THE BCE ROLE IN THE EUROPEAN CRISIS: THE NON CONVENTIONAL MEASURES AND THE LEGAL ARGUMENT FACING THE GERMAN COSTITUTIONAL COURT.

ABSTRACT

This work starts from the analysis, in the first chapter, of the American subprime crisis.
The first paragraph talks about how the financial legislations in the U.S.A. led to the crisis in the housing market. Also, in the first paragraph, is analyzed the derivates market and the subprime crisis up to the credit crunch.
The expansion of household debt was financed with mortgage backed securities (MBS) and collateralized debt obligations (CDO), which initially offered attractive rates of return due to the higher interest rates on the mortgages; however, the lower credit quality ultimately caused massive defaults.
While elements of the crisis first became more visible during 2007, several major financial institutions collapsed in September 2008, with significant disruption in the flow of credit to businesses and consumers and the onset of a severe global recession.
In the second paragraph is explicated how the contamination has come to the Eurozone, and the specific role of the financial center of London, the City, which, whit its less financial regulation, has imported the toxic assets in European banks.
For this reason, the crisis has assailed the European states, beginning from the Mediterranean area.
After the first decade of the European Union, the incomplete financial and political integration and cooperation was one of the main important causes for the spread of the crisis in Europe.
In this complicate context, a fundamental role has been played by rating companies which

have declassed the government bonds of some states, like Greece, Portugal, Spain and Italy too.

The first chapter ends describing the specific features of the *spread* and underlining its influence about the relations between the most powerful European country, Germany, and the rest of the continent.

After that general survey about crisis, the second chapter focuses on the European Central Bank establishment.

Starting from the foundation of the ECB, is described the historical framework when the ECB was been create and the debate about the model (French or German) that the Bank would have to adopt.

After that, in the second paragraph are analyzed the founding and fundamental treaties of the European Central Bank which provide for skills and goals, with a particular attention for the Maastricht Treaty and the Lisbon Treaty.

The primary objective of the European Central Bank, as mandated in Article 2 of the Statute of the ECB, is to maintain price stability within the Eurozone.

The basic tasks, as defined in Article 3 of the Statute, are to define and implement the monetary policy for the Eurozone, to conduct foreign exchange operations, to take care of the foreign reserves of the European System of Central Banks.

The last paragraph talks about the decision-making bodies of the European Central Bank, like the Executive board, the Governing Council and the General Council.

The third and final chapter is the main core of all the work.

First of all were esplicated the antispread measures not only from the ECB, but also from a collective commitment of the European states.

The most important operations were the Long Term Refinancing Operation (LTRO), the Security Market Programme and, analyzed more specifically, the European Stability Mechanism.

The European Central Bank's long-term refinancing operation (LTRO) is a process by which the ECB provides financing to eurozone banks. The stated aim of the LTRO is to maintain a cushion of liquidity for banks holding illiquid assets, and thus prevent interbank lending and other loan origination from seizing up as they did in the credit squeeze of 2008.

The securities markets programme (SMP) is a Eurosystem programme to purchase bonds – especially sovereign bonds – on the secondary markets. The programme, adopted by the

ECB Governing Council in May 2010, was replaced by outright monetary transactions (OMT) in September 2012. The Governing Council of the ECB established the SMP with the aim of counteracting disruptions to the monetary policy transmission mechanism. The programme envisages that central bank money created from the purchase of securities is "sterilised", in other words that this money is removed from the money market. For this purpose it offers commercial banks the possibility to invest central bank money at the ECB as a time deposit. Due to the ban on monetary financing, no purchases are made on the primary market. The last purchase under the SMP took place in February 2012. The programme, the total volume of which peaked at around €210 billion for a time, was phased out in September 2012. The Eurosystem central banks that purchased sovereign bonds under this programme will hold them to maturity.

The European Stability Mechanism (ESM) is an international organisation located in Luxembourg which was established on 27 September 2012 as a permanent firewall for the Eurozone to safeguard and provide instant access to financial assistance programs for member states of the eurozone in financial difficulty, with a maximum lending capacity of €500 billion. It replaced two earlier temporary EU funding programmes: the European Financial Stability Facility (EFSF) and the European Financial Syabilisation Mechanism (EFSM). All new bailouts for any eurozone member state will now be covered by ESM, while the EFSF and EFSM will continue to handle money transfers and program monitoring for the previously approved bailout loans to Ireland, Portugal and Greece.

All these operations were done between 2011 and 2012.

Another ECB's operation is the main theme of the second paragraph: the OMT.

During the Global Investment Conference, 26 July 2012, in London, the ECB President, Mario Draghi, announced that: «Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough».

The "whatever it takes to preserve the euro" were the Outright Monetary Transactions.

Outright Monetary Transactions is a program of the European Central Bank under which the bank makes purchases ("outright transactions") in secondary, sovereign bond markets, under certain conditions, of bonds issued by Eurozone member-states. Outright Monetary Transactions are not the same as quantitative easing operations, since, in the latter, the central banks buy bonds and, by doing so, inject liquidity into the banking system, with the aim of stimulating economic activity. The ECB has made clear that the principle of "full sterilisation” will apply, where by the bank will be reabsorbing the money pumped into the system "by any means necessary."

In practice, the only means of sterilisation used has been the auctioning of sufficient quantities of one-week deposits at the ECB - the same means of sterilisation that the ECB used for its previous bond-buying programme, the SMP.

However, this new way to fight the European crisis has not been a general consensus, especially in Germany.

Germany's Central Bank president, Jens Weidmann, along with German economy minister Phillip Roesler had expressed their opposition to ECB's bond-buying plan, arguing that it might erode «the willingness of Eurozone member-states to implement reforms».

The Costitutional German Court of Karlsruhe gave a negative (legal) opinion too about OMT asserting that the ECB, with these operations, exceeded the mandate given to it by the treaties.

For these reasons the Costitutional German Court sent, on February 2014, the case at the European Court of Justice in Luxembourg.

The last paragraph of this work is focused on this dispute between the European Central Bank and the Court of Karlsruhe and on the judgment of the latter.

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