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Management of Tied up Revenues and Funds after Bankruptcy of a Municipality: Old and Recent Rules and Guidelines in Italy

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Abstract

When a group of elected administrators is given the responsibility to hold, use or dispose of resources not belonging to him, they must be held fully answerable to the owner (Municipality, Region, etc.) of the resources for what he does with them. This, in essence, is the obvious principle of financial accountability. The local Administrators of a Municipality have the power to manage and use large sums of public funds collected in the form of taxes, fees and other receipts. In a democracy like Italy, this power is given to each local Government, Province, Region or Municipality elected by the citizens. The Local Administration is thus accountable to the citizens for the manner in which the public funds are managed and used. This paper tries to explain what to our knowledge none have done: synthesize and describe old and recent rules, the concept of public accountability and how a Public local institution in Italy can arrive at a financial default, how and which public bodies are held answerable to Ministry of the Interior and Court of Auditors for the management and use of the public fund and moreover for part of those ones having a violated destination. **Materials and Method:** in the drafting of ours, after an exhaustive narrative review of the history and evolution of the regulations regarding the financial distress of local authorities in Italy from 1998 to the present day, we critically but briefly analyze the salient points of the management of the criticality of the services financial statements of Italian municipalities in trouble. Subsequently, we report the guidelines of the Italian Ministry of the Interior, local authorities section, which masterfully describes regulations and responsibilities. Starting from this decisive and authoritative opinion, we then report an exhaustive 2019 opinion issued by the Court of Auditors of the Campania Region to the former Mayor of the Municipality of

Piedimonte Matese, a city in Southern Italy and seat of the authors of the work, who voted for the financial distress chosen in January 2019. Subsequently, we report the 2021 Guidelines approved by the local liquidation commission of the institution. **Discussion:** Since the 2000s there have been so many reforms, some under the pressure of increasingly widespread Federalism and others that paradoxically have had the result of limiting the freedom of municipalities tightened between increasingly stringent constraints than even in some municipalities in the balance. They also made impossible a hypothetical attempt at multi-year realignment through a programmable prudent financial management. With the historical rules and recent changes referred to and in particular with Article 36 of Legislative Decree n.50/2017 (converted into law n.96/2017) things change drastically since the Extraordinary Liquidation Commission (CSL), as amended by Article 255 of the TUEL, is also assigned tasks of managing the amounts for restricted use. To this responsibility is added the obligation for CSL to manage them separately from the unconstrained mass with the right to settle and settle in full. This change is substantial and falls not so much in the action of determining the passive mass but rather in the action of raising funds. **Conclusions:** Once the regulatory description is finished, it is clear to the reader that in Italy, once the Distress Resolution and the appointment of the CSL members have been approved, this appointment of the CSL actually determines the start of the procedure. The management of the Entity is thus split in two dividing it between the CSL which is responsible for the level of the previous debt and the institutional bodies of the Municipality which remain the task of eliminating the previous management criticality and ensuring stable conditions of equilibrium without having to worry anymore debt management. Past debts will thus be managed by CSL through a laborious procedure that will lead to a new balance sheet and cash balance with some decisive advantages such as the temporary inability to undergo foreclosures or seizures for enforcement procedures as well as the suspension of interest on all debts.

Keywords

Public Default, Municipality Bankruptcy, Public Management

1. Introduction

Financial distress is an administrative tool conceived and legally structured in Italy a few decades ago. An instrument that seemed to have fallen into disuse at the beginning of the 2000s and in particular after the constitutional law of 18 October 2001, n. 3 and the consequent modification of the Constitution (Constitutional Law, 2001) but which has seen its return on the scene in recent years (Giofrè, 2021). The topic of "failure" has always been a topic that is difficult to understand and manage even by many managers and financial organizational positions of local authorities who find themselves in enormous difficulty in coor-

dinating and starting post-failure administrative activities in the various sectors of the body. These difficult activities, which must always be started quickly and no later than a few weeks after the vote of the Council resolution of failure by the City Council, are of enormous and primary importance. The financial sector of the institution immediately faces days of momentary administrative paralysis due to the need to verify in detail the procedural obligations after the declaration of failure such as for the liquidation procedures of works financed with restricted amounts (Conte, 2015). This therefore always entails a temporary blocking of the liquidations of the individual services and it is therefore absolutely essential, for the understanding of the entire procedure, that the elected political administrator explains to the local population the effects of the instability on the local community itself as well as the role played by the body before, during and after the reorganization. The tied or tied up sums are resources that the Entity obtains to use exclusively for the destination for which they are born (Constitutional Law, 2001). Sometimes, however, the interpretative doubt may arise as to what is meant by "restricted revenue" and in this case certainly the first thing to consider is whether or not they have a specific destination from the moment of their request. Non-failing institutions are allowed to use restricted liquidity, subject to the opinion of the financial manager, in order to guarantee payment of deadlines and the supply of indispensable goods and services, even in the event of a provisional exercise, whose failure to implement would cause damage to the Entity. Given the financial fragility of many Entities, however, the law provides that they can use for payments of restricted amounts only when there are no funds for payment of current expenses; this without having to resort to the cash advance art. 222 TUEL (Ministry of the Interior, 2000: Consolidated Text of the Laws on the Organization of Local Authorities, Legislative Decree 18 August 2000, n. 267) and only in the presence of a temporary need and immediately identifying the amount of tied revenue to be used in compliance with accounting rules (Constitutional Law, 2001). The Court of Auditors has expressed itself in detail in this regard The rule obviously provides that even if used, they must be reconstituted as soon as possible with the first free entrances that enter the municipal fund and the continuous distraction of them could result in the non-realization of the works or services for which they were intended as well as artificial and illegal financing of expenses otherwise not feasible (Act of Orientation on TUEL, 2000).

2. Method

This article aimed to analyze briefly in detail the laws and procedures to be followed after bankruptcy of a municipality in Italy. After a historical narrative review of the old and recent rules, we discussed briefly a specific case reporting comments and suggestions received by the Regional Court of auditors (Regione Campania in Naples) adding a summary of the guidelines released by the Local Authorities Control Section of the Ministry of the Interior, which hopefully can

help the reader to understand well the reforms of recent years. All the authors have contributed to the research and the limitations of this article have been that, beyond the opinions of the Court of Auditors and the Ministry, to our knowledge and on the net no specific publication has been found beyond a few articles on non-scientific website journals, university compilation theses or blogs. The opinion of the Regional Court of Auditors of Campania, the Ministerial Guidelines and other opinions were personally obtained by one of the authors as former Mayor of the troubled City of Piedimonte Matese. To our knowledge, no one had published similar research. In this discussion paragraph, we try to further summarize the current literature and clearly point out the literature and recent reform in order to give clarify the sense of the innovative contribution of recent reform and, hopefully, of this paper. Before the discussion and conclusion paragraph therefore we reported 2 sub-paragraphs where we report a short historical narrative review of rules and laws and subsequently the legal opinions of the Court of Auditors and the recent Italian guidelines of the Italian Ministry of the Interior

Financial Disruption from Law Decree 66 *of* 1989 *to today*

Disruption is a complex Italian legal mechanism that certifies a "pathological" state of an entity burdened by a heavy debt (Smedile, 2018). Before arriving at a normative definition, some studies were obviously carried out, including an analysis commissioned by the Ministry of the Interior. The art. 1-bis of the legislative decree 1 July 1986, n. 318 (law no. 488 of 9 August 1986) thus allowed local authorities to recognize for the first time off-balance-sheet debts, that is, not foreseen in the budget expenditure estimates. These unforeseen debts, despite being an actual violation of rules, thus became unpunished and made their own by the entity. In 1986 the Court of Auditors, foreseeing that the finances of the municipalities were about to collapse, required certification on off-balance sheet debts from the acquisition of which a large debt mass emerged1. At first this led to the granting of an amnesty for past debts but unfortunately due to the enormous economic difficulties encountered by many local authorities, regulations were envisaged and issued which impacted financial structural instability (Cerniglia & Bordigon, 2003). Thus it was that for the first time in 1989 with art. 25 of Legislative Decree 66 dealt with the financial instability of the entities in a significant manner with the following future conversion and related amendments, in the law of 24 April 1989, no. 144 (Manzetti Vanessa, 2018). During the 1980s-1990s, the law underwent considerable and significant changes (Paolo, 2007). It resisted all the reforms of the following years that took place following the reform of Title V, Part Two, of the Constitution and of Law no. 42 of 5 May 2009 on fiscal federalism (Legislative Decree 15 September 1997, n. 342). In 1995, there was a major reform of the financial system of local authorities (Consolo, 2020) and shortly before 2000, the failure procedure was innovated through article 90-bis of Legislative Decree 77 of 1995 (NormActive, n.d.) which in practice has simplified the procedures for ascertaining and liquidating debts, speed-

ing up the procedure in many cases. Overall and a stabilization of the rules was also due to the federalist push. Thus it was that the initial Law 142/90 (reform of the local autonomy system, ed.) was followed by 59/97 (so-called Bassanini), L.127/97, L.191/98 and L.50/99) (Bassanini Laws 59/97, 127/97, 191/98 and 50/99, n.d.). These provisions introduced important principles such as simplification and administrative federalism, implementing the broadest administrative decentralization in accordance with Article 5 of the Constitution. Subsequently came the 267/2001 or Consolidated Law on the organization of local authorities (TUEL), and it was thus foreseen that whenever there would be critical issues and potential elements of failure detectable by objective parameters, the body would be subjected to a series of controls (Bellocci & Passaglia, 2018, OpenBDAP, 2019). These rules thus allowed the Ministry to monitor these from the very beginning of the first signs of financial imbalance in order to try to avoid reaching a situation that could no longer be remedied (Italian Finance Law, 2003). The legislation on instability was thus implemented by the articles ranging from 244 to 269 of the T. U. E. L and which abrogated all the previous provisions without changing their substance but giving an organic arrangement and a detailed definition of the procedures. What happened in the following periods was widely reported in the results of the monitoring by the Central Directorate of Local Finance of the Ministry of the Interior (Bellocci & Passaglia, 2018). With the drafting of the TUEL, the path of autonomy in the field of rehabilitation was then considered impassable for local authorities in distress, thus considering it impossible to take out a mortgage with charges borne by the State, perhaps forgetting to consider the extraordinary nature of cases of structural disease which lead to failure. With Law 488 of 28 December 2001, i.e. the Finance Law for the year 2002 3, numerous appeals were made to the Constitutional Court for conflicts of attribution between the State and the Regions, and between Regions and Local Bodies, especially with regard to of expenditure introduced by the Internal Stability Pact (PSI, 2019: The Rules of Public Finance of Local authorities). In fact, from 1999 to 2015 Italy had to formulate its PSI expressing the programmatic objectives for the Territorial Bodies each year in different ways. The introduction of the PSI, then repealed in 2016, further worsened the task of Local Authorities in drafting the budget and defining expenditure constraints that do not correspond to adequate revenues. Repealed after 17 years of validity, the internal Stability Pact was then replaced with the new constraint of a balanced budget of final competence in compliance with the contents of paragraphs 707-729 of Article 1 of the Stability Law (Stability Law, 2004: Financial 2003, comments Omnia Consulting). As we have seen, the multiplication of constraints certainly did not facilitate the work of local authorities. In this sense, the PSI was aimed at achieving the public finance objectives imposed at EU level, the possibility of using state-funded mortgages was then definitively canceled and it was thus understood that the failure was not a mere amnesty but is to be considered as a "norm safeguarding the entire system" so that the entities can contin-

ue to provide essential services for situations in which the crisis is more serious. We have therefore seen how the issue of Legislative Decree no. 267/2000 and the Reform of Title V of the Constitution with the Constitutional Law n. 3/2001 mark two important moments for the regulation of public financial distress in Italy. Among the useful procedural changes, the introduction of a time limit within which to restore the Entity as well as the creation of an external body, the Extraordinary Liquidation Body (OSL) subsequently called Commission (CSL, appointed with Decree of the President of the Republic) (Consolidated Law of Local Authorities updated to Legislative Decree 104/2020, n.d.). The CSL, once appointed, provides within a very short time to the organization of the procedures for the verification and settlement of debts credit. In practice, the countless corrective measures were aimed at improving the methods of determining the debt and identifying the pre-emption criteria for the payment of the same. Since the 2000s, there have been so many reforms, some under the pressure of increasingly widespread Federalism and others that paradoxically have had the result of limiting the freedom of municipalities tightened by increasingly stringent constraints. This occurred in particular after the financial crisis of 2008 when the Court of Auditors also recognized a real loss of local autonomy that had been widely recognized with the Constitutional Law no. 3 of 2001 (own taxes and revenues could be determined and the possibility of setting up equalization funds without destination restrictions) (Anessi, Pessina, Barbera, & Sicilia, 2018; De Toni, 2017). Despite the procedural changes and the impossibility for troubled municipalities to draw from state funds and mortgages, over the years and even recently with the COVID-19 emergency (Urgencies during COVID Pandemia: Decree "Ristori" 2021 and Decree "Relaunch" 2020 Italian Government), the state has several times given out many hidden funds behind extraordinary interventions. Once the Dissest Resolution has been approved, the Presidential Decree for the appointment of the members of the Extraordinary Liquidation Commission (CSL) will follow and this appointment of the CSL effectively determines the start of the procedure. The management of the Entity is thus split in two dividing it between the CSL which is responsible for the level of the previous debt and the institutional bodies of the Municipality which remain the task of eliminating the previous management criticality and ensuring stable conditions of equilibrium without having to worry anymore debt management. Past debts will thus be managed by CSL through a laborious procedure that will lead to a new balance sheet and cash balance, with some decisive advantages such as the temporary inability to undergo foreclosures and the discipline of the CSL activity to which the competence belongs. Management of what happened in the accounts by the previous December 31st (Albo, 2012; Brocardi.it, 2012). The CSL must organize the Call for creditors and verify the real existence of the credits by planning the strategies and means necessary for the collection and liquidation of the available funds, including through the sale of real estate assets, in order to complete the liquidation of the liabilities. The elected administration

has the task of leading the Entity through the procedures necessary for the drafting of the new, permanently re-balanced budget approved by the Board of the Entity within the terms of the law (Brocardi.it, 2012). The new re balanced budget will obviously refer to the three or five-year period following the failure and after being voted on and presented to the Ministry, after careful evaluation by the technicians, it may receive a favorable opinion or modifications and restrictions and stakes may be requested. This succession of increasingly stringent regulations led from the beginning of the 2000s to a significant reduction in failures compared to the number of failures in the first years from the entry into force of the legislation, representing 73% of the total failures in the first six years. in the middle of the last decade. The management of restricted funds: guidance documents and of the Local Authorities Section of the Ministry of the Interior and opinions of the regional sections of the Court of Auditors. In May 2018, following numerous interpretative difficulties by various failing local authorities that repeatedly asked the regional control sections of the Court of Auditors for their opinion, the Observatory considered it useful to issue an act of guidance on the management of the restricted funds of these entities. In the introduction, the Observatory reiterates first of all that the CSL is the institution in charge of the procedures necessary for the recovery of the economic and financial situation of the failing municipality and that it must guarantee creditors liquidation based on the strict criteria set by law. Subsequently, the Ministry recalls that in recent years the CSL has taken on a characteristic function, including an order in the context of the reorganization of the territorial levels of government (reform of Title V of the Constitution (Giofrè, 2021)). The CSL represents a novelty thanks to its complete management autonomy both from institution in distress and by the State (although it is a rib as it is appointed by the President of the Republic). From this point of view, within the framework of a particular procedure aimed at ensuring the equal cooperation of creditors, the powers exercised by the Extraordinary Body are aimed primarily at the survey of the mass. From this point of view, the CSL really represents a body that replaces the employees of the institution in distress to exercise extraordinary power (detection of the passive mass, acquisition and management of the financial means available for the purpose of recovery, liquidation and payment of the mass ascertained passive). The proof is that the effects of CSL's work impact and determine effects on the rehabilitation and assets of the failing institution and in a certain sense it is truly an extraordinary part of the Municipality where it acts in place of ordinary management. In fact, the Observatory clarifies; it is precisely on the Entity and its legal sphere that the effects of the reorganization following the action of the CSL which clearly works for the assets of the Entity on which they go to be charged in surplus go to end. And passive the operating results. In this perspective, the CSL is therefore truly "an extraordinary body of the Municipality within which it is established and operates". Over the years, these actions have required continuous updates of the legislation. Many doubts have been expressed in the last

decade by numerous officials of local authorities, especially in relation to the activity of CSL and in particular with regard to the administration of residual assets and liabilities relating to restricted use funds and therefore the Observatory deemed it necessary to issue clarifications by way of interpretative guidelines especially following the amendments to the TUEL made by the Monti government (Year 2017). In general, the Observatory always carries out careful monitoring of the situation linked to local public finance and in the application of management rules it always requires an at least appreciable level of homogeneity and consistency (so with the document issued it intended to promulgate guidelines). The validity of this document lies in its tracing the action to be taken by the officials in the exercise of their functions by achieving a milestone on the subject, consistent with the regulatory principles and homogeneous in its effects. In the document, the Observatory starts from the analysis of Article 255, paragraph 10 and then refers to the exceptions made on this provision for distressed municipalities and entities (Observatory on finance and accounting of local authorities, n.d.; Finance Observatory of the Italian Ministry, 2017). In detail, the Observatory explains how the Accounting Magistracy has clarified that the CSL until then had not to deal with residual assets and liabilities relating to restricted funds. She had and must proceed with the determination of the mass and liquidation in 24 months from the establishment, ensuring the coverage of the active mass protected by executive procedures pursuant to paragraph 12 art 255 TUEL. With the aforementioned changes and in particular with Article 36 of Legislative Decree n.50/2017 (converted into law n.96/2017) things change drastically since the CSL, as amended by Article 255 of the TUEL, is also assigned tasks of managing the amounts for restricted use. To this responsibility is added the obligation for CSL to manage them separately from the unconstrained mass with the right to settle and settle the balance. This change is substantial and falls not so much in the action of determining the passive mass but rather in the action of raising funds. Up until then, this was elusive because it was taken for granted that the debit/credit relating to the tied sums was offset and did not require a specific take-over. This was until it was understood that even the management of restricted funds had over the years led to the onset of even huge off-balance sheet debts and the rule excluded CSL's management responsibilities in this sense. This obviously had created discriminatory consequences in the past since, among other things, creditors providing services financed by restricted funds (for example building with European funds) could benefit from the possibility of attacking the ordinary post-bankruptcy budget and beyond the permitted limits. The institution therefore had to be guaranteed that during the return phase it would not undergo foreclosures linked to amounts with restricted use, but this benefit was linked to the certainty of the previous accounting of the destination restriction made recognizable to third parties. Otherwise, any creditors of non-identifiable tied sums must compete with the general mass (passive mass). It follows that "…therefore, that the presumed space of discretion in the management of the

OSL, also with regard to the obligations deriving from restricted management funds, must be exercised in the priority consideration of the incidence and present and future repercussions of said management on a situation of overt fragility of the 'disrupted body'". The conclusions of the opinion of the Observatory are that, in consideration of the inevitable fallout of the choices on the future of the body even after the presence of the CSL but in respect of its autonomy, the Body and the CSL should work hand in hand by agreeing on the choices and work of the investigations. The institution should be allowed an early knowledge of the mass of debts and of the substantial future criticalities that will or would affect the choices, directions and future of the institution and the administered city. But we know that between saying and doing there is always the sea and politics in between. The Observatory's conclusions are substantially based on the analysis of circular 93, on the provisions of the TUEL and on the amendment made in 2016/17. Among the various indications, what most catches the eye and which often clashes with the administrative reality, is the need for the OSL and local bodies to interact so that the offices and administrators are fully aware of the critical issues, that the OSL is aware of the projects and programs connected and the latter concretely aware of the remediation actions. The involvement of the Entity will then take place through the acknowledgment of the guidelines adopted by the OSL as well as through an agreed procedural agreement. This is in order to ensure that the entity itself has indications about the operations whose temporal perimeter certainly does not end in the administrative life of the OSL but which could potentially also have effects on the future performing management of the entity.

Management of ERDF restricted sums in the Municipality of Piedimonte Matese: *the opinion of the Regional Control Sections of the Campania Regional Court of Auditors and the* 2021 *Guidelines of the local CLS.*

Following the dissolution vote which took place in January 2019, pursuant to the regulations allowing the exercise of the consultative activity, with a note of April 2019 the Mayor of Piedimonte Matese asked for an opinion pursuant to Article 7 paragraph 8 of Law 131/2003 to the Audit Section of the Court of Auditors of the Campania region, which met in the council chamber on May 8, 2019, replied with an exhaustive opinion (Campania Local Authorities Section, n.d.: Audit Court CAMPANIA/104/2019). The Mayor requested a conclusive opinion on the management and liquidation of active residues as well as if "it is true that the same sums, although managed by the OSL, can, in any case, be liquidated in full and separately from the debt mass. The Court with a wide disquisition answered in a broadly exhaustive manner first of all with regard to the subjective admissibility of the question asked, admitted following scrutiny since it undoubtedly represented public accounting matters concerning in particular the demarcation line between the management areas served by the CSL and the bodies of the institution in failure. In summary, the Court replying clarifies that the management is by the OSL even in cases of urgent reporting need and not

having taken place and late appointment of the CSL, also explaining that with respect to the doubt on the liquidity in full it notes that pursuant to paragraph 2 of art 2 bis of the DL 24/6/2016, no. 113 (urgent financial measures for local authorities and the territory". Conv. In Law no. 160 of 7 August 2016, subsequently amended by Legislative Decree no. 50/2017, the administration of residual liabilities and assets related to restricted management funds, not only is the responsibility of CSL but is also managed separately as part of the extraordinary liquidation management; which means in other words that the same administration constitutes a separate activity in the context of the extraordinary liquidation management and with respect to hypothesis of "liquidity in full" (or not) of the amounts with restricted use in the context of CSL management, the Board agrees with the guidance act of 26.10.2018 (Observatory on Finance and Accounting of Local Authorities, n.d.), dedicated precisely to the management of restricted funds in institutions in financial distress. In this deed, they have already seen how it is preliminarily observed that the previous exclusion of the need for CSL to take and in charge of the tied management, both for the active and passive part. , was based on the assumption that these funds, having by definition been in balance, do not require any type of contribution from the CSL. In summary, the Court clarifies that pursuant to the amendments referred to in paragraph 10 of art. art 1 paragraph 457 of law 232/2016 (as replaced by art 36, paragraph 2, Legislative Decree 24 April 2017, n.50, converted with amendments, by Law 21 June 2017, n.96) all responsibilities, including possible identification of off-balance sheet debts as well as the liquidation of restricted sums are the responsibility of the OSL ineluctably. OSL which in the first months of 2019, in approving its own guidelines (Minutes n. March 2021) for the separate management of the tied sums, obviously refers mainly to the Ministerial Circular n. 21 of 1993 just described as well as an opinion given to the Extraordinary liquidation commission of Caserta (protocol note 91410 of 24 July 2017, separate management, guarantee of the destination constraint and possibility of settling (28)). As repeatedly reiterated, the standard has been amended several times in the last 2 decades, so much so that the application behaviors of different institutions in failure have been different and sometimes conflicting and, as mentioned, it is essential to define the "conduct" of each CSL in general terms in the face of the obvious and unavoidable requests for payment at value on binding managements in the financial statements as already amply represented by the Statutory Auditors in the various requests to the Control Sections of the Court of Auditors. However, it is clear that in practice each CSL will have to evaluate every single investigation as well as the existence of the reasons for the opportunity which, in accordance with the aforementioned ministerial circulars, allow, would have allowed and will allow the payment of expenses related to the management of the restricted funds even before the approval of the extinction plan, such as in the case of the difficulties linked to the settlement of the sums relating to "care allowances", funds for a regional measure intended for the disabled and who were stuck be-

tween rigidity and obvious difficulties in dialogue between the institutions (OSL Municipality of Piedimonte Matese, 2021). At the conclusions of this examination, therefore, the CSL of the Municipality of Piedimonte Matese intended to approve its own guidelines aimed at the administration of the active and passive residuals of restricted management funds, differentiating the instant and entitled ones. In the determination it is thus clarified that the holders of loans financed for restricted destinations will in any case have to apply for liquidation and their requests evaluated according to the same criteria adopted for the ordinary requests, but requesting the CSL for each specific restricted management fund for a detailed report for the different instances. In detail, the CSL requests the offices, in addition to taking care to specify the existence of the constraint and the deed from which it derives, that in the event the Entity receives a request for liquidation for services rendered to the Entity under an expense commitment, to which matched sums already collected by the institution and available on the specific account of the municipal treasurer correspond, the extraordinary liquidation body, after verifying the title, will authorize the competent municipal offices to issue the relative payment order. In the event that a payment request is received relating to an expense commitment in which residual assets to be collected are paid after reporting the expense to third parties, the CSL, after verifying the title, will authorize the municipal offices to settle by reporting and recording the collection of the credit. Finally, in the event that a request for payment is received concerning an expense commitment whose amounts for restricted use have already been collected by the Entity and are available in the cash register and/or residual assets not collected, in quantities lower than due (i.e. lower than the residual liabilities registered on the specific restricted management fund), the liquidating commission will ask the Entity to replenish the restricted financial resources and will authorize the expenditure only within the limits of the resources actually ascertained and acquired by the Entity, not being able to burden the excess on the ordinary means of the liquidation management.

3. Discussion

The substantial changes in the last few years are therefore that according to art 252, paragraph 4 and art 254 paragraph 3 of the TUEL, the OSL has the exclusive competence of what financially happened on 31 December prior to the date of approval of the Disruption (budget debts, off balance sheet pursuant to article 194 as well as debts deriving from executive procedures extinguished pursuant to article 248, paragraph 2 and debts deriving from transactions carried out by the extraordinary liquidation body pursuant to paragraph 7). From a recent reading of the determination of approval of the guidelines of the CSL operating in the municipality of Piedimonte Matese (OSL Municipality of Piedimonte Matese, 2021) which excellently summarizes the supporting legislation, it is clear that the procedures implemented in that municipality and the rules to be considered as a premise essential and at the basis of the procedure and the work of each CSL are

those already known. First of all, the circular of the Ministry of the Interior n. 21 of 20 September 1993, relating to the application of the rules on instability which among other things clarifies that the active and passive residuals of the tied management are excluded from the active and passive mass, clarifying the same that the liquidation of the expenses of the tied management is the responsibility of the extraordinary liquidation body which, where it deems appropriate, may proceed with the payment even before the approval of the repayment plan, subject to verification of the regularity of the expenditure provided for by law. Article 255, paragraph 10 of the TUEL and article 5, paragraph l-bis of the Presidential Decree are also referred to n.378 of 24 August 1993, on the basis of which in the past the OSL was considered not competent with regard to the sums for restricted use and mortgages (Presidential Decree 24 August 1993, n. 378) on the basis of which the CSL was considered not competent; was then superseded by the 2016 amendment of Article 255 (Giofrè, 2021). The substantial amendment is therefore the one decided by the MONTI Government in which Article 1, paragraph 457, of Law No. 232 of 11 December 2016, introducing a limited derogation from Article 255, paragraph 10 of the TUEL, entrusts to the competence of the extraordinary liquidation body of the distressed municipalities the administration of the residual assets and liabilities relating only to restricted management funds, considering (like the CSL operating in Piedimonte Matese) that the same leaves unchanged the provisions regarding the management of mortgage loans and other expenses referred to in article 255, paragraph 10 of the TUEL. So in conclusion, is financial distress really bad? The instability in practice traces a gap between the pre and the post and clearly does not represent a real business failure since the entity, in this case, continues to exist while for a private entrepreneur it would represent the legal death of the company. Clearly, the municipality does not dissolve and the Mayor does not lapse since there is a clear separation between ordinary and extraordinary bodies. The institution is obviously forced to downsize everything and it is easy to understand how all politics should be censored with a short breath. The legislator's concern has always been to prevent a large mass of debt from falling on the future of our children and grandchildren, as unfortunately still often happens. Obviously, this action is not only common to municipalities but to many local bodies and what was warned should be a guideline for responsible political action at all levels.

4. Conclusion

In conclusion, from the historical regulatory reconstruction and from the literature, from the recent Monti 2018 reform and the opinions of the Court of Auditors as well as from the recent ministerial guidelines, it is clear that it is the OSL (extraordinary liquidation body) that has to manage active and passive residues as well as procedure for the reconstruction and liquidation of the sums under restricted management, by reason of the amendment of paragraph 10 of the rule that took place due to the effects of article 1 paragraph 457 of law 232/2016, of

any nature and origin. In fact, from what has been learned it leaves no room for doubts and Article 1, paragraph 457 of Law 232/2016 (as replaced by Article 36, paragraph 2, Legislative Decree No. 50 of April 24, 2017). It is not only the responsibility of CSL but is also managed separately as part of the extraordinary liquidation management; which means, in other words, that the same administration constitutes a separate activity within the extraordinary liquidation management. Finally, the Court of Auditors believes that the OSL can and must exercise full autonomy but also takes into account that the obligations do not always run out within the time perimeter of their management and therefore susceptible to further future effects on the future assets of the Entity. In conclusion, although it is believed that the OSL's discretion must be exercised in the priority consideration of this future potential impact and its future repercussions, through the TUEL content and also through an agreement agreed upon between Local Authorities and CSL.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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