§ 5 The Italian Example: Mini-Bots as a Challenge for the European Monetary Union

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I. Introduction.

The Economic and Monetary Union ("EMU") is grounded on an asymmetric distribution of competences between the European Union ("EU" or "Union") and the Member States ("MSs").[1] The government of the European currency, the EURO, belongs *exclusively* to the Union and, in particular, to the European Central Bank ("ECB"), whose primary task is to "*maintain price stability*" (Article 127(1) of the Treaty on the Functioning of the European Union ("TFEU")). In contrast, the economic governance of the EMU is *substantially* retained by the MSs, which "*shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article121(2)*" (Article 120 TFEU). Although it is difficult to classify this policy as being among the Union's competences,[2] the coordination of the economic (national) policies provided by Article 119 ff. TFEU is "*built on two related*

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[1] This situation is well-known in European legal literature. An overview is given by A. Hinarejos, *Fiscal Federalism in the European Union: Evolution and Future Choices for EMU*, 50 Common Market Law Review (2013), p. 1621 (at p. 1624 ff.) and the references provided.

[2] G. Lo Schiavo, *The Role of Financial Stability in EU Law and Policy* (Kluwer Law International 2017), p. 91, questions whether Chapter 1 of Title VIII of the TFEU "*is uneasy with the general structure of EU competences (exclusive, shared or supporting) and suggests that European economic governance is not strictly speaking an EU competence*".

assumptions, preservation of national authority and preservation of national liability".[3]

Accordingly, the Treaty regulation highlights a significant unbalanced distribution of the powers within the EMU. On the one side, the ECB is vested with the exclusive competence to govern the EURO and monetary stability; on the other side, the coordination of the economic national policies is *in principle* left to the MSs, which shall establish the Internal Market, "*avoid excessive government deficits*" (Article 126(1) TFEU) and maintain the stability of the monetary Union.

This original legal framework has been *strengthened* and *implemented* after the 2008 economic and financial crisis. A first set of measures aims at reducing the autonomy of the MSs in conducting their economic policy, especially when the budgetary and public finance situation presents some issues of concern. In this sense, the existing European budgetary surveillance system has been reinforced, also through the institution of minimum standards for Member States' national budgetary frameworks and a new surveillance framework for macroeconomic imbalances, the Excessive Macroeconomic Imbalance, has been introduced.[4] In addition, the Euro Plus Pact and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ("TSCG") have been adopted outside the EU legal framework.

The prohibition of any type of credit facility "*with the European Central Bank or with the central banks of the Member States (…) in favour of (…)*

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3 P. Craig, *The Lisbon Treaty, Revised Edition: Law Politics and Treaty* (Oxford University Press 2013), p 460.

4 These measures are part of the so-called Six-Pack, composed by three Regulations and a Directive: Regulation 1175/2011 amending Regulation 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [2011] OJ L306/12; Regulation 1177/2011 amending Regulation 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [2011] OJ L306/33; Regulation 1173/2011 on the effective enforcement of budgetary surveillance in the euro area [2011] OJ L306/1; Directive 2011/85/EU on requirements for budgetary frameworks of the Member States [2011] OJ L306/41; Regulation 1176/2011 on the prevention and correction of macroeconomic imbalances [2011] OJ L306/25; Regulation 1174/2011 on enforcement measures to correct macroeconomic imbalances in the euro area [2011] OJ L306/8.

central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States" (Article 123(1) TFEU), as well as the no bail-out clause provided by Article 125(1) TFEU, have imposed on the MSs and the European Institutions the creation of specific instruments to mitigate the effects of the 2008 crisis and to counter future asymmetric economic and financial shocks.[5] Along this line, the same need requires the ECB to intervene in the markets in order to assist EURO countries in difficulties.

The consequences of the renewed legal framework, even within the original Treaty provisions introduced by the Treaty of Maastricht, are the progressive restriction of the MSs' powers to govern their economic policies, especially as regards the budgetary and public finance measures. From the outset, the introduction of the EURO has shifted monetary leverage to the ECB and national fiscal leverage has been progressively reduced over the years, especially for less virtuous MSs, through the preventive negotiation of the annual deficit ratio with the European Institutions.

In this context, given that the resources granted to the ESM are insufficient to prevent asymmetric shocks, that the ESM lacks any power to raise further revenues on the market, and that a system to mutualize further national debt through the issuance of European bonds – the so-called "Eurobonds" – is prevented by the current Treaty provisions,[6] "*individual Member States [have to] deal with them [asymmetric shocks] separately*".[7] It is

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[5] The reference is to the European Financial Stabilization Mechanism, created with the Council Regulation (EU) 407/2010 of 11 May 2010, and the European Stability Mechanism, established by an International Treaty on 2 February 2012.

Asymmetric shocks are shocks that affect the economy of one or several members of the currency area, but not all.

[6] See, A. de Gregorio Merino, *Legal Developments in the Economic and Monetary Union During the Debt Crisis: The Mechanisms of Financial Assistance*, 49 Common Market Law Review (2012), p. 1613 (on p. 1630), who considers the Eurobonds as a "*treason to the principle that each Member State must remain liable for its budgetary decisions*".

[7] A. Hinarejos, *supra note 1*, p. 1627.

After the creation of the ESM, MSs still remain responsible for their public finance situation, but may receive assistance after negotiating and agreeing to strict conditions.

easy to infer that politicians, academics and practitioners are free to imagine all kinds of solutions to counter those shocks and/or "save" national economies (within the boundaries of the EMU).[8]

This contribution deals with one of these exercises of imagination, alternatively called "Tax Rebate Certificates" ("TRC"), "geuro" or "Mini-BOTs",[9] instruments which, according to their makers' minds, should enlarge the Italian citizens' purchase excluding the violation of the ECB monopoly and without producing any additional public debt. After illustrating the different proposals on the table and categorizing these instruments within the "*parallel currency*" experiences (Paragraph 2), the specific proposal is evaluated in the domestic and EU contexts (Paragraph 3).

II. The basic features of the different proposals.

The (undeserved) fame gained by the "Mini-BOTs" stems from the endorsement for small denomination securities by the Chamber of deputies ("*Camera dei rappresentanti*"). With a motion passed on 28 May 2019, the Chamber *commits* the Government

> "1) to further pursue the process of accelerating the payment of public administrations' commercial debts, as highlighted in the introduction, also evaluating initiatives to broaden the (range of) cases admitted to offset the public administration credits and debts, as well as the securitization of tax credits, even through instruments such as small denomination government bonds, implementing the application of all the measures adopted in the 2019 budget law, also related

[8] In short, shocks may be countered by monetary and fiscal tools, including among the latter, spending measures and transfer mechanisms.

[9] BOT is the acronym of "*Buoni Ordinari del Tesoro*", i.e., Ordinary Treasury Bonds, plus "*mini*" as denominations would be less than the lowest standard treasury bond of EURO 1.000.

> to cash advances, to ensure compliance with the payment deadlines of public administrations' commercial debts and thus avoid the infringement procedure that the European Commission has launched against Italy on the implementation of the directive on late payments" (emphasis added, author's translation).[10]

According to the existing political confidence between the Parliament and the Government, the former calls for the introduction of small denomination government bonds – renamed by politicians and the press as Mini-BOTs – in order to accelerate the payments of the public administrations' commercial debts. The motion did not clarify the features of these bonds, except for their nature of security.

Further information could be inferred from the program agreed to between the League (*La Lega*) and the Five Star Movement (*Movimento 5 Stelle*), which proposed:

> "instruments such as government bonds of small denomination, even evaluating the definition of public debt in appropriate instances",[11]

[10] Chamber of representatives, Motion 1/00189 of 28 May 2019. The original Italian text is: "*[l]a Camera (…) impegna il Governo: 1) a dare ulteriore seguito al processo di accelerazione del pagamento dei debiti commerciali delle pubbliche amministrazioni, come evidenziato in premessa, anche valutando di assumere iniziative per l'ampliamento delle fattispecie ammesse alla compensazione tra crediti e debiti della pubblica amministrazione, oltre che la cartolarizzazione dei crediti fiscali, anche attraverso strumenti quali titoli di Stato di piccolo taglio, implementando l'applicazione di tutte le misure adottate nella legge di bilancio 2019, relative anche alle anticipazioni di tesoreria, per garantire il rispetto dei tempi di pagamento dei debiti commerciali delle pubbliche amministrazioni ed uscire, così, dalla procedura d'infrazione che la Commissione europea ha avviato contro l'Italia sull'attuazione della direttiva sui ritardi di pagamento*".

[11] The Italian version is: "*strumenti quali titoli di stato di piccolo taglio, anche valutando nelle sedi opportune la definizione stessa di debito pubblico*".

but, in particular, in the pamphlet of its most convinced supporter, Borghi Aquilini.[12]

According to Borghi Aquilini, Mini-BOTs are considered to be a type of "I owe you" (IOU) that will be issued in paper form[13] and small denominations (EURO 1 to EURO 500), will pay no interest and have no maturity. The Government will guarantee acceptance of mini-BOTs for future tax payments, and, in addition, as a mode of payment to settle energy bills or buy train tickets or other goods and services supplied by publicly owned companies. In the idea of the proponent, these instruments would be used for payments between private persons and, as actually stated, they "would be used as means of payment". Due to "their character (paper form, small denominations) it is hoped that they will be spent locally, thereby stimulate growth in the Italian economy."[14]

These basic features of the mini-BOTs – paper form, small denomination, no interest and no maturity –characterize them as a parallel currency, without legal tender, in the sense that they cannot be legally accepted as a means of payment or for settling debts, and are aimed at progressively substituting the EURO in domestic transactions. This conclusion is further upheld by the pamphlet which highlights that mini-BOTs are seen as a necessary step to the abandonment of the EURO by Italy.

Besides, before the political proposal, some economists had already fostered similar solutions, at least with regard to the goal pursued, i.e. the achievement of a fiscal expansion without increasing the deficit and the debt ratios.

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12 C. Borghi Aquilini, *Mini BOT. Sovranità è democrazia*.

13 The pamphlet mentioned even presents the facsimile of the new EURO 1 mini-BOT, mimicking the EURO banknotes.

14 F. Papadia and A. Roth, *Mini-BOT in the government programme of the Five Star Movement and the League*, Blog Post, 5 June 2018, https://www.bruegel.org/2018/06/mini-bots-in-the-government-programme-of-the-five-star-movement-and-the-league/ (visited 16 June 2020).

Bossone and Cattaneo, in various contributions,[15] proposed the introduction of "Tax Rebate Certificates" (TRCs) which will be circulated electronically and can be used to pay taxes within two years after their issue. In their own words,

> "[e]ssentially, the TRC proposal involves an intertemporal resource transfer from the public to the private sector, through future tax rebates that can be liquidated in the market today (or at any time) at a discount. The liquidity so generated can be spent and support higher demand today. Increased spending, in turn, increases employment and output and generates the fiscal revenues needed to pay for the future tax rebates. Special safeguard measures would be activated in the event of fiscal underperformance."

In a nutshell, TRC as "*helicopter bonds*" are assigned free of charge by the government to households and enterprises in inverse proportion to their income, both for social equity purposes and to incentivize consumption. Similarly to Mini-BOTs, TRCs are legally accepted only by the Government in order to settle tax debts within two years, but, since they are traded in the financial market, they may be used by households and enterprises which need immediate liquidity discounting them close to a two-year zero-coupon government bond.

By issuing TRCs,

> "the government grants to the private sector immediate spending power, while facing *deferred* revenue

[15] The English versions are: B. Bossone and M. Cattaneo, *'Helicopter tax credit' to accelerate economic recovery in Italy (and other Eurozone countries)*, 4 January 2016, https://voxeu.org/article/fiscal-stimulus-helicopter-tax-credits (visited 1 May 2020) and Id., *"Fiscal Money" to End the Unending Crisis*, n.d., www.eunews.it/wp-content/uploads/2016/11/Bossone-Cattaneo.docx (visited 16 June 2020).

> shortfalls that would be recovered during the interim prior to redemptions through the new revenues generated by the output growth."

As claimed by the proponents, TRCs are neither legal tender, because they are accepted as means of payment "on a voluntary basis", nor debt instruments, because they "only promise to accept redeemable TRCs in exchange for fiscal rebates". However, TRCs exploit the second function of money, i.e. they are a "store of value, since the right to future fiscal rebates attached to them is a source of value".

A final proposal fosters the introduction of a parallel electronic currency, similar to the so-called Voroufakis's "Plan B".[16] According to the proponents, in the short and medium-term, the "geuro" would foster demand, growth and employment. In the long term, the parallel currency could transform the euro into a "common clearing currency", while the "geuro" would be used for payment between private agents.

III. A Critical Evaluation. The usual habit of avoiding the obstacle instead of tackling it.

My limited knowledge of economics, stemming from my academic studies as a youth, do not allow me to dispute the financial or economic sustainability of the above-mentioned proposals. However, it is easy to state that

[16] M. Amato, L. Fantacci, D.B. Papadimitriou, G. Zezza, *Going Forward from B to A? Proposals for the Eurozone Crisis*, Lewy Economics Institute, Working Paper n. 866, May 2016.

The "Plan B" can be downloaded at https://www.yanisvaroufakis.eu/2017/07/05/2nd-anniversary-of-the-oxi-vote-our-parallel-payments-system-its-importance-confirmed-by-the-oligarchic-press-continuing-ritualistic-distortions/ (visited 16 June 2020).

the success of such proposals depends – almost exclusively – on their credibility and, on the other side, on people's trust. Evidence from past experiences is not univocal but, overall, it does not provide a significant sample.[17]

In addition to this first point, "*[m]ore important than the purely technical considerations would be the message that mini-BOT are just a preparation for a parallel currency and an eventual abandonment of the euro by Italy. (…). This leads to a preoccupation of market participants fearing that the introduction of the mini-BOT is a preparation to introduce a parallel currency*".[18]

Leaving the economic and financial effects of the proposals aside, I can plainly state that they do not create any conflict with Article 128(1) of the TFEU nor with Articles 2, 10 and 11 of the Council Regulation n. 974/98 of 3 May 1998, because mini-BOTs, TRCs and "geuros" do not have legal tender. Indeed, the proponents affirm that these instruments will not be officially backed by the government as legal tender but only by future tax revenue. From this perspective, these instruments would play the role of storing value and, in this regard, would closely resemble a government security.

The real issue concerns the proponents' only whispered idea to unilaterally decide to pay down its own debts using money other than the legal tender: this solution would conflict with EU law and create negative repercussions of a reputational nature among the potential subscribers of its public debt securities.

On the other side, it is extremely difficult to rule out the possibility that mini-BOTs, TRCs and "geuros" do not increase the public debt value or ratio. This position is manifestly stated by the Bank of Italy in a document released on 11th December 2017, according to which "*given that just like government securities, 'fiscal money' would be a liability incurred by the*

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[17] An illustration is provided by F. Papadia and A. Roth, *note 14*, and F. Canepa, *ECB official skeptical of Italy's alternative cash plan*, 18 May 2018, in https://www.reuters.com/article/us-italy-politics-ecb/ecb-official-skeptical-of-italys-alternative-cash-plan-idUSKCN1IJ2A7 (visited 16 June 2020).

[18] F. Papadia and A. Roth, at note 17.

State from the moment of issue",[19] but also admitted by some of the proposals,[20] even if they believe that any additional deficit would be repaid over time from the additional revenue deriving from the higher level of economic activity caused in turn by the initial fiscal expansion. In particular, as suggested, "*[t]he increase of the deficit would result from the subsidy nature of TRC allocations (but the same argument could apply to the mini-BOT), which would be distributed without any counter-payment from its receivers*".[21]

According to this position, the issuance of these instruments should comply with the European Stability and Growth Pact ("ESGP") limits and, in general, with the budgetary rules which govern the Eurozone.

However, in the interpretation of the League supporters, there would be no increase of government deficit because of the presence of the mini-BOT. A liability of the State in the form of unpaid invoices would be substituted by another liability in the form of the mini-BOT. This argument is not consistent. The government's commercial debts are not included in the ESGP and therefore the substitution with government securities would cause an increase of the public deficit and the public debt.

A formal reason for arguing that these instruments are not part of the public debt derives from Regulation n. 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts. According to Annex A, Chapter 5, paras. 5.06 and 5.08, *liabilities* "*are established when a debtor is obliged to provide a payment or a series of payments to a creditor*", whereas *contingent liabilities* "*are agreements whereby one party is obliged to provide a payment or series of payments to another unit only where certain specific conditions prevail*". In this sense, mini-BOTs might be characterized as "*contingent liabilities*" because their payment depends on the fulfilment of certain conditions.

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19 Bank of Italy, *The functions of money and proposals for 'fiscal money'*, 11th December 2017, https://www.bancaditalia.it/media/views/2017/moneta-fiscale/index.html?com.dotmarketing.htmlpage.language=1#_ftnref7 (visited 16 June 2020).

20 B. Bossone and M. Cattaneo, note 15, and M. Amato, L. Fantacci, D.B. Papadimitriou, G. Zezza, note 16.

21 F. Papadia and A. Roth, at note 14.

In my view, this is a rather formalistic approach that cannot hide (the evidence of) how things (actually) stand. These instruments are plainly a means of debt based on a challenge: an increase in liquidity leads to an increase in economic growth and, therefore, to an increase in public revenues. However, like every challenge, this one is also based on a hazard overlooking the real problem of European (economic) governance, namely the lack of an adequate EU budget. In other words, as stated by a former Italian Minister of Treasury, "*[t]he problem (or, one of the problems) of the EU is that it tackles problems (energy, climate, public finance, security, immigration, public goods) which are not national as it would be national: but they are continental, global*".[22]

After the Coronavirus crisis it seems that something is changing in European politics. Perhaps this is the time to face up to the problems.

[22] T. Padoa Schioppa, *Interview delivered to la Repubblica*, 6th October 2008.