

PROCESSES OF ADMINISTRATIVE SIMPLIFICATION

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Dott. Eleonora CAVALIERI - Prof. Luisa TORCHIA

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1. PREAMBLE

During the Sixteenth Legislature in Italy administrative simplification measures have become general policy because of their potential ability to help growth and economic development which are priorities for the current economic crisis.

The Government has responded to the growing demand for simplification coming from both companies and from civil society by promoting regulatory simplification, which

is entrusted to a special Ministry, and by implementing the complex and ambitious project to reduce the amount of regulatory provisions of art. 14 of l. n. 246/2005 ("cut-laws"). This job is certainly impressive, but it is of questionable practical significance¹. Some general measures have been introduced (the most important ones are those on *Segnalazione certificata di inizio attività* (*S.c.i.a.*, i.e. the requirement to report the start of operation) and *Sportello unico per le attività produttive* (*S.u.a.p.*, Wake-stop shop for productive activities), as well as many precise measures. The following report will consider only interventions adopted in 2011 by the second Berlusconi government and those in the so-called "*Decreto Semplificazioni*" (Simplifications Decree) adopted by the Monti government in early 2012.²

2. INTERVENTIONS OF A GENERAL NATURE

2.1 Measures for reducing administrative burdens

A four-point approach has been adopted to achieve the goal of reducing administrative burdens for businesses (as required by the EU³) and for private individuals. The first point regards improving the so-called "*taglia-oneri*" ("cut-burdens") regulated by

¹ N. LUPO, B.G. MATTARELLA, *La codificazione e il taglia-leggi a livello statale: Immagine o sostanza?*, see website www.astrid.eu, pp. 19-20.

² *Decreto-legge* 9.2.2012, n. 5, "*Disposizioni urgenti in materia di semplificazione e sviluppo*".

³ The Communication from the Commission to the Council COM (2007) 23, 24.1.2007, provides for a reduction of the administrative burden by at least 25% by 2012. Also in the European Strategy 2020, the Commission seeks a reduction in the administrative burden on enterprises and an improvement in legislative quality to create an efficient, sustainable and competitive economy as regards resources (see Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth COM (2010) 2020, on the website ec.europa.eu p. 17).

art. 25 of d.l. n. 112/2008⁴. This article provides that an investigation into the M.O.A. (existing information burden) should be conducted according to an established program and on this basis each Ministry should draw up a plan to reduce the information burden⁵. This plan should merge into the general action plan for simplification and regulatory quality (called "PAS")⁶. This mechanism has been changed by the *Decreto Sviluppo* (Development Decree) d.l. n. 70/2011⁷. On the one hand, the *Decreto Sviluppo* provides that the reduction interventions, contained also in the regulations which are to be adopted by the Government by 30 September 2012⁸, should not be limited to the information burdens on enterprises, but should also be extended to information burdens on citizens⁹. On the other hand, the

⁴ *Decreto-legge* 25.6.2008, n. 112, "Disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria", converted, with amendments, by *legge* 6.8.2008, n. 133. See B. CAROTTI, *La manovra finanziaria prevista dalla legge n. 133/2008*, in *Giornale di diritto amministrativo*, 2008, 1189 ff.

⁵ A timetable of the activities to measure the administrative burden for their subsequent reduction may be found in «*Piano per la semplificazione amministrativa per le imprese e le famiglie 2010 – 2012*» presented by the then *Ministro per la Pubblica Amministrazione e l'innovazione* to the *Consiglio dei Ministri* of 7.10.2010. The norm also provided for the adoption of *ad hoc* guidelines which have yet to be adopted.

⁶ PAS, provided for by art. 1, co. 2, *Decreto-legge* 10.1.2006, n. 4, converted with amendments by *legge* 9.3.2006, n. 80, which was conceived as an instrument to be adopted annually, seems however to have been definitively abandoned during the *XVI Legislatura*. Thus also G. VESPERINI, *Note a margine di una recente ricerca sulla semplificazione amministrativa*, in *Giornale di diritto amministrativo*, 2010, pp. 203-206 (here p. 206).

⁷ *Decreto-legge* 13.5.2011, n. 70, "Semestre Europeo – Prime disposizioni urgenti per l'economia", converted, with amendments by *legge* 12.7.2011, n. 106. Questions have been raised about the use of this kind of instrument for the introduction of simplification measures. With particular reference to the so-called "cut-law" decrees, see N. LUPO, *Dalla delega ai decreti-legge "taglia-leggi": continuità o rottura?*, in *Giornale di diritto amministrativo*, 2009, p. 701 ff., and N. LUPO, B.G. MATTARELLA, *La codificazione e il taglia-leggi a livello statale: Immagine o sostanza?*, cit.

⁸ These are regulations to be adopted according to art. 17, co. 2, of l. n. 400/1988.

⁹ Thus art. 25, co. 5, d.l. 112/2008 as amended by article 6, co. 2, lett. f), n. 2, d.l. 70/2011.

development decree requires regions, provinces and municipalities to adopt mitigation measures¹⁰. At the time of writing the measurement phase, conducted by the *Dipartimento per la Funzione Pubblica* (Civil Service) is still in progress¹¹.

The second point of approach involves extending investigation into measuring the information burden to independent administrative authorities. These authorities shall propose legislative and regulatory measures designed to reduce the burden on businesses in the pursuit of the objectives defined at the European level¹².

The third point introduces some constraints on the exercise of regulatory power. It has been established that "the ministerial or inter-ministerial regulations and administrative provisions of a general nature adopted by the State administration (...) must contain in an annex a list of all the information burden imposed on citizens and enterprises introduced or eliminated by these regulations"¹³. This provision of the *Decreto Sviluppo* has been reproduced with the same wording in art. 7, co. 2 of l.n. n. 180/2011 ("*Statuto delle*

¹⁰ On the amendments to the "cut-burdens" introduced by d.l. 70/2011, S. SALVI, S. SARPI, *Il "Decreto Sviluppo"*, in *Giornale di diritto amministrativo*, 2011, p. 1049 ff., S. SALVI, *Continuità e sviluppi nelle politiche di semplificazione: il Piano 2010-2012*, in *Giornale di diritto amministrativo*, 2011, pp. 781-788; with specific reference to the role of regions and local authorities, M. DE GIORGI, *La semplificazione amministrativa tra esigenze di uniformità ed effettività delle politiche: alla ricerca di un coordinamento stabile tra Stato e regioni*, in *Le istituzioni del federalismo: regione e governo locale*, 2011, pp. 501-530 (here p. 522-523).

¹¹On the implementation of the "cut-burdens", see *Presidenza del Consiglio dei Ministri – Dipartimento per la funzione pubblica, La semplificazione amministrativa per le imprese*, Dossier n. 4, novembre 2011, on the website: http://www.funzionepubblica.gov.it/media/875495/dossiersemplificazione_iv_nov2011_def.pdf.

¹² Art. 6, co. 3, d.l. n. 70/2011.

¹³ The provision, contained at art. 6, co. 2, lett. b), n. 5, defines also the information burdens as well as all the legal requirements that involve the collection, elaboration, transmission, conservation and production of the information and documents for the public administration.

imprese")¹⁴. According to this provision, the ministerial or inter-ministerial regulations and administrative provisions also have to be published on the official sites of each administration on the basis of the criteria and procedures defined by appropriate regulations, as well as in the Official Gazette¹⁵. Article 8 has also introduced the principle of compensation for regulatory and administrative information burdens: if a normative act or a general provision wants to introduce new burdens then it has to eliminate another burden of the same value which is in force. To implement the principle, article 3 of the *Decreto Semplificazioni* establishes that the state administrations shall provide a yearly report on the overall balance of the administrative burdens introduced and eliminated in the previous year to the Prime Minister's office by January 31¹⁶. If the burdens introduced exceed the burdens eliminated, the Government may adopt regulations to reduce the administrative burdens within its jurisdiction as provided by law. Finally, to contrast the gold-plating phenomenon the law of 2011 (*Legge di Stabilità*) has established that the national implementation of EU Directives cannot introduce or maintain any stronger layers of regulation than the minimum required by the EU Directives. The Annual Information Report (AIR) must acknowledge compliance with this provision¹⁷.

To achieve the complete "de-certification" of relations between the government and private citizens, the legislator has modified the law on administrative records (DPR n. 445/2000) by reducing information burdens. In relations between the organs of public administration and service providers, law n. 183/2011 provides that certificates and

¹⁴ Legge 11.11.2011, n. 180, "Norme per la tutela della libertà d'impresa. Statuto delle imprese".

¹⁵ In the regulation are identified also the modalities for presentation of claims by citizens and enterprises for the non-fulfilment of the provision and the consequences for the purposes of assessing any management liability that may be involved.

¹⁶ Art. 8, co. 2-ter, of l. 180/2011, introduced by art. 3, co. 1, d.l. n. 5/2012, provides for this purpose the adoption of one or more regulations according to art. 17, co. 2, of l. n. 400/1988.

¹⁷ See art. 15, co. 2, l. 12.11.2011, n. 183.

affidavits (*atti di notorietà*) have to be substituted with self-certification as regulated by Articles 46 and 47¹⁸. Such certificates should bear the words: "This certificate cannot be presented to public administration offices or to private providers of public services". Non-compliance with this obligation is a violation of public duty regulated by art. 74 of the *Testo Unico*. This is also clarified by Directive n. 14/2011 of the Minister of Public Administration and Simplification.

2.2 Documents to submit with the application

In order to increase transparency and to simplify the presentation of applications, art. 6 of the *Decreto Sviluppo* requires all public administrations to publish on their websites the list of acts and documents that the applicant has to produce when making an application in proceedings initiated by private parties¹⁹.

Non-compliance with this obligation will be considered in the evaluation of the productivity bonus for senior management and it will have significant consequences on the administrative procedure.

First of all, the public administration cannot reject the application and it is obliged to invite the applicant to regularize the documentation within a reasonable time. Failure to do so will annul the rejection. In proceedings regulated by Article 19 l. n. 241/1990, if the documentation is incomplete it will be possible to start the activity from the date of

¹⁸Art. 15, co. 2, l. 12.11.2011, n. 183. To check the data of the self-certification documents, the administrations shall identify a single office responsible for the activity of their management, transmission and verification. The administrations shall publish on their institutional website the organizational measures adopted for the efficient, effective and prompt acquisition of such data and for carrying out checks.

¹⁹ Art. 6, co. 2, lett. b, nn. 1-6, d.l. n. 70/2011. It is important to point out that the provision is applied to all the administrations identified at art. 1, co. 2, of d.lgs. n. 165/2001.

presentation of the *S.c.i.a.*. In that case the administration cannot reject the continuation of the activity and remove any effects before the deadline for regularizing the application expires. However, this provision does not apply in cases where the production of documents or records is required by a law, regulation or acts published in the Official Gazette.

2.3 The extension of the Segnalazione certificata di inizio attività (S.c.i.a.) and the abolition of ex ante checks

Of the general simplification measures, some are aimed at improving the legal institution of *S.c.i.a.* and others at extending its enforcement area.

The improvement of the *S.c.i.a.*, has undergone several cosmetic operations. The *Decreto Sviluppo* thus provides that the *S.c.i.a.* "shall be deemed to have been presented when the administration receives it"²⁰. Instead the *Decreto Semplificazioni* has clarified that the statements and technical opinions of recognized experts shall be annexed to the *S.c.i.a.* only "where expressly provided by law"²¹. The vexed question of the nature of the *S.c.i.a.*, inside the Italian legal system, was recently solved at the *Adunanza Plenaria* (Plenary Meeting) of the Council of State²². Art. 6, co. 1, d.l. n. 138/2011 accepted the argument that *D.i.a.* and *S.c.i.a.* measures are not tacit provisions that can be directly

²⁰ The provision, which is not applied to the procedures which have been completely computerised (such as the *Sportello unico per le attività produttive*), prevents the public administrations from rejecting *S.c.i.a.*

²¹ Thus art. 2, d.l. n. 5/2012, confirmed the interpretation already provided by the *Ministro per la semplificazione normativa* with an explanatory note of 12.11.2010.

²² *Cons. St., Ad. Plen.*, 29.07.2011, n. 15.

challenged²³. So to protect interested parties from the provisions of *S.c.i.a.*, such parties can ask the administration to intervene directly. Should no intervention be forthcoming, interested parties can activate art. 31, commas 1,2,3 of the *Codice del processo amministrativo*.

To extend the enforcement of *S.c.i.a.*, the provisions of art. 3, co. 1-3, d.l. n. 138/2011 are of particular importance. Article 3 establishes the principle that private initiative and private economic activity are free and everything that is not expressly prohibited by law is permitted. However, some constraints remain, for instance those: of European Community law; of international obligations grounded on fundamental principles of the Italian Constitution; which safeguard fundamental human rights such as safety, freedom, human dignity and social utility²⁴.

Article 3 seems to introduce a new "guillotine" (similar to the one already provided for by *Legge n. 246/2005*). It provides that within one year of the entry into force of d.l. n. 138/2011, the state provisions in contrast with this principle shall be abolished, "with the

²³ *Decreto-legge* 13.08.2011, n. 138, converted with amendments by *legge* 14.09.2011, n. 148.

²⁴ See art. 3, co. 1, letters a)-e) of d.l. n. 138/2011, according to which "everything that is not expressly prohibited by the law is allowed only in cases of: a) constraints arising from the European Union legal system and from international obligations; b) conflict with the fundamental principles of the Constitution; c) damage to security, freedom, human dignity and conflict with social benefit; d) indispensable provisions for the protection of human health, conservation of animal and plant species, of the environment, landscape and cultural heritage; e) provisions on the activities of gambling, i.e. which in any case have effects on public finances", "è permesso tutto ciò che non è espressamente vietato dalla legge nei soli casi di: a) vincoli derivanti dall'ordinamento comunitario e dagli obblighi internazionali; b) contrasto con i principi fondamentali della Costituzione; c) danno alla sicurezza, alla libertà alla dignità umana e contrasto con l'utilità sociale; d) disposizioni indispensabili per la protezione della salute umana, la conservazione delle specie animali e vegetali, dell'ambiente, del paesaggio e del patrimonio culturale; e) disposizioni relative alle attività di raccolta di giochi pubblici ovvero che comunque comportano effetti sulla finanza pubblica".

consequent direct application of *S.c.i.a.* with the following checks." In addition, it authorizes the government by 31 December 2012 to adopt regulations which identify the provisions abrogated and define the regulatory discipline of the subject.

Art. 34 of d.l. n. 201/2011 (known as "*salva-Italia*")²⁵ provides that "the introduction of an administrative system designed to subject the exercise of an economic activity to prior authorization must be justified on the basis of the requirements of a constitutionally general interest compatible with European Community law that respects the principle of proportionality". In this case, and the requirements for the exercise of economic activities are established, such requirements shall be communicated via self-certification to the competent administration. The activity can start immediately unless an *ex post* check is conducted within a defined period. Article 34 therefore intends to replace *ex ante* checks with *ex post* ones. However, it still leaves private parties responsible for any damage to third parties in the exercise of the activity.

Finally, the *Decreto Semplificazioni* modifies art. 2 of l. n. 241/1990 to promote compliance with the terms of procedure and to facilitate the adoption of an *ad hoc* provision whenever *S.c.i.a.* and *silenzio assenso* (silence) are not applicable.

To promote compliance, late or failed enactment of the provision is an element for the evaluation of manager or civil servant performance, and for assessing their disciplinary, administrative and accounting liability. When a provision on an individual application is adopted late, the established time and the effective time taken to conclude the proceedings have to be declared. To facilitate the adoption of an *ad hoc* provision, the law provides that if the deadline to conclude the proceeding expires without a provision, top managers have a substitutive power which citizens can activate with an application²⁶. In this case top

²⁵ *Decreto-legge* 6.12.2011, n. 201, *Disposizioni urgenti per la crescita, l'equità e il consolidamento dei conti pubblici*, converted by *legge* 22.12.2011, n. 214.

²⁶ Art. 1, co. 1, d.l. n. 5/2012. Moreover, the provision regulates the case of the government body's failure to identify the holder of the substitutive power. It prevents the attribution of the substitutive power by the law to the

managers, using competent offices or, a commissioner *ad acta*, can halve the time to adopt the provision²⁷.

3. SPECIFIC INTERVENTIONS

3.1 "Micro-simplifications" for businesses

Simplifications for businesses in 2011-2012 have been achieved through "micro-modifications" introduced by decree-law with the exception of two rules of procedural simplification (on the prevention of fires, D.P.R. 1.09.2011, n. 151, and the administrative laws on the environment, D.P.R. 19.10.2011, n. 227).

The *Decreto Sviluppo*, for example, regards construction²⁸, taxation²⁹, privacy³⁰, procurement, yachting for commercial purposes, production of pontoons of a seasonal

general director, or in his absence, to the director of the office and, in his absence, to the highest ranking official present in the administration.

²⁷ The new co. 9-*quater* of l. n. 241/1990 also provides that by 30 January of each year the person in charge of the exercise of the substitutive power shall communicate to the government body the procedures for which the deadline failed to be respected, subdivided according to type and structure of the competent administration bodies.

²⁸ Art. 5, d.l. n. 70/2011 introduces the concept of "silence" (i.e. silence means agreement - "*silenzio assenso*") for construction permits, apart from cases in which there are environmental, landscape and cultural constraints and, solving the interpretative doubts which have arisen following the amendment of art. 19 of l. n. 241/1990, clarifies the sphere of application of the *S.c.i.a* in substitution of *D.i.a.* for construction. In this regard the interpretation provided by the *Ministro per la semplificazione normativa* of 16.09.2010, has been reiterated, according to which *S.c.i.a.* substitutes *D.i.a.* for construction, except in cases in which the latter is alternative or substitutive for the construction permit. Among the other simplifications on the subject of construction should be mentioned the contract scheme, which has long been widespread in practice, in the granting of cubic metres; the provision, for private housing constructions, for the substitution of the acoustics report with self-certification signed by a qualified technician; the introduction of the obligation for Municipalities to publish on their institutional websites the technical documents annexed to the urban planning instruments. See P. Urbani, *Le innovazioni in materia*

nature³¹, tourist districts³², liquefied petroleum gas tanks³³, authorization for exceptional transport by road³⁴, enrollment in the provincial register of small businesses³⁵.

Similarly, article 14 of the 2011 *legge di stabilità* regards limited liability companies, cooperatives, simplified accounts for the self employed. Article 40 of the "Salva Italia" decree provides simplifications on the obligation to keep and record the register of workers, reclamation of polluted sites, requirements for car repair firms, disposal of special waste.

edilizia privata nella legge n. 106/2011 di conversione del d.l. 13 maggio 2011. Semestre Europeo – Prime disposizioni urgenti per l'economia, in www.giustamm.it, and C. Vitale, *Il "Decreto Sviluppo"*, in "Giornale di diritto amministrativo", 2011, pp. 1049 ff.

²⁹ Art. 7 provides numerous other simplifications on the subject, such as the extension of the regime of simplified accounting (*contabilità semplificata*) and the increase in the amount to be able to summarise in a single document the invoices received during the month.

³⁰ Art. 6, comma 2, letter a) of d.l. 70/2011 excludes from the sphere of application of the Code on the subject of personal data protection contained in d.lgs. n. 196/2003 the treatment of personal data regarding legal persons, organizations or associations used in the context of relationships exclusively between those subjects for administrative and accounting purposes. Moreover, the norm provides for businesses dealing with only the data of their staff, their external collaborators and their families to provide self-certification in substitution of the *Documento programmatico per la sicurezza*.

³¹ Art. 3, co. 7, d.l. n. 70/2011.

³² Art. 3, co. 6, d.l. n. 70/2011.

³³ Art. 6, co. 2, lett. c), d.l. n. 70/2011.

³⁴ Art. 6, co. 2, lett. e), d.l. n. 70/2011.

³⁵ Art. 6, co. 2, lett. f-*sexies*), d.l. n. 70/2011.

Apart from the checks on businesses provided in art. 14, d.l. n. 5/2012 provides "micro-simplifications" for companies and contains, measures concerning the employment of foreign workers holding a residence permit³⁶, communication of employment of in the commerce sector³⁷, participation in public contracts³⁸, specific environmental authorization³⁹, authorization for the recycling of waste oils⁴⁰, itinerant market stalls⁴¹, qualification for installers of equipment in buildings⁴², professional requirements for managers that deal with medical gas deposits⁴³.

3.2 "Micro-simplifications" for citizens

The simplification measures in favor of citizens are less numerous than those for companies. They are mainly based on the digitalization of relationships with the public administration and the strengthening of certain instruments such as digital signatures, certified electronic mail and payments online.

³⁶ Art. 17, d.l. n. 5/2012.

³⁷ Art. 18, d.l. n. 5/2012.

³⁸ Art. 20, d.l. n. 5/2012.

³⁹ Art. 23, d.l. n. 5/2012.

⁴⁰ Art. 24, d.l. n. 5/2012.

⁴¹ Art. 27, d.l. n. 5/2012.

⁴² Art. 34, d.l. n. 5/2012.

⁴³ Art. 38, d.l. n. 5/2012.

The use of information technology is now a constant of all simplification measures regarding also companies and public administrations⁴⁴. The *Decreto Semplificazioni* regulates the modernization of relationships between government, citizens and businesses, especially through the use of digital services and broadband⁴⁵.

Among the simplifications for citizens introduced, the *Decreto Sviluppo* introduces provisions on online payments to local health structures⁴⁶, digital transmission of medical records and change of residence, and the unification of the National health document with the identity card⁴⁷. Other important changes introduced by the *Decreto Semplificazioni* concern documentation for persons with disabilities⁴⁸, the single declaration of conformity of thermal systems⁴⁹, expiry of identity documents⁵⁰, renewal of driving licenses⁵¹,

⁴⁴ Among the digitalization tasks applicable to businesses there is the provision contained in art. 6, co. 2, lett. f-*quater*) of d.l. n. 70/2011, amending art. 2215-*bis* c.c. on book-keeping. Some digitalization tasks for the administrations are in art. 6 *Decreto Semplificazioni*, which provides that some communications between administrations can only be conducted via internet.

⁴⁵ Art. 47, d.l. n. 5/2012.

⁴⁶ Art. 6, co. 2, lett. d) e d-*bis*).

⁴⁷ Art. 10, co. 2, d.l. n. 70/2011.

⁴⁸ Art. 4, d.l. n. 5/2012.

⁴⁹ Art. 11, d.l. n. 5/2012.

⁵⁰ Art. 7, d.l. n. 5/2012.

⁵¹ Art. 11, co. 3, d.l. n. 5/2012.

compulsory exhaust emission checks for motor vehicles and motorcycles⁵², digitalization of enrollment and examination procedures⁵³.

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⁵²Art. 11, co. 8, d.l. n. 5/2012.

⁵³Art. 47, d.l. n. 5/2012.