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The Introduction of the "Balanced Budget" Principle into the Italian Constitution: What Perspectives for the Financial Autonomy of Regional and Local Governments?

by

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Abstract

This paper analyses the impact on regional and local authorities of Articles 117 and 119 of the Italian Constitution (hereafter referred to as "IC") as amended by Constitutional Law no. 1/2012.

In particular, it attempts to verify whether the new formulation of these constitutional provisions materializes the risk of a significant reduction in the financial autonomy of both Regions and Local Governments.

With the constitutional reform the legislative competence of "*harmonization of public account*" has become an exclusive State competence, the "*balanced budget*" principle has been extended to Regions and local authorities and public borrowing has been broadly prohibited.

What is the actual significance of the changes introduced by Constitutional Law no. 1/2012 for the financial autonomy of Italian sub-national authorities?

Is it time to recognise that the goals of financial independence of Italian fiscal federalism, launched by the reform of Title V of the IC, must give way to a new organization of public finance, where a central role is played by the central government in order to comply with the financial constraints arising from new challenges of the European economic integration process?

Key-words

harmonisation of public accounts, public finance coordination, balanced budget, public borrowing, fiscal federalism, multilevel financial system

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1. The European and Italian legal framework in which the constitutional reform took place

In April 2012, the Italian Parliament enacted Constitutional Law no. 1/2012 with the aim of intensifying the Italian commitment to restore public finances in accordance with the constraints imposed by the *Europlus Pact* and the *Six Pack,* now strengthened by the *Fiscal Compact* .

The law modifies Articles 81, 97, 117 and 119 of the IC, introducing specific rules in order to ensure that in the economic cycle - consisting of favourable and adverse phases - public budgets are constructed in a way to guarantee a progressive equilibrium between revenue and expenditure.

Since the launch of the Economic and Monetary Union (EMU), the Treaty of Maastricht has imposed that the ratio of the annual government deficit to Gross Domestic Product (GDP) must not exceed 3% at the end of the preceding fiscal year. In case of failure, a government is required to at least reach a level close to 3%, consenting only exceptional and temporary excesses. At the same time, the Treaty of Maastricht imposed onto the EMU Member States a ratio of gross government debt to GDP not exceeding 60% at the end of the preceding fiscal year.

These constraints on Member States' fiscal policy were further strengthened by the *Stability and Growth Pact,* which imposed upon the Member States the obligation to guarantee, in the medium term, a break-even public deficit, while in the short term a limit of 3% of deficit/GDP ratio was not to be exceeded.

More recently, the Fiscal Compact bolstered these rules even more, imposing upon all Contracting Parties[I] an "annual structural balance" - defined in Article 3, Paragraph 3, letter *a*, of the Treaty as *"the annual cyclically-adjusted balance net of one-off and temporary measures"* - that must not exceed 0.5% of GDP, as well as a reduction in public debt at a regular rate (5% per annum) until the achievement of the reference level of 60% of GDP[II].

These provisions involve a sort of "enhanced" golden rule because the budgetary balance, which must substantially be in equity, also includes investment expenditure (Article 3.1, letters *a* and *b*, of the Fiscal Compact); conversely, in the classic theory of public finance, the most popular version of the "golden rule" requires that current spending must be financed through tax incomes, whilst investment spending has to be

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financed through the current budget surplus or by issuing government bonds (Majocchi 2012: 45-46).

Article 3.2 of the Fiscal Compact requires the Signatory States to make the new rules binding within their respective legal systems "*through provisions of binding force and permanent character, preferably constitutional*", at least one year after the entry into force of the Treaty.

Constitutional Law no. 1 of 2012, therefore, is the legal instrument by which the Italian Parliament introduced into the Italian Constitution the stringent limits imposed at European level by the new rules of economic governance.

In this regard it is, first of all, interesting to notice that reforming specific constitutional provisions contrasts with the traditional rigidity of the Italian Constitution vis-à-vis changes caused by the European integration process.

Until now, in fact, Article 117 of the Italian Constitution has been the only constitutional provision to be modified as a result of the above process.

In the Italian experience, indeed, compliance with the duties arising from participation in the European Union has mainly been provided through a "Europe-oriented" interpretation of the already existing constitutional provisions.[III]

In antithesis to this trend, the implementation of the new economic rules in the domestic order have occurred through a constitutional reform that has been qualified as "hetero-directed" insofar as it was requested by European institutions in order to "restore market confidence" (Groppi 2012: 6).

From a substantial point of view, the constitutional reform basically prescribes the balance between revenues and expenditures for the State budget and for the budgets of Regions and local authorities and allows for public borrowing only in some "*exceptional cases*".

Before analysing the amendments introduced by Constitutional Law no. 1/2012 to Articles 117 and 119 of the Constitution, it seems appropriate to make some introductory remarks in order to understand the general framework in which the constitutional reform is taking place.

First of all, it is necessary to take into account that after the adoption of Constitutional Law no. 1/2012, the Italian Parliament adopted a "Reinforced" Law[IV] on 24 December 2012 (Law no. 243/2012) in order to implement the "balanced budget" principle, thus complying with the provisions of Paragraph 6 of the reformed Art. 81 of the Constitution.

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Additionally, it is necessary to notice that in 2012, many government complaints (or "Commissioner of the State complaints", in the case of the Region of Sicily) about spending and budget laws of the Regions (and even of those with special status) were issued[V].

The numerous appeals are of a certain interest for us because they show that the "justiciability" of the "balanced budget" principle is to some extent a congenial operation for the State in order to control the budgets of Regions and local authorities and thus the financial autonomy of the various levels of government[VI]. On the other hand, a judicial review of the State balance tends to fade away and becomes not easily feasible, essentially because of the lack of entitled claimants legitimate to appeal against the State budget law (Scaccia 2012: 4).

Finally, in order to give an overview of the complex articulation of Italian public finance coordination between the central State and sub-national authorities, it is necessary to report that the Italian Parliament also approved Law no. 213/2012 (converting the Legislative Decree no. 174/2012[VII]) aimed at strengthening the auditing system of the management of financial resources by territorial authorities carried out by the Court of Auditors[VIII].

The Legislative Decree basically prescribed the Court of Auditors' control over regional expenditure laws through a special report to be transmitted to the Regional Councils and then to the Presidency of the Council of Ministers (Prime Minister). Moreover, the Legislative Decree established the control of the Regional Sections of the Court of Auditors over the budget plans and financial statements of Regions, the entities of the Regional Health Service, and of local authorities in order to verify their compliance with the goals fixed by the Internal Stability Pact. Finally, another very important novelty introduced by the Legislative Decree is the extension of the "Parification Judgment" (*giudizio di parificazione*) to the financial statements of all Italian Regions, whilst previously it applied only to Regions with Special Statute (except Aosta Valley).

2. The "*harmonisation of public accounts*" as an exclusive State competence

After the Constitutional Reform no. 1/2012, the new Article 117, Paragraph 2, letter *e*,

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of the Constitution states that the matter of "*harmonisation of public accounts*" is no longer a legislative competence shared between State and Regions but becomes an exclusive State competence[IX].

This change involves the relevant legal repercussions, since the matter of "*harmonisation of public accounts*" takes shape as a subject different and independent from that of "*public finance coordination*", which is still a matter of shared competence between State and Regions[X].

If we take into consideration the decisions of the Constitutional Court after the reform of Title V of the Italian Constitution on the subject of "*harmonisation of public accounts and public finance coordination*" on appeals launched by either the State or the Regions, there is insufficient information to draw a clear dividing line between the two subjects, as they have always been considered a single matter of shared competence between State and Regions[XI].

The attribution of both areas to the shared competence of State and Regions had taken place through the reform of Title V of the Italian Constitution[XII] (Constitutional Law no. 3/2001) with the aim to implement a so-called "*fiscal federalism*".

Through a new and more detailed division of legislative powers in financial matters, the exclusive competence "*State taxation and accounting systems*" and "*resource equalization*" was attributed to the State, while it was povided that the field of "*harmonisation of public accounts and public finance coordination and tax system*" would become a shared competence between State and Regions[XIII].

The main goal of that Constitutional Reform was creating a system of relations between the State and the several levels of government able to establish a direct relationship between the taxes collected in a specific area of the country - municipalities, provinces, and Regions - and the proceeds used by the same governments of these areas.

As a matter of fact, it is relevant to underline that from the Constitutional Reform of Title V of the Italian Constitution in 2001 until the approval of Law no. 42/2009 (specifically designed to implement the "fiscal federalism" designed by that constitutional reform), the central government dictated the fundamental principles of the harmonization of public accounts, public finance coordination and the tax system by means of the *Finance Act* (now called "*Stability Law*") in a very "authoritative" way, i.e. through introducing a whole series of constraints[XIV] for the Regions and local authorities budgets (Carboni 2011: 651-652).

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It was only in 2009, with the approval of Law no. 42, that the Italian Parliament gave a boost to the federalist process.

Through the recognition of the "*general principles of public finance coordination and tax system*[XV]" and through delegating to the national executive the task of implementing these principles using legislative decrees, the legislator intended to lay down the foundations for a financial coordination based on the joint participation of all levels of government that was supposed to be essential for the implementation of fiscal federalism.

A process that – although still being difficult to implement, more than a decade after the reform of Title V of the Constitution – now seems destined to suffer from a setback with the entry into force of Constitutional Law no. 1/2012.

The subject of "*harmonisation of public budgets*" having become a State exclusive competence, the central government will be no more limited to a mere determination of fundamental principles (as wanted by the reform of Title V of the Constitution). Instead, it will benefit from an autonomous competence, of the exclusive type, which might, presumably, allow it to approve much more detailed regulations that are able to bind the financial autonomy of regions and local authorities much more tightly.

It is, therefore, clear that all depends on the interpretation that will be given to the concept of "harmonization" in the field of "public budgets".

In European Union Law, the concept of "*harmonisation*" summarizes the process by which the refinement of legal systems (or, more specifically, the refinement of national laws governing a particular matter) becomes possible in order to perform the implementation of a common, supranational purpose[XVI].

Harmonisation thus involves an "approximation" of different legislations that is realized by directives indicating objectives and incorporating principles and guidelines from which is excluded, in principle, the possibility to outline more detailed regulations.

The question should thus be whether this meaning of "harmonization" might be used with reference to the notion of "*harmonization of public accounts*".

If so, the State would be authorized to enact legislation containing only general principles, but not also detailed regulations.

However, such an interpretation would make the constitutional reform meaningless to the extent that it makes the matter of "*harmonisation of public budgets*" an exclusive competence, and no longer a shared one.

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Only a different meaning of "harmonisation", which does not coincide with that which is of European derivation, might make sense of the new allocation of the subject matter into the exclusive competence of the central government.

On the other hand, however, it is impossible to state that the constitutional reform assigns the State an unlimited legislative power in the field of "public budgets".

"*Harmonization of public account*", as the State's exclusive competence, cannot automatically imply a central government unification of the balance procedures because, if so, it would loosen the minimum and essential guarantee of financial autonomy of decentralized governments (Salerno 2012: 161).

Indeed, it is important to emphasize that, despite the transfer of legislative competence, the term "harmonization" remains within the constitutional provision. Hence, it is necessary to attribute the proper relevance to this choice made by the constitutional legislator.

In other words, the term "harmonization" of Article 117, Paragraph 2, Italian Constitution, should be granted a meaning that, on the one hand, does not coincide with its European intention (in order to render the transfer of legislative competence meaningful) but that, on the other hand, is able to prevent the State from adopting an unlimited, detailed fiscal discipline, leaving in this way the Regions with an only limited margin of legislative autonomy.

At the same time, it would be interesting to figure out what kind of consequences is implied by the possibility of the central government to not only enact principles and general criteria, but also precise and detailed rules in the subject of "*harmonization of public budgets*".

One of the consequences might be the possibility of Regions to appeal against all too detailed regulation adopted by the State in the subject of "*harmonisation of public budgets*". In fact, a situation in which a subject matter is an exclusive competence of the central government could mean that it will no longer be possible for the Regions to appeal to the Constitutional Court for violations of shared competences.

In this way, there would only be two possibilities left for Regions to appeal against State regulations regarding the harmonization of public budgets: when State legislation is suspected not to fall within the field of harmonization but, more properly, in the field of public finance coordination; or if a Region considers that the State has adopted detailed

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regulations in this area that go beyond the limitations inherent in "harmonisation" interpreted as a "restricted" legislative technique.

Secondly, the transfer of the "*harmonisation of public accounts*" matter into the exclusive State legislation sphere may determine the simultaneous assignment to the State of the regulatory power related to this specific field in accordance with the sixth Paragraph of Article 117 of the Italian Constitution, which stipulates that "*regulatory powers shall be vested in the State with respect to the subject matters of exclusive legislation, subject to any delegations of such powers to the Regions. Regulatory powers shall be vested in the Regions in all other subject matters*".

It is not predictable whether and how much the influence of the central government on the financial autonomy of the various levels of government will grow, the State being in the ideal position to transfer many of the contents of the "*public finance coordination*" matter into that of "*harmonization of public finance*".

Furthermore, the content of the bill on a constitutional amendment submitted by the Italian Government on 15 October 2012 regarding a thorough reform of Title V of the Constitution is perfectly consistent with this hypothesis: Article 2, Paragraph 1, letter *c* of this bill repeals Article 3 of the Constitutional Law 1/2012 and defines the whole matter of "*harmonisation of public accounts, public finance coordination and tax system*" as an exclusive State competence.

3. The extension of the "balanced budget" principle to Regions and local authorities and the introduction of the obligation of complying with European economic and financial constraints

Up to now, the Italian sub-national governments' contribution to achieving the fiscal objectives fixed by the *Stability and Growth Pact* - adopted by the Amsterdam European Council in June 1997 – has mainly been governed by the State through the so called "*Internal Stability Pact*[XVII]"(Law no. 448/1998).

In particular, the *Internal Stability Pact* was conceived in order to guarantee the convergence of the Italian internal economic and financial system towards common specific criteria established at European level through the Stability and Growth Pact and the Treaty of Maastricht.

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To reach this goal, it was considered essential to secure sub-national government cooperation in achieving the two primary objectives of "economic cycle stabilization" and "public finance sustainability".

Along these lines, over the years Italian public finance coordination mainly consisted of the State imposing financial constraints onto sub-national governments.

The primary objective of the fiscal rules contained within the Internal Stability Pact was to supervise the net public borrowing of sub-national authorities. This goal was pursued, on the one hand, by imposing constraints in order to achieve incremental savings compared to the results achieved in previous years and, on the other hand, through a progressive reduction of State transfers to those authorities.

Moreover, beyond the provisions of the Internal Stability Pact, the imposition of specific financial constraints by the State on sub-national authorities also took place through a succession of various "Stability Laws", financial manoeuvres implemented by Law-Decrees arising from Article 77 IC, and provisions raised in many sector-specific national laws.

The high number of State measures, however, failed to ensure compliance with the parameters set by the European Union.

The reports submitted by the Court of Auditors revealed a high level of debt at all levels of Italian government and a massive recourse to public borrowing[XVIII].

Therefore, no effective control of net borrowing by sub-national governments was achieved. Some sub-national governments found themselves in very bad financial conditions and were even subjected to deficit repayment plans.

The "balanced budget" constitutional reform aims at disrupting such heavy conditions of financial distress faced by regional and local authorities.

The second Paragraph of Article 119 IC, as amended by the Constitutional Law 1/2012, now states that: "*Municipalities, Provinces, Metropolitan Cities and Regions shall have revenue and income autonomy in compliance with their balanced budgets, and shall contribute to ensure the observance of the economic and financial constraints deriving from the European Union*."

As it is possible to notice, on the one hand the new constitutional provision extends the balanced budget principle to the regional and local authorities. On the other hand, it constitutionalises the principle of regional, provincial and municipal contribution to fulfilling the economic and financial constraints imposed by the European Union.

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The new formulation of Paragraph 1 of Article 119 IC does not ensure that territorial authorities have the opportunity to make reference to the needs of fiscal policies in function of the economic cycle, as instead it is afforded to the State by the amended Paragraphs 1 and 2 of Article 81 IC.

This means that only the central government has a certain flexibility in the budget choices concerning the balance between income and expenditure, being authorised to take into consideration the trends of the economic cycle and in the event of exceptional circumstances (Article 81, Paragraph 6, IC).

Moreover, it must be stressed that the expression "*in compliance with their balanced budgets*" means that the balanced budget principle has to be applied to each territorial authority individually, and not to territorial authorities as a whole. In fact, each of them is required to ensure compliance with this principle within its own budget, and this kind of "individual" responsibility guarantees the observance of the obligations deriving from the European legal system through the complexity of institutions in the multilevel financial system.

The provisions of the constitutional reform have been fully implemented through the "reinforced" law (Law no. 243/2012) that was specifically designed to introduce "*the basic standards and criteria to ensure the balance between revenue and costs of the budgets* (...) *of all the public administrations*" in accordance with the amended Article 81, Paragraph 6 IC.

This Law, consolidating at central level control over national public finance, seems able to overcome some of the structural problems that since the reform of Title V of the Constitution have characterized the fragmented Italian public finance coordination.

In particular, Article 9 clarifies under which conditions it is possible to consider as "balanced" the budgets of the Regions (both of the autonomous Regions with a special statute and Regions with ordinary statute), Municipalities, Provinces, Metropolitan Cities and the autonomous Provinces of Trento and Bolzano/Bozen. It is necessary that, both at the budget formation and approval stages, such authorities show: *a)* a non-negative commitment- and cash-based balance of final revenues and final expenditure; and *b)* a non-negative commitment- and cash-based balance of current revenues and current expenses, including principal repayment instalments on loans (Article 9, Paragraph 1).

Article 9 also states that in case of failure to achieve the "*balanced budget objective*" arising from the management report and in case of a negative balance in one of the two mentioned circumstances, "*the Region or the authority in question shall adopt corrective measures to*

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ensure budgetary realignment within three years" (Article 9, Paragraph 2). By contrast, any surplus shall be used to pay off any accrued debt or, if related to current revenues and current expenditures, may be used to finance investment expenditures, in the way established by the subsequent Article 10 of the Law (Article 9, Paragraph 3).

The latter obligations regarding the surplus are, furthermore, set only for Regions and local authorities, inasmuch the Law does not prescribe a similar obligation for the central government.

Finally, Article 9 charges the State with the task of establishing an *ad hoc* sanction system in the event in which Regions and local authorities fail to achieve the "*balanced budget objective*" through the provision of "*specific repayment plans*".

4. The prohibition of public borrowing

With the constitutional reform, public borrowing has been prohibited, both with reference to central government and as regards territorial authorities.

More specifically, following the literal tenor of Article 81, Paragraph 2 IC, State public borrowing is prohibited except in the event it is made "*in order to consider the effects of the economic cycle*". There are therefore only two cases in which State public borrowing is permitted. The first does not require parliamentary authorization if public borrowing is made in order to guarantee adjustment to the economic cycle. In the second case, public borrowing is permitted in case of the occurrence of "exceptional events" whose existence has to be certified through parliamentary authorization taken with absolute majority (Lupo 2012: 130).

On the other hand, a stricter provision has been introduced as regards public borrowing by regional and local authorities.

The new Article 119 IC states that Municipalities, Provinces, Metropolitan cities and Regions "*shall borrow only to finance investment expenditure with the contextual definition of the harmonization schedules and under the condition that for the complex of entities of each Region the budget balance is respected*".

It has to be noted that the provision limiting borrowing exclusively to finance investments had already been introduced into Article 119, Paragraph 6 IC, by the reform of

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Title V of the Constitution in 2001. To be precise, even before its introduction into the Italian Constitution the principle of public borrowing limited to investment expenditure had been recognised by Italian ordinary legislation (Article 10, Paragraph 2 of Law no. 281/1970 for the Regions and Article 202 of the Local Authorities Act –"TUEL" – see Legislative Decree no. 267/2000).

Now the new formulation of Article 119, Paragraph 6 IC, requires two more conditions to be fulfilled before Regions and Local authorities can resort to public borrowing to finance investment expenditures.

First of all, a contextual definition of the amortization schedule is required.

Secondly, it is required that the balanced budget rule is respected by all the local governments within a Region.

As it has been noted by the Dossier of the "Servizio Studi Senato della Repubblica A.S. 3047", requiring a definition of the amortization schedule means that compliance with the balanced budget principle becomes a kind of "intertemporal obligation" for territorial authorities.

Each authority is in fact required to ensure a balanced budget over the whole period considered, also taking into account depreciation charges.

Moreover, the opportunity for every single authority to borrow is subject to the condition that the balance budget principle is respected by each public administration of that Region. In other words, this means that, in case of a deficit by one local government, this must be covered with the surpluses produced by the other authorities within that Region, thus ensuring an overall balanced budget of that regional aggregate.

This seems to represent a new and very strict limit for territorial authorities' political self-determination. Each local authority, in fact, even if fully respecting the balanced budget principle, would be unable to borrow just because the neighbouring authority's financial mismanagement caused an imbalanced "*consolidated regional budget*"(Cecchetti 2012: 7).

Law no. 243/2012 on the implementation of the balanced budget principle clarified what the expression "*the complex of entities of each Region"* means. Indeed, it was not clear whether also the Region itself should have been considered as part of that "complex of entities". Excluding the Region from the complex of entities would mean that the budget of a local authority of that Region had to be compensated only by the balances of the other

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entities of the considered aggregate, excluding that of the regional government as itself not being part of the complex.

Actually Article 10, Paragraph 3, of the Law explicitly established that also the Region had to be considered part of the "complex".

However, it must be noted that considering Municipalities, Provinces and Metropolitan Cities as "entities of a Region" might conflict with the "principle of autonomy" stipulated by Article 114 IC which explicitly states that: "*Municipalities, Provinces, Metropolitan Cities and Regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution*".

Finally, Law no. 243/2012 also established the conditions and limitations of borrowing to cover investment expenditures.

In particular, Article 9, Paragraph 2, states that the borrowing transaction must take place through the contextual definition of the amortization schedule, whose duration remains closely linked to the investment and whose content should emphasize "*the incidence of the obligations on the individual future accounting periods as well as how to cover the corresponding expenses*".

5. Conclusions

The constitutional reform which introduced the "balanced budget" principle into the Italian Constitution essentially intervened on two fronts, as it directly regards the financial autonomy of both Regions and local authorities: On the one hand, by moving the subject of "*harmonization of public accounts*" from the list of shared competences to that of exclusive state competence and, on the other, by modifying the constitutional provisions regarding the financial autonomy of territorial authorities contained in Art. 119 IC, in order to extend the same "balanced budget" principle to Regions and local authorities and reiterating that they are obliged to comply with the economic and financial constraints deriving from the EU legal order.

At the same time, Law no. 243/2012 constituted the corollary of the constitutional reform by implementing its general principle and goals.

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In fact, after a brief analysis of some of its dispositions, one might argue that the latter regulatory intervention coherently integrates the general operation of narrowing the regional and local financial autonomy set forth by the mentioned constitutional reform.

In other words, it is possible to affirm that the constitutional reform of Articles 117 and 119 IC, as well as introducing correction mechanisms of different nature in order to respond to emergencies arising from the financial crisis, seems to conceal the intention of reversing the "fiscal federalism" process started in Italy with the reform of Title V of the Constitution in 2001, which laid out a progressive and increasing allocation of relevant functions to Municipalities, Provinces, Metropolitan Cities and Regions through the recognition of the need for adequate financial independence at every level of government.

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[I] The Fiscal Compact - formally "*Treaty* on Stability, Coordination and Governance in the EMU" (TSCG) - was signed on 2 March 2012 by all Member States of the EU except the Czech Republic and the United Kingdom.

[II] Article 3.1 Fiscal Compact: "*The Contracting Parties shall apply the rules set out in this paragraph in addition and without prejudice to their obligations under European Union law:*

(a) the budgetary position of the general government of a Contracting Party shall be balanced or in surplus;

(b) the rule under point (a) shall be deemed to be respected if the annual structural balance of the general government is at its country-specific medium-term objective, as defined in the revised Stability and Growth Pact, with a lower limit of a structural deficit of 0,5 % of the gross domestic product at market prices. The Contracting Parties shall ensure rapid convergence towards their respective medium-term objective. The time-frame for such convergence will be proposed by the European Commission taking into consideration country-specific sustainability risks. Progress towards, and respect of, the medium-term objective shall be evaluated on the basis of an overall assessment with the structural balance as a reference, including an analysis of expenditure net of discretionary revenue measures, in line with the revised Stability and Growth Pact."

[III] Through judgment no. 183 of 1973 (on the primacy of Community Law, even with the reserves of so-called "*controlimiti*"), and judgment no. 170 of 1984 (concerning the direct effect of EU Law in the Italian legal system), the Constitution becomes, to some extent, fully "available" for the Constitutional Court so that, through constant reference to Article 11 IC, it provides coverage for the sovereignty limitations arising from the European framework, on the one hand, and seems to lay the groundwork for a lack of responsibility of the State legislature in modifying and adapting the Constitution to EU Law, on the other (Costanzo 2008).

[IV] We talk about "reinforced" law due to the special majority required. The Constitutional reform prescribed this special majority both for the authorization of public borrowing in presence of "exceptional events" (Article 81, Paragraph 2, IC) and for the adoption of the "Reinforced Law" *ex* Article 81, Paragraph 6, IC. In this way it is possible to ensure the involvement of the opposition both in "systematic" and "contingent" most important parliamentary decisions of public finance (Lupo 2012: 134).

[V] In order to give some examples, the Commissioner of the State last year appealed against the Region of Sicily's Bill no. 801/2012 entitled "*Disposizioni programmatiche e correttive per l'anno 2012. Legge di stabilità regionale*". This complaint was soon followed by the appeal against Bill no. 898/2012 ("*Autorizzazione al ricorso ad operazioni finanziarie*") approved by the same Region, because it confirmed the content of the previous Bill. The President of the Council of Ministers, on the other hand, appealed during the year against several regional laws such as Law no. 18/2012 enacted by Region of Puglia ("*Assestamento e prima variazione di bilancio di previsione per l'esercizio finanziario 2012*"); Law no. 25/2012 enacted by Region Friuli Venezia Giulia ("*Riordino istituzionale ed organizzativo del servizio sanitario regionale*"); Law no. 30/2012 enacted by the Region Valle d'Aosta/Vallée d'Aoste ("*Adeguamento del bilancio di previsione per l'anno 2012 agli obiettivi complessivi di politica*

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economica e di contenimento della spesa pubblica previsti dal decreto-legge 6 luglio 2012, n. 95 (Disposizioni urgenti per la revisione della spesa pubblica con invarianza dei servizi ai cittadini nonché misure di rafforzamento patrimoniale delle imprese del settore bancario). Modifiche a disposizioni legislative"). All these complaints were mainly based on a suspected violation of the distribution of competences between State and Regions in the subject of "*public finance coordination*" (Article 117, Paragraph 3, IC), or, on the other hand, on the suspected violation of the principles of public finance established by Article 81 IC.

[VI] As regards the conflicts between the constituent entities of the Italian Republic, on the basis of Article 134 of Italian Constitution, "*The Constitutional Court shall pass judgement on controversies on the constitutional legitimacy of laws and enactments having force of law issued by the State and Regions or conflicts arising from allocation of powers of the State and those powers*".

Article 39 of Law no. 87/1953 ("*Rules on the establishment and functioning of the Constitutional Court")* specifies that if a Region violates the State's or another Region's sphere of competence as assigned by the Constitution, the State or the concerned Region may, respectively, appeal to the Constitutional Court in order to solve the conflict. Otherwise, also a Region whose constitutional competence is violated by a State act can appeal to the Constitutional Court. However, such an appeal in matters of competence regulation shall indicate the so called "*interest in appealing*" by showing "*how the conflict of competence arose*" and "*the act by which the competence is violated, as well as the provisions of the Constitution and the constitutional laws that are considered violated*".

On the other hand, Italian Constitution does not allow that local authorities appeal directly to the Constitutional Court.

[VII] Article 1 of the Decree Law no. 174/2012 is entitled "*Strengthening of the Court of Auditors' participation on the control of the territorial authorities' financial management*".

[VIII] As established by Article 100, Paragraph 2, of the Italian Constitution, "*The Court of Accounts exercises preventive control over the legitimacy of Government measures, and also ex-post* auditing *of the administration of the State Budget. It participates, in the cases and ways established by law, in auditing the financial management of the entities receiving regular budgetary support from the State. It reports directly to Parliament on the results of audits performed*". Moreover, Article 103, Paragraph 2, of the Italian Constitution, states "*The Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law*".

[IX] "*In Italian constitutional law, there are three typologies of competences. The first are competences exclusive to the State, which are listed in Article 117, paragraph 2, of the Constitution. The second are shared (or* concurring*) competences where State and Regions co-legislate, a "portion" of the matter being acknowledged to each. It is up to the State to give the fundamental principles of the legislative regime by means of legislation known as* "framework law" (c.d. "legge-quadro"), *and it is up to the Region to fill in* ("complete") *the framework by giving the detailed provisions, which should be consistent with the fundamental principles laid down by the State act*" (Martinico 2011: 33-36).

[X] In the former formulation of Article 117 of Italian Constitution both "*harmonization of public accounts*" and "*public finance coordination*" were matters of shared competence between State and Regions.

[XI] With judgment no. 17/2004, the Constitutional Court stated that the terms "*harmonization of* public *accounts*" and "*public finance coordination and tax system*" constituted an "hendiadys", in which the two terms used would express, in substance, the same concept.

By the following judgment no. 414/2004, the Constitutional Court even went beyond the definitional problem, stating that "*harmonization of public accounts and public finance coordination*" does not have to be understood as a "matter" in the strict sense, but rather as a "functional competence", because it does not properly identify "objects", but strategic "goals" that stand for the constitutional basis on which the State legislative power is based, ensuring the financial balance of the whole Italian Republic while safeguarding the autonomy of the various components in which it is divided.

[XII] Before the reform of Title V of the Italian Constitution, "*public finance coordination*" was an exclusive state competence. The central government undertook to satisfy regional and local needs through a resource transfer system.

[XIII] Article 117, Paragraph 2, IC as amended by Constitutional Reform of Title V, stated the following: "*The State has exclusive legislative powers in the following matters: (…)*

e) the currency, savings protection and financial markets; competition protection; foreign exchange system; state taxation and accounting systems; equalization of financial resources."

At the same time, Paragraph 3 of Article 117 stated that "*Concurring legislation applies to the following subject matters:* (…) *harmonization of public accounts and co-ordination of public finance and taxation system*."

[XIV] Pending the conclusion of the implementation process of Article 119 IC, the 2004-2008 Financial Acts have introduced measures such as the suspension of some State transfers to local authorities (Article 2,

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Paragraph 20, Law no. 350/2003) or the recognition of the regional power to vary the additional IRPEF rates and the IRAP rates (Law no. 311/2004) to cover the regional health system's deficits. At the same time they granted the municipalities the right to vary the IRPEF rates up to a maximum limit. The 2009 Financial Act (Law no. 203/2008) set upper spending limits for the Regions and laid down new rewarding or penalizing rules for the municipalities with more than 5,000 inhabitants, depending on whether they achieved a positive or negative final balance. (Carboni, 2011)

[XV] Article 2 of Law no. 42/2009 recognised a series of general objectives and criteria, including: revenue and expenditure autonomy; greater administrative, financial and accounting liability for all levels of government; enforceability and consistency of individual taxes and of the tax system as a whole; tax system simplification; identification of the fundamental principles of public budget harmonisation in order to ensure a uniform and predefined provision of municipal, provincial, metropolitan and regional budgets; a gradual overcoming, at all the government levels, of the "historical spending" criterion in favour of the "standard requirements" criterion to finance the "essential levels" (indicated by Article 117, paragraph 2, letter m of the Italian Constitution) as well as "basic functions" (indicated by Article 117, paragraph 2, letter d, of the Italian Constitution).

[XVI] Article 249 (ex 189) of the Treaty of Rome 1957 stipulates that directives are binding as to the result to be achieved, but that each individual Member State can use its discretion on how to implement it ("[a] *directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*").

[XVII] The "*Internal Stability Pact*" was introduced into the Italian legal system through the Financial Act no. 448/1998 in order to guarantee the participation of local authorities in reaching the public finance goals arising from the Italian commitment to the Stability and Growth Pact adopted by the European Council of Amsterdam in 1997.

As regards local authorities, see the recent report " *La finanza locale nei rendiconti 2011 – Valutazioni di sintesi*" (*Deliberazione n. 7/SEZAUT/2013/FRG*), available at http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_autonomie/2013/delibera_7_2013_frg.pdf. Among the reports concerning the Regions, see in particular "*Relazione sulla gestione finanziaria delle Regioni negli esercizi 2009-2010*" *(Deliberazione n. 6/SEZAUT/2011/FRG)*, available at http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_autonomie/2011/delibera_6_2011_e_relazione.pdf.

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