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1. The European system relies on three pillars after the entry into force of the Maastricht Treaty: the Treaties establishing the European Community; the Common Foreign and Security Policy and the Justice and Home Affairs. Here only the first pillar is taken into account and in particular the Treaty establishing the European Economic Community, as modified by the Single European Act and by the Maastricht Treaty (the other two treaties are the Treaty establishing the European Coal and Steel Community and that establishing the European Atomic Energy Community). The Treaty establishing the European Community Treaty is now named as the Treaty establishing the European Community (EC Treaty).

Community Law is made of the provisions of the EC Treaty and of secondary legislation, i. e. provisions deriving from the sources set out in article 189 of the EC Treaty: Regulations, Directives and Decisions.

2. In Italy there are two mechanisms for the implementation of a treaty into the domestic order:

- The incorporation of the treaty into the internal legal order through the enactment of appropriate legislation reformulating the content of the treaty;

- The "renvoi" by the internal legal order to the treaty, made possible by a legislative act called "ordine di esecuzione". It is a special procedure which avoids a reformulation of the treaty.

This latter technique has been employed for the implementation of the EC Treaty. A formal law has been enacted providing for the renvoi to the EC Treaty. The law in question is an ordinary law and in principle the EC law should have the status of ordinary legislation in our legal order. However, Italian Courts have applied the principle of the supremacy of the EC Law, as set out by the Court of Justice of European Community.

The major problems, as far as the implementation of EC Law is concerned, have arisen in connection with the secondary legislation rather than the implementation of the EC Treaty.

3. By definition, regulations are directly applicable into the domestic legal order of Member States (see Article 189 of the EC Treaty). However, until 1975 national legislation repeating verbatim the regulation was enacted and the regulation has been formally published in Italian Official Journal. In 1975 the Constitutional Court (judgment n. 232, 30 October 1975) ruled out that the formal publication of regulations (i.e. their incorporation as Italian law) was contrary to EC Law and therefore to Article 11 of the Italian Constitution which ensures the supremacy of EC Law over the Italian Law, as we shall see.

4. According to Article 189 of the EC Treaty, directives are binding only as to the result to be achieved, but the choice and means are left to member States.

For many years in Italy the instrument chosen to implement EC directives into the Italian

legal order has been that of the "delegation" by the Parliament to the Government. This technique raised two kinds of problems:

- the conformity of the delegation to the Constitution, since according to Article 76 delegation is possible only for well defined matters and for limited time. On the contrary delegation was generally made for five years and for implementing all directives enacted during that period. Often the delegation was given when the time for implementing a particular directive was already elapsed;

- the inertia and delay of the Government in enacting the delegate legislation, due to the inefficiency of the Public Administration in carrying out the preparatory work. The inertia and delay have been often responsible for the infringement of EC Law.

The entry into force of the Single European Act (1987) and the number of directives (about 300) required for its implementation, obliged the government to remedy this situation. The new procedure relies on two pillars: the Legge Comunitaria of 1989 (Law No. 86 of 9 March 1989) and the duty for the Public Administration not to apply the domestic law inconsistent with the EC Law having direct effect (i.e. EC law conferring rights enforceable by individuals).

(a) The Legge Comunitaria establishes a procedure for the implementation of the EC Law. Each year a statute, named Legge Comunitaria is enacted by the Parliament. This means that each year the state of conformity of the Italian Law to Community Law is verified so that the necessary measures are taken. The implementation is carried out globally rather than for each individual directive. The instruments contained in the Legge Comunitaria are the following:

- the abrogation of the national legislation inconsistent with the EC Law;
- the delegation to the government for the implementation of Community Law;
- the implementation via administrative decree of those directives which do not require a formal law for their implementation;
- the enactment of "regulations" (i.e. subordinate legislation) by the Government for those directives bearing on matters regulated by law, provided that the Constitution does not require the enactment of a formal law for their administration.

Therefore the characteristic of the new instrument relies on:

- the entirety of the implementation;
- the "deregulation", i.e. implementation by subordinate legislation.

The success of the new instrument in providing the implementation of directives requires:

- A prompt enactment of the Legge Comunitaria by the Parliament. Only after the legge Comunitaria enters into force the delegation becomes operative and the Government has a four month deadline for enacting the appropriate subordinate legislation;
- At its turn, a prompt enactment requires that the Administration submit in due time the bill to the Chambers (the bill must be submitted, by law, by the 1st March of each year).

(b) The other pillar for the implementation of EC Law is the non application by the Public Administration of the Italian Law inconsistent with the Community Law having a direct effect.

That rule is a consequence of the supremacy of the EC Law within the Italian domestic order. Since a well-known judgment of the Constitutional Court of June 8, 1984, the supremacy of the EC Law has been ensured by the Judiciary. The EC Law prevails over the domestic law, even when the latter is enacted subsequently, and judges are obliged to disregard subsequent

internal legislation without having to refer to the Constitutional Court. After a lengthy evolution that rule is now applied also by the Public Administration. In this connection, the influence of the Court of Justice of European Community has been decisive. In its judgment 103/88 of 22 June 1989 the Court stated that not only judges, but also the administration, including city councils, are bound to recognize the supremacy of EC Law and, therefore, are bound to disregard domestic law inconsistent with it. The dictum by the Court of Justice has been endorsed by the Constitutional Court in a number of judgments (see for instance Constitutional Court 11 July 1989, No. 369; 4 July 1989, No. 389; 18 April 1991, No. 168). The same line of reasoning has been followed by the Council of State, the highest administrative court in Italy (see for instance Council of State 6 April 1991, No. 452; 19 October 1991, No. 864).

The principle according to which the administration is obliged not to apply Italian Law inconsistent with EC Law has been applied also in connection with regional administration, as declared by the Council of State in its decision No. 1074 of 31 July 1991. Consequently not only the central administration, but also regional authorities are duty bound not to apply regional legislation inconsistent with the EC Law.

The principle under examination is valid only in so far as the EC Law has direct effect. If a directive does not confer rights enforceable by individuals, the Court of Justice has established the rule according to which the government is liable, vis-a-vis individuals, for not having implemented a directive (see the Francovich case, Court of Justice of European Communities, Cases C-6, 9/1990). Consequently an individual can sue the Italian administration for damages once that the time-limit for the directive implementation had been uselessly elapsed.

5. As said before, a prompt implementation requires that both the public administration and the Parliament speed their work in connection with EC Law.

Since EC Law has a bearing on the competence of many ministries, the coordination and the harmonization of the ministries involved is of outmost importance. The Law 400/1988 on the organization of the Presidency of the Council entrusts the President of the Council with the task of coordinating the implementation of EC Law (Article 5.3). A special branch, i. e., the General Secretariat of the Presidency of the Council, is given the competence to execute the competence assigned to the President of the Council as far as the implementation of EC Law is concerned and, more recently, a Decree of the President of the Council of the Ministers (enacted on 9 December 1993) has established a Secretariat for the coordination of relations with the EC Commission. A role should also play the Consultative Committee of the heads of administrations, which has been foreseen by Law 183/1987).

Before the entry into force of the law on the Presidency of the Council, a special structure was created for the implementation of EC Law. This structure, called Department for Coordination of Community Policies (Dipartimento per il coordinamento delle politiche comunitarie), operates as a Department of the Presidency of Council. It may be headed by a Minister "without portfolio". This means that the appointment of a Minister for "European Affairs" is not a permanent feature of the Cabinet. The Minister for "European Affairs" was first appointed in 1980 and his competences depend on the task assigned to him by the Prime Minister. The Department for Community Policies has an important task in preparing the Legge Comunitaria that each year the Government has to submit to the Parliament.

The Parliament obviously plays an important role in the implementation of EC Law, since it has to approve and enact the Legge Comunitaria. Both Chambers have a special committee the competence of which is devoted to European matters. The Senate has a special body called Giunta per gli affari delle Comunita' Europee (Council for European Affairs), while the Chamber of Deputies ha a Special Committee for the European Affairs.

6. Even though the Italian State is not a federal State, regions are given wide competences, both as far as the legislation and administration are concerned. Regional autonomy is enshrined in the Constitution (Article 117) and special statutes regulate the transfer of competences from the Central government to regions. There are two kinds of regions: those having a special autonomy (regioni a statuto speciale) and those having an ordinary autonomy. The first category of regions enjoys wider competences than the second. Moreover, the implementation of the special statute for the German minority in Alto Adige has had as consequence the establishment of two autonomous provinces: Bolzano and Trento.

The EC Law impinges upon the competences of regions and autonomous provinces. It is sufficient to recall agriculture matters which are the object of regulations and directives by the European Community. As far as the Italian legal order is concerned, the competence on that matter has almost been assigned to regions and autonomous provinces.

A problem of implementation of EC Law impinging upon the competences of regions has arisen in connection with directives, since regulation leaves no much room to the national legislation. For a long period regional autonomy has been constrained as far as the EC Law is concerned. The assumption was that should regions not implement a directive, the Italian State would nevertheless be responsible. On the other hand, the modalities for implementing the EC Law fall within the competence of member States, since the Community does not regulate this matter.

This state of affairs has changed and regional autonomy is now taken into account also in connection with the EC Law. The mechanism employed for ensuring the implementation of the EC Law and at the same time respecting regional autonomy has been that of the delegation by the central authorities and the substitution by the central authorities should regions not implement EC Law. Regions are allowed to implement the EC Law within the limits established by the national legislation. However, should they unable to do so, national legislation applies. The execution of this model implies: i) the enactment by the central authorities of a legislation containing a set of principles to whom regions should conform in implementing the EC Law. For the necessary harmonization should be ensured. ii) The enactment of detailed provisions, to be applied if regions (or a region) do not implement the EC Law.

The procedure has been rationalized by the 1989 Community Act, which makes a distinction between regions with a special autonomy and autonomous provinces on one hand and regions with an ordinary autonomy on the other:

- Regions with special autonomy and autonomous provinces are allowed to implement a directive, as soon as it has been notified to the Italian State. Those entities are however obliged to follow the principles contained in the central legislation within the limit of the Constitution and the regional statute;

- Regions having an ordinary autonomy (and regions with special autonomy in connection with those matters where they share competence with the central authorities) are allowed to implement a directive only after that the Legge Comunitaria had been enacted following the notification of the directive in question to the Italian State. In order to ensure the necessary harmonization, the Legge Comunitaria contains provisions which regions are not allowed to derogate.

- In both instances the central authorities are entitled to intervene and the provisions enacted by the State apply, should regions (or autonomous provinces) not implement a directive.

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