

CONSTITUTIONAL REVIEW BILL

SUMMARY NOTE

The Constitutional Review Bill lays down provisions to overcome "perfect" bicameralism, reduce the number of parliamentarians and contain costs arising from institutions' activities, eliminate the CNEL (National Council for Economics and Labour) and review Title V, Part II of the Italian Constitution.

1. Overcoming the "perfect" bicameralism

The Bill foresees a differentiated bicameral system, whereby the vote of confidence in the Government will be the prerogative of the Chamber of Deputies only. As such, the Chamber will exercise policy-setting as well as legislative powers (i.e. the power to adopt Acts of Parliament, except constitutional laws which will still require the approval of the other Chamber as well) and will oversee Government performance.

The Senate of the Republic - renamed Senate of Autonomies – is now redefined as a body representing local institutions and contributing – as provided for by the Constitution - to the legislative function (it will approve constitutional laws jointly with the Chamber of Deputies and deliberate - in other cases – proposals for amendments which in some subjects can have a particular impact on the procedure) and ensuring linkage between the State and the Regions, Metropolitan Cities and the Municipalities. The new Senate of Autonomies also participates in decision-making aimed at drafting and implementing EU legislative acts and, in line with its own Rules of Procedure, oversees implementation of State laws and evaluates the impact of public policies at the different local levels.

a) Membership criteria of the Senate of Autonomies

The Senate of Autonomies comprises the Presidents of Regional Executives and of the Autonomous Provinces of Trent and Bolzano, the Mayors of the Capital Cities of Regions and Autonomous Provinces as well as, for each Region, two members elected, with limited vote, by the Regional Councils among their members and two Mayors elected, with limited vote, by an electoral panel composed of the Mayors of the Region.

Therefore, there will be an even composition of representatives of the Regions and those of the Municipalities. In addition to these local representatives, there will be a group of twenty-one citizens who have brought honour to the Country through their outstanding achievements in social, scientific, artistic, and literary fields (the relevant requirements will be the same as those currently applied to life members of the Senate). They will be appointed by the President of the Republic for a seven-year mandate. The seats at the Senate reserved for representation of the Overseas Constituency are therefore abolished, and they only remain in place for the Chamber of Deputies.

The term of office for Senators is the same as the bodies of local institutions they have been elected to. The Law will regulate the election system for elected members, as well as the replacement of Senators in case of cessation of their regional or local elective office.

b) Status of member of the Senate of Autonomies

Like Deputies, Members of the Senate of Autonomies have the power of legislative initiative and carry out their duties without a binding mandate.

As in the old system, Members of the new Senate shall not be held liable for the opinions expressed or votes cast in the discharge of their duties; however, they will not be covered by the safeguards and the authorization regime provided for by the current article 68 of the Constitution in case of personal search, arrest, other limitations of personal freedom, interception of their conversations or communications or impoundment of their correspondence.

With a view to reducing the costs of politics, the Bill also provides that: a) members of the Senate of Autonomies shall not be entitled to any allowance to carry out their duties; b) remuneration of the Presidents of Regional Executives and the members of regional bodies shall not exceed the salaries of Mayors of Capital Cities of Regions; c) political groups represented in the Regional Councils shall not receive any refund or similar monetary transfer.

c) Functions of the Senate of Autonomies

Legislative procedure

The Bill envisages a strong rationalization of the legislative procedure: according to its provisions, except for the already mentioned cases of constitutional review bills and other constitutional bills (which will still be subject to the ordinary procedure as per Art. 138 of the Constitution, which remains unchanged), all laws are approved by the Chamber of Deputies. The Senate, however, will still have the power to propose amendments to each Bill approved by the Chamber of Deputies. In some areas, the rejection of amendments proposed by the Senate can be overridden by the Chamber only with a vote by absolute majority of its members.

These areas include, inter alia:

- the election system for the elected members of the Senate;
- the organization of the Roma Capitale entity;
- the organization, executive bodies, electoral legislation and core functions of Municipalities, including their associations, and of Metropolitan Cities, as well as the organization of the wider local authorities replacing the Provinces (Enti di Area Vasta);
- the general rules on land use;
- the national system and the coordination of disaster relief;
- the exercise of the supremacy clause, introduced within the proposed modifications concerning the revision of Title V of the Constitution;

- the participation of Autonomous Regions and Provinces in the preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities, their participation in the implementation and enforcement of international agreements and EU acts, as well as the procedural law governing such participation and the legislation regulating the exercise of subsidiary powers by the State in the case of non-performance by the Regions and autonomous provinces;
- State legislation regulating those instances where Regions can enter into agreements with foreign States and understandings with local authorities of other States;
- legislation governing the coordination between the State and the Regions in the fields of migration, public order and protection of cultural and landscape heritage;
- the whole legislation governing the financial autonomy of regional and local authorities (Art. 19 of the Constitution);
- the law regulating procedures aimed at ensuring that State subsidiary powers vis-à-vis local authorities are exercised in compliance with the principles of subsidiarity and of loyal cooperation;
- the election system and cases of non-eligibility and incompatibility of members of regional bodies, as well as their remuneration (without prejudice to the above mentioned "ceiling");
- the ratification of treaties concerning Italy's membership of the European Union.

Moreover, on budget laws, the Bill provides for the examination by the Senate without the need for recall; furthermore, should the Senate approve proposals for amendments by an absolute majority, the Chamber may deviate from them only if it finally approves the relevant bills by an absolute majority.

The Senate of Autonomies, as provided for by its Rules of Procedure, can also carry out fact-finding activities and elaborate observations on each draft law or document under examination by the Chamber of Deputies. The Senate, deciding by absolute majority, is also empowered to ask the Chamber to consider a bill; in such case, the Chamber must take a stance within six months from the date of the above decision.

The Senate of Autonomies shall be empowered to also require the consideration of bills confirming decree-laws; however, in this case, the request is to be decided upon within thirty days from their presentation to the Chamber, and the Senate shall take a stance within ten days from the day of transmission of the bill.

The Constitutional Review Bill also provides that, should the President of the Republic ask the Houses to consider again a bill confirming decree-laws, the deadline for confirmation be delayed by thirty days.

Lastly, as far as the revision of legislative procedure is concerned, the Bill also regulates the timeline for the approval of measures which are a priority for the Government, as it provides for the introduction of the notion of "voting by a definite date": therefore, the Government can ask the Chamber to decide that a bill be included in the agenda as a matter of priority and that it be submitted to a final voting within sixty days from the day of the request (or a shorter deadline which nonetheless takes into account the complexity of the subject-matter); upon expiry of such deadline, the text proposed or approved by the Government, on its own request, is submitted to a vote, without modifications, article by article and with a final voting. In such a case, the Bill halves the deadlines for the Senate to consider the texts and make a decision (and for the Chamber to do so by a final decision).

At the same time, the Bill introduces into the Constitution the limitations as per Law n. 400/1988 on decree-laws, as it provides that decree-laws may not: regulate subjects as per Art. 72, paragraph 4 (bills on constitutional and electoral matters, bills delegating legislative powers or authorising the ratification of international treaties and bills to approve budgets and accounts); reiterate provisions already contained in decrees not confirmed into law or regulate legal relations arising from those decrees; reinstate the efficacy of legislative rules or measures having force of law that the Constitutional Court has declared illegal for defects not related to the procedure; the Bill also provides that decrees should contain provisions that are immediately applicable, with a specific content consistent with the title.

Non-legislative functions

Without prejudice to the above mentioned duties concerning the oversight of implementation of State laws and the evaluation of public policy impact on the local levels, the Senate of Autonomies will continue to have competences currently vested by the Constitution in the Parliament in joint session of its members, including:

- the election and the oath-taking of the President of the Republic (due to the new composition of the Senate representing local institutions, the panel electing the President of the Republic will not include regional delegates anymore);
- the impeachment of the President of the Republic;
- the election of one third of the members of the High Council of the Judiciary.

As for the election of constitutional judges, a third of which is appointed by the Parliament in joint sitting, the Bill provides that three judges be appointed by the Chamber of Deputies and two by the Senate of Autonomies.

The Senate shall also have a consultative function in case of dissolution of Regional Councils and removal of the Presidents of the Executives, currently vested in the Committee for regional affairs as per Art. 126 of the Constitution, a body which will therefore be eliminated.

By virtue of its new membership criteria and duties, the Senate of Autonomies will not maintain its powers of parliamentary enquiry, which will therefore become an exclusive competence of the Chamber of Deputies.

2. Reform of Title V of the Constitution

The draft revision of Title V is aimed at outlining a smoother and less adversarial multilevel governance system. This would ensure a balance among national, regional and local interests as well as guarantee a set of policies for territorial planning consistent with the wider strategic choices adopted at the national level.

Without prejudice to the abolition of Provinces, which is confirmed, the draft constitutional review will overcome the current fragmentation in the division of legislative responsibilities between the State and the Regions – whose lack of flexibility contributed to a huge increase in constitutional disputes – and aim at a more rational legislative decentralization in line with the economic and social development of the Country.

Against this backdrop, the guidelines of the reform project envisage a shift from an inflexible division of legislative responsibilities based on subject-matters to a more modern and flexible division also based on functions, inspired to a "cooperative regionalism". Such a framework provides for:

- the elimination of "concurrent" legislative competences and the resulting redefinition of "exclusive" State competences and "residual" competences attributed to Regions;
- the introduction of a "supremacy clause" whereby the State, on a Government proposal, can legislate on matters or functions falling outside its exclusive legislative competences, if so required to protect the legal or economic unity of the Republic or to carry out economic and social programs or reforms of national interest;
- the introduction of the possibility for the State to delegate to Regions – even temporarily – its legislative tasks for matters falling under its exclusive competence, with some exceptions;
- the reorganization of criteria governing the distribution of the power to issue regulations.

More specifically:

1) the list of matters and functions falling under the "exclusive" competence of the State is complemented with the following: coordination of public finance and tax system; general rules on administrative proceedings and the legislative framework governing employment in public administrations; general rules on health protection, food safety as well as labour protection and security; education system; university education and strategic planning of scientific and technological research; complementary and supplementary social security; organization of Municipalities, Metropolitan Cities and the wider local authorities replacing the Provinces (Enti di Area Vasta); foreign trade; environment, ecosystems, cultural heritage and landscape, including additional aspects alongside the forms of protection already provided for; general rules on cultural activities, tourism and sports organization; organization of intellectual and communication professional profiles; general rules on local government; national system and coordination of disaster relief; national energy production, transportation and distribution; strategic infrastructures and major transport and navigation networks of national interest and related security provisions; ports and airports for civilian use, of national and international interest;

2) as a consequence, Regions will have legislative power in all matters and functions not explicitly reserved to the exclusive competence of the State, especially in relation to regional territorial planning and infrastructure and the related mobility, the regional organization of services for business, social and healthcare services and - notwithstanding the autonomy of educational institutions - school services, as well as vocational education and training;

3) also, in addition to the already mentioned "State supremacy clause", the State will conversely be able to delegate, after an agreement with the Regions involved, the exercise of legislative power (by means of a law approved by absolute majority of the members of the Chamber of Deputies) on matters or functions falling under its exclusive competence to all Regions or some of them, even temporarily; therefore, the provision governing differentiated regionalism as per Article 116, para. 3 of the Constitution will be deleted;

4) as for the power to issue regulations, it is specified that it shall be entrusted to the State or the Region based on their respective legislative responsibilities; such power is also conferred to Municipalities and

Metropolitan Cities for the organization and implementation of their functions, without prejudice to the relevant State or Regional legislation.

3. Abolition of the National Council for Economics and Labour

Finally, the Bill provides for the abolition of the National Council for Economy and Labour (CNEL), the reason being that such a body does not serve anymore the purpose of ensuring a link with the economic and social categories that justified its establishment in the first place.

4. The Interim phase

The Reform is accompanied by a set of interim provisions, which are required to allow for the full deployment of the new bicameral system and the new division of responsibilities between the State and the Regions. They provide for the regulatory framework for the first constitution of the Senate, which is due within ten days from the renewal of the Chamber of deputies following the date of entry into force of the reform, as well as other rules ensuring a smooth shift to the new institutional system.