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LOOKING FOR A EUROPEAN POLICY DIRECTION

Summary: 1. Subject of investigation. - 2. The notion of "political direction". - 2.1. Is it possible to talk about an economic political direction? - 3. The complex decision-making circuit. - 4. The problem of the not easy "translation" of the notion of political direction at European level. - 5. Conclusions: a first (but perhaps weak) attempt to rebuild a European economic political direction.

1. Subject of investigation

The health emergency that has hit the European continent represents an important moment in the history of integration, a real "test case" for the stability of the European institutional system.

Due to the difficulty of arriving at commonly-shared solutions, and also because of the current governance structure, there have been long-lasting consequences on the European economy, already in crisis.

The purpose of this analysis is to investigate whether it is possible to talk about an European economic policy direction, well aware that, at supranational level, it is actually not possible to talk about a real form of state and, consequently, a form of government at european level.

However, an attempt could be made, starting from a "classic" category of constitutional law, such as political direction, investigating whether or not there could be a specific political direction in the economic and supranational sphere, which is currently outside the circuit of democratic accountability.

Parliaments, both national and European, especially in the economic sphere, are unable to impose their political direction on the European scene, even if they represent the

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organ of government which is the most affected by the decision-making process (especially in the so-called "downward" phase).

This foretells the danger that there could be a gradual move towards a total emptying of parliaments' own functions for the sole benefit of the executive bodies¹.

This condition could be demonstrated as a result of the current economic crisis, caused by COVID 19 pandemic and, recently, by the spread of populist current in European continent (as can also be seen following the last elections of the European Parliament in 2019)².

The reasons for this progressive crisis of the parliaments (also and above all in the functions of economic matters) can be ascribed to the idea of governance linked to a neoliberal vision which is not limited to impact only on market logic, but also on the more general form of government.

In particular, it is complex to fully define the European "form of state"; perhaps, even more complex, to define the form of government³, since, in the governance systems based on intergovernmentalism, the leaders in decision-making processes are increasingly (and only) Governments, without an active role of Parliament.

Moreover, neoliberal theories have had an impact not only on the State-market relationship, declined through the combination of state interventionism and private initiative, but also (and above all) on the social environment and on the form of state⁴.

Therefore, neoliberal law is a principle which is not addressed to citizens, but to market players (companies and consumers) and is a technical principle, not because of the lack of political issues in the decisions, but because it is coherent in its compliance with the rules of economic efficiency and its ability to make the market work properly⁵. In this way, it produces both a transformation on politics in its classical meaning and on the principles set by social-democratic constitutionalism⁶.

¹On the progressive marginalization of parliaments, relegated to mere functions of "ratification", the literature is vast; it is possible to mention, more recently, the work of C.F. FERRAJOLI, *Rappresentanza politica e responsabilità. La crisi della forma di governo parlamentare in Italia*, Napoli, 2018, p. 439 ss. which analyses the problems linked to the 'ratifying concept' of parliamentary democracy.

²For an overview of the results of the European Parliament elections, please refer to the following link <https://www.europarl.europa.eu/election-results-2019/it>; with regard, more generally, to the rise of the populist phenomenon, cfr. A. LUCARELLI, *Le aporie del populismo tra fenomenologia e categorie del costituzionalismo*, in C. IANNELLO (a cura di), *Neoliberalismo e diritto pubblico*, in *Rassegna di diritto pubblico europeo*, 1, 2020, 170 ss., and ID., *Principi costituzionali europei tra solidarietà e concorrenza*, in *Liber Amicorum per Pasquale Costanzo*, *Consulta on-line*, 1, 2020.

³R. IBRIDO, N. LUPO (a cura di), *Dinamiche della forma di governo tra Unione europea e Stati membri*, Bologna, 2018.

⁴As underlined by C. IANNELLO, *Gli effetti del neoliberalismo sul diritto pubblico: note introduttive*, in ID. (a cura di), *Neoliberalismo e diritto pubblico*, *Rassegna di diritto pubblico europeo*, 1, 2020, p. 2: neoliberal policies have not only affected the economic sector, nor have they remained confined within the sphere traditionally considered to be economic.

⁵C. IANNELLO, «Impresa», «mercato» e «concorrenza» fondamenti dell'ordine «costituzionale» neoliberale. *Le politiche pro-concorrenziali dall'ambito economico a quello sociale*, in ID. (a cura di), *Neoliberalismo e diritto pubblico*, cit., p. 142.

⁶A. LUCARELLI, *Le aporie del populismo tra fenomenologia e categorie del costituzionalismo*, cit., p. 171-172.

These criticisms have an impact on the functioning of the institutions and on the new positions assumed by the representation, aimed at translating into political decision the “dik-tats” imposed by governance bodies outside the democratic circuit (Central Bank, European Commission, Monetary Fund).

Decisions considered “necessary, even if unpopular”, in our continent, taken under the mantra “Europe asks us to” and whose main effects are known: dissolution of social rights, privatisation of public services, reduction of democratic spaces, precarious employment relations⁷.

At the same time, if on one side, the need for economic policies based on austerity seems to be increasingly prevalent, on the other, it emerges that austerity is not enough to “defend” the European continent from exceptional events (both health and economic).

For these reasons, we are facing a “turning point” for the future of the European Union, especially if it is true that national policy is now derived from European one, and it is from Brussels that our destiny may depend⁸.

Considering these circumstances, the structure of this work is an expression of the development of the problems mentioned: in a first part we will try to explain the notion of political direction as elaborated by the Italian constitutional doctrine, and then it will investigate if it is possible to talk about an economic political direction not only at national level but also at European level.

2. The notion of “political direction”

The above-mentioned could provide to frame (even more generally) how the State's intervention in economic matters is structured (through the activity of political guidance) and which are the regulatory instruments; in order to deepen the ownership and the changes that have affected this legal category.

It will be reconstructed how the activity of political direction is functional to the achievement of those ideals and values outlined in our Constitution, which are the result of the compromise of the constituent fathers.

It is possible to trace the notion of political direction, as a relevant institute for the study of constitutionalist phenomena, back to the end of the 1930s, as a partial modification and specification of a further concept (borrowed from the German legal tradition) at the beginning of the 20th century. This is the so-called “government function”, understood as the fourth and distinct function of the State, preceding the three traditional functions (legislative, judicial and,

⁷C. DE FIORES, *Sulle perversioni del neoliberalismo e sui suoi riflessi costituzionali. Brevi riflessioni su partecipazione politica e dissoluzione dell'ordine della mediazione*, in C. IANNELLO (a cura di), *Neoliberalismo e diritto pubblico*, cit., p. 153.

⁸M. BALLERIN, *Gli Stati Uniti d'Europa spiegati a tutti. Guida per i perplessi*, Napoli, 2019, p. 11.

in particular, executive - in turn more complex and with less clear-cut boundaries) and over which it is predominant⁹.

The function of government and the political direction represent, therefore, two relevant concepts with which the Italian constitutionalist doctrine has assumed the awareness of the political variability of the constitutive tasks of the State¹⁰, assuming as a reading key of a classical conception of the State for which the latter should be able to reduce to unity the expression of the various "particular" (indeterminate and mutable) purposes proper to constitutional bodies¹¹.

Thus, it is immediately evident the complexity of the notion, already with regard to its classification¹², and also because it is difficult to find a similar term in other legal systems¹³.

The first elaborations of the concept of political direction date back to the period prior to the work of the Constituent Assembly¹⁴, aiming to find a link between the moment of politics and the moment of law¹⁵, strongly influenced by a socio-cultural context of authoritarian inspiration, such as the Fascist period¹⁶.

Already after the First World War, the investigation of Italian legal doctrine had focused mainly on the analysis of "acts issued by the Government in the exercise of political power" in accordance with the provisions of law n. 5992 of 31 march 1889 (article 24)¹⁷ (on the creation of the Judicial Section of the Council of State).

The reasons for the particular attention paid by the doctrine to political acts are closely linked to three assumptions: the establishment of a body of administrative justice; the need to determine the object of the competence to be attributed to administrative justice; the heterogeneous nature of administrative activity, which is susceptible to control by administrative justice¹⁸.

⁹T. MARTINES, *Indirizzo Politico*, in *Dig. Disc. Pubbl.*, Torino, 1993, p. 244 and, regarding to notion of function of government, C. MORTATI, *L'ordinamento del Governo nel nuovo diritto pubblico italiano*, Roma, 1931, p. 7 ss.

¹⁰T. MARTINES, *Indirizzo politico*, cit., p. 245.

¹¹C. MORTATI, *La Costituzione in senso materiale*, Milano, Giuffrè, 1940, p. 108.

¹²A. MANNINO, *Indirizzo politico e fiducia nei rapporti tra governo e parlamento*, Milano, 1973, pp. 47 ss., in doctrine, some have spoken of the political direction of the State and the government, of majority political direction and constitutional political direction; some have supported its normative character, others consider it in an existential sense; finally, there has been no lack of those who have identified the political direction outside the State apparatus, in the agreement made between the parties of the governing coalition, at the time of the formation of a new cabinet.

¹³A. MORRONE, *Indirizzo politico e attività di governo. Tracce per un percorso di ricostruzione teorica*, in *Quaderni Costituzionali*, 1, 2018.

¹⁴C. MORTATI, *L'ordinamento del governo nel nuovo diritto pubblico italiano*, cit. e Id., *La costituzione in senso materiale*, cit.; V. CRISAFULLI, *Per una teoria giuridica dell'indirizzo politico*, in *Studi urbinati*, 1939, pp. 53-171.

¹⁵G. GROTTANELLI DE' SANTI, voce *Indirizzo politico*, in *Enc. Giur.*, Roma, 1989, p. 1.

¹⁶Mind you, in fact, that strictly connected to the notion of political direction is the need (in that historical period) to identify institutions that would strengthen and to some extent could "justify" a greater significance of the governing body compared to the role of other constitutional bodies.

¹⁷P. CIARLO, *Mitologie dell'indirizzo politico e identità partitica*, Napoli, 1988, pp. 9 ss.

¹⁸E. CHELI, *Atto politico e funzione di indirizzo politico*, Milano, 1961, who pointed out that "while the terrain for the emergence and development of the theme of the political act is identified in administrative law, the conceptual formulations connected with the notion of political direction are constantly entrusted to the instruments of analysis proper to constitutional law [...]; the results of a survey carried out with uniform criteria for the notions

However, this approach was entirely centred on the concept of a political act, which is typical of administrative law, and the investigation of the political direction was exhausted within administrative law, without giving importance to the method and procedure of its formation¹⁹.

The influence of this doctrinal framework soon left room for other approaches that better valorized "the constitutional element" of the notion of political direction.

In fact, it is due to the work of Mortati²⁰ the first elaboration of the political direction as a previous and pre-eminent government function over the other functions of the State. Mortati's theory was, however, also taken up and revised by the literary production of V. Crisafulli²¹, even though he agreed in considering the notion of political direction as the determination of the State's aims, he made a series of corrective to it.

The State's activity «cannot be guided only by legal rules, but must also be determined in the same way as precepts of another kind, which can be said, in a broad sense, to be technical, and are, more especially, political [...]»²².

The legal notion of political direction is relevant as "activity, intrinsically technical and political, but legally regulated, in whole or in part; the first and central moment of the formative process of the State will, direct and immediate expression of the fundamental unity of the state"²³.

The importance, however, of Crisafulli's thought is to have placed greater emphasis on the principle of the separation of powers, believing that the definition and implementation of the political direction should be the result of cooperation between the different constitutional bodies, endowed with respective autonomy, pointing out how the division of powers "does not contradict the essential unity of state sovereignty, but responds only to a logical and practical need together, of specification and differentiation in unity"²⁴. The political direction is therefore, in the history of juspublicist thought, the concept that designates the activity by which are assigned, from time to time, the aims of the State - both the ultimate and fundamental ones, as well as the contingent ones - and which has consequently determined a redefinition of the descriptive categories of the state dynamics, reintroducing, alongside the concepts of function or power, designating legal activities, that of politics, understood as an activity qualitatively different from those²⁵.

of political direction and the function of political direction can be no more than the results of constitutional law: political power lives in a natural space that is not administrative, but constitutional". On the origin and history of the political act see also C. DELL'ACQUA, *Atto politico ed esercizio dei poteri sovrani*, II, Padova, 1990.

¹⁹P. CIARLO, *Mitologie dell'indirizzo politico e identità partitica*, cit., noted that even according to a large part of the doctrine, this approach was insufficient because it did not adequately describe the legal and organisational framework of political power in a given legal system.

²⁰C. MORTATI, *L'ordinamento del governo*, cit., pp. 7 ss. which in turn was inspired by the works of the German R. SMEND, *Verfassung und Verfassungslehre*, München, 1928.

²¹V. CRISAFULLI, *Per una teoria giuridica dell'indirizzo politico*, cit., p. 117.

²²*Ivi*, p. 118.

²³A. MORRONE, *Indirizzo politico e attività di governo*, cit., p. 17.

²⁴V. CRISAFULLI, *Per una teoria giuridica dell'indirizzo politico*, p. 129.

²⁵Cfr. M. DOGLIANI, *Indirizzo politico*, in *Dig. Disc. Pubbl.*, Vol. VIII, Torino, 1993, p. 245.

These theories, which are defined as "normative", because they prescribe a binding legality to the political direction, have been opposed by so-called "existential" theories²⁶, according to which the political direction would have a merely terminological value and would be the result of an ex post reconstruction, on the basis of the results of the activity of the constitutional bodies, of the acts adopted by them, at the same time considered in their plurality and in the light of their interactions, legally relevant.

After the Republican Constitution, the political direction has had a different configuration; this also emerges in the debates in the Constituent Assembly²⁷.

In fact, it had emerged in the thinking of the constituents that the new Constitution should determine not only the political structure of the state but also the guidelines for its economic and social action²⁸.

The main outcome of this influence compared to the theoretical elaborations of the 1930s was the link between interpretations of the constitution and the political party system and conceptions of political direction. In this way, the political orientation was able to continue to perform a normative directive function: no longer for the benefit of the governing body, but either of the formal constitution or of the material constitution, the latter being a metaphor for "party government"²⁹.

From this point of view, the function of government degraded to mere implementation and execution of already predetermined, exclusive and prescriptive purposes. However, the basis of this foundation (which in previous studies could be identified in the political party or parties, in the interests of the State, or in the Constitution) was not relevant: what mattered was precisely that, with regard to this legal category, a certain foundation had to be identified, from which could only descend a degree of prescriptiveness towards all the other constitutional bodies³⁰.

On the other hand, however, if the activity of political direction is aimed at determining the purposes of the State, part of it has been spent with the exercise of the constituent power, which has outlined its fundamental and ultimate purposes, acting as a guide to the holders of such activity.

²⁶C. LAVAGNA, *Contributo alla determinazione dei rapporti giuridici tra capo del governo e ministri*, Roma, 1942.

²⁷In particular, reference is made to the debates on the form of government, which took place in the II Subcommittee.

²⁸Art. 2 D.lg. Lt. n. 435, 31 July 1945 which institutionalised the Ministry for the Constituent.

²⁹IBIDEM.

³⁰A. MORRONE, cit., pp. 8 ss., he speaks of an "archetype" from which it follows that this activity/function "as it is based on an archetype, it can only be prescriptive", adding that "even in the parliamentary model, as can be seen from the meticulous analysis of comparative law and the consideration of the Italian experience itself before Fascism, the function of political direction presupposes a unifying principle. The different attitudes of the English, French and Weimaran experiences depend not so much on legal factors as on the influence exercised by social and political conditions. The tendency towards award-winning or assemblarism is only a historical question, in which the possibility of identifying a center in which the supreme authority of the state is concentrated, whose functionality does not depend on formal criteria, but on the "subsistence of certain social elements", remains unaltered".

It should therefore be noted that the problem of political direction has also been redefined by the existence of programmatic rules and rules with deferred effectiveness, which presuppose that the State is called upon to carry out successive and inexhaustible tasks of implementation and enforcement³¹.

It is thus possible to understand also the position of Martines, who has conceived three distinct phases in the category of political direction: a first phase (so-called teleological), aimed at identifying the goals of state action by the political system in its complexity (according to an analogous definition borrowed from political science, which identifies this complexity in the whole of all the subjects capable of exerting political influence); a second one (so called "instrumental"), aimed at translating into legal results the programmed will of the bodies that give life to an organized system that can provide the necessary legal means (through, evidently, the regulatory activity first of all) and material means (through administrative activity); and a final phase (the so-called "effectual" phase) which is integrated (and modified) through a series of acts in which the objectives set out and to be pursued can actually take place³².

Consequently, the activity of direction is seen as an activity (and in this lies the basic reason for its non-configurability as an autonomous function), not assuming "importance in its own right if not (and only in part) in the teleological phase, where, for the rest, it is carried out through acts that constitute the exercise of a different function", that is, it is presented under the species of legislative or administrative activity (while with regard to the teleological phase it is presented as a political activity in the strict sense or as the exercise by constitutional bodies of the powers that determine the dynamics of the form of government).

This is why the institute of political orientation still deserves attention today, because through this it is possible to analyse the decision-making process from the privileged perspective of relations between bodies³³.

2.1. Is it possible to talk about an economic political direction?

However, once a general framework on the notion of policy direction is provided, it is now intended to further circumscribe the scope of the investigation. In particular, it is intended to investigate the elaboration of an economic policy direction since it is believed that it

³¹M. DOGLIANI, *Interpretazioni della costituzione*, Milano, 1982 e ID., *Indirizzo politico. Riflessioni su regole e regolarità del diritto costituzionale*, Napoli, 1985, p. 41; E. CHELI, *Atto politico*, cit., p. 108 e A. MANNINO, *Indirizzo politico*, cit., pp. 151 ss.

³²T. MARTINES, *Indirizzo Politico*, cit.

³³Part of the doctrine has, however, distinguished two profiles of the address: the constitutional one and the majority one. With regard to the segment of constitutional political direction (aimed at implementing the purposes that directly or indirectly are connected to the Constitution, with the consequence of an interpretation of the discipline either as an impulse for its implementation or, on the other hand, as a guarantee of its non-violation), ownership should be identified in all constitutional bodies, including the President of the Republic and the Constitutional Court; while in the second case (majority direction) - and therefore aimed at implementation not necessarily and directly subsumed by the Constitution - ownership would not be attributable to the bodies now referred to. P. BARILE, *La Corte Costituzionale, organo sovrano: implicazioni pratiche*, in *Giur. Cost.*, 2, 1957, pp. 916 ss.

can represent a valid perspective for analysing decision-making processes also at supranational level.

This is not the place to retrace the economic model outlined in the Italian Constitution and how it evolved in parallel with the process of European integration³⁴.

Suffice it to say that our Constitution did not want to impose abstract models, least of all in the economic sphere, offering the possibility for politics (which is able and interested) to use its "instruments" to ensure the progress of individuals and the entire community³⁵, providing them with a path within which they can move.

It has thus been argued that "the Italian economic system" has a twofold aspect: an abstention to observe and a function to exercise³⁶; refrain from imposing a particular mode of production but «claiming from the dominant mode of production to accept its subjection to a type of State whose constitutionally redefined role is reconverted into a social function»³⁷.

This twofold aspect is accompanied in the Charter itself by the identification of the decisional seat, delegated to face the continuous mutability of these dynamics; such seat consists, of course, in the Parliament, depositary place of the representation ex art. 67 cost. and body called to substantiate the numerous legal reserves of which also the constitutional discipline of the economy is characterized by (artt. 41, c. 3; 42, c. 2, 3 e 4; 43)³⁸.

In fact, economic policy decisions at Italian level have seen Parliament, especially in recent years³⁹, no longer as the 'central' body in determining economic policy directions.

It has been said that the category of political direction is an expression of technical and design rationality that lies at the basis of the construction and implementation of the wel-

³⁴M. BENVENUTI, *Democrazia e potere economico: la "forma" del primato costituzionale*, seconda versione provvisoria della relazione dell'A. al XXXII Convegno Annuale AIC, in www.associazionedeicostituzionalisti.it; N. IRTI, *L'ordine giuridico del mercato*, Roma-Bari, 1998, and M. LUCIANI, *Economia nel diritto costituzionale*, in *Dig. Disc. Pubbl.*, Vol. V, Torino, Utet, 1990; P. DE CARLI, *Costituzione e attività economiche*, Padova, 1978; L. GIANNITI, *Note sul dibattito alla Costituente sulla "costituzione economica"*, in *Diritto Pubblico*, 2000.

³⁵Cfr. M. LUCIANI, *Unità nazionale e struttura economica*, in *Annuario AIC 2011*, Napoli, Jovene e M. BENVENUTI, *Democrazia e potere economico*, op. cit.

³⁶G. FERRARA, *Costituzione e revisione costituzionale nell'età della mondializzazione*, in *Scritti in on. di G. Guarino*, Vol. II, Padova, 1998, p. 256.

³⁷IBIDEM.

³⁸M. BENVENUTI, *Democrazia e potere economico*, cit., contra L. D'ANDREA, *Democrazia e potere economico: la "forma" del primato costituzionale*, seconda versione provvisoria della relazione dell'A. al XXXII Convegno Annuale AIC, in www.associazionedeicostituzionalisti.it, according to which "In the long reconstruction offered by Marco Benvenuti, I do not think that at any time (if not marginally ...) the recognition of a positive role played in this regard by the independent determination of the private actors of the economic process seems to emerge (if not marginally ...): in the approach followed by the rapporteur, economic freedoms are qualified as "ineliminable, rather than inviolable"; it would seem that they are almost "endured" in the constitutional design, if not even frankly suffered"; the A. prefers, therefore, a reading of the Constitution that privileges the reading of economic freedoms as constitutionally protected values. It can be noted, however, that the State does not necessarily have to be at odds with the private sector, but on the contrary, the public-private dimension (especially in economic matters) can merge, giving greater significance to the model of "mixed economy" that our constituent fathers have arrived at; the State, in fact, can be a fundamental partner of the private sector, even a bolder partner, since it is willing to take risks that businesses do not intend to take. In similar terms and from the same perspective cf. M. MAZZUCATO, *Lo Stato innovatore. Sfatare il mito del pubblico contro il privato*, Roma-Bari, 2013, p. 10; M. MAZZUCATO e M. JACOBS (a cura di), *Ripensare il capitalismo*, Roma-Bari, 2016.

³⁹I am thinking in the matter of budgetary action and the conflict of powers promoted and resulted in two orders of the Constitutional Court, n. 17/2019 and n. 60/2020.

fare state. And it was also stressed that the economic model accepted by our constituent fathers could not disregard the recognition of the importance that state intervention in the economic sphere has (can and must have). Therefore, before proceeding to a discussion of the causes that have led to a "debasement" of the Parliamentary role in economic matters (with consequent reduction of its activity of orientation) to the advantage of a numerous series of "agents" (internal and external to the representative circuit), it is necessary to ask oneself whether it is possible or not to identify an "economic political direction" as an autonomous category with respect to the more general political direction as previously proposed⁴⁰.

From the examination carried out previously of the main reconstructions of the debate on political direction (in general), it would not seem to emerge a clear inclination to the configurability of a further and more specific direction from an economic point of view; on the contrary, the opposite solution seems more clearly accepted in doctrine.

In fact, referring, once again, to the so-called "normative" theories, as postulated by Mortati and Crisafulli⁴¹, it is already possible to grasp the difficulty of preponderate for the configurability of an autonomous economic address.

In the reflections of the first one, identifying the direction as an objectively constitutional function, further and distinct from the three "classical" functions (legislative, executive and judicial), suitable to put in place more than objective legal norms to be achieved, also the economic sector assumed importance, as a "moment" in which the co-determination between the direction of the Government and Parliament was more identifiable⁴²; however, it ended up excluding the autonomy of direction from an economic point of view by bringing back, instead, the decisions on financial means to an implementation aspect of the general political direction, linked to it by a nexus of instrumentality (in the perspective also accepted by Martines)⁴³.

In the reflections of the second one, on the other hand, the main emphasis is placed, in the first studies⁴⁴, on the political direction as a governmental activity, later on, on the distinction between "legal activity" and "political activity", reconstructing the direction in the light of this second activity, as a moment of synthesis of the functions of the State and of the implementation of the Constitution⁴⁵; in his first reflections, in particular, the author seemed to identify an activity of direction in economic matters (differently from Mortati), underlining that intervention in this specific sector was mainly recourse to the executive rather than the legislative function⁴⁶.

⁴⁰F. COCOZZA, *Profili di diritto costituzionale applicato all'economia*, Vol. I, Torino, 1999, pp. 129 ss.; U. ALLEGRETTI, *Il Governo della finanza pubblica*, Padova, 1971, pp. 3 ss.; G. RIVISECCHI, *L'indirizzo politico finanziario tra Costituzione italiana e vincoli europei*, Padova, 2007, pp. 20 ss.

⁴¹It is reiterated, for the sake of completeness, that while the first postulated a direction in terms of function (paying particular attention at the time of the "decision"), the second postulated a direction in terms of activity (with greater emphasis on the relationship between constitutional bodies).

⁴²In particular, the Acts of Direction appeared to be "modes of implementation for individual sectors [...] of the general political direction"; see C. MORTATI, *Istituzioni di diritto pubblico*, Padova, 1967, pp. 294 ss.

⁴³A. MUSUMECI, *La legge finanziaria*, Torino, 2000, p. 10.

⁴⁴V. CRISAFULLI, *Per una teoria giuridica dell'indirizzo politico*, cit., pp. 53 ss.

⁴⁵M. DOGLIANI, voce *Indirizzo politico*, cit., p. 206.

⁴⁶V. CRISAFULLI, cit., p. 94 and G. RIVISECCHI, cit., p. 26.

On the other hand, as regards the so-called "existential" theories which, as pointed out, outlined a determination of the political direction only *ex post*, in the light of the results and effects of a given government activity, degrading it to a mere descriptive indication (thus losing legal relevance to the category itself)⁴⁷, no basis could be found for a possible economic political direction (distancing it from the general political direction), since the foundations would never have been laid to draw a dividing line "between the political, social and economic sectors, which are interdependent and mutually dependent"⁴⁸.

To the same conclusion (impossibility of recognizing autonomy to the economic political direction) also seem to come Martines' thesis, according to which the political direction is articulated in three phases (teleological, instrumental and effectual). It would not seem, in fact, to recognize an autonomous direction in the relationship that links the teleological phase (of predisposition of the ends that is expressed in relation to the legislative function) to the instrumental phase (which is expressed through the action of the executive); even if «the role of the laws of direction of approval of the economic program is highlighted, since they should identify and make explicit the social ends that are expressed in the government program relating to the direction and coordination of economic and private activity»⁴⁹.

For these reasons, even if a less in-depth reading could identify in Martines' thought a possible configurability of an autonomous economic direction, starting from the perspective that the Government's activity in the field of economic policy and direction of the interministerial committees, in particular the Interministerial Committee for Economic Planning, assumes particular importance in its actual activity of direction⁵⁰, the author, however, has specified that the determination of the political direction always takes place in relation to the values expressed in the community, which rise to the rank of goals and objectives pursued by the action of Parliament, Government and social forces; the next step is therefore the recognition of a non-neutrality of the political direction with respect to the values of the Constitution⁵¹.

Finally, it does not seem to emerge from the reconstruction of the theories elaborated on the subject of political direction, the recognition of an activity of economic political direction of independent importance with respect to "general political direction"⁵².

⁴⁷C. LAVAGNA, *Contributo alla determinazione dei rapporti giuridici tra capo del governo e ministri*, cit.; G. CUOMO, *Unità e omogeneità nel governo parlamentare*, Napoli, 1957.

⁴⁸G. CUOMO, cit., p. 162 e G. RIVISECCHI, cit., p. 23.

⁴⁹This reading key is provided by G. RIVISECCHI, cit., p. 27; see also T. MARTINES, voce *Indirizzo politico*, cit., p. 152 and A. BARBERA, *Leggi di piano e sistema delle fonti*, Milano, 1968, pp. 55 ss.

⁵⁰References to the Interministerial Committees can also be found in the reflections of A. MANNINO, *Indirizzo politico e fiducia nei rapporti fra governo e parlamento*, cit., pp. 79 ss. who, while starting from reflections on the importance that these bodies have within the configuration of the constitutional body competent to determine the direction (which for the author and the Council of Ministers, in the structure of which these very unnecessary government bodies have assumed importance in the economic field), does not seem to be able to put itself at the basis of a recognition of an autonomous function of economic direction, even of a sectorial nature only in their own right.

⁵¹See T. MARTINES, *Indirizzo politico*, cit., pp. 150, 157 e 165.

⁵²G. RIVISECCHI, cit., p. 32 also comes to the same conclusion. He points out that even in other reconstructions on the rise and decline of the notion of political direction, while noting that the economic and financial aspects are the cornerstones of this category and that there has been a progressive attraction of these matters in

Moreover, it would not be possible to arrive at several conclusions, also for a further order of reasons.

In fact, if we were to refer to those positions in doctrine (within the framework of the structure delineated by our constituent fathers in matters of economic relations) that postulate the configurability of a true and proper "Economic Constitution"⁵³, (to be understood as a set of provisions having a "separate" foundation with respect to the overall framework of the other Titles in the Constitution) it should be stressed that there was no lack of those who deny autonomous dignity to such provisions, on the contrary, to be framed and interpreted in the overall examination of the whole Constitutional Charter.

It follows, therefore, that just as it is not possible to configure "autonomy" in the interpretation of the provisions on economic relations, it would not be possible to configure an autonomous political-economic direction with respect to the more general activity of direction; that it is well placed in the interpretation of all the precepts and founding values which "feed" our constitutional order.

3. The complex decision-making circuit

We could try, now, to shed some light on how this political direction circuit is being articulated. To this end, the first data that needs to be emphasized concerns the historical social contextualization of the category of political direction.

To make it clearer, it is evident that the political direction, as an institute elaborated and born first in the Fascist era and then reworked and "adapted" following the entry into force of the Republican Constitution, has undergone profound changes during the second half of the 20th century and the beginning of the 21st century.

If, in fact, in the first 40 years of republican history, the circuit of political direction can peacefully be found in the network of relations between government, parliament and political parties⁵⁴, in an ideal "circle" that finds its foundation in popular sovereignty and trust institutions, can't same the same for the last thirty years of republican history.

In fact, with the emergence of the processes of globalisation and the evolution of the European integration process, the State has increasingly ceded quotas of sovereignty. This imposed the need to "review the ultimate aims of the State", and, more generally, the elaboration of the political direction.

favour of the European institutions and international constraints, it is not possible to distinguish a function of economic political direction "autonomous" from the general direction, C. DE FIORES, *Corte, legislatore e indirizzo politico*, in V. TONDI DELLA MURA, M. CARDUCCI, R.G. RODIO (a cura di), *Corte Costituzionale e processi di decisione politica*, Torino, 2005, pp. 181 ss.

⁵³N. IRTI, *L'ordine giuridico del mercato*, cit. and M. LUCIANI, *Economia nel diritto costituzionale*, cit.

⁵⁴N. LUPO, *L'europeizzazione delle forme di governo degli stati membri: la presidenzializzazione derivante da Bruxelles*, in R. IBRIDO, N. LUPO (eds.), *Dinamiche della forma di governo tra Unione europea e Stati membri*, cit., pp.175 ss.

At European level, therefore, without being able to retrace the various 'stages' of European integration and the long-standing problem of the democratic deficit of the institutions, which only with Lisbon, in 2009, seems to have found a 'partial' solution, the political direction sees a much more complex participation of bodies: we move on from the institutions recognised by the Lisbon Treaty, to the role of national parliaments and executives, as well as bodies provided for by international treaties whose contracting parties coincide with part of the European Member States, but decisions are not taken by the institutions of the Union.

In this patchwork of bodies involved in drawing up the political direction, the national parliaments, which are called upon to ensure democratic control over their government's action in European decision-making bodies, certainly play a leading role.

Article 10 (2) TEU provides that European citizens are directly represented by the European Parliament, while national citizens ensure democratic control over the EU Council and the European Council. The European institutional set-up has a dual legitimacy (direct with the EP and indirect with national Parliaments; control and direction over the action of its governments represented at ministerial level in the Council and with the Heads of State and Government in the European Council). Article 12 TEU provides for the direct powers of national Parliaments (subsidiarity control and a series of information rights that translate into obligations, as well as other mechanisms provided for in the Additional Protocols).

The European decision-making process can be represented, for descriptive purposes, as a continuous cycle, divided into several phases.

A first stage in the formation of legislative action or, in any case, the political and regulatory side of the EU, in which it is usually the Commission (*motu proprio*, at the instigation of the Council or of the European countries) that assesses whether action is needed (technical or political assessment)⁵⁵. At this phase, through Green Papers or State consultation documents, the Commission may present White Papers and carry out an impact assessment (all possible regulatory options, as well as compliance with the principles of award, subsidiarity, proportionality and other Treaty principles and assess the economic, regulatory and administrative impact of the proposed solutions).

A second phase, which we can define as 'decision-making in the strict sense', made up of intensive negotiations and the participation of various institutions, which for example is referred to as Trilogues or Trialogues (informal negotiations in which representatives of Parliament, the Council and the Commission take part. During these negotiations, the three institutions agree on political guidelines and draft amendments to the legislative proposals put forward by the Commission).

A final phase of adoption of the legislative act (reg., dir. or dec.): which then has to be implemented. In this "executive" phase there are then further articulations. There can be direct execution at European level; indirect execution (which requires, for example, the transposition of directives); an evaluation phase, in which it is realised whether or not, in the

⁵⁵IBIDEM.

transposition phase, the act has affected national interests to a different extent from what was originally assessed.

In this complex circuit, at the Italian regulatory level, law n. 234/2012 has aimed to allow to act consistently in all phases of the decision-making cycle⁵⁶.

The decision-making process on economic and monetary policies is even different.

Without claiming to be exhaustive, and not being able to go through the entire decision-making cycle in these areas, what we are trying to underline are the reasons why the EU has been more pervasive in the economic sector of the Member States and in monetary policy.

Monetary union began when the United States put an end to the Bretton Woods agreements to claim the right to produce and export inflation⁵⁷. In 1971, the era of fixed exchange rates between European currencies, the dollar and gold, ended and Europe plunged into monetary chaos. The values of national currencies began to fluctuate, and with the oil shock of 1973 some European governments began to use their currencies as an improper weapon to regain the competitiveness that their economies were losing. This dynamic put the European market in crisis and made the common agricultural policy unmanageable. It was in response to this threat and to gain effective independence from American monetary policy that European governments decided to restore monetary stability on the continent (aware that they owed several points of GDP to the proper functioning of the common market)⁵⁸. However, this was not enough to limit the effects of the oil shock, and so a more binding system, the European Monetary System, was chosen. The need had emerged to move towards monetary union, which was achieved in 1992 with the Maastricht Treaty. It became clear that mere cooperation was not enough to guarantee monetary stability and that only the sharing of sovereignty could achieve it.

As can be seen, a political and economic direction (*rectius*: in the strict monetary sense) was beginning to take shape, which, however, foreshadowed many other horizons.

Subsequent events in the field of economic policies have led to a preference not only for the instruments provided for in the Treaties, but also for new intergovernmental mechanisms.

The stages are now well known to all, from the introduction of the Stability and Growth Pact, which, however, has not been able to avert the danger (for which it was drawn up) that macroeconomic and financial imbalances in some Member States could also affect

⁵⁶The instruments aimed at ensuring this consistency are set out in Article 6, paragraph 4 of Law 234/2012 provides that the government shall send Parliament a report with a series of indications assisted by a correspondence or concordance table comparing the national legislation on which the Directive will have an impact.

⁵⁷M. BALLERIN, *Gli Stati Uniti d'Europa spiegati a tutti*, cit., p. 38.

⁵⁸IBIDEM.

countries not directly invested by them⁵⁹; to the subsequent adoption of the mechanism of the "European Semester"⁶⁰.

Through these mechanisms and the 'synchronisation' of the activities of the Member States' institutions, the aim has been to unify the timing of the assessment of economic and budgetary policies at Union level, enabling the Council to carry out an assessment of individual budgetary and reform programmes before they are submitted to national Parliaments.

Not all European countries have, however, decided to join the Fiscal Compact and, among those that have joined, the impact on the internal regulatory system for the transposition of the Treaty itself has been different⁶¹. The casuistry is therefore varied and would undoubtedly deserve more in-depth study⁶²; it is not easy, however, to outline a unitary and specific framework.

The willingness, in fact, to adhere or not to an international treaty falls within the full political discretion (therefore, difficult for the jurist to approach). It may be noted, however, that the "different approaches" of the Member States may be indicative and functional in demonstrating the "degree" of crisis of the parliamentary institution with regard to expenditure decisions and relations between constitutional bodies⁶³ and European institutions.

⁵⁹Dipartimento della Ragioneria di Stato, *La modifica della legge di contabilità e finanza pubblica alla luce del nuovo "Semestre europeo"* (Legge n. 39 del 2011), Roma, 2011, in www.rgs.mef.gov.it.

⁶⁰Reg. 1175/2011 which introduced Article 2a to Reg. EC 1466/97. It is a mechanism that covers multiple activities, among which: a) preparation and surveillance of the implementation of the Broad Economic Policy Guidelines of the Union; b) preparation and monitoring of the implementation of the Employment Guidelines which Member States must take into account; c) submission and assessment of stability and convergence programmes; (d) the submission and assessment of Member States' National Reform Programmes supporting the Union strategy for growth and jobs, defined in line with the broad economic guidelines, the employment guidelines and the general guidance given to Member States by the Commission and the European Council at the beginning of the annual cycle of surveillance; (e) as well as the surveillance to prevent and correct macroeconomic imbalances under the Reg. 1176 /2011 on the prevention and correction of macroeconomic imbalances. Cfr. V. G. RIZZONI, *Il "semestre europeo" tra sovranità di bilancio e auto vincoli costituzionali: Germania, Francia e Italia a confronto*, in *Associazione Italiana dei Costituzionalisti*, 4, 2011; and S. BIGAZZI, *Il ruolo istituzionale del Ministero dell'Economia e delle Finanze alla luce della crisi economico-finanziaria*, in *Federalismi.it*, 26, 2016.

⁶¹In particular, reference is made to Article 3(2) of the Fiscal Compact, according to which: "The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty by means of binding provisions of a permanent nature - preferably constitutional - or otherwise strictly adhered to throughout the national budgetary process. [...]".

⁶²Although interesting were also the experiences of Germany, Spain, Portugal, Greece and Ireland.

⁶³Although there was no lack of analysis in this respect. Take, for example, the case of the United Kingdom, M. GORDON, *The United Kingdom and the Fiscal Compact: Past and Future*, in *European Constitutional Law Review*, n. 10/2014, pp. 28-53. The author, in the course of its reconstruction, includes among the possible reasons also a problem "intrinsic" to the British constitutional system, which, as is well known, boasts of a predominantly customary system; hence, the impossibility or difficulty of adhering to the TSCG. It should also be pointed out, moreover, that the author, while envisaging the possibility that the United Kingdom could accede to the Treaty at a later date, could not have imagined changed relations with the EU itself as a result of the so-called "Brexit". This may, for example, be indicative of the fact that Great Britain had wanted to preserve its prerogatives as regards spending decisions. On the contrary, instead, among the countries that have decided to adhere to the Treaty, it is possible to refer to France, which has transposed the provisions of the same ex art. 3 par. 2, not intervening with a constitutional reform but with the approval of an organic law. In particular, with regard to the French Constitutional Council's ruling on the compatibility of the Institutional Law with the obligations of the Treaty, please refer, by way of example, to R. CASELLA, *Il Consiglio costituzionale francese e il trattato sul fiscal compact*, in *forumcostituzionale.it*, 2012. The case of Italy and Greece, on the other hand, is different, and they have decided, as is well known, to transpose the provisions of the Treaty by means of a constitutional revision law. Italy, in particular, with the constitutional law n. 1/2012, which also reformed, in particular, Article 81 of Constitution.

Lastly, what is striking is the fact that, unlike a 'classic' policy circuit, there is a further and different 'economic' policy which, at European level, clearly seems to be based on principles aimed at achieving the objectives of budgetary balance and macroeconomic adjustments, also to the detriment of social rights and important principles advocated by the Treaties, first and foremost solidarity⁶⁴.

Without, however, entering into the merits of effective participation in all phases of the decision-making cycle by national bodies, for which a much more in-depth discussion would be necessary, a first question is beginning to arise which we want to ask the reader: is it possible to talk about a real circuit of political direction?

4. The problem of the not easy "translation" of the notion of political direction at European level

However, if it is not possible to speak of an economic political direction separately from the more general political direction, as elaborated by the Parliament-Government - political parties circuit, at a supranational level the situation seems to be different.

In particular, it is believed that it is possible to identify the existence of a "European economic policy direction" but not, at the same time, a general European political direction. There are several reasons for this.

First of all, it has been possible to anticipate the difficulty of being able to speak in the proper sense of a European form of government. There are those who have spoken of a "paradigmatic example of non-state federalism", those who, on the other hand, have placed greater emphasis on the doctrines of constitutional pluralism and those who, again, on "multi-level constitutionalism"⁶⁵.

It is clear that the problem is even more complex, as it inevitably comes up against the problem of sovereignty.

There are those who, in fact, appear to be more open to thinking in terms of a form of European governance based on the case law of the Court of Justice, identifying in the Union a constitutional system capable of exercising fragments of sovereign powers. Others, on the other hand, favouring the Member States' supremacy of sovereignty (also in relation to the delegated powers of the European Union), consider that only by ellipsis can the category of the form of government be referred to with reference to the Union⁶⁶.

Thus, as effectively argued, the Union would suffer from the disconnection between supranational institutions and forms of control and direction operating at national level. While, in fact, the dynamics of representation and responsibility would still today be anchored in the political arenas of the Member States, increasingly significant competences are instead

⁶⁴A. LUCARELLI, *Principi costituzionali europei tra solidarietà e concorrenza*, cit.

⁶⁵Cfr. R. IBRIDO, N. LUPO (a cura di), *Dinamiche della forma di governo tra Unione europea e Stati membri*, cit., pp. 11 ss.

⁶⁶Ivi, pp. 13-14.

exercised at supranational level, with the further and not secondary difficulty of identifying a precise institutional centre to which the political responsibility for a given decision could be attributed.

Secondly, precisely because of the way in which the balance between bodies is structured at European level, we are increasingly witnessing a fragmented approach, at the mercy of both the agenda-setting powers of the European Commission and the European Council; the European Parliament, which for some time now seems to have "solved" the long-standing problem of the democratic *deficit*, nevertheless plays a "secondary" role in the development of a European policy.

A different discourse could be made, however, with regard to the areas of economic policy.

Taking a step backwards, well before the entry into force of the Lisbon Treaty in 2009, the structure that had been created over time was such that it still generated uncertainty about the legal framework and the nature of the Union itself.

The reasons for these uncertainties lay mainly in the fact that the unitary system, originally outlined, was not matched by a formal structure, within which old and new forms of cooperation had been combined.

This was also reflected in the methods of action set up according to principles, procedures and instruments which differed according to the areas of competence at stake: on the one hand, the so-called intergovernmental method, operating in the two areas of cooperation governed by the TEU and dependent on the will of governments and based on the decision-making power of the Council alone (to be exercised, with exceptions, by unanimity) and by acts without controls by the Commission and the Court of Justice; on the other hand, the so-called Community method, characterised by 'a decision-making process in which 'interests other than those of the governments of the individual Member States also play a role and from which rules subject to control and interpretation by the Court and at the same time likely to be invoked directly by citizens even against conflicting national rules'.

With the reunification of the European Union system through the Lisbon Treaty, following the failure of the process linked to the European Constitution and the referendums against it in France and the Netherlands, the Community method has also become generalised as an instrument for the functioning of the Union as a whole.

However, the intergovernmental method has continued to maintain a non-secondary presence in the functioning of the system, reappearing in the institutional life of the Union, not least because of the growing and central role assumed by the European Council. This is particularly the case with regard to "border" matters, i.e. matters undertaken by the Member States outside the formal framework of the Union and not yet drawn into the Union's competence and, at the same time, functional to the integration process through their "communitarisation".

With particular regard to economic policy, the system set out in the Treaties has proved inadequate to ensure the management of the Economic and Monetary Union, as it can at most avoid excessive public deficits through the multilateral surveillance mechanism, but certainly does not allow positive action to be taken to impose proper fiscal discipline on the

Member States; this is precisely because of the persistent absence of a common fiscal policy, the presence of 'tax havens' within EMU and the need to reform the European budget, which are, on the whole, instrumental to an effective integration process.

Especially after the financial crisis in 2008⁶⁷, there has been a profound change in European economic governance, which has ended up increasingly exploiting intergovernmental approaches to the detriment of the Community method⁶⁸. These mechanisms, therefore, partly attributable to international law and partly to European law, are therefore affected by the problem of their difficult legal framework, while at the same time escaping traditional judicial controls and democratic and parliamentary procedures.

Subsequent events in the field of economic policies have led to a preference not only for the instruments provided for in the Treaties, but also for new intergovernmental mechanisms.

The stages are now well known to all, we have passed from the introduction of the European Fiscal Compact, with which, however, it was not possible to avert the danger (for which it was drawn up) that any macroeconomic and financial imbalances in some Member States could also affect countries not directly invested by them⁶⁹; to the subsequent adoption of the "European Semester" mechanism⁷⁰.

Through these mechanisms and the "synchronisation" of the activities of the Member States' institutions, the aim has been to unify the timing of the assessment of economic and budgetary policies at Union level, enabling the Council to make an assessment of individual budgetary and reform programmes before they are submitted to national parliaments.

The casuistry, as can be seen, is varied and would certainly deserve more in-depth examination⁷¹.

⁶⁷See B. DE WITTE, *Euro crisis responses and EU legal order: increased institutional variation or constitutional mutation?*, in *European Constitutional Law Review*, 3, 2015, p. 436 the consequences of the transformations following the crisis can be summarised as: a) the predominance of intergovernmentalism at the expense of the Community method; b) the use of emergency and/or hybrid instruments, outside the framework of the Treaties, which could lead to a 'circumvention of EU law' to the detriment of compliance with the rule of law; c) the alteration of equality between Member States; d) the transformation of the relationship between Member States and the EU, in particular with regard to the impact of conditionality policies and budgetary constraints on the financial sovereignty of the Member States.

⁶⁸F. FABBRINI, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges*, Oxford, 2016.

⁶⁹Dipartimento della Ragioneria di Stato, *La modifica della legge di contabilità e finanza pubblica alla luce del nuovo "Semestre europeo"* (Legge n. 39 del 2011), Roma, 2011, in www.rgs.mef.gov.it.

⁷⁰Regulated by Regulation N. 1175/2011, which introduced Article 2a of Regulation N. 1466/97. It is a mechanism that covers multiple activities, including: a) preparation and monitoring of the implementation of the broad guidelines for the economic policies of the Union; b) preparation and monitoring of the implementation of the employment guidelines which Member States must take into account; c) submission and assessment of stability and convergence programmes; (d) the submission and assessment of Member States' National Reform Programmes supporting the Union strategy for growth and jobs, defined in line with the broad economic guidelines, the employment guidelines and the general guidance given to Member States by the Commission and the European Council at the beginning of the annual cycle of surveillance; (e) as well as the surveillance to prevent and correct macroeconomic imbalances under the Reg. 1176 /2011 on the prevention and correction of macroeconomic imbalances. In this regard, V. G. RIZZONI, *Il "semestre europeo" tra sovranità di bilancio e auto vincoli costituzionali: Germania, Francia e Italia a confronto*, in *Associazione Italiana dei Costituzionalisti*, 4, 2011; e S. BIGAZZI, *Il ruolo istituzionale del Ministero dell'Economia e delle Finanze alla luce della crisi economico-finanziaria*, in *Federalismi.it*, 26, 2016.

⁷¹Although interesting were also the experiences of Germany, Spain, Portugal, Greece and Ireland.

Lastly, what is striking is the fact that, unlike a "classic" policy circuit, there is a further and different "economic" policy which, at European level, clearly seems to be based on principles aimed at achieving the objectives of budgetary balance and macroeconomic adjustments, also to the detriment of social rights and important principles advocated by the Treaties, first and foremost solidarity⁷².

Indeed, precisely in the case of the economic crisis caused by the pandemic (caused by COVID 19), Europe has shown a lack of decision-making capacity, especially as regards the instruments to be put in place. This, precisely because of the lack of a clear governance structure, suitable to be able to intervene in a timely manner.

As a matter of fact, the pandemic crisis, which has affected the European continent and the damaging economic consequences it has brought about, can be a valid "test case" to argue that, even in the absence of a clear European economic policy direction, there is still a propensity to solve the problems by intervening either with instruments that are outside the European circuit (think of the ESM) or with mechanisms that preserve monetary stability and competition in any case. In other words, there may be a "determination of goals" that can be assimilated to a political direction.

All this can only have an impact on the national constitutional order and, more generally, on the position of the Member States in the European context; this is also due to a political direction which, as has been pointed out above, cannot be defined as the European Union but the sum of sectoral and intergovernmental interests for which the priority is the containment of public debt.

On the one hand, the predominance of the intergovernmental method over the Community method generates asymmetries between States (according to the logic of debtor and creditor countries), on the other hand, there is a progressivishift of quotas of sovereignty (particularly in the field of economic policies) from States to the EU institutions⁷³.

This transformation in relations between states and the EU has not been matched by a transformation in European procedures aimed at making these processes more transparent and democratic. Thus, the European Parliament has taken on an entirely marginal role in the mechanisms for assisting states, and even the institutions aimed at enhancing the dialogue between national parliaments and the European Parliament have ended up being of absolutely no practical relevance.

What, however, may seem to be a digression in the discourse is functional to be able to trace, instead, a first attempt to identify a political direction in economic matters at European level.

⁷² A. LUCARELLI, *Principi costituzionali europei tra solidarietà e concorrenza*, cit.

⁷³ See M.T. STILE, *Il MES nella risoluzione delle crisi finanziarie europee. Un paradigma di limitazione della sovranità statale*, in *Rivista AIC*, 2, 2020.

5. Conclusions: a first (but perhaps weak) attempt to rebuild a European economic political direction

From the framework outlined, it is clear that it is difficult to talk about a European policy direction because of the difficulty of defining the European form of government.

Moreover, it is well known that one of the ways of classifying the form of government is precisely to identify the bodies with the function of political direction. At European level, it is more difficult than ever to identify clearly who is in charge of policymaking.

The question is, therefore, how effective is this institution in improving decision-making in the EU? Central in this path becomes the function of determining a clear, unequivocal, unified political direction, expression and result of a process that, in order to take on the character of democracy, should wind between participation and democratic representation.

However, we are well aware that this is not the case, at least at the moment.

Should an attempt be made to understand who is given the political direction to govern the EU, or at any rate, beyond formal powers, who holds it? In different terms: will the EU political direction be the result of action by individual states, individual chancelleries (intergovernmental method), or rather the EU in its federal form? Will it be implemented at European level by the Council and the Commission, or will the Parliament, the only EU body directly elected by the citizens, be given a leading role?⁷⁴

The system of governance of the European Union, as created by its founding Treaties and as it has been articulated in subsequent Treaties, has sought to emphasise that it has never been consistent with the principles of democratic legitimacy proper to the nation states.

Suffice it to say that the fundamental principle of the separation of powers, according to which no body can exercise the three legislative, executive and judicial powers at the same time, is contradicted in the European Union by an institution such as the European Commission. The latter participates in the legislative process with its almost exclusive right of legislative initiative, participates in the executive power with its annual "executive" decisions and also participates in the judiciary when it takes decisions and imposes sanctions in competition and state aid matters that are not contradicted by the European Court of Justice⁷⁵.

The main consequence of the exclusive right of legislative initiative granted to the European Commission is the absence of such a right on the part of the European Parliament, which - unlike any national Parliament - can only ask the European Commission to submit a proposal for a law. Of course, this particularity of European governance has had a twofold justification: on the one hand, the European Commission must examine national legislation and take into account the interests of the Member States before proposing a draft European

⁷⁴A. LUCARELLI, *Principi costituzionali europei tra solidarietà e concorrenza*, cit.

⁷⁵P. PONZANO, *Democrazia e governance europea*, in *Centro studi sul federalismo*, 2012, http://www.csfederalismo.it/images/policy_paper/07_pponzano_it.pdf.

law; on the other hand, a draft European law submitted by a majority of members of EP could hardly take into account the interests of less populous states⁷⁶.

This "anomaly" of European governance is aggravated by the fact that the European Council of Ministers exercises both legislative and executive functions provided for in the Treaties (e.g. in foreign policy) and can also self-delegate new executive functions (at least in areas of EU competence where it can adopt a legislative act without the agreement of the EP) and has seen its role grow increasingly in recent years⁷⁷.

The doctrine has not failed to point out that European democracy should be distinguished from the democratic models established in the Member States, since its distinctive feature would be that it has 'decision-making processes that cannot be monopolised by a single institution'⁷⁸.

It must certainly be acknowledged that the Lisbon Treaty has introduced a number of improvements in the functioning of European governance. One need only think of the increase in the legislative and budgetary powers of the European Parliament, the link introduced between the choice of the President of the European Commission and the results of the European elections⁷⁹, and the strengthening, although limited, of the role of national parliaments.

However, these elements of greater "democraticity" of the European Union have not eliminated the main anomalies of European governance in the Treaties and in institutional practice.

The inadequacy of the Union's powers in the field of the economic policies of individual States combined with the need to put in place mechanisms for financial assistance to States in difficulty has led to heavy intervention by the European Union on national policy guidelines, albeit in the absence of real democratic legitimacy.

This kind of 'executive federalism' of a self-imposed European Council would be the model for a post-democratic exercise of power⁸⁰.

It seems to me that, on the economic side, the 'ultimate goals' that the European institutions intend to pursue are clear: the mantra of sound finances, even at the expense of indebtedness that is functional to the achievement of clear objectives of growth and reduction of inequalities.

However, we are still faced with a "hybrid" orderly structure, and also in economic terms, the question of the relationship between monetary policy and economic policy therefore arises again in peremptory terms. The imperfection of the structure currently defined by

⁷⁶ Ibidem.

⁷⁷ N. LUPO, *L'europizzazione delle forme di governo degli stati membri: la presidenzializzazione derivante da Bruxelles*, in R. IBRIDO, N. LUPO (a cura di), *Dinamiche della forma di governo tra Unione europea e Stati membri*, cit., p. 175ss.

⁷⁸ Cfr. P. Ponzano, *Democrazia e governance europea*, in Centro Studi sul Federalismo, 2012, reperibile al sito http://www.csfederalismo.it/images/policy_paper/07_pponzano_it.pdf.

⁷⁹ The reference is to the *Spitzenkandidaten* affair started in 2014 and "tended" to be confirmed in the 2019 elections; on the point cfr. J. PRIESTLEY e N. PENALVER GARCÍA, *The Making of a European President*, London, 2015.

⁸⁰ J. HABERMAS, *Questa Europa è in crisi*, Roma-Bari, 2012.

the Treaties is evident: and, in the face of the risk of a serious weakening of the action taken so far, the need for a strengthening of the Union's powers in the field of economic and, above all, fiscal policy becomes more pressing, overcoming, with the force of full institutional legitimacy, national resistance to measures that have direct or indirect economic effects and giving new impetus to the process of European unification. Ultimately, one wonders whether the time is ripe to take a further step towards a real federal system or not. The irreversible interconnections between national and European policies are now in place. A real economic political direction.

Moreover, the applicability of representative and federal models to continental and global organisations would be difficult. It has been argued that "representative principle seem to be attached to medium size and, in any case, to institutions of state type and not to be suitable to the same extent to govern institutions of a superstate nature or, at least, to govern them alone and with the same function as state bodies". Therefore, according to this idea, federalism would not be practicable at Union level because it would be inappropriate when it comes to integrating "state units with a long tradition that intend to maintain a strong personality and retain a considerable amount of sovereign powers"⁸¹.

On the other hand, another part of the doctrine believes that the time would be ripe to move towards a real European federative process.

A. Spinelli and E. Rossi had already believed in this, even before the European Communities, stating that: «the most pressing problem, without whose solution progress is merely an illusion, is the definitive abolition of the division of Europe into national, sovereign states [...] People are in general far better disposed than in the past towards a federal reorganization of Europe. [...] now is the time to put down the foundations for a movement capable of mobilizing all forces to build the new organism which will be the grandest, most innovative creation in Europe for centuries; capable of setting up a solid federal state, with a European armed service at its disposal rather than national armies; capable of crushing economic autarchies, the backbone of totalitarian regimes; that will have sufficient institutions and means for its deliberations on the maintenance of common order to be executed in the individual federal states, while allowing each state to retain the necessary autonomy for a plastic organization and development of political activity according to the specific characteristics of the various populations»⁸².

However, today we know that it can be more viable, given the way the process of European integration has evolved, for a nucleus of States to begin with the founding of a federal Union and for others to join later.

The reference to the member countries of the euro zone would be clear, not only because they are "sufficiently homogeneous among themselves from the social and economic

⁸¹ U. ALLEGRETTI, *Democrazia e rappresentanza nell'era della globalizzazione*, cit., p. 82.

⁸²A. SPINELLI, E. ROSSI, *Per un'Europa libera e unita. Il Manifesto di Ventotene*, in www.istitutospinelli.org, p. 55-57.

point of view, but also because they are those who have already shared a significant part of their sovereignty⁸³ (first of all, think of the monetary sovereignty)⁸⁴.

One point remains, regardless of the position to which it is intended to adhere: the Union needs to be reformed, and also urgently.

If the path of a federation is not considered to be feasible, given the now strong inter-relationship between the economies of the euro area, an urgent first step would be to extend the European budget, harmonise tax regulations and give a parliament more powers in this regard⁸⁵.

Moreover, the main problem that Europe seems to be facing today is that of representing a reality of "policies without politics"; the lack of political parties structured at European level⁸⁶, which can provide political guidelines within the European institutions, and of real debate in the parliamentary seats still seems a long way off. This is why it could still be difficult to open a real "European constituent" phase.

⁸³M. BALLERIN, *Gli Stati Uniti d'Europa*, cit., p. 88; and B. CARAVITA, *Il federalizing process europeo*, in *Federalismi.it*, 17, 2014, p. 5 ss. In partially different position, G. DE VERGOTTINI, *Forma di governo dell'Unione europea*, in *Treccani.it.*, 2009, which identifies precisely in the EU's value structure the more properly "constitutionalist" character of the European order, compared to the nature of the EU, which it still considers to be fundamentally internationalist and, as such, deprived of the features of a political union of a federal nature. In this sense also E. CASTORINA, *I valori fondanti dell'Unione europea*, in *Id.*, *Riflessioni sul processo costituente europeo*, Torino, 2010, p. 379 ss.

⁸⁴More generally, also on "interogovenamentalità", A. MORRONE, *Crisi economica e diritti. Appunti per lo stato costituzionale in Europa*, in *Quad. Cost.*, 1, 2014; *Id.*, *Una costituzione per l'Europa? Per uno stato costituzionale europeo*, in *Federalismi.it*, 23, 2014.

⁸⁵S. STAIANO, *I partiti europei fuori tempo*, in *Federalismi.it*, 15, 2012, p. 2, the knot to untie is therefore the major and most intricate one - the completion of a federal constitutional structure - as is now made clear by the fact that decisions necessary to safeguard the degree of integration achieved so far (one of all: fiscal union) are prevented by reasons relating to the circuits of legitimation and representation within individual countries.

⁸⁶*Ibidem*, according to which the European parties, on the other hand, do not come out of a "cone of shadow": they would have the position, by level and context, suitable to affect the constituent process underway, but they have not consolidated, nor do they seem to be able to consolidate in the short term, as an autonomous driving factor. And they are still in a relationship of close dependence with their counterpart national parties. Now, in such a situation, it does not seem to be possible to deny that individual party systems, due to the type of influence that remain in their respective countries, act as conspicuous factors of stickiness, for reasons linked to national contexts, in the European constituent process; and P. RIDOLA, *Il voto europeo del 6 e 7 giugno: la "sfera pubblica europea", l'integrazione multilivello e le sfide della complessità*, in *Federalismi.it*, 12, 2009; G. GRASSO, *Partiti politici europei e disciplina costituzionale nazionale*, in *Nomos*, 1, 2017; M. R. ALLEGRI, *I partiti politici a livello europeo fra autonomia politica e dipendenza dai partiti nazionali*, in *Federalismi.it*, 2013; A. CIANCIO, *I partiti politici europei e il processo di democratizzazione dell'Unione*, in *Jus*, 3, 2012, *Id.*, *Parties and the Process of Political Integration in Europe*, in *Dirittifondamentali.it*, 2, 2016; *Id.*, *Alla ricerca della forma di governo dell'Unione europea: lo snodo dei partiti politici europei*, cit., pp. 340 ss. according to: the parties do not yet appear to be fulfilling the task of elaborating what can be considered the necessary services of 'political unity', lacking the objective of acting as real factors of political-cultural mediation between the institutions and citizens, by incorporating their opinions and selecting their interests, and then transferring them into the European decision-making process, on the assumption that they are real, preventive and necessary rooted in the social structure.