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THE ADAPTATION OF NATIONAL LEGISLATIONS TO COMMUNITY LAW AND THE NEW ITALIAN LEGISLATION

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ITS PUBLICATION IN THE "NATIONAL PARLIAMENTS" SERIES RESULTS FROM THE INTEREST SHOWN IN ITALY AND ABROAD IN THE LAW 86/89 (WHOSE AUTHOR, MR A. LA PERGOLA, IS CURRENT MEMBER OF THE EUROPEAN PARLIAMENT).

THE VIEWS EXPRESSED IN THIS STUDY ARE THOSE OF THE AUTHOR ONLY AND IN NO WAY COMMIT THE INSTITUTION AT WHICH MRS FULCI CARRIED OUT HER TRAINING.

C O N T E N T S

1. INTRODUCTION: Community acts

The adaptation of the various national legislations to Community legislation poses different problems in the different Community countries, whether because of the existence of constitutional rules governing their competence in the field of legislative powers or because of the various legislative acts which the Community can issue in the framework of its functional competence. Of the various Community acts, regulations and directives are the most authoritative; they are Community acts inasmuch as they emanate from the Community institutions (Council, on a proposal from the Commission for the EEC and EAEC, Commission for the ECSC), following the procedure laid down in the Treaties and governed by Community law. They are authoritative acts in that they are compulsory in terms of their effects on the state and the individual. They are therefore legal sources and in this context the Court of Justice[1] and, however much they may resist this, the national supreme courts have confirmed the primacy of Community law and its direct applicability in various judgments[2]. In the event of a conflict between a national law and a Community directive, the national judges must apply the Community directive, even if the Member State in question has not yet incorporated it, provided the deadline for incorporating it has expired. The Court has also laid down in various judgments that it is not even possible to invoke a constitutional law if it conflicts with a Community regulation.

Notwithstanding the copious jurisprudence of the Court of Justice, various difficulties still remain with regard specifically to the adoption of directives. This question can be looked at from two aspects: at the level of the instruments at the disposal of the various countries in order to ensure the maximum level of coordination and information, especially during the stage of the negotiations preceding the formulation of the directives, which led in nearly all the states to the setting up of ad hoc committees responsible for information to the national assemblies, and at the level of the legislative instruments for incorporating the directives. In the latter case, the speed with which the directives are incorporated plays a major role, as does the position the incorporating acts occupy in the hierarchical system of legal sources.

The articles of the Treaties setting out the choice of legal sources are Articles 14 ECSC, 189 EEC and 161 EAEC. It is useful to distinguish between acts which are directly and immediately applicable and those which require an incorporating act on the part of the Member States, given that the main problem arises in the latter case.

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[1] The most important judgment is that on the Costa ENEL case of 15.7.1964, rec 64, p. 1143, case 6/64

[2] cf also judgment No. 389, of July 1989, of the Italian Constitutional Court

(a) DIRECTLY APPLICABLE ACTS: EEC regulations and general ECSC decisions, EEC decisions and individual ECSC decisions

Regulations are binding and directly applicable. To establish whether an act is a regulation, we must examine its nature, given that its form is irrelevant and cannot modify its structure[3]. According to the Court of Justice, the fundamental characteristics of a regulation are its applicability to objectively determined situations and its effectiveness vis à vis specific categories of persons, considered both generally and in the abstract.

The quality of addressee of an act must depend on a well-defined situation de jure and de facto, defined by the act in relation to its objective. Regulations are compulsory in their entirety, which means that they cannot be implemented in part but must be implemented in their entirety and promptly. Their direct applicability in every Member State means that the Member States do not need an incorporating act for regulations; following the Italian Constitutional Court's most recent case law, any incorporating act would in fact have to be regarded as unlawful[4]. Nevertheless, regulations often involve obligations incumbent on the States regarding their execution, such as the organization or creation of administrative structures for their execution.

The principle of the primacy of Community law renders void any acts contrary to the provisions contained in a regulation, even if they replace it, and means that, in the event of a conflict between a national law and the regulation, the latter prevails over the national law in the dual sense of rendering that national law inapplicable and preventing the formulation of valid new legislative acts contrary to the Community provisions.

Regulations are issued by the Council (basic regulations) or the Commission, pursuant to Art. 155 EEC, under the powers delegated to it by the Council or by virtue of its legislative powers, pursuant to Art. 189 EEC (implementing regulations). They are published and enter into force 20 days after their publication or after the date indicated in them.

General ECSC decisions are analogous to regulations; Art. 33 ECSC shows the distinction between general and individual decisions and sets out the necessary conditions for bringing an action before the Court of Justice to have a decision declared void.

A further category of directly applicable acts in the various internal systems of law is that of (EEC) decisions; they are notified to the addressee and take effect from the time of notification. The compulsory nature of EEC and ECSC decisions relates only to the addressees of the act, which can be a Member State, a region, an undertaking or a physical person; and this compulsory quality covers all aspects of that decision.

The criterion for distinguishing between regulations and decisions resides in the scope of the act. Decisions which include a monetary obligation have an executive effect.

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[3] cf judgment of 17.6.1980, joint cases 789 and 790/79, Colpak v. Commission, Coll. p. 1949

[4] cf Italian Constitutional Court judgment No. 183 of 1973 and No. 232 of 1975

(b) INDIRECTLY APPLICABLE ACTS: EEC directives and ECSC recommendations

These acts are binding on the States as regards the result to be achieved but not the means used. In other words, the Member State must achieve the result indicated in the directive by the deadline laid down in it but is free to do so by using the means it deems most appropriate. It follows from Art. 5 EEC that Member States must take the most appropriate measures to execute the directive. Italian doctrine has maintained that in view of the Institutions' practice of issuing extremely detailed directives, these directives are immediately and directly effective and applicable and there is no nee for a state incorporating act. Obviously, only those directives that are extremely detailed, are confined to confirming an obligation laid down in the Treaties and require the addressee to adopt a negative form of conduct (i.e. to refrain from a certain conduct) are directly applicable.

The Court of Justice has on several occasions confirmed that acts incorporating directives must fulfil the requirement of legal certainty and therefore advises the use of appropriate instruments[5] and 'adequate publicity' of those instruments. In the event that the deadline laid down in the directive for its application has expired and the state concerned has not incorporated and implemented it, the Commission has the power of control and can bring proceedings for failure to act, while the individual can invoke the protection of the subjective rights deriving from the directive before the national courts. Directives enter into fore upon notification; ECSC recommendations are binding upon notification if they are individual in character (Art. 15 ECSC); in all other cases they enter into force on the date of publication.

(c) THE SINGLE EUROPEAN ACT: Acts of the European Council

With the entry into force of the Single European Act, the European Council became institutionalized, pursuant to Art. 2, as a political policy-forming body responsible for defining the basic policy lines of cooperation between the Member States. Certain authors state that, since it is not an integral organ of the Community institutions, the European Council does not adopt formal decisions but confines itself to indicating the general guidelines and objectives of the activities to be undertaken, and requesting the Council and the Commission to execute them.

As a result, the Single European Act does not specify the procedures for formulating these guidelines; Art. 3 refers to the Treaties and to subsequent Treaties and Acts modifying or supplementing them and to the provisions of Titles II and III of the Single European Act, and to the documents referred to in the third paragraph of Art. 1. Given that these provisions make no reference to the acts, competences and powers of the European Council, it would seem that the only useful reference is that made in Art. 3.(2) and within it, to the phrase 'the practices gradually established among the Member States'. The practice that has become established is in fact that of deliberating on matters that are so detailed as to leave the Council and the Commission very little margin for action. The opposite view is held by those who, rightly, maintain that the European Council is a special form of the

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[5] cf judgment of 6.5.1980, case 102/79, Commission v. Belgium, Coll. p. 1473

Council of the European Communities and is therefore entitled to adopt acts such as directives, decisions and regulations, in accordance with the procedures laid down by the Treaties. The practice that has become established is in fact that of deliberating on matters that are so detailed as to leave the Council and the Commission very little margin for action. However it is more interesting to note that under the provisions of Art. 31 of the SEA the European Council and its acts do not fall within the competence of the Court of Justice, which means there is no chance of normal legal recourse. The fact that this is a policy-making body does not justify such an exception, especially when we consider that its usual practice is to formulate such extremely detailed acts that they can replace acts by the Institutions, which merely need to standardize them; this situation has since changed and the European Council has confined itself to issuing guideline acts.

2. PROCEDURES FOR INCORPORATING COMMUNITY ACTS:
   (a) The original six Member States of the Community

In BELGIUM, the Foreign Affairs Committee is responsible for keeping the Chamber of Representatives informed of the general Community policy lines, of the progress in adapting national legislation to Community legislation and, lastly, of all the various acts issuing or issued from the Institutions, in cooperation with the various responsible committees. There is no general national law governing the incorporation of directives in an organized manner. The other bodies responsible for implementing and incorporating Community acts are: the International Economic Committee, the Foreign Ministry and the 'Comité d'avis chargé des questions européennes' made up of 10 national deputies and 10 Members of the EP.

The procedure is as follows: the Minister for External Relations, European Relations Department, notifies the responsible service or department of the acts issued by the Institutions; the latter draws up a draft law for submission to the Parliament. So the directive can be incorporated directly, transposed by being referred expressly to the Parliament or applied by a royal decree.

Since 1980, when exclusive regional competence was established for certain matters, so that the government could not replace a region in the event that the latter failed to act, a lacuna has appeared in the application of Community directives with regard to the said regional competences.

On 29 March 1990, the Senate's 'Comité d'avis des questions européennes' was set up, made up of 22 members of the Senate, which can appoint 10 or 11 of its members to meetings with the Chamber of Representatives Consultative Committee. One of this new body's tasks is to draw up an annual report on the progress in adapting national legislation to Community legislation.

In FRANCE law 79.564 of July 1979 created a Parliamentary Delegation (from the National Assembly and Senate) to the European Community with the task of providing information on Community policies and acts. Article 34 of the Constitution provides for a statutory reserve on the matters this includes, and therefore also on the EEC directives relating to these matters. In fact the executive has general regulatory powers and, pursuant to Article 37 of the Constitution, such rules are deliberated by the government and issued by the President of the Republic; in the case of certain technical matters, it is also possible to issue ministerial or interministerial decrees.

However, pursuant to Art. 38 of the Constitution, the most widely used instrument is legislative delegation to the government for the execution of individual directives or several directives. Provision is also made for the use of 'ordonnances' (government provisions subsequently ratified by Parliament), decrees (acts by individual ministries) and simple ministerial circulars.

Two important innovations were recently introduced. The first was the approval, on 15.7.1989, of a further subparagraph of Art. 86 of the National Assembly's rules of procedure introducing the requirement that draft laws on Community matters must include information on the applicable Community legislation and on the legislation in force in the main Community countries, in order to harmonize French legislation more closely with that of the Community and the other Member States.

The second was the creation of an inter-group of deputies, within the National Assembly, entitled PENELOPE (Pour l'Entrée des Normes Européennes dans les Lois Ordinaires des Parlements d'Europe), which is responsible for checking whether, in all sectors, the draft laws submitted to the National Assembly are compatible with the achievement of the 1992 Single Market.

GERMANY has also adopted a system that ensures that the Federal Government provides continuous information on Community matters both to the Bundesrat and to the Bundestag. Each of the two Chambers has set up committees responsible for this area; the Bundesrat has also set up a European Affairs Committee and the Bundestag a European Affairs Subcommittee of the Foreign Affairs Committee.

The difficulty here is the distribution of powers between the Länder and the Federation. The Länder have a say in all initiatives within their competences prior to the final approval of a directive. When a directive of interest to the Länder enters into force, the responsible minister must request the Länder to incorporate it.

All directives are incorporated by means of a legislative act; the government may issue such acts, but only if authorized by the legislative authority.

The legislative acts used are as follows:
Federal laws: when the object of the directive relates to provisions which will require substantial amendment;
Länder laws: in the case of matters within their competence;
Delegated regulations: the Federal Parliament authorizes the government to issue them for specific directives and stipulates precise implementing deadlines;
Regional delegated regulations; The Bundesrat may authorize the regional governments to adopt regulations;
Regional or Federal Administrative Regulations: Only for matters not governed by the law.

Because it takes about a year to approve laws implementing directives, the administrative bodies act as though the government has incorporated directives as soon as they enter into force, even in the absence of an act to that effect.

In ITALY too, the incorporation of Community directives has caused a variety of problems. Initially legislative power was delegated to the government, most

recently in 1982, authorizing it to issue delegated implementing decrees for Community laws. An important change came about with Law 183 of 16.4.1987 which reorganized this whole area by creating a ministry without portfolio for the Coordination of Community Policies, responsible for information and coordination between the various ministries concerned and the government.

On the question of incorporating directives, Law 183/87 makes it possible to delegate power to the government for matters which require a legislative act; but unlike earlier delegations, this one provides that the delegating law establishes guiding principles and criteria defined on the basis of the matters concerned.

For matters not covered by the statutory reserve, or which are not yet governed by the law, simple administrative acts can be used; for matters covered by the statutory reserve or already governed by the law, the government drafts an outline law which also contains specific rules of principle for matters falling within regional competence.

In their turn the regions, but only those with a special status and only in relation to matters for which they have exclusive competence, can immediately execute Community acts, adapting them however to the appropriate national legislation.

The situation has changed with Law No. 86 of 9.3.1989, which provides for an accelerated procedure so that Community acts can be incorporated more rapidly (cf paragraph 3a).

In LUXEMBOURG the Foreign and Community Affairs Committee is responsible for relations with the Community. It applies enabling laws in cases where the Constitution does not provide for a statutory reserve; in other cases it applies ordinary law, e.g. for matters not regulated prior to the issuing of the Community directive.

The law of 9.8.1971 authorized the Grand Duke to issue regulations implementing directives for matters not covered by the statutory reserve.

In the NETHERLANDS the EEC Affairs Committee serves as the instrument of information and coordination of Community policy. Here too there are various possibilities:
Ordinary Law, for matters reserved to the law;
General Administrative Regulations, for matters which can be delegated;
Ministerial Decrees and Circulars;
Deliberations by the 'Produktschaffen, i.e. the professional organizations that play an important role in the country.

(b) States that acceded to the Community at a later date

DENMARK has a Committee for Relations with the Common Market that exercizes great political influence and monitors the actions of the government even during the negotiations for the drafting of the directives.

Art. 6 of Law No. 447 of 11.10.1972 provides that the government must notify a committee appointed by the Folketing of proposals for provisions that can be directly applied and those which instead require incorporating acts. In 1973 an acute crisis arose between that committee and the Folketing because of the latter's serious failure to act; since then the committee has exercized far

more stringent controls and the exchange of information with the Folketing is continuous. That has led to closer cooperation between the ministries and close political cohesion with regard to EEC policies, which also means that the incorporation of directives has been much simplified and speeded up. Every six months the government must present a report to the Common Market Committee on its own activities with regard to implementing Community acts.

The following other bodies also examine Community acts:
The Special Committees, which examine the development of the Community and formulate the Danish position;
The Committee of High Officials, which defines the political guidelines in the field in question;
The Government Committee, which is linked to the government.

The legislative instruments used are Ordinary Laws, which are approved promptly as a result of the continuous exchange of information between the Folketing, the committee and the government, and Ministerial Measures, but only in the field of the right of establishment and the free movement of services and workers.

In GREECE the incorporating acts for directives repeat the structure of the directives, this being judged the best means of duly incorporating Community law.

In the case of directives prior to 1980, the Act of Accession to the EEC (No. 945/1979) provided for the possibility of incorporating them by means of Presidential Decrees drawn up by the Council of State or by Ministerial Decrees, in view of the large number of directives to be incorporated by Greece because of its recent accession.

The normal method of incorporating directives is by Parliamentary Act, although Art. 78 of the Constitution makes it possible to issue Framework Laws delegating the exercize of legislative powers to the government in economic matters; in exceptional cases, pursuant to Art. 44(1) of the Constitution, it is also possible to use decrees with the force of law, for instance following a finding of failure to act.

On 13.9.1990 the Committee for European Community Affairs was set up, consisting of 25 members of whom 10 are Greek Member of the EP, with responsibility for examining all European questions whether institutional or legislative. This is an important innovation and has led to more prompt and rapid examination of European questions by the Greek Parliament.

In IRELAND the executive has wider powers and can even amend legal provisions in implementation of Community directives. Since 1973 there has been a Joint Committee that examines draft directives and monitors their implementation. A procedure exists for annulment and ascertaining correctness: the Joint Committee can recommend to the Assembly, no later than a year after their adoption, the annulment of national executive acts. The Joint Committee also has information tasks. The usual legislative acts are Ordinary Laws and Government Regulations, the latter applicable only to matters not previously governed by law.

In the UNITED KINGDOM the two Houses of Parliament have set up committees responsible for preventive monitoring of the process of formulating directives and subsequent monitoring of their implementation.

Section 2 of the European Communities Act of 1972 sets out the competences of the Crown and its Ministers in implementing Community directives, except for matters relating to taxes, the law of precedents, delegated legislation and criminal law. Here too a procedure for annulment has been introduced, which means that one of the two Houses has the power to call for a parliamentary debate on the enacted legislation no later than 40 days after its enactment. If this power is not exercized, the legislation enters into force; if it is, the legislation can be rejected following the parliamentary debate and therefore becomes void.

The following legislative acts are used:
Ordinary Laws, which automatically apply Community acts (Art. 2(1) of the European Communities Act (ECA) and Cabinet measures (Art. 2(2) ECA);
Orders in Council, which are Cabinet decrees;
Regulations, which are acts by individual ministers but always subject to parliamentary control.

In SPAIN there is a Joint Committee for the European Communities which is responsible for coordination and information, and Law 47 of December 1985 sets out the general principles governing the delegation to the government of the power to issue acts implementing Community legislation.

PORTUGAL also provides for delegation to the government of the power to incorporate Community directives, on the basis of the Portuguese Constitution; a European Affairs Committee has been set up and discussions are currently under way in the Assembleia da Republica on widening its powers.

(c) Observations

From what we have briefly outlined above, it is clear that the methods used to adapt the individual national provisions to Community legislation are of two kinds: preventive monitoring by ad hoc committees, who keep in contact with the legislative authority, of the activities of the various governments during the negotiations on the enactment of directives; that is an option that has the advantage of speeding up the enactment of acts incorporating the directives, given that the legislative assemblies are kept fully informed of all the steps leading to the formulation of the directive to be issued; it also has the advantage of enabling the directive to be incorporated by ordinary laws duly approved by the assemblies, which guarantees respect for the principle of legality and poses no problems in terms of the principle of the citizen's confidence in the law. The other method used consists in carrying out controls at the time when the directive is incorporated by a system of statutory reserve, of legislative delegation to the government or, finally, by a system of control following the enactment of the act incorporating the directive, which may lead to its annulment (annulment procedure).

The second option tends often to slow down the process of adapting national legislation to Community legislation. Inasmuch as the legislating assemblies are not sufficiently informed about the EEC body of legislation and need much more time to approve the legislative act to be issued; this often means using the system of delegating mor or less extensive legislative power to the government, or more often, the use of government regulations or even simple ministerial circulars. It is clear this creates problems in terms of the principle of legality, of legal sources and their effectiveness, and of the

principle of confidence in the law, as it does in relation to the time taken to incorporate the directives. The Court of Justice has on several occasions confirmed the need to respect these principles, which are fundamental to any legal system.

3. IMPLEMENTATION OF COMMUNITY LAW IN ITALY

(a) The 'La Pergola' law

The enactment of Law No. 86 of March 1989 brought about several changes in the adaptation of national legislation to Community legislation; before examining the procedures and instruments set out in it, it is worth defining its fields of application. With regard to Community acts, paragraph (a) of Article 1 lists the following; regulations, directives, EEC decisions and ECSC recommendations. It should also be noted that this article provides for the adaptation of legislation on the basis of the Court of Justice judgments relating to the incompatibility of legislative acts and regulations with the provisions of the Treaties (Art. 1, c.1, 1.b). The judgments in question can only relate to incompatibility with respect to the Treaties establishing the Community, not respect for the other innumerable acts issued on the basis of the Treaties themselves.

Art. 2, c.3 establishes that the report introducing a draft Community Law must take account of the Court's case law where it relates to judgments which have legal institutional implication for the national legislative system, and where it relates to possible failure to act or infringement of Community obligations on the part of the Italian State.

This means that the procedures set out in that law are applicable only to the cases indicated above while in all other cases we must refer to Arts 171 EEC and 143 EAEC and to the Commission's power of control as laid down in Arts 155 EEC and 124 EAEC.

The instrument adopted for adapting legislation is the Annual Community Law (ACL), which enacts all the Community acts requiring an incorporating act at one and the same time.

Enacting procedure
The Minister for the Coordination of Community Policies, in cooperation with the administrations concerned, and in agreement with the Foreign Affairs Minister, after ascertaining that the provision is compatible with Community legislation, drafts an outline law which is submitted to the Council Ministers by 31 January each year and to the two Chambers by 1 March that year. That means the general adaptation activities must be undertaken by the first months of each year. We come now to the instruments provided under the ACL.

Content of the law:
The ACL can contain various types of provision, specifically:

1. Provisions that amend or derogate from laws conflicting with Community laws, Art. 3, c.1, 1.a;
2. Provisions that implement or apply Community acts, Art. 3, c.1, 1.b;
3. Legislative delegation to the government of the power to issue provisions enacting or applying Community acts, Art. 3, c.1, 1.b;
4. Authorization given to the government to enact regulations implementing Community acts, Art. 3, c.1, 1.c;
5. Provisions with which the government must comply in enacting regulations under the conditions set out in Art. 4, c.3, which is to say if the

directives allow for a choice of means of implementation, if it is necessary to introduce penal or administrative sanctions or specify the public authorities responsible for the administrative functions involved in the application of the new measures;

6. Provisions or legislative delegation to the government where the implementation of directives involves setting up new administrative bodies or structures, implies new expenditure or less revenue, Art. 4 c.6;
7. Provisions relating to the use of the procedure under Art. 4, (4) and (5) for implementing amendments to directives already incorporated by regulation and where necessary also for the other Community acts, pursuant to Art. 5 c.2.

At this point it becomes clear that only in the first two cases does the ACL have a direct effect on the Italian legislative system with a view to ensuring the rapid an correct incorporation of Community law. In fact both in the case of legislative delegation to the government and the authorization to enact government regulations the time taken is substantially longer and there is no real guarantee of the principles of legality or confidence in the law on the part of the individual.

Regulations must be enacted within a period of four months from the entry into force of the ACL, but no time is set for legislative delegation; it should also be noted that no deadline is set for the enactment of the ACL, since the date of 1 March relates only to the presentation of the draft law to the Chambers.

Article 6 lays down that in the case of decisions addressed to the Italian Republic that are of particular importance to national interests or involve considerable executive tasks, if the council of Ministers does not decide to contest them it must enact the appropriate directives; in this case too no deadline is set. In the council of Ministers, the President of the autonomous Region or Province involved has a consultative vote. This provision was inserted, as stated explicitly in the report attached to the draft law, in consideration of decisions on aid to the States and of the fact that the Council of Ministers has to take a decision very suddenly, in view of the extreme importance of these decisions and the short time allowed for any opposition to them; if not contested the decision becomes irrevocably binding on the State.

The power to issue regulations

With regard to power, we must refer to Articles 4 and 5 of the law, an analysis of which shows that the kind of acts for which the regulation is prescribe are as follows:

1. Directives and recommendations (ECSC), Art. 3, 1.c;
2. Directives amending earlier directives already incorporated into the legislative system, without prejudice to Art. 20 of Law No. 183/87 which provides for the use of delegated decrees. The ACL may also provide for the use of regulations instead of ministerial decrees, Art. 5, c.1[6];

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[6] cf CAMERA DEI DEPUTATI Dossier di Documentazione, No. 30, December 1988, p. 58. It is clear from the preparatory work for the 'La Pergola' law that this article relates to the 'incorporation of directives amending previous directives that have already been

3. 'Where necessary' Community decisions and regulations, Art. 5, c.2.

This last provision relates to decisions or regulations amending directives already incorporated by regulation and which do not therefore require another legislative act.

A comparison of the existing Art. 4 with Art. 20 of Law No. 183/87, which has remained in force, shows that for matters not covered by statutory reserve, even if they are already regulated by law, Art. 4 can be applied, while for matters not reserved to the law and not yet regulated the law, Art. 11 of Law No. 183/87, which provides for the use of regulations or other general administrative acts, including regional acts, is applicable.

There are two conditions for the use of the regulation: the matters to which the acts to be incorporated refer, even if they are already regulated by law, must not be subject to statutory reserve, and the ACL must explicitly allow its use.

Procedure for enacting regulations

In annex to the draft law, the government presents a list of directives whose implementation requires the authorization to enact regulations.

Once this authorization has been obtained, the government prepares an outline decree which is submitted for opinion to the responsible committees in the Chambers. If no opinion has been received within 40 days, the decree is nonetheless issued.

Implementing regulations are adopted within the meaning of Art. 17 of Law No. 400/88, on a proposal from the President of the Council or the Minister for the Coordination of Community Policies delegated by him.

The deadline for approval is four months from the entry into force of the ACL; the Council of State must give its opinion within 40 days, and not 90 as laid down by Art. 17 of the law of appeal (Art. 4, c.5); in this case too failure to act by the Council of State does not prevent approval of the regulation.

Art. 4, c.3 governs a special case: if the directives allow for a choice of implementing means, it becomes necessary to introduce penal or administrative sanctions, if it is necessary to specify the public authorities responsible for the necessary administrative functions, the necessary provisions must be contained in the ACL and the government must adhere to them when enacting the regulation.

Powers of the autonomous regions and provinces

For matters falling within their sole competence, the autonomous Regions and Provinces of Trento and Bolzano must immediately implement the directives; where the state has concurrent powers, they do so only after the enactment of the ACL following notification of the directive.

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implemented by the regulation referred to in Art. 4', which remain distinct from those governed by Art. 20 of the Fabbri law.

In all cases the deliberations of the Council of Ministers, in agreement with the Minister for the Coordination of Community Policies and other ministers concerned, establish the policy-lines and ensure coordination on Community matters.

Failure to act by the regions and provinces

In the event of failure to act by the autonomous Regions and Provinces of Trento and Bolzano, the procedure provided under Art. 6, c.3 of the DPR No. 616/77 is applied by the Minister for the Coordination of Community Policies in agreement with the Ministers for Regional Affairs and other responsible ministers.

This procedure lays down an appropriate deadline for fulfilment of this obligation and on its expiry, according to the joint provisions of Art. 6 of DPR No. 616/77 and Art. 11, c.2 and 3 of the ACL, provides for substitute measures by the State which may where appropriate assign the necessary powers and give appropriate instructions to a specially appointed committee.

Art. 6, c.4 establishes the primacy of national legislation, even in matters of exclusive national competence, where there is total failure to act or a law is enacted that is contrary to that contained in the corresponding national legislation.

In the event of failure to act by other public bodies, the necessary instructions are issued by the President of the Council pursuant to Art. 12 of the ACL; they consist in laying down a deadline for fulfilment of obligations and, in the event of continued failure to act, in appointing a commissioner ad acta with the task of replacing the body failing to act and equipped with the necessary powers.

(b) Bodies responsible for the coordination of Community policies

The government is the body responsible for providing information to the parliament on the Community legislative processes (Art. 1, c.2); every six months it must present a report on its activities in respect of Community legislation and Italian policy towards Europe (Art. 7) and a report on European Union (Art. 8, c.2).

Within 90 days from the entry into force of a Community directive or recommendation, the government must give the Chamber a written account of the conformity or not of national legislation with the directive or recommendation of which it has been notified (Art. 2, c.3).

In the case of the regions, every six months the President of the Council, on a proposal from the Minister for the Coordination of Community Policies, must convene a special session of the Conference of State and Regions on the general guidelines with which the regions must comply.

Government action is nearly always preceded by an 'impulse act' by the Minister for the Coordination of Community Policies, which is equipped with a permanent secretary working in cooperation with the ministers concerned in each case. A consultative committee is set up under the Presidency of the Council, made up of experts in the various fields and with advisory duties.

A Council for European Community Affairs has been set up under the Senate and is responsible for examining the annual report on the Community's activities drawn up by the government and for presenting a report on it to the Assembly. It can also present own-initiative reports on those activities it considers important. Its other powers are always merely consultative.

It should also be added that various difficulties have appeared with regard to the effective working of these bodies, whether because of their failure to enact secondary legislation in implementation of the principles embodied in the Fabbri law or whether because of the limits imposed on ministerial action in the framework of cooperation with the Community, for which COREPER is largely responsible.

On 10 October 1990 the Special Committee for Community Policies was set up under the Chamber of Deputies.

Under Rule 126 of the Chamber's Rules of Procedure it has 'general competence in relation to the regulatory aspects of the European Community's activities and provisions and the implementation of Community agreements'.

It is made up of 51 members appointed in proportion to the membership of existing groups in the Chamber and 'has guidance and control functions vis à vis the government in respect of matters within its competence'.

It also has advisory tasks, i.e 'it delivers opinions on draft laws and draft delegated decrees' on the application of the Treaties and subsequent amendments thereof, on draft laws and decrees on the implementation of Community provisions and, in general, on all draft laws in respect of their compatibility with Community legislation. It examines the reports on the Community submitted by the government and draws up its own reports for the Assembly. It can organize hearings of ministers and, on the authorization of the President of the Chamber, can propose meetings with Members of the European Parliament.

The six-monthly report by the government is forwarded to the Special Committee for Community Policies, which can refer it to the Assembly.

With regard to the ACL, the Special Committee has the task of examining the draft law and reporting on it to the Assembly; it also receives the reports from the various responsible committees, which have 15 days to draft them and can appoint a rapporteur who takes part in the appropriate Special Committee meetings. Even if no such reports have been drawn up by the deadline, the Special Committee will examine the draft law.

Pursuant to Art. 126(3) the amendments approved by the individual committees are deemed approved unless the Special Committee rejects them on the grounds of incompatibility with Community legislation or for reasons of general coordination. The Special Committee has 30 days within which to examine the ACL and draw up a general report for the Assembly.

With respect to Court of Justice judgments, the responsible committee must examine the matter in question within a period of 30 days, with the assistance of a government representative and a Special Committee representative, provided no draft law on the same subject is in course of examination in which case the matter will be examined jointly.

It emerges from the above that the object of this innovation is to create an information-consultation body which can assist the parliament, or more precisely the Chamber, in dealing with Community matters and coordinate the activities of the various responsible committees. Here it may be noted that the Special Committee has the power not to accept the amendments tabled by the responsible committees if they conflict with Community legislation or for reasons of general coordination, which means that in this sector it in fact plays the role of general coordinating body.

It should also be pointed out, however, that as regards its relations with the government, it seems very vague to assign it only a general guidance and control function, for it is not specified precisely what matters and acts it is to deal with.

Clearly, only a sufficiently detailed an specific report by the Government will enable the Committee to carry out its tasks properly.

Another aspect worth examining concerns the provisions of the Fabbri law, now in force, relating to the prompt adaptation, i.e. directive by directive, of the Italian legal system: this law was not applied in 1990 since the transposal of directives was referred entirely to the ACL.

A final positive comment relates to the Court of Justice's judgments: in this field the Special Committee must express its own opinion on the need to take measures and comply with obligations, which means in a sense it is 'spurring on' the national authorities to act.

(c) Conclusions

If we want to draw up a balance sheet of the adequacy of the instruments set out in the 'La Pergola' law for adapting Italian legislation to Community legislation, we must look at the cardinal points defined by the Court of Justice in various judgments concerning the problems of incorporating Community directives.

A first point emerges from the judgment of 24.3.1988 in case 104/86[7] which establishes the obligation of the Member States expressly to repeal any provisions that are incompatible with those contained in the Community acts, notwithstanding the primacy of Community legislation and the direct applicability of its provisions.

A second point emerges from the judgment of 6.5.1980 in case 102/79[8] which establishes that even very detailed directives need an act of incorporation into national legislation and that this obligation is substantiated by the use of cogent provisions and not simple administrative practices that can be modified by the administration at any time.

A third point emerges from the judgment of 3.3.1988 in case 116/86[9], Commission v. Italian Republic, which establishes that the choice of legislative instrument must take account of the context in which the new

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[7] cf FORO ITALIANO 1988, IV, 477, Commission v. Italian Republic
[8] cf FORO ITALIANO 1981, IV, 32, Commission v. Belgium
[9] Not yet published in Italy

legislation is to be introduced, which means that implementing provisions must be applied that have the same legal effectiveness as those to be amended.

Lastly, the judgment of 8.7.1987 in case 262/85[10] mitigates the principle just set out in that it provides that an act of incorporation of the directive is not necessary if the matter in question has already been regulated in line with the directive; in all cases however, the directive must be effectively and clearly observed.

Comparison of the three key points established by the Court of Justice's case law with the instruments laid down in the 'La Pergola' law suggests a few observations. In the first case, the ACL effectively provides, under Art. 3, c.1, 1.a, for the repeal of incompatible laws, so no problems arise, even in the event of a shorter or longer period during which, given the annual deadline for the ACL, it would be possible for the two bodies of legislation to coexist, namely a state legislation and a Community legislation that were incompatible with one another.

With regard to the type of legislative instrument used, there are no problems as regards regulations pursuant to Art. 4. The first subparagraph of that article provides for the use of regulations for matters not reserved to the law even if they are already regulated by law. That provision does not appear to conflict with the dictates of the Court of Justice which require the use of acts equivalent to those already regulating the matter; since the use of regulations is expressly authorized by a national law, the ACL, that means that a constitutional aspect prevails over other pre-existing laws even if they are higher ranking. It should also be noted that if the regulation has to govern matters going further than the Community provisions to be implemented, it could no longer have the effectiveness it has hitherto had and as regards the part going further than the Community provisions, it would certainly not take priority over legislative acts conflicting with it.

Here the enacting procedure also appears lax: in theory the government is subject to a dual control by the parliament: it exercises preventive control when, in order to obtain authorization to use this instrument, it must present a list containing all the directives for which it is requesting that authorization, and subsequent control, when it presents the draft regulation. It is worth noting that subsequent control cannot take place if, pursuant to Art. 4, c.4, the committees set up by the Chambers do not deliver their opinion within 40 days and the regulation is nevertheless enacted. Given the parliamentary time-table, it is easy to see how that opinion could not be delivered in time and that the government would therefore escape this most important control.

The power of the parliament with regard to the incorporation of directives is substantiated, therefore, in the approval once a year of the ACL[11], for which no specific enacting deadline is laid down.

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[10] cf. FORO ITALIANO 1987, IV, 390, 'Commission v. Italian Republic

[11] In this context a doctrinal debate is taking place on the nature of the 'La Pergola' law which requires parliament to legislate on an annual basis on specific matters, without having the rank of constitutional law.

That gives rise to two sets of problems: firstly, it is easy to foresee that it might take the parliament a long time to approve it, which would frustrate the objective of the 'La Pergola' law, except in the event of a special approval procedure being established here.

Secondly, the parliament cannot be informed promptly of the directives to be enacted and does not intervene at the stage of the negotiations on their enactment, an aspect closely connected with the approval of the ACL in that it certainly draws out the approval time.

If we compare the bodies set up in the various Member States to deal with the incorporation of Community acts, we can see that where there are close relations between the parliament on the one hand and the government and the Community institutions on the other, the adaptation of national legislation is rapid and nearly always based on the use of ordinary law.[12]

In Italy, as we have seen, the government is assisted by administrative back-up and consultative bodies: the Department for the Coordination of Community Policies, the Consultative Committee under the Presidency of the Council and the various ministers responsible for these matters. But as regards relations with the parliament, there are no bodies responsible for enabling the latter to take an active part in the process of formulating Community directives since both the Chamber Committee and Senate Committee have merely consultative functions.

In this context we are once again faced with the familiar problem of the Community's democratic deficit, which some people maintain should be resolved by giving greater powers to the EP and not to the national authorities.

If that is definitely an objective to be achieved it is difficult to see why this process of democratization should not also pertain to the national parliaments inasmuch as it is their role, as representatives of the people of the Community, to render the Community laws operative in the various states.

If all the national parliaments were more actively involved in the process of Community legislation, this would being great advantages, not least that of ensuring closer coordination between the various national laws and Community legislation.

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[12] From this point of view the best situation is in Denmark, where the Committee for Relations with the Community acts as a constant point of contact between the parliament and the government; this ensures prompt and due information of the parliament, which can approve the necessary acts very quickly.

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A P P E N D I X

LAW No 86 of 9 March 1989

General provisions on Italy's participation in the Community legislative process and the procedures for implementation of Community obligations

The Chamber of Deputies and the Senate of the Republic have approved the following:

THE PRESIDENT OF THE REPUBLIC

hereby enacts

the following law:

Article 1

Aims

1. The procedures and measures provided for in this law shall enable the State to guarantee fulfilment of the obligations deriving from Italy's membership of the European Communities and resulting from:

(a) the issuing of directives, decisions and recommendations (ECSC) which, in accordance with the provisions of the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community, require the Italian Republic to adopt implementing provisions;

(b) a jurisdictional declaration by judgment of the Court of Justice of the European Communities, on the incompatibility of laws and regulations with the provisions of the aforementioned Treaties.

2. In accordance with the arrangements laid down this law, the Government shall ensure that Parliament is duly informed of the progress of Community legislative procedures.

Article 2

The Community law

1. No later than 31 January each year, the Minister for the Coordination of Community Policies shall, on the basis of the acts issued by the institutions of the European Communities, ascertain, with the cooperation of the administrative authorities concerned, whether internal legislation complies with Community legislation and shall submit to the Council of Ministers, in conjunction with the Foreign Minister and other Ministers concerned, a bill on 'provisions for fulfilment of obligations deriving from Italy's membership of the European Communities' (the Community law for the year in question).
2. The bill shall be submitted to the two Chambers by 1 March the same year.
3. The bill's introductory report shall refer, in particular, to the case-law of the Court of Justice of the European Communities as regards judgments with legal and institutional repercussions on national legislation and judgments concerning any cases of non-compliance with or violation of Community obligations by the Italian Republic.
4. Paragraph 2 of Article 10 of Law No. 183 of 16 April 1987 shall be replaced with the following:

'2. The Government shall, within 90 days, report in writing to the Chambers on whether internal legislation complies with the provisions of the Community recommendation or directive.'

Article 3

Substance of the Community law

1. As a rule, national legislation shall be periodically adjusted in line with Community legislation by the annual Community law through:

(a) provisions amending or abrogating existing legislation which does not comply with the obligations referred to in Article 1(1);

(b) provisions necessary for bringing into force or ensuring the application of decisions of the Council or the Commission of the European Communities, as referred to in Article 1(1)(a), including provisions delegating legislative power to the Government;

(c) granting the Government authorization to implement directives or recommendations (ECSC) by regulation, pursuant to Article 4.

Article 4

Implementation by regulation

1. With regard to matters already governed by law, but not exclusively governed by law, directives may be implemented by regulation if the Community law so requires.

2. The government shall submit to the two Chambers, attached to the Community bill, a list of the directives for whose implementation it wishes to request authorization under Article 3(c).

3. If the directives allow choices to be made concerning their method of implementation or if it proves necessary to introduce penal or administrative sanctions or to specify the public authorities responsible for carrying out the administrative tasks involved in the application of the new provisions, the Community law shall lay down the appropriate provisions.

4. Apart from the cases provided for in paragraph 3, prior to the issuing of the regulation, the draft decree shall be submitted to the standing committees responsible in the Chamber of Deputies and the Senate of the Republic, which shall be required to deliver their opinions within 40 days of the referral. Beyond this deadline, the decrees shall be issued even in the absence of these opinions.

5. The implementing regulation shall be adopted in accordance with the procedures laid down in Article 17 of Law No. 400 of 23 August 1988, on a proposal from the Prime Minister or, by delegation, the Minister for Coordination of Community Policies, within four months of the date of entry into force of the Community law. In this case, the opinion of the Council of State shall be delivered within 40 days of the request. Beyond that deadline, the regulation shall be issued even in the absence of this opinion.

6. The Community law shall, in any case, be drawn up pursuant to Article 3(b) where implementation of the directives involves:

(a) the establishment of new administrative organs or structures;
(b) an estimate of new expenditure or decreased revenue.

7. The legal provisions allowing directives on certain matters to be implemented by administrative decisions shall remain unchanged.

8. A list of the directives implemented or still to be implemented by administrative decisions shall be attached to the Community bill.

Article 5

Implementation by amendment

1. Subject to the provisions of Article 20 of Law No. 183 of 16 April 1987, the Community law may stipulate that each amendment of the directives to be implemented by regulation pursuant to Article 4 shall be carried out in accordance with the procedure laid down in paragraphs 4 and 5 of the same article.

2. The provisions of paragraph 1 and Article 4 shall also apply, where appropriate, to the implementation of the other Community provisions referred to in Article 1(1)(a).

Article 6

Decisions of the European Communities

1. Following notification of decisions adopted by the Council or the Commission of the European Communities which concern the Italian Republic and particularly affect national interests or whose implementation involves substantial costs, and after consulting the Foreign Minister and other Ministers concerned and in agreement with them, the Minister for the Coordination of Community Policies shall refer the matter to the Council of Ministers.

2. If it does not envisage contesting the decision before the Court of Justice of the European Communities, the Council of Ministers shall issue appropriate directives for implementation of the decision by the competent authorities.

3. If the implementation of the decision falls within the sphere of competence of a region or an autonomous province, the president of the region or province concerned shall take part in the sitting of the Council of Ministers, in a consultative capacity, subject to the provisions of the special statutes.

Article 7

Six-monthly report to Parliament

1. The Government shall submit to the Chambers a six-monthly report on Italy's participation in the Community legislative process, outlining the principles and characteristics of Italian policy in the preparatory work for the issuing of Community legislative acts and, in particular, the Government's position on each Community policy, on sets of legislative acts concerning the same subject and individual pieces of legislation of particular importance to general policy. At the same time, the Government shall also report to Parliament on the programme of activities submitted by the Presidency-in-Office, its own policy guidelines on the matter and, subsequently, the progress made in implementing of the programme.

Article 8

Incorporation of the report referred to in the second paragraph of Article 2 of Law No. 871 of 13 July 1965

1. The report submitted by the Government to Parliament, pursuant to the second paragraph of Article 2 of Law No. 871 of 13 July 1965 shall include a special section on the activities of the European Council, the Council and the Commission of the European Communities which relate to the completion of the internal market and economic and social cohesion, in the light of the positions adopted within these bodies by Italy and the other Member States of the European Community, and with special reference to

Community funding received by Italy and the use made, thereof, as well as the sections of the reports of the Court of Auditors of the European Communities concerning Italy.

2. At the same time a similar report shall be submitted by the Government to Parliament concerning the work of the Council of Europe and the Western European Union insofar as, in the opinion of the Foreign Minister, it is aimed at European unification.

Article 9

Powers of the regions and autonomous provinces

1. The regions with special statute and the autonomous provinces of Trento and Bolzano may provide for the immediate implementation of Community directives on matters falling within their exclusive competence.

2. In areas where they have concurrent powers, the regions, including those with ordinary statute, and the autonomous provinces of Trento and Bolzano, may implement directives following the entry into force of the first Community law after notification of the directive.

3. The Community law or another State law implementing directives on matters falling within the regional sphere of competence shall indicate what provisions of principle cannot be derogated from by the regional law adopted and take precedence over conflicting provisions which may already have been issued by the regional authorities. On matters falling within their exclusive sphere of competence, the regions with special statute and the autonomous provinces shall conform to the State law within the limits of the Constitution and their respective statutes.

4. In the absence of the regional legislation provided for in paragraphs 1, 2 and 3, all the provisions required for the fulfilment of Community obligations by the State law or the regulation referred to in Article 4 shall be applied.

5. The task of guiding and coordinating the regions' administrative activities in areas within the scope of the directive shall require a unitary approach, not least with regard to economic planning objectives and commitments deriving from international obligations.

6. Where it is not exercised by law or by an act with force of law in accordance with paragraph 3 or, on the basis of the Community law, by the regulation provided for in Article 4, the guiding and coordinating function referred to in paragraph 5 shall be exercised by deliberation of the Prime Minister or the Minister for the Coordination of Community Policies in agreement with the Ministers responsible.

Article 10

'Community session' of the State-region conference

1. On a proposal from the Minister for the Coordination of Community Policies the Prime Minister shall, at least once every six months, convene a special session of the standing conference on relations between the State, the regions and the autonomous provinces, to deal with aspects of Community policy of regional or provincial interest.

2. The conference shall, in particular, give its opinion on:

(a) general guidelines on the drafting and implementation of Community acts concerning the regions' sphere of competence;

(b) the criteria and procedures for ensuring that the exercise of regional powers is compatible with observance and fulfilment of the obligations referred to in Article 1(1).

3. The Minister for the Coordination of Community Policies shall refer to the Interministerial Committee on Economic Planning for matters concerning the spheres of competence referred to in Article 2 of Law No. 183 of 16 April 1987.

Article 11

Non-fulfilment by the regions and autonomous provinces

1. If the non-fulfilment of one of the obligations provided for in Article 1(1) is due to the administrative inactivity of a region or autonomous province, the Minister for the Coordination of Community Policies, in agreement with the Minister for Regional Affairs and the Ministers responsible, shall initiate the procedure provided for in the third paragraph of Article 6 of Presidential Decree No. 616 of 24 July 1977.

2. On expiry of the time limit given to the region or autonomous province concerned to act, the Council of Ministers acting in accordance with the third paragraph of Article 6 of Presidential Decree No. 616 of 24 July 1977, shall provide, in accordance with the procedure laid down in paragraph 3 of Article 6 of this law, for the substitive intervention of the State; to this end, it may, through the appropriate directives, confer the necessary powers to a Committee to be appointed by a Decree of the Prime Minister on a proposal from the Minister for Regional Affairs, following consultation of the Minister for the Coordination of Community Policies.

3. The committee referred to in paragraph 2 shall consist of:

(a) the Government commissioner, who shall act as chairman;

(b) an administrative magistrate, a law officer or a university law professor;

(c) a third member appointed by the region or autonomous province concerned or, if this member has not been appointed within 30 days of the request, the chief magistrate of the capital of the region or province, who shall act by referring to the categories mentioned in sub-paragraph (b).

4. The committee's secretarial duties shall be carried out by the staff of the Government commissioner's office.

Article 12

Non-fulfilment by public bodies

1. If the non-fulfilment of one of the obligations provided for in Article 1(1) is due to the failure to act of a public body other than the State, a region or an autonomous province, the Prime Minister, on a proposal from the Minister for the Coordination of Community Policies, in conjunction with the ministers responsible and having received the observations of the body concerned, shall issue the necessary directives setting a time limit within which the public body must act.

2. If no action is taken within that time limit, the Prime Minister shall confer on a commissioner the powers to act in the place of the body's services.

Article 13

Initiatives aimed at European cohesion and the internal market

1. The Minister for the Coordination of Community Policies shall, in agreement with the Foreign Minister and the other Ministers responsible, promote initiatives aimed at European social and economic cohesion, including joint action with the European Economic Community and the other Member States.

2. The Department set up under Article 1 of Law No. 183 of 16 April 1987 shall, as part of its task of coordinating Community policies relating to the internal market, guarantee with adequate resources the widest possible dissemination of information concerning provisions adjusting internal legislation in line with Community legislation which confer rights on the citizens of the Community or facilitate the exercise of those rights in relation to the free movement of persons and services.

Article 14

Addition to Law No. 839 of 11 December 1984

1. The following paragraph shall be added to Article 7 of Law No. 839 of 11 December 1984:

'The terms of legislative acts of the European Communities referred to in the text shall, similarly, be indicated in the footnote'.

Article 15

Final provisions

1. Articles 12 and 13 of Law No. 183 of 16 April 1987 and all other provisions incompatible with the provisions of this law shall be abrogated.

This law, bearing the State seal, shall be incorporated into the official Statute Book of the Italian Republic. All persons concerned shall be obliged to observe it and ensure observance thereof as a State law.

Done at Rome, 9 March 1989

COSSIGA

DE MITA, *Prime Minister*
LA PERGOLA, *Minister for the Coordination of Community Policies*

Approved: VASSALLI, *Minister of Justice*