



UNIVERSITÀ
DI SIENA 1240

European Union and Budget Decisions (II)



Co-funded by the European Union

UNIVERSITY OF SIENA, SCHOOL OF ECONOMICS AND MANAGEMENT

JEAN MONNET MODULE "EUCOLAW" THE EUROPEANIZATION OF CONSTITUTIONAL LAW. THE IMPACT OF EU LAW ON NATIONAL SOURCES OF LAW, FORM OF GOVERNMENT, RIGHTS AND FREEDOMS.

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Summary

- 1. Public Finance and State Budget
- 2. The European framework
- 3. The Italian framework
- 4. A comparative perspective
- 5. Open issues

3. The Italian Framework

From 1948 to 1978

- The only article that the Italian constitution dedicates to the state budget is art. 81. In the constitution of 1948, the article is very short.
- 1. The Houses approve every year the budgets and expenditure accounts submitted by the Government.
- 2. Provisional use of the budget cannot be granted except by law and for periods not exceeding a total four months.
- 3. In the law approving the budget no new taxes or new expenditures shall be introduced.
- 4. Any other law involving new or increased expenditures must specify the means for meeting them.

From 1948 to 1978

- The first three paragraphs deal with the formation of the state budget law, establishing some characteristics of the budget law (legge di bilancio):
 - it must be proposed by the Government (reserved initiative law);
 - It must be approved by the Chambers every year (annual law);
 - it cannot contain any new expenditure or revenue with respect to those already existing (formal law).
- The fourth paragraph is very thin and contains an early version of the balanced budget principle. The Constitution dedicated a very little space and a weak force to that principle.

From 1948 to 1978

- The weakness of the principle is caused by two reasons:
 - First, the lack of interest in the subject by the constituents, which focused on other parts of the economic constitution
 - Second, the public debt in Italy did not constitute a problem; public expenditure was not a problem to contain as it was necessary to rebuild a ruined economy after the war.
- The weakness of the principle has some consequences:
 - First, only the coverage for the current financial year is considered necessary, but not for the subsequent financial years
 - Second, the rule did not prohibit covering new expenditures through recourse to borrowing and therefore could not be a limit to the growth of public debt.

From 1978 to 2009

- The Law 468/1978 introduces the financial law (legge finanziaria), an annual law with the task to identify new revenues and new expenditures.
- It was presented by the government along with the budget law and approved by the end of the year, as the budget law.
- Over the years it has become an expression of local and sectoral interests and has become one of the instruments through which the state public debt has worsened.
- With the Law 362/1988 there is an attempt to limit the abnormal use of the financial law
- With the Law 208/1999 there is another change, an expansion of the content of the financial law, that with the previous amendment had lost part of its regulatory capacity

From 2009 to 2012

- At the end of 2000 decade, the public finance regulation is completely reformed by Law 196/2009 which introduces the so called stability law (legge di stabilità) and eliminates the financial law.
- The causes that lead to this development are linked and are of a legal nature (the increasingly stringent conditionality dictated by European standards) and economic nature (the big economic crisis that has hit Europe in those years).
- The stability law attempt to revitalize the budget law
- This law would have to deal only with the macroeconomic framework and the general questions most relevant
- However this evolution is not realized and the change seems to be limited mainly to the name of the law; also the stability law is used mainly to cover local and sectorial interests.

From 2012...

- In 2012 the framework of public finances know a further significant change, always as a consequence of the European conditionality and the severe economic crisis.
- The constitutional law 1/2012 (see Materials) try to implement the international obligations assumed by Italy (with the fiscal compact), amending art. 81 of the Constitution, in addition to arts. 97, 117 and 119.
- The constitutional law was passed very quickly (in comparison with the other laws amending the Constitution approved in Italy) and with little debate in politics and society; its approval represent the most tangible result achieved by the European conditionality in the Italian constitution and legal order.

From 2012...

- The new art. 81 of the Constitution provides that
- 1. The State shall balance revenue and expenditure in its budget, taking account of the adverse and favourable phases of the economic cycle.
- 2. No recourse shall be made to borrowing except for the purpose of taking account of the effects of the economic cycle or, subject to authorisation by the two Houses approved by an absolute majority vote of their Members, in exceptional circumstances.
- 3. Any law involving new or increased expenditure shall provide for the resources to cover such expenditure
- 4. Each year the Houses shall pass a law approving the budget and the accounts submitted by the Government.
- 5. Provisional implementation of the budget shall not be allowed except by specific legislation and only for periods not exceeding four months in total.
- 6. The content of the budget law, the fundamental rules and the criteria adopted to ensure balance between revenue and expenditure and the sustainability of general government debt shall be established by legislation approved by an absolute majority of the Members of each House in compliance with the principles established with a constitutional law.

From 2012...

- The reformed art. 81 thus provides, on the one hand, the balanced budget principle expressed in a new form, and on the other, new rules on the formation of the state budget.
- With regard to the balanced budget principle, it seems to constitute the new fulcrum of art. 81, since, also formally, it is located in the opening of this article.
- In particular, while first was provided in a generic way that
 - "4. Any other law involving new or increased expenditures must specify the means for meeting them"
- now there are two paragraphs that establish explicitly that
 - "1. The State shall balance revenue and expenditure in its budget.
 - 2. No recourse shall be made to borrowing"

From 2012...

- Nevertheless, the same paragraphs add that
- the balance between revenue and expenditure is pursued "taking account of the adverse and favorable phases of the economic cycle"
- and that resorted to borrowing can be "for the purpose of taking account of the effects of the economic cycle or, subject to authorisation by the two Houses approved by an absolute majority vote of their Members, in exceptional circumstances".
- These exceptional circumstances are defined by the constitutional law 1/2012 and by the Law 243/2012 implementing Art. 6 of the new art. 81: they are defined as "severe economic downturns, financial crises and severe natural disasters, all events beyond the control of the State and with a great impact on the financial situation of the country".

From 2012...

- As to the formation of the state budget
- the reserved initiative of the Government is confirmed
- the annual nature of the budget law is confirmed too
- but it is deleted the formal nature of the budget law, rule before contained in paragraph
- “3. In the law approving the budget no new taxes or new expenditures Shall be Introduced”.
- According to this amendment, a substantial budget law laying down new expenditures and revenues is allowed. Also in this case the content of the budget law, on the basis of the art. 6 of the new art. 81, are defined by Law 243/2012.

From 2012...

- The new budget law aims to eliminate the financial law/stability Law (since 2016) and to introduce a new substantial budget law, consisting of two sections.
- The first (substantial section), which reproduces the contents of the previous financial law/stability law, contains provisions on new revenues and expenditure having effect in the three-year period considered, indicating the net balance to be financed, the maximum level of use of the financial market, changes in tax rates, deductions etc;
- The second (formal section), which reproduces the contents of the previous budget law, thus indicating forecasts of income and expenditure under current legislation, as changed by the first section of the budget law.

From 2012...

- It is also important to note that the new budget law is part of what has been called the European Budget Cycle, divided into an European Semester and a National Semester. In reality the interrelations between European and national level are continuous and last for the entire annual budget cycle.
- The "European Semester" includes the ex ante coordination of economic and budgetary policies within the European Union.
- In the "National Semester" those objectives, anticipated and agreed at European level, are introduced in the budget law.

From 2012...

- 1. By the end of January, the European Commission draws up an annual analysis on the European economic growth
- 2. By the end of March the European Union Council approves the so-called guidelines on the main economic policy objectives
- 3. By 10 April the government submit to the Parliament the so called Economy and Finance Document (DEF), which contains the Stability Programme (PS); analysis and forecasting of public expenditures; the National Reform Programme (PNR)
- 4. By 30 April the DEF is approved by the Parliament and the PS and the PNR are forwarded to the EU Council and the European Commission
- 5. By the end of June the European Commission, develops the economic policy recommendations and statements addressed to Member States.
- 6. By 20 September, the government presents to the Parliament an update note to the DEF
- 7. By 20 October, the Government presents to the Parliament the budget law bill.
- 8. By 31 December the houses approve the budget law.

4. A comparative perspective

Germany

- The Germany introduced rules on budgets stability in its Basic Law already with the reforms of 2006 and 2009, constitutionalising the rules of the Stability and Growth Pact well in advance with respect to the latest diktat from the European Union.
- But the balanced budget principle in the German Constitution is not exactly new.
- Already the Weimar Constitution of 1919 and the Basic Law of 1949 provided for this principle in their text. It was, however, a purely formal rule because the balanced budget could be guaranteed by resorting to borrowing.
- A further step towards this principle was made in 1967 when art. 109 of the Constitution was amended by the introduction of the obligation for the Bund and for the Lander to 'take into account in their budgets the need for a general economic equilibrium'.
- Again, in 1969, the reform of art. 115 of the Constitution and of the constitutions of some Lander, introduced the possibility to borrow only for investment expenditures.

Germany

- In 2006 the Föderalismusreform I amends arts. 104a, 104b, 105, 107 and 109
- As for the art. 104b more stringent criteria for the granting of the Bund financial assistance for the Länder investments are introduced. The assistance, according to the amended article, may be granted only if it is necessary for the reasons explicitly established. The second paragraph also provides that such aids must be limited in time and that their use should be subjected to checks at regular intervals. The third paragraph introduces, a right of information in favor of the Bundestag, the Bundesrat and the Federal Government on the implementation of the measures and on any eventual improvements.
- As for the art. 109, it is provided that the Bund and the Lander are jointly accountable for the fulfillment of the European obligations in budgetary matters. The penalties introduced for violation of the parameters set by the Stability and Growth Pact are allocated to the Bund and the Lander to the extent respectively of 65% and 35%. The penalty for the Lander is further divided: 35% falls on all the Lander; the remaining 65% is for the Land that caused the penalty.

Germany

- In 2009 the German Parliament returned to reform Title X of the Constitution with the Föderalismusreform II that amends arts. 104b and 109 and introduces and art. 109a
- As for art. 104b, the reform introduce a derogation from the limits imposed on the Bund to grant financial assistance to the Lander investments. That aid may be granted in the event of natural disasters or as a result of exceptional emergency situations beyond the control of the Land and seriously affecting its financial capacity.
- As it regards the art. 109, it was reaffirmed the obligation of the Bund and the Lander to take into account the general economic equilibrium, but within the framework of European budgetary rules. It also include the obligation for the Bund and the Lander to bring their own budgets in a balanced situation, without recourse to borrowing (so-called debt brake, Schuldenbremse).

Germany

- Art. 109a, introduces preventive tools, establishing the possibility of adopting provisions with federal bicameral law, concerning:
 - 1) The continuous monitoring of the budgetary management of the Federation and the Lander by a joint body (Stability Council);
 - 2) The conditions and procedures for the determination of a budget emergency;
 - 3) The principles governing the development and implementation of remedial programs to prevent budget emergencies.
- The article establishes the Stability Council (Stabilitätsrat), whose task is "to ensure the fiscal stability of the various levels of government, control their fiscal and budgetary policy, [...] ensure compliance with the stability pact, [...] declare if the Bund or Lander are facing a budget emergency or a state of necessity [...] and oversee the implementation of remedial programs.

Spain

- On September 2011, only one month after the submission of the draft reform, Spain introduced the balanced budget principle in its constitution
- Since the entry into force of the Spanish constitution in 1978, the text has known only one change in 1992, given also the particularly aggravated revision procedure.
- This was possible thanks to the agreement between the two major parliamentary forces: the Socialists (PSOE) of José Luis Rodríguez Zapatero and the Popular (PP) of Mariano Rajoy.
- Until the constitutional revision the budgets equilibrium was laid down only at ordinary level by the Ley general de estabilidad presupuestaria n. 18/2001, integrated by Ley organica complementaria de Ley general de estabilidad presupuestaria n. 5/2001, both amended in 2006 and 2007

Spain

- At the constitutional level rules on state budget and public debt are contained in art. 134 and 135. The revision interested only one of these articles, art. 135, demanding the discipline of detail to an organic law, approved by the Spanish Parliament on April 2012.
- Art. 134 reserves to the Parliament the approval of the annual budget prepared by the Government, which, pursuant to paragraph 5, is the only one entitled to propose bills involving increases in expenditures or reductions in the revenues, after the approval of the annual budget. The government, according to paragraph 6, has also the exclusive right to accept or refuse any proposal or amendment which involves an increase in public expenditure or a reduction in the revenue.
- Art. 135, prior to the reform, subordinated the recourse to borrowing by the Government to a legislative authorization. It also prevented to amend or modify expenditure that were provided for fulfilling the payment of interest of the national debt.

Spain

- The first paragraph of the new art. 135, binds all public bodies to adapt their acts to the balanced budget stability, defined by art. 3, paragraph 2, of the organic law of implementation, as a situation of balance or surplus.
- The second paragraph obliges the State and the Autonomous Communities to contain the respective deficit within the limits set by the EU for its Member States. The maximum level of the structural deficit allowed, only in the case of structural reforms with long-term budgetary effects, is set by the organic law of 0.4% of GDP, or at a lower level if so provide the European legislation. This is an exception to the general rule laid down by that paragraph, under which no administration, including States and Autonomous Communities, can have a structural deficit.
- The third paragraph extends to the Autonomous Communities the principle already provided for the State at the first paragraph. It also binds the public bodies to give priority to the expenditures laid down to fulfill the payment of interest of the national debt. These expenditures cannot be amended or modified. It also imposed to all public bodies to maintain a debt/GDP ratio below the threshold established by the European Union legislation.

Spain

- The fourth paragraph introduces derogations to these constraints, only in the event of natural disasters, economic recession or extraordinary emergency situations that are beyond the public bodies control and that are likely to seriously affect the financial economic or social sustainability, situation verified by the absolute majority of the Congress of Deputies.
- The fifth paragraph and the organic law of implementation define new principles of financial sustainability (art. 4), responsibility (art. 8) and institutional loyalty (art. 9), which should inform the financial discipline of public administration, in addition to strengthening those already provided for by existing legislation: budgetary stability (art. 3), programming (art. 5), transparency (art. 6), effectiveness and efficiency in the distribution of public resources (art. 7).
- The sixth paragraph states that the Autonomous Communities adopt in its budgetary rules and decisions the necessary arrangements for the effective application of these principles in accordance with their constitution and within the limits of this article.

France

- In France there have been several attempts to reform the constitution to give stability to budgets.
- In 1996, the Loi constitutionnelle n. 96-138 introduced in the Constitution the concept of budget equilibrium and gave to the Parliament a greater, but still bland, power control on budget, until then reserved for the Court of Auditors.
- In 2008, the loi constitutionnelle n. 2008-724 introduced, in art. 34 Cost., "The objective of balance of the budget", but many commentators highlighted the need for a further specification of the principle.

France

- With a draft constitutional law presented by the government, approved on July 2011 and for a long time waiting for final approval of the Parliament sitting in joint session or a referendum, France tried to go in this direction. At the end the reform was not approved.
- This new draft Constitutional Law would have amended art. 34 of the Constitution by establishing a new category of law, the "lois cadre d'équilibre des finances publiques", introduced in the hierarchy of sources of law between the organic laws and the ordinary laws (among which we can find the lois de finances and the lois de financement de la sécurité sociale).

France

- According to the amendment, the current “lois de programmation de finance public” would have been replaced by the “lois cadre d'équilibre des finances publiques”, that would have to determine, for at least three years, the multiannual guidelines and the rules for the management of the public finance, in order to ensure the balance of the State budget. Such laws must also annually set limit on the expenditures and measures on the revenues for the finance laws and to social security financing laws.
- The amendment also provides that the framework laws can be changed only under the conditions provided for by an organic law, which also determines their content.
- The framework laws are subject to the control of the Conseil constitutionnel, as already provided for organic laws. Moreover, it would be for the Conseil constitutionnel to assess the compliance of finance laws and social security financing laws with respect to the framework law and to examine both the laws together, by December 31 of the year in which they were approved.

France

- Other constitutional rules on finance are contained in articles. 39, 40 and 47.
- Art. 39 reserves the chronological priority on the examination of finance laws and social security financing laws in the National Assembly.
- Art. 40 prohibits the acceptance of the proposals and amendments bearing new or higher expenditure and lower revenue formulated by members of parliament.
- Art. 47 provides that if the National Assembly does not examine the finance bills within 40 days from the submission of the project, the Government can present the bills to the Senate, which has to decide within 15 days. In the event of disagreement between the two houses the Prime Minister or the Assembly Presidents may convene a joint mixed commission. Even if the latter does not reach the adoption of agreed text, the Government may ask the National Assembly to take a final decision. If Parliament does not act within 70 days the bill provisions may be issued by the Government by ordinance.

5. Open issues

Open issues...

- Attempt to bypass European treaties
- Differentiation between euro/no euro countries
- Lack of democratic legitimization of budget decisions
- Balanced budget principle as a mainstream principle
- Balanced budget principle as a constitutional principle
- European economic governance and form of Government
- European economic governance and form of State