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# The Challenges of the National Recovery and Resilience Plan and of Asymmetric Regionalism: A Resilience Opportunity for Italian Regions?

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*A più di vent'anni dalla riforma costituzionale volta a valorizzare le autonomie territoriali in Italia, i rapporti tra Stato e Regioni si basano ancora su un'architettura che, in diversi settori dell'ordinamento, appare non aggiornata al nuovo quadro. In particolare, lo Stato non ha svolto appieno il suo ruolo cruciale nel conciliare decentramento ed equità fissando i livelli essenziali delle prestazioni (LEP) riguardanti i diritti civili e sociali che devono essere garantiti su tutto il territorio nazionale; l'attuazione dell'autonomia fiscale degli enti territoriali è parziale e disomogenea. Queste criticità devono ora fare i conti con le disposizioni cogenti del Piano Nazionale di Ripresa e Resilienza (PNRR) finalizzate all'attuazione del federalismo fiscale e con la volontà espressa dal Parlamento di attuare il regionalismo asimmetrico ma solo dopo la determinazione dei LEP. Gli obblighi derivanti da questo quadro chiariscono che l'attuazione del quadro costituzionale non può più essere differita.*

*More than twenty years after the constitutional reform aimed at enhancing territorial autonomy in Italy, the relations between the State and the Regions are still based on an architecture that, in various sectors of the legal system, does not seem updated to the new framework. In particular, the State has not fully reconciled decentralization with equity of access to essential levels of services (ELS) concerning civil and social rights that must be guaranteed throughout the national territory. The implementation of fiscal autonomy of territorial governments is partial and not homogeneous. These critical issues must now be understood in light of the mandatory provisions of the National Recovery and Resilience Plan (NRRP) aimed at enacting fiscal federalism and the will expressed by the Parliament to implement asymmetric regionalism but only after the determination of the ELS. The obligations stemming*

*from this framework make clear the implementation of the constitutional framework can no longer be postponed.*

*Summary: 1. The Italian framework of regional autonomy: an example of partially ineffective constitutional enforcement.- 2. The pandemic as a catalyst for a constitutional implementation that can no longer be postponed: the fiscal federalism.- 3. ... the implementation of the essential levels of services.- 3.1. Definition of ELS and their measurability.- 3.2. The relationship between ELS and standard expenditure needs from the economic-statistical perspective.- 4. A tested case study: standard needs and equalization in healthcare.- 5. Italian regionalism at a crossroads: meet the challenge and make the change or move towards the twilight of territorial autonomy.*

## **1. The Italian framework of regional autonomy: an example of partially ineffective constitutional enforcement**

More than twenty years after the constitutional reform aimed at enhancing territorial autonomy in Italy<sup>[9]</sup>, the relations between the State and the Regions are still based on an architecture that, in various sectors of the legal system, seems petrified and not updated to the new framework.

It is useful to recall that the aim of the reform can be summarized as follows: valorising of the regional specificities and thus the need to decentralize competences and service offerings to enhance appropriateness and efficiency, also facilitated by the closer proximity between political decision-makers and voters; taking into account – at the same time – the significant disparities in income distribution across the Italian territory (central vs. peripheral, north vs. south, mainland vs. islands), which could make increasing differentiation and decentralization in service delivery risky, exacerbating inequalities based on residence.

Bearing in mind this goal, central features of the reform are the new distribution of the subject-matters between the State's and the Regions' legislative power, which goes along with a new vision of the relationship between the various levels

of government.

In particular, the reversal of the technique of enumeration of legislative powers, whereby the State ones (exclusive and concurrent) are now enumerated in the Constitution, with a residual clause in favour of the Regions (Article 117, par. 2-4 of the Constitution), alongside the introduction of the principle of subsidiarity for administrative functions (Article 118, par. 1 of the Constitution), should have entailed two main consequences.

First of all, a transfer of functions from the State to the Regions (and to the local government), reserving specific tasks to the former. In fact, to achieve a proper balance between unity and plurality, cooperation and competitiveness, solidarity and autonomy, the expansion of regional competences is accompanied by some specific safeguards. In particular, among the matters falling within the scope of the State's exclusive legislative power is that of managing equalization and of determining the essential levels of services (ELS) concerning civil and social rights that must be guaranteed throughout the national territory (Article 117, par. 2, lett. e and m of the Constitution). A central role for State power in reconciling decentralization and equity, is also found in the assignment to the central Government of the obligation to substitute regional Governments in case of non-compliance with the ELS (Article 120, par. 2 of the Constitution).

The reservation of these competence to the State is particularly worthy also considering the circumstance, provided for in Article 116, par. 3 of the Constitution, that Regions may request the State to get further special forms and conditions of autonomy, on the basis of specific conditions. The latter provision, introduced by the above mentioned constitutional reform, is a crucial element to cope with the complexity resulting from the expansion of regional prerogatives, as the most discerning federalist doctrine attests with reference to federal/regional States originated from a centrifugal rather than a centripetal process: where the federal trends are generated by devolution of powers from a single centre rather than pooling together previously sovereign entities, asymmetric arrangements are the best way to accommodate differential needs to preserve the unity of the State<sup>(9)</sup>.

Secondly, in order to effectively implement the new constitutional set-up of competences and functions, a consistent enactment of the principles relating to the financial autonomy of the Regions and local government (Article 119 of the

Constitution) is necessary. These principles – a further crucial feature of the reform – can be summarized as follows: the full financing of the functions of each territorial entity from its own taxes and revenues, from revenue sharing of State taxes, from State equalization transfers without specific allocation requirements; determination of equalization transfers so as to close the gap between standard requirements and fiscal capacity of each territorial entity. In this regard, in 2009 a law was passed delegating the Government to adopt a series of legislative decrees in order to implement the constitutional provisions on the basis of a new vision of intergovernmental relations<sup>[4]</sup>. According to the guiding principles and criteria contained therein, the rationale of the new structure of multilevel financial relations is the overcoming of the derivative finance system and the granting of greater autonomy in revenue and expenditure to the Regions and local government with the aim of enabling them to assume responsibility for the exercise of the new, broadest competences<sup>[5]</sup>, while respecting the principles of solidarity and social cohesion<sup>[6]</sup>.

Having said that, neither of these two processes has been completed yet and there is thus a discrepancy between constitutional requirements qualifying the regional State model and the living Constitution in many respects.

In particular, the ELS have been fixed only in the healthcare sector<sup>[7]</sup> and in few other fields (active labour market policies and training<sup>[8]</sup>; social services<sup>[9]</sup>; kindergartens, transport of disabled pupils<sup>[10]</sup>). Lacking the ELS, there is no reliable and objective benchmark to detect standard costs and requirements related to the territorial needs in relevant fields and, consequently, it is difficult to check if the current distribution of resources in those fields is appropriate. This, on one side, contributes somehow to “legitimizing” the State’s maintenance of a position of pre-eminence vis-à-vis the Regions and local government in some areas, which does not properly correspond to the role assigned to it by the constitutional provisions. On the other, this lack does not effectively address the gaps between different parts of the Country in terms of infrastructure and services<sup>[11]</sup>.

The process of determining the ELS accelerated at the beginning of the current decade, partly due to the need to enact some policies for social inclusion and cohesion envisaged by the National Recovery and Resilience Plan (NRRP)<sup>[12]</sup>, partly due to the will of the Parliament to implement the above mentioned

Article 116, par. 3 of the Constitution which provides for differentiated regionalism. In this context, the determination of ELS is considered not only as a precondition for the attribution to the Regions of further special forms and conditions of autonomy relating to matters referable to civil and social rights to be guaranteed throughout the national territory, but also in a wider perspective: a constitutionally necessary expenditure threshold that constitutes an insurmountable nucleus for the provision of social services of a fundamental nature, to ensure fair and transparent conduct of financial relations between the State and the territorial autonomies, to foster a fair and efficient allocation of resources related to NRRP and the full bridging of territorial gaps in the enjoyment of services inherent to civil and social rights<sup>[13]</sup>. In this perspective, a similar definition of ELS can be found in the Law no. 86/2024, which contains the Provisions for the implementation of the differentiated autonomy of the Regions with ordinary statute pursuant to Article 116, par. 3 of the Constitution: ELS are «*the constitutionally necessary threshold and constitute the insurmountable nucleus to make these rights effective throughout the national territory and to provide social benefits of a fundamental nature, to ensure the fair and transparent conduct of financial relations between the State and the territorial autonomies and to encourage a fair and efficient allocation of resources and the full overcoming of territorial gaps in the enjoyment of benefits relating to civil and social rights*»<sup>[14]</sup>.

As far as financial autonomy is concerned, from 2009 until now the implementation of the fiscal federalism has been partial and inhomogeneous. In particular, the fiscalisation of transfers, aimed at overcoming the mechanism of derivative finance, has only been concretely implemented for the municipal sector<sup>[15]</sup>; the equalization of resources based on needs and tax capacities has only been initiated for the municipalities of ordinary Regions<sup>[16]</sup>; infrastructural equalization and the convergence path to the ELS are still lacking. More successful the implementation with reference to the reform of accounting within the process of harmonization of public budgets<sup>[17]</sup>. As a result, the Regions (and local government) have no real financial autonomy and still depend on the State transfers. This situation does not help in activating the circuit of full accountability of local authorities while, on the contrary, the fiscalisation of transfers (which has not been done for the Regions yet) would allow a greater

traceability of expenditure and taxation, thus favouring democratic control by the electorate <sup>[18]</sup> .

In this regard, the NRRP now foresees the reform of the sub-national fiscal framework (Milestone 1C1-119), which consists in completing the fiscal federalism envisaged by Law no. 42/2009, with the objective of improving the transparency of fiscal relations between the different levels of government, allocating resources to sub-national administrations on the basis of objective criteria and to incentivize an efficient use of the resources <sup>[19]</sup> . The reform, to be completed by the first quarter of 2026, will have to define in particular the applicable parameters and implement fiscal federalism for ordinary Regions and for the Provinces and Metropolitan Cities <sup>[20]</sup> .

## **2. The pandemic as a catalyst for a constitutional implementation that can no longer be postponed: the fiscal federalism**

It was conceivable that, to cope with the consequences the pandemic had (and still has) not only on the healthcare service, but also on the social and economic structure of the Country, the criticalities outlined above would turn into the need for intervention on the regional State.

That is why the NRRP put, among the goals to achieve, the reform concerning the fiscal federalism and in particular, among its constituent steps, the fiscalisation of transfers and the definition of ELS. As mentioned earlier, this was the basis for Parliament's decision to pass a law to allow the differentiation process between Regions to begin <sup>[21]</sup> .

Why is it necessary or, at least, meaningful, to start with the issue of financial autonomy?

Because, in general, in multi-layered systems the financial relations between the different levels of government help to delineate the concrete nature of intergovernmental relations and thus they have a crucial importance in identifying the intrinsic physiognomy of the form of State and, in particular, the real institutional dimension of federal/regional systems <sup>[22]</sup> .

This seems to be an essential element of knowledge for understanding the effective ability of a system to navigate the change and to be resilient especially

when faced with external and internal pressures<sup>[23]</sup> .

Concerning the Italian model of regionalism, as mentioned above, Article 119 of the Constitution establishes that territorial governments (Municipalities, Provinces, Metropolitan Cities and Regions) have financial autonomy of revenue and expenditure and autonomous resources. The ordinary method of financing functions does not provide for transfers, with two exceptions: those for equalization purposes for territories with a lower fiscal capacity per inhabitant (Article 119, par. 3); those with which additional resources are allocated and special interventions are made in favour of specific entities, to promote economic development, cohesion and social solidarity, to remove economic and social imbalances, to favour the effective exercise of personal rights, or to provide for purposes other than the normal exercise of their functions (Article 119, par. 5)<sup>[24]</sup> .

These transfers, allowed by way of exception, are based on the exclusive legislative power of the State pursuant to Article 117, par. 2, lett. e of the Constitution.

Article 8 of the Law no. 42/2009 therefore provides for the abolition of State transfers aimed at financing expenditure related to matters of concurrent and residual regional legislative competence, as well as expenditure related to matters of exclusive State competence in relation to which the Regions exercise administrative powers (Article 8, letters a and f). The same article specifies that the expenditure relating to matters subject to the constraint of Article 117, par. 2, lett. m of the Constitution must be determined in compliance with the standard costs associated with the ELS (Article 8, letter b). These matters were identified by Article 14 of the Legislative Decree no. 68/2011 in the following: health, assistance, education, local public transport with reference to capital expenditure and states that further matters may be specified by law.

Article 10, par. 1 of the Law no. 42/2009 provides that, with regard to the financing of regional functions in matters of concurrent and residual regional legislative competence, the relative expenditure allocations, including personnel and operating costs, in the State budget are to be cancelled; the rates of State taxes are to be reduced and certain regional taxes and rates of regional co-participations are to be correspondingly increased<sup>[25]</sup> .

Article 2 of the Legislative Decree no. 68/2011, implementing the Law no. 42/2009, provides for the redetermination of the surtax on personal income tax of ordinary Regions. Article 7 of the Legislative Decree no. 68/2011 provides for

the abolition of transfers from the State to ordinary Regions, with specific reference to State transfers in the current account and, where not financed through recourse to debt, in the capital account, of a general and permanent nature and destined for the exercise of regional competences, including those aimed at the exercise of functions by Provinces and Municipalities.

Therefore, since 2012, the regional surtax on personal income tax (IRPEF) should have been re-determined, so as to ensure that all ordinary Regions receive revenues corresponding to the abolished State transfers; all State transfers with the above-mentioned characteristics should have been abolished.

Now the aforementioned Milestone M1C1-119 NRRP identifies precise deadlines for the completion of the fiscalisation of transfers, an essential component for the implementation of fiscal federalism to be achieved by March 2026 (peremptory deadline). For the identification of the transfers to be fiscalised, the deadline was set at 31 December 2023 (deadline that can be waived, but within the timeframe envisaged for the achievement of the Milestone as a whole). In this regard, the procedure set forth in Article 7 of the Legislative Decree no. 68/2011 provides that the identification of the transfers to be fiscalised is to be made by a decree of the Prime Minister, adopted, on the basis of the assessments of the Technical Commission for Standard Needs (TCSN)<sup>[26]</sup>, at the proposal of the Minister of the Economy and Finance, in agreement with the Minister for Regional Affairs and Autonomies, after hearing the advice of the Unified Conference<sup>[27]</sup> and after hearing the advice of the Commissions of the Chamber of Deputies and the Senate of the Republic competent for financial profiles.

The fiscalisation of the State transfers will subsequently have to take place according to the procedure set forth in Article 2 of the Legislative Decree no. 68/2011, which provides that the regional IRPEF surcharge be re-determined with a special Prime Minister's Decree in such a way as to guarantee that all the ordinary Regions receive revenues corresponding to the abolished State transfers, in addition to the revenues ensured by the base rate in force. It should be noted that Article 13, par. 1, letter a, no. 1 of the Law no. 111/2023 (the so-called "Tax Delegation Law") also provides for the possibility of resorting to alternative sources of financing.

That being said, on 11 December 2023 the TCSN expressed its assessments of

the transfers to be fiscalised<sup>[28]</sup>. These assessments were based on the reconnaissance carried out by the Department of the State General Accounting Office on the basis of the criteria indicated by the legislation in force and the analysis of the State budget payments to the Regions for the years 2021 and 2022. The outcome of the technical reconnaissance was then analysed in discussion with the representatives of the State Administrations concerned, with subsequent adjustments to the original mapping.

During the discussion, critical positions emerged on the part of several State Administrations, the National Association of Municipalities, the Union of Provinces and, for some profiles, some Regions.

In its final assessment, the TCSN, after recalling the binding regulatory framework, recalled the Constitutional Court's magisterium consolidated on the matter, according to which it is possible to maintain any State transfers to the Regions in matters of regional competence only if (a) they are funds necessary to ensure homogeneous levels in the enjoyment of rights and the use of services throughout the national territory ("imperative social needs"), (b) provided that the involvement of the Regions is guaranteed and, in any case, (c) only as a temporary and transitional solution in the face of the continuing non-implementation of the Law no. 42/2009, which results in the unfinished implementation of Article 119 of the Constitution<sup>[29]</sup>.

Hence, having noted the objective existence of a legal framework in which the sectoral regulations are not consistent with Article 119 of the Constitution and its implementing discipline, and considering that fiscal federalism cannot be achieved without the cooperation of the Regions, the National Association of Municipalities, the Union of Provinces and, above all, the State Administrations concerned, called upon to "govern" the steps necessary to put an end to the persistent non-implementation of the constitutional dictate, the TCSN emphasised in its assessment the need for a debate in the political forums on the determination of the perimeter of the fiscalisation of transfers.

As a matter of fact, the polycentric nature of the Italian legal system implies complex institutional relations, at both political and technical levels, to achieve the cooperation necessary for the smooth functioning of the system<sup>[30]</sup>.

On the other hand, it was foreseeable that the taxation process would meet with resistance, due to the need for a paradigm shift that requires appropriate

metabolisation and organisational innovations, starting from the State level. However, it is also necessary to proceed with the realisation of fiscal federalism, since this is the implementation of a model that the Constitution has required to be realised since 2001 and which is, above all, the precondition for guaranteeing appropriateness in the allocation of resources, functional to the equal guarantee of rights.

Finally, the urgency of achieving fiscal federalism has been again underlined by the Constitutional Court in Judgment no. 192 of 2024, ruling on the constitutional legitimacy of the above mentioned Law no. 86 of 2024 on the so called differentiated regionalism. In its arguments, the Court highlights, in particular, how the fiscalisation of State transfers still remaining in regional matters and the establishment of the equalization fund are processes that have been systematically postponed from year to year. This prevents the completion of the cooperative regional model designed by the 2001 constitutional reform, since the regional finance has remained largely derivative and devoid of equalising mechanisms (except for healthcare sector<sup>[31]</sup>). The Court therefore strongly emphasises the need to fully implement the design described in the aforementioned Milestone M1C1-119 NRRP, interrupting once and for all the practice of systematic postponements followed to date<sup>[32]</sup>.

### **3. ... the implementation of the essential levels of services**

Coming to the second unresolved issue, as mentioned above, implementing ELS is crucial to realizing a proper balance between differentiation and equity.

Law no. 42/2009, in implementing the constitutional mandate, established general guidelines for defining standard needs associated with the ELS and the mechanism of comprehensive equalization to ensure the financing of needs with transfers aimed at compensating the gap between needs and fiscal capacity.

The notion of ELS is already found in some legislative provisions preceding the 2001 reform of Title V of the Constitution: in Healthcare with the determination of Essential Level of Health Assistance (ELHA) (Legislative Decree no. 502/1992) and in the assistance sector (childcare, non-self-sufficiency, disability, dependencies, poverty, etc.) for which the notion of ELS is traceable in Law no. 328/2000. Even if there is no comprehensive legislation that defines the

ELS<sup>[33]</sup>, the equalization of the gap between standard need and fiscal capacity today guides the financing of healthcare services at the regional level (Legislative Decree no. 68/2011) and the financing of fundamental functions of Municipalities, Provinces, and Metropolitan Cities (Legislative Decree no. 216/2010).

The first concrete step in defining the standard need aligned with a nascent ELS began in 2021 with the introduction of service goals enhancing socio-educational services of Municipalities, notably the ELS related to childcare services aiming for a coverage rate of at least 33% of children between zero and two years by 2027 at the municipal level (Article 1, par. 172 of the Law no. 234/2021). Other norms related to the identification of ELS can be found in Article 13 of the Legislative Decree no. 68/2011, which outlined a procedure for defining, financing, and implementing the ELHA; in Article 1, paragraphs 167 and 169 of the 2022 budget law (Law no. 234/2021) which established that respectively with a Prime Ministerial Decree and a decree from the Minister of Labor and Social Policies the implementation methods of the ELS for non-self-sufficient elderly people are determined and the ELS in other areas of social care, as identified by Article 22 of the Law no. 328/2000, are defined.

In the regulation of financial flows between the central government and territorial governments, the safeguarding of general public finance equilibria is ensured by the provision of equalization mechanisms with a closed budget constraint (top-down approach), where the standard need corresponds to a distribution coefficient applied to a total national expenditure amount defined in line with budget objectives and respect for European fiscal rules. Territorial governments can fund additional services beyond the ELS by leveraging the fiscal effort applied to local taxes or by generating greater efficiency. Thus, the overall resources constrain the transformation into euros of the ELS through the definition of standard needs.

In the current equalization framework, the financing of healthcare needs is characterized by some critical issues, especially concerning the absence of a direct link between healthcare expenditure needs and ELHA. The equalization mechanism for local entities is applied partially as it is still amid a long transition period from the old equalization criterion based on historical expenditure. It foresees full implementation in 2030 for Municipalities and in 2031 for

Provinces and Metropolitan Cities.

### **3.1. Definition of ELS and their measurability**

The ELS emerge from a definition process involving two distinct aspects. The first is identifying services constitutionally required for civil and social rights. The second aspect pertains to the determination of the essential level for each service that must be uniformly guaranteed across the national territory. While technical bodies carry out preliminary investigations to determine both aspects, political assessments that inherently belong to the State's democratic-representative bodies must not be overlooked.

Aligned with this cooperative approach between technical and political bodies in defining the ELS, it is interesting to recall the outcomes of the Scientific and Technical Committee for the Identification of ELS (CELS). This Committee, established by a decree from the President of the Council of Ministers on March 23, 2023, undertook technical studies and in-depth analysis in order to help the policy-maker to implement the provisions of Article 116, paragraph 3, and Article 117, paragraph 2, letter m of the Constitution, which address differentiated regional autonomy and the identification of essential service levels, respectively.

Since the enactment of the new Title V of the Constitution, the CELS's efforts represent the first comprehensive initiative to establish foundational guidelines for the ELS definition by Italian policymakers based on constitutional principles. By late 2023, based on constitutional guarantees of civil and social rights and existing legislation, the CELS identified 283 potential functions/services related to 14 areas (defined by constitutional boundaries) affected by the ELS and also subjected to devolution according to Article 116, paragraph 3 of the Constitution.

The Committee's findings led to a conceptualization of ELS that is both "service-oriented" and "mandatory". Although these must take on a financial dimension, they are not strictly tied to direct measurability of service, thereby relegating the concept of measurability to a non-decisive element in defining ELS. From the analysis of hypothesized ELS functions/services by the CELS, a distinction emerged between: "quantifiable" ELS, where it is feasible to compute the

standard needs in each territory, and “non-quantifiable” ELS, which are seen as uniform normative constraints across the national territory and not subject to local derogation, representing essential services rendered by public authorities without the elements suitable for precise and punctual determination of standard needs, yet requiring forecasts for ongoing expenses.

In the second phase of the CELS’s work, finalized in 2024, the multifaceted definition of the 283 proposed ELS provided by the CELS was reconciled with the economic-statistical vision. This process, needed to allow the Technical Commission for Standard Needs (TCSN) to define the methodological pathways for establishing costs and needs associated with ELS, led to the identification of three categories of ELS:

- 1) ELS for individual benefits, such as support for students with disabilities, access to employment services, healthcare, and local public transportation, marked by a high degree of measurability and directly delivered to individuals;
- 2) ELS for collective benefit, like air, water, and soil quality monitoring, food safety controls, gas and electricity provisioning, communication networks, and cultural heritage conservation, characterized by performances where individual benefit is indistinguishable from community benefit and measurability may not always be direct;
- 3) ELS about national rules and constraints, including biodiversity protection, educational programs, urban standards, land use limits, and rail transport quality standards, where service measurability is generally absent but the benefit is predominantly collective.

In summary, this classification clarifies that ELS vary significantly in terms of measurability, with individual ones tending to be more easily quantifiable compared to collective ones or to those linked to national regulations, underscoring the importance of careful monitoring since this tripartite division converges in presenting the ELS as a tool for monitoring and analysing performance.

### **3.2. The relationship between ELS and standard expenditure needs from the economic-statistical perspective**

Turning to the identification of the methodological pathway for converting ELS

into financial dimensions, it is crucial to specify that: the standard cost refers to the unit cost of a given service, provided under the best conditions of efficiency and appropriateness; whereas standard expenditure needs represent the financial requirements of an entity to guarantee a specific service based on the characteristics of various territories, such as the cost of productive factors and socio-demographic aspects of the resident population.

From a methodological standpoint, the discriminant element is the degree of measurability of the performances associated with ELS. Where there is extensive measurability, the analysis begins with the identification of performances, which can occur in two distinct ways: directly concerning the service offered, as in the case of the number of students per class in education, parameters related to air quality, or response times in healthcare; or indirectly, taking into account the characteristics of the territorial context, such as the density of the resident population, the demographic distribution by age groups, or the presence of archaeological sites and cultural assets. Standard costs, a fundamental element in determining standard expenditure needs, can be estimated in two ways. On one hand, it can be calculated based on the specificities of the territorial context and service standards, considering local peculiarities; on the other hand, it can be derived from normative sources, as occurs in specific sectors, such as education or labour protection.

It is crucial to emphasize that the need for measurability does not confine the definition of ELS solely to functions connected with direct personal service delivery with measurable individual output. For functions where output is not readily measurable, the measurement criteria might be parameterized to variables indirectly related to the unmeasurable output, such as the input of resources needed to fund these functions, appropriately standardized based on relevant contextual structural factors; the number of beneficiaries; qualitative elements or context-linked elements generating the service demand.

From a strictly economic-statistical perspective, the definition of ELS performances should adhere to requirements that are purely functional to the concrete implementation of the associated standard expenditure needs. This implementation is based on appropriate quantitative analyses of the burdens sustained by administrations at the territorial level. Therefore, ELS performances should be expressed with reference to measurable quantitative or qualitative

entities that are readily available with sufficient ease and promptness, reducing or eliminating the need to develop specific investigations. Concurrently, ELS performances should be feasible for almost all service providers, even through subsequent phases of specifying standard service levels. Finally, it is suitable that ELS performances are directly traceable to financial data concerning the average expenses sustained by the State and other levels of government over the last few years.

With the introduction of techniques for determining standard municipal needs starting in 2013<sup>(34)</sup>, it became possible to develop an estimation model allowing for a precise and consistent quantification of the level of services provided, based on two key equations. The first equation defines the standard need as the product of the level of services and the standard cost of these services, expressed as:

$$\text{Standard Expenditure Need} = \text{Services} \times \text{Standard Cost} (1)$$

The second equation establishes that the standard cost is a function dependent on the territorial context and adopted service standards, formulated as:

$$\text{Standard Cost} = f(\text{territorial context}, \text{service standards}) (2)$$

The analysis starts with the identification of services, which can occur in two distinct ways: directly concerning the service offered, such as the number of students per class in education, parameters related to air quality, or response times in healthcare; or indirectly, considering the characteristics of the territorial context, such as the density of the resident population, the demographic distribution by age groups, or the presence of archaeological sites and cultural assets.

Standard cost, a fundamental element in determining standard needs, can be estimated in two main ways. On one side, it can be calculated based on the specifics of the territorial context and service standards, considering local peculiarities; on the other hand, it can be derived from normative sources, as occurs in specific sectors like education or labour protection.

A crucial aspect of this approach lies in respecting budget constraints, which not only ensure the economic sustainability of public administrations but also require that available resources be allocated efficiently and compatibly with quality and equity objectives. This implies that the level of services and the standard cost must be determined rigorously and in a balanced way, ensuring that the system meets the needs of local communities and the principles of

financial sustainability. Through this integrated system, it becomes possible to meet the essential needs of communities, promoting a balanced use of public resources and ensuring high standards of efficiency, quality, and equity in the services provided. Equations (1) and (2) thus provide a clear framework for the entire process, allowing a direct link between territorial needs and the levels of services actually provided.

Expanding on the criteria for identifying measurement methods to accompany, in a subordinate manner, the primary identification of services, the first area is the definition of the beneficiary pool. In particular, it is a priority to divide functions/services into two types of beneficiaries: on one side, services that address the entire population indiscriminately (for example, ensuring access to a service or ensuring certain quality standards), in which case the beneficiary pool is identified with the entire resident population or with specific segments of the resident population; on the other side, services that instead address a specific “client group” that must express a direct demand to use the service, in which case the number of potential beneficiaries already becomes a primary measure of the level of service to be guaranteed.

The next step towards defining the measurement criteria is the reconnaissance of the historical level of services, both overall and by regional scope. For each ELS performance, it will be necessary to verify if there are already more or less detailed service standards and if all or part of these standards can be identified as a measurement criterion. In cases where existing standards are acquired as a measurement criterion, the measurement of ELS will be “implicitly” linked to the historical expenditure allocated across territories based on current funding criteria. In this case, the recognition of current service standards across various territories under existing legislation identifies the level of service that the State is currently able to guarantee.

In cases where the performance component of ELS is absent, and consequently, the measurability of the service level and standard cost becomes non-viable, equation (2) disappears. In these cases, the definition of need can be deferred to a variant of equation (1) where services are replaced by context-related variables that reflect socio-demographic, economic, and morphological aspects correlated with the ELS content of the matter or functions being defined. As outlined in equation (3), the need for each region will correspond to an apportionment

coefficient obtained from the weighted averages of the selected context variables. Both the selection of variables and the weighting will be supported by a technical inquiry by the Technical Commission for Standard Needs, but must then be validated in a political setting, as this measurement process is subject to broader margins of discretion due to the absence of performance measurability.

$$\text{Standard Expenditure Need} = \Sigma (\text{context variables} \times \text{weight}) \quad (3)$$

Regarding the relationship between ELS and budget constraints, the logical path developed thus far shows how the theme of respecting budget constraints is generally separate from the mere definition of ELS and from identifying the type of standard for measuring performance on the territory. How ELS impacts budget balances materializes instead when defining the parameters with which standard service levels are determined. It will be the political decision-maker, therefore, who decides which standard level to guarantee, compatible with the budget constraint hypothesis or by leveraging the expansion of resources.

In cases where services are measurable, and it is possible to identify standard costs, the political decision-maker will have access to a complete information framework. This allows for the adoption of a bottom-up approach, which enables the estimation of needs in economic terms relative to different options of intensity and service level. At the end of the process, however, an apportionment coefficient will still be determined, following a top-down approach, necessary to respect the existing budget constraint or possibly reformulated based on the choices of the political decision-maker matured during the bottom-up analysis within the broader context of political planning.

Conversely, in the absence of service measurability, the definition of needs becomes more limited. In this case, the standard expenditure need is represented solely by the apportionment coefficient, and political decisions develop exclusively from a top-down perspective, constrained by a budget limit defined *ex-ante* at a purely political level.

#### **4. A tested case study: standard needs and equalization in healthcare**

For the Regions which in the Italian system have as their main responsibility the provision of health services, Law no. 42/2009, in implementing the

constitutional framework of 2001, provides, consistently, that the expenses associated with the ELS of the Regions are included, in the first place, those for health and social assistance. The health sector, therefore, with its more than 130 billion euros of current public expenditure (equal to over 80% of the current expenditure of the Regions), is, by far, the protagonist sector of the entire process of financial decentralization desired by the constitutional reform of 2001, as well as being the main spending responsibility of the Regions. The same Law no. 42/2009 established that for the expenditure sectors subject to ELS, health in the first place, the full financing of the standard needs determined *«in compliance with the standard costs associated with the essential levels of services set by state law... to be delivered in conditions of efficiency and appropriateness throughout the national territory»*.

Therefore, to be in line with the current constitutional set-up, the process of determining the standard health needs of each Region should follow three crucial steps: 1) the setting of the ELS, 2) the determination of the standard unit cost of services, 3) the calculation of the financial needs as the product between the ELS and the standard unit cost. After the enactment of Law 42/2009, the implementation of the regional standard needs of the health sector was concretely implemented with Legislative Decree no. 68/2011, thus making it possible, from 2013, to activate the new mechanism for allocating the indistinct component of the National Health Fund (NSF) which, in fact, today guides equalization in healthcare. Even though today there is a precise identification of health ELS through the definition of the Essential Levels of Health Assistance (ELHA), the mechanism for calculating the standard needs issued by Legislative Decree no. 68/2011 does not allow direct identification of the standard expenditure needs necessary for the satisfaction of the ELHA, as the latter mainly perform an *ex-post* performance monitoring function.

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### BOX - In-depth analysis of ELHA

The individual's right to health, as protected by Articles 2 and 32 of the Constitution, must be guaranteed through the provision of services attributable to the Essential Levels of Health Assistance (ELHA) in the health sector, as identified in the Prime Ministerial Decree of 12 January 2017 implementing Articles 117 and 120 of the Constitution.

This box summarizes the services currently provided in the annexes of the Prime Ministerial Decree, concerning the ELHA Core defined in the Ministerial Decree of the Ministry of Health of 12 March 2019, thus providing a concise but complete list. In particular, the indicators used, replacing the "ELHA Grid" (in force until 2019), are discussed to assess the provision of ELHA by the Regions. These indicators are divided into three macro-areas: collective prevention and public health, district care, and hospital care. In the context of district assistance, specific attention has been given to social and health care, giving it an autonomous connotation given a possible integration with the Essential Levels of Services (ELS) relating to social services, an area of exclusive competence of the Regions and local authorities.

Collective prevention and public health activities: include surveillance, prevention, and control of infectious and parasitic diseases, protection of health in open and closed environments, safety in the workplace, animal health and urban veterinary hygiene, food safety, prevention of chronic diseases through the promotion of healthy lifestyles, and the performance of medico-legal activities for public purposes. These services are aimed at the entire population and are provided directly by national health services or through affiliated doctors and paediatricians.

District assistance: ensures a range of services accessible to the entire resident population, including outpatient and home management of pathologies, 24-hour continuity of care, health care in tourist resorts, emergency interventions, supply of medicines and medical devices, specialist outpatient care, and rehabilitation support. It also includes spa assistance for specific pathologies.

District social and health care guarantees access to home, semi-residential, and residential health and social services for the population that is not self-sufficient and in fragile conditions, the taking charge of the person, and the multidimensional assessment of needs. The Regions and Autonomous Provinces organize these activities, ensuring uniformity throughout their territory.

Inpatient care: Provides a wide range of healthcare services, including urgent surgeries, hospitalization, programmable surgical or invasive procedures, specialist care services, post-admission support, specialist toxicology consultations, and transfusion and transplantation services.

Legislative Decree no. 68/2011 establishes that standard health needs must be determined in line with national and EU public finance constraints, aiming at uniformly satisfying the Essential Levels of Health Assistance (ELHA) throughout the Country. It provides for the definition of a standard per capita cost, based on the age-adjusted population, calculated as a weighted average of the per capita expenditure of the benchmark Regions (Emilia-Romagna, Marche, Veneto, Lombardy, and Umbria) for their ability to guarantee the ELHA in economic equilibrium. Since 2013, the standard national health needs have been determined to guarantee the ELHA, dividing them into the three levels of care (prevention, district, and hospital). The average standard cost is calculated from the costs of the first three benchmark Regions (Emilia-Romagna, Umbria, and

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Marche), chosen for their economic balance in providing ELHA, among the five best. The distribution of the indistinct share of the National Health Fund is then made by applying this average cost to the population of each Region, weighted by age, as established annually by the State-Regions agreement. Simply put, the mechanism provides that health needs are based on a per capita calculation, weighted by 65% on the resident population and 35% on the age-adjusted population, making the standard cost an almost irrelevant constant in the allocation process. As a result, despite the emphasis on ELHA and standard costs, the actual methodology approaches a uniform per capita approach with slight age-related variations, where standard costs are, in fact, irrelevant.

Let us now take a closer look at the current mechanism for allocating resources in the health sector. On the margins of the State-Regions agreement of 9 November 2023 (Rep/acts 262/CSR), CIPESS Resolution no. 33 of 30 November 2023 defines the current level of financing of the National Health Service to which the State ordinarily contributes at €128.869 billion. The total allocation is then divided between an indistinct share of €123.8 billion aimed at financing the ELHAs and a share of resources tied to satisfying specific services equal to €4.2 billion. The new level of national health needs, which represents the overall financing of public and accredited healthcare in Italy, has been increased by the 2023 Budget Law by €2.150 billion for the year 2023, providing for the following increases for the coming years: €2.3 billion for 2024 and €2.6 billion from the year 2025. Table 1 reports the structure of the total requirement for 2023 is detailed below.

Table 1: 2023 requirements of the national health system (Del. 4/2023 CIPESS).

Macro - Destination	Amount in billions of euro
2023 indistinct financing, of which 3,074 tied up	123,810
Bound in favour of the Regions and Autonomous Provinces	2,452
Tied in favour of other entities	1,098
Bonus fund - provision	644

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Portion allocated to the 2023 Innovative Medicines Fund	864
Total	128,869

Table 2 instead reports the details of the increases allocated in the Budget Law for 2023 (Law no. 197/2022 Article 1, par. 535).

Table 2: Increases in the National Health Needs allocated in the Budget Law for 2023.

NHS funding level	2022	2023	2024	from 2025
LB 2022 (co. 258)	124,061	126,061	128,061	128,061
LB 2023 (co. 535)	-	2,150	2,300	2,600
<b>TOTAL</b>	124,061	128,211	130,361	130,661
Higher costs of energy sources (DL. 50/2022 Energy and DL. 144/2022 - Aiuti-ter)	-	1,600	-	-
More FSN resources (DL. 34/2023 Energy and Health)	-	1,400	-	-

Official forecasts for the trend in health expenditure (a component that includes additional items of expenditure in the health sector, including private spending, compared to health needs related to regional transfers), which can be found in the main economic planning documents (NADEF 2023), show values for 2024 close to 133 billion and for 2025 close to 137 billion, both equal to 6.2 percent of GDP.

Starting from 2023, with the CIPRESS resolution of 8 February 2023, new criteria for allocating the unrestricted indistinct portion were introduced, to take greater account of socio-economic and demographic aspects. In particular, a share of 0.75% of the total resources will be allocated according to the mortality rates of

the population under 75 years of age, and a further share of 0.75% will be allocated according to the socio-economic conditions of the territories (indicators relating to particular territorial situations that impact on health needs). This is a small step towards adapting the criteria for determining health needs more in line with the population's needs, but its scope is certainly very modest.

The unrestricted portion, therefore, of the indistinct loan, amounting to €120,736 million, is distributed in implementation of the rules described above, attributing:

- €118,925 million (corresponding to 98.50%) based on the criteria of the resident population and the frequency of health consumption by age, thus applying the procedure dictated by Article 27, par. 5-11 of the Legislative Decree no. 68/2011;
- €905.52 million (corresponding to 0.75%) based on the mortality rate of the population (under 75 years of age);
- €905.52 million (corresponding to 0.75%) based on the overall figure resulting from the indicators used to define particular territorial situations that impact health needs.

In the distribution of 98.5% of the indistinct funding, net of the shares already allocated for specific purposes, the average per capita cost for the different levels of assistance was first calculated, based on the benchmark Regions. This calculation took into account the population updated in January 2022, in accordance with the relevant regulations. The average per capita cost obtained was then multiplied by each Region and Autonomous Province's weighted population to allocate funding proportionally.

Table 3 shows the percentages of expenditure to be allocated to the three levels of assistance, indicating the criteria for weighting the reference population for each. An analysis of the population weighting criteria concludes that 65% is allocated based on a uniform per capita quota, while the remaining 35% is broken down by age-weighted population.

Table 3: Percentages of expenditure and weighting of the population by level of care

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Support Level	Percentage of expenditure		Population weighting criteria
Prevention	5%		Unweighed
District		Primary Care Medicine	7.00% Unweighed
	51%	Pharmaceutics	11.71% of unmet needs The ceiling imposed on the total requirements of the sums tied up
		Specialist	13.30% Weighing
		Territorial	18,99% Unweighed
Hospital	44%		50% weighted population 50% unweighted population

Once the financial needs of each Region have been defined, based on the above, each Region finances its standard needs by drawing on the following sources of funding:

- the National Health Service's own revenue (ticket), equal to an average of 1.5% of needs;
- the general taxation of the regions includes regional tax on productive activities, IRAP (in the revenue component intended for health financing), and additional regional tax on personal income, IRPEF. Both taxes are quantified to the extent of the revenue generated by the application of the national basic rates, equal to an average of 26% of requirements;
- the co-participation of the Regions with special statutes and the Autonomous Provinces of Trento and Bolzano: these entities participate in the financing of health up to the amount of the needs not met by the

sources described in the previous points, except the Sicilian Region, for which the co-participation rate has been fixed since 2009 at 49.11% of its health needs (Law no. 296/2006, Article 1, par. 830);

- the State budget finances health needs not covered by other sources of funding essentially through participation in Value-Added Tax (intended for the ordinary Regions), excise duties on fuel, and the National Health Fund (a share is allocated to the Sicilian Region, while the remainder overall also finances other health expenses linked to certain objectives), equal to an average of 64% of the requirement.

An analysis of the current funding mechanism reveals at least three critical issues.

1. First, the ELHA do not directly enter into determining standard health needs (national and regional). Therefore, no role is recognized for the quantitative levels of services to meet the territories' demands. As a result, the system does not seem to guarantee the full financing of the ELHA, as would be prescribed by the Constitution. ELHA operate only as an *ex-post* monitoring tool, with limited effectiveness. In fact, a new monitoring system called "New Guarantee System (NSG)" is underway starting on 1 January 2020 to overcome the current system based on the ELHA Grid.
2. Secondly, standard costs still have a limited operational function, and the definition of standard requirements is not conducive to efficiency in providing health services, as there is no link with the efficiency level of the "virtuous" Regions in determining regional needs.
3. Finally, the Regions have limited fiscal autonomy. In particular, a reduction process has been underway for some time for IRAP, and the probable abolition has been announced. The regional income tax covers only 8% of the undivided financing. In addition, this tax is basically paid by two types of taxpayers: employees and pensioners, while income from self-employment and wealth are exempt.

Therefore, the mechanism for equalizing health resources cannot be considered fully in line with the constitutional principles and those of the Law no. 42/2009. A revision of the definition criteria and of the standard needs and the allocation of the indistinct health fund should explicitly use the ELHA – possibly mediated

by the construction of composite indicators of the global level of services offered – in the definition of the standard needs of each Region.

The latter should then be identified with a model such as:

where the standard cost (eq. 4a) is statistically estimated considering not only demographic elements, such as the age of the population, but also factors related to the supply of services, such as input costs (labor and capital), which allow measurement of efficiency. Next, the standard requirement (eq. 4b) would respond directly to the level of services to be provided based on the ELHA assessed at standard cost and grouped into homogeneous groups to overcome the complexity that would arise from seeking a standard cost for each ELS.

### **5. Italian regionalism at a crossroads: meet the challenge and make the change or move towards the twilight of territorial autonomy**

The activities of the policy maker described above are very complex but essential in order to achieve crucial goals that, also in the light of the NRRP, can no longer be postponed: equality in the enjoyment of rights and good governance of public resources. These goals, however, can only be effectively achieved if a new role-awareness is acquired by all levels of government involved.

The management of public resources must be guided by the central State in ways which differ from those that have prevailed up to now and are largely based on the use of State transfers with destination constraints. The overlapping of centrally governed policies and directives with those deriving from the spending autonomy of sub-state entities violates constitutional provisions<sup>[35]</sup>, deresponsibilises the beneficiary entities and, not least, has in fact been incapable of guaranteeing the adequate and generalised protection of fundamental rights, as is evident from an analysis of the various services provided on a territorial scale by the territorial entities, but also by the State administration itself.

It is therefore necessary to create that true national connective tissue that is the ELS, constructed by the rule-maker (the Parliament and the Government<sup>[36]</sup>) through a rigorous process of defining services, analysing the relative standard costs and needs, overall financial sustainability and subsequent assumption of political responsibility. This is how public expenditure, and in particular that of

the territorial levels of government, is to be oriented: an expenditure supported primarily by its own taxes and revenues and by co-participations, no longer by transfers and supported possibly by equalisation mechanisms. Secondly, safeguards must be put in place to guarantee the ELS, through adequate monitoring of the actual allocation of resources, if necessary by activating sanction mechanisms and substitutive powers.

The framework briefly outlined defines, specularly, the context within which the autonomy of territorial entities (Regions, Provinces, Metropolitan Cities, Municipalities) is exercised and which, as can easily be guessed, necessarily implies, in order to be legitimised as such, the assumption and demonstration of political, administrative and financial responsibility, as well as the respect of the principle of loyal cooperation (which the State is also subject to).

For the full enactment of the constitutional mandate, from a procedural point of view it is of crucial importance that, as far as the Executive power is concerned, the intergovernmental relations are effectively centred on the cooperative organs known as “Conferences system”<sup>[37]</sup>, working at political level and supported by appropriate technical bodies. From the Legislative power side, lacking a territorial representative Chamber, the Parliamentary Bicameral Commissions with specific competence on these issues (i.e. the Parliamentary Commission for Regional Issues and the Parliamentary Commission for the Implementation of Fiscal Federalism) could be at least greater enhanced.

Incidentally, it is worth mentioning that the “cooperative regionalism”, also recalled recently by the Constitutional Court<sup>[38]</sup>, if correctly understood in the light of the classical federal theory<sup>[39]</sup> should refer first of all to the multilevel/vertical dimension of the Republic and to the bodies and to the instruments useful to implement the multilevel/vertical dialogue (rather than primarily to the horizontal relations between Regions, since the regional level plays institutionally as a whole *vis-à-vis* the State in defining the balance between the unitary principle and the autonomy principle).

In the end, it is remarkable to notice that the achievement of basic goals such as equality in the enjoyment of rights and good governance of public resources is extraordinarily consistent with the original spirit of Italian regionalism, which is quite different from the used of it often done in republican history, i.e. as something to be supported or opposed on the basis of logics that are all internal

to the political dynamics between the majority and the opposition of the moment. It is instead important to bear in mind the reasons for which the Constituents chose the regional form of State: enhancing the geographical and historical heterogeneity of the different parts of the Country, thus fostering their cohesion and allowing a more effective implementation of the constitutional precepts; consolidating democracy by bringing citizens closer to the institutions, increasing their responsibility, attachment and interest in and control over public affairs, making them more aware of exercising their political rights<sup>[40]</sup>; propitiating the reform of the State, triggering a profound process of reform of the central public administration and re-qualifying the legislative activity of Parliament which, no longer obliged to regulate in detail numerous matters, would be placed in a position to concentrate its efforts on the major political choices<sup>[41]</sup>.

All these reasons, *mutatis mutandis*, maintain their relevance and make it clear why it is important for Parliament and the Government today to contribute wholeheartedly to the resumption of this arduous path of effective realisation of (the Constituents' intuition and) the constitutional dictate, also in the light of the "gentle nudge" given by the commitments undertaken at European level and which make the achievement of equality in the enjoyment of rights and good governance of public resources no longer postponable.

In this way also the challenges of the NRRP and of the asymmetric regionalism could turn into an opportunity of resilience for the Italian Regions.

1. The paper is the result of a joint reflection of the Authors. However, paragraphs 1, 2 and 5 are attributed to Elena D'Orlando; paragraphs 3 and 4 to Francesco Porcelli.
2. Constitutional Law no. 3/2001, mainly regarding the Regions with "ordinary" autonomy. For the Regions and Provinces with a special statute (indicated in Article 116, par. 1 and 2 of the Constitution), the Law provides the so called "most-favourable clause", aimed at ensuring that they benefit from the only effects of the reform that broaden their spaces of autonomy. The following reflections will essentially concern the ordinary Regions, although their developments cannot fail to have systemic repercussions on the special autonomies as well.
3. F. Palermo, C. Zwillling, K. Kössler (eds.), *Asymmetries in Constitutional Law. Recent Developments in Federal and Regional Systems*, EURAC Book 53, Bolzano/Bozen, 2009; R. Agranoff (eds.), *Accommodating Diversity: Asymmetry in Federal States*, Nomos, Baden-Baden, 1999.
4. Law no. 42/2009 on Delegation to the Government on fiscal federalism, implementing

- Article 119 of the Constitution.
5. The correspondence between economic and political jurisdiction is in fact necessarily required, according to the principle of “fiscal equivalence”, for a full accountability of the policy- and the rulemaker: M. Olson, *Strategic Theory and Its Applications. The Principle of “Fiscal Equivalence”: The Division of Responsibilities among Different Levels of Government*, in *American Economic Review*, vol. 59, no. 2, 1969, 479 ff.
  6. C. Saunders, *Financial Autonomy vs. Solidarity: A Dialogue between Two Complementary Opposites*, in A. Valdesalici, F. Palermo (eds.), *Comparing Fiscal Federalism*, Brill-Nijhoff, Leiden, 2018, 40 ff.
  7. Prime Ministerial Decrees 29 November 2001 and 12 January 2017.
  8. Legislative Decree no. 150/2015.
  9. Law no. 178/2020.
  10. Law no. 234/2021.
  11. M. Bucci, G. Ivaldi, G. Messina, L. Moller, E. Gennari, *I divari infrastrutturali in Italia: una misurazione caso per caso [Infrastructure Gaps in Italy: A Case-by-Case Measurement]*, in *Bank of Italy Occasional Paper*, No. 635, July 29, 2021.
  12. Approved by the Italian Government by the Law Decree no. 59/2021, converted into Law no. 59/2021 and then by EU Council on 13 July 2021 (within the framework of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility). The NRRP has been amended on 19 September 2023 and finally updated on 8 December 2023 also to introduce a REPowerEU chapter.
  13. Law no. 197/2022, Article 1, par. 791.
  14. Law no. 86/2024, Article 1, par. 2.
  15. Legislative Decree no. 23/2011.
  16. Legislative Decree no. 23/2011 and Law no. 228/2012, subsequently amended several times.
  17. Legislative Decrees no. 118/2011 and no. 126/2014.
  18. J. Sonnicksen, *Federalism and Democracy*, in J. Cremades, C. Hermida (eds.), *Encyclopedia of Contemporary Constitutionalism*, Cham, Springer, 2020, 1 ff. A control which is particularly worthy in case of negative externalities: T.S. Aidt, J. Dutta, *Fiscal Federalism and Electoral Accountability*, in *Journal of Public Economic Theory*, vol. 19, no. 1, 2017, 38 ff.
  19. In turn inextricably linked to the political and financial accountability of local authorities: R. Boadway, A. Shah, *Fiscal federalism. Principles and Practice of Multiorder Governance*, Cambridge University Press, New York, 2009, 29 ff.
  20. In addition to Regions and Municipalities, the autonomous territorial entities provided for in the Italian Constitution are in fact Provinces and Metropolitan Cities (Article 114, par. 1-2).
  21. The above mentioned Law no. 86/2024.
  22. A. Kress, *Accommodating Diversity While Guaranteeing Stability: The Role of Financial*

- Arrangements*, in A. Valdesalici, F. Palermo (eds), *Comparing Fiscal Federalism*, cit., 274 ff.
23. As the dynamics triggered by the economic and financial crisis of the first decade of the Century already displayed: J. Kim, C. Vammalle (eds.), *Institutional and Financial Relations across Levels of Government*, OECD Fiscal Federalism Studies, OECD Publishing, Paris, 2012.
  24. These are ordinary and special equalisation interventions, which can work differently in the various legal systems, but nonetheless aimed at mitigating regional differences in fiscal capacity and expenditure needs and overcoming inequalities: S. Dougherty, K. Forman, *Evaluating Fiscal Equalisation: Finding the Right Balance*, *OECD Working Papers on Fiscal Federalism*, No. 36, OECD Publishing, Paris, 2021.
  25. According to the principle of correspondence between resources and functions, which allows to test the accountability of the level of government concerned: M.F. Ambrosiano, P. Balduzzi, C. Peiti, *Accountability and Revenue Assignment across Levels of Government: Rules, Practices, and Challenges*, in A. Valdesalici, F. Palermo (eds), *Comparing Fiscal Federalism*, cit., 119 ff.
  26. The TCSN was instituted by the Law no. 208/2015 to analyse and evaluate the activities, methodologies and processing relating to the determination of the standard needs of Municipalities, Metropolitan Cities and Provinces (regulated by the Legislative Decree no. 216/2010); the Legislative Decree no. 68/2011 and Law Decree n. 50/2017 extended its functions also to the definition of the standard needs and the standard fiscal capacity of the Regions in the fields of assistance, education and local public transport with reference to capital expenditure. The Law no. 234/2021 has further expanded the functions of the TCSN, stipulating that it shall express a mandatory opinion on all ministerial measures intended to affect the ELS and related standard needs, as far as the modalities for allocating resources and for monitoring the achievement of targets are concerned. It is interesting to underline that the composition of the TCSN is such that it includes representatives of the central Ministries as well as of the Regions, Provinces and Municipalities, thus allowing both a horizontal and a vertical cooperation.
  27. Which was established by Legislative Decree no. 281/1997 and participates in the decision-making processes involving matters falling within the competence of the State and the Regions, in order to foster cooperation between the activities of the State and the system of autonomies, examining matters and tasks of common interest and also performing consultative functions. It is chaired by the President of the Council of Ministers or, by delegation, by the Minister for Regional Affairs; the Minister of Economy and Finance, the Minister of Infrastructure, the Minister of Health, the President of the Conference of Regions and Autonomous Provinces, the President of the National Association of Municipalities, the President of Union of Italian Provinces are members. The Conference represents the forum where Regions, Provinces and Municipalities are called upon to express their position on issues of common interest and take resolutions, promote and sanction understandings and agreements, express opinions and appoint representatives.

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28. The assessment is available at <https://www.mef.gov.it/ministero/commissioni/ctfs/index.html>.
29. Among others, see Judgment no. 273/2013, 4.3.
30. By the way, institutional dimension plays a crucial role in intergovernmental dynamics due to the predominance of cooperative paradigms in financial relations worldwide: E. Alber, *Intergovernmental Financial Relations: Institutions, Rules, and Praxis*, in A. Valdesalici, F. Palermo (eds), *Comparing Fiscal Federalism*, cit., 223 ff.
31. According to the specific mode of financing provided by Legislative Decree no. 56/2000: see below, *sub par.* 4.
32. Judgment 192/2024, 23.3.
33. It is worthy to remind that in the above mentioned Judgment 192/2024, the Constitutional Court underlines the need that, where the Legislature delegates the Government to determine ELS, it must lay down precise principles and criteria for the delegation, in accordance with Article 76 of the Constitution (9.2).
34. F. Porcelli, *The Evaluation of Standard Expenditure Needs of Municipalities: The Case of Social Care Services in Italy*, in *The Italian Journal of Public Economics*, 2015, 3, 123-157; G. Brunello, F. Porcelli, M. Stradiotto, *I fabbisogni standard dei comuni e delle province: un nuovo patrimonio informativo per stimolare maggiore efficienza e responsabilità nei governi locali*”, in *Rivista di diritto finanziario e Scienza delle Finanze*, 2015, 2, 199-235; F. Porcelli, F. Vidoli, *A comprehensive model for the evaluation of standard expenditure needs and standard level of local services*, in *Local Governments Studies*, 2019, 46(5), 734-762.
35. As repeatedly clarified by constitutional jurisprudence: see, e.g., Constitutional Rulings no. 16/2004, no. 187/2021, no. 40/2022, no. 71/2023.
36. The respective role of the two constitutional bodies within the process of determination of ELS it is clearly described in the Judgement of the Constitutional Court no.192/2024, 9.
37. Composed by the following three bodies with a mixed composition, as they are made up of representatives of the State and of the territorial autonomies: the Permanent Conference for Relations between the State, the Regions and the Autonomous Provinces (State-Regions Conference); the State-City and Local Autonomies Conference; the Unified Conference (see footnote no. 26). These bodies represent the privileged institutional venues for discussion and connection between the State, Regions and local authorities. R. Bifulco, *The italian model of State-local autonomies conferences (also) in the light of federal experiences*, in J. Luther, P. Passaglia, R. Tarchi (eds.), *A world of Second chambers. Handbook for constitutional studies on bicameralism*, Giuffrè, Milano, 2006, 1045 ff.
38. Judgement no. 192/2024, 4.
39. H. Kelsen, *Die Bundesexekution. Ein Beitrag zur Theorie und Praxis des Bundesstaates, unter besonderer Berücksichtigung der deutschen Reichs- und der österreichischen Bundes-Verfassung*, in *Festgabe für Fritz Fleiner zum 60. Geburtstag*, Tübingen, Mohr Siebeck, 1927, 127 ff. On the German model: K. Hesse, *Das unitarische Bundesstaat*, Karlsruhe,

- C.F. Müller, 1962; G. Kisker, *Kooperation im Bundesstaat. Eine Untersuchung Zum Kooperativen Federalismus in Der Bundesrepublik Deutschland*, Mohr Siebeck, Tübingen, 1971. On the USA model, D.J. Elazar, *Exploring Federalism*, University of Alabama Press, Tuscaloosa, 1987; L.J. O'Toole, R.K. Christensen (eds.), *American Intergovernmental Relations: Foundations, Perspectives, and Issues*, CQ Press, Washington, 2012; in the Italian doctrine, G. Bognetti, *Lo spirito del costituzionalismo americano. I. La Costituzione liberale*, Giappichelli, Torino, 1998, 195 ff. and *Id.*, *Lo spirito del costituzionalismo americano. II. La Costituzione democratica*, Giappichelli, Torino, 2000, 203 ff.
40. Motivations that acquire an even more pregnant significance with reference to the recognition of financial autonomy to the Regions, not by chance described as the «*true cornerstone of the regional system*» by an illustrious member of the Constituent Assembly, such as Costantino Mortati: C. Mortati, *Istituzioni di diritto pubblico*, II, Padova, CEDAM, 1967, 750.
41. On the original motivations of the regional choice see, among the Italian scholars, A. D'Atena, *Diritto regionale*, Giappichelli, Torino, 2022, 11 ff.