REPUBLIC OF ITALY

Expert

Prof. Francesco Merloni

l. GENERAL QUESTIONS

1. How is the federation formally called (regional, federal state, other...)?

The formal name is "Repubblica Italiana" (Italian Republic), without any reference to either federalism or regionalism.

2. Since when has the power been decentralized in your federation? Was the decentralization established in its origins or in a later time?

Constitutional provision for the Regions is contained in the Italian Constitution which came into force in 1948. Previously, there was no experience of regional-type autonomy. The Italian State was constituted in 1861 with the unification of a number of small pre-unitary States. The territory of the Regions provided for by the Constitution has no precise relations with these pre-unitary states.

3. Has decentralization been formally abandoned or practically inoperative in any historical phase?

Immediately after the Constitution, several Regions with special statutes were constituted (Sicily, Sardinia, Trentino-Alto Adige, Valle d'Aosta and then Friuli-Venezia Giulia). Only in 1970, after 23 years of non-enforcement, were the remaining 15 Regions constituted with an ordinary statute.

4. Which are the deep reasons in the adoption of a politically decentralized system?

Special Statute Regions were established because of the existence of ethnic and linguistic minorities or to stave off separatist movements (particularly in Sicily). The reasons for the Regions with ordinary statutes were various: the divisions among the different policies for public programs, differences in political systems.

5. Could you point out the main phases of the system and the main characteristics?

1861-1922 A unitary state (the Kingdom of Italy), the result of the fusion of previously pre-unitary states, mainly based on the French Napoleonic model. Limited recognition of local autonomies: Municipalities and Provinces, however, strictly supervised by the central government by means of a Prefect.
1922-1945 During Fascism the centralistic character of the system becomes more marked, with rigid control of local entities, also of the political type.
1945-1970 Italy becomes a Republic with a new Constitution which provides for the creation of Regions. Special Statute Regions are constituted.
1970-2001 Ordinary Statute Regions are constituted. With great difficulty the State makes several attempts (1972, 1977, 1918) to transfer functions and resources to the Regions and local entities.
2001 Section V of the Constitution is rewritten, strengthening the position of the Regions and local entities as constitutive elements of the Republic.

6. How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?

As previously mentioned (point 5), the Regions are not the only constitutive elements of the Republic because the Municipalities, Provinces and metropolitan Cities must be considered of equal rank. In any

case, the institutional position of the Regions is certainly of more importance due to the acknowledgement of their strong legislative powers and the explicit listing of the Regions in the Constitution (art. 131).
The Constitution formally provides for the creation of 20 Regions of which one, Trentino-Alto Adige, consists of two Provinces (Trent and Bolzano) which both have rank and powers equivalent to those of a Region. Several of the twenty Regions, those with a special Statute, enjoy a differentiated regime in terms of legislative powers and financial autonomy. Such differentiated regimes are established in the Statutes of these Regions and, unlike the others, are approved by constitutional law.

7. **Do they have singular features (for historical, linguistic, geographical, political, legal or economical reasons)? Do these singular features have political or legal consequences? In other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asimmetry/simmetry?**

The Constitution establishes a general criterion of decentralization in favour of the Regions this system is valid for the ordinary statute Regions. The text of the Constitution provides, in uniform terms, the limits of the legislative and administrative jurisdictions of the Regions. The degree of autonomy and allocation of jurisdictions of the special statute Regions are established in their individual statutes. Therefore, there are specific differences among the legal regimes (in terms of powers and jurisdictions) of these regions.

II. CONSTITUTIONAL LAW

1. **Do you have a written Federal Constitution? What is the procedure far its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?**

Yes, there is a written Constitution (which, however, cannot be defined as federal). The Constitution was written by a constituent Assembly, elected by universal suffrage, which worked from June of 1946 until the end of 1947. It was promulgated by the then provisional Head of State.

Article 138 of the Constitution regulates the procedures to amend constitutional rules: ratification of a constitutional law is by means of two resolutions with an absolute majority of the components of the two Chambers three months after the first resolution. A confirmatory referendum can be requested. A referendum cannot be held if the law is ratified by a majority of two thirds of the components of both Chambers at the second reading. The Regions have no power to intervene in the procedures of constitutional amendment.

The most important constitutional amendments are both recent: with constitutional law n. 1 of 1999, the statute autonomy of the Regions was extended to allow them to determine their form of government and the election system of their organisms. with constitutional law n. 3 of 2001, Section V of the second part of the Constitution was almost entirely rewritten, greatly increasing the Regions' authority regarding legislative matters while the jurisdiction of the Central Government over such matters was reduced to a limited and explicit series.

2. **Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?**

The Constitution refers to Constitutional laws or ordinary laws to enforce some of its provisions. Constitutional laws are ratified by means of the special procedures of art. 138 of the Constitution.

Ordinary laws are ratified in accordance with normal legislative procedure. There is no explicit reference to constitutional conventions in the Constitution. Nevertheless, on several occasions interpretation of the Constitution has been based on informal agreements that have the same function as constitutional conventions.

3. Are there any written state constitutions? What is the procedure far its elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions? Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?

The Regions are provided with Statutes. Therefore, the term "constitution" is avoided. Before the amendment of 1999, the Statute of the "ordinary" Regions was determined by an absolute majority of the Regional Council and ratified with the ordinary law of the State. After the amendment of 1999, the Statute is ratified directly by the Regional Council with resolutions adopted after two months. The State no longer has any power of ratification. However, when elements are seen as being in contrast with the Constitution, the State can contest the Statute before the Constitutional Court. For the "special" Regions, the Statute is ratified with constitutional law.
Matters referred to the Statute are only subject to the Constitution.

III. CONTENTS OF THE FEDERAL CONSTITUTION. DOES THE FEDERAL CONSTITUTION:

1. Expressly recognize federalism or political decentralization as a constitutional principle or value?

There is no reference to "federalism" in the Italian Constitution. However, it very explicitly recognizes the principles of "local autonomy" and "decentralization" in the part dedicated to its fundamental principles (art.5).

2. design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?

The Constitution enumerates (art. 114, sub-section 1) the subjects that constitute the Republic: Municipalities, Provinces, metropolitan Cities, Regions and the State.
The Constitution explicitly enumerates the Regions (art. 131).

3. enshrine the autonomy of the states? If so, in which way?

Both the Regions and local entities are recognized as being "autonomous entities with their own statutes, powers and functions according to the principles established by the Constitution" (art. 114, sub-section 2). The Regions are also recognized as having legislative authority, for many matters of an exclusive nature, without the intervention of the State.

4. recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?

The Regions cannot establish entities at the constitutional level by agreement. The Constitution only regulates possible revision processes of the Regions' territories that can also be the fusion of two or more Regions to form a single Region.

The Regions have established structures of co-operation, such as associations regulated by private law, at the national level to sustain their relations with the State (Conference of the Regional Presidents).
The regions can establish agreements of co-operation among them "to exercise their functions better, also with the determination of shared organisms" (art. 117, sub-section 8). Such agreements are ratified with regional law. The State does not intervene in agreements but can challenge the regional law of ratification if an excess of the Region's legislative authority is recognized.

5. **fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?**

The Constitution directly establishes the principles of regional decentralization of the "ordinary" Regions. These principles are put into effect by the regional Statute and by subsequent State and regional legislation, according to their respective jurisdictions.
For the "special" Regions, the Constitution refers its enforcement entirely to the Statute, ratified by constitutional law.

6. **allow the exercise of the right to self-determination or the separation of states or other territories?**

No power of self-determination is provided for and, even less, secession of the Region.

IV. INSTITUTIONAL ISSUES

1. **Do states participate in the election, appointment or cessation of the federation's chief? Is there any other relationship between this figure and states or main territorial communities? Which one?**

A limited representation of the Regions (three for each Region, 61 representatives) participates in the election of the President of the Republic, although it is mainly the responsibility of the two Chambers (945 components). The Regions do not intervene in the cessation procedures of the Head of State.

2. **Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? What functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?**

A second chamber of representatives does not exist for the Regions. The Senate is "elected on a regional basis" (art. 57 Const) with direct election of the senators by constituencies whose territorial division corresponds to a Region.

3. **Do states have legislative initiative aver federal subject matters? Is their consent required far the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?**

A regional Council "can introduce a bill to the Chamber" (art. 121, sub-section 1, Const). Obviously it is a law dealing with the legislative, exclusive or concurrent authority of the State. There is no provision for

the intervention of the Regions following ratification of a law by Parliament. Five Regional Councils can request the holding of a referendum for the total or partial repeal of a State law.

4. **Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?**

Yes, the Constitutional Court can be directly accessed by either the State or a Region to judge the legitimacy of a law as regards excess of legislative authority.The Regions have no power to nominate the members of the Constitutional Court.

According to prevailing opinion, although the Constitutional Court strongly endorses the principles of autonomy and decentralization, it has often backed choices and behaviour on the part of the State that have greatly affected the legislative autonomy of the Regions. The prevailing lines of conduct have been:
a broad interpretation of the concept of "national interests" that vaguely limits and can be widely applied to regional law;a very wide individuation of the provisions in the state laws considered to be fundamental principles regarding regional legislative authority. Thus, the State has legislated in detail in such a way as to reduce the regional legislative authority to mere executive development of the state regulations.

The jurisdictional organisms have no power to resolve conflicts between the State and the Regions but can raise question regarding the constitutional legitimacy of laws that are about to be applied. In this regard questions relative to possible excesses in legislative authority can also be raised.

5. **Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or against regulations and administrative decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a confljct of powers against another state before a court? In each state, which is the legitimate organism - legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts o rules? Are there any other institutions or individuals legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?**

The Constitutional Court is competent not only for questions regarding constitutional legitimacy of the laws and "acts having legal force" (which do not include regulations) but also for "conflicts of powers between the State and the Regions and among the Regions" (art. 134 Const).

With conflict of power, any act or secondary or administrative regulation can be challenged that damages the sphere of the respective authority of the State and of the Regions. Yes, the procedure for safeguarding authorities can be considered as symmetrical. Regarding the possibility of revocation, the situation is different for laws and for acts, either regulatory or administrative.

Concerning laws, before the reform of 2001, the State had the power of preventive control over regional laws, which it has lost, while a Region could only challenge a state law without being able to have it

revoked. Today, both merely have the power to challenge laws before the Constitutional Court which has no power to revoke the legal effect of the law challenged.

However, in the case of conflict of power between the State and the regions, the Court, pending decisions, has the power to revoke the legal effect of acts. Judicial actions on laws or acts are executed by the executive organism of the Region (the regional council). Neither local entities (Municipalities and Provinces) nor other public entities have the power of direct appeal to the Constitutional Court, the only organism with the authority to annul state or regional laws.

6. **Who is in charge of the official appointment of the main state authorities (the chief of the state, government, parliament or legislative assembly, judicial power of the state, etc.)? Does the federation intervene in the process of appointment?**

The Regions' organisms are all elective. The State does not intervene in the nomination procedures except for jurisdictional interventions (of ordinary judges for eligibility requirements and administrative judges for election procedures).

7. **Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to salve federa! and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible far the provision of materia! resources to the administration of justice (federation or states)? Which are the criteria far the allocation of resources? Can federal courts review state court's decisions? In what circumstances?**

Judicial power is exclusively in the hands of the central government. The regions have no authority, neither legislative nor administrative, regarding civil, penal, administrative or accounting jurisdictions.

8. **Are there others mechanisms far state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, far instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?**

The Regions' instrument of participation in the decision-making of the central government is the State-Region Conference where opinions are expressed on important, legislative (still in the bill phase) or administrative acts and on planning. A second Conference should be mentioned, the Local Autonomies

City-State Conference that allows local entities an analogous participation. The two conferences often meet jointly in a unified Conference.

The Regions do not participate in organisms provided with special autonomy of independence, especially if such organisms work on matters of state jurisdiction.

9. **Can states freely convoke a referendum regarding political or legai measures? Are there any constraints? In other words, does the federation have any power aver this field?**

According to art. 123 of the Constitution, the regional statute allows the Region "to exercise the right of initiative and to convoke referendums on laws and administrative provisions of the Region". Since

statutes no longer undergo State approval, we must wait for the promulgation of the new statutes before the breadth that will be given to these instruments of public participation can be evaluated.

10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.) ?

The Regions are provided with a coat of arms and a standard, but there is no such thing as a regional hymn or flag.

V. THE ALLOCATION OF POWERS

1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?

A distinction must be made between legislative authority and administrative authority.

As regards legislative authority, the Constitution provides for the distribution of authority between the State and the Regions and the relative formal guarantee is in the mutual right to challenge, before the Constitutional Court, state or regional laws that invade the sphere of authority established for each in the Constitution. Regarding administrative authority, the Constitution (art. 118) establishes principles that must be respected concerning allocation (subsidization, due proportion, differentiation), but refers its effective allocation to state or regional law according to the respective legislative authority.

2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?

Its basic design is in a double list of subject matters (authority exclusive to the State (art. 117, sub-section 2) and concurrent authority (art. 117, sub-section 2)) and a residual general clause for the Regions (art. 117, sub-section 6 Const).

3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are there any rules or principles that presume that the power is vested in a certain level of governance?

Yes. The residuality clause allows the Regions to legislate on any subject matter that is not listed among those that are exclusive to or concurrent with the State, therefore on any “new” subject matter.
The effectiveness of the system, which was introduced with law n. 3 of 2001, cannot be evaluated yet as it is still not in full force.

4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?

5. Are there other general rules? Which are they?

6. Does the Constitution allow making more flexible the allocation of powers by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer or delegate powers to states? Through which mechanisms? What role did ali those mechanisms play on the evolution of the federation? How have the decisions regarding the material, economie and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?

General answer to these three questions:

There is no general statement that gives preference to state law over regional law. The Government has a preventive power "when it requires the safeguard of legal unity or economic unity (art. 120, sub-section 2). In this case the State can enforce superiority of state regulations over regional ones.

Art. 117, sub-section 1, plainly states that the legislation of the State and that of the Regions "is executed with respect to the Constitution as well as the obligations derived from EU regulations and international obligations".

Allocation is rigid in regards to legislative authority in that it can only be modified with constitutional amendment. Negotiated instruments of interpretation of the Constitution do not exist (agreements, organisms for the prevention of conflicts). The only organism qualified to interpret the Constitution is cases of conflict is the Constitutional Court.

Regarding secondary regulations, art. 117, sub-section 6, provides that the State, in matters of its own exclusive legislation, can delegate to the Regions the power to control by regulation.

The Constitution says nothing about the possibility of delegating administrative functions but holds pacifically the possibility, with a law, of delegating functions, by official subjects, both downward (from the State to the Region, from the Region to local entities) and upwards.
In general, the instrument of the delegation of administrative functions between the State and the Regions has been used very little while it is more widely used between Regions and local entities.
Regarding single financial resources, the Constitution affirms the principle that they must be distributed among the different levels of government in such a way as to "finance integrally the public function to which they are attributed" (art. 119, sub-section4).

7. Has any subject matter been fully attributed to just one of the territorial levels of governance federal or state-?

Regarding legislative authority, a large part of the subject matters, with the only exception being those of concurrent legislation, are attributed exclusively either to the State (list of art. 117, sub-section 2) or to the Regions (general clause of residuality of art. 117, sub-section 4).

However, if we consider several subject matters exclusively of state legislation, we realize that they do not deal with subject matters in the proper sense, that is relative to specific subjects or complexes of homogeneous activities, but rather with transversal subject matters. Therefore, in this case the State can legislate posing limits, also important ones, on regional legislative authority. Examples of this type of transversal authority: "safeguard of competition"; "jurisdiction and court regulations"; civil and penal order; administrative justice; "determination of the basic levels of the services concerning the civil and social rights that must be guaranteed throughout the entire national territory".

8. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence aver state law in case of conflict)?

Yes, a list of subject matters of concurrent legislation exists, but it is a special competition, different from the one provided for in Germany. In Italy, the Regions are responsible for the legislation of these subject matters "except for the determination of the fundamental principles that is reserved for the legislation of

the State". In this way, therefore, the competition of the two legislations is strictly divided according to the distinction regulation of principle (for the State) and regulation of detail (for the Regions).

9. Are there any subject matters in which legislative power is exclusively attributed to the federation, while executive power is attributed to the states? If so, is the regulative power regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?

As mentioned in point 1, the allocation of legislative authorities and administrative functions follow different criteria. The Constitution strictly allocates the first ones while state or regional laws, applying the principle of subsidization, distribute the second ones. This can cause, for example, administrative functions regarding legislative authority, that is exclusively attributed to the State, to be attributed to the Provinces or Regions.

In general, the State cannot influence the organization and the development of the administrative functions attributed to the other levels of government. Indeed, the State can only legislate, in an exclusive way, on subject matters regarding "administrative order and organization of the State and national public institutions" (art. 117.2 g). This is not true for delegated administrative functions for which the State retains a legislative power of detail and regulation power.

10. Are there any subject matters in which the federation can establish principles or basis far the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?

Yes, they are in the spheres of "concurrent" legislation. We do not have a survey yet regarding the enforcement of the new constitutional text. However, we can refer to previous experience when there was a list of subject matters of regional legislative authority and their authority was limited by the State's power to establish the "fundamental principles" of each subject matter. We can affirm that the State made extensive use of this power, defining even detailed regulations as fundamental principles, thus greatly compromising, often with the use of the Constitutional Court, the autonomy of the Regions.

11. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?

Yes, the State maintains its own peripheral administration to exercise the administrative functions that have remained at the national level. The most important sectors are those regarding peace (public order), education (which, however, should be mostly regionalized), financial administration, social security (national insurance) and the safeguard of cultural assets.

Yes, there are cases of administrative functions delegated to the Regions. In this case, organisms of the Regions carry out the functions delegated according to the disposition of state law (and possible regulations), but without any hierarchical-type subordination. The State reserves the right of instruction and to transfer financial resources to predetermined destinations.

12. What are the general limits of state powers?

Regional legislative authority is only subject to the limits imposed by the Constitution, EU regulations and international obligations. A limit of "national interest" is not provided for; there is no general clause that gives preference to state regulations over regional ones. There are no limits regarding respect for the general principles that can be drawn from state legislation.

13. In your opinion, what are the most important federal powers?

Foreign policy, defence and the armed forces; currency, savings and financial markets; peace (public order); social security (national insurance); safeguard of the environment, the ecosystem and cultural assets.

14. In your opinion, what are the most important state powers?

Health and social assistance; town-planning and building; industry, agriculture and the production sectors in general. Prospectively, education, including that of universities.

15. Have any of these federal or state powers been extensively interpreted?

Up to recent times, based on the previous text of the Constitution, a broad interpretation came about, as mentioned above, with the extension of the concept of national interests and the extended use of power in determining the fundamental principles regarding subject matters of regional authority

With the new constitutional text such phenomena should be avoided: a) by the lack of a provision of national interest as a general limit; b) by the absence of limits to the subject matters (numerous and important) which exclusively regard regional legislation.

16. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?

Yes, the Constitution (art. 11) provides that Italy agrees to "the limitations of sovereignty that are necessary for a regulation that assures peace and justice among nations". The main transfer of sovereign powers was to the European Union. This has some effects on the system of relations with the EU. The State has exclusive authority over its relations with the EU, which concern all the subject matters under its jurisdiction, including foreign policy and international relations. Regarding the Regions' international relations and relations with the European Union, the subject matter is of concurrent legislation: the State can establish the fundamental principles. It is also expressively provided that the Regions, in matters under their own jurisdiction, can ratify agreements with other States and pacts with territorial entities within another state in the cases and in the ways regulated by the laws of the State (art. 117, sub-section 9).

VI. LOCAL AND MUNICIPAL GOVERNMENT

1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used to refer this autonomy? What substantially follows from this constitutional recognition?

Yes, the Constitution recognizes in general local autonomy in art. 5 and names Municipalities, Provinces and metropolitan Cities as constitutive parts of the Republic (art. 114, sub-section 1) and autonomies, with

their own statutes, powers and functions (art. 114, sub-section 2). Local entities do not undergo external controls on their acts, neither by the State nor by the Regions.
The Statutes of the Regions in turn contain explicit statements of recognition of the local autonomies. It can be deduced from the constitutional provisions that state or regional law cannot suppress the constitutionally guaranteed autonomy and that the basic requirements for such autonomy are: 1) self-government, that is, the right to set up their own organisms of government; 2) regulative autonomy regarding the organization and development of the functions attributed to them; 3) political and administrative autonomy; 4) financial autonomy.

2. **Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method far the election?**

Yes, municipal and provincial organisms are elected democratically by direct vote.

3. **Are local entities under federal or state control? If so, are these controls limitated to. issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?**

As previously mentioned, local entities are no longer subject to controls on their administrative acts. At the head of the State, controls on the organisms remain that have the power to dissolve councils in cases of serious violation of the law or impossibility to function.
No, in Italy local entities cannot directly challenge a state or regional law, before the Constitutional Court , that is damaging to their autonomy.

4. **Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?**

Before the constitutional reform of 2001, all regulating of local entities was reserved for legislation of the State which had collected the relative regulations in a single text (d. Lgs. N. 267 of 2000).
With the constitutional reform, three sub-matters of the previous general regulatory system are reserved exclusively for state legislation: determination of the organs of government; the relative electoral legislation; determination of fundamental functions.

In this way, the Regions are now responsible for important matters: distribution of administrative functions, besides the fundamental ones; regulation of the types of association and collaboration among the local entities; regulation of local revenue.

Therefore, one can affirm that the design for regulating local entities is a matter which is divided between the State and the Regions.

A long tradition of relations between the State (Minister of the Interior) and the national associations of local entities exists that will remain in place regarding all aspects of regulating that are still determined by state law. However, greater weight can be expected to be given to direct relations between the Regions and the local entities within them.

The State has certainly greatly influenced the activity of the local entities, also by enforcing its own policies and by means of expenditure incentives.

5. **Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart tram these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis far the recognition of this regime?**

No. In Italy cities do not exist that enjoy a legal status that is equivalent to that of the Regions.
The new Constitution provides for metropolitan Cities but refers their determination, the definition of their organism, their power and functions to state law. This part is still not in force.

6. **Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system far the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?**

The Constitution provides for two types of intermediate entities between the Municipalities and the Regions that should be considered as alternatives. The Provinces, which are meant to cover the entire national territory (except for the metropolitan areas) and the metropolitan Cities, meant to substitute the Provinces in these metropolitan areas.

The territory of the Provinces (and of the metropolitan Cities) is defined by State laws (art. 133, Const). The Region can only express an opinion.

The Provinces are local entities like the Municipalities and their autonomy is guaranteed, in the same way, by the Constitution.

No privileged relationships exist between the State and the Provinces.

Administrative functions are attributed to the Municipalities by state or regional law, according to the principle of subsidarity. Therefore, the State can attribute or delegate functions to the Municipalities according to their own exclusive authority. Examples regarding immigration, civil status and from the General Register Office suffice. If the function is attributed, it is carried out by the Municipality according to the provisions of state law, and also according to its own autonomous regulations, with the principle of integral financial coverage.

If the function is delegated, not only does the State have legislative authority but also the authority to regulate and direct as well as the duty to cover entirely, in case of transfers, the cost of the activity carried out.

7. **How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds tram the federation or the state that asks far the collaboration?**

7. see above

8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?

Local entities have the power to regulate the organization and the carrying out of functions attributed to them (art. 117, sub-section 6, Const).

VII. INTERGOVERNAMENTAL RELATIONS

1. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which is its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?

The principle of loyal collaboration was not provided for in the original text of the Constitution of 1948. It was coherent in a very unitary system in which the State was the only subject endowed with sovereignty, on which the other subjects depended. On an number of occasions, the Constitutional Court has referred to the principle, considering it implicitly affirmed in the Constitution, almost always to justify state interventions and procedures which made the interests of the Central Government predominate over those of subjects endowed with autonomy.

The new text affirms the principle of equal order (?) at all levels of the government in the Republic, with a strong separation of powers directly guaranteed by the Constitution. However, a clear affirmation of the principle of loyalty is lacking. An indirect reference is contained in art. 120 of the Constitution which provides for the exercise of substitutional power by the State according to regulations to be established by law. The law should establish "procedures capable of guaranteeing that sovereign powers are exercised with respect to the principle of subsidization and the principle of loyal collaboration".
This law is pending and will be enforced by the Constitution.

2. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations far the dynamics of the system? To what extent do they allow to make more flexible the formal allocation of powers?

As previously mentioned, the Constitution does not provide for a system of intergovernmental relations, neither before nor in the text in force today.

In the previous system different organisms of co-operation developed between the State and the Regions. These organisms, initially of the sectoral type (the individual national Ministries of a sector created organisms of co-operation with the regional councillors of the same sector) were then unified in the already mentioned State-Regional Conference (point IV.7), regulated by ordinary law of the State. With these instruments, a participation is created for the Regions that is subordinate to the decision-making of the State. Certain "agreements" are foreseen that are to be concluded at the Conference. But if the agreement is not accomplished, the final decision depends on the Central Government. Therefore, intergovernmental relations have contributed to assuring the presence of the Regions in legislative procedures of national planning and administration, just as they have made the distribution of power less

rigid, substantially favouring processes of sharing public policies, but they still have not changed the centralistic stamp of the overall institutional system.

3. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required far their creation? How the states are represented? Are they important far the system?

We must distinguish between organisms of unitary representation of the interests of the Regions at the national level and organisms of horizontal collaboration among Regions.

Regarding the first, the Conference of the Presidents of the Regions should be pointed out; it works as an instrument of pressure, similarly to the national associations of local entities.

As regards the second, it has already been mentioned that the Regions have the right to stipulate agreements "in order to exercise their functions better, also with the establishment of common organisms" (art. 117, sub-section 8). It concerns a regulation that "constitutionalizes" previous provisions of ordinary law (d.P.R n. 616 of 1977, art. 8; d.lgs. n. 112, art. 3, sub-section 5). The Central Government does not take part in these organisms. Before now, the Regions had always been denied the right to establish permanent organisms of a general nature, that could be an intermediate organism between the Central Government and the Regions.

4. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?

Also Municipalities and Provinces have their structures of unitary representation in the form of associations, based on private law, whose regulations have allowed them to gain important powers to intervene in national administrative and legislative procedures.

Then, in 1997, the State-City-Autonomy Conference was constituted that allows local entities to have intergovernmental relations that are similar to those that the State maintains with the Regions. A unified Conference is even being planned that will bring together in a joint meeting representatives of the Government, the Regions and local autonomies to deal with problems of mutual interest.

5. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies, etc.)? Is this joint collaboration usual far developing public works, managing services, or financing of activities? Which legal regime is applicable?

Setting up mixed organisms at different levels of government is not directly regulated in general by the law. The principle is valid that any entity with a distinct legal personality has the right to establish organisms of collaboration with other entities according to the regulations of civil law..
The right to stipulate agreements of collaboration of various kinds is affirmed and regulated: organizing agreements in general (in the law on administrative procedure); program agreements (TV on local entities); different types of so-called "negotiated programming". In the framework of such agreements, whose use is growing especially in the field of the integrated establishment of joint public interventions in determined territorial areas, it is certainly possible to set up joint organisms of collaboration.
Mixed organisms exist that have been created directly by legislation of the sector; entities for the management of national parks or authorized to manage watersheds of national interest are significant examples.

VIII. TAXATION

1. **What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?**

Presently, the taxation capacity is put in action trough own taxes and trough additions to federal taxes and is very limited: in both cases the tax is entirely regulated by federal law and Regions can only establish the tax rate within rigid limits established by federal law. These own taxes or additions to federal taxes have either tax or duty/fee nature and must be considered as a form of direct taxation. In the new constitutional system the situation should largely change: the new version of art. 119 Const: give directly to Regions the capacity of establish regional taxes and the legislative exclusive power to regulate them.

2. **Can states ask for credit or issue public debit within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?**

Yes, Regions can ask for credit or issue public debt, but respecting rigid limits (established in federal law): the income must be bound to investment expenditure; the total of interest expenditure can't overcome the 25% of tax income established in the annual budget. Further limits can be fixed by federal legislation (especially the legislation bound to the respect of Maastricht limits). The ask for credit doesn't need a federal authorization, normal authorizations of financial market control reason excepted.

3. **To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?**

From provisional data for the 2001 budget, 69% of regional incomes comes from own incomes, 20,3% from transfers from federation and from UE, 10,7% from public debt. In the future the system should change, because the new version of art.119 Const. Provides transfers from federation only for equalization reasons.

4. **Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)?**

The participation of Regions to the federal taxes is a very important phenomenon, especially for "special" Regions (80% of the own incomes) than "ordinary" Regions (42%). On the federal taxes participated Regions don't enjoy of any normative power or administrative competence.

5. **Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?**

The transfers from federation to Regions are regulated in various ways according to the different sectorial legislation: in same cases they are distributed with objective criteria, in other following discretionary decisions of federation of financing specific programs submitted by the Regions. Between these two extreme there are a series of intermediate situations. As already indicated (point 3) the new version of art.119 Const. should change the system: the transfers in the future should be used only for equalization reasons.

6. **Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?**

The federation transfers must be bound from Regions to specific destinations, regulated in a more or less detailed ways: in some cases they are bound to sectors, in other cases to specific initiatives.

7. **What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?**

Presently, but also in the future (according to the new version of art.119 Const.), there is no provision of direct mechanisms of tax solidarity among Regions. The equalization measures are implemented only through federation transfers.

8. **Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?**

The federation has the power to compensate owns debts and credits. There is not any specific regulation concerning relations between federation and Regions.

9. **Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?**

Regions don't participate in any way in the management of federation taxes. On the contrary is the federation who manages regional taxes (tax on productive activities, additions), paying afterwards the takings to Regions.

10. **What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?**

Not considering public expenditure for covering interests of public debt, in the 1999 fiscal year 59% of total public expenditure was made by the federation, 23% by Regions, 18% from local authorities.

11. **To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?**

Financial intergovernmental relations are not satisfactory, mainly because they are unbalanced in favour of the federation, because they are characterized by a double track system: a federation-Region system of relations doubled by a federation-local authorities system. In both cases Region and local authorities are scarcely guaranteed. The new version of art.1119 Const. Should change completely the present system.

12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?

For the implementation of specific initiatives some federations acts provide the federation guaranty on debts of the Regions and charging to the federation the payment of part of interest. The new version of art.119 Const. changes this situation, as it provides the prohibition for the federation to give guaranties to regional debt.

13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation – Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).

The coordination mechanisms among the different levels of governance for financial aspects are largely mechanisms of superimposition of the federation over Regions and local authorities. Three examples: 1) the unified treasury system (the obligations for all public authorities to deposit their own liquidity to the federation treasury; 2) the insufficient fiscal autonomy allowed to Regions and local authorities; 3) the power of the federation to establish limits and burdens not strictly imposed by the Maastricht limits. If, according with the new Title V of Constitution there will be a significant change in the intergovernmental relations in general (see answers to section VII), the coordination mechanisms for financial aspects should improve towards a larger guaranty of the regions and local authorities position.

IX. LANGUAGES

(Section to be addressed only in those systems where their multilingual reality is somehow legally recognized)

1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, afe they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private? Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?

No, the Constitution only recognizes Italian as being official for the entire territory. In two Regions, Valle d'Aosta and Trentino-Alto Adige (but in reality only in Alto Adige), bilingualism is acknowledged, that is, the local languages (French and German) are the equivalent of Italian for official use.

2. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?

The Constitution (art. 6) provides that the "Republic safeguards with appropriate regulations the linguistic minorities". Through the effect of the above mentioned acknowledgement of bilingualism in several Regions, and more recently law n. 482 of 1999, this constitutional provision has become the safeguard of other minor linguistic communities (French, French-Provencal, Friulian, Ladin and Sardinian). Safeguards may promote cultural interest in these languages, but they do not make them the formal equivalent of Italian as the official language.

3. Do state constitutions recognize official languages different tram those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages

on an equal footing? Can states establish linguistic duties to citizens and companies different tram those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?

The Statutes of Valle d'Aosta and Trentino-Alto Adige recognize respectively French and German as official languages.

4. Broadly speaking, which is the linguistic system regarding education?

Except for the two above-mentioned Regions, all teaching is in Italian.

5. To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?

X.GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS

1. At present, how is the level of political decentralization generally assessed? What is your assessment?

Regarding the constitutional provisions after the reform of 2001, the overall system of autonomy has shown considerable progress, to the point of showing signs of being influenced by the entire constitutional order of the Republic

However, in reality there are still strong pressures of the centralist type. Many administrative functions are apparatuses continue to remain national, also regarding decentralization towards the Regions. Financial power, concerning both revenue and expenses, is still solidly in the hands of the Central Government.

2. What are the main historical claims by states? To what extent are they satisfied?

The Regions requested several major amendments to the Constitution. Some of them were partly satisfied by the constitutional reform of 2001, other not.

Surely the new distribution of legislative authority is among the requests satisfied, with the change-over in the criterion of allocation which is now favourable to the Regions, while the State has authority for a limited and explicit list of subject matters.

In prospective, also the financial demand should be satisfied since the Constitution affirms the principle of complete coverage of attributed functions (but on this point we can expect strong resistance).

The regions have been less satisfied with relations regarding the system of local autonomies over which the Regions had wanted more explicit power of regulation. However, as we have seen, regulating power is allocated between the State (for the features that the Constitution requires to be regulated uniformly) and the Regions, which have now gained important powers. In reality, a strong antagonism remains between the Regions and associations of Municipalities and Provinces that continually ask the State to give them a national guarantee against the Regions' trend towards a new centralism. Thus, both end up by allowing a still strongly centralised system to exist.

No satisfaction has been given regarding the other two regional demands, decisive for the complete transformation of the constitutional order: the creation of a second Chamber for regional representation, modelled on Germany's Bundesrat; the right of the Regions to nominate some of the judges of the Constitutional Court.

3. **What are the risks and main opportunities far the development and consolidation of the system of political decentralization?**

4. **What are the main trends of development? Which is the likelihood of them coming true?**

5. **Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?**

General answer to these three questions:

Risks of stoppage of the decentralization process depend on the political system and the economic situation. From the political point of view, all of the political parties are frustrated transversally by autonomous pressures and centralist pressures. At present, the contradiction seems particularly strong between a would-be autonomous party which is installed only in a part of the country, "Lega Norte"(Northern League), and the other parties of the government coalition, by tradition certainly more centralist. The coalition of the opposition seems culturally more in favour of decentralization but also very worried that decentralization might take effect in jerks, without a coherent design, risking the break-up of national solidarity which would favour the localism expressed by the richest part of the country.

The economic situation, in particular the huge national debt accumulated by Italy, does not seem to be favourable to an evolution, in a fully autonomous direction, of the institutional system.

However, the European perspective, which is founded on the high value it places on autonomous government, favours decentralization.

6. **Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?**

To me, the questionnaire seem very rich and well structured. If I might make a suggestion, perhaps more attention should be paid to the EU perspective. Specifically, what forms of participation there are of the Regions in the formation (upward phases) and enforcement (downward phases) of EU policies and, in general, in the context of the attention recently paid to EU governance by the European Commission.