

CULTURAL SERVICES
AND CONSTITUTIONAL PURPOSES
(ITALY AND THE EU)*

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1. INTRODUCTION

If they are to deal with the policies of cultural services in the Italian State, a State of Law and Welfare, rooted in a democratic Constitution since 1948, public-law experts cannot do without an initial examination of the relevant fundamental laws. Keeping on the track of the constitutional legality principle which dictates the political and legislative level basic to this article's inquiry, we intend to examine the dimensions of the public power as regards the sector that interests us. In this way, we can make an objective parameter for reference, a parameter that will enable us to verify the real range and effect of the cultural policies that put our social charter into effect.

It is sixty-six years since this charter was born but, especially in its basic principles, it is still very much alive and kicking.

However, both the problem of which public subject - State or Regions - is competent and responsible, and the administrative ap-

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proach to the solutions stand outside this article's remit. A propos, the administration question, in Italy (see Const., Art. 118), comes under the principle of vertical and horizontal subsidiarity as well as of differentiation and adequacy.

One must point out straight away that public intervention in cultural sectors (Const., Art. 9, taken together with Art. 2 and Art. 3, par. 2) is, by nature, promotional: the Italian State deems these sectors not to be a legal right from the recipient's viewpoint, though the sectors are able to promote individual and community growth. So, we can assert that cultural promotions move from personalist and communitarian principles for encouraging such growth. The two basic principles of the Italian State order, as is known, maintain the three typical sectors of a Welfare State - education, health tutelage and social services.

We can state, then, that what these sectors of the Welfare State have in common is their putting of specific services at the disposal of the individual and the community. What distinguishes these sectors is the fact that they are more or less essential for their recipients. Cultural services, with the due qualifications we will make later, have their rightful place in the field of the Welfare State policies¹.

Since becoming a member of the EU (Const., Art. 11 and Art. 117, par. 1), the Italian State has been playing its role in the European integration process, which, for more than sixty years, compels it to compete with the rules set by the supranational legal system. And the latter is usually prevailing over that set by the Member States.

One must insist that there is no question of dealing with political moves for culture services unless one goes into the norms of the primary European Law. These norms stand alongside those of the Italian Constitution. But to put it like this, is not entirely correct -

¹ Cf. A. MATTIONI, *Cultura e persona nella Costituzione* [Culture and Person in the Constitution], in: L. DEGRASSI, ed., *Cultura e istituzioni. La valorizzazione dei beni culturali negli ordinamenti giuridici* [Culture and Institutions. The Enhancement of Cultural Property in the Legal Systems], Giuffrè, Milano, 2008, p. 1 ff.

because we must add that the Italian Constitutional Court (see, for instance, decisions nos. 98/1965, 183/1975 and 170/1984) has established that the constitutional principles and values of the Italian legal system take precedence over European Community Law, (now European Union Law). This reminder is particularly important. It is Article 9 of the Italian Constitution which, as stated above, forms the basis of cultural initiatives and, working from these basic principles, stands as a counterbalance to the supranational European Law.

The above explains why, in the following pages, we start our inquiry from the basic and other Italian constitutional norms which concern our subject. This will enable us to make a useful comparison between the two systems - knowing full well that European regulations in this field have to take account of the Italian Constitution.

Since the aim of this contribution is to verify the type of political action enacted by the authorities in cultural fields, it will be our task to add some comment on the policies that come into legislation in either the European or the Italian systems.

2. PROMOTION OF CULTURE IN THE ITALIAN CONSTITUTION

Cultural services are without doubt one of the possible forms of public promotion. This fact already leads us to a first judicial-institutional reflection on the idea of promotion with specific reference to the problem of extending public authorities' power - an extension already implied in the idea itself. To clarify this idea, as anticipated in our introduction, we must turn to the Italian Constitution in order to check the nature of promotion as a task entrusted to public authorities.

As already stated, the norm to begin from is Article 9 of the Constitution, which states that "the Republic promotes the development of culture". This pronouncement, which is unanimously taken to be

a fundamental principle² means, in short, that public institutions are expected to have “promotional duty”, *i.e.* to enact positive policies favouring culture³, even though it is at a glance evident that the constitutional formula is unclear as to the extent of intervention expected from public authorities.

Maybe we can make the matter clearer straight away by specifying that the concept of culture, understood here, excludes the field of education, which, according to the constitutional Articles 33-34, has to be provided as a compulsory duty.

For Italy’s 1948 Constituent Assembly, the two hypotheses - culture in general and education (a facet of culture) in particular - were, in any case, profoundly different from each other. This is because the two sectors are diverse even from their starting point, *i.e.* starting from an individual’s need and requirement to be cultured and, in any case, educated⁴.

In fact, the demand for culture is sustained by freedom, as for instance, in the constitutional Article 33, par. 1, as regards arts and sciences, which, together, by logical-substantial extension, encompass culture in general. “Freedom” here must be understood in the active sense (freedom of expression, “output”) as well as the passive one (freedom of reception, “input”). The active sense is, on the one hand, a classic negative freedom which does not accept interference from public authorities especially in expressive creations; on the other hand, it is also a positive freedom in the way that politically neutral authority is needed for staging support for less popular cultural projects by unknown artists, for example.

Passive freedom (of reception) is classic and positive by nature, demanding services from public policies which, in line with the

² See, one for all, M. CECCHETTI, Art. 9, *in*: R. BIFULCO / A. CELOTTO / M. OLIVETTI, eds, *Commentario alla Costituzione* [*Commentary to the Constitution*], vol. I, Utet, Torino, 2006, p. 221.

³ Cf. L. DEGRASSI, *La razionalizzazione dello Stato sociale nell’ordinamento dei servizi alla persona e alla comunità* [*The Rationalization of the Welfare State in the Social Services Legal System*], Giuffrè, Milan, 2004, p. 17.

⁴ *Ibidem*.

Welfare State, act mainly in support of the weaker social groups such as students or the aged⁵.

Hence, one can deduce that public promotion as a duty derives from culture as positive freedom, which, however, needs measuring in some way.

Since dutiful promotion means that public authorities have to take initiatives, stimulate and financially encourage cultural events (the present indicative “promotes” in the constitutional Article 9 leaves no space for doubt), it is clear that this duty stops at *an* and is not concerned with *quomodo*.

“How” depends on the public authority’s discretion in deciding what kind of political-cultural action to take and so what services to supply⁶. Cultural expressions are manifold and all have in common the anthropological spark of human creativity - think, for example, of art, shows and spectacles, cultural property and landscape property, science, sport, traditional and artisan activities in historic city centres, etc. Considering all these activities, it will help the political majority to decide which one to support and how to go about it. Their intervention must, in any case, be politically neutral and must not in any way damage the freedom of cultural expression, which, as we have seen, must remain constitutionally untouchable.

Education itself is, instead, guaranteed as a tangible social right as a compulsory and free social service, unconditional in itself (Const., Art. 34). In consequence, the demand for education must be an-

⁵ As for “freedom” connected with culture, see, among others, M. FIORILLO, *Arte e scienza - libertà* [Art and Science - freedom], in: *Enciclopedia giuridica del Sole 24 ore*, 2007, p. 643.

⁶ L. DEGRASSI, *Ricerca ‘industriale’ e valutazione di ‘scopo’* [‘Industrial’ Research and ‘Object’ Evaluation], in: L. DEGRASSI, ed., *La ricerca scientifica tra Stato e mercato. Ipotesi di collaborazione* [Research between State and Market. Hypothesis of Collaboration], vol. III of *La conoscenza organizzata. Argomenti, sistemi giuridici e riforme nella Scuola, nell’Università, nella Ricerca* [The Organized Knowledge. Arguments, Legal Systems and Reforms in School, University, Research], F. CORTESE / L. DEGRASSI / G. PIPERATA, eds, vols. I-III, Editoriale Scientifica, Naples, 2014, pp. 77 ff.

swered by the public authorities' "compulsory duty to supply" that by the 2001 reform of Title V of the Constitution, has been quantified, qualified and connected to the clauses of "Essential Performance Levels" with Const., Art. 117, par. 2. In other words, while it is agreed that educational contents remain protected by freedom of instruction (Const., Art. 33, par. 1), public education services must derive from planned political action. Such action is intended to ensure the supply of what is essential for the effective education of pupils. The education imparted should also allow each individual to develop his/her personality in terms of equal opportunity (Const., Art. 3, par. 2).

To sum up, the extent of the authorities' power in education services is outlined in the Italian Constitution, which declares that the services must be a response to the genuine right and demand for them. Instead, cultural services are proffered in reply to a condition of freedom. This is why the role of public authorities is preferred to the idea of promotion, which permits a distinction between the constitutional duty to take an initiative (promotional duty on *an*) and the choice of consequential cultural policies (political discretionary power and duty as regards *quomodo*).

The emergence of these differing constitutional approaches to education and to general culture must not be taken as suggesting that the Constitution strongly supports education, an essential culture, and looks on general culture as merely complementary - as if there were a stronger commitment to education and a weaker one to general culture. After all, each approach is objective and is calculated to meet different needs.

The pre-conditions leading to this result are pretty obvious. In effect, it is quite clear that the demand for education is universal and that it is fundamental for a human being's development. Unless you have a minimum of education, of basic knowledge, you are hardly aware even of your own existence - not to speak of being able to understand your own personal inclination towards further cultural knowledge and expression. It is essentially basic education itself that leads to the demand for further culture. And since the latter takes on many-sided connotations, each individual, once he/she has become literate (on the principle of ideological pluralism always

upheld by the Italian Constitution) will, if he/she wishes, turn to the type of cultural expression he/she finds most congenial. If one agrees with this premise, one must also accept the statement that education is a right and a requirement that must be met; whereas general culture is a free choice, a demand that may be satisfied. The former is an essential need in forming an individual's personality while the latter is a living preference in improving one's existence as well as becoming aware of one's role in society and taking part in social changes⁷.

The above background explains the difference between the need for education and the wish for culture; it also clarifies why they lead to different service-obligations for the public authorities. For education, the authorities are obliged to provide complete planned services, crafted to meet the basic needs of a person's life - needs which the "Essential Performance Levels" must be able to satisfy. As regards, instead, general culture, the authorities are expected to take initiatives - not least because people with more culture benefit themselves and their society as well as contribute to the nation's resources. And the latter features are definitively not within the remit of the "Essential Performance Levels" and their services. Eventually, what direction to take and what services to offer will depend on the policies of the majority. This explains why, as we have pointed out before, there is a duty, an obligation only with the *an* but not with the *quomodo*.

These are the assumptions underlying the Italian Constitution's declaration of the right to education, which is connected to the obligation of providing the population with services as well as being linked to cultural freedom and the duty of cultural promotion through various types of public initiative (services, financial incentives, etc.). This promotion is left in the hands of the political majority's policies though, of course, within the limits of constitutional guarantees foreseen for such a delicate sphere as an individual's personal culture.

⁷ L. DEGRASSI, *La razionalizzazione dello Stato sociale... [The Rationalization of the Welfare State...]*, cit., pp. 71 ff.

Italian Cultural Policies

The Italian Constitution's Article 9, which concerns the function of promotion, has only partly been put into practice. Moreover, cultural promotion in Italy is, at this moment, dragging its heels just as in other European countries, because of the serious economic crisis.

Discretionary power is a dominant concept in the Italian Constitution Norm. It gives public authorities the duty and initiative to enact cultural policies. And this kind of power could not only help individual and community development, but also increase employment especially among the young. However, this discretionality seems not to be particularly concerned with cultural projects. If we just take a look at the latest policy provisions, we see that the three decrees introduced by the previous Government Monti (law-decree no. 5/2012, *i.e.* "decreto sviluppo" (Development decree), law-decree no. 83/2012, *i.e.* "decreto crescita" (Growth decree); law-decree no. 179/2012, *i.e.* "decreto crescita del Paese" (Nation's growth decree)) are all directed to economic sectors, which are generally (in the EU, too) considered crucial for national recovery - sectors such as computerisation and digitalisation all across the board, also covering the nation's civil service.

As a further example, one can take the enactment of the Italian Digital Agenda, foreseen in the first Article of the last of the three decrees quoted above.

In the whole scenario of PM Monti's manoeuvre, promotion of culture is notably absent, but for two exceptions: the support given to industrial research - a support concerning striking research projects, industrial innovation, smart communities and the adoption of a strategic plan for tourism development. These are cultural initiatives undoubtedly aiming at relaunching the Italian economy (see again law-decree no. 179/2012 respectively, Arts. 19 ff. and 34-quinques).

With reference to the former government Letta, which lasted less than one year⁸, Art. 57 of the law-decree no. 69/2013, *i.e.* the "decreto del Fare" (Action decree), stated that the industrial re-

⁸ From April 28, 2013 to February 21, 2014.

search would be supported, as well as the basic research concerning, for example, the development of social innovation projects for the young people below 30 and the creation of innovative start-ups and university spin-offs, still operating economically, but also considering the young people's employment. The law-decree no. 91/2013⁹, *i.e.* the "*decreto Valore-Cultura*" (Culture & Value decree), should be taken into consideration: a virtuous circle with knowledge, research, art, safeguard and employment was triggered and once again between culture and economy. In the end, we must refer to the current Government Renzi, which issued the very recent law-decree no. 83/2014, *i.e.* the "*decreto Art-bonus*" (Art-bonus decree). Besides planning measures aiming at collecting resources thanks to liberal allocations¹⁰ for maintenance, repairs, protection and restoration of State cultural heritage, this decree provides for an economic support to lyrical-symphonic foundations, as well as a policy to attract foreign investments in Italy in the cinema and audiovisual production. And moreover, this decree establishes urgent measures to favour the employment of the young people at the Institutes and Places of Culture¹¹. Such measures also make the access to the cultural and touristic sector easier. With reference to the latter, the accommodation facilities and their requalification will have to be digitalised in order to improve the quality of the accommodation offer and strengthen the competitiveness of touristic destinations¹². From the Art-bonus decree, basic themes were already

⁹ Converted into law on October 7, 2013, no. 112.

¹⁰ In favour of them, tax concessions like for example tax credits will be planned. The Institutes and Places of Culture to which targeted interventions will be provided are the archaeological site of Pompei and the Reggia in Caserta.

¹¹ As regards the concept of "Institutes and Places of Culture" *cf.* L. DEGRASSI, *The Italian Cultural Heritage. Law and Rights. Selected Issues*, Giappichelli, Torino, 2012, pp. 85 ff.

¹² To hit these targets, the decree once again foresees tax concessions like tax credits. As regards tourism, both tourist guides dealing with sites of a specific historic, artistic or archaeological interest and Agenzia nazionale del turismo-ENIT will be reorganised.

there in Monti's manoeuvres, like, for example, the digitalisation and the connection between culture and tourism.

To conclude, everyone can realise how, since 2012, the economic streamlining of cultural policies seems to have reached a point of no return (*i.e.*, the interpretation given to the *quomodo* by political majorities following one another).

Moving away from current policies, the most important and complete cultural policy applied since 2000 was without doubt that concerned with cultural property and the landscape (leg. decree no. 42/2004, *i.e.* "the Urbani Code", modified in 2006 and 2008). As is well known, Italy can boast a long tradition in law regarding protection - the most famous of these laws dates back to 1939, *i.e.* "the Bottai Laws" (no. 1089, regarding historical and artistic things and no. 1497 about natural beauty), which were in force until the above-quoted Urbani Code.

Briefly, the promotion of the cultural heritage - including both cultural property and the landscape - comes from the Const., Art. 9. After the first legislative attempts at the end of the 1990s (leg. decree no. 112/1998 and leg. decree no. 490/1999), it will be only acknowledged as a full discipline in the 2004 decree. The promotional function is realised by an activity of enhancement, which aims at improving public fruition. This implies the public enjoyment and use of cultural property both at a public and a private level, within the limits of their maintenance and protection.

Such purpose can be realised by managing resources and available means. The fruition aims to implement the cultural development of both people and communities, still on the basis of the Italian Constitution, Art. 9 and Art. 3, par. 2¹³.

If, according to the 1939 laws, protection only pursued a static conception of cultural heritage, which was self-contained and limited, today the process of promoting and enhancing realises the dy-

¹³ For an in-depth analysis, see C. BARBATI / M. CAMMELLI / G. SCIULLO, eds, *Diritto e gestione dei beni culturali* [*Law and Management of Cultural Property*], il Mulino, Bologna, 2011, pp. 53 ff. and L. DEGRASSI, *The Italian Cultural Heritage...*, *cit.*, pp. 69 ff.

namic conception which expands its effects to the individuals and communities wishing to be educated in this way.

In fact, regulations, as long as they provide concrete institutional instruments to enhance cultural property and the landscape, did not allow protecting the archeological site of Pompei¹⁴, nor did they protect the “Girolamini” Library in Naples, caused by a failure of the protection function. Cases like these are unfortunately well known to the Italian chronicles, and not only in Italy.

Unfortunately, beyond the Urbani Code, the sector of cultural heritage has been suffering from an infinite sequence of reforms - even issued with legislation by law-decree - without analysing the reasons for the previous failures¹⁵, as well as from wholesale cuts in economic resources and a lack of an adequate turnover of skilled personnel¹⁶. This sector has never carried out a well-planned safeguard in the attempt to reduce the need of affecting the cultural heritage with damaging and invasive modalities due to emergency. Maybe, functionalising culture and economy might help face the shortcut of resources, without which culture is destined to decay sooner or later.

3. PROMOTION OF CULTURE IN THE TREATY OF LISBON

Differently from before, the Treaty of Lisbon, which entered into force on December 1, 2009, gave legal significance both to individuals' positions and to the EU's duties. While the latter had been there since the origin of the EU supranational experience, the for-

¹⁴ In the meantime, a strategic commitment to carry out the “*Grande Progetto Pompei - GPP*”, which was approved by the EU Commission with the decision no. C (2012) 2154 on March 29, 2012, was made. The GPP was taken into consideration in the law-decree no. 91/2013, *i.e.* Culture & Value decree, and now also in the law-decree no. 83/2014, *i.e.* Art-bonus decree.

¹⁵ See what is correctly stated in V. FRANCOLA, Più luci che ombre nel nuovo d.l. beni culturali [More lights than shadows in the new Law-Decree on Cultural Property], *in: Astrid* (Review on-line), May 2014, p. 9.

¹⁶ *Ibidem*.

mer started to exist with the EU Charter of Fundamental Rights, *i.e.* the 2000 Nice Charter, whose binding nature raised at the beginning many doubts. By acknowledging the Nice Charter, Article 6 of the Treaty of Lisbon solved any hesitation, thus becoming the legal basis - a sort of *ante litteram* constitutionalisation - not only of EU powers but also of rights.

As regards our subject, this Treaty includes among its approaches both the freedom of arts and sciences (Art. 13) and the right to education (Art. 14). Thus, the EU regulations accept the double nature of freedom and rights, which can be traced respectively to the two different positions of art and science, that is the cultural¹⁷ and the educational, in the same terms as they are recognised by the Italian Constitution as above explained. Let us repeat that, compared to public power, freedom of culture is, as usual, both negative and positive, whereas education, compared to public powers, is a mandatory social right.

Our main concern is to understand how European powers are extended with reference to positive freedom, that is to the promotional area, which, as we pointed about the relation between the European and Italian regulations, conveys the same meaning found before in the Italian Constitution. This is clear from the regulatory *corpus* of the Lisbon Treaty.

With reference to the Lisbon Treaty, Art. 107, par. 3, let. d), the law explicitly acknowledges the promotional function for culture, also by means of EU financing, insofar as it foresees that what “may be considered to be compatible with the internal market...is aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest”. The statement is important not only because it is an explicit derogation from the rule prohibit-

¹⁷ They should be read instead as synonyms, according to G. DEMURO, Art. 13. Libert  delle arti e delle scienze [Freedoms of Arts and Sciences], in: R. BIFULCO / M. CARTABIA / A. CELOTTO, eds, *L'Europa dei diritti, Commento alla Carta dei diritti fondamentali dell'Unione Europea [The Europe of Rights, Commentary to the Charter of Fundamental Rights of the European Union]*, il Mulino, Bologna, 2001, p. 117.

ing aid from the State but also because EU public support is inferred to be destined to heritage protection (mainly cultural) as well as to its enhancement through appropriate active policies. It was the first time that the EU introduced the promotion function in such an explicit way. The following Art. 167, named “Culture”, which, as well known, was originated in the 1992 Maastricht Treaty, is only a further specification.

The first issue emerging from Art. 167 is to entitle the promotional function. “The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”. What emerges here is that the single Member States are responsible for promoting culture. This is definitely acceptable given that the hypothesis of one homologising European culture cannot be sustained because as many cultures as peoples make up the EU.

National and regional cultural diversities are a source of wealth and each Member State has to defend its own specific nature according to its idea of culture (Lisbon Treaty, Art. 3, par. 3). This is why no regulation in the Treaty bears any definition of culture.

Such a premise led the EU to decide that the single Member States themselves should define the concepts of both culture and cultural products “due to the subsidiary character of EU competences in this field”, which can be traced back to the idea of supporting, coordinating or completing the Member States’ action¹⁸.

A close reading shows clearly how the EU is in charge of promoting culture. Article 167 begins as follows: “The Union shall contribute to the flowering of the cultures of the Member States”. Where cultural growth within a single State is not successful, the

¹⁸ L. ZAGATO, *La problematica costruzione di un’identità culturale europea. Un quadro più favorevole dopo Lisbona?* [The problematic construction of a European Cultural Identity. A more favorable frame after Lisbon?], in: L. ZAGATO / M. VECCO, *Le culture dell’Europa, l’Europa della cultura* [Cultures of Europe, Europe of Culture], Franco Angeli, Milan, 2011, p. 257.

supranational authorities will be entitled to intervene. And only the EU will be able to judge the results of its action¹⁹.

Besides supporting the pursuit of full cultural development, the EU is also responsible for completing and coordinating it, which are other aspects of the promotional function. On this issue, Art. 167 points out that the EU has to bring “the common cultural heritage to the fore”. This expression means a sort of European cultural policy in addition to national and sub-national cultures - and in this, the completion would be realised. The Union shall be also aimed at “encouraging cooperation between Member States”, as well as at supporting and supplementing the action of the States themselves in the following sectors: “improvement of the knowledge and dissemination of the culture and history of the European peoples; conservation and safeguarding of cultural heritage of European significance; non-commercial cultural exchanges; artistic and literary creation, including in the audiovisual sector.” In this way, the EU wants to include activities that strengthen national and sub-national policies²⁰ in European interests - and both coordination and an additional form of completion would thus be realised.

¹⁹ In this way, we can realise why, actually, the EU provided a definition of “culture”: this concept “which constitutes the basis for the Community action, notably at international level, is understood in the anthropologic and social sense, embracing all of which concurs to the identity and dignity of people. Such concept enables one to fully grasp cultural diversity in a dynamic way in its relation to the Other” (*cf.* point 4 of the commun. from the Commission to the Council and the European Parliament “Towards an international instrument on cultural diversity” - COM(2003) 520 final, August 28, 2003). Thus, the EU also underlined how the communitarian mission in this field can be achieved through the cultural services supporting cultural diversity as they are “vehicles of identity, values and meaning” (letter g, Art. 1, decision of the EU Council, May 2, 2006 on the 2005 conclusion of the UNESCO Convention on protecting and promoting diversity of cultural expressions). Cultural services are therefore relevant on the cultural level, let alone on the economic one (*cf.* whereas 5, reg. EU no. 1295/2013).

²⁰ On such a distinction again L. ZAGATO, *op. cit.*, pp. 255-257.

The 2004 Commission communication “On Building Our Common Future”²¹ promoted this regulatory result. According to this, European citizenship has to tie up with culture, now defined as European culture and diversity and no longer as Cultural exception (as regards economy), which was the old-style approach to the matter. Today, European citizens must be involved in the development of policies in sectors like sports, culture, audiovisuals, also in terms of economic growth.

The EU bypasses the problem concerning the competences of the single Member States when it binds cultural policy to citizens’ education and therefore to European integration in a strategic and transversal way. And moreover, the EU stresses that it is free to take cultural and economic policies as a whole.

The Lisbon Treaty follows in the wake of this communication. As we have seen, it is clear that promoting culture not only concerns the Member States, but also the EU itself. The centralising tendency of cultural promotion in economic terms seems to be inevitable if other legal acts are taken into consideration, which we will later deal with.

Towards a Definite Economic Streamlining of the EU Cultural Policies. Conclusion

Once having analysed the distribution of competences as regards culture and, more specifically, its promotion in compliance with the primary law, we understand why the matter is contained in the EU’s coordinating open approach to the Member States. It means flexibility in structuring cooperation around strategic objectives in order to encourage their fulfillment via the “moral suasion” technique. Flexibility is also mirrored in the secondary legislation acts adopted by the EU. As a matter of fact they were usually “soft law” acts, as in the case *a*) of the European Parliament and the Council’s decision no. 1855/2006/EC, which fixed the “2007-2013 Culture Programme”, *b*) of the Council’s resolution on November 16, 2007/CE, presenting the “European Agenda for culture” and *c*) of the Com-

²¹ COM(2004) 101 final.

mission's communication COM(2012) 537 final, which aimed at "enhancing the cultural and creative sectors to promote growth and employment in the EU". All these acts aim to pursue an economic policy through the important resource of culture - and therefore the would-be European cultural space - also in economic terms.

We leave out the first act that is no longer in force²² being replaced by a regulation we will deal with later. We will now provide a synthesis of the content of the two remaining acts.

First, the Council's resolution 2007/CE concerns the "European Agenda for culture" whose target is promoting cultural diversity and intercultural dialogue, as well as culture as a catalyst for creativity in the framework of the Lisbon strategy for growth and employment, and as an essential element in the European international relationships. Among these objectives, intercultural promotion needs

²² The decision no. 1855/2006/EC on culture was abrogated and replaced by the reg. EU no. 1295/2013, which concerns the media sector too. Though the decision is no longer in force, it is worth spending some words on it, since it was the first act to open the way to the sector of culture as a whole. It was the most relevant in that it intended to "enhance the cultural area shared by Europeans ... with a view to encouraging the emergence of European citizenship" (*cf.* Art. 3 of the dec. no. 1855/2006/EC). Given the Member States' cultural diversity, the EU wants to establish a common territory where either public or private cultural operators, though scattered all over the States themselves, can work together. Cultural diversities - Europe's wealth - are therefore invited to build the European peoples' cultural space in order to form a common heritage. The economic and social contributions, which can be provided by cultural policies, thanks to the commitment of all the operators concerned are potentially so relevant that the cultural sector can be seen as an important employer as well as a means of combating social exclusion (*cf.* whereas 4 and 5, *ibid.*).

As to the above-mentioned decision, the specific purposes were the cultural operators' transnational mobility, the circulation of works of art and artistic cultural products, and the promotion of intercultural dialogue, which is, indeed, based on cultures being equal. In the different cultural sectors, operators would have to submit projects able to realise the EU's programmes in order to be financed. In short, the programme strategy was bottom-up oriented: the cultural initiative started from those concerned, *i.e.* from the bottom, to be later financed by the EU, *i.e.* from the top.

to be emphasized as a sustainable process contributing to identity, citizenship and European social cohesion. Specifying the second objective is also relevant in that it aims to encourage the growth of cultural and creative industries, including the audiovisual sector. Their potential is thus optimised, especially that of small- and medium-sized enterprises (SMEs) within local and regional development.

Second, the Commission's communication COM (2012) 537 final rounds off the EU's cultural policies because it links previous policy to the Europe 2020 strategy. Communication starts from the consideration that "culture shapes our identities, aspirations and relations to others and the world. It also shapes the places and landscapes where we live, the lifestyles we develop". Nevertheless, the various creative and cultural sectors (like heritage, visual and performing arts, cinema, music, publishing, fashion or design), which play a major role in our daily life both in terms of social development and economic growth, are still not fully recognised. The first step to take is to digitalise them so that they can realise their full potential and Europe's long-standing excellence can be better "valorized as a comparative advantage on the world scene" (*cf.* point 1, *commun.*). By means of this act, the Commission proposes a strategy "to exploit further the potential of these sectors in the EU to contribute to growth and jobs".

The EU purposes referred to the 2007 resolution and 2012 communication have been fulfilled in the recent programme "Creative Europe 2014-2020" adopted by the European Parliament and Council's regulation (EU) no. 1295/2013 of December 11, 2013²³. Given that, thanks to the principles of subsidiarity and proportionality, the EU is present with a robust financial help in a sector now becoming quite heterogeneous, it itself claims such a competence owing to the fact that the programme receivers are at a transnational and international level, thus becoming supranational.

²³ The regulation (the text is relevant for the purposes of EEA) abrogates the decisions no. 1718/2006/CE as regards media no. 1855/2006/CE, as already said, as regards culture, and no. 1041/2009/CE as regards media mundus.

Once resolved this, the act is relevant for at least two reasons: one is substantial and the other is strictly legal-formal.

As to the former aspect, besides grouping two different sectors (the emphasized heterogeneity) - culture and media - it marks the tendency towards the economic development and therefore the inseparable double nature of cultural services: economic and cultural. This can be easily proved in that joining culture, *i.e.* creative sectors like audiovisuals, which by definition aim at pursuing economic wealth via growth and employment, means that culture needs to be led to the realisation of the same target²⁴. No wonder that the meeting of the media and culture programmes for the cultural and creative sectors within the programme "Creative Europe" would support the small- and medium-sized enterprises (SMEs) more effectively²⁵ (and no more the generic operators mentioned in the decision no. 1855/2006). It is to them that the programme itself is basically addressed²⁶.

As to the strictly legal-formal aspect, the act, since it is a regulation, is no longer a "soft law" act, but rather a "hard law" one. With the aim of this adoption two elements have been decisive: *a)* the change of the target of culture - which would have fallen under the single Member States' jurisdiction - and which is now, as just underlined, basically economic under the EU jurisdiction; *b)* the receivers of the programme itself that are rather transnational and international SMEs, once again under the EU law. If it is true that the cultural sector, when considered from the viewpoint of economic growth, is one of the most important steps for the EU to be able to present itself as the legitimate and eligible candidate as united po-

²⁴ However, the EU Commission's communication "Europe 2020 - A strategy for an intelligent growth, sustainable and inclusive" (*cf.* COM (2010) 2020 final March 3, 2010) defines a strategy which allows transforming the European Union into a smart economy. Consequently, the cultural and creative sectors are a source of innovative ideas that can bring to life products and services able to trigger growth and employment.

²⁵ *Cf.* the Commission's recommendation 2003/361/EC, May 6, 2003, related to the definition of micro and small and medium enterprises.

²⁶ *Cf.* letter c), Art. 4, reg. n. 1295/2013.

litical subject, it is as much true that the role played by legally binding acts, *i.e.* "hard law", cannot be of minor importance as the contribution of the regulation just analysed seems to suggest.

In the process of European integration - and our Country is an undisputed protagonist - it is to be hoped that Italy conforms quickly so that its art treasures can be saved. They also belong to Europe, or rather, they do belong to the world heritage. It would be a good deed to ensure that such treasures are universally preserved and appreciated. The EU regulation issued at the end of 2013, which is a mandatory act for all the Member States as well as for Italy, would lead in this direction.

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ABSTRACTS / RÉSUMÉS

Art. 9 of the 1948 Italian Constitution states that the Republic has to keep to the duty of promotion of culture (mere freedom), which does not include education (genuine social right): only the latter must be satisfied by public powers through an offer within the essential service levels; as to the former, there is no similar obligation. Although cultural interventions are undertaken at the public powers' discretion, an active political action should be desirable also for the positive impact the offer of cultural services would have on both economy and employment. The Welfare State is therefore not totally extraneous. The EU legal system is based on Art. 151 Lisbon Treaty. Culture belongs to the Member States, unless it deals with transnational or international financial programmes whose objectives can be better achieved at the Union level in accordance with the principles of subsidiarity and proportionality as set out in Art. 5 Lisbon Treaty.

L'article 9 de la Constitution italienne de 1948 prévoit que la République favorise le développement de la culture (davantage de liberté), ce qui n'inclut pas l'éducation (droit social authentique): cette dernière est la seule à devoir être satisfaite par les pouvoirs publics au moyen d'une offre située aux niveaux de prestation essentiels; pour ce qui est de la première, il n'existe pas de telle obligation. Bien que les interventions en matière de culture soient entreprises à la discrétion des pouvoirs publics, une action politique active serait également souhaitable pour l'impact positif que l'offre de services culturels aurait sur l'économie et l'emploi. L'Etat providence n'y est donc pas totalement étranger. Le système juridique de l'Union européenne repose sur l'article 151 du traité de Lisbonne. La culture relève des Etats membres, à moins qu'elle ne concerne des programmes financiers transnationaux ou internationaux dont les objectifs peuvent être mieux atteints au niveau de l'Union, en conformité avec les principes de subsidiarité et de proportionnalité énoncés à l'article 5 du traité de Lisbonne.

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