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# Local Government in Italy

## Responses to Urban-Rural Challenges

edited by

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The H2020-MSCA-RISE-2018 project aims to provide solutions for local governments that address the fundamental challenges resulting from urbanisation. To address these complex issues, 18 partners from 17 countries and six continents share their expertise and knowledge in the realms of public law, political science, and public administration. LoGov identifies, evaluates, compares, and shares innovative practices that cope with the impact of changing urban-rural relations in major local government areas (WP 1-5).



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# Structure of Local Government

# 4.1. The Structure of Local Government in Italy: An Introduction

Elisabeth Alber, *Eurac Research*

When it comes to inter-municipal cooperation and the rationalization of local government, any associative form today goes beyond the mere wish to more efficiently deliver services. Managing local services cooperatively is becoming a condition for the survival of (small or remote) municipalities, not only in Italy. In addition, regional strategies in terms of inter-municipal cooperation are strongly influenced by the different political regional cultures and their legacies of the past.

As for the legal framework, the Italian Constitution specifies the role of the regions as to the number, changes in territorial boundaries and mergers of municipalities. Article 133 of the Constitution says that '[c]hanges in provincial boundaries and the institution of new provinces within a region are regulated by the laws of the Republic, on the initiative of the municipalities, after consultation with the region. The region, after consultation with the populations involved, may establish through its laws new municipalities within its own territory and modify their districts and names.' However, the number and the size of local entities has always been a controversial feature in Italy. As of 1 January 2019, 5,498 out of 7,914 municipalities have less than 5,000 inhabitants (that is 69.5 per cent) and more than 700 have less than 500 inhabitants. This has historical reasons. The practice of establishing a municipality for each territorial community dates back to the 19$^{th}$ century (Administrative Unification Laws 1865).

As second-tier local entities, the provinces in their current form also date back to the years 1859-1865 (with bodies being firstly elected in 1860). Today, their very existence is put into question (apart from the two autonomous provinces of Bolzano/Bozen and Trento that together form the special region Trentino-South Tyrol). Under the most important reform in recent times concerning associative forms of local government, metropolitan cities and provinces, the Ordinary Law no 56/2014 ('Delrio Law'), a province shall no longer be considered as a representative entity, but as a territorial entity of wide area (*area vasta*). In terms of functions, a province should have a coordination role and focus on strategic planning and management issues of the concerned territory. In practice, a province shall represent the interests of the mayors of the municipalities belonging to its territory. The central state aimed to completely abolish the province as a layer of intermediate local entity, but the Constitutional Reform foreseeing the removal of the provinces was voted down in a referendum on 4 December 2016. In practice, only some regions have reduced the number of the provinces and, as a rule, the functions provinces were vested with were either transferred to the regional or to the municipal level. The Constitution in its Article 114 stills reads that 'The Republic is composed of the municipalities, the provinces, the metropolitan cities, the regions and the State. Municipalities, provinces, metropolitan cities, and regions are autonomous entities

having their own statutes, powers, and functions (…). Rome is the capital of the Republic. Its status is regulated by State Law.'

Like the provinces, the metropolitan cities are a structural layer in the local government design of Italy that is placed between the municipalities and the regions. They are designed to replace some of the provinces and, in part, vested with functions like the ones of provinces such as strategic planning and coordination of the concerned territory, also regarding the provision of public services. While the metropolitan cities in the ordinary regions are regulated by the Ordinary Law no 56/2014, for the ones in the special regions different regulations may apply. Metropolitan cities were already introduced by the 2001 constitutional reform (Constitutional Law no 3/2001), but they were only established with the Ordinary Law no 56/2014. As of 01/01/2020, there are 14 metropolitan cities and not all of them are so far fully operational. The organs of the metropolitan cities are neither directly, nor indirectly elected. The main organs of the metropolitan cities are the metropolitan mayor, the metropolitan council, as well as the metropolitan conference comprising the mayors of all municipalities belonging to the metropolitan city. It is worth mentioning that the metropolitan mayor – contrary to the president of the provinces – is not elected by the mayors and the members of the councils of the municipalities in the metropolitan city. As a rule, the mayor of the capital of the former province becomes the metropolitan mayor.

Rome enjoys a special autonomy and is specifically referred to in different laws (for example, the Fiscal Federalism Law no 42/2009). Rome has its own internal by-laws and, in a nutshell, has a twofold organization with an upper level (mayor and appointed councilors) and a lower level with the bodies of the ten municipalities into which Rome is subdivided (mayors and members of the councils). The Mayor of Rome is also the mayor of the Metropolitan City of Rome.

Taking reforms at national and regional level into account, as of 01/01/2020, Italy consists of the following divisions:

- 20 regions (fifteen ordinary and five special ones, with varying degrees of autonomy from one to another):
- 7,904 municipalities;
- 14 metropolitan cities (ranked by population size in decreasing order they are: Rome, Milan, Naples, Turin, Palermo, Bari, Catania, Florence, Bologna, Genoa, Venice, Messina, Reggio Calabria, Cagliari);
- 83 provinces;
- 6 free consortia of municipalities;
- 4 non-administrative units (corresponding to the former provinces of the Friuli-Venezia Giulia region).

Several forms of inter-municipal cooperation complete Italy's administrative territorial organization. They are now analyzed in a more detailed manner.

The challenge of having overall too many and too small municipalities differently affects regions and has led to the elaboration of several reform packages, at national, but also regional level, in recent times, but also earlier on. Two are the solutions envisaged in Italy to address the challenges linked to the need to rationalize the number and size of municipalities due to financial, socio-economic and demographic trends: associative forms of (incentivized) inter-municipal cooperation or mergers of municipalities.

There are three types of associative forms (*forme associative*) of local government: the conventions (*convenzioni*), the consortia (*consorzi*) and the unions of municipalities (*unioni di comuni*). The conventions are agreements between two or more municipalities for the delivery of a service or the fulfillment of a task (regulated to a certain extent under Article 30 of the Unified Law on Local Entities no 267/2000 and in subsequent legislation).

Municipalities shall form a convention for at least three years. For the exercise of fundamental functions in the form of a convention, Law no 56/2014 establishes a minimum demographic limit of 10,000 inhabitants or of 3,000 inhabitants if the municipalities belonged to or still belong to mountain communities (if the regional legislator that holds exclusive powers on associative forms of local government has not foreseen any exceptions to these parameters due to particular territorial conditions). Conventions in general represent a flexible, adaptable tool as to associative forms of service delivery. They can be of 'closed' type (with a fixed and predetermined number of members) or of 'open' type (with the possibility for others to join at a later stage, prior the consent of all municipalities that cooperate in the convention). Conventions do not foresee the establishment of further bodies. As a rule, one municipality part of the convention is identified as the coordinator of all parties in the convention.

Unlike the conventions, consortia are fully recognized as local entities, with the necessity to be organized in an assembly and a management board (Article 31 of the Unified Law on Local Entities no 267/2000). Municipalities and other entities form a consortium if they intend to manage one or more public services together.

The unions of municipalities are composed of two or more municipalities for the associative exercise of their functions, being also recognized as local entities (Article 32 of the Unified Law on Local Entities no 267/2000), with own by-laws and organs. Unions of municipalities are normally exercising an array of functions and services, unlike consortia. The minimum demographic limits are the same ones as for a convention (with exceptions that can be set by the region). Among the most prominent provisions of Article 32 of the Unified Law on Local Entities no 267/2000, attention should be given to paragraph 5 that states that the resources invested in the personnel of a union of municipalities shall not exceed the sum of staff costs previously incurred by each municipality (that now is part of the union of municipalities). Once fully operational, progressive savings must, instead, be the aim regarding personnel costs. In addition, the role of secretary of the union of municipalities shall be carried out by a secretary of a municipality belonging to the union, thus without incurring in further costs. Unions of

municipalities are often viewed – or have so been interpreted by the central government – as a precursor of the merger of municipalities.

Especially from 2009-2010 onwards, austerity legislation not only affected financial intergovernmental relations at the expense of subnational entities, but also structural aspects in local government.

One example are the provisions enshrined in the Decree Law no 78/2010 (converted into Law no 122/2010). On the one side, they, in various forms, heavily impact financial resources available to local government bodies. On the other side they call for new rules as to the associative exercise of administrative functions in the six so-called fundamental competence areas of municipalities (in short, general administration and management; early childhood education and care as well as schooling and schools; local mobility, transport and roads; land management and environmental development; social services). At this stage it shall also be noted that the portfolio of functions to be exercised in an associative form of inter-municipal cooperation has been further defined in details and augmented in subsequent national legislation (for example, Decree Law no 95/2012, converted in Law no 135/2012). With the exception of single-municipal islands and the enclave municipality of Campione d'Italia, municipalities up to 5,000 inhabitants or municipalities up to 3,000 inhabitants (if they belonged to or still belong to a mountainous community [*comunità montana*]) have to exercise basic functions in an associative form, by a convention or by a union, in a gradual manner starting by jointly exercising three functions. The same function cannot be carried out by more than one associative form.

Another example are the provisions enshrined in Decree Law no 138/2011 (converted in Law no 148/2011). They provide a reduction in the number of members in local government bodies and a merger of administrative functions in the case of small municipalities. Accordingly, municipalities with a population of less than 1,000 inhabitants have to carry out their functions in an associative form. It has to be noted that the possibility of exercising functions in an inter-municipal cooperation has already been prescribed for in 1990 (by the Law no 142/1990). Thus, the new aspect in legislation on associative forms at local government level in the period 2009-2012 lies in its compulsory nature (from which the national legislator again refrained from with regard to certain categories of municipalities in subsequent legislation that modified the legislation and by-laws on associative forms of cooperation at local level).

One of the shortcomings of the first provisions on associative forms of inter-municipal cooperation was the lack of sanctions for entities that did not foresee them at all or for those that would do so beyond the deadlines enshrined in legislation (deadlines that were extended several times and last extended until 1 December 2020 by Decree Law no 8/2020 converted in Law no 40/2020). This lack was filled by Article 14 of Decree Law no 78/2010, which provides that the prefect of the province, the representative of the central state, shall give the defaulting municipalities a peremptory deadline within which to act. Once this deadline has expired, Article 8 of Law no 131/2003 would provide the *commissariamento* (administration

by an external commissioner) in line with the provisions laid down in Article 120 of the Constitution; they read as follows: 'The Government can act for bodies of the (…) and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities. The law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with the principles of subsidiarity and loyal co-operation.'

Many pieces of the national legislation from the financial-economic crisis onwards do not only offer and impose formulas of associative forms to municipalities, but they also increase conflicts over competences. The formulas are very complex and, most importantly, the implementation of associative forms of inter-municipal cooperation has been desultory from the very beginning. In Italy, the region has exclusive the power on forms of inter-municipal cooperation. Regardless of that, the Constitutional Court has legitimized interference resulting from centrally imposed schemes because of exceptional times and the need of spending reviews. According to the rulings of the Constitutional Court, inter-municipal cooperation is instrumental to the rationalization of public finance and any State's austerity legislation (containing, among others, forced inter-municipal cooperation) is considered legitimate as it falls into the competence 'coordination of public finance' (Article 117(3) of the Constitution), a concurrent (State-Region) competence. By very extensively interpreting the principles of coordination of public finance, the Constitutional Court nullified the regional space for maneuvering on inter-municipal cooperation (among others, see Constitutional Court judgments no 237/2009, no 68/2011, no 108/2011, no 182/2011; no 77/2013). However, the Constitutional Court most recently has ruled (judgment no 33/2019) that requiring municipalities with less than 5,000 inhabitants (and less than 3,000 inhabitants in case of mountain municipalities) to perform their basic functions cooperatively is unconstitutional, if it does not allow municipalities to demonstrate that the management by means of associative forms does not favor the economies of scale or ameliorate the delivery of public services to the concerned population. According to the Court, forcing small municipalities to cooperatively manage fundamental functions is excessively rigid and does not stand the proportionality test. The rigidity does not allow to consider all those situations in which, due to the geographical location and demographic and socio-environmental issues, the convention or the union of municipalities are not suitable to achieve cost savings.

Regarding the different associative forms of inter-municipal cooperation, the regional governments may provide for (financial) support or any other incentives. In practice, regions do so to a very different extent (favoring one or the other form). Incentives are also provided by central state legislation in the form of contributions and facilitations.

Mergers of municipalities have been encouraged by the national legislator since the 1990s with little success. Between 1995 and 2011 only nine mergers were successful. In the following years more mergers were undertaken (in 2019, 31 mergers for a total of 65 municipalities in

seven ordinary and one in a special region), but the solution of merging municipalities remains the proverbial drop in the ocean when it comes to finding solutions to the hyper-fragmentation and rationalization of very small municipalities (so-called *comuni polvere*) in Italy. However, positive examples are to be found in the Italian panorama. For example, in the Autonomous Province of Trento the number of municipalities has been reduced by more than one third through mergers.

At national level, financial incentives are foreseen for the merger of municipalities, and, to very different extent, regions do also establish them. The situation as to incentives is again different in special regions as they regulate the matter of local entities in their respective autonomy statutes and as they also enjoy a great extent of financial autonomy.

The merger of municipalities is a bottom-up process in the sense that a referendum involving the citizens of the affected municipalities is obligatory. As earlier mentioned, Article 133 of the Constitution reads that 'The region, after consultation with the populations involved, may establish through its laws new municipalities within its own territory and modify their districts and names.'). Put simply, if the referendum is positive, the merger is approved by the regional legislation. However, there are many differences (and some innovative approaches) when it comes to the details in the procedures and in the interpretation of the result of the consultative referendum. Regions may apply a 'dirigist' role or be a mere executor of the popular will regarding mergers of municipalities.[105]

Law no 56/2014 ('Delrio Law') provides many facilitating measures for the merger of municipalities (paragraph 116ff). Most importantly, it establishes that in municipalities that are the result of a merger the by-law of the new local authority may lay down special cooperation forms between all municipalities involved in the merger. The by-law of the new local authority may be approved as a provisional one by all municipal councils that initiated the merger before the new municipality is established. In addition, it is foreseen that it is the by-law of the new municipality and no longer regional legislation that lays down appropriate detailed measures that ensure the participation of all the peoples of the former independent local authorities, and the effectiveness of decentralized service provision throughout the new municipal territory.

The Ordinary Law no 56/2014 also expressly speaks of 'merger by incorporation' and of 'aggregations of municipalities by incorporation' in Article 130. However, with regard to the merger *strictu sensu* (which results in the abolition of the existing municipalities and the establishment of a new municipality), the incorporation does not establish a new municipality. It results in the abolition of the incorporated municipality, which formally becomes part of an already existing municipality.

At this stage, it should also be recalled that in order to facilitate the merger of municipalities, Article 15(3) of the Unified Law of Local Entities no 267/2000 provides that the central state

[105] See details below in report section 4.3. on Mergers of Municipalities.

shall make special contributions for the ten years from the merger itself. To this end, the rule provides that each year, by an administrative act issued by the Minister of the interior, after hearing the Standing Conference State-Cities and local entities, the modalities of allocation of the contribution shall be defined.

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