Chapter 21
Notes on the Corporate Act in Italian Health Companies

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ABSTRACT

The corporatization of the Italian health system is to be considered a reform process that aims to achieve better performance of public health service companies, both in terms of effectiveness and efficiency. In this dimension, the choice of the legislator to establish health companies with public legal personality and at the same time to endow them with entrepreneurial autonomy is justified. The main expression of this autonomy is, undoubtedly, the corporate act, a document which is recognized as a private law act by which the organization and operation of the company are governed. It is adopted by the general manager and is based on the principles and criteria established by the regional legislative activity. The description made by the law regarding the corporate act is very generic, but the intention to compare it to the statute of a private company of which the health care company must imitate the internal organization is evident.

INTRODUCTION

As regards the generality of public administrations, the use of organizational and managerial tools governed by private law - even so important, in the economy of the administrative reforms of the nineties - concerns only a part of the overall organizational plan, that is, the determinations for the organization of the offices and the measures inherent in the management of employment relationships undertaken by the management bodies (the so-called "micro" organization), while the fundamental lines of organization and the most important offices (the so-called "macro" organization) remain regulated, within the framework of the general principles established by law, with organizational acts of a public nature (organizational regulations, general organizational administrative acts, etc.). Otherwise, in the process of corporatization, the entire organization of healthcare companies is defined with acts of a private nature (Comite, 2002).

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All this does not mean that the activity of health companies, as public entities, is exempted from compliance with the constitutional principles (impartiality and good performance) and legislative (economy, effectiveness, publicity and transparency) that govern the action of public administrations; quite the opposite. However, the individual acts (including that of organization) cease to have relevance in analytical terms, and the overall result of the activity assumes importance, in synthetic terms: hence the fundamental role played by responsibility for the results achieved and by the related control and evaluation functions. In fact, at this stage, the logic of corporatization assigns the task of verifying (and sanctioning) both the compliance of the administrative action with the purposes defined by the law, and compliance with the principles that govern (also) the action of healthcare companies (effectiveness, efficiency, cost-effectiveness, transparency, etc.), as well as compliance with political-administrative guidelines: a synthetic evaluation (on the whole of the activity carried out) instead of an analytical evaluation (characteristic, instead, of the activities under administrative law) (Triassi & Nardone, 2021).

The corporatization of the Italian health system is to be considered a reform process that aims to achieve better performance of public health service companies, both in terms of effectiveness and efficiency. In this dimension, the choice of the legislator to establish health companies with public legal personality and at the same time to endow them with entrepreneurial autonomy is justified. The main expression of this autonomy is, undoubtedly, the Corporate Act, a document which is recognized as a private law act by which the organization and operation of the company are governed. It is adopted by the general manager and is based on the principles and criteria established by the regional legislative activity. The description made by the law regarding the Corporate Act is very generic, but the intention to compare it to the statute of a private company of which the health care company must imitate the internal organization is evident. The choice of this type of instrument allows for the introduction of those elements of flexibility necessary to make an economic, efficient and effective management of resources concretely feasible. In other words, it makes it possible to have a wider capacity to maneuver, to make diversified choices and, above all, to better adapt the operating model to the concrete and very complex context such as the healthcare one. Therefore, the Corporate Act represents the most qualifying moment in which the managerial attitude of the healthcare company top management can (and must) express itself, which delineates the set of distinctive features that distinguish the organization; an important corporate governance tool, to be articulated according to the strategic choices of each Region, on the basis of the fundamental guidelines identified by the legislation (Comite, 2001).

Through its adoption by the general manager, the company acts as a private law entity, which independently pursues its goals, using business tools.

However, it is important to emphasize that the final objectives that the healthcare company must pursue can only remain public, which are the objectives of health protection by the legal system, as the right of the person (subjective right) and the interest of the community. In this sense, public acts must follow a particular regime to guarantee the principles of impartiality, good performance, transparency, reasonableness, also supporting the complex and articulated principle of "subsidiarity". Only organizational tools are privatized.

In the exercise of private powers, in fact, the decision-making process is not predeterminable, therefore, always in compliance with the legislative constraints, the organizational choices are free.