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1.

In a period in which European anti-coronavirus measures are being heatedly discussed, it is necessary to verify which constraints in their adoption can derive from art. 310 TFEU. This rule states that "revenue and expenditure must be in balance" in the Union budget. The balance-sheet requirement is confirmed by art. 17 of the Union's Financial Regulation (Regulation 2018/1406), which states that the Union cannot take out loans.

2.

The interpretation *a contrario* of art. 310 provides a starting point. As this rule addresses the Union's budget, it does not apply to the budgets of the different entities. It therefore does not apply to entities such as the ESM, established outside Union law, as well as to entities such as the ECB and the EIB, which are based on that law, but have legal personality and separate financial statements to those of the Union. Moreover, the ESM Treaty (Article 21), the Statute of the ECB (Article 23) and that of the EIB (Article 20) expressly provide for these entities' borrowing activities.

This is not insignificant if you think about the measures already taken or that can be taken by the entities in question: the ECB's QE program for 2020 (a total amount of 1,200 billion euro); ESM resources available for financial assistance and precautionary credit lines (over 400 billion euro); OMT-type transactions involving the ECB and the ESM (of potentially unlimited amount); EIB loans and guarantees, including through EIFs (for amounts over 40 billion euro).

3.

All these measures are outside art. 310. But let us now turn to those which certainly fall within its scope, as they affect the Union's budget.

This is the case of two recent Commission initiatives that are the subject of proposals for regulations addressed to the European Parliament and the Council: the first is intended to give life to the so-called "Coronavirus Response Investment Initiative" and the second to the so-called "SURE - Support to mitigate Unemployment Risks in an Emergency" project.

However, it is to be excluded that these measures present elements of incompatibility with art. 310. The first, limiting itself to a reuse of resources already entered in the budget, does not entail a new expenditure that needs coverage. As for the second, the Union functions as an intermediary for loans taken on the market and channeled to the Member States against corresponding guarantees. They are therefore only formally loans from the Union and in any case duly guaranteed.

A somewhat similar conclusion should apply if it was decided to reactivate the EFSM, which was once set up with regulation 407/2010 and used to provide financial assistance to Ireland, Portugal and Greece. Even in that case, the Union played an intermediary role, taking loans on the market and then turning them over to the requesting States under the same conditions. There were no collective guarantees from the Member States at the time, but the risk of the operation was considered sustainable by the Union budget (and therefore compatible with art. 310) given the limited amounts involved.

4.

In view of other possible measures, it is to be asked when the extremes of a violation of the norm in question should be identified.

Firstly, not just any deficit in the annual financial statements determines such a violation, as it can be carried forward and covered in the following financial year. Art. 18 of the financial regulation of the Union provides for it. And it seems that this possibility lends itself to be extended to the whole seven-year period of the multiannual financial framework (MFF). In other words, it should not be necessary to cover the deficit in the immediately following financial year, as long as this occurs within the expiry of the MFF. If necessary, such a shift could be accompanied by the adoption of a safeguard clause, i.e. a commitment to increase certain revenues or decrease certain items of expenditure in subsequent years (a flexibility that is already allowed with respect to state budgets).

More generally, the rule of art. 310 must be considered violated only in the event of significant deficits. Here too, a principle of law generally applied in matters of obligations should be valid: *de minimis non curat pretor*. Art. 126 TFEU also provides that only "significant errors" qualify a state deficit as excessive. The deficit threshold, which for Member States is related to national GDP, in Europe should refer to the overall GDP of the Union. Obviously, the parameter to be adopted can be discussed, but the principle remains that only significant deviations to balance the budget are to be recognized.

5.

The creation of the abovementioned EFSM can be traced back to this order of ideas.

Outside the interpretative framework outlined above it is impossible not to run into the limit of art. 310; and this could be the case where a substantial issue of Eurobonds is made, albeit in the qualified form of Coronavirusbonds (CVB), without providing corresponding revenues in the Union budget or adequate guarantees from the Member States.

To overcome the obstacle, the sure way appears to be the revision of art. 310, in the form of integration rather than modification of this norm. It should be established that the principle of balancing the budget can be waived in the presence of exceptional circumstances such as the current pandemic. The revision can not be implemented with a simplified procedure (art. 48.3 TEU), since this does not allow the attribution of new competences to the Union. It is necessary to resort to the ordinary procedure of art. 48 TEU, which could be facilitated by a broad use of opting out and accelerated given the exceptional nature of the situation.

6.

The revision of the Treaty is not necessary if the CVBs are configured as a debt not of the Union but of a different subject. This is the case with certain abovementioned ongoing operations. It could be an already existing entity outside (ESM) or within Union law (ECB, EIB), or a newly created subject. For new external entities, the solution appears fairly linear: it must be an international extra-EU agreement, as was done for the ESM. For the creation of new internal entities, the discussion is more difficult, provided that the revision of the Treaty is excluded.

A possible solution could be a combined use of the rules on enhanced cooperation (articles 20 TEU, 326-334 TFEU) and that of art. 352 TFEU. More precisely, a group of interested Member States could establish enhanced cooperation and create a new entity by invoking the special power attributed by Article 352. The use of what is provided therein would be justified by the need to deal with an exceptional situation not covered by the Treaties, but necessary for the protection of the Union's vital interests. The new entity would be located within the Union, but with an autonomous personality and its own budget with adequate resources. The issuing of CVBs would be entrusted to this entity.

Such a solution, which does not interfere with art. 310, could be appropriate for the dynamics of the Eurogroup, based on a combination of art. 136 TFEU and the aforementioned art. 352.