Strasbourg, 4 October 2007

CDL-UDT(2007)013
Engl.only

T-09-2007

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

UNIDEM
Campus Trieste Seminar

"EUROPEAN INTEGRATION –
CONSTITUTIONAL AND LEGAL REFORMS"

Trieste, Italy
10 – 13 September 2007

REPORT

"PARLIAMENTARY PROCEDURES IN ITALY CONCERNING EU DRAFTS AND COMMUNITY LAW IMPLEMENTATION"

by

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Political scientists often said that European issues were very far from the interests of the Italian public opinion, despite the euro-enthusiasm that comes as a result of the polls. The Italian Parliament, until the end of the 1990's, reflected this point of view, while dedicating few time to the scrutiny of European draft law. With regard to the procedures, in absence of any constitutional provision, the Parliament has enacted its rules in 1971 without paying particular attention to European Community affairs, and without providing itself with sufficient legal instruments in order to exercise a real and binding control over the activity of the Government.

The first legal provision dedicated to what is called "*fase ascendente* del processo decisionale comunitario" (ascending phase of the European law-making process), apart from the parliamentary rules of procedure, dates back to 1987 (law n. 183 – so called "Fabbri law"), stating that the Government shall transmit all proposals of regulations, directives and decisions to the Parliament, in order to give the parliamentary commissions the possibility to send comments about European draft law. In Italy, as in most of the other EU State members, European affairs are referred to specialised committees, appointed at the beginning of each legislature and reflecting the balance between the political parties in the plenary.

This framework remained almost unchanged in 1989, when the so called "La Pergola law" (l. n. 86) was enacted: this law introduced a new instrument aimed at improving the implementation of European law (the annual community law, indicating all European directives which will be implemented in the current year and the ways of implementation – laws, delegation of powers to the Government, regulations or administrative acts), but no significant amendments were introduced with regard to the scrutiny of EU draft laws; we could only mention a periodical report on Italy participation in community policies, a new task to which the Government was entrusted with; but in the light of the following experience the delay of the presentation of the report to the houses of parliaments was in some cases so serious to make the examination of the document completely outdated[1].

What is more important, a similar delay frequently occurred in the transmission of European documents from the Government to the Parliament, making it very difficult, if not meaningless, the scrutiny of draft laws before the examination and the discussion by European institutions. In a few cases the parliamentary commissions issued *resolutions*, which can be defined as acts with political and not legal binding effect.

The ratification of the Amsterdam Treaty opened the way to important legislative reforms as far as the role of our Parliament in European affairs is concerned; at the same time, the rules of procedure were amended, in order to ensure coordination with new legislative rules. The kind of European documents transmitted to the Parliament was enlarged, including, for example, the white and green papers of the European Commission and the proposals of EU acts in the field of justice and home affairs (laws n. 128 of 1998 and n. 209 of 1998). In addiction, the President of the Council of Ministers, or the Minister of European affairs should indicate the timetable of discussion of these acts by the European Council of Ministers, and the right of the Parliament to express its opinion about the same acts was reaffirmed.

In the annual community law of 2000 a new amendment to the existing law n. 86 of 1989 was introduced, dedicated to the "transmission to the Parliament and the Regions of European draft laws". Among the documents concerned, the ones related to foreign and common security policy were included; what is more important, the amendment envisaged an indirect parliamentary "scrutiny reserve", as a result of which the Government could not express the "Italian opinion" about a draft law before the date officially indicated for the examination of the draft by European institutions.

[1] Article 5 of the law n. 25 of 1999 now schedules an annual report, which is presented by the Government by 31 January, jointly with the annual community bill.

This provision did not prevent the Government to make "preliminary agreements" with other European governments during the *delai* envisaged by the law concerned and by the Protocol on the role of national parliaments, annexed to the Amsterdam Treaty, while bypassing the parliamentary scrutiny. So, new proposals of amendments were discussed, in order to improve the role of our Parliament in European affairs, following the solutions adopted in other countries. The "best practice model" could be the Danish one, established a "mandating system" which binds the Government to receive a mandate by the Parliament before conducting a negotiation in Bruxelles, but even the British or French system could be followed, while defining more clearly the rules of procedure of the scrutiny of EU draft laws as it has been done in those countries, whose parliaments, though to different extents, play a significant role in the European law making process[2].

The reforming efforts have eventually conducted to the substitution of the whole system of participation of the Parliament to the drafting and implementation of EU laws. New rules are now established by the law n. 11, enacted in 2005, which dedicates two articles to the involvement of our Parliament in the scrutiny of EU draft laws, and includes in the same process – of course with less prerogatives - even the regions, the local authorities and the CNEL (a body representing working categories). The previous La Pergola law is not into force, and the same can be said with regard to the other law previously mentioned, given the fact that the law n. 11 of 2005 provides a complete regulation of the subject concerned.

The key-point of the law still relate to the information of the Chambers of Parliament (Chamber of Deputies and Senate), which shall receive all the draft regarding acts of European Community or European Union (communications, white and green papers included), and all the proposals indicated in the agenda of the meeting of the European Council of Ministers or the European Council (a body composed of the heads of state or governments of the EU members); with reference to the meetings of the European Council the Government should previously inform the Parliaments, explaining the opinions and proposals that it is going to promote before the Council.

An *ex post* report of the activities performed by our Government during the mentioned meetings will be issued in a 15 days time to the parliamentary European affairs commissions; in addiction, every six months the Government will report to the Parliament about the main European issues.

The parliamentary commissions will have the possibility to express their view about the documents transmitted, and to approve resolutions (politically binding, as we have explained before). The scrutiny reserve has been improved, and it will be automatically used when the commissions have already started the scrutiny of single European documents, though the reserve time is limited to 20 days; in fact, the Government will communicate to the Council of Ministers of the European Union that it will not express the "Italian opinion" about the draft concerned before the parliamentary commissions have examined it.

[2] Of course, we have to point out that every evaluation of the performance of European parliaments in the scrutiny of draft laws should take into account, in a comparative perspective, the different system of government established by the constitutional rules of each State member. So, for example, the powers of the British Parliament are not easily comparable to the prerogatives of the French Parliament, given the fact that the Cabinet Government system, peculiar to United Kingdom, is grounded on consolidated rules of political accountability (of the Cabinet before the Parliament), while the French model is characterised for having strongly limited parliamentary prerogatives. Anyway, in 1992 the ratification of Maastricht Treaty by France was preceded by a constitutional amendment (following a decision of the French *Conseil constitutionnel*) which entrusted the Parliament with the power to scrutinize EU draft laws and to approve *resolutions*, expressing its political opinion about the drafts concerned.

The scrutiny reserve can be activated even on purpose of the same Government, especially when it needs the parliamentary political support in order to strengthen its position before its European partners.

The Chambers committees can now demand the information necessary for carrying-out the pre-legislative evaluation from the Government, in order to bridge the traditional gap of technical information which often makes it very difficult for Parliament to perform the scrutiny activity.

If we should briefly comment the solutions envisaged by the law n. 11, we could express a first positive opinion; of course the practice will provide the last judgement, because the instruments established bay the law shall now be implemented by our parliamentary committee, which in the past were not so fast and efficient to comply with the mechanism and procedures of scrutiny of EU draft laws. However, the very first outcomes show encouraging signals of improvement in the working of these instruments, with special regards to the scrutiny performed by the European affairs committee of the Senate.

As far as the implementation of EU law is concerned, the "annual community bill system" is nowadays consolidated, in a framework which tends to create a "Community session", i.e. a period of time in the first semester of the year where the Parliament concentrates on European affairs, examining all the European laws needing implementation and the annual report on the Italian participation to the EU activities. Statistics show that the system of the community bill has reduced the number of infringement procedures of the European Commission against Italy, and it has largely improved the rate of transposition of directives, even if compared with other countries.

Conclusion: is there a need of constitutional amendments?

This is a quite interesting subject, whose importance has not diminished after the entry into force of the law n. 11.

It could be very odd that the participation of our Parliament to the scrutiny of EU draft law is not mentioned at all by our Constitution, which dedicates one provision (article 117) to the participation of the regions, while forgetting the role of the Chambers.

It must be underlined, however, that a "Danish solution", if exported to Italy, will probably determine a change in the system of government, because our constitutional principles established a sort of "indirect reserve" of the Government in determining Italian European policy together with the Parliament, and a mandating system will prevent the Government from using its constitutional prerogatives.

In fact, in Italy we already have such an example, but it is provided by a single ordinary law, concerning the MAE (European Detention Order) and giving legal binding effect to the opinions of the Parliament related to the list of criminal offences to which this procedure can be applied. An inclusion of a general provision in the Constitution should be carefully evaluated.

We don't have to forget, above all, that the principle of parliamentary involvement in European law making process has already been stated by the Protocol on the role of national parliaments; so, the role of the Parliament has already been recognised at a European level, and any amendment of the constitution of State member could be justified only with a view to enlarging this role.