

## Chapter 3

# Worldwide Welfare Society: Healthcare and Social Impact Investments

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### **ABSTRACT**

*In the face of healthcare emergency and the linked problems, the purpose of the work is to identify an economic and organizational tool for the improvement of the person's health condition and, consequently, for the prevention of the spread of future contingent pandemics. Due to the lack of public resources, this system would contemplate private investments balancing social and speculative objectives. It analysed the social impact bond (SIB), the typical form of impact investing that provides for public and private partnership. After examining the structure with its positive and negative aspects, the disintermediation through blockchain technology and smart contracts is prospected. According to the horizontal subsidiarity, stated in the article 118, paragraph 4, Cost., the suggested intervention would represent an operation aimed at realizing the right to health through a negotial tool (the SIB agreement) subject to the control of merit.*

Globalization facilitates the rapid expansion of infectious diseases around the world. This spread hinders the effectiveness of interventions limiting the contagion at the national level and exacerbates the situation of developing countries. The latter, in fact, do not have an organizational and economic structure suitable for dealing with the risks. For this purpose, international institutions have set up financial systems such as the Contingency Fund for Emergencies (CFE), established in 2015 by the WHO to respond immediately to a disease outbreak, and the Pandemic Emergency Financing Facility (PEF), developed by the World Bank in 2016 to make pay-outs through insurance and cash windows. However, the aforementioned tools present some critical issues that prevent the fulfillment of an immediate and decisive response. The CFE does not constitute a flexible and adaptable system to every viral pathology due to the mainly constrained and voluntary nature of the budget. Regarding the PEF, the beneficiaries are exclusively low-income countries with weaker health systems that are members of the International Development Association (IDA). A further limitation concerning the insurance window is represented by the circumscription to a predetermined group of diseases. The cash window, on the other hand, also covers new or unknown

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pathogens but the economic availability is very limited. For the activation of this financing mechanism, excessively stringent criteria must be met, just like pathogen type, outbreak size (number of cases or deaths), spread (number of countries affected), and growth (over a period of time). The inadequacy of these tools emerged with the advent of COVID-19. Having, in fact, spread primarily across high- and middle-income countries, the funding occurred only on April 27, 2020, almost four months into the pandemic. For these reasons, the World Bank Group established a new Health Emergency Preparedness and Response Multi-Donor Fund (HEPRF), with the intention of incentivize low-income countries to increase investments in health preparedness and support the immediate COVID-19 response. In consideration of the economic and organizational shortcomings in the health sector, both nationally and internationally, it is therefore necessary a transnational intervention suitable for facing possible future pandemics through adequate investment in developing innovative vaccines, broad-spectrum antivirals, appropriate non pharmaceutical interventions and surgical device. Such preventive measures would ensure not only a prompt and effective reaction to the onset of an infectious disease but also a saving in public spending. As agreed with the GPMB's annual report 2020 the costs of COVID-19 are over US \$ 11 trillion with a future loss of US \$ 10 trillion in earnings, while investments in preparedness are measured in US \$ 5 per person annually. In conformity with the report «it would take 500 years to spend as much on investing in preparedness as the world is losing due to COVID-19» (Global Preparedness Monitoring Board, 2020, p. 6).

The experience of the current health emergency and the inadequacy of the remedies adopted have led to a new international dialogue about the solutions that can be adopted to counter the spread of future and new pathogens.

On the occasion of the 74th World Health Assembly of 31 May 2021, the opportunity of an international treaty on pandemics that guarantees cooperation between States and establishes adequate collective action for the identification, alarm and response to future pandemics was discussed. The stipulation of this treaty would pursue the objectives of prevention and early detection of future pandemics, improvement of the response to them through a coordinated worldwide approach to research activity and equal and universal access to medical formulas as well as through a “One Health” which relates the health of human beings, animals and the planet.

The lack of economic availability, accompanied by the rigid budgetary constraints introduced with the Stability and Growth Pact, currently suspended until 2023 due to the health emergency, and by the austerity policies, has caused the State to lose the role of exclusive guarantor of social rights. Therefore, problems have arisen regarding the reconciliation between these financial constraints and the satisfaction of social rights. According to an approach adopted by the Constitutional Court, the right to health care is configured as “financially conditioned”, as full and absolute implementation cannot be ensured due to limited financial resources (Constitutional Court, 2011). According to a different orientation, the implementation of the protection of a constitutionally relevant asset, such as health, can take place gradually, through a reasonable balance with other interests or assets of equal constitutional protection and with «the real and objective possibility of disposing of the necessary resources [...]» (Constitutional Court, 1990). However, if the requirements relating to the balance of public finance «in the balancing of constitutional values operated by the legislator, had an absolutely preponderant weight, such as to compress the essential core of the right to health connected to the inviolable dignity of the human person, we would be faced with a macroscopically unreasonable exercise of legislative discretion.» (Constitutional Court, 1994). It follows that reasonableness acts as a parameter for the exercise of the discretion of the legislator who, in the reconciliation between financial constraints and the implementation of social

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