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The feared judges in Karlsruhe will soon have to rule on the constitutionality in Germany of the planned issue of Eurobonds to finance the NGEU. The issues are the classic and recurrent ones: the measure in question would be both *ultra vires* and detrimental to the German constitutional identity.

Without going into the merits of these issues here, it would not be inappropriate to recall that the use of European public debt securities is nothing new. The first case took place in the mid-1970s.

The oil crisis was raging in those years, producing devastating effects in Europe. An aid program for States in difficulty (Community Loan Mechanism - CLM) was consequently launched, financed by the Community with the assumption of loans on the market up to 3 billion dollars. The reimbursement of these loans had to be provided by the Community budget, with a subsidiary guarantee from the individual States according to pre-established percentages. The operation was implemented with a regulation (397/75 EEC), unanimously adopted by the Council on the basis of the residual competence of art. 235 EEC (corresponding to the current 352 TFEU).

For the second case, it is necessary to take a look at Regulation (EC) 332/2002 of February 2002, decided by unanimous resolution of the Council pursuant to art. 308 EC (which replaced the previous art. 235 EEC). This regulation established a financial support mechanism (FSM) for the benefit only of non-euro area States, with a maximum disbursement of 16 billion euro. Once again the Community was authorized to borrow on the market; but the Community alone had to respond to the obligations assumed, without providing for subsidiary guarantees from the Member States.

The third case is concomitant with the serious economic and financial crisis of the 2008-2013 period. With Regulation (EU) 407/2010 of May 2010, the European Financial Stabilization Mechanism (EFSM) was established, intended to provide loans to euro States in difficulty. The regulation was adopted by the Council by a qualified majority on the basis of art. 122.2 TFEU. To finance the mechanism, the Commission has been authorized to borrow on the capital market (up to a maximum of 60 billion euro); and the Union is liable for these debts with its own assets, without prior guarantees from the Member States. Only once all budgetary resources have been exhausted is it possible for the Commission to request additional contributions from Member States (Regulation 2015/1360), to be applied in proportion to their respective contributions to the Union budget.

The abovementioned crisis of the 2008-2013 period reinvigorated the so-called macro-financial assistance (MFA) in favor of States in the Union's neighborhood. This program, started in 1990 and continued over the years with ups and downs, is still in place. It takes the form of the granting of loans (more rarely grants) co-decided on a case-by-case basis by the Council and the European Parliament on a proposal from the Commission. A regulation drawn up by the Commission in 2011 aimed at introducing a specific discipline for the MFA has not been successful. Since the Lisbon Treaty, the program has been based on Articles 212-213 TFEU. To find the necessary resources, the Union has generally turned to the financial markets, which have been able to rely only on the Union budget and not on any subsidiary responsibility of the Member States. According to the 2019 Commission Report, disbursements to beneficiary MFA States in that year amounted to 430 million euro.

We now come to the EU's initiatives in the times of Covid, starting with the SURE program. As is known, it is an instrument aimed at providing financial support to Member States to alleviate the employment problems created by the pandemic. Its legal basis is constituted by a regulation (2020/672 of 19 May 2020) adopted by the Council pursuant to art. 122 TFEU. Loans to Member States are envisaged for a maximum amount of 100 billion euro, to be financed by issuing a corresponding amount of bonds on the market. This occurred with the successful launch of bonds qualified in terms of the social profile of their use (SURE Social Bonds). The debts assumed by the Union are counter-guaranteed by the Member States, on a voluntary basis, each in proportion to its share of the Union's gross national income. If a guarantor State does not honor its commitment, the Commission can claim compensation from the others, who in any case are not obliged beyond the initially underwritten guarantee.

It remains to be said of the EU's other and more important initiative to deal with the pandemic crisis, the one now being scrutinized by the Bundesverfassungsgericht. By Council decision (2020/2053) of 14 December 2020 the Commission was authorized to borrow on the capital market for an amount of 750 billion euro, intended to finance the Next Generation EU and its essential component, the Recovery and Resilience Facility. The decision is based on art. 311 TFEU, which requires a unanimous vote by the Council, after consulting the European Parliament, and subsequent approval by all Member States in accordance with their respective constitutional rules. The Commission operates on the market on behalf of the Union; the resulting debts are therefore debts of the Union, not of the Member States. The latter are not called upon to provide the Union with a formal counter-guarantee, as in the case of SURE; but the Commission can ask for additional contributions from the States if the Union's budgetary assets prove insufficient. Any failure of a State to meet the request of the Commission is compensated by the others, with a proportional increase in the respective contributions. However, the annual amount that the Commission can request from a Member State cannot exceed a certain threshold, which is to be determined on the basis of complex parameters.

A comparative look at the cases mentioned so far allows us to formulate some final observations:

a) on several occasions the Union (or the Community) borrowed on the capital market even before the current NGEU program;

b) the resources thus collected have been used to provide financial assistance either to all Member States (CLM, SURE, NGEU), to the euro States only (EFSM), to non-euro States (FSM), or also to non-member States (MFA);

c) the Council has always authorized these operations, on a proposal from the Commission, sometimes with a unanimous resolution (Articles 235 EEC, 308 EC, 311 TFUE), sometimes by qualified majority (Article 122 TFEU); normally Parliament is only consulted, except in the case of co-decision pursuant to articles 212-213 TFEU and that of approval pursuant to articles 235 EEC and 308 EC;

d) the procedure required by art. 311.3 TFEU, on which the use of the capital market to finance the NGEU is based, is particularly aggravated as it also requires ratification by all Member States, not unlike the simplified procedure for revising the Treaties (Article 48.3 TEU); this is therefore almost a constitutional procedure;

e) the authorization to borrow on the financial markets is always subject to ceilings, most recently 100 million euro for the SURE and 750 million euro for the NGEU;

f) the loans are contracted in the name and on behalf of the Union, which is liable for them with its own activities: sometimes exclusively (FSM, MFA), but more generally with the subsidiary assistance of the Member States if the Union's resources are insufficient;

g) the cooperation of the Member States has taken the form of a counter-guarantee of the debts assumed by the Union (CLM, SURE), or additional contributions to the latter's budget (EFSM, NGEU); guarantees and contributions must be provided jointly and severally, so that any default by a State is absorbed by the others; in any case, however, the responsibility of a single State cannot exceed a predetermined limit.