Dipartimento delle Finanze

Fiscal Justice Reform

System of safeguards for the independence of fiscal judiciary

Fiscal Justice Directorate

As part of the preparatory activities for the preparation of the Italian contribution to the 2023 Rule of Law Report, the European Commission formulated some questions on fiscal justice, which were forwarded to this Directorate from the Ministry of Justice. Therefore, as requested, this document provides a brief overview of the fiscal justice reform, with a focus on the safeguards of independence that the new legislative framework ensures to the fiscal judiciary.

I. Fiscal Justice Reform: fiscal system and proceedings

The reform, approved by Law No. 130/2022, is one of the main objectives indicated by the NRRP within the broader domestic justice system (Milestone M1.C1-35). This, in view of the significant impact that the efficiency and quality of fiscal jurisdiction has on the confidence of economic operators, also in view of greater attractiveness of investments from abroad.

The reform concerned both the procedural rules contained in Legislative Decree no. 546/1992 and the legislative provisions provided for by Legislative Decree no. 545/1992.

The amendments and the introduction of new procedural institutes were essentially aimed at strengthening the taxpayer's safeguards within fiscal proceedings reducing the time of litigation and the tendency to appeal against judgments on the merits, as well as increasing the efficiency of the administrative structures supporting the fiscal jurisdictional function. The reform also aimed at facilitating access to fiscal case law databases to increase the uniformity of rulings given in similar cases and strengthen the respect for, and uniform interpretation of the law ensured by the Supreme Court [nomophylactic function].

With reference to the interventions concerning the legal framework, the reform provided for an overhaul of the fiscal judiciary, with the aim of putting **full-time judges in charge of dealing with fiscal litigation, by professionalising the figure of the fiscal magistrate** (Legislative Decree no. 545/1992, Articles 4-4-quater), also in order to improve the quality level of rulings. In addition, first and second instance fiscal Courts replaced the previous Provincial and Regional Tax Commissions (Legislative Decree no 545/1992, Article 1).

II. The system of safeguards to protect the independence of fiscal magistrates

The establishment of a new professional fiscal judiciary has created the need to outline and strengthen a system of safeguards to ensure its independence from the Ministry of Economy and finance [MEF]. They concern, in particular, the following aspects:

A. Recruitment procedure (Articles 4, 4-*bis*, 4-*ter* and 4-*quater* of Legislative Decree no. 545/1992)

B. Self-governing body (Legislative Decree no. 545/1992, Articles 24, 24-*bis*, 29-*bis*)

C. Inspection activities and disciplinary proceedings (Legislative Decree no. 545/1992, Articles 24, paragraphs 2-*bis*, 2-*ter*)

A. *Recruitment procedures*

The competition procedures for entry into the fiscal judiciary, established by Law no. 130/2022, provide for a competition managed by the Board of examiners appointed by the Self-Governing Body of the fiscal Judiciary (CPGT) (Article 4 of Legislative Decree no. 545/1992). **The MEF has no power to appoint a magistrate, but merely translates the choices made by the Board of examiners into a Ministerial Decree, with the final ranking ratified by the self-governing body** (Article 9 of Legislative Decree no 545/1992). At the end of the competition procedure, for the sole purpose of ensuring the fiscal magistrate the effects on his/her legal and economic status, the content of the resolution of appointment of the CPGT is reproduced, without any scope for changes by the Ministry of Economy and Finance, in the decree of appointment of the magistrate adopted by the Minister (Legislative Decree no. 545/1992, Article 9). The system described above follows that of the procedures for the appointment of successful competition candidates in the ordinary judiciary, which similarly involves the CSM [High Council of the Judiciary] as the self-governing body of the ordinary judiciary and the Ministry of Justice.

The CPGT is also exclusively responsible for the performance appraisal of judges, also for the purpose of career advancement. Article 11 of Legislative Decree no. 545/92, as amended by the reform, confirmed that the CPGT is exclusively responsible for assignment and transfer of tasks procedures,

to which a necessary appraisal of the fiscal judges is linked, **The MEF only ratifies the resolutions adopted by the CPGT on the aforementioned procedures by adopting a Ministerial Decree for the necessary changes in the legal and economic status of the fiscal judge.** The procedure described above precisely follows the one provided for the assignment, transfer and evaluation of ordinary magistrates, which involves the CSM, the holder of the procedure, and the Ministry of Justice, which adopts a Minister's decree for the necessary changes in the legal and economic status of ordinary judges.

B. Self-governing Body

The Presidential Council of Fiscal Justice, the self-governing body of fiscal judges, was affected by the reform, which expanded the role and functions assigned to it, precisely in order to strengthen the independence of the new fiscal judiciary.

The staff in service at the CPGT belongs to the MEF staffing plan but the **organisational management, and therefore its efficient use, is the sole responsibility of the self-governing body, which has organisational and accounting autonomy by law** (Legislative Decree no. 545/1992, Article 24 and Article 29-*bis*). In essence, the staff in service at the CPGT is managed autonomously by the self-governing body; this implies that the said body concretely assigns staff to its offices and provides the necessary directives for the performance of institutional tasks, on the basis of criteria established by its own regulations. It follows that **the MEF has no decision-making power over the organisation and management of the staff assigned to the CPGT.**

With regard to the rules on CPGT elections during the first application of the reform, it should be noted that an amendment approved at AS 564 concerning the conversion into law of Decree-Law no. 13 of 24 February 2023, on *"Urgent provisions for the implementation of the National Recovery and Resilience Plan (NRRP) and the National Plan for Complementary Investments to the NRRP (PNC), as well as for the implementation of cohesion policies and the Common Agricultural Policy"*, repealed the reservation, contained in Article 8, paragraph 5, of Law no. 130/2022, of the four representatives of the Council, who had to be elected separately among magistrates from the ordinary, administrative, accounting and military judiciary, since they were moved to the fiscal judiciary following the call for applications administered by the self-governing body pursuant to Article 1(7) of Law no 130/2022. The new provision approved with the aforementioned

amendment solves the doubts about the concrete application of the provisions contained in the aforementioned Article 8, paragraph 5, of Law no. 130/2022, which could have caused disputes and referrals to the Constitutional Court.

Lastly, it is useful to specify that a political assessment is underway for the adoption of a provision establishing the autonomous staffing plan of administrative staff at the CPGT, removing it from the administrative staffing plan of the Ministry of Economy and Finance**.**

C. Inspection activities and disciplinary proceedings

The Inspection Office and the National Ufficio del Massimario have been set up at the CPGT, whose members, selected from among fiscal magistrates and judges, are appointed by the self-governing body (Articles 24 and 24-*bis* of Legislative Decree no. 545/92).

The Inspection Office, which is governed by a special regulation (CPGT Resolution no. 2/2023), performs the function of inspecting the work of those who belong to the fiscal jurisdiction within the limits set by law and in compliance with the principle of safeguarding the autonomous exercise of the judicial function, through impartial and objective verification of situations and conduct reported or autonomously noted, as well as the regularity of conduct in the performance of official duties. This office is therefore required to report any anomalies to the CPGT. By resolution no. 441 of 28 March 2023, the CPGT launched a call for applications for the selection of 6 members to make up the Inspection Office referred to in Article 24, paragraphs 2, 2-*bis* and 2-*ter* of Legislative Decree no. 545/92.

As to the Ufficio del Massimario, the CPGT recently adopted the Organisational Regulation (CPGT Resolution no. 158/2023), which established the requirements to be met by the 16 fiscal magistrates and judges to perform the relevant functions. By subsequent resolution no. 309 of 28 February 2023, the self-governing body published the call for applications for the selection of 15 members and 1 director of the national Ufficio del Massimario for fiscal justice.

The technical and administrative support of the two new offices is provided by the staff in service at the CPGT; to this end, the reform provided for the recruitment of 25 officials to carry out these new functions. In this regard, it should be noted that the recruitment of the aforementioned officials should take place by July 2023 following the update of the recently published ranking list of

the Ripam-MEF call for applications published in O.J. no. 104 of 31 December 2021, relating to 58 officials for the secretarial offices of the Fiscal Justice Courts.

As to disciplinary proceedings, pursuant to Article 16 of Legislative Decree no. 545/92, the initiative of initiating the action lies solely with the Presidency of the Council of Ministers or with the President of the second-instance Fiscal Court with respect to fiscal judges serving in the Courts in the region of jurisdiction. The report of the President of the Court - which initiates the proceedings - is addressed to the Disciplinary Office at the CPGT, which follows the procedure up to the possible imposition of the disciplinary sanction to the fiscal judge for the violations specifically identified in Article 15 of Legislative Decree no. 545/92. **The MEF, just like the Ministry of Justice for sanctions imposed by the CSM on ordinary judges, only ratifies the sanction decided by the CPGT** by adopting a Minister's decree for the necessary changes in the legal and economic status of the fiscal judge.