Regional Differentiation in Europe, between EU Proposals and National Reforms

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Abstract

Regions and local governments play a very important role in the application of European law and in the implementation of European policies. The economic crisis of 2008 has accentuated territorial and social differentiation and highlighted the negative effects of globalization. This circumstance has created resentment among peripheral and marginal communities in the electoral results, but also a strong request for involvement, participation and sometimes independence from territories. These developments raise new questions about the relationship between the EU and the Regions and, more widely, about the role of subnational entities in the EU integration process, as they are the institutions nearest to citizens.

The aim of this article is to contribute to that debate by exploring the following research question: 'is subnational differentiation positive or negative for European integration?' Towards a possible answer, two perspectives are examined from a constitutional law approach. From the top down, it examines the attitude of the EU towards regional differentiation, from the origins of the EU integration process and its development until recent initiatives and proposals. From the bottom up, it analyses the role of subnational entities by presenting the Italian experience, through the reforms that have been approved over the years until the recent proposal for asymmetric regionalism. The aim is to understand whether regional differentiation still represents a positive element for the European integration process, considering the role that subnational entities play in many policies and the challenges described earlier.

Keywords: regional differentiation, regional disparities, autonomy, regionalism, subsidiarity, European Union, multilevel governance.

A Introduction: The Role and Value of Regional Differentiation in Theory and with Present Challenges

An impressive number of studies have demonstrated and highlighted the role and value of regional differentiation in economic, political and legal perspectives. For the purpose of this analysis, three famous studies that deal with three different

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aspects of the role and value of differentiations in decentralized systems will be recalled and referenced in the current context:

First, Robert Dahl[1] defined federal democracy as:

> a system in which some matters are exclusively within the competence of certain local units – cantons, states, provinces – and are constitutionally beyond the scope of the authority of the national government; and when certain other matters are constitutionally outside the scope of the authority of the smaller units.

Secondly, Justice Louis D. Brandeis[2] said in a famous dissenting opinion in 1932:

> It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

Lastly, Daniel Elazar's 1979 study[3] dealt with questions of unity and diversity in decentralized systems:

> One of the characteristics of federalism is its aspiration and purpose simultaneously to generate and maintain both unity and diversity [...] Federalizing involves both the creation and maintenance of unity and the diffusion of power in the name of diversity [...] When discussing federalism, it is a mistake to present unity and diversity as opposites. Unity should be contrasted with disunity and diversity with homogeneity, emphasizing the political dimensions and implications of each. [...However] the question remains open as to what kinds or combinations of diversity are compatible with federal unity and which ones are not.

These concepts are currently threatened in Europe by various circumstances, such as globalization, economic crises and Brexit. On the one hand, contemporary systems and societies face complex policy challenges (*i.e.* environmental concerns, migration, economic development) that require coordination, shared rules and intergovernmental collaboration instead of a rigid separation of powers. On the other hand, several countries are struggling with the widening gap in regional disparities, owing to the effects of economic crises and differentiated impact of globalization.

In recent years, a strong demand for autonomy has come from the territories in Europe (in other words, a request for more competences and, sometimes, independence), raising questions about the value of regional differentiation, the

1 R. Dahl, *Democracy, Identity and Equality*, Oslo, Norwegian University Press, 1986, p. 114.

2 *New State Ice Co. v. Leibmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting opinion). On this judgement *see* E.E. Steiner, 'A Progressive Creed: The Experimental Federalism of Justice Brandeis', *Yale Law & Policy Review*, Vol. 2, No. 1, Fall 1983, pp. 1-48.

3 D.J. Elazar, *Federalism and Political Integration*, Ramat Gan, Israel, Turtledove Publishing, 1979, pp. 64, 67.

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role of regional entities as well as the division of competences and intergovernmental relationships between levels of government today in the context of globalization of the economy.[4] An interdependent economy and the openness of markets, in fact, impel competition among territories in order to attract resources and investments. This is, in part, the dynamic behind the new request for more territorial autonomy.

The requests for more autonomy from some territories and the political and constitutional consequences could be used and interpreted as 'moving apart' or could represent the possibility of looking at regional differentiation as a way of 'coming together'. The choice will depend on national reactions but also on European answers.

This article aims at exploring the following research question: is subnational differentiation positive or negative for European integration? If there is much reflection on differentiated integration at member state levels,[5] there is little debate on subnational differentiation and its impact on European integration. Towards this end, and following a constitutional law approach, two perspectives will be examined. From the top-down view, the first part will examine regional differentiation in Europe and the EU's attitude towards such differentiation and regional disparities, especially the latest debates and the initiatives settled at the EU level; from the bottom-up perspective, the second part will examine the role and value of regional differentiation within national states, and the recent developments (requests for more autonomy), by presenting the Italian experience. By drawing connections between the two perspectives some conclusions on the positive role of subnational entities will be delineated, together with some considerations on the roles of Member States and the EU.

B 'Top-Down View', from EU's Old Attitude to New Proposals

I The Role and Value of (Subnational) Regional Differentiation and the EU: Origins and Developments

The European institutional context is complex and varied, with 87,502 subnational governments (86,300 municipal levels, 942 intermediary levels, and 260 regional levels)[6], all differently involved in the application of European law and in the implementation of European Union (EU) policies.

4 *See* P. Lattarulo *et al.*, *The Regions of Europe Among Local Identities, New Communities and Territorial Disparities*, Milano, Franco Angeli, 2019. On the state of federalism in Europe *see*: A. Morrone, 'Tendenze del federalismo in Europa dopo la crisi', *Le Regioni*, Vol. 1, 2018, pp. 13-34; L. Vandelli, 'Qualche appunto sulle tendenze delle istituzioni territoriali', *Le Regioni*, Vol. 1, 2018, pp. 85-94, reflects on recent changes involving local government systems across Europe, where the economic crisis has reshuffled a consolidated balance within the European multilevel governance systems; as a result, differentiation has replaced uniformity as the core principle that shapes the structure of sub-national governments.

5 *See* recently: F. Schimmelfennig & T. Winzen, *Ever Looser Union?: Differentiated European Integration*, Oxford, Oxford University Press, 2020.

6 OECD (2019), *Key data on Local and Regional Governments in the European Union* (brochure), OECD, Paris, p. 3. The data excludes the UK.

The attitude of the EU towards regional differentiation has changed over the years and can be divided into three main periods:

The first period, which coincides with the beginning of the European integration process, has been described as an EU 'regional blindness',[7] where no relevance was accorded to subnational entities. However, the participation in the European integration process had a significant impact on Regions' role and competences within states.[8]

The second period, described as 'Europe of the Regions',[9] has been characterized by an evolution that signalled the transition from a situation of 'irrelevance' of regional entities to a consideration of them as essential levels for the realization of European objectives and of the whole European integration project. Regional differentiation, in fact, can be an obstacle to the full establishment of the internal market, since different economic conditions can hinder the uniformity required by freedom of movement.[10] Many reasons are behind this evolution, linked to economic, geopolitical and institutional changes that occurred in the international and European contexts. The increasing attention paid by the European and national governments to substate entities during the 1990s was formalized in the European treaties (with the introduction of many innovations, such as the principle of subsidiarity and the Committee of Regions), and accompanied by legal measures and institutional adjustments adopted by states to render regional participation in the European decision-making process effective.[11] These circumstances caused processes of further

7 The 'regional blindness' of the EU was highlighted by H. P. Ipsen, 'Als Bundesstaat in der Gemeinschaft', *in* E. von Caemmerer, H.-J. Schlochauer & E. Steindorff (Eds.), *Probleme des europäischen Rechts. Festschrift fur Walter Hallstein zum seinem 65. Geburtstag*, Klostermann, Frankfurt am Main, 1966, p. 256, which used the expression *Landesbindheit*, and it has been variously taken up by international doctrine.

8 On the impact of 'regional blindness' on Regions, *see* M. Olivetti, 'The Regions in the EU Decision-Making Processes', *in* M. Cartabia, N. Lupo & A. Simoncini (Eds.), *Democracy and Subsidiarity in the EU. National Parliaments, Regions and Civil Society in the Decision-Making Process*, Bologna, Il Mulino, 2013.

9 On the Europe of Regions *see*: C. Harvie, *The Rise of Regional Europe*, London, Routledge, 1993; S. Borrás Alomar, T. Cristiansen & A. Rodriguez-Pose, 'Towards a "Europe of the Regions"? Visions and Reality from a Critical Perspective', *Regional Politics and Policy*, Vol. 4, No. 2, 1994, pp. 1-27; L. Hooghe & G. Marks, 'Europe with the Regions: Channels of Regional Representation in the European Union', *Publius: The Journal of Federalism*, Vol. 26, No. 1, 1996, pp. 73-91; J. Loughlin, 'Europe of the Regions and the Federalization of Europe', *Publius: The Journal of Federalism*, Vol. 26, No. 4, Autumn 1996, pp. 141-162.

10 For these reasons, competition policy – which has always been a fundamental objective of the EU – provides for some specific exceptions, including regional state aid (Art. 107, Para. 2-3, Art. 108, Art. 349 TFUE); regional policy of social and territorial economic cohesion became another fundamental objective of the treaties (Art. 3 TEU, Para. 3, Arts. 174-178 TFUE).

11 On the evolution of the involvement of territorial autonomies in the European decision-making process, *see*: A. D'Atena (Ed.), *L'Europa delle autonomie. Le Regioni e l'Unione europea*, Milano, Giuffré, 2003; A. D'Atena (Ed.), *Regionalismo e sovranazionalità*, Milano, Giuffré, 2008; M. Cartabia & V. Onida, 'Le Regioni e l'Unione Europea', *in* M. Pilade Chiti & G. Greco (Eds.), *Trattato di diritto amministrativo europeo*, II, Milano, Giuffré, 2007, pp. 991 *et seq.*; L. Violini, 'Le regioni italiane e l'Europa. Da Maastricht a Lisbona', *in* S. Mangiameli (Ed.), *Il regionalismo italiano dall'Unità alla Costituzione e alla sua riforma*, I, Milano, Giuffré, 2012, 463 *et seq.*

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regionalization in several Member States:[12] for example, the constitutional reforms in Italy and the devolution Act in the United Kingdom.

During this period concepts of 'multilevel governance'[13] and 'multilevel constitutionalism'[14] spread as one of the main characteristics of the EU system and were specifically addressed by the Committee of the Regions in a 'White Paper on multilevel governance' in 2009[15] and in a 'Charter for Multilevel Governance in Europe' in 2014.[16] Several modifications in national legislation were held during this period to make effective the participation of subnational entities in the European decision-making process within the ascending and descending phases;[17] the role of regional bodies in this area, in fact, is essentially determined by states, which translates into a considerable differentiation of the discipline.

Besides the institutional involvements, the EU's attitude towards regional differentiation has passed through the development of a European regional policy

12 For a short description of these changes at the national and European levels, *see* Olivetti, 2013.

13 The concept of multilevel governance has been widely used in the political science literature over the years; *see*: L. Hooghe & G. Marks, *Multi-Level Governance and European Integration*, Lanham, MD, Rowman & Littlefield, 2001; L. Hooghe & G. Marks, 'Unravelling the Central State, But How? Types of Multi-Level Governance', *American Political Science Review*, Vol. 97, No. 2, 2003, pp. 233-243; I. Bache & M. Flinders, *Multi-level Governance*, Oxford, Oxford University Press, 2004; N. Bernard, *Multilevel Governance in the European Union*, The Hague, Kluwer Law International, 2002; S. Piattoni, *The Theory of Multi-level Governance: Conceptual, Empirical, and Normative Challenges*, Oxford, Oxford University Press, 2010; H. Enderlein, S. Wälti & M. Zürn (Eds.), *Handbook on Multi-level Governance*, Cheltenham, Edward Elgar, 2010; I. Bache & M. Flinders, *Multi-level Governance: Essential Readings*, Edward Elgar, 2015.

14 The concept of multilevel constitutionalism has been commonly used in the legal literature: *cf.* I. Pernice, 'Multilevel Constitutionalism in the European Union', Walter Hallstein Institute – Paper 5/02, available at: www.ecln.net/documents/whi-paper0502.pdf (last accessed 22 April 2020); I. Pernice, 'Multilevel Constitutionalism and the Crisis of Democracy in Europe', *European Constitutional Law Review*, Vol. 11, No. 3, 2015, pp. 541-562.

15 The Committee of the Regions' White Paper on Multilevel Governance (2009/C 211/01). The White paper was followed by the Opinion of the Committee of the Regions on 'building a European culture of multilevel governance: follow-up to the Committee of the Regions' White Paper' 2012/C 113/12.

16 Resolution of the Committee of the Regions on the Charter for Multilevel Governance in Europe 2014/C 174/01.

17 On the participation of Regions and local authorities to the European decision-making process, *see*: R. Wyn Jones & R. Scully (Eds.), *Europe, Regions and European Regionalism*, London, Palgrave Macmillan, 2010; C. Panara & A. De Becker (Eds.), *The Role of the Regions in EU Governance*, Heidelberg, Springer, 2011; S. Pazos-Vidal, *Subsidiarity and EU Multilevel Governance. Actors, Networks and Agendas*, Abingdon OX, Routledge, 2019. On the Italian experience *see*: A. Iacoviello, 'Rules and Procedures for Italy's Participation in the European Decision-Making Process: The System Outlines in Act 234/2012 and by the Regional Laws', *in* S. Mangiameli (Ed.), *The Consequences of the Crisis on European Integration and on the Member States The European Governance between Lisbon and Fiscal Compact*, Heidelberg Springer, 2017, pp. 125-162; S. Baroncelli, *La partecipazione dell'Italia alla governance dell'Unione europea nella prospettiva del Trattato di Lisbona*, Torino, Giappichelli, 2008; A. Papa (Ed.), *Le Regioni nella multilevel governance europea: Sussidiarietà, partecipazione, prossimità*, Torino, Giappichelli, 2017.

and the recognition that reduction of regional disparities is a key factor in political integration and effective functioning of the internal market.[18]

The need to reduce 'the differences existing between the various regions' appears in the TFEU Preamble and, more widely, in Article 174 of the TFEU:

> the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions. Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

A recent report from the Organisation for Economic Cooperation and Development (OECD) highlights the role the EU has played in reducing regional disparities:[19]

> Since 1995, regional inequality across countries has been reduced significantly, though the 2008 crisis temporarily undid some progress. Inequality of GDP between European regions has declined by about 25%. Regions with lower per capita income have significantly reduced the gap with other regions of the EU. This reduction has been achieved despite slowly growing regional GDP inequalities within most EU countries and other parts of the world.

The *third period* corresponds to the decade of the economic crisis of 2008, which had a huge impact on the European multilevel governance system, since it operated only across two dimensions, the supranational and the national levels, and encouraged a strong centralization process in many Member States that took power and influence away from the regions. During the decade of the economic crisis attention has been focused on the recovery of the European integration process, on the ratification of the Lisbon Treaty, and on the correspondence of states to austerity measures adopted.[20] As demonstrated by an OECD report, on the one hand, austerity policies have blocked the ongoing reform processes and greatly reduced the ability of governments to implement those already adopted; on the other hand, the need to consolidate public finances encouraged the adoption of other types of diametrically opposed reforms compared with the previous ones.[21] The result of these manoeuvres has led, at the European level, to

18 R.Y. Nanetti, 'EU Cohesion Policy and Territorial Restructuring in the Member States', *in* L. Hooghe (Ed.), *Cohesion Policy and European Integration*, Oxford, Oxford University Press, 1996, p. 59 *et seq.*

19 OECD Report, *The European Union: A People Centred Agenda*, May 2019, p. 15.

20 *Cf.* S. Mangiameli (Ed.), *The Consequences of the Crisis on European Integration and on the Member States. The European Governance between Lisbon and Fiscal Compact*, Heidelberg, Springer, 2017.

21 OECD Report, *Multilevel Governance Reforms. Overview of OECD Country Experiences*, 2017.

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a complex and contradictory institutional context, which presents "situations of uncertainty and fluidity".[22]

At the socio-economic level, the economic crisis has accentuated territorial and social differentiation and shown the negative effects of globalization. Another study,[23] in fact, highlights that:

> the regional level as economic growth has been uneven across the EU's regions over the last decade and, consequently, growing disparities between regions have emerged. [...] – leading to a widening gap between core and periphery regions within the EU [...] Since the year 2000 overall EU GDP has grown by some 24 percent (net of inflation), but with large variation across the Single Market. The picture is quite clear: economic dispersion between countries in terms of GDP per capita declined in the EU until the economic and financial crisis in 2008/2009, with no overall reduction since then. When reviewing the economic dispersion between regions, we find that divergence has in fact increased since the crisis, bringing dispersion levels back to those pertaining at around the year 2000.

In this scenario, as two sides of the same coin, the resentment of the most disadvantaged communities and territories emerged clearly in some electoral consultations, and some of the richest territories and communities claimed more autonomy and participation. As will be examined in Part C. IV, both sides have manifested in the Italian experience of recent years.

II Recent Debates and Initiatives at the EU Level

The EU has started to deal with this theme through the debate on the future of Europe in 2017, which refocused on the need for a Europe at three dimensions (Europe, states and regions) and on the role of regional and local authorities in the process of European integration, considering the importance they have for democratic participation at the levels closest to citizens and for a correct implementation of European policies.

One of the main reports of this debate, in fact, has emphasized how regional authorities retain a key role as 'communicators' on the functionality of the multilevel system and that "the EU's positive role in daily life is not visible if the story is not told locally".[24]

22 The description is from the report written by M. Bruter, S. Harrison & F. Bicchi, 'Reflecting on the Future of the European Union. The View from Local and Regional Authorities', *The London School of Economics and Political Science*, January 2018, available at: www.lse.ac.uk/business-and-consultancy/consulting/assets/documents/reflecting-on-the-future-of-the-eu.pdf (last accessed 22 April 2020).

23 S. Naess-Schmidt & J. Bjarke Jensen, *Subsidiarity and Proportionality in the Single Market. An EU Fit for Inclusive Growth*, Bertelsmann Stiftung, Gütersloh (Germany), 2018, pp. 6-7, available at: www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/9/469/1544453164/subsidiarity-and-proportionality-in-the-single-market.pdf (last accessed 22 April 2020).

24 *Ibid.*, p. 12.

Many documents have been published on this theme, three of which are more relevant for this analysis, and a concrete plan of action was formulated:

a) the *task force for subsidiarity and proportionality and for 'doing less in a more efficient way'*, established by the president of the Commission on 14 November 2017, delivered its final report on 10 July 2018. In summary, the report states that for a better definition of European policies and greater efficiency in the use of resources, new operating methods are needed that will allow an effective participation of national, local and regional authorities, which play a fundamental role in the practical implementation of European legislation. The working method should lead to a 'more active subsidiarity' ('Active Subsidiarity'), which is also suitable for ensuring greater understanding and acceptance of the reasons why some policies are implemented at the level of the EU:[25]

> What is necessary is a new way of working to improve the current policymaking processes and to allow the Union to use it resources more efficiently. It will allow local and regional authorities and national Parliaments to make a more effective contribution to policymaking, to the design of (new) legislation and to ensuring respect for the principles of subsidiarity and proportionality.[26]

b) Reflections on the role of local and regional authorities were also stimulated by the European Committee of the Regions (CoR) and the associations of local and regional governments throughout the EU.[27] In particular, during the European Week of Regions and Cities, the president of the European Committee of the Regions presented his annual speech on 'The State of the European Union: the view of Regions and Cities' (9 October 2018), where a double functionality of the EU and Regions was underlined: "The cities and regions need the European Union. The European Union needs its cities and regions." This debate stated that the democratic foundations of the EU must be rebuilt on three dimensions and

25 The activity of the task force was taken up in the speech by the president of the European Commission on the State of the Union on 12 September 2018 (Jean Claude Juncker, president of the European Commission, *State of the Union 2018*, 12 September 2018).

26 Report of the Task force on Subsidiarity, Proportionality and "Doing Less More Efficiently", July 2018, p. 4, available at: https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf (last accessed 22 April 2020).

27 On 4 July 2018, following the initiative of the Committee of the Regions and together with the Council of European Municipalities and Regions (CEMR), the mayors and presidents of the EU cities and regions met in Brussels to discuss the main challenges they face in view of the changes in the European context (*see* Committee of the Regions, Press release of 4 July 2018, *Future of Europe: European Committee of the Regions and Local Government Associations Join Forces*. Available at: https://cor.europa.eu/en/news/Pages/Future-of-europe-CoR-and-local-government-associations-join-forces.aspx (last accessed 06 August 2020). The meeting followed the resolution of the European Parliament of 3 July 2018, which includes the request for the permanent participation of the CEMR in the development of EU policies, and is part of a broader debate that continued with the Week of European Regions and Cities from 8 to 11 October 2018.

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not just on two (EU and states) and that only by strengthening the territories can the EU be strengthened.

c) the Bucharest Declaration of the European Committee of the Regions 'Building the EU from the ground up with our regions and cities', adopted during the 8th European Summit of Regions and Cities, the 14-15 March 2019, addressed two main points: a) strengthening the democratic foundation of the EU; b) anchoring the EU's action locally to build a better future for our citizens:

> Local and regional democracy is an essential part of EU democracy. Multilevel governance is essential to ensure the active and equal participation of all levels of government in a spirit of trust. This loyal cooperation between all levels is essential for the EU to be able to deliver on its objective of economic and social progress for its citizens wherever they live, and in a fully accountable, efficient and transparent way; [...] While respecting national frameworks, more decentralization and a better division of powers are essential elements of good governance because they increase transparency, accountability and quality of policy-making with a better engagement with citizens; [...] Tackling the persistent economic, social and territorial disparities remains a major challenge for the future of the EU.[28]

d) During the 8th European Summit of Regions and Cities, the 14-15 March 2019, the European Committee of the Regions launched a specific measure for encouraging a more systematic involvement of Europe's local and regional authorities in implementing the EU legislation: a *Network of Regional Hubs for EU Policy Implementation Review* (#RegHub).[29] Owing to the variety of EU regional differentiation, a regional hub is considered, in a broader sense, as "any territorial authority below the member state level that implements EU policy", so it can involve communities, departments, provinces, large cities, etc. The initiative has started with a pilot phase (2019-2020), which involves 20 hubs ('core group') and 17 'associated hubs' that act as contact points. They will provide feedback about their experience in implementing EU legislation in three EU policy areas with significant repercussions at the local and regional levels: public procurement, air quality and cross-border health care. If successful, the pilot project will be opened up to all EU regions from 2021. *RegHub* followed one of the recommendations (no. 8) of the Subsidiarity Task Force and put forward the concept of 'Active subsidiarity' and the need for a 'new way of working'. This initiative could have a valuable impact, considering that a large volume of EU legislation is implemented at the local and regional levels. Subnational levels of government could involve

28 European Committee of the Regions, *Bucharest Declaration "Building the EU from the Ground Up with Our Regions and Cities"*, 8th European Summit of Regions and Cities, 14-15 March 2019, points 1, 3, 8.

29 All information about RegHub are available on the website https://cor.europa.eu/en/our-work/Pages/network-of-regional-hubs.aspx, *See* specifically: Subsidiarity task force follow-up: Pilot project for a network of regional hubs to assess the implementation of EU legislation, COR-2018-03132-05-00-NB-TRA.

and contact many various stakeholders so that authorities could provide important feedback on the experience they have in applying EU legislation, and EU institutions could benefit from their experience.

During the 9th Subsidiarity Conference, held in Rome on 22 November 2019, the European Committee of the Regions and the Conference of European Regional Legislative Assemblies launched an initiative to debate the involvement of regional parliaments with legislative competences in the EU legislative process. The reflections are aimed at contributing to the *Conference on the future of Europe*,[30] which will be a valuable opportunity to evaluate and discuss the role and values of Regions and local authorities in and for the European integration process.

The EU's increasing interest in the Regions and the growing relevance of subnational entities in the European integration process coexist with the conviction that the EU should respect the constitutional structures of Member States, as stated in Article 4.2 TUE:[31]

> The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security.

However, the Treaties "protect 'only' regional and local self-government as an element of national identities; specific regional or local identities, comparable with what the Treaty recognizes as national identities, are not protected".[32]

Even if the EU could involve more and more Regions in the European integration process, the role of Regions in the EU continues to depend mainly on Member States. The pressure to manage regional differentiation is thus mainly on them.

30 The conference will be launched on 9 May and will last two years. *Cf.* European Commission, *Communication from the Commission to the European Parliament and the Council, Shaping the Conference on the Future of Europe*, Brussels, 22 January 2020 COM(2020) 27 final; European Parliament, *Resolution of 15 January 2020 on the European Parliament's Position on the Conference on the Future of Europe* (2019/2990(RSP)); European Committee of the Regions, *Draft resolution of the European Committee of the Regions on the Conference on the Future of Europe*, 138th plenary session, 11-12 February 2020.

31 *Cf.* E. Di Salvatore, *L'identità costituzionale dell'Unione europea e degli Stati membri. Il decentramento politico-istituzionale nel processo di integrazione*, Torino, Giappichelli, 2008.

32 H.J. Blanke, 'Article 4 [The Relations Between the EU and the Member States]', *in* H.J. Blanke & S. Mangiameli (Eds.), *The Treaty on European Union (TEU). A Commentary*, Heidelberg, Springer-Verlag, 2013, p. 224; L. Burgorgue-Larsen, A. Levade & F. Picod (Eds.), *Traite' établissant une Constitution pour l'Europe. Parties I et IV. Commentaire article par article*, Vol. I, Bruylant, Bruxelles 2007, Art. I-5, Para. 4, p. 14.

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C 'Bottom-Up Perspective', between Regional Requests and National Reforms

I Regional Differentiation in the Italian Experience: Historical and Constitutional Background

Italy is characterized by a strong differentiation among territories that has historical roots.[33] This differentiation was the basis for the introduction in the 1947 Constitution of a regional system, with a division of competences (legislative, administrative) established in the Constitution and guaranteed by constitutional adjudication. One of the reasons behind the introduction of a regional system was the transformation of the state from the bottom up.[34]

The cornerstone of the constitutional framework is Article 5:[35]

> The Republic is one and indivisible. It recognizes and promotes local autonomies, and implements the fullest measure of administrative decentralization in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralization.

Strong differentiation and historical reasons were responsible for the introduction, besides the 15 Ordinary Regions (symmetrical regionalism), of 5 Regions with 'special forms and conditions of autonomy' (asymmetrical regionalism) each with specific competences and resources ('Regions with special autonomous status' or 'Special Regions'). Within these regions, the situation in Trentino-Alto Adige/Südtirol is even more 'special', with the presence of two autonomous provinces with the same powers (legislative, administrative and fiscal powers) as the regions.[36]

33 E. Felice, 'The Roots of a Dual Equilibrium: GDP, Productivity and Structural Change in the Italian Regions in the Long-run (1871-2011)', *Banca d'Italia Economic History Working Papers*, August 2017, 40, exploring the evolution of Italy's regional inequality in the long run, analyses the roots of Italy's dual development and identifies different historical phases along this path.

34 *See* C. Desideri, *Regioni politiche e territori. Per una storia del regionalismo italiano*, Milano, Giuffré, 2015; C. Desideri, 'A Short History of Regionalism in Italy Since the Republican Constitution. Italian Regionalism and Its Evolution', *in* S. Mangiameli (Ed.), *Italian Regionalism: Between Unitary Traditions and Federal Processes. Investigating Italy's Form of State*, Springer, 2017, pp. 35-65.

35 On the meaning of Art. 5 of the Constitution, the literature is extensive. For classical studies *see* C. Esposito, 'Autonomie locali e decentramento amministrativo nell' art. 5 della Costituzione', *in* C. Esposito (Ed.), *Costituzione italiana. Saggi*, Padova, Cedam, 1954; C. Mortati, *Istituzioni di diritto pubblico*, Padova, Cedam, 1975-1976. For more recent studies: S. Staiano, *Art. 5*, Bari, Carocci, 2017; R. Bifulco, 'Art. 5 Cost.', *in* R. Bifulco, A. Celotto & M. Olivetti (Eds.), *Commentario alla Costituzione*, UTET giuridica, Torino 2006; L. Ronchetti, *L'autonomia e le sue esigenze*, Milano, Giuffrè, 2018.

36 *See* Art. 116 Const. Paras. 1-2: "Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/ Südtirol and Valle d'Aosta/Vallée d'Aoste have special forms and conditions of autonomy pursuant to the special statutes adopted by constitutional law. The Trentino-Alto Adige/Südtirol Region is composed of the autonomous provinces of Trent and Bolzano."

The reasons for asymmetric regionalism alongside symmetric regionalism were the need to preserve specific identities (*i.e.* language in Trentino-Alto Adige and Valle D'Aosta) to guarantee international relations (Friuli Venezia Giulia and Trentino-Alto Adige) and to avoid secessionist movement (Sicily). All Special Regions are granted fiscal benefits – although they have been partially reduced over the years – which has led to feelings of resentment from other regions.

This was the organization on paper. In fact, if Special Regions became operational after the approval of special statutes (and Sicialian statute was approved in 1946 before the Italian Constitution), owing to political reasons (and relationships among political parties) linked to the situation of Italy in the international context, ordinary Regions were established and began to act only in 1970.

In 1992, the biggest changes occurred in international relationships and in the Italian political system that signed the passage from the '1st' to the '2nd Republic': local authorities became directly elected (1993), the national electoral system changed (1994) and two incisive constitutional reforms (one in 1999 and the other in 2001) changed Italian regionalism completely. In 2001 ordinary regions were given the majority of competences (general competences plus shared competences with the state in some fields), while the state reserved some competences (117 Cost.). The changes in the division of competences were 'formally' so ample, that on paper the Italian state appeared to have 'formally' fewer competences than a federal state. Again, the constitutional transformations of the regional system were justified by several factors: changes in the political parties, the extended Italian debt and the necessity to join the Euro, the changes in the international context (with the end of the Cold War) and the need to adopt the Maastricht Treaty.[37]

The 2001 reform brought the word 'differentiation' into the Constitution, together with 'proportionality' and 'subsidiarity' in Article 118 Cost, related to the division of administrative competences:

> Administrative functions are attributed to the Municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation.

Moreover, in order to preserve the presence of Special Regions and, at the same time, reduce the gap with ordinary regions, two clauses were introduced. The first provided, on a provisional basis (*i.e.* 'until the [regional] Charters are updated'), for the application to Special Regions of that part of the new law governing ordinary autonomy that provides for "wider forms of autonomy than those already attributed" (Article 10 of Constitutional Law no. 3/2001). The second

37 For a description of Italian regionalism, its origin and evolution, *see*: S. Mangiameli (Ed.), *Italian Regionalism: Between Unitary Traditions and Federal Processes. Investigating Italy's Form of State*, Heidelberg Springer, 2017.

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permitted the partial extension of special autonomy to individual ordinary Regions (Art. 116, Para. 3):

> Additional special forms and conditions of autonomy, related to the areas specified in art. 117, paragraph three and paragraph two, letter l) – limited to the organizational requirements of the Justice of the Peace – and letters n) and s), may be attributed to other Regions by State Law, upon the initiative of the Region concerned, after consultation with the local authorities, in compliance with the principles set forth in art. 119. Said Law is approved by both Houses of Parliament with the absolute majority of their members, on the basis of an agreement between the State and the Region concerned).

While the first clause has been broadly applied, the second one was not applied until 2018, because the regional initiatives promoted immediately after the constitutional reform of 2001 have never reached any agreement with the government (*infra*).

II Role and Value of Regions in Action

Over the years Regions have enacted a significant volume of legislation in matters within their competences with different results. Systematic studies conducted on regional legislation by the Institute for the Study of Regionalism, Federalism and Self-Government for the Italian Chamber of Deputies since 2001[38] show the 'weight' of regional legislation in different competences.

These studies show that general improvements and innovations were achieved in social care, migration policies, agriculture and environment. On the other hand, Regions played a weak role in investment, economic development and productive activities (industry and commerce), since the transformations of the economic constitution (the EU internal market and the globalization process) and the strong 'austerity' measures deeply influenced regional policies.

The economic crisis of 2008 has had an intense impact on Italian regionalism because it had pushed in the last decade towards a general process of re-centralization, which was considered the most appropriate way to remedy the financial crisis.[39] During this period Regions gave priority to 'services to communities' instead of 'structural investment' acting as an important social cushion. This choice could be explained by the close link with their local communities.

The added value of regional differentiation in Italy could be better understood through an analysis of two symptomatic sectors: 'social services' and 'policies on productive activities and economic development'.

38 *Cf.* Camera dei deputati, 'Tendenze e problemi della legislazione regionale', *in Rapporto sulla legislazione tra Stato, Regioni e Unione europea*, available on the website of the Italian Chamber of Deputies: www.camera.it/leg18/397?documenti=1137 (last accessed 23 April 2020).

39 On these aspects, and for criticism on the measures adopted in Italy during the economic crisis *cf.* S. Mangiameli, *Le Regioni italiane tra crisi globale e neocentralismo*, Milano, Giuffré, 2013.

In the case of social services, Regions have played an important role in the implementation of the principle of equality, especially during the years of the economic crisis: in those years, in fact, they operated almost like a social safety net in the almost total absence of the state in defining even the essential levels of care. If theoretical reflections lead to the consideration of regional differentiation in this sector as a risk for inequality, the analysis of the exercise of competences reveals a total absence of the state and a substitute role for Regions in guaranteeing substantial equality.[40]

Many documents adopted during the *Reflections on the future of the European Union* underline the demand for a new European social model. In light of the Italian experience, the social model that one intends to implement at the EU level cannot disregard the involvement of subnational entities.

A different situation emerges for policies on productive activities, where the conditionings of globalization and of the EU internal market have led to a reduction of the role of Regions, especially during the economic crisis, or to a sort of subordination of regional policies to state guidelines.[41] A case in point is that of trade, where the anti-crisis state legislation pushed towards greater liberalization and deregulation of productive sectors with profound effects on regional competence.

Despite this different experience, several socio-economic surveys, European documents[42] and some scholars underline the importance of Regions in productive activities also in the context of European integration and globalization.[43]

If anything, regional experience in this field leads us to other considerations.

The analysis of regional competences and case law shows that in most of the sectors included in the productive activities a strict division of competences between state and regions is not possible. These sectors rather tend to become an indistinct area of policies owing to two factors: on the one hand, the state can act through transversal competences and the 'call for subsidiarity', while, on the

40 G.M. Napolitano & G. Saputelli, 'Principle of Equality and Social Care Policies in the Italian Regional System between Autonomy and Centralization', *Notizie di Politeia*, Vol. XXXIV, 2018, pp. 132, 165-183.

41 G. Saputelli, 'Lo Stato regionale italiano e il riparto di competenze in materia di attività produttive e sviluppo economico, tra devoluzione e accentramento', *Federalismi.it*, Vol. 22, 2017, available at: www.federalismi.it/nv14/articolo-documento.cfm?Artid=35182&content=Lo%2BStato%2Bregionale%2Be%2Bil%2Briparto%2Bdi%2Bcompetenze%2Bin%2Bmateria%2Bdi%2Battivit%C3%A0%2Bproduttive%2Be%2Bsviluppo%2Beconomico&content_author=%3Cb%3EGabriella%2BSaputelli%3C%2Fb%3E (last accessed 22 April 2020).

42 *See* European Commission, *Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee of the Regions. Review of the "Small Business Act" for Europe*, Brussels, 23 February 2011, COM(2011) 78 final.

43 A. Barbera, 'L'assetto territoriale delle istituzioni regionali e locali nell'era della globalizzazione', *in Scritti in onore di Antonino Pensovecchio Li Bassi*, I, Torino, Giappichelli, 2004, pp. 119-133; S. Mangiameli, 'Il regionalismo italiano dopo la crisi e il referendum costituzionale. Appunti per concludere una lunga transizione', *Italian Papers on Federalism*, Vol. 1, 2017, pp. 10-11, available at: http://italianpapersonfederalism.issirfa.cnr.it/il-regionalismo-italiano-dopo-la-crisi-e-il-referendum-costituzionale-appunti-per-concludere-una-lunga-transizione.html (last accessed 6 August 2020).

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other hand, the Regions have progressively replaced sectorial laws (*i.e.* commerce, industry) with laws that promote the entire regional economic system, envisage a plurality of interventions and denote a comprehensive vision of economic development.

These circumstances reveal that participation in the EU process pushes not towards a management of public policies structured in a rigid division of roles, but towards a different *modus operandi* that requires the involvement of all entities for the realization of the same objectives. This *modus operandi* requires a resumption of 'institutional collaboration',[44] well known in federal experiences.

In fact, owing to the transformations connected to globalization, especially in economic policies, 'real' differentiation of territories corresponds less and less to 'institutional' differentiation.

In relation to the Italian situation, a recent analysis[45] carried out by CENSIS shows a redefinition of the economic geography of territories, in the complex dialectic that has been created between places and global flows, of which only some regions have become interpreters. The report highlights the 'infra-regional' gaps through a 'mosaic' that shows the presence of transregional territories characterized by significant homogeneity that require homogeneous policies or common/joint actions. This circumstance suggests the need to look at territory (its morphology, its evolution and socio-economic processes) and opens up new responsibilities for regional institutions that can adequately deal with these challenges if they equip themselves with 'micro-dimension sensors' able to offer an effective representation of what happens in local systems. Therefore, unlike other parts of the world (USA and Asia), where big metropolitan cities (global cities) have occupied the scene of economic growth and social development[46], socio-economic data confirms that in Italy *the territorial dimension (regional, provincial or municipal) continues to have a very strong centrality*.

For policies on production activities, it is possible to use horizontal cooperation (through the current legal instruments already provided in the Constitution, such as Art. 117 last paragraph) to 'support' the current differentiated regionalism process (*infra*).

The Italian experience in these two examples demonstrates that the role of Regions could be extremely important in some cases, but also that there are policies that cannot be better implemented at the regional level (*i.e.* big infrastructures) and some others require shared competences or strong vertical and horizontal collaborations (economic development).

The analysis of the Italian experience of regionalism confirms the statement of *Brandeis*, because it tells us the added value of differentiation in some policies, but has to be supported by the consideration that in other cases, while Regions

44 OECD, *OECD Studies on SMEs and Entrepreneurship, Italy Key Issue and Policies*, 2014, p. 197 *et seq.*

45 CENSIS, *Il ruolo della dimensione regionale nell'evoluzione del mosaico territoriale italiano. Una nuova constituency per il prossimo ciclo politico-istituzionale*, Roma 5 ottobre 2018, pp. 10, 13, 15, 21. Available at: www.censis.it/sites/default/files/downloads/Sintesi_Consigli.pdf (last accessed 22 April 2020).

46 See R. Hirschl, *City, State: Constitutionalism and the Megacity*, Oxford, Oxford University Press, 2020.

are not sufficient, the monitoring or substitute role of the state is necessary. For instance, it is symptomatic, and well perceived, how regional autonomy has led to great innovation but also divergence in the health-care system.[47]

III The State's Attitude Towards Regions, from Constitutional Protection to Political Exploitation

The evolution of Italian regionalism swung between autonomy and strong centralization, apart from – and often despite – constitutional changes described earlier.

Just after the constitutional reform of 2001, the state began to retain competences, and the constitutional court substantially 'rewrote' the distribution of competences between the state and Regions described in Article 117 Cost. Emblematic is the use of the principle of subsidiarity – more precisely the mechanism termed 'call for subsidiarity'[48] – to justify state legislative action in some competences formally attributed to Regions. The huge constitutional litigation and case law referred to regionalism – which counts approximately 50% of the case law (more than 100 decisions) every year – during this almost 20-year period determines a reality of Italian regionalism that differs completely from what is written in the Constitution.

The process of centralization was particularly intense during the economic crisis, with an invasive state and a deep reduction of policy funding.[49] During the last decade (2008-2018) the need to consolidate the country's finances has led to a drastic reduction of resources for subnational governments and to an abuse of the state competence on coordination of public finance to expand the areas of intervention of the state, as well as to block the implementation of fiscal federalism.

As already mentioned, all across Europe the need to consolidate the country's finances justified important processes of territorial reorganizations.[50] In Italy two main institutional transformations were proposed in this direction: the 'near abolition' of Italian Provinces (l. n. 56/2014), with the allocation of administrative competences mainly to Regions, and a constitutional reform aimed at changing the nature and functions of the Second Chamber but with a

47 For a recent overview of the state of the health-care system in Italy, *see* S. Gabriele, 'Lo stato della sanità in Italia', Focus n. 6, Ufficio Parlamentare di Bilancio, Dicembre 2019, pp. 33-36, available at: www.upbilancio.it/wp-content/uploads/2019/12/Focus_6_2019-sanit%C3%A0.pdf (last accessed 22 April 2020).

48 On this mechanism, and for the case law related to Italian regionalism, *see* V. Barsotti *et al.*, *Italian Constitutional Justice in Global Context*, Oxford, Oxford University Press, 2016, pp. 200-201.

49 *See* S. Mangiameli, *Le Regioni tra crisi globale e neocentralismo*, Milano, Giuffrè, 2013; L. Vandelli, G. Gardini & C. Tubertini, *Le autonomie territoriali dopo la crisi*, Santarcangelo di Romagna (RN), Maggioli, 2017.

50 OECD Report, 2017.

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strong reallocation of regional competences at the central level.[51] While the first reform was enacted (with many problems of implementation and functionality), the second one was rejected by a referendum that had a huge popular participation.

If during the economic crisis a general process of centralization is not surprising, in Italy it was very intense. The 'subconscious' opinion is that the central level works better than the decentralized level, notwithstanding the results achieved by Italian Regions over two decades.

In a nutshell, the framework of Italian regionalism is currently characterized as follows: if in theory (according to the Constitution) the state can intervene in regional competences only in exceptional circumstances, in practice it substantially and systematically interferes with regional competences. The financial model continues to be strongly centralized: the law on fiscal federalism implementing constitutional provisions was enacted only in 2009 and carried out years later, but owing to the economic crisis it has never been applied.[52] The intergovernmental relationships are based mainly on a system of conferences (3 models of conferences) that involves Regions, the state and the cities: this system was originally introduced for informal collaboration and became the main

51 The constitutional reform proposal of 2016 would have led to a re-centralization of competences, a strengthening of the role of the central state, albeit in the perspective of a modification of the Senate as the seat of representation for territorial autonomies. On the one hand, it registered the state of regionalism as it had developed by means of national legislation and case law of the Constitutional Court; on the other hand, it would have strengthened this state of affairs by codifying it in the Constitution and by introducing further elements of centralization. On the characteristics, contents and limits of the 2016 constitutional reform proposal, *see*: F.S. Marini & G. Scaccia (Eds.), *Commentario alla riforma costituzionale del 2016*, Napoli, Edizioni Scientifiche Italiane, 2016; Astrid (Ed.), *Cambiare la Costituzione? Un dibattito tra i costituzionalisti sui pro e i contro della Riforma*, Santarcangelo di Romagna (RN), Maggioli Editore, 2016; P. Costanzo, A. Giovannelli & L. Trucco (Eds.), *Forum sul D.D.L. Costituzionale Renzi-Boschi. Dieci studiosi a confronto*, Torino, Giappichelli Editore, 2015; P. Costanzo (Ed.), *Referendum costituzionale: uno sguardo d'insieme sulla riforma Renzi-Boschi*, Torino, Utet, 2016; S. Panizza & R. Romboli, *Aspettando il referendum (con il fiato sospeso) – Limiti e contenuti della riforma costituzionale Renzi-Boschi*, Torino, Giappichelli, 2016; E. Rossi, *Una costituzione migliore? Contenuti e limiti della riforma costituzionale*, Pisa University Press, 2016. For two opposite views *see*: AaVv., *Perché sì. Le ragioni della riforma costituzionale*, Bari, Laterza, 2016; AaVv., *La Costituzione bene comune*, Roma, Ediesse, 2016.

52 *Cf.* L. Antonini, 'The Financial Autonomy of Regions: A Decisive but Neglected Chapter in Italian Institutional System', *Italian Papers on Federalism*, Vol. 2, 2014, available at: http://italianpapersonfederalism.issirfa.cnr.it/the-financial-autonomy-of-regions-a-decisive-but-neglected-chapter-in-italian-institutional-system.html; A. D'Atena, 'The Financial Autonomy of Italy's Regional Authorities: Its Constitutional Model and the History of Its Implementation', *Italian Papers on Federalism*, Vol. 1, 2018, available at: http://italianpapersonfederalism.issirfa.cnr.it/the-financial-autonomy-of-italy-s-regional-authorities-its-constitutional-model-and-the-history-of-its-implementation.html (last accessed 22 April 2020).

decision space for state and Regions consultations; many reforms aimed at modifying the second chamber were proposed but never approved.[53]

The negative attitude towards Regionalism in Italy has political (and cultural) reasons: apart from Special Regions, the Regionalism has always been used as an 'instrument' for political purposes at the national level.[54]

Looking at the Dahl and Elazar statements mentioned in par. 1, we can say that in Italy the division of competences has always been 'in the hand of the State',[55] despite the constitutional provisions, and that the evolution of the intergovernmental relations has seen a balance between unity and differentiation that has often pushed towards *uniformity*.

IV A New Phase in Italian Regionalism: The Request for More Autonomy and Asymmetry

After the rejection, via referendum, of the constitutional reform proposal, a renewed interest in regionalism came about through the request of some Regions for the activation of the procedure ex Article 116 c. 3 of the Constitution about asymmetric regionalism.[56] Also as a reaction to the strong centralization process during the crisis and to the state attitude towards regionalism, previously mentioned, in 2018 three Regions (Emilia Romagna, Lombardy, Veneto) formally activated the procedure of asymmetric regionalism and signed preliminary agreements with the state.[57] In these agreements, later expanded in February 2019[58] and still under negotiation, the Regions requested several competences (Veneto, 23 subjects; Lombardy, 20 subjects; Emilia Romagna, 16 subjects), among which 'education' and 'health protection' have the most relevance for citizenship rights; 'foreign trade' and 'scientific and technological research and innovation support for productive sectors' are the most relevant for productive activities. In the list of subjects, Regions also requested several competences that are structurally not completely transferable owing to other constitutional provisions that limit the powers of Regions: this is the case, for example, for

53 *Cf.* E. Gianfrancesco, 'La partecipazione delle regioni alla vita dello Stato (e della Repubblica): bicameralismo, camera delle regioni e conferenze', *in* J.M. Castellà Andreu *et al.* (Eds.), *Autonomie territoriali, riforma del bicameralismo e raccordi intergovernativi : Italia e Spagna a confronto*, Editoriale Scientifica, 2018, pp. 189-216.

54 For a study on the dynamics between the state and Regions in relation to the political party system in Italy: Desideri, 2015.

55 S. Mangiameli, 'Governing from the Centre: The Influence of the Federal/Central Government on Subnational Governments. The Italian Case', *Italian Papers on Federalism*, Vol. 2, 2013, available at: http://italianpapersonfederalism.issirfa.cnr.it/governing-from-the-centre-the-influence-of-the-federal-central-government-on-subnational-governments-the-italian-case.html (last accessed 22 April 2020).

56 Art. 116 Cost. Para. 3.

57 *See* the Dossier of Servizio Studi del Senato, 'Il regionalismo differenziato e gli accordi preliminari con le regioni Emilia-Romagna, Lombardia e Veneto', 16 May 2018, pp. 17-19, available at: www.senato.it/service/PDF/PDFServer/BGT/01067303.pdf (last accessed 6 August 2020).

58 *See* the Dossier of Servizio Studi del Senato, 'Il processo di attuazione del regionalismo differenziato', 104/1, March 2019, available at: www.senato.it/japp/bgt/showdoc/18/DOSSIER/0/1103442/index.html?part=dossier_dossier1 (last accessed 6 August 2020).

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'international and EU relations of the Regions' included in all agreements,[59] which are limited by Article 117 Cost., c. 5 and 9. The reasons behind these specific requests reveal both the economic incentives and opportunities linked to the European internal market and funds and the desire to determine their own policies internationally.

Following the examples of Lombardy, Veneto and Emilia Romagna, other Regions have started the process or the discussions on more autonomy, although they did not conclude any agreements.[60]

The aspirations behind the regional requests – it has to be noted that Lombardy, Veneto and Emilia Romagna are the productive hearthland of Italy – could be summarized as wanting more autonomy, more resources and more differentiation, where differentiation in this case is equivalent to 'quality and efficiency'.

The process of asymmetric regionalism also raises some fears from other Regions (especially from the South), which could be summarized as wanting less differentiation, where differentiation is a synonym of inequality and is expressed in a different allocation of resources and in a growing divide between the North and the South. Italy is one of the most typical examples of uneven disparities among territories, especially considering the increased North-South divide in recent years:

> regional imbalances still play a major role nowadays: Italy's North-South divide in terms of GDP has no parallels in any other advanced country of a similar size, and southern Italy is, after Eastern Europe, the biggest underdeveloped area inside the European Union.[61]

As known, even the European regional policy and the use of structural funds have not yielded the results that they could have.

The regional requests for more autonomy have opened a lively debate on the political and social implications of regional differentiation and on the many juridical problems for the application and the implementation of Article 116 Cost. Par. 3 (on the procedures, the subjects, the controls, etc.), but the principal knot is undoubtedly about resources: who is going to pay for more autonomy and differentiation and how? Are Italian Regions coming together or moving apart?

59 In all of the preliminary agreements signed in 2018, an addendum defined commitments aimed at strengthening the role of the Regions in international relations and with the EU, with a clarification of the methods of regional involvement.

60 Servizio Studi del Senato, 'Verso un regionalismo differenziato: le Regioni che non hanno sottoscritto accordi preliminari con il Governo', No. 45, July 2018, p. 23, available at: www.senato.it/japp/bgt/showdoc/18/DOSSIER/0/1069514/index.html (last accessed 6 August 2020).

61 Felice, 2017. On the condition of Italian Southern Regions *see* A. Morelli, 'La condizione delle Regioni meridionali: a che punto è la notte?', *Le Regioni*, Vol. 5, 2017, pp. 891-898; A. Spadaro, 'Riflessioni sparse sul regionalismo italiano: il caso delle Regioni meridionali', *Le Regioni*, Vol. 5, 2017, pp. 899-916; D. Cersosimo, S. Chimenti & R. Nisticò, 'Recessione economica e cittadinanza. Il grande disinvestimento pubblico nel Mezzogiorno negli anni Duemila', *Le Regioni*, Vol. 5, 2017, pp. 917-952.

The doubts concern the funding procedures that can lead, over time, to retaining part of the taxes gathered on territories, with the risk of affecting the entire system of public finance (specifically, on public revenue and the redistributive power of the central state) and subsequent repercussions on the principles of equality and national solidarity, that is to say on citizenship rights (in fact, the first proposal from Veneto was going in this direction). Such problems of financial sustainability, together with an increased complexity of the entire system, would be amplified if many regions accessed asymmetric regionalism. This is the debate around the 'residual fiscal balance': the difference between how much a territory contributes in terms of taxes and what it receives in terms of public expenditure from the state.[62] Furthermore, the high Italian public debt remains in the background, which has a significant impact on the country's economic and financial condition.

The foregoing circumstances have led to a huge debate on the topic, and numerous studies and analysis have already been published.

Many of these reflections (see, for example, the studies of the two research centres: the Institute for the Study of Regionalism and Federalism[63] and the Associazione per lo sviluppo dell'industria nel Mezzogiorno[64]) emphasize that the process of asymmetric regionalism of Article 116 Cost. Co. 3 could be considered compatible with the Constitution only if some conditions are clearly defined: a real implementation of fiscal federalism, the establishment of essential levels of care and an efficient equalization system. The prior definition of these aspects would preserve equality and unity and make differentiated regionalism an opportunity for the whole country and not only for the Region involved.

62 *See*, specifically, Ufficio studi e ricerche, Ufficio affari giuridici del Gruppo Pd Senato, *Il regionalismo differenziato tra autonomia e solidarietà*. Atti del seminario dei Gruppi parlamentari del Partito Democratico di Camera e Senato (18 February 2019), Sala Zuccari Palazzo Giustiniani, available at: www.senatoripd.it/materiali/documenti/regionalismo-differenziato-autonomia-solidarieta/ (last accessed 6 August 2020).

63 A. Filippetti *et al.*, *Prima che il Nord somigli al Sud. Le regioni tra divario e asimmetria*, Soveria Mannelli, Rubettino, 2020.

64 Commissione SVIMEZ sul federalismo fiscale, *Regionalismo differenziato e diritti di cittadinanza in un Paese diviso*, available at: www.svimez.info/archivio/images/INIZIATIVE/2019/2019_04_09_nota_regionalismo.pdf (last accessed 22 April 2020); A. Giannola & G. Stornaiuolo, 'Un'analisi delle proposte avanzate sul "federalismo differenziato"', *Rivista economica del Mezzogiorno*, Vol. 1-2, 2018, pp. 5-52.

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The Conference of Regions and Autonomous Provinces published a document on the subject,[65]where it underlines the need for a full implementation of the current constitutional framework regarding 'fiscal autonomy' of regions, and funding of a basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory, especially in Regions with lower per capita taxable capacity (in compliance with the principle of solidarity), together with the need to increase the principle of loyal cooperation.

The request for more powers by Regions through Article 116 c. 3 and the subsequent debate have once again turned the spotlight on the failure to implement regionalism as defined in the Constitution.[66] The Constitution, in fact, already provides for a series of mechanisms to protect the legal and economic unity of the country through the state's power of redistribution (see Art. 117 Const., c. 2, letter m); Art. 119 Const.; Art. 120 Const.).

The need to implement the constitutional framework on the foregoing aspects entered the institutional debate on negotiations and was accepted in the draft framework law containing

> principles for the attribution to Regions of particular forms and conditions of autonomy (Art. 1) and the methods for defining LEPs (Essential Level of Performance) and service objectives (Art. 2),[67]

65 Conferenza delle Regioni e delle Province autonome 'Le Regioni e le nuove sfide del regionalismo' (18/128/CR5b/C1), Roma 18 ottobre 2018, available at: www.regioni.it/newsletter/n-3479/del-23-10-2018/le-regioni-e-le-nuove-sfide-del-regionalismo-18820/ (last accessed 6 August 2020), underlines the need to strengthen and improve the role of Regions in the strategic planning of European structural funds. Also, the Union of Italian Provinces published a document ('Il punto di vista delle Province: "Autonomia finanziaria delle istituzioni della Repubblica e attuazione dell'articolo 116, comma 3, della Costituzione", Commissione parlamentare per l'attuazione del federalismo fiscale, Roma, 28 marzo, available at: www.provinceditalia.it/wp-content/uploads/2019/03/Nota-UPI-audizione-regionalismo-differenziato-28marzo2019.pdf (last accessed 6 August 2020) that, in addition to underlying a full implementation of fiscal federalism as a condition of asymmetric federalism, takes the opportunity to criticize the institutional and financial situation of the intermediate local governments, strongly penalized by the aforementioned institutional reforms, and so the urgency and need for a reform of local autonomies. An implementation of the constitutional framework related to subsidiarity is therefore necessary, through a better discussion of areas where a devolution of competences is possible.

66 G. Tarli Barbieri, 'Verso un regionalismo differenziato o verso un regionalismo confuso? Appunti sulla (presunta) attuazione dell'art. 116, comma 3 Cost.', *Osservatorio sulle fonti*, Vol. 2, 2019, available at: www.osservatoriosullefonti.it/mobile-saggi/fascicoli/2-2019/1444-regionalismo-differenziato (last accessed 6 August 2020), highlights the persistent non-implementation of Title V of the Constitution (2-3), and a drastic reduction of prerogatives of Regions (5), therefore Art. 116 c.3 Cost. will have to be applied on a juridical condition of Regions largely determined not by the Constitution but by ordinary legislation and constitutional jurisprudence. U. De Siervo, 'Dieci anni dopo. Un bilancio della riforma regionale 2001-2011. Conclusioni', *Le Regioni*, 2011, p. 593, claims that there has been a substantial abandonment of the Constitution by the state.

67 *See also* the document of the Minister for Regional Affairs and Autonomies on the state of implementation of Art. 116 of the Constitution presented during the session of the State-Regions Conference of 28 November 2019.

as well as in the draft agreements between the state and the Regions.

An examination of the draft agreements currently available[68] makes it clear that Regions are asking for many detailed administrative competences besides legislative competences. It seems that a more effective application of the subsidiarity principle and a greater collaboration with the state are being pursued; once again, a correct implementation of the Constitution is requested (see Art. 118 Cost. for the subsidiarity principle).

As some scholars have pointed out, Regional requests for more autonomy could be an opportunity for a real implementation of regionalism and for a transformation of the state's role, since both have never been seriously addressed.[69] The transfer of competences from state to Regions, in fact, requires the abolition, or at least the reshaping, of peripheral and central state administrations in the areas concerned, that is to say, the beginning of a major reform of the organization of the central state.[70]

Currently, given the complexity of the subject and all the constitutional implications briefly mentioned, it seems more reasonable to resize both the subjects and the objects involved, by starting with some Regions and devolving a few subjects, rather than to undertake a large process of asymmetric regionalism.

In any case, debate and reflections on the role of Regions and on the value of regionalism have been reopened. The hope is that it will not become scientific reflection confined to libraries, as has often marked the history of institutional reforms in Italy.

68 We are referring to the draft Agreements of 4 July 2019, informally published by some reviews (for example: www.roars.it).

69 S. Mangiameli, 'Appunti a margine dell'art. 116, comma 3 della Costituzione', *Le Regioni*, Vol. 4, 2017, p. 686, considers the asymmetric regionalism as a possibility for a "new season of Italian regionalism". Confindustria (the main association representing manufacturing and service companies in Italy), 'Iniziative regionali per l'autonomia differenziata ex articolo 116 della Costituzione', Position paper, July 2019, available at: www.astrid-online.it/static/upload/posi/position-paper-autonomia-differenziata.pdf (last accessed 6 August 2020), also claims that the process is an opportunity to improve the efficiency of the public administration and strengthen the competitiveness of the territories, provided that it takes place in compliance with the principles of the Constitution.

70 Cf. Tarli Barbieri, 2019, p. 6, claims that the implementation of Art. 116 of the Constitution must be preceded by a reform of the functioning of central administrations. S. Mangiameli, 'Il Regionalismo differenziato e la salvaguardia degli interessi nazionali', *in* Ufficio studi e ricerche, Ufficio affari giuridici del Gruppo Pd Senato (Ed.), *Il regionalismo differenziato tra autonomia e solidarietà. Atti del seminario dei Gruppi parlamentari del Partito Democratico di Camera e Senato*, 18 February 2019, *Supra*, pp. 11-13, proposes the model of *Bundesexecution*, in which Regions are responsible for implementing public policies (organization of regional and local administrative functions), while the state is entrusted with strategic planning, coordination and negotiation of national interests in Europe and the international scenario.

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D Conclusion and Challenges: The Need to Rediscover Unity and Subsidiarity in the EU and in Member States

Connections between the EU's attitude towards Regions and the latest regional requests for more autonomy or independence have been analysed in recent years.[71]

The growing relevance of regional levels in the European integration process – along with the advantages of the internal open market for some territories – in fact, have enhanced awareness of subnational entities (a *Europeanization* of the regions) and their role, '*with or without*' states.[72] In this regard, "the EU can be seen as a destabilizing force on relationships between Member States and their internal components", since it "has favored the construction of a new 'loyalty' towards the EU which competes with that of the Member State", thus even increasing "the appeal of the 'exit option' from the existing state authority".[73]

However, and paradoxically, the experience of the UK with Brexit shows that the EU integration process has in some ways also promoted unity among territories within the states.[74] Brexit has jeopardized devolution and the role of nations:[75] outside the EU the three nations are losing not only funds and opportunities, but also mechanisms of participation at the national and European levels, with less and less relevance of these levels in the European and global markets. These problems are linked mainly to the constitutional structure of the UK but show how much the intergovernmental relations and unity within a country are influenced by the participation in the EU integration process.

The relationships between territories have been threatened by globalization and economic crises (both increased regional differentiation among territories and the latter pushed centralization processes within Member States), thus causing backlashes.

71 On the connection between separatist movement of regions within Member States and participation in the European integration process, *see* F. Palermo, 'Autonomia, Europa e secession. Come stanno le cose?', in P. Lattarulo *et al.* (Eds.), *The Regions of Europe Among Local Identities, New Communities and Territorial Disparities*, Franco Angeli, Milano, 2019, p. 55 *et seq.*; C. Fasone, 'Secession and the Ambiguous Place of Regions Under EU Law', *in* C. Closa (Ed.), *Secession from a Member State and Withdrawal from the European Union Troubled Membership*, Cambridge, Cambridge University Press, 2017, pp. 48-68.

72 G. Falcon, 'Una breve riflessione introduttiva per la discussione sul federalismo in Europa', *Le Regioni*, Vol. 1, 2018, p. 36, says that for the territorial communities within the Member States, the EU, on the one hand, has represented a further level of centralization, and, on the other hand, makes it less important to belong to a particular state.

73 Fasone, 2017, pp. 54, 60.

74 A report of the House of Lords, European Union Committee 4th Report of Session 2017-19, *Brexit: devolution*, published on 19 July 2017, 12, underlined that "the European Union has been, in effect, part of the glue holding the United Kingdom together since 1997".

75 For an overview of the impact of Brexit on devolution and on the unity of UK, *see* M. Keating, 'Brexit and the Territorial Constitution of the United Kingdom', *Droit et société*, Vol. 1, No. 98, 2018, pp. 53-69; S. Douglas-Scott, 'The Future of the United Kingdom', *European Journal of Legal Studies*, Special Issue, October 2019, pp. 245-274; N. McEwen, 'Negotiating Brexit: Power Dynamics in British Intergovernmental Relations', *Regional Studies*, Published online: 03 April 2020.

In this context, the focal point has become how to strengthen unity in the national states and in the EU. Regional differentiation, in fact, could help towards more integration but could also push towards disintegration, and, therefore, the research question behind this article – 'is subnational differentiation positive or negative for European integration?' – becomes more and more relevant.

Through the analysis of the Italian experience of regionalism and the EU attitude towards subnational levels until recent developments, this study has tried to highlight the positive role that regional differentiation could have for European integration.

EU and subnational levels need each other for several reasons (the implementation of the common market and policies), so the EU cannot be indifferent to these challenges[76] if it wants to create 'an ever closer union among the peoples of Europe'.

Also at the EU level, a better application of multilevel governance and subsidiarity in some matters[77] could be crucial for some policies (*i.e.* the migration policy) and some states (*i.e.* Italy) – and could be a useful tool against anti-European sentiment and distrust.

EU is facing the severest crisis of its history, greatly overshadowing the 2012-2017 crisis: the coronavirus pandemic and its health-related, social and economic repercussions. This circumstance, and the need to provide adequate answers and measures, "present Europe with an extraordinary opportunity: to decide to move towards a deeper unity, or to decline irrevocably".[78]

76 P. Popelier, 'A Multilevel Governance Perspective on Disintegrative Dynamics within EU Member States', *in* P. Lattarulo *et al.* (Eds.), *The Regions of Europe Among Local Identities, New Communities and Territorial Disparities*, Franco Angeli, Milano, 2019, p. 36, affirmed that the EU should be more structurally involved in fragmenting developments within Member States (autonomists or secessionists): the "EU cannot position itself as a neutral bystander because it is a constitutional system of multilevel governance that is impacted by fragmenting developments within the Member states" (*see also* p. 39). Fasone, 2017, pp. 50-51, also says that "the EU cannot claim to remain neutral and indifferent to secession within its Member States, although it does not enjoy a specific competence in this field. In other words, the EU bears part of the responsibility for these developments and after the Treaty of Lisbon it has acted as if it were regionally oriented". In this regard, the EU should include an "ad hoc provision regarding the monitoring of secession processes in the Member States" that supports "the idea of finding minimum requirements for a secession within an EU Member State to be considered legitimate under EU law as a precondition for a future EU accession of that new entity".

77 For example, the study of Naess-Schmidt & Bjarke Jensen, 2018, p. 6, reviews how the principles of subsidiarity and proportionality can help boost growth in the EU at the aggregate country level, while at the same time allowing EU regions to benefit from growth. They argue that subsidiarity and proportionality, both general principles in EU law, can play a key role in mitigating growth imbalances across the EU.

78 G. Schwan *et al.*, 'ICON Guest Editorial: Without a New European Patriotism, the Decline of the EU is Inevitable', 3 April 2020, available at: www.iconnectblog.com/2020/04/icon-guest-editorial-without-a-new-european-patriotism-the-decline-of-the-eu-is-inevitable/ (last accessed 6 August 2020).

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The territorial differentiations require an institutional adjustment that involves (or calls for) a renovation or reorganization of state systems and structures.[79]

At the state level it is necessary to have mechanisms of *unification* that move not necessarily towards *centralization* but towards more collaboration in the definition of policies and more subsidiarity; that is to say, less state where it is not necessary (*e.g.* in some Italian Northern Regions for some policies) and more where it is requested (*e.g.* in some Southern Italian Regions for other policies). Rather, a strong regionalism requires a strong state in the equalization policy, monitoring and replacement. In Italy those mechanisms are already provided in the Constitution (Arts. 5, 117, 119, 120), but they have to be really implemented. In other situations – for example in the UK – the changes requested to the state are much more profound.

Similarly, the extraordinary state of emergency on account of the Covid-19 pandemic is causing huge disruptions and tensions on competences, roles and collaborations among territorial institutions in many Member States.[80] As someone pointed out: "Is there a space for federalism in times of emergency?"[81]

In regard to the severe implications of this situation for rights, sources of law, economy and institutions – on which there is already an extensive debate – new deep reflections on territorial organization will be needed. In this context many voices think that the current regional system is inadequate and are asking for the

79 This need is well recognized by Italian doctrine. According to Morrone, 2018, p. 21, globalization of economy poses the 'sustainability' of constitutional state, and, subsequently, the sustainability of regional and federal states as a model of governance. Vandelli, 2018, pp. 93-94, hopes for a robust but open coordination centre that involves every territorial level, for which the creation and proper functioning of effective loyal collaboration circuits between the state and the territorial autonomies are essential.

80 For a comparative view of measures adopted by Member States in Europe *see* the Observatory of European Papers 'Focus speciale sul COVID-19 e l'UE', available at: www.europeanpapers.eu/it/news/forum-europeo-focus-speciale-su-covid19-e-ue; Diritto Pubblico Comparato ed Europeo Online Osservatorio Comparato Covid 19, available at: www.comparativecovidlaw.it/europa/; the specific section of 'Verfassungsblog', available at: https://verfassungsblog.de/category/debates/fighting-covid-19-debates: on 'Verfassungsblog', *see*, for example: M. Massa & D. Tega, 'Fighting COVID 19 – Legal Powers and Risks: Italy', 23 March 2020; A. Klafki & A. Kießling, 'Fighting COVID 19 – Legal Powers and Risks: Germany', Friday 20 March 2020; T. Moonen & J. Riemslagh, 'Fighting COVID 19 – Legal Powers and Risks: Belgium', 25 March 2020. On the Belgian case *see also* F. Bouhon *et al.*, 'States' Reactions to COVID-19 Pandemic: An Overview of the Belgian Case', *International Journal of Constitutional Law*, 14 April 2020, Blog, available at: www.iconnectblog.com/2020/04/states'-reactions-to-covid-19-pandemic:-an-overview-of-the-belgian-case.

81 This is the title of an article by F. Palermo, 'Is There a Space for Federalism in Times of Emergency?', VerfBlog, 13 May 2020, available at: https://verfassungsblog.de/is-there-a-space-forfederalism-in-times-of-emergency/.

centralization of some competences at the state level,[82] while others are defending the regions and what they have done.[83]

A reconfiguration of the territorial and institutional organization is not possible during an emergency or in a time of crisis, which demands setting priorities and finding efficient solutions, but certainly the answers regions have provided during this period will influence the discourse in the near future. Some of the competences seriously affected by the pandemic – health care, education, productive activities – are, in fact, the same as those that were at the core of the agreements between the state and Regions for differentiated regionalism.

It is hoped that the future debate will be constructive, not disruptive. Only by taking into account what the last 50 years of regionalism has meant for the country, scholars will be able to answer whether Regions have been 'laboratory of federalism' or not (*Brandeis*).[84] For the 50th anniversary of the first regional election the president of the Republic has said that the pandemic certainly raises new questions, but also that autonomies can contribute to national unity in a framework of loyal cooperation among different levels of government:

> Diversities – if not used improperly – are a multiplier of civil, economic and cultural growth. Europe itself is called upon to enhance the regional dimension as a vehicle of integration. ... The ability to keep together plurality and unity will be decisive.[85]

Elazar, cited earlier, warns that some "kinds or combinations of diversity are compatible with federal unity" and some others "are not".[86]

It is in the nature of a decentralized system that some powers of unitary regulation and coordination *should* be in the competence of the central government, while others *could* be devolved to regions (*Dahl*).[87] In any case, it is

82 *See*, for example, S. Cassese, 'Coronavirus, Cassese: Le Regioni fanno troppe cose e male, il servizio sanitario dev'essere nazionale', *Il Messaggero*, 3 April 2020, available at: www.ilmessaggero.it/italia/coronavirus_cassese_intervista_regioni_sanita_nazionale-5149114.html?fbclid=IwAR1GjpXYq_l_e96KC8YVYID3cCL-FKeAK6OYncbbIglGoj6pVJkZhCItyqU; and S. Cassese, 'Sanità malata. Frammentazione e squilibrio ospedali-territorio. I guai degli eccessi di regionalizzazione, anche in altri campi', *Il Foglio*, 21 Aprile 2020, available at: www.ilfoglio.it/salute/2020/04/21/news/sanita-malata-314097/ (last accessed 6 August 2020).

83 *See*, for example, U. Allegretti & E. Balboni, 'Autonomismo e centralismo nella lotta contro la pandemia coronavirus', *Forum di quaderni costituzionali*, Vol. 1, 2020, available at: www.forumcostituzionale.it/wordpress/wp-content/uploads/2020/04/Allegretti-Balboni.pdf (last accessed 6 August 2020), which have a positive opinion on the responses given by different levels of governments to the pandemic, as well as on the relations between the state and the regions, which worked well overall, despite misunderstandings, errors and omissions.

84 Brandeis, 1932.

85 Our translation from "50 anni dalle prime elezioni regionali: dichiarazione del Presidente Mattarella", available at: www.quirinale.it/elementi/49450 (last accessed 9 June 2020).

86 Elazar, 1979.

87 Dahl, 1986.

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becoming more evident that – in normal and exceptional times – all competences are intertwined.[88]

Definitely, from this experience one element is emerging clearly: interdependence. No one, even in the best system, could play any game alone, since we depend strictly on one another, even from the institutional point of view. As underlined by the president of the Constitutional Court recently, "In times like these, if there is one constitutional principle that deserves particular emphasis and attention, it is precisely that of 'loyal cooperation', the institutional side of solidarity."[89]

88 C. Buzzacchi, 'Coronavirus e territori: il regionalismo differenziato coincide con la zona "gialla", *LaCostituzione.info*, 2 March 2020, available at: www.lacostituzione.info/index.php/2020/03/02/coronavirus-e-territori-il-regionalismo-differenziato-coincide-con-la-zona-gialla/ (last accessed 6 August 2020), highlights the strict relationships among competences at all levels in normal and exceptional times.

89 M. Cartabia, *Summary of the Report on the Work of the Constitutional Court in 2019*, Palazzo della Consulta 28 April 2020, p. 19, English version, available at: www.cortecostituzionale.it/jsp/consulta/composizione/relazione_annuale.do (last accessed 6 August 2020).