

Self-regulation as a regulatory strategy: The Italian legal framework

Simona Rodriguez, Università degli Studi di Torino (Italy)

Abstract

This article aims to provide an overview of the evolution of self-regulatory mechanisms in Italy.

A brief overview of the Italian system of sources of law has showed that the model of the sources of law rooted in the Italian constitution is typically positivistic and centred on the pivotal role of Parliament, the only body empowered to legislate, either directly or by delegating its normative powers to the Government, within expressly specified limits.

What room, if any, is there for self-regulatory rules? If one of the most interesting aims of the research was to analyse to what extent the self-regulatory phenomenon is compatible with Parliament's undisputed sovereignty and with the linked principle of the rule of law, it should be clear that rules made by private actors (*i.e.* self-regulatory rules), which pretend to have external effects (binding *erga omnes*), can be considered as law and, as such, as sources of law, as long as they can be 'incorporated' into and recognized in some of the formal sources of Italian law. This seems the only possible and constitutionally compatible interpretation of a phenomenon (self-regulation) which, instead, could potentially be able to place the formal hierarchy of sources of law in jeopardy.

On the other hand, the results of the study make clear that, even when Parliament confers its normative powers on any other bodies (*i.e.* either independent administrative authorities or professional orders, or, more in general, any self-regulatory associations), it is unlikely that it will give up determining the limits within which those normative powers have to be exercised. Some authors actually consider this sort of 'delegated legislation' to be a means for the State to reassert its sovereignty.

Anyway, this new pluralistic 'architecture' will undoubtedly allow the legislator to retain some exclusive duties: first and foremost, the power to prescribe the institutional conditions which underlie the basis of 'private self-regulatory governance', as well as the aims of their future normative action; secondly, to intervene in order to correct, if necessary, the new consensual rules.

Keywords

self-regulation; Parliament's sovereignty; Italy

[full text](#) [back](#)

ISSN 1871-515X