Administrative Simplification and Codification in Italy

Maddalena Filippi, Presidency of the Council of Ministers, Italy

I. ADMINISTRATIVE SIMPLIFICATION

1. The administrative simplification process of the Italian system was got under way in 1993 by the placing on the statute book of a law (No. 537 of 24 December 1993) that pinpointed a series of administrative procedures to be simplified on the basis of criteria set out in the law itself: the simplification in question was therefore solely procedural and aimed, above all, at reducing the time and the cost of the procedures, and was to be implemented with a more flexible discipline (because approved with the juridical instrument of "de-legislation", which made it possible to replace the previous legislative discipline, and even to modify it, with a less cumbersome regulatory discipline).

In actual fact, some new instruments that aimed at reducing the time of concluding the procedure and, more generally, improving the quality of the administration from the point of view of efficiency, transparency and simplification had already been introduced in 1990 (by means of Law No.241 of 7 August 1990, which for the first time laid down general principles regarding administrative procedures and access to documents). Particular mention should here be made of:

- the instrument of *silence-assent*, which – in the cases envisaged by the law – transforms the silence of the administration regarding an application submitted by a citizen into a tacit measure of acceptance of the application:

- the instrument of *reporting the commencement of an activity*, which – in the cases envisages by the law and subject to respect of the conditions established by it – introduces a kind of "self-administration" that enables citizens to start up new initiatives even on the sole basis of a statement that they have done so, without there being any need for the issue of an administrative authorization measure;

- the instrument of the *service conference***,** which makes it possible for the object of the procedure to be examined jointly and simultaneously by all the administrations competent for safeguarding the various public interests involved in the procedure in question;

- the instrument of *agreement*, which makes it possible to utilize a consensual and non-authoritarian action model between administrations (organizational agreement) and between administrations and citizens (agreement in substitution of the measure).

2. This first phase of getting administrative simplification under way was followed – in the second half of the 'nineties[23] – by a second phase that aimed at consolidating the system by means of such new instruments as:

[23] By means of Law No.59 of 15 March 1997, Law No.127 of 15 May 1997, Law No.50 of 8 March 1999 and Law No.340 of 24 November 2000.

- an annual simplification law (containing the definition of the orientations, the criteria, the modalities and the intervention matters for the year to come), the bill (*disegno di legge*) for which is to be tabled by the Government in Parliament together with a report on the state of implementation of the simplification process;

- enlargement of the procedural simplification criteria, no longer limited to reduction of the procedure costs and times (by means of reduction of the phases of the procedure, the terms, the bureaucratic obligations and the presence of collegial organs), but extended to the lightening of the area of public intervention;

- institution of stable forms of consultation and participation of the organizations that represent the economic and productive categories and other organizations of social importance interested in the regulation and simplification processes;

- institution of the single counter for productive activities (*sportello unico per le attività produttive*), which makes it possible to identify a single interlocutor for enterprises and a single procedure for the start-up of production plants:

- utilization of informatics and its *E-government* mechanisms, which – both in the relations between the various administrations and in the relations between administrations and citizens – make it possible for acts, documents, instances and contracts drawn up and transmitted by means of IT instruments to be considered valid and efficacious even in the absence of a paper support (with the introduction of the obligation for the public administration to publish all announcements (*bandi*) and calls for bids (*avvisi do gara*) at one or more web sites and to make electronic forms (*moduli*) and formularies (*formulari*) available through telematic channels and valid in every respect for the interchange of data)[24];

- recourse – in particular cases – to telematic bids for the acquisition of goods and services by the public administration with a view to assuring full transparency and automaticity of the procedure for selecting the successful bidder[25].

Starting in 1997 and based on this new legislative complex there was got under way the process of streamlining procedure (which has led to the simplification of 105 procedures, 62 of which concern different but interconnected procedures), the new simplification instrument (service conference, agreements, single counters) were brought into operation, the new institutes of silence-assent and simple reporting of new activities were provided and appropriately disciplined, and the unified informatics network of the public administration have been set up.

As far as the interventions of regulatory and procedural simplification are concerned, in particular, these have been executed by means of the application of specific “techniques” that, as regards their direct effects on procedural discipline, can be conventionally subdivided into the following three general criteria:

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[24]. See Decree of the President of the Republic No.513 of 10 November 1997 and Law No.340 of 24 November 2000.

[25]. See Law No.340 of 24 November 2000.

- techniques of elimination, by means of which it is mentioned to pursue effects of suppressing procedures;

- techniques of reduction, through which the prevail effect is either partial revision of the discipline or suppression of single procedural segments;

- techniques of rationalization and procedural rationalization, depending on whether the prevailing effect is either producing an organic revision of the regulations-also with regard to possible connections with other procedures- or, more specifically, a simplification of restructured procedural patterns, as in the case of a reform of the functional and/or organizational profiles of the entire procedural order.

3. Recently Parliament again intervened in the field of the simplification of the existing procedures. The simplification law approved on 29 July 2003 (Law No.229) provides that, as far as administrative functions are concerned, law decrees and regulations will have to comply with the following principles:

- illustration of the administrative procedures and of any procedures that are closely connected with or instrumental for these procedures;

- reduction of the deadlines for the conclusion of the procedures;

- uniform regulation of procedures of the same type;

- reduction of the number of administrative procedures and unification of procedures relating to the same activity;

- simplification and acceleration of the expenditure and accountancy procedures;

- bringing procedure into line with the new technologies.

II. CODIFICATION

1. The simplification instruments envisaged by the reform of the second half of the 'nineties comprised the Consolidation Act (Testo unico), which aimed at recognizing and coordinating all the rules (legislative and regulatory) that disciplined individual subject matters but were dispersed and fragmented in very different normative texts (the consolidation act was called "mixed" because it envisaged the "delegislation" of the primary norms concerning the organizational and procedural aspects).

This normative instrument has already been used to implement new regulations in the following areas:

- administrative documentation;

- building;

- expropriation for public utility;

- justice expenditure;

- card-index of criminal records;

- card-index of administrative sanctions deriving from crime and pending court cases associated therewith.

2. By means of Law No.229 of 2003 the instrument of the Consolidation Act (which had an essentially conservative character that tended to maintain the existing status quo, because it aimed at nothing other than eliminating a formal situation of regulatory dispersion and disorder) was replaced by a subject matter codification system that makes it possible to harmonize the associated regulations, introducing even substantial modifications into the existing discipline.

The new law provides for the introduction of the instrument of regulatory re-organization, establishing the principles and criteria in accordance with which these activities are to be carried on; the principal innovations can be summarized as follows:

- shifting from a simplification to be achieved by means of "microsurgery" interventions to a simplification that will involve entire subject matters of legal and socio-economic areas;

- shifting from a merely procedural simplification to a substantial simplification;

- shifting from consolidation acts to not merely recognitive codes (that is, without normative changes) as the instrument for innovating the existing order;

- "deregulation", as liberalization of various sectors of intervention and as reduction of the substantial regulations governing the administrative functions, and the management tasks of the public administration with respect to the various social sectors.

In particular, the new law on simplification requires the codification policy to be implemented in accordance with the following guiding principles and criteria:

- definition of the regulatory re-organization and codification of the primary regulations governing the subject matter;

- explicit indication of the abrogated regulations;

- indication of the general principles especially as regards the information, participation, discussion (possibility of the opposition), transparency and publicity that regulate the administrative procedures with which the regulations are concerned;

- substitution of the acts of authorization, license, concession, nihil obstat, permission and consent, no matter by what name they may be known, the issue of which depends on ascertainment that the requirements and conditions of law are satisfied (simple declaration that the activity has been commenced);

- determination of the cases in which implied consent may be inferred from silence, in relation to requests for the issues of an act of consent, that does not imply the exercise of administrative discretionary powers, reduction and revision of administrative functions, with explicit exclusion of specific typologies;

- promotion of self-regulation of quality standards and conformity certifications by the productive categories, subject to supervision by the public administration or independent bodies,

- promotion of voluntary compliance by the interested parties with regulation models and adequate instruments of subsequent inspection and control in the cases in which it is proposed to suppress the administrative powers of authorization or to reduce the public functions that regulate the exercise of private activities.

- implementation of the subsidiarity principle.

The new law on simplification has replaced the "regulatory re-ordering" with regulatory reorganization and codification, allowing sectoral policy interventions. The simplification statute is introducing a sectoral division of pertinence to facilitate the successful implementation of regulations, Sectors mentioned:

- regulatory production

- simplification and quality of regulations

- labour safety

- insurance

- incentives for productive activities

- food products

- consumer protection

- legal metrology

- internationalization of enterprises

- information society

- national corps of fire brigades.

The following procedures of better regulation are employed: processes of "de-legislation", regulatory and administrative simplification, assessment of the impact of regulations, regulatory reorganization and codification, application of the rules for the drafting of regulatory measures and others.

The Prime Minister's Office is responsible for the promotion and the monitoring of the sectoral policies. The responsibilities are distributed among the Department of the Public Function, the Department of Juridical and Legislative Affairs and the legislative offices of all the administrations.

3. The codification activity will however have to take due account of the significant number of amendments recently introduced into Title V of the Constitution (2001), producing the consequent revision of the distribution of competencies as well as further transfer to the regions of regulatory powers in matters of concurrent or exclusive competence of the regions.