



THE ESTABLISHMENT OF THE PARLIAMENTARY BUDGET OFFICE IN ITALY

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Background

Constitutional Law no. 1 of 20 April 2012 substituted the entire text of Article 81 of the Constitution relating to the regulation of the national budget, and introduced provisions designed to ensure balanced budgets by general government entities. Paragraph 6 of the new Article 81 of the Constitution specifies that an ordinary law approved by an absolute majority of the members of each House, and conforming to the principles enshrined in the very same Constitutional Law, shall define the content of the budget law and set the fundamental rules and criteria to balance fiscal revenue with expenditure and ensure the sustainability of the debt of general government entities. Article 5 of Constitutional Law no 1 of 2012 sets out the content of the ordinary law mentioned above, to be approved by 28 February 2013. Specifically, the ordinary law shall provide for the establishment of an independent body within the Houses of Parliament – without prejudicing the constitutional autonomy of the same – responsible for analysing and auditing the performance of the public finances and for assessing compliance with budget rules.

This Law represents the culmination of a long political and academic debate that has taken place over the last decade concerning the quality of the information in the area of public finance. Over time, several proposals have been put forward for the reform of the institutions that provide technical support to decision-makers, including proposals for the creation of new independent bodies for the assessment and verification of fiscal developments.

Constitutional Law no. 1 of 2012 embodies choices that take account of the political and cultural debate that preceded its adoption. It envisages a privileged relationship between the new independent body and Parliament, which has been given concrete form by setting up the new body within the Houses of Parliament. Constitutional Law no. 1 of 2012 marks a major new departure with respect to the solutions advanced in the past, however, in that it does not simply propose the unification of already extant parliamentary structures, but, rather, the establishment *ex-novo* of an autonomous body that is also independent of Parliament, with which it

nonetheless maintains a close relationship. The purpose of this close relationship is, on the one hand, to maximise the authority and efficacy of the new body and, on the other, to strengthen parliamentary oversight. The establishment of a body that is independent of other departments of the Houses of Parliament is the result of a specific decision taken by the framers of the Constitutional Law whose references for the structural configuration and independence of the new body, as well as for the tasks to be assigned to it, are based on the “fiscal council” model used in other international contexts. More specifically, the Constitutional Law forms part of a process of change in the governance rules of the European Economic and Monetary Union, which places particular emphasis on the role of independent institutions in national budget processes. The formation of an independent body by means of a constitutional law was, above all, intended to transpose into Italian law Article 6 of EU Directive 85 of 8 November 2011, relating to budgetary frameworks for Member States.

After adopting the text of the constitutional reform law, Italy signed the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, ratified by Law no 114 of 23 July 2012 which, in regulating in the so-called “Fiscal compact”, specifies that the European Commission shall define common principles relating to, among other things, the role and independence of the institutions responsible at national level for monitoring compliance with the rules set out in Treaty (Article 3.2). In the framing of the Law enacting the constitutional reform, account was therefore taken of the common principles on national fiscal correction mechanisms as set out the European Commission Communication COM (2012) 342 (final) of 20 June 2012.

The new body is also configured to conform to the requirements that, once the legislative procedures have been completed, are to be included in the Regulation of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, which forms part of the so-called “two pack”.

For the purposes of acquiring elements useful for the preparation and drafting of the ordinary law as envisaged in Article 5 of Constitutional Law no. 1 of 2012, the Chairs of the Budget Committees of both Houses of Parliament promoted the formation of a technical working group made up

of officials of the Senate and Chamber of Deputies, representatives of the Ministry of the Economy and Finance (*viz.* the Office of the State Accountant General and the Treasury Unit), the Office of the Presidency of the Council of Ministers (Unit for Relations with the Parliament), as well as representatives of the Court of Auditors, the Bank of Italy and ISTAT. The working group completed its work on 24 September 2012 and forwarded its findings to the Chairs of the Budget Committees. On the basis of the working group's findings, several parliamentary bills were presented in the two Houses of Parliament at the end of November 2012.

Accordingly, Parliament approved, with all-party consensus, Law no. 243 of 24 December 2012 containing rules for the implementation of the principle of a balanced budget pursuant to Article 81.6 of the Constitution, which, in Chapter VII (Articles 16-19), provides for the establishment and regulation of the independent body to be known as the Parliamentary Budget Office (PBO).

Pursuant to Article 6 of the Constitutional Law no. 1 of 2012, according to which the new constitutional rules shall apply as of the fiscal year starting 2014, the PBO is to become fully operational as of that same year. Meanwhile, the preparatory work for the creation of the new Office should be completed in the course of the current year.

The legal basis

The creation of the new body is provided for by Article 5.1(f) of Constitutional Law no. 1 of 20 April 2012, whereas its organisational structure and functions are defined in Articles 16-19 of Law 243 of 24 December 2012, which is a "reinforced Law" [designed to be resistant to amendment or repeal by simple majority].

Both laws were passed by a larger majority than is required for the approval of ordinary laws (simple majority). In particular, the independent body is set up by force of a constitutional law and any modification thereto must be effected in accordance with the special complex procedures laid down by the Italian Constitution for the revision of the Constitution (Article 138). The regulations setting out the essential characteristics of the PBO are included in a "reinforced" law that must be approved by an absolute majority of each House of Parliament in the final vote. In

adopting these legislative forms, Italian legislators have sought to safeguard the new body from episodic and unwarranted changes such as might be included in laws relating to disparate areas or even in budget acts.

Let it also be noted that any derogation or amendment of the a reinforced Law by ordinary law would be therefore an indirect violation of the Constitution and open to censure by the Constitutional Court.

Terms of reference

Article 18 of the reinforced Law sets out the tasks of the PBO taking into account international best practice and pursuant to EU Law.

In connection with its function of making preliminary assessments of government compliance with fiscal rules, the PBO has specific responsibilities in the area of macroeconomic and public finance forecasting. The Law implementing the constitutional reform, however, contains no references to any ready-made model of independent macroeconomic forecasting, and the choice of which system to adopt in practice is therefore left open. It is therefore conceivable that, especially during the start-up phase of the new Office, the government's macroeconomic forecasts will be assessed with reference to analogous forecasts made by third parties, with the PBO assuming a more active role at a later stage in its activities when it might, for example, coordinate a panel in charge of producing consensus-based macroeconomic forecasts or, alternatively, make its own forecasts. Similarly, with regard to public finances, the PBO may either verify the projections of the Government or, if necessary, produce its own forecasts. The PBO is also expected to carry out assessments of the long-term sustainability of public finances.

During the year, PBO will perform analyses and evaluations of the macroeconomic impact of major pieces of legislation and monitor the fiscal performance of general government entities and the various subsectors thereof to ascertain whether they are in line with the budgetary targets.

As required by the reinforced Law and in keeping with the common principles developed by the European Commission for the implementation of the Fiscal Compact, the PBO shall verify the activation and use of the correction mechanism to counter significant deviations from the targets set

in financial and budgetary planning documents. The reinforced Law also requires the independent body to provide its own assessments of deviations from budget objectives as permitted by the law itself in the presence of exceptional events that have been identified as such pursuant to European Law (severe economic recession or extraordinary events outside the control of the State having a major impact on the overall financial situation of the country, including major financial crises and natural catastrophes).

Whether monitoring the correction mechanisms or assessing deviations, the PBO may not directly involve itself in the processes provided for by law. Rather, its task shall be to make analyses and technical assessments of the use of the correction mechanism and the escape clauses as prescribed in the reinforced Law, before the political authorities make their decisions.

The list of tasks set out in the reinforced Law, moreover, is not exhaustive. Indeed, the Law expressly states that the PBO may carry out specific studies relating to other economic and public finance issues that are relevant to the analysis, audit and assessment tasks to which it has been assigned by the same law. The independent body is not, however, expected to make economic policy recommendations or propound alternative measures to those being put forward by the Government or Parliament.

In accordance with the “comply-or-explain” rule and with the common principles developed by the European Commission, the reinforced Law (Article 18.3) stipulates that if, in the exercise of its functions, the PBO should make assessments that significantly diverge from those of the Government, then at the request of at least one third of the members of the Budget Committee of either House, the Government shall illustrate why it believes its assessments should be confirmed, or else align them with those of the Office. With a view to strengthening the role of Parliament, the legislator made sure that the “comply-or-explain” obligation is not automatically triggered by a mere divergence, even a significant one, between the Government's assessments and those of the PBO, but must be activated by a qualified minority of the members of a relevant parliamentary committee. This stipulation does not diminish the role of the independent body, firstly because the opposition parties have an evident interest in seeking a clear explanation from Government for its actions, and, secondly because it helps avoid the risk of overlap between

the Office's activities and parliament's constitutionally enshrined functions of government oversight. It should also be borne in mind that parliamentary discussion of PBO assessments that diverge from those of the Government is an ideal way of ensuring they receive maximum public visibility and are accorded due importance.

The PBO prepares its analysis on the basis of an annual programme of activities, which must in any case include the performance of the duties assigned to it pursuant to European Union law. The programme shall be presented by the Chair of the PBO Board to the Budget committees of both Houses. The foregoing parliamentary committees also have the right to ask the Office to prepare additional analyses and reports to those included in the annual programme of activities. This prerogative is not extended to other committees, individual Members of Parliament or parliamentary groups, as to do so might inhibit the PBO from systematically carrying out its core function.

The bodies of the PBO

A defining feature of the PBO, and one that was the subject of considerable debate during the consideration of the bill, is its collegial structure. In fact, the Office is directed by a Board made up of three members, one of whom functions as the Chair. In Europe, collegial bodies are the norm, but they tend not to be associated with the Houses of Parliament, but rather with the Executive, also in respect of the appointment process. At international level, where the body is set up within the parliamentary environment, the norm is for it to have a sole director (as in the USA, South Korea, Canada and Australia). These latter offices do not necessarily have full independence from the parliamentary administration such as the PBO enjoys. In some cases, they consist simply of offices that form part of the general parliamentary administration.

Board members are appointed by a decree jointly adopted by the Presidents of the Senate and of the Chamber of Deputies, who shall choose from a shortlist of ten nominees selected, in accordance with the parliamentary Rules of Procedure, by a two-thirds majority of the members of the Budget committees. Pursuant to the reinforced Law, the Board members shall be appointed from among nominees who are of

recognised independence and proven expertise and experience in the field of economics and public finance at a national and an international level.

The Italian legislator has therefore opted for a collegial Board, whose Chair, however, is accorded a position of seniority over the other members, and has considerable discretionary powers over the direction of the Office's activities. In designing the form of the Executive of the Office, the legislator resolved that a collegial structure would be most conducive to its independence and authority, and could accommodate the appointment of non-Italian experts as might be necessary in view of the diverse and complex nature of the affairs falling within the purview of the Office. Meanwhile, the primacy accorded to the Chair of the Board enables the Office to speak with one voice and express unequivocal positions. Yet, the choices to be made in the coming months by the Budget committees are destined to have a decisive effect on the nature of the Office. In particular, the CVs of the candidates are to be presented along with their applications.

As noted above, the Chair is accorded seniority over the other Board members. The law stipulates that it shall be the Chair who convenes Board meetings and sets the agenda (Article 16.4), and that analyses and reports produced by the PBO shall be adopted by the Board on a proposal from the Chair (Article 18.4). With respect to external relations, especially, with Parliament, the Chair shall represent the PBO (Article 16.4), and shall also be the only member of the Board to give testimony, when requested, at hearings organised by parliamentary committees with responsibilities in the area of public finance (Article 18.2). Similarly, the Chair shall be the person who presents the PBO's annual programme of activities to the relevant parliamentary committees. Internally, the Chair shall appoint the Director-General, who shall oversee the work of the administrative structure operating in the service of the PBO (Article 17.5).

The reinforced Law also specifies that Board members shall be appointed for one six-year term and may not be reappointed. The foregoing rule is intended to strengthen the independence of the PBO. The term of office for Board members is longer than the duration of a parliament (5 years) so that the renewal of the Executive of the PBO may not coincide with a possible change of the parliamentary majority. The prohibition on the reappointment of Board members is intended to allow

them to carry out their mandate without being influenced by the possibility of a renewal of their post.

The Chair shall receive a total salary equal to that provided to the Chair of the Italian Competition Authority. Members of the Board shall receive a salary equal to 80 per cent of that of the Chair. Under penalty of forfeiture of office Board members may not engage in any professional or consultancy activity, and may not be directors or employees of public or private entities, or hold other public office of any kind.

The reinforced Law allows for the dismissal from office of Board members only in cases of grave violations of official duties, in which case the dismissal shall be effected by means of decree jointly adopted by the Presidents of the Senate and the Chamber of Deputies on the basis of a recommendation to this effect adopted by a two-thirds majority of the members of the Budget committees of both Houses, in the manner prescribed in the parliamentary Rules of Procedure. Restricting the grounds for removal from office to cases of particularly grave violations of official duties, and requiring a quorum to confirm the dismissal effectively means that opposition groups need to be involved in the decision. This constitutes a safeguard for Board members, the purpose of which is to help them fulfil their task of making assessments that may not be to the liking of the Government and the parties of the majority. The Office's accountability to Parliament is structured with a view to creating a non-partisan body, immune to unwarranted political interference that might prejudice the technical and scientific independence of its analysis and assessment.

To guarantee the authoritativeness of the analyses carried out by the PBO, Article 18.5 of the reinforced Law specifies that the Board may set up a Scientific Committee composed of people of proven experience and expertise in the field of economics and public finances at a national, European or international level, whose task shall be to offer guidance on the operational methodology of the PBO. The Committee may be composed of academics, experts and senior European and international officials, and may also include members of national institutions working in the field of public finance (the Bank of Italy, ISTAT, the Court of Auditors, etc.).

Staff

According to Article 17 of the reinforced Law, the Office shall act with complete autonomy in the selection of its staff, basing its choices solely on merit and competence and its own operational needs. In the first three years of operation, the number of staff of the PBO, who are distinct from administration staff of the two Houses of Parliament, may not exceed thirty. Thereafter, the number of staff may not exceed forty. The staff of the PBO shall be made up of:

- permanent staff hired by the Office by means of public competition;
- staff selected through public comparative selection procedures for the performance of duties for a limited period of time not exceeding three years and whose contract may be renewed once.

As with other public offices and independent supervisory and regulatory authorities, the Office may, when necessary, use staff seconded from the administrations of the Chamber of Deputies and Senate as well as from other general government entities and public bodies. When staff are requested by the PBO, their outplacement becomes mandatory and overrides any temporal, numerical and or other restrictions applied by the public entity or administration to which they belong. The PBO shall also be free to return seconded staff at any time back to the administration from which they were outplaced. The termination of secondments, including those of staff from Parliament, is also subject to the approval of the PBO.

The reinforced Law gives no instructions regarding the numbers of the various categories of staff. During the start-up phase, however, and with a view to rendering the PBO immediately operational, one possible solution may be to set up a core group of staff from the administrations of the two Houses of Parliament who already work in the field of public finance. During this phase, extensive use may also be made of highly specialised staff hired under fixed-term contracts. At the earliest possible opportunity, however work must begin on organising competitive processes for the recruitment of permanent staff to equip the Office as soon as possible with a stable and independent base of personnel.

The law gives UPB ample autonomy in the manner in which it organises and manages its staff. The operations of the administrative section of the

PBO shall be supervised by a Director-General with specific expertise and experience in the field of economics and public finances, who shall be appointed by the Chair from among the PBO staff.

In a manner similar to that used by other independent authorities, regulations adopted by the Board, subject to the prior approval of the Presidents of the two parliamentary Chambers, shall determine the organisational and operational arrangements of the PBO as well the legal and economic treatment of its staff.

Resources and budget

The reinforced Law prescribes that the PBO shall independently manage its own budget, which shall be appropriated from a standing Government fund of €6 million per year as of 2014. These resources are primarily destined for the remuneration of Board members and staff, while the necessary equipment and the premises housing the Office will be made available by the administrations of the two Houses of Parliament in the manner set out below. The PBO shall receive funding through the budgets of the two Houses on the basis of a permanent financing arrangement designed to give it adequate stability in preparing its spending programme. Also with the aim of ensuring adequate funding, the reinforced Law specifies that said appropriation may be reviewed only by the budget law and after advice has been taken from the Board, and must in any event be sufficient to ensure the effective performance of the functions of the PBO. As for the management of the resources allocated to it, the PBO shall have a separate budget that shall be approved by the Board by 31 December of the year preceding that to which the budget refers. The financial report for the Office shall be approved by 30 April of the successive year.

Pursuant to the provisions of Constitutional Law no. 1 of 2012, the reinforced Law states that the PBO shall have its seat in Rome on parliamentary premises (Article 16.1). The seat of the PBO will therefore have to be jointly chosen by the Presidents of the Senate and the Chamber of Deputies, and located on premises belonging to both Houses of Parliament provided free of charge to the PBO (Article 17.6). To underscore the independence of the PBO, the premises it occupies must be

clearly marked off and distinct from those occupied by the offices of the parliamentary administrations. The Presidents of the two Houses, acting jointly, shall also furnish the PBO with the equipment and supplies necessary for its operation (Article 17.6).

Access to information

Access to information is one of the pivotal requirements for the proper functioning of the PBO. The reinforced Law therefore stipulates that it shall enjoy general access to information and data held by public bodies or bodies in which the public sector holds equity interests. In particular, the reinforced Law states in Article 18.6 that the Office shall interact with all branches of general government, public bodies and publicly-held entities, requiring them not only to communicate data and information, but also to cooperate in any way that the Office deems helpful to the fulfilment of its institutional duties.

To facilitate the Office in the performance of its institutional duties, the foregoing bodies and entities shall grant the Office access to any databases relating to the economy and public finances that they have created and/or maintain. In regard to these provisions, it should be considered that access to data and information will be subject to general restrictions relating to confidentiality and privacy imposed by ordinary law, but public administrations and offices will not be allowed to impose any additional restrictions at their own discretion. Even where the information is confidential or private, the relevant portion should, wherever possible, be made available to the Office as an aggregate or in any case in a manner that does not prejudice the interests that the privacy law is primarily intended to protect.

Transparency

Article 18.4 of the Law states that all the analyses and reports produced by the PBO in the exercise of its functions shall be published on its institutional website. The annual programme of activities officially presented by the Chair of the Board of the PBO to the Budget committees shall likewise be made public. Pursuant to Article 19.2 of the Law, both the

Office's preliminary budget and its financial report for the previous year shall be forwarded to the Presidents of the two Chambers and published as an annex to their accounts. The budget documents may also be published on the institutional website of the Office.

Even in the absence of specific provisions in this regard, it should be noted that, as with all bodies that Italian law defines as being independent of political institutions, the Executive of the PBO and, in particular, the Chair, may, without prejudicing his or her privileged relationship with Parliament, communicate directly with the public through the mass media.