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"Better regulation" in Europe: principles and regulatory sustainability

di

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Sommario: 1. European "regulatory sustainability" cornerstones: an introduction. – 2. The EU "Sustainable Regulation": functions and expectations. – 3. The EU "better regulation" stance: Italian case. – 4. A brief analysis of the Italian Better Regulation. – 5. Conclusions.

1. European "regulatory sustainability" cornerstones: an introduction

The issues of "regulatory sustainability" (*rectius* "quality"), introduced at international level by the "*Recommendation on Improving the Quality of Regulation*" of the OECD Council of 9 March 1952[1], have been a long-standing part of the strategies of European Union institutions, in the belief that poor regulation has a negative impact not only on legal certainty, compliance with the law and efficiency

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[1] The "Recommendation" at hand called on Member States to take effective measures to ensure the quality and transparency of regulation and provided a list of reference criteria. These are the so called "checklists", to be used in public decision-making to provide Member States with a set of common principles and procedural tools to improve the quality and efficiency of regulatory activity. Following the adoption of this Recommendation, a specific multi-annual programme on regulatory reform has been launched. A report on the implementation of this programme was presented in 1997 with sector and thematic studies on regulatory review by Member States and a series of recommendations on the use of regulatory impact analysis (see OECD "*Report on Regulatory Reform*", Paris, 1997). In 1998, the OECD launched the Country Reviews programme on regulatory reform in member countries with the aim of building a comprehensive and in-depth review of e-experiences of economic, government and administrative reform in member countries and helping governments to improve the performance of the economy in terms of innovation, growth and social progress.

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of justice, but also on a country's economic development and resource efficiency[2]. As evidence of this growing commitment, European institutions have adopted specific initiatives aimed at implementing "sustainable regulation" policies (or "smart regulation", according to recent European language). In this regard, the principles of subsidiarity and proportionality, enshrined in Article 5 of the Treaty on European Union (so called "TUE"), are not only two fundamental moments in the decision-making process, but also appear to be the basic rules guaranteeing the quality of regulation. As a matter of fact, on the one hand, the principle of subsidiarity obliges us to consider the so called "zero option", *i.e.* it requires us to consider not adopting any regulatory measures and in this sense it contributes to containing the production of legislation; on the other hand, the reference to the principle of proportionality involves assessments, a study of facts (so called "*ex ante* analysis") and *ex post* verifications, *i.e.* constant monitoring of the impact of legislation, contributing, at least potentially, to a greater effectiveness of European legislation and related policies[3]. From a historical point of view, it should be remembered that, until the 1990s, the debate on European regulation focused on problems of quality of drafting (so called "formal drafting") and on the tools and methods proposed by legislative technique, rather than on the question of how to govern regulatory policies in a multi-level system, such as that of the European Union. Care for the drafting quality of legislative texts is considered by the European institutions to be indispensable for legislation to be better understood and correctly implemented. Particular attention is paid to the implications of multiculturalism[4]. Acts enacted by the institutions must be formulated in a

[2] N. RANGONE, *The quality of regulation: the myth and reality of good regulation tools*, in *Italian Journal of public law*, 2012, 3-4, 235 ff.; L. Trucco, *Better regulation e better lawmaking dell'U.E.*, in R. ZACCARIA (ed.), *Fuga dalla legge? Seminari sulla qualità della legislazione*, 2011, 62 ff.

[3] A. VEDASCHI, *Istituzioni europee e tecnica legislativa*, Torino, 2001, 258 ff.

[4] As said in doctrine, "*the decision-making process has evolved becoming more complicated and extensive. Indeed, in keeping with the guidelines provided by the EU, a long cycle frequently follows that starts with the stakeholder and expert consultations, goes through the impact assessment and compliance with drafting rules (i.e. better regulation), passes through the rule-making deliberation, and ends with the monitoring and evaluation of public policies. Moreover, the law frequently introduces an experimental period of application by means of sunset clauses*" (N. MACCABIANI, *An empirical approach to the Rule of Law: the case of Regulatory Sandboxes*, in *Osservatorio sulle fonti*, 2020, 2, 367 ff.).

comprehensible and coherent way and according to uniform rules of presentation and legislative technique so that citizens and economic operators can know their rights and obligations; courts can ensure that the law is respected and Member States can proceed, where necessary, with correct and timely implementation of national law[5]. Only in the late 1990s, at the initiative of the governments of some Member States (Italy and Spain first and foremost) did the issue of the "sustainability and quality" of regulation become a common concern. With the official commitments adopted in 2000 by the Lisbon and Feira European Councils, an overall strategy was outlined, which led the Community institutions and the Member States to adopt concrete programmes for improving the sustainability and quality of regulation, which, as mentioned above, is also recognised as having an important role in improving the competitiveness of the European economy[6]. In particular, the Commission's strategy for the achievement of sustainable regulation was – and actually is – essentially based on three pillars[7]: (I) *regulatory simplification*: in this field, the Commission has identified a number of regulatory sustainability instruments, *i.e.* the abrogation of obsolete rules, codification in a single act of several existing acts and recasting in a single act of several amendments to an act, which have become stratified over time[8]; (II) *the reduction of administrative burdens*:

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[5] For an in-depth analysis, L. HOOGHE, *Cohesion policy and European integration: building multi-level governance*, Oxford, 1996; D. DINAN, *Ever closer union: an introduction to European integration*, Basingstoke, 1999, 134 ff.; H. WALLACE, M.A. POLLACK, A.R. YOUNG, *Policy-making in the European Union*, Oxford, 2015, 234 ff.

[6] F. BASSANINI, S. PAPARO, G. TIBERI, *Qualità della regolazione: una risorsa per competere*, in *Astrid*, 2005, 2, 367 ff.; A. SIMONCINI, E. LONGO, *L'ultima stagione della semplificazione: la riduzione degli oneri amministrativi*, in *Osservatorio sulle fonti*, 2013, 3, 125 ff.

[7] These milestones have been accompanied by other lines of action that the Commission has, over the years, identified, implemented, and sometimes corrected. On this point, G. MARKS, *Structural Policy and Multilevel Governance in the EC*, in A. CAFRUNY, G. ROSENTHAL (eds.), *The State of the European Community*, Berlin, 1993, 392, ff.; N. Chowdhury, R.A. Wessel, *Conceptualising Multilevel Regulation in the EU: a legal translation of multilevel governance?*, in *European Law Journal*, 3, 5, 335 ff. (2012).

[8] As far as acts of unification of existing norms in the European context are concerned, it should be pointed out that the terminology used is the result of translations from English and French, so the meaning of a European denomination translated into Italian often does not identify the same type of act as the original language. The typical example is the word "codification", which for the European Union means the reunification into a single text, and the subsequent abrogation, of one or more acts with the relative modifications, but unlike what happens in the Italian legal system, the new text cannot in any way intervene on the substance of the codified

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among the main actions, it is worth mentioning those inspired by the "Think Small First" principle, which states that the European Union must formulate rules taking particular account of the characteristics of SMEs (Small-Medium Enterprises) and simplify the regulatory environment in force[9]; (III) *impact analysis*: this assessment aims to increase the technical quality of the Commission's proposals by evaluating the costs and benefits they bring to: (i) improve the quality of proposals, through a more systematic, open and evidence-based approach to policy design and a rigorous and comprehensive analysis of social, economic and environmental impacts; (ii) provide an effective aid to decision making; (iii) make the policy process more open and transparent, thanks to coordination within the Commission and the strengthening of external communication[10]. In a nutshell, the regulatory and administrative simplification measures have been combined with the objective of improving the existing regulatory framework, while impact analysis has been given the task of improving the quality of new initiatives[11].

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norms. As far as "consolidation" is concerned, while for us it corresponds to a generic activity of simplification and reorganization of rules which certainly lies at the basis of the acts of unification, for the European Union it is a specific operation of clarification of the law conducted by the Commission for purely informational purposes, it does not produce legal effects and does not replace the acts contained therein which therefore remain in force. In this regard, see P. BILANCIA, *Il modello europeo di governance multilivello*, in A. PAPA (ed.), *Le Regioni nella multilevel governance europea*, Milano, 2016, 32 ff.; N. CHOWDHURY, R.A. WESSEL, *Conceptualising Multilevel Regulation in the EU: a legal translation of multilevel governance?*, in *European Law Journal*, 3, 6, 335 ff. (2012); J.P. OLSEN, *Unity, diversity and democratic institutions*, Oslo, 2013, 289 ff.

[9] This principle also gives rise to the following commitments for Member States: (i) to rigorously assess the impact of legislative and administrative initiatives on SMEs (the so called "SME test") and integrate the results into the formulation of proposals; (ii) to consult stakeholders, such as SME organisations, at least in the eight weeks preceding the submission of a legislative or administrative proposal, which is likely to have an impact on business; (iii) to use specific measures for SMEs and micro-enterprises, such as transition periods, derogations and exemptions, especially from information or reporting obligations, and other *ad hoc* methods.

[10] With regard to this matter, see E. MELLONI, *Dieci anni di Impact Assessment della Commissione europea*, in *Rivista italiana di politiche pubbliche*, 2012, 3, 179 ff.

[11] See O. PORCHIA, L. SWAN, D. CAPUANO, N. MARIN, P.L. PETRILLO, M. RICCIARDELLI, C. ODONE, C. GESTRI, N. MINASI, M. MARGIOTTA, E. PROSPERI, T. PETUCCI, P. PONZANO, *"Better regulation" nell'Unione Europea: principi, obiettivi e strumenti*, in *issirfa.cnr.it*, 2015; C.M. RADAELLI, A.C.M. MEUWESE, *Better regulation in Europe: between public management and regulatory reform*, in *Public administration*, 87, 3, 2009, 639-654.

2. The EU "Sustainable Regulation": functions and expectations

In recent years, the European Commission has considered to focus further attention on the "sustainability of legislation", on the assumption that the current social/economic situation requires a legislation that is even more effective and efficient in achieving its general interest objectives, demonstrating that it has a clear added value, providing full benefits at minimum regulatory costs – respecting the principles of subsidiarity and proportionality – and a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. In this respect, the Commission has repeatedly stressed that the concept of "sustainability/smart regulation" includes in the so called "better regulation policies" the idea that legislating "*does not mean reducing or increasing the number of rules, but rather achieving results in the least burdensome way possible*"[12]. To achieve these objectives, the European Union has highlighted several critical steps towards achieving regulatory sustainability, namely: *(A)* the phases of regulation must be integrated within a comprehensive strategy (c.d. "life-cycle approach"). The regulatory cycle should be a *continuum* in which the project and *ex ante* evaluation of a regulatory text is linked to its implementation, monitoring, evaluation, and review. So, from an integrated perspective, the quality of regulation cannot be achieved with partial approaches; *(B)* the governance of "implementation processes" should be considered: evaluations should take into account how European legislation is implemented at national and sub-national level, which often place an unnecessary burden on European legislation (see the so called "gold-plating"); *(C)* the regulation shall be open to society by strengthening consultation procedures[13]; *(D)* for the Member States, a policy of regulatory quality needs to be

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[12] See the Communication "*Smart Regulation in the European Union*" COM (2010) 543/3 of 08 October 2010.

[13] From 30 June to 30 September 2014, the European Commission submitted the first draft of the "Guidelines on Public Consultations" to stakeholders. The document, drawn up on the basis of the principles and *minimum* standards established by the Commission in 2002 (with Communication COM (2002)704), provides for the operational criteria for improving the quality, objectives and articulation of public consultations, with particular reference to the reporting phase. In particular, the draft Guidelines divide the consultation process into three different phases: (i) strategy development, (ii) consultation, (iii) analysis of results. Participation

developed, in particular by ensuring clarity and accessibility of national regulation[14]. Even more recently[15], the Commission has made it clear that sustainable regulation implies the adoption of an inclusive approach, based on consultation and transparency (i.e. it is necessary to "listen more closely" to citizens and stakeholders, with an attitude of openness to their suggestions, at every stage of the legislative process), on the adoption of instruments capable of producing better results (it means that all significant regulation impacts - whether positive or negative - must be analysed) and ongoing review of existing legislation[16]. More newly, in 2019[17], regulatory sustainability has been even more emphasized, given the potential for action on two of the key elements that strengthen the European vertical supply chain: the principle of subsidiarity and the strengthening of an inter-institutional coordination method. In a European system of vertical distribution of power, subsidiarity can remain a fixed point. Its oscillating nature,

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in the consultation was quite large, with 120 contributions sent on the text, mostly from public authorities and representative organisations. The comments focused on two major problematic issues raised by the Commission in the consultation questionnaire: the balanced involvement of all types of stakeholders and transparency on the results of the consultation process. On the point, E. MELLONI, *Dieci anni di Impact Assessment della Commissione europea*, in *Rivista italiana di politiche pubbliche*, 2012, 3, 179 ff.; C.J. PARASKEVOPOULOS, P. GETIMIS, N. REES, *Adapting to EU Multi-level Governance: Regional and Environmental Policies in Cohesion and CEE Countries*, London, 2016, 344 ff.; M. KAEDING, *In search of better quality of EU regulations for prompt transposition: the Brussels perspective*, in *European Law Journal*, 14, 5, 2008, 583-603.

[14] In 2012, the Commission took significant action: after launching a public consultation on the follow-up of Smart Regulation and one on the ten most burdensome rules for European SMEs, in December it adopted the Communication "*Adequacy of EU Regulation*" COM (2012) 746, which announced the so called "REFIT" programme, aimed at "*eliminating unnecessary regulatory costs (burdens) and ensuring that the body of EU legislation remains fit for purpose*" by identifying "*burdens, inconsistencies, gaps and ineffective measures*". The year 2013 was dedicated to the launch of the REFIT programme, completing the "mapping" of the European regulation measures, and defining the first simplification actions.

[15] On 19 May 2015, the Commission adopted the "*Better Regulation Agenda*", a package of initiatives and reforms inspired by criteria of transparency, simplification, and evaluation throughout the regulatory cycle. This was already announced in the Commission's Work Programme for 2015 COM (2014) 910, presented in December 2014, which stated a commitment to "*strengthen* [...] *the tools* [...] *for better regulation, in particular evaluations, impact assessments and public consultations, and (identify) a further set of new actions under the* [...] *Better Regulation agenda*".

[16] R. BALDWIN, *Is better regulation smarter regulation?*, in *Public Law*, 2, 5, 485 ff. (2005); J. PELKMANS, S. LABORY, G. MAJONE, *Better EU regulatory quality: assessing current initiatives and new proposals*, in G. GALLI, J. PELKMANS (eds.), *Regulatory Reform and Competitiveness in Europe*, London, 2000, 234 ff.; G. MAJONE, *Regulating Europe*, London, 1996, 122 ff.

[17] Please see the communication "*Better Regulation principles: at the heart of the EU's decision-making process*", 15 April 2019.

repeatedly cited as the cause of its failure, can be rebalanced by trying to give subsidiarity a concrete political content, capable of guiding institutional activity toward a concrete regulatory sustainability. It is with respect to this concretization of subsidiarity that sub-national bodies and also national Parliaments must contribute, with the instruments provided by the strategy of better regulation, which helps to keep the reasons for unity and differentiation within an *endiadi*, without reducing them to a rigid dichotomy[18]. Regulatory sustainability, in the EU vision, stimulates the creation of a common language and method that becomes the basis of a wider sharing and involvement. The forms of vertical connection (and also those of horizontal connection) that arise from national and regional participation in the European legislative process can also contribute to the establishment of a relational mode through which this perspective of alliance between the European Union, the State and sub-national bodies can be filtered, in order to better achieve regulatory sustainability[19].

3. The EU "better regulation" stance: Italian case

Overall, from the reconstruction carried out, it seems clear that, in the European dimension, the sensitivity to the problems of regulatory sustainability became clear and that a broader vision of the problems inherent in the regulatory process – oriented towards developing "a culture of good legislation" – has progressively emerged, understood as (i) a process common to all European institutions and Member States and (ii) linked to a cycle of initiatives and interventions that are not

[18] B. VIMERCATI, *La better regulation come strumento politico dell'integrazione regionale nel federalizing process europeo*, in *Federalismi*, 2018, 7, 45 ff.; H. FOSS HANSEN, L. HOLM PEDERSEN, *The dynamics of regulatory reform*, in T. CHRISTENSEN, P. LAEGREID (eds.), *Autonomy and regulation: coping with agencies in the modern state*, Cheltenham, 2006, 55, ff.

[19] It shall be considered that the future of regulatory sustainability depends also on the real application of the principle of subsidiarity. It will depend not only on the design of procedural instruments capable of promoting their applicability, but also on the political and legal *ethos* that animates those who exercise legislative functions and those who control them (see G. MARKS, *Structural Policy and Multilevel Governance in the EC*, in A. CAFRUNY, G. ROSENTHAL (eds.), *The State of the European Community*, London, 1993, 392 ff.).

isolated or sporadic[20], but that follows the legislative activity from the initial phase of conception and design to the implementation and verification of the results achieved; this, in a context of increased transparency and accountability and greater involvement of stakeholders and citizens, supported by the diffusion of the use of the network[21]. In this perspective, every regulatory act must not only be drafted in a simple, clear and univocal way in language and meaning, but at the same time it must be taken on the basis of a full awareness of the possible effects it will produce not only in the legal system, but also and above all on its recipients, citizens and businesses, and on public administration[22]. Moreover, any regulatory measure will require constant attention both in terms of implementation measures and in terms of continuous monitoring, aimed at verifying *in itinere* the effects and results produced and at considering the opportunity of possible adjustments. Finally, it will be necessary to assess the actual achievement of the objectives underlying the regulation itself and to outline the possible regulatory interventions for its modification, integration, or termination. In this way, the regulatory cycle becomes a real virtuous circle of production and regulation. It has also been noted that this complex virtuous circle cannot ignore the contribution and involvement not only of all the European institutions but also of the individual Member States[23]. Moreover, many of the instruments introduced in recent years reflect requests made by the Member States (i.e. the measurement of administrative burdens) and, more recently, the emphasis placed by the Commission on the assessment of the

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[20] See J.H.H. WEILER, *L'Unione e gli Stati Membri: competenze e sovranità*, in *Quaderni Costituzionali*, 2000, 4, 9 ff.; Id., *In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration*, in *Journal of European Integration*, 5, 8, 825 ff. (2012).

[21] For an in-depth analysis, M. DABROWSKY, J. BACHTLER, F. BAFOIL, *Challenges of multi-level governance and partnership drawing lessons from European Union cohesion policy*, in *European Urban and Regional Studies*, 4, 6, 355 ff. (2015); N. GUNNINGHAM, D. SINCLAIR, *Smart regulation*, Oxford, 1999, 133 ff.

[22] See also G. VOSA, *Legiferare con intelligenza fra contenuto e forma: le procedure di codificazione e rifusione del diritto parlamentare europeo*, in *Osservatorio sulle fonti*, 2011, 4, 11 ff.; A. CARDONE, *La qualità della normazione nel diritto comunitario*, in *Osservatorio sulle fonti*, 2007, 3, 94 ff.; C.M. RADAELLI, *Whither better regulation for the Lisbon agenda?*, in *Journal of European Public Policy*, 3, 5, 190 ff. (2007); L. ALLIO, *Better Regulation in the European Commission*, in C. KIRKPATRICK, D. PARKER (eds.), *Regulatory Impact Assessment: Towards Better Regulation?*, London, 2007, 72 ff.

[23] J.B. WIENER, *Better Regulation in Europe*, in *Current Legal Problems*, 3, 455 ff. (2006).

impacts produced by the rules in force is accompanied by an increasingly pressing request for greater involvement of the same countries[24], which have already been asked for data and information to assess the effects of the measures to simplify administrative burdens, and which should carry out "joint assessments" with the Commission in the context of the EU's internal market.

It is worth noting that improving the quality of regulation cannot be achieved without the articulation of public powers at different institutional levels, responsible for adopting and implementing policies also to reduce administrative costs. European integration leads to a huge redistribution of competences between various levels of government: European, national, regional, and local, called upon to cooperate to achieve the objective set by the Better Regulation program.

Coherence of government action can only be achieved through the complementarity of different regulations, intervening at the level where regulatory and market failures can be most effectively addressed. In multilevel governance systems, action by the State alone is not sufficient to solve the problem of excessive regulatory and bureaucratic costs, and the search for solutions at national level would not achieve any significant result, given the pervasive and detailed nature of European legislation in relation to some major matters like environment, procurement, transport, energy. For these reasons, it is necessary to have strong cooperation at every institutional level because, while on the one hand, EU requirements have produced positive results on the orientation of market regulation, favouring competition and guaranteeing high standards of products, environmental protection and public safety, on the other hand, European legislation may require conditions that make the reform of regulation in some

[24] *Ex aliis*, I. PERNICE, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, in *The Columbia Journal of European Law*, 4, 6, 407 ff. (2009); V. LIPPOLIS, *Gli effetti del processo di integrazione europea sul Parlamento italiano*, in *Rivista AIC*, 2017, 3, 144 ff.; K. BORONSKA-HRYNIEWIECKA, *A new player in the "multi-level parliamentary field". Cooperation and communication of regional parliaments in the post-Lisbon scenario*, in A. J. CORNELL, M. GOLDONI (eds.), *National and regional parliaments in the EU-legislative procedure post-Lisbon: The impact of the early warning mechanism*, Oxford, 2016, 137 ff.

States more complex, increasing the complexity of systems and inhibiting the search for and adoption of alternative regulations.

In Italian legal system, for example, the implementation of regulatory quality policy is increasingly the result of autonomous initiatives by the regions[25]. With the Agreement between the Government, Regions and Local Authorities on simplification and improvement of the quality of regulation of 29 March 2007, several initiatives were envisaged for the different levels of government to improve regulation itself. Subsequently, with law no. 180/2011, the Italian legislator made proposals intended to have an impact on businesses conditional on the use of better of Better Regulation tools. The regions have often paid more attention than the national legislator to the to the application of the principles of quality of legislation, especially with regard to *ex ante* and *ex post* evaluation of regulation[26].

Italy has been the subject of several reviews on the state of Better Regulation by the OECD, the first of which was in 2001, followed by subsequent reports in 2007, 2009 and 2012. The latest document was drafted taking also into account the indications offered by a government representative and representatives of and employers' organisations[27]. This report, although dated, provides a picture of the external perception of our country: it highlighted the need for a regulatory reform, simplification, and cost reduction. The assessment of policies on the quality of standardisation is not entirely positive: in particular, the lack of an adequate communication of the objectives and policies undertaken and the inadequacy of the methods for *ex post* evaluation of the initiatives undertaken are underlined, making a systematic approach based on a performance method impossible. There is a lack of transparency in the regulatory process, and it is recommended that there be greater quality in the work of the regulatory control bodies, but also that consultation mechanisms be strengthened and that there be no parameters enabling

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[25] Following the reform of the so called "Title V" of the Italian Constitution by Constitutional law no. 3/2001, many of the most incisive competences at an economic level came under general or residual regional legislative powers: industry, trade, crafts, tourism, and agriculture.

[26] In some cases, including in their statutes the adoption of such instruments, as in the case of Lombardia Region, or by regulating the matter through *ad hoc* regional legislation.

[27] For example, *Cittadinanzattiva, Confartigianato, Confcommercio, Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa, Confindustria*.

external stakeholders to assess policies and consequently provide feedback on the effectiveness of interventions in terms of quality of regulation. The transparency that should be essential in the entire decision-making process is also evaluated negatively. More recently, in February 2015, the OECD has provided an assessment of Italy in overall terms, not just in terms of better regulation. The OECD indicates as a necessary and priority labour market reform that should provide the flexibility needed to innovate, restructure and boost productivity. In addition to labour market reform, it is advisable also a closed markets reform as a means of increasing competitiveness and competition.

4. A brief analysis of the Italian Better Regulation

An accurate definition of what is meant by "simplification" is not as easy as it may seem, mainly for the uncertainty surrounding the meaning and the objectives pursued by the legislator, who often hides sector specific regulations behind simplification measures. To achieve simple and effective regulation, it is necessary to put in place a policy that makes interventions coherent and objectives enduring, using the regulatory instruments that best meet the specific needs underlying public intervention.

At the beginning of the 1990s, the Italian legal system was characterised by a high level of regulatory inflation that undermined the proper functioning of public administrations whose actions were subject to a multitude of procedures. The reform season was thus inaugurated by

by law no. 241/1990 on administrative procedures, introducing significant innovations linked to two main objectives: simplification and transparency. The acceleration of simplification processes was linked to different factors: the push of market globalisation, which brought with it competition between national economies; the need to enforce the rights of individuals; the reduction of costs for public administrations.

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The first simplification measures essentially concern the administrative respond to the problem of excessive bureaucratisation of public administration. Subsequently, the legislator began to turn its attention to other regulatory sectors, moving from a mainly administrative simplification to a simplification of entire regulation complexes. This is achieved by reducing the number of rules, especially of primary level, but also by reorganisation and codification. It becomes essential to reduce the number of regulations theoretically still in force, eliminate confusing or contradictory regulations and to establish clear rules that are comprehensible to the target, this also through the use of the so called "*Codici di Stile*", which contains the basic principles for drafting clear and comprehensible texts, always with a view to simplifying relations between administrations and users.

The reduction of the stock of regulations, especially in the Italian context, characterised by a high degree of regulatory inflation, was the subject of the annual simplification programme, provided for in law no. 59/1997, which was first implemented by law no. 50/1999. The aim was to give citizens and economic operators a precise and unitary overview of the rules governing every sector of social and economic life, but also to combine procedural simplification with specific measures to recompose the fragmented of regulatory sources[28].

5. Conclusions

Action to improve the quality of regulation is expressed through the establishment of principles and the provision of instruments to change the way the regulator makes his choices. The objective of Better Regulation is precisely that of making a decisive and significant change in the approach to regulation, considering first and foremost its economic impact on citizens and economic operators. The White Paper on Governance shows how regulatory action is a decisive factor for economic

[28] The reorganisation of legislation has led to an innovative choice for our legal system with the creation of an instrument specifically designed for this purpose: the "Mixed Single Texts" ("*Testi unici misti*").

development and an instrument capable of restoring confidence in politics[29]. In this perspective, Better Regulation becomes the tool for fostering competitiveness and development by eliminating the regulatory and bureaucratic burdens on businesses and citizens and creating a clear and transparent regulatory framework.

At the international level, the OECD has indicated the lines of action to be followed, suggesting ways to implement, develop and revise regulations. At EU level, Better Regulation has become an integral part of the Lisbon Strategy, based on the assumption that quality regulation is a necessity for keeping the single market competitive, breaking down the barriers that still exist and promoting business development. The objective is achieved by means of an *ex ante* assessment of regulatory hypotheses, which provides a clear picture of the costs and benefits of the intervention, together with consultation of the addressees, which must permeate the entire process of producing regulations[30].

To promote economic development, the improvement of the quality of regulation must also and above all concern small and medium-sized enterprises. The commitment at Community level has focused precisely on the promotion of SMEs, assessing the obstacles that most hinder their growth, tackling the administrative dysfunctions that undermine their capacity to invest and develop, and finally preparing an impact analysis to assess the effects of regulations on small businesses. It is precisely this point that represents the most critical factor in the entire Better Regulation policy, not only at Community but also at national level: the unsatisfactory level of participation, due to multiple factors, including an imprecise and unfocused selection of the parties to be consulted, their mistrust and

[29] This position is reflected in the Mandelkern Report, which sets out the principles for quality regulation: the need for the decision-maker to intervene, the assignment of responsibility for the choice to a specific subject, transparency and participation in the decision. The implementation of these principles requires consideration of the various regulatory options, impact analysis, consultation and simplification, all of which have a direct impact on economic development.

[30] Better Regulation is based on three fundamental pillars: (i) regulatory simplification, which acts on the *acquis Communautaire* by providing a clearer and more streamlined framework for businesses and citizens; (ii) the reduction of administrative burdens; (iii) regulatory impact analysis, which ensures compliance with the principle of proportionality, balancing benefits and costs, transparency and accountability of the decision-maker.

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the choice of interlocutors who are not always capable of highlighting technical profiles, undermines the possibility of designing the regulatory framework to meet the needs of the addressees. With the REFIT programme, launched in 2015, the commitment to the quality of regulation has been maintained and strengthened, with the monitoring of entire sectors to assess their degree of efficiency, strengthening impact analysis and consultations that must permeate the entire decision-making process.

The objective of improving the quality of regulation must be shared at all levels of government if it is to bring concrete results for economic and social development, and this is why the Member States must prepare enduring policies that are capable of affecting their own regulation.

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