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TACKLING CLIMATE CHANGE  
THROUGH MULTILEVEL GOVERNANCE:  
FROM GLOBAL MANDATES  
TO NATIONAL AND LOCAL IMPLEMENTATION

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1. INTRODUCTION

THE issue of climate change is surely global: it is a common world-wide problem, which needs common solutions, common rules and share of costs and sacrifices. Nonetheless, although the objective of reducing the global temperature concerns every single nation State and, to be more precise, every single individual of the planet, there is a limited harmonization on the measures to accomplish this target: these still belong to national States and result different, heterogeneous, and conditioned by the territory where they are enacted and implemented.

The aforesaid works both for technical and practical tools and for regulatory approaches. Some States, for instance, prefer investing in wind power, some other in solar power and some more other in nuclear power. While, on the contrary, in other countries the preference is for natural gas and hydroelectric energy. Similarly, there are differences also with regard to the choices concerning public regulatory measures and tools: investments, incentives and funds for private enterprises; command and control measures; environmental taxes; creation of markets and so on. At the same time, also the intensity and the intrusiveness of such regulatory measures towards

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the economic sectors and private individuals vary, according to legal order, being sometimes important and limiting, some others marginal and deferential.

While the environment is recognized as a subject of *global* governance<sup>1</sup> – albeit in recent decades the common public measures adopted worldwide have proved to be not so effective – it is now becoming an issue of *multilevel* regulation<sup>2</sup>, in which national authorities regain a wider and stronger discretionary power in decision-making. Although a connection between extra-national and do-

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<sup>1</sup> On this issue, the sectoral literature is significant. See, among others, E. MORGERA, *Global Environmental Law and the Comparative Legal Method(s) in: Review of European, Comparative and International Environmental Law*, 2015, 24(3) pp. 254-63; T. YANG / R.V. PERCIVAL, *The Emergence of Global Environmental Law in: Ecology Law Quarterly*, 2009, 36(3) p. 664; V. HEYVAERT, *Transnational Environmental Regulation and Governance: Purpose, Strategies and Principles* (Cambridge University Press, 2018), pp. 6-7; O. DILLING / T. MARKUS, *The Transnationalisation of Environmental Law in: Journal of Environmental Law*, 2018, 30(2) pp. 179-206; K. KULOVESI / M. MEHLING / E. MORGERA, *Global Environmental Law: Context and Theory, Challenge and Promise, in: Transnational Environmental Law*, 2009, 8:3, *passim*.

<sup>2</sup> “The concept of multi-level governance can be read in a narrow way as shifting competencies between local, national and supranational governmental institutions, or it can take into account not only traditional methods of public regulation by the state, but also the entire range of actions and institutions which provide order (including public–private partnerships, non-state actors and so on). Authority has not simply shifted upwards to European institutions, it has become dispersed across multiple territorial levels and among a variety of private and public actors (Rosamond, 2007)”, K. KERN / H. BULKELEY, *Cities, Europeanization and Multi-level Governance: Governing Climate Change through Transnational Municipal Networks, in: Journal of Common Market Studies* 47(03), p. 11. On the issue see also the theories on multilevel constitutionalism, in I. PERNICE, *Multi-level constitutionalism in the European Union, in: European Law Review*, 2002, vol. 27, n. 5, 511 ss. See also S. PIATTONI, *The theory of multi-level governance: Conceptual, empirical, and normative challenges*, Oxford University Press, 2010; G. MARKS / L. HOOGHE / K. BLANK, *European integration from the 1980s: State-centric v. multi-level governance, in: Journal of Common Market Studies*, 34(3), 1996, 341-378.

mestic governance is still significant – above all for what relates to defining targets, policy-orientation and general directives –, distinction, fragmentation and separation between the levels of governance still prevail.

Indeed, the system is twofold: global institutes, principles and institutions cohabit with multilevel, State-centered, and fragmented ones. So, if the “risk analysis procedure” and the “environmental impact assessment” are globalized, the “precautionary principle” and the interpretation of environmental exceptions to free trade are not. At the same time, if objectives, targets and deadlines are common and globally based, the policies and measures to accomplish them differ from State to State. Therefore, within the global space we assist in the enhancement of parallel and differentiated regulatory approaches and frameworks, occurring in various levels of governance.

For what concerns public policies to tackle climate change, the multilevel approach is significantly increasing in the last years: the problem remains global, but the responses are national, regional, even local; differentiated and adapted to national prerogatives and capacities. International norms, guidelines, directives and standards are still in force, but national and subnational measures constitute the central and crucial moment of the regulation at stake, which sees States and local administrations as key players.

This trend is significantly enhanced by the diffusion of the Green New Deal (GND), an economic policy program<sup>3</sup> launched some

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<sup>3</sup> The expression recalls the “New Deal” enacted in the United States by the President Franklin Delano Roosevelt between 1933 and 1939 in order to find remedies to the effect of the economic crisis of 1929-1932. This was based on John Maynard Keynes’ theories and on State intervention, in such a way as to not compromise the fundamental principles of the capitalistic system. On the issue, see, among others, K.K. PATEL, *The New Deal: A Global History*, Princeton University, 2016. The reference to Roosevelt’s program unveils two of the primary features of the GND: State intervention in the economy with a view to reviving it, that is to say, to promote growth and development, and the need to identify a meeting point precisely between this economic growth and environmental protection. GND literature is already growing: J. RIFKIN, *The Green New Deal: Why the Fos-*

years ago, recently increasing and still in progress, with the aim of implementing, developing, and consolidating an economy that pursues growth through an ecologically oriented action<sup>4</sup>. The GND combines public interventionism and private initiatives to ensure that all economic and industrial choices are able to promote economic growth through safeguarding the environment<sup>5</sup>. Indeed, the program at stake does not try to find a compromise between the two pillars of growth and environmental sustainability, but it makes them integrated and interdependent, so that fostering one means fostering the other as well.

While sustainable development and environmental protection have generally been good reasons for promoting the integration and harmonization of related national regulations, strengthening and accelerating the process of global governance in these areas<sup>6</sup>, the GND

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*sil Fuel Civilization Will Collapse by 2028, and the Bold Economic Plan to Save Life on Earth*, St. Martin, 2019; N. CHOMSKY / R. POLLIN, *The Climate Crisis and the Global Green New Deal: The Political Economy of Saving the Planet*, Verso Books, 2020; A. PETTIFOR, *The case for the Green New Deal*, Verso Books, 2020.

<sup>4</sup> “An economy that sustains life on earth will be a steady state economy and will not exceed the nine ecological boundaries: stratospheric ozone depletion; loss of biosphere integrity (biodiversity loss and extinctions); chemical pollution and the release of novel entities; climate change; ocean acidification; freshwater consumption and the global hydrological cycle; land system change; nitrogen and phosphorus flows to the biosphere and oceans; atmospheric aerosol loading”, *Ibid.*, p. 158. See also *Stockholm Resilience Centre*.

<sup>5</sup> The *Green New Deal* aims at reducing CO<sub>2</sub> emissions and global warming; protecting biodiversity and human, animal and plant health; reducing general pollution and waste, and, at the same time, promoting socio-economic development; identifying new areas of investment; increasing wealth and general well-being.

<sup>6</sup> In this regard, the affirmation of sustainable development, starting from the seventies and eighties of the last century, initiates a series of intervention programs, of an international nature, aimed at encouraging development – especially in the poorest countries – without compromising the environment. This has fostered international cooperation, the emergence of international environmental principles (“the polluter pays”; “pre-

seems to be following a different path. Although this approach is being affirmed all over the planet, in the EU, as well as in the USA or in China, its content changes from one place to another. The scope and the objectives are all similar and, in some cases, shared, as they find recognition in global or regional policies, but their specific implementation sees the role of domestic administrations strengthened. This occurs at state level – where fundamental choices are made in terms of investments, incentives, planning and limits to enterprises –, and at local level – where numerous implementing measures are put in place to enable the GND to be actuated.

In this sense, the climate change policies under the umbrella of the GND, rather than global, develop as multilevel and polycentric. They are multilevel because the environmental sector, if compared with others, reveals a multi-layered governance, in which the separation and distribution of functions between international organizations and national States is evident, effective and considerable and in which domestic actors still have enough discretion and powers to determine the content of their regulatory measures, despite some common procedural limits and targets<sup>7</sup>.

In addition, the system also reveals polycentric, being characterized by “multiple governing authorities at different scales rather than a monocentric union”<sup>8</sup>. Therefore, there is a plurality of regulatory subjects acting in the field.

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caution”; and so on) and the birth of international organizations in the sector.

<sup>7</sup> On this see D. BEVILACQUA, From Sustainable Development To Green New Deal, in: *Ius Publicum Network Review*, Issue 1, 2021, 20 ss. Accordingly, see Recital n. 11 of the EU Commission, *Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2030*, Brussels, 14.10.2020 COM(2020) 652 final 2020/0300 (COD), 9: “Environment policy being highly decentralised, action to achieve the priority objectives of the 8th EAP should be taken at different levels of governance, i.e. at the European, the national, the regional and the local level, with a collaborative approach to multi-level governance”.

<sup>8</sup> The term polycentricity was first used in essays Michael Polanyi published such as *The Logic of Liberty* (1951) to describe a method of social

These two characteristics are in evident contradiction, as the governance of one of the most globalized issues does not produce a common institutional system of regulation. Nonetheless, the contemporary presence of a plurality of subjects still may produce significant change and may be interpreted according to a hopeful

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organization in which individuals are free to pursue their objectives within a general system of rules (POLANYI, *The Logic of Liberty* (1951), Liberty Fund, 1998). A decade after the publication of *The Logic of Liberty*, V. OSTROM *et al.* (The Organization of Government in Metropolitan Areas: A Theoretical Inquiry, in: *American Political Science Review*, 1961, vol. 55, issue 4, 831-842) adopted the term polycentricity to describe a form of organization in metropolitan-area governance characterized by a multiplicity of overlapping political units. They argued that this seemingly inefficient configuration of political units could achieve greater efficiency in the production and provision of public goods and services than a centralized government if certain market-like characteristics were present.

With reference to the environment, see E. OSTROM, Polycentric systems for coping with collective action and global environmental change, in: *Global Environmental Change*, 2010, 20 (4), p. 552: "Each unit within a polycentric system exercises considerable independence to make norms and rules within a specific domain (such as a family, a firm, a local government, a network of local governments, a state or province, a region, a national government, or an international regime)". On polycentricity and climate change, among others: A. JORDAN / D. HUITEMA / H. VAN ASSELT / J. FORSTER (eds), *Governing climate change. Polycentricity in action*, Cambridge, Cambridge University Press, 2018, *passim*; R.B. STEWART / M. OPPENHEIMER / B. RUDYK, *A new Strategy for Global Climate Protection*, in: *Climatic Change*, 120(1-2), *passim*; H. OSOFSKY, Polycentrism and climate change, in: *Climate Change Law*, edited by D. FALBER / M. PEETERS, Cheltenham, Edward Elgar, 2016, p. 324 ff. On polycentricity in general: P. ALIGICA / V. TARKO, Polycentricity: from Polanyi to Ostrom, and beyond, in: *Governance*, 2012, 25 (2), p. 237 ff. and M. MCGINNIS (ed.), *Polycentricity and Local Public Economies*, Ann Arbor, University of Michigan Press, 1999, *passim*; C. SKELCHER, Jurisdictional integrity, polycentrism, and the design of democratic governance, in: *Governance*, 2005, 18, p. 89, where he describes polycentric governance systems as those in which "political authority is dispersed to separately constituted bodies with overlapping jurisdiction that do not stand in hierarchical relationship to each other".

thinking: the activities tackling climate change, although not coming from a top-down and globalized harmonization of the policies to adopt, are still emerging and increasing from the bottom, producing an effective complementary governance of the problem in a more fragmented and multi-centered approach<sup>9</sup>, as a domestic reaction to the slowness and incapacity of the international community to accomplish the task.

The following article will examine these issues in depth, concentrating on some international and EU legal provisions, confirming the described approach. It will be organized as follows:

In paragraph 2 the analysis will focus on two significant extra-national measures to tackle climate change: the Paris Agreement and the EU Regulation establishing the framework for achieving climate neutrality. Both reveal a similar approach, which sets common targets, purposes and methods, while leaving to the States the choice of the measures to accomplish them, without providing for effective sanctions for non-compliance.

Paragraph 3 deals with other actual regulations relating to the environment and climate change, specifically pertaining to buildings' energetic efficiency in the EU and other "glocal" experiments. The examples show how the multi-layered character of these policies involves also subnational authorities, which connect to supranational institutions, sometimes even bypassing States. This reveals a *glocal* approach to the issues at stake, which may prove to be quite efficient.

Paragraph 4 will provide some reflection on the analyzed issues and will show that the described pattern may not be the result of lack of courage or a disappointing result of the negotiations; it could rather be a precise choice, based on realism and insisting on bottom-up and diversified approaches. Nonetheless, this choice presents advantages and drawbacks, opportunities and risks.

The conclusions will insist on these positive and negative respects in the effectivity to reach the objective of all international and na-

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<sup>9</sup> E. OSTROM, Polycentric systems for coping with collective action, *cit.*, *passim*.



tional regulations in this field, which is to tackle climate change without reducing economic growth and social development.

## 2. FROM PARIS AGREEMENT TO EU CLIMATE LAW: A MULTILEVEL ENVIRONMENTAL GOVERNANCE

The Paris Agreement<sup>10</sup> and the EU Regulation 2021/1119<sup>11</sup> present similar features and characteristics, all confirming a similar regulatory vision that, despite aiming at maintaining a global common approach to tackle climate change and protect the environment, does not foresee a harmonized and homogeneous governance, while leaving a good amount of discretionary powers to domestic rule-makers and administrations. On this model, three significant traits must be pointed out.

The first one concerns the strategic approach of bottom-up regulation: although the environment is a common world-wide problem, realistically it cannot be faced with common, uniformed and identical solutions. Both in the EU, as at the global level, the policies and measures need to be diversified and be adapted to the needs, political views and characteristics of the territories where they are implemented. If common standards and minimum levels of achievement

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<sup>10</sup> The Paris Agreement is a legally binding international treaty that entered into force on 4 November 2016. Today, 192 Parties (191 countries plus the European Union) have joined it. It includes commitments from all countries to reduce their emissions and work together to adapt to the impacts of climate change and calls on countries to strengthen their commitments over time. The Agreement provides a pathway for developed nations to assist developing nations in their climate mitigation and adaptation efforts while creating a framework for the transparent monitoring and reporting of countries' climate goals. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en).

<sup>11</sup> *Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')*, PE/27/2021/REV/1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1119>

are established at supranational level, this approach may still be successful.

Secondly, the multilevel approach does not mean a definitive divergence from global governance. Both the Paris Agreement and the EU Climate Law follow a common regulatory view, grounded on the interaction, linkages and norms shared among the member States and on common objectives and principles. Nonetheless, the compulsory nature of such regulation is weaker, so voluntary commitments and reputational accountability, as well as domestic discretion in establishing rules and in implementing measures are enhanced.

Finally, both disciplines under consideration imply a choice – by the international Community and the EU legislators – which takes account of a realistic starting point, which does not leave much space to an environmental globalized law. Due to the inconvenience and the costs – at least in the short term – of environmental protection measures, countries tend to minimize their efforts to face climate change and pollution and compulsory, harmonized and global approaches do not seem at sight at the moment, with the risk of producing more resistance than with a bottom-up and multilevel response.

### *2.1. The Paris Agreement and the Differentiated Responsibilities of National States*

Art. 2, par. 1, lett. a) of the Paris Agreement aims to “strengthen the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels”. The same Agreement, as stated in the second paragraph of the same Art. 2, “will be implemented to reflect equity and the principle of common but *differentiated* responsibilities and respective capabilities, in the light of *different* national circumstances” (*italics added*).

In these first words, besides the objective of the Treaty at issue, we can find the main *rationale* of the regulatory approach stemming from it: the Paris Agreement does not aim to homogenize and

make common the measures to tackle climate change but to admit differentiated responsibilities and recognize different capabilities and different national circumstances. This vision finds confirmation in the implementation mechanism: every five years, each country is expected to submit an updated national climate action plan (Nationally Determined Contribution – NDC). In their NDCs, countries communicate actions they will take to reduce their greenhouse gas emissions in order to reach the goals of the Paris Agreement and to build resilience to adapt to the impacts of rising temperatures. To better frame the efforts towards the long-term goal, the Paris Agreement invites countries to formulate and submit long-term strategies (Arts 3, 4, 6, 7 and 13).

The NDCs's submission is mandatory, but their content is left to national States' discretion. At the same time, the entire Agreement is binding, but its enforcement capacity is significantly reduced<sup>12</sup>. On this, for instance, no sanction-mechanism is foreseen to force countries to maintain their commitments or in case of violations of the Treaty's provisions.

Other binding mechanisms concern procedural obligations. For instance, Art. 4, par. 8 establishes that "in communicating their na-

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<sup>12</sup> It provides for ratification by the States that have signed it and its implementation. In addition, no judicial mechanisms have been provided for to sanction States that do not comply with the provisions of the agreement. It follows that the instrument is not very effective in terms of its successful implementation in the territories, even if the Agreement itself provides for four implementation mechanisms: transparency and the duty to inform, assistance and support from the weakest countries, efficiency and, finally, the establishment of a committee to facilitate implementation. Accordingly, see M. FEHLING, *Energy Transition in the EU and its Member States: Interpreting Federal Competence Allocation in the Light of the Paris Agreement*, in: *Transnational Environmental Law*, 10-02, 202, p. 350: "Not all parts of the Paris Agreement are equally binding. To a large extent it is more less soft law. Many responsibilities of the signatory states are framed in rather vague terms; quite often the agreement says that the parties 'should' do something (e.g., Article 4(4)) or that they 'aim to ... as soon as possible' (e.g., Article 4(2)). If such clauses are legally binding at all, they can be understood only as purely procedural obligations".

tionally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement". Such a transparency duty is functional to the implementation of the Agreement and while it does not affect the content of national policies on climate change, increases their exposure to judgment and to the "naming and shaming" mechanism, which characterizes the Treaty as such.

In addition, paragraph 13 of the same Article provides that "Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency (...)". This means that national Member States are responsible – and must give account – for the choices they made to tackle climate change, reporting, in a complete and transparent manner, the results obtained from their contribution.

The entire regulatory framework within the Agreement is built to place the responsibility for climate measures on national States' shoulders, although without a direct enforcing mechanism for compliance. Nonetheless, the rationale is to work on transparency; information and best-practice sharing; public reputation and empowerment of domestic institutions. By renouncing to impose a binding and top-down approach, the international community opted for an alternative empowering attempt: "While the concept of bottom-up action on climate is not novel – it was much discussed during the lull in the international negotiations and international climate action in advance of Copenhagen – the Paris Agreement is novel in that it brings disaggregated bottom-up action into an international framework. Some climate negotiators have suggested that a focus on non-state actors will reduce the pressure on countries to fulfill their NDCs and to make more ambitious commitments in the future"<sup>13</sup>.

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<sup>13</sup> R.B. STEWART / M. OPPENHEIMER / B. RUDYK, *Building Blocks: A strategy for Near-term Action within the new Global Climate Framework*,

As mentioned, the most important international agreement on climate change does not foresee mechanisms of sanctions and enforcement to effectively oblige States to conform to global policies to stop gas emissions and all other pollutant affecting temperatures. This may be interpreted as a lack of courage or the incapacity to produce a common universal program of climate policies<sup>14</sup>. Alternatively, it may be instead a precise choice, based on realism and on the failure of the Kyoto Protocol which, even if it had binding sanctioning mechanisms<sup>15</sup>, did not accomplish its mission. This vision might respond to a strategy, based on domestic empowerment, incentive mechanisms, horizontal competitions among states, soft powers and differentiations related to geo-cultural characteristics. The approach is not an isolated case – as we will see immediately – and its effects may be assessed in two ways.

According to a benevolent judgment, the strategy may be successful for at least three reasons: first, the approaches to a more effective environmental protection and to ecological transition cannot be harmonized, as they are strongly connected to the needs, characteristics, convenience and present conditions of each single territory

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2017, Springerlink.com, p. 2, now published as *Introduction* to a Special Issue on *Alternate Structures for a Global Climate Action: Building Blocks Revisited*, edited by R.B. STEWART / B. RUDYK. On the “bottom-up approach” see M.-C. CORDONIER SEGGER, Advancing the Paris Agreement on Climate Change for Sustainable Development, in: *Cambridge Journal of International and Comparative Law*, 5(2), 2016, pp. 209-2012 and D. BODANSKY / J. BRUNNÉE / L. RAJAMANI, *International Climate Change Law*, Oxford University Press, 2017, pp. 214-215.

<sup>14</sup> On this issue see, among others, R. CLÉMENÇON, The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?, in: *The Journal of Environment & Development*, 03/2016, Volume 25, Issue 1, p. 9 and *passim*; H.N. / Å. PERSSON, Global climate adaptation governance: Why is it not legally binding?, in: *European Journal of International Relations*, Vol 24, Issue 3, 2018; N. KUSNETZ, Why the Paris Climate Agreement Might be Doomed to Fail, <https://insideclimatenews.org/news/28072021/pairs-agreement-success-failure/>.

<sup>15</sup> S. OBERTHÜR / R. LEFEBER, Holding countries to account: The Kyoto Protocol's compliance system revisited after four years of experience, January 2010, *Climate Law* 1(1), p. 134.

involved; second, connected to the previous, a deep and wide change in climate policies must involve and be shared by a large number of actors, among which citizens, organizations and enterprises, besides governments and public institutions, and this may easily occur at local level, rather than in a global arena; third, as the most realistic path to reach the goal is finding a way to maintain economic growth without damaging the environment, the solution will better come out of competition among States rather than through an imposed decision determined from above.

Alternatively, the described strategy may be evaluated with a negative assessment. First of all, this concerns the fact that we might not have enough time to test if it is as successful as it promises: considering the urgency of an intervention to tackle climate change, waiting for all the States to comply with international targets may be too slow and ineffective. In addition, renouncing to impose a common and harmonized policy on the environment may foster the risk to encourage free-riding behaviors and race to bottom mechanisms among the international community due to the fact that the unpopularity of the actions required is quite high.

## *2.2. Binding but Empty: The EU Climate Law and Member States' Discretion*

A similar approach as the one just described is to be found in the EU Regulation 2021/1119, named "The EU climate law". The latter, besides sharing the same objective as the Paris Agreement, to be implemented by making the EU the first zero-emissions continent by 2050, presents an analogous feature in leaving the Member States a wide margin of discretion in decision-making on the issue at stake.

This approach is visible in Art. 2, paragraph 2 of the Regulation, laying down that "the relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective". The

European legislator clearly identifies the objective to be achieved by the States and by the Union itself, namely that of climate neutrality, but without specifying what measures will be taken for this purpose, limiting itself to classifying the latter as “necessary”. In such way, it provides a rather abstract evaluation criterion, since while identifying the objective to be achieved, the expression “necessary” remains too vague if specific policies, measures and instruments to be implemented in the medium term do not support it.

Broad discretionary and interpretative powers are therefore left to the competent institutions (EU Commission and Member States) to adopt measures to combat emissions. Therefore, we know the subjects acting as the main decision-makers, but not the tools: so far it is not possible to say what measures will be adopted, what tasks will be assigned, nor the powers and ways in which these will be conferred to achieve the objective of climate neutrality.

These first provisions outline a general regulatory framework – in truth rather vague – useful to identify the objective of regulation, to dictate the line to be followed, which coincides and goes beyond that established in the international arena with the Paris Agreement, and to identify the actors involved in its implementation, but not providing for immediate action.

In addition, paragraph 2 of Art. 5 of Regulation 1119 establishes that “the Commission shall adopt a Union strategy on adaptation to climate change in line with the Paris Agreement and shall regularly review it in the context of the review provided for in point (b) of Article 6(2) of this Regulation”. Paragraph 4 of the same Article lays down that “Member States shall adopt and implement national adaptation strategies and plans, taking into consideration the Union strategy on adaptation to climate change referred to in paragraph 2 of this Article and based on robust climate change and vulnerability analyses, progress assessments and indicators, and guided by the best available and most recent scientific evidence”.

The Commission regularly assesses both European (Article 6) and national (Article 7) policies. Regarding the latter, if these are not consistent with the achievement of the climate-neutrality objective or do not ensure progress on adaptation referred to in Article 5, it may make recommendations making them available to the public.

States are called upon to give explanations as to how they intend to “take due account” of the recommendations (Article 7(3)(a)) and, if they do not follow them up, they must justify this choice (Art. 7(3)(b)).

The EU oversees the strategy and programming, delegating the concrete and detailed regulation to the States, and then verifying their work periodically. However, in such verification, as mentioned, States can deviate from supranational recommendations, as long as they justify such deviation. No sanction is foreseen in case of non-compliance, which produces a two-fold effect: both the capacity to bind national States, and the harmonization of the rules are weakened.

The described model demonstrates the important role of guidance and direction played by the European Union between the general purposes dictated by international law and the normal executive powers entrusted to national administrations. This stage in the chain of government is peculiar because it is not merely directive, but is also identifying a strategy, procedures, and competences; and yet it is not even purely juridical-administrative because it does not define the measures to be taken, nor does it lay down limits on the choices of the Member States. In addition, it is coherent with the *rationale* of Arts 192 and 193 TFEU, in which the allocation of competences is not clear as the policy area of the environment presents a situation in which powers and responsibilities are shared between the Union and the States<sup>16</sup>.

This confirms the multilevel structure of such model of governance, in which the EU is an intermediate subject within the extra-national system, with tasks of guidance, policy definition, programming and execution (together with Member States)<sup>17</sup>. In this sys-

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<sup>16</sup> In this sense, see M. FEHLING, *Energy Transition in the EU and its Member States*, *cit.*, pp. 341-346.

<sup>17</sup> This approach follows its own logic: on the one hand, the EU takes a step forward with respect to the international model, which on the environment has rarely managed to overcome national borders, meeting the resistance of States in the implementation of common policies; on the other hand, the step is short, because if it is true that the European Union itself – with its conditional measures, with the coordination and the definition of



tem, the last phase is thus fragmented and heterogeneous, as the applicable norms do not foresee the harmonization of the regulatory measures to be adopted.

This confirms that global and EU environmental governance, if compared with trade or other economic disciplines, ends up being less globalized or Europeanized and more connected to national prerogatives and priorities. This is not changing – rather, it is enhanced – with the Green New Deal, above all in the EU, where the European Green Deal (EGD)<sup>18</sup> still “operates as a genuinely destabilizing force, one generating legal conflicts between the consolidated objectives of the European substantive constitution and the emerging goal of ecosystems’ biodiversity, without providing any legal or institutional tool for their resolution”<sup>19</sup>. Despite a common

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common bases – is stronger than the international complex, it limits itself to planning, specifying objectives and requesting measures of action, without however identifying a concrete regulation and the activities to be adopted and without establishing legal mechanisms that bind the states.

<sup>18</sup> The EGD has been launched with a Communication of the EU Commission: *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal*, Brussels, 11.12.2019 COM(2019) 640 final. It is a program of 116 points, which commits the EU Countries to “transform the EU into a modern, resource-efficient, and competitive economy, ensuring: no net emissions of greenhouse gases by 2050; economic growth decoupled from resource use; no person and no place left behind. [...]. The European Green Deal provides an action plan to boost the efficient use of resources by moving to a clean, circular economy; restore biodiversity and cut pollution. The plan outlines investments needed and financing tools available. It explains how to ensure a just and inclusive transition. The EU aims to be climate neutral in 2050” ([https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)). The single objectives are listed in a table attached to the Communication: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596443911913&uri=CELEX:52019DC0640#document2>, p. 2.

<sup>19</sup> E. CHITI, *Managing the Ecological Transition of the EU: The European Green Deal as a Regulatory Process*, in: *Common Market Law Review*, 2022.

strategic vision, the actual regulation stemming from the EGD reproduces a fragmented model, which respects national distinctions, preferences and competences, even when it takes into account connections and reciprocal dependency. Regulation No. 1119 confirms this view, as it establishes the vision, the approaches, the objectives, and the priorities, which the same EU promotes with funding, coordination, assistance and control. Notwithstanding, the subjects performing – and choosing – the measures to reduce climate change are mainly national States and their authorities.

The analysis of the Paris Agreement and of the EU Climate Law confirms the increment of the multi-layered approach for environmental governance. If sustainable development and environmental protection in general have been valid reasons for promoting the integration and harmonization of national regulations<sup>20</sup> to protect these values, so enhancing and fostering the process of global governance of such a sector – as confirmed by the Kyoto Protocol<sup>21</sup> or

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<sup>20</sup> In this regard, the affirmation of sustainable development, starting from the seventies and eighties, initiates a series of intervention programs, of an international nature, aimed at encouraging development – especially in the poorest countries – without compromising the environment. This has fostered international cooperation, the affirmation of international environmental principles (“the polluter pays”; precaution”; etc.) and the birth of international organizations in the sector. On this see K. KULOVESI / M. MEHLING / E. MORGERA, *Global Environmental Law: Context and Theory, Challenge and Promise*, in: *Transnational Environmental Law*, 8:3, 2019, Published online by Cambridge University Press, pp. 405-435.

<sup>21</sup> The Kyoto Protocol created an emission allowance market to keep the total amount of CO<sub>2</sub> within certain limits worldwide. Although it provides for the involvement of States and is in fact ineffective because of the reluctance of some of them to take part, it has been conceived, structured and put in place as a properly global measure, with common rules, aimed at regulating a world-wide market, specially constituted and extended on a global scale. On the subject, see R.G. TARASOFSKY / S. OBERTHÜR / H.E. OTT, *The Kyoto Protocol. International Climate Policy for the 21st Century*, Springer Berlin Heidelberg, 2013; V. HEYVAERT, *Transnational Environmental Regulation and Governance. Purpose, Strategies and Principles*, Cambridge University Press, 2019, p. 59 and *passim*.

the Århus Convention<sup>22</sup> – the GND follows a different path. The theme and the objectives to be achieved remain supranational (global or regional), in any case common, but the choice of instruments for their pursuit, their administrative content, the timing of action and the implementation of public intervention measures see the role of domestic administrations strengthened. Whereas at global and regional level, common strategies and approaches are outlined, at national level, fundamental choices are made in terms of main regulation, investments, incentives, planning and limits to companies while at local level, a number of implementing measures are put in place to enable the joint projects to be realized in practice.

### 3. CLIMATE CHANGE AND “GLOCAL” POLICIES: FROM SUPRANATIONAL MANDATES TO LOCAL IMPLEMENTATION

A second significant aspect relating to policies on climate change is their “glocal”<sup>23</sup> character. The governance emerging in this sector,

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<sup>22</sup> *Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters*, 25 June 1998 (entered into force on the 30<sup>th</sup> of October 2001). The Aarhus Convention – adopted in order to protect the environment, promote sustainable development and protect human rights –, while targeting the Member States, identifies a number of common procedural guarantees (a right of access to information, a right of participation in the environmental decision-making process and a right of action of individuals' claims in the event of infringement of access rights and participation) extended to all and attributable to a judicial body also by private individuals. See S. CASSESE, *Il diritto globale. Giustizia e democrazia oltre lo Stato*, Torino, 72 ss.; M. MACCHIA, *Legality: The Aarhus Convention and the Compliance Committee*, in: S. CASSESE / B. CAROTTI / L. CASINI / E. CAVALIERI / E. MACDONALD (eds), *Global administrative law: The Casebook*, 3<sup>rd</sup> Ed. Irpa, 2012, 13 ss. <http://www.irpa.eu/wp-content/uploads/2012/08/the-casebook-chapter-3.pdf>.

<sup>23</sup> The concept of glocalization has been defined as the “simultaneous occurrence of both universalizing and particularizing tendencies in contemporary social, political, and economic systems. The term, a linguistic hybrid of globalization and localization, was popularized by the sociolo-

in accordance with the impulse given by the GND approach, foresees an important connection between supranational powers – charged with mandates, guidelines, objectives and general principles – and local institutions, deputed to implement public measures in the field, and connecting with each other and with private subjects in regulatory networks for policy implementation. Such a glocal tendency, though, creates a synergy between necessarily common and supranational mandates and objectives and local and territory-related implementation and final decisions. And produces as well informal organizational models for the implementation of policies and measures.

A valid example is found in the sector of renovation of buildings, which aims to considerably reduce energy consumption and wastes, with positive effect on CO<sub>2</sub> emissions and global climate change<sup>24</sup>.

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gist Roland Robertson and coined, according to him, by Japanese economists to explain Japanese global marketing strategies. The notion of glocalization represents a challenge to simplistic conceptions of globalization processes as linear expansions of territorial scales. Glocalization indicates that the growing importance of continental and global levels is occurring together with the increasing salience of local and regional levels. Tendencies toward homogeneity and centralization appear alongside tendencies toward heterogeneity and decentralization. But the notion of glocalization entails an even more radical change in perspective: it points to the interconnectedness of the global and local levels. Most users of the term assume a two-level system (global and local), citing phenomena such as hybridization as the result of growing interconnectedness. Local spaces are shaped and local identities are created by globalized contacts as well as by local circumstances. Thus, globalization entails neither the end of geography nor declining heterogeneity.”, *Britannica*, <https://www.britannica.com/topic/glocalization>. On the issue see, among others, R. ROBERTSON (ed.), *European Glocalization in Global Context*, Palgrave Macmillan UK, 2014; V. ROUDOMETOF, *Glocalization: A Critical Introduction*, UK: Taylor & Francis, 2016; Z. BAUMAN, On Glocalization: or Globalization for some, Localization for some Others, in: *Thesis Eleven*, 1998, Vol: 54, issue: 1, pp. 37-49; *Id.*, Glocalization and Hybridity, in: *Glocalism. Journal of Culture, Politics and Innovation*, 2013, Vol. 1.

<sup>24</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social*

On this issue, for instance, the European Committee of the Regions and the European Commission have entered into cooperation to accelerate the renovation and decarbonization of the EU's housing and estate sector. The partnership aims to support local and regional authorities and builds on the fact that the "renovation wave" of EU buildings is a key factor in contributing to the ecological transition project: relaunching new investments, creating jobs, saving energy and reducing greenhouse gas emissions.

Following the relevant strategy published by the Commission<sup>25</sup> – not by chance contained in a non-binding text (a Communication) – the European Union finances and establishes the orientation, the objectives and the priorities (§§ 2-3.6) for removing existing obstacles along the restructuring chain, with a series of policy measures, financing instruments and technical assistance arrangements<sup>26</sup>. Then National Member States, together with local and regional authorities, carry out the activities of change, presenting projects to obtain the funds and implementing the supranational directives<sup>27</sup>.

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*Committee and the Committee of the Regions. A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives*, Brussels, 14.10.2020 COM(2020) 662 final.

<sup>25</sup> *Ibid.*

<sup>26</sup> The level(s) indicators have been published in January 2021: <https://susproc.jrc.ec.europa.eu/product-bureau/product-groups/412/documents>. In the Communication, the Commission itself announces the adoption of binding legal texts in order to put in place the designed strategy: "Building on such good practices, the Commission will propose mandatory minimum energy performance standards as part of the revision of the Energy Performance of Buildings Directive (EPBD) by the end of 2021, following an impact assessment looking at the scope, timeline and phasing of a progressive implementation of such requirements, including the need for accompanying support policies. Such measures will facilitate linking specific national, regional and local incentives and support compliance with these minimum standards", European Commission, *Communication [...] A Renovation Wave for Europe*, cit., p. 8.

<sup>27</sup> Another example of multilevel action within the GND, involving supranational actors and subnational actors, can be found in the Regional legislative Act of Emilia-Romagna n. 16 of 2015, in support of the circular economy. This was adopted in implementation of Decision 1386/2013/EU

However, as it is known, the core moment of such regulatory activity occurs at local level, where inspections, authorizations, controls and eventually sanctions are managed, by local authorities. Therefore, the European regulatory package, implemented by all the Member States, directly affects the activity both of local and of private subjects involved in the field, either exclusively or acting together: for instance, local authorities act in combination with private subjects – be it enterprises or private owners – in order to implement the project of building renovations through the EU financing incentives<sup>28</sup>.

Another example, besides building renovation, concerns the electricity supply for public buildings or street illumination, which are turning into renewable energy sources in many cities, with direct involvement of the local authorities<sup>29</sup>.

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on a general Union action programme on the environment until 2020 “Living well within the limits of our planet” and of Art. 4 of Directive 2008/98/EC on waste, which promotes measures to reduce waste production and its recovery, reuse and recycling also as an energy source.

<sup>28</sup> Examples of these kinds of project are increasing. For instance, in three European places (Manlleu and Sant Cugat, in Spain and Corby, in the UK) a new model of building renovation has been experimented. It is named “*Combined Heat System by using Solar Energy and Heat pumps – CHESS*” (<https://cordis.europa.eu/project/id/680556>). The initiative saw the creation of a Consortium, composed of subjects of a public nature (the University of Ulster, in Ireland; the Agency for Urban Ecology of Barcelona; the Municipality of Sant Cugat in Spain) and private (an architectural firm; various energy producing and distributing companies; consulting companies), with the task of creating a reliable, efficient, and profitable system able to provide heating and hot water in buildings mainly from renewable sources. Thanks to a combination of solar thermal energy production, seasonal heat storage and the use of high-efficiency heat pumps, the system has been applied to both new and existing buildings, with a reduction in energy costs for users and a reduction in CO<sub>2</sub> emissions.

<sup>29</sup> In Italy, for instance, the legislative decree n. 102/2014, “*Attuazione della direttiva 2012/27/UE sull’efficienza energetica, che modifica le direttive 2009/125/CE e 2010/30/UE e abroga le direttive 2004/8/CE e 2006/32/CE*” implements an EU directive issued, among other measures,

Besides incentives and investments, the EU legislation foresees also prohibitions and compulsory measures, directly affecting private subjects: as entrepreneurial, who must provide certificates when involved in renovation activities<sup>30</sup>; and as individual owners, who must provide a certificate of the energetic performance as well, in order to measure the efficiency of the building in energy saving, which conditions letting and selling of apartments and houses<sup>31</sup>. The model is multilevel in a broad sense, as regulatory activities are dispersed across multiple territorial levels and performed by a variety of private and public actors<sup>32</sup>.

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to create a national fund for energetic efficiency in order to renew public offices and local illumination (Art. 15).

<sup>30</sup> European Commission, *Communication [...] A Renovation Wave for Europe*, cit., p. 7: "The Commission considers that energy performance certificates (EPC) and their availability in accessible databases improve transparency of the performance of the building stock. At the building level, EPCs inform about energy performance, share of renewables and energy costs. At district, regional, national or Union level, they are crucial for identifying the worst-performing buildings in urgent need of renovation. They can be used to evaluate improvements relative to the investment before and after the works and help connect financing with quality renovation".

<sup>31</sup> "Latterly, the most comprehensive approach can be seen in the European Union (EU). Following the 2010 EU Energy Performance of Building Directive, it is mandatory for all European properties to hold an Energy Performance Certificate and monitor their heating and air conditioning (all 28 Member States signed up to this directive). EPCs have a significant relationship with climate-related stranded assets in real estate. They are a key enabler of building improvement, as they influence decision making in real estate transactions and provide cost-optimal recommendations for energy performance improvement", K. MULDOON-SMITH, Understanding climate-related stranded assets in the global real estate sector, in: B. CALDECOTT (ed.), *Stranded Assets and the Environment: Risk, Resilience, and Opportunity*, Routledge Explorations in Environmental Studies, Taylor & Francis, 2018, p. 157. On this see: [https://ec.europa.eu/energy/topics/energy-efficiency/energy-efficient-buildings/energy-performance-buildings-directive\\_en](https://ec.europa.eu/energy/topics/energy-efficiency/energy-efficient-buildings/energy-performance-buildings-directive_en).

<sup>32</sup> On this description of multilevel governance see B. ROSAMOND, New Theories of European Integration, in: M. CINI / N. PÉREZ-SOLÓRZANO

This approach is not isolated, as confirmed by the consequent initiatives taken by the EU institutions: in December 2021, the Commission proposed a revision of the directive on the energy performance of buildings (COM(2021) 802 final). It upgrades the existing regulatory framework to reflect higher ambitions and more pressing needs in climate and social action<sup>33</sup>, while providing EU countries with the flexibility needed to take into account the differences in the building stock across Europe: “setting a common EU framework for the decarbonisation trajectory of buildings and related requirements while allowing for adaptation to national circumstances would thus bring much needed certainty for all actors across the supply chain of renovation and construction, and predictability and readiness to all stakeholders, from industries, to local and national workforces, private investors and financial institutions”<sup>34</sup>. This last aspect, as evident, confirms the *rationale* of the reform: a common supranational regulatory framework and a domestic implementation activity, taking into account the differences, the priorities and the needs of the geographical areas of the implementation.

Another example of the relationship between supranational regional mandates and directions and local and territorial implementations and actuations is given by the “Covenant of Mayors on Cli-

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BORRAGÁN (eds), *European Union Politics*, Oxford: Oxford University Press, 2010, pp. 104-122.

<sup>33</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)*, Brussels, 15.12.2021 COM(2021) 802 final 2021/0426 (COD), p. 4: “The main objectives of this revision are reducing buildings’ greenhouse gas (GHG) emissions and final energy consumption by 2030 and setting a long-term vision for buildings towards EU-wide climate neutrality in 2050. In order to meet them, the initiative is grounded in several specific objectives: to increase the rate and depth of buildings renovations, to improve information on energy performance and sustainability of buildings, and to ensure that all buildings will be in line with the 2050 climate neutrality requirements. Strengthened financial support and modernisation and system integration are levers to deliver on these objectives”.

<sup>34</sup> *Ibid.*, p. 5.



mate Change" (CMCC)<sup>35</sup>. This consists of a voluntary initiative involving the mayors of European cities. It is administered by the Covenant of Mayors Office (COMO), established and funded by the European Commission. Each city and town are called to develop a baseline emissions inventory and to submit a Sustainable Energy Action Plan (SEAP), which maps out the different approaches and policies that they intend to implement to achieve the minimum 20% carbon dioxide (CO<sub>2</sub>) emissions reduction target. In case a member is not able to reach the established criteria and targets, it will receive a negative assessment, seeing reduced its access to the funding opportunities created within the framework of the Covenant, and it may have its membership suspended. Even if there is uncertainty about the applicable law<sup>36</sup>, this issue may even be irrelevant, as far as there is an administrative mission and its concrete execution through regulatory measures.

The CMCC regulatory system, just described, presents similarities with the one disciplined with EU Regulation n. 2021/1119, above analyzed (§ 2). Also in this case, the main approach – including objectives, targets, funding, and general orientation – is established at the EU level, while the concrete measures to tackle climate change are decided at local level, in subnational policies. In addition, in both legal acts reputational accountability plays a significant role. Nonetheless, two important differences are to be observed: the climate EU legislation is a binding act, while the Covenant of Mayors is not; despite this, the former does not have enforcing mechanisms supported by sanctions, while the latter has.

Finally, a last example on this is to be found in the initiative of the European Committee of the Regions, named "Green Deal Going Local", which aims at placing cities and regions at the heart of the EU's transition towards climate neutrality. It consists of a political engagement and communications campaign launched in June 2020.

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<sup>35</sup> See [http://www.covenantofmayors.eu/about/covenant-of-mayors\\_en.html](http://www.covenantofmayors.eu/about/covenant-of-mayors_en.html). On the issue, see the report of V. HEYVAERT, *The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation*, in: *Transnational Environmental Law*, 2017, 6(2), p. 209-210.

<sup>36</sup> *Ibidem*, p. 209.

It includes a political working group, composed of thirteen local and regional leaders and comprises a set of communication and engagement tools to accelerate the green transition at the local and regional level.

The main goals of “Green Deal Going Local” are: to empower Europe’s local and regional leaders to take action on climate change; to accelerate uptake of EU funds among local and regional authorities and increase delivery of sustainable EU-funded projects in Europe’s local communities; to showcase how EU regions, cities and villages are leading the efforts to adapt to and mitigate climate change; to change and improve EU policy-making so that it gives a stronger voice to cities and regions in order to be more effective in implementing the European Green Deal and ensuring delivery of EU climate change targets. The role of this network is mainly of promotional and consultative nature, with no regulatory powers. Nonetheless, it shows the importance of involving, coordinating and assisting local and subnational institutions in the Green Deal implementation, as this would provide and ensure policy coherence and consistency among the different regions, it would spread the best practices all over the European area and enhance a bottom-up and territory-related approach to the common problem of climate change.

As the described examples show, the *glocal* system for tackling global warming can assume different patterns. The first one is characterized by the vertical interlinkages of local subjects with supranational institutions, as in the case of the building renovation. The same sector shows that the administrative activity of local governance is not only vertical, but also horizontal, as it involves municipalities and public and private actors inside their jurisdictions, in order to implement projects funded by the EU or simply for the capacity to create connections with the actors operating in their proximity. Thirdly, there is also a transnational interplay of cities in networks and alliances, as the Covenant of Mayors and the European Committee of the Regions initiative demonstrate.

Some important issues are worth mentioning when dealing with local implementation of global climate change objectives.

The first one is that many local communities do possess enough knowledge, skills and capacity to face climate change challenges, affecting local realities, but having a greater impact, as many particular improvements contribute to the general improvement. In addition, local decisions can be more easily organized in an open and participatory fashion, with advantages in consent-capture, in performing deliberative tools and in increasing democratic rulemaking. Moreover, the common presence of different actors dealing with different problems may be of help in tackling more and heterogeneous challenges concerning climate change<sup>37</sup>.

On the other hand, the described system presents also potential drawbacks.

First, the fragmentation of the approaches: this can produce very different results and outcomes and, therefore, lead to phenomena of race to the bottom, *Nimby* and *Nimto* syndromes.

Second, local implementation is strongly dependent on national and supranational funding, as cities and municipalities have different budgets and the financial support coming from a different level of governance helps equalize the approach, having also an impact on regulatory and normative choices.

Third, this bottom-up approach – despite being necessary – still ends up being insufficient, as the contribution of local government may be not enough and sometimes incapable (for instance, when local authorities lack the necessary expertise to deal with the issues at stake) to reach the global standards for climate change. In addition, it is often difficult to measure and assess local policies, so as to correct them for achieving better results.

Finally, the described system is certainly multilevel, as it connects institutions and authorities of different legal orders. Nonetheless, it does not follow a precise and detailed legal discipline or a predefined organizational scheme, distributing powers and competences and articulating the efforts and duties following a plan; so that it is far from being coordinated and harmoniously organized, with an increment of the *ad hoc* phenomenon. This may be useful to tackle

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<sup>37</sup> In this sense see A. JORDAN / D. HUITEMA / H. VAN ASSELT / J. FORSTER (eds), *Governing climate change, cit.*, p. 15.

specific problems and to react with flexibility to present needs. At the same time, it may also produce negative results as such a disorganized and informal model of regulation would make it more difficult to monitor the activities performed, to guarantee a minimum of formal equality and to keep the level of decision-makers' accountability high.

#### 4. CLIMATE CHANGE AND ITS MULTILEVEL REGULATION: A DELIBERATE REGULATORY STRATEGY OR A MISSED OCCASION?

The regulatory structure deriving from the system and the activities of resilience to climate change and of curbing greenhouse gas emissions – above all with its interaction with the Green New Deal policies – presents as multilevel, polycentric, and fragmented, with an evident and well-depicted distinction of powers, competences and measures between supranational, domestic and local governance. This has advantages and drawbacks.

As for the former, the stage of supranational public planning is accentuated, which serves to dictate a common line of action and to prepare the regulatory interventions that will follow, allowing member states and citizens to study, understand and adapt to shared projects. In addition, it also shows a long-term nature, because the planned actions will have to be implemented over time<sup>38</sup>. Moreover, such a system is more appropriate to adapt regulatory policies to domestic/local features and to diversify the response to climate change challenge. Finally, it favors a multinational regulatory system based on competition, because States are pushed to identify the most effective intervention models, with potential race-to-the-top effects.

For what concerns the drawbacks, the non-immediate effectiveness and the vagueness of the measures implementing the GND policies leave the doubt that such an approach may produce also

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<sup>38</sup> Although the climate situation presents a rather high degree of urgency, the deadlines set by the EU are of a multi-annual nature and leave a certain margin of time for the choice of the most suitable and most effective interventions.

problematic or negative effects: too many heterogeneous acts and policies put in place by different actors, negatively affecting harmonization and contributing to a regulatory disorder; slow, insufficient or ineffective interventions at the domestic level; difficulties in evaluating and correcting national actions; a potential delay in reversing the current environmental governance model<sup>39</sup>. Finally, although in contrast to what has been said above, the lack of political expediency and the high costs of environmental measures<sup>40</sup> could lead national governments to a minimal commitment to the fight against climate change, with potential race-to-the-bottom effects.

The role of the State – here both regulating and promoting new economic guidelines and plans – is resumed regarding the market dynamics of globalization. At the same time, regional and local institutions and communities also gain particular importance, because the first condition for the success of the GND and of climate change governance is its application by each individual citizen and in the territories. Therefore, the regulation to protect the environment – while pursuing global objectives and while possessing a rationale and a vision common to the various systems – develops according to a predominantly multilevel articulation. In this fragmented and heterogeneous polity, the competences of the States are still strong, not only in terms of implementation and enforcement of global measures, but also in terms of policy-making choices, whether they are shared, within the extra-national arena, or exclusive in domestic legal orders.

Coherently with this point of view, also the regulatory structure that deals with the Green New Deal appears as articulated, complex, polycentric and fragmented. This, while not responding to an orderly organizational design and presenting the characteristics of

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<sup>39</sup> On this see the last Report (2021) of the *Intergovernmental Panel on Climate Change*, available at: <https://www.ipcc.ch/report/ar6/wg1/#SPM>.

<sup>40</sup> In this sense see S. NESPOR, Tutela dell'ambiente e democrazia: considerazioni sullo scritto di Manfredi, in: G. MANFREDI / S. NESPOR, Ambiente e democrazia: un dibattito, in: *Riv. Giur. Ambiente*, 2010, p. 311.

the *ad hoc*cracy<sup>41</sup>, still reveals original and features worthy of attention. Moreover, in this differentiation and fragmentation, it is particularly challenging and complex to strike a balance – besides that between the environment and economic growth – between global prerogatives and local interests and expectations, with the risk of conflicts between regulatory models with different quality and quantitative standards.

This, in fact, produces advantages and disadvantages because the most compliant States will have fewer supranational limits for the pursuit of objectives useful to the entire global system; while the less compliant ones, on the other hand, will use regained discretion and their internal sovereignty to operate forms of resistance to change, slowing down their path even beyond State borders. Notwithstanding, it is true that the ability to promote circular economy activities, to produce energy from renewable and free-for-all sources and in general to foster the vision of the Green Deal, which matches economic growth with the environment, thus without the cost of pollution or the unpopularity of freedom-restricting policies, constitutes such a revolutionary change in economic development, which may provide a competitive stimulus between the States themselves, therefore encouraging a race to the top, with a contagion of good practices and effective intervention programs.

## 5. CONCLUSIONS

In the present globalized world, States are still the main actors in the deliberation and execution of public regulatory policies<sup>42</sup>. However, their sovereign powers change – subject more or less to supranational conditioning – depending on the sector: trade, for instance, has a very globalized legal governance, while in the environmental

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<sup>41</sup> On this subject it is to mention S. CASSESE, Administrative law without the State? The challenge of global regulation, in: 37 *NYU Journal of International Law and Politics*, 2005, p. 679 and *Id*, *Chi governa il mondo? La dimensione globale della democrazia*, Il Mulino, Bologna, 2013, p. 22.

<sup>42</sup> *Id*, *Il diritto globale. Giustizia e democrazia oltre lo Stato*, Milano, Einaudi, 2009, p. 5.

one, and with the emergence of the GND, States gain greater autonomy in the core stage of administrative decision-making. Indeed, despite being linked to common interests and common ends (enhancing growth while protecting the environment and tackling climate change), they are not merely the agents of supranational bodies, but also enjoy (almost) full discretion, if not in establishing the main purposes, still for what concerns the contents and the procedures of their regulatory policies and measures.

The various countries decide whether to act through investments or incentives, establishing their entities; whether or not to take command and control measures, ensuring their effectiveness and efficiency; whether and how to involve individuals or local authorities and to what extent to delegate functions and services to them. In addition, at the supranational level, sanctioning mechanisms are weak or lacking. Hence, the climate change regulation, as combined with GND governance system, confirms as multilevel and polycentric, appearing more as a “layer cake” than as a “marble cake”<sup>43</sup>.

What is more, this multilevel articulation is not only found in the dialectic between national and supranational policies, but also between States and subnational authorities, as well as in relations between institutions and members of civil society, when private legal entities assume an important role in active administration. Although the policies are part of a common design, the polity called upon to implement them in practice – with the most diverse regulatory measures – fragments vertically into a plurality of subjects (inter-state organizations; supranational institutions, national governments, regions, municipalities, civil society organizations, enterprises), often with different legal nature, powers, and capacities.

The worldwide nature of the problem at issue may suggest a common globalized approach to the phenomenon, using harmonization and homogenization of binding rules to tackle climate change in an effective manner. Nonetheless, the multilevel approach, as described

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<sup>43</sup> *Ibid.*, p. 23, where the author uses the combination of the two definitions with the opposite approach in respect of the text, but referring to the general structure of global governance.

in the previous pages, could still turn into a successful choice, for the following reasons:

First, the innovation of the GND mainly consists of an economic change, to put it better: an economic transition, which is indeed an ecological one. Therefore, the level of the regulatory phase – be it global, international, or merely domestic – loses importance. What is at stake here is the capacity of public powers to perform – in a preliminary stage, working on the main infrastructure supporting the economy – an effective transition in the way enterprises produce goods and services and operate their activities. If this part of the GND program works, the rest will follow spontaneously: the new circular economy is so convenient and performing, that naturally private actors will embrace it; similarly, renewable energies such as solar and wind powers, free for all and always available, are much more convenient than fossil fuels, which are becoming stranded assets<sup>44</sup>. That is why the present governance can even be multilevel and fragmented among all the different polities involved: if it works, no matter at which level, the contagion will come spontaneously and there will be a race to the top, instead of a race to the bottom.

Secondly, this method shows coherence with the unpopularity of environmental regulations, at least in the short term: a top-down imposition of common global rules may increase national resistance, as it would be seen as a supra-national non-democratic rulemaking forcing and limiting domestic approaches. On the contrary, by empowering private subjects, local governments and domestic regulators to act, the GND complies with territorial peculiarities and needs, and favors both participative and representative democratic guarantees, necessary to share the initial sacrifices and costs of the environmental transition.

#### ABSTRACTS / RÉSUMÉS

The article draws on two case studies: the first one concerns the Paris Agreement and the EU Climate Law, showing the multilevel enforcement of policies on climate change; the second one insists on few practical cases with regard to global mandates and local/subnational implementation. The

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<sup>44</sup> See above, footnote n. 31.



work starts with the aforementioned examples to focus on powers attribution and organizational patterns to respond to climate change concerns, emphasizing the differences between the present multilevel governance of the environment and a global harmonized approach and pointing out strengths and weaknesses of the former. It takes into consideration the concept of Green New Deal (GND) as a new paradigm of public regulation, which affects, globally, regionally and locally, the regulatory approach to face climate change. In such perspective, while in front of global concerns a set of common principles and purposes are provided, their effective implementation pertains to regional organizations, national States and subnational governments. The role of public powers is crucial, as private actors alone are not able to accomplish the green transition: the public authorities affect, condition and directly assume economic activities according to the vision of GND, fostering the *rationale* of the “entrepreneurial State”. Therefore, the system is no more globalized, but fragmented in more levels, in which domestic powers regain force and discretion in decision-making, with advantages and drawbacks. In the conclusions, the paper stresses the importance of the new approach for the purpose of fighting climate change, involving a regulatory transformation that can lead to effective and positive outcomes. Nonetheless, this model also reveals weaknesses, risks and critical issues to be taken into account in order to assess its potential benefits.

L'article s'appuie sur l'étude de deux cas: la première concerne l'Accord de Paris et la loi européenne sur le climat, en montrant l'application à plusieurs niveaux des politiques sur le changement climatique; la seconde s'arrête sur quelques cas pratiques en ce qui concerne des mandats mondiaux et une mise en œuvre locale/infranationale. Le travail commence par les exemples susmentionnés pour se concentrer sur l'attribution des pouvoirs et sur les modèles organisationnels destinés à répondre aux préoccupations liées au changement climatique, en insistant sur les différences qui existent entre la gouvernance multiniveau actuelle de l'environnement et une approche globale harmonisée, et en soulignant les forces et les faiblesses de la première. Il prend en considération le concept de *Green New Deal (GND)* comme nouveau paradigme de la réglementation publique qui affecte à l'échelle mondiale, régionale et locale l'approche réglementaire qui vise à faire face au changement climatique. Dans cette perspective, alors qu'un ensemble de principes et d'objectifs communs sont fournis pour répondre aux préoccupations mondiales, leur mise en œuvre effective relève des organisations régionales, des Etats nationaux et des gouvernements infranationaux. Le rôle des pouvoirs publics est crucial, car à eux seuls, les ac-

teurs privés ne sont pas en mesure d'accomplir la transition verte: les autorités publiques affectent, conditionnent et assument directement les activités économiques conformément à la vision de la *GND*, favorisant la *logique* de "l'Etat entrepreneur". Par conséquent, le système n'est plus mondialisé, mais fragmenté en plusieurs niveaux, dans lesquels les pouvoirs nationaux regagnent en force et en autonomie dans la prise de décision, avec des avantages et des inconvénients. En conclusion, l'article souligne l'importance de la nouvelle approche pour la lutte contre le changement climatique, qui implique une transformation réglementaire susceptible de conduire à des résultats efficaces et positifs. Néanmoins, ce même modèle révèle également des faiblesses, des risques et des questions critiques à prendre en compte afin d'évaluer ses avantages potentiels.

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