CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: ITALY

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I POLITICAL CONTEXT

POLITICAL CHANGE

I.1

WHAT IS THE POLITICAL CONTEXT OF THE EUROZONE CRISIS PERIOD IN ITALY? HAVE THERE BEEN CHANGES IN GOVERNMENT, ELECTIONS, REFERENDA OR OTHER MAJOR POLITICAL EVENTS DURING THE PERIOD OF 2008-PRESENT?

The center-right coalition led by Berlusconi (PdL) won the elections of 2008 conquering the widest margin in terms of parliamentary seats in Italy's republican history.

But a series of internal dynamics undermined this success: in brief, firstly one of its components, led by the then President of the Chamber of Deputies Fini, left the PdL in 2010; secondly, the coalition was electorally defeated in the local elections of May 2011; soon after, the referenda of 12 and 13 June 2011 went against some political choices of the government (not related, in any case, to the Eurozone crisis), and were perceived as a failure for it.

During the summer of 2011 Italy witnessed a worsening of the economic and financial crisis, due to the increased spread on government bonds, which led to the ECB's letter of the 5 August (see question X.10 and X.11); and this despite the measures already adopted in June 2011 with the Decree n. 98/2011, containing most of the financial manoeuvres necessary to achieve a balanced budget in 2014.

The interaction between the political and financial crisis became evident in the widespread skepticism of the major financial players and of some supranational and foreign authorities towards the resilience of the Italian economic system. This attitude determined, at the end of July 2011, a major increase in the interest rates of the Italian public debt bonds, bringing with it the need to bring forward to 2013 the goal of achieving a balanced budget (Decree 138/2011).

The opposition and a part of the media believed[1] that the main causes of this skepticism lay with the poor credibility of Berlusconi's government, whose international image was already tarnished due to his political and personal misadventures. Furthermore, within the ruling coalition and the government itself conflict increased, as emblematic in the distance between the Prime Minister and the Minister of Economy and Finance Giulio Tremonti, also on the merits of the possible measures to be taken to address the financial emergency and for the revitalization of the country.

A clear split within the political majority became evident on 11 October 2011, when the lower Chamber (Camera dei Deputati) rejected by one vote the 2010 State Administration General Statement bill («*rendiconto generale dello Stato per l'esercizio finanziario*»): that did not imply – as for formal, and widely used and misused, votes of confidence/no-confidence – a legal obligation to resign, but led to a necessity of "*parliamentary monitoring*

[1] See for instance http://www.economist.com/blogs/charlemagne/2011/11/italy-under-imf-supervision.

of the continuance of such confidence"[2]. This monitoring took place on 14 October, when the Camera dei Deputati formally approved, with 316 votes in favour and 301 against, the motion of confidence presented by the government to verify the persistence of the majority.

But as a consequence of this situation of *impasse*, the President of the Republic became «the main actor on the stage»[3]. He firstly launched two severe warnings in close succession (26 October and 1 November 2011) on the need to take «*decision, albeit unpopular ... in the national and in the European interest*», and on his «*constitutional duty to verify the conditions for the realization of this perspective*», given the «*further deterioration of the Italian position within the financial markets*».

He then marked with an increasing number of communications, meetings, notes and statements («informal talks with the major components of the opposition and majority forces») the course of action for a formal vote, on 8 November 2011, of the same State Administration General Statement bill rejected a month before (with the absence of the opposition, in order to ensure the approval but at the same time demonstrating that the government did not have the absolute majority), and, the day after, for the announcement of Berlusconi of his willingness to resign after the approval of the Stability Law (Law 196/2009).

This approval arrived on 11 November, again with the decision of the opposition not to engage in filibustering, due to a «*sense of responsibility towards the country*»; on 12 of November Berlusconi resigned.

After only two days of consultations with political and social groups, and without elections, on 16 November Professor Mario Monti, recently nominated Senator-for-life in accordance with article 59.2 of the Constitution, presented the members of the new government, all external to the political parties. They were sworn in and obtained the confidence of the Senate on the same day, with the support, as mentioned, of all the political groups except the Lega Nord (281 votes in favour and 25 against), a record. Two days after, the Camera dei Deputati also voted its confidence (556 votes in favour and 61 against) to this 'technical' government of so called 'national commitment'.

The Monti government fully exercised its functions until the end of 2012 (the natural end of the legislature being the Spring 2013), when (6 December) the center-right coalition of the PdL left the majority; on 8 December 2012, after a meeting between Prime Minister Mario Monti and President Giorgio Napolitano, the former announced through the latter his resignation after the approval of the Stability law.

On 21 December 2012, after such approval, the government remained in office as usual for the current business until the settlement of the new Chambers and the birth of the new government.

But the elections of the end of February 2013 gave a rather complex result, even complicated

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2 As expressed by Valerio Onida, one of Italian leading constitutional scholars, in an opinion then cited directly by the President of the Republic Napolitano.

3 T. Groppi, I. Spigno, N. Vizioli, The Constitutional Consequences of the Financial Crisis in Italy, in X. Contiades (ed.), Constitutions in the Global Financial Crisis. A Comparative Analysis, p. 102.

by the often criticized Election law n. 270/2005: this led to a sort of equilibrium, not in terms of seats but surely in terms of political influence, between the two traditional main coalitions, with a good result of the new populist Movement led by comedian Beppe Grillo.

The new, and somehow unexpected, *impasse* led to several unprecedented moves.

Firstly Italy saw a re-election (for the first time in the Italian history) of Giorgio Napolitano as the President of the Republic: in particular, he announced to accept this unprecedented option under the same conditions of responsibility and commitment towards the country by the main parties, in the national and in the European interest, already expressed months before at the time of the crisis of the Berlusconi IV government.

Then, after the failure of the first mandate to form a government offered to MP Bersani, the leader of the center-left coalition which had the majority of the Camera's seats (but not of the Senate), Napolitano constituted two small Commissions of so called *wisemen* (renowned experts on institutional and economic affairs) for the assessment of the reforms to be considered as urgent for the country.

He then offered the mandate to Enrico Letta (PD) for the construction of a government with bi-partisan support and members, from both the center-left and the center-right coalitions.

In turn, Enrico Letta also constituted a Commission for Constitutional reforms, composed of around 40 experts, which worked during the summer and then published a complete series of reports (both a common and individual ones),[4] trying to prompt new institutional reforms in Italy by 2015.

More recently, the process has been accelerated by the decision of the Constitutional Court (n. 1/2014)[5] to strike down part of the contested electoral law (n. 270/2005), and by the comprehensive proposal of amendments to the standing orders of the Chamber of Deputies,[6] although the issue dealing with budget and the oversight on the fiscal policy have not been included.

II CHANGES TO THE BUDGETARY PROCESS

BUDGETARY PROCESS

II.1

DESCRIBE THE MAIN CHARACTERISTICS OF THE BUDGETARY PROCESS (CYCLE, ACTORS, INSTRUMENTS, ETC.) IN ITALY.

Art. 81 of the Italian Constitution has always provided, both before and after its amendment in 2012 (see Question IX.4) and any Eurozone-crisis-related reform, the role for the Chambers of the Parliament to «(...) *approve every year the budget and the accounts*

[4] All published at the website http://riformecostituzionali.gov.it/documenti-della-commissione/relazione-finale.html.

[5] http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2014&numero=1.

[6] See on this the report of the works of the "Giunta per il regolamento" of the Chamber, 12 December 2013, available at: http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/html/2013/12/12/15/comunic.htm.

submitted by the Government».

In this respect, Law n. 39/2011 has recently amended Law n. 196/2009 (the new law of accounting and public finance), modified its budgetary cycle and the means used for budget planning, and fostered an alignment between national planning and the timing of the European Semester and a centralization of the role of Italian local authorities, for which a more intense involvement in the definition of the economic financial objectives was provided (in close connection with the implementation of Article 119 of the Constitution defined by the law of 5 May 2009, n. 42, in the area of fiscal federalism).

According to the new text of the Law n. 196/2009, the Government, by the 10th of April of each year, has first of all to submit to the Parliament what it is called today the "Economy and Finance Document" (DEF, *Documento di Economia e Finanza*, Art. 10 Law 196/2009, which has replaced the Public Financing Decision introduced in 2009).

This document has become «*the linchpin of economic and financial planning*»,[7] is divided into three sections, and includes both the *Public Financing Decision* - which, in its original version (law n. 196/2009) was to be submitted mid September - and the content of the *Economy and Public Financing Report*.

The DEF (Art. 10(3) Law 196/2009) has to contain of course an analysis of the revenue account and the cash account of all the public administrations for the previous year, the related forecasts for the following three years, the identification of general rules on the evolution of expenditure of all the public administrations, and detailed information on the results and predictions of the accounts of the major areas of spending, at least for the following three years, with particular reference to those relating to public employment, social protection and health, as well as on the public administrations' debt.

The DEF also defines the *Stability Plan* scheme (Art. 10(1) Law 196/2009) - which will have to contain measures to accelerate the reduction of public debt - and the *National reform plan* scheme (Art. 10(5) Law 196/2009, with an outline of the country's priorities, the main reforms to be made, national macro-economic imbalances and the macro-economic factors that affect competitiveness, the progress of reforms which have already been set up, the foreseeable effects of suggested reforms in terms of economic growth, the strengthening of competitiveness of the financial system and the increase in employment). Both these documents, according to Art. 9 Law 196/2009 («*Relations with the European Union in the field of public finance*») are then to be submitted to the European Union Council and to the European Commission by 30 April of each year.

In order to integrate the DEF, by the 30th June, the Minister of Economy and Finance submits to Parliament an attachment outlining the effects of the monitoring on the public financing balance deriving from the measures stated in the budget manoeuvres implemented even during the year.

With regard to the involvement of the local authorities in economic and budgetary planning,

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[7] L. Mercati, The 'European Semester' and Changes to the National Accounting Discipline. Annual Report - 2011 – ITALY, in Ius Publicum Network Review, available at the site http://www.ius-publicum.com/repository/uploads/21_07_2011_16_50_Mercati2UK.pdf, p. 3.

Article 7(3) of Law 196/2009 foresees that the DEF scheme should be sent to the Permanent Conference for the Coordination of Public Financing (on its role see also Question VII.12) for its recommendations. The Committee has to give its recommendations in time to permit Parliament to decide on the DEF itself.

An *Updating Note* to the Economy and Finance Document (Article 10-bis of Law 196/2009) is then to be submitted to the Parliament by the 20th September: the presentation of this document – in coherence with the new European economic planning procedures - is «*no longer prospective and connected to the occurrence of considerable gaps in public financing fluctuation patterns*»,[8] but mandatory, and may contain an updating to the programmatic objectives and macro-economic and public financing estimate.

Article 10-bis of Law 196/2009 also regulates the cases of possible changes to the public financing objectives stated in the Economy and Finance Document and in its Updating Note, or of considerable gaps in public financing patterns that require remedial action, with obligations for the Government (respectively) to send an update to the guidelines regarding the distribution of objectives to the Permanent committee for the coordination of public financing or to submit a motivated report to Parliament.

The *Stability bill* (Disegno di legge di stabilità) and the *State Budget bill* (Disegno di legge del bilancio dello Stato) have to be submitted to Parliament by 15 October of every year: these documents together conclude the budget cycle and compose the three-year *Manouvre of public finance* (Manovra di finanza pubblica, Article 11 of Law 196/2009), laying down all the measures necessary to achieve the programmatic objectives.

Finally, according to Article 12 of Law 196/2009, the Minister of Economy and Finance shall submit to the Chambers, in the month of April, a *General Report on the economic situation of the Country* for the previous year.

GENERAL CHANGE

II.2

HOW HAS THE BUDGETARY PROCESS CHANGED SINCE THE BEGINNING OF THE FINANCIAL/EUROZONE CRISIS?

As already emphasized, the financial/Eurozone crisis had a strong impact on the reorganization and the reform of the Italian budgetary process, but this could be considered to be already in place.

In particular, the process of reform can be described as involving three different stages:[9]

1) the first phase led to the adoption, at the end of 2009, of the original version of the aforementioned new Law of accounting and public finance n. 196/2009, which updated the

[8] L. Mercati, The 'European Semester' and Changes to the National Accounting Discipline. Annual Report - 2011 – ITALY, in Ius Publicum Network Review, available at the site http://www.ius-publicum.com/repository/uploads/21_07_2011_16_50_Mercati2UK.pdf, p. 4.

[9] See, on this, the conceptualization made by the website of the Camera dei Deputati, in its pages on the "Topics of Parliamentary activity": http://www.camera.it/Camera/browse/292?area=8&Contabilit%C3%A0+e+strumenti+di+controllo+della+finanza+pubblica.

previous Law 468/1978, and systematized some of the innovations previously introduced on an experimental basis, such as the "reclassification" of the balance and the method of the three-year-planning of resources;

2) the second phase, centered in 2011 with the enactment of Law n. 39/2011, which introduced a number of amendments to Law n. 196/2009 to ensure the consistency of the budgetary and financial planning cycle of the public administrations with the new rules and procedures established by the European Union within the framework of the European Semester, the ex ante coordination of economic policies and budgets of Member States and a tighter financial surveillance;

3) the third phase, again a result of the further development of the European discipline and in particular of the adoption of the Fiscal Compact, was realized by the approval of the Constitutional Law 20th April 2012, n. 1 - which introduced into the Constitution the principles of a balanced budget and the sustainability of government debt (see Question IX.4) - and the subsequent Law of 24th December 2012, n. 243, which laid down specific provisions for the implementation of these principles under the new sixth paragraph of Article 81 of the Constitution.

In this complex framework, one can conceptualize the main changes in the process as follows:[10]

- an extension of the scope and boundaries of the accounting rules, with the establishment of a unified regulatory framework for all the subjects of the complex aggregate of Italian public administrations, and the introduction of new procedures for the coordination of public finance between the different levels of government;

- an extension of the scope in time as well of the system of budgetary decisions, now set over three years, both in terms of scheduling policies, objectives and resources, and in terms of implementation of public finance manoeuvres;

- a qualitative improvement of the information supplied by the documents of public finance, in terms of planning, management and reporting, through estimates of income and expenditure described in the different institutional subsectors - central government, local authorities and social security authorities – and through the drafting of several explanatory notes and informative annexes about the methods of study of trends of public finance and the effectiveness of financial maneuvers;

- the formal institutionalization of the system of functional reclassification of the state budget in "missions" and "programs" (previously operated on an experimental basis), with programs as new units of parliamentary vote, and associated with specific performance indicators;

- the redefinition of the content of the instruments of economic and financial planning and of

[10] Again relying also on the "official" view of the website of the Camera dei Deputati, in its pages on the "Topics of Parliamentary activity": http://www.camera.it/Camera/browse/292?area=8&Contabilit%C3%A0+e+strumenti+di+controllo+della+finanza+pubblica.

the timing of the budget cycle, which have been revised in the light of the role of the different levels of government in the pursuit of financial goals and the need to harmonize the national budget decisions with the decisions adopted by the European Union under the European semester framework;

- the strengthening of the rules for the financial coverage of the laws and of the instruments for monitoring and quantitative and qualitative control of public spending, coupled with the extension of methods of measurement and evaluation of the results of public policies (so called "spending review").[11]

INSTITUTIONAL CHANGE

II.3

WHAT INSTITUTIONAL CHANGES ARE BROUGHT ABOUT BY THE CHANGES IN THE BUDGETARY PROCESS, E.G. RELATING TO COMPETENCES OF PARLIAMENT, GOVERNMENT, THE JUDICIARY AND INDEPENDENT ADVISORY BODIES?

It has been remarked by the scholars how the budgetary process has always been placed, in the history of the constitutional state, «on the ground of the contrast and of the clash» between representative assemblies and executive power.[12]

In this respect, it has been common in the literature to see in the Italian budgetary process of the last decades a symptom of certain pathological dynamics of the two institutions: of the Parliament, unable to exercise a proper control on the financial choices of the Government given the absence of specific parliamentary procedures and powers, and also the traditional difficulties in the access by the two Houses to the information and the data on accounting and finance;[13] but also of the Government, which has no specific tools to contrast the negative legislative influence of the Parliament on the content of its accounting and financial documents, and it is often forced to resort to extreme procedural remedies, such as the abuse of the vote of confidence to contrast maxi-amendments.

In any case, a certain progressive empowerment of the executive branch in relation to the powers of the legislature has been highlighted, since the government has many tools to guide and control the decisions relating to public finance, not coupled with proper control powers of the Parliament:[14] both during authorizations, i.e. in the ordinary legislative procedure of approval of Laws containing effects of expenditure (also by vetoing parliamentary legislation with effects on budget), and during the final balance ("sede consuntiva"), namely when, in implementing the budget, the expenditure laws exercise their legal and, above all, financial

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[11] See on this http://www.camera.it/Camera/browse/522?tema=535&Il+controllo+della+spesa+e+la+spending+review.

[12] See the rich historical analysis of M. Luciani, Costituzione, bilancio, diritti e doveri dei cittadini, in Questione Giustizia n. 6/2012, with a reference to K. H. Friauf, Der Staatshaushaltsplan im Spannungsfeld zwischen Parlament und Regierung, Bad Homburg v.d.H.-Berlin-Zürich, Gehlen, 1968.

[13] See E. Griglio, Il "nuovo" controllo parlamentare sulla finanza pubblica: una sfida per I "nuovi" regolamenti parlamentari, in Osservatorio sulle Fonti, fasc. 1/2013, p. 12.

[14] See for instance A. Brancasi, Le misure urgenti per il controllo, la trasparenza ed il contenimento della spesa pubblica, in Diritto pubblico, 2003, p. 962; M. Degni La decisione di bilancio nel sistema maggioritario, Ediesse, Roma, 2004, p. 244 ff.

effects, and finally through the production of delegated legislation, with which the executive acquires a substantial legislative power.

The same dynamics of creeping empowerment on the form of government and the system of sources were detected by scholarship in the new European constraints and in the ones informally placed by the financial markets[15]: in particular, in the strong forms of prior coordination and convergence of the EU and Eurozone Member States' economic policies, and the risk of a mere role of ratification left for the Parliament.

In this respect, it will be interesting to study the possibility of a reform of the Standing orders of the Houses of the Parliament (see Questions VII.6, VII.16, and I.1), and, after its establishment in 2014, the role of the new Fiscal Council, the so called «Parliamentary Budget Office» («Ufficio parlamentare di bilancio», see Question VII.5), not by chance established in the Chambers.

CHANGE OF TIME-LINE

II.4

HOW HAS THE TIME-LINE OF THE BUDGETARY CYCLE CHANGED AS A RESULT OF THE IMPLEMENTATION OF EURO-CRISIS LAW?

The details, including the recent changes in the time-line, were discussed under questions VII.8, but also II.1 and II.2.

It is in any case important to highlight, as already done in those contexts, that the process of reorganization and reform of the Italian budgetary process was already in place since 2009 at least, and therefore not *only* directly linkable to the formal "implementation of Euro-crisis law" (though surely linked to the deterioration of the macroeconomic and growth prospects of the country).

So, summarizing, the new Law of accounting and public finance n. 196/2009 took the place of the previous Law 468/1978.[16]

This last provided for a system as follows: a "Combined report on the economy and public finances" was issued by 28 February of each year; an "Economic and Financial Planning Document" by 30 June (as well as a "Final Statement of Accounts" and a "Budget adjustment bill", these two not being planning documents); a "Forecasting and Planning Report", as well as the formal "Finance Bill" and "Budget Bill" were submitted by 30 September. Any accompanying legislation (bills) followed, by 15 November.

The new system changed as follows: a "Report on the economy and the public finances" due by 15 April; again, a "Final Statement of Accounts" and a "Budget adjustment bill" (not

[15] See for instance G. Rivosecchi, Parlamento e sistema delle autonomie all'ombra del governo nelle trasformazioni della decisione di bilancio, Rivista AIC, 1/2012, available at the website http://www.associazionedeicostituzionalisti.it/sites/default/files/rivista/articoli/allegati/Rivosecchi_2.pdf.

[16] See also the short explanatory note published by the *Ragioneria generale dello Stato* in its website: http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Servizio-s/Note-brevi/La-legge-d/Versione-inglese-La-legge-di-contabilit—e-finanza-pubblica-.pdf.

planning documents) by 30 June; a "Public Financing Decision" (see Question II.1) by 15 September; the *Stability bill* (Disegno di legge di stabilità) and the *State Budget bill* (Disegno di legge del bilancio dello Stato) (see again Question II.1) submitted to Parliament by 15 October, any accompanying legislation (bills) following, by 28 February.

The main amendment in the new system made by Law 39/2011 (see Question II.1) is the anticipation of the obligation of the Government to submit by 10 April of each year to the Parliament (and not by mid-September) what it is called today the "Economy and Finance Document" (DEF, *Documento di Economia e Finanza*, Art. 10 Law 196/2009, which has replaced and includes the Public Financing Decision introduced in 2009).

MISCELLANEOUS

II.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND CHANGES TO THE BUDGETARY PROCESS?

The Constitutional Law n. 1/2012 (see Question IX.4) also calls for a reform (still to be implemented) of the internal procedural rules of the two parliamentary Chambers, which are the other relevant sources of law to be studied in the budgetary process, apart from what described above. They will possibly contain new rules on the monitoring of the national and subnational budgets, and maybe also new tools pertaining to the envisioned "permanent dialogue" of art. 13 of Regulation (EU) No 1176/2011 with the European Institutions.

III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

NATURE NATIONAL INSTRUMENTS

III.1

WHAT IS THE CHARACTER OF THE LEGAL INSTRUMENTS ADOPTED AT NATIONAL LEVEL TO IMPLEMENT EURO-CRISIS LAW (CONSTITUTIONAL AMENDMENT, ORGANIC LAWS, ORDINARY LEGISLATION, ETC)?

First of all (see questions IX.1 and IX.4), Constitutional Law n. 1/2012 amended articles 81, 97, 117, 119 of the Constitution, inserting (in a somewhat nuanced way) the principle of the "balanced budget".

Moreover, the same Constitutional Law n. 1/2012 is autonomously the source of adoption of other «Euro-crisis law» obligations, in particular by providing the need for the establishment of a Fiscal Council and by leaving to a 'reinforced law' the establishment of the maximum deviation from the parameter of equilibrium in the budgets.

Such a 'reinforced law' was adopted, as already said, at the end of 2012 (Law 243/2012). The Italian legal order does not include, in its system of sources, formal 'organic laws', but the Law 243/2012 is in some ways comparable to that model[17]; in particular, its peculiar 'reinforced' nature is substantiated by the facts that[18]:

a) this law may be "repealed, modified or waived only expressly" by a subsequent law passed by the same special majority of art. 81, sixth paragraph of the Constitution; the laws amending the Law no. 243 of 2012 must necessarily be approved by the two plenary sessions of the Chambers

b) this special law cannot rule, in such a reinforced way, on matters already covered by ordinary legislation and outside its predicted area of competence; on the other hand, in the matters of art. 5 of Constitutional Law. n. 1 of 2012 any ordinary law is precluded

c) the Government cannot intervene on such matters by decree-law or by delegated legislation (even in the case of mandate by the Parliament reinforced as the law n. 243)

d) any effect of implied repeal of the norms of the Law 243 of 2012 is precluded.

All the other mentioned legislative measures, including the reforms on the budgetary process, came by ordinary legislation.

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17 N. Lupo, La revisione costituzionale della disciplina di bilancio e il sistema delle fonti, Relazione al Convegno "Costituzione e pareggio di bilancio" (Roma, 18 maggio 2012), in Il Filangieri. Quaderno 2011, Jovene, Napoli, 2012.

18 R. Dickmann, Brevi considerazioni sulla natura rinforzata della legge 24 dicembre 2012, n. 243, di attuazione del principio costituzionale del pareggio dei bilanci pubblici, in Federalismi.it, 6/2013, available at http://www.federalismi.it/ApplMostraDoc.cfm?content=Brevi+considerazioni+sulla+natura+rinforzata+della+legge+24+dicembre+2012,+n.+243,+di+attuazione+del+principio+costituzionale+del+pareggio+dei+bilanci+pubblici+-+stato+-+dottrina+-+&artid=22043#.Uq5Vb2TuKYU.

CONSTITUTIONAL AMENDMENT

III.2

HAVE THERE BEEN ANY CONSTITUTIONAL AMENDMENTS IN RESPONSE TO THE EURO-CRISIS OR RELATED TO EURO-CRISIS LAW? OR HAVE ANY AMENDMENTS BEEN PROPOSED?

See Questions IX.4 and IX.5, about Constitutional Law no. 1/2012, of 20 April 2012, which has introduced the "balanced budget" principle into the text of the Constitution itself, modifying the central Article 81 and, incidentally, other three provisions of the basic law: articles 97, 117 and 119.

CONSTITUTIONAL CONTEXT

III.3

IF NATIONAL CONSTITUTIONAL LAW ALREADY CONTAINED RELEVANT ELEMENTS, SUCH AS A BALANCED BUDGET RULE OR INDEPENDENT BUDGETARY COUNCILS, BEFORE THE CRISIS THAT ARE NOW PART OF EURO-CRISIS LAW, WHAT IS THE BACKGROUND OF THESE RULES?

See for a relevant point for Italy here Question IX.1: and so the debate on the previous text of Art. 81 of the Constitution, which already dictated a formally strict rule on the coverage of the financial burden (art. 81.4, previous text: «*all other laws implying new or additional expenditures must set out the means to cover them*»), but was then relaxed by subsequent interpretations of the Constitutional Court[19].

But precisely for this reason, Italy needed a new constitutional reform, and so we are not properly talking of a proper «background» already in place, but simply of an interesting debate often confined in academic terms.[20]

PURPOSE CONSTITUTIONAL AMENDMENT

III.4

WHAT IS THE PURPOSE OF THE CONSTITUTIONAL AMENDMENT AND WHAT IS ITS POSITION IN THE CONSTITUTION?

The purpose of the constitutional amendments is the introduction of the "balanced budget" principle into the text of the Constitution itself, modifying art. 81 and, incidentally, other three provisions of our basic law: articles 97, 117 and 119.

Article 81 is central in this respect: in the Italian basic law, in the absence of a true "Economic Constitution" (according to the German definition of *Wirtschaftsverfassung*), the properly said fiscal rules can be found in several constitutional dispositions, strictly linked to those protecting social rights, but article 81 was and is the one directly related to the budget process, «budgets and expenditure accounts», and «new taxes and expenditures» (it is located in PART II, ORGANISATION OF THE REPUBLIC; TITLE I, PARLIAMENT; SECTION II, The Drafting of Laws of the Constitution).

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19 T. Groppi, I. Spigno, N. Vizioli, The Constitutional Consequences of the Financial Crisis in Italy, p. 94 ff.

20 See on this Groppi 94 ff.

The constitutional revision brings also changes to:

- Article 97 of the Constitution, the central article of the two related to the Public Administration, and in particular historically stating the «efficiency and the impartiality of administration» – by introducing the requirement that public administrations, in line with European Union directions, ensure "balanced budgets and public debt sustainability"

- Article 117, one of the central articles of the recently reformed TITLE V on REGIONS, PROVINCES, MUNICIPALITIES, and in particular devoted to the legislative powers of the central State and the regions, by amending paragraphs 1 and 2 and granting the State exclusive legislative power over the "harmonization of public budgets", whereas it was previously shared between State and regions

- Article 119, again in Title V, on matters of regional and local finance, where more stringent constraints on the local authorities have been introduced.

It is interesting to notice that article 117 was the only one already containing a reference to «the constraints deriving from EU-legislation and international obligations» (in the absence of a proper "European clause" in the Constitution); it is now in Articles 97 and 119 (on the public administrations and territorial authorities) that reference to "economic and financial constraints derived from the European Union" was included (a reference lacking in Article 81).

RELATIONSHIP WITH EU LAW

III.5

IS THE CONSTITUTIONAL AMENDMENT SEEN AS CHANGING THE RELATIONSHIP BETWEEN NATIONAL AND EUROPEAN CONSTITUTIONAL LAW?

See under Question IX.5 for the peculiar genealogy of the Balanced Budget Rule amendment.

But apart from that, and from the general points described also in that context in relation to the (non influential) parliamentary concerns on budgetary sovereignty, no other special elements are traceable to see the constitutional amendment as «*changing the relationship between national and European constitutional law*». On the contrary (see Question III.3), the point of the proper, or strict, interpretation, as opposed to the relaxation, of the balanced budget rule, has always been part of the Italian academic constitutional law debate.

ORGANIC LAW

III.6

HAVE THERE BEEN CHANGES TO ORGANIC LAWS OR OTHER TYPES OF LEGISLATION THAT ARE OF A DIFFERENT NATURE OR LEVEL THAN ORDINARY LEGISLATION, IN RELATION TO EURO-CRISIS LAW OR THE BUDGETARY PROCESS?

See Question III.1 on Constitutional Law n. 1/2012 and the "reinforced law" n. 243/2012.

CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

III.7

IF ORDINARY LEGISLATION WAS ADOPTED IN CONJUNCTION WITH A CONSTITUTIONAL AMENDMENT, WHAT IS THE RELATIONSHIP BETWEEN THE TWO?

See again Question III.1, for a brief explanation of the relationship between the aforementioned constitutional amendments, the Constitutional Law n. 1/2012, and the 'reinforced' (but formally ordinary) Law 243/2012.

PERCEPTION SOURCE OF LEGAL CHANGE

III.8

IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?

Given also the political instability and the difficulties faced by Italy, and the replacement in 2011 of a political government with a 'technical' one with a clear pro-European flavour, the public perception was clearly of a period of direct implementation of «Euro-crisis law» measures.

Every single reform was clearly perceived in the framework of a broader European system of policies. There are several possible examples of this, including the parliamentary debates, that opened with (and often focused on) a discussion on the “political” future of the European Union.

In terms of specific reforms with adoption of ordinary legislation, there is for example the report produced by the Camera dei Deputati for its Members and for publication in its website, on the relevant «themes of parliamentary activity» of the current legislature, focusing on the budget reforms: http://leg16.camera.it/465?area=1&tema=496&Il+pareggio+di+bilancio+in+Costituzione. It is clearly contextualized in the terms of «Budget constraints and the European Union» («Vincoli di bilancio e Unione Europea»).

MISCELLANEOUS

III.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND TO CHANGES TO NATIONAL (CONSTITUTIONAL) LAW?

No other relevant information.

IV EARLY EMERGENCY FUNDING

Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1st round of Greek loan assistance).
The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF) are two temporary emergency funds, both resulting from the turbulent political weekend of 7-9 May 2010. On May 9, a Decision of the Representatives of the Governments of the Euro Area Member States was adopted expressing agreement on both funds.
The EFSM is based on a 'Council regulation establishing a European financial stabilisation mechanism' of May 11, 2010 adopted on the basis of article 122(2) TFEU and therefore binding on all 27 member states of the EU.
*(*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF*)*
*The EFSF is a special purpose vehicle created under Luxembourgish private law by the 17 member states of the Eurozone. The EFSF Framework Agreement was signed on June 7, 2010. On June 24, 2011, the Heads of State or Government of the Eurozone agreed to increase the EFSF's scope of activity and increase its guarantee commitments. (*http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf *and* http://www.efsf.europa.eu/attachments/faq_en.pdf*)*

NEGOTIATION

IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The EFSF and EFSM were not discussed in the Parliament before their announcement in May of 2010.

Given also their peculiar genealogy, there are no details available regarding the Italian Government's negotiation in relation to the Regulation or the Framework Agreement. For a long time, there has been no evidence of particular political/legal difficulties encountered in the negotiation. In the context of the new European elections campaign of 2014, however, the former Minister of Economy and Finance Giulio Tremonti has repeatedly spoken of a first opposition, by the Italian government, to the position of France and Germany for "banks-centered" interventions[21] already in 2010, and therefore referring already to the EFSF and EFSM terms, and not only to the ESM.

ENTRY INTO FORCE

IV.2

[21] See for instance, most recently, the interview by V. Zincone to G. Tremonti, "Quel che oggi temo di più è un asse Mosca-Berlino", in Corriere della Sera – Sette, 1 maggio 2014 – numero 18, pp- 36-38.

ARTICLE 1(1) EFSF FRAMEWORK AGREEMENT PROVIDES THAT IT WILL ENTER INTO FORCE IF SUFFICIENT EUROZONE MEMBER STATES HAVE CONCLUDED ALL PROCEDURES NECESSARY UNDER THEIR RESPECTIVE NATIONAL LAWS TO ENSURE THAT THEIR OBLIGATIONS SHALL COME INTO IMMEDIATE FORCE AND EFFECT AND PROVIDED WRITTEN CONFIRMATION OF THIS. WHAT DOES THIS PROCEDURE LOOK LIKE IN ITALY AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

The Framework Agreement was implemented in the Italian legal order with Article 17 of Decree-Law ("decreto-legge") n. 78/2010 (containing «Urgent measures on financial stability and economic competitiveness»), and therefore, at least initially, through a governmental decree which directly entered into force on 31 May 2010.

The first paragraph of Article 17 was the explicit authorization to the Minister of Economy and Finance to ensure the participation of the Italian Republic in the capital of the company formed with the other Member states of the Euro area, in accordance with the conclusions Council of the European Union of 9 and 10 May 2010.

Decree-laws are legislative acts of a temporary nature having the force of law, adopted in «extraordinary cases of need and urgency» by the Government, pursuant to art. 77 of the Constitution of the Italian Republic. They need then to be converted into law by the Parliament within 60 days from the publication: Decree 78/2010 was in fact converted (with amendments) by Law n. 122, 30 July 2010.

GUARANTEES

IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN ITALY? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The second paragraph of the aforementioned Article 17, Decree 78/2010, converted by Law n. 122, 30 July 2010, was an authorization to the Minister of Economy and Finance to grant State guarantees on the liabilities of the company formed with the other Member states of the Euro area, «*in order to form the financial funding to make loans (or other forms of financial assistance) to the Member States of the euro in accordance with the conclusions Council of the European Union of 9 and 10 May 2010 and other consequent decisions that will be passed by unanimous vote of the Member States of the euro area*».

Through a *renvoi* to Article 2, paragraph 2 of the decree-law of 10 May 2010, no. 67, it was also provided that the necessary resources were to be obtained «*by means of the emission of government bonds in the medium-long term*», as extraordinary measures not to be calculated in the limits or levels provided by the Italian law.

The conversion into law was discussed in the Parliament between 1 June and 15 July, at the

Senato della Repubblica,[22] and between 20 and 29 July, at the Camera dei deputati.[23] Given the wide and various array of topics included in the original Decree n. 78, the implications of the EFSF guarantees were not specifically debated.

ACTIVATION PROBLEMS

IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER DURING THE NATIONAL PROCEDURES RELATED TO THE ENTRY INTO FORCE OF THE EFSF FRAMEWORK AGREEMENT AND/OR THE ISSUANCE AND INCREASE OF GUARANTEES?

There have been no known significant difficulties encountered.

CASE LAW

IV.5

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN ITALY?

No. This may be considered not surprising in Italy, in general, for this kind of measures, given the restricted possible modalities of access to the Italian Constitutional Court. These are limited (briefly said) to appeals lodged by individuals before an ordinary judge - and therefore pertaining to legislative norms relevant and directly applicable in ordinary trials – then sent to the Constitutional Court after the suspension of the trial; and ex post direct appeals lodged by Regions and other powers of the State in case of invasion of constitutional attributions and «spheres of competences». Therefore, in Italy there is not the possibility of an ex ante review prior to the ratification of international agreements.

IMPLEMENTATION

IV.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE EFSF, FOR EXAMPLE WITH REGARD TO DECISIONS ON AID PACKAGES (LOAN FACILITY AGREEMENT AND MEMORANDUM OF UNDERSTANDING) AND THE DISBURSEMENT OF TRANCHES, BOTH OF WHICH NEED UNANIMOUS APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

As noted, Art. 17 of the governmental Decree 78/2010, converted by the Parliament with Law July 30, 2010, n. 122, amounts to an ex-ante parliamentary delegation to the Minister of Economy and Finance to grant disbursements «*in accordance with the conclusions Council of the European Union of 9 and 10 May 2010 and other consequent decisions that will be passed by unanimous vote of the Member States of the euro area*».

The second part of its paragraph 2 provides then for the inclusion of these disbursements in a special attachment to the "Stato di previsione" complied by the same Minister and submitted to the Parliament, according to Law n. 196/2009 on Public accounting and Finance (see Questions VII:8 and II.4), for a subsequent control by the Chambers.

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22 http://www.senato.it/leg/16/BGT/Schede/Ddliter/35500.htm

23 http://www.senato.it/leg/16/BGT/Schede/Ddliter/35679.htm

IMPLEMENTING PROBLEMS

IV.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE APPLICATION OF THE EFSF?

There have been no known significant difficulties encountered in the application of the EFSF.

BILATERAL SUPPORT

IV.8

IN CASE ITALY PARTICIPATED IN PROVIDING FUNDING ON A BILATERAL BASIS TO OTHER EU MEMBER STATES DURING THE CRISIS, WHAT RELEVANT PARLIAMENTARY DEBATES OR LEGAL ISSUES HAVE ARISEN?

Italy participated in the bilateral support part of the first aid package for Greece in 2010.

Italy's contribution quota was determined on the basis of the percentage of the stake in the total capital of the European Central Bank, and therefore amounted to 18.42 per cent of the total Euro area contribution of €80 billion.

The participation was debated both in the upper house (*Senato della Repubblica*, between 11 and 25 May 2010, http://leg16.senato.it/leg/16/BGT/Schede_v3/Ddliter/35379.htm) and in the lower house (*Camera dei Deputati*, between 3 and 15 June 2010, http://leg16.camera.it/126?pdl=3505) for the «conversion into Law» of the Decree n. 67/2010 «*Urgent measures to safeguard the financial stability of the Euro*», and the «order of execution» of the international agreement named as "Intercreditor Agreement" and of the agreement designated as "Loan Facility Agreement" («both signed on May 8th 2010»).

The Decree n. 67 made direct reference to the three-year program of financial support by means of bilateral loans to Greece defined in the Declaration of the Heads of State and Government and in the resulting decisions of the "Eurogroup". It provided for the granting of loans in favor of Greece by decree of the Minister of Economy and Finances, in accordance with the conditions laid down with the decisions taken at the European level, and then for the communication of these decrees to the Parliament and to the Court of Auditors.

From a constitutional point of view, it was underlined by some scholars how the ratification was accomplished by unusual means.[24] In fact, a particular problem arose in relation to the legal nature of the original European agreements, and to the legal instrument to correctly implement them in the Italian legal order. The agreements at the European level, in fact, have been concluded after the approval by the Italian Council of Ministers of the Decree n. 67, and this latter, therefore, simply referred to the original Declaration of the Heads of State and Government and any consequent act. At the time of "conversion into Law" of the Decree, therefore, it was considered appropriate to make specific reference to legally binding agreements entered into force in the meantime: thus, these were annexed to the text of the

[24] See G. Napolitano, L'assistenza finanziaria europea e lo Stato ''co-assicuratore'', in Giornale di diritto amministrativo n. 10/2010.

Law of conversion, which now also contains the relative order of execution. Doubts were raised,[25] however, whether the agreements reached among the European partners were pure international agreements, which, pursuant to Art. 80 of the Italian Constitution, shall be subject to ratification, or, on the contrary, they were sui generis Community acts, therefore not subject to specific approval process (but with no specific legal grounds in the Treaties or in secondary European legislation). In the first case, in fact, one would see in such an approval an atypical order of execution, with no specific authorization for the ratification, and with the further anomaly of an execution order contained in a Law of conversion of a Decree, against the provisions of Art. 15 of the Law n. 400/1988 on the possible contents of Decree-laws in the Italian legal order.

As for the merits, in both the Chambers of Parliament, as usual for bills related to European affairs, there was a broad convergence of views between the centre-right party of the Popolo della Libertà (at that time, in charge of supporting the executive) and the centre-left party of the Partito Democratico.

Upper House

In terms of «relevant Parliamentary debates», it is firstly important to highlight that at the Senate (Senato), the MP rapporteur at the plenary discussion (Tancredi, center-right PdL) stressed the point of the need of a European intervention for the Greek situation, and described the conditions posed for the loan assistance, and the amount of the quota referred to Italy. He then clearly stated that the conversion into Law of the Decree n. 67/2010 «*authorizes the government to carry out the operations of financial support for Greece agreed at international level*», explaining how the "Intercreditor Agreement" and the "Loan Facility Agreement" were to be considered as a first stage of the European set of interventions for the financial crisis, leading to a strengthening of the preventive surveillance of public finances and of European «governance».[26] Interestingly, he also explicitly placed the new measures in the context of a «challenging» reform of the modern «welfare system», for a better and more rigorous use of the collective resources.[27]

A first representative of the centre-left PD, at the time in the opposition (Nicola Rossi), already during the examination in the V Committee on 20 May 2010,[28] noted that the Decree in object and the future economic measures announced by the Government are the basic steps for the future «material constitution of the European Union». Therefore he stated that it would be a serious mistake to limit the examination of the international economic crisis to the mere issue related to the Greek economic crisis and therefore called for a broader view in relation to the Italian economic situation, in broad relation to the European one. He stressed the point of the somehow comparable situation that Italy, Spain and Portugal would enjoy

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25 Ivi.

26 «(...) *an opportunity to relaunch the process of European cohesion, giving rise to the awareness of shared responsibility and the need to improve the tools to protect the European financial stability and to strengthen the coordination of budgetary policies*»: http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=481753.

27 *Ibidem.*

28 http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=481105.

with the worsening of the crisis, and he called for a broad and powerful European intervention in this respect. He envisioned two possible models of reference. The first represents the evolution towards a political union that would require, as mentioned by the European Commission, a stage of preliminary analysis on the financial statements of each State by all the other Member States. A multilateral surveillance no longer a posteriori but also ex ante and that does not concern only the profiles of the deficit and debt but also the data structure of the economy of each country. He described this solution as much more flexible than the other viable alternative, modelled after the U.S. system: in that context, the individual states «would not be able to be in deficit if not for investments and would not be able to exceed stringent limits on the deficit».[29]

In addition, in the same venue, a second intervention by a PD representative (Morando) stressed the point of the need for structural reforms in Italy, and said that the situation in Greece was also determined by the poor efficiency of public financial control, the lack of transparency and credibility of financial institutions. He pleaded – with clear reference to the internal situation - for the establishment of an independent authority on public finances, as an institutional factor that (especially in the context of the Parliament) would greatly affect the credibility of a country in respect of the financial markets.[30]

A general support was based on the need to show solidarity with Greece but also because it was in Italy's interest as vulnerable economy with similar problems of high public debt.[31]

Lower House

In the lower house (Camera dei Deputati), some weeks later (14 June 2010), the debate started with the discussion of the rapporteur (MP Marinello, PdL) on some of the aforementioned critical legal technical points, such as 1) the atypical nature of the Decree in question, «*which, in essence, cannot be amended, as it includes and incorporates a commitment between states*»[32], and 2) the question raised by the specialized Committee on the Quality of Legislation that this kind of agreements reached between the European partners are (quite obviously) «*sui generis Community acts, not submitted to a specific approval process*»,[33] and often approved in other European states by «*ordinary rules, without using the instrument of ratification of international agreements*».

But the points raised no particular practical obstacles, and the political discussion followed more or less the same ideas already expressed at the Senate (Senato), with the PD representative (Gozi) even talking of «false economic sovereignty»[34] of the States with the intention to criticize their resistance to common European strong measures, given the common need of economic growth.

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29 *Ibidem.*

30 http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=481105.

31 For instance, see MP Giarretta (PD) intervention in the plenary session of the 25th May 2010, http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=481753.

32 http://leg16.camera.it/410?idSeduta=0336&tipo=stenografico#sed0336.stenografico.tit00040 , p. 3.

33 *Ivi.*

34 *Ibidem, p. 9.*

Only the representatives of relatively small groups, such as the center-left Italia dei Valori party (MP Cambursano) raised some general critical remarks on the economic sustainability, for both Greece and Italy, of the European plans, but without touching upon particular technical aspects.[35]

It is interesting to note that, at this stage, also the Lega Nord group (a federalist and regionalist political party rooted in the Northern part of Italy) voted in favor of the European measures, with the idea that that would strengthen their "fiscal federalism" projects; and that also representatives of the main center-left PD party (MP Vannucci) highlighted the point of the need of a reform of the corrupt and inefficient Italian welfare/socio-economic rights system, also following a European common «harmonisation».

MISCELLANEOUS

IV.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE EFSM/EFSF?

Not other relevant information.

35 *Ibidem,* pp. 22-25.

V TREATY AMENDMENT ARTICLE 136(3) TFEU

At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."
The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.

NEGOTIATION

V.1
WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

Both in relation to the dynamics within the government and in the Parliament, Italy faced no particular difficulties in the *negotiation* of the amendment, in terms of serious obstacles to the actual feasibility of the approval.

This has to do with a common feature of the Italian politics in relation to what one can call, in general terms, «European affairs» (also including the regular international treaties concluded in the Euro zone crisis, namely the Fiscal Compact and the ESM Treaty, see question VIII.1): a certain (until now) stable bi-partisan favorable approach, by main center-left and center-right parties, in the approval of the related measures.

This was surely the case of the procedure of authorization by Law 23 July 2012, n. 115 of the 136 TFEU Treaty amendment: in fact, it is interesting here to highlight, as a first point and talking about general political/legal difficulties and related debates, that

- the negotiation took place under the Berlusconi IV government (but in any case with the political approval of large part of the center-left opposition), and the ratification under the «technical» Monti government (with bi-partisan support)

- in both parliamentary Chambers, and in their Committees in charge of the first review, the procedure in question was joined with the other procedures related to the Fiscal Compact and the European Stability Mechanism (ESM), as it is clear from the attached documents: (http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367, http://documenti.camera.it/leg16/resoconti/assemblea/html/sed0669/stenografico.pdf, so called «joint discussion», «*discussione congiunta*»; see also http://www.europarl.europa.eu/webnp/webdav/site/myjahiasite/users/fboschi/public/e

sm%20tscg/art.%20136%20ESM%20fiscal%20compact%20ratprocess.pdf).

In this joint discussion, no particular point was raised on the matter of the amendment of Art. 136 TFEU, since the focus was not on the technical legal aspects of the three measures (for instance, the problem of competence or of legal basis of the Treaty reform), but mainly on the broad macroeconomic perspectives.

APPROVAL

V.2

HOW HAS THE 136 TFEU TREATY AMENDMENT BEEN APPROVED IN ITALY AND ON WHAT LEGAL BASIS/ARGUMENTATION?

It is probably relevant to highlight that, in both the Chambers, and for both the initial part in front of the competent Parliamentary Committees and the discussion in the Chamber, the procedure of authorization by law of the Fiscal Compact was joined with the other procedures related to the Treaty amendment article 136(3) TFEU and the European Stability Mechanism (ESM).

In fact, given the aforementioned «joint discussion» (see question V.1) in the Italian Parliament in relation to the 136 TFEU Amendment, the Fiscal Compact and the European Stability Mechanism (ESM), the answer will be common for the 136 TFEU Amendment (here), the Fiscal Compact (see question VIII.2) and the ESM Treaty (see question IX.2).

The legal process through which these measures have been approved/ratified in Italy was the typical process dictated by articles 80 and 87(8) of the Constitution.

According to art. 80, the two Chambers of the Parliament (Camera dei Deputati and Senato della Repubblica) «*authorize by law the ratification of international treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to the national territory or financial burdens or changes to legislation*».

Art. 87(8) Const. reads: «*The President shall: authorize the introduction to the Houses of bills initiated by the Government, promulgate the laws and issue decrees having the force of law as well as regulations, call popular referenda in the cases provided for by the Constitution, appoint State officials in the cases provided for by law, accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorized by the Houses*». So the final step of the ratification procedure - and, formally speaking, the ratification itself – is an act of the President of the Republic. In any case, it is important to highlight that this is a typical act that, in the categorization of the President's acts, is normally qualified as “formally but not substantially” presidential: this means that the act involves the formal role of the President as the highest representative of the Republic, especially in international relations, but this does not imply his substantive role, nor his liability, for the related political choices, which are in the sphere of the Government in terms of negotiation, and of the Parliament for the authorization, as already seen.

No referendum was held on the 136 Treaty amendment (or Fiscal Compact or ESM Treaty).

In fact, art. 75(2) Constitution excludes this possibility for the ratification of international treaties as it reads «*Referenda are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorizing the ratification of international treaties*».

RATIFICATION DIFFICULTIES

V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER DURING THE RATIFICATION OF THE 136 TFEU TREATY AMENDMENT?

The legal process through which the 136 TFEU Treaty amendment has been approved in Italy was the typical process dictated by articles 80 and 87(8) of the Constitution. This means that Italy had an authorization law adopted, through the regular legislative procedure of art. 72 of the Constitution, by both the two Chambers of the Parliament, and the formal act of ratification issued by the President of the Republic (see question V.2, and in more detail on the procedure question IX.2 on the ratification of the Fiscal Compact).

It is relevant here to highlight again, talking about general political/legal difficulties and related debates, that, in both the parliamentary Chambers, and in their Committees in charge of the first review, the procedure of authorization by law of the 136 TFEU Treaty amendment was joined with the other procedures related to the Fiscal Compact and the European Stability Mechanism (ESM), as it is clear from the attached documents.

The other important point to highlight is that in the Italian political system, the two major parties of the center-right and center-left coalitions (Popolo della Libertà e Partito Democratico, respectively) are both strong pro-European movements, with really few, and scarcely relevant, exception among their members (see also question I.1 on the political context of Italy during the Eurozone crisis). This can be considered (at least until now) as a traditional element of the Italian party system, probably one of the few rooted elements in a period of possible changes like the present. This has historically had an impact on the quantity and quality of the Italian debate on European issues: the related bills are normally adopted in the Parliament jointly by these two parties (and a large part of the satellite-parties),[36] with relatively scarce, and normally apologetic, debate, and again relatively scarce echo in the general public debate.

This has only slightly changed with the Eurozone crisis, and the ratification procedure of the 136 TFEU Treaty amendment (and of the other international measures, as aforementioned) constitutes evidence of that. The bill for authorization of the 136 TFEU Treaty amendment was presented by the competent ministers of the Berlusconi IV government on 19 September 2011, and then discussed and approved (jointly), by the same Chambers, in July 2012 under

[36] See, for instance, the majorities at the Camera dei Deputati at the page http://parlamento16.openpolis.it/votazione/camera/ratifica-ed-esecuzione-della-decisione-del-consiglio-europeo-2011199ue-che-modifica-larticolo-136-del-trattato-sul-funzionamento-dellunione-europea-relativamente-a-un-meccanismo-di-stabilit%C3%A0/39316.

the Monti government. This means that, at the time of the presentation, there was a political system in place with a strong center-right governing coalition with the biggest parliamentary majority in the Italian history, and the center-left coalition in opposition; at the time of the discussion and the approval, both coalitions supported the new Monti government (as a kind of "große Koalition" pushed by the choices of the President of the Republic after PM Berlusconi's resignation in November 2011, linked itself to the Eurozone crisis, see question I.1), and only some small parties formally in opposition.
The "stenographic reports" attached show that the rapporteurs in charge of the different bills were members both of the centre-right parties and of the center-left (symbolizing a kind of joint endorsement).[37]

The parliamentary debates (held in the upper house[38] between 14 December 2011 – first exams in the Committees – and 12 July 2012 – final approval – and in the lower house[39] between 17 July 2012 – first exams in the Committees – and 19 July 2012 – final approval) were obviously influenced by the joint discussion on the three different ratification/approval procedures.

The rapporteurs themselves emphasized the difference with the old times in which the ratification of the EU-related bills was seen as an only "technical" debate, with no political echo nor particular resistance. But the debates seem to be a general discussion of the typical, historical problems of the so called democratic deficit in the European Union, with strong arguments, from both center-right and centre-left, for the need of a more "political" federal Union.
Sometimes the discussion touches on the German "expansionist" commercial policy in Europe and in the Mediterranean countries, because of the macroeconomic and monetary dynamics helping German exports in comparison with the Italian ones.

But in general, the real technical discussion relevant for this question is linked to the problems of the financial inadequacy of the European *stability mechanism*, and the important concerns for the possible great costs for the Italian budgetary system.[40]

Since the plenary debates took place in mid-2012, real strong resistance to the approval of the bill came only from the relatively small parties of the new opposition under the Monti government, and in particular by the Lega Nord group (a federalist and regionalist political party rooted in the Northern part of Italy, which some months before voted in favor of the Greece related bilateral measures, with the idea that that would strengthen their "fiscal federalism" projects – see question IV.8).

In this respect, some (relatively scarce) broad concerns are raised on the constitutionality of

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37 http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367.
38 http://leg16.senato.it/leg/16/BGT/Schede_v3/Ddliter/37365.htm.
39 http://leg16.camera.it/126?tab=&leg=16&idDocumento=5357&sede=&tipo=.
40 See for instance, MP D'Amico, plenary discussion at the Camera dei Deputati, 11 July 2012: http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110, p. 60.

the measures, and the sovereign attributions on fiscal and budgetary policy:[41] for instance by emphasizing how the ESM «*takes away from the Parliament, and therefore from the citizens, the responsibility of the national budget by handing it to an executive power without constitutional legitimacy, namely the Council of Finance Ministers of the countries of the European Union (...) and the European Central Bank*»;[42] or how these measures themselves, for their implied economic burden, would go contrary to the rationale of the golden rule of the renewed article 81 of the Constitution on the financial coverage of every law of the State.[43]

A PdL member suggested that, in view of the constitutional significance of such measures, the special "aggravated" procedure for constitutional reform should have been used.[44]

A general emphasis was put on the forthcoming important judgment of the German Constitutional Court, at the time still awaited, as evidence of a more structured and serious debate on these themes in other Member states.[45]

Some of the opponents actually tried to discuss the issue of a possible *referendum* on the new European measures,[46] but it is important to highlight in this respect that no "consultative referendum" of this kind is foreseen in the Italian Constitution, and the only way to establish it would be by adopting a special "constitutional law" enabling such a referendum (legge costituzionale), used only once in the history (but precisely on EU-related issues, in 1989).

Last point to mention: some important, even if only symbolic and numerically irrelevant, defections came for the center-right coalition from some traditionally liberal members, based on concerns for new possible increases in taxes.

CASE LAW

V.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT IN ITALY ON THE 136 TFEU TREATY AMENDMENT?

No. This was not surprising, given the limited possible modalities of access to the Italian Constitutional Court (see under Question IV.5).

MISCELLANEOUS

V.5

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41 An highly debated point at least by some constitutional lawyers in the country, somehow disregarded in the parliamentary debates.

42 MP Boldi, joint plenary discussion of the Senato, 11 July 2012: http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367.

43 MP D'Amico, joint plenary discussion of the Camera dei Deputati, 18 July 2012, http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110.

44 MP Azzolini, joint plenary discussion of the Senato, 11 July 2012: http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367.

45 MP Evangelisti, joint plenary discussion of the Camera dei Deputati, 19 July 2012, http://leg16.camera.it/410?idSeduta=0669&tipo=stenografico#sed0669.stenografico.tit00020.

46 MP Mazzatorta, joint plenary discussion of the Senato, 11 July 2012: http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367.

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE 136 TFEU TREATY AMENDMENT?

No other relevant information.

VI EURO-PLUS-PACT

On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the 'Plus' - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out).
The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.
*(*http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf*)*

NEGOTIATION

VI.1
WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE NEGOTIATION OF THE EURO-PLUS-PACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE PACT FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

The pact was negotiated at the time by the government in charge (Berlusconi IV), with no formal ex-ante involvement of the Parliament.

It is therefore difficult to exactly trace the related institutional debates, at least in formalized terms.

Talking about political/legal difficulties, one can say the government did not meet specific obstacles in the negotiation, even though the objectives of the Pact are also considered as historical Italian weaknesses.

MISCELLANEOUS

VI.2
WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE EURO-PLUS-PACT?

Italy did not take measures directly and formally categorized as a "reaction to the Euro-Plus-Pact", as other Members States did.[47]

But if one considers the immediate reaction to the Pact, it is important to highlight that on 6 July 2011, following the activities of the European Semester and a number of informal "letters" between the EU institutions and the Italian government[48], the Italian government approved the decree n. 98/2011, containing «urgent measures for financial stabilization», then converted by the Italian Parliament by Law n. 111/2011 on 15 July 2011.

[47] See the prospectus here: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/.
[48] See under question VII.1.

On 12 July 2011 the Italian Parliament also converted the so called «development decree» ("Decreto sviluppo") n. 70/2011 by Law no. 106/2011. With these measures, the Italian Government intended to comply with the «European commitments», i.e. to implement the recommendations on the National Reform Programme and the Stability Programme.

On 21 July 2011, the ECOFIN Council declared to be satisfied of the measures taken, approving «the package of budgetary measures recently presented by the Italian government, which will allow it to bring the deficit below 3% in 2012 and to achieve a balanced budget in 2014».

Given the traditional varied composition, and the consequent unsystematic quality, of the Italian legislative texts, and in particular of the Decrees of the government, it is difficult to exactly describe the «economic/social» substance of the aforementioned measures.

Law 111/2011 includes, in particular, various but important reforms for «reducing the costs of the political institutions» (Law n. 111/2011, Chapter 1, Articles 1-8), for the «rationalisation and monitoring of government expenditure» (Law n. 111/2011, Chapter 2, Articles 9-15), for the «containment and rationalization of the public expenditure on public sector employment, health, social security, school organization», and on the participation of the regional and local institutions to the financial stabilization (Law n. 111/2011, Chapter 3, Articles 16-20), for «financing the urgent expenditure measures» (Law n. 111/2011, Chapter 4, Art. 21 – 22), in the field of tax redistribution (Articles 23-25) (Articles 26-39) (Articles 40-41).

Law 106/2011, on the other hand, includes reforms on tax credits for investments in the field of scientific research (art. 1), tax credits for investments and hiring programs in the Southern part of Italy (art. 2); administrative simplification for business (artt. 3 and 8) and for the construction of public infrastructure (art. 4) and private buildings (art 5); other administrative simplification measures for small and medium-sized enterprises (art. 6); simplification of tax measures (art. 7); measures for meritocracy in school and in research (art. 9); simplification of some public services offered to citizens (art. 10).

The Italian rules on the budgetary process have undergone, in the last four years, important reforms. In 2009 the so called new "national accounting law" (L. 31 dicembre 2009, n. 196) was enacted, and soon some new amendments in 2011 (L. 7 aprile 2011, n. 39) to (obviously) adapt it to the new European standards, including the timing of the European Semester.[49] Moreover, a new Law n. 234/2012 on «*general rules on Italy's participation in the formation and implementation of legislation and policies of the European Union*» was adopted (see Question VIII.6).

In terms of parliamentary procedures, the Camera dei deputati has adopted, through two special "opinions" of its "Giunta per il regolamento" of 6 October 2009[50] and 14 July 2010,[51]

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49 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/116306.pdf.

50 http://leg16.camera.it/593?conoscerelacamera=236.

51 http://leg16.camera.it/593?conoscerelacamera=241.

an «experimental procedure» for the exercise of the control of subsidiarity and the of the «political dialogue» with the European Commission and the European Parliament.

But no formal changes have been made in order to specifically comply with the Euro-Plus-Pact.

VII SIX-PACK

The 'Six-Pack' is a package of six legislative measures (five regulations and one directive) improving the Economic governance in the EU. The Commission made the original proposals in September 2010. After negotiations between the Council and the European Parliament, the package was adopted in November 2011 and entered into force on December 13, 2011. Part of the 'Six-Pack' measures applies only to the Eurozone member states (see the individual titles below).
The 'Six-Pack' measures reinforce the Stability and Growth Pact (SGP), among others by introducing a new Macroeconomic Imbalances Procedure, new sanctions (for Eurozone member states) and reversed qualified majority voting. Also, there is more attention for the debt-criterion.
*(*http://ec.europa.eu/economy_finance/economic_governance/index_en.htm*)*

NEGOTIATION

VII.1
WHAT POSITIONS DID ITALY ADOPT IN THE NEGOTIATION OF THE 'SIX-PACK', IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE 'SIX-PACK' FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The position of the Italian government in the negotiation of the "Six Pack" has been essentially in favor of the agreement, with the expression of no clear opposition to some particular measures, and with the traditional bi-partisan support (see question V.3, and also question I.1) of both the main center-right (at that time, the majority supporting the government Berlusconi IV) and center-left parties.

The relevant reports «*on the participation of Italy to the European Union*» issued by the Department for the European Affairs of the Government (*Presidenza del Consiglio dei Ministri*)[52] did not formalize any particular point raised by the Italian representatives, if not the contribution in identifying and develop transparent methods, based on clear and shared analysis, for the assessment of national progress in implementing the Europe 2020 Strategy.[53]

The only specific debate held in Parliament was in the context of the XIV Committee of the Senate on European affairs, on 11 and 16 November 2010 (see

[52] See in particular http://www.politicheeuropee.it/attivita/18197/relazione-consuntiva-2011-e-programmatica-2012, and the archive of all the reports, including the more recent ones, at the page http://www.politicheeuropee.it/attivita/44/archivio-relazioni.

[53] «*The Italian government has played an important role in the definition of the excessive imbalance procedure (procedures Macroeconomic imbalances - MIP) proposed by the Commission and now part of the "six-pack". In the analysis of the means for preventing macroeconomic imbalances (Alert Mechanism Report and Scoreboard), contained in the new economic governance package, the attention of the Member States countries has focused in particular on the indicators to be used in the two areas chosen for identify macroeconomic imbalances: the competitiveness and the internal and external imbalances. The Government has repeatedly stressed the need to develop transparent methods, based on clear and shared analysis, the assessment of national progress in implementing the Europe 2020 Strategy.*»: Relazione Programmatica 2012 (see note 24), p. 15.

http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512051; http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512300). General critical remarks were made on the «*effective involvement of the Parliament*», apparently both regarding the negotiation of the measure and regarding the possible consequences for the budgetary process (see in particular Senator Marinaro, PD, in the debate on the 16 November); and, in terms of preoccupations on national budgetary sovereignty, a point was made in the same context by Senator Di Giovan Paolo (PD) on the fact that «*this procedure will affect, in a substantial manner, the preparation of financial maneuvers of the 27 countries of the European Union*».

A general report on all the measures, in the framework of the Reasoned Opinion on Subsidiarity, was issued,[54] pleading for a «*degree of flexibility*» in the evaluation of economic and budgetary policies adopted by Member States, in the context of macroeconomic surveillance; for a «global approach based on several factors» with particular reference to the criteria to assess whether the reduction of the public debt by a Member State can be considered satisfactory; for a limitation of the criterion of reverse majority only to the part of the sanctions on interest bearing and non-interest-bearing deposits for "non virtuous" Member States, keeping the current system of voting (by qualified majority) for each subsequent sanction («otherwise an imbalance between the right of initiative of the European Commission and the permanence of the ultimate decision-making power in the hands of the Council» would arise).

What is in any case relevant to note in answering such a general question, is that the course of action for the resignation of Silvio Berlusconi as head of the government, and its replacement with the so called Monti's "technical" government in November 2011, developed in the context of the strengthening of mechanisms for coordination and monitoring of economic policies, but was perfectly coincident with, and influenced by, the negotiation of the Six Pack and its aftermath (see Question I.1).

DIRECTIVE 2011/85/EU

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States

IMPLEMENTATION

VII.2

WHAT MEASURES ARE BEING TAKEN TO IMPLEMENT DIRECTIVE 2011/85/EU ON REQUIREMENTS FOR BUDGETARY FRAMEWORKS (REQUIRED BEFORE 31 DECEMBER 2013, ARTICLE 15 DIRECTIVE 2011/85/EU)?

Under Italian law, the «Legge comunitaria» was historically the regulatory measure

[54] http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512300, Allegato 1, "*OSSERVAZIONI APPROVATE DALLA COMMISSIONE SUGLI ATTI COMUNITARI NN. COM (2010) 522 definitivo, COM (2010) 524 definitivo, COM (2010) 525 definitivo, COM (2010) 526 definitivo E COM (2010) 527 definitivo SOTTOPOSTI AL PARERE MOTIVATO SULLA SUSSIDIARIETA*".

(typically the bill of law to convert a previous *ad hoc* Decree into law) that the Italian Parliament every year enacted (and was compelled to enact, pursuant to Law 9 marzo 1989 n. 86 before and Law 4 febbraio 2005 n. 11 afterwards) to incorporate into its domestic legal order all the norms produced and the standards set by European Union law (obviously, if these were in need of implementation).

A new procedure has been dictated by Law 234 of 2012 based instead on the splitting of the annual «Legge comunitaria» in two distinguished legislative provisions: a «Legge di delegazione europea» and a «Legge europea». The content of the first is confined to those provisions of delegation necessary for the transposition of EU directives by the government; while the latter, in general, should contain provisions directly designed to ensure the adjustment of the internal legal order to European constraints.

Legge Comunitaria 2012

In relation to the implementation of the Directive 2011/85/EU, some steps were already taken in the first half of 2012 with the proposal of the Legge comunitaria 2012 (already approved at the Camera dei Deputati as Bill C.4925, then under examination at the Senato as Bill S.3510, see http://leg16.senato.it/leg/16/BGT/Schede_v3/Ddliter/38910.htm), and finally implemented by means of Law n. 97/2013 («legge europea» 2013): a specific Article 8[55] was added during the examination by the internal Committees, in order to dictate a guiding principle for the government to implement with a «Decreto legislativo» (a delegated act with the force of law) the Directive 2011/85/EU on requirements for budgetary frameworks of the Member States. The provision compels the government, as delegated legislator, to «*coordinate the implementation of the Directive with the institution by Constitutional Law. n. 1/2012, of an independent body which will be assigned the tasks of analysis and monitoring the developments in public finance and evaluation of compliance with budgetary rules, as well as the introduction of specific budgetary rules*».[56]

As a general framework, one can rely in any case on the *European Commission Interim Progress Report on the implementation of Council Directive 2011/85/EU*[57], and conceptualize the existing Italian legislation we already mention in other answers (and recently reformed, as we say) as already complying with the large part of the European provisions, in this sense:

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[55] Art. 8: «*Criterio direttivo di delega al Governo per il recepimento della direttiva 2011/85/UE del Consiglio, dell'8 novembre 2011, relativa ai requisiti per i quadri di bilancio degli Stati membri).*

1. Nella predisposizione dei decreti legislativi per l'attuazione della direttiva 2011/85/UE del Consiglio, dell'8 novembre 2011, relativa ai requisiti per i quadri di bilancio degli Stati membri, il Governo è tenuto a seguire, oltre ai princìpi e criteri direttivi di cui agli articoli 1 e 2 della presente legge, anche il seguente criterio direttivo specifico: coordinare l'attuazione del capo IV della direttiva con le disposizioni della legge di cui all'articolo 81, sesto comma, della Costituzione, come sostituito dalla legge costituzionale 20 aprile 2012, n. 1, da approvare entro il 28 febbraio 2013, cui sono riservate in particolare l'istituzione di un organismo indipendente, al quale attribuire compiti di analisi e di verifica degli andamenti di finanza pubblica e di valutazione sull'osservanza delle regole di bilancio, nonché l'introduzione di specifiche regole di bilancio.»

[56] The process for the setting up of the independent body is still ongoing: see law n. 243/2012, the Joint Protocol of the two Chambers of December 2013, and below under Question VII.5.

[57] http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp128_en.pdf.

- in terms of *accounting and statistics*, the objective of harmonising accounting systems and budget schemes across the general government sub-sectors is met in Article 2 of Law 196/2009 on Public Accounting and Finances — covering all general government sub-sectors excluding regional and local (municipalities and provinces) governments — and in the amendments to Law 42/2009 on fiscal federalism — covering regional and local governments; furthermore, Article 14 of Law 196/2009 requires the Ministry of the Economy and Finance to publish monthly cash- based fiscal data for central government, and quarterly consolidated cash-based fiscal data covering local government and social security are also available on the Ministry of the Economy and Finance's website. A reconciliation table is then produced under the joint responsibility of the Ministry and the ISTAT (Italian National Institute for Statistics).

- In terms of *forecasts*, the same Ministry is responsible for delivering macroeconomic and budgetary forecasts; and Article 2(4) of Law No 39/2011 amending Law 196/2009 states that a separate methodological note detailing the assumptions used to produce macroeconomic forecasts is to be attached to the second section of the Economic and Financial Document (DEF). All these assumptions are published, as well as the results of their ex-post evaluation.

- In terms of *fiscal rules* and *of mechanisms of coordination across sub-sectors of general government* (with the aim to strengthen fiscal discipline), the constitutional amendment adopted in April 2012 introduces the principle of a budget balance for the entire general government sector and the principle of a sustainable public debt (Article 1 amending Article 81 of the Constitution, see Question IX.4 also for the other linked relevant constitutional amendments); and sub-national governments - municipalities, metropolitan cities, regions, provinces and autonomous provinces - are required to contribute to public debt sustainability (Article 2(c) of Constitutional Law 1/2012, see again Question IX.4). Moreover, the so called 'Internal Stability Pact' defines the measures enabling local and regional authorities to «contribute to the achievement of public finance targets», with conditions for taking on new long-term secured loans and other sources of market financing («*annual debt service has to remain below a ceiling defined in terms of a percentage of the revenue collected in the two years before the year when loans are contracted*»).

- In terms of *medium-term budgetary framework* - as already said under Question VI.2 - in 2009 the so called new "national accounting law" (L. 31 dicembre 2009, n. 196) was enacted, and soon some new amendments in 2011 (L. 7 aprile 2011, n. 39) with the aim of coordinating the Italian budgetary timeline with the European Semester. In this sense, the so called Economic and Fiscal Document (*Documento di Economia e Finanza* — DEF) is the annual key document for the rolling medium-term budgetary framework (see the details later under Question II.1), prepared by the Ministry of Economics and Finance and submitted to parliament by the government in April. It includes a "Stability Programme" (with objectives of economic policy and public

finance forecasts for at least the next three years, broken down by sub-sector; a forecast of the main budgetary aggregates; an update of the budgetary forecast for the current fiscal year; a report on the sustainability of public debt; an analysis of sensitivity to GDP growth and to interest rates); detailed analysis, for at least the next three years, of macroeconomic trends, main fiscal aggregates assuming unchanged policies, results and forecasts for public administration debt and for the main expenditure categories, in particular public employment, social and healthcare; a scheme for the National Reform Programme. It can be then updated in September by the '*Nota di aggiornamento del DEF'* (updating note); and in October, a budgetary package consisting of the budget bill and the stability bill is presented to parliament by the government, with the qualitative and quantitative measures for achieving the fiscal objectives set in the DEF (and in any September update), for the three reference years (Article 2-3 of Law 39/2011).

IMPLEMENTATION DIFFICULTIES

VII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE IMPLEMENTATION PROCESS, IN PARTICULAR IN RELATION TO IMPLICATIONS OF THE DIRECTIVE FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

As already mentioned under question VII.2, the implementation process was formally troubled: some steps were already taken in the first half of 2012 with the proposal of the *Legge comunitaria* 2012 (already approved at the Camera dei Deputati as Bill C.4925, then under examination at the Senato as Bill S.3510, see http://leg16.senato.it/leg/16/BGT/Schede_v3/Ddliter/38910.htm), and finally implemented by means of Law n. 97/2013 («legge europea» 2013): a specific Article 8[58] was added during the examination by the internal Committees, in order to dictate a guiding principle for the government to implement with a «Decreto legislativo» (a delegated act with the force of law) the Directive 2011/85/EU on requirements for budgetary frameworks of the Member States.

In the meantime, as already said, Law 234 of 2012 reformed the system of annual implementation into the Italian legal order of European directives, and some of the measures inserted in the bill of the Legge Comunitaria 2011 were actually replicated elsewhere, and the

[58] Art. 8: «*Criterio direttivo di delega al Governo per il recepimento della direttiva 2011/85/UE del Consiglio, dell'8 novembre 2011, relativa ai requisiti per i quadri di bilancio degli Stati membri).*

1. Nella predisposizione dei decreti legislativi per l'attuazione della direttiva 2011/85/UE del Consiglio, dell'8 novembre 2011, relativa ai requisiti per i quadri di bilancio degli Stati membri, il Governo è tenuto a seguire, oltre ai princìpi e criteri direttivi di cui agli articoli 1 e 2 della presente legge, anche il seguente criterio direttivo specifico: coordinare l'attuazione del capo IV della direttiva con le disposizioni della legge di cui all'articolo 81, sesto comma, della Costituzione, come sostituito dalla legge costituzionale 20 aprile 2012, n. 1, da approvare entro il 28 febbraio 2013, cui sono riservate in particolare l'istituzione di un organismo indipendente, al quale attribuire compiti di analisi e di verifica degli andamenti di finanza pubblica e di valutazione sull'osservanza delle regole di bilancio, nonché l'introduzione di specifiche regole di bilancio.»

law never fully adopted.[59] Remarkably, a bill for the Legge Comunitaria 2012 was already presented in Parliament, with the aforementioned Art. 8 (see question VII.2) fully devoted to (the delegation to the government for the future) implementation of the Directive.

In the context of the discussion in the Camera, the only relevant debate arose during the examination of the XIV Committee (for European affairs, 4 April 2012, see http://documenti.camera.it/leg16/resoconti/commissioni/bollettini/pdf/2012/04/04/leg.16.bol0634.data20120404.com14.pdf).

In this context MP Gozi (PD) highlighted that «many of the provisions of the Directive have already been transposed into Italian law n. 196/2009, on public finance and accounting. But the most significant provision of the Directive is not implemented yet, and concerns the establishment of an independent authority for the control of the financial statements and the performance of public finances». He then went on and stated that the constitutional reform on Article 81 of the Constitution, at the time still under examination, provides that for the establishment of such an authority a law enacted by a qualified majority is necessary: this coincidence could in fact pose a problem of coordination, and even a possible antinomy in terms of procedural norms. He asked therefore for a clarification from the government. See further under question VII.5 for the chosen solution of the establishment of the Budgetary Committee.

MACROECONOMIC AND BUDGETARY FORECASTS

VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

In the current system, the Ministry of the Economy and Finance is responsible for delivering macroeconomic and budgetary forecasts, and for their evaluation (see Question VII.2), at least until an independent Fiscal Council will be actually established (see Question VII.5).

Article 2(4) of Law No 39/2011 amending Law 196/2009 stipulates that a separate methodological note detailing the assumptions used to produce macroeconomic forecasts is to be attached to the second section of the Economic and Financial Document (DEF). As already said before (see Question VII.2), all assumptions underpinning the macroeconomic and budgetary forecasts, as well as the results of their ex-post evaluation, are published by the Ministry of the Economy and Finance, in accordance with article 4(6) Directive 2011/85/EU.

FISCAL COUNCIL

VII.5

DOES ITALY HAVE IN PLACE AN INDEPENDENT FISCAL COUNCIL (ARTICLE 6(1) DIRECTIVE

[59] http://www.senato.it/leg/16/BGT/Schede/Ddliter/37909.htm. See on this F. Socci, L'ingorgo europeo al Senato e la riforma della legge comunitaria, in Rassegna del Forum dei Quaderni Costituzionali, available at the website http://www.forumcostituzionale.it/site/images/stories/pdf/documenti_forum/paper/0402_socci.pdf.

2011/85/EU: 'INDEPENDENT BODIES OR BODIES ENDOWED WITH FUNCTIONAL AUTONOMY VIS-À-VIS THE FISCAL AUTHORITIES OF THE MEMBER STATES')? WHAT ARE ITS MAIN CHARACTERISTICS? DOES ITALY HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

Italy did not already have an independent Fiscal Council in place as did some other Member States.

Constitutional Law[60] n. 1/2012 (the same law, adopted with the procedure of constitutional reforms, which amended the Constitution inserting the golden rule standards, see under Question IX.4) provides, in Article 5, for the establishment «*of an independent body to be assigned the tasks of analysing and monitoring the developments in public finance and the evaluation of compliance with budget rules*»; Article 1, section5, lit. D of the same Constitutional Law states that the body shall assume the name of «Parliamentary Budget Office» («Ufficio parlamentare di bilancio»), shall be based in Rome, in the context of the Parliament, and shall have «*full autonomy and independence of judgment and evaluation*».

As also provided by Law 243/2012, the Office will be composed of three members (one of whom is the Chairman) appointed with a decree adopted in agreement by the Presidents of the two Chambers, and chosen from a list of 10 personalities of «recognized independence and proven expertise and experience in the field of economics and public finance at the national and international levels» compiled by the competent parliamentary Committees on public finance.

The mandate of the members will last 6 years, and will be not renewable.

All these provisions were initially meant to enter into force, and therefore the Office was expected to be established, in January 2014.[61] Actually, the members have been finally selected on the 30th April 2014.[62]

REGULATION NO 1176/2011 ON THE PREVENTION AND CORRECTION OF MACROECONOMIC IMBALANCES

*(*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT*)*

MEIP DIFFICULTIES

VII.6

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER AND WHAT DEBATES HAVE ARISEN,

60 In Italy a constitutional law is a law adopted with the same procedure of constitutional reforms and enjoying the same rank among the sources of law as the Constitution (although it is external to the text of the Constitution).

61 See the "Protocollo per l'attuazione del Capo VII della legge 24 dicembre 2012, n. 243, relativo all'istituzione dell'Ufficio parlamentare di bilancio", available at the website http://documenti.camera.it/leg17/resoconti/commissioni/bollettini/pdf/2013/11/21/leg.17.bol0125.data20131121.com15.pdf, p. 10.

62 See the public announcement of the Presidents of the two parliamentary chambers at the website http://www.senato.it/comunicato?comunicato=47307.

IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

No legal or political difficulties have arisen, nor have debates taken place on the implications of the regulation apart from the broader debates on Euro governance (see Question VII.1).[63]

As for the new macroeconomic imbalances procedure, the Italian rules on the budgetary process have undergone, in the last four years, important reforms. In 2009 the Italian Parliament passed the so called new "national accounting law" (L. 31 dicembre 2009, n. 196), and soon some new amendments in 2011 to (obviously) adapt it to the new timing of the European Semester (L. 7 aprile 2011, n. 39).

We had, then, the constitutional amendments of 2012 – following the ratification of the Fiscal Compact – and the related L. cost. 1/2012 and legge 24 dicembre 2012, n. 243 implementing the new principles of balanced budget. All these measures are discussed in detail in the directly related parts of this questionnaire. In any case, it is important to note that they all embody some important aspects of flexibility, and some important instruments for ex-post controls of the national and subnational budgets. In this perspective, relying also on some first academic commentaries,[64] one can consider Italy to have already implemented the necessary rules to accommodate the new Macroeconomic Imbalances Procedure of Regulation (EU) No 1176/2011, and therefore, it seems, no additional changes followed after its adoption. Const. Law 1/2012 also calls for a reform (still to be implemented) of the internal procedural rules of the two parliamentary Chambers. They will possibly contain new rules on the monitoring of the national and subnational budgets, and maybe also new tools pertaining to the envisioned "permanent dialogue" of art. 13 of Regulation (EU) No 1176/2011 with the European Institutions.

Both in the 2012 and 2013 application of the Alert Mechanism the European Commission decided that an in-depth review was warranted for Italy.[65]

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63 As already said in the answer to question VII.1, a specific allusion to the enforcement measures of the Regulation 1174/2011 came in the Reasoned Opinion on Subsidiarity attached by the Parliament to the official "parliamentary acts" of the Commission XIV of the Senate on European Affairs (http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512300), in which an argument was made for the limitation of the criterion of reverse majority voting only to the part of the sanctions on interest bearing and non-interest-bearing deposits for "non virtuous" Member States, keeping the current system of voting (by qualified majority) for each subsequent sanction («otherwise an imbalance between the right of initiative of the European Commission and the permanence of the ultimate decision-making power in the hands of the Council» would arise).

64 G. Rizzoni, Il "semestre europeo" fra sovranità di bilancio e autovincoli costituzionali: Germania, Francia e Italia a confronto, in Rivista dell'Associazione Italiana dei Costituzionalisti, 4/2011, available at the website http://www.associazionedeicostituzionalisti.it/sites/default/files/rivista/articoli/allegati/Rizzoni.pdf.

65 Alert mechanism report 2012. 14.02.2012. COM(2012) 68 final, p. 19 (http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=68&RechType=RECH_naturel&Submit=Search). In the 2013 report the Commission concluded that it *"finds it useful, also taking into account the identification of a serious imbalance in May, to examine further the risks involved and progress in the unwinding of imbalances in an in-depth analysis."* Alert mechanism report 2013. 28.11.2012. COM(2012) 751 final, p. 11 (http://eur-lex.europa.eu/Result.do?T1=V5&T2=2012&T3=751&RechType=RECH_naturel&Submit=Search).

More in particular, in the 2012 application it found that «*(W)hile private sector indebtedness is not excessive in Italy, the high level of public debt and the need to consolidate public finances could exert pressures on private sector balance sheets*»; and, in terms of country-specific commentary, Italy's «*scoreboard values are above the indicative thresholds in the areas of competitiveness and public debt. Italy has had a significant deterioration in competitiveness since the mid-1990s which is also seen through the persistent losses of market shares. These losses are only partly reflected in the steady worsening of Italy's external position, given the relatively subdued growth of domestic demand. Weak productivity developments are the main explanatory factor. While private sector indebtedness is relatively contained in Italy, largely thanks to the financial position of households, the level of public debt is a concern, especially given the weak growth performance and structural weaknesses. This, in turn, potentially puts strain on private sector balance sheets*».[66]

In its 2012 in-depth review of Italy, the Commission concluded that «Italy is experiencing serious macroeconomic imbalances, which are not excessive but need to be addressed. In particular, macroeconomic developments in the area of export performance deserve attention as Italy has been losing external competitiveness since euro adoption. Given the high level of public debt, enhancing the growth potential should be a key priority so as to reduce the risk of adverse effects on the functioning of the economy».[67]

In its 2013 in-depth review of Italy, the Commission concluded that Italy "is *experiencing macroeconomic imbalances, which require monitoring and decisive policy action*. In particular, export performance and the underlying loss of competitiveness as well as high public indebtedness in an environment of subdued growth deserve continued attention in a broad reform agenda in order to reduce the risk of adverse effects on the functioning of the Italian economy and of the Economic and Monetary Union, notably given the size of the Italian economy."[68]

The National Reform Programme submitted by then Prime Minister Mario Monti and Minister of the Economy and Finance Vittorio Grilli, in accordance with Minister for European Affairs Enzo Moavero Milanesi in April 2013 contains a number of measures to correct to macroeconomic imbalances. (http://ec.europa.eu/europe2020/pdf/nd/nrp2013_italy_en.pdf).

In the complete Italian version of the document (http://ec.europa.eu/europe2020/pdf/nd/nrp2013_italy_en.pdf, but not in the aforementioned version in English), at pages 111-316, one can find a specific analysis of all the reforms undertaken, «in detail».

Those include various measures on:

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66 Alert mechanism report 2012. 14.02.2012. COM(2012) 68 final, p. 15.

67 European Commission, Macroeconomic Imbalances Italy, Occasional Paper 107, July 2012, p. 3. http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp107_en.pdf

68 European Commission, Macroeconomic Imbalances Italy, Occasional Paper 138, March 2013, p. 3. http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp138_en.pdf.

V.1 debt reduction, efficiency and quality of public expenditure;

V.2 Health;

V.3 Education & Research;

V.4 Labour market and training;

V.5 Welfare and Poverty;

V.6 programs co-financed by the European Structural Funds;

V.7 Enhancement of cultural heritage;

V.8 tax reform and fight against tax evasion;

V.9 Competition;

V.10 Infrastructures;

V.11 Energy and Environment;

V.12 support for entrepreneurship;

V.13 Simplification of bureaucracy and transparency;

V.14 a report on the State of art in the implementation of reforms

presented in the English version (pages 3-12) as measures:

I1) keeping «Italy and Europe along the same path»; I.2) taking «the crisis as an opportunity»; and with attention to: I.3) Balance of the public accounts; I.4) A Public Administration closer to businesses and citizens; I.5) More support to businesses and a more favourable entrepreneurial environment; I.6) Southern Italy: an occasion for relaunching the economy; I.7) A grater impulse to the market; I.8) Research and innovation: businesses and digital households; I.9) More quality in the educational system; I.10) Legality and certainty of the law; I.11) A modern and competitive fiscal system; I.12) a more flexible and inclusive labour market; I.13) Keeping up the guard: monitoring.

REGULATION NO 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE POSITIONS

*(*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF*)*

MTO PROCEDURE

VII.7

WHAT CHANGES TO THE RULES ON THE BUDGETARY PROCESS ARE MADE TO ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

The concept of MTO was introduced in Law 243/2012, which, adopted by an absolute majority of the members of both Houses of Parliament under the new sixth paragraph of Article 81 of the Constitution at the end of 2012, dictates the basic standards and criteria to ensure the balance between revenue and expenditure in budgets and sustainability of the debt of all Italian levels of governments.

According to Article 3 of Law 243/2012, the budget balance can be considered as achieved when the structural balance meets at least one of the following conditions:

a) it is at least equal to the medium-term objective or shows a deviation from the medium-term objective lower than that considered significant by the European Union norms (excessive deficit procedure) and by the international agreements on the matter (Fiscal compact), i.e. up to 0.5 percent of GDP;

b) it ensures the respect of the adjustment path towards the medium-term objective in cases of exceptional events and programmatic differences giving place to correction mechanisms, or it shows a deviation from the same adjustment path significantly lower than that considered as significant by EU norms (i.e. up to -0.5 per cent in relation to the aim).

EUROPEAN SEMESTER

VII.8

WHAT CHANGES HAVE TO BE MADE TO THE RULES AND PRACTICES ON THE NATIONAL BUDGETARY TIMELINE TO IMPLEMENT THE NEW RULES ON A EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION (SECTION 1-A, ARTICLE 2-A CONSOLIDATED REGULATION 1466/97)?

Law 7 April 2011, n. 39 has modified the budgetary cycle of Law n. 196/2009 (see above) and the means used for budget planning in order to create an alignment between national planning and the timing of the European Semester.

To allow this:

- the Government, by 10 April of each year, submits to the Parliament the *Economy and Finance Document* (DEF), which has replaced the Public Financing Decision (DFP) introduced by Law n. 196/2009, and includes both the Public Financing Decision - previously to be submitted in mid-September - and the content of the Economy and Public Financing Report. This DEF also specifies the Stability Plan scheme (with measures to accelerate the reduction of public debt) and the National reform plan scheme (outlining country's priorities, main reforms to be made, national macro-economic imbalances, macroeconomic factors that affect competitiveness, the progress of reforms which have already been set up, foreseeable effects of suggested reforms), these to be submitted to the EU Council and Commission by 30 April of each year

- an integration of the DEF, by 30 June, the Minister of Economy and Finance submits to the Parliament an attachment outlining the results of the monitoring on the public financing balance deriving from the measures stated in the budget manoeuvres implemented during the

year

- an updating note to the Economy and Finance Document is supposed to be submitted by the 20th September, no longer in connection to the occurrence of considerable gaps in public financing fluctuation patterns, but as a mandatory requirement, with an update of the programmatic objectives and a macro-economic and public financing estimate

- the Stability bill and the State Budget bill have to be submitted to Parliament by 15 October of each year.

MTO DIFFICULTIES

VII.9

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

Italy did not encounter proper problems or obstacles in the reform process.

But some critical points were debated in Parliament, including:

- the balance of powers between the Chambers and the executive in the budgetary process, not only in terms of a budgetary process becoming more and more a dialogue among executives (MP Duilio, plenary discussion of the lower house, 7 February 2011: «*Here we measure not only a complex and a bit sophisticated issue, but also the level of centrality of the Parliament in carrying out such operations. In fact, to put it differently, and more briefly, the process that is developing also at the European level – moving from the European Semester, previously recalled - is likely to refer to a dialogue between the executives, rather than between the legislative assemblies*»),[69] but also in relation to the timing for a proper examination of the related bills by Parliament

- the coordination of the reform on the budgetary process with the ongoing reform on the so called “fiscal federalism” (Law n. 42/2009), and the related problems of budgetary coordination between the different administrative levels.[70]

Some of these problems were then tackled by Law 234/2012 (General rules on Italy's participation in the formation and implementation of legislation and policies of the European Union) (see Question VIII.6).

RESPECT MTO

VII.10

HOW IS RESPECT OF THE MEDIUM-TERM BUDGETARY OBJECTIVE INCLUDED IN THE NATIONAL BUDGETARY FRAMEWORK (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)?Chapter II of Law no. 243 of 2012 regulates the principles and rules of the budgetary process in relation to all levels of government. They relate to: definition of a

69 http://documenti.camera.it/leg16/resoconti/assemblea/html/sed0430/stenografico.htm, p. 15.

70 Ibidem, MP Cambursano, p. 25.

balanced budget, the introduction of norms on the evolution of expenditure and rules concerning the sustainability of public debt.

The principle of a balanced budget for government is defined in Article 3, precisely in relation to the medium-term objective (MTO) established under European Union law as a benchmark for the evaluation of the financial position of each Member State. In particular, in the programming phase the budget policy objectives should be set to allow "at least" the respect of the MTO or otherwise respect of the adjustment path towards the objective. In the ex-post evaluation phase, the equilibrium is considered achieved if the structural balance of the consolidated budget of the public administrations is at least equal to the MTO, or coherent with the adjustment path as indicated in earlier planning documents.

For the case of a deviation from the MTO, a specific procedure for the invocation of "exceptional circumstances" was formalized in Article 6 of Law no. 243 of 2012. It was used for the first time on 16th April 2014.[71]

CURRENT MTO

VII.11

WHAT IS ITALY'S CURRENT MEDIUM-TERM BUDGETARY OBJECTIVE (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)? WHEN WILL IT BE REVISED?

0.0 % since 2005 (see P. Biraschi, M. Cacciotti, D. Iacovoni and J. Pradelli, "The New Medium-Term Budgetary Objectives and the Problem of Fiscal Sustainability After the Crisis.", Ministry of Economy and Finance - Department of the Treasury Working Paper[72], 2010, page 19), confirmed in 2012.

ADOPTION MTO

VII.12

BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS ITALY'S MEDIUM-TERM BUDGETARY OBJECTIVE ADOPTED AND INCORPORATED IN THE STABILITY PROGRAMME (EUROZONE, ARTICLE 3(2)(A) CONSOLIDATED REGULATION 1466/97)?

Art. 9 of Law 196/2009, as amended by Law 13/2011, states that «*(I)n preparing the update of the stability program to be presented to the Council of the European Union and the European Commission, the Government transmits to the Chambers of the Parliament and to the Permanent Conference for the coordination of public finance*» - this last, a new organ set by Art. 5 of Law 42/2009 and Articles 33/37 D.Lgs. 68/2011, chaired by the President of the Council of Ministers and composed of representatives of the various institutional levels of government, which contributes to the definition of the objectives of public finance, and works for the monitoring and control of the financial system of regional and local authorities and for

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[71] See http://www.lastampa.it/2014/04/16/economia/def-giallo-della-lettera-di-padoan-allue-c-lok-in-commissione-venerd-il-cdm-p52FgGea9IpaM0GA8D6g8M/pagina.html.

[72] http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_en/analisi_progammazione/working_papers/WP_8_.pdf

the conciliation of the interests of central and local governments in the implementation of fiscal federalism - «*within fifteen days prior to the date of submission agreed at the European level, an updated scheme of the Stability Programme which includes a picture on medium-term prospects of Italian economic policy within the European Union, with an indication of the guidelines for its implementation at the level of national policies*».

Art. 12 of Law 196/2009 provides that an annual «Report on the Economy and Public Finance» (to be presented by the government to the Parliament by 15 of April of each year) shall also give information, when available, on the opinion of the Council of the European Union on the updating of the Stability Programme.

REGULATION NO 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE

*(*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF*)*

EDP DIFFICULTIES

VII.13

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No legal or political difficulties were encountered nor did any significant debates specific to Regulation 1177/2011/EU arise apart from the general debate on the six pack (see under Question VII.1).

There are no specific changes to the budgetary procedure to accommodate the new amendments to the excessive deficit procedure.

The only recent, relevant change in this respect is the new Art. 4 of the Government Decree («decreto legislativo», delegated legislation) n. 91/2011, according to which, with a view to the harmonization of budgetary systems of the various public administrations, «*(I)n order to achieve the quality and transparency of public finance data, as well as the improvement in the capacity of connection of the budgets of all the levels of government with the European System of accounting records, the public administrations … are required to adopt a common plan of accounts»*, among the other things *«aimed to ensure compliance with Regulation (EC) No. 479/2009 of the Council of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, and subsequent modifications*»[73].

[73] Art. 4
Piano dei conti integrato
1. Al fine di perseguire la qualità e la trasparenza dei dati di finanza pubblica, nonchè il miglioramento della raccordabilità dei conti delle amministrazioni pubbliche con il sistema europeo dei conti nell'ambito delle rappresentazioni contabili, le amministrazioni pubbliche che utilizzano la contabilità finanziaria, sono tenute ad adottare un comune piano dei conti integrato, costituito da conti che rilevano le entrate e le spese in termini di contabilità finanziaria e da conti economico-patrimoniali redatto secondo comuni criteri di contabilizzazione.

REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE

*(*http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT*)*

SANCTIONS

VII.14

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No legal or political difficulties were encountered nor did any significant debates specific to Regulation 1173/2011/EU arise apart from the general debate on the six pack (see under Question VII.1).

But, as already highlighted in that context, it is important to note that in connection with the debate held in the XIV Committee of the Senate on European affairs, on 11 and 16 November 2010 (see http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512051; http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512300), a general report on all the measures, in the framework of the Reasoned Opinion on Subsidiarity, was issued,[74] criticizing, among the other things, the use of the criterion of reverse majority in the imposition of sanctions.

GENERAL CHANGES

VII.15

WHAT FURTHER CHANGES HAVE TO BE MADE TO THE RULES ON THE BUDGETARY PROCESS IN ORDER TO COMPLY WITH THE SIX-PACK RULES?

There were no amendments to the rules on budgetary process to accommodate the possibility of sanctions for non-compliance with the Medium-term Budgetary Objective Procedure. pursuant to Art. 7 of the Decree 149/2011, there was already the possibility for the central government to impose sanctions on regions, local authorities and other public administrations in case of failure to respect the "Internal Stability Pact" (see Question VII.2).

Moreover, according to Law n. 234/2012 (see Question VIII.6) there is today the possibility

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2. Le voci del piano dei conti sono definite in coerenza con il sistema delle regole contabili di cui all'articolo 2, comma 2, nonchè con le regole definite in ambito internazionale dai principali organismi competenti in materia, con modalità finalizzate a garantire il rispetto del regolamento (CE) n. 479/2009, del Consiglio, del 25 maggio 2009, relativo all'applicazione del protocollo sulla procedura per i disavanzi eccessivi, allegato al Trattato che istituisce la Comunità europea, e successive modificazioni.

[74] http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=512300, Allegato 1, "*OSSERVAZIONI APPROVATE DALLA COMMISSIONE SUGLI ATTI COMUNITARI NN. COM (2010) 522 definitivo, COM (2010) 524 definitivo, COM (2010) 525 definitivo, COM (2010) 526 definitivo E COM (2010) 527 definitivo SOTTOPOSTI AL PARERE MOTIVATO SULLA SUSSIDIARIETA*".

of an «azione di rivalsa» (a retaliatory action) of the State against Regions whenever the violation of EU Law implies a responsibility of the Italian Republic and an infringement proceeding reaches the Court of Justice and eventually ends up with a condemnation.

And also, it is relevant to note in this respect that in the last years the Italian Constitutional Court has started to strike down sections of regional laws that infringe Art. 81.4 of the Constitution on the balance between revenue and expenditure (see for instance the cases for Campania and Friuli-Venezia Giulia in the decisions n. 70/2012[75] and 115/2012[76]). See also on this matter the judgment n. 8/2013 of the Constitutional Court discussed under Question X.12.

MISCELLANEOUS

VII.16

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE SIX-PACK?

It is worthy in any case to mention the amendments set by Law 183/2011 and Law 228/2012 to the discipline of the "Internal Stability Pact" (see Question VII.2), in particular in relation to sanctions (see Question VII.15) and to the inclusion of municipalities under 5000 inhabitants in its financial plans.[77]

It is submitted that parliamentary standing orders should be amended in the future, otherwise legislative updates cannot receive an effective implementation in practice.[78]

75 http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=70.
76 http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2012&numero=115.
77 http://leg16.camera.it/522?tema=104&Patto+di+stabilit%C3%A0+interno#paragrafo2384.
78 I am grateful to Cristina Fasone for making this point clear to me.

VIII ESM TREATY

The European Stability Mechanism (ESM) Treaty was signed on July 11 2011. It was later renegotiated and a new ESM Treaty was signed on February 2, 2012. The Treaty provides a permanent emergency fund that is intended to succeed the temporary emergency funds. It entered into force on September 27, 2012 for 16 contracting parties (Estonia completed ratification on October 3). The 17 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.
*(*http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it *and* http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf*)*

NEGOTIATION

VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE NEGOTIATION OF THE ESM TREATY, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

The ESM Treaty was not formally discussed in the Parliament before its announcement.

In any case, as already said also for the Treaty amendment of Article 136 (under Question V.1), a common feature of the Italian politics in relation to what one can call, again and in general terms, «European affairs» (also including the regular international treaties concluded in the Euro zone crisis, namely the Fiscal Compact and the ESM Treaty) is a certain (until now) stable bi-partisan favorable approach, by main center-left and center-right parties, in the approval of the related measures. The two major parties of the center-right and center-left coalitions (Popolo della Libertà e Partito Democratico, respectively) have been both strong pro-European movements, with really few, and scarcely relevant, exceptions among their members. This can be considered now as a traditional element of the Italian party system, probably one of the few rooted elements in a period of possible changes like the present. This has historically had an impact also on the quantity and quality of the Italian debate on European issues: the related bills are normally adopted in the Parliament jointly by these two parties (and a large part of the satellite-parties), with relatively scarce, and normally apologetic, debate, and again relatively scarce echo in the general public debate.

In addition one can notice that, at the time of the negotiation of the Treaty, Italy was already experiencing clear problems in its budgetary situation. Therefore, the position of the government and the negotiation were influenced by this factor, fostering the typical bi-partisan support: note that the Treaty was signed in 2011 by the Berlusconi IV government, and re-signed in 2012 by the Monti government.

And again, in both the parliamentary Chambers, and in their Committees in charge of the first review, the procedure in question was joined with the other procedures related to the Fiscal Compact and the European Stability Mechanism (ESM), as it is clear from the attached documents

(http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367, http://documenti.camera.it/leg16/resoconti/assemblea/html/sed0669/stenografico.pdf, so called «joint discussion», «*discussione congiunta*»; see also http://www.europarl.europa.eu/webnp/webdav/site/myjahiasite/users/fboschi/public/esm%20tscg/art.%20136%20ESM%20fiscal%20compact%20ratprocess.pdf).

In any case, see under Question IV.1 about the late emergence, after years and in the context of the new European elections campaign of 2014, of critical positions even by the direct negotiators for Italy.

RATIFICATION

VIII.2

HOW HAS THE ESM TREATY BEEN RATIFIED IN ITALY AND ON WHAT LEGAL BASIS/ARGUMENTATION?

It is probably relevant to highlight that, in both the Chambers, and for both the initial part in front of the competent Parliamentary Committees and the discussion in the Chamber, the procedure of authorization by law of the ESM was joined with the other procedures related to the Treaty amendment article 136(3) TFEU and the Fiscal Compact.

The ratification process through which the ESM Treaty has been ratified in Italy was the typical process dictated by articles 80 and 87(8) of the Constitution.

According to art. 80, the two Chambers of the Parliament (Camera dei Deputati and Senato della Repubblica) «*authorize by law the ratification of international treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to the national territory or financial burdens or changes to legislation*». So, having no doubts about the «*political nature*» of the Treaty and the «*financial burdens*» entailed, both Chambers of Parliament had to authorize its ratification, through the regular legislative procedure (since art. 72, last paragraph, Constitution dictates that «*The regular procedure for consideration and direct approval by the House is always followed in the case of bills on constitutional and electoral matters, enabling legislation, the ratification of international treaties and the approval of budgets and accounts*»).

Art. 87(8) Const. reads: «*The President shall: authorize the introduction to the Houses of bills initiated by the Government, promulgate the laws and issue decrees having the force of law as well as regulations, call popular referenda in the cases provided for by the Constitution, appoint State officials in the cases provided for by law, accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorized by the Houses*». So the final step of the ratification procedure - and, formally speaking, the ratification itself – is an act of the President of the Republic. In any case, it is important to highlight that this is a typical act that, in the categorization of the President's acts, it is normally qualified as “formally but not substantially” presidential: this means that the act involves the formal role of the President as the highest representative of the Republic, especially in international relations, but this does not imply his substantive role, nor his

liability, for the related political choices, which are in the sphere of the Government in terms of negotiation, and of the Parliament for the authorization, as already seen.

No referendum was held on the ESM Treaty (or 136 Treaty amendment, or Fiscal Compact). In fact, art. 75(2) Constitution excludes this possibility for the ratification of international treaties as it «*Referenda are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorizing the ratification of international treaties*».

RATIFICATION DIFFICULTIES

VIII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?

In terms of Parliamentary debates, as already remarked, it is relevant to highlight that, in both parliamentary Chambers, and in their Committees in charge of the first review, the procedure of authorization by law of the ESM was joined with the other procedures related to the Fiscal Compact and the 136 TFEU Treaty amendment (see Questions V.3 and IX.3). The other important point to highlight, again, is the traditional bipartisan support, in the Italian political system, by the two major parties of the center-right and center-left coalitions (Popolo della Libertà e Partito Democratico, respectively) and a large part of the satellite-parties, for the adoption – and therefore, the ratification and authorisation – of European measures (see above, and Questions V.3 and IX.3). This has historically had an impact on the quantity and quality of the Italian debate on European issues: the related bills are normally adopted in the Parliament jointly, with relatively scarce, and normally apologetic, debate, and again relatively scarce echo in the general public debate. This has only partially changed with the Eurocrisis, and the ratification procedure of the ESM Treaty (and of the other international measures, as aforementioned) constitutes evidence of that: at the time of the discussion and the approval, Italy had the two main coalitions supporting together the new Monti government (as a kind of "große Koalition" pushed by the choices of the President of the Republic after PM Berlusconi's resignation, linked itself to the Eurocrisis), and only some small parties as formal opposition.

The parliamentary debates were obviously influenced by the joint discussion on the three different ratification procedures.

The rapporteurs themselves emphasized the difference with the old times in which the ratification of the EU-related bills were seen as a only "technical" debate, with no political echo nor particular resistance. But the debates seem to be a general discussion of the typical, historical problems of the so called democratic deficit in the European Union, with strong arguments, from both CR and CL, for the need of a more "political" federal Union. Sometimes the discussion touches on the German "expansionist" commercial policy in Europe and in the Mediterranean countries, because of the macroeconomic and monetary dynamics helping German exports in comparison with the Italian ones.

But in general, the real technical discussion relevant here was linked to the problems of the financial inadequacy of the European *stability mechanism*, and the important concerns for the possible great costs for the Italian budgetary system.

The Senator rapporteur Dini (PdL), for example, summarized as follows the doubts risen during the examination by the III Committee for Foreign Affairs (http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=657978):

- the need to clarify the amount of the authorized capital stock of the European Stability Mechanism, which, pursuant to Article 8 of the Treaty establishing amounts to 700 billion euro. In the conclusions of the Eurogroup on 30 March 2012 the mobilization for the firewall was calculated in 800 billion euro, while the ceiling of the lending capacity of the instruments consolidated EFSF - ESM was indicated as 500 billion euro, pursuant to Article 39 of the Treaty establishing the ESM.

- the need to clarify the wording of Article 12 of the Agreement, which, in the boundaries of the support that the ESM may provide to a Member State, provided that since January 1st, 2013 also collective action clauses were included in all public debt state titles of the Euro area newly issued and with maturities of over one year in a way that ensures that their legal impact was identical. This prediction was in fact directed at achieving an appropriate form of private sector participation.

- the payment in five installments, in accordance with Article 41 of the Treaty ESM, of the initial capital by each member of the ESM. Pursuant to paragraph 3 of Article 41 an ESM Member may decide to accelerate the payment of its shared capital. Doubts came both on the schedule of payments of the Italian contribution, and the system of further "on call" contributions to the ESM to grant loans to member countries of the euro in financial difficulty.

- a discrepancy was also highlighted in predictions about the entry into force of the Decision 2011/199/EU amending Article 136 of the Treaty on the Functioning of the European Union with regard to the Stability Mechanism, scheduled for 1 January 2013, and the commitment made by the European Council of 9 December 2011 to operationalize the EMS from the month of July 2012.

- need for clarification of the effect on the assessment of the public debt of middle-long term emissions for the payment of the Italian contribution, in relation to the possible increased need in terms of interests estimated for 2012 at about 120 million euro.

Real strong resistance to the approval of the bill came only from relatively small parties of the new opposition under the Monti government: some of them actually tried to discuss the issue of a possible *referendum* on the new European measures, but it is important to highlight in this respect that no "consultative referendum" of this kind is foreseen in the Italian Constitution, and the only way to establish it would be through a special "constitutional law"

(legge costituzionale), used only once in the history (but precisely on EU-related issues, in 1989) (see under Questions V.3 and IX.3).

CASE LAW

VIII.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE ESM TREATY?

No. This was not surprising, given the limited possible modalities of access to the Italian Constitutional Court (see Question IV.5 above for more details).

CAPITAL PAYMENT

VIII.5

WHAT IS THE ROLE OF PARLIAMENT IN THE PAYMENT OF THE (FIRST INSTALMENT OF) PAID-IN CAPITAL REQUIRED BY THE ESM TREATY (ARTICLE 36 ESM TREATY)? WHAT RELEVANT DEBATES HAVE ARISEN IN RELATION TO THIS PAYMENT?

The ratification Law n. 116/2012, in its Article 3, authorises for the payments «established in Articles 9 and 41 of the Treaty»,[79] and also, in relation to those, for «the emissions of medium-long term bonds».

See above, under question VIII.3, for the critical remarks raised by the rapporteur Senator Dini, during the examination of the ratification Bill in the III Committee for Foreign Affairs, about the payment in five installments, in accordance with Article 41 of the Treaty ESM, of the initial capital by each member of the ESM. Pursuant to paragraph 3 of Article 41 an ESM Member may decide to accelerate the payment of its shared capital: and doubts came both on the schedule of payments of the Italian contribution, and the system of further "on call" contributions to the ESM to grant loans to member countries of the euro in financial difficulty.

APPLICATION & PARLIAMENT

VIII.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE ESM TREATY, FOR EXAMPLE WITH REGARD TO DECISIONS TO GRANT FINANCIAL ASSISTANCE AND THE DISBURSEMENT OF TRANCHES, WHICH BOTH REQUIRE UNANIMOUS ADOPTION BY THE BOARD OF GOVERNORS COMPOSED OF THE NATIONAL FINANCE MINISTERS?

Beyond ordinary parliamentary procedures regarding executive accountability, note that art. 4 of the new law 234/2012 (the new law on the «*general rules on Italy's participation in the formation and implementation of legislation and policies of the European Union*»), under the title «*Information and consultation of Parliament*», states, *inter alia*, that:

«*4. The Government informs and consults the Houses of the Parliament, under the procedures identified by the law referred to in Article 81, sixth paragraph, of the*

[79] http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-07-23;116.

Constitution, as replaced in accordance with the Constitutional Law 20 April 2012, n. 1, and in the manner provided by the respective Regulations, about the coordination of economic and budgetary policies and the functioning of the mechanisms of financial stabilization, as laid out or pursued in accordance with:

a) acts, bills and documents adopted by the institutions of the European Union;

b) the aims identified in an enhanced cooperation under Article 20 of the Treaty on the European Union;

c) agreements and hypotheses of intergovernmental agreements between Member States of the European Union».

APPLICATION DIFFICULTIES

VIII.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?

Italy did not encounter specific and relevant difficulties in the application of the Treaty.

It is relevant to remark that the main debates in Italy, both in the Parliament in the aforementioned «joint discussion» on the three major Euro-crisis measures (see Questions V.3, VIII.3 and IX.3) and in a general political sense, were focused on Italy as a possible 'target' of the measures of financial stability, and not so much on the interventions for other countries (if not, in a somewhat typical way, to remark that Italy is spending a great amount of money for those in a period of internal crisis).

IMPLEMENTATION

VIII.8

HAVE THERE BEEN ANY RELEVANT CHANGES IN NATIONAL LEGISLATION IN ORDER TO IMPLEMENT OR TO COMPLY WITH REQUIREMENTS SET BY THE ESM-TREATY?

None directly related to the ESM-Treaty.

MISCELLANEOUS

VIII.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE ESM TREATY?

No other relevant information.

IX FISCAL COMPACT

The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic).
After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.
*(*http://www.european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=it*)*

NEGOTIATION

IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER IN THE NEGOTIATION OF THE FISCAL COMPACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

There is no clear evidence of particular obstacles encountered by Italy at the time of the negotiations, for the traditional bi-partisan support for European measures, especially after the change in the government after the resignation of the President Berlusconi in November 2011, and also for the critical situation the country was already experiencing in terms of budget.

The Government in charge, therefore, supported the Treaty, with a clear positive approach for stronger economic governance.

In the discussion on the 19th July 2012 in the lower house, the Minister for European Affairs Enzo Moavero Milanesi emphasized the following requests of the Government in charge during the negotiation of the Fiscal Compact:[80]

- in front of the commitment to the onerous reduction of one-twentieth for every year of the public debt, the Italian Government asked - as recognized in the relevant article of the Treaty – that other factors «*including elements such as the relationship between private debt and public debt, the business cycle and so on*» were to be taken into account in this assessment, in coherence with the peculiarities of the Italian economy

- an involvement of the European Parliament not only as an observer in the negotiations on the Compact, but also later with an active role in its implementation[81]

- a clear revision clause in the text of the Compact, to assess at a later stage its «full traceability to the ordinary system of the Treaty».

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80 http://leg16.camera.it/410?idSeduta=0669&tipo=stenografico#sed0669.stenografico.tit00020.sub00010, p. 2-3.

81 «*if the European Parliament has been involved not only as an observer in the negotiations on the fiscal compact, but also later with a role in its implementation, this is also due to specific requests that have been brought forward by our government*», ivi.

In the same context, the Minister also stressed the parallel position of the Government for a more robust approach and more focus on economic growth, and emphasized the parallel negotiation in the Council of other European (ordinary) legislation on matters «*such as the completion of the digital single market for energy, or interventions to have a real European labor market, for instance the stimulus and the acceleration of the recognition of professional qualifications and diplomas (...) and project bonds, European bonds guaranteed at European Union level, the first of this kind, related to the implementation of European projects, infrastructure, also co-financed from European funds*».[82]

Probably because of the direct impact on the text of the Constitution, in Italy there were in any case relevant general debates on the Fiscal Compact, in particular pertaining to:

1. the legitimacy of a "forced", or somehow imposed, constitutional reform[83]
2. the desirability of similar impositions, in macroeconomic terms (Italy has a long, bi-partisan tradition also in terms of high public expenditure)
3.

in academic terms, on the coherence of the new Balanced budget rule with the previous text of Art. 81 of the Constitution, which already dictated a formally strict rule on the coverage of the financial burden (art. 81.4, previous text: «all other laws implying new or additional expenditures must set out the means to cover them»), but was then relaxed by subsequent interpretations of the Constitutional Court.[84]

It is also relevant to highlight that one can observe, in the context of the new European elections campaign of 2014, a late emergence of critical positions even by the early informal negotiators of the Compact (in particular some representatives of the Berlusconi IV government, in charge until November 2011, and including former PM Silvio Berlusconi). These include the statement of a first opposition of Italy in the Fiscal Compact negotiations (see under Questions IV.1 and VIII.1 for similar notations).

RATIFICATION

IX.2

HOW HAS THE FISCAL COMPACT BEEN RATIFIED IN ITALY AND ON WHAT LEGAL BASIS/ARGUMENTATION?

It is probably relevant to highlight that, in both the Chambers, and for both the initial part in

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82 http://leg16.camera.it/410?idSeduta=0669&tipo=stenografico#sed0669.stenografico.tit00020.sub00010, p. 3.

83 In fact, by using the words of T. Groppi, The Impact of the Financial Crisis on the Italian Written Constitution, Italian Journal of Public Law, available at the website http://www.ijpl.eu/assets/files/pdf/2012_volume_1/IJPL_volume%201_2012.pdf, p. 4, «*it should be underlined that formal amendments to the Italian Constitution are quite rare due to the prevailing legal culture that is not strictly linked to the text, and also because of the complexity of the process of constitutional amendment established by the Constitution itself.*»

84 T. Groppi, I. Spigno, N. Vizioli, The Constitutional Consequences of the Financial Crisis in Italy, in X. Contiades (ed.), Constitutions in the Global Financial Crisis. A Comparative Analysis, p. 94 ff.

front of the competent Parliamentary Committees and the discussion in the Chamber, the procedure of authorization by law of the Fiscal Compact was joined with the other procedures related to the Treaty amendment article 136(3) TFEU and the European Stability Mechanism (ESM).

The ratification process through which the Fiscal Compact has been ratified in Italy was the typical process dictated by articles 80 and 87(8) of the Constitution.

According to art. 80, the two Chambers of the Parliament (Camera dei Deputati and Senato della Repubblica) «*authorize by law the ratification of international treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to the national territory or financial burdens or changes to legislation*». So, having no doubts about the «*political nature*» of the Fiscal Compact and the «*financial burdens*» entailed, both the Chambers had to authorize its ratification, through the regular legislative procedure (since art. 72, last paragraph, Constitution dictates that «*The regular procedure for consideration and direct approval by the House is always followed in the case of bills on constitutional and electoral matters, enabling legislation, the ratification of international treaties and the approval of budgets and accounts*»).

Art. 87(8) Const. reads: «*The President shall: authorize the introduction to the Houses of bills initiated by the Government, promulgate the laws and issue decrees having the force of law as well as regulations, call popular referenda in the cases provided for by the Constitution, appoint State officials in the cases provided for by law, accredit and receive diplomatic representatives, and ratify international treaties which have, where required, been authorized by the Houses*». So the final step of the ratification procedure - and, formally speaking, the ratification itself – is an act of the President of the Republic. In any case, it is important to highlight that this is a typical act that, in the categorization of the President's acts, is normally qualified as "formally but not substantially" presidential: this means that the act involves the formal role of the President as the highest representative of the Republic, especially in international relations, but this does not imply his substantive role, nor his liability, for the related political choices, which are in the sphere of the Government in terms of negotiation, and of the Parliament for the authorization, as already seen.

No referendum was held on the Fiscal Compact (or the 136 Treaty amendment, or the ESM Treaty. In fact, art. 75(2) Constitution excludes this possibility for the ratification of international treaties as it «Referenda are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorizing the ratification of international treaties».

RATIFICATION DIFFICULTIES

IX.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID ITALY ENCOUNTER DURING THE RATIFICATION OF THE FISCAL COMPACT?

At the time of the negotiation of the Treaty, Italy was already experiencing clear problems in its budgetary situation. Therefore, also the subsequent ratification was influenced by this

factor, as well as by the already mentioned, typical bi-partisan support to pro-European measures, especially with the 'technical' government led by President Monti and officially supported by both center-left and center-right main parties.

In terms of Parliamentary debates, (see also question V.3), it is relevant here to highlight, talking about general political/legal difficulties and related debates, that, in both the parliamentary Chambers, and in their Committees in charge of the first review, the procedure of authorization by law of the Fiscal Compact was joined with the other procedures related to the ESM and the 136 TFEU Treaty amendment.

The parliamentary debates were obviously influenced by this joint discussion on the three different ratification procedures: the rapporteurs emphasized the difference with the old times in which the ratification of the EU-related bills were seen as a only "technical" debate, with no political echo nor particular resistance, but the discussion seems to be a general treatment of the typical, historical problems of the so called democratic deficit in the European Union, with strong arguments, from both the centre right and the centre left, for the need of a more "political" federal Union.[85]

But probably the Fiscal Compact, considered as the more austerity-oriented measure in discussion,[86] was also the one receiving the clearer critical remarks, by both representatives of the majority and the opposition (the large majority of votes notwithstanding), in the awareness of its nature of possibly «most important act of all the legislature» for its sovereign implications.[87]

Some MPs raised clear concerns about the insufficient democratic nature of such an important move: both in terms of doubts of the transparency of «European bureaucrats»' decisions,[88] and in terms of the not obvious will of the citizens to participate in the hard process of reduction of the debt,[89] and the desirability of new efforts to engage and inform citizens about the choices made.[90]

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[85] See for instance MP Tempestini (PD), 17 July 2012, Exam in the III Commission for Foreign Affairs, http://leg16.camera.it/824?tipo=C&anno=2012&mese=07&giorno=17&view=&commissione=03&pagina=data.20120717.com03.bollettino.sede00010.tit00020#data.20120717.com03.bollettino.sede00010.tit00020, p. 42.

[86] See the report of MP Tempestini, again, in the plenary discussion of the 18 July 2012 of the Camera dei Deputati, http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110.sub00010, p. 55.

[87] MP Cambursano, plenary discussion of the Camera dei Deputati, 18 July 2012, http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110.sub00010 , p. 59: «*what we are doing in my opinion is the most important act of the whole legislature: overcoming the nation-states, guarantors (even though not always) of the rights and freedoms of citizens, reducing their sovereignty for Europe's advantage, for Europe and for its organisms that unfortunately are still not entirely democratic. If the words of Jean Monnet, according to which Europe will be made in periods of crisis and will be the sum of the solutions adopted in the crisis, are true, then this is the right opportunity. Let's prove it once and for all, let's make this building start (...) the one of the European demos without which we will never have a truly united Europe*».

[88] MP Tassone (UDC), plenary discussion of the Camera dei Deputati, 18 July 2012, http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110.sub00010 , p. 71.

[89] MP Picchi (PDL), exam of the III Commission on Foreign Affairs of the Camera dei Deputati, 18 July 2012,

Moreover, in a more substantive way, Senator Morando (PD), in his capacity of rapporteur and already during the examination in the III Permanent Committee on 17 April (http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=657917), focused in particular on «the absence, in the fiscal compact, of rules and policies for the growth, of equal strength and capacity for innovation of those aimed at stability», blaming for this the «still too strong doctrine that claims that stability, as the coin, is a common good, while that would not be the case of growth, which continues to be a national asset», also a very important issue for the Government (see Question IX.1).

However, real, strong and formal resistance to the approval of the bill came only from the relatively small parties of the new opposition under the Monti government (Lega Nord and Italia dei Valori). Some of the representatives of these parties openly talked of «a fiscal unification introduced surreptitiously, almost secretly, without much debate, possibly without making it known to the country because the price of this deal is not heavy for the next few years, but for generations to come»,[91] and, in quantitative terms, a «suicidal act for Italy»[92] that goes beyond an even reasonable turn of austerity[93] (see in fact Question IX.5 on the position of Lega Nord on the reform of Art. 81).

A discussion was vaguely introduced on the issue of a possible referendum on the new European measures,[94] but it is important to highlight in this respect that no "consultative referendum" of this kind is foreseen in the Italian Constitution, and the only way to establish it would be through a special "constitutional law" (legge costituzionale), used only once in history (but precisely on EU-related issues, in 1989).

BALANCED BUDGET RULE

IX.4

ARTICLE 3(2) FISCAL COMPACT PRESCRIBES THAT THE BALANCED BUDGET RULES SHALL TAKE EFFECT IN NATIONAL LAW THROUGH "PROVISIONS OF BINDING FORCE AND PERMANENT CHARACTER, PREFERABLY CONSTITUTIONAL, OR OTHERWISE GUARANTEED TO BE FULLY RESPECTED AND ADHERED TO THROUGHOUT THE NATIONAL BUDGETARY PROCESSES." HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN ITALY? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW

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http://leg16.camera.it/824?tipo=C&anno=2012&mese=07&giorno=18&view=&commissione=03&pagina=data.20120718.com03.bollettino.sede00010.tit00010#data.20120718.com03.bollettino.sede00010.tit00010, p.94.

[90] MP Pianetta (PDL), exam of the III Commission on Foreign Affairs of the Camera dei Deputati, 18 July 2012, http://leg16.camera.it/824?tipo=C&anno=2012&mese=07&giorno=18&view=&commissione=03&pagina=data.20120718.com03.bollettino.sede00010.tit00010#data.20120718.com03.bollettino.sede00010.tit00010, p.95.

[91] MP Giorgetti, plenary discussion of the Camera dei Deputati, 19 July 2012, http://leg16.camera.it/410?idSeduta=0669&tipo=stenografico#sed0669.stenografico.tit00020, p. 32.

[92] Senator Divina, plenary discussion of the Senate, 11 July 2012, http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667367.

[93] Senator Bricolo, plenary discussion of the Senate, 12 July 2012, http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=667491.

[94] See for instance MP Maggioni, http://leg16.camera.it/410?idSeduta=0668&tipo=stenografico#sed0668.stenografico.tit00110.sub00010, p. 75-76.

IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.

Constitutional Law n. 1/2012, of April 20th 2012, has introduced the "balanced budget" principle into the text of the Constitution itself, modifying the central art. 81 and, additionally, other three provisions of our basic law: articles 97, 117 and 119.

The label given to the reform was actually "balanced budget", therefore reminiscent of the Fiscal Compact wording, but this expression has not been explicitly adopted in the Constitution. The new article 81 Constitution introduces in fact a so called "equilibrium principle": according to this, the State shall ensure that revenues and expenditures will be in "equilibrium" having regard to the economic cycle. The new paragraph 2 of the article introduces a "debt-break" clause, which can be derogated from only in two cases: in order to counteract the effect of the economic cycle and, by a law adopted by an absolute-majority, to cope with exceptional events. According to the new text, the detailed discipline will be provided by a specific 'reinforced' law, again adopted by an absolute-majority (art. 5, Constitutional Law n. 1/2012). The reform has also repealed the third paragraph of article 81 Constitution, which prescribed that the balance act cannot introduce new taxes or new expenditures.
In its amended text, the new third paragraph, which is a new version of the old fourth one, dictates that any law involving new or increased charges must provide the means to face these measures. The fourth and the fifth paragraphs prescribe that each year the Parliament must approve the balance acts and, whenever a delay will occur, that a temporary interim budget exercise cannot be granted save by law and for no longer than four months. The sixth paragraph provides for the absolute majority law which should determine the contents of the new balance act, «the basic standards and criteria to ensure the balance between revenue and expenditure budgets and the debt sustainability of all the public administrations».

Furthermore, the new text of article 97 Constitution introduces the principle according to which the public administration (or better, again, all the public administrations, i.e. provinces, municipalities and above all regions, which are often considered as the real problem in terms of sustainability of public accounts) has to take into account the European Union system for purposes of ensuring balance and debt-sustainability.

Art. 117 Constitution, as amended by the reform, mandates a shift in the legislative competences over "harmonization of public accounts" from the State-Regions concurrence competence list (Article 117, paragraph 3) to the State exclusive competence list (Article 117, paragraph 2).

The new Article 119 Constitution prescribes that municipalities, provinces, metropolitan cities and regions have financial autonomy in respect of the equilibrium of their budget and their cooperation in ensuring compliance with the economic and financial constraints deriving from the European Union standards. The last paragraphs impose that, in coherence with the so called "golden rule", a loan repayment plan must be determined, with the

exclusion of any guarantee issued by the State. Art. 5 of Constitutional Law n. 1/2012 determines the necessary contents that shall be regulated by the specific law prescribed by the new sixth paragraph of Article 81 Constitution, and empowers the Houses of the Italian Parliament to monitor the respect on the public finance equilibrium. Art. 5, s. 3, f) prescribes that an independent authority on budget control shall be established within the Parliament (see Question VII.5).

DEBATE BALANCED BUDGET RULE

IX.5

DESCRIBE THE NATIONAL DEBATE ON THE IMPLEMENTATION OF THE FISCAL COMPACT/BALANCED BUDGET RULE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

In terms of parliamentary procedures, the rarity should firstly be emphasized of formal amendments to the Italian Constitution for both broad cultural reasons and because of the complexity of the process of constitutional amendment established by the Constitution itself (Art. 138 of the Constitution asks for a double reading by each of the two chambers of the Parliament of the constitutional bill, with a required majority of deputies or senators at the first reading for the approval, and a qualified majority of two thirds of the components in the second reading. If only an absolute majority, and not this last qualified one, is reached at the second deliberation, Art. 138 provides for the possibility to call for a referendum).

In the case of the Balanced Budget Rule amendment, after the approval of the Euro-plus agreement on 11 March 2011, several constitutional bills were filed in both Chambers, by the majority as well as by members of the opposition;[95] but only after the letter sent by the European Central Bank to the Italian Government on 5 August 2011 (as well known, asking, among other things, for a constitutional reform tightening fiscal rules; see Questions X.10 and X.11 for details), the Government announced the presentation of a constitutional bill, filed on 15 September 2011 to the Lower House (Camera dei Deputati). All these were then discussed together,[96] and led to the approval of Constitutional Law n. 1/2012.

This was finally approved by the Lower House (Senato) on 17 April 2012, and soon after promulgated by the President of the Republic, thereby concluding a procedure considered as «*unique in the entire history of constitutional amendments in Italy*»:[97] in fact, not only revisions brought about through Government initiatives are themselves very rare, but the process has been relatively fast, and the majorities obtained have been very large (Camera dei

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95 http://leg16.camera.it/126?tab=&leg=16&idDocumento=4205-A&sede=&tipo=.

96 http://leg16.camera.it/824?tipo=C&anno=2011&mese=10&giorno=05&view=&commissione=0105&pagina=data.20111005.com0105.bollettino.sede00010.tit00010#data.20111005.com0105.bollettino.sede00010.tit00010

97 See T. Groppi, The Impact of the Financial Crisis on the Italian Written Constitution, Italian Journal of Public Law, available at the website http://www.ijpl.eu/assets/files/pdf/2012_volume_1/IJPL_volume%201_2012.pdf, , p. 5.

Deputati: 489 yes, 3 no, 19 abstentions;[98] Senato: 235 yes, 11 no, 34 abstentions[99]; i.e. more than two thirds of each Chamber, thus avoiding the possibility of a referendum).

During the parliamentary process, already in the first date of plenary examination (23 November 2011, at the Camera dei Deputati) the Government (represented by the Minister for the Relationship with the Parliament, Prof. Giarda, http://leg16.camera.it/410?idSeduta=0553&tipo=stenografico#sed0553.stenografico.tit00050.sub00010) expressed the importance for the government of the bill's approval: «*I hope that the discussion, and then the completion of the work on this bill, can be reasonably quick so that we can proceed to the examination and approval by the Senate of the Republic, in order to show to all the world, which is observing us, the first concrete steps, of particular importance, because they modify the text of our Constitution to show that this government is working with the cooperation, assistance, aid of Parliament, implementing the commitments that characterized the settlement itself of this Government*».

In the same context, the problem of (budgetary and general) sovereignty was actually raised by some of the few political parties at the time in the opposition (e.g. the "Italia dei Valori", MP Cambursano: «*We are not deprived of sovereignty when some decisions made by Europe replacing those of Member States are based on commonly agreed rules and democratically controlled by the European Parliament. But we are defraud when the sacrifices asked to Greeks and Italians are decided in Berlin or Frankfurt, without control of the institutions of the European Union*»); but some other opposition parties, such as the "Lega Nord", approved the Bill because it was originally presented by the Berlusconi IV government (whom they supported), and they simply argued against the traditional policies of high public expenditure of the past decades.

Some other MPs, also supporting the government, stressed the critical points of the choice of an implementation in the form of a Constitutional Law, also for problems of timing in the approval (MP Tassone, UDC[100]: «*was it really necessary to undertake an amendment of Article 81 and constitutionalize, therefore, a balanced budget? Times are tight but I think we are pointing more to an announcement than to anything else, because if times are so tight to adopt such a complex measure relating to the budget, maybe it was fairer and easier to provide by ordinary law, considering that a law of constitutional revision obviously leads necessarily to a time dilation*»), as well as the desirability of similar strict budgetary constraints («*And then there are also the stories of the past, because in a moment of crisis and difficulty we also need debt to face critical situations of economic nature, and I refer to the occurrence of exceptional events*») and the problematic imposition made, through this, by the State on the local authorities and the other levels of government («*how can we think of a revival of Article 81 of the Constitution just starting from the state? A constitutional principle should refer to the Republic which is made by the State, regions, municipalities and metropolitan areas pursuant of Title V and Article 114 amended by the Constitutional Law of*

98 http://leg16.camera.it/410?idSeduta=0598&tipo=stenografico#sed0598.stenografico.tit00100.sub00020.

99 http://leg16.senato.it/leg/16/BGT/Schede_v3/Ddliter/votazioni/38076_votazioni.htm.

100 http://leg16.camera.it/410?idSeduta=0553&tipo=stenografico#sed0553.stenografico.tit00050.sub00010

18 October 2001, n. 3 ... so can one just consider the state, only the state?»).

In the assembly of 30 November 2011 an amendment was proposed and briefly discussed (but eventually withdrawn) on the possibility for the Houses of Parliament to establish, in deciding the annual planning of public finance, a formal maximum level of public spending, forcing subsequent «legge di bilancio» and «legge di spesa» to conform to it (MP Calderisi). Large part of the criticism by the main parties supporting the Monti government was diluted precisely with the drafting choice of avoiding «*the introduction of too rigid a ban for deficit spending*», also not to «*affect the quality of the stabilization policies and range of choices and tools to achieve it*», and not to put it «*in conflict with other fundamental rights*» (MP Bressa, PD, 23 November 2011).

Another formal point was also emphasized (Senator Ceccanti, 14 December 2011, http://leg16.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=620512): «the choice of the Italian legislator to intervene at a double regulatory level is appreciated, by approving a thin constitutional law, in which the general principles are established, and then a reinforced law containing detailed elements, which cannot be derogated from by ordinary laws.»

RELATIONSHIP BBR AND MTO

IX.6

WHAT POSITIONS, IF ANY, ARE TAKEN IN THE NATIONAL DEBATE ABOUT THE RELATIONSHIP BETWEEN THE BALANCED BUDGET RULE OF ARTICLE 3(1)(B) FISCAL COMPACT AND THE MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) RULE IN THE SIX-PACK (SECTION 1A, ARTICLE 2A REGULATION 1466/97, ON WHICH SEE ABOVE QUESTION VII.10)?

The point was actually briefly touched upon during the discussion of the «*Bill: provisions for the implementation of the principle of a balanced budget in accordance with Article 81, sixth paragraph, of the Constitution*» (A.C.5603-A, http://leg16.camera.it/410?idSeduta=0732&tipo=stenografico#sed0732.stenografico.tit00020.sub00010, then Law 243/2012).

The rapporteur, MP Duilio (PD, Camera dei Deputati, 11 December 2011), stated that «*During the examination in the Commission two parallel changes were approved referring to Articles 3 and 4, specifying that all the public administrations concur with each other in ensuring balanced budgets and the sustainability of the public debt. The equilibrium coincides with the medium-term objective specified under the Stability and Growth Pact, as amended by the Six pack. ... I remind that at now the medium-term objective for our country is a balanced budget in structural terms. The provision also states that the equilibrium is reached if it intends to respect the adjustment path towards the medium-term objective.*».

CASE LAW

IX.7

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE FISCAL COMPACT/IMPLEMENTATION OF THE BALANCED BUDGET RULE?

No. Again, this was maybe not surprising, given the limited possible modalities of access to the Italian Constitutional Court (see under Question IV.5 for details on this).

NON-EUROZONE AND BINDING FORCE

IX.8

HAS ITALY DECIDED TO BE BOUND BY PARTS OF THE FISCAL COMPACT ON THE BASIS OF ARTICLE 14(5) FISCAL COMPACT ALREADY BEFORE JOINING THE EURO AREA, OR HAS THIS OPTION BEEN DEBATED?

Not applicable.

MISCELLANEOUS

IX.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND THE FISCAL COMPACT?

No other relevant information.

X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

A number of member states have received direct financial assistance through balance of payments support (Hungary, Rumania, Latvia), bilateral agreements/IMF (Greece), the temporary emergency funds/IMF (Ireland, Portugal, Greece), and the permanent emergency fund (Spain and Cyprus).
*(*http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm*)*
Several member states have (also) indirectly benefited through the Securities Markets Programme (SMP) created in May 2010, a bond-buying programme of the European Central Bank that was replaced in September 2012 by the Outright Monetary Transactions (OMT) programme (Greece, Ireland, Portugal, Italy, Spain).
*(*http://www.ecb.int/mopo/liq/html/index.en.html#portfolios*)*

CONTEXT

X.1

IF RELEVANT, DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT OF THE FORMAL REQUEST OF DIRECT FINANCIAL ASSISTANCE.

Not relevant.

NEGOTIATION

X.2

DESCRIBE THE PUBLIC AND POLITICAL DEBATE DURING THE NEGOTIATIONS ON THE FINANCIAL ASSISTANCE INSTRUMENTS, NOTABLY THE MEMORANDUM OF UNDERSTANDING (MOU) AND FINANCIAL ASSISTANCE FACILITY AGREEMENT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

Not relevant.

STATUS INSTRUMENTS

X.3

WHAT IS THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS IN THE NATIONAL LEGAL ORDER (POLITICAL AGREEMENT, INTERNATIONAL TREATY, ETC.)?

Not relevant.

TRANSPOSITION NATIONAL LEGAL ORDER

X.4

CONSIDERING THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS, WHAT PROCEDURE DOES THE CONSTITUTION PRESCRIBE FOR THEIR ADOPTION/TRANSPOSITION INTO THE NATIONAL LEGAL ORDER?

Not relevant.

ROLE PARLIAMENT

X.5

WHAT IS THE ACTUAL ROLE OF PARLIAMENT WITH REGARD TO THE ADOPTION/TRANSPOSITION INTO THE NATIONAL LEGAL ORDER OF THE FINANCIAL ASSISTANCE INSTRUMENTS?

Not relevant.

ADJUSTMENT REQUIREMENTS

X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

Not relevant.

MISSIONS

X.7

WHAT LEGAL CHANGES, IF ANY, HAD TO BE MADE TO ACCOMMODATE 'TROIKA' REVIEW MISSIONS, POST-PROGRAMME SURVEILLANCE MISSIONS, ETC?

Not relevant.

CASE LAW INTERNATIONAL INSTRUMENTS

X.8

HAVE THERE BEEN DIRECT OR INDIRECT LEGAL CHALLENGES AGAINST THE FINANCIAL ASSISTANCE INSTRUMENTS BEFORE A NATIONAL (CONSTITUTIONAL) COURT?

No.

CASE LAW IMPLEMENTING MEASURES

X.9

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON NATIONAL POLICY MEASURES ADOPTED IN RELATION TO THE MEMORANDA OF UNDERSTANDING?

No.

BOND PURCHASES ECB

X.10

DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT WHERE THE EUROPEAN CENTRAL BANKS STARTED BUYING GOVERNMENT BONDS ON THE SECONDARY MARKET (THROUGH THE SECURITIES MARKETS PROGRAMME, SMP).

Between 2011 and 2012 the ECB bought 102,8 billions of euro of Italian bonds, the largest quota among all the Eurozone members (this is understandable, given the dimension of the

Italian public debt).[101]

The program started for Italy in August 2011, when the Berlusconi IV government was still in charge, and went on in 2012 with the Monti government (supported by a bi-partisan coalition with the same parliamentary composition).

Precisely in the summer of 2011, Italy became the subject of speculation because of its high debt-to-GDP ratio, as the fallout from a speculative global financial market attack caused by the general lack of confidence towards the euro area following the sovereign debt crises in other EU counties, Greece in particular. This, in turn, provoked substantial interest payments, making more difficult to achieve a budget surplus even having achieved primary surpluses. Financial market speculation increased the pressure on the Italian economy and «*forced the government down the path of even harsher policies with a view to restoring the public finances, due to a dramatic hike in the interest rates on government debt*».[102]

As already said in question VII.1, it is relevant to highlight that the course of action for the resignation of Silvio Berlusconi as head of the government, and its replacement with the so called Monti's "technical" government, developed in the context of the strengthening of mechanisms for coordination and monitoring of economic policies, saw the culmination of a dramatic crisis of European stock exchanges and a strong widening of the spread between the rates on Italian and German bonds, and in particular developed with:

1) a letter by the President of the ECB Jean-Claude Trichet and his designated successor, then a member of the Executive Board of the ECB, Mario Draghi, to the President of the Italian Council of Ministers on 5 August 2011[103]; 2) a letter of the President of the Council of Ministers to the President of the European Commission and the President of the European Council submitted at the Euro-Summit on 26 October 2011;[104] 3) a letter containing the request for clarification by the Commissioner for Economic and Monetary Affairs and European Commission Vice President Olli Rehn to the Italian Minister of Economy and Finance, Giulio Tremonti, on 4 November 2011;[105] 4) a letter containing the additional

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[101] See the data included in the study of the Netherlands Court of Audit, available at the site http://www.rekenkamer.nl/english/Publications/Topics/EU_governance_to_combat_the_economic_and_financial_crisis/Financial_stability_instruments/Financial_instruments/European_Central_Bank_ECB.

[102] See E. Borghi, *The Impact of Anti-Crisis Measures and the Social and Employment Situation: Italy*, European Economic and Social Committee, available at the site http://www.eesc.europa.eu/resources/docs/qe-32-12-542-en-c.pdf.

[103] The complete text is available at http://www.corriere.it/economia/11_settembre_29/trichet_draghi_italiano_405e2be2-ea59-11e0-ae06-4da866778017.shtml or http://www.ilsole24ore.com/art/notizie/2011-09-29/testo-lettera-governo-italiano-091227.shtml?uuid=Aad8ZT8D

[104] See the text and the attached document available at the website http://www.ilsole24ore.com/art/notizie/2011-10-26/nella-bozza-inviata-bruxelles-185744.shtml?uuid=Aas1BFGE.

[105] Available at the website http://www.ilsole24ore.com/pdf2010/SoleOnLine5/_Oggetti_Correlati/Documenti/Finanza%20e%20Mercati/2011/11/olli-rhen-tremonti.pdf?uuid=97b64544-0a36-11e1-902a-5584c7c5a689; see also the attached questionnaire available at the site http://www.ilsole24ore.com/pdf2010/SoleOnLine5/_Oggetti_Correlati/Documenti/Finanza%20e%20Mercati/2011/11/chiarimenti-ue.pdf?uuid=97036500-0a36-11e1-902a-5584c7c5a689.

information given by the President of the Council of Ministers and the Ministry of Economy and Finance on 14 November 2011 to the Commissioner and Vice President Rehn.[106]

CONDITIONALITY BOND PURCHASES ECB

X.11

WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

The aforementioned letter by the President of the ECB Jean-Claude Trichet and his designated successor, then a member of the Executive Board of the ECB, Mario Draghi, to the President of the Italian Council of Ministers of 5 August 2011, specified the measures considered as urgent to prevent the collapse of the country and the Euro.

The points listed were:

1. Significant measures to increase the growth potential («*increase of competition, especially in services, improving the quality of public services and redesign of regulatory and tax systems to be better suited to support the competitiveness of enterprises and the efficiency of the labor market*»).

2. Immediate and decisive measures to ensure the sustainability of public finances («*Additional corrective fiscal measures are needed. We consider essential for the Italian authorities to front-load the measures adopted in the July 2011 package by at least one year. The aim should be to achieve...a balanced budget in 2013, mainly via expenditure cuts*»)

2.a Further measures to fix the budget («*It is possible to intervene further in the pension system, making more stringent the eligibility criteria for seniority pensions and rapidly aligning the retirement age of women in the private sector to that established for public employees*»)

2.b An automatic deficit reducing clause («*An automatic deficit reducing clause should be introduced stating that any slippages from deficit targets will be automatically compensated through horizontal cuts on discretionary expenditures*»)

2.c Tight control on the assumption of debt, including commercial debt, and on the expenditures of regional and local authorities.

All these proposals were in various ways subject to contestation, both in the Parliament (in the process of enactment of the single reforms, but also with specific debates on the opportunity of a publication by the Government and a proper public debate in the

[106] Available at the website http://www.legautonomie.it/Documenti/Attualita/Crisi.-La-lettera-di-risposta-dell-Italia-all-UE.

Chambers)[107] and in the general public debate:[108] but it is important to recall that they were actually implemented in particular under the Monti government, which was born precisely as a bi-partisan emergency government with a clear pro-European approach, and therefore with no clear obstacles.

In light of all this, critical remarks on the heterodirected nature of these reforms notwithstanding, it will be probably more relevant to assess how many of these reforms, in the long run, will receive a complete implementation and/or will actually survive the replacement of the Monti government, in 2013, with new executives with a more pronounced "political" nature.

MISCELLANEOUS

X.12

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO ITALY AND FINANCIAL SUPPORT?

It is interesting to note that the mentioned letter by Jean-Claude Trichet and Mario Draghi to the President of the Italian Council of Ministers of 5 August 2011 (see Question X.10) emphasized, among the other things, the «need for a strong commitment to abolish or merge some intermediate levels of administration (such as provinces)».

This reform, which implies amendments of the constitutional text, is still ongoing.[109]

But a previous intervention in this direction was attempted by the Monti government already in late 2011, and annulled by the Constitutional Court (n. 220/2013)[110] because of the illegitimate use of Decree-laws (legislative acts of a temporary nature having the force of law, adopted in «extraordinary cases of need and urgency» by the Government, pursuant to art. 77 of the Constitution of the Italian Republic, see Question IV.2) for such a purpose.

However, if one can be tempted to read this last case as the symbol of a strong judicial opposition of the Constitutional Court against national legislative reforms prompted by the financial crisis, a comprehensive reading tells us, in fact, the opposite.[111]

It is for instance relevant to note that, in the same year of this judgment based on somewhat formal grounds, the Constitutional Court rejected in the case n. 8/2013[112] the complaint of

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[107] See the plenary discussion of the Camera dei Deputati on the 29th September 2011, http://leg16.camera.it/410?idSeduta=527&tipo=stenografico#, soon after the letter of the ECB of 5.8.2011 was published by the main newspaper of the country, the Corriere della Sera.

[108] See for instance the harsh critical positions of the former Minister of Economy and Finance Prof. Giulio Tremonti, in his book *Uscita di Sicurezza*, Rizzoli, 2012.

[109] See the governmental report to the amendment proposal at the website http://www.governo.it/backoffice/allegati/72060-8797.pdf.

[110] http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=220.

[111] See the reflections by A. Morrone, *Crisi economica e diritti. Appunti per lo stato costituzionale in Europa*, in *Quaderni costituzionali*, n. 1/2014, 79, 81 and D. Tega, *Welfare Rights in Italy*, in C. Kilpatrick and B. de Witte (eds.) *Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges*, EUI Working Papers, Law 2014/05, p. 54-57, available at the website http://cadmus.eui.eu/bitstream/handle/1814/31247/LAW%20WP%202014%2005%20Social%20Rights%20final%202242014.pdf?sequence=1

[112] http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=8.

two Regions against the provisions of a Decree-law of the State according to which the local authorities are divided into two classes based on the parameters of virtuosity therein, so that they participate in different degrees to the consolidation of public finances, stating that it is reasonable and legitimate to allow for «an evaluation of the adaptation of each local authority to the principles of rationalization of regulation».

Comparable judgments by the *Corte Costituzionale* upholding national reforms came also in the fields of the redefinition (and optimization) of the geographical allocation of courts and tribunals (n. 237/2013),[113] of the regional financial contributions to the so-called *spending review* measures (n. 205/2013),[114] or on the powers of control of the Court of Auditors on the local entities of the Italian five so called regions with special status (n. 60/2013).[115]

Moreover, and in the same vein, several judgments stroke down regional legislative measures considered as conflicting with the new national reforms: for instance the decision n. 28/2013,[116] n. 78/2013,[117] n. 138/2013,[118] n. 180/2013,[119] n. 221/2013.[120]

113 See http://www.giurcost.org/decisioni/2013/0237s-13.html.
114 See http://www.giurcost.org/decisioni/2013/0205s-13.html.
115 See http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=60.
116 See http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=28.
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118 See http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=138.
119 See http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=180.
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Report on Italy

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