

**Raising the curtains on the post-delegation phase  
Exploring why Italian executives do not exercise the legislative  
powers they are delegated**

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The substantial increase in delegation of legislative powers from the parliament to the executive has been singled out as one of the most prominent changes in the Italian political system for the last three decades. It has meant the opportunity for traditionally weak executives to adopt significant reforms in several sectors while bypassing the notorious fetters of the ordinary legislative process. While the literature has traditionally focused on those processes leading to the adoption of the enabling acts by the Italian Chambers, there exists still a research gap as to how, and whether, the executive uses these legislative mandates (by adopting so-called legislative decrees within a time-limit set out in the enabling act). Based on a newly collected data-set covering all delegated acts and legislative decrees enacted from 1988 to 2013, this paper firstly analyses the evolution in the use of legislative delegations. The second part of the article attempt to explain why, in certain cases, the cabinet did not use the delegations. Preliminary results show that delegations authorizing the adoption of consolidation acts, passed towards the end of the legislature, prescribing precise guidelines for the executive agents and characterized by a high level of administrative complexity are less likely to be implemented.

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At the turn of the millennium, the extension of cabinet's legislative functions is accepted as a necessary element for the day-to-day management of contemporary social realities. It reduces the parliamentary workload and allows assemblies to save time and resources for more substantive policies. It represents a non-mediated channel to draw on the resources and expertise residing in the bureaucracy. Delegated legislation, in its many national variants, is one of the most widely-used procedures to involve the executive in the legislative process (Carey and Shugart 1998). As a rule, it envisages an act adopted by the Parliament authorizing the executive to legislate on a specific policy domain, sometimes according to expressly set instructions.

Over the last twenty years, Italy has stood out among other parliamentary democracies for its extensive use of legislative delegation. This power has been enshrined in the Constitutional Charter since its adoption in 1946, but Italian political elites have started putting it to full use only since the early 1990s.<sup>1</sup> Ever since, Italian governing majorities have used it extensively to adopt policies in a wide range of areas. At times it was the instrument chosen to pass long-awaited structural reforms. These dynamics have not failed to catch the eye of political analysts who detected a strengthening of the executive with regard to its

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1 The Italian Constitution regulates this procedure in Article 76, which states quite succinctly: "The exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes". These are the basic steps of a standard delegation process. First, a delegating act is approved by the Parliament through the ordinary legislative process. Article 76 does not delineate any real limits to the breadth of the law-making power that can be delegated. It only prescribes the presence of principles and criteria which clearly lay out the goal, scope and duration of such delegations. However, since there is no clear agreement on what their minimal content should be, it is up to the Constitutional Court to rule on their legality on a case by case basis. Second, decrees (which are termed *decreti legislativi*, legislative decrees from now on) are drafted by the line ministry and have to be approved in the Council of Ministers before becoming law (and before their deadline expires).

legislative function (Zucchini 2011; De Micheli and Verzichelli 2004). Frustrated by a slow, overcrowded and unmanageable ordinary legislative process, Italian executives opted for “governing outside parliament” (Capano and Giuliani 2001). Although also other tools gained in importance,<sup>2</sup> experts commented that “through delegating laws the executive in Italy has perhaps finally acquired an effective agenda-setting tool” (Kreppel 2009, 201). Others more assertively referred to it as: “the most significant change in relations between government and parliament introduced during the 1990s and maintained since” (Vassallo 2007, 699).

The growing interest for this type of legislative procedure coming from academic quarters is not paralleled by a congruous number of empirical analyses endeavoring to cast light on what happens after the delegation is issued and the executive receives a specific mandate to legislate. Considering the dynamics occurring in what we refer to as “post-delegation” phase is of primary importance, because a delegation law cannot produce the sought-after policy change without the executive executing the delegation act through implementing decrees. Meaningfully, the Italian executive is not constitutionally obliged to carry out every delegation, thus it is free to select which delegated tasks to implement. Our collected data show that Italian executives have made use of this discretion for the last thirty years. According to the data, almost 50% of the delegations approved were not executed during the legislature when the delegation was issued. In 34% of the cases, the deadline of the delegation expired without at least one legislative decree being approved. These are remarkable figures which begs for a closer examination. Why would a majority vote a delegation and then

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2 There was a parallel increase in the use of decree-laws (*decreti legge*, cabinet decrees equivalent to laws adopted in cases of extreme urgency, which enters immediately into force and expire after 60 days if they are not converted into laws by the Parliament), civil protection ordinances (*ordinanze della protezione civile*, issued by the Head of the Italian civil protection to regulate emergency situations), motions of confidence to speed up and secure the approval of laws (*questione di fiducia*) (Vassallo 2007; Micheli 2015).

not follow up with implementing decrees? This paper aims to analyse this question by means of a systematic large-n analysis of the use of delegations in Italy for the last three decades.

Past studies on legislative delegation in Italy have so far neglected the post-delegation phase. This is due, partly, to the lack of information about what happens during this stage of the decision-making, which mostly takes place behind the scenes. Additionally, there has not been so far a systematic collection and analysis of data on how the government performed its delegation mandate (the only exception is Vassallo 2001). This work contributes to fill this gap by integrating available information on delegating laws adopted in Italy from the start of the 10<sup>th</sup> to the end of the 16<sup>th</sup> legislature (1987-2013) with data concerning executive decrees passed as a result of these delegations (adopted up to December 2014).<sup>3</sup> For the 10<sup>th</sup> to 12<sup>th</sup> legislatures I adapted the data collected by Vassallo (2001). For the 13<sup>th</sup> to 16<sup>th</sup> legislatures I collected the data available online and periodically updated by the Italian Parliament.<sup>4</sup> Data are available in the Italian law-making archive (Borghetto et al. 2012).

The paper is organized as follows. The following section shows the collected evidence on the exercise of legislative delegations in Italy during our observation period. Next, we test a series of hypotheses on why a subset of the delegations are not executed in the XIII, XIV and XVI legislatures. Finally we draw the conclusions.

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<sup>3</sup>Tracing the relationships between delegating laws, delegations and legislative decrees is not straightforward. A delegating law, which is formally – most of the time – an ordinary law, may contain more than one delegation. Generally, one delegation corresponds to one article in the law but there are also cases where it stretches across more than one article or it is contained in a single comma. Additionally, the exercise of one delegation may require more than one legislative decree (sometimes they are adopted at distant points in time) and one legislative decree may be based on more than one delegation.

<sup>4</sup> [www.parlamento.it](http://www.parlamento.it)

## 1. The paradox of not-exercised delegations in Italy

Since the early 1990s, the recourse to legislative delegation has been a prominent phenomenon both in quantitative terms and from a substantial point of view in the Italian political landscape. According to analysts it was the determining factor explaining why “compared to the previous decades, the 1990s were a period of legislative activism and of real governance” (Capano and Giuliani 2001, 24). Our database counts a total of 184 delegating laws containing 964 delegation provisions. The share of delegating laws out of the total number of ordinary laws is increasing over time due to the steady decrease of ordinary legislation. In the last three legislatures under study (14<sup>th</sup> to 16<sup>th</sup>), 1 out of 5 ordinary laws contain delegations. The peak was reached in the short 15<sup>th</sup> legislature, where 41% were delegating acts.

On the other hand, the number of delegations included in each law varies extensively. The largest delegating acts are by far the Community Acts, namely yearly laws aimed at providing for the adaptation of the Italian legal system to European law.<sup>5</sup> They contain from a minimum of 5 (law 13/2007, Community Act 2006) to 40 (law 428/1990, Community Act 1990) delegations. If we remove this category of acts from our data, the median number of delegations is 2 with an interquartile range of 3. To capture the evolution in the use of legislative delegation over time, figure 1 plots the distribution by type of all delegations from the beginning of the 10<sup>th</sup> (1987) to the end of the 16<sup>th</sup> (2013) legislature. It classifies observations into 4 categories.

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5 The Community Acts established for every directive the preferred executive measure needed for its implementation: either administrative acts, *regolamenti* (secondary level regulations) in areas subjected to previous *delegation* or, finally, *decreti legislativi*. This latter instrument was by far the most used. During the period under consideration, one out of two directives was transposed through legislative decrees. Law 234/2012 abolished this instrument.

## FIGURE 1 ABOUT HERE

Consolidating delegations authorize governmental agents to codify existing legislation in specific policy fields. This practice is employed - also in other legal systems - to reorganize and reduce the stock of existing laws. The increase in consolidating delegations originates with the center-left majority in the 13<sup>th</sup> legislature. Act 50/1999 provided for an extensive recourse to legal consolidation by means of so-called "*testi unici*" to be adopted by means of legislative decrees (OECD 2001). The 14<sup>th</sup> legislature followed through this initiative and gave it a new impetus through Act 229/2003 which introduced the new instrument of "*codici*". All in all, more than 80% of all consolidating delegations were adopted in these two legislatures. Parliamentary committees have to be consulted after the delegation is issued and the executive should take into account their non-binding opinion on draft executive decrees (Mattei 2007).

Corrective delegations grant the executive the possibility to either modify or integrate legislative decrees once they are adopted. They represent a time extension of the delegation (sometimes up to 5 years from the entry into force of the parent delegation act) and, in many cases, they are included in the original delegating act.<sup>6</sup> Their rationale is to enable a revision of existing policies adopted through delegated legislation in light of the information acquired during their first implementation. While they were almost absent in the first three legislatures under consideration, ever since the 13<sup>th</sup> legislature they have become more common and have represented a share of around 15% of all delegations.

EU-related delegations empower the cabinet to pass those measures that are needed to adapt the Italian legislative system to EU law. In the early 1990s, the steady increase in legislative delegation was mainly due to the introduction of

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<sup>6</sup> Normally, corrective decrees have to be passed within specified time-limits (the adoption period normally starts immediately after the last primary legislative decree is issued) and abide by the procedures of their corresponding delegating provisions.

the Community Act. Italy had to transpose a large backlog of Single European Market directives and a massive recourse to legislative delegation was the solution devised to respect European obligations (Giuliani 2006; Borghetto 2013). In the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> legislature no less than 50% of delegations were EU-related. With the exception of the 15<sup>th</sup> legislature (where 60% of all delegations were still contained in Community Acts), almost 1/3 of delegations is associated with European duties. On the other hand, it is worthy noticing that these figures underestimate the impact of Europe on Italian legislation (Borghetto, Giuliani, and Zucchini 2012). On average, almost 60% of legislative decrees originated from EU-related delegations, with a peak of 80% and 73% respectively in the 15<sup>th</sup> and 16<sup>th</sup> legislature.

We use the term “primary” to refer to the second biggest category of delegations. Figure 1 shows that, on average, one-third of delegations falls into this type. Their number increased in the 13<sup>th</sup> legislature, immediately after a sentence of the Constitutional Court (360/1996) set extremely high constraints to the reiteration of decree-laws by the Italian executive (Della Sala and Kreppel 1998). They are normally included in three types of delegation acts (Ceccanti 2014). The first type of acts contains delegations authorizing the executive, according to more or less precise instructions, to complete and integrate immediately applicable provisions already laid down in the law<sup>7</sup>. In the second, delegations limit themselves to define the general goals that the executive will have to observe when drafting the core of the reform. The third are *omnibus* measures, containing many micro-level delegations on a variety of policy sectors.<sup>8</sup>

For the last three decades, primary delegations have been instrumental in passing a number of important reforms. The preference of Italian parliamentary

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7 For instance Law 123/2007 on safety at work

8 For instance Law 144/1999 on measures to stabilise the public finance.

majorities for policy-making by legislative decrees rather than by the standard legislative procedures rests on three factors. First, they may lack “technical expertise” or its access might be too costly in comparison with the executive (one of the function of parliamentary committees is to limit this information disadvantage). This might be particularly apparent when the goal is to regulate policy issues having an “inter-sectoral scope”. Secondly, they provide a faster channel to adopt urgent measures compared to the often sluggish ordinary procedure (Borghetto and Giuliani 2012). Finally, they offer a solution to bargaining problems within the ruling coalition. These problems became particularly serious in the Second Republic as, in the backdrop of heterogeneous and unstable majorities, there was an increased expectations on executives to be the main drivers of legislative reform (Capano and Giuliani 2001; Marangoni 2013). In the new competitive system of government alternation, failing to act could lead to the punishment of the coalition in power at the polls. The recourse to legislative delegation offered significant advantages to the incumbent government willing to change the status quo in line with its electoral platform (Zucchini 2011).<sup>9</sup> The most obvious one is that the points of friction which normally hamper the passage of a bill through the ordinary legislative process are relatively bypassed. The fact that the discussion in Parliament revolves around guidelines and normally avoids getting into the details of the matter contributes to blunt the opposition’s weapons. Most importantly in the Government’s eyes - especially if, as in Italy, it does not firmly hold the reins of the law-making process - the approval of the delegating law leads to a swapping of roles between the two branches: in the first phase, the last word belongs to MPs; in the second phase, this power lies in the executive’s hands. If the executive is so willing, the day after the delegating law enters into force it can send its draft

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9 Zucchini argues that the advent of government alternation introduced the situation where “the reverse point in case of no policy change can be farther than the present status quo for some of the present government parties”. These new conditions reinforced the agenda power of Italian executives (Zucchini 2011).



legislative decrees to the relevant parliamentary committees or other special committees (if it is envisaged in the delegating provision). In one or two months at maximum, it receives their observations. Formally, it can disregard them because they are not legally binding. After the draft decree is approved in the Council of Ministers, it is published in the Official Journal and eventually, it becomes law. All in all, the post-delegation phase can take no longer than a few months.

The fact that the executive is the *dominus* in what we term “post-delegation” phase contrasts with the data on the actual exercise of individual delegations presented in Table 1. The number of delegations which expire without being implemented is remarkable: 34% of the total. If we add to this that a 16% of all delegations got their first implementing decree(s) only in a subsequent legislature, the share of delegations not executed by the majority in power at the moment of the delegation raises to 50%.

To illuminate the phenomenon of non-execution it is useful to analyze delegations by types. Consolidating delegations is the category with the highest rate of non-fulfillment (62%). This is expectable if we think that the codification of existing legislation is usually a technical and administrative activity, with little short-term benefits in terms of visibility for the government in power. The amount of resources devoted to this task should be smaller in comparison with delegations dealing with issues that are of high salience for the programmatic profile of majority parties.<sup>10</sup>

#### TABLE 1 ABOUT HERE

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<sup>10</sup> The average time taken to adopt a *testo unico* is remarkably longer in comparison with the time required to pass other legislation. This might explain why the Berlusconi IV government created a specific Minister for the Simplification of laws in charge of coordinating all codification processes.

Also 54% of corrective delegations were not executed. This is less troublesome from a political point of view because they merely represent an opportunity to adjust existing legislative decrees in case they need it. What is more, they hinge on the adoption of fulfillment of the original delegation.

Not taking action on EU-related delegations is the less likely scenario of the four (25%). The transposition of EU directive by means of legislative decrees can be delayed (24% of delegations were implemented by a subsequent legislature) but not completely neglected. First, given the periodicity and heterogeneity of the Community Act non-executed delegations can be simply reintroduced on the next act. Second, the EU commission and the EU Court of Justice can wield enforcement instruments when they determine cases of national non-compliance, attaching financial costs to cabinet inactivity (Borghetto 2013).

## FIGURE 2 ABOUT HERE

As for our last category, 30% of primary delegations are not executed. In 10% of the cases the first implementing decree was passed only in the next legislature. This is the most interesting category because, as mentioned above, it has represented one of the most important instruments for legislative innovation for the last three decades. Figure 2 reports once again the proportion of delegations either implemented in the same legislature, in another legislature or not implemented across the 7 terms under consideration but focuses only on primary delegations. The plot shows clearly that the problem of non-implementation or late implementation concerns for the most part those legislatures which were interrupted because of a snap election (11<sup>th</sup>, 12<sup>th</sup> and 15<sup>th</sup> legislatures). In many cases the government in power when the delegating act was adopted did not have sufficient time to issue the required implementing decrees and the delegation was handed over to the next majority. The latter could decide to use

the pendant delegation or, vice versa, they could simply decide to wait for the delegation to expire without exercising it. An exemplary case is the 12<sup>th</sup> legislature. Most of the delegating laws were approved in the second part of the 2-year legislature, during the transitory “cabinet of technocrats” led by Lamberto Dini. Out of six delegations expiring in the course of the legislature, only 4 were used.<sup>11</sup> The remaining 22 delegations (with a deadline expiring after the elections) were for the most part inherited by the Prodi government (only 2 were used by the Dini cabinet), which completed the reform of the financial system (5 delegations in Law 549/95) and the pension system (8 delegations in Law 335/95). Conversely, 7 delegations were neglected by the new center-left executive. A closer inspection of these cases reveals that at least four of them fitted well into Prodi’s policy platform since they envisaged transfers of competences to local governments in various fields (Law 203/95 and Law 549/95 art.2). The new government’s agenda did not envisage their implementation because the plan was to regulate this policy issue by means of a brand-new, more organic and far-reaching reform (Law 59/97, the so-called Bassanini law).

Even so, the amount of delegations adopted which were not followed by any implementing decree in the same legislature remains remarkable also in the long 5-year legislatures. They were 24 out of 109 primary delegations in the 13<sup>th</sup> legislature (22%), 23 out of 64 in the 14<sup>th</sup> (36%) and 27 out of 63 in the 16<sup>th</sup> (42%).<sup>12</sup> The goal of the next section is to spell out the possible explanations for this phenomenon.

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11 We established their implementation deadline by looking at their original text. In principle, nothing prevents the parliament to extend the delegation deadline by means of a new law.

12 It is relatively rare for the new majority to use the delegations left unexecuted in the previous term. In the three legislatures under consideration they are: 4(13th), 2(14th) and 2 (16th).

## 2 Hypotheses

The first category of determinants affecting the decision to exercise a delegation concerns factors varying at the level of the individual delegation. To begin with, we consider how relevant the issue is in the government coalition's platform. Provided that 1) voters retrospectively cast their vote based on their perception of government performance in the past term and 2) value in particular its capacity to comply with important commitments of its policy platform, not executing a delegation in these areas can be costly for a coalition. In light of this argument, we expect that delegations concerning political salient sectors are more likely to be exercised (H1).

Secondly, we took in consideration the level of discretion characterizing the delegation provision.<sup>13</sup> The impact of discretion on the likelihood of implementation can be read in two ways. On the one hand, the more discretion given, the easier it will be for the minister in charge to attain his/her most preferred policy outcome. This should speed up the adoption of the implementing measures or at least make it more likely before the end of the legislature. On the other hand, granting extensive discretion to implementing actors might be taken as evidence that deadlocks exist in parliament on those points and that delegation is a way to move the debate to another arena, the Council of ministers and the public administration, where new solutions can be tested and compromises be reached far from the public scrutiny. Still, this process may still require long negotiations to reach an accepted solution. In this case, high discretion should be attached to controversial measures which are less likely to be implemented. Given this contested interpretation of the impact of discretion, the

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<sup>13</sup>We recall that Article 76 of the Italian Constitution obliges the Parliament to specify in the delegating law the "principles and criteria" the executive has to meet. These provisions are normally contained in a comma of the delegation provision and conventionally take the form of a bullet-point list.

direction of the expected effect is left undefined: the level of discretion in a delegation should have an impact on the use of the delegation (H2).

An alternative reason for not executing a delegation is the *complexity* of the task. Even in the presence of political agreement on the necessity of the reform, the problems to tackle before taking it home are often difficult to predict. For instance, certain issues might be interconnected with others (which have to be solved first) or they might involve a great range of stakeholders, all expecting to be consulted. The proxy of complexity used in the present work is the time granted to the executive to draft the decrees, as it is set out in the delegating measure. In fact, the time-limits are normally defined by the legislator on the basis of the predictable difficulty of the process. Therefore, we expect that the greater the amount of time conceded, the less likely the exercise of the delegation (H3).<sup>14</sup>

We incorporated three factors varying at the level of delegating acts. Firstly, we take into consideration the timing of adoption for delegating acts. Our data reveal that it is not rare for the Parliament to adopt important reforms also a few months before the dissolution of the two Chambers. Of course this decision puts the Government under tight time-constraints and nullifies most of the benefits stemming from a longer time-frame for intra-coalition negotiations. Thus we expect that the shorter the time between the adoption of the delegating law and the end of the legislature, the less likely all delegations included are to be exercised (H4).

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14 An alternative proxy for complexity is whether the primary delegation is adopted jointly with a corrective delegation (see above). The justification for corrective delegations is to grant the cabinet a chance to revise existing reforms taken through legislative decrees after observing their impact on the ground. Based on this premise, one should expect corrective delegations to be attached to primary delegations regulating complex policy areas, namely the ones more likely in need of future adjustments. We tested whether the inclusion of “corrective provisions” makes the exercise of a delegation less likely and the results were always highly non-significant. For the sake of model parsimony, this variable was not included in the final model.

Secondly, we consider the type of initiator of the delegating act. In the greatest majority of cases the initiative originated from the executive and when the initiator is an MP, he/she is usually affiliated with a party of the governing majority. This last option is often used by coalition members when their proposal does not enjoy a sufficient consensus in the Council of Ministers (whose vote is necessary to initiate a bill). We decided to control for this factor because it is indicative of a divergence of interests in the governing majority. Conversely, we expect that the rare cases of delegating laws initiated by opposition MPs are ordinarily not implemented by the executive because of the distance in terms of policy priorities typical of a bipolar system. That said, we expect that delegations incorporated in legislative bills initiated by MPs are less likely to be exercised (H5).

Finally, we test the impact of the level of policy heterogeneity characterizing the delegating law. If a law regulates a specific issue area through multiple delegations, we expect them to be interdependent. To achieve the goal of an effective regulation, all components of the reform have to be in place. As a result, advancing with the implementation of one measure requires the parallel elaboration of all others. What is more, in these cases, it is likelier to have a single ministry in charge of all implementation processes. Clearer lines of responsibility should facilitate the drafting and discussion of the measures. Conversely, when the delegations in a law span across multiple areas, each of them tends to be dealt with independently by different actors. This does not mean that they are doomed to be neglected. Rather, if they raise conflict among stakeholders or regulate an area characterized by high policy uncertainty they cannot “climb on the bandwagon” of sister delegations. The greater the heterogeneity of a law, the less likely its delegations are to be exercised (H6).

### **3 Measurement of dependent and independent variables**

The unit of analysis is the individual primary delegation. Our observation period covers the three 5-year post-1996 legislatures: the 13<sup>th</sup> (1996-2001), 14<sup>th</sup> (2001-2006) and 16<sup>th</sup> (2008-2013) legislatures. In quantitative terms, our data set comprises the whole population of 236 primary delegations approved in this period.

The dependent variable measures whether the delegation was exercised in the legislature (1) or not (0). A delegation may require more than one implementing legislative decree and, in a limited number of cases, the last adopted measure was passed by the subsequent legislature. In this case, we considered the delegation as exercised by the legislature which adopted the enabling act.

With respect to the delegation-specific explanatory variables, the measure of government *issue salience* (H1) relies on the policy coding of each delegation and each (quasi-) sentence of a Prime Minister's investiture speech using the 21 major policy topics of the Comparative Agendas Codebook. Investiture speeches are delivered by each appointed Prime Minister in front of the two chambers before they cast their investiture vote. They are normally used to lay down the policy guidelines leading the cabinet's decision-making for the rest of the mandate. Since more than one investiture speech was delivered in each of the legislatures, I calculated the percentage of sentences devoted to each topic in each speech, I grouped them by legislature and averaged them, weighting for the length of each speech. Then I assigned the corresponding value (by legislature and policy code) to each delegation. *Discretion* (H2) was created by counting the number of words used in the delegation text to specify the policy guidelines constraining the cabinet. The capacity-related variable, *complexity* (H3), measures the number of days available before the expiry of the delegation. To take into account the presence of a few big outliers in *discretion* and *complexity*, I use their logarithmic version.

As for the factors which vary at the level of delegating acts, *time left* until elections (H4) measures the number of days separating the adoption of the law from the end of the legislature. *MP origin* (H5) takes the value of one if the initiator of a bill is an MP (no matter his/her party affiliation), 0 otherwise. Finally *omnibus* (H6) measures the distinct number of CAP policy topics (from 1 to 21) contained in each delegating act.<sup>15</sup> Table 2 presents some descriptive statistics about each of the predictors.

TABLE 2 ABOUT HERE

## 4 Analysis and finding

To test the effect of the explanatory factors presented above on our binary dependent variable, we fitted a logit multilevel model. This enables to account for the two-level hierarchical structure of our data-set, where multiple delegations can be nested within the same delegating law.<sup>16</sup>

TABLE 3 ABOUT HERE

The first finding is that our salience-related covariate, government *issue salience* (H1) behave as expected but it has no significant impact on the probability that a delegation is actually executed.<sup>17</sup> There appears to be no special treatment for

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15 Each delegating act was assigned a specific CAP code. Omnibus counts the number of distinct CAP codes.

16A likelihood ratio test confirmed that the multilevel model should be preferred to a standard logistic regression. The multilevel regression was calculated by means of R (R Core Team 2016) with the lme4 package (Bates et al. 2014).

17Being an early version of the model, we refrain from performing a substantive analysis of regression results.



delegations belonging to issue areas that are central to the executive policy platform. This finding suggests that while political salience might be one of the reasons to delegate in the first place (to deliver on the promises made during the electoral campaign), it is less consequential once the delegation is issued and the regulation burden shifts to the post-delegation stage. Here the responsibility for the process may be taken mainly by policy experts who are less sensitive to matters of political returns. This reasoning illustrates well one of the advantages of legislative delegation. It allows the regulation of - mainly technical - policies which cannot boast any short-term strategic political value, but still require a periodic legal maintenance.

An interesting result is the impact of *discretion* (H2) (in delegation criteria). Delegations prescribing in details the instructions the government must follow are on average more likely to be performed. We interpret this finding as an example of the close relationship between the parliamentary phase, when delegation criteria are adopted, and the subsequent executive phase. Precise instructions can be introduced when there is a strong agreement among coalition partners on the policy goals and instruments (Huber and Shipan 2002). Only less controversial points are postponed to the post-delegation and the discretion of the ministerial unit responsible. Additionally, since writing detailed legislation is generally costly, a high level of statutory control might signal the importance of the policy in the eye of the delegating actors. As a result, the latter will be more prone to monitor the ministry in charge of drafting the decree and avoid that previous efforts are wasted because of administrative negligence.

Also *complexity* (H3) affects the likelihood of a delegation being executed in a statistically significant way. Long delegation deadlines are normally attached to delegations aiming at regulating areas characterized by higher policy uncertainty and a greater number of stakeholders. Yet, at times, not even acting under a

longer time-frame facilitates a compromise. In these cases, the executive may run out of time because of new elections.

As regards the attributes of the delegating law, *time left* until new elections (H4) is significant and, in line with our expectations, it decreases the likelihood that delegations are used. This finding lends itself to a twofold explanation. The first one is mechanical: there is simply not enough time and most of the resources are devoted to run the electoral campaign. Under these circumstances, delegation appears as a leap of faith. The exercise of the delegation is left to the future ruling majority which, in the post-1996 bipolar system, has always been the coalition in the opposition. The second explanation hints at the symbolic value of delegation laws adopted in the run-up to elections. From the point of view of the incumbent government, a benefit associated with the issuance of a delegating law is the possibility of claiming credit for starting a sector-wide reform in front of the electorate. The legislature adopting them does not plan their final implementation from the very beginning. Rather they represent a selling point in the coming electoral campaign.

There is no significant difference in the way the executive deals with the execution of delegations included in MP-sponsored laws (H5). Rather than suggesting a division in the Council of Ministers, the presentation of bills by parliamentarians might be justified by mere electoral reasons (Bräuninger and Debus 2009).

Finally, delegations contained in *omnibus* laws are not less likely to be executed (H6). Generally, omnibus delegation laws are a way to facilitate the adoption of micro-sectoral delegations that would not pass the parliamentary scrutiny, were they presented through individual acts. On the other hand, this does not detract from the fact that they might be relevant or long overdue, which is way they receive implementation from the executive.

## Conclusions

The findings presented in this paper aim to contribute to the debate on the current evolution of the executive-legislative relation in the so-called Second Italian Republic. The advent of government alternation and the consolidation of a bipolar system are seen as the strongest incentives pushing governing majorities to look for new means to increase their functional legitimization. Legislative delegation was one of the responses they found. Whereas in the first half of the 1990s, this legislative option was predominantly used to transpose EU directives and to initiate large emergency reforms, since 1996 it established itself as one of the strongest instruments available to the executive to implement its legislative agenda. In particular, it allowed the executive to bypass the veto-ridden ordinary process without the need of a Constitutional amendment.

On the other hand, this paper shows that a portion of these delegations remains unimplemented. The fact that in Italy a number of delegations expire without generating any decree represents a conundrum if it is compared with the consistent use of legislative delegation over the years. Our model points to three main answers to this phenomenon. Firstly, this is due to the lack of political commitment at the highest political level. This emerges both from the reluctance on the part of ministerial units to embark on resource-demanding activities of legislative codification, which do not guarantee any substantial political benefits; and from the fact that some delegations are likely to be adopted for mere electoral convenience, especially at the end of the legislature. Secondly, we find that delegations prescribing precise instructions for government action are more likely to be implemented. The chances are that most of the content of these policies has already been agreed upon at the delegation stage, leaving to the executive the task of simply filling in the details. The importance of a pre-delegation agreement finds support also when considering our capacity-related

variable. Extended time-limits and bargaining behind a ministry's closed doors might favor compromises. Yet, sometimes, these conditions are not sufficient and the delegation simply expires or the legislative term ends without it being implemented. All in all, post-delegation processes are not exempt from the requirements of consensual decision-making, which has been long recognized as a typical trait of Italian politics (e.g. Giuliani 2008).

In conclusion, our collected evidence points out a good predictor of the ultimate implementation of reforms is the political agreement underlying it. In many cases the formal adoption of a delegation is only the beginning of a long and demanding negotiation, shifting the debate from the parliamentary floor and committees to the Council of ministers.

In conclusion, more work has to be done to explore more fully how the expansion of legislative delegation affected the relationship between legislative and executive powers. For instance, little is known on the impact of parliamentary scrutiny on executive policy-making in the post-delegation phase.<sup>18</sup> Numerous questions arise, such as are these instruments sufficient and how are they used? Have they changed over time? Research on the processes characterizing the post-delegation phase is just at the beginning stages.

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<sup>18</sup> Parliamentary committees have to be consulted after the delegation is issued and the executive should take into account their not-binding opinion on draft executive decrees (Mattei 2007).

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# Tables and figures

Fig.1 Distribution of delegations across legislatures by type

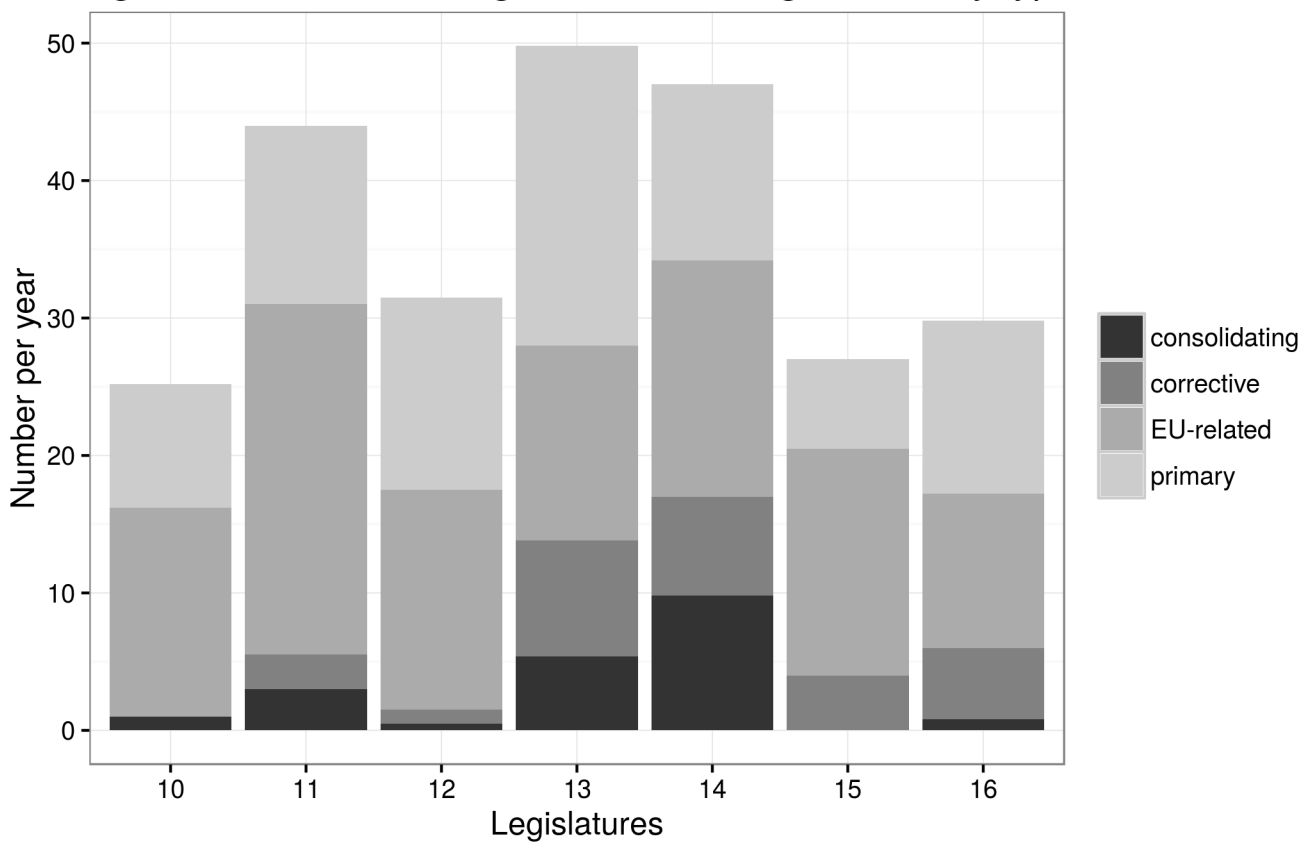


Fig.2 Distribution of primary delegations  
by state of execution across legislatures

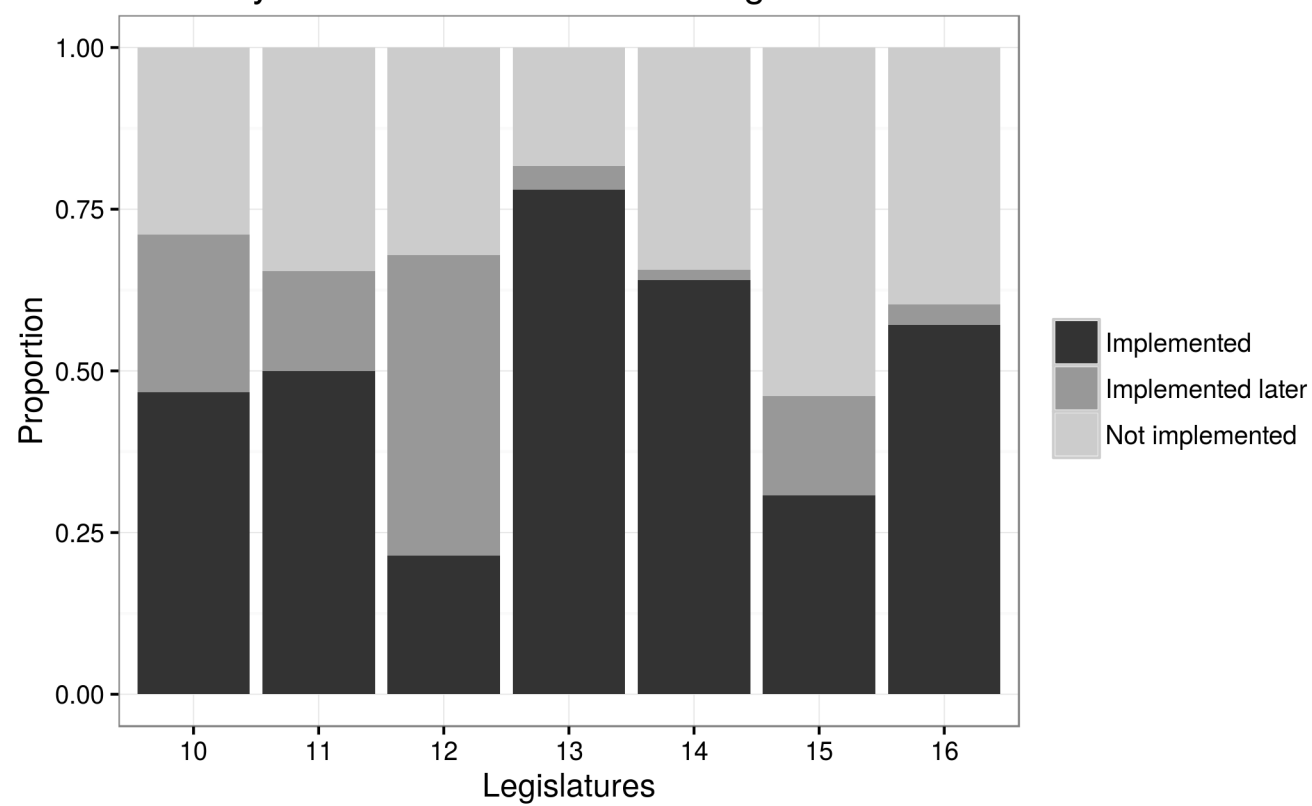




Table 1: Distribution of delegation by state of execution

	Implemented	Implemented later	Not implemented
consolidating	29	6	57
corrective	46	8	65
EU-related	205	98	102
primary	206	37	105

Table 2: Descriptive statistics - Predictors

Statistic	N	Mean	St. Dev.	Min	Max
issue saliency	239	0.1	0.1	0.0	0.3
discretion	239	5.8	1.0	3.5	8.9
complexity	239	2.2	0.6	0.7	3.6
time left	239	30.4	16.2	0	54
MP origin	239	2.8	2.2	1	7

Table 3: Mixed logit model results

	<i>Dependent variable:</i>
	Implemented by the end of the legislature=1
issue saliency	2.241 (3.047)
discretion	0.354** (0.173)
complexity	-1.160*** (0.392)
time left	0.031** (0.016)
MP origin	0.162 (0.652)
omnibus	0.181 (0.148)
Constant	0.084 (1.407)
Variance(between 81 delegation acts)	1.23
Observations	239
Log Likelihood	-127.513
Akaike Inf. Crit.	271.027
Bayesian Inf. Crit.	298.839
<i>Note:</i>	*p<0.1; **p<0.05; ***p<0.01