

The New Italian *Senato* in light of the EU constitutional system

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Executive Summary

- > On 12th April 2016 the Italian Parliament definitively passed a constitutional reform, which supersedes the Italian equal bicameralism (i.e. same structure and functions for both the Chambers, *Camera* and *Senato*), which is one of the causes of the inefficiencies of the Italian system of government. A *referendum* on it will very likely be held in October 2016.
- > Italian membership of the EU has had an effect on the content of this reform: EU governance requires member states to deal efficiently with EU institutions.
- > With this reform, the Italian *Senato* should play a specialised role in EU affairs, as happens in some other member states with a bicameral system. Therefore, the reform can be considered as valuable in light of the EU constitutional system set out by the Treaty of Lisbon.

On 12th April 2016 the Italian Parliament definitively passed an important constitutional reform, which is expected to radically change the Italian system of government. A *referendum* on it will very likely be held in October 2016. This reform is of great interest for anyone who observes the EU from a constitutional law perspective. First of all, the content of this reform has been affected by Italian membership of the EU. Secondly, the new Italian *Senato* that will emerge from this reform should play a specialised role in focusing on EU affairs, as happens in some other member states with a bicameral system. This Policy Brief discusses this role, considering it as valuable in light of the EU constitutional system set out by the Treaty of Lisbon.

The content of the Italian constitutional reform

The current Italian constitutional reform is expected to radically change the Italian system of government. Its main aim is superseding the Italian equal bicameralism, which is an exception among the EU member states and one of the causes of the inefficiencies in the way the Italian system of government currently works. Equal bicameralism means that both of the Italian Chambers, *Camera dei deputati* (Chamber of Deputies) and *Senato della Repubblica* (Senate of the Republic), have exactly the same legitimation and tasks. Regarding their legitimation, the *Camera* and the *Senato* are both elected by direct universal suffrage (Articles 56 and 58 of the Constitution) for five years (Article 60 Const.): each Member of Parliament, therefore, represents the Nation (Article 67 Const.).

Such an equal bicameralism seems to negate the idea of bicameralism itself, which should normally allow the voice of social and regional forces to be heard by the State and enrich political representation and pluralism. For example, in many federal states, the second Chamber represents the federated states (e.g. in Austria, Belgium, Germany). The same happens in a regional state like Spain, where the *Senado* (Senate) represents the *Comunidades autónomas* (Autonomous Communities), or in some unitary states (like France and the Netherlands), where the second Chamber represents the regional/local authorities. Another sensible model involves the members of the second Chamber representing functional interests, like in Ireland and in Slovenia, or being high-profile and 'expert' members, as in the United Kingdom. Apart from Italy, only in three EU member states (Czech Republic, Poland and Romania) the two Chambers are nowadays directly elected by the people. However, they do not exercise the same functions, as happens in Italy.

The second feature of Italian bicameralism is that the tasks of the two Chambers are exactly the same. Legislative powers are exercised collectively by both Chambers and the government requires the confidence of both. The reason why, after World War II, the Italian Founding Fathers chose the solution of such an equal bicameralism, was the *'complesso del tiranno'* ('tyrant complex'). After the twenty-year experience of fascist dictatorship, this so-called 'tyrant complex' saw the Constitutional Assembly introduce a bicameralism based on the power of veto of a second Chamber which would control (and in some way restrain) the action of the government and of the political majority who would win the first elections after the passing of the Constitution in 1948. It has to be borne in mind that the Italian Constitution was passed at the beginning of the Cold War: one big party, the *Democrazia Cristiana*, supported the United States, while the Marxist parties supported the Union of the Soviet Socialist Republics. Therefore, the 1948 elections were to decide whether Italy would belong to the Western alliance or not: every party wanted to be sure, in case of losing the election, that the winner would not be too powerful. For this and other reasons (e.g. the proportional-representation electoral system and the very fragmented multipartyism), the development of the Italian political system until the 1990s was unique among the Western countries, with very weak governments and the development of a consensus instead of a majoritarian democracy.

Things have changed radically since the 1990s. The end of the Cold War, a majoritarian electoral system and the birth of new parties made alternate governments possible and the governments became more efficient within the Italian political system. However, the equal bicameralism is still putting a brake on the efforts of governments to carry out their political programs.

This would change with the constitutional reform. First, the *Senato* would become an indirectly elected Chamber, representative of the *Regioni* (Regions), the *Province autonome* (Autonomous Provinces) and local authorities, while the *Camera* would continue to be directly elected by the people. Second, the government would not require the confidence of the *Senato* anymore but only of the *Camera*. The *Camera* would also have the general power of definitively approving legislative bills, which means that legislative powers would not be exercised collectively by the *Camera* and the *Senato* anymore, apart from some matters such as constitutional amendment bills.

How Italian membership of the EU affected the reform

Italy has been trying to supersede equal bicameralism for more than thirty-five years but every attempt to amend the Constitution for that purpose has failed. Now, on the contrary, it is very likely that the current constitutional amendment process will succeed. Why? Events in the EU and in Italy between 2010 and 2013 marked a set of turning points, with EU membership having a significant impact.

In 2010, a yearly cycle of economic policy coordination between the EU's member states and its institutions was established within the EU, called the 'European Semester'. In 2011, most EU member states signed a Treaty (the so-called 'Fiscal Compact') which prescribes a balanced budget rule to be incorporated in each member state's legal system. What this new EU economic governance actually required was that within the new yearly cycle of economic EU policy coordination, every government should be able to deal quickly and efficiently with the EU institutions. Italian equal bicameralism, by contrast, traditionally results in a lengthy legislative process and puts a brake on the government and its efforts to carry out its political programme.

Moreover, the economic and financial crisis, which overwhelmed Italy especially since 2011, showed – once again under the pressure of the EU – how stuck the Italian parliamentary system was. In July 2011, the government led by Silvio Berlusconi, which after the 2008 elections could rely on a large majority in Parliament, issued a wide-reaching *decreto-legge* (emergency decree) with measures to face the economic and financial crisis. However, on 5th August 2011, the European Central Bank sent a confidential letter to the Italian government stating that those measures were not enough to tackle the crisis and asking it to establish structural reforms. The letter underlined that the Euro area Heads of State or Government summit of 21st July 2011 had concluded that "all euro countries solemnly reaffirm their inflexible determination to honour fully their own individual sovereign signature and all their commitments to sustainable fiscal conditions and structural reforms". After receiving the letter, the Italian government was able to pass a second *decreto-legge* in August 2011 with further measures to tackle the crisis only with the support of the opposition parties. However, it was not able to establish structural reforms. This led Berlusconi to resign in November 2011.

A non-partisan government (not composed of politicians but experts in economics and legal issues) led by the economist Mario Monti was then appointed. It was supported in Parliament by the main centre-right-wing party, the main centre-left-wing party and by another centre party and obtained the vote of confidence by the broadest majority in the history of the Italian Republic. This demonstrated that the Italian system of government does not work efficiently: the only way it was able to get out of its stalemate and tackle the economic and financial crisis under the pressure of the EU was through such a non-partisan government.

Almost the same happened after the 2013 elections when the centre-left-wing coalition obtained the majority in the *Camera* but not in the *Senato*. In any bicameral system there could be different majorities between the two Chambers. However, this obviously becomes a huge problem in a system with an equal bicameralism like the Italian one, where the government requires the confidence of both Chambers and legislative powers are exercised collectively by both of them. The Italian political system faced a new stalemate and the same parties which had supported Monti's government gathered to support the so-called 'broad agreement' government led by Enrico Letta, which was politically weak and lasted for less than one year. After those events the main parties agreed that the necessity to reform equal bicameralism could not be put off any more.

As the explanatory notes of the Constitutional Amendment Bill clearly state, Italy needs to carry out this reform "to fully rationalize the complex multi-level governance based on the European Union, the State and the *Regioni*" and, in wider terms, "to enhance the efficiency of the decision-making and public policies implementation processes (...) in order to achieve the stability of the Government activity and the speed and the strength of decisions which are essential in the global competitive context".

The potential future specific functions of the *Senato* regarding the EU

The specific functions regarding the EU that the new *Senato* would exercise with this reform would be the following. As the exact meaning of the Articles is not always clear, efforts need to be made to interpret them (Albanesi 2015).

(a) The *Senato* would contribute to exercising the functions of linking the State with the

Regioni/Province autonome/local authorities and with the EU (Article 55, paragraph 5, of the new Constitution). This implies that the *Camera* could exercise such functions, too. However, the *Senato* being an indirectly elected Chamber which would represent the *Regioni*, the *Province autonome* and local authorities, it seems to be potentially fit for acting as a specialised Chamber on EU affairs in the context of the multilevel governance of the EU system.

- (b) The *Senato* would take part in decision-making and in the implementation of EU acts and policies (Article 55, paragraph 5, of the new Constitution). This seems to mean two things. At the EU level, the *Senato* could play a specialised role by issuing reasoned opinions on the compliance of EU legislative drafts with the principle of subsidiarity (in accordance with the 'yellow' and 'orange card' procedure set out by Article 7 of Protocol No. 2 to the Treaty of Lisbon) and by issuing opinions within the 'political dialogue' (which are without legal effect, in accordance with the so-called 'Barroso procedure'). At the national level, the *Senato* could play a specialised role in carrying out inquiries and hearings on EU affairs: the reports which would come from such activities could also be used by the *Camera* to hold the government to account or to adopt resolutions addressed to the government on its EU policies.
- (c) The *Senato* would assess the impact of EU policies on the Regions (Article 55, paragraph 5, of the new Constitution). This function seems to include in particular the scrutiny on the compliance of EU legislative acts with the principle of subsidiarity.
- (d) The *Senato* and the *Camera* would exercise legislative powers collectively in relation to the bill which sets out the general rules, the terms and the conditions concerning the way Italy shall implement commitments which arise from EU membership (Article 70, paragraph 1, of the new Constitution) and the bills which authorise the ratification of international treaties concerning EU membership (Articles 80 and 87, paragraph 8, of the new Constitution). The extent of such legislative powers should be interpreted narrowly. This means excluding, from the collective exercise of legislative powers by the Chambers, bills that are aimed at implementing commitments which arise from EU membership. If not, the *Senato* would continue to play the same role that it is playing nowadays, as most legislation is enacted to implement commitments which arise from the EU policy process.

At the end of the day, the *Senato* could act as a specialised Chamber on EU affairs, as happens in some other member states with a bicameral system (Heffler *et al.* 2015), especially in the UK. In fact, in the UK the European Union Select Committee of the House of Lords is more selective and more thorough in scrutinizing EU drafts than the European Scrutiny Committee of the House of Commons: whereas the Commons Committee reports quickly on a large number of documents, often within a week, the Lords Committee reports on a much smaller number of documents in considerably greater detail in longer inquiries. This led the former Italian Prime Minister and Vice-President of the Convention on the Future of Europe Giuliano Amato to say that “the best reports that we read throughout the Union, on whatever European documents, are coming from here [i.e. from the European Union Select Committee of the House of Lords]. You deserve appreciation and esteem from everybody, because the analysis is very detailed with arguments that it is difficult to find anywhere else” (House of Lords 2012).

Such a role has been played by the National Parliaments especially through reasoned opinions adopted according to Article 7 of Protocol No. 2 and through opinions given within the ‘political dialogue’. This demonstrates that “national parliaments are part of a greater constitutional whole than the microcosm of the national constitutional system” (Besselink 2007).

In light of the EU constitutional system, the Italian constitutional reform can thus be considered as a valuable change. The *Senato*, being an indirectly elected Chamber which would represent the *Regioni*, the *Province autonome* and local authorities, should represent the needs of regional and local authorities and bring them to the attention of the State and, through the latter, to the EU. It should also take part in decision-making and in the implementation of EU acts and policies, in the way which has been described above.

The new *Senato* in light of the EU constitutional system

National Parliaments, being democratic bodies, have been playing an important role in the EU constitutional system especially since the Treaty of Lisbon by adopting resolutions to their national governments, holding the latter to account for their EU policies and connecting the EU institutions with the needs of the European people.

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