‘supply’” (2005: 19). The analyst should therefore pay more attention to electoral behaviour (Keating 1998: 97) as such phenomena supposedly have a better explanatory power of the differences between ERPs than programmatic and ideological preferences.

The last typology that can be found in the literature concerns the ability of the ERPs to enter a governmental coalition at regional or national level (Barrio et al. 2009: 11) and the type of government and the role that the ERPs might play in it. Strmiska (2005: 31) identifies what he calls a “typology of party systems” but, in fact, refers to the types of cabinet and grand coalition in the framework of Lijphart, i.e. mono-partisan cabinets, coalition cabinets, etc. together with complete, partial or absent alternation of the ruling parties. In addition, he identifies the different roles that a regional party can play according to the different party systems. Depending on both its electoral strength and the type of cabinet, an ERP may participate in the government (alone if being a predominant formation) or may play an opposition game, being a potential coalition partner, may have blackmail potential, etc. Moreover, in the case of regional party systems composed of two or more ERPs, one has to pay attention to the type of the coalition, i.e. whether it is a ‘pure coalition’ (composed solely of ERPs) or a ‘mixed coalition’ (composed of one or more ERP and one or more other party).

Overall, such typologies are useful for a better description or understanding of ERPs in Western Europe. But they are not fully satisfactory regarding their comparative understanding - across time and across countries - and they primarily concern peculiar characteristics that are limited in scope. In this regard, the ideological positioning appears to be a more encompassing way of identifying and classifying ERPs. Its scope is not limited to some particular moments or phenomenon as in the case of the typologies based for example on birth condition, electoral successes, formation of electoral cartels or even government participation. On the contrary, the neglected ideological perspective is often the underlying feature of some of the typologies presented above as, for example, in the electoral demand and in the electoral success of a party or even in the possibilities of being



included in a coalition at the governmental level. In our attempt to reformulate a typology of ERPs, this ideological perspective will be a prime importance.

### 3. A typology based on ideological positions

According to Gomez-Reino, De Winter and Lynch (2006), the study of ideology is not only important to identify the determinants of electoral successes (see mainly Montabes et al. 2004), but also to determine whether the ethno-regionalist parties constitute a political family as such. They hypothesised that the regionalist family not only exist but also exhibit a distinct ideology when compared to other party families. Even if significant variation inside this party family can be shown, the overall ideological image of the ERPs is less heterogeneous than one might suppose. There is a consensus among scholars in acknowledging that the more relevant classifications of ERPs are based on ideology, on these claims for autonomy, for self-government and for a reorganisation of the national state for the benefit of a limited territory (see for example, Mikesell, Murphy 1991; De Winter 1998; Seiler 2005; Gomes-Reino et al. 2006).

The autonomy/decentralisation issue is not the only dimension we can find when performing a programmatic analysis of the ERPs. Gomez-Reino et al. (2006) divide the ethno-regionalist parties' ideology according to four main dimensions: self-government, left-right cleavage, European integration, and post-materialism – mainly the first three<sup>VIII</sup>. Each dimension can be analysed separately and can be considered as a category as such in one's typology.

Concerning the left-right axis, the underlying question in the literature is generally whether it is possible to locate ethno-regionalist parties on this axis or whether such categorization is inappropriate as their different ideological nature does not take into account the left-right dimension. The latter approach is to be found in the observations of Müller-Rommel (1991) and Keating (1998: 108)<sup>IX</sup> who consider ethno-regionalist parties as 'detached small parties', that is parties that cannot be classified on a left-right axis. Other authors argue that the position of the ethno-regionalist parties on the left-right dimension not only can be analyzed, but also that their observed position is so widespread that it is impossible to draw any general conclusion (Urwin 1983; Delwit 2005). Even if this does



not concern the majority of the ethno-regionalist parties, some of them can be found on both extreme points of the axis. More generally, ethno-regionalist parties can be found at every possible place on this dimension and one may add that, while ERP can gain electoral support from across socio-economic boundaries, this support tends to be strongly set in the direction of middle-class groups (Urwin 1983: 235). According to Seiler (2005: 45), when located on a left-right dimension, ethno-regionalist parties tend to disappear as an autonomous category. This author consequently refuses to use the left-right cleavage as a typology. According to him, the best predictor of the ethno-regionalist vote is the identity question and not otherwise significant socio-economic variables.

Yet other authors (De Winter, 1998; Gomez-Reino et al. 2006) have argued that some patterns of ideological position can be found in the parties considered. Limiting to socio-economic aspects of the left-right axis, they analysed the location on this dimension of the ERPs and they observed that the majority of these ERPs can be placed on the left or the centre-left and that only a few of them can be positioned somewhere else. But it should also be noticed that the positions on this dimension are not always consistent because some ERPs tend to change their left-right location over time as, for example, the VU (*Volksumie*). Based on a empirical manifesto analysis, Dandoy and Sandri (2008) nonetheless observed that the ERPs are widespread on this dimension and that a centre-left tendency can be noticed. The ERPs seem to be slightly more on the left than the average of the other parties – this is well exemplified by the cases of Spain and Italy, with the exception of the recent years – but no general trends can be clearly derived from any group of parties.

Europe is considered as such an important issue that it is often integrated in previous ideological typologies (Ray 1999; De Winter 2001; Jolly 2006, 2007; Lynch, De Winter 2008). The image that the ERPs have of Europe can be apprehended via their scenarios for the future of their region and their central state. For example, De Winter (1998: 205) adds another category of ERPs, i.e. the European federalist parties. Indeed, almost all electorally significant ERPs are represented in Brussels but their ideological discourse is different and adapted to the Brussels' tone. And their demands are situated in the framework of a federal 'Europe of the regions' (De Winter 1998: 205). These parties somehow favour an 'integral federalism', with European integration serving in their mind as a basis for the regionalist movement and capable of being associated with the future of their region and their state (Seiler 2005: 36). The literature mainly focuses on the



overestimated importance of the membership of ERPs inside the different groups in the European Parliament, but neglects the approaches of such parties regarding public policies (concerning for example structural funds, their participation to the Committee of the Regions, etc.). The positions of these parties on European issues could lead to a typology based on differing visions of the future of Europe.<sup>x</sup> But many ERPs have demands that do not fit into the framework of a federal ‘Europe of the regions’ as some reject the idea of a federal Europe or a submission to any other type of supranational authority.

We observed earlier in the definition of an ERP that, besides territorial and ethnic elements, their prominent feature is the demand for reorganisation of the national power structure and of some kind of ‘self-government’. This demand for empowerment is often considered as ‘the’ issue of the ERPs – De Winter et al. (2006: 17) even speak about an ‘ownership’ on the issue – and it is this ideological item that distinguish these parties most compared to other party families (Tursan 1998: 6; De Winter 1998: 204)<sup>xi</sup>. Based on empirical observations, Dandoy and Sandri (2008) argued that the content of the manifestos of the ethno-regionalist parties is different from the ones of other party families. The decentralisation or autonomy issue is clearly a theme that belongs to the ethno-regionalist parties<sup>xii</sup>, with the exception of the SFP (*Svenska Folkpartiet*).

The typology proposed here finds its roots in this important and central issue of autonomy or decentralisation, and in the scenarios developed by the ERPs for the future of their region or community. These projects may sometimes appear very different among themselves and considerable variations and distinct options are observed across parties. Even if Urwin (1983: 246) speaks about a “market of futures”, some common patterns and characteristics can be found in the different scenarios. The conceptual basis of our typology relies on Bugajski’s (1994) and De Winter’s (1998: 205) classifications, which are based on the party goals and the radicalism of the demands made by the parties for self-government<sup>xiii xiv</sup> and on Mikesell and Murphy’s typology of minority-groups aspirations<sup>xv</sup> based on their policy options and quests for particular cultural-political arrangements (1991: 587). In this article, we will distinguish between three main different types of ERPs – each divided into several subtypes – based on the project they have for their region or territory in the future: protectionist parties, decentralist parties, and secessionist parties. The first category concerns regionalist demands for recognition of linguistic, religious or cultural identity and for access and participation to the national political life that do not



challenge the existing state structure. The second category deals with parties demanding a structural – and sometimes in-depth –reordering of the state organisation, its institutions and its internal borders. And the third category concerns demands for separation (in the sense of demanding an exemption from social norms), autonomy and independence.

Table: Typology of ethno-regionalist parties

	Category	Sub-category	Demands
<i>Soft demands</i>	Protectionist	Conservative	<b>Recognition, Preservation</b>
		Participationist	<b>Access, Participation</b>
<i>Mild demands (challenges to internal order)</i>	Decentralist	Autonomist	<b>Authority, powers for one region</b>
		Federalist	<b>Authority, powers in a federal framework</b>
		Confederalist	<b>Authority, powers in a confederal framework</b>
<i>Strong or radical demands (challenges to international order)</i>	Secessionist	Independentist	<b>Independence</b>
		Irredentist	<b>Independence (including neighbouring territories)</b>
		Rattachist	<b>Joining neighbouring state</b>



#### 4. Protectionist parties

The protectionist ethno-regionalist parties<sup>xvi</sup> seek to defend the interests of a culturally and linguistically defined and territorially concentrated minority. But the scope of their demands remains limited to preservation or conservation of mainly cultural and political rights. These parties do not question the existence of the national state itself and the centrality of its institutions. They rather focus their claims on the protection of their cultural identity, of their specific language and on the recognition of their political rights. Not many ERPs can be found in this type as many of the parties observed here display more radical demands (see below) but we may nonetheless distinguish between two sub-types of protectionist parties: conservative and ‘participationist’ ERPs.

The first sub-category concern parties that merely try to put an end to discriminatory measures or socio-political behaviours that are based mainly on cultural and linguistic grounds and they also intend to preserve their cultural specificities vis-à-vis a culturally overwhelming state. These parties can be labelled as **conservative parties** as they want to maintain and preserve a status-quo of their cultural and linguistic situation and try to prevent more discrimination on these bases. Their demands not only concern the acknowledgment of the existence of the group and its due respect, but also might seek for the recognition of the regional language as the official language of the region (or even of a bilingual status) or the creation of specific cultural institutions. Examples<sup>xvii</sup> of these parties can be found in the Slovenian political movements in the Austrian region of Carinthia, like the *Koroška slovenska stranka* (Carinthia Slovene party) between the two World Wars or the EL (*Enotna Lista*) that seek to secure the collective rights of the Slovenian-speaking minority. This cultural conservative strategy was not a real success and the political ambitions of the Slovene community in Carinthia have continued to be hampered and their position further weakened.<sup>xviii</sup>

The second sub-category of protectionist ERPs – the **participationist parties** – is slightly more pro-active as it not only asks for the end of social, linguistic or political discrimination but also wants to reach an improvement in their political situation. This improvement is limited in scope and restricted to political and citizenship rights but seeks nonetheless to facilitate the preservation of the minority’s specificities. This can be



achieved through moderate claims such as the use of a proportional electoral system, the establishment of positive quotas for members of the minority to be employed as civil servants, the establishment of ethnic or linguistic quotas in local, regional, national or European parliaments and cabinets, as well as veto rights and specific legislative majorities for policy domains of a major interest for these communities. Examples of this type of ERPs can be found in the case of the Belgian FDF (*Front Démocratique Francophone*) before the 1970s (De Winter 1998: 205), of the German SSW (*Südschleswiger Wählerverband*), and in the case of the majority of the French Basque regionalist parties (Izquierdo 2005: 209), like PNV (*Partido Nacionalista Vasco*), *Enbata*, HBAS (*Euskal Herriko Alderdi Sozialista*), EMA (*Ezkerreko Mugimendu Abertzalea*), EB (*Euskal Batasuna*), or even AB (*Abertzaleen Batasuna*).

## 5. Decentralist parties

Compared to protectionist parties that solely want recognition and preservation of their cultural identity, granted access to the decision-making process and a political representation, decentralist parties challenge the division of power between the central state and the region. The main objective of such parties concerns a regime change and consists in a challenge of the internal order of the state. These decentralist demands typically deal with internal borders (borders of the region), regional institutions, division of power between the centre and the region(s), regional self-rule, fiscal autonomy, regional representation at the central level, etc. (Schneckener 2004: 30-34). In addition, and as indicated in this category's name, these parties seek for further autonomy for their region in numerous policy domains. These domains can be, for example, related to culture and language, to education or media, to economy and budget, to taxes or regional development, to supervision on local decision-making levels or even to international relations. Three sub-categories of decentralist ERPs can be distinguished: the autonomist parties, the federalist parties and the confederalist parties.

Concerning the first sub-category, its main characteristic is that their claims are made for their own region only and do not concern the other regions of the national state. **Autonomist parties** want to be treated differently from other sub-national entities and to receive substantively more autonomy and responsibility. They look for a recognition either



as a region *per se*, independently on the status of the neighbouring territories, either as a specific or special region – when the regional level already exist – and they seek the decentralisation of administrative services and the creation of autonomous and competent political institutions.

The regions where these parties originate from are traditionally historical regions or regions with a specific cultural identity and often at the periphery of their national-state, demanding a particular status and a unique recognition of the autonomy of their region. Even if some of these autonomist parties do not explicitly exclude full independence as a future option, their primary goal is this quest for a maximum autonomy of their region. Examples of this type of party can be found in historic or peripheral regions as Valle d'Aosta with *Union Valdôtaine* (Sandri 2008), Brittany with *Union Démocratique Bretonne* (Keating 1988: 202; Schrijver 2006: 251), Alsace with *Union du Peuple Alsacien* (UPA), Catalonia with *Convergència i Unió* (Keating 1988: 237), Galicia with *Coalición Galega* (CG) and *Esquerda Galega* (EG) (Schrijver 2006: 157) or the Basque country with *Partido Nacionalista Vasco* (Perez-Nievas 2006).

As indicated by their name, **federalist parties** want to implement federalism at the national level, implying a share of power between the central state and the sub-national entities. This sharing of power is often protected by the existing national constitution, with the central state defining the functional rules and each region more or less recognised in the same way and benefitting from the same share of power. According to Urwin (1983: 249), federalism is the classic pattern of territorial accommodation. Unlike autonomist parties that look for a reorganisation the state that would benefit to their region only, federalist parties seek for the organisation, under a federal umbrella, of a general autonomy for all regions of the state. Obviously, as in the case of Belgium, federalism can remain imperfect as some regions benefit from more or less power (the so-called asymmetric federalism), but in principle the federal system recognises and protects every region the same way.

Contrary to the claim of De Winter (1998: 205), federalist parties cannot be said to advance more radical demands than do the autonomist parties. In order to assess the 'radicality' of their claims, one has to look at every policy domain (education, health, law and order, taxes, etc.) and not just at the proposed type of autonomy for the region and the scope of the change of the internal order. Indeed, the Basque country region seems to be



more autonomous within the regionalised Spanish system than any *Länder* within the Austrian federal state. This category of ERPs can be exemplified by the Dutch case of the FNP (*Fryske Nasjonale Partij*) that seeks for more power to the provinces and by the Belgian case with the three ERPs before 1980: the Flemish VU (*Volksunie*), and the French-speaking RW (*Rassemblement Wallon*) and FDF (*Fédéralistes Démocrates Francophones*). As in the case of autonomous parties, demands from federalist parties can also have as ultimate aim the independence of the region, but in a much broader future.

**Confederalist parties** can also be classified as a subtype in the broad category of decentralist parties. Confederalism globally implies a similar dynamic to that of federalist demands, i.e. the exercise of competencies by sub-national entities, but with the difference that the regions hold the sovereignty and decide which competences, powers and decision-making processes they delegate to the state. An obvious example of such confederalist parties can be found in the case of Flemish ERPs, for example the transient *Sociaal-Liberale Partij* (Social-liberal Party) that wishes to transform Belgian federation into a confederation.

## 6. Secessionist parties

Secessionism can be defined as “the political movement of a specified population group that drives a process at the end of which it hopes to have succeeded in detaching itself and its territory from its host-state and to have established an independent state of its own” (Wolff 2004: 5). But the form this independent state may take varies greatly across cases and depending on the environment. Unlike decentralist parties, secessionist parties rely on two main characteristics. The first is what Kellas calls “the territorial imperative” (2004: 10). Secessionism is not only based on a population and on a strong political demand, but also on specific and well-defined piece of territory (Premdas 1990: 15). The goal of secessionist parties is mainly a change of the ‘ownership’ of a territory.

The second characteristic concerns the international environment (Premdas 1990: 16). Even in its simplest forms, secessionism has an impact on the international community, at least with the creation of a new independent state – requiring an official recognition from the international community and the establishment of numerous bilateral and multilateral agreements<sup>XIX</sup> –, the redefinition of international borders, and the



weakening of the host-state. In addition to a challenge to the national – or internal – order of a state as in the case of decentralist parties, secessionist parties imply by definition a challenge to the international order. But their ultimate goal can create complex situations, as in the case of the disappearance of the host-state (for example, some Flemish secessionist parties), the coupling of the independence with an irredentism on a territory belonging to another host-state (irredentist parties) or even the re-attachment of the secessionist territory to an existing neighbouring state (rattachist parties). Our analysis of this type of ERPs needs to seek roots not only in the classic study of political parties but also in the field of international relations as the scenarios developed by these parties have a direct impact on the neighbouring countries and on the more global European equilibrium.

The main objective of the **independentist parties** is the full political independence of their region.<sup>xx</sup> Their claims seek *de facto* a full reorganisation of the existing state in the perspective of the creation of a new sovereign state based on the previous region or territorial entity. The most common ideas spread by such parties rest on the rights for self-determination and for independence. The Flemish VU (*Volskunie*) and one of its successors, the N-VA (*Nieuw-Vlaamse Alliantie*), some Italian parties in the aftermath of the WWII as the *Movimento per l'Indipendenza Siciliana* (MIS) and the *Partito Sardo d'Azione* (since the eighties), numerous Corsican parties (*Movimentu pa l'Autoderterminazione*, *Corsica Viva*, *Unita Naziunalista*, *Corsica Nazione*, *Accolta Naziunale Corsa* and *Rinnovu Naziunale*), the Basque AB (*Abertzaleen Batasuna*), the Galician ANPG (*Asamblea Nacional-Popular Galega*), the French *Ligue Savoisiennne*, the Welsh *Plaid Cymru* or even the Scottish SNP (*Scottish National Party*) and SSP (*Scottish Socialist Party*) are obvious examples of these independentist parties. In addition, we can include in this category the parties that demand not only their independence, but also those of neighbouring regions from the same host-state. It is the case of ERC (*Esquerra Republicana de Catalunya*) that wants the creation of a Greater Catalonia including the Spanish regions of Valencia and Balearic Islands (Schrijver 2006: 110).

A further distinction we could operate within this category is the one of the future and format of the remaining state. Depending on the structure of the state and the scope of the territory that wants to secede, the initial state might survive and even collaborate with the newly created state, or might completely disappear. The independence of a part of its territory challenges the unity and existence as such of the state. Furthermore, coercive



measures could be taken by the state facing such independentist claims that could be perceived as a ‘violation’ of its integrity (Urwin 1983: 238). This might lead both sides to an escalation using, for example, terrorism and assassinations on behalf of the ERPs or intimidation and violent repression on behalf of the state.

Independentist parties can be found in the cases of the secessionist demands of a linguistic minority (with notable exception of Flanders) in a state, but the situation becomes more complex in the case of a linguistic minority spread over two – or more – states. This is the case of the **irredentist parties**. According to Conversi (2003: 266), secessionism and irredentism should be kept distinct. The term ‘irredentism’ comes from the field of International Relations and can be defined as “a state-based movement that seeks to retrieve an external minority, together with the territory it inhabits across an existing border, i.e. to add territory as well as population to an existing state” (Wolff 2004a: 5). In other words, irredentism is a policy for regaining lost territory (Snyder 1982: xvi). Enlarging this International Relations’ concept to ERPs, the territory of the region is regarded by these parties as incomplete, since a significant part of its population lives outside the host-state. Nationalists may then claim that all co-nationals be united in the one single nation-state (Kellas 2004: 15).

In this sub-category of secessionist parties, the irredentist parties not only seek to break away from the national state but also favour the annexation to their newly created sovereign state of territories that belong to another nation-state (De Winter 1998: 207). This type of secessionist demand typically comes from political movements settled close to a border and sharing cultural, linguistic and often historical links with a community on the other side of the border. The most well-known examples of such parties are HB/EH (*Herri Batasuna / Euskal Herritarok*) and EA (*Eusko Alkartasuna*) that claim the creation of a Basque state, based on the Basque country region and on irredentism regarding the Navarre region and the French Basque country (*Iparralde*) (Perez-Nievas 2006: 61; Acha 2006: 77; Schrijver 2006: 110). All historical Basque territories should on this view eventually be integrated into a united *Euskalherria*. With regard to this topic, the discourse of the PNV is more realistic as it asks for co-ordinating policies with Navarra and the transformation of the French Basque country into a single regional and administrative unit. On the French side of the border, all ERPs belong to the autonomist category and favour



trans-border cooperation, with the exception of EA (*Eusko Alkartasuna*) that shares the idea of a united Basque country in the long term (Izquierdo 2005: 209).

The last sub-category of secessionist parties – the so-called **rattachist parties** – concerns parties that wish to break away from the state they belong to (host-state) and to join another state (kin-state). This is often the case of small minorities in a state living next to another state sharing similar linguistic and cultural identity. This is more likely to occur if the minority is relatively small in terms of population, if the neighbouring state is culturally strong (for example an important culture or a dominant language) and in periods of international turmoil (De Winter 1998: 207). Rattachism is nowadays the label of the political movement that wants Wallonia (with or without the Brussels region) to leave Belgium and join the neighbouring French state. This term has been recently enlarged to include other similar movements and parties in Belgium and in other European countries (Dandoy 2009).

The main difference between rattachist parties and independentist (and irredentist) parties is that they do not seek for independence. These parties do not wish to build a new and independent state but rather join another (pre-existing) one and to be considered as an inherent part of its territory. In other words, even if they usually favour some kind of autonomy for their region, rattachist parties prefer to be part of an existing country rather than to become independent. Historically, such parties have received various labels as, for the example, ‘reunionist’ or ‘reunificationist’.<sup>XXI</sup> More recently, this category has wrongly been labelled as ‘irredentist’ in the literature (see for example De Winter 1998; Bugajski 1998; Keating 1998; Wolff 2004a; Gomez-Reino et al., 2006). As stated above, even if they want to be united with part of another state’s territory, the ultimate goal of irredentist parties is still independence. Examples of rattachist parties can be found in several European countries as in the case of Italy with the UV in Valle d’Aosta that wanted to be part of France (Keating 1988: 139; De Winter 1998: 207), of SVP, *Heimatbund* and *Südtiroler Freiheitlichen* in South Tyrol that considered leaving Italy and joining the Austrian state (Keating 1988: 140; Holzer, Schwegler 1998: 169; Pallaver 2006: 183) and the case of the Aland movement for reunification with Sweden (Daftary 2004: 118). Each Belgian linguistic community witnessed rattachist ERPs (respectively to join Germany, the Netherlands and France), as in the case of the German-speaking CVP (*Christliche Volkspartei*) and HF (*Heimattreue Front*), of the Flemish VNV (*Vlaams National Verbond*) and



more recently of the French-speaking RWF (*Rassemblement Wallonie-France*) (Dandoy 2009). But the most famous examples are probably the catholic parties in Northern Ireland, i.e. *Sinn Fein* and SDLP, that seek to be integrated in the Republic of Ireland (Keating 1988: 193).

## 7. Concluding remarks

This article aimed at providing a useful frame for analysis and comparison of a type of party that has often been neglected in the literature on party families, i.e. the so-called ethno-regionalist parties. Partly relying on previous attempts at building typologies, this article suggested a renewed classification of ethno-regionalist parties in Western Europe. This typology of ERPS has been based on ideology and, more particularly, on the essential dimension of the strength of the party demands regarding the preferred state structure and the future of their region. Three main types and several sub-types of ERPs have been identified, each of them corresponding to actual existing cases in various European countries. The parties situated at each extreme part of this typology (the protectionist parties and the secessionist parties) and often neglected by the literature were specifically covered. This article will also have contributed to a clarification of the terminology used when dealing with independentist, irredentist and rattachist parties by complementing the traditional party politics approach with studies from international relations.

Admittedly, the attempt of this article to build a typology of ERPs based on ideology has been confronted by numerous methodological and empirical problems, but we have argued that our attempt could constitute a useful tool for understanding such parties. We will conclude with two general remarks concerning the ideology of the ERPs. We will demonstrate that parties are not monoliths but are rather subject to adaptation and change. Indeed, ideological tendencies and factions exist inside each ERPs and future scenarios promoted by such parties evolve over time.

Following De Winter (1998: 208), we believe that it is barely possible to place the ERPs in one of the above categories and sub-categories on a fixed and permanent basis. The party positions and visions for the future of their region have often moved over time between these categories as ERPs often tend to adapt their strategy, their ideology and



their discourses depending on many factors (electoral, demographic, contextual, etc.). For example, the BNG (*Bloque Nacionalista Galego*) claimed at first independence as an ultimate goal. Their demands afterwards moved towards ‘self-determination’ and ‘national sovereignty’ and independence claims were definitely abandoned in 1982 (Schrijver 2005: 151). Nowadays, this party ‘only’ demands autonomy and institutional recognition of Galicia as a nation. On the other side, the Welsh party *Plaid Cymru* originally demanded more ‘self-determination’ and a ‘full national status’ but, in 2003, asserted for the first time Welsh independence as its ultimate goal. Some ERPs therefore witness a programmatic moderation over time while others experience a radicalisation of their demands.

But, rather than a methodological limitation of the use of such typology, it could be interesting to analyse the conditions of passage from one category to another. For example, rattachist parties often moderate their ideology after a few years. Are there global trends among ERPs and among countries? In other words, can we see a relation between the degree of radicalism in the regional demands and the age of the ERP or even other factors? Further analyses are necessary to assess whether ERPs radicalise their ideology across time and to determine what are these other factors (such as governmental participation or electoral defeat) affecting the transformation of the ideology towards more or less demands and radicalisation. Besides observations regarding the origin of the ERPs (see for example Strmiska’s typology presented above), an in-depth analysis of the ‘death’ or disappearance of such parties could provide much useful information.

Moderate and radical objectives often cohabit within the same party (Gomes-Reino et al., 2006: 251). It is not uncommon to find in the same party different traditions and different degrees of preferred self-government. These opinions and diverging ideologies are represented by different factions that might change over time and sometimes collaborate or oppose each other. Depending on the strongest faction and sometimes on individual elites, the overall and official ideology of the party can evolve. As a result, factionalism can create tensions, not only for the determination of the ideology of the party, but also when the ERP envisages participating to the government. As they rarely govern alone, coalition participation requires that compromises should be made as, for example, the support to socio-economic policies in exchange for passing institutional reforms. These moments of negotiation and cabinet participation are often the place for high intensity conflicts within the party.



If electoral success tends to reinforce the relative weight of the dominating faction, any electoral defeat often provokes the resurgence or revival of numerous factions that threaten the dominant ideology and could lead to lethal party splits. But factionalism is not always negative and counter-productive for a party, as De Winter (1998: 228) observed that there is no link between factionalism and the electoral performance of an ERP. In the same way, factionalism can even constitute a resource and can be used strategically by presenting both moderate and extremist objectives (Gomes-Reino et al. 2006: 254). As most of the ERPs turn into catch-all parties (Dandoy, Sandri 2008), they adapt to their electorate and try to attract voters on both sides of the left-right spectrum.

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<sup>I</sup> Urwin (1983: 228) identified no less than 115 distinct parties across 17 western European countries since 1945.

<sup>II</sup> For example, Keating (1988: 235) uses the term ‘peripheral nationalist parties’ while Premdas (1990: 17) talks about ‘ethno-national’ and ‘ethno-linguistic’ movements.

<sup>III</sup> Snyder interchangeably uses the term ‘mini-nationalism’ with ‘regionalism’ and defines the former as “these smaller nationalisms controlled by a larger nationalism in multi-national states” (1982: 5).

<sup>IV</sup> Similarly to Deschouwer (2006), Strmiska furthermore distinguishes regional parties from multi-regional parties, as the latter are also a form of sub-national parties. An obvious example of such parties can be found in the case of the LN (*Lega Nord*) in Italy.

<sup>V</sup> These elements raise the unanswered question of whether we could consider all the ERPs as a specific ‘party family’. As Strmiska (2003) stated: “we cannot ascertain that there is a family of ethno-regional parties or, to be more precise, a family equivalent to the standard *familles spirituelles* or political party camps”. Yet, no empirical research has been done regarding the comparison of ethno-regionalist parties with other types of parties or other party families, with the exception of Dandoy and Sandri (2008) and of some other comparative analyses solely focused on specific themes or issues. For example, Ray (1999) and Jolly (2006, 2007) have compared the issues of Europe and European integration in ethno-regionalist parties and state-wide parties through expert surveys.

<sup>VI</sup> Keating nonetheless distinguishes between three categories of regionalist parties: extra-constitutional separatist parties; constitutional separatist parties; non-separatist parties (1988: 235-238).

<sup>VII</sup> Already in 1983, Urwin (1983: 228) differentiated parties by region according to their electoral activities, that is the readiness of a party to contest seats, its ability to win votes, and its ability to secure representation from a region in the national legislature, but these differentiations were more considered as logical steps rather than a real typology. Nonetheless, he concentrated his analysis on the electoral strength of parties and classified 115 ethno-regionalist parties according to an ‘index of cumulative regional inequality’ based on regional and national election results. Kellas (2004: 225) also states that elections and votes are the key for understanding regional nationalism.

<sup>VIII</sup> There is nearly no empirical evidence of the existence of the post-materialism dimension and even De Winter (2006) admitted that this dimension can be found in the case of only a few ethno-regionalist parties. For empirical evidence concerning the first three dimensions, see Dandoy and Sandri (2008).

<sup>IX</sup> In this regard, Keating contradicts himself as his 1988 book (*State and Regional Nationalism*) deals with an analysis of the left-right positioning of the different regionalist parties.

<sup>X</sup> De Winter (1998: 206) identifies different scenarios for the future of Europe: an intergovernmental Europe where the regions are equivalent to the states, an intergovernmental ‘Europe of the Regions’, a Federation of Europe composed of regions and states, a Federation of Europe composed of regions only and a Federation of Europe of nation-states where the regions are equivalent to the states.

<sup>XI</sup> Urwin goes even further by declaring that “territorial identity is the only thing that all [ERPs] have in common” (1983: 232).



<sup>XII</sup> However, this superiority in terms of space dedicated to this issue inside the manifestos of the ethno-regionalist parties is no longer unique to them.. Not only their attention to the decentralisation issue has been stagnating after decades of growth, but other parties seem to have been ‘contaminated’ by the issue. Dandoy and Sandri (2008) observed that other parties, in a range of countries, deal with the issue of decentralisation in their manifestos.

<sup>XIII</sup> Gomes-Reino et al. (2006: 250) add to this classification De Winter’s future of Europe, that is intergovernmentalist and federalist of various kinds. Their classification concerns seven different classes: cultural protectionist ; autonomist parties ; devolutionist, regionalist or decentralising parties ; national-federalist parties ; confederal parties ; independentist or sovereignist parties ; irredentist parties. Bugajski’s classification (1994, xxii-xxiii) is based on five categories, very similar to De Winter’s ones : cultural revivalist or protectionist parties ; (political) autonomist parties ; territorial self-determination or federalist parties ; separatist or independentist parties ; and irredentist parties.

<sup>XIV</sup> These classifications have been the basis for further attempts. Seiler’s classification (2005: 36) also based its typology on ideology and distinguishes four types of ERPs: legitimist parties, national peripheral parties, anti-nationalist (or post-nationalist) parties and neo-centralist parties, while Ishiyama and Breuning’s typology (1998: 6) concerns output-oriented parties ; anti-authority parties ; anti-regimes parties ; and anti-community parties. Snyder (1982) indicates that mini-nationalists vary in the intensity of their demands, ranging from moderate autonomists to extreme separatists but he does not specify exactly which categories. Wolff (2004) distinguishes four levels of territorial claims: autonomist ; non-irredentist / secessionist ; irredentist / non-secessionist ; irredentist / secessionist. Regarding ethno-regionalist demands as such, Coackley (2003: 7) detects four categories: equality of citizenship ; cultural rights ; institutional political recognition (from autonomy to confederalism) ; and secession while Roessingh (1996: 25) distinguishes between demands concerning control ; access ; autonomy ; and exit.

<sup>XV</sup> In their classification, minority movements can be distinguished between demands towards recognition ; access ; participation ; separation (in the sense of an ‘exceptionalism’) ; semi-autonomy ; autonomy ; and independence (1991: 588-589).

<sup>XVI</sup> This category broadly corresponds to the ‘protectionist parties’ classification used by De Winter (1998: 205) and to the ‘legitimist parties’ classification used by Seiler (2005: 36). Remarkably, Gomes-Reino et al. (2006: 267) prefer to make no explicit reference to culture as the word ‘protectionist’ is often used in commercial and economic terms. Nonetheless, we may not restrict the definition of this category of ERPs to only cultural and linguistic aspects as the demands of these parties are often of a political and even economic nature. The same comment applies to Bugajski’s typology (1994) according to which this type of ERPs would belong to the ‘cultural revivalist’ category.

<sup>XVII</sup> A particular example of ERP belonging to this category can be found in the case of the Spanish UPN (*Union del Pueblo Navarro*). The specificity of this regionalist Navarrese party is that it combines not only the defence of the Navarrese culture but that it also was set up in opposition to the Basque nationalists. The ideological position of this party is therefore partly based on an opposition towards the Basque radical separatists that saw Navarra as a part of the future independent Basque state (Schrijver 2006: 109).

<sup>XVIII</sup> For example, compulsory bilingual schooling was abolished in 1959 and in 1975 the Slovene territory was split into four electoral constituencies in order to prevent the Slovene parties from getting a seat in the regional parliament.

<sup>XIX</sup> This would be particularly the case if the host-state belongs to a regional organisation (such as the European Union).

<sup>XX</sup> Independence requires a huge investment in economy and infrastructures and it is not a coincidence if the majority of the independentist ERPs originates from a wealthy region. Seiler (2005: 36) qualifies this situation as a ‘neo-centralism’, that is a situation where the periphery is richer and more developed than the centre.

<sup>XXI</sup> The term ‘reunionism’ has been mainly used in relation to the reunion of the Anglican Church with the Roman Catholic Church. And if the reunification consists in is the political unification of separate political entities which had previously been united, it mainly concerns states. Examples of reunifications are numerous, like the *Anschluss* in 1938, the Vietnamese reunification in 1975-76, or even the German reunification in 1990.



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## The Indian and Chinese policies towards Africa: a veritable challenge to EU-led interregionalism?

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## Abstract

This paper aims to analyze comparatively EU's, China's and India's diverging designs for the governance of Africa. The paper addresses one fundamental research question: to what extent do the Chinese and Indian competing African policies constrain the European interregional strategy towards Africa? Building on Heiner Haenggi's categorization, the paper investigates the extent to which the emergence of new paradigms of interregionalism (promoted by India and China) might impact on the re-defined EU-Africa interregional development partnerships. The paper submits that the EU's, India's and China's respective regional and interregional policies are generating a competitive "politics of interregionalism" in the African context, where the EU is seeking to perform as a credible "normative power". In a systemic perspective, the EU is undoubtedly called to face the challenge rising from alternative models of interregional cooperation.

## Key-words:

Interregionalism, European Union, India, China, Africa, development cooperation, conditionality, "normative power"



## 1. Introduction

The emergence of “new regionalism” in the changing post-Cold War international system has set the stage for the establishment of a veritable “global politics of interregionalism” (Farrel, 2005). As target of multiple interregional policies, the African context provides, in an analytical perspective, the most illuminating case-study to uncover both the conceptual significance and the empirical limits to the European conception of interregionalism as a paradigm to foster a “regionalized multilateral” global governance. Indeed, this paper aims to analyze EU’s, China’s and India’s diverging designs for the governance of Africa. The paper addresses one fundamental research question: to what extent do the Chinese and Indian competing African policies constrain the European interregional strategies towards Africa?

With respect to the notion of “interregionalism”, a concise terminological and theoretical account is indispensable. Interregionalism is addressed by this paper not merely as a trade-based but as a multidimensional phenomenon occurring in a post-hegemonic international systemic outlook. Unlike pre-Cold War regionalism, which has been shaped by the US “liberal hegemonic” attitude according to the “open regionalism doctrine” (Bergsten, 1997) post-Cold War interregionalism constitutes an innovative paradigm of international relational patterns. In Mario Telò’s words, although regionalism and interregionalism have historically taken different forms<sup>1</sup>, “the current globalization process entails a broader and deeper, even if highly differentiated new type of regionalism” (Farrel, 2005).

In order to scrutinize the different conceptions of interregional cooperation behind the EU’s, China’s and India’s African policies, the paper builds on Heiner Haenggi’s distinction between 1) “deep” or “pure interregionalism”, characterized by the relations between “deeply integrated regional groupings”; 2) “transregionalism”, characterized by region-to-region interactions both at the governmental level and at the level of the civil society; 3) “soft” or “quasi-interregionalism”, including hybrid sets of relations between weakly institutionalized regional groupings and single Great Powers (Haenggi, 2000).



Thus, the paper will scrutinize the EU's, China's and India's respective interregional projects in an analytical continuum between "soft (inter)-regionalism", close to the Asian model of development cooperation, and "deep (inter)-regionalism", embodied in the EU "governance externalization" strategy towards Africa. Thus, the paper tackles interregionalism both as a structural political post-Cold War phenomenon and as a "conceptual frame for the comparison" of the European, Chinese and Indian policies towards Africa. In a theoretical perspective, this paper assumes that international actors' respective interregional policies are driven by both internal and extra-regional factors. In particular, the EU, being a multilateral entity internally, is keen, in the absence of structural constraints, to "externalize" its internal "binding multilateral" model in dealing with other regions; in a similar fashion, China and India, as nation-states attached to a more traditional conception of sovereignty, conceive interregionalism through an instrumentalist rather than "existentialist" perspective.

This assumption, which challenges the realist paradigm implying the absolute separation between internal and external policy-making structures, confirms the intrinsically "intermestic" nature of interregionalism. Nevertheless, some basic realistic elements, such as the importance attributed to territoriality and geopolitical reasoning, are kept in this paper as essential analytical lenses.

The paper will be structured as follows. Paragraph 1 will analyze the evolution of the European view of interregionalism as a structural element of the EU's development cooperation policy, with specific reference to the EU-Africa relationship. Paragraph 2 will outline the interregional cooperative patterns behind India's and China's engagement in the African context. The conclusions will elaborate on what the African case-study can tell us in general about the emerging "global politics of interregionalism", as well as about the feasibility of the EU-led project to foster "a better global governance through interregional cooperation".

The current sources of incoherence, which the EU is called to face in the implementation of its renewed African policy, might suggest a negative generalized trend for the EU-backed interregional paradigm. In this sense, the African context might definitively test the extent to which the EU-led version of interregionalism might shape a "regionalized multilateral" global outlook or whether EU-backed interregionalism is



destined to dissolve into an incoherent mix of bilateralism and region-to-region institutional cooperative arrangements.

## 2. EU-led interregionalism and its impact on the EU-Africa relationship

### 2.1. The concept of EU-led interregionalism: normative bases and structural implications

The worldwide promotion of regional integration and region-to-region cooperation as a paradigm of “civilized” inter-state governance has consistently characterized the EU’s “structural foreign policy”<sup>11</sup>. As Mario Telò has pointed out (Telò, 2007)<sup>111</sup>, the most relevant pattern of the EU’s external projection, which might account for the “civilian” character of the European power at the global stage, precisely resides in the European commitment to interregionalism. EU-led interregionalism has resulted in a consolidated worldwide network of formally institutionalized interregional cooperation frameworks.

Since the 1970’s interregional cooperation has been a privileged tool of European external relations. Shaped by globalization and by the “new regional” phenomenon in the 1990’s, EU-led interregionalism has grown up to become a policy objective per se, linked to the European commitment to establish an “effective multilateral” global governance and perform as a viable interlocutor vis-à-vis the United Nations. Thus, the promotion of interregional multidimensional agreements by the EU is naturally associated with the very soul of the EU intra-regional system of governance (P. Magnette and K. Nicolaidis, 2009). In Regelsberger and De Flers’ words, “the logic of interregional cooperation derives from the successful European model, which has transformed the relations between formerly warring parties into some sort of a cooperative structure where divergent interests are tackled and resolved by negotiations” (De Flers and E. Regelsberger, 2005).

Being characterized by a legally-binding multilateral mode of governance at the intra-regional level, the EU has an intrinsic interest in providing effective support to potentially cooperative regional groupings. In fact, in the European case the linkage between internal multilateralism and interregionalism is so strong, that Aggarwal and



Fogarty have defined the EU as the “patron saint of interregionalism in international economic relations” (Aggarwal- Fogarty, 2005).

As a European *trait distinctif* in the conduct of development cooperation policy, the promotion of regional and interregional cooperation is driven by the principle of “functional differentiation”. As far as the European administrative practice is concerned, the European Commission has managed to focus on a policy domain where it can exploit a comparative advantage over EU nation states’ diplomacies. In a public rational choice perspective, the Commission enjoys a comparative advantage over national diplomacies on the economic, political and social aspects of regional integration. Thus, instead of acting in state-like terms, the Commission highlights its own value-added linked to the external projection of the European “binding multilateral regional governance”.

Thus, since the 1970’s, the European Commission has supported the creation and consolidation of regional groupings, notably in the framework the EEC-driven development cooperation policy (Bartels, 2007). The European support to regional cooperation, as part of a distinctive European approach to the promotion of regional stability and economic development, has traditionally encompassed a wide geographical scope. In the African, Caribbean and Pacific countries (ACP), the EC support to the Southern and Western African sub-regionalization processes provided the bases for the consolidation of SADC and ECOWAS, which are considered as the two most tangible results of the European regionalist approach.

As far as the African context is concerned, the promotion of region-to-region cooperation and “regional integration assistance policy” found a driving force in the political discourse of the 1990’s. Indeed, the deepening of the European integration process through the Maastricht Treaty and the institutionalisation of a Common Foreign and Security Policy (CFSP) seemed to reinforce the European international role in the promotion of pluralist democracy, human rights and good governance through regional integration.

To sum up, the European “ideal type” of interregional cooperation is based on what Haenggi defines as “region-to-region” cooperation, or “pure interregionalism”. As a matter of fact, the EU has clearly emphasized a policy preference for the institutional strengthening of African sub-regional integration cooperative frameworks. In a global perspective, the EU sees region-to-region cooperation as an instrument to promote a more



balanced and pluralistic world order, based on the development of a “regionalized multilateralism<sup>IV</sup>”.

A central element of the EU’s African policy, interregionalism appears as “a stepping stone to push global governance, because it aims towards interest adjustments, common policies and multilateral cooperation” (Westphal, 2005). To this regard, the extent to which the EU does effectively promote African sub-regional integration processes does constitute a decisive test for the overall viability of the EU conceptions of interregionalism. Thus, the political reality of the EU-Africa relationship is worth scrutinizing in order to anticipate the main structural elements which will emerge from the EU-China-India comparative analysis.

## **2.2. From Lomé to Cotonou: the EU’s interregional cooperation with Africa**

As suggested above, the European “existentialist” conception of interregionalism has profoundly characterized the EU’s policy approach towards Africa. Since the outset of the ECC development cooperation policy, the Commission did literally “create” its technical counterpart through the establishment of the ACP (Africa, Caribbean and Pacific). A relatively technical and politically heterogeneous regional grouping at the beginning, the ACP gradually evolved into a set of distinct sub-regional integration frameworks, which the EU consistently supported through the successive Lomé Treaties. In order to back the consolidation of Africa sub-regional organizations, the ECC made political use of non-reciprocal trade preferential treatment (which was seen as controversial by the non-ACP GATT members) and technical and financial cooperation funds under the European Development Fund.

The interregional character of the “Lomé model” gradually acquired a substantial political dimension. Far from being a merely financial renegotiation of the Lomé IV Treaty, Lomé IV bis, signed in 1994, represented a turning point in the European conception of interregionalism. Previously expressed in the Lomé III Annex I Joint Declaration on art.4, the European concern with the respect of good governance and of human rights created the rationale for art. 5 of Lomé IV, further amended in Lomé IV bis, and better known as “conditionality clauses”.



Founded on the principle of regionalization, the Cotonou Agreement foresees the division of ACP countries into six sub-regional groupings as partners of newly negotiated WTO-compatible trade and economic agreements. According to the principle of differentiation, the regional performance in terms of human rights and good governance becomes an innovative criterion for the allocation of financial resources. As Dieter Frisch has put it, “the regional performance criterion, linked to a badly defined concept of “good governance”, introduced in the eyes of the ACP countries, an element of uncertainty into the predictability of aid, [...] in so weakening the principle of joint management of aid” (Frisch, 2008). Such reservations, shared by the ACP governmental actors, seemed to be reinforced by the EU unilateral scrutiny of good governance indicators.

Linked to the concern for WTO conformity, the European trade policy towards Africa made increasingly clear the EU’s categorical commitment to trade liberalisation and macroeconomic stability. The envisaged abolition of preferential and non-reciprocal agreements, which constituted the economic basis of the Lomé model, has been criticized<sup>V</sup> as an underhand way to introduce “regionalist conditionality” in the EU development cooperation policy. Moreover, the significant role attributed by the Lomé model to civil society and non-state actors, which established the concept of “decentralized cooperation”, further eroded the central governmental elites’ control of development aid, thus enhancing the scepticism of traditional governmental actors during the negotiations (Carbone, 2005).

Thus, in a qualitative perspective, the interregional policy of the EU has clearly moved beyond “old regional”, group-to-group dialogue gravitating around the EC, and now features a multiplication of formal cooperative frameworks, covering highly differentiated topics. Even though the EU-ASEAN and the EU-MERCOSUR arrangements still represent the most genuine EU-driven interregional frameworks (Haenggi, 2000), interregional associations and arrangements are developing towards African sub-regions, as exemplified by the support the EU recently gave to the regionalization of the Southern Africa (SADC) and West Africa (ECOWAS).

Nevertheless, the existence of tensions and asymmetrical trends in the EU’s African policies appears as an incontrovertible political reality. The inclusion of political dialogue in the last generation of “global agreements” strongly testifies the EU’s commitment to influence, as a “normative power” (Manner, 2008), the development of the post-Cold War international system. However, in a more concrete perspective, one should highlight the



extent to which “human rights clauses” and political dialogue are at best “proceduralized” in a relatively technical and neutral approach, and at worst sacrificed in name of political stability or hidden national interests.

As a matter of fact, several factors seriously damage the consolidation of genuine interregional institutions and the multidimensionality of EU interregional policy towards Africa, namely: a) agricultural protectionism, b) security and migration concerns, and c) human rights disputes vis-à-vis African governments, notably after the controversial “Darfur question”. What is more, as Leonard Bartels has pointed out, the contradictory use of top-down regional integration assistance instruments, namely in the framework of the European-driven negotiation of Economic Partnership Agreements (EPAs), has paradoxically weakened existing African regional organizations (Bartels, 2007). By artificially imposing six sub-regional groupings, instead of favoring a bottom-up approach trying to exploit already existing potential sub-regional organizations, the EU has in effect endangered several fragile new regional African constructions, whose pivotal states unilaterally decided to withdraw from region-to-region negotiation, preferring the EU-granted GSP or EBA treatment (Bilal, Rampa, 2006).

Finally, there is increasingly widespread skepticism about the capacity of the EU to build a truly autonomous and independent “model” of interregional cooperation, aside from cultural and political pressures by the US. The inclusion of the IMF-dictated “good governance” paradigm and the concern with WTO conformity in the last generation of EU-ACP Partnership Agreements (“Cotonou Agreement”) is often mentioned as a proof of a certain European “dependence” on the presumptive *Pax Americana* or Washington consensus. As the voting patterns in the key UN forums show (Gowan, Brantner, 2007), the EU is suffering an erosion of its international influence and credibility, which fundamentally undermines the effectiveness of its development cooperation policy.

In addition to the mentioned sources of incoherence and inconsistency, the existence of alternative models of “developmental interregionalism” and “south-south interregional cooperation” seems to constitute the main challenge to EU-led interregionalism towards Africa. This is why closer attention to the systemic implications of the emerging Indian and Chinese African policies might represent a better guide to understand the empirical limits to the EU-Africa interregional cooperation.



### 3. China's and India's policy towards Africa as alternative paradigms of interregionalism

#### 3.1. Challenging the EU's material power: China-led "neo-mercantilist" interregionalism as a case of non-normative development cooperation policy

The People's Republic of China has emerged during the last decade as a major international actor in the African context. Consistently with the economic *rationale* that shapes Beijing's African policy, China has built on a peculiar form of interregional cooperation, doing away with conditionality. Primarily concerned by trade issues, by undertaking business, by the exploitation of raw material sources and with preferences in governmental procurements for infrastructures and service delivering, China claims to promote a "no-strings attached" policy, with the partial exception of the "one-China clause"<sup>VI</sup>. As Benjamin Burton has pointed out, "China, far from promoting norms of 'international solidarity', actually employs *a contrario*, a mercantilist framework towards Africa. This reflects the desire to cater for its growing demand for natural resources, and its refusal to intervene in domestic affairs" (Barton, 2009).

When elaborating the notion of "Beijing Consensus", Joshua Cooper Ramo did specifically refer to an alternative model of socio-economic development, in opposition to the Washington Consensus<sup>VII</sup>. Beyond its mere economic and social character, the notion of "Beijing Consensus" can be transposed to a more political dimension, in direct correlation to the emerging "global politics of interregionalism": according to the political principles of the "Beijing Consensus" (i.e. self-determination, non-interference in nation states' internal affairs and neutrality with respect to internal political regimes), China is gradually forging an alternative model of interregional cooperation.

The Chinese model of interregionalism finds its privileged target in the African context, where China-led interregionalism can be easily seen as an alternative to EU-led interregionalism. Unlike its European counterpart, Beijing conceives interregionalism in an "instrumentalist" rather than "existentialist" perspective. Instead of exporting the model of "binding multilateral (inter-)regional cooperation", China does not consider the promotion



of African sub-regional economic integration as a foreign policy objective *per se*. This is why the Chinese interregional design for the governance of Africa is based on a conception which can be defined “soft interregionalism”, characterized, according to Haenggi’s typology (Haenggi, 2000), by a hybrid mix of bilateralism and bi-regionalism as well as by the absence of human rights and good governance conditionality.

Not by coincidence, the Chinese commitment in the African continent seems to intensify as the United States and the European Union requirements on human rights and good governance reinforce the African temptation to diversify its outside partners. As Dieter Frisch has put it, “it is becoming increasingly difficult to insist on an element as essential for development cooperation such as good governance, when other partners such as China are offering financial support and bringing in investments with no such considerations” (Frisch, 2008).

The rejection by the Chinese public banks and financial institutions of the World Bank-endorsed Equator Principles opened the path to a consistent Chinese penetration in states hit by multilateral sanction regimes. Emblematic in this sense are the cases of Sudan, whose Darfur policy is constantly sheltered by the Chinese obstructionism in the UN Security Council<sup>VIII</sup>, Nigeria, and Angola, where China has become the first outside trade and economic partner<sup>IX</sup>.

Summed up in the 2006 Paper on African Policy, the Chinese interregional cooperative framework will “offer African countries economic assistance with *no political conditions* attached and take positive measures to increase economic benefit of the China-aid projects in Africa<sup>X</sup>” [emphasis added]. Respectful of national sovereignty, which has always constituted a primary African concern, such a pragmatic Chinese development cooperation approach clearly undermines the EU political dialogue requirements, by focusing on merely economic and informal requirements.

Ample empirical evidence seems to support the view of China’s approach towards Africa as a kind of non-normative interregionalism: in contrast with the European approach to build up group-to-group dialogue in order to promote new regional cooperation, China operates quite differently, by selecting its African partner on the basis of mere economic needs.

Moreover, China does not stress its guiding role, as in the Washington Consensus-based EU-led interregionalism, but conceives itself as an economic partner, very focused



on the partnership of equal South-South cooperation. As a matter of fact, it is not in China's foreign policy interest to promote the principle of interference in the domestic affairs. In spite of the European efforts to set up a comprehensively universal "human rights policy", China wishes fully to respect national sovereignty as a fundamental principle of the international order. This is exactly what China has traditionally done in the main international *fora*, in order to protect its own freedom of maneuver.

The non-normative and non-structural nature of the Chinese interregionalism becomes even more evident in relation to the African Union (AU) issue. While the EU attempts to push through regional integration in Africa, by consolidating the AU, China does not consider any African regional and sub-regional organization as a strategic partner in itself. In Barton's words, "the EU's attempt to shape the AU on its design is sufficient proof of its normative power usage in Africa, whereas China prefers bilateral interaction, which is logical for a country unfamiliar with regional organizations" (Barton, 2009).

However, the growing interest of China in regional and interregional cooperation, displayed through the participation in many regional fora, such as the Asia-Europe Meeting (ASEM), Asia-Pacific Economic Cooperation (APEC), ASEAN+3, Shanghai Cooperation Organization (SCO), might encourage China to consider the promotion of African regionalization processes as a foreign policy option in the foreseeable future. The 2006 China-African Summit might represent a turning point in the institutional configuration of Sino-African relations, representing as it does a flexible combination of bi-regionalism and bilateralism.

To sum up, the Chinese policy towards Africa is based on a model of "soft interregionalism", which combines the political principles of the "Beijing Consensus" with a preference for mixed bilateral and bi-regional cooperation frameworks. The extent to which China-led interregionalism might constitute a genuine alternative to the European development cooperation policy is worth considering from a systemic perspective, in the light of the contribution of another emerging international actor, India.



### 3.2. Challenging the EU's normative power: the emerging Indian paradigm of "South-South interregionalism"

Historically bound by the normative basis of its anti-colonial and anti-racist "third-world" foreign policy, India still conceives itself as a bridge between developed and developing countries. The pivotal position of its alignment in international economic institutions and its historic ties with Eastern and Southern African countries (especially South Africa), do constitute the main source of a genuine Indian "soft power". Nonetheless, Indian growing activism on the African continent seems to exhibit a gradual adaptation to the changing post-Cold War international environment..

Due to its past commitment to a genuine "non-aligned" foreign policy, India has gradually accumulated much influence in African political circles, especially in countries where the European normative power has displayed little effects in the medium-term (i.e. South Africa and SADC countries). By emphasizing economic growth over political conditionality, India is promoting norms in its development policy towards Africa, in a different way to that favoured by the EU. India sees economic growth as an instrument of national emancipation, which can and should be combined with a significant degree of economic and political liberties.

Looking at Ian Manners definition of "normative power" (Manners, 2002; Manners 2008), it is easy to find in the Indian commitment to African development a normative design, which shapes an alternative model of interregionalism in opposition to both EU-led and China-led interregionalism. Unlike the European Union, India enjoys a relatively high degree of legitimacy, due to its anti-colonial and "south-south" rhetorical stances. Unlike China, India can successfully claim to support a value-based interregional model, founded on democracy and political liberties.

Far from the European "existentialist" connotation of regional cooperation, the Indian instrumentalist interpretation of interregionalism aims at increasing India's bargaining power within multilateral fora. India takes an instrumental view of its own hybrid interregional relations (close to Haenggi's categorization of "hybrid interregionalism") both in the economic and trade field, such as at the WTO, and in the security sphere, such as at the UN. As a "bridge between developed and developing countries", India also enhances its negotiating power thanks to its pivotal position.



Paradigmatically, through the WTO G20 bargaining power, India, together with Brazil and China, successfully sidestepped the EU-US agenda during the Doha Development Round.

With specific reference to the African context, India-led interregional policy is based on the promotion of regional cooperation between African developing countries, not as an objective by itself, but as a mean to achieve economic and social development in accordance with a liberal-democratic political order. Coherently with the hybrid interpretation of its interregional relational patterns, and with its attachment to the classical notion of nation states' sovereignty, India builds on a differentiated network of bi-regional and bilateral relations, South Africa being the cornerstone of India's African policy.

At the interregional level, IBSA (India-Brazil-South Africa) does clearly constitute the main institutional reference of India-backed South-South interregionalism. Built on the India-South Africa "special relationship" (which is constantly nourished through a common normative background, and more empirically, by a considerable Indian community based in south-eastern South Africa), IBSA appears both as a value-based and as an increasingly unified bloc in international multilateral negotiations. As officially stated by the Indian government, "India, Brazil and South Africa share common economic and political history and have stood together in different multilateral fora on more than one occasion for the cause of developing world<sup>XI</sup>".

Another cornerstone of the Indian African policy consists in the support of African regional economic cooperation institutional frameworks, as in the case of the NEPAD initiative. India's objectives with regard to this newly established interregional policy have remained the same over the years, i.e., the "creation and consolidation of strong economic bonds among countries of the South and the use of India's relative economic strength for development of these countries on a mutually beneficial basis" (Beeri, 2003).

At the bilateral level, India has engaged single African partners economically through technical assistance, training and trade programs. As Ruchita Beeri has put it, over the past four decades, India has provided "more than US \$2 billion in technical assistance to the countries of the South and most of it has gone to Africa" (Beeri 2003). Since 1994, the government has run a program for cooperation with select African countries for the development of small-scale industries (SSI). The countries involved are Nigeria, Senegal, Zimbabwe, Tanzania, Uganda, Kenya, Ghana and Ethiopia. A small-scale industry



development project is also under execution in Zimbabwe. In Senegal, Mali and South Africa, Indian officials have been involved in significant technical and training projects. The normative foundation of the Indian bilateral aspect of interregionalism seems to favour economic development as a precondition to social and political liberties. This is why the Indian engagement in the African continent does not follow a strictly recognizable territorial or geographical logic, but rather follows a norm-based logic.

In spite of the abovementioned *caveats*, India disposes of an attractive image among its main African partners, which constitutes a valuable source of normative power. India is likely to reinforce its 21st century role as the new centre providing technologic resources, financial aid and preferential commerce to a developing Africa in order to increase its normative influence in terms of market standards. Economically, the Indian commitment to interregionalism implies working closely with the African Union on the NEPAD initiative, as well as reinforcing the potentially multidimensional character of IBSA. Diplomatically, India looks at ways and means to garner support in order to promote its strategic interest. India's role in UN peacekeeping in Africa, much appreciated by the local population, has been a clear example of the increasingly proactive attitude of India in African political and security issues.

Thus a new paradigm of normative-based “equal interregional partnership” is emerging through Indian activism in Africa, which might engender the conditions for a competitive relationship between the EU's, China's and India's interregional projects towards the African continent.

On the one hand, the Chinese model of interregional cooperation seems to erode the European material capabilities to perform as “normative power” in the African continent: by offering alternative and non-conditional sources of financial aid and economic cooperation, Beijing does challenge the relative influence of the EU. On the other hand, India-led interregionalism, relying on South Africa as *pivot* of the Indian influence on the African continent, does represent a challenge to the EU in terms of value-based interregional cooperation and democratic legitimacy. In a structural perspective, ample empirical evidence leads us to suggest that India's and China's African policies might significantly constrain EU-led interregionalism towards Africa.



#### 4. Conclusions: the Indian and Chinese challenge to EU-led interregionalism: is Europe “losing” Africa?

The paper has aimed at showing the characteristics of the diverging EU, India and China regional and interregional patterns towards Africa, as well as their implications for the “global politics of interregionalism”. The problematic concerns overshadowing the triangular EU-India-China relationship with Africa have been addressed according to Haenggi’s analytical classification; building on a realist declination of the “new regionalist” approach, the paper has investigated the extent to which the emergence of new paradigms of interregionalism (i.e. promoted by India and China) might impact on the re-defined European interregional policy.

The paper submits that the EU’s, India’s and China’s respective regional and interregional policies are generating a competitive “global politics of interregionalism”, where the EU is engaged to perform as a credible “normative power”. In a systemic perspective, the EU is undoubtedly called upon to face the challenge rising from alternative models of interregional cooperation. In this sense, the entry into force of the Lisbon Treaty does not necessarily constitute an adequate response in terms of coherence and consistency of the EU’s commitment to interregionalism as a way to foster a global governance paradigm change. The strategic void affecting the EU’s influence in the African context should be filled by a renewed strategic effort moving beyond the 2000 EU-Africa Strategy.

As a generalizable trend, the African case study might suggest a negative implication on interregionalism as a long-term relational pattern fostered to reform the current global governance outlook. Nevertheless, interregionalism has so far represented an effective instrument to enhance the European “actorness” at the international stage. It has benefited all newly established regional groupings and assured visibility to European development cooperation policy towards Africa. Despite the political difficulties, particularly in terms of coherence within the EU and between the *plethora* of the regional groupings involved, interregionalism has overall proven a productive model of cooperation for all actors involved (both at the governmental and at the non-governmental level).

In contrast with the Chinese and Indian interregional policies, less regulated and less solid in their historical evolution, the EU’s commitment to interregional cooperation



encompasses a rich variety of treaty-based relations. Moreover, the non-state nature of the EU and its consensus-based political system guarantee a certain degree of continuity and credibility in its collectively-negotiated interregional trade and security commitments. This is why the emergence of India and China interregional policies towards Africa does not necessarily undermine the conceptual significance of European-led interregionalism, which continues to represent a policy of *longue durée*, not an accidental tendency of the post-Cold War international system. Moreover, rather than a rollback, European-led interregionalism is likely to envisage an underpinning of the current interregional trends, were the WTO Doha Round to falter.

Thus, the most relevant question is not *whether* interregionalism can continue to shape the post-Cold War international system transition, but *which kind* of interregional model has the best chances to shape the future global trends, notably in case of a competitive dynamic between the EU, India and China (and eventually US) interregional patterns. The main concern about the European-promoted interregional project does not come from the conceptual solidity of interregionalism *per se*, but from the comparative advantages that India and China might enjoy in cooperating with developing countries. In order to preserve its influence on the emerging regional actors in the African continent, the EU is challenged, on the one hand, to strengthen its internal institutionalization, thus continuing to embody the most successful model of deeply-institutionalized regional polity. More decisively, the EU is called to be more focused on the “structural” implications of interregionalism as a way to provide an effective international system change (eventually based on “regionalized multilateralism”), rather than privileging short-term economic-centered factors.

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<sup>I</sup>In particular, Telò distinguishes between Germany and Japan pre-Second World War “malevolent regionalism”, the American-led post-Second World War hegemonic regionalism, and the current post-hegemonic regionalism., M. Telò 2007).

<sup>II</sup> On the specific notion of the “EU structural foreign policy”, see Hill, Smith, 2008.

<sup>III</sup> M. Telò, 2007

<sup>IV</sup> Bjorn Hettne defines the same concept as “multi-regionalism” (Hettne, 2005).

<sup>V</sup> See, in particular, the paradigmatic case of South Africa.

<sup>VI</sup> Through the “one-China-clause”, China’s African partners are required to accept the “one-China doctrine”, which implies the non-simultaneous recognition of the People’s Republic of China and Taiwan at the international stage.



<sup>VII</sup>J. Cooper Ramo, *The Beijing Consensus*, United Kingdom Foreign Policy Centre, London, 2004.

<sup>VIII</sup> China's obstructionism in the UN Security Council posed the basis for the dilution of the 1706 Resolution, which imposed sanctions to Omar El Bashir Sudanese regime.

<sup>IX</sup> See <http://www.china.org.cn>

<sup>X</sup> People's Republic of China Ministry of Foreign Affairs, *The Chinese African Policy*, 2006, see <http://www.fmprc.gov.cn/eng/zxxx/t230615.htm>.

<sup>XI</sup> S. P. Mukherjee, Indian External Affairs Minister, Speech at the Academic Forum, "IBSA Partnership For Shared Prosperity & Inclusive Globalization" at <http://meaindia.nic.in>, 2007.

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## A World Currency for a World New Deal

by  
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## Abstract

The wars in western Asia and the financial crisis of 2007-2008 spelt the end of the American attempt to global supremacy. Global public goods such as security and monetary and financial stability are no more granted by the US. This opens up the possibility of cooperation among vast regional areas to establish a new world order, through the reform of the Bretton Woods institutions, the progressive institutionalization of the current governance instruments, and a democratic reform of the UN. The Dollar was from 1920s to 1960s the currency of a creditor country, and since the 1970s of an increasingly indebted one: it cannot be the world currency anymore. The positive spontaneous transition of the monetary system from the dollar standard towards a multicurrency/multibasket regime can produce instability if not governed towards the creation of a world currency, as it happened in the EU. The Chinese Central Bank Governor proposal to modify the IMF SDR (Special Drawing Rights) composition and to use them to that purpose should be supported by the Eurogroup, which on the contrary is even unable to decide for its unitary representation within the IMF.

## Key-words:

Dollar, International monetary system, reform, Special Drawing Rights, SDR, world currency



## 1. The rise and fall of the dollar

Luca Pacioli's "double entry" accounting system<sup>I</sup>, that of the "assets system" (before the "income system" provided the most skilled accountants, the most refined mathematicians, and the cleverest financiers with the chance of passing off the destruction of capital as the creation of profit), has finally presented its arithmetical verdict after the end of the world supremacy of the dollar, which lasted for almost a century: committal for trial for fraudulent bankruptcy. As we wait for the markets and the Courts to render their verdicts, it might be useful to look at the recent history of this currency in its two lives: the currency of a powerful creditor country, from the 1920s to the 1960s, and the currency of an "empire of debt" (Bonner and Wiggin, 2006) from the 1970s up to the present day.

On four different occasions, Keynes made us able to foresee how it would turn out: as a young official of the British Treasury, he resigned in 1919 from the financial delegation at the peace conference to protest against the reparations imposed on Germany (Keynes, 1919); as an economist, in 1921 he introduced the distinction between uncertainty and risk, stating that only the latter can be measured, while the former justifies State intervention (Keynes, 1921); as a "practical visionary", in 1936 he integrated into economic science ideas such as animal spirits, state of expectations, liquidity traps, and other remarkable concepts corresponding to actually observable behaviours, capable of providing a theoretical explanation of long-term mass unemployment (Keynes, , 1936); and, lastly, as a plenipotentiary in Bretton Woods in 1944, old and infirm, he was defeated, together with the British Empire, in his last attempt to avoid, with his *Bancor*, the supremacy of the dollar (Keynes, 1980; Skidelsky, and Keynes. 2000)..

In the post-war period, Keynes's goal of creating an international monetary base linked to a non-inflationary development of the world, rather than to the needs of a single powerful nation, was pursued by Robert Triffin<sup>II</sup>.

According to Hudson's outstanding reconstruction (Hudson, 2003), the supremacy of the dollar began in 1917, when the American government financed the war efforts of Great Britain, France, and Italy against the Central Powers, imposing the



intergovernmental financing model instead of private bank loans and aids from allies, which had been adopted until then to meet financial needs arising from wars. The European states bought weapons from the ex colony to fight against each other, got into debt with the American government, and were not even able to win the war by themselves. The United States finally intervened when the appalling slaughter had taken its toll on European nations, thus turning the U.S. into the real winner of the war.

The problem of the inter-allied debt got intertwined with that of the German reparations. In Versailles, Keynes argued that Germany would not be able to pay reparations to Great Britain and France without selling goods and services to the winning countries, which however did not mean to make room for German products in their markets. At the same time, the “winning” nations of Europe would not be able to reimburse their debts to the American government without either collecting the German reparations or securing the required means through trade surplus. Keynes concluded that the reparations would eventually lead to a Second World War. As he was ignored, he resigned and wrote *The Economic Consequences of the Peace*. His prophecy was understood only when it came true, but at least it helped in managing the second post-war period more cleverly than the first.

Roosevelt, who had just taken office, was responsible for the failure of the London Economic Conference of 1933, from which Great Britain and France had hoped to achieve, as the Hoover Administration had hinted at, the writing off of their debts or at least a moratorium, hence the chance of coming to a transaction with Germany. The formal explanation offered by the Roosevelt Administration was that in 1917 the United States had not yet been an ally but just an “associate” in the war. The *New Deal*, which applied policies favourable to debtors within the U.S., adopted instead very rigorous creditor policies towards the European nations, together with protectionist measures. The debtor countries wanted to honour their commitment towards the United States but, at the same time, were prevented from resorting to exports. Hence, they demanded more and more pressingly that the German reparations be paid to them. This greatly favoured Hitler’s campaign and triggered the chain of events that led to the destruction of Europe.

In 1936, Keynes published his *General Theory* and declared that he was in favour of Great Britain imitating the *New Deal*. Undoubtedly, the *New Deal*, launched a few years



before, implemented for the first time policies to support monetary demand and direct public intervention in the economy. Keynes deemed these policies essential to ensure a stable level of income and almost full employment in the capitalist system, characterised by complex financial institutions whose instability was inherent in the methods adopted to finance investments<sup>III</sup>. The application of policies similar to those of the *New Deal*, hence *beggar thy neighbour*, by individual national states would, however, lead straight to another war. This contradiction might have been less evident to Roosevelt and to Keynes – due to the size and prosperity of the U.S. domestic market, in the case of Roosevelt, and the vast spaces of the British Empire, in the case of Keynes –, but, as for the other European countries, underestimating this issue was the most ruinous mistake of their economic nationalism. The British federalists saw this contradiction, denounced it and supported a new international order. However, the world had taken another path and, in the post-war period, Lionel Robbins himself stated that he regretted having opposed the reflation proposed by Keynes (Robbins, 1937)<sup>IV</sup>.

The financial instruments that the U.S. government adopted to support the Allies before and during the Second World War (*cash and carry* and *lend-lease*) added a new, unsustainable burden to previously existing debts, allowed the Americans to force Great Britain to renounce its imperial status, permanently strengthened the position of the United States in the world, and ultimately led to the U.S. replacing Great Britain as hegemonic power. Consequently, the divisions existing among European national states handed the entire continent over to the United States.

The Bretton Woods Agreements – with the adoption of the White Plan (*a gold exchange standard* based on the convertibility of the dollar into gold at the price of 35 dollars an ounce) and the rejection of the proposal put forth by Keynes (an international currency called *Bancor*) – marked the complete success of the American plan for unilateral rule over the Western world. The establishment of the dollar as international currency, the American power of veto at the International Monetary Fund, the use of the World Bank to promote an international division of labour favourable to American exports, and the double standard that became the GATT rule in trade matters made up the framework of an economic system corresponding to the American hegemony.



The U.S. obtained Europe's final renunciation of any colonial ambitions at the time of the Suez crisis (1956), when it demanded of the IMF to support the pound only on condition that the Anglo-French troops withdrew from the Canal. As illustrated by Hudson, the Americans had aimed at taking over the British Empire since the first intergovernmental loan of 1917. The crisis of the pound in 1956 was caused, above all, by the conversion of the *sterling balances* into dollars. These were the debts Great Britain had contracted with its Colonies for the supply of foodstuffs to the United States, which was Britain's major economic contribution to the war. At Bretton Woods, Keynes had asked for a bilateral *clearing* of these "deposits" between Great Britain and its Colonies, so that it would be possible to pay them back gradually, thanks to revenues coming from exports, but the United States had demanded and obtained, together with the relinquishing of Britain's imperial status, the multilateralisation of said debts.

On more than one occasion (when referring to the loan of 1917, to the London Conference, and to the Bretton Woods Agreements), Hudson wonders about the reasons behind Britain's acquiescence to the American demands and proposes a number of different answers. First of all, Britain was driven by the belief that it had to respect the creditor policy by honouring its commitments, although it had now moved to the role of debtor. This was because said policy – just like private property – was one of the pillars of capitalism, and the British governing class of that time, which also included some supporters of fascism and Nazism, feared Soviet communism above all things. Hudson also conjectures that Great Britain was most likely resigned to handing over its role to the United States, in order to achieve – through the U.S. – the spreading of the English language and culture (i.e., their "race") throughout the world. Both explanations highlight significant aspects, but it should not be forgotten that Great Britain did not actually have any other choice: the divisions among national sovereign states and their wars essentially delivered the whole of Europe into the hands of the United States.

The acceptance of the dollar as international currency during the "golden years", between 1946 and 1965, when the United States was in a leading position, is therefore understandable. The Bretton Woods monetary system had reorganised the "free world" around the dollar, just like the British Empire had been organised around the pound. The United States accounted for more than half of the world's gross product, held almost all



the gold reserves, and was the only nation capable of financing reconstruction and economic recovery during the post-war period. It carried out this task in an exemplary way, due to the obvious correspondence between post-war reconstruction and the American national interest, or *raison d'État*, but also thanks to steps forward in the way the economy was thought of (a quarter of a century had passed since *The Economic Consequences of the Peace*), and perhaps out of idealism too (this is true, at least, for a minority group which has always been present in American history). However, the United States has managed to prolong the international role of the dollar until today, forty years after the end of the convertibility into gold (which was limited to central banks in 1968 and, then, completely abolished by Nixon in 1971). The power exercised by the United States as creditor is evident, but the power it has continued to exercise as debtor requires further explanation. As Triffin rightly guessed, the adoption of the dollar as international currency might lead to two opposite situations (*the Triffin dilemma*): a shortage of international currency if the American balance of payments is positive, and an excess of dollars in the opposite case. As expected, the situation shifted from *dollar-shortage* in the 1950s to *dollar-inflation* during the wars in Korea and, above all, Vietnam. After the declaration of inconvertibility of the dollar into gold, the *gold-exchange standard* became, also formally, a *dollar standard*, which allowed the United States to finance a long series of export balance deficits, almost uninterrupted up to the present day.

Until 1982 these deficits were due to capital flows: the United States ran into debt to buy foreign companies all around the world, made high profits and *capital gains* on investments, and paid low interests on its *Treasury Bills* and *Treasury Bonds*. The balance of current payments did not display any imbalances. In this phase, the main financiers of the U.S. were Europe and Japan. However, from 1982 onwards, the deficit has affected the balance of goods and services (*current account*) and it has progressively increased to a ratio of 5-6% of the GDP, which is not very sensitive to fluctuations in the dollar exchange rate (also because the dollar has devalued vis-à-vis the wrong currencies: too much vis-à-vis the euro and too little vis-à-vis the renminbi). Military expenditure, which has been constantly increasing, has been financed through foreign debt without a corresponding increase in tax rates, which have instead been reduced for the higher income classes. The Government has thus avoided having to ask the Congress, and the American people, to bear the expenses of



wars. The “deficit without tears”, against which De Gaulle and Rueff had fought in vain, has basically made it possible to finance cannons without giving up on butter.

Europe avoided the danger of being in the same situation with the creation of the euro, a process that lasted for thirty years. In this second phase, the main financiers of the United States have been oil-exporting countries and Asian countries exporting industrial products (characterised by intensive exploitation of low-cost labour without social contributions and environmental restrictions, and with strict state control over exchange rates). The export revenues of these countries, deposited with American banks and mainly reinvested in U.S. Treasury bonds, have turned the United States into the major world debtor. The accumulation of deficit has made debt unsustainable.

## **2. Dollar standard, fundamental imbalances and the crisis of the American hegemony.**

The inversion in the sign of the U.S. balance of current payments (1982) coincided with the beginning of Ronald Reagan’s two presidential terms (1981-1989), which saw the dismantling of the framework of macroeconomic regulations and financial market rules, established by national States and international institutions controlled by the United States, that had supported the economic development during the previous “Keynesian” 30-year phase. In the same period, the “scientific production method” paved the way for economic globalisation (Lucio Levi, 2005, and for the creation of a “network society” (Manuel Castells, 1996), through an economic and social process fundamentally different from the previous two internationalisation processes, which had had a colonial nature. This process should have been steered at a worldwide level, as had been done first in the national States and then in the European Union. Instead, it was decided that the markets, capable of self-government – according to the ideology that was functional to U.S. hegemony –, should be the sole arbiters of globalisation, without any transition periods, without reaching common grounds, without legislative harmonisation, *homo homini lupus*, which was exactly what the United States needed to finance its current accounts deficit by draining savings from the rest of the world.



The U.S. deficit grew more and more, as it was financed by Asian countries and by oil-producing countries which reinvested their revenues in dollars (government bonds, financial activities, and real estate in the United States). The central role of currency asymmetry (thanks to which the U.S. can run into debt in its own currency and not in the creditor's currency) in creating and preserving these fundamental imbalances is evident, but too much has been written in support of two opposing but equally bizarre economic theories<sup>V</sup>: the theory according to which “fault lies with the Chinese because they save too much” (*the saving glut hypothesis* or *capital flows view*), and the theory according to which “fault lies with the Chinese because they keep the renminbi exchange rate pegged to the dollar to build up currency reserves” (*the “Bretton Woods II” hypothesis* or *trade flows view*). Dust has been kicked up to divert attention from the true reason behind the permanence of fundamental imbalances: the role of the dollar as international currency.

The Chinese save a lot because they are poor and enjoy no social protection (this is exactly why transnational companies set up their operations in *Export Processing Zones*). Moreover, owning large currency reserves has seemed desirable to emerging and developing countries only after the Asian crisis of 1997, to avoid falling into the hands of the IMF and having to abide by the policies of the *Washington Consensus* (Stiglitz, 2002; Stiglitz, 2006.). Until 2005 China kept the renminbi pegged to the dollar, then to a basket that included the dollar, the euro and several other Asian currencies. In 2008, it restored fixed parity with the dollar to face the financial crisis and, in 2010, it reverted back to the system introduced in 2005. The revaluation of the renminbi has, in any case, been significant if we do not only consider the nominal exchange rate to the dollar but also the effective (referred to all the currencies) and real (adjusted by the inflation rates differential) exchange rate. Krugman, who demands the free fluctuation of the yuan, under threat of duties and quotas, should consider that, if pure market logics were applied, the renminbi could not revalue at all, as the huge amount of Chinese savings might partially be moved abroad to meet the obvious needs of portfolio diversification. A much more reasonable analysis is provided by Ken Miller (Miller, 2010)<sup>VI</sup>, who offers the following assessment: “*So far, China’s financial foreign policy has been good for other countries and less beneficial for China itself than first meets the eye... A little bit of patience is in order. Policymakers in the United States should remember that China emerged as a financial power less than ten years ago. With a better understanding of*



*China's domestic imperatives, Washington can encourage Beijing to project its financial power abroad in ways that contribute to the stability of the global economy”.*

The American government and the too many Authorities in charge of controlling the financial system are too busy trying to renew old debts and to place new ones, and they have certainly not concerned themselves very much with exercising stringent control or restraining the most daring financial innovations, with curbing the proliferation of financial institutions not subject to Fed regulations, and ultimately with limiting the *leverage* levels, which tend to approach infinity. On the contrary, the *de-regulation* approach started by Reagan continued with his successors, so much so that in 1999, right after the Asian crisis and at the same time as the rescue of the LTCC (*the Nobel Prizes crack*), Clinton abolished the *Glass-Steagall Act* of 1933, with which Roosevelt had separated and regulated the activities of commercial banks, investment banks, and stock exchanges. As illustrated by Minsky (Minsky, 1986.), instability is intrinsic to a capitalist system like ours (the real one, not that of the *Chicago Boys'* textbooks), because the physiological financing phases (*hedge financing*) generate an increase in profits, hence an increase in the value of *capital assets*, which leads to speculating on their price through *speculative financing* methods, which might then lead to resorting to new debts in order to finance even just the interests on previous debts (*Ponzi financing*). Crises have been following each other, growing in size and becoming more and more frequent. This is the path to bankruptcy. This explanation is different from that provided by Galbraith (Galbraith, 1961) or Shiller (Shiller, 2000), who irrationally expect the stock markets to continuously display an upward trend, since Minsky highlights the endogenous nature of instability. Even if all the operators behaved rationally, the sum of their rational behaviours would not be sustainable by the economy as a whole. The Federal Reserve could have opposed the formation of speculative bubbles but, on the contrary, the expansive monetary policy pursued by Greenspan (and approved by Bernanke) encouraged their formation to attract capital into the United States, trying to make easy money in order to finance the current account deficit. But, then, it “parted the fools from their money” by raising interest rates, which is a clear warning sign that the party is over (the same happened to the real estate sector, to the *dot-coms*, to Enron, to the securities that, through several clever steps, had *sub-prime* mortgages as collaterals – and everything leads to believe that it is not over yet).



Therefore, the main issue is that a national currency plays the role of an international currency: with the American government busy placing its debt and the monitoring Authorities willing to turn a blind eye, bankruptcy certainly comes as no surprise<sup>VII</sup>. Market fundamentalism, *deregulation*, privatisations/expropriation of public goods and natural monopolies – the whole set of Chicago guidelines mentioned by Reagan and his successors – has had no other purpose than to cover up the debtor's ruthless policy according to which: debts are *not* to be paid.

The use of wars by the United States to export democracy and import oil has made the world a less safe place. Nuclear proliferation is encouraged by the example of the oldest nuclear powers and by the American policy of using a double standard towards other nations, which are seen alternatively as friends or scoundrels<sup>VIII</sup>. Tax havens ensure the trouble-free recycling of huge sums, thus representing the biggest incentive to global organised crime, and they are used by terrorists, too. The refusal to ratify the Kyoto Protocol and the threat of retaliation against some “client” nations that wished to commit to it have dangerously delayed the adoption of much needed environmental measures at a global level. Inequalities increase within States and among States. The refusal to ratify the Treaty for the establishment of an International Criminal Court greatly hinders the practical implementation of supra-national law. International monetary stability is more and more severely threatened by the role still played by the dollar within the worldwide financial system, which is disproportionately big when compared to the importance of the United States in today's world-economy and undermined by the constant growth of the issuing country's foreign debt. In all these fields, the United States no longer sets the example, does not contribute to the production of world public goods, at times hindering their availability or even encouraging their destruction. The course correction begun by Obama should turn the U.S. into a *player* like all the other ones and not merely restore good manners.

These phenomena could never have taken on the characteristics of a reactionary phase on a worldwide scale and would not have led to a worldwide crisis if, in 1991, the Soviet Union had not ceased to exist. Few remember that Gorbaciov only needed 12 billion dollars (one tenth of the sum recently given to Greece), but his request was turned down because the United States preferred Eltsin's adventurism, with all it entailed, to



*perestrojka* (Gorbaciov, 1987). The end of the Cold War and of the division into two opposing world blocks (bipolar equilibrium) favoured the development of new regional powers and redistributed the economic weights on the world scene. Unfortunately, as strange as it might seem to our common sense, this also favoured the U.S. attempt to take advantage of the situation and establish a unilateral world government (or “empire”). The outcome was disastrous, above all for what concerns the availability of world public goods, such as peace, security, lawfulness, energy and environmental sustainability, equality in distribution, and monetary stability. The United States has lost its hegemony (from both the Gramscian/cultural and the realistic/strategic points of view) in all of the above fields<sup>IX</sup>. The failure of the three trillion dollar war against Iraq (Stiglitz’s estimate) and the 2008 financial crisis have made the whole world realise that the U.S. does not supply – and actually puts at risk – the two fundamental public goods that might have perhaps justified its “exorbitant privilege”: security and financial stability. The world’s gendarme and the world’s banker have both failed.

### 3. Globalisation, de-dollarisation and creation of Regional Currency Areas

The replacement of a hegemonic power by another and of a national currency by another, as last happened when Great Britain handed over its role to the United States and the pound was substituted by the dollar, does no longer correspond to the distribution of economic power around the world and to the needs of the global economy. At the end of the Second World War, the United States alone accounted for over half of the world’s economy, owned most of the gold reserves, and was the only country capable of financing the reconstruction. Nowadays, NAFTA, the EU, and “ASEAN+3”<sup>X</sup> each account for 25% of the world’s gross domestic product (the purchasing power being equal).

It is no longer possible for one (super-)power to rule the entire world and, as it lacks shared guidance by the main economic groups, the globalisation process is suffering from a malady that compromises its continuation. Those against the global spread of a type of capitalism without rules draw their arguments and gain increasing support from the growing perception of out-of-control risks and injustices that cannot be opposed<sup>XI</sup>. The



negative effects of globalisation actually derive from the contradiction between the world dimension of the most important issues and the fragmentation of power among national sovereign States. The powerlessness of the States, which is becoming more and more manifest, is the true cause of the citizens' distrust, of the crisis of political parties, and of the devaluation of democracy.

The effects of the economic globalisation amplify and speed up the phenomena leading to the breaking up of the international economic order, deriving from the decline of the U.S. hegemony and from the disintegration of the Soviet Union. National States – even the United States – and intergovernmental bodies are not able to face global problems, for which a suitable level of government has not yet been created. It is plainer and plainer to see that the states are powerless and this is corresponded by the spreading of a sense of insecurity, which manifests itself in the volatility of the markets, in xenophobic or micro-nationalist reactions by groups that feel threatened, and in the creation of new protest movements at the world level. Even the United States is no longer capable of keeping the most worrying issues under control, which do not only concern the economy but also:

- the nuclear proliferation;
- the environmental unsustainability of globalised development through the currently available energy sources and technology;
- the economic and moral failure in the distribution of wealth among and within States;
- the blow dealt to insurance, redistribution, and welfare state stabilisation mechanisms by the “law” of competitiveness imposed by transnational enterprises on national states;
- the lack of any other laws which grant the power to oppose global oligopolies, major tax evaders, and new organised crime;
- the supremacy given to freedom of trade over any other consideration concerning environmental sustainability, food security, health protection, financial lawfulness, and stability. This supremacy is ensured by the judicial and sanctionary power enjoyed – alone among all the international institution – by the World Trade Organization (WTO), which is not subject to any democratic control.
- lastly, the monetary disorder, the progressive disintegration of any control and protection network for the financial markets, and the inexistence of a world lender of last resort.



The need to face these emergencies has led the States to strengthen regional cooperation, following the example of the European Union, and to extend participation in world *governance* bodies. The Bretton Woods Conference was a G2, with Keynes and White as protagonists and the Allies as spectators. Then, there have been a G7 and a G8, and now a G20. Nevertheless, the UN is the only legitimate forum in which it is possible to make decisions that affect all the States in the world (Levi, 2005; Stiglitz et al., 2010).

According to its neo-liberal supporters, the liberalisation of the capital market should have been capable of self-government and it should have favoured the financing of real investments, but it has achieved the opposite result: by increasing volatility and uncertainty, it has caused negative effects on long-term investments, which are crucial for structural transformations and development (UN DESA, 2010). Such exaggerate freedom and such ill-placed trust in the self-government of the markets has not brought any benefits to the U.S. investments but rather to its consumptions, its wars, and its financial as well as real estate bubbles. The last decade – in which the deficit of the American balance of payments constantly increased and the U.S. foreign debt rose so much that most scholars deemed it unsustainable – coincided with the first ten years in the life of the euro, and with its extraordinary success. Hence, a process leading to the diversification of public and private currency and portfolio reserves has become possible – and this makes the financing of the American deficit through the exaggerate privileges of the dollar somehow less “automatic”. Already before the financial crisis, several countries whose currencies had been pegged to the dollar depegged from it completely or initiated a *de-linking* process (Argentina, Brazil, China, Russia, etc.). In most cases, the dollar was replaced by a basket of regional currencies and by economic and monetary agreements at the regional level. This corresponds to the needs of infra-regional trade, which is growing much more than inter-regional trade and demands that exchange rates be kept as stable as possible within each area, so that internal competition and the strength of an individual country in comparison to that of other countries in the area are not distorted. It also ensures pooling together at the regional level when facing external risks, it allows responding to crises with adequate resources, and it lends more bargaining power when participating in international meetings, in which macro-regions will be represented more and more as individual units.

The European Union has provided a model for all the other regional integrations. The euro was an undeniable success: it made it possible to preserve the unity of the internal



market, to keep inflation at bay (it did not go above 2% for ten years), and to create 16 million jobs from when it came into being until the American crisis exploded and its metastases spread throughout the world. Above all, as foreseen by the European federalists as early as 1972 (Albertini, 1972), the Euro was the needed pretext to progress in political integration, since the contradiction of a currency without a State would necessarily require steps forward towards the objective of a European Federation. It has been proven, also through the so-called debt crisis, that the value of the euro is not linked to the fate of an individual country – as is the case for the dollar – but to the fate of the Economic and Monetary Union, and that the ECB truly is a federal institution in which monetary sovereignty is shared. It has also been made clear that the emphasis placed by the ECB on the goal of currency stability corresponds to the need of steering globalisation together with other major currency areas, already existing or currently being created, which are responsible for the value of their currency towards their domestic markets as well as for the well-ordered development of the world economy. The future will mostly be shaped by the prospect that the United States and the dollar area, under Obama's leadership, will be included in this group. The speculation on Greek debt made the EMU take another difficult leap forward, an ability which Europe has always displayed in the most difficult stages of its creation. On the 9<sup>th</sup> of May 2010, the European Council of Heads of State and Prime Ministers decided that financial support should be provided, if needed, to Greece and other States that might be affected by speculations. This decision marked the beginning of a practice (if not the actual introduction of a principle) that implies financial solidarity among the Economic and Monetary Union member countries. It is a form of solidarity as complex as the interdependence among EMU States. Once the institutional innovations introduced by the Treaty of Lisbon had been implemented and the new representation bodies had been set up, the Union was able to manage the repercussions on its weakest regions of the devastating crisis triggered by the monetary privilege and financial irresponsibility of the United States. As always in the history of the European integration process, the first stage of intergovernmental interventions is followed by institutional consolidation. Among the most interesting issues are:

- the chance that the already existing *European Stabilisation Mechanism* (ESM) might issue *eurobonds* for 60 billion euros;



- the creation of the *European Financial Stability Facility* (EFSF) of €440 billion, provided on the basis of each country's share in the ECB (only Slovakia refused to pay its share), whose managing board comprises representatives from all the member states and whose technical aspects are dealt with by the European Investment bank and by the German debt agency;
- the chance that the ECB might intervene with purchases on the secondary market in case of speculative sales of government securities issued by Eurozone member states;
- assigning the power to monitor systemic risks to a body made up of the Governors of the national Central Banks and presided over by the President of the ECB;
- the institution of three European Supervisory Authorities covering, respectively, banks, insurance, and the financial markets;
- introducing a procedure (the European Budget Semester) by which, before approval by individual national parliaments, each member state's budget must be approved in Brussels through collective consultation-monitoring under the supervision of the Commission;
- the adoption of two policies: the *Stability and Convergence Program*, for the stability of public finances, and the *National Reform Program*, for the competitiveness of the European economy as a whole.

The EU has so far undertaken many initiatives, but one issue still has not been addressed: a substantial increase (to twice its size) in the limited “federal budget” (at present, just 1% of the European GDP) for the effective management of EU measures to stimulate development, so that the European economy can move from the current energy-consuming and consumerist model to a sustainable regime. This sustainable regime should be compatible with: the fact that most of the world population thus far excluded from wealth is progressively gaining access to it, the physical limitations imposed by the resources of our planet, and the climatic challenge posed by an exponential growth in the use of fossil fuels. It will not be long before we all realise that the economic and monetary union, thus far achieved only for what concerns a EU currency, must be brought to completion if we truly want the member states to put their efforts into solving domestic budget problems (the German position) *and* we also want the efforts to develop a new industrial model to be shared by all member countries, so that they can be efficient and effective (the French position). Now that the taboo concerning the issuing of *euro-bonds* has been broken, also the one about euro-fiscality is doomed to fall. *Carbon tax* and *Tobin tax*



are the most coherent hypotheses with the priority objectives that should be financed at the European level (economic re-conversion and financial stabilisation).

The IMF's participation in the rescue plan for Greece (with a further €250 billion), which many have negatively interpreted almost as an insult to the European honour, should, in my opinion, be seen in a different light. The Eurogroup is in a position of strength, as its public accounts are in order, its balance of payment is substantially even, its foreign debt is more than sustainable, and its private savings are capable of financing investments and most of the public deficit. This strength makes it possible to show without fear or hesitation that Europe does not consider itself a “closed fortress” but a part of the world system currently being created. Accepting the IMF rules has set a precedent that will eventually lead to the application of international financial regulations to the United States too.

#### 4. The cooperative solution

The international monetary system is at a crossroads between two paths that look very similar but might produce very different outcomes. Following the decline of the international role of the dollar, the creation of the euro, and the growing tendency towards diversifying official reserves and private portfolios, the *dollar standard* has turned into a *multicurrency foreign exchange regime*. As the most severe effects of the financial crisis progressively spread, this currency regime too is subject to tensions that seem incompatible with the preservation of consensus towards globalisation.

On the one hand, actions by individual States and the stipulation of international agreements, mainly on a regional scale but also at an interregional level (see the BRIC countries), are gradually turning the *multicurrency* regime into a *multibasket* system. On the other hand, the global objectives – rebalancing fundamental imbalances, financial stabilisation, and implementation of a cycle of investments for sustainable development – seem difficult to achieve without acknowledging, both symbolically and practically, cooperation as the “raison d’État” of globalisation. A world currency would provide such a symbol because it would no longer “bear the mark” of a sovereign but of a world institution, not of strength but of right; and, if properly looked after, there would be



substance to it, since it would rest on a rather reliable base, the world's wealth. The first, spontaneous course of action would not be incompatible with the second one, steered at a global level, if the two were consciously made to go hand in hand. Conversely, the result would be the creation of monetary blocks not linked to one another, with the risk of frightful currency disturbances along their borders, if the regional solutions were implemented haphazardly, trying frantically to look for an alternative to the dollar, or in a situation of panic, when everyone seeks a way out, thus causing the ruin of all.

In short: the international *multicurrency/multibasket* monetary system, which is spontaneously being created through regional integration processes, is a step forward compared to the asymmetric monetary system based exclusively on the dollar, but the volatility of exchange rates among the major currencies does not fulfil the need for a public good, i.e. currency stability, which is necessary for a globalisation that works. We are still in a non-system which leaves the door open to new ruinous crises, which does not eliminate the need to sterilise resources for the preservation of currency reserves, and which does not sufficiently cut down on transaction costs and premiums for coverage of risks deriving from the volatility of exchange and interest rates.

At Bretton Woods it was necessary to reconcile three principles that were incompatible, thus renouncing one of them: national monetary sovereignty, fixed exchange rates, and free movement of capitals. The last of the three was sacrificed and the system worked until 1971. Then, Europe chose to sacrifice the first one, monetary sovereignty, within the Union in order to achieve fixed exchange rates, a single currency, and the free movement of capitals.

Today, globalisation presents us with three new principles (Rodrik, 2007), one of which will have to be sacrificed: national sovereignty, democracy, and globalisation. Renouncing globalisation (autarchic model) would be incompatible with the development of the production forces, made possible by the scientific revolution. Sacrificing democracy would allow countries to preserve their sovereignty and to participate in the world market (authoritarian market model). Yet, we would like to see democracy in China rather than authoritarian regimes in the West. There is only one viable solution, that of sharing a part of national sovereignties – the portion needed to guarantee world or continental public goods that individual states are not capable of ensuring – at a supranational level (federalist model).



This is not a crisis like the others, but just a little more serious; it is the last convulsion of the international role of the dollar. Without radical reforms it is impossible to plan the world's economic recovery and to avoid falling back into authoritarianism, protectionism, and war. The need for a reform of the international monetary system, towards a supranational, symmetric, equal, and stable system, was included in the agenda of the European Federalist Movement well before the early warning signs of a crisis (Iozzo-Mosconi, 2006; Iozzo and Mosconi, 2006). More recent federalist studies have further described the steps needed to complement the government of the currency with that of the economy within the Eurozone (Iozzo-Maiocchi, 2010; Montani, 2010). Here is a summary of the main proposals:

1. completing the European Economic and Monetary Union with a budget policy financed through own taxation and the issuing of *euro-bonds*;
2. spreading the EMU model to other macro-regions around the world (five or six currency areas);
3. creating a *world currency unit*, a basket of 5-6 world currencies, with functions similar to those of the *European Currency Unit (ECU)* prior to the establishment of the euro;
4. entrusting the world's economic and financial supervision to the IMF, which should become a Council of the UN's ministers of economy (corresponding to Europe's Ecofin), as already proposed by Jacques Delors;
5. creating a world's central bank (possibly by modifying the purposes of the Bank for International Settlements - BIS);
6. entrusting the ECB with banking and finance monitoring functions within the Eurozone and the BIS with the same functions at a worldwide level;
7. establishing independent *Authorities*, at the European and/or worldwide level, having the same duties now given to Rating Agencies, thus solving the problem of conflict of interest;
8. establishing a world public insurance company for the coverage of global risks;
9. committing to a common fight against illicit capital flows, which make drug trafficking, crime, and terrorism possible as well as lucrative, also in tax havens;
10. using the World Bank to pursue objectives such as human development and fighting against poverty, rather than for purposes that are often mostly functional to the interests of rich countries;



11. urging the WTO to comply with the obligation, included in its Statute but so far disregarded, of combining the pursuit of free trade with the adherence to social and environmental norms and standards.

After the crisis, the *governance* of the World and of Europe has taken two extraordinary steps forward: the world's economic guidance has been moved from the G8 to the G20 (which actually limits the power of the U.S.) and the financial government of Europe has been shifted from the 27 member countries, as initially requested by Germany, to the 16 countries of the Eurogroup, as decided in the end (actually limiting the influence of Germany, which will no longer be able to rely on the support of other countries not included in the Eurozone in the management of financial solidarity actions decided after the Greek public debt crisis). The recent proposal made by Germany – that the U.S. should renounce its power of veto within the International Monetary Fund in return for Europe decreasing its representatives in favour of emerging countries – confirms this trend, which will lead to unitary representation of the Eurozone countries within the IMF.

Despite these steps forward and the availability of all the necessary intellectual and technological tools, it will most likely be impossible to prevent the crisis of the dollar (*soft-lending* scenario) within the field of *governance* and the American Right will not agree to the international cooperation needed to achieve this goal, at least as long as the dollar is accepted as international reserve currency. In order to carry out the reforms needed to manage globalisation (plan for sustainable world development, macroeconomic control, financial regulations, abandoning the theory and practice of market fundamentalism and a-social capitalism), it will be necessary to wait until the crisis of the dollar has actually occurred (*hard-lending* scenario). Paradoxically, the bad news about the American economy (heavily negative balance of current payments, increasing unemployment, deep real estate market crisis, etc.) has not caused the expected failure of the dollar, since the dollar still is the currency “that can buy anything all over the world”. But the purchasers of *Treasury Bonds* have now been reduced to three: China (and other Asian countries), the Saudi Monarchy (and other oil exporters) and the Fed. They have different, peculiar and precarious reasons for purchasing U.S. Bonds.



China, which has already invested 2/3 of its official reserves in the dollar (amounting to 2.6 trillion dollars) is not likely to invest any more of its surplus in the American currency. In fact, there has already been a significant reduction (around 10%) in the amount of China's dollar reserves. In the short term, China wishes to keep the value of the dollar stable for as long as possible, above all because oil and several other raw materials are paid in dollars. In other words, China's attitude depends on Saudi Arabia's decisions. But China's long-term objective is strengthening its financial system and achieving the convertibility of the yuan, thus leading to the creation of a world reference currency basket that includes it (starting from the Special Drawing Rights –SDRs- but, should this prove too difficult, the creation of a completely new world financial architecture will be preferable to reforming the institutions created at Bretton Woods).

The Saudis complain, but they have not gone as far as to seriously challenge the *dollar pricing* of oil because the United States guarantees their safety, from both their neighbours and terrorism. The war in Iraq has proven, on the one hand, that the U.S. is sincerely committed but, on the other hand, it has raised questions about the effectiveness of its protection. Moreover, the situation in Afghanistan will probably have a similar outcome and, despite the fact that military solutions have always failed, the American Right seems impatient to lose yet another war, this time against Iran. Obama should be able to rely on a much wider support in the U.S. as well as in the rest of the world to be able to keep the military-industrial mastiff on a tight leash. The rebellion of some commanders is more than emblematic. Within this conflicting framework, although they know that they would not last a single day without U.S. support, the Saudis try to pursue a more autonomous economic strategy, as shown by: the plan to create a Gulf currency (with consultancy provided by the ECB), an increase in the share of gold reserves, and an oil pricing policy which, despite being denominated in dollars, seems to aim at being more closely pegged to the Euro. For the Saudis and the Chinese alike, a world basket of currencies would be the ideal solution.

With Bernanke's speech delivered in August 2010, the Fed confirmed that it will not accept the role of last-resort buyer. How could it? The theory of the independence of the Central Bank was invented by the Americans only to be applied to the central banks of other countries. Despite constant references to deflationist mistakes made after the crisis of 1929, no one forgets that the other possible path was that chosen by the Weimar Republic.



So, the United States too is forced to drive with one foot on the brake and one on the accelerator, all the more so because, after a brief period of recovery, its balance of payments has once again hit record deficit. One might come to the conclusion that an *ECU-like basket* might be the best solution for the U.S. too, but no one can foresee who – and when and how – will be able to tell the Americans that their imperial dream is over, that the rules must be valid for everyone, and that in the long run one can only consume what one produces. To start off with, who could increase the price of petrol through fiscal policies without condemning oneself, at best, to electoral defeat? It is not wise to mess with the Right.

No actor in this tragedy can get out of this contradiction alone: using the brake causes a catastrophe because it brings the economy to a standstill and compromises social cohesion, whereas pressing the accelerator brings about the same result, since it disintegrates the value of the currency. The first solution leads the weakest debtors and their creditors to bankruptcy, through some sort of Darwinian selection. The second solution damages creditors and those who earn a fixed income, favouring debtors regardless of their merit. At the level of even the most powerful national States, no “third way” is available. Individual States must look after their own budget and leave the issue of development to the continental and world government levels.

The Federalists’ interpretation was validated by the crisis, because only the federalist point of view makes it possible to complement the brake and the accelerator policies with other indispensable tools to deal with the first global systemic crisis: a clutch and gear stick, i.e. the government. The proposal of an *ECU-like* basket of currencies, put forward in 2006 as a first step towards a world currency and the government of globalisation, has its origins in the battle for the Euro and in Albertini’s motto “unifying Europe to unify the world” (EFM, 1981). The crisis came in 2007-2008, then, in 2009, Zhou (Zhou Xiao-Chuang, 2009) proposed to replace the dollar with the SDRs, quoting Triffin. In 2010 the Stiglitz Report to the United Nations (Stiglitz et al., 2010) and even the IMF (IMF, 2010) acknowledged the need for a world currency and they only wondered how long it would take to implement it. In a document issued by its strategic department, the IMF summarised some main ideas to mitigate demand and diversify supply of reserves, as well as to stabilise the international monetary system. These proposals were presented in descending order of potential resistance and implementation times:



- near term: voluntary multilateral agreement to implement stabilisation policies; directive on reserve adequacy;
- near-medium term: monitoring capital flows; using COFER<sup>XII</sup> for reporting activities concerning the composition of reserves; creation of a substitution account;
- medium term: wider use of SDRs; directive on policies related to issuers and holders of currency reserves;
- medium-long term: multilateral agreement on capital flows; possibility to use the sovereign debt of emerging countries to obtain liquidity from a *pool* or from a lender of last resort (so that the need for reserves decreases);
- long term: penalties for imbalances in the balance of payments; system based on SDRs; *Global Currency*.

The IMF's strategic document (still dominated by the United States, the only country to have the power of veto with a share higher than 15%, as the quotas of European countries are still divided) lists the system based on the SDRs and the *global currency* among its long-term objectives, as they will be met with a higher level of resistance, but it does endorse this perspective and declare its superiority, also by asking its *Board of Directors* to pronounce on the above.

Only the European Union does not concern itself with this matter (an impromptu declaration by Almunia, during the first Barroso Commission, was against the Chinese proposal), as if the survival of the euro did not depend more on the great worldwide financial and currency game than on the events in Greece. The thoughts and actions of politicians are still limited all over the world – but especially in Europe where the size of the States should not allow it – by national *constituencies* and by methodological nationalism. However, fear sharpens the wits of central bankers: while Bernanke gives notice of a second “quantitative easing”, Zhou asks for the dollar to be replaced by the SDRs, and Trichet goes too far ahead by calling for just one European seat at the IMF, even before the German proposal to the U.S. about reducing the weight of the EU (in comparison to the total number of European countries) if the U.S. is willing to give up its power of veto.

As Lucio Levi remarked (Levi, 2009), “Here lies the malady of Europe. Here lies the deepest reason for the citizens’ disaffection toward the European institutions. By saying no to the Chinese plan, Commissioner Almunia has chosen to carry on with a policy of



subordination to the U.S. at a time in which the world is evolving towards a multipolar order and the United States needs to be helped to share with others political and economic responsibilities that it can no longer manage by itself. It is a renunciative policy that has no justification. Thanks to the euro, the EU would have the power to break through the U. S. reserve and initiate the plan for the implementation of a world currency”.

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<sup>I</sup> Fra' Luca Pacioli (Borgo San Sepolcro 1445 - Rome 1517), pupil of Piero della Francesca, was an Italian mathematician and Franciscan friar. He invented the "double entry" accounting system.

<sup>II</sup> Triffin's writings between 1935 and 1988 were translated into Italian and collected in the volume: *Dollaro, euro e moneta mondiale*, with a preface by Alfonso Iozzo, 1997. For the purpose of this article, we refer mainly to: Triffin, *Our International Monetary System: Yesterday, Today and Tomorrow*, Random House, New York, 1968.

<sup>III</sup> The introduction of financial instability is the most innovative aspect of Keynesian economics. Nevertheless, it was ignored by the neoclassical synthesis and trivialised by the neo-Keynesian models. A more in-depth investigation of the Keynesian theory versus its simplistic vulgate was made necessary only at the end of the golden years (1946-66), due to repeated financial crises of increasing duration and intensity. See Minsky's two major works: Minsky, 1975; Minsky, 2008.

<sup>IV</sup> About Robbins and Keynes, see Guido Montani in his Introduction to the Italian edition of Robbins's writings, 1985. About Robbins and the British federalists, see Levi, 2008.

<sup>V</sup> The whole affair is masterfully described in: Fiorentini and Montani, 2010.

<sup>VI</sup> Ken Miller, *Coping With China's Financial Power, in Foreign Affairs*, July/August 2010. Miller is CEO and President of the merchant banking firm Ken Miller Capital LLC, and a member of the U.S. State Department's Advisory Committee on International Economic Policy.

<sup>VII</sup> Among the promptest and most effective analyses of the crisis, see: Morris, 2008; Shiller, 2008; Attali, 2008; Attali, 2009; Posner, 2009; Bruni, 2009; Reinhart and Rogoff, 2009.

<sup>VIII</sup> The wars waged by the U.S. have been criticised from all political positions. Just a few examples are: Cooley, 1999; Chiesa, 2002; Chomsky, *Rogue States, The Rule of Force in World Affairs*, 2000; Romano, 2001. Vidal, 2001.

<sup>IX</sup> The theoretical analysis of the "cycle of empires", based on the law of diminishing returns (the economic costs to preserve the *status quo* tend to grow more rapidly than the economic ability to preserve the *status quo*), seems particularly useful in understanding the crisis of the American hegemony: Gilpin, 1981. Among the political analyses of the decline of the U.S.: Brzezinski, 1997; Ferguson, 2004; Garrison, 2004; Ikenberry, 2002; Kupchan, 2002; Nye jr, 2002; Wallerstein, 2003; For an analysis focusing specifically on the role of the military-industrial apparatus and on its power over the world order and American democracy, see: Johnson, 2004.

<sup>X</sup> The abbreviation "ASEAN+3" indicates the ASEAN member countries (Brunei, Cambodia, the Philippines, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, and Vietnam) plus China, South Korea, and Japan.

<sup>XI</sup> On the neo-liberalist globalisation and its malady: Amin, 1997; Gallino, 2000; Gilpin, 2000; Held-and Mc Grew, 2000; Paul Hirst and Grahame Thompson, 1996; Rodrik, 2007; Stiglitz, 2002; Touraine, 1999. Among the many scholars who believe that we should "let the markets decide": Wolf, 2004.

<sup>XII</sup> Cofer – *Currency Composition of Official Foreign Exchange Reserves* (IMF database)



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## The transfer of State Property to Regions and Local Authorities within the Italian Fiscal Federalism Reform

by  
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## Abstract

The present article examines the process concerning the transfer of State Property to Regions and Local Authorities, recently introduced in Italy pursuant to Decree 85/2010. The transfer of State owned assets and properties to territorial bodies according to this legislation is the first step in the implementation of the Fiscal Federalism Reform. The article analyses in depth the legal framework of this “Public Property Federalism” (“federalismo demaniale”) and the various steps leading to the actual transfer and assignment of some State assets to Regions and Local Authorities. The financial issues of this transfer are also discussed. The article concludes with some remarks on the future prospects of this reform.

## Key-words:

Transfer of State property to territorial bodies, Fiscal Federalism (FF), relationships between the State, Regions and Local Authorities



## 1. The transfer of State Property to Regions and Local Authorities: the Legal Framework

On 28th May, 2010 the Council of Ministers approved the first legislative decree to implement the law of delegation n. 42/2009 thus moving on to the second and key step in implementing fiscal federalism in Italy<sup>I</sup>. In fact Law 42/2009 merely outlines this reform and delegates to the Government the actual implementation of fiscal federalism through the adoption of a number of legislative decrees. Decree 85 of 2010, deals with “transferring public assets to Municipalities, Provinces and Regions” and includes in particular provisions governing the transfer of State Property from the State to territorial bodies (Regions and Local Authorities), the so called “Public Property Federalism” (“*federalismo demaniale*”)<sup>II</sup>. The Government has therefore chosen to “Public Property Federalism” as the first step in its implementation of Fiscal Federalism.

In Italy the transfer of State Property to territorial bodies is based on art 119 of the Constitution, as amended by the 2001 Reform of Title V of the Constitution. In its last paragraph the previous article 119 stated that Regions were to be awarded Public assets pursuant to national legislation. Therefore, the devolution of State Property and assets had already been foreseen before the Constitutional Reform of 2001, although limited to the Regional Authorities as beneficiaries.

The rewriting of the constitutional provisions on “Public Property Federalism” in the 2001 reform is more consistent with the general principles stated in Title V of the Constitution and is more oriented towards the establishment of a Republic of “Autonomies” (*Repubblica delle autonomie*) based on the principle of equivalence among the different levels of Government that make it up. In the amended article 119 of the Constitution it is stated that not just Regions, but Provinces and Municipalities too are entitled to hold Public Assets.

The reformed Constitution appears to confirm a greater degree of self government to Regions and Local Authorities (Municipalities and Provinces) in the regulation and management of the public properties that will come under them<sup>III</sup>. According to the



previous text Regions had to comply with national legislation while now territorial bodies are only bound to the general principles or tenets of national law.

The sixth paragraph of art 119 offers a constitutional basis for the transfer of State Property to territorial bodies and can thus be considered one of the tools that territorial bodies can resort to obtain the aims set for Fiscal Federalism (as outlined by the Constitution), since the foundations for Regions and Local Authorities' effective financial autonomy. More generally, art 119 is consistent with the overall framework laid out by Title V aimed at the consolidation self-government for territorial bodies. In this case it is implemented through the transfer or assignment of certain public assets which are transferred from the State to Regions and Local Authorities which will be responsible for the management of the transferred assets.

Art 19 of law 42/2009 on Fiscal Federalism was the implementation of the last paragraph of article 119 of the 2001 amended Constitution. It laid the foundation for the ending of the transitional regime established by the Constitutional Court which had ruled that State owned assets and properties had to remain under the exclusive rule of the State until such time as the last paragraph of art 119 of the 2001 amended Constitution had been fully implemented<sup>IV</sup>.

Article 19 of the legislative decree of fiscal federalism is entitled 'Public assets of municipalities, provinces, metropolitan cities and Regions' and contains general principles and criteria to guide the actions of the law-maker delegated on "Public Property Federalism"<sup>V</sup>.

First of all, it states that all transfers from the State must be unencumbered and that transferable assets must be classed according to well defined types<sup>VI</sup>. As far as the criteria to be followed in transferring public property and assigning it, the size of the authority, its financial capability and the actual remit of authority of Regions and Local Authorities will have to be considered. The State maintains the task of drafting lists identifying the public property to be assigned to territorial bodies selected among those eligible to receive transferable goods.

The principle of the jurisdiction and location ("*territorialità*") is another criterion when assigning property<sup>VII</sup> and the "Unified Conference" ("*Conferenza unificata*") is designated as the institution where consultation and conciliation take place as a step in the process to assign State Property to territorial bodies<sup>VIII</sup>. The "Unified Conference" is the



body that links the various levels of government in Italy: the National Government, the Regions and the Local Authorities. The law also states that Legislative Decrees must identify the types of properties of national interest not to be transferred to territorial bodies including the assets listed as the “National Cultural Heritage”<sup>IX</sup>. In fact these are rather general provisions which do not detail the transfer of State property to territorial bodies and leave the delegated legislator much leeway. As happens in other cases where there is delegated legislation on Fiscal Federalism, the assignment of State Property to territorial bodies is based on a rather broad mandate. Decree 85 deals with some of the key issues detailing the procedures to assign state Property to territorial bodies.

## 2. The procedure leading to the approval of Legislative Decree 85/2010

The Law on FF entails a rather lengthy procedure for the adoption of legislative decrees. It requires an agreement be found in the Unified Conference. Texts are then forwarded to Parliament so that an *ad hoc* Bicameral Parliamentary Committee on Fiscal Federalism<sup>X</sup> and the relevant Committees can voice their opinions on the financial consequences<sup>XI</sup>.

With the first legislative decree of 28<sup>th</sup> May the ordinary procedure was not fully followed since an agreement was not reached at the Unified Conference within the deadline. If an agreement is not reached with the Government, according to Law 42 art 2.3, a Report has to be drafted and submitted to Parliament motivating the failure to agree. As the government observed, in this case the failure to agree was not due to the impossibility of reaching an agreement among the parties present at the Unified Conference, but to the deadline according to the existing Law<sup>XII</sup>. The need to have a final approval of a legislative decree within the year Law 42/2009 entered into force led the Government to proceed without having reached an agreement with the Unified Conference.<sup>XIII</sup>

The fact the first Decree implementing Fiscal Federalism was approved without abiding by the ordinary procedure is no little matter, especially as it was the first implementation of Law 42. From this point of view, the Government might have reconvened the Unified Conference reaching an agreement guaranteeing the principle of



loyal cooperation between the National Government (State) and the territorial bodies. In fact the Unified Conference is the only body where State, Regions and LAs sit together and whose importance has increased over time, due to the absence in Italy of a Second Chamber of Parliament representing territorial bodies' interests. One ought not to forget that on March the 4<sup>th</sup>, 2010, the “Conference of State-Local Authorities”, the institutional body where National Government and Local Authorities sit jointly, expressed a favourable opinion on the text that had been agreed upon in the course of the same meeting. Several of the amendments to the Decree – if compared to the text originally submitted in December 2009 for the first time, are the result of the debate between the National Government, “ANCI” (the National Association of Italian Municipalities) and “UPI” (The Union of Italian Provinces).

Other than the procedural matters the approval of this first Decree was quite lengthy. The Government approved the first draft of the Decree in December 2009 which was followed by a second in March 2010. The text was then transmitted to the Parliament and parliamentary Committees expressed their opinions in the various steps of the procedure, suggesting a number of new amendments, introducing a number of novelties and important changes: the text approved by the Government in May 2010 was much richer in contents and shows marked differences compared to the December 2009 original text. It is noteworthy that the parliamentary opposition actively cooperated with the parliamentary majority to improve the text of the legislative decree, as had happened with the Delegated Law 42 where the opposition had also played an active role too<sup>XIV</sup>. Maintaining this positive trend is paramount for the success of the reform which will continue to involve the Parliament following procedures which will lead to other major legislative decrees assessing the ‘standard costs’ of the territorial bodies functions and determining their fiscal autonomy.

As for the procedures leading to the approval of the Legislative decree on PPF, the failure of a good cooperation between National Government and territorial bodies at the Joint Conference was partly offset by the cooperative attitude among the political parties displayed in Parliament.



### 3. Criteria to identify public properties to transfer

One of the first issues addressed by Legislative Decree 85 is the identifications of the bodies and institutions which have to draw up the list of properties to be transferred to territorial bodies. Art 19 of Law 42 outlines a system whereby it falls to the national government to draw up these lists and then the agreement for the actual transfer has to be reached in the Unified Conference. In fact, the law is not clear on this point and could be open to several interpretations as it lacks a clear distinction between the preliminary step (identification of properties) and the second one, that is to say the actual assignment. Article 2 of the decree states that the Central Government (State) is responsible for the identification of properties but also states that the agreement at the Joint Conference is a preliminary condition, which entails territorial bodies participation. Such a choice of the legislator would be understandable, because it would guarantee the actual involvement of Regions and LAs right from the beginning (identification of properties) using a federal approach. However, there are doubts as to the compliance with art 19 of the delegated legislation which, albeit not openly, seems to leave the drafting of the list solely in the hands of the central government. However, this latter provision can be seen as justified, if one considers that the properties belong to State and as a result it would stand to reason that the Central Government be the only body to decide which of its properties it wishes to transfer.

Art 3.3 of the Decree established that all properties must be identified from lists contained in one or more Decrees adopted by the President of the Council of Ministers, following an agreement at the Joint Conference and within six months of the entrance into force of legislative Decree 85<sup>XV</sup>, which is like setting the deadline on December the 26<sup>th</sup>, 2010. In fact another section of the Legislative Decree (art 7) makes provision for further two year legislative Decrees drawing up new lists to transfer to territorial bodies on their request. In other words, by the end of 2010 only the first step of PPF will be completed. Art 7 also makes provision for LAs to apply for the transfer of other public properties that had not been included in the previous Decrees of Assignment. These are two important provisions: the former extends the implementation of PPF making it permanent rather than temporary. This suggests it might continue over time rather than finish. The latter



increases the participation and the active role of territorial bodies in the process, putting them in a position whereby they can apply to the State for the transfer of properties not originally included in the Decrees of Assignment, thus increasing their holdings.

Art 3.3 also states that the lists attached to the decrees of assignment must describe the information of each property especially as for their legal status, its value, the income it yields and running costs. This transparency is important for the territorial bodies if they are to make an informed decision as to whether they wish the transfer to take place.

#### 4. How are properties transferred?

Once the procedures to identify transferrable public goods have been established, Legislative Decree 85 addresses the rules governing the transfer of properties from the State to Regions and Local Authorities.

After the publication in the Official Gazette of the lists of transferrable goods contained in the President of the Council of Ministers Decrees Regions and other Local Authorities wishing to have the goods transferred have 60 days to apply to the “Italian Public Property Agency” (“*Agenzia del demanio*”). In their applications territorial bodies should state the use they intend to make of the property and the time needed to reach their stated aims (art. 3.4). However, art. 3.1 also provides an “automatic transfer” to Regions and Provinces of the State Property relating to “Maritime Public Property” and the “Public Water-ways”, without previous requests by territorial bodies<sup>XVI</sup>.

A further Decree of the President of the Council of Ministers will then assign properties in the light of the applications received. Pursuant to the principle of subsidiarity, if a property is not assigned to the Authority closest to the citizen (the Municipal Government) it is assigned to another level of government, that is to the Province or to the Region (art 2,3). Transference entails no costs and does not require the applicant to make any payment.

The procedure laid down in the Decree therefore foresees an active participation of territorial bodies in the assignment procedure and specifically it allows them to choose the public properties they wish assigned to them. This excludes any top-down procedure for assigning properties in the absence of a clear application for assignment (by territorial



bodies)<sup>XVII</sup>. This particular section of the Decree is to be welcomed as a Municipality or Province are unlikely to manage well a State Property assigned to them against their will. However, the final choice as to which territorial bodies should receive the transferred property is left to the National government in its decree of Assignment without any prior agreement at the Joint Conference. The Government has only an obligation to ‘hear’ the relevant Regions and Local Authorities. The choice of the delegated legislator raises issues of legitimacy with reference to the contents of article 19 of the law of delegation which requires an agreement of the Unified Conference in assigning properties to territorial bodies. A mandatory procedure to seek agreement with the Unified Conference would be preferable in this phase too.

If no territorial body applies for the transfer of a property, art 3 states that such assets should be transferred to a limited pool of properties entrusted to the “Italian Public Property Agency” to assess and possibly transfer the properties in agreement with the involved territorial bodies. After three years, if the properties have not been transferred, they will once again become available and the Government may once again include them in the following decrees of available properties. This means Regions and Local Authorities can apply for the transfer of the assets they had not previously applied for. This is a useful provision as it allows a Local Authority in a difficult financial situation, and thus temporarily unable to manage property, apply for an assignment at a later stage when it might be able to cover management costs. The provision clearly indicates that the will of the legislator is to transfer all public transferrable property to territorial bodies in the long term.

Legislative decree 85 identifies a number of principles intended to guide the Government in establishing which territorial bodies the assets are to be transferred to (art. 2).

The principles to be respected are first and foremost *subsidiarity*, *adequacy* and *territorial application*. According to which properties must be assigned to Municipalities, considering their presence in the community. According to the number and type of public properties assigned, the best suited level of government will be identified. Assignment may involve higher tiers of government where they can better address the management and protection of properties.



The principle of *simplification* also allows territorial bodies to dispose of or divest itself of assigned assets pursuant to existing legislation<sup>xviii</sup>. The decree states that an *ad hoc* “All Services Conference” composed by all interested territorial bodies shall be informed by the Local Authority of its decision to dispose or disinvest from the property. All the relevant territorial bodies involved in granting the permission to re-class or re-zone properties in the Master Plan and which decide general Master Plan variations including the introduction of constraints and limits, sit in the said All Services Conference.

The principle of *financial coverage* demands that a territorial body which receives the property must have the financial resources to protect, manage and develop the property. The principle of “matching functions and authority” stresses the need for a link between the actual functions of the recipient authority and need to protect and develop the said property. The latter, must take the physical, landscape and cultural features of the property into account to guarantee the protection of the environment and the development of the area.

The introduction of these many principles to guide choices in assigning public property highlights the will of the delegated legislator in using flexible criteria to assess which is the best suited Local Authority on a case by case basis. The high degree of flexibility in the decision making and choices is guaranteed by the principle of subsidiarity, a flexible principle per se which presumes a case by case decision making process. The provision of art. 2.5 adds a further degree of flexibility allowing the same property to be assigned to two or more territorial bodies. As a result, for instance a Municipality and Province may have joint management of the same property. The provision could have a positive consequence for smaller Local Authorities allowing them to join consortia and thus satisfy the requirements for the assignment to them of a property which would otherwise have to be assigned to a larger authority. However, it has to be said that this co-management might make the practicalities more complex and problematic.

The first versions of the decree on the regulation of the transfer process were inadequate in one respect, as they had no provisions to create links between Regions and other Local Authorities to agree on the purchase of State Property. An agreement among Local Authorities in every Region however now makes it possible to submit applications in a more rational manner, avoiding the risk of juxtapositions and helping the Government in the assignation process. According to art 3 each and every Local Authority will submit



applications without a territorial bodies agreement. Every decision is however made by the central government and both Regions and Local Authorities have only to be heard before decisions are made. Hence the risk of more than one authority submitting for assignation of the same property: for instance a Municipality, a Province and a Region might apply for an airport of regional importance.

The system of applications by single Local Authorities does not appear efficient in assigning assets. As a result, an *ad hoc* article was added to the last version of the text, a little before its final approval, thus eliminating – in a measure - the inadequacy of the text. In fact art 8 allows Local Authorities to consult reciprocally and with the local branches of national authorities. Special Service Conferences may be convened and chaired by the President of the Region. The legislation stresses that the possibility of creating joint arenas among Local Authorities is aimed at ensuring the best use of public property. Consultations enable Local Authorities to put forward joint and coordinated proposals on property assignation, and results must be conveyed to the Ministry of the Economy so that the Government may take the decisions on board and incorporate them in drafting subsequent Assignation Decrees. It is a positive amendment which could favour loyal cooperation between territorial bodies and facilitate future Government decisions in property assignation.

## 5. Which properties can be transferred?

A key feature of PPF refers to the identification of the types of public properties that can be transferred to Regions and Local Authorities. Law 42 attributes the power to decide which properties are transferrable and which remain State-owned to the delegated legislator.

Art 119 of the Constitution does not state how to identify the types of assets that can be assigned to territorial bodies. The decree proceeds with the identification of the properties to transfer (art 5) according the scanty information in art 19 of the Law which, as mentioned, merely requires to identify properties of national importance that cannot be transferred, including properties belonging to the national cultural heritage. Hence the



legislator enjoys a high degree of discretionary power, which is all the more evident if one considers the reference to properties of “national importance” is very general and could lead to centralised decisions by the delegated legislator. Art 5 which refers to the list of transferable or assignable goods must be read in the light of the latest amendments to the Decree connected to art 3.1.

The first type of transferable properties the Decree 85 identifies concerns properties belong to the “Maritime Public Property” (“*demanio marittimo*”) <sup>XIX</sup>, and thus the seashore, the anchorage area, beaches and ports of regional interest, with the exclusion of properties directly used by state bodies. The latter can be assigned only to Regions with one or more Decrees by the President of the Council of Ministers within six months from the implementation of the decree 85 ( art 3.1, letter a).

The second category includes “Public Water-ways” (“*demanio idrico*”) which basically means lakes, streams and other public waters, excluding the trans-regional rivers. Cross-regional lakes can be transferred to Regions following the procedures described for Maritime Public Properties, except for lakes that fall within the boundaries of one Province that can be transferred to it (art. 3.1, lett. b).

The third group includes all the “airports of regional or local interest”, excluding those of national interest<sup>XX</sup>.

The fourth group includes all mines and relative annexes on land. Mines excluding those with oil and gas deposits are transferred to the Provinces (art. 3.1, lett. b).

The fifth group is residual in that it covers any category not included in the above, with the exception of the properties which are specifically excluded from transference. This is a significant provision because it allows the transfer of any State Property not included in the previous categories to be included, excluding the public properties which are specifically excluded from this Decree. If applied it will make it possible to transfer nearly all public property from the State to territorial bodies, excluding non transferable State Property.

The Decree includes a regimen for the transfer of “Military State Property” (“*demanio militare*”): one year from the time the present decree enters into force, following an agreement in the Joint Conference, a President of the Council of Ministers Decree will establish which of the army properties should be transferred to territorial bodies.

There are many buildings belonging to the Forces, such as disused army barracks in Italy, but the actual transfer could be problematic. A limited Company called ‘Difesa



Servizi SpA” was established in the 2010 Budget Law<sup>XXI</sup> under Defence Ministry monitoring. The company is forbidden from disposing of its assets relating to Military State Property although its purposes also include the development and management of military premises through agreements with other parties and the drafting of sponsorship agreements. One of the main aims of the company is the appreciation and development of such real estate and allows the conversion of disused military properties – such as barracks and jails - to new uses.

Including Military Public Property in the public assets capable of transfer to territorial bodies seems inconsistent with the previous decision of the legislator to attribute development and regeneration to the Ministry of defence (acting through the new Ltd Company) which means they would effectively remain Government property. So if the final outcome is to leave the regeneration of Military property in the hands of the State, only a small number would be assigned to territorial bodies and the ones that are unlikely to be the properties with the greatest potential.

The Decree identifies the types of property that cannot be transferred to territorial bodies (arts. 5.2 and 5.7) and which, pursuant to art 19 of Law 42, are to be considered of “national importance”<sup>XXII</sup>. These include properties belonging to the Presidency of the Republic, to Parliament, to the Constitutional Court and in general to all the constitutional bodies; properties used by any State or national agency or body and by the public bodies occupying them for institutional and effective institutional uses; ports and airports of national and international importance; goods that have been included in agreements or accords with territorial bodies for the rationalization or management of their respective properties; networks of national interest including energy grids, rail tracks in use, national parks and reserves.

As far as these non transferable assets are concerned, the Decree introduces a procedure to make all transactions involving state bodies transparent: they will have to motivate the reason why they are not disposing of the property. Government Bodies are under the obligation to supply the Italian Public Property Agency with the lists of goods which they wish to exclude from transfers and the Agency may demand clarification on their motivations<sup>XXIII</sup>. The Agency then has 45 days to publish the list of sites not included in its list for transfers with the motivations. Lists may subsequently be supplemented or changed following the same procedure.



As for cultural heritage the decree requires non transferable assets and property of public interest *including those belonging to the national cultural heritage* to be identified<sup>XXIV</sup>. This means the Decree includes properties belonging to the national cultural heritage in the list of the non disposable State Property, although in practice it does allow some of them to be transferred in virtue of the 2004 legislation on Cultural Heritage which states that some parts of the cultural heritage can be transferred from the State to the territorial bodies<sup>XXV</sup>. Article 5.5 also states that the transfer to territorial bodies of the afore mentioned properties must take place within one year from the entry into force of the Decree and also states that it must follow specific agreements for the development and appreciation, and thus of the cultural development plans as stated by the law in force<sup>XXVI</sup>. Therefore, the Decree makes it possible to transfer a certain number of assets from the State or national government to territorial bodies, even if the cultural heritage of national importance should remain under the central State, as Law n. 42 states.

As one can easily see from the above lists, there are a number of public properties that potentially can be transferred from the national government to the territorial bodies, especially considering also the ‘open’ list of transferable properties. Non transferable properties will require testing how many and which properties will be actually used by state bodies for their institutionally defined purposes and what share of the publicly owned military properties will actually be transferred considering the afore mentioned problems for this class of properties. The first answers to these questions will come when the first lists of transferable properties are published.

## **6. The legal status of the transferred properties and the principle of “functional valorisation” (“valorizzazione funzionale”)**

One important issue discussed by Legislative Decree 85 is the legal or juridical status of the properties transferred to the territorial bodies. As mentioned transfer is free of charge and can present a financial opportunity for Regions and Local Authorities. They can for instance benefit from the income for the concession or rent which the Constitutional Court ruled belong to the body that holds the legal title (Sentence 26 /2004). This means



that territorial bodies can benefit from the transfer if they have a good enough level of autonomy in managing them.

Prior to the 2001 Reform, art 119 of the Constitution made provisions for the transfer of properties from the State to Regions according to the State Law. In a judgement of 1971 (Const. Court 39/1971) the Constitutional Court deemed it legal for the State to restrict the use of devolved

properties. The new article 119 of the Constitution however states that the properties and heritage should be distributed according to the general principles of the law, thus giving territorial bodies greater management powers. According to the old text, Regions had to act consistently with the national legislation as a whole while nowadays territorial bodies are only constrained by its general principles. In this respect, especially onerous constraints on territorial bodies managing the property cannot be considered a general principle of state law.

Article 19 of the Law has no reference to constraints on transferred properties and in general it does not state the juridical status of these properties. The decree (art 4) states that the transferred properties are part of the 'assignable properties' (*patrimonio disponibile*) of Regions and Local Authorities except for those listed as maritime, water properties (costal and sea heritage) and airports which will not be listed as assignable but will remain under the current legislation which lays down constraints in the management of these properties. However, the Decree also allows the State or National Government to include other properties which are excluded from the transferable properties of the territorial properties. A President of the Council Ministers Decree of Assignment will have to indicate and motivate which properties are to be excluded from the transferable properties. The State thus retains the right to further extend the list of transferred goods which have limitations of use (since they cannot be disposed of and assigned and being burdened by limitations of use). The publication of the lists will tell us which and how many properties in the lists of assignment will be burdened by limitations of use. The risk is that the opportunity to extend constraints of use of transferred properties will lead to an excessive increase of the properties with constraints, and as a result, will be a limitation on the territorial bodies' freedom to manage the properties. The transfer of properties will in any case entail the inclusion of Regions and Local Authorities in the 'legal possession' and in all the assets and



liabilities of the transferred properties even though the management of the properties is burdened by the limits of historical, environmental and artistic limits.

Decree 85 has an important provision which introduces constraints on the assignment of the transferred properties. The properties which become part of the transferable property of territorial bodies can be disposed of only once they have been appreciated and developed<sup>xxvii</sup> and only after a statement of adequacy issued by the Italian Public Property Agency or “The Agency of the Territory” (*“Agenzia del territorio”*), in reference to their respective competencies. It is an important provision which forces territorial bodies to proceed with the appreciation and development of the property and aims at avoiding the immediate transfer of properties, to raise income with their sale.

A further constraint on the possibility to dispose of transferred property is the “Decree for insolvent Local Authorities” (*“Decreto per gli Enti locali in stato di dissesto finanziario”*) (art. 2.3): until such time as the finances of the Local Authorities return solvent they cannot dispose of any assets or property which have been allocated to them, and the use of the latter being restricted to their institutional aims. It is an important and welcome provision which clearly is aimed at preventing Regions and Local Authorities in severe financial straits from selling any transferred properties to raise an income. The provision reflects to one of the main aims of Law 42 which, as mentioned, foresees the introduction of penalties for Regions and Local Authorities’ mismanagement or for causing insolvency, and rewards territorial bodies that successfully manage their finances.

An important feature of the Decree, which needs discussion in more detail, concerns the development of the properties and assets transferred to territorial bodies. This development is one of the main aims of the decree as can be seen in art 1 which establishes that territorial bodies must guarantee the ‘utmost functional valorisation’ of the transferred properties. The principle of the “functional valorisation” of the asset must be to the advantage and in the interest of the community the territorial bodies represents (art 2.4). Furthermore the Local Authority will have to inform the community of the development or appreciation of the property, by publishing on its institutional site. The valorisation of the property requires the involvement of the local communities with the aim of strengthening the bond between the said property and the local area. Municipalities may elect to hold referenda, including computerised ones, to decide what type of action is to be taken.



Decree 85 makes provision for the assignment of a property or asset to more than one common investment funds to gain maximum appreciation of the transferred property. The “Savings Bank” (“*Cassa depositi e prestiti*”) can participate in these funds (art 6)<sup>XXVIII</sup>. The provision is intended to support the financial soundness of the territorial bodies which find it difficult to manage their properties and assets and, as a result, to make the assigned properties financially viable.

Decree 85 also introduces another provision aimed at guaranteeing the development and appreciation of transferred properties and assets. As mentioned, when a Region or a Local Authority submits an application for the assignment of an asset it must also annexe a report indicating how it intends to use the said asset. To guarantee that they will abide by their commitments, the Decree allows the national Government to act as a proxy in the event of the territorial body not fulfilling its duty (art 3.5). The Government’s proxy action is aimed to guarantee the best use of the asset and its appreciation in the event of the Local Authority defaulting.

The Decree states the principle of valorisation and development of transferred properties and assets is one of its main aims: a “Public Property Federalism” which allows for the reappraisal of public assets whose potential has not been totally used to date. Territorial bodies which are assigned the property accept it *cum onere* and with the commitment to exploit and develop it: this may become an opportunity to use it and which the community may benefit from. Further proof of the importance of this principle is stated in the provision which forbids territorial bodies to dispose of an asset without first managing and developing it. A public asset should not be seen as means of raising ready cash through a sale, but as an opportunity to invest in and create the conditions so that it may benefit its community. When Regions and Local Authorities are rightly told to make good use of public assets, the State must choose to transfer assets or properties of value or at least with potential of use. The State should not merely abandon useless assets in a sort of “Federalism by neglect”<sup>XXIX</sup> which would bring no benefit either to the territorial bodies or their communities.



## 7. The Financial Procedures connected to the transfer of State assets

The final clauses of Legislative Decree 85 (art 9) list provisions which offer guidance on the redefinition of public finance ensuing from the transfer of public assets.

First, as said, the transfer of assets is not onerous (zero cost) and furthermore all its parts must be tax free. Decree 85 also makes provision of a redefinition of tax revenues of Regions and Local Authorities. One or more President of the Council of Ministers Decrees will be needed to reduce the flow of funds to territorial bodies as a result of the reduction of State revenue following the transfer of assets. This procedure will have to be agreed upon by the Unified Conference. The aim is to make up for the shortfall state revenue due to the assignment of the assets which cease to be a source of revenue for the State. Amounts are not easily assessed which is why the concept of prior agreement at the Unified Conference is positive: it will encourage the Government to adopt decisions agreed with the territorial bodies and avoid over penalizing the latter.

Another feature of the Decree refers to the thorny issue of the relationship between transferred assets and respect of the constraints ensuing from the “domestic stability pact”<sup>xxx</sup>. Expenditure resulting from transferred assets and their management does not fall in its entirety under the pact, by only an amount equal to the savings of State expenditure ensuing from the fact the State no longer manages the assets. A decree from the President of the Council of Ministers will quantify the amount. This provision is an attempt to address the problems of the constraints of the Stability Pact, which can seriously reduce the investment capacity of territorial bodies: the issue is crucial for the implementation of the transfer of State Property. One of the aims of this reform is to manage effectively transferred and assigned assets, and if so territorial bodies must have the resources to invest in the assets they receive. During the debate preceding the approval of this Decree the issue emerged of the need to review Stability Pact rules so as to guarantee, in general, a full implementation of Fiscal Federalism. This decree offers only a partial solution to this problem because it fails to offer territorial bodies the necessary guarantees of the resources needed to make the required investments in the assets.

The decree also contains provisions governing the financial aspects of the transfer of assets purchased by Regions and Local Authorities: the Italian Public Property Agency



must issue a statement of adequacy before allowing the Local Authority to dispose of the said asset. The Law also says that the Local Authorities must use 75% of the revenue generated by the sale of the asset to reduce their indebtedness and make investments. The remaining 25% must be invested in the Fund for the amortization of Government Bonds to reduce the number of circulating Government Bonds through refunds or repurchases. The provision is the outcome of the Parliamentary debate on federalism: the two earlier Government bills had lacked any reference to this feature. The aim is clearly to bind the amount of 25% of any revenue as a guarantee of the national public debt. The provision must be seen in the framework of the high Italian national debt, one of the most serious problems the country has been addressing in the past few years. Given the seriousness of the matter, 25% might be somewhat too low as a guarantee for the national debt and a higher percentage should have been considered to make it equal with the percentage guaranteed for non indebted Local Authorities investments. Limitations on revenue for territorial bodies that elect to dispose of the public assets assigned to them could have limited future disposal of these assets, and encouraged good management of and investment in the transferred asset, which after all is one of the principal aims of the present Decree.

The closing provision of the Decree establishes that the reform must take place without any additional financial burden for the public sector's financial position. . The transfer of State Property will have to be a zero cost reform, which is consistent with Delegated Law 42 that establishes that all Fiscal Federalism must be at zero cost for Italy. The Decree make specific reference to article 28 of Law 42, which contains provisions aimed at avoiding an increase in public expenditure to implement Fiscal Federalism. The Decree also states that the transfer of functions following the introduction of "Public Property Federalism" must correspond to the transfer of staff to avoid duplication of functions and roles.

## **8. What are the prospects for "Public Property Federalism" in Italy?**

The entry into force of Decree 85 is the first step in the implementation of Fiscal Federalism in Italy as a consequence of Law 42. Procedural aspects leading to the approval



of this first decree gave rise to controversy. But instead of criticizing the lack of an agreement in the Unified Conference on this text, it is probably better to stress the positive aspects of the cooperation between Government and opposition in Parliament to make possible the improvement of several features of the Law. It would certainly be better if future implementation decrees were approved with the agreement of the Unified Conference, the body where local authorities and central government interact. But there are good grounds to hope that the spirit of cooperation and an essentially bipartisan approach will continue in Parliamentary discussion of this important reform.

From another point of view, the approval of this decree has made it possible for “Public Property Federalism” to actually take its first steps towards implementation, for the first time in Italy. In fact it introduces a discipline which indicates when and how public property and assets will be transferred to the Regions and Local Authorities.

The transfer of State Property to Regions and Local Authorities is one of the consequences of the 2001 Constitutional Reform, which introduced the “Republic of Autonomies” (*Repubblica delle autonomie*) established by art 114 of the (revised?) Constitution. If the creation of a new decentralised system necessarily requires a number of functions and duties to be moved from the State to the territorial bodies which make up the Republic, then also public assets can no longer exclusively belong to the State. With a limited number of exceptions, public assets will belong to the range of territorial bodies, from the smallest Municipality to the State itself, which form the Republic.

As happened with the radical reallocation of legislative competences between the State and Regions under the new article 117 of the reformed Constitution, this Decree will, if seriously implemented, fundamentally change the distribution of public assets. Previously State ownership was the rule, but now it will be limited to specific types of property while all other property will be transferred to territorial bodies thanks to the ‘open’ and ‘residual’ list of transferable assets (art 5.1, letter e). This arrangement is totally consistent with the distribution of administrative functions between State and Local Authorities provided by art 118 of the Constitution, which states that administrative functions are to be attributed to the closest level of government of the citizen, pursuant to the principle of subsidiarity.

The approval of Decree 85 is only the first, albeit important, step in the “Public Property Federalism process”. The definitive transfer of assets to territorial bodies requires another three key steps: Government Decrees have to list transferable assets and property;



territorial bodies than must submit their requests for the assignment of the said assets and lastly other Government Decrees are needed to transfer the assets. The transfer of State Property to territorial bodies, as established by the present Decree, will be a continuous over the coming few years. The 2010 deadline for the submission of lists of transferable assets does not complete the process because, as mentioned, as from 2012 other assets can be transferred with Assignment Decrees issued every two years.

The number and standard of the assets made immediately available for transfer will make it clear whether this first step is important or if it will only be an initial experiment which will need to be supplemented by the two-yearly decrees.

The final text of the present decree contains many important modifications compared to the text initially submitted by the Government. Amendments have completed and improved the text, making the transfer of assets easier and less confused than it originally was. The changes to the text introducing changes to protect transferred assets are to be considered positively, as transferred resources need to be managed to the advantage of the community and not seen as easy revenue to be raised by disposing of the property to third parties. However, more could have been done in this direction, with more and stricter constraints and disincentives so that the disposal of assets by territorial administrations could be considered very much the exception to the rule.

The success of this reform is unquestionably linked to the good management of public assets assigned to territorial bodies. The duty to manage and develop assets to the advantage of the local communities is a way to limit the risk of the progressive privatization of public assets<sup>XXXI</sup>. However, for the process to succeed transferred property must be of a 'high' standard and have a good use potential as otherwise the risk of State 'federalism by neglect' remains looming round the corner. Decree 85 has outlined the legal framework which makes it possible to transfer assets to territorial bodies although, at this point, it is crucial to know which and how many properties will actually be transferred. The first major step in the process has been taken but a second one is required and is just as important: it concerns the actual implementation process.

The identification of the assets to transfer falls to the national Government, which has to draw up the lists following an agreement with the Unified Conference: this should enable territorial bodies to participate from the beginning in the implementation of "Public



Property Federalism”. The list of transferable assets is a key step because it will establish which assets the State actually intends to make available for assignation.

The success or failure of the operation depends entirely on the role Regions and Local Authorities will have. Decree 85 requires a good degree of involvement of territorial bodies to identify assets and then actually transfer them in practice. Another extremely important consideration is that the transfer of a property requires the relevant territorial body to request it, and makes no provision for the State to impose a mandatory transfer of assets or property which might not be of interest to the Local Authority concerned. This means Regions and Local Authorities have an active role to play in selecting the assets they actually believe might be useful to them. At the same time, this freedom of choice should favour the commitment to appreciate and develop the assets and property the territorial bodies requested since one can reasonably presume they believe the assets have potential and investment in them is viable.

In July 2010 the Italian Public Property Agency published a first list of assets and property that could potentially be transferred consistently with the need for transparency of the actual size of the public assets and property held by the State. The first reactions from Local Authorities to the list have not been over-enthusiastic. The first criticism to the list is related to the ‘quality’ of many assets. As the President of the “Association of Italian Municipalities” (ANCI) stated, they look more like a problem than an opportunity<sup>xxxii</sup>. Other criticisms were raised by the Head of the Department for Public Property and Assets of the City of Milan who considered the assignment of the University or of the Conservatoire as useless given it is impossible for the Municipality to use them in any other way than their current employment. Another series of criticisms focussed on the fact that many territorial bodies lack the funds to manage assets and develop them.

The implementation of “Public Property Federalism” in Italy has thus entered onto the political agenda. Territorial bodies will put their demands forward on the basis of the lists the Government has published in the Decrees and it will be a matter of seeing which assets the State is prepared to transfer and how Regions and Local Authorities will react.

When territorial bodies make their applications for the acquisition of transferred properties, a first assessment of the Decree’s impact can be made. Subsequently, the focus will be on how territorial bodies manage their assets and properties, and on whether and if they have the funds to manage and develop them, and even gain revenue from them. The



process we are facing will be a long one, complicated and made up of a number of different steps. The outcome cannot be taken for granted.

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<sup>I</sup> For a comprehensive commentary on the Law approved on May the 5th, 2009 n. 42, “*Delega al Governo in materia di federalismo fiscale, in attuazione dell’art. 119 della Costituzione*”, in particular see Martines T., Ruggeri A., Salazar C., 2009; Nicotra V., Pizzetti F., Scozzese S. (ed), 2009; Jorio E., Gambino S., D’Ignazio G., 2009.

<sup>II</sup> Pursuant to article 19 of Law 42 approved on May the 5th, 2009 concerning, as will be mentioned further in the text some of the directive principles for the guidelines governing the assignment of public property to Regions and LAs.

<sup>III</sup> See Fransoni G. and Della Cananea G., 2006.

<sup>IV</sup> Sentence 427/ 2004 of the Italian Constitutional Court

<sup>V</sup> On art 19 of Law . 42 see Antonini L. and Greco A., 2009.

<sup>VI</sup> Letter *a*) in art. 19, Law n. 42 /2009.

<sup>VII</sup> Art. 19, letter *b*), Law 42/ 2009.

<sup>VIII</sup> Art. 19, letter *c*), legge n. 42/2009.

<sup>IX</sup> Art. 19, letter *d*), Law. 42/ 2009.

<sup>X</sup> The Commission, pursuant to art. 3 of Law 42/2009, is responsible for expressing opinions on the draft Legislative Decrees prepared and verifying implementation according to provisions in the Laws themselves .

<sup>XI</sup> The procedure is governed by art 2 .para 3, of Law . 42 /2009. The provision allows the Government following parliamentary opinions to disagree with the decisions of the Joint Conference: in this case the government will have to present a report containing the motivations for differing with the agreement.

<sup>XII</sup> Decree 281 /1997 at art . 3 states that the agreement has to be reached within 30 days counting from the first session of the conference where the issue is an item on the agenda.

<sup>XIII</sup> On the issue see Nicotra V. and Pizzetti F., 2010.

<sup>XIV</sup> See Scuto F., 2009.

<sup>XV</sup> Decree 58 was published in the Official Gazette (N . 134 dated 11/06/2010) and was implemented on June the 26<sup>th</sup>, 2010.

<sup>XVI</sup> On this issue, see Paragraph 5.

<sup>XVII</sup> With the exception of the “automatic transfer” of the public goods of the Maritime Public Property and of the Public Water-ways’.

<sup>XVIII</sup> See. art. 58 of LD 112 dated June 25<sup>th</sup>, 2008, amended by Law 133 dated August the 6<sup>th</sup> 2008

<sup>XIX</sup> As defined by 822 of the Civil Code and art 28 of the Maritime Code of Navigation (*Codice di Navigazione*) .

<sup>XX</sup> As defined by art 698 of the Code of Navigation (*Codice di Navigazione*) .

<sup>XXI</sup> Reference is made to para 27 and following of art. 2, Legge December 23<sup>rd</sup> 2009, n. 191, “2010 Budget”.

<sup>XXII</sup> “*Ivi compresi i beni appartenenti al patrimonio culturale nazionale*”, according to letter d of art 19 of law. 42/ 2009.

<sup>XXIII</sup> Information must be given within 90 days from the entry into force of the LD.

<sup>XXIV</sup> Art. 19, lett. *d*), of Law . 42 /2009.

<sup>XXV</sup> Reference is made to art 54 of LD 42 dated January the 22<sup>nd</sup> 2004 on the country’s heritage (“*Codice dei beni culturali e del paesaggio*”, pursuant art 10 of law 137 of July 6<sup>th</sup> 2002). The first two paragraphs of the article list a series of publicly owned properties including real estate and areas of archaeological interest, buildings considered national monuments with deeds enforced by law, museum collections, art galleries, galleries, libraries, and archives. The third paragraph makes provision for the properties on that list to be transferred to the LAs .

<sup>XXVI</sup> Art. 112 of LD 42 dated January the 22<sup>nd</sup>, 2004

<sup>XXVII</sup> Through the procedures for the adoption of the amendments to the Master Plan (article 4.3)

<sup>XXVIII</sup> The *Cassa depositi e prestiti* is a State controlled body (the State holds 70% of the shares and the rest is held by banking foundations. It supports public investment and other projects of public interest .

<sup>XXIX</sup> See Antonini L., 2009. The Author believes this model of PPF avoids risks of a federalism by neglect as it



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is a federalism by good management.

<sup>xxx</sup> The Stability Pact (*patto di stabilità*) stems from the need of every EU Member State to attain targets and the level of indebtedness of the Public Sector is the main parameter to be monitored. One of the main aims of the fiscal regulation underlying the domestic stability pact is the monitoring of LA debt.

<sup>xxxI</sup> See V. Nicotra and F. Pizzetti, *Federalismo demaniale*, op cit., 24.

<sup>xxxII</sup> *E i Comuni non vogliono i beni del demanio: per molti solo spese*, in the *Corriere della Sera*, July the 30<sup>th</sup>, 2010.

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CENTRO STUDI SUL FEDERALISMO

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## Federal Reform II in Germany

by

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## Abstract

Recently Germany experienced yet another federal reform shortly after a previous modification to the German federal system. This paper explains agenda setting, negotiations and ratification of this recent federal reform. With regards to the case of the most recent federal reform in Germany the issue of debt limits had been effectively agreed upon as a package deal between political parties and Bund and Länder alike.

The Grand Coalition of CDU/CSU and SPD managed to quickly gather a qualified majority in the Bundestag, making the qualified majority of Länder the crucial negotiating point. At the end, stronger Länder forced weaker Länder either to accept the new debt regime suggested primarily by the federal government, forcing Bund and Länder to uphold balanced budgets until 2020 or to be responsible for a failed reform. In this situation weaker Länder saw the new constitutional debt regime as more acceptable than rejecting a reform.

## Key-words:

Federalism, reform, Germany, financial crisis, balanced budget



## 1. Introduction <sup>1</sup>

Germany recently experienced a second federal reform.. This paper considers the agenda of the reform commission; the negotiations within the commission and their result; and the ratification of the commission's conclusions. The paper concludes that this reform is a solution of the smallest common denominator that leaves open crucial questions of German federalism. A further commission is foreseeable.

## 2. Setting the Agenda

A bicameral commission composed of Bundestag and Bundesrat representatives negotiated the first round of federal reforms in 2006, leading to some disentanglement of competencies between the Bund and Länder. Disentanglement was seen as a necessary step for reducing Bundesrat participation in federal legislation and federal involvement in jurisdictions of Länder (Benz 2005). Finances between Bund, and Länder had been excluded in the reform.

For dominating actors the separation between competences and finances was supposed to make compromise easier.

In the second stage of federal reforms, a second bicameral commission dealt with the financial relationship between Bund and Länder from 2007-2009. Negotiations started a year after the German Constitutional Court (Bundesverfassungsgericht – BVerfG) decided that the Bund must only pay additional finances (Bundesergänzungszuweisungen - BEZ) to Länder in case of a budgetary crisis causing a danger for the federal level (Bundesstaatlicher Notstand). This decision stood in contrast to previous decisions of the Court. The FDP (Free Democratic Party) played a crucial role in setting the agenda for the commission because of a personal agreement between current chancellor Angela Merkel (Christian Democratic Union - CDU) and Guido Westerwelle (FDP) that a second federal commission about finances would have to follow the first stage of federal reforms (Westerwelle 2006). For the FDP every reform of the federal system offers the opportunity



to promote their ideological position of a moderately competitive form of federalism. At the same time Länder branches of the FDP were coalition partners in important Länder governments of which consent was needed in the Bundesrat to ratify the first federal reform.

Table 1  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments with CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
11/05-05/06	11	22	36
05/06-11/06	7	18	44

(Source: Own Calculations)

The number of total votes in Bundesrat is 69; therefore a qualified majority would consist of 46 votes. Länder governments led by Bund governmental parties only held a simple majority of 44 votes in Bundesrat at the time of voting for the first stage of federal reforms. Since the newly elected federal government wanted to succeed in passing legislation at this early juncture of its term it was in its interest to pass the first stage of federal reforms quickly. The federal government could then move to set up the second commission, helped by the consent of Länder governments with FDP participation in Bundesrat.

The decision to set up the commission was accompanied by a list of topics to be debated in the commission, these topics focussing on the regulation of the budget crisis and rules regarding debts (Bundesrat 2006). Concerning the financial relationship between Bund and Länder this subject is important, but not central to the arrangement of fiscal federalism in Germany. Another subject which is central to fiscal federalism is the fiscal equalisation scheme (Länderfinanzausgleich - LFA) which discourages high populated Länder from increasing their resources because they will be distributed among weaker Länder up to 95 % of the federal mean. Weaker Länder, like city states and less dense populated Länder argue that they face higher costs for providing public services compared to the federal mean. In this controversy a BVerfG decision (Maßstäbe Urteil) of the year 1999 obliged the legislative bodies to adjust the LFA. This adjustment took place shortly before the second federal commission and fixed the LFA for the period between 2005 and



2019. Therefore the commission did not want to discuss this matter anew. The focus of the commission lay on another problem, that relating to state indebtedness.

### 3. Results and Negotiation Patterns

The so-called golden rule in the old Article 115 of limiting state debts to investment was abolished in the second reform and a new mode of regulating debts and amortisation was introduced into the Grundgesetz. Under normal economic circumstances it is now forbidden to make new debt, a prohibition designed to achieve the goal of balancing the debts of the Bund and Länder. This general prohibition has four exceptions. Firstly, according to the second federal reform the federal budget is considered as balanced even if there is a structural deficit of 0.35 % of annual GDP growth. Furthermore the maximum amount of debts Bund and Länder are 0.5 % of annual GDP growth, leaving the possibility for all Länder to take up debts for 0.15 % of annual GDP growth. The second exception pays attention to the cyclical nature of economic development. In times of economic recession tax revenue decreases and higher national debts are necessary to stimulate the economy. If the economy is booming again, these debts must be cleared in a limited period of time. To this end a new stability council (Stabilitätsrat) was set up consisting of the ministers of Bund and Länder for finance and the federal minister for economic affairs. The same persons already form the financial planning council (Finanzplanungsrat), but this institution proved to be without any impact on budgetary behaviour in the past. The new stability council acts as a guardian for the budgets and evaluates federal and Länder budgets according to financial indices which should lead to create pressure of the public to avoid debts, although neither of the two councils may take binding decisions. For determining the economic cycle a position of economic normality will be determined referring to macro-economic indicators. Based on this determined position of normality, it will be decided whether the Bund or a Land faces a recession or if the economy is booming. Depending on this evaluation the council considers whether new debts can be made, or if old debts must be paid back. Thirdly the debt regulations do not apply in cases of emergency or, fourthly, in cases of crisis over which the state does not have control. Despite the four exceptions, the general prohibition of debts is supposed to result in



balanced budgets by 2020 at the latest for the Länder and by 2016 for the Bund. For some Länder this task is particularly difficult.

Until 2020 Bremen, Schleswig-Holstein, Saarland, Sachsen-Anhalt and Berlin will receive a consolidation assistance totalling 7.2 billion € for the consolidation of their budgets but only under the condition that their budgets will be balanced by 2020 at the latest and that they cooperate with the newly established stability council. In addition to the reforms of national debt regulations the second stage of federal reforms included administrative issues such as public IT cooperation, benchmarking, motorway provisions and a national cancer registry.

The results of the financial reform were largely as the federal minister of finance had outlined in his position papers (Kdrs.98; Kdrs.96 2008)<sup>II</sup>, although these papers had not considered the question of the 7,2 billion € designated to help struggling Länder. At the end of the negotiations both Bund and Länder agreed they will pay half of the total amount each of the consolidation assistance, with an exemption for those Länder benefitting from the assistance. For Länder that had benefitted from the LFA this was particularly taxing as it meant that they would now have to pay towards the five poorest Länder so that these Länder can consolidate their budgets (Oettinger 2009).

In this second round of federal reform, the “grand coalition” of SPD and CDU/CSU had the chance to show that they could address substantive problems. In Western Germany a grand coalition at the federal level had governed only once before, from 1966-1969, and had so far been associated on the one hand with large constitutional change, but change achieved by back door compromises neglecting the interests of the voter.

In 2005 the second grand coalition at the federal level seemed to have particularly low legitimacy because its two participants, the CDU/CSU and the SPD, achieved notably poor election results compared with their previous performance in general elections. It was a preliminary success of the grand coalition that the second federal commission presented an outcome and did not declare failure of negotiations. The first stage of reforms had been revitalized through the grand coalition of 2005. A failed second federal commission would have increased voters distrust in the entire political elite and facilitated the rise of populist parties. For the Bund and for the chairs of the second federal commission, Günther Oettinger (CDU) and Peter Struck (SPD), any outcome was better than nothing. It was in



the personal interests of both leaders that the commission did not fail and could present a text before the general elections in 2009. For Struck (SPD) this commission was the last political project of his career and he did not want to retire with a failed federal reform. The second federal commission provided an opportunity for Oettinger (CDU) to overcome isolation in his party and to underpin his political ambitions in the Bund (DPA 2007).

The ideal outcome for the Bund and commission chairs was a federal reform that would avoid further state debts for Bund and Länder. The second best outcome for the Bund and the chairs was merely debt limits for the Bund only. Consent of Länder governments would have been necessary in both cases. From a legal point of view the Bund needed the Länder for introducing debt limits in the constitution, because changing the constitution requires a 2/3 majority in Bundesrat. But Länder did not need the Bund for reforming their debt regulations in their Länder constitutions.

In the event, Bund and commission chairs pursued their prime interest of establishing debt limits for Bund and Länder. The federal government was supported by governmental parties, because governmental parties assigned two delegates in the reform commission from the federal government. This institutional entanglement improved the position of Bund vis-à-vis Länder. The four members of opposition parties were not able to formulate an alternative policy position at the federal level. These four commission members belonged to three different parties with heterogeneous positions on debt limits, which made alternative policy formulation rather difficult. The FDP favoured a liberal conception of federalism with competing Länder instead of a strong federal regime, as did the LINKE. Hence the FDP position as laid down in position papers contained a certain degree of tax autonomy for Länder with enhanced possibilities to deviate from federal legislation (Kdrs.94, Kdrs. 116 2008). The FDP also argued that the possibility for Länder to unite should be made easier. Throughout the last decades constitutional reforms made the possibility for Länder to unite very difficult. The process foresees a complex mechanism in Article 29 of the Grundgesetz of a combination of a legislative process with referenda with a high quorum. The FDP suggested either reducing the necessary quorum for referenda or through agreement between the Länder at stake (Kdrs.119 2009). The LINKE, on the other hand, supported the status quo (Kdrs.47 2007). At best for the LINKE debts should be cleared by selling gold reserves (Kdrs.139 2008) but under no circumstances should debt limits be included in the constitution (Kdrs.150 2008). In



agreement with all other parties except the LINKE the GREENS also favoured debt limits. But the party recognized that by introducing debt limits the Länder would lose a source of revenue. If debt limits were to be set up the Länder would have to get other sources of revenue. Therefore Länder should get the right, argued the GREENS, to raise overhead taxes (Kdrs.95 2007).

Positions of key political parties show that debt limit is far more than merely a technical question. Whether a state should be able to make debts for public spending or whether the state should not be allowed to make debts is at the centre of party political ideology.

While left wing political ideology argues that the state has to intervene to ensure equality, right wing ideology emphasises that individuals should act free from state interventions. State debts become important when state interventions must be financed and raising taxes is politically too costly. Hence the discussion of debt limits in the commission was influenced by general conceptions of state-economy relations. The small parties had a particularly clear cut ideological conception regarding debt limits. These were the FDP and the LINKE. The SPD and CDU, CSU position was mixed with the SPD tending towards the left, the CDU and CSU more towards the right.

The financial crisis in autumn 2008 brought about the paradoxical situation wherein even economic right-wing parties launched economic stimulus packages due to economic problems of certain Länder. Such measures should fight the recession that followed the financial crisis. The crises developed at the moment when the commission was supposed to present its final results, in autumn 2008. The commission session scheduled for October 2008 was cancelled and the negotiations stagnated until spring 2009. Some leftist Länder declared the commission a failure because under the condition of a financial crisis it would be irresponsible to limit a state's capacity to act by constitutionally prohibiting state debts (Funk, Höll 2008). In January 2009 the coalition committee of Bund decided to set up the second economic stimulus package (Konjunkturpaket II) causing even more state debts after setting up a bail-out for banks. CDU/CSU and FDP dominated Länder followed the national example by announcing their own economic stimulus packages (Soldt 2008). CDU members of the budget committee in Bundestag tied their consent to a second Bund stimulus package to the introduction of debt limits in the constitution (STEB 2009). The first commission session since summer 2008 took place in February 2009 and dealt with



questions of how to proceed with the introduction of debt limits and bringing about the above mentioned compromise. The situation became more complicated than before, because Länder elections in the intervening period had reinforced CDU/CSU and FDP representation in regional government. Those parties are usually opposed to economic stimulus packages, but saw no alternative to launching them because of the financial crisis

Table 2  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments with CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
11/06-06/07	4	18	47
06/07-05/08	7	18	44
05/08-10/08	10	18	41
10/08-01/09	10	24	35
01/09-07/09	10	29	30

(Sources: Own Calculations)

Finally, elections in Länder caused divided government meaning that state organs are dominated by different political parties at a time when the results of negotiations had to be ratified. Länder governments were not only opposed to the federal government, but were also not in favour of state interventions through economic stimulus packages. The world wide recession forced Governments also in the Länder to drop their political aim of balanced budgets and to set up economic stimulus packages. Of course this led to a higher state indebtedness. CDU/CSU and FDP governments in particular criticised state indebtedness most. This gave rise to the paradox that the most determined critics caused highest increase of state indebtedness. Out of strategic calculations CDU/CSU and FDP supported the reform of the federal structure in a way that was perceived more restrictive regarding state debt regulations, even if the regulation would only apply for the Bund. That meant CDU/CSU and FDP could not achieve their so far proclaimed political goal of balanced budgets, but replaced this goal with the new proposed debt prohibition.

Until February 2009 the situation for weaker Länder was strategically good, because the Bund needed their consent even if debt rules would not apply for Länder. But in the first session of the federal commission after the financial crisis in February 2009 the stronger Länder were widely dominated by CDU/CSU and FDP coalitions, who doubted



the use of the planned new debt rules, if they were only valid for the Bund. Hence strong Länder and foremost the Bavarian CSU made clear that the envisaged new debt rules should apply for both Bund and Länder. If it did not apply to both they would reject a proposed reform.

In face of this package deal of the stronger Länder, weaker Länder were forced to choose between the lesser of two evils: Either they could reject a federal reform for Bund and Länder that would force them to balance their budget by 2020. Or they could reject the entire reform against the will of the Bund and stronger Länder. In this case open conflict among Länder would have arisen, which would have put in question the legitimacy of the German federal structure.

#### 4. Ratification of the Results

The second federal commission could not entirely unify Länder positions on debts limits. That resulted in vote abstention of the Länder Berlin and Schleswig Holstein; although both benefit from the consolidation assistance included in the second stage of federal reforms.

Abstention has the same effect as a rejection, because the absolute majority of votes are required to pass legislation. Mecklenburg Vorpommern rejected the financial reforms. Its criticism is that it has significant structural problems, with the highest unemployment rate among German Länder, and nevertheless has to pay for the consolidation assistance for other Länder as well (Pergande 2009). Länder that have so far considered themselves as poor now have to contribute to the reduction of new indebtedness of the five poorest Länder.

Table 3  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments of CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
07/09-08/09	10	29	30

(Sources: Own Calculations)



Since elections in Bremen on 13 May 2007 the parties of the federal Government had lost their qualified majority in the Bundesrat. Since the elections in Hessen on 18 January 2009, governmental parties have not had a majority in the Bundesrat because the former absolute majority of CDU had been replaced by a coalition of CDU and FDP. Just as during agenda setting between May and November 2006 the FDP could in 2009 influence Bundesrat decisions through its participation in coalition governments in six Länder.

This meant that FDP was not only a pivotal player during agenda setting but also during ratification of the reforms in the Bundesrat. The ideological aspect of debt limits was close to FDP conceptions of economic policies, which are sympathetic to limiting state interventions in the market.

For some weaker Länder the consolidation assistance provided incentives for consent to the reform. Government parties held 30 votes in Bundesrat and with 29 votes of Länder with FDP government, the 2/3 majority of 59 votes was achieved for ratifying the reform. But Bundestag consent was necessary too. The reform was introduced into the legislative process in May 2009. Surprisingly the FDP group in the Bundestag did not vote for the second stage of federal reforms even though their colleagues in the Länder governments were in favour. Whereas the FDP held a powerful position in Bundesrat this was not the case in the Bundestag. In the Bundestag the “grand coalition” held a comfortable 2/3 majority of her own, without the need for any other party’s consent.

## 5. Conclusion

The paper explained how the commission of Bundestag and Bundesrat was established and how the issue of debt limits came on the agenda. Since the Bund wanted to pass legislation quickly it depended on the consent of governments with FDP participation in the Bundesrat. The FDP only agreed to the reform on the condition that a second bicameral commission would be set up dealing with fiscal federalism. The task was to reform the financial relationship between Bund and Länder, so that Länder should be placed in a better situation to carry out their constitutional obligations.



When the second commission began its work, the provisions of LFA had been agreed upon recently, which meant that this subject was off the agenda. With the new territorial organization of Länder the issue of tax autonomy and regulations regarding state limits were a natural focus of discussion. During the negotiations of the commission the financial crisis hit Germany and was followed by a recession. As an answer to the crises the Bund and right-wing Länder governments launched economic stimulus packages resulting in the highest annual rise of state indebtedness in recent German history. Those right-wing governments that had previously criticised state indebtedness most before the financial crises were responsible for increasing state debts. This did not prevent those governments from arguing that, to support balanced budgets Bund and Länder must not in future take up state debts and instead should cooperate with a newly established stability council consisting of Bund and Länder governments.

From the case of the second stage of federal reforms in Germany it can be seen that the issue of debt limits has been agreed upon as a package deal between political parties and between Bund and Länder. In the first step the negotiations consisted of a proposal of the federal government supported by CDU/CSU and SPD as the major parties holding the qualified majority in the Bundestag. Elections brought the FDP in a stronger position, and against the backdrop of the financial crisis stronger Länder also doubted the usefulness of debt brakes applying only to the Bund. Therefore stronger Länder forced weaker Länder either to accept the new debt brakes -chaining them to balanced budgets until 2020 or to be responsible for a failed reform. In this situation weaker Länder saw the new constitutional debt regime as the lesser of two evils and agreed to the reform.

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<sup>11</sup>The abbreviation Kdrs. means printed matter of the second federal commission (Kommissionsdrucksache).



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Some reflections on the choices of the European Court  
of Justice in the *Küçükdeveci* preliminary ruling

by

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## Abstract

In *Küçükdeveci* judgment, the European Court of Justice declared that national judges must set aside national norms that are at variance with the general principle of non discrimination on grounds of age, by virtue of its direct applicability (even in disputes between private parties). This principle is also codified in the Charter of Fundamental Rights and in the EC Directive 2000/78, therefore it is worth analyzing these three sources in turn (general principles, Charter, directives) to understand which of them can have horizontal direct effects, and upon which conditions. In addition to that, the author focuses on the validity of an "incidental direct effects" doctrine, and on the repercussions that this decision might have on the social cohesion of the European Union.

## Key-words:

General principles of the European Union, directives, European Charter of Fundamental Rights, non discrimination on grounds of age, social cohesion



## 1. Preliminary remarks

Some months have passed, and it is perhaps appropriate now to recall the *Küçükdeveci* judgment of the European Court of Justice (ECJ)<sup>I</sup> and account for its most remarkable aspects.

The ECJ was asked to pronounce on the EU-legality of a German domestic provision, under which employers who wish to dismiss an employee, can, for the purpose of calculating the length of the period of notice to be provided, disregard the years of seniority that the employee has accrued before the age of 25. In the main proceedings, an employee who had been dismissed under these terms brought his employer before the Labor Tribunal, asking the judge to declare the irregularity of his dismissal.

The measure appeared to violate the principle of non-discrimination on grounds of age, that the ECJ had already had the opportunity to specify and use in the infamous 2005 *Mangold* case.<sup>II</sup> The challenged provision was also at variance with the letter of the non-discrimination directive (Directive 2000/78), which mandates that, in the absence of a justification, ‘there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 [including age]’ (Art. 2).

Although at the time of the main proceedings the non-discrimination directive was fully operative (in fact, it had been carefully transposed by the German legislator),<sup>III</sup> it could not be invoked to challenge the legality of the German norm, because directives normally do not have horizontal direct effect, that is, they cannot dispose of disputes between private parties.

As a result, the ECJ compared the challenged norm with the general principle, and found them to be incompatible. Specifically, the Court acknowledged the motivation behind this *prima facie* discrimination (the necessity to provide eldest workers with a comparatively higher protection in case of dismissal), but deemed the German provision to be insufficiently effective (and disproportionate) even in light of such purpose. Accordingly, the ECJ instructed national judges to set this provision aside, even in the case of private disputes (Wiesbrock 2010).



## 2. General principles of the EU order.

The *Kücükdeveci* judgment is very instructive as to the horizontal effect of general principles, an aspect that – apart from the *Mangold* ruling – had virtually never been explored, either in the case-law or in the scholarship. Intuitively, general principles serve an auxiliary function: they inform the interpretation and inspire the application of specific rules. As for their direct application, the framework is more blurred, especially when principles are supposed to affect the outcome of disputes between individuals (as opposed to being used to assess the legality of the acts of public authorities).

Historically, general principles emerge to fill the physiologic *lacunae* of any legal order, and to provide citizens with some instruments of control against the exercise of public powers. Principles typically consist of procedural and substantive guidelines aimed at ensuring an appropriate threshold of fairness of the public intervention in social life. Accordingly, their role in litigation is mostly as standard of review for state action (vertical direct effect). To put it differently, when principles are enforced, they generally bestow on private parties rights, rather than enforceable obligations.

When it comes to non-discrimination, however, it may be that private parties are just as likely to adopt discriminatory conduct as are public authorities. Therefore, non-discrimination principles end up being invoked in private litigation; the issue, then, is whether it is desirable that the set of enforceable rights and obligations of individuals should depend on the content of non-codified general principles, as opposed to positive regulation.

In other words, the judicial creation of a new set of unwritten obligations of private subjects is difficult to reconcile with the values of legal certainty, and results in a scenario where individuals can be held liable for the failure of their States to comply with the duty to implement EU law in keeping with the general principles of law. In the case under consideration, for instance, Germany's failure to harmonize its domestic legislation to the non-discrimination principle would have established the employer's liability *vis-à-vis* the employee, although the former had done nothing but abiding by valid national law.

The “horizontalization” of general principles can be read in light of the similar process relating to European directives which, in turn, followed the footsteps of the private



application of Treaty norms (see Case 43/75 *Defrenne v. Sabena*,<sup>IV</sup> discussed below). However, the ECJ did not ratify in the case under consideration both direct applicability and horizontal effect of the general principles; as more fully described below, their relevance in private disputes is only of partial (incidental) application.

### 3. Incidental horizontal effect.

The ECJ did not rule that directives can have direct horizontal effect. Quite to the contrary, the Court recalled and reaffirmed its previous case-law on the point; indeed, despite the call for a change uttered by the Advocate General in his opinion, the ECJ rejected the temptation to overrule the well-established principle that ‘a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual’ (par. 46).

However, although the direct effect of the directive instrument has not been not reformed by the ECJ, much of the doctrinal debate developed with respect to directives can be reproduced here, not only with respect to the issue of horizontal application (see above), but also as regards the notion of incidental direct effect.

This formula has been consistently used in the literature to identify the possible use of an EU norm to obviate the application of the existing national provision, when these two instruments are incompatible. However, differently from what happens with (full) direct effect, the EU provision is not applied directly to resolve the controversy. To put it differently, its content does not affect the outcome of the dispute, which has to be decided on the basis of national law (excluding the disappplied rule).

According to this doctrine, directives cannot dispose of a claim between individuals and substitute the applicable EU-implementing domestic law, but they can exclude its application, serving as a ‘touchstone’ (Prechal 2005: 234) of EU-consistency. (Craig and Búrca 2008: 271)<sup>V</sup> There were cases in which the ECJ seemingly adopted this rationale, as limitedly as in the *Unilever* case<sup>VI</sup> or more robustly (although apodictically) like in the *Bernáldez*<sup>VII</sup> and *Bellone*<sup>VIII</sup> ones.

This view might have inspired the ECJ in *Mangold* and *Küçükdeveci*: German national judges should have simply used the general principle of non-discrimination on grounds of



age to set aside national discriminatory provisions. The main dispute, then, would have been resolved applying the default rules of national law (in the *Küçükdeveci* case, the German provision establishing a direct proportion between seniority and length of the notice period).

#### 4. Directives: a Trojan horse for the application of EU law?

Despite the ECJ's concern to deny any *révirement* on directives' legal effect, these latter can nonetheless play a major role. First of all, they prove helpful in identifying the content of the general principle. The reconstruction of general principles has always represented a very delicate task for the Court, and the existence of a legal source that lays down the shared understanding of the Member States with respect to a principle can reduce any further difficulty in this respect. Hence, the systematic use, in the reasoning of the judgment, of the formula 'the principle of non-discrimination on grounds of age, as given expression in Directive 2000/78,' in which the formula is accorded a formal role, next to the principle.

More technically, the directive is determinant inasmuch as it certifies the existence of an EU competence on the matters that it regulates. Accordingly, since the subject of the directive falls under the EU sphere of action, general principles can apply thereto, including in the cases (like in *Küçükdeveci* or *Mangold*) in which the directive itself cannot apply. In other words, directives may be used as a precondition for the application of the principle (Sciarabba 2010).

In *Mangold*, the challenged provision had been adopted to transpose the non-discrimination directive, therefore the attribution of the non-discrimination matter to the EU did not trigger obvious issues as to the extent of the EU competence. In *Küçükdeveci*, instead, it was more controversial whether the domestic provision could be reviewed against EU law. The connection between the German rule (regulating an aspect of dismissal procedures) and the directive is indirect, as the former is not an expression of non-discrimination policies, but merely a norm belonging to one of the fields to which non-discrimination principles should apply (Thüsing and Horler 2010).



The ECJ failed to take into account this weaker connection and applied the *Mangold* doctrine: the existence of the directive and its theoretical application to the field of dismissals is sufficient for the EU to have competence thereon; accordingly, EU general principles can represent the standard of review for the legality of the domestic norm, even if the directive has no direct effect.

In sum: EU law applies (through its general principles) even on matters that are incidentally governed by a directive, and even if this latter does not apply. In the case of directives that build upon a general principle, such as the non-discrimination directive at stake in *Mangold* and *Küçükdeveci*, the legal outcome is virtually identical to the existence of a directive's direct horizontal effect, given the similarity between the content of this latter and the principle.

## 5. The Charter of Fundamental Rights.

The principle of non-discrimination on grounds of age, besides being enshrined in the directive 2000/78 and having been ratified in *Mangold*, is also codified in the Charter of Fundamental Rights (Art. 21, first paragraph). The ECJ deliberately avoid emphasizing this aspect (see the laconic wording of par. 22 of the decision, in which it simply mentions that under Art. 6(1) of the Treaty on the Functioning of the European Union the Charter has the same force of the Treaties).

This reluctance is likely due to the fact that the Lisbon Treaty, carrying within the hardening of the Charter, entered into force only in December 2009, long after the facts leading to the main proceedings. The ECJ could not rule in favor of the direct application of the Charter without being accused to have provided it with some undue retroactive effect.

However, the overall design of the decision is built upon some long-reaching implications, which may bring significant consequences in the current post-Lisbon scenario. Indeed, the Charter's acquired Treaty-like nature provides private parties with the power to invoke it in private disputes on the basis of the *Defrenne* doctrine. In *Defrenne*, indeed, the Court clarified that directives may be invoked between private parties when



their content 'provides further details regarding certain aspects of the material scope' of treaty norms (par. 54).

As a result, directives detailing some of the principles listed in the Charter (many of which have the status of general principles of the EU) attain direct horizontal applicability, in the sense that they merely facilitate the direct horizontal application of the Charter, by specifying its content. The Charter's horizontal application is a profound development of the EU system, inasmuch as it establishes new obligations on EU citizens (and not only on EU or national bodies) for the purpose of enforcing certain constitutional rights and principles.

## 6. The social impact of *Kücükdeveci*

Quite apart from the issue of the effects of directives and general principles, between the lines of the *Kücükdeveci* judgment it is possible to spot the premises of a further development. Ruling that EU citizens must bear part of the cost for the actual implementation of the Charter's rights, the ECJ finally accomplished the preamble of the Charter, which warns the beneficiaries of the rights protected therein that ('[e]njoyment of these rights entails responsibilities').

Granted, duties and obligations flowing from the EU legislation are not an innovation, but for the first time they are not designed in this judgment to serve some structural purpose of the economic Community (such as the functioning of the Common Market). Private subjects are called to contribute to the constitutional integration of the EU, and to incur costs and obligations aimed at ensuring that other citizens' non-market rights are safeguarded. This is suggestive of a new notion of solidarity, which for once is not based on an opportunistic reading of citizenship.

This shift can be better appreciated considering what had been the ECJ's approach up until now. In the past, the Court had typically preferred not to impose upon member states judicially-designed solutions which could have altered domestic welfare policies, hence the systematic use of the indirect effect doctrine, whereby the ECJ instructs ordinary judges to interpret domestic provisions as much as possible in keeping with EC directives,



yet gives them the power to choose how to resolve the dispute in practice, so as to accommodate the interests at stake (Niglia 2010).

This hands-off approach is missing in *Küçükdeveci*: the choice to elevate the stance of non-discrimination rights in litigation (through the Charter, or through recourse to general principles) makes the indirect effect stratagem useless. More importantly, it becomes clear through the judgment that non-discrimination rights deserve protection regardless of the possible good faith of the perpetrators of the abuse: the interest of redressing discrimination conduct prevails over the position of those who erroneously based their behavior on national law.

As a result, EU citizens are finally called to contribute to the constitutional building of Europe,<sup>IX</sup> and States are strongly pressed to act diligently in their transposition duties, since any failure to conform national legislation to EU law (be it a directive, a general principle or a provision of the Charter) may result in blameless citizens being punished in court.

<sup>I</sup> ECJ, Case C-555/07, *Seda Küçükdeveci v. Swedex GmbH & Co. KG (Küçükdeveci)*, nyp, of 19 January 2010.

<sup>II</sup> ECJ, Case C-144/05, *Mangold v Rüdiger Helm*, 2005, ECR I-998.

<sup>III</sup> This aspect differentiates the legal setting of *Küçükdeveci* from the *Mangold* precedent, in which one of the most controversial issues was precisely that the period for transposition had not expired yet.

<sup>IV</sup> ECJ, Case C-43/75, *Defrenne v. Sabena*, 1976, ECR 455.

<sup>V</sup> The distinction between *invocabilité d'exclusion* and *invocabilité de substitution* is discussed at some length in Prechal (2010, 235, 267-268).

<sup>VI</sup> ECJ, Case C-443/98, *Unilever Italia SpA v. Central Food SpA*, 2000, ECR I-7535.

<sup>VII</sup> ECJ, Case C-129/94, *Criminal proceedings against Rafael Ruiz Bernaldez*, 1996, ECR I-1829.

<sup>VIII</sup> ECJ, Case 215/97, *Bellone v. Yokohama*, 1998, ECR-I 2191.

<sup>IX</sup> As opposed to the established trend according to which EU citizens are always only recipients of rights, see J.H.H. Weiler (2010), *On the Distinction between Values and Virtues in the Process of European Integration*, 2010, draft.

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PERSPECTIVES ON FEDERALISM



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## Federal Reform II in Germany

by

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## Abstract

Recently Germany experienced yet another federal reform shortly after a previous modification to the German federal system. This paper explains agenda setting, negotiations and ratification of this recent federal reform. With regards to the case of the most recent federal reform in Germany the issue of debt limits had been effectively agreed upon as a package deal between political parties and Bund and Länder alike.

The Grand Coalition of CDU/CSU and SPD managed to quickly gather a qualified majority in the Bundestag, making the qualified majority of Länder the crucial negotiating point. At the end, stronger Länder forced weaker Länder either to accept the new debt regime suggested primarily by the federal government, forcing Bund and Länder to uphold balanced budgets until 2020 or to be responsible for a failed reform. In this situation weaker Länder saw the new constitutional debt regime as more acceptable than rejecting a reform.

## Key-words:

Federalism, reform, Germany, financial crisis, balanced budget



## 1. Introduction <sup>1</sup>

Germany recently experienced a second federal reform.. This paper considers the agenda of the reform commission; the negotiations within the commission and their result; and the ratification of the commission's conclusions. The paper concludes that this reform is a solution of the smallest common denominator that leaves open crucial questions of German federalism. A further commission is foreseeable.

## 2. Setting the Agenda

A bicameral commission composed of Bundestag and Bundesrat representatives negotiated the first round of federal reforms in 2006, leading to some disentanglement of competencies between the Bund and Länder. Disentanglement was seen as a necessary step for reducing Bundesrat participation in federal legislation and federal involvement in jurisdictions of Länder (Benz 2005). Finances between Bund, and Länder had been excluded in the reform.

For dominating actors the separation between competences and finances was supposed to make compromise easier.

In the second stage of federal reforms, a second bicameral commission dealt with the financial relationship between Bund and Länder from 2007-2009. Negotiations started a year after the German Constitutional Court (Bundesverfassungsgericht – BVerfG) decided that the Bund must only pay additional finances (Bundesergänzungszuweisungen - BEZ) to Länder in case of a budgetary crisis causing a danger for the federal level (Bundesstaatlicher Notstand). This decision stood in contrast to previous decisions of the Court. The FDP (Free Democratic Party) played a crucial role in setting the agenda for the commission because of a personal agreement between current chancellor Angela Merkel (Christian Democratic Union - CDU) and Guido Westerwelle (FDP) that a second federal commission about finances would have to follow the first stage of federal reforms (Westerwelle 2006). For the FDP every reform of the federal system offers the opportunity



to promote their ideological position of a moderately competitive form of federalism. At the same time Länder branches of the FDP were coalition partners in important Länder governments of which consent was needed in the Bundesrat to ratify the first federal reform.

Table 1  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments with CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
11/05-05/06	11	22	36
05/06-11/06	7	18	44

(Source: Own Calculations)

The number of total votes in Bundesrat is 69; therefore a qualified majority would consist of 46 votes. Länder governments led by Bund governmental parties only held a simple majority of 44 votes in Bundesrat at the time of voting for the first stage of federal reforms. Since the newly elected federal government wanted to succeed in passing legislation at this early juncture of its term it was in its interest to pass the first stage of federal reforms quickly. The federal government could then move to set up the second commission, helped by the consent of Länder governments with FDP participation in Bundesrat.

The decision to set up the commission was accompanied by a list of topics to be debated in the commission, these topics focussing on the regulation of the budget crisis and rules regarding debts (Bundesrat 2006). Concerning the financial relationship between Bund and Länder this subject is important, but not central to the arrangement of fiscal federalism in Germany. Another subject which is central to fiscal federalism is the fiscal equalisation scheme (Länderfinanzausgleich - LFA) which discourages high populated Länder from increasing their resources because they will be distributed among weaker Länder up to 95 % of the federal mean. Weaker Länder, like city states and less dense populated Länder argue that they face higher costs for providing public services compared to the federal mean. In this controversy a BVerfG decision (Maßstäbe Urteil) of the year 1999 obliged the legislative bodies to adjust the LFA. This adjustment took place shortly before the second federal commission and fixed the LFA for the period between 2005 and



2019. Therefore the commission did not want to discuss this matter anew. The focus of the commission lay on another problem, that relating to state indebtedness.

### 3. Results and Negotiation Patterns

The so-called golden rule in the old Article 115 of limiting state debts to investment was abolished in the second reform and a new mode of regulating debts and amortisation was introduced into the Grundgesetz. Under normal economic circumstances it is now forbidden to make new debt, a prohibition designed to achieve the goal of balancing the debts of the Bund and Länder. This general prohibition has four exceptions. Firstly, according to the second federal reform the federal budget is considered as balanced even if there is a structural deficit of 0.35 % of annual GDP growth. Furthermore the maximum amount of debts Bund and Länder are 0.5 % of annual GDP growth, leaving the possibility for all Länder to take up debts for 0.15 % of annual GDP growth. The second exception pays attention to the cyclical nature of economic development. In times of economic recession tax revenue decreases and higher national debts are necessary to stimulate the economy. If the economy is booming again, these debts must be cleared in a limited period of time. To this end a new stability council (Stabilitätsrat) was set up consisting of the ministers of Bund and Länder for finance and the federal minister for economic affairs. The same persons already form the financial planning council (Finanzplanungsrat), but this institution proved to be without any impact on budgetary behaviour in the past. The new stability council acts as a guardian for the budgets and evaluates federal and Länder budgets according to financial indices which should lead to create pressure of the public to avoid debts, although neither of the two councils may take binding decisions. For determining the economic cycle a position of economic normality will be determined referring to macro-economic indicators. Based on this determined position of normality, it will be decided whether the Bund or a Land faces a recession or if the economy is booming. Depending on this evaluation the council considers whether new debts can be made, or if old debts must be paid back. Thirdly the debt regulations do not apply in cases of emergency or, fourthly, in cases of crisis over which the state does not have control. Despite the four exceptions, the general prohibition of debts is supposed to result in



balanced budgets by 2020 at the latest for the Länder and by 2016 for the Bund. For some Länder this task is particularly difficult.

Until 2020 Bremen, Schleswig-Holstein, Saarland, Sachsen-Anhalt and Berlin will receive a consolidation assistance totalling 7.2 billion € for the consolidation of their budgets but only under the condition that their budgets will be balanced by 2020 at the latest and that they cooperate with the newly established stability council. In addition to the reforms of national debt regulations the second stage of federal reforms included administrative issues such as public IT cooperation, benchmarking, motorway provisions and a national cancer registry.

The results of the financial reform were largely as the federal minister of finance had outlined in his position papers (Kdrs.98; Kdrs.96 2008)<sup>II</sup>, although these papers had not considered the question of the 7,2 billion € designated to help struggling Länder. At the end of the negotiations both Bund and Länder agreed they will pay half of the total amount each of the consolidation assistance, with an exemption for those Länder benefitting from the assistance. For Länder that had benefitted from the LFA this was particularly taxing as it meant that they would now have to pay towards the five poorest Länder so that these Länder can consolidate their budgets (Oettinger 2009).

In this second round of federal reform, the “grand coalition” of SPD and CDU/CSU had the chance to show that they could address substantive problems. In Western Germany a grand coalition at the federal level had governed only once before, from 1966-1969, and had so far been associated on the one hand with large constitutional change, but change achieved by back door compromises neglecting the interests of the voter.

In 2005 the second grand coalition at the federal level seemed to have particularly low legitimacy because its two participants, the CDU/CSU and the SPD, achieved notably poor election results compared with their previous performance in general elections. It was a preliminary success of the grand coalition that the second federal commission presented an outcome and did not declare failure of negotiations. The first stage of reforms had been revitalized through the grand coalition of 2005. A failed second federal commission would have increased voters distrust in the entire political elite and facilitated the rise of populist parties. For the Bund and for the chairs of the second federal commission, Günther Oettinger (CDU) and Peter Struck (SPD), any outcome was better than nothing. It was in



the personal interests of both leaders that the commission did not fail and could present a text before the general elections in 2009. For Struck (SPD) this commission was the last political project of his career and he did not want to retire with a failed federal reform. The second federal commission provided an opportunity for Oettinger (CDU) to overcome isolation in his party and to underpin his political ambitions in the Bund (DPA 2007).

The ideal outcome for the Bund and commission chairs was a federal reform that would avoid further state debts for Bund and Länder. The second best outcome for the Bund and the chairs was merely debt limits for the Bund only. Consent of Länder governments would have been necessary in both cases. From a legal point of view the Bund needed the Länder for introducing debt limits in the constitution, because changing the constitution requires a 2/3 majority in Bundesrat. But Länder did not need the Bund for reforming their debt regulations in their Länder constitutions.

In the event, Bund and commission chairs pursued their prime interest of establishing debt limits for Bund and Länder. The federal government was supported by governmental parties, because governmental parties assigned two delegates in the reform commission from the federal government. This institutional entanglement improved the position of Bund vis-à-vis Länder. The four members of opposition parties were not able to formulate an alternative policy position at the federal level. These four commission members belonged to three different parties with heterogeneous positions on debt limits, which made alternative policy formulation rather difficult. The FDP favoured a liberal conception of federalism with competing Länder instead of a strong federal regime, as did the LINKE. Hence the FDP position as laid down in position papers contained a certain degree of tax autonomy for Länder with enhanced possibilities to deviate from federal legislation (Kdrs.94, Kdrs. 116 2008). The FDP also argued that the possibility for Länder to unite should be made easier. Throughout the last decades constitutional reforms made the possibility for Länder to unite very difficult. The process foresees a complex mechanism in Article 29 of the Grundgesetz of a combination of a legislative process with referenda with a high quorum. The FDP suggested either reducing the necessary quorum for referenda or through agreement between the Länder at stake (Kdrs.119 2009). The LINKE, on the other hand, supported the status quo (Kdrs.47 2007). At best for the LINKE debts should be cleared by selling gold reserves (Kdrs.139 2008) but under no circumstances should debt limits be included in the constitution (Kdrs.150 2008). In



agreement with all other parties except the LINKE the GREENS also favoured debt limits. But the party recognized that by introducing debt limits the Länder would lose a source of revenue. If debt limits were to be set up the Länder would have to get other sources of revenue. Therefore Länder should get the right, argued the GREENS, to raise overhead taxes (Kdrs.95 2007).

Positions of key political parties show that debt limit is far more than merely a technical question. Whether a state should be able to make debts for public spending or whether the state should not be allowed to make debts is at the centre of party political ideology.

While left wing political ideology argues that the state has to intervene to ensure equality, right wing ideology emphasises that individuals should act free from state interventions. State debts become important when state interventions must be financed and raising taxes is politically too costly. Hence the discussion of debt limits in the commission was influenced by general conceptions of state-economy relations. The small parties had a particularly clear cut ideological conception regarding debt limits. These were the FDP and the LINKE. The SPD and CDU, CSU position was mixed with the SPD tending towards the left, the CDU and CSU more towards the right.

The financial crisis in autumn 2008 brought about the paradoxical situation wherein even economic right-wing parties launched economic stimulus packages due to economic problems of certain Länder. Such measures should fight the recession that followed the financial crisis. The crises developed at the moment when the commission was supposed to present its final results, in autumn 2008. The commission session scheduled for October 2008 was cancelled and the negotiations stagnated until spring 2009. Some leftist Länder declared the commission a failure because under the condition of a financial crisis it would be irresponsible to limit a state's capacity to act by constitutionally prohibiting state debts (Funk, Höll 2008). In January 2009 the coalition committee of Bund decided to set up the second economic stimulus package (Konjunkturpaket II) causing even more state debts after setting up a bail-out for banks. CDU/CSU and FDP dominated Länder followed the national example by announcing their own economic stimulus packages (Soldt 2008). CDU members of the budget committee in Bundestag tied their consent to a second Bund stimulus package to the introduction of debt limits in the constitution (STEB 2009). The first commission session since summer 2008 took place in February 2009 and dealt with



questions of how to proceed with the introduction of debt limits and bringing about the above mentioned compromise. The situation became more complicated than before, because Länder elections in the intervening period had reinforced CDU/CSU and FDP representation in regional government. Those parties are usually opposed to economic stimulus packages, but saw no alternative to launching them because of the financial crisis

Table 2  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments with CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
11/06-06/07	4	18	47
06/07-05/08	7	18	44
05/08-10/08	10	18	41
10/08-01/09	10	24	35
01/09-07/09	10	29	30

(Sources: Own Calculations)

Finally, elections in Länder caused divided government meaning that state organs are dominated by different political parties at a time when the results of negotiations had to be ratified. Länder governments were not only opposed to the federal government, but were also not in favour of state interventions through economic stimulus packages. The world wide recession forced Governments also in the Länder to drop their political aim of balanced budgets and to set up economic stimulus packages. Of course this led to a higher state indebtedness. CDU/CSU and FDP governments in particular criticised state indebtedness most. This gave rise to the paradox that the most determined critics caused highest increase of state indebtedness. Out of strategic calculations CDU/CSU and FDP supported the reform of the federal structure in a way that was perceived more restrictive regarding state debt regulations, even if the regulation would only apply for the Bund. That meant CDU/CSU and FDP could not achieve their so far proclaimed political goal of balanced budgets, but replaced this goal with the new proposed debt prohibition.

Until February 2009 the situation for weaker Länder was strategically good, because the Bund needed their consent even if debt rules would not apply for Länder. But in the first session of the federal commission after the financial crisis in February 2009 the stronger Länder were widely dominated by CDU/CSU and FDP coalitions, who doubted



the use of the planned new debt rules, if they were only valid for the Bund. Hence strong Länder and foremost the Bavarian CSU made clear that the envisaged new debt rules should apply for both Bund and Länder. If it did not apply to both they would reject a proposed reform.

In face of this package deal of the stronger Länder, weaker Länder were forced to choose between the lesser of two evils: Either they could reject a federal reform for Bund and Länder that would force them to balance their budget by 2020. Or they could reject the entire reform against the will of the Bund and stronger Länder. In this case open conflict among Länder would have arisen, which would have put in question the legitimacy of the German federal structure.

#### 4. Ratification of the Results

The second federal commission could not entirely unify Länder positions on debts limits. That resulted in vote abstention of the Länder Berlin and Schleswig Holstein; although both benefit from the consolidation assistance included in the second stage of federal reforms.

Abstention has the same effect as a rejection, because the absolute majority of votes are required to pass legislation. Mecklenburg Vorpommern rejected the financial reforms. Its criticism is that it has significant structural problems, with the highest unemployment rate among German Länder, and nevertheless has to pay for the consolidation assistance for other Länder as well (Pergande 2009). Länder that have so far considered themselves as poor now have to contribute to the reduction of new indebtedness of the five poorest Länder.

Table 3  
Bundesrat distribution of votes.

Time	Bund <> Länder (Governments of SPD-LINKE, SPD-GREENS, CDU-GREENS)	Governments of CDU, CSU-FDP	Bund = Länder (Governments of SPD, CDU and CSU)
07/09-08/09	10	29	30

(Sources: Own Calculations)



Since elections in Bremen on 13 May 2007 the parties of the federal Government had lost their qualified majority in the Bundesrat. Since the elections in Hessen on 18 January 2009, governmental parties have not had a majority in the Bundesrat because the former absolute majority of CDU had been replaced by a coalition of CDU and FDP. Just as during agenda setting between May and November 2006 the FDP could in 2009 influence Bundesrat decisions through its participation in coalition governments in six Länder.

This meant that FDP was not only a pivotal player during agenda setting but also during ratification of the reforms in the Bundesrat. The ideological aspect of debt limits was close to FDP conceptions of economic policies, which are sympathetic to limiting state interventions in the market.

For some weaker Länder the consolidation assistance provided incentives for consent to the reform. Government parties held 30 votes in Bundesrat and with 29 votes of Länder with FDP government, the 2/3 majority of 59 votes was achieved for ratifying the reform. But Bundestag consent was necessary too. The reform was introduced into the legislative process in May 2009. Surprisingly the FDP group in the Bundestag did not vote for the second stage of federal reforms even though their colleagues in the Länder governments were in favour. Whereas the FDP held a powerful position in Bundesrat this was not the case in the Bundestag. In the Bundestag the “grand coalition” held a comfortable 2/3 majority of her own, without the need for any other party’s consent.

## 5. Conclusion

The paper explained how the commission of Bundestag and Bundesrat was established and how the issue of debt limits came on the agenda. Since the Bund wanted to pass legislation quickly it depended on the consent of governments with FDP participation in the Bundesrat. The FDP only agreed to the reform on the condition that a second bicameral commission would be set up dealing with fiscal federalism. The task was to reform the financial relationship between Bund and Länder, so that Länder should be placed in a better situation to carry out their constitutional obligations.



When the second commission began its work, the provisions of LFA had been agreed upon recently, which meant that this subject was off the agenda. With the new territorial organization of Länder the issue of tax autonomy and regulations regarding state limits were a natural focus of discussion. During the negotiations of the commission the financial crisis hit Germany and was followed by a recession. As an answer to the crises the Bund and right-wing Länder governments launched economic stimulus packages resulting in the highest annual rise of state indebtedness in recent German history. Those right-wing governments that had previously criticised state indebtedness most before the financial crises were responsible for increasing state debts. This did not prevent those governments from arguing that, to support balanced budgets Bund and Länder must not in future take up state debts and instead should cooperate with a newly established stability council consisting of Bund and Länder governments.

From the case of the second stage of federal reforms in Germany it can be seen that the issue of debt limits has been agreed upon as a package deal between political parties and between Bund and Länder. In the first step the negotiations consisted of a proposal of the federal government supported by CDU/CSU and SPD as the major parties holding the qualified majority in the Bundestag. Elections brought the FDP in a stronger position, and against the backdrop of the financial crisis stronger Länder also doubted the usefulness of debt brakes applying only to the Bund. Therefore stronger Länder forced weaker Länder either to accept the new debt brakes -chaining them to balanced budgets until 2020 or to be responsible for a failed reform. In this situation weaker Länder saw the new constitutional debt regime as the lesser of two evils and agreed to the reform.

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<sup>11</sup>The abbreviation Kdrs. means printed matter of the second federal commission (Kommissionsdrucksache).



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