A pandemic, a war on the continent, an energy shock and a sharp turn in transatlantic relations have pushed the European Union to do what, until recently, seemed beyond its reach: borrowing on the markets on a massive scale, financing national reforms and investments, tying funds to milestones and targets, and taking the first steps towards a common defence.

At the centre of this transformation stands Next Generation EU, the largest plan ever managed by the European institutions. Its significance lies less in its size than in its method: performance-based disbursement, constant dialogue between the Commission and national executives, and a broad, at times creative, reading of the Treaties.

As the programme comes to a close, this volume asks whether NGEU has been a parenthesis or has changed the Union for good. Twelve chapters by established scholars and young researchers, brought together by the NextGEUOrder Jean Monnet Chair, examine its legal foundations and its spillover into EU governance, the actors and forms of knowledge it has empowered, and its legacy for defence, the budget, cohesion and digital policy.

The answers do not converge, and deliberately so. Some see in NGEU the seed of a more federal Union; others stress the limits of the Treaties and the risks of executive-driven integration. All agree that the Union emerging from these years is, in important respects, a Union made new – a novelty that must be understood first and foremost in constitutional terms.

Serena Sileoni is Associate Professor of Constitutional Law at Suor Orsola Benincasa University, Naples.

ISBN 979-12-5511-035-4

S. SILEONI AN EU MADE NEW
THE EUROPEAN CONSTITUTIONAL ORDER AFTER NEXT GENERATION EU

QUADERNI DELLA RICERCA • 34
DIPARTIMENTO DI SCIENZE GIURIDICHE ED ECONOMICHE

Co-founded by the Erasmus+ Programme of the European Union

AN EU MADE NEW

THE EUROPEAN CONSTITUTIONAL ORDER AFTER NEXT GENERATION EU

edited by
Serena Sileoni

SUOR ORSOLA BENINCASA
UNIVERSITÀ EDITRICE



QUADERNI DELLA RICERCA • 34

Collana diretta da
Lucio d'Alessandro

Comitato scientifico
Tommaso Edoardo Frosini
Enricomaria Corbi
Paola Villani
Natascia Villani

QUADERNI DELLA RICERCA • 34
Collana diretta da
Lucio d'Alessandro

DIPARTIMENTO DI SCIENZE GIURIDICHE ED ECONOMICHE





Il volume si inserisce tra le attività della Cattedra Jean Monnet
European Order after the Next Generation EU (NextGEUOrder),
istituita presso l'Università degli Studi Suor Orsola Benincasa di Napoli
nell'ambito del programma Erasmus+ della Commissione europea

Redazione
Luciana Trama

Impaginazione
Uliva Foà

Progetto grafico e copertina
Flavia Soprani

Realizzazione e stampa
Carmine Marra

© Università degli Studi Suor Orsola Benincasa, Napoli 2026
Tutti i diritti sono riservati

Il libro è concesso in licenza in base alla licenza internazionale
Creative Common Attribution 4.0 CC-BY-NC-ND.
Tutti i dettagli sulla licenza sono disponibili su: creativecommons.org/licenses/by-nc-nd/4.0.
Accesso gratuito del libro all'indirizzo: universitypress.unisob.na.it.
La proprietà intellettuale dei singoli contributi resta degli autori.

ISBN 979-12-5511-035-4

AN EU MADE NEW

The European Constitutional Order after Next Generation EU

edited by
Serena Sileoni



SUOR ORSOLA
BENINCASA
UNIVERSITÀ EDITRICE

Contents

7 Serena Sileoni
An EU Made New — Introduction

15 Gianluca Contaldi
The institutional consequences of the NGEU programme

41 Cristina Fasone
The spillover of the 'euro-national method of government' beyond the Recovery and Resilience Facility: Strenghts and weaknesses

79 Giacomo D'Arrigo
NGEU: first effects on the institutional structure and governance of the EU

153 Adriano Dirri
The NextGenerationEU implementation and beyond: fundamental rights and the rule of law as constitutional "features"

185 Enrico Ciappi
I Foresight, therefore I am: The informal origins of the EU's strategic culture before Next Generation EU

219 Serena Sileoni
From execution to politics: the evolution of the European Commission

269 Claudia Marchese
The resort to expertise in the European dimension. A focus on the European Commission's reliance on experts

295 Aldo Iannotti della Valle, Giacomo Antonio Lombardi
The common defence as a driver for a more integrated Europe

323 Luigi Servadei
From crisis response to strategic planning in the European budget. Critical issues and prospects in integrating Next Generation EU and the 2028-2034 Multiannual Financial Framework

335 Francesco Spera
A possible answer to the territorial divide: the principle of "do not harm cohesion"

379 Martina Lillo
Institutions for the future. European Union's normative efforts in the pursuit of Transgenerational Justice

405 Gaia Lucilia Romano
Digital constitutionalism and the NGEU: is the emerging European digital sovereignty compatible with democracy?

431 Authors

Serena Sileoni

An EU Made New — Introduction

1. A Union remade by an emergency

In the space of a few years, a pandemic, a war on the continent, an energy shock and a sharp change in transatlantic relations have pushed the Union to do things that, until recently, most observers would have considered beyond its reach: borrowing on the markets on a massive scale, financing national reforms and investments, conditioning the disbursement of funds on milestones and targets, and taking the first concrete steps towards a common defence.

The Next Generation EU programme (NGEU) sits at the centre of this transformation. With a financial capacity of 750 billion euros in nominal value, raised through common bonds and channelled to the Member States mainly through the Recovery and Resilience Facility (RRF), it has been the largest plan for raising and redistributing funds ever managed by the European institutions. Yet its significance lies less in its size than in its method. The NGEU introduced a performance-based logic of disbursement, an ongoing dialogue between the Commission and national executives, and a broad,

at times creative, use of the legal bases offered by the Treaties.

As the programme comes to a close, the question that runs through this volume becomes unavoidable: has the NGEU been a parenthesis, or has it changed the Union for good?

The title of this collective volume, *An EU Made New*, states a hypothesis rather than a conclusion. Its contributions test it from different angles. They ask whether the NGEU has produced a new method of European integration, how it has shifted the balance between institutions, and what it leaves behind for the Union's budget, its values and its democratic legitimacy. Their answers are not uniform, and the volume does not try to make them so.

This book is the final research output of the Jean Monnet Chair *European Order after the Next Generation EU* (NextGEUOrder), established at the Università degli Studi Suor Orsola Benincasa of Naples under the European Commission's Erasmus+ programme.

The Chair started from a simple premise. Between 2020 and 2022, from the onset of the pandemic through ongoing geopolitical crises, the Union faced a series of emergencies still not finished, that challenged its legal and institutional order and redefined the perimeter of European politics. The NGEU was the first instrument of that change. The reform of the Stability and Growth Pact, the efforts in defence policy and some other policies suggested that the Union was going through a change of a "constitutional" nature, affecting both its own institutions and those of its Member States.

The Jean Monnet Chair tried to understand that

change from the institutional, historical, political and economic point of view.

The volume reflects this aim. More specifically, it grows out of the Chair's second Jean Monnet conference, which brought together established scholars and young researchers selected through an open call for papers, many of whom have revised their conference papers into the chapters collected here.

The twelve chapters can be read as three movements. The first examines the NGEU as a legal and institutional device and its spillover into the Union's governance. The second looks at the actors and the forms of knowledge that the new method has empowered. The third follows the legacy of the NGEU into specific fields (defence, the budget, cohesion, digital policy) and into the long-term horizon of the Union.

As for the first movement, i.e. the NGEU and the new method of government, Gianluca Contaldi opens the volume with a reconstruction of the main features of the programme and of its institutional consequences. He shows how the NGEU rested on an expansive reading of Article 122 TFEU, a reading now extended to the SAFE Regulation on defence and to the measures on Russian assets, and how this raises concerns about the democratic principle, since that provision excludes the European Parliament. He concludes that the programme is not replicable on a large scale under the current Treaties, unless future borrowing is anchored in the Multiannual Financial Framework and tied to specific purposes. Cristina Fasone analyses the spillover of what she calls the "euro-national method of government" beyond the RRF: to energy, agriculture, fiscal

rules, assistance to third countries, the defence industry, cohesion, environmental and social policy. The method borrows from both the Community and the intergovernmental methods. Its strengths, such as multiannual planning, national ownership and a focus on results, are weighed against its weaknesses, chief among them the dominance of a "fragmented" executive branch. Giacomo D'Arrigo argues that the NGEU marked a paradigm shift in the Union's institutional governance, one that has already taken root in other initiatives, from the new Stability and Growth Pact onwards. Its legacy, he suggests, lies not only in resources but in the discipline of designing, evaluating and implementing projects within defined timeframes, a lesson that has also reshaped national administrations. Adriano Dirri asks whether the RRF can be read as a "constitutional moment" in Ackerman's sense and answers in the negative. He nonetheless identifies new "constitutional features": the enforcement of the rule of law and the Charter of Fundamental Rights through the conditionality attached to EU funds. The cases of Poland, Hungary and Slovakia show both the potential and the limits of this approach, which the Commission's proposal for the 2028–2034 MFF now seeks to systematise.

Turning to the second movement, i.e. actors, knowledge and power, Enrico Ciappi takes the reader upstream, tracing the intellectual origins of the NGEU in the culture of strategic foresight that developed within the European institutions from the Delors era onwards. Resilience and anticipatory governance, he argues, did not appear in 2020: they are the product of a long-standing, if contested, knowledge regime that paved the way

for the euro-national model of crisis management. My chapter examines the evolution of the European Commission from an executive body towards an increasingly political actor. Starting from the NGEU "laboratory", the chapter follows the Commission's growing role in the reform of the Stability Pact, the oversight of digital markets, tariff negotiations, common defence and the proposal for the 2028–2034 budget. It asks to whom this political choice should be attributed, and what it means for the institutional balance of the Union and its compatibility with the Treaties. Claudia Marchese focuses on the Commission's reliance on expertise, from expert groups to the Scientific Advice Mechanism. She shows that expertise is not only scientific, that the choice of which expertise to value rests with the institutions, and that this "politics of expertise" deserves attention for its effects on democratic decision-making.

In the third movement, i.e. beyond the NGEU: policies and futures, Aldo Iannotti della Valle and Giacomo Antonio Lombardi read the emergence of a common defence through Jean Monnet's maxim that Europe would be forged in crises. After reviewing the instruments of a renewed Common Security and Defence Policy and its relation with the UN and NATO, they consider common defence as a further step towards a European federation, and assess it in light of Article 11 of the Italian Constitution. Luigi Servadei examines how the NGEU has changed the EU budget, turning it from an allocative and compensatory tool into a political one. Looking at the Commission's July 2025 proposal for the 2028–2034 MFF, he asks whether the lessons of the NGEU have been absorbed into or-

dinary programming. His answer is cautious: the new framework will be the real test of whether an emergency response can become a stable strategic capability. Francesco Spera addresses the territorial divide and the risk that the post-pandemic drift towards centralised, nationally managed plans may weaken cohesion policy. He analyses the new principle of "do no harm to cohesion" as a counterweight to these tendencies, and as a way to give effect to Article 175(1) TFEU. Martina Lillo moves to the level of political theory. Drawing on social ontology and on Monnet's idea that nothing endures without institutions, she explores the Union's efforts in the pursuit of transgenerational justice, and argues for a supranational constitutionalism capable of carrying the Union's normative capital across generations. Gaia Lucilia Romano closes the volume with the digital transition. Using the digitalisation of justice in the Italian national recovery and resilience plan as a case study, she shows how NGEU conditionality has acted as a constitutional engine, contributing to an emerging European digital sovereignty. She also warns of the risks of a technocratic drift for accountability, fundamental rights and democratic participation.

Read together, the chapters suggest that the NGEU has changed the Union both through its formal rules and through its practice.

Three threads run through the volume. The first concerns institutional balance: the method strengthens the Commission and national executives, while the European Parliament and national Parliaments struggle to find their place in it. The second concerns legal bases and legitimacy: a broad reading of the Treaties made

the response possible, but its repetition outside genuine emergencies raises questions of democratic accountability that cannot be postponed indefinitely. The third concerns permanence: whether the NGEU will remain a precedent or become a turning point depends on choices still open, above all in the negotiation of the 2028–2034 Multiannual Financial Framework.

The contributions do not converge on a single answer, and this is deliberate. Some authors see in the NGEU the seed of a more federal Union; others stress the limits of the Treaties and the risks of an executive-driven integration. What they share is the conviction that the Union which emerges from these years is, in important respects, a Union made new, and this novelty must be understood in constitutional terms before it can be judged.

This volume and the Chair would not exist without the many people who took part in the activities of the NextGEUOrder Jean Monnet Chair: the members of the teaching staff, the scholars and officials who led seminars and workshops, the young researchers who every year answered the calls for papers, and the students of the Università degli Studi Suor Orsola Benincasa who made the course a place of genuine discussion. Thanks are also due to the Department of Legal and Economic Sciences, to the Suor Orsola Benincasa Università Editrice, to the Internationalization Office and, lastly, to the European Commission for supporting the Chair through the Erasmus+ programme. A special note of thanks to Aldo Iannotti della Valle and Giacomo Antonio Lombardi for their continuous and patient support in the activities of the Chair. Without them, the Chair would not have been possible.

Gianluca Contaldi

The institutional consequences of the NGEU programme

Summary: 1. The general features of the Next Generation EU programme. – 2. The legal consequences of the programme on the institutional structure of the European Union. – 3. Is the programme replicable in light of the Treaties currently in force? – 4. The legal obstacles to a permanent-scale reproduction of the NGEU programme: Article 311 TFEU. – 5. The limits arising from Article 310 TFEU and from the principle of subsidiary liability of the Member States. – 6. So: what can be done in a situation of structural crisis?

1. The general features of the Next Generation EU programme.

The *Next Generation EU* programme represented the largest plan for the raising and redistribution of funds by the European Commission since the birth of the European Economic Community. The funds, raised through the issuance of bonds, were subsequently allocated to the Member States, in the form of non-repayable grants or loans, in order to help them recover from the economic crisis brought on by the COVID-19 pandemic.

It is certainly not easy to summarise the main features of this complex operation. Its most characteristic elements are, undoubtedly, its scale (750 billion euros), which far exceeds that of comparable programmes implemented in the past.

The second characteristic is the specific purpose of the programme, which can indeed be identified with recovery from the economic crisis generated by COVID. Although, for the sake of clarity, it must be said that this purpose was interpreted extremely broadly, to the point of turning NGEU into something akin to an industrial policy programme.

The third distinctive element of this programme is its temporary nature; indeed, this was rather limited for a plan of such wide scope. The programme was conceived during 2020; in 2021, the Member States' national plans were approved, and the States are now required to complete all *milestones* by 31 August 2026[1].

[1] The programme's end date is irrevocably fixed at 31 August 2026 by various provisions of secondary law. See first of all Article 18(4), point (*i*) of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, which makes clear that, in preparing their national recovery and resilience plans, Member States must set out: «the envisaged milestones and targets and an indicative timetable for the implementation of the reforms, and for the investments to be completed by 31 August 2026». This deadline is, moreover, provided for by Article 20(5) of the same Regulation, which establishes that the Commission, in drawing up its proposal for a Council decision approving national recovery and resilience plans, shall provide for «(d) the period, not exceeding 31 August 2026, by which the milestones and targets for both investment projects and reforms must be completed». In implementation of this provision, the deadline is subsequently reiterated in the implementing decisions by which the Council approves the national plans (see, for example, Article 2(4) of the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Italy, of 13 July 2021, which specifies that «to be eligible for payment, Italy must achieve the milestones and targets by 31 August 2026»).

The programme's end date is considered so non-negotiable that the European executive itself has invited the Member States to revise their national plans, removing those targets that cannot be achieved with certainty by the set date[2]. By 30 September 2026, payment requests must be sent to the European Commission and, at the same time, evidence must be provided demonstrating that the intended results have been achieved. The Commission will then carry out its assessments and, by 31 December 2026 at the latest, will pay out the final tranches to the Member States. The debt incurred by the European Commission must then be repaid in full by 2058.

Lastly, a further aspect that distinguishes the NGEU programme from other funds previously disbursed by the European institutions is its specific focus on results: payment of each *tranche* took place, in fact, on a six-monthly basis, only following a concrete verification that the result had been achieved, and no longer through reimbursement of itemised expenses, as had previously been the case. This method of disbursement constitutes a profound departure from previous practice, capable of having a structural impact on the domestic political bodies and the administrative bodies responsible for implementing European programmes[3].

[2] Communication from the Commission to the European Parliament and the Council, *NexGenerationEU- The Road to 2026*, Brussels, 4 June 2025, COM(2025) 310/final/2.

[3] On the consequences that the NGEU programme (and the Italian PNRR, in particular) have had on the domestic legal order, see L. Bartolucci, *Piano nazionale di ripresa e resilienza e forma di governo tra Italia e Unione europea*, Giappichelli, Turin 2024, p. 207 ff.; G. D'Arrigo, *NGEU e Pnrr: il rafforzamento della governance europea e delle amministrazioni centrali dello Stato*, in «Rivista trimestrale di diritto pubblico» (2024), p. 1197 ff.; S. Sileoni, *L'indirizzo politico tra Unione europea e Italia. Profili*

2. The legal consequences of the programme on the institutional structure of the European Union.

It is well known that the NGEU programme was implemented by means of acts of secondary law, without the governments of the Member States ever even contemplating amending the Treaties. On the other hand, the urgency of addressing the economic consequences of the pandemic crisis was so pressing that there was certainly no time to carry out the long and complex procedure laid down in Article 48 TEU.

Despite the obviousness of this observation, the prevailing view in the literature appears to be that the programme has produced certain long-term structural consequences within the supranational legal order[4].

The legal features that support this conclusion are, in principle, closely linked to the way in which the European institutions relate to the national institutions responsible for implementing the programme[5]. It is indeed generally argued that NGEU has brought into being a new method of governance, the essence of which lies, eminently, in the existence of an ongoing dialogue between the Member States and the European Commission.

This method indeed has certain features that distinguish it from the traditional "open method of coor-

di diritto costituzionale, Editoriale scientifica, Naples 2026, esp. p. 187 ff., 251 ff.

[4] See L. Marin, *Solidarity and Crises in the European Union: a Constitutional Principle in the Pandemic and Energy Crises*, Cacucci, Bari 2024, p. 60 ff.

[5] See N. Lupo, *Caratteristiche (e presupposti) del nuovo "metodo di governo" delineato dal Next Generation EU*, in «Diritto e società» (2025), p. 557 ff., esp. 575 ff.; S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, cit., p. 90 ff., who speaks, in this regard, of a «dialogue between executives».

dination"[6]. More precisely, it unfolds in five phases[7]. In the first, the European institutions define the general objectives of the programme and identify the priorities, focusing mainly on the achievement of European public goods, such as the digital and ecological transitions. In the second, the Member States prepare development plans for the use of the funds; these plans, which are built through a progressive dialogue with the European Commission, are generally extremely detailed: they must, in fact, clearly indicate the results to be achieved and the timeframe for their achievement; in the third, the plans are subject to approval by the institutions[8]; in the fourth, the programmes are implemented. In the fifth and final phase, the European institutions carry out continuous monitoring of the achievement of results and of the existence of the further conditions necessary for receiving the funds[9].

[6] Cf. C. Fasone, N. Lupo, *Learning from the Euro Crisis. A New Method of Government for the European Union's Economic Policy Coordination after the Pandemic*, in «International Journal of Constitutional Law», III (2024), p. 882-904; N. Lupo, *Caratteristiche (e presupposti)*, cit.; Id., *Dinamiche delle fonti e metodi di governo tra Unione europea e Italia*, Editoriale scientifica, Naples 2026, p. 66 ff.

[7] F. Fabbrini, *The Recovery and Resilience Facility as a New Legal Technology of European Governance*, in «Journal of European Integration» (2024), p. 85 ff., 91 ff.

[8] The plans submitted by the Member States are assessed by the European Commission and subsequently approved by Council implementing decision (see Articles 19 and 20 of Regulation 2021/241, cit.).

[9] Among the further conditions for receiving the funds, particular importance must be attached to compliance with the rule of law, especially following the adoption of Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020, on a general regime of conditionality for the protection of the Union budget, in OJ EU L 433I, 22.12.2020, p. 1–10. It should be recalled that two actions for annulment were brought against this Regulation by Hungary and Poland, which were dismissed by the Court of Justice in judgments of 16 February

This method was first adopted with the SURE fund[10] and was later replicated, on a considerably larger scale, with the *Next Generation EU*. Moreover, several legislative acts adopted in subsequent years expressly make use of it[11]. These include RePowerEU[12], the Social Climate Fund[13], the assistance mechanism for Ukraine[14] and, lastly, the reform of the Stability and Growth Pact[15].

2022: Cases C-156/21 and C-157/21, respectively ECLI:EU:C:2022:97 and ECLI:EU:C:2022:98. See, also for further references, A. Guazzarotti, *Neoliberismo e difesa dello Stato di diritto in Europa. Riflessioni critiche sulla costituzione materiale dell'UE*, Franco Angeli, Milan 2023, p. 22 ff., 54 ff.

[10] Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, in OJ EU L 159, 20.5.2020, p. 1–7.

[11] See F. Fabbrini, *The Recovery and Resilience Facility*, cit., para. 3; S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, cit., p. 167 ff.

[12] Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, in OJ EU L 63, 28.2.2023, p. 1–27.

[13] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, in OJ EU L 130, 16.5.2023, p. 1–51. This Regulation was subsequently amended by Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023, in OJ EU L 231, 20.9.2023, p. 1.

[14] Regulation (EU) 2022/2463 of the European Parliament and of the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +), in OJ EU L 322, 16.12.2022, p. 1–14.

[15] The reform of the Stability and Growth Pact was carried out by means of three acts, namely: Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97, in OJ EU L, 30.4.2024; Council Regulation 2024/1264 of 29 April 2024 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, in OJ EU L, 30.4.2024; and, lastly, Council Directive 2024/1265 of 29 April 2024 amending Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, in OJ EU

This ongoing dialogue between the European institutions – and the Commission in particular – and the national Governments, consisting of repeated exchanges and progressive adjustments, undoubtedly presents several advantages. The most obvious is that, since it involves the direct participation of the Member States in defining the plan, the plan is characterised by a high rate of spontaneous compliance. On the other hand, the high degree of compliance with the Commission's requirements is also determined by the related risk of otherwise losing the funds made available, should the objectives set for the agreed deadlines not be achieved.

Secondly, this same method is more respectful of the principle of subsidiarity, since it unfolds in a supranational phase – characterised by the identification of the general objectives – and a more strictly national phase, in which the States set out the details of the programmes according to their own needs.

Thirdly, a structural feature of the programme can be seen in the undoubtedly rather liberal use of legal bases. This is particularly evident in relation to Article 122(2) TFEU, which allows the Council, on a proposal from the Commission, to «grant, under certain conditions, Union financial assistance to the Member State concerned»[16].

L, 30.4.2024. See G. D'Arrigo, *Il nuovo Patto di Stabilità e Crescita (PSC): il "metodo NGEU/PNRR" nella rinnovata governance europea*, in «Federalismi», XXVI (2025); S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, cit., p. 113 ff.

[16] This provision, in fact, constituted the legal basis for the adoption of Regulation 2020/2094, concerning the establishment of the recovery and resilience fund: Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, in OJ EU L 433I,

In this regard, it should be noted that, from a drafting standpoint, there is a clear distinction between the first and second paragraphs of this Treaty provision. While the first allows measures appropriate to the economic situation to be adopted, in order to remedy difficulties in the supply of certain products (particularly in the energy sector), the second provides for the possibility of adopting measures to help a Member State in difficulty «caused by natural disasters or exceptional occurrences beyond its control».

Despite the different requirements for the intervention of the European institutions, this provision has in fact often been used as a whole. In other words, the practice of the institutions in recent years has been to refer to Article 122 TFEU in its entirety, in a sense combining certain requirements found in the first paragraph with some of those set out in the second, thereby avoiding strict adherence to the requirements of either provision taken alone.

Even accepting this interpretative option, it is nonetheless evident that the European institutions went well beyond the requirements laid down by the Treaty provision. Thus, for example, Article 122(2) TFEU allows financial assistance to be granted to a Member State which «is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control». In other words, the provision would represent a kind of exception clause to the general prohibition on loans or financial assistance laid down in Articles 123 and 125 TFEU, but

22.12.2020, p. 23–27.

recourse to it would be conditional precisely on the crisis being confined to a single Member State and not depending on circumstances attributable to that State. On the contrary, the COVID crisis was of such scope as to affect the entire Union (if not the whole world), and the size of the instrument (namely, seven hundred and fifty billion euros) went far beyond the very logic underlying a provision of an emergency nature.

On closer inspection, this is an expansive reading that is not unique to the NGEU programme: indeed, an analysis of practice shows that a substantially modificative reading of the provisions of Article 122 TFEU is currently under way. This emerges very clearly also from Regulation 2025/2600 on the freezing of Russian assets and, above all, from Regulation 2025/1106 (the so-called SAFE Regulation)[17], concerning the granting of loans to Member States for the strengthening of armaments or for investments, to be carried out through public procurement procedures launched jointly by two or more Member States in the defence sector.

With regard to the SAFE Regulation in particular, the exceptional situation – which is indeed the precondition for recourse to the mechanism provided for in Arti-

[17] Council Regulation (EU) 2025/2600 of 12 December 2025 on emergency measures to address the severe economic difficulties caused by Russia's actions in the context of the war of aggression against Ukraine, in OJ EU L, 2025/2600, 13.12.2025; Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) instrument through the reinforcement of the European defence industry, in OJ EU L 2025/1106, 28.5.2025. In the literature, see A. Nato, *Profili critici del Regolamento (UE) n. 2025/2600 sugli assets russi: strumento a tutela dell'Unione economica e monetaria o misura restrittiva?*, in «Eurojus.it», II (2026); L. Marin, *Common Procurement in Defence and the Strategic Autonomy of the Union: A First Appraisal*, available on the website of the European University Institute, www.eui.eu.

cle 122(2)[18] – is concretely identified with the geopolitical changes that have occurred worldwide. We are therefore faced with an emergency situation that not only transcends the borders of a single Member State, but even those of the entire Union. Moreover, this is certainly not a sudden and unexpected state of affairs, but rather the product of a gradual repositioning of the interests of the great powers on the world stage.

In any event, irrespective of whether or not the requirements are actually met, such frequent recourse to Article 122 – which involves only the Commission and the Council, without any active participation by the European Parliament – is also beginning to raise concerns about compliance with the democratic principle. This provision does not, in fact, provide for any involvement of the European Parliament: it is one thing for this to occur exceptionally, in situations of genuine urgency; it is quite another to resort to the same legal basis for industrial-policy interventions intended to produce certain long-term consequences in the years to come[19].

[18] There is a substantial body of opinion in the literature holding that Article 122(1) TFEU does not require, for its activation, the existence of an emergency situation. Following this approach, it could also be envisaged that Article 122(1) be used for the adoption of Union economic-policy measures (for a discussion of this issue, see A. Nato, *Finanziare le politiche europee attraverso il debito comune UE: riflessioni sul dilemma dell'emergenza e sulla conciliabilità dell'istituto con i principi di bilancio e di stabilità finanziaria sovranazionali*, in «Unione europea e diritti» (2025), p. 263 ff., 277 f.).

[19] The SAFE Regulation is currently being challenged by the European Parliament, which complains of the absence of the requirements for recourse to this instrument, both because it is an act predominantly concerned with industrial policy (which should therefore find its legal basis in that field) and because it is vitiated by a failure to state reasons, since the Council allegedly failed to clearly set out the existence of the requirements for recourse to that legal basis (see the notice in the Official Journal:

Fourthly, particularly in the NGEU programme, a broad interpretation of the principle of solidarity is clearly evident: indeed, the concrete functioning of the programme has helped reinforce an expansive view of both aspects contained in Article 3(3) TEU, which – as is well known – refers both to a relationship of solidarity between Member States and to intergenerational solidarity[20].

The solidarity inherent in the *Next Generation EU* programme would, in fact, develop in both directions envisaged by the aforementioned provision: both in a horizontal sense, since it creates a mechanism for sharing (albeit partially) the obligations assumed by the Member States for the implementation of the programme; and in an intergenerational sense, because it makes it possible to finance projects for the conversion of traditional industrial systems and, consequently, to hand down to future generations a cleaner world.

Undoubtedly, the very idea of financing a vast programme of economic assistance with proceeds raised

C/2025/5209, Action brought on 20 August 2025 – European Parliament v Council of the European Union, Case C-560/25, in OJ EU, C, 6.10.2025; in the literature, see L. Grossio, *Il Parlamento adisce la Corte di giustizia contestando il ricorso all'art. 122 TFUE per l'istituzione dello strumento di azione per la sicurezza dell'Europa (SAFE)*, in «Eurojus.it», 1 September 2025). Beyond the specific case, it seems evident that the case in question will in any event allow the Court to clarify the specific limits of recourse to this legal basis. This is, therefore, a most welcome interpretative exercise, given a legislative text that appears rather deficient and a Commission practice that tends not to clearly distinguish between the two scenarios provided for by the two paragraphs of the Treaty provision.

[20] See G. Morgese, *Solidarietà di fatto …e di diritto? L'Unione europea allo specchio della crisi pandemica*, in «Eurojus», special issue (2020), p. 77 ff., 110 f.; P. Mengozzi, *L'idea di solidarietà nel diritto dell'Unione europea*, Bologna University Press, Bologna 2022, p. 181 ff.

by the European institutions fully corresponds to the concept of solidarity. Indeed, in certain respects, it even goes beyond the traditionally self-interested character that marks so-called European economic solidarity[21]. However, in its concrete implementation, the very fact that the programme entails the introduction of new taxes that will also fall on the citizens of countries that did not take out loans, but only received grants free of charge, ultimately reduces, in practice, the perception of genuine solidarity among the Member States[22].

Lastly, it seems correct to state that the implementation of the programme has brought about a shift towards a modificative reading of Article 125 TFEU: unlike previous interventions (including those carried out by the ECB, namely the OMT, PSPP and PEPP programmes), which operated essentially from a market-oriented perspective, the NGEU plan is structured as a large-scale public investment programme: in other words, in the design and management of the programme, the public-law dimension appears to prevail over the strictly private-law and market-oriented one[23]. This impression is, moreover, confirmed when one considers

[21] On which see G. Morgese, *La solidarietà tra gli Stati membri dell'Unione europea in materia di immigrazione e asilo*, Cacucci, Bari 2018, p. 31 ff.

[22] Although the concrete implementation of the programme does leave room for some doubt as to whether it was genuinely an application of the principle of solidarity: see, on this point, G. Contaldi, *Stiamo realmente assistendo ad un cambio di paradigma del concetto di solidarietà economica nel diritto dell'unione europea?*, in G. Morgese (ed.), *La solidarietà europea, a che punto siamo?*, Eustic Jean Monnet Working Paper, University of Bari Aldo Moro, Bari 2023, p. 20 ff.

[23] M.A. Panascì, *Unravelling Next Generation EU as a transformative moment: From Market integration to redistribution*, in «Common Market Law Review» (2024), p. 13 ff.

that, in its concrete implementation – that is, in the individual national recovery and resilience plans – many investments have concerned educational and social sectors (such as nurseries, student housing, incentives for research programmes, incentives for the preservation of cultural heritage), which are often neglected under a strictly market-driven logic.

3. Is the programme replicable in light of the Treaties currently in force?

Another question that must be examined in order to assess the institutional implications of the programme for the supranational legal order is its abstract reproducibility. Indeed, the instances cited in the previous paragraph as applications of the NGEU method of governance are, in reality, tools that reproduce only some of its aspects, without, however, capturing its full essence, which – as noted above – is characterised by the fact that the Commission issues bonds to raise funds that it then distributes to the Member States, in the form of grants or loans, to finance projects aimed at delivering European public goods.

This is not, in fact, the case with the Ukraine instrument[24], nor with the aforementioned Regulation 2025/1106, concerning the granting of loans – essentially through the provision of guarantees – to Member States to encourage investment in armaments and defence. On closer inspection, these instruments have a very specific purpose and are characterised solely by the

[24] Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility, in OJ L, 2024/792, 29.2.2024.

granting of loans or the provision of guarantees. They do not, therefore, constitute significant elements of practice for demonstrating the abstract reproducibility of the programme, because they fall well short of establishing a structural plan for financing broad-ranging industrial policies, as occurred with *Next Generation EU*.

Moreover, unlike the NGEU programme, both of the instruments just mentioned are based essentially on money made available by the Member States themselves or disbursed by the institutions, but in the form of loans or guarantees, never as grants. The only feature these instruments have in common with the NGEU programme is, precisely, recourse to a similar mechanism of dialogue with the European Commission for the preparation of spending plans agreed with it.

In this context, in the absence of significant practice, doubt remains as to whether the NGEU programme is actually replicable under the Treaties currently in force. Or rather, whether the essence of the programme can be reproduced: funds raised by the Commission through the issuance of bonds, which are subsequently disbursed to the Member States, including free of charge, in order to achieve wide-ranging European public goods.

Nor, on closer inspection, does the *Catalyst Europe* programme, provided for by the European Commission in its proposal for the next Multiannual Financial Framework, appear to constitute a suitable manifestation of such practice. Here too, in fact, we are dealing with mere EU-guaranteed loans, intended to support certain specific investments in strategic areas[25].

[25] Commission proposal for the 2028-2035 MFF: *"EU-backed*

However, the programme just mentioned, as will be clarified further in the conclusions, unlike its other counterparts conceived so far, does provide some indication as to what is needed to make "*almost structural*" a financing programme modelled on the *Next Generation EU*.

4. The legal obstacles to a permanent-scale reproduction of the NGEU programme: Article 311 TFEU.

Having established these premises, let us try to identify the main obstacles to repeating an extensive financing programme in favour of the Member States, such as *Next Generation EU* was: these limits arise, in all likelihood, from Articles 311, 310, 123 and 125 TFEU[26]. Let us examine them separately, so as to try to understand whether – and, above all, under what conditions – they can be overcome.

Article 311, as is well known, concerns the procedure for introducing own resources. There are currently four own resources: the common customs tariff; a per-

loans - For the first time, the EU will offer EU-backed loans (Catalyst Europe) to spur investment in strategic areas". This can be found in various fields, and in particular in territorial cohesion policy (see the proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for Economic, Social and Territorial Cohesion, Agriculture and Rural Development, Fisheries and Maritime Policy, Prosperity and Security for the period 2028-2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509, Brussels, 16.7.2025, COM(2025) 565 final, 2025/0240 (COD), on which see G. Chiellino, *Bilancio Ue: spunta l'idea di 134 miliardi di prestiti per coesione e agricoltura*, in «Il Sole 24 Ore», 12 June 2026. On the Commission's proposal in general, see C. Fasone, *La proposta di Quadro finanziario pluriennale UE 2028-2034, tra continuità e innovazione*, in «Federalismi», XXXIII (2025).

[26] See A. Nato, *Finanziare le politiche europee attraverso il debito comune UE*, cit., p. 267 ff.; S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, cit., p. 79.

centage of national VAT; a levy on non-recycled plastic packaging waste; and the rate based on Gross National Income[27].

The bonds issued by the European Commission cannot, however, be classified as own resources. The sums raised through bonds cannot in fact be regarded as resources, at least not in the technical sense. This reveals, moreover, one of the major differences from a national budget: a State can finance its own expenditure through debt, relying on the fact that a certain proportion of public debt can be rolled over through the issuance of new bonds; in substance, therefore, there is a portion of national debt that is never fully repaid. In the supranational legal order, by contrast, the issuance of further bond packages is not possible: it was, in fact, an *una tantum* operation, carried out on an exceptional basis. As a result, by 2058 the debt incurred to finance the NGEU programme must be repaid in full.

In short, within the European Union legal order, common debt – even though it is classified as «other revenue» in Decision 2020/2053 on own resources – is, in substance, an item of expenditure, which must be financed through other categories of own resources[28].

Consequently, in order to issue new common debt, the supranational legislature must establish further resources necessary to repay that debt. The legal basis that can be used for this purpose is, obviously, always the

[27] See Article 2 of Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, in OJ L 424, 15.12.2020, p. 1–10.

[28] The suitability of Article 311 is also noted, albeit on the basis of somewhat different reasoning, by A. Nato, *Finanziare le politiche europee attraverso il debito comune UE*, cit., p. 285 ff.

same: namely Article 311 TFEU. The problem raised by this provision, however, is that it is not structurally suited to establishing a genuine supranational tax system.

The role played by the parliamentary assemblies, both European and national, in the procedure laid down by this provision is not, in fact, extended to the deliberative phase, but is confined solely to approving the resources decided upon by the Council. At this point, the question naturally arises as to whether the procedure laid down in the founding Treaty for introducing new own resources genuinely constitutes a suitable instrument for bringing about a structural change capable of laying the foundations for a European tax system[29]. The critical aspect, in fact, lies precisely in the absence of any genuine deliberative power vested in an assembly representative of European citizens.

It could even be argued that the mechanism provided for by this Treaty provision substantively violates the principle, recurrent in modern tax law systems, of "*no taxation without representation*", according to which only those freely elected by the people may introduce tax levies. This is a principle that originated with the English[30] constitution, which still constitutes the

[29] It is in fact debatable whether the procedure in question autonomously amounts to an amendment of the founding Treaty, or whether it is instead merely a supplementation or implementation of the Treaty rules. In the literature, see G. Isaac, *Les finances communautaires*, in «Revue trimestrielle de droit européen» (1980), p. 302 ff.; L.S. Rossi, *La dinamica interistituzionale nella definizione del bilancio comunitario*, in «Dir. Un. Eur.» (2006), p. 179 ff.; M. Dony, *La réforme des procédures financières au sein de l'Union européenne*, in M. Dony, L.S. Rossi (eds.), *Démocratie, coherénce et transparence: vers une constitiunalissation de l'Union euroéenne?*, Éditions de l'Université de Bruxelles, Brussels 2008, p. 89 ff.

[30] See M. Luciani, *L'equilibrio di bilancio e i principi fondamentali: la prospettiva del controllo di costituzionalità*, paper presented at the

foundation of every modern tax system[31] and is closely linked to the principle of democracy, which – as is well known – is one of the founding values of the European Union.

In this context, it is generally assumed that only a parliamentary assembly, democratically elected and politically accountable for its choices, may legitimately impose taxes. It is clear that, from this standpoint, a procedure in which elected assemblies intervene only to approve what has been decided elsewhere does not fully correspond to this widely shared idea of democracy.

It should also be added that the introduction of a fixed, generalised tax across all Member States might not comply with the principle of progressivity, which is usually enshrined in provisions of constitutional rank[32]. The levy on non-recycled plastic packaging waste (the only tax introduced so far expressly to guarantee the repayment of debts incurred to finance NGEU) is, in fact, imposed uniformly on all European citizens, regardless of income and irrespective of the economic and tax sys-

conference *Il principio dell'equilibrio di bilancio secondo la riforma costituzionale del 2012*, Constitutional Court, 22 November 2013, p. 2 (available *online*).

[31] In the Italian legal system, the principle of "*no taxation without representation*" is codified in Article 23 of the Constitution: see A. Fedele, *Art. 23*, in U. De Siervo, A. Fedele, *Rapporti civili*, in *Commentario della Costituzione*, eds. G. Branca, A. Pizzorusso, Zanichelli, Bologna 1978, p. 21 ff.

[32] The principle of progressive taxation, based on ability to pay, is expressly provided for, in the Italian legal system, by Article 53 of the Constitution. The literature generally accepts that it may be subject to exceptions in limited cases (G. Falsitta, *Il principio della capacità contributiva nel suo svolgimento storico fino all'Assemblea Costituente*, in «Riv. dir. trib.», 2013, p. 761 ff.; G. Melis, *Manuale di diritto tributario*, 5th ed., Giappichelli, Turin 2024, p. 45 ff.).

tem of the country in which they reside and pay taxes[33].

Lastly, it may also be inferred that this same levy ends up being poorly aligned with the principles that should govern any tax system. It is indeed evident that it does not serve allocative and redistributive purposes, except in an entirely indirect manner, through the mechanism of disbursements to the States under the NGEU plan. In tax law, however, an allocative purpose is understood to mean a redistribution of income in favour of the less well-off classes, through instruments of social assistance or public services[34]. On the contrary, the European plan has generated an economic stimulus that has probably benefited, in the first place, businesses and productive sectors. In other words, the redistribution of resources to the Member States through the disbursement programme does not correspond to the meaning that this term normally has in tax matters[35]. And this

[33] Although the levy on non-recycled plastic packaging waste is itself calculated statistically for each Member State, with that State's GNI share deducted, so as not to be excessively regressive. Moreover, the European Court of Auditors has recently found a discrepancy between the initial forecasts and the actual collection of the levy (see European Court of Auditors, Special Report No 16/2024, *Entrate dell'UE basate sui rifiuti di imballaggio di plastica non riciclati. Un esordio difficile ostacolato da dati che non sono sufficientemente comparabili o affidabili*, Luxembourg, 2024; the report is available at: https://www.eca.europa.eu).

[34] It is generally held that the distributive principle derives from the combined provisions of Articles 3 and 53 of the Constitution (see F. Gallo, *Ordinamento comunitario e principi costituzionali tributari*, in A. Di Pietro (ed.), *Per una Costituzione fiscale europea*, CEDAM, Padua 2008, p. 407 ff., 416 ff.).

[35] If it is assumed that the principles just outlined – in particular those of progressivity and redistribution – are fundamental to the Italian constitutional order, one could theoretically conclude that conferring a taxing power on the European institutions falls outside the scope of Article 11 of the Constitution (F. Salmoni, *Recovery Fund, condizionalità e debito pubblico. La grande illusione*, CEDAM, Padua 2021, p. 88).

change, precisely because of its inherently novel character, would probably have required an amendment to the founding Treaty, so as to give a more incisive role to the parliamentary assemblies. But, as already noted, this was not, in practice, a viable option given the tight timeframe for action.

5. The limits arising from Article 310 TFEU and from the principle of subsidiary liability of the Member States.

Even setting aside the intrinsic limits in the operation of Article 311, the greatest obstacle – from a legal standpoint – to using the NGEU method to finance ordinary public policies is Article 310 TFEU, which enshrines the principles of unity, universality and balance of the European budget[36].

In essence, three specific consequences flow from these principles. First, the funds raised through the issuance of bonds must have a specific purpose and must be allocated solely to that purpose. This principle, therefore, in itself excludes the possibility of incurring common debt to finance ordinary public policies.

Secondly, the principle of the annuality of the budget rules out the possibility that debts could be incurred and then repaid in subsequent years[37].

Thirdly, Article 310 requires that the budget be

[36] See A. Nato, *Finanziare le politiche europee attraverso il debito comune UE*, cit., p. 290 ff.

[37] Except where such sums are earmarked for a specific purpose: see, to this effect, also Article 224(1) of Regulation 2024/2509, laying down the financial rules applicable to the general budget of the Union: «1. The Commission shall implement a diversified funding strategy comprising the borrowing authorised under Article 5(1) of Decision (EU, Euratom) 2020/2053 and, except in duly justified cases, borrowing and debt-management operations to finance financial assistance programmes».

balanced, in the sense that obligations incurred in a given year cannot be repaid in a subsequent year, but the entire cycle must be completed within the same financial year.

Lastly, a major obstacle to the widespread acceptance of recourse to borrowing to finance ordinary European policies arises from the subsidiary liability that falls on the other Member States in the event that the Union does not have sufficient resources to repay maturing obligations.

Article 9(5)-(6) of Decision 2020/2053 does indeed provide for a kind of subsidiary liability in the event that a Member State is unable to repay the debt incurred at maturity, or in the event that the European budget lacks the resources to cover maturing obligations[38].

As the German Federal Constitutional Court pointed out in its decision of 6 December 2022 on own resources, the scenario of subsidiary liability of a Member State is strongly circumscribed by a series of concurrent factors: the specific circumstance for which the debt was incurred (namely, addressing the economic consequences of the crisis brought on by COVID); the fact that such liability is provided for only over a limited period; and, lastly, the fact that the amounts requested from an

[38] Article 9, Decision 2020/2053: «5. […] Where a Member State fails, in whole or in part, to honour a call in due time, or where it notifies the Commission that it will not be able to honour a call, the Commission shall, in order to cover the part corresponding to the Member State concerned, temporarily be entitled to make additional calls on the other Member States. Such calls shall be proportionate to the forecast of budget revenue of each of the other Member States. A Member State that has failed to honour a call shall remain subject to that obligation. 6. The total maximum annual amount of treasury resources that may be requested from a Member State under paragraph 5 shall in any circumstance be limited to its relative share based on GNI within the extraordinary and temporary increase in the own resources ceilings referred to in Article 6».

individual State cannot exceed a certain proportion of that State's GNI share. As a result, the German Federal Constitutional Court concluded that, in the case at hand, there was no violation of the clause on democratic self-determination and that public-spending decisions taken by the supranational institutions did not deprive the Bundestag of its power to decide on expenditure borne by German citizens[39].

In short, subsidiary liability for the scenario in which the Commission fails to obtain the necessary resources is closely linked to the specific circumstances for which the NGEU programme's debt was incurred: it follows – according to the German Federal Constitutional Court – that a mechanism of subsidiary liability on the part of the Member States can be established only where extraordinary and strictly specific circumstances exist. And that this is an arrangement that cannot, in practice, be relied upon to structurally finance European policies.

If this reasoning is accepted, it follows that the subsidiary liability of the Member States, for cases in which the Union's budget lacks sufficient resources, cannot be extended to the financing of permanent structural policies: precisely because this could give rise to a fiscal liability on the part of the Member States to which their respective national parliaments have never given their consent.

From other perspectives, Article 125, the *no-bail-out clause*, also appears to preclude structural recourse to borrowing[40]. According to the Court of Justice's interpre-

[39] Urteil vom 6. Dezember 2022, 2 BvR 547/21 and 798/21 (Judgment of 6 December 2022). The judgment is available on the Court's website: https://www.bundesverfassungsgericht.de.

[40] See S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*,

tation in the well-known *Pringle*[41] case, liability for debts incurred must remain specifically in the hands of the individual Member State. On that occasion, indeed, the Court clarified that Article 125 does not prohibit loans to a Member State, provided that the latter retains responsibility for repaying the sums used to finance its own economic policy measures. Should the financing of national policies through funds borrowed from the European institutions become structural, this would probably also entail a transfer of fiscal liability: in other words, it could happen that the public debt of a defaulting State would end up being shared among the other Member States. If the other Member States were called upon to permanently make up for any shortfall in funds on the part of the Member State that took out the loans, or to compensate for the Commission's own lack of liquidity, this would undermine the principle of State responsibility for debts incurred to finance its own economic policies. In this scenario, in fact, the other States would essentially become responsible for the budget of the defaulting country. In short, one of the cornerstones on which the whole of European economic and monetary policy rests would be lost.

Lastly, Article 123 TFEU also appears to rule out the possibility of introducing permanent financing using resources raised by the European institutions. This provision, as is well known, prohibits the ECB from financing sovereign debt, since the ECB, as is well known, cannot purchase debt securities on primary markets[42]. If the EU

cit., p. 79.

[41] Judgment of the Court of 27 November 2012, *Pringle v Government of Ireland and Others*, Case C-370/12, ECLI:EU:C:2012:756.

[42] It is Article 123 TFEU itself that establishes, albeit indirectly,

were to permanently resort to debt to finance its policies, the Union would remain exposed to market fluctuations, without a central bank able to intervene in a supporting role. Moreover, in such a scenario, intervention on secondary markets would not produce the same stabilising effect that it has had with regard to the Member States.

Indeed, perhaps, in the event of a shortfall of resources at Union level, the ECB could not intervene at all: because the Court, in the well-known *Gauweiler* judgment, made clear that monetary-policy operations are permissible only insofar as they pursue, precisely, a monetary-policy objective[43]; whereas, if the ECB were to purchase public securities issued by the European Commission, this might not even qualify as a monetary-policy measure, but rather as a measure of strict economic policy in favour of the supranational body itself.

6. So: what can be done in a situation of permanent crisis?

If the observations set out in the preceding paragraphs are correct, it must necessarily be concluded that the NGEU programme is not – at present – replicable on a large scale to finance European policies. Or, at least, that it is not replicable under current conditions.

It cannot, however, be ruled out that the new MFF

that the ECB and the ESCB may not carry out operations other than on secondary markets. See also Articles 18.1 and 21.1 of the Statute of the European System of Central Banks and of the European Central Bank, which exclude the possibility of their operating through purchases at the time of issuance. See, for instance, the decision establishing the PSPP programme also known as *Quantitative Easing*: Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme, (ECB/2015/10).

[43] Judgment of the Court of 16 June 2015, *Peter Gauweiler and Others v Deutscher Bundestag*, Case C-62/14, ECLI:EU:C:2015:400.

may provide for further recourse to forms of borrowing. An indication of this, ultimately, is provided by the Commission's own proposal for the new MFF (for the period 2028-2034): this proposal indeed provides for the establishment of the *Catalyst Europe* fund, which entails the issuance of bonds to raise funds that are disbursed to the Member States, predominantly as loans, for specific purposes, strictly limited in scope and time.

Therefore, from a legal standpoint, further recourse to borrowing is possible only on condition that this method of financing is provided for by the next Multiannual Financial Framework and that the issuance itself is aimed at financing a specific purpose. In this way, indeed, the requirements of Article 310(4) would be met; and the democratic deficit that is lost through recourse to an emergency instrument such as the aforementioned Article 122 would be recovered. This is because, under the procedure laid down for the approval of the Multiannual Financial Framework, pursuant to Article 312(2), the Council acts unanimously, after obtaining the consent of the European Parliament. In short: a mechanism similar to NGEU can be used only where a number of concurrent circumstances are present that, in substance, reproduce a situation analogous to that which arose when the programme was established. Specifically, it is necessary that a specific situation arise requiring emergency intervention; that this need stem from an extraordinary scenario, limited in time; that there be a decision on own resources establishing how the debts will be repaid; and, lastly, that the limits laid down by the Multiannual Financial Framework in force at the time when the decision is taken to address the situation in question through recourse to borrowing not be exceeded.

Cristina Fasone

The spillover of the "euro-national method of government" beyond the Recovery and Resilience Facility: Strenghts and weaknesses

Summary: 1. The Recovery and Resilience Facility as a benchmark? A procedural spillover. - 2. Strengths. - 3. Weaknesses. - 4. Concluding remarks.

1. The Recovery and Resilience Facility as a benchmark? A procedural spillover

The Recovery and Resilience Facility (RFF)[1] has been described by some as a potential watershed "Hamiltonian" moment for EU integration[2]. While not everyone agrees on the fact that the EU has "crossed the Rubicon" funding and spending mechanisms and on the desirability transformation it may entail[3], five years af-

[1] See Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 057 18.2.2021, p. 17.

[2] See, *e.g.*, A. Kaletsky, *Europe's Hamiltonian Moment*, in «Project Syndicate» (2020), available at: https://www.project-syndicate.org/commentary/frenchgerman-european-recovery-plan-proposal-byanatole-kaletsky-2020-05?barrier=accesspaylog

[3] See P. Lindseth, C. Fasone, *The European Union and the limits of supranational administrative governance: from the eurozone crisis to the response to coronavirus*, in «Revue française d'administration publique», 181 (2021), p. 859-882.

ter its launch it is difficult to deny the influence the RRF construction has exterted on other EU legal instruments, on a procedural level more than from a substantive perspective.

Indeed, the RRF is a one-off temporary fund worth over 700 billion euro, mobilized through EU common borrowing and redistributed mainly through grants and partly through loans to the Member States depending on the loss of GNI and the rise in the unemployment rate faced as a consequence of the pandemics[4]. Moreover, the RRF cuts across all public policies and sectors save for CFSP/CDSP and regulation of financial markets[5]. Since 2021 we have not witnessed the EU's setting up of another instrument comparable to the RRF in terms of funding and spending mechanisms and size[6].

Yet, we have experienced a spillover effect[7] of the RRF "method of government", described elsewhere as the "euro-national method of government" [8], on other

[4] For a detailed analysis of the RRF, see, amongst many, B. De Witte, *The European Union's COVID-19 recovery plan: The legal engineering of an economic policy shift*, in «Common Market Law Review», 58 (2021), p. 635-682; and F. Fabbrini, *The Legal Architecture of the Economic Responses to COVID-19: EMU Beyond the Pandemic*, in «Journal of Common Market Studies», 60 (2022), p. 186–203.

[5] See P. Leino-Sandberg, T. Raunio, *From Bad to Worse: The Continuous Dilemma Facing Parliaments in European Economic and Fiscal Governance*, in «Government and Opposition», 60 (2025), p. 86-103.

[6] See C. Wutscher, *When Size Matters: On the Legality of the Recovery Instrument "Next Generation EU" in Light of its Unprecedented Volume, ed. R. Weber, The Financial Constitution of European Integration. Follow the Money?*, Hart Publishing, Oxford 2023, p. 131.

[7] On the spillover effects in the context of the European integration process, see in detail E.B. Haas, *The uniting of Europe: political, social, and economical forces, 1950-1957 (1958)*, Notre Dame University Press, Notre Dame 2004.

[8] See, in particular, N. Lupo, *Caratteristiche (e presupposti) del nuovo "metodo di governo" delineato dal Next Generation EU*, in «Diritto

instruments and fields of EU law, primarily for the procedures to adop, implement and change the content of the national plans. This process has not taken place as a mere "transplant" of a model[9], but it has occurred with some fine-tuning and adjustment justified by the policy area.

The foundational elements of the "euro-national method of government" can be identified in: 1) the adoption (or revision) of performance-based medium-term Plans including reforms and investments, of which the National Recovery and Resilience Plans (NRRPs) are a model; 2) the compliance by these domestic plans with supranational priorities (e.g. environmental transition, energy autonomy, sustainable social policies) and the operation of various regimes of spending conditionality (e.g. macroeconomic, thematic, rule of law conditionality); 3) a continuous bi-lateral dialogue between domestic institutions and the European Commission on framing, amending and implementing the plans[10]. Beyond these crucial elements, other features of the RRF construction have not spread consistently and in a systematic manner to further EU legal instruments adopted since 2021. For instance, the resort to common borrowing for funding applies to some tools only (e.g. the Ukraine Facility) as well as the extensive interpretation of the legal bases, in particular of Article 122 TFEU and of Article 175(3)

e società», 3(2025), p. 557-579 with regard to the preference for the term "government" instead of "governance".

[9] See, famously, A. Watson, *Legal Transplants. An Approach to Comparative Law*, University Press of Virginia, Charlottesville 1974; and now M. Siems, *Legal Transplants: An Interdisciplinary Approach*, Oxford University Press, Oxford 2026, p. 133-178.

[10] For the analysis of each of these foundational dimensions, see extensively N. Lupo, *Dinamiche delle fonti e metodi di governo tra Unione europea e Italia*, Editoriale Scientifica, Naples 2026, p. 75 ff.

TFEU, which has been considered controversial by both commentators[11] and institutions, like the European Parliament on the SAFE Regulation[12].

Looking at the three foundational elements of the "euro-national method of government" this contribution aims to detect and map them into other and more recent (compared to the RRF) policy instruments adopted by the EU – notably the REPowerEU Regulation, the reform of the Common Agricultural Policy (CAP), the Social Climate Fund, the Stability and Growth Pact (SGP), defence industry measures and, in prospect, cohesion policy under the new Multiannual Financial Framework (2028-2034) that is currently being negotiated.[13] Most important, it also critically considers the strengths and weaknesses of such a method of government. In terms of the strengths, extensive multiannual planning, the focus on performance, national ownership of strategic policy choices and redistribution of resources in line with common priorities can be highlighted. As to the weaknesses, instead, the "euro-national method of government" blurs the lines of the competence arrangement between the EU and Member States, increases the use of broad political discretion by the Commission, which is not balanced by

[11] See P. Leino-Sandberg, *The secret life of the EU treaties: NGEU and the politics of the EU's 'living constitution'*, in «European Law Open», first view, 2026, p. 1-23.

[12] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OJ L 2025/1106, 28.5, 2025 and the action for annulment brought by the European Parliament against the SAFE Regulation: case C-560/25, *European Parliament v. Council*, 20 August 2025.

[13] The present contribution has been finalised in May 2026.

effective democratic accountability mechanisms, and is overly focused on bilateralism – that is on the interaction of each national government with the Commission – at the expenses of collective forms of decision-making that could take the proper fulfilment of European public goods into account[14].

Thus, rather than reviewing the mechanic and dynamics of the RRF[15], the contribution engages with the positive and negative spillover effects of the "euro-national method of government" stemming from the RRF, and circulated on various grounds to other legal measures passed by the EU since then, to conclude on how such a method can be improved and adjusted.

2. Strengths

2.1. Planning

The insistence of the "euro-national method of government" on the adoption of multiannual domestic plans can be viewed at first glance as beneficial for programming investments and reforms in the medium-term, for ensuring certainty and predictability to the government's action and to foster democratic control on pre-determined milestones and targets to be implemented according to a specific timeframe. It is also a way to counter the overarching trend of the last few decades of constantly running after emergency and urgency, crisis after crisis, and to foster the return of the State[16], of the

[14] On the idea of European public goods, see M. Buti, G. Papacostantinou, *European Public Goods: How can we supply more?*, in «Luiss School of European Political Economy – Policy Brief», 3 (2022), p. 1-9.

[15] See, in detail, G. Contaldi in this volume.

[16] See e.g., G. Amato, *Bentornato Stato, ma*, Il Mulino, Bologna 2022 and on the EU level of government, P. Dermine, *The planning meth-*

public authorities in general, in orchestrating and guiding the development of the economic sector.

For example, the RePowerEU Regulation, no. 2023/435, aimed to increase the EU autonomy and security in the energy production, following the start of the war in Ukraine, directly amends the RRF Regulation and requires the insertion of an *ad hoc* RePowerEU chapter into the existing NRRPs, which was completed by the end of 2023[17]. Thus it is an instrument reshaping the NRRPs' contents from within.

Following the reform of the Common Agricultural Policy (CAP)[18], the revised legislation foresees the adoption by the Member States of CAP national strategic plans (2023-2027) to include investments and reforms. Soon after, EU Regulation 2023/995, establishing the European Social Climate Fund, effective as of 2026 (till 2032), mandated the drafting by the Member States of Social Climate Plans to address the social implications of the green transition. These Plans must include "measures and investments to address the impact of carbon pricing on vulnerable households, vulnerable micro-enterprises and vulnerable transport users in order to ensure affordable heating, cooling and mobility, while

od: An inquiry into the constitutional ramifications of a new governance technique, in «Common market law review», 61 (2024), p. 959-992.

[17] M. De Bellis, *The NGEU and the Energy Crisis: The Shifting Boundaries of Conditionality*, in «European Papers», 9 (2024), p. 1135 ff.

[18] See Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common argicultural policy (CAP strategic plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agrocultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435, 6.12.2021, p. 1-186.

accompanying and accelerating necessary measures to meet the climate targets of the Union"[19].

Despite being directed toward a third country, Ukraine, to contribute through financial assistance to the repair, recovery and reconstruction of the country in the aftermath of the war with Russia, the Ukraine Facility (2024-2027), requires the adoption of a Framework Agreement between this State and the EU[20]. In addition to this, the Ukrainian authorities had to submit a Plan, delivered in March 2024 indeed, to detail the structural reforms and investments they intend to promote using EU money. Likewise the reform of the Stability and Growth Pact (SGP) in 2024 adopted the same planning logic, although it does not entail the disbursement of EU resources, but rather constrain national expenditures and debt[21]. The revised SGP is anchored to a medium-term perspective with a forward-looking approach[22], including structural reforms and investments to promote counter-cyclical fiscal policies, and to adopt debt sustainability and

[19] See Articles 6-8 of EU Regulation 2023/955.

[20] See Article 9, Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024 establishing the Ukraine Facility, OJ L 2024/792, 29.2.2024.

[21] See Regulation (EU) 2024/1263 of the European Parliament and the Council on multilateral budgetary surveillance; Council Regulation (EU) 2024/1264 of 29 April 2024 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ L, 2024/1264, 30.4.2024; Council Directive (EU) 2024/1265 of 29 April 2024 amending Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, OJ L, 2024/1265, 30.4.2024

[22] While the old SGP was still suspended and its revision was pending, the RRF "implementation" was inserted, without any *ad hoc* change in EU secondary law, into the European Semester: see B. Vanhercke, A. Verdun, *The European Semester as Goldilocks: Macroeconomic Policy Coordination and the Recovery and Resilience Facility*, in «Journal of Common Market Studies», 60 (2022), p. 204 ff.

a multiannual net expenditure path as the main standards. The Commission's reference trajectory to Member States with a debt/GDP ratio beyond 60% covers a four-year period, which can be extended for up to three more years, where the country, as in the end happened for all of them in 2024, commits to implement a program of investments and reforms (once again, like the NRRPs), which balances through growth the longer net expenditure path.

Following the deterioration of the geopolitical situation and the publication of the "ReArm" Europe Plan by the Commission[23], the so-called SAFE Regulation, no. 2025/1116, adopted by the Council in May 2025, was expected to provide a boost for defence expenditures stimulating the growth of the related industry. In fact, SAFE serves to finance joint procurement between EU countries, EEA-EFTA countries and Ukraine "to carry out urgent and major public investments in support of the European defence industry in response to the current crisis situation" (Article 1). In order to benefit from SAFE the interested Member States had to submit to the Commission a "duly reasoned and substantiated" European defence industry investment plan by 30 November 2025 detailing the defence-related products to be purchased, the planned activities and the estimated expenditures, the involvement of Ukraine, if any, in the measures to be adopted and how compliance with the EU procurement rules is ensured (Article 7).

Last but no least, as the process is still ongoing,

[23] European Commission, White Paper for European Defence – Readiness 2030, March 2025.

one of the Commission proposals within the new MFF 2028-2034, COM(2025) 565 final, if approved as it is the new MFF 2028-2034, published in July 2025[24], if approved as it is, may trigger a profound change, akin the RRF model, in the way the multiannual planning for the expenditure of cohesion policy funds has been carried out until now. To date cohesion funds are governed via Operational Programmes by Member States and their Partnership Agreements with the Commission. The pending proposal, instead, envisions the submission by each EU country of a single "national and regional partnership plan" encompassing all the policy areas comprised under the new Heading 1 of the prospective new MFF, "Economic, social, territorial cohesion, CAP, fisheries and maritime affairs, prosperity and security", thus from structural funds to funds for migration management[25].

The spreading of this "planning method", as it has been described[26], combines a medium-term projection for programming public policies with a sufficient level of flexibility connected to the possibility to amend these plans. The NRRPs were amended multiple times, starting from the insertion of the RePowerEU chapter,

[24] European Commission, *Communication on A dynamic EU Budget for the priorities of the future - The Multiannual Financial Framework 2028-2034*, COM (2025) 570 final/2, and *Proposal for a Regulation of the European Parliament and the Council establishing the European Fund for economic, social and territorial cohesion,agriculture and rural, fisheries and maritime, prosperity and security for the period 2028-2034 and amending Regulation (EU)* 2023/955 and Regulation (EU, Euratom) 2024/2509, both published on 16 July 2025.

[25] See C. Fasone, *La proposta di Quadro finanziario pluriennale UE 2028-2034, tra continuità e innovazione*, in «Federalismi.it», XXXIII (2025), p. 5 ff.

[26] See P. Dermine, *The planning method*, cit., p. 959 ff.

but the opportunity to change the other plans, following the spillover of the "euro-national method of government" is very concrete and feasible. In the case of the medium-term fiscal structural plans, under the new SGP, they can even be revised in case of a newly appointed government, thus taking into account the development of electoral or political cycles, and if there are objective circumstances preventing the implementation – provided that the present plan has not entered its last year of enforcement[27].

The planning, however, triggers important issues of coordination, both between the various plans required under EU law within the same Member State – all of them focusing on investments and reforms – as well as across the Member States, at supranational level, to make sure that the EU priorities and objectives are fulfilled. The risk would be, otherwise, fragmentation of the planning depending on the public policy at stake and the lack of a coherent cross-national response to common challenges.

2.2. Focus on performance

Another important novelty of the "euro-national method of government" is its insistence on the fulfilment of milestones and targets connected to investments and reforms the various plans envisage. This emphasises performance over costs of the projects implemented, which so far has been the traditional method to assess Member States' expenditures under cohesion policy: there each EU country gets reimbursed depending on the costs promised and incurred for carrying out the policy inter-

[27] See Article 15, paras 1 and 2, Regulation (EU) 2024/1263.

vention; under the "euro-national method of government", instead, in principle the State is paid or rewarded by the EU for achieving the targeted objectives according to the national plan agreed with the Commission. The achievement of milestones and targets is validated by the Commission in the framework of a continuous bi-lateral exchange process, carried out both at administrative and political level, with the national governments. The involvement of the Council varies. For example, the CAP strategic plans and the European social climate plans are approved by the Commission only through an implementing decision. The medium-term fiscal-structural plans, under the SGP, are endorsed through a recommendation by the Council upon proposal by the Commission and the defence industry investment plans, according to the SAFE Regulation, as well as the Ukrainian Plan in relation to the Ukraine Facility, are approved by the Council via implementing decisions[28]. In general, the more the subject-matter at stake relates to a very integrated EU policy fields, like CAP and environment, the more the dominus appears to the Commission. By contrast, where the area is less integrated, like with economic policy coordination or defence, there is at least a check of the Council. In any event, the Commission is the main player, steering the process, asking the national government for further information and clarification, if needed. It also enjoys a significant level of discretion, as it will be further explained in section 3, on the very in-

[28] Article 8, Regulation EU 2025/1116 providing for the approval of the plans by the Council by 30 June 2027. For each national plan adopted a loan agreement and detailed operation arrangements follow, not very differently from what occurred under the RRF.

terpretation of the milestones and targets. Thus, it is able to give political directions[29], in agreement with national authorities, on the implementation of the plans.

The use of the economic leverage is key to understand the new focus on performance: "carrots and sticks" are used by the Commission to speed up or slow down the payment process as this is conditional upon meeting the expected objectives. The extensive use of various conditionality instruments in the implementation of these plans, through a mechanism that has been labelled as "integration through funding"[30], supplement and complement traditional rule-making.

For example, on the CAP strategic plans the payments are authorized by the Commission providing that certain labour rights are guaranteed, requiring that at least 3% of the direct payments budget is directed toward young farmers and the promotion of gender equality[31]. Moreover, conditions are set also for the final beneficiaries, the farmers, who must assure, individually, that at least 3% of the arable land is dedicated to biodiversity and non-productive elements[32].

[29] S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, Editoriale Scientifica, Naples 2026, p. 353-359.

[30] B. De Witte, *Integration through Funding: the Union's Finances as Policy Instrument, in The Financial Constitution of European Integration. Follow the Money?*, edited by R. Weber, Hart Publishing, Oxford 2023, p. 116-131; and *Governing through funding in the EU*, edited by L. Tsourdi, M. van der Sluis, Cambridge University Press, Cambridge, forthcoming.

[31] In terms of EU priorities the Regulation requires that 35% of funds are allocated to measures to support climate, biodiversity, environment and animal welfare and 25% of the budget for direct payments has to incentivize eco-schemes, i.e. incentives for climate-and environment-friendly farming practices.

[32] See Article 12, 13 and 14, Regulation (EU) 2021/2115.

For the medium-term fiscal-structural plans, for example, it is required to reducing the government expenditure-to-GDP ratio or increasing the government revenue-to-GDP ratio, to comply with the relevant country-specific recommendations, but also to fulfil the climate objectives set out in Regulation (EU) 2021/1119, foster social and economic resilience, including the European Pillar of Social Rights, energy security, and where necessary, the build-up of defence capabilities.[33]

However, due attention should be paid to the final outcomes effectively achieved through the plans (e.g. the actual contribution to the green and the digital transition triggered by that specific milestone compared to the status quo), not to the outputs only, e.g. on CAP strategic plans the absolute number of women involved in farming. The shift from outputs to outcomes, which is not very straightforward in practice,[34] and an assessment of the costs of the public intervention would make the performance-oriented approach really valuable[35].

2.3. National ownership of strategic choices

A frequent narrative of the EU integration process has highlighted the "external constraints" that supranational institutions have put on national policy-making,

[33] See, in detail, Articles 13 and 14, Regulation (EU) 2024/1263.

[34] See R. Beetsma, M. Buti, *Designing conditionality in the supply of European public goods*, in «Bruegel Working Paper» 20 (2024), p. 1 ff.; and F. Fabbrini, *The recovery and resilience facility as a new legal technology of European governance*, in «Journal of European Integration», 47 (2025), p. 85-103.

[35] See, *e.g.* European Court of Auditors, *Performance-orientation, accountability and transparency – lessons to be learned from the weaknesses of the RRF - Review* no. 02, 2025, https://www.eca.europa.eu/ECAPublications/RV-2025-02/RV-2025-02_EN.pdf

especially in the economic domain and since the Maastricht Treaty[36]. The supranational reaction to the Euro Area crisis has further seconded this view, due to the use (and abuse) of strict conditionality and the top-down approach employed in the macro-financial assistance programmes[37]. The debtor countries[38], also due to the deviation from responsible fiscal policies, were imposed to implement a series of reforms and expenditures cuts in exchange for money[39]. The limitation of sovereign authority this entailed and the constraints on autono-

[36] Such a narrative has been used expecially by Eurosceptic commentators, see P. Castillo-Ortiz, G. Martinico, *The Eurosceptic Mobilization of Constitutional Law*, Oxford University Press, Oxford 2026, p. 24-45, but has been channeled also beyond that, to become somehow mainstream. See, with significant variations in the approach: G. Carli, *Cinquant'anni di vita italiana*, Laterza, Bari 1993, p. 3 ff.; R. Gualtieri, *L'Europa come vincolo esterno*, in *L'Italia nella costruzione europea. Un bilancio storico* (1957-2007), edited by P. Craveri and A. Varsori, Franco Angeli, Milan 2009; E. Diodato, *Il vincolo esterno. Le ragioni della debolezza italiana*, Mimesis, Sesto San Giovanni 2014; A. Somma, *Sovranismi. Stato, popolo e conflitto sociale*, DeriveApprodi, Rome 2018, p. 94-101; M. Degni, P. De Ioanna, *Il vincolo stupido. Europa e Italia nella crisi dell'euro*, Castelvecchi, Rome 2019. See, critically, L. Pierdominici, *Teoria e ideologia del vincolo esterno: è predicabile un suo significato costituzionale?*, in *Miserie del sovranismo giuridico. Il valore aggiunto del costituzionalismo europeo*, edited by G. Martinico, L. Pierdominici, Castelvecchi, Rome 2023, p. 109-127.

[37] On strict conditionality see M. Ioannidis, *Europe's new transformations: How the EU economic constitution changed during the Eurozone crisis*, in «Common Market Law Review», 53 (2016), p. 1237-1282.

[38] Of course, the situation of Greece and Portugal was different from that in Spain and Cyprus, where the crisis affected primarily the banking sector, and from Ireland, which had pursed fiscal policies limiting both revenues and expenditures in previous years. See P. Faraguna, C. Fasone, and D. Tega, *Grecia, Irlanda, Portogallo e Spagna dieci anni dopo. Introduzione a uno studio dell'eurocrisi nella prospettiva costituzionalistica*, in "Quaderni costituzionali", 1 (2019), p. 199-200.

[39] For a comparative analysis, see M. Markakis, *Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance*, Oxford University Press, Oxford 2020, p. 105 ff.

mous decision-making fed into this debate of EU-driven reforms forcely accepted by the bailout countries. The response to the pandemic through the RRF tried to move away from this scheme, prompting to procedures and policy choices that were definitely more fine-tuned to the national needs. In some cases, like it was for the NRRPs, the adoption of the national plans is not mandated by EU law, but is voluntary upon Member States' choice. For instance, this applies to the defence industry and investment plans under the SAFE Regulation as well as to the Ukrainian Plan, although the adoption of this instrument was the key reason why the Ukraine Facility was set up.

Where the adoption of the plans is compulsory under the "euro-national method of government", the Member States are able to craft it in such a manner and to include the milestones and targets they consider necessary, though in line with the common overarching priorities identified by the EU. In consultation with the Commission, each country sets its own indicators and the timeline for fulfilling the objectives, according to its own agenda (and within the timespan foreseen by the EU). Indeed, not all Member States are alike and they have more or less need of EU money for investments and reforms in a specific policy field.

The "euro-national method of government" is directed to all EU countries – unlike the most known forms of differentiated integration, like enhanced cooperation, opt-outs etc. – but allows for flexibility in the specific contents of the national plans. This is particularly clear in the framework of the revised SGP where the insistence on numerical fiscal rules has been replaced by the

net expenditure path relevant to every Member State and also dependent on the level of debt sustainability[40].

The fine-tuning of the contents of the domestic plans, especially if accompanied by a drafting and implementing process that involves the national parliament, regional and local authorities[41], trade unions and the relevant stakeholders allows to build a sense of national ownership of those plans that was missing during the Euro Area crisis. The perceived national ownership of the plans financed or rewarded by the EU strips the Eurosceptic narrative of its bite as domestic authorities enjoy considerable leeway in the decision-making and implementation.

2.4. Redistribution of resources

Most of the new instruments established after the RRF entails the disbursement of EU money from the supranational level of government to the Member States. Although they do not mobilise grants under a direct management arrangement as the RRF does, the effects of this flow of money, if effectively used at national level, can be redistributive. Such an objective is an important one considering the traditional limited capacity of the EU budget to alleviate cross-country and domes-

[40] Due to Protocol no. 12 to the Treaty of Lisbon and the debt and deficit safeguard clauses (Articles 7 and 8 of EU Regulation 2024/1263), numerical fiscal rules have not disappeared. They co-exist with the new performance indicators, which however are those effectively enforced by the Commission. See M. Dani, *La riforma della governance economica europea nella prospettiva del diritto costituzionale*, in «Quaderni costituzionali», 3 (2022), p. 630-634.

[41] Due to domestic federal arrangements, for Belgium two Plans were submitted, by the Flanders and by Wallonia.

tic asymmetries in terms of wealth and development[42]. RePowerEU was financed partly with unused RRF funds (from the loan component) and partly with new funds, but the EU did not resort to borrowing. The CAP, the European Social Climate Fund, and cohesion policy are financed through EU own resources and they pursue a clear redistributive effort. This is somehow inherent in the design of CAP and cohesion policy, both instrumental to fill the gaps across the Member States in terms of protection and enhancement of rural areas in Europe and of regional development.[43] The intent to redistribute resources is patent as well with regard to the Social Climate Fund: Annex I to Regulation 2025/955 includes among the criteria to allocate the resources across the Member States the "population at risk of poverty living in rural areas (2019); carbon dioxide emissions from household fuel use (average for 2016–2018); percentage of households at risk of poverty with overdue utility bills (2019)".

For different reasons, the transfer of money from the EU to Ukraine under the Ukraine Facility is precisely directed to ensure macro-financial assistance to the country, whereas the redistributive capacity of SAFE is less clear. Here the aim to financing joint procurement between EU countries, EEA-EFTA countries and Ukraine to carry out common investments in support of the European defence industry may not necessarily prioritise the resources for the areas lagging behind in

[42] See C. Fasone, *EU Budget and Spending Powers*, in *EU Fiscal Federalism: Past, Present, Future*, edited by A. Hinarejos, R. Schütze, Oxford University Press, Oxford 2023, p. 233-262.

[43] See Articles 174 and 175 TFEU.

terms of defence capacity. Most important, SAFE is a one off-EU budget loan instrument financed through EU borrowing and worth 150 billion euro: the instrument is rather modest in terms of envelope vis-à-vis the number of beneficiary countries (also beyond the EU Member States) and is meant primarily to stimulate national spending[44], besides the obligation to repay the debt for the countries that have decide to subscribe to this fund[45].

Lacking any immediate financial resources guaranteed to the Member States, unlike the RRF and the other instruments reviewed in this contribution, there is no redistributive effect envisaged by the revised SGP. The potential three-year extension of the net expenditure path for financing a multiannual programme of investments and structural reforms is the only "political" incentive to the compliance with the fiscal rules. Besides postponing the duration of the reference trajectory, no forms of positive conditionality can be detected. The funds at stake to be used are national. Rather than offering EU resources, conditionality here can be just used to freeze funds for a Member State. The "sticks" are thus much more visible than the "carrots".

[44] See M. Dani, A.J. Menéndez, *The EU's (not so) cheap talk on defence*, in «European Law Open», 4 (2025), p. 425 ff. Temporarily SAFE will also finance defence-related procurement activities in individual Member States: see Article 1, EU Regulation 2025/116.

[45] At the time of writing, 19 Member States have asked to make use of the fund: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Spain. The expected allocation of the resources across the recipient countries is available here: https://defence-industry-space.ec.europa.eu/eu-defence-industry/safe-security-action-europe_en.

3. Weaknesses

3.1. Questioning the competence arrangement

Besides the advantanges that the "euro-national method of government" brings to the fore there are also a number of shortfalls that need to be taken into account if such a method of government spreads further.

A first challenge relates to the competence arrangement and power balance between the Member States and the EU. It is clear that the emphasis on performance indicators[46], investments and structural reforms somehow trumps any orthodox reading of the principle of conferral of powers (Article 4, para 1 TEU) as well as the clear identification of the competent authority to act, being the process based on a constant negotiation between national and EU institutions. Thus it is not clear how responsibilities are allocated beyond the statics of the lists of EU competences (Articles from 3 to 6 TFEU).

In fields that are particularly integrated, like the CAP, the provisions for national strategic plans (under the new MFF proposal, of comprehensive regional and national partnership plans[47]), if justified by the need to

[46] On the limits of the performance-based approach see European Court of Auditors, *Performance-orientation, accountability and transparency*, cit., p. 24 ff. See also the attempt to fine-tune it contained in the new MFF 2028-2034 package: Proposal for a Regulation of the European Parliament and of the Council establishing a budget expenditure tracking and performance framework and other horizontal rules for the Union programmes and activities, COM (2025) 545 (1), 17 July 2025.

[47] In this case, already in the first assessments of the new MFF proposal doubts were casted on the desirability of integrating several successful programmes, with different aims, scope of EU action and falling under diverse EU competences, into one national plan per Member State. See Committee of the Regions, *Resolution on the Multiannual Financial Framework 2028-2034*, 168th plenary session, 15 October 2025, adopted by unanimity. See also European Parliament, *Interim report on the proposal*

respond to domestic concerns, perhaps appears to endorse a "return of the Nation State"[48] into one of the most supranational policy areas.

By contrast, the so-called SAFE Regulation intervenes in between defence and industry policy and was engeneered as a financial assistance mechanism as for its basis. It was adopted by the Council under Article 122 TFEU (both paragraphs). The use of this legal basis has been strongly contested: it recalls an emergency competence to bring a fundamental change in the EU defence architecture and it completely bypasses the European Parliament (EP)[49]. Article 122 TFEU is seen as a counterweight or a complement to the no bailout clause[50], but its two paragraphs, often used in combination as a legal basis as it was for the EURI Regulation[51] and now for SAFE, in principle are meant to address different issues[52].

for the multiannual financial framework for 2028-2034, 2025/0571R(APP), 6 May 2026.

[48] See also P. Dermine, *The planning method: An inquiry into the constitutional ramifications of a new governance technique*, cit., p. 969, ft 62.

[49] See, again, *Parliament v. Council*, Case C-560/25, cit. Cf M. Leson, *Moving towards a SAFE Defense Policy in Europe: Emergency Powers Move into the Realm of Security and Defense Policy*, in «VerfBlog», 2025/9/12, https://verfassungsblog.de/safeact-eu-defense/.

[50] J.V. Louis, *Guest Editorial: The no-bail-out clause and rescue packages*, in «Common Market Law Review», 47 (2010), p. 983.

[51] See Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument (EURI) to support the recovery in the aftermath of the COVID-19 crisis, OJ L 433I, 22.12.2020, p. 23–27. On the use of Article 122 TFEU as part of the legal construction paving the way to the Next Generation EU, see Legal Service of the Council of the EU, *Opinion of the Legal Service on Proposals on Next Generation EU*, 9062/20, 2020.

[52] This is particularly emphasised by B. De Witte, *Guest Editorial. EU emergency law and its impact on the EU legal order*, in «Common Market Law Review», 59 (2022), p. 8; M. Chamon, *The use of Article 122 TFEU - Institutional implications and impact on democratic accountability*, Study commissioned by the AFCO Committee, Brussels, European Parliament, 2023, p. 19.

Article 122(1) TFEU is an exceptional provision, a rather generic clause, with a solidaristic intent[53], while Article 122(2) TFEU is a genuine emergency clause. The latter, for good or for bad, has become instrumental to provide temporary financial assistance to Member States, including both grants and loans. Indeed, Article 122(2) TFEU is a more specific legal basis with a narrower focus. It refers to a Member State that "is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control", paving the way to Union financial assistance to the Member State concerned under "certain conditions". The choice for a generic reference to Article 122 TFEU[54] appears as a pragmatic determination by the Commission (and the Council) to endorse a purposive reading of the Union financial assistance capacity, also beyond the

[53] It should be recalled that in CJEU, *Thomas Pringle v Government of Ireland and Others*, Case C-370/12, 27 November 2012, the Court of Justice affirmed that "Article 122(1) TFEU does not constitute an appropriate legal basis for any financial assistance from the European Union to Member States who are experiencing, or are threatened by, severe financing problems (paragraph 116)". In 2016 it was used to establish a permanent EU program for emergency financial support to EU countries hit by natural or human disasters: Council Regulation (EU) 2016/369 on the provision of emergency support within the Union [2016] OJ L70/1. According to the clause, "Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, *in a spirit of solidarity between Member States*, upon the measures appropriate to the economic situation, in particular *if severe difficulties arise in the supply of certain products, notably in the area of energy* (emphasis added)". See M. Chamon, *The non-emergency economic policy competence in Article 122(1) TFEU*, in «Common Market Law Review», 61 (2024), p. 1501, stressing the non-emergential nature of the clause.

[54] The same German Constitutional Court showed "suspicion" toward the use of Art. 122 TFEU for the EURI Regulation in the Judgment of the Second Senate of 6 December 2022 – 2 BvR 547/21, paragraphs 182-185. See S. Grund, A. Steinbach, *Debt-financing the EU*, in «Common Market Law Review», 61 (2024), p. 1002.

crisis and targeting all EU Member States. It has been turned from an emergency legal basis to an ordinary instrument, to be routinely used.

The pursuing of the "euro-national method of government", thus, can go in both directions – either more EU interfering with national competences (as for SAFE) or more national interference with the EU sphere of action (as for CAP), depending on the cases – but it certainly contributes to a degree of confusion between supranational and Member States' competences and responsibilities.[55] It also risks feeding uncertainty and a "blaming game" on who holds the authority and the material capacity to fulfil the expected objectives.

Moreover, to implicitely respond to the allegation of overly extensive reading of one single legal basis, some of the measures adopted under the "euro-national method of government" resort to a combination of multiple legal bases at the same time, which is ambiguous from the perspective of understanding which authority between the EU and the Member States is ultimately competent to act.

For example, besides Article 175(3) TFEU, the REPowerEU Regulation is also anchored to other Treaty provisions ranging from those relevant to structural funds (Article 177(1) TFEU) and environmental protection and the prudent and rational use of natural resources (Article 192(1) TFEU), to the exploitation of energy resources (Article 194(2) TFEU) and the implementation of the EU budget (Article 322(1) TFEU). As antic-

[55] See S. Garben, *The Competence Question in the (Con)Federal European Union*, Oxford University Press, Oxford 2025, p. 341 ff.

ipated, the rich set of legal bases used here is not only dependent on the particular reach of REPowerEU, but could also be seen as a response to the criticism raised by some against the RRF Regulation's Treaty anchoring and the overstretching of cohesion policy.[56] Likewise, the legal basis of the European Social Climate Fund is the result of a patchwork of Treaty provisions ranging from environmental protection (Article 192(1) TFEU), energy resources (Article 194(2) TFEU), implementation of the EU budget (Article 322(1) TFEU) to transport (Article 91(1) TFEU), in this case.

All these elements together can point to the sustainability of the judicial review of the relevant EU decisions under the new "method of government": insofar as the overlapping of competences is not fixed politically, through multilevel bargaining, it is not clear what the attitude of the CJEU would be in case of more intense litigation. The large resort to soft law mechanisms like conditionality as a general tool to govern the EU has not yet triggered a serious reflection on its long-term implications, its legal limits, and the level of judicial scrutiny feasible.[57].

3.2. (Too) Wide political discretion

The "cash for reform" approach embedded in the "euro-national method of government" leaves open a

[56] P. Lindseth, P. Leino-Sandberg, *Crisis, Reinterpretation, and the Rule of Law: Repurposing 'Cohesion' as a General EU Spending Power*, in «Hague Journal on the rule of law», 16 (2024), p. 587 ff.

[57] A. Baraggia, M. Bonelli, *Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges*, in «German Law Journal», 23 (2022), p. 151 ff.; V. Viță, *(Un)Constitutional Conditions. A European Perspective*, in *New Frontiers of EU Funding - Law, Policy, Politics*, edited by J. Scott, C. Kilpatrick, Oxford University Press, Oxford 2024, p. 109 ff.

number of questions regarding the limits of the decision-making authority of the Commission, the engine behind the approval and the monitoring on the implementation of the many plans adopted.

The deployment of multiple mechanisms of conditional spending in the enforcement of a single plan – on the milestones and targets connected to the specific commitments of Member States of structural reforms and investments, on macroeconomic indicators, on the green and digital transition, on the horizontal enabling clauses under the Common Provisions' Regulation,[58] and on the rule of law[59] – and the pervasiveness of conditionality allow significant leeway to the Commission in the interpretation of those conditions.

As conditional spending moves away from the traditional top-down command-and-control type of decision-making, the contours of the authorative powers tend to become blurred. Although the Commission has tried to come up with indicators and scoreboards to qualify and quantify the level of compliance or the margins of deviation from the conditions and, thus, the extent to which a certain payment can be fulfilled or funds must be suspended, their interpretation by the

[58] See Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, PE/47/2021/INIT, OJ L 231, 30.6.2021, p. 159–706.

[59] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1–10.

Commission in practice allows for great flexibility; a flexibility that has been endorsed to excuse and rarely to "sanction" Member States.

The adoption and the disbursement of funds on the NRRPs has provided a clear example of the discretion the Commission has, using the economic leverage strategically in support of the euro-friendly Polish Government led by Tusk since the end of 2023 to provide a very generous interpretation on the fulfilment of milestones and targets, for example on judicial reforms, even when the inter-institutional tensions with the Presidency of the Republic did not allow to move the reforms further.

The SGP is another field where the flexible interpretation of the fiscal rules has become a mantra, well before its reform in 2024[60]. No Member States has ever be sanctioned as an outcome of the excessive deficit procedure and the repeated activation of the escape clause, due to contextual occurrences, creates uncertainty. As soon as the latest revision of the SGP entered into force, just some months after, the Commission authorized the use of the escape clause to favor defence spending and so far a majority of Member States have taken advantage of it[61].

The situation is further complicated by the circumstance that for the implementation of the medium-term fiscal-structural plans, while the old indicators – like the output gap and the structural balance – are

[60] See, under the Jucker Commission, European Commission, *Communication on Making the best use of the flexibility within the existing rules of the Stability and Growth Pact*, COM (2015) 12 final, 13 January 2015.

[61] Austria, Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, Croatia, Latvia, Lithuania, Hungary, Poland, Portugal, Slovenia, Slovakia, Spain and Finland.

replaced by debt sustainability and the net expenditure path[62], the debt/GDP ratio (60%) and deficit/GDP ratio (3%), as enshrined in the Treaties, have not been altered[63]. Both deficit and debt sustainability safeguards have been kept to orient the reference trajectory[64]. Thus, the Commission is confronted with indicators of different nature and somehow inconsistent – numerical fiscal rules coexist with performance measures – so that this institution can broadly interpret and fine-tune them in a manner that is not highly predictable.

Notwithstanding the reporting obligations upon the Commission about the implementation of the various instruments, the decision-making remains quite opaque. Neither the Commission's assessment of the plans nor the monitoring of their execution, to authorize the payment of the tranches, is assisted by the principles of openness and transparency. From the implementing decisions and recommendations, often not easy to retrieve online, the reasons for the Commission' determinations are not clearly explained. For example, the extent to which a certain output (e.g. an investment) contributes to the achievement of the desired outcome

[62] See F. Amtenbrink, J. de Haan, *The European Commission's Approach to a Reform of the EU Fiscal Framework: a Legal and Economic Appraisal*, in «European Law Review», 48 (2023), p. 422 ff. and M. Markakis, *The New EU Economic Governance Framework: Principle, Policy, and Enforcement*, in «European Law Review», 49 (2024), p. 478 ff.

[63] On the legal and political sustainability of the present Treaty arrangements, see critically, M. Dani et al., *'"It's the political economy . . .!" A moment of truth for the eurozone and the EU*, in «International Journal of Constitutional Law», 19 (2021), p. 306 ff.

[64] Although the latter varies according to the debt level: if between 60 and 90% of the GPD, it has to decrease on average by 0.5% of the GDP on an annual basis; if the debt is above 90%, the expected decrease is of at least 1% per year.

(the improvement of the net expenditure and debt sustainability) is not spelled out, nor an evaluation of the costs actually entailed is foreseen. The insistence on performance, which often encompasses not eminently legal considerations, leaves outside of the picture the quality of the procedure followed, the impact on third parties, the rights of final beneficiaries of funds.

The inter-institutional dynamic at EU level is inevitably affected. Even where the Council has the final say, the Commission is the actual repository of information, the main collector of data and evaluations and is particularly difficult to hold it in check as for its decisions and the justifications underpinning them.

3.3. Excessive emphasis on bilateralism

A third challenge stemming from the "euro-national method of government" lies in the excessive focus on bi-lateralism,whereby the collective dimension of the EU policy-making and protection of the "European public goods" risks being undermined. To strengthen the national ownership and dimension of the EU decisions, the bi-lateral dialogue that accompanies the design, reform and implementation of the various plans have ensured a high degree of flexibility and have developed according to a timeframe that largely suits the national needs. Yet, if the Council, as the collective intergovernmental site, and the European Parliament, as the directly elected supranational representative assembly, are not actively involved in controlling the national plans, the EU action may become too fragmented and oriented toward national interests rather to supranational goods, being them inevitably

identified through multilateral negotiations in parliamentary and intergovernmental institutions. The Commission is the key player, as also confirmed by the circumstance that for some of the Plans the adoption and revision are foreseen just through a Commission implementing decision. This does not support transparency and public knowledge of the reasons underpinning crucial determinations with the Commission being accused to be driven by national preferences, as occurred in relation to the adoption and financing of the Polish NRRP[65].

If the bi-lateral dialogue is essential to allow a reconciliation between EU strategic priorities and domestic interests, it would be important to introduce and strengthen the opportunities for collective scrutiny on the implementation of the plans. With this regard, the role of the European Parliament, today at the margins of the new "method of government", as confirmed by the choice and interpretation of the legal basis for the funding instruments, should be reinforced as well as the information flow toward it. Indeed, as anticipated above (section 2), not only is there an issue of coordination between the same category of plans across the Member States (no formal or informal *ex ante* consultation takes place between national governments) for the sake of protecting the EU common goods, but there is also the need to coordinate and accommodate the

[65] See the Joined Cases T-530/22 *Medel v Council*, T-531/22 *International Association of Judges v Council*, T-532/22 *Association of European Administrative Judges v Council*, and T-533/22 *Recthers voor Rechters v Council*, dismissed by the Order of the General Court of 4 June 2024, and the Opinion of Advocate General Tamara Ćapeta delivered in Medel and Others v Council, Case C-555/24 P, 16 April 2026.

various types of plans from the same country together, as they often fall under the responsibility of different Ministries.

3.4. Limited democratic accountability

A fourth challenge requiring some fine-tuning of the new "method of government" is represented by the weak democratic accountability of the many plans. Here the problem is triggered by two issues.

First, steakeholders and regional and local authorities are not involved in the drafting of the plans, but, at best, are treated as mere executor. Only EU Regulation 2023/955 requires the consultation with local and regional authorities, representatives of economic and social partners, relevant civil society organisations, youth organisations and other stakeholders at national level before the submission of the European Social Climate Plans to the Commission (Article 5), with the hope of making the planning process less top-down and more participatory. This is probably also due to the aim to tackle the social consequences of the green transition, which are particularly felt at local and regional level.

In relation to cohesion policy, under the pending procedure for adoption the MFF 2028-2034, concerns were expressed on the potential re-nationalisation and centralization of the resources' management at the level of the national governments, with a much more marginal role of stakeholders and regional and local authorities[66]. This is in contrast to the long-standing part-

[66] See Committee of the Regions, *Resolution on the MFF 2028-2034*, 168th plenary session, cit.

nership principle in cohesion policy, whereby local and regional authorities, NGOs, economic and social partners, universities traditionally have been widely involved in the governance of the structural funds also through the Monitoring Committees. It is precisely this bottom-up and participatory approach that has been defended as a virtue of the cohesion policy that may be undermined in case a turn toward the "euro-national method of government" is effectively entrenched within the new MFF without adaptations[67].

In addition, the problem of the weak democratic accountability can also be traced back to the very marginal role granted to the European Parliament and national parliaments. By any means, they can be equated to "stakeholders" in the process due to their peculiar institutional position and the role that representative democracy is supposed to play in the EU (Article 10 TEU)[68].

On the NRRPs, the European Parliament has been regularly involved in the "RRF dialogue" with the Commission only. Not even a similar mechanism is envisaged on the implementation of the other numerous plans save for the traditional oversight mechanisms on the EU budget, like the discharge procedure, and the Eu-

[67] See J. Zeitlin, D. Bokhorst, E. Eihmanis, *Rethinking the Governance and Delivery of the Cohesion Policy Funds: Is the Recovery and Resilience Facility (RRF) a Model? Final report*, October 2023, https://feps-europe.eu/publication/governing-the-rrf/, p. 26 ff. However, in the Commission's Proposal COM(2025) 565 final a series of guarantees for preserving the partnership principle and the involvement of regional and local authorities and stakeholders are provided, even in terms of their direct interaction with the Commission. In prospect, if the proposal is approved as it is, the national and regional partnership plans will incorporate in a dedicated chapter the national social climate Plan.

[68] See A. Manzella, *Parlamento europeo e Parlamenti nazionali come sistema*, in «Rivista AIC», I (2015), p. 2 ff.

ropean Parliament is just the addressee of information related to the annual reporting obligations by the Member States. Yet, the marginalization of the European Parliament, one of the budgetary authorities in the Union, is particularly questionable given the flow of money interested by the plans and the disbursement of EU funds[69].

Sometimes the strategic choice of the legal basis is also instrumental to put the European Parliament at margins, like with Article 122 TFEU. In already cited the action for annulment against the SAFE Regulation[70], the European Parliament pleaded that the measure deals with boosting defence industry across the Union[71], so it would have required Article 173 TFEU (industrial policy) as its legal basis and an ordinary legislative procedure. While the war between Russia and Ukraine is an exceptional occurrence beyond the Member States' con-

[69] On the need to foster substantive accountability given the redistribution of resources involved, see C. Fasone, *Fighting back? The role of the European Parliament in the adoption of Next Generation EU*, in «Journal of Legislative Studies», 28 (2022), p. 368-384.

[70] The management of another fund related to defense, but unlike the SAFE Regulation, grounded on CFSP/CDSP provisions (Arts. 30(1) and 41(2) TEU), the EPF, instrumental to conflict prevention and to preserve peace and international security, has become the object of controversy: not the Council Decision (CFSP) 2021/509 of 22 March 2021 establishing the Facility and its legal basis, but Decisions adopted by the European Peace Facility Committee, respectively, on the allocation of the amounts to assistance measures for the supply of military support to the Ukrainian Armed Forces and to the amounts granted to the Facility due to the exclusion of Hungary from the voting. See *Hungary* v *Council and European Peace Facility*, Case T-452/25 and Case T-605/25, actions brought on 6 May and 4 September 2025, pending.

[71] See, again, *European Parliament v Council of the European Union*, Case C-560/25. On 9 September 2026 the General Court dismissed the action in the Case T-457/24, Hungary v European Peace Facility (EPF) and Council, for lack of jurisdiction on the decision of the EPF Committee that allocated the first instalment of extraordinary revenues from frozen Russian assets to support for the Ukrainian Armed Forces.

trol, it is less clear that it has caused severe or immediate difficulties for their defence capacities. Notably, the common procurement procedures on defence products financed by SAFE can also involve third countries[72].

Perhaps, the limit of democratic accountability at EU level could be re-balanced through one or more sectoral interinstitutional agreements with the Commission, which would commit itself to share more information with the Parliament and to consult it or obtain its consent, depending on the case, on some strategic decisions on the plans and on the management of the various EU financial instruments. Similar concerns also refer to the revised SGP, although the EU budget is only indirectly at stake, through negative conditionality.

Possibly equally serious are the problems of democratic accountability when it comes to national parliaments. For these institutions, planning is not necessarily critical in principle, in that it provides predictability on the timeline and a reliable roadmap of the reforms and investments to carry out. However, to have multiannual plans set on a wide range of public policies without a meaningful involvement of national legislators as a top-down exercise led by the executive, as it occurs in many Member States[73], is democratically questionable. Also

[72] First of all Ukraine as well as EU candidate or potential candidate countries; Iceland, Liechtenstein, Norway (the three EEA-ETA countries); Canada, Japan, Moldova, North Macedonia, Norway, South Korea, and the United Kingdom, which have concluded Security and Defence Partnerships.

[73] See, e.g. E.W. Binder et al., *Survey on the role of national parliaments in the implementation of the Recovery and Resilience Facility. Synthetic presentation of the results*, In-depth study for the Economic Governance Support Unit (EGOV), Directorate-General for Internal Policies, European Parliament, PE 699.524, April 2022 p. 6 ff.

the path toward the reform and implementation of the plans is to a large extent executive-driven: if and when the parliaments are involved most of the time are forced to act under huge time pressure and with very little political scrutiny. The sidelining of the parliaments also has repercussions on the level of transparency of the decision-making and implementation of the plans and may affect in the domestic public opinions the perception of the actual ownership of those plans. The remedy to the marginalization of national legislatures, however, can hardly come from the EU, if not under the form of a renewed commitment to strengthen vertical and horizontal interparliamentary cooperation in the Union targeted to the different plans (that could also alleviate the issue of a too strong insistence on bi-lateralism). Rather, it should be primarily for each domestic constitutional system to adapt the scrutiny and decision-making procedures in Parliament to the new reality of systematic planning with pervasive conditionality attached to them. A process that has not been set in motion for the time being.

4. Concluding remarks

While the "euro-national method of government" has expanded the range of procedures available for the EU integration beyond the traditional divide between the "community method" and the "intergovernmental method", it takes something from both of them. Indeed, like in the "community method", the engine of the procedure is a supranational institution, the European Commission and the acts adopted are typical acts of EU law. However, similarly to the intergovernmental

method, the "fragmented" executive branch of the EU[74] monopolises the entire process, where national governments individually interacts with the Commission and shape the decision-making.

The resort to this "method of government", following the RRF, has produced spillover effects in a number of policy areas, which are also quite diverse: energy, CAP, fiscal rules, assistance to third country, defence industry, cohesion policy, environment and social policy.

Prima facie some of these effects appear beneficial for the EU and its Member States, like the spread of multiannual planning in these sectors, with contents that are defined by the Member States, as to increase predictability and the sense of national ownership of strategic choices, but framed under common supranational priorities. The functioning of these plans, in particular the Commission's assessment on their implementation is grounded on a performance-based approach, which makes conditional the reward of the Member States or the disbursement of EU money toward the EU countries to the fulfilment of milestones and targets, according to a detailed timeframe agreed with the Commission. This would ensure a focus on the actual achievement of the expected objectives. Moreover, as many of the new instruments, through conditional spending mechanisms, are transferring resources to the Member States – though mostly through loans and reimbursements – the "euro-national method of government" also pursue a redistributive effort. Better, increases the redistributive ca-

[74] See D. Curtin, *Challenging Executive Dominance in European Democracy*, in «Modern Law Review», 77 (2014), p. 4 ff.

pacity of the EU budget, traditionally very limited, also resorting to common borrowing.

There are, however, also some weaknesses brought by this new method, which would need to be addressed. First, the competence divide between the EU and the Member States becomes increasingly blurred compared to the architecture of powers set in the Treaties with a difficulty to locate authority and responsibility. Some policies that are highly integrated under EU law, like CAP and cohesion policy, according to the pending revision of the MFF 2028-2034, due to the insistence of national planning are becoming more domestically-oriented that they used to be. By contrast, in the EU's least integrated areas, like defence and fiscal policies, the control and direction provided by the EU institutions, notably the Commission, are now more intrusive into the national fields, with reforms and investments assessed and validated by the Commission. This institution is indeed in a dominant position and enjoy a considerable discretion in its evaluation: significant leeway in the interpretation of national conditions and EU rules and very limited chances to review its action from outside, due to the lack of transparency and sound justification provided. Equally problematic is the marginal democratic accountability the "euro-national method of government" has. Neither the European Parliament, also due to the choice of legal bases like Article 122 TFEU, nor national parliaments have a substantive voice in the process or have the capacity to closely monitor procedures, between each national government and the Commission, which remain largely untracked. This also points to another critical issues, namely the excessive focus on the

bilateral dialogue between each national executive and the Commission at the expenses of the EU-wide public good and objectives. Despite the performance indicators that have been adopted it remains unclear how national milestones and targets, if and when achieved, contribute to the fulfilment of supranational objectives: not necessarily a specific output translates into an expected outcome. The EU added value is somehow lost and the political directions become fragmented.

Some tools to improve the operation of this "method of government" could be quite easily implemented. Lacking the political feasibily for Treaty amendments, one or more inter-institutional agreements between the European Parliament, the Commission and the Council could be beneficial to set information duties and transparency obligations on the Commission vis-à-vis the Parliament and the Council and to find ways for *ex ante* inter-institutional structured consultation on the choice of the legal basis and on the disbursement of EU money, forcing the Commission to provide more in-depth explanations for its proposal[75]. Procedures under inter-institutional agreements could also help rebalancing the excessive focus on bilateralism, providing for moments of collective discussion and deliberation at supranational level and to mutually coordinate the national plans. As the European Court of Auditors has repeatedly claimed, it is desirable to include, next to the performance of the

[75] A good starting point, with this regard, is represented by the Framework Agreement on relations between the European Parliament and the European Commission, OJEU Series L 2026/1050, 12 May 2026, whose para. 2 mentions new duties for the Commission when it wants to use Article 122 TFEU as a legal basis.

plans and the targeted outputs, also an assessment of the costs, and of the effective outcome produced, that is an estimate of how the satisfactory achievement of a national milestone or a target impact on the progress of the relevant EU priority.

Other issues are more difficult to address and would require further research and institutional consideration. In particular the legal-constitutional limits of conditionality and of the Commission's discretion in assessing the conditions should be identified (possibly, by the Court of Justice of the EU?) to avoid arbitrariness. Furthermore, the legal nature of the plans has to be disentangled. They are approved through acts of EU law, but their contents are set by national institutions, so this opens a reflection as to whether the plans can be subject to judicial review by the Court of Justice and whether the Charter of fundamental rights applies when they are implemented[76]; an issue that goes back to the competence question. Finally, national reforms would also be needed to bring domestic parliaments and regional and local authorities in the loop, at least when drafting or amending the plans, to contribute to the agenda-setting.

[76] In comparable situations, the case law of the Court of Justice adopted a clear self-restraint *vis-à-vis* "hybrid acts": see S. Mair, *The CJEU's Review of Hybrid Acts in an Era of Rising Dissent Toward Non-Majoritarian Institutions*, in «European Papers», 11 (2026), p. 485-502.

Giacomo D'Arrigo

NGEU: first effects on the institutional structure and governance of the EU

Summary: 1. Introduction: The NGEU Initiative – 2. Legal Basis and Operation – 3. Effects on the Governance and Institutional Structure of the EU – 4. Other Initiatives Under the New Method of Governance – 5. The NGEU's Contribution to a New Institutional Dimension of the EU; 6. Conclusions.

1. Introduction: The NGEU Initiative

The Next Generation EU (NGEU) was not only the most important initiative launched by the European Union to respond to the 2020 Covid-19 pandemic, but it also represented the instrument that had the greatest impact – homogeneously and comprehensively across its various areas of application – on the law, procedures, the federalization perspective of the EU, and the strengthening of its institutions, influencing its very constitutional identity. This marked a watershed moment for the Union, its functioning, and its future prospects. The aim of this contribution is to demonstrate how the NGEU itself brought about a paradigm shift, particularly with regard to the EU's institutional governance. It represents

an innovative model that has already established itself in other European initiatives, impacting both within and outside the Union.

Over time, depending on the context or problem, the need to intervene in the functioning of the EU's instruments, institutions and procedures has emerged[1], but it was precisely the most serious crisis, the global pandemic[2] that caused an unexpected and sudden emergency situation that forced the Union to adopt significant innovations in its operating mechanisms, thus determining the affirmation of a «new method of governance»[3],

[1] Among those who have studied the topic in depth: B. De Witte, *Il processo semi-permanente di revisione dei Trattati*, in «Quaderni costituzionali», III (2002), p. 499-520; A. Gattini, *Questioni di metodo nella revisione dei trattati*, in *Verso la Costituzione Europea* (*Proceedings of the study meeting, Urbino 17 June 2002*), Milan 2003, p. 89-112; B. De Witte, *La dimensione nazionale della revisione dei Trattati europei*, in «Quaderni costituzionali», I (2005), p. 40; T.E. Frosini, *La revisione dei Trattati europei: problemi e prospettive*, in *Annuario 2005 dell'Associazione Italiana dei Costituzionalisti. L'integrazione dei sistemi costituzionali europeo e nazionali*, Cedam, Padua 2007; F. Fabbrini, *Il Parlamento europeo e la riforma dei Trattati*, in «Centro Studi sul Federalismo», CCLXXVIII (2023), p. 1-2; A. Adinolfi, *Le ragioni di una (incerta) riforma dei Trattati dell'Unione*, in «Osservatorio sulle Fonti», I (2024), p. 7-16; P. Scarlatti, *Note sulla riforma istituzionale dell'Unione europea alla luce della recente proposta di revisione dei Trattati del Parlamento europeo*, in «Federalismi.it», XVII (2024), p. 221-232. Among the official acts, we would like to point out: European Parliament, Resolution of 22 November 2023 with proposals for reform of the European Treaties (TEU and TFEU) and of the Charter of Fundamental Rights of the reform of the EU (CFR); Conference on the Future of Europe, *Report on the final outcome*, presented in Strasbourg on 9 May 2022.

[2] The pandemic emergency generated by Covid-19 was officially declared by the World Health Organization on 11 March 2020.

[3] Among others, the following have spoken about it: N. Lupo, *Next Generation EU e sviluppi costituzionali dell'integrazione europea: verso un nuovo metodo di governo*, in «Diritto Pubblico», III (2022), p. 729-755; N. Lupo, *Il nuovo "metodo di governo" delineato dal PNRR e i suoi incoraggianti primi passi*, in *L'impatto del PNRR sul sistema di governo multilivello. Opportunità e criticità*, ed. P. Bilancia, Il Mulino, Bologna

different from the «community» and «intergovernmental» ones active in the EU[4].

The European Union is (still today) considered by many exclusively or predominantly an economic union that, through «constitutional engineering» choices[5] has defined a field of action in which the political process and national leaders have had the opportunity and scope to overcome the barriers arising from formal constraints and national resistance. After the pandemic crisis, its unique process of federalization and constitutionalization has entered a new phase. The effects of Covid-19 have indeed highlighted the issue – a central one for years – of strengthening the Union in terms of the efficiency of its institutions and procedures, democratic legitimacy, and transparency of decision-making.

2024, p. 27-54; C. Fasone, N. Lupo, *Learning from the Euro- crisis. A new method of government for the EU economic policy coordination after the pandemic?*, in «STALS Research Papers», IV (2023), p. 1-24. Referring to a new «legal technology»: F. Fabbrini, *The recovery and resilience facility as a new legal technology of European governance*, in «Journal of European Integration» (2024), p. 1-19; G. D'Arrigo, *NGEU e PNRR: Il rafforzamento della governance europea e delle amministrazioni centrali dello Stato*, in «Rivista trimestrale di diritto pubblico», IV (2024), p. 1199-1229.

[4] Among the many, for a summary of the different methods of governance at the European level, see: N. Lupo, *Dinamiche delle fonti e metodi di governo tra Unione europea e Italia*, Editoriale Scientifica, Naples 2026, p. 1-138. In particular, with reference to the community method, see: S. Gozi, *Il governo dell'Europa*, 2nd ed., Il Mulino, Bologna 2011, p. 29 ff; S. Sileoni, *La Commissione europea: genesi, rafforzamento, prospettive*, in «Quaderni costituzionali», IV (2025), p. 871-901. While with reference to the intergovernmental method see also: G. Amato, *Riflessioni*, in *Annuario 2005*…, cit., Cedam, Padua 2007, p. 173-181; C. Bickerton, D. Hodson, U. Puetter, *The New Intergovernmentalism and the Study of European Integration*, in *The New Intergovernmentalism States and Supranational Actors in the Post-Maastricht Era*, Oxford University Press, Oxford 2015, p. 1-48.

[5] G. Sartori, *Ingegneria costituzionale comparata*, Il Mulino, Bologna 2013.

2. Legal basis and operation

Aside from the dramatic health impact, the Covid-19 pandemic was a symmetrical shock[6], yet individual countries responded asymmetrically[7]. Essentially, countries with stronger economic and fiscal conditions were able to respond better, managing the immediate social and economic consequences with greater resources. Weaker countries, however, were unable to do so, and in addition to their internal challenges, they potentially jeopardized the single market, creating debt-sustainability difficulties in the markets and consequences for public finances. This asymmetric response prompted the EU, as a single entity, to promote a concerted initiative that – a factor that influenced acceptance by the Member States most reluctant to adopt such solutions[8] – would prevent even the richest countries from suffering the indirect consequences generated by the poorest countries. The choice of the single market established in 1993[9] in

[6] Among others who have dealt with the topic of symmetric shocks and the theory of optimal currency areas, R. Mundell winner of the Nobel Prize in Economics in 1999, among his main publications is the volume *International Economics*, The Macmillan Company, New York 1968.

[7] M. Tancioni , *Le conseguenze macroeconomiche del SARS-CoV-2. Incertezza e scenari di policy*, in «Menabò di etica e di economia», CXXI (2020), p. 1-7.

[8] S. Kurz, *The 'Frugal Four' Advocate a Responsible EU Budget*, in «Financial Times», 16 February 2020. The speech by the then Austrian Chancellor refers to the contrast between the countries in favour and the so-called «frugal countries» (Austria, Denmark, Finland, the Netherlands and Sweden) who are against the hypothesis of a common European response and any path of debt sharing between the Union states.

[9] The European single market was established on 1 January 1993 and guarantees the free movement of goods, services, people, and capital within the EU. The single market today comprises the 27 EU member states plus Norway, Iceland, and Liechtenstein (via the European Economic Area). Switzerland has partial access to the single market (via bilateral agreements). A. Arena, F. Bestagno, G. Rossolillo, *Mercato unico e liber-*

fact requires «a basically homogeneous economic environment»[10] and without this common response from the Union, the pandemic (and its effects) could have exacerbated an economic and social situation already in serious crisis due to the Greek crisis of the 2000s.

In this regard, since 2021, several emergency regulatory interventions have been implemented at the European level to address the health and economic impacts of the crisis[11]. This reflection analyzes the types of

tà di circolazione nell'Unione europea, Giappichelli, Turin 2016, p. 1-438.

[10] G. Contaldi, *Il Recovery Fund*, in «Studi sull'Integrazione Europea», III (2020), p. 587-612.

[11] Among these types of measures, the main ones to be highlighted are: the *Coronavirus Response Investment Initiative* (CRII) of March 2020; *the Coronavirus Response Investment Initiative Plus* (CRII+) of April 2020, the first allowed states to benefit from financial support and targeted assistance in response to the emergency, the second allowed for very flexible use of unused European Structural and Investment Funds. The «suspension», the Stability and Growth Pact, which loosened its main constraints, allowed governments significant leeway with respect to the possibility of increasing debt: European Commission, Communication from the Commission to the Council on the activation of the general escape clause of the Stability and Growth Pact, COM(2020) 123 final , Brussels, 20 March 2020. Flexibility in the use of European Structural and Investment Funds (ESI), Regulation (EU) 2020/558 amending Regulations (EU) N. 1301/2013 and (EU) N. 1303/2013 as regards specific measures to provide exceptional flexibility in the use of European Structural and Investment Funds in response to the Covid-19 epidemic. The activation of the SURE fund for unemployment support, Council Regulation (EU) N. 2020/672 of 19 May 2020 establishing a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 epidemic. These activities must also be added to those (relevant for their capacity to intervene) of the Union's financial institutions, in particular the ECB, which in 2020 launched a Pandemic Emergency Purchase Programme (PEPP) – based on Article 127, paragraph 2, TFEU – with which it committed to purchase government bonds and commercial paper on the financial markets up to €750 billion, subsequently doubled to €1,350 billion. The PEPP programme in particular confirmed the ECB's central role in the EMU system, which has increasingly consolidated over time and is based on one of its general tasks, namely «to define and implement the monetary policy of the Union».

planning and recovery initiatives implemented within the framework of structural support for the continental economy. After a series of formal, technical, and political steps[12], the Union has adopted various measures. Among these, the Recovery Fund[13] is certainly the most significant, launching the Next Generation EU process. This refers to and finances the National Recovery and Resilience Plans (NRRPs), which individual countries have defined and submitted to the competent Union institutions to receive the requested financial allocation, within the indicated deadlines and modalities. This is perhaps the most significant European initiative since the decision to introduce the euro. It is a new proposal with a complex legal architecture, characterized by several documents referenced here along with their respective legal bases. This package includes: the Regulation establishing the NGEU and defining its amount[14], which has its legal basis in Article 122 TFEU; the decision authorizing the financing of the MFF and the NGEU, the latter through the issuance of common debt[15], which has Article 311 TFEU as its legal basis; the Regulation establishing the requirements of respect for the rule of law as a condition for the protection of the EU budget and a requirement for accessing

[12] On what led to the European Council's decision in July 2020, see the reconstruction in G. D'Arrigo, P. David, *Next Generation EU e PNRR italiano: analisi, governance e politiche per la ripresa*, Rubbettino, Soveria Mannelli 2022, p. 13-17.

[13] Extraordinary meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, Brussels, 21 July 2020.

[14] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument.

[15] Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union.

the MFF and the NGEU[16], which has Article 322 as its legal basis; the Interinstitutional Agreement which also sets the timetable for the introduction of new EU taxes to repay the principal and interest of the NGEU[17], with Article 295 TFEU as its legal basis; the Regulation determining the MFF 2021/2027, defining its amount[18], which has its legal basis in Article 312 TFEU; the Regulation that defines the organization and governance of the NGEU with the criteria for the use of funds through the NRRP defined by individual States[19], the legal basis of which is constituted by Art. 175 TFEU. A general framework supported by the legal analysis of the competent institutions with respect to the «consistent interpretation of the Treaty»[20], which defines an initiative that marks «an unprecedented approach to responding to one of the crises (perhaps the most significant) by the European Union: a radical departure from previous negative events»[21].

[16] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general system of conditionality for the protection of the Union budget.

[17] Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.

[18] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the Multiannual Financial Framework for the years 2021-2027.

[19] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

[20] European Commission, *Questions and answers: Next Generation* EU – *Legal construction*, Brussels, 9 June 2020; Council of the European Union, *Legal Service Opinion 9062/20 on the Next Generation EU proposal*, Brussels, 24 June 2020.

[21] L. Polverari, *Coordinative Europeanization as a response to*

Until the pandemic, the EU had responded to crises with targeted bailouts, austerity measures, and the mobilization of existing policies funded by the EU's Multiannual Financial Framework. Now, however, we are faced with a new and significant proposal from several perspectives: it is not, as has happened in the past, simply about financial support – even if the amount provided is absolutely significant, considering it amounted to approximately one-third of the Union's overall budget[22] – but a concrete initiative to support institutions, communities, and individuals with innovative operating mechanisms. From a functional point of view, the main features can be found in its general structure, with particular attention to the aspects whereby the programming/planning of investments, the approval of system reforms, the timetable of activities and expenditure and the monitoring of implementation are elements linked together by a single operational structure bound to the achievement of goals and

crisis: what lessons from the RFF for *future* Eu *cohesion policy?*, in «Comparative European Politics» (2024), p. 1-21.

[22] M. Bordignon, I. Valpreda, *Il bilancio europeo e le politiche dell'Unione*, in «OCPI», 27 February 2024. The issue of fiscal autonomy of the EU: European Commission, *Future financing of the* EU. *Final report and recommendations of the High Level Group on Own Resources*, Brussels, December 2016. In general, it is recalled that the European budget is administered through three distinct methods. Approximately 20% is managed directly by the EU agencies, responsible oversight, allocation, and use of these funds. The majority of the budget, approximately 70 percent, follows a shared management approach, with Member States playing an active role in implementing and administering these funds. European appropriations are managed by their respective states to support projects and initiatives within their territories. The remainder of the budget, which constitutes a much smaller share, is managed indirectly; it largely consists of funds allocated to third countries and international organizations for specific projects and programs. The budget adoption process is defined in Article 314 TFEU.

objectives with an extremely short (to be understood as the time frame within which to achieve them) and rigid (the exceeding of which is not permitted without being penalised) timing for implementation set in semesters, so that the achievement of milestones and the target of a semester is a necessary condition for obtaining the disbursement of funds for the activities of the following semester[23]. In the regulatory framework and in its practical implementation, the NGEU and subsequently the NRRPs of individual States have as their own operational characteristic, which differentiates them from other European funding programmes, the centrality assigned to the achievement of agreed-upon and verified objectives through monitoring[24]. The resources allocated by the NGEU[25] are not in themselves new: funds from European sources have existed since 1975[26] and have gradually

[23] G. D'Arrigo, L. Salvo, *NGEU e PNRR: riflessioni su Governance e Mezzogiorno*, in «Rassegna di Diritto Pubblico Europeo», I (2023), p. 60-65.

[24] For an in-depth analysis of the governance *profiles*, functioning, objectives and policies of NGEU and NRRP and for their comparison with traditional EU programming, see also: G. D'Arrigo, P. David, *Next Generation EU and Italian NRRP: analysis …* cit.; F. Fabbrini, *Next Generation EU. Il futuro dell'Europa dopo la pandemia*, Il Mulino, Bologna 2022; P. Cucumile, *I fondi strutturali e il PNRR a confronto*, in «Il Diritto Amministrativo», I (2023).

[25] Resources equal to 750 billion euros, at 2018 prices.

[26] In 1975, the first structural fund, called the European Regional Development Fund, was established following a compromise reached between the nine countries of the then European Economic Community (EEC) at the two Paris summits of 1972 and 1974. The ERDF had a budget of 257 million ECUs for the period 1975-78, corresponding to 4.8 percent of the Community budget, and was divided into national shares. There was no programming for the interventions to be financed yet, and the Member States simply requested funding for *ad hoc projects*. In 1988, the Delors Commission reformed the Cohesion Policy by doubling its funding and defining management tools: 3 structural funds dedicated to specific issues: the European Regional Development Fund (ERDF), the European Social

increased over time, in the succession of the various programming cycles, but the innovations introduced by this initiative, the institutional implications produced and the centrality it has acquired, well explain the level of attention it has generated. The breadth of the debate that has arisen, the significant scientific production, the impact on national legislation, the impact on European governance: all elements that confirm the importance of the NGEU issue from various perspectives and in a widespread manner because at the same time it concerns the issue of economic resources and the implementation of (binding) reforms and policies and, at the same time, strengthens the affirmation of a «new method of governance».

From a legal perspective (with the relevance this entails for the European legal system), a central aspect is the identification of the legal basis that grants the power[27] to produce consequences and outcomes and legitimises the adoption of the measure by defining the scope of the type of act and the effects it generates. This activity, the identification of the appropriate legal basis, «permeates

Fund (ESF) and the European Agricultural Guidance and Guarantee Fund (EAGGF), as well as the so-called Community Initiatives (CI), managed directly by the Commission.

[27] The Union's system of competences is based on the principle of conferral (Article 4 (1) and 5 (1) TEU), which governs both the vertical distribution of competences between the Member States and the Union and the horizontal relationship between the institutions (Article 13(2) TEU). The principle's scope is mitigated either by provisions established by the Treaties themselves (referring to the flexibility clause, Article 352 TFEU) or by provisions developed by case law (both through evolutionary interpretation and the doctrine of implied powers). With respect to the types of competences, the Treaties provide for three different categories: exclusive competences of the Union, shared competences between the EU and the Member States, and competences that support, coordinate, and complement the action of the Member States (Article 2 TFEU). The exercise of these competences is governed by the principles of proportionality and subsidiarity.

the institutional life of the Union»[28] and requires every legal measure to be linked, either directly or through an intermediate act, to a specific Article of the Treaties. The choice of legal basis by the legislator and competent bodies[29] is an operation of strategic importance because it guarantees the legitimacy of the Union's actions, which (it is worth emphasizing) can act only and exclusively within the limits established by the Treaties themselves. It is a «typical feature of the European legal system»[30] to require both a reference to the legal basis and a statement of reasons for the Union's legal acts[31]. The indication of a Treaty provision as an appropriate legal basis or not can in fact have decisive repercussions, even determining a declaration of nullity of the act itself in the event of an erroneous indication of the legal basis[32]. As we will see

[28] B. De Witte, *The European Union's covid-19 recovery plan: the legal engineering of an economic policy shift*, in «Common Market Law Review», LVIII (2021), p. 652.

[29] On assessments concerning the choice of legal bases and the role of the offices performing these activities, see: P. Leino-Sandberg, *The institutional politics of objective choice: Competence as a framework for argumentation, in The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future*, eds. S. Garben, I. Govaere, Hart Publishing, Oxford 2017, p. 210-231; the expression «politics of competence» appears at p. 216. On the activities of the offices dealing with it, see J.P. Jacqué, *The Role of Legal Services in the Elaboration of European Legislation, in Lawyering Europe. European Law as a Transnational Social Field*, eds. A. Vauchez, B. De Witte, Hart Publishing, Oxford 2013, p. 43.

[30] N. Lupo, *La costruzione del diritto dell'Unione europea e la legittimazione politica*, paper at the XL Annual AIC Conference «L'Unione europea a confronto con la Costituzione della Repubblica italiana», Turin, 10-11 October 2025, p. 6.

[31] On this point see N. Lupo, *Alla ricerca della motivazione delle leggi: le relazioni ai progetti di legge in parlamento*, in *Osservatorio sulle fonti 2000*, ed. U. De Siervo, Giappichelli, Turin 2001, p. 67-112.

[32] O. Porchia, *Competenze dell'Unione europea, in Treccani-Diritto on line, 2017*; A. Manzella, *La ripartizione di competenze tra Unione*

in more detail, for the Next Generation EU, the main or reference legal basis of the Regulation that governs it is Article 175, paragraph 3 of the TFEU[33]. This was adopted with the ordinary legislative procedure, without the implementation – an aspect that acquires greater relevance also in light of the different choices made during previous crises – of intergovernmental agreements outside of EU law and without the establishment of new intergovernmental bodies, thus concentrating responsibilities, tasks and roles mainly on the Commission and the European Council for this initiative characterised by its non-replicability[34]. Compared to other legislative acts adopted at the beginning of the pandemic crisis which were based on the emergency situation[35], with the choice of prevalent use of Article 175 TFEU, the emphasis was placed on the continent's cohesion and future development, focusing

europea e Stati membri, in «Quaderni costituzionali. Rivista italiana di diritto costituzionale», III (2000), p. 531-544.

[33] This is the provision on which the structural funds are based, and as we will see later, it allows for specific initiatives other than those implemented solely through these funds, with the general objectives of strengthening economic, social, and territorial cohesion.

[34] On this point, on 6 December 2022, the Federal Constitutional Court of Germany rejected (Order 1 BvR 547/21 of 16 April 2021) the appeal against the law ratifying the decision of the EU Council – relating to the NGEU package – concerning the system of own resources of the European Union (*Eigenmittelbeschluss Ratifizierungsgesetz - ERatG*). With this decision, dated 14 December 2020, the Council authorised the Commission to finance the instrument called *Next Generation EU, also through recourse to the capital markets, for an amount* of up to 750 billion euros, while highlighting the exceptional and non-replicable aspects that «justified» its implementation. See S. Baroncelli, *Monetary Policy and Judicial Review*, in *Research Handbook on EU Economic Law*, eds. F. Fabbrini, M. Ventoruzzo, Edward Elgar Publishing, Cheltenham 2019, p. 199-231.

[35] Art. 122 paragraph 2 TFEU, which for example was the legal basis of Council Regulation (EU) 2020/672 of 19 May 2020 (known as the «SURE» Regulation).

on overcoming the immediate emergency in favor of the programmatic choices projected into recovery activities. Therefore, not measures for managing the emergency, but measures for the Union's future recovery, starting from the very name of the measure: Next Generation EU, which speaks/looks to the next generation of Europeans and Europe[36]. It is worth dwelling on the aforementioned aspect regarding the source of the Regulation because it affects: the «life» of the measure; the consequences it produces; and the type of «posture» with which the Union chooses to address a policy or a specific issue.

Looking more closely at the legal basis of this new initiative, the key provisions are: Article 122 and Article 175, paragraph 3, TFEU. The combination of these two provisions has led some scholars to speak of a «hybrid character» for the NGEU[37], having combined a provision inspired by the principle of solidarity (Article 122 TFEU) with one referring to the principle of economic and social cohesion (Article 175 TFEU). The two main documents of the new European initiative – both Regulations, with the strength and legal value that this instrument brings with it – have these Articles at their core. Article 122 TFEU formed the legal basis for Regulation 2020/2094, which establishes the European Union Recovery Instrument,

[36] Angela Merkel's words «The goal is for reconstruction funding to be invested not in returning to where we were before, but in moving towards the future», speech presenting the priorities of the German-led presidency, Brussels, 8 July 2020. NGEU evokes a sort of European idealism based on the belief that Europe must fight for the best: beyond solidarity to overcome the immediate crisis, a new pact is proposed, one that evokes the dimension of the future.

[37] E. Verdolini, *Mano ferma nel guanto di velluto: l'uso del soft law…* cit., p. 130.

regulating its essential characteristics[38]. Both paragraphs of the Article in question were used: the first allows for the structuring of support measures consistent with the principle of solidarity, in the literal sense of the term, that is, such as not to entail repayment obligations for individual Member States; the second paragraph, on the other hand, is guided by a different philosophy, being in fact suitable for establishing financial assistance mechanisms, provided that precise conditionalities are established, including the possibility of repaying the economic resources disbursed[39]. Article 122 TFEU[40] expressly mentions the «spirit of solidarity» between States and has been defined as the provision most similar in consistency to an «emergency clause»[41] in the Treaties, capable of legitimizing the European Union to prepare solidarity instruments to address situations of economic crisis[42]. Until now, this pro-

[38] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the economic recovery after the Covid-19 crisis, OJ L 433, 22 December 2020. The introductory part of the Regulation, not surprisingly, defines the NGEU as «an exceptional and coordinated programme of economic and social support, in a spirit of solidarity between Member States».

[39] F. Croci, *La solidarietà economica e Next Generation EU*, in *La solidarietà europea: a che punto siamo?*, ed. G. Morgese, University of Bari, Bari 2023, p. 44-59.

[40] B. De Witte, *The European Union's Covid-19 Recovery…* cit., p. 653-655; F. Croci, *Solidarietà tra Stati membri dell'Unione europea e governance economica europea*, Giappichelli, Turin 2020, p. 144 ff.

[41] On reading of Article 122 TFEU as a «solidarity clause» see M. Ioannidis, *Between responsibility and solidarity: Covid-19 and the future of the European economic order*, in «MPIL Research Paper Series», XXXIX (2020), p. 5-6.

[42] The doctrine has been divided into two blocks on the role of Article 122 of the TFEU: on the one hand, those, including B. De Witte, have spoken of *legal engineering* (or innovative interpretation) but still placing the initiative within the scope of Article 122 or at most within its evolution, but not considering the case of a «rupture», the Treaties, also because the provision for intervention by the European Council circum-

vision had been reserved for truly exceptional situations and interventions, but now it serves as the legal basis for a chapter-based economic program that, in terms of size and structure, is equivalent to a sort of second (albeit temporary) EU budget. As we have seen, Article 175 TFEU instead constituted the legal basis for Regulation 2021/241, which establishes and regulates the Next Generation EU[43]. This Article regulates the economic policy instruments that are functional to the implementation of the principle of cohesion, including the European structural funds[44]. Article 175, paragraph 3 TFEU[45], also provides for the possibility of introducing additional cohesion instruments of an atypical and innovative nature, to be understood as different instruments from the traditional structural funds: paragraph 3 of the provision, in fact, expressly refers to «specific actions that may prove necessary outside the Funds». The provisions therefore allow for the expansion of the principle of economic and

scribes the application and use of the Article; on the other hand, there is the position of those, including P. Leino-Sandberg, who speak of the implementation of an innovative interpretation and the creation of a new European «super-competence» which goes beyond the emergency rationale and instead takes on redistributive tasks by conferring them on the States, thus going beyond the very rationale of Article 122.

[43] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18 February 2021.

[44] Art. 175, paragraphs 1 and 2, TFEU.

[45] D. Fromage, *The future of EMU architecture post-Covid*, in «Legal Issues of Economic Integration», IV (2020), p. 304; G.P. Manzella, *Politica di coesione e Covid: dalle iniziative di investimento al Dispositivo per la ripresa e la resilienza*, in «Rivista giuridica del mezzogiorno», II-III (2021), p. 641-642; B. De Witte, *The innovative European response to COVID-19: decline of differentiated integration and reinvention of cohesion policy*, in *Continuity and change – how the challenges of today prepare the ground for tomorrow. ECB Legal Conference 2021*, ed. European Central Bank, Frankfurt am Main, 2022, p. 399.

social cohesion and its adaptation to specific concrete contingencies of an emergency nature. Although it was not expressly conceived to respond to economic shocks, it can be used to shape unforeseen cohesion instruments that can be useful for overcoming economic and social fractures that have opened up following the occurrence of any crisis situation[46]. This provision, although not conceived for situations of economic crisis, has proven useful in addressing them; this approach is confirmed by Regulation 2021/241 itself, which identifies the general objective of the instrument as «promoting the economic, social,

[46] For the sake of completeness, it is useful to report the position of some scholars, who have hypothesized that the legal framework of the NGEU violates Article 310 of the TFEU with reference to the provisions of the balanced budget constraint and the limits on debt mutualization, as well as its definition as *a one-off measure* classified as «extra-budgetary» was a way to circumvent Article 310, effectively contravening the Treaties. On this point, see P. Leino-Sandberg, *Next Generation* EU. *A Constitutional Change without Constitutional Change*, in *Reconnect Europe*, 13 January 2021 and G. Contaldi, *Aspetti giuridici della conclusione del NGEU*, in «Studi sull'integrazione europea», II (2026), pp. 213-230. Then there is the criticism of the undemocratic nature and lack of transparency in the decision-making process that has characterized the NGEU (and more generally that of the Union), with particular reference to the role played by legal offices and consultants defined as the «invisible community in the EU decision-making process», on this point see P. Leino-Sandberg, *The Politics of Legal Expertise in* EU *Policy-Making*, Cambridge University Press, Cambridge 2021. With regard to the non-violation of Art. 310 TFEU, it is worth recalling the position of those who point out that since the final date for the full repayment of the NGEU's debts has been set at 31 December 2058 (33 years after the entry into force of its Regulation), an operating deficit will not be generated in the EU budget of the current MFF and the balanced budget principle will be respected, while it will impact in subsequent years on budgets other than the current one but without there being any formal assumption of debt in the next MFFs. On this point, see the reflection of the director of the office of the legal/juridical service of the Council of the European Union, A. De Gregorio Merino, *The Recovery Plan: Solidarity and the living constitution*, in «EU Law Live –Weekend Edition», L (2021), p. 2-12.

and territorial cohesion of the Union»[47]. In this sense, the use of Article 175 TFEU confirms its important role within the «EU political toolbox»[48] for managing its policies and development. To conclude this initial analysis of the provisions relating to the NGEU from the perspective of their legal construction, it is worth recalling the aspects regarding the rules pertaining to the sustainability of the repayment guarantees of the maxi-loan, the most significant ever undertaken in the history of the Union[49]. This decision breaks one of the EU's main taboos: the creation of a common debt for the social and economic needs of the Member States, whose management is structurally inserted into the European multiannual budget, representing a lever for continental investments and for each «country system» within a framework of public policies identified in a binding manner by the Union and with a management governance that sees the strengthening of the community dimension.

[47] Art. 4, paragraph 1, Regulation (EU) 241/2021.

[48] B. De Witte, *The European Union's covid-19 recovery plan: the legal…*, p. 680, cit.

[49] There have been precedents in the past for debt-sharing mechanisms, with resources raised on the market or from individual state budgets. The most significant cases include the *Community Loan Mechanism* (CLM), Council Regulation (EEC) 379/75 of 17 February 1975 on Community loans (OJ L 46, 1975), financed by the European Community following the oil crisis that erupted in the 1970s and subsequently reused; the initiative that no longer limited assistance to shocks in the oil market (Council Regulation (EEC) 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments (OJ L 178, 1988)); more recently (at the beginning of the pandemic crisis), the so-called *social bonds* that financed the SURE employment support program, better known as the «European redundancy fund». However, all these were sectoral and «small» initiatives and, more importantly, had no impact on the overall economic situation of the Old Continent or its political outlook.

The debate on legal sources and bases, so extensive and in-depth despite having taken place in a short space of time, represents (further) evidence of the element of novelty that has involved not only the institutions or beneficiary bodies but also the community of scholars and analysts, with an external «impact» produced by the NGEU that has gone beyond the legislative and technical offices of European bodies, proposing elements of innovation for the future dynamics of the Union.

3. Effects on governance and the institutional framework of the EU

Although established for years, the rules and practices governing the functioning and relationships between European institutions have not eliminated the question «how does the EU work?»; this remains among the most pressing questions. This is not only due to the curiosity generated by analyses and in-depth studies, but also because the Union's tasks, duties, and role have gradually expanded (whether by choice, case law, or necessity/opportunity), and knowledge and understanding of the functioning of European governance has become increasingly important. The day-to-day nature of the Union's decisions and how they are organized, determining choices for citizens, businesses, associations, local authorities, and states, or impacting individuals, groups, and member states, is therefore of significant importance.

This function has grown over time in terms of assigned powers[50], issues addressed, established bodies,

[50] The European Commission reconstructs the main stages of the

legislation, and an expanded institutional role, corresponding to a greater «space occupied» by the EU. This is thanks, and in some respects paradoxically, to the «unfinished nature of the European legal system – not structured like a state, but different from an international organization – which is an element of weakness, but also of flexibility, allowing for the 'addition', so to speak, of new instruments, institutions, or regulatory frameworks without overwhelming the existing ones»; this condition defines[51] a European advantage (compared to other organizations) that has always allowed it to respond to individual crises and seize opportunities for its own development and progress. This is an approach that authoritative scholars have used, speaking of a «composite Constitution» approach[52] with broadening scope for interpreting the texts.

The process of centralization generated within EU mechanisms is highlighted here. This process is characterized by elements that, in practice, are constraints, indications, commitments, obligations, and objectives set out in legislative acts, guidelines, or case law. These, albeit of varying scope and commitment, have created an «ecosystem» within which states (and their structures) have been conditioned to implement individual na-

EU's history since 1945, available at the link: *https://european-union.europa.eu/principles-countries-history/history-eu_en*

[51] L. Torchia, *Le crisi fanno bene all'Unione europea: il caso dei Piani nazionali di ripresa e resilienza*, in «Rivista trimestrale di diritto pubblico», II (2023), p. 577.

[52] L.F.M. Besselink, *A Composite European Constitution*, Europa Law Publishing, Groningen 2007, p. 3-12; N. Lupo, F. Piccirilli, *Conclusions. "Silent" Constitutional Transformations: The Italian Way of Adapting to the European Union*, in *The Italian Parliament in the European Union*, ed. N. Lupo, F. Piccirilli, Hart Publishing, London 2017, p. 317-333.

tional NRRPs. For the sole purpose of highlighting the most significant interventions in terms of scope and/or strength, and which produce greater reinforcement and a role for the benefit of the European dimension, the following areas are worth mentioning.

3.1 Contents

Regarding content, when drafting the National Plans, governments were required to comply with two priority and binding guidelines: the commitment to finance areas of activity established by the Union, allocating at least 37 percent of the allocated resources to initiatives and projects for the climate objective and at least 20 percent for the digital objective[53]. Specifically, the green transition area stems directly from the European Green Deal[54] (with the dual objective of climate neutrality by 2050 and reducing greenhouse gas emissions by 55 percent by 2030). Regarding digital transformation, the objective is twofold: improving digital performance as summarized by the Digital Economy and Society Index (DESI)[55] and aligning with the communication «Shaping Europe's digital future»[56]. These two items (green transition and digital transformation) alone determine

[53] Art. 16, Regulation (EU) 2021/241.

[54] The European Commission has adopted a number of documents, initiatives and acts. Updates on this activity can be found at: *https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en#documents*

[55] The description, documentation, and annually updated measurement of the DESI index are available at: *https://digital-strategy.ec.europa.eu/it/policies/desi*

[56] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Shaping Europe's digital future*, Brussels, 19 February 2020 COM(2020) 67 final .

the spending of 57 percent of each National Plan. The remaining 43 percent, however, is not freely determined by governments as to its use; in fact, there remains a «residual» allocation constraint for these funds, which is determined by the six[57] identified «pillars» or the listed «objectives»[58], both of which are contained in the Regulation establishing the NGEU, with the force of law that this instrument has for states and individuals. These content elements effectively impact public policies and the sectors addressed (to the detriment of others) at the national level, within a context of their homogenization at the European level, creating an upward leveling of the identified areas. Furthermore, still with reference to the content of the document, there are two other commitments: the obligation to take into account the guidelines prepared by the Commission for the drafting of the Plans[59], and the obligation to take into account principles identified by the Union in other documents[60], which states must adhere to as explicitly referenced in the NGEU Regulation[61]. Among these, the most relevant case for impact on the activities and projects of the National Plans is given by the observance of the principle «Do No Significant Harm» DNSH, trans-

[57] Art. 3, Regulation (EU) 2021/241.

[58] Art. 4, Regulation (EU) 2021/241.

[59] European Commission, Guidelines for the preparation of plans financed by the RRF are available at the following web addresses: *https://ec.europa.eu/info/sites/default/files/document_travail_service_part1_v2_en.pdf*

https://ec.europa.eu/info/files/commission-staff-working-document-draft-template-recovery-and-resilienceplans_en

[60] Art. 17, Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088.

[61] Art. 5, paragraph 2, Regulation (EU) 2021/241.

lated as «not causing significant harm to the environment»[62], for the implementation of which each country has created its own documents[63]. Finally, there is the obligation to refer, always when drafting the NRRP, to the indications of the Country Specific Recommendations (CSRs) drawn up annually for Member States, recommendations that with the NGEU are no longer simply non-binding guidelines (as they have always been) but mandatory documents and a benchmark for the composition (and fundability) of the Plans themselves, which must therefore contain reform interventions consistent with the CSRs of 2019 and 2020. The «Country Recommendations», drawn up by the Council of the European Union[64], represent one of the main means of communication between the Union, the country, and the definition of their respective public policies and reforms, as well as establishing broad guidelines for activities and interventions to be implemented aimed at homogenizing the identified sectors at the continental level. With the NGEU, the recommendations become a reference el-

[62] Among others, the following have written about it: F. Spera, *Da valutazione "non arrecare un danno significativo" a "principio DNSH": la codificazione di un nuovo principio europeo e l'impatto di una analisi trasversale rivolto al futuro*, in «Quaderni AISDUE», XXXIV (2022), p. 739-758; M. Montini, *La sfida della transizione energetica e l'emergere dei conflitti intra-ambientali: quali possibili soluzioni?* in «Quaderni AISDUE», XI (2023), p. 256-275; A. Bartolini, *Green Deal e il c.d. principio DNSH*, in «Federalismi.it», XV (2024), p. 50-60.

[63] For Italy, see the «Operational Guide» prepared by the State General Accounting Office, see State General Accounting Office, *Guida operativa per il rispetto del principio di non arrecare danno significativo all'ambiente* (so-called DNSH), updated edition attached to the RGS circular of 14 May 2024.

[64] Art. 121, paragraph 2, TFEU if referring to economic policies or Art. 148, paragraph 4, TFEU if referring to the examination of the Member States' annual reports on employment.

ement in the drafting of the NRRPs (with respect to the forecasting of investments and reforms) consistent with the CSRs of 2019 and 2020, unless individual States have already addressed the points indicated in the recommendations and have already achieved «substantial progress» or «full implementation» ratings. It can therefore be said that the (EU) instrument of the Recommendation is strengthened through the mechanism of the NRRPs (of individual countries). The issue of content and how the power relations between the European Union and Member States have developed through it leads to two concluding reflections. First, the type of constraint linking the NGEU and the NRRP, which some scholars describe as a «negotiating constraint». This constraint[65] is evident from three aspects: drafting the Plan, entrusted exclusively to the individual Member State; negotiation and stipulation of operational agreements on monitoring and implementation of the Plans; and the possibility of amending the Plan. It is true that the role of the Recommendations is strengthened through the NRRP, but this strengthening is balanced by negotiation, which is not imposition. Secondly, with regard to the type of legal constraint, it is useful to recall one element: compared to the NRP (National Reform Programme), which each country is required to draft annually during the «European Semester» phase for the preparation of its budget, the regulatory constraint of the NRRP is presented in much more stringent terms. While the NRPs are approved by

[65] G. Menegus, presentation in the «Next Generation EU» section of the seminar «*Fonti del diritto europee e ordinamento interno. Influenze e circolarità*», promoted by Luiss and La Sapienza Universities in collaboration with the journal *Federalismi.it*, Rome, 6 May 2024.

the competent EU institutions through the Recommendation instrument, the NRRPs are approved through an Implementing Decision[66], a legally binding act within the EU legal system and a binding instrument for the countries[67]. This determines an increased role for the Commission in terms of responsibilities and functions[68].

3.2 Reversal

Still referring to the process of greater centralization introduced by the NGEU, it is worth mentioning the inclusion in Regulation 2021/241[69] of the non-reversibility clause, the reversal mechanism. This prohibition, introduced by the European legislator, prohibits countries from canceling, once they have adopted them, measures necessary to meet the milestones and targets of the Plans. The objective is specifically to avoid nullifying the commitments of the reforms and to prevent a

[66] Article 291 of the TFEU regulates implementing acts. In this case, the EU Regulation establishing the NGEU is the legislative act that constitutes the legal basis of the national NRRPs. For further information, see: R. Adam, A. Tizzano, *Manuale di Diritto dell'Unione Europea*, 4th ed., Giappichelli, Turin 2024, p. 240 ff.

[67] On the topic see: I.A. Nicotra, *Le tendenze della produzione normativa alla luce di pandemia, crisi economica, guerra e cambiamento climatico*, in «Osservatorio sulle Fonti», II (2022), p. 873-905; D. De Lungo, *Contributo allo studio dei rapporti fra Piano Nazionale di Ripresa e Resilienza e sistema delle fonti statale: dinamiche, condizionamenti e prospettive*, in «Osservatorio sulle Fonti», III (2022), p. 33-53; N. Lupo, *Il Piano Nazionale di Ripresa e Resilienza (PNRR) e alcune prospettive di ricerca per i costituzionalismi*, in «Federalismi.it», I (2022), p. IV-XIII; A. Monorchio, L. Mottura, *Compendio di contabilità di Stato*, Cacucci, Bari 2021; D. Bolognino, *Manuale di contabilità di Stato*, Cacucci, Bari 2019, p. 85-108; E. Cavasino, *L'esperienza del PNRR: le fonti del diritto dal policentrismo alla normazione euro-governativa*, in «Rivista AIC», III (2022), p. 247-269.

[68] M. De Bellis, *Il ruolo di indirizzo e controllo della Commissione europea* … cit., p. 32-49.

[69] Art. 24, paragraph 3, Regulation (EU) 2021/241.

decision to backtrack shortly after the official transition has been made in the forms and with the tools identified, thus ensuring certification of the objective achieved[70]. In short, this makes it impossible to review reforms already achieved as if they had never been achieved or implemented. This prohibition on regression from the achievement of agreed objectives is enforced by the revocation of economic benefits if, once achieved, there is a subsequent deviation from them. The importance that the European institutions assign to this clause can be understood from the fact that both the European Court of Auditors[71] and the Commission[72] have intervened to further detail the various aspects of the reversal mechanism, with the ultimate goal of being able to specify a halt to financial transfers for states that fall foul of the clause[73]. It could be said that the reversal clause marks a new centralization at the European level, both with respect to the constraints on legislative activity and the

[70] On the subject of *reversal* see: N. Lupo, *Il divieto di invertire la marcia (c.d. reversal) nelle riforme PNRR già adottate: si chiarisce un altro elemento essenziale del nuovo "metodo di governo"*, in «Quaderni Costituzionali Rassegna», IV (2023), p. 10-22. N. Lupo, *PNRR e cicli politico-elettorali, tra Unione europea e Stati membri* in «Federalismi.it», XXVIII (2023), p. III-XIV.

[71] European Court of Auditors, Special Report N. 7 of 2023.

[72] European Commission, *Report on the implementation of the Recovery and Resilience Facility: Moving Forward*, Brussels 19/09/2023 COM(2023) 545 final.

[73] An example of a possible *reversal penalty* that affected Italy and which did not materialize was the one relating to the decree-laws of 6 November 2021, n. 152, converted with law 233/2021 and of 30 April 2022, n. 36, converted with law 79/2022, both implementing measures of the NRRP, in this case concerning *milestone* M1C1-103: «Entry into force of primary and secondary legislation and regulatory provisions and completion of administrative procedures to encourage compliance with tax obligations (tax compliance) and improve audits and controls».

constraints on public policies to be implemented by each individual state. In particular, it is an instrument that impacts reforms rather than activities and projects, and it concerns the bureaucratic activity of the NRRPs more than spending.

Reversal constraint is not completely rigid, as it has been partially mitigated. In the Commission's explanatory and technical documentation on the reversal, clarifying elements emerged that explain its application[74], admitting some scope for intervention (effectively loosening its rigidity) with respect to the possibility of reversing it. This aspect is formally accepted, provided, however, that it does not substantially preclude the results achieved in previous decisions. This relaxation therefore appears to affect the use of the tools to be employed rather than the result to be achieved, it concerns, when possible, the review of the use of tools and sources rather than the actual ultimate non-application of the provisions and the results produced and the merit generated by them. It is therefore concluded that the reversal instrument retains all its strength and represents an element that governments and parliaments must take into account in their activity.

3.3 Conditionality

Another aspect related to the centralization process generated by the NGEU is the (new) role of conditionalities, which – it should be clarified immediately –

[74] See the reference to the *reversal mechanism* indicated in the document: European Commission, *Report on the implementation of the Recovery and Resilience Facility: Moving Forward*, Brussels 19/09/2023 COM(2023) 545 final.

do not relate to the destination (or purpose) of European resources, which is instead represented by the specific purposes for which the fund or program exists[75]. Conditionality, in fact, pursues a political objective that goes beyond the primary motivation for the expenditure itself and represents a way of exercising power based on the control of resources by a public entity, through the creation of membership or obedience[76]. It pertains to the implementation of public policies and activities that would otherwise not be pursued by the beneficiary of resources, policies, and activities, which are instead implemented not through legal imposition but through the conditioning provided by the power of the purse.

This is not a recent aspect of the functioning of international organizations and composite states[77], which has spread significantly at the Community level both through legislation and the case law of the Court of Justice developed in recent years[78], especially with

[75] For example, funds from the EU «Horizon Europe» programme are earmarked for research activities and not for areas other than those identified in the founding Regulation.

[76] On the concept of conditionality see: C. Pinelli, *Conditionality*, in *Max Planck Encyclopedia of Public International Law*, ed. R. Wolfrum, Oxford University Press, Oxford-New York 2013, p. 1-9.

[77] On the role of this instrument in relation to financial institutions see R.W. Grant, *Strings Attached: Untangling the Ethics of Incentives*, Princeton University Press, Princeton 2012, p. 101-110. In relation to States, see instead A. Baraggia, *La condizionalità come strumento di governo negli Stati compositi. Una comparazione tra Stati Uniti, Canada e Unione Europea*, Giappichelli, Turin 2023, p. 155-230.

[78] With regard to the rulings concerning the conditionality regimes linked to the provision of European resources, the following judgments are worth mentioning: *C-370/12 Pringle v. Government of Ireland, Ireland and the Attorney General* (ECLI:EU:C:2012/675) of 27 November 2012; *C-62/14 Gauweiler v. Deutscher Bundestag* (ECLI:EU:C:2015:400) of 16 June 2015; *C-8/15 Ledra Advertising Ltd and Others v. European Commission and European Central Bank* (ECLI:EU:C:2016:701) of 20 Sep-

regard to spending conditionality and budgetary constraints, which are increasingly rooted in the European legal context, so much so that their relevance and impact on the transformations in the fabric of relations between Brussels and the Member States have been affirmed[79]. In the new governance introduced by the NGEU, the conditionality regime finds even greater strength: no longer only in the purely economic perimeter, but also in solidarity[80] and even more so political terms, intertwining the objective of protecting the financial interests of the EU, which over time has increased its importance with respect to the aim of protecting the Treaties[81], becoming a priority objective of the NRRPs. With the NGEU, the conditionalities therefore have a dual value: on the one hand, they are necessary to ensure the initiative's effectiveness, the functionality of the Plans, and compliance with deadlines within a context of operational and content homogeneity. At the same time, they also clearly define «political» profiles and further emphasize

tember 2016.

[79] V. Viță, *Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality*, in «Cambridge Yearbook of European Legal Studies» (2017), p. 116-143.

[80] On the subject of the different profiles of conditionality, among others: P. Mengozzi, *L'assistenza finanziaria comunitaria e le diverse accezioni del principio di condizionalità: dal MESF al Recovery Fund-Next Generation EU*, in «Quaderni AISDUE», II (2023), p. 35-50; F. Costamagna, *Il Next Generation EU e la costruzione di una politica economica europea: quale ruolo per democrazia e solidarietà?*, in *Quaderno AISDUE serie speciale, Atti del Convegno L'Unione europea dopo la pandemia, Bologna 4-5 novembre*, Editoriale Scientifica, Naples 2021, p. 38-46.

[81] E. D'Alterio, *I controlli sull'uso delle risorse pubbliche*, Giuffrè, Milan 2015, p. 9-29. For a more general reflection on the growing role of European public finance rules, see also E. D'Alterio, *Public Finance Law and Public Administrations. The Shaping Power of Public Finance in the European Union*, Routledge, London 2025.

the European Union as an entity attentive to shared interests and which now explicitly calls for the concrete application of the «rule of law». This has been achieved[82] by granting the Commission (and individual countries that can take action in this regard during the European Semester) the power to carry out monitoring and control activities specifically targeting any violations, in implementation of the NRRPs, that impact or concern violations of the rule of law. This aspect was reinforced by the Court of Justice, which in 2022 rejected the appeals of two countries (Poland and Hungary) against the application of the EU Regulation establishing[83] the conditionality mechanism in the management of European funds (both the NGEU and the MFF), thus effectively establishing the rise of these instruments to a European[84] governance mechanism. In the two rulings[85], the Court

[82] Term developed by the Court of Justice on the basis of Articles 2 and 19 TEU and Article 47 of the Charter of Fundamental Rights: in the combined provisions of the reading it is defined that this expression defines: the effective application of EU law, the proper functioning of the internal market, respect for the values and fundamental rights of the Union, effective judicial protection, the autonomy and efficiency of the judicial system. It is worth noting that Article 7 TEU, which establishes the procedure for intervening against Member States that violate the rule of law, has never been applied, proving ineffective. Moreover, the new Regulation (EU) 2020/2092, concerning a general regime of conditionality for the protection of the Union budget, appears to be the instrument capable of leading to the imposition of sanctions for such violations.

[83] Regulation (EU, Euratom) No 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general system of conditionality for the protection of the Union budget, establishing a stronger constraint for accessing European funds under both the NGEU and the MFF.

[84] A. Baraggia, M. Bonelli, *Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges*, in «German Law Journal», XXIII (2021), p. 131-156.

[85] The references are: C-156/21, *Hungary v. Parliament and Council*, and C-157/21, *Poland v. Parliament and Council*, both judgments

established that «respect by the Member States for the common values on which the Union is founded, which have been identified and shared by them, and which define the very identity of the Union as a legal order common to those States, including the rule of law and solidarity, justifies mutual trust between those States»[86]. By implementing conditionalities, the EU strengthens its ability to influence national legislation and policies, with the express objective of protecting the rule of law and European financial interests. This helps to affirm how the continental level (still) assumes an overall role of preeminence over the state and territorial levels[87], confirming that the sharing of rules that assign a primary role to European institutions is a direction that is consolidating. Strengthening conditionality, in terms of the connection between budgetary policies and reforms, could induce Member States to improve their spending on structural investments, compared to current expenditure items, which are subject to constant reductions due to contracting national budgets. The management of significant resources – whether these arise from debt or planning, both European – and the growing scope for conditionalities have led to an increase in the level of

of 16 February 2022 against the Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council.

[86] For a first analysis of the two judgments, B. Nascimbene, *Stato di diritto, bilancio e Corte di giustizia*, in «Eurojus», II (2022), p. 114-136; E. Perillo, *Respect for the «European Rule of Law» in Light of the Hungarian and Polish Judgments on the Financial Conditionality Clause. What Prospects?*, in «BlogDUE» (2022), p. 1-6.

[87] G. D'Arrigo, *Next Generation EU e PNRR: governance, politiche pubbliche e innovazioni in Europa e in Italia*, in *L'attuazione del PNRR: uno sguardo al futuro*, eds. B.G. Mattarella, L. Fiorentino, M. Cardone, in «Quaderni della Rivista Amministrazione in Cammino», Rome 2022, p. 10-36.

controls but also stabilized a management governance model that strengthens the community dimension, also with respect to the value profile[88] of the European integration process[89]. This value aspect is also found in another conditionality profile included in the NGEU, less well-known and less debated in terms of legal analysis, but nonetheless important and worth mentioning. It touches on a topic that has grown significantly in recent years and has gained significant prominence, both in public debate and in the commitment of European and national institutions: gender equality and closing the gender gap. This is a significant area for (rightly) political reasons, but also for its technical implications and implications for the drafting and implementation of the Plans. The NGEU and related documents have given due attention to the Union's concerns about social inequalities, particularly gender gaps, keeping in mind that the issue of equal opportunities, reflected in the various national Plans, is part of the broader strategy that makes it one of the horizontal principles of the Union's multiannual budget for the seven-year period 2021-2027, and which the Commission adopted in a five-year strategy document[90]. This means that, in implementing the MFF

[88] G. Pitruzzella, *L'integrazione tramite il valore dello "Stato di diritto"*, in «Federalismi.it», XXVII (2022), p. IV-XIII. On the subject of the increased centrality of EU values as an element of reinforcement of the European construction with regard to a more recent ruling which in any case involves Hungarian legislation, see also P. Mori, *La giustiziabilità dell'art. 2 TUE e la funzione costituzionale dei valori della sentenza Commissione/Ungheria (Valeurs de l'Union)*, in «Unione Europea e Diritti», II (2026), p. 2-19.

[89] A. Dirri, Y. Guerra, *Il Regolamento europeo sulle condizionalità legata al rispetto dello Stato di diritto. Impatto e criticità applicative sul processo di integrazione europea*, in «Diritto Pubblico Comparato ed Europeo Online», IV (2023), p. 3315-3344.

[90] European Commission, Communication from the Commis-

and the NGEU, with particular reference to the labor market, measures are envisaged that guarantee three objectives: a) a gender perspective; b) gender budgeting; c) ex ante and ex post gender impact assessment. These aspects ensure the full implementation of the National Plans without gender discrimination, with detailed elements in the Next Generation EU legislation[91] relating to labor market participation; ensuring and strengthening equal treatment, status, advancement, and equal pay between men and women; access to equal opportunities; and ensuring against any type of discrimination. The national NRRPs therefore had to indicate projects aimed at reducing gender gaps, in line with the Commission's operational guidelines, by including a specific paragraph entitled «Gender equality and equal opportunities for all»[92] in the template. The same guidelines also indicate other priorities that are useful to recall to understand the scope and penetration of the conditionalities indicated in other sectors. The document prepared by the Commission highlights the preparation of formal commitments in relation to: anti-money laundering, anti-fraud, and anti-corruption frameworks; business environment

sion to the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *A Union of Equality: The Gender Equality Strategy 2020-2025*, Brussels, 5 March 2020 COM(2020) 152 final .

[91] Articles 3 and 4 of Regulation (EU) 2021/241 on the principles and objectives of the Plans cite the indicated themes; Art. 18, letter «c», the Regulation; art. 18, letter «o» in line with objective n. 5 of the Sustainable Development Goals – SDG (the sustainable development goals are a series of 17 interconnected objectives, defined by the United Nations as a strategy «to achieve a better and more sustainable future for all», also known as the «2030 Agenda» which recognizes the close link between human well-being, the health of natural systems and the presence of common challenges for all countries); evaluation criterion n. 3; «recitals» n. 28 and 39.

[92] Located in the general introduction of individual documents.

reforms; effectiveness of public administration and judicial systems; respect for the rule of law; guaranteeing tax revenues for investments; and competition reforms.

All these constraints – political, such as those on the rule of law; thematic, such as those on the gender gap; operational, such as those on anti-fraud – represent strong conditionalities that benefit the supranational dimension. This articulation confirms how the NGEU represents a step toward integration and strengthening the European role because it increases the importance of community resources; it determines the path of shared European debt; it overexposes the Commission in its relations with governments and with the conditionality mechanisms related to the granting and management of resources; it provides a method for influencing developments in macroeconomics, public policy, and regulatory activity. This brings about the aforementioned paradigm shift, with a heavy intervention, almost interference, by European public authorities in influencing the economic planning of member states, in the introduction of an initial autonomous and stable fiscal policy, in the finalization of institutional policies with respect to the protection of European economic and financial interests, in the growing role of the Brussels executive, and certainly in the strengthening of the community method, albeit in a context that also appears to be developing a «new method of governance» for the functioning of the European Union. For all these reasons, the importance and functioning of European governance and how it has changed with the NGEU are of primary importance, playing a significant role in defining the scope of action of public authorities and in connecting them to economic and social

dynamics and to the objectives that the Union sets for itself by «anticipating» the priorities of public policies.

With regard to the centralization process, the EU Commission has seen significant innovations, with its role growing in several respects: its institutional and political position; the expansion of its tasks and functions; and the increased strengthening of its position *vis-à-vis* other EU institutions and, at the same time, vis-à-vis the Member States. These elements have also generated a consequent increased visibility among citizens and in the media. It is therefore not a stretch to say that among the EU institutions, the NGEU has had the most significant impact on the Commission, which, before the adoption of the Recovery Package, had only coordinating powers that emerged in the context of the European Semester[93]. The Next Generation EU, while retaining important intergovernmental characteristics, particularly the requirement for each Member State to approve the document defining the system of own resources[94], shifts a significant number of new, real powers to the European Union level[95] – primarily to the Com-

[93] F. Costamagna, *Il coordinamento delle politiche economiche nell'ambito del Semestre europeo*, in *Governance economica europea. Strumenti dell'Unione, rapporti con l'ordinamento internazionale e ricadute nell'ordinamento*, ed. O. Porchia, Editoriale Scientifica, Naples 2015, p. 127-142; G. Menegus, *Gli indirizzi di massima per il coordinamento delle politiche economiche ex art. 121 TFUE nel quadro del semestre europeo*, in «Osservatorio sulle fonti», XXXIII (2020), p. 1452-1503.

[94] In accordance with Article 311 of the TFEU. On the Union's own resources, see: A. Pedone, *Il bilancio dell'Unione Europea: tra dipendenza dal passato e prospettive per il futuro*, in *Istituzioni, diritti, economia. Dal Trattato di Roma alla Costituzione europea*, eds. G. Colombini, F. Nugnes, Plus, Pisa 2004, p. 275-288.

[95] Starting from the «surveillance model», fiscal federalism as described by A. Hinarejos, *Fiscal Federalism in the European Union*, in

mission – including the ability to raise resources beyond state transfers and to direct supranational economic policy by investing in transnational policy priorities such as the Green Deal and digitalization, as identified by the Commission itself. The Next Generation EU has exerted a strong push for the Commission to be given treasury-like functions[96]; for the strengthening of EU policy powers; and for a cooperative role between the EU's monetary and fiscal institutions. All this with the objective advantage of possessing, unlike other institutions, the full legal and economic expertise necessary to present concrete and detailed policy and technical documents, materials, and instruments. This factor has led the other institutions – especially in an emergency context and with decisions to be made quickly – to accept the Commission's texts and proposals as the basis for general discussions[97], thus playing a decisive role in the coordination and overall direction of the package of choices and policies to be implemented. Finally, in addition to the tasks already indicated, in the operational phase, the Commission has the final say and powers over the implementation, delivery, and monitoring of the activities and reforms envisaged in the National Plans as funded. In this regard, it is useful to highlight how the NGEU Regulation explicitly establishes the centrality of the EU Commission as the primary player, indicating

«Common Market Law Review», VI (2013), p. 1621-1642.

[96] European Commission, *Communication from the Commission to the European Parliament, the European Council and the European Central Bank on a European Minister for Economic Affairs and Finance*, Brussels, 6 December 2017, COM(2017) 823 final.

[97] B. De Witte, *The European Union's covid-19 recovery plan*… cit., p. 669.

that «the mechanism is implemented by the Commission under direct management, in accordance with the relevant rules adopted pursuant to Article 322 TFEU»[98]. Beyond these general considerations, there are two aspects that confirm the role of the European executive in the centralization process brought about by the NGEU.

3.4 Controls

The NGEU is structured as a performance-based program, with detailed implementation and management measures for achieving the objectives agreed upon between the European Union and each Member State. This approach places a strong focus on the Union's institutions, starting with its executive branch, within a framework of significant innovations compared to the functioning of traditional European programming[99] (with regard to Italy, it highlights weaknesses in the administrative and management system[100]). Both the NGEU and the NRRPs it finances therefore have the primary operational characteristic, differentiating them from other programs funded by the Union, of placing a focus on the achievement of verified objectives. This performance-based system, as described, is therefore focused on achieving results (which are not necessarily financial, but also include reforms, regulatory interventions, and other types of interventions) and not on prior-

[98] Art. 8 Regulation 2021/241, which also explicitly refers to the Financial Regulation and Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council (the so-called «Cross-compliance Regulation»).

[99] P. Cucumile, *I fondi strutturali e il PNRR* … cit.

[100] G. Santilli, *Vita e drammi di un fondo europeo*, in «Il Foglio», 2 September 2021.

itizing expenditure. This implies that the payment of the tranche established every six months occurs only after verification of the achievement of targets and milestones, regardless of the costs incurred, but within a timeframe that indicates reforms and measures adopted and with specific monitorable indicators for their verification. For Member States, therefore, it is not a question of obtaining disbursements tied solely to the costs incurred, but rather based on the concrete achievement of objectives, including non-economic/financial ones. It is in this context that – at the European level and independently of national legislation and plans – a (new) competence emerges that becomes central and highlights the Commission's role: control/monitoring activities, whose ultimate purpose is to contribute to fulfilling the European «pact» to ensure sound financial management[101] and that its implementation, delegated to the Member States, must be consistent with this principle[102] and in compliance with the agreements stipulated with the European Commission[103]. Specifically, this refers to activities that,

[101] This phrase is referred to in Article 22 and Recital 40 of Regulation (EU) 2021/241.

[102] European Commission, *Commission staff working document guidance to member states recovery and resilience plans*, Brussels, 22 January 2021 SWD(2021) 12 final which on p. 36-38 defines the principle of «sound financial management», in relation to the RRF. For an analysis that cross-references the combined provisions of Regulation (EU) 2021/241 and Regulation (EU) 2020/2092, see G. Gioia, *Il controllo della Corte dei conti sulla gestione del PNRR. Del rapporto fra attività di controllo, Stato di diritto e accountability*, in «Italian papers on federalism», II (2022), p. 130-132.

[103] For an in-depth analysis of European and national controls with reference to the NRRP see E. Tatì, *I controlli amministrativi alla luce del Piano nazionale di ripresa e resilienza: problemi e prospettive tra efficienza e condizionalità*, in «Federalismi.it», XXXIII (2022), p. 85-130.

with regard to financial aspects and economic impact, aim to monitor spending, but above all, «good» spending, in the sense of sound financial management, assigning the control function, which each Member State implements as it sees fit, but with the obligation to account for how it finalizes this activity[104], which becomes even more fundamental within the more general context of management governance. That this is the approach underlying the purpose of the controls is confirmed by Regulation 2021/241 itself in its explicit references to this approach[105] and to effectiveness (and/or results)[106] within the broader context of the administration's activities aimed at finding solutions[107]. This approach, in

[104] F. Corti, J.N. Ferrer, *Steering and Monitoring the Recovery and Resilience Plans: Reading between the lines*, in «Ceps», II (2021), p. 1-17.

[105] In Regulation (EU) 2021/241, the reference to *performance* is present in recital 53 (and in the English version it appears sixteen times). The parameter of efficiency relating to the implementation, monitoring, and evaluation of the Plans can be found in recitals 41 and 51 and in Articles 18, paragraph 4, letter k) and 19, paragraph 3, letters i) and j).

[106] Here the references are to "whereas" 17 and 18. The concept of "result" (in the Italian version there are 21 citations of this term) is then implicit in the definition of the *milestones* (qualitative goal/result) and the *targets* (quantitative objective/result) in Articles 2; 11, paragraph 2; 29, paragraph 2; 30; 31 and 34.

[107] On the administration «for results» and on the European influence of the efficiency parameter, see: A. Romano Tassone, *Sulla formulazione "amministrazione per risultati"*, in *Scritti in onore di* E. Casetta, Jovene, Naples 2001 p. 813 ff; L. Torchia, *L'efficienza della pubblica amministrazione tra ipertrofia legislativa e atrofia dei risultati*, Paper given at the 64th Conference of Administrative Studies on «Sviluppo economico, vincoli finanziari e qualità dei servizi: strumenti e garanzie», Varenna, 20-22 September 2018; F. Di Mascio, A. Natalini, *Beyond New Public Management*, Carocci, Rome 2018, p. 91-99; R. Ursi, *La giuridificazione del canone dell'efficienza della pubblica amministrazione*, in *A 150 anni dall'unificazione amministrativa italiana - Studi - La giuridificazione*, eds. B. Marchetti, M. Renna, University of Florence, Florence 2017, p. 457-458 and 465-468.

addition to controls, also assigns the Commission additional sanctioning tasks – thus strengthening the control activity beyond mere verification or acknowledgement – which extend to the possibility of suspending payments or even recovering allocated funds if the conditions are met. A final aspect of monitoring, again the responsibility of the Commission offices, but which also presents aspects requiring widespread evaluation, concerns the Recovery and Resilience Scoreboard, the online evaluation framework[108] that provides a public overview of the progress made in implementing the instrument and the Plans. The framework is built on a set of common indicators[109] related to the objectives of the Recovery and Resilience Facility, showing progress in the implementation of the NGEU and the National Plans, the collective objectives, and the initiative's overall performance. Indicator data is collected by member states, who communicate it twice a year to the Commission, which uses it for the public monitoring dashboard[110].

The result is a general situation in which the set of targets and milestones, measurement criteria, analysis times, verification methods upstream of the process and the automatic nature of the assessment mechanisms

[108] Available at: *https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html*

[109] The Commission, Member States and the European Parliament have identified 14 common indicators relating to the six political pillars of the NGEU.

[110] The indicators, data collection methods and all that is relevant to this monitoring activity are defined in Delegated Regulation (EU) 2021/2106 of 28 September 2021, which supplements Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by defining common indicators and detailed elements of the recovery and resilience scoreboard.

ensure that the control (and sanction) action is carried out promptly, all under the responsibility of the Commission, confirming its competence in this area and its centrality in the system.

3.5 Relations between the Commission and the Member States

The relationship between the Commission and individual Member States, which develops within the legal framework outlined by the Treaties[111] and secondary legislation as well as the case law of the Court of Justice of the EU[112], specifically in the NGEU, presents some new elements. In fact, this can be described as a direct relationship with the individual States that dialogue with the EU executive within the framework defined in the

[111] Articles 2, 4 paragraph 3 and 7 of the Treaty on European Union (TEU).

[112] The judgment of 5 February 1963 in case 26/62 (*van Gend & Loos v. Netherlands Revenue Authority*, ECLI:EU:C:1963:1) established the principle of the direct applicability of Community law in the courts of the Member States. Similarly, the judgment of 15 July 1964 in Case 6/64 (*Costa v. ENEL*, ECLI:EU:C:1964:66) was fundamental in establishing that Community law is to be understood as an autonomous legal order that has primacy over national legal rules. The Court has always claimed the ultimate authority in defining the relationship between Union law and national law since these two judgments, developing the fundamental doctrines of the primacy of EU law, according to which Union law has absolute primacy over national law and this must be taken into account by national courts. The Court confirmed this approach in subsequent cases (among them: Case 106/77, *Administration of State Finances v. Simmenthal spa* of 9 March 1978, ECLI:EU:C:1978:49; Case 149/79, *Commission of the European Communities v. Kingdom of Belgium* of 17 December 1980, ECLI:EU:C:1980:297; Joined Cases C-46/93 and C-48/93, *Brasserie du Pêcheur sa c. Federal Republic of Germany* and *The Queen v. Factortame ltd* of 5 March 1996 ECLI:EU:C:1996:79; Case C-473/93, *Commission of the European Communities v. Grand Duchy of Luxembourg* of 2 July 1996, ECLI:EU:C:1996:263); Case C-213/07, *Michaniki AE v. Ethniko Symvoulio Radiotileorasis* of 16 December 2008, ECLI:EU:C:2008:731).

Regulation for the management of the specific fund[113]. The Commission immediately established a direct relationship with the Member States, providing them with general guidelines for drafting the Plans[114] and holding bilateral meetings regarding the projects. Furthermore, through operational agreements[115] between the Commission and national governments, the commitments regarding the various management and technical activities[116] for the implementation of the NRRPs[117] were defined, following the typical format of a private law contract. These agreements meticulously list the respective commitments in a context that is, however, no longer the traditional one of partnership agreements for the European Structural and Investment Funds (ESIF)[118]. Following the definition of the Plans, with the discussions between the center (Brussels) and the periphery (national capitals), in the terms and channels mentioned, even in the operational phase, two moments can be summarized that always refer to the relationship between the Commission and the States as defined by the NGEU. The first

[113] In Regulation (EU) 2021/241 see: recitals 8 and 18 and Articles 4, paragraph 2; 8; 22, paragraph 1.

[114] European Commission, *Commission Staff Working Document, Guidance to Member States Recovery and Resilience Plans*, 22 January 2021, SWD(2021)12.

[115] Provided for by Art. 20 of Regulation (EU) 2021/241.

[116] Referring to the implementation of the NRRP and their monitoring by the EU. The operational agreements define: the monitoring and implementation schedule; the indicators relating to the achievement of milestones and objectives and the methods of access by the Commission to the data and, if applicable; further new milestones and objectives connected to the provision of the loan.

[117] Regarding the Italian Plan, the Operational Agreements were signed on 23 December 2021.

[118] F. Corti, J.N. Ferrer, *Steering and monitoring…* cit.

concerns dialogue and approval of the Plans; the second of (possible) variation, disbursement and implementation. In the first phase, the Commission's role emerges as «preliminary to the definition of the Plans»[119] with two types of intervention: a) verification of compliance with European documents and guidelines[120]; b) approval of the documents. With reference to point a), the activities of the bodies established specifically by the Commission[121] are responsible for: concretely verifying the anchoring to the pillars indicated by the Regulation, evaluating their relevance, proposals and effectiveness in relation to targets and milestones, consistency with the proposed actions[122]; verifying compliance with conditionalities[123]; verifying adherence to the specific Recommendations developed in the European Semester[124]. With reference to point b), the Commission offices carry out the following tasks: they authorize, within two months of submission, the Plans and define the approval proposal which is submitted to the Council of the European Un-

[119] M. De Bellis, *Il ruolo di indirizzo e controllo della Commissione europea nel dispositivo per la ripresa e la resilienza: la trasformazione della condizionalità*, in «Diritto Costituzionale Rivista Quadrimestrale», II (2022), p. 37.

[120] EU regulations, guidelines, country recommendations, and thematic policy objectives referred to in Commission documents.

[121] On 16 August 2020, the Recovery and Resilience Task Force (RECOVER) was established within the Secretariat-General of the European Commission, with responsibility for implementing the RRF and coordinating the European Semester. RECOVER reports to Commission President von der Leyen and works closely with the Commission's Directorate-General for Economic and Financial Affairs.

[122] Art. 19, paragraph 3, Regulation (EU) 2021/241.

[123] The environmental objectives with respect to the DNSH principle identified in the EU Regulation so-called «Taxonomy» and those of the rule of law identified in the EU Regulation so-called «conditionality».

[124] Art. 19, paragraph 3, letter b, Regulation (EU) 2021/241.

ion in the legal form of an implementing decision[125]. The Commission subsequently signs the agreement with the Member States also containing the agreed six-monthly timeframe complete with instalments and objectives[126]; they disburse contributions in individual installments after assessing the six-monthly achievement of goals and objectives deemed «satisfactory»[127]. They verify implementation with periodic visits twice a year, in response to the Member States' payment requests, to the national bodies responsible for managing the Plans. This occurs through two pathways: authorization to allocate the contribution in the event of a positive assessment[128]; or refusal to allocate in the event of a negative assessment[129]. This latter option includes consequences ranging from a request to freeze the six-monthly payment, to termination of the EU/Member State agreement, and, as a last resort, to the recovery of amounts already paid. It is interesting to note that, from the perspective of the Commission's role, while during the approval phase of individual Member States' documents, the European Council can also not approve the NRRPs – although in this case it must decide by qualified majority – during the verification phase of the Plans' implementation, the Commission alone has exclusive power to decide and liaise with the Member States[130]. Regarding the disburse-

[125] Art. 20, paragraph 1, Regulation (EU) 2021/241.
[126] Art. 23, paragraph 1, Regulation (EU) 2021/241.
[127] Art. 20, paragraph 5, letter a, Regulation (EU) 2021/241.
[128] Art. 24, paragraphs 2-5, Regulation (EU) 2021/241.
[129] Art. 24, paragraphs 6-9, Regulation (EU) 2021/241.
[130] Taking into account the advisory role of the Economic and Financial Committee. Similar reflections also appear in N. Lupo, *Il Piano Nazionale di Ripresa e Resilienza (PNRR) e alcune* ... cit.

ments of the contribution, the first instalment[131], defined as pre-financing[132], deserves a specific mention. It was paid immediately upon signing the operational arrangements. It should be noted that of the 27 countries, only Ireland's NRRP did not receive pre-financing because it was not requested[133].

This centrality for the Commission highlights two aspects: the primary body managing Next Generation EU at the European level in all its various phases, and at the same time the primary actor in dialogue with the Member States. This centralization is determined both by the tasks expressly assigned to the Commission itself by the Regulation and subsequent and consequent acts, and by the role assumed by the body in the emergency phase of the pandemic and in the various stages of political negotiations[134]. This construct refers not only to management governance but also to the «system» of governance that is increasingly centered on the European executive, an institution designed to address (only) the Community interest and an operational entity (which differs from the Council, a body representing and mediating between Member States). Within this framework, as defined by the NGEU Regulation, it is worth men-

[131] The granting of which is conditional on the Commission defining and accepting as satisfactory the mechanism for monitoring and controlling the implementation of the Plans.

[132] Of the same amount for all States, equal to 13 percent of the total value of the National Plan.

[133] European Commission, *Report to the European Parliament and Council on the implementation of the Recovery and Resilience Facility*, Brussels, 1 March 2022.

[134] F. Fabbrini, *Next Generation EU: Legal Structure and Constitutional Consequences*, in «Cambridge Yearbook of European Legal Studies», XXIV (2022), p. 45-66.

tioning the provision of a balancing mechanism in favor of the Member States and potentially influencing the implementation of the European program: the «emergency brake» mechanism already known from European Union law[135]. In this case, it is a question of the possibility[136] for all States[137] to challenge the documents of other countries if they detect – during the European Semester, which represents the time frame for the coordination of economic policies of and between Member States, a time frame in which governments are required to illustrate their reform programme (and not only), thus promoting mutual ex ante preventive control over public finance documents and planned activities – «exceptional... seri-

[135] The emergency brake clause system was introduced with the Treaty of Lisbon, which extended the ordinary legislative procedure and qualified majority voting, and introduced this new clause in the Treaty on the Functioning of the European Union. This system allows a Member State to submit a complaint to the European Council if it deems a legislative proposal to be of particular concern, requiring the legislative procedure to be suspended. This procedure can be restarted within four months if the Member State's concerns can be addressed; otherwise, the Commission prepares a new proposal. This mechanism is referred to in Articles 48 (safety of migrant workers), 82 (judicial cooperation in criminal matters with a cross-border dimension), and 83 (definition of common rules for certain crimes) of the TFEU.

[136] The aim is to make mutual monitoring of the state of the art as transparent as possible regarding the correct use of common resources raised through debt on the market and distributed by the Commission differently among Member States.

[137] Strictly speaking, the hypothesis considered refers to governments that opposed the sharing of common debt at the European Council of 21 July 2020, which approved the Recovery Plan. This mechanism was introduced to address the concerns of «frugal» countries as a potential tool for monitoring progress in countries receiving significant European resources. It can therefore be said that this is an essentially «political» procedure, aimed at delaying the disbursement of payments for no more than three months, especially if the qualified majority of Member States has since reached consensus in the committee around the decision to activate the «brake».

ous deviations from the satisfactory achievement of the relevant goals and objectives, they may request that the President of the European Council refer the matter to the next European Council»[138] which will have to discuss the issue in detail within three months of the request for an opinion from the Economic and Financial Committee.

Restricting ourselves to the NGEU, it can be stated that the European Commission is formally the member states' primary interlocutor. Summarizing its actions, this role ranges from supporting the planning of interventions to overseeing projects and verifying their compliance with the stated objectives. It is the body that signs the individual agreements (contracts) between the EU and national capitals, containing the rules of engagement for managing the Plans, and it is also the body that formally issues payments to the member states in accordance with the results of the review procedure[139]. All of this occurs within the framework that envisions for the Commission the role of managing policies and activities, coordinating them, and implementing the common

[138] Recital n. 52 of Regulation (EU) 2021/241. It is worth noting that this clause is included in the preamble to the Regulation and not in the operative part: this placement has a twofold motivation. On the one hand, it prevents the European Council from intervening in the management of the Recovery Fund (the body has no formal responsibility for the implementation of EU legislation), on the other hand, it weakens the possibility «for the European Council to discuss issues without being able to block an implementing decision» as noted by B. De Witte in *The European Union's COVID-19 recovery plan: the legal* … cit., p. 677.

[139] This provision is based on the Treaties, in Article 317, first paragraph, of the TFEU, which assigns to the Commission the task of implementing the budget taking into account the principles of «sound financial management». See the reflections of L. Strianese, *La governance di bilancio: attori e procedure*, in *Diritto della finanza pubblica europea*, eds. L. Di Rienzo, R. Perrone Capano, Edizioni Scientifiche Italiane, Naples 2008, p. 101 ff.

areas assigned to the body institutionally responsible for multiannual budgets, the single market, development, and new public policies. This role is now reinforced by the Commission's enhanced position.

4. Other EU initiatives with the new method of governance

There is no doubt that, given the events mentioned above and regardless of the formal interventions made while the Treaties remained unchanged, the NGEU represents a «constitutional moment»[140] that has justified a creative interpretation of their provisions to address the Covid-19 crisis. It is equally unquestionable that for the Union and for EU law there is a pre- and post-NGEU, and this change of context has manifested itself in the terms we have seen, but also in subsequent initiatives undertaken by the EU in various sectors. Initiatives in which the Recovery and Resilience Facility (RRF) served as a model for other programs, employing processes, systems, and technical methods that have been replicated elsewhere. This method has been used several times (about a dozen), and two are highlighted

[140] The «constitutional moment» in European Union law refers to the point at which EU law confronts national constitutions and fundamental principles of the Member States. This «moment» is crucial for the coexistence and mutual respect between EU and national legal systems. The «constitutional moment» in EU law is a period of confrontation and dialogue between the Union legal system and that of the Member States, in which an attempt is made to find a balance between the need for European integration and the protection of national fundamental principles. It is useful to remember that Constitutions do not evolve only through amendments and formal procedures, but also through interpretation and «constitutional moments» as the NGEU appears to have been. In this regard, see: C. Fasone, N. Lupo, *Learning from the Euro-crisis. A new method* … cit., p. 24.

below, which are relevant for their policy implications and impact.

A first example is the REPowerEU programme, adopted by Regulation of the European Parliament and Council in February 2023[141], which represents the EU's response to the rising energy costs following the war in Ukraine by providing additional[142] support resources to Member States to phase out Russian fossil fuel sources in favor of the transition to renewable energy. REPowerEU is designed to complement the RRF and, in addition to introducing direct amendments to the Recovery Regulation, has a governance structure that fully mirrors that of the NGEU. Specifically, it amends Article 4 of the NGEU Regulation by introducing among its priorities the new objective of «increasing the resilience, security and sustainability of the Union's energy system through the necessary reduction of dependence on fossil fuels and the diversification of energy supplies at Union level»[143]. A new Article «REPowerEU chapters in the Recovery and Resilience Plans», is also introduced[144], which addresses areas such as: improving energy infrastructure; energy efficiency in buildings; energy poverty; reducing energy consumption; and energy transmission and distribution. With respect to these updated chapters, the Commission assesses them while the Council approves them, in line with the governance structure of the NGEU.

[141] Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards the REPowerEU chapters and also amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755 and Directive 2003/87/EC.

[142] Around 20 billion euros.

[143] Art. 1, Regulation (EU) 2023/435 of 27 February 2023.

[144] Art. 21c, Regulation (EU) 2021/241 of 12 February 2021.

The framework of this program has also been used in a different context, one of great value for European governance: that of the new Stability and Growth Pact. The SGP, the cornerstone of the EMU[145], was established in the aftermath of the Maastricht Treaty with the aim of overseeing Member States' fiscal policy and ensuring sound public finances. Before the Covid-19 pandemic, the Commission had begun a reflection on how to reform the original SGP. During the pandemic crisis, the SGP was suspended for the first time in spring 2020[146]. Then, with the outbreak of the conflict in Ukraine, the suspension was extended to December 2023. After a complex process of political changes and text updates[147], it was published in the Official Journal on 30 April 2024. The EU has introduced three legislative acts[148], collectively referred to as the «new Stability

[145] M. Heipertz, A. Verdun, *Ruling Europe: The Politics of the Stability & Growth Pact*, Cambridge University Press, Cambridge 2010, p. 1-316.

[146] A. Estella, *The 'Muting' of the Stability and Growth Pact*, in «Cambridge Yearbook of European Legal Studies», XXIII (2021), p. 73-90.

[147] For an updated overview of developments in the institutional debate, see the documentation dossier prepared by the offices of the Chamber of Deputies and the Senate of the Republic for the Interparliamentary Conference on Stability, Economic Coordination, and *Governance* in the European Union in Madrid, October 26-27, 2023, available at: *https://documenti.camera.it/leg19/dossier/pdf/RI029.pdf*

[148] These are: a) Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on effective economic policy coordination and multilateral budgetary surveillance and repealing Council Regulation (EC) n. 1466/97; b) Regulation, on the so-called «corrective arm», has instead received only further amendments, after those introduced in 2005 and 2011: by Council Regulation (EU) 2024/1264 of 29 April 2024 amending Regulation (EC) n. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure; c) Council Directive (EU) 2024/1265 of 29 April 2024 amending Directive 2011/85/EU on requirements for budgetary frameworks of the Member States. The legal basis for all three documents is Article 121 TFEU.

and Growth Pact»[149]. The structure of the Pact follows the architecture of the NGEU, with individual national spending plans drawn up according to different needs, so as to treat each case according to the specifics of the country. States with particularly high public debt (such as Italy[150]) will be able to engage in dialogue with the Commission on the timing and methods of implementing the spending plans. As of September 30, 2024, governments have submitted their medium-term plans (4 or 7 years) for reducing debt, indicating investments and expenditures[151] that will allow them to comply with EU budget constraints[152]. This approach confirms the meth-

[149] For different assessments see: F. Salmoni, *Commissione UE e "nuovo" Patto di stabilità e crescita: quali altri vincoli?* in «Federalismi.it», XXXIII (2022), p. IV-XII; C. Forte , *La nuova governance fiscale europea: quali possibili riflessi sull'ordinamento interno?*, in «Osservatorio AIC», I (2023), p. 222-236; L. Bartolucci, *Il percorso della riforma del Patto di Stabilità: il compromesso raggiunto peggiora la buona proposta della Commissione (ma è comunque un passo in avanti rispetto al "vecchio" Patto)*, in «Diritti comparati» (2024), p. 1-7; N. Lupo, *Gli adeguamenti dell'ordinamento costituzionale italiano conseguenti al nuovo patto…* cit.; C. Fasone, *La riforma del Patto di stabilità e crescita: un compromesso al ribasso?*, in «Quaderni costituzionali», II (2024), p. 442-447; A. Francescangeli, G. Gioia, *Il nuovo Patto di Stabilità e Crescita. Much Ado About (Almost) Nothing?*, in «Diritti comparati» (2024), p. 1-7.

[150] For an analysis of the impact of the new SGP on Italy, see C. Cottarelli, I. Valpreda, *Quanto sarà difficile per l'Italia rispettare le nuove regole europee sui conti pubblici?* in «OCPI», 17 May 2024, p. 1-6; For a comprehensive analysis of the new SGP and its implications for the Italian rules and institutional context, see: Ufficio Parlamentare di Bilancio, *Audizione della Presidente dell'Ufficio parlamentare di bilancio nell'ambito dell'indagine conoscitiva di riforma delle procedure di programmazione economica e finanziaria e di bilancio in relazione alla riforma della governance economica europea*, 7 May 2024.

[151] Art. 14, Regulation (EU) 2024/1264, of 29 April 2024.

[152] For a more detailed analysis of the functioning of the new SGP see G. D'Arrigo, *Il nuovo Patto di Stabilità e Crescita (PSC): il "metodo NGEU/PNRR" nella rinnovata governance europea*, in «Federalismi.it», XXVI (2025), p. 1-26.

od of dialogue with the European Commission for the modification and implementation of the Plans, leaving the evaluation to the EU executive. On the public policy front, in parallel with the provisions of the NGEU, the new Pact allows states to continue investing in some areas to the detriment of others, thus influencing policy sectors at the European level. For example, national expenditures incurred for EU funding programs or co-financed by them will not be counted even if they were to increase the budget deficit[153]. As stated for the NGEU, this important initiative, the new SGP, must also be put to the test to determine whether a new governance format is gaining ground, whether the tools and procedures of the new method stand the test of time, whether the use of a new institutional and regulatory architecture is being implemented in everyday decisions or whether none of this is being confirmed. In certain respects, at present, no major critical issues appear to have emerged, therefore it would seem appropriate to be able to affirm the development of a new method for coordinating and managing EU economic policies, as well as mega-programs (such as the NGEU) or large-scale supranational public policies (such as REPowerEU or the budgetary discipline of the SGP), all initiatives with a European origin and dimension.

The NGEU governance framework is increasingly being used by the EU for programmes with different purposes and beneficiaries, or pursuing different objectives. Initiatives with different legal bases, ranging from cohesion policy to economic governance, involve

[153] Art. 2, Regulation (EU) 2024/1264, of 29 April 2024.

EU spending while others do not. Despite these differences, the legal architecture introduced by the RRF is increasingly being followed, binding EU legal acts (specifically, regulations adopted under the ordinary legislative procedure) structured through a process consisting of well-defined phases. The two programmes mentioned have their own specific legal features and peculiarities and deviate slightly from the RRF model. For example, RePowerEU involves EU spending, while the SGP provides for EU surveillance of national fiscal policies. However, despite these differences, the new SGP continues to share the performance-based nature of other programmes[154]. There are also other reasons that justify the widespread diffusion of this NGEU model, such as, for example, the increased role of the Member States at the national level, which are strongly involved in the process by autonomously deciding the content and scope of their own Plans and remaining responsible for their implementation. At the same time, however, this framework also grants significant power to the EU institutions, particularly the Commission and the Council, with their significant power to direct national policies[155]. It is the EU institutions that decide the general objectives that the countries plan to achieve, and it is always the EU institutions that approve the National Plans. Ultimately, in line with the logic of performance-based monitoring, the EU institutions monitor compliance with the documents

[154] L. Pench, *The new Stability and Growth Pact: innovation and continuity, in the light of Next Generation EU*, in *Research Handbook on Post-Pandemic EU Economic Governance and NGEU Law*, eds. F. Fabbrini, C.A. Petit, Edward Elgar Publishing, Cheltenham 2024, p. 299-327.

[155] J. Zeitlin, D. Bokhorst, E. Eihmanis, *Governing the RRF*, in *Policy Study for …* cit.

and authorize the disbursement of EU funds (or whether to grant flexibility in application of budgetary rules). It is also worth noting that this model enjoys greater democratic legitimacy if we consider that the National Plans are autonomous and do not derive from supranational diktats or impositions[156] that characterize other, more coercive regulations of EU[157] governance. Finally, the RRF model reflects the logic of subsidiarity, where the EU identifies general objectives, leaving the goals to be achieved to lower levels of government, closer to citizens and with deeper knowledge of the context and tools for implementation. Furthermore, the RRF model does not oblige states to implement their own plans but merely creates an incentive to do so, thus contributing to strengthening the EU's executive powers, particularly the Commission[158]. And because all RRF-modeled legal technology programs are multiannual, this gives EU institutions a strong and lasting influence over national decision-making in specific areas.

The RRF model also presents a series of weaknesses. First, there are questions of legitimacy regarding the involvement of local authorities. The National Plans

[156] «Two- pack» reform of the SGP, which provides for strengthened surveillance, if the Commission deems a Member State's draft budget non-compliant with the obligations imposed by the Pact, it could request the submission of a revised draft budget within two weeks of receipt. Upon completion of its examination of the draft budget and no later than 30 November each year, the Commission would, if necessary, adopt an opinion on the draft, to be submitted to the Eurogroup for consideration.

[157] D. Bokhorst, F. Corti, *Governing Europe's Recovery and Resilience Facility: Between Discipline and Discretion*, in «Government and Opposition», LIX (2023), p. 1-17.

[158] M. Patrin, *Collegiality in the European Commission. Legal Substance and Institutional Practice*, Oxford University Press, Oxford 2023.

are developed by national governments, and yet, despite the founding Regulations requiring the involvement of local administrations and civil society, the participation of these stakeholders has been virtually non-existent[159], as acknowledged by the Commission itself in its mid-term review[160].

The attention paid to the new Next Generation EU and NRRP model, and its spread to other European initiatives, testify to the true validity of this method. This validity has produced a positive break from traditional European programs that provide for lump sum payments over a seven-year period, regardless of actual results achieved. This validity does not conceal elements of vulnerability, such as pushing states, even under pressure from beneficiaries, to request, not without valid reasons regarding the risk of «creating congestion and errors and therefore a loss of resources for some countries»[161], an extension of the deadline beyond the 2026 deadline[162]. This solution[163] risked undermining one of the founding elements of the NGEU/NRRP meth-

[159] S. Baroncelli, *The Recovery and Resilience Facility*, in «REBUIL Working Paper», XV (2024), p. 1-14.

[160] European Commission, *Communication from the European Commission to Parliament, Council* … cit.

[161] A. Quadrio Curzio, *Perché si dovrebbero allungare i tempi del Recovery Plan*, in «Huffington Post», 22 November 2021.

[162] M. Buti, M. Messori, *Il metodo di Next Generation è valido ma bisogna fare di più per la fiducia nella UE*, in «Il Sole 24 Ore», 12 November 2024.

[163] The rigidity of the deadlines is clearly confirmed by the Communication from the European Commission, *NextGenerationEU - The road to 2026*, COM(2025) 310 final , Brussels, 4 June 2025, which indicates fixed timescales and procedures. For an initial analysis of this communication see: G. D'Arrigo, P. David, *Ultimo tratto di strada per il PNRR* in «Lavoce.info», 1 July 2025.

od: the solidarity and trust between EU countries that underpinned the Recovery initiative, given the fragility of Europe and the idea of a «community» identity[164]. A postponement would have effectively eliminated the link between ownership of decisions and the assumption of responsibility by individual states towards the Union, with the risk of transforming the EU program into a «major» one-off program. Instead, it is necessary to confirm confidence in EU decisions because they are a path to a leap in maturity and integration for the Union, even in the face of challenges such as pandemics, war, global competition, the advance of technological innovation, where the size of individual countries is inadequate, and the shift of decision-making and portions of sovereignty from the national to the supranational level help avoid the possibility of decline for the Union itself[165].

5. The NGEU's contribution to a new institutional dimension of the EU

The elements introduced by Next Generation EU and the National Recovery and Resilience Plan therefore appear significant. As seen at both the European and national levels, the impact on governance systems has been significant, with innovative features – some can be considered established, others require further development – that have changed the operational and organizational contexts of the Union. For Italy, these have affected de-

[164] L. Febvre, *L'Europa. Storia di una civiltà*, Feltrinelli, Milan 2014; P. Cattani, *Un'idea d'Europa, Liberalismo, democrazia ed etica ad inizio novecento*, Marsilio, Venice 2024.

[165] M. Buti, M. Messori, *Europa. Evitare il declino*, Il Sole 24 Ore, Milan 2024.

cision-making mechanisms, executive management, and structures.

For the EU, the issue of governance, especially with reference to the proposed introduction of a new method of governance at the supranational level, has acquired an absolutely central importance. The innovations introduced are based on concrete evidence of the NGEU's effective functioning, to be verified in everyday practice and – above all – upon the program's closure, when all the elements necessary to assess whether this experience has worked or not will be available. This program, we recall, is explicitly characterized as an exceptional and temporary measure and is scheduled to end definitively in December 2026, without an automatic continuation or commitment to reintroducing it in the future. In this regard, however, it is worth noting the criticism of those who believe this is a falsely temporary initiative, considering that «it is temporary, but will last for almost 40 years»[166]. This temporary approach seems to be denied even by authoritative voices in the public debate, who describe it as «a fundamental advancement of European integration»[167], to the point of proposing its definitive structure, which has described it as an instrument to be kept «in the European toolbox so that it can be used again if similar circumstances arise»[168]. This reflection, according to some[169],

[166] P. Leino-Sandberg, *Next Generation EU. A Constitutional...* cit, p. 2.

[167] D. Gros, *Europe and the Covid-19 crisis: the challenges ahead*, in «CEPS Policy Insights», XX (2020), p. 1-15.

[168] C. Lagarde, *Interview with Christine Lagarde President of the ECB*, in «Le Monde», 19 October 2020.

[169] P. Leino-Sandberg, *Next Generation EU. A Constitutional… cit.*, p. 3.

narrows the scope for interpretation to which the Treaties are subject, hypothesizing their substantial reinterpretation and the establishment of a precedent that, faced with new emergencies of a different nature, could lead political and institutional decision-makers to determine measures that once again over-interpret the fundamental charters of EU law and rules, adapting them to unforeseen contexts and realities without formal revision. This goes beyond the limits of opportunity and crosses the line between adapting the Treaties to the development of society as living instruments and making them infinitely flexible charters. Although it should be noted that the hypothesis of a revision of the fundamental charters is expressly provided for by the Treaties themselves[170] and has also been discussed and hypothesized in the recent past by scholars[171] on the occasion of the last two institu-

[170] The revision of the TEU and the TFEU is governed by Article 48 of the TEU, which provides for two paths (ordinary and simplified) for the revision of the two charters. Among others, the following have written on the subject: S. Bariatti, *Art. 48*, in *Trattati dell'Unione Europea*, ed. A. Tizzano, Giuffrè, Milan 2014, p. 328-333; B. De Witte, *Il processo semi-permanente di revisione dei trattati*, in «Quaderni Costituzionali. Rivista italiana di diritto costituzionale», III (2002), p. 499-520; J. Ziller, *La nuova Costituzione europea*, Il Mulino, Bologna 2004, p. 91 ff.; M. Cartabia, *Revisione dei Trattati (diritto comunitario e dell'Unione Europea)*, in *Dizionario di diritto pubblico*, Vol. V, ed. S. Cassese, Giuffrè, Milan 2006; A. Adinolfi, *Le ragioni di una (incerta) riforma dei Trattati dell'Unione*, in «Osservatorio sulle Fonti», I (2024), p. 7-16.

[171] S. Ceccanti, F. Clementi, *La Convenzione europea e i costituzionalisti italiani: tra processi di riforma e problemi di metodo, in* «Nomos. Le attualità del diritto», III (2002) , p. 121-131; T. Groppi, *La revisione della Costituzione*, in *Comentarios a la Constitución Europea*, Vol. I, eds. E. Alvarez Conde, V. Garrido Mayol, S. García Corso, Tirant lo Blanch, Valencia 2004, p. 219-246; B. Guastaferro, *Dalla Conferenza sul futuro dell'Europa al confronto istituzionale sulla revisione dei trattati*, in «Quaderni costituzionali. Rivista italiana di diritto costituzionale», IV (2022), p. 923-927; L. Lionello, *Gli esiti della Conferenza sul futuro dell'Europa e le prospettive di revisione dei Trattati*, in «Blog Aisdue» (2022); L. Salvo, *Evolving dem-*

tional processes promoted with this aim by the European institutions[172], as well as formally requested with an official resolution approved by the European Parliament[173].

The unique exceptionality of the NGEU initiative has also been confirmed in the political approach and work programme of the new European Commission chaired for the second time by Ursula von der Leyen. In fact, in the letters of appointment for the European Commissioners Raffaele Fitto and Valdis Dombroskis[174], both explicitly recall the shared scope of the NGEU and the Member States' Plans, specifying «by the 2026 spending deadline» and «in view of the 2026 spending deadline»[175], and without any indication of a future continuation of the program. Vice-President Fitto himself, in the texts prepared for MEPs[176] ahead of the hearing

ocratic participation in the EU, in *Comunicación Política e Institucional en tiempos de conflicto. Desafíos de la Unión Europea y nuevas narrativas ante la desinformación*, ed. C. Concha Perez-Curiel, J.A. Navarro-Moreno, R. Domínguez-García, Dykinson, Madrid 2024, p. 399-408.

[172] These are the European Convention, which met for its first session on 28 February 2002 and which had among its topics the simplification of the Treaties, with the prospect of adopting a European Constitution and the inclusion of the Charter of Fundamental Rights in the TEU, and the Conference on the Future of Europe, which opened on 9 May 2021, which, while not explicitly including Treaty reform among its final proposals, did indicate institutional interventions and reforms, which would in fact require a process of revision.

[173] European Parliament resolution of 22 November 2023 on the European Parliament's proposals for amending the Treaties (2022/2051(INL)). In this regard, see the reflections of N. Lazzerini, *La risoluzione del 22 novembre 2023 del Parlamento europeo sui progetti di modifica dei Trattati nel contesto delle prospettive di riforma dell'Unione*, in «Osservatorio sulle Fonti», III (2023).

[174] The first as executive vice president and with responsibility for Cohesion and Reforms, the second with responsibility for Economy and Productivity, Implementation and Simplification.

[175] Both letters of appointment are dated 17 September 2024.

[176] Published by the European Parliament on 23 October 2024.

on November 12, 2024, anticipated that «as the final deadline of 2026 approaches, the Commission will continuously assess whether Member States will meet their commitments and whether the final milestones and objectives are likely to be achieved by that date». He also stated that «based on the current legislative framework, I will engage with the affected Member States on how to amend their plans and ensure that the funds are focused on equally ambitious alternative investments that can be completed within the instrument's lifetime. If, despite these efforts, some of the final stages or objectives are still deemed unmet, the corresponding disbursement will not be made». These words, directed at an institutional body, further exclude the possibility of postponing or repeating the initiative.

However, there is evidence that seems to point in a different direction. The NGEU, currently being finalized, is widely recognized as a leap forward because, in addition to being an initiative with a structural impact on the Union's structures, organization, and procedures, it allows for a comprehensive understanding of how to address a crisis and the resulting elements introduced to address it. These elements can be deciphered through three systemic variables: the instrumental, regarding the set of tools and functions assigned to the institutions involved to implement policies and activities that contribute to the affirmation of their role; the organizational, regarding the impact on related or newly created structures; and the strategic, regarding the acquisition of priorities and functions relative to other institutions. The sum of these aspects prevents the NGEU from being considered merely a one-off event and instead opens

the way to the hypothesis that it is the precursor to a new EU[177] paradigm introducing a new method of governance. Its substantive and formal affirmation will depend on practical solutions to a trilemma: favoring the EU's supranational institutions; promoting a new policy mix in fiscal policy; and implementing national reforms consistent with EU objectives despite the temporal and politically biased nature of national electoral cycles[178]. This paradigm is so new and transformative that it has contributed to the hypothesis that the NGEU could be a «Hamiltonian moment»[179] for the EU.

[177] M. Buti, S. Fabbrini, *Next generation EU and the future of economic governance: towards a paradigm change or just a big one-off?*, in «Journal of European Public Policy», XXX (2023), p. 676-695.

[178] On these two aspects see: N. Lupo, *I paradossi delle "aritmie democratiche" nell'Unione europea: quando a vincere (in Europa) sono gli sconfitti (nelle elezioni nazionali)*, available at the link *https://iris.luiss.it/handle/11385/227879*; S. Sileoni, *L'indirizzo politico tra Unione europea e Italia*, Editoriale Scientifica, Naples 2026.

[179] The historical reference is to Alexander Hamilton, one of the Founding Fathers of the United States, who in 1790 succeeded in transforming the debt that the 13 colonies had accumulated in the fight for independence from the United Kingdom into the public debt of the new federal state, also establishing reliance on a new federal tax system to pay the joint debts. After a long stalemate, Hamilton managed to reach a compromise in June 1790 with the leaders of the Democratic-Republican Party, Thomas Jefferson and James Madison, who had opposed the centralization of taxation at the federal level. On 4 August 1790, Congress approved the «Funding Act», which allowed the creation of the first stock of public debt, thus laying the foundations for the birth of the United States, which, thanks to this decision, equipped itself with common financial means and a single, unitary instrument for managing the fiscal lever and the budget. The expression «Hamiltonian moment» has taken on a significant meaning because it was a decision that proved crucial in the process of establishing the United States, which was able to manage its own public and development policies not only towards the outside world, but also towards the founding member states (in the curious course of history, it is worth noting that Hamilton, who was instrumental in the birth of the States, died in 1804 in a duel with US Vice President Aaron Burr). See the reflections of: C. Bon, A. Santini, *Un momento hamiltoniano? Riflessione interdisciplinare comparata tra Stati*

5.1 A new method of government?

The innovation of the NGEU, in concrete terms, is achieved mainly through two aspects: the novelty of a common European debt; the novelty of a governance method for the EU.

With regard to shared European debt, it is important to underline how the Next Generation also represented a turning point in the history of public debt. Indeed, the program, with a strongly solidarity-based approach unimaginable just a few years earlier, allowed the Commission to issue debt securities worth nearly €800 billion, guaranteed by the Member States. Even more significantly, €338 billion would be disbursed not as subsidized loans, but as non-repayable grants[180]. In practice and approach, «debt has changed from an instrument of domination to an instrument of sharing»[181]. During the global pandemic, the traditional cultural approach—in which the Protestant ethic inspired the 'disciplinary' nature of the established European framework for controlling State finances—gave way to the Latin and later Catholic conception of debitum: helping those in need, especially where the need arose from causes beyond their control. And this second approach was the rationale behind the decision to provide grants in addition to loans[182],

Uniti e Unione europea sul problema del debito, in «Istituta», I (2023), p. 5-26; G. Toraldo, *Il momento hamiltoniano dell'Europa è adesso? Riflessioni sulla creazione di un'Unione fiscale a partire dagli interventi della Commissione a Trattati invariati*, in «Quaderni Aisdue», Special Issue IV (2024).

[180] Obviously, the provision of these resources, as mentioned, was accompanied by rigorous conditionalities and controls.

[181] M. Ferrera, *Debito comune europeo*, in «La Lettura del Corriera della Sera», 2 June 2024.

[182] On the subject of the gratuitousness of public debt see V. De

in a context where the dramatic health and economic needs were beyond anyone's control. As already seen, this is not the first experience of common public debt[183], but these have always been limited to sectoral initiatives and quantitative dimensions, and have not had a significant impact on the overall European economic situation or on the future economic and political outlook[184]. Now, confirming the generative power of the NGEU, public debate is openly discussing the «necessity» of common debt as a tool to raise resources to address major global challenges and allow the EU to compete in a competition that pits «radically different political and economic values and models» against each other[185].

Regarding the novelty of a new method of governance[186] for the EU, a debate has been raging for several years on the provisions of the NGEU and the NRRP. As mentioned, there is no doubt that the two initiatives (linked) have enabled a significant leap in the process of continental integration, from a perspective that rewards and strengthens the decisions and role of the communi-

Romanis, *Il pasto gratis. Dieci anni di spesa pubblica senza costi (apparenti)*, Mondadori, Milan 2024.

[183] See note n. 49.

[184] For an analysis of the impact of the debt burden resulting from the NGEU and NRRP on the European and Italian economies, see Banca d'Italia, *Relazione annuale anno 2023 – centotrentesimo esercizio*, 31 May 2024. Among the most significant data, it emerges that Italy accounts for 12.8 percent of the European Union's economy, while our NRRP accounts for 29.9 percent of the NGEU funds and, looking only at loans referring to May 2024, Italy's weight reaches 72.4 percent.

[185] P. Toia, *Debito comune: utopia o necessità*, in «Corriere della Sera», 3 October 2024.

[186] On the reasons for this expression with respect to *mode of governance* or simply *governance*, see N. Lupo, *Caratteristiche (e presupposti) del nuovo "metodo di governo" delineato dal Next Generation EU*, in «Diritto e società», III (2025), p. 557-579.

ty method over the intergovernmental method, which was more widely used in past crises and with the governance of decisions and operations more centered on the Council as a clearinghouse between the various interests of the states. With the new program, governance is indeed more focused on the Commission (and «community» institutions) and on the common European interest with Union coordination policies, attributing a crucial and innovative role to the EU's multiannual budgets[187]. The NGEU at the European level and the NRRPs at the national level, however, appear to be taking another step forward, overcoming the traditional distinction between the community and intergovernmental methods, defining a path that identifies a «new method of governance». For various reasons, this has been described as a «new» Euro-national process[188] with a capacity for regulatory innovation, also described as an exercise in «creative legal engineering»[189]. This has immediately generated, even considering the sheer volume of acts, rules, and procedures implemented, instruments whose implementation has produced legal effects at the European and national levels[190]. This has

[187] For a summary of the structure and functioning of the European Union budget, see: M. Bordignon, I. Valpreda, *Il bilancio europeo e le politiche…* cit.

[188] N. Lupo, *Il Piano Nazionale di Ripresa e Resilienza: un Nuovo procedimento…* cit.; G. Piccirilli, *Il PNRR come procedimento euro-nazionale e la "fisarmonica" governativa, in La fisarmonica parlamentare tra pandemia e PNRR*, ed. V. Di Porto, F. Pammolli, A. Piana, Il Mulino, Bologna 2022, p. 137-158.

[189] B. De Witte, *The European Union's…* cit.

[190] With particular reference to Italy, see the reflections of I.A. Nicotra, *Le tendenze della produzione normativa alla luce di …* cit.; E. Cavasino, *Il Piano Nazionale di Ripresa e Resilienza e le sue Fonti, Dinamiche dei processi normativi in tempo di crisi*, Editoriale Scientifica, Naples

consequently triggered a process capable of influencing the actions of Parliaments (European and national) and governments for a long time, confirming the EU initiative's ability to influence regulatory frameworks and policy implementation, as well as defining a standardization of procedures with respect to objectives and processes in processes binding on the states. This initiative is also relevant and innovative from a constitutional perspective and in the «construction» of a state organization. As has been noted, «the NGEU is a crucial moment because it has opened a new phase of political development, thanks to a teleological interpretation of the European Constitution»[191] thus confirming its transformative nature and constitutional impact. From this perspective, it has also been highlighted how the issues relating to the centralization of fiscal authority powers, the creation of a common debt, and the implementation of administrative and coercive capacity – the aspects addressed by the NGEU with systemic and operational innovations – are precisely the elements that have so far impeded the balanced institutional development of the EU, while instead building a solid legal authority and functioning, legitimate institutions[192]. This is therefore a legal engineering mechanism with its own characteristics, which, building on the NGEU framework, has already established itself in other programs and initiatives with different purposes and beneficiaries,

2022, p. 99-129.

[191] M.A. Panasci, *Unravelling Next Generation EU as a*… cit., p. 54.

[192] R.D. Kelemen, K.R. McNamara, *State-building and the European Union: Markets, War, and Europe's Uneven Political Development*, in «Comparative Political Studies», LV (2022), p. 963-991.

and which could become a standard for future EU governance and policies[193].

The approach just illustrated can be traced back to a majoritarian approach. However, it is also worth highlighting the assessments that highlight some of the structural limitations of the mechanism in question, such as the fact that it requires the model to be tied to the implementation of multi-annual national plans[194], potentially subject to pressure from changes in parliamentary and government majorities. Other limitations to consider include: the democratic issue, the rigidity of the program[195], and the weakness in terms of support for younger generations. This interpretation, while highlighting the right recognition that the program aimed to introduce a change of direction in the condition of European economic policy, also underscores how the instrument itself runs the real risk of ending up trapped in the economic and monetary policy framework designed in Maastricht[196].

Aside from these latest considerations, the thesis that NextGen is the tool that outlines a «new mode of EU policy-making» (a new method of governance for EU policies)[197] now seems to be consolidated, both due to the

[193] F. Fabbrini, *The recovery and resilience facility as a new legal* … cit., p. 15.

[194] F. Fabbrini, *The recovery and resilience facility as a new legal* … cit., p. 2.

[195] J. Zeitlin, D. Bokhorst, E. Eihmanis, *Governing the RRF*, in «Policy Study for the Foundation of European Progressive Studies», June 2023. The study can be found at the link: *https://feps-europe.eu/publication/governing-the-rrf/*.

[196] G. Contaldi, *Su taluni problemi strutturali del programma Next Generation UE*, in «Ordine Internazionale e Diritti umani», IV (2022), p. 875-894.

[197] Talking about it openly in these terms: L. Schramm, U. Krotz,

identification of its own defined characteristics[198] and its replicability, which has already been achieved in other initiatives on very different topics. The process, which is part of the Euro-national economic-financial framework, presents important innovative developments regarding the interpretation of the legal bases, introducing new and identifying elements that precisely define the contours of a new model[199]. Its certain characteristics, shared by the various analyses, can be summarized as follows: a) national medium-term plans with reforms and investments, based on the verification of results (performance) assessed by the European Commission; b) the definition of binding macro-objectives identified at the European level and implemented in detail by individual countries depending on the context, tools, and agreed timeline; c) ongoing bilateral (technical and political) dialogue between Union institutions (especially the Commission) and the institutions (particularly the Government) of each Member State; d) the independent procurement of a significant amount of common resources on the financial markets, suitable for building an autonomous fiscal capacity[200]. It should be noted, however, that this last

B. De Witte, *Building 'Next Generation' after the pandemic: The implementation and implications of the EU Covid Recovery Plan*, in «Journal of Common Market Studies», LX (2022), p. 7.

[198] Even if there is a fundamental difference with respect to the use of the terms «governance» and «government» in reference to the «new method», the recent interventions by: F. Fabbrini, *Il Dispositivo per la Ripresa e la Resilienza come nuovo metodo di governance dell'Unione europea*, in «Giornale di diritto amministrativo», V (2025), p. 543-555; N. Lupo, *Caratteristiche (e presupposti) del nuovo* … (cit.), p. 557-579.

[199] See notes 3 and 4.

[200] N. Lupo, *Gli adeguamenti dell'ordinamento costituzionale italiano conseguenti al nuovo patto di stabilità e crescita. Prime riflessioni*, in «Bilancio Comunità Persona», I (2024), p. 170-184.

(and significant) characteristic of the NGEU (so-called fiscal capacity)[201] is not always identifiable in other EU initiatives inspired by it. As always in the programme analysed, it is useful to underline the aforementioned increased role of the European Semester, used to ensure coexistence, complementarity and monitoring of national priorities at the European level[202]. The proliferation of Euro-national procedures raises awareness of the ever-increasing and consequent need for greater alignment of timescales and rhythms with respect to timetables, decisions and implementation processes[203]. With the NGEU, the issue of such synchronization has increased in importance to the point of being perceived as a goal to strive for. The legislation, in fact, pays specific attention to coordination with the political-electoral cycles of individual Member States with respect to the issue of possible changes in government[204]. The impact of Member States' electoral cycles is one of the most significant features of the progressive refinement of the new method established by the NGEU compared to other Euro-national procedures. This aspect concerns the macro-theme of the connections between the Union and Italy, the junction between the European and national

[201] F. Fabbrini, *EU fiscal capacity. Legal Integration after…* cit., p. 127 ff.

[202] C. Fasone, N. Lupo, *A new method of government for,…* cit., p. 17-22.

[203] Recent political science studies have shown that, when delinking *between two decision-making processes is not possible*, it is necessary to ensure their accurate synchronization, despite the difficulties involved. Reference is made in particular to K. Goetz, *Time, Politics, and Political Science*, in *The Oxford Handbook of Time and Politics*, Oxford University Press, Oxford 2024, p. 1-18.

[204] N. Lupo, *PNRR e cicli politico-elettorali, tra …* cit.

legal systems, and is the point where the real dynamic of political direction is currently based, and therefore also of the structure of the form of government and the application of the principle of separation of powers[205].

6. Conclusions

A final reflection cannot fail to begin with the legacy of this initiative. Regarding Next Generation EU, its adoption certainly «had the great merit of restoring confidence in the EU's ability to act in the face of external challenges»[206], and the package that constitutes the new European program represents a major shift in EU economic policy (well beyond the pandemic that justified its creation), made possible by creative legal engineering based on the TEU and TFEU. The value of the Recovery Plan, in a general sense, «lies not so much in the huge resources, but in imposing the need to design, evaluate, and implement projects within defined timeframes»[207]. With particular reference to Italy, this has entailed a significant effort by the competent national authorities to make realistic commitments and keep them. There is certainly a «legacy of Next Generation EU within the process of European integration»[208], which, as we have seen, is taking shape in the debate and initiatives, and which has its roots in the reform of governance. Its main

[205] C. Fasone, N. Lupo, *La separazione tra poteri nei raccordi tra Unione Europea e Italia*, in «Rivista trimestrale di diritto pubblico», I (2023), p. 45-87.

[206] B. De Witte, *The European Union's covid-19 recovery plan: the* … cit., p. 678.

[207] L. Torchia, *Dov'è il vero valore del Recovery Plan*, in «Lavoce.info», 16 March 2021.

[208] D. De Lungo, *L'eredità costituzionale di Next Generation EU e* … cit., p. 70.

confirmation is economic. Many are hoping for a lasting legacy from this experience; in Italy, the interpretation that projects the form of government and political direction into an integrated dimension between national and supranational institutions is consolidating[209]. Finally, there is another legacy that seems to be consolidating, relating to the nature of public structures and which now takes for granted the multidisciplinary nature of public administrations, as a lesson for the future imparted by the NRRP with respect to social, economic, and management issues, which the Plan has implemented, forcing the PA to grapple with non-traditional and diverse disciplines, fields, and sectors[210].

What else does Europe need to achieve its Hamiltonian moment? The Next Generation has provided a turning point and a direction, but today it is possible to identify several other challenges that must be addressed to achieve this oft-mentioned moment. At the European level, the range of important steps to consider is as follows: making the NGEU measure structural and not temporary; defining a path leading to fiscal union; and looking to the horizon of amending the Union Treaties. The oft-quoted (rightly) Jean Monnet, in his famous reflection on the progress of Europe, argued that «l'Europe se ferait dans les crises, et qu'elle serait la somme des solutions qu'on apporterait à ces crises»[211]. If this

[209] G. Tarli Barbieri, *Gli sviluppi della forma di governo sotto la lente del Piano Nazionale di Ripresa e Resilienza*, in *Scritti costituzionali sul Piano Nazionale di Ripresa e Resilienza*, eds. D. De Lungo, F.S. Marini, Giappichelli, Turin 2023, p. 1 ff., 77 ff., 101 ff.

[210] S. Cassese, *I fondi del PNRR: un'occasione che per ora stiamo sfruttando*, in «Corriere della Sera», 1 November 2023.

[211] J. Monnet, *Mémoires,* Fayard , Paris 1976, p. 426. See Also J.

statement is true, that crises constitute an opportunity for the Union to progress along the path of integration and its development, the adoption of the NGEU has the merit of restoring confidence in the EU, in its ability to react to challenges and crises, and in its capacity to identify functional and useful solutions and regulations, as has already happened over time and in multiple sectors, having a significant impact also through the definition of models and standards subsequently adopted globally[212]; exercising a significant influence in areas such as competitive policy, consumer safety and health, environmental protection and, in recent years, with respect to the new frontiers of data privacy protection and, more generally, of ICT innovations, artificial intelligence and the «digital society»[213]. An activity that is always in line with a certain idea of Europe and its own role.

Next Generation EU and the NRRP are nearing completion and at the center of public debate. In the near future, this centrality will be even more evident as both positive aspects and critical elements become evident. The innovative power of the European dimension and the significant amount of resources available to Italy justify this attention. Some open considerations (without claiming to be exhaustive) can be addressed to the NGEU and the Italian Plan as elements of the ongoing debate.

Monnet, *Memoirs*, HarperCollins, New York 1978, p. 417.

[212] A. Bradford, *Effetto Bruxelles. Come l'Unione Europea regola il mondo*, Franco Angeli, Milan 2021.

[213] A. Iannuzzi, *La governance europea dei dati nella contesa per la sovranità digitale: un ponte verso la regolazione dell'intelligenza artificiale*, in «Studi Parlamentari e di Politica Costituzionale», CCIX (2021), p. 31-52; S. Calzolaio, A. Iannuzzi , E. Longo, M. Orofino , F. Pizzetti, *La regolazione europea della società digitale*, Giappichelli, Turin 2024.

The shared assertion of the central role of public administration and public management. The former is the main structure to be strengthened for the State, the latter is the method characterizing the modern work of the PA. Both are relevant to the implementation of the NRRP and to European and national measures and programs. Without efficient administration and a functional method, the results expected from the Plan are difficult to achieve. The centrality of state structures at different levels of government, if not adequately updated in terms of approach and procedures, represents an issue that goes well beyond the implementation of the NGEU itself.

Secondly, the affirmation of a new governance model and the NGEU (for the continental dimension) and the NRRP (for the national profile) are models to strive for. In particular, the requirement to access resources after planning clear, achievable interventions with a certain impact, and the requirement that resources be disbursed upon the achievement of measurable objectives and with monitoring and reporting procedures structured within a known deadline, is a mechanism that imposes a new discipline that relies not on accountability, but on responsibility (of states towards the Union, of public administrations towards the State). This represents a significant innovation with a fundamental «sharing» that obliges all stakeholders to work together to ensure everything works. The debate on structuralizing the Recovery Fund as a measure and model cannot ignore this aspect of governance.

A third element is given by the fact that the RRF does not limit itself to making resources available to the

States but – as highlighted – includes reforms and investments. This is already evident in the name[214]: Recovery and Resilience Facility, that is, it is not (just) a fund but a mechanism (Facility) that certainly provides resources, but also modernization decisions, commitments, and reforms. There is an undoubted communication limitation which, by focusing solely on the money, risks failing to properly emphasize this aspect.

The fourth point concerns Europe, which found itself facing a new but as yet undefined situation. Brexit, followed by the pandemic and the war in Ukraine, created an unexpected dimension (with the Union's reactions driven by strong and unanimous decisions, an often forgotten aspect) that gave the EU the opportunity to play a significant political role vis-à-vis its member countries. While at the beginning of 2019, with the Union at its lowest point of discredit and anti-European movements increasingly strong, the debate focused on negotiations between the Commission and national governments over the allocation of a few additional decimal points of GDP to the EU budget, after just a few months the Union was forced to change its approach in a new phase that, without resorting to Treaty reforms, allowed it to intervene in the European funding instrument, reversing the weights at play to the EU's full advantage (politically, economically, and in terms of its role).

Now it's a matter of being ambitious and seeing this ambition as a European opportunity; a healthy ambition,

[214] The phrase of the Emperor Justinian comes to mind when he wrote that «*nomina sunt consequentia rerum*», indicating that names also reveal the essence or characteristics of things, see Justinian I, *Le Istituzioni*, 533 AD.

of which the Next Generation EU initiative can be a hallmark, involving European and national institutions. This ambition must clearly address the aforementioned issue of moving beyond the unanimity requirement as the rule for EU decisions, to be more efficient and not simply a «union of pacts». It can be said that, after years, the Union appears to have rediscovered a path for its future and that of its communities. This future is not only made of ideals but also, and above all, of formal acts, decisions made, projects implemented, expectations realized. A dimension built with the effort inherent in political choices and daily administrative practice. Bearing in mind that, in the experience of major issues, when the EU has made progress, all countries have made progress by improving their starting conditions. Think of the environment, rights, competition, innovation, and energy. With the NGEU, the bar on the European horizon has been further raised with respect to its functioning and profile.

All of the elements cited are of great importance and contribute to the significance of the NGEU initiative and the significance of its impact on the Union. This initiative and its role should be interpreted through the words of the President of the Republic, with respect to the collective perspective: «The *Next Generation* is our horizon, our strategy for the future. And the path to achieving it is the strategic autonomy of the Union», reminding us that the future of the EU in this «new phase requires very solid foundations: we owe it to the new generations of Europeans»[215].

[215] S. Mattarella, *Dichiarazione alla stampa del Presidente della Repubblica Sergio Mattarella in occasione della XVI riunione del gruppo "Arraiolos"*, 15 September 2021.

Adriano Dirri

The NextGenerationEU implementation and beyond: fundamental rights and the rule of law as constitutional "features"

Summary: 1. Introduction – 2. The European Union constitutional moment and the Recovery and Resilience Facility: looking for Godot. – 3. The RRF and its legal basis: a constitutional expansion? – 4. Constitutional features: the RFF, the rule of law conditionality and the Charter of Fundamental Rights. – 5. The burden of NRRPs implementation. – 5.1 Poland. – 5.2 Hungary. – 5.3. Slovakia – 6. Conclusions: the RRF constitutional features in the next Multiannual Financial Framework.

1. Introduction

The starting point is to examine the extent to which Ackermann's "constitutional moment" theory can be used to analyse the legal innovations that occurred with the Recovery and Resilience Facility Regulation (RRF), particularly with regard to its constitutional ramifications. While it is beyond the scope of this paper to review the various scholars' positions on this issue, I will argue that it is difficult to identify a constitutional moment in the European Union's (EU) post-pandemic legal response. In the second paragraph, I highlight the differences between

the US and EU constitutional histories, particularly with regard to borrowing and fiscal integration. The RRF and the National Recovery and Resilience Plans (NRRPs) are one-off measures adopted by the EU to tackle the economic consequences of the pandemic. However, it would be a mistake to argue that it is "business as usual", since several innovations have taken place where constitutional features may be found. The third paragraph discusses the legal basis of the RRF and the extent to which it has been subject to extensive interpretation and, therefore, a "constitutional expansion", despite remaining an exceptional measure. The fourth paragraph highlights the new "constitutional feature": the role of rule of law conditionality and the Charter of Fundamental Rights (CFR), and how they interact with the RRF's performance-based model. The most striking feature of the recent legal innovation in the EU is the enforcement of the EU's fundamental rights and values through its funding programmes, even though this is pursued through various regulations and there are some issues with their coordination and application. This is addressed in the fifth paragraph, where the challenges in the NRRPs implementation are examined thorough three case studies: Poland, Hungary and Slovakia. In the sixth paragraph, amongst the RRF spillover, I argue that the constitutional features that can be traced in the next Multiannual Financial Framework (MFF) is a system of mutually reinforcing conditionalities for accessing the EU funds. As in the Commission's Proposal, the next MFF incorporates procedures and structure of the RRF, as well as more coordinated approach with regard to the conditionalities connected to the EU's rule of law and the CFR.

2. The European Union constitutional moment and the Recovery and Resilience Facility: looking for Godot

The pandemic and the legal tools adopted by the EU have reignited the debate surrounding the EU's integration process. The ongoing debate concerns the EU's constitutional features, specifically whether the crisis has boosted this profile or if it constitutes an exceptional tool that does not open the way to a "constitutional moment".[1] The constitutional profiles of the EU Treaties gained momentum through the extensive interpretation of certain clauses. The issue is to determine whether the latest developments in economic governance, decision-making, and the spread of the performance-based model have a "transformative" and constitutional impact on the European polity[2].

The problem lies in the "asymmetry" between the aspiration to create a legitimised, federal political authority for the EU, and the reality of the predominance of the Member States. Next Generation EU (NGEU) is seen as challenging this status quo, and its innovative toolkit has been widely discussed.[3] Indeed, a political and constitutional struggle has been set in motion, highlighting the conflict between two opposing views of EU

[1] See B. Ackerman, We the People: Foundations, Harvard, Harvard University Press 1991; Id., *We The People: Transformations*, Harvard, Harvard University Press 1998; Id., *We The People: The Civil Rights Revolution*, Harvard, Harvard University Press, 2014; Id., *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law*, Harvard, Harvard University Press, 2019.

[2] In this paper I do not agree with the view proposed by M.A. Panascì, *Unravelling Next Generation EU As A Transformative Moment: From Market Integration To Redistribution*, in Common Market Law Review, Vol. 61(1), 2024, pp. 13-54.

[3] The relevant bibliography will be referenced throughout the chapter.

integration. The path to strengthening solidarity among Member States via debt mutualisation and an EU firmly anchored firmly in functionalism[4].

Therefore, the theory of the "constitutional moment" has often been invoked alongside the "Hamiltonian moment". By analogy, it is a means of identifying the emergence or consolidation of significant constitutional aspects of the EU integration process. Comparative observations are useful in this regard. The theory of the constitutional moment, as set out by Ackermann, has often been invoked following the failure of the Constitutional Treaty in 2005. This is because there is a need to overcome the inability to amend the treaties to cope with multiple crises, ranging from financial to the rule of law crises.[5] Then, the distinction between ordinary politics and EU policymaking in exceptional times is at stake, as are the new legal arrangements that call into question the intergovernmental governance method. In this sense, the NGEU can be viewed as a diverse post-crisis response aimed at changing EU governance through a new legal framework that takes a more supranational stance.

This tension was highlighted years ago by Walker who argued that, on the one hand, the EU existence lies

[4] To this regard the issue is to shape the EU material and, partly, formal constitutional arrangement, based on market and financial regulation. F. Bilancia, S. Civitarese Matteucci, *The material constitutional arrangement of the European Union*, in M. Belov (eds.), *Peace, Discontent and Constitutional Law. Challenges to Constitutional Order and Democracy*, London, Routledge, pp. 65-71, quote p. 69. Even more critically see A.J. Menéndez, *The 'Terrible' Functional Constitution of the European Union: 'Sound' Money, Economic Freedom(s) and 'Free' Competition*, in M. Goldoni, M.A. Wilkinson (eds.), *The Cambridge Handbook on the Material Constitution*, Cambridge, Cambridge University Press, 2023, pp. 351-366.

[5] A. Baraggia, *Constitutional Moment*, Max Planck Encyclopedia of Comparative Constitutional Law [MPECCoL], July 2020.

in competences put together by the Member States in response to economic and external pressures (globalising pressures). On the other hand, the EU must seek legitimisation as a central, supranational authority "in a map of political authority already colored"[6]. Therefore, I argue that it is still valid the assumptions that sees the EU as a legal subject caught in between of a constitutional renewal – through "extra-constitutional" tools - and a "new constitutional beginning", option which currently remains remote[7].

The core issue of the EU's constitutional moment lies around the principle of conferral and the competence creep - through a creative interpretation of the Treaties' legal basis[8] - alongside the crucial role of the ECJ. The latter has shaped, since Van Gend and Loos and Costa, the "constitutionalisation" of the EU law especially through the primacy and direct effect doctrine[9]. Thus,

[6] N. Walker, *Europe's Constitutional Momentum and the Search for Polity Legitimacy*, in International Journal of Constitutional Law, vol. 3(2-3), 2005, p. 221. This reasoning echoes K. Nicolaïdis, *The Idea of European Demoicracy*, in J. Dickson, P. Eleftheriadis (eds.), *Philosophical Foundations of European Union Law*, Oxford, Oxford University Press, 2012, pp. 247–274.

[7] N. Walker, *Europe's Constitutional Momentum*, p. 219.

[8] See S. Sileoni, *L'indirizzo politico tra Unione europea e Italia. Profili di diritto costituzionale*, Napoli, Editoriale Scientifica, 2026, p. 52.

[9] See Judgment of the Court (Grand Chamber), 21 December 2021, Cases C-357/19 et al *Euro Box Promotion*, EU:C:2021:1034, par. 257; M. Leloup, L.D. Spieker, *Rethinking primacy's effects: On creating, avoiding and filling legal vacuums in the national legal system*, in Common Market Law Review, Vol. 61(4), 2024, pp. 913-958; M. Bonelli, *Growing pains: Direct effect, primacy and fundamental rights after Lin*, in Common Market Law Review, Vol. 61(4), 2024, pp. 1045-1076; D. Gallo, *Direct effect in EU Law*, Oxford, Oxford University Press, 2025; J. Kokott, *Direct effect – Van Gend & Loos versus the new direct effect*, in L.F.M. Besselink, N. Lupo, M. Wendel (eds.), *Research Handbook on European Constitutional Law*, Cheltenham, Edward Elgar, 2026, pp. 172–190.

the EU integration process is caught between the principle of competence conferral and the broadening of its scope.[10] It has led to the conclusion that the EU is living in a (con)federal competence conundrum, with the ECJ playing a key role.[11] Ackerman's theory fits since the constitutional moment, which began in the foundational period and is still being pursued by the ECJ, is legitimate as an extra-legal process, but it is not yet complete as it lacks the popular mobilisation of the "European society".[12] The perspective of the "ongoing constitutional moment" may also be useful when considering the recent ECJ judgement on the binding nature of the EU values and principles set out in Article 2 TEU. Nevertheless, while it represents "the proposal" of the constitutional moment from the elites, it is neither clearly "concluded" nor "communicated" to the people(s). This constitutes a fault line, since this "higher law-making" is in one way (conflict[13]) or in another (dialogue and toward the creation of a "block of constitutionality"[14])

[10] Or also a "competence leak" if the reference is the post-Lisbon stage with the multiple crisis which affected the EU integration. S. Garben, *The Competence Question in the (Con)Federal European Union*, Oxford, Oxford University Press, 2025, pp. 28, 259.

[11] *Ibid.*, p. 336

[12] *Ibid.*, p. 356

[13] See P. Faraguna, *Constitutional Identity in the EU—A Shield or a Sword?*, in German Law Journal, Vol. 18(7), 2017, pp. 1617-1740; B. Iancu, Ș. Deaconu, *False Analogies? Rule of Law 'Backsliding' and Identitarian Claims in Hungary, Poland, and Romania*, in Hague J. Rule Law, First View, 2025, 1-29.

[14] C. Caruso, *La gerarchia ritrovata. Blocco di costituzionalità e sistema delle fonti nel processo di integrazione europea*, in F. Fabrizzi, G. Piccirilli (a cura di), *Fenomenologia della produzione normative tra Italia e Unione Europea. Studi sulle fonti del diritto*, Torino, Giappichelli, 2025, p. 193 ss. See also the landmark judgement of the Italian Constitutional Court No. 71/2026. See P. De Pasquale, *La sentenza 71/2026 della Consulta e*

posited within the Member States' ordinary and apex courts and the ECJ[15].

This integration through law has also emerged because of the fractured metabolic EU constitution. Indeed, the EU operates as a supranational agent with cooperation and coordination responsibilities, implying a degree of autonomy from the member states. However, scholars have emphasised that the EU's democratic and constitutional legitimacy still lies in the Member States, resulting in a "fractured" and "polycentric" EU metabolic constitution. Consequently, there is a gap between the administrative, technocratic and juristocratic powers of the EU and the democratic legitimacy of the Member States.[16] The NGEU, was presented as a "constitutionalising dynamic" for the common borrowing alongside the rule of law conditionality as a pillar of the new governance. The question was whether the NGEU represented a significant step for the EU fiscal capacity and autonomy, particularly with regard to borrowing. In this regard, under Article 311 TFEU, the Council requires unanimous approval for taxation and borrowing under the MFF, which was the procedure followed for the NGEU

lo spazio costituzionale europeo, in Federalismi.it, n. 16/2026, pp. iv-xiv; N. Lupo, Ordinamenti non più distinti, ma interdipendenti, nello spazio giuridico europeo (Nota a Corte costituzionale, sentenza n. 71 del 2026), in Eurojus, Anticipazione Fascicolo n. 3, 2026, pp. 1-37.

[15] From a methodological standpoint, Tushnet emphasized that the components of the Constitutional Moment might not be related conceptually to other constitutional settings. M. Tushnet, *Misleading metaphors in comparative constitutionalism: Moments and enthusiasm*, International Journal of Constitutional Law, Vol. 3, Issue 2-3, 2005, p. 262.

[16] P. Lindseth, C. Fasone, *The Eurozone Crisis, the Coronavirus Response, and the Limits of European Economic Governance*, in G. Grégoire, X. Miny (eds.), *The Idea of Economic Constitution in Europe. Genealogy and Overview*, Leiden, Brill, 2022, pp. 516-517.

approval. Despite that, the pandemic response has not changed the fact that national revenues represent almost the totality of the EU budget. What is remarkable is the scale of funds mobilised through a common debt. Conversely, the power to borrow resources from financial markets – even if temporarily - should not be underestimated given its "imitations" for other purposes together with the new conditionality regulation adopted.[17]

The parallelism with the US constitutional history falls short, especially with regard to the "Hamiltonian Moment"[18]. As the EU resembles the US more under the Articles of Confederation than under the US Constitution, the NGEU does not bear any resemblance to the "Hamiltonian Moment" for various reasons. One of these reasons is that Hamilton considered public debt to be a resource for the United States. He sought to stabilise the US by unifying public debt and relying on several sources of revenue to pay loan interest. As it was impossible to repay all the debt, he wanted to create the impression that it was being repaid as long as interests were being paid.[19]. It was, of course, done on constitutional basis (Article 1, S. 8 US Const.)[20] and the Hamilton plan was

[17] P. Lindseth, *The Constitutional Imaginary and the Metabolic Realities of European Integration*, in J. Komárek (ed.), *European Constitutional Imaginaries: Between Ideology and Utopia*, Oxford, Oxford University Press, pp. 202-203 and 209 ff.

[18] A. Guazzarotti, *La riforma delle regole fiscali in Europa: nessun "Hamiltonian moment"*, in Rivista AIC, n. 1/2023.

[19] P.A. Van Malleghem, *NextGenerationEU: Hamiltonian moment or European New Deal?*, Yearbook of European Law, Vol. 42, 2023, pp. 10-23; C. Georgiou, *Europe's 'Hamiltonian moment'? On the political uses and explanatory usefulness of a recurrent historical comparison*, Economy and Society, Vol. 51, Issue 1, 2025, pp. 143–149.

[20] "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common

straightforward; in fact, public debt was used to rebuild the US economy after the Independence war. Conversely, the EU Treaties do not contain similar provisions, since the annual budget shall be in balance[21] and the Own Resources Decision (ORD) specified that borrowing was solely directed to address pandemic consequences[22]. Thus, the NGEU is a "one-off" operation whose scope is not to pursue structural reform followed by a spending programme. Rather, it is the opposite: exceptional borrowing without "follow-up", as was the case with the "New Deal" in the US.[23] Therefore, it would be inaccurate to make a strict comparison with the US constitutional experience, and the contribution of the NGEU to EU constitutional integration should be traced elsewhere.

3. The RRF and its legal basis: a constitutional expansion?

Since invoking a constitutional moment without the involvement of the European *demoi* would be misleading, other avenues for analysing the NGEU "constitutional ramifications" must be considered.[24] The

Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States".

[21] P.A. Van Malleghem, *cit.*, p. 18. According to Article 310 TFEU the budget shall be in balance and, to this regard, in Pringle, the ECJ stated that Article 122 TFEU must be subjected to certain conditions to avoid the no-bail out principle. Case C-370/12, Pringle, para 135-137.

[22] Articles 5 and 6 of the Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom.

[23] See P.A. Van Malleghem, *cit.*, p. 36. See also S. Grund, A. Steinbach, *Debt-financing the EU*, in Common Market Law Review, Vol. 61(4), 2024, pp. 993-1018.

[24] P. Leino-Sandberg, M. Ruffert, *Next Generation EU and its constitutional ramifications: A critical assessment*, in Common Market Law Review, Vol. 59(2), 2022, pp. 433–472.

creative use of legal basis, especially Articles 122 and 175 TFEU, and the decision-making process of the new legal architecture and the conditionality measures for the protection of the rule of law and fundamental rights.

Firstly, it should not be that Art. 122 TFEU, which formed the legal basis for the European Union Recovery Instrument Regulation (EURI)[25], may be used for on-time exceptional situations[26] but cannot override the conditions set by Art. 125 TFEU (the no bail-out clause). There are concerns[27] because the Commission has frequently used this legal basis to address the pandemic, energy and security emergencies.[28] This clause is also "attractive" since it does not specify the adoption procedure, which rests in the Qualified Majority Voting (QMV) in the Council.[29] However, the issue lies

[25] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis. The EURI is the Instrument that enables the Commission to borrow funds on the financial markets.

[26] This feature was criticised since "the RRF's aims, based on Article 175(3) TFEU, were radically different from anything for which Article 122 TFEU had heretofore served as the basis". P. Leino-Sandberg, P. Lindseth, *European Integration in the Constitutional Borderlands. The NextGenerationEU Model and the Struggle for Europe's Future*, Oxford, Oxford University Press, 2026, p. 106.

[27] P. Leino-Sandberg, M. Ruffert, *cit.*, p. 448.

[28] See E. Rebasti et. al., *EU Emergency law*, Institutional Report, XXXI FIDE Congress, Katowice 2025, pp. 92-93. See also, B. de Witte, *Guest Editorial, EU Emergency Law and Its Impact on the EU Legal Order*, in Common Market Law Revie, Vol. 59(18), 2022, pp. 3-18; F. Casolari, A. Pau, *Rethinking EU Emergency Law: Towards a General Supranational Emergency Clause?*, in S. Bogojevic, X. Groussot, *Emergency and EU Law. The Case of Covid-19, Climate Change and Migration*, Oxford, Hart, pp. 63-79; C. Cinnirella, *'Emergency Powers' of the European Union: An Inquiry on the Supranational Model*, in European Papers, Vol. 10, No. 3, 2025, pp. 525–553.

[29] R. Mańko, *Legal bases in Article 122 TFEU Tackling emergencies through executive acts*, European Parliamentary Research Service,

in measures adopted under the umbrella of Article 122 TFEU that may fall under other clauses.[30] This would represent a paradigm shift, since the EU would be changing in a secondary fashion its economic policy, despite the main purpose of Article 122 TFEU being to tackle multiple crises.[31]

Article 122 TFEU was more recently used for the Security Action for Europe (SAFE) Regulation, to assist Member States to carry out urgent investments in support of the European defence industry in the current exceptional security context.[32] The SAFE Regulation[33] shows the extent to which the legacy of the NGEU is concretising as a new "method of government"[34] alongside the (mis)use of the flexibility clause granted by Art. 175 TFEU (*infra*). In fact, under the 2025 mid-term review of the cohesion policy, the Member States have

April 2025.

[30] M. Ovádek, *Contested Competences in the European Union. The Law and Politics of Institutional Choice*, Oxford, Oxford University Press, 2026, pp. 99-100.

[31] M. Chamon, *The rise of Article 122 TFEU: On crisis measures and the paradigm change*, Verfassungsblog, 1 February 2023.

[32] With the SAFE Regulation the Commission is empowered to borrow funds for maximum 150 billion of euro. This is part of the Readiness 2030, a plan which aims at mobilising 800 billion in total. The remaining 650 are in deficit spending and derogates, for this kind of expenses, the Stability and Growth Pact. See S. Sileoni, *cit.*, pp. 177-182; F. Fabbrini, S. Fabbrini, *The Trump effect: Readiness 2030, SAFE, and the German debt brake reform*, in Journal of European Public Policy, 2026, pp.1–21.

[33] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument (Text with EEA relevance).

[34] C. Fasone, N. Lupo, *Learning from the euro crisis: A new method of government for the European Union's economic policy coordination after the pandemic*, in International Journal of Constitutional Law, Volume 22(3), 2024, pp. 882–904; P. Dermine, *The planning method: An inquiry into the constitutional ramifications of a new EU governance technique*, in Common Market Law Review, Vol. 61(4), 2024, pp. 959-992.

reallocated the 10% of the cohesion funds to defence and security.[35] This move has triggered the reaction of the European Parliament (EP),[36] which has questioned the precise legal basis of Article 122 TFEU (whether the first or the second paragraph). In fact, under the 2024 reformed Rules of Procedure, if the Commission plans to adopt an act under Article 122 TFEU, the EP President must invite the Commission to justify their choice of the legal basis, according to Rule 138(1). This is then verified by the Committee on Legal Affairs (JURI) according to Rule 138(2).[37] Where the choice made by the Commission is found unjustified, it might lead to an action for annulment. It is the case of SAFE because the Commission did not persuade the EP,[38] who challenged the EC as a different legal basis would have been required (Article 173(3) TFEU).[39] Thus, the Court will have the chance to delineate the contours of the emergency clause both

[35] The Commission has allowed to redirect cohesion funds to current challenges. European Commission, *Communication from the Commission to the European Parliament and the Council. A modernised Cohesion policy: the mid-term review*, Strasbourg, 1.4.2025, COM(2025) 163 final.

[36] The EP has already passed a Resolution criticizing the excessive use of the clause. European Parliament, COVID-19 pandemic: lessons learned and recommendations for the future 17.7.2024 European Parliament resolution of 12 July 2023 on the COVID-19 pandemic: lessons learned and recommendations for the future (2022/2076(INI))

[37] R. Mańko, *Legal bases in Article 122 TFEU. Tackling emergencies through executive acts*, European Parliamentary Research Service, April 2025, pp. 8-10.

[38] Also before the SAFE Regulation doubts were expressed about the continuous use of the clause. M. Chamon, *The use of Article 122 TFEU. Institutional implications and impact on democratic accountability*, European Parliament's Committee on Constitutional Affairs, September 2023, pp. 32-33.

[39] P. Leino-Sandberg, P. Lindseth, *European Integration in the Constitutional Borderlands*, *cit.*, pp. 275 ff.

in relation to the applicants' pleas and, perhaps to shed lights on acts adopted under Article 122 TFEU.[40]

The other clause – Article 175(3) TFEU – was used as a general spending power for the RRF within the objectives of cohesion policy set out in Article 174 TFEU. It grants a wide margin of flexibility in allocating funds under the NRRPs.[41] In fact, the EU has broadened the scope of its policies, thanks to Article 175 TFEU which envisages additional "actions" beyond the funds deemed necessary. The RRF Regulation went further by using the economic, social and territorial cohesion to include of objectives such as, for example, digital transformation and policies for future generations (Art. 3 RRF Regulation). It should be remembered that Article 175(3) has previously been invoked as the legal basis for broadening the scope of the Structural Funds. What is exceptional is that, for the first time, this large amount of funds has been allocated under this clause "towards a much broader domain of macro-economic policy measures" to rebalance the economic development of the Member States.[42] Cohesion policy has been reinterpreted teleologically as promoting economic convergence, beyond addressing the EU regional inequalities. This

[40] Case C-560/25: Action brought on 20 August 2025 – European Parliament v Council of the European Union.

[41] P. Leino-Sandberg, M. Ruffert, *cit.*, p. 455; M. Ovádek, *cit.*, pp. 2-3. This interpretation of Article 175 TFEU was criticised because it is not a general spending power, as Article 1, Section 8 of the US Constitution. See P.L. Lindseth. P. Leino-Sandberg, *Crisis, Reinterpretation, and the Rule of Law: Repurposing 'Cohesion' as a General EU Spending Power*, Hague J Rule Law, Vol. 16, pp. 603-604; Id., *European Integration in the Constitutional Borderlands*, *cit.*, pp. 77-102.

[42] B. De Witte, *The European Union's COVID-19 recovery plan: The legal engineering of an economic policy shift*, in Common Market Law Review, Vol. 58, (Issue 3), 2021, pp. 653-659, *cit.*, p. 658.

could pave the way for an extension of cohesion policy as a cross-cutting tool for addressing economic differences among Member States.[43] Therefore, the NGEU projects, ranging from education, health systems and digital innovation, have generated an overlap between cohesion policy – a concurrent competence - and economic convergence, where the EU plays a coordination role in a continuous dialogue with the Member States governments. Overall, NGEU has centralised the decision-making and the EU funds management, resulting in the enforcement of macroeconomic goals at the expense of subnational entities and, therefore, far beyond the territorial cohesion in the strict sense.[44]

In the decision-making process, the NGEU architecture has empowered the Commission and the Council, while it has relegated at the margin the Parliament[45], both in relation to the use of Article 122 TFEU and in the implementation of the NRRPs. The main feature is the continuous bargaining between the European Commission and the Member States governments[46]. Indeed, "consisting in a mix-model of governance combining supranational and intergovernmental traits", it represents a step forward compared to the Eurozone crisis, when

[43] C. Fasone, *The autonomy of the EU spending powers: legal constraints and challenges*, in ECB Legal Conference 2025, *Building Europe's Autonomy: Law, Institutions, Cooperation*, European Central Bank, Frankfurt, 2025, pp. 53-54.

[44] See M. Patrin, *Solidarietà e coesione tra continuità e trasformazione. La politica di coesione come strumento di governance dell'Unione*, in Il Diritto dell'Unione europea, n. 3/2024, pp. 511, 520, 523-525, 536-538.

[45] As well as Member States parliaments. See critically P. Leino-Sandberg, P. Lindseth, *European Integration in the Constitutional Borderlands*, *cit*., p. 281.

[46] N. Lupo, *Dinamiche delle fonti e metodi di governo tra Unione europea e Italia*, Napoli, Editoriale Scientifica, 2026, pp. 68-69.

the intergovernmental method was preferred[47]. On the one hand, the Commission is leading the bargaining with the governments of the Member States as well as the assessment, update, suspension and amendments to their plans; on the other hand, the Commission shall make a proposal for a Council implementing decision in each case, who has the final say[48].

Thus, the constitutional moment cannot be assessed only with regard to the features analysed above. It is hard to argue that a straightforward paradigm shift is taking place. Nevertheless, changes have been introduced, especially with a major political role of the Commission in the continuous bargaining with the Member States governments. While the NRRPs are formally regulated by acts of the Member States, on a more substantive ground, they are negotiated with the Commission. The latter sets conditions for the disbursement of funds to the former, a performance-based model, composed of milestones and targets but also of "super milestones" as in the case of Hungary (*infra § 5.2*).

4. Constitutional features: the RFF the rule of law conditionality and the Charter of Fundamental Rights

Conditionality is not something new in the EU integration. The recent democratic erosion in many Member States has prompted the EU, particularly the Commission and Parliament, to reinforce the connec-

[47] A.M. Fernández-Pasarín, A. Lanaia, *The governance of the recovery and resilience facility. The incremental innovation of standard conditionality regime*, European Policy Analysis, Vol. 11, (1), 2025, p. 78.

[48] Articles 10 and 18-21, Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

tion between the performance-based model and the principles enshrined in Article 2 TEU.[49] Indeed, the RRF, alongside the Conditionality Regulation and the Common Provisions Regulation (CPR),[50] is explicitly employed to promote adherence to EU values and the CFR. While it is not possible to analyse these tools here, there is a cross-cutting "constitutional" connection among the three instruments: the protection of fundamental rights and the rule of law through the EU budget. The CFR's direct link has been established in the CPR for the 2021–2027 period as a general obligation covering all European Structural Investment (ESI) funds (Article 9(1) of the CPR). The "enabling conditions" are divided into horizontal and thematic conditions: the former relate to the CFR and the latter to the European Pillar of Social Rights (EPSR). This represents an expansion of the CFR's role compared to the 2014–2020 financial period. Under the new Regulation, Member States must comply with the enabling conditions throughout the programming period, not just at the beginning, and fulfilment is mandatory to obtain reimbursement for expenditure related to a specific objective (Article 15 of the CPR). Therefore, the Commission is granted greater efficiency through the effective application of the CFR, which is permanently mobilised through the EU budget.[51]

[49] N. Lupo, *cit.*, pp. 70-77.

[50] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

[51] C. Rizcallah, *The European Union and Human Rights. Un-*

Differently, the RRF does not explicitly reference to fundamental rights, which are contained in targeted milestones. Instead, it is implicitly included in the negotiated reforms, which aim to strengthen health systems, social housing and, above all, judicial independence (Article 3 of the RRF Regulation). For example, the RRF is designed to implement the EPSR, particularly with regard to gender equality. Article 18 stipulates that NRRPs must adhere to the EPSR's objectives, which are described as a "values-based dimension of the RRF". However, this framework has been criticised for not clearly linking the RRF to EU values.[52] Nevertheless, it could be argued that, given the scope of the RRF, an explicit connection would have been somewhat beyond the remit, since the RRF's implementation formally falls within the cohesion policy as a "one-off" measure.

In addition, the protection of EU values has been reinforced through the adoption of the conditionality regulation. This was introduced to protect the rule of law principles from breaches by Member States that affect or could seriously affect the EU's budget.[53] Fundamental

derstanding a Singular Regional Player, Oxford, Hart, pp. 185-190; M. Fisicaro, *Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values*, in European Papers, Vol. 7, No 2, 2022, pp. 700-707.

[52] M. Fisicaro, *Beyond*, *cit.*, pp. 716 – 719, quote p. 716. See for a more comprehensive account L. Fromont, *The place of inequality and poverty in the Recovery and Resilience Facility*, in C. Brière, A. Crespy (Eds.), *Inequality and the European Union*, London, Routledge, 2024, pp. 80–92.

[53] Amongst many see: J. Łacny, *The Rule of Law Conditionality Under Regulation No 2092/2020—Is it all About the Money?* in Hague J. Rule Law, 13, 2021, pp. 79–105; M. Blauberger, and V. van Hüllen, *Conditionality of EU funds: an instrument to enforce EU fundamental values?*, in Journal of European Integration, 43(1), 2021, pp. 1–16; A. Baraggia, M. Bonelli, *Linking Money to Values: The New Rule of Law Conditionali-*

rights are explicitly invoked in cases of violations of the principles of the rule of law relating to effective judicial protection, including access to justice by independent and impartial courts, as well as non-discrimination and equality before the law (Article 2 of the Conditionality Regulation). The scope of the Regulation is therefore limited by its connection to EU financial interests. This approach has been criticised as it "economises the rule of law [...] based on managerial logic", thereby depoliticising the EU's rule of law and marginalising both the EU and national parliaments during the assessment process. Thus, fundamental rights are only taken into consideration where their infringement affects the sound financial management and has a direct impact on growth, rather than being considered in broad terms, such as gender equality.[54] Nevertheless, the link between the RRF and the Conditionality Regulation should not be underestimated because, given that Article 8 of the RRF states that the Conditionality Regulation applies horizontally to all EU funds.[55] Therefore, a path toward a stronger constitutional dimension emerges: the CFR with a more solid teeth together with a substantive role of the EU funds in addressing cit-

ty Regulation and Its Constitutional Challenges, in German Law Journal, 23(2), 2022, pp. 131-156; C. Fasone, M. Simoncini, *Next Generation EU and Governance by Conditionality: A Transformation of the European Economic Constitution?*, in European Papers, Vol. 9(3), 2024, pp. 1148-1179; A. Torres Pérez, *The constitutional impact of rule-of-law spending conditionality*, in International Journal of Constitutional Law, Vol. 22(3), 2024, pp. 859–881.

[54] L. Fromont, *What EU Conditionality Says about the Rule of Law*, in European Journal of Risk Regulation, Vol. 16, 2025, pp. 850 – 852, quote p. 851.

[55] N. Kirst, *Rule of Law Conditionality*, in F. Fabbrini, C.A. Petit, *Research Handbook on Post-Pandemic EU Economic Governance and NGEU Law*, Cheltenham, Edward Elgar, 2024, pp. 199-203.

izens and territorial inequalities. The problems lie in the interplay between the three tools especially in their coherent e coordinated implementation[56]. This is a difficult task for the EU Institutions, especially the Commission, which means pursuing the implementation of the CFR alongside the protection of the EU's "constitutional values" set by Article 2 TUE, recently declared binding by the ECJ[57].

5. The burden of NRRPs implementation, between predictability, adaptation and the rule of law enforcement: Poland, Hungary and Slovakia.

As the final stage of the NRRPs implementation approached, the EU Commission highlighted several difficulties. Despite substantial progress, Member States were urged to speed up the process. Among the issues raised by Member States was the administrative burden caused by their previous capacity and the Council's often overly detailed implementation decisions. In fact, disbursement of funds has slowed down in 2025. Against this backdrop, it is important to note that implementation is taking place amid several crises, beginning with Russia's invasion of Ukraine and the subsequent energy supply chain crisis. In response, the EU incorporated REPowerEU chapters and subsequently revised the NRRPs, which meant new loans, new priorities and an additional administrative burden for Member States.[58] Overall,

[56] See critically C. Rizcallah, *cit*., p. 206.

[57] See on the European Commission v. Hungary (C-796/22) the EuLawLive Symposium, *Enforcing Article 2 TEU: The CJEU's Judgement in Commission v. Hungary (C769722)*, June 2026.

[58] European Commission, *Communication from the Commission to the European Parliament and the Council – NextGenerationEU –*

disparities in the implementation of the NRRPs remain high: for example, as of 31 August 2026, Bulgaria, Hungary and Romania still need to fulfil more than 85% of their milestones and targets, while Sweden has received 100% of its national plan.[59]

Alongside faster and more timely reforms, legality, transparency, and the protection of the EU's financial interests must not be overlooked. To this end, the Commission has stepped up its efforts to address the concerns raised by the European Court of Auditors (ECA) and the European Parliament. Nevertheless, a proper, coherent transparency system is still lacking.[60]

Thus, the complexity of the NRRPs implementation lies in the administrative shortcomings at the EU and Member States level, in assessments and in transparency. In addition, the predictability of the NRRPs has been undermined by several modifications or "mid-course corrections" to address crises and contingencies[61]. Ultimately,

The Road to 2026, Brussels, 4.6.2025, COM(2025) 310 final/2. More recently the European Court of Auditors warned that RRF REPowerEU chapters are not sufficient to achieve targets in renewable energy sources production capacity. In addition, REPowerEU plan lacks tools for monitoring its implementation from both the EU Commission and the Member States. European Court of Auditors, *Implementation of the REPowerEU Plan needs a boost*, Special Report 21/2026, Luxembourg, 9 September 2026, p. 9.

[59] European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of the Recovery and Resilience Facility*, Brussels, 8.10.2025.

[60] Many weaknesses were raised by the European Court of Auditors, *Performance-orientation, accountability and transparency – lessons to be learned from the weaknesses of the RRF*, Review 02/2025, 06/05/2025; C.A. Petit, *Assessing Transparency in the Recovery and Resilience Facility. Lessons from the Recovery and Resilience Facility and NRRPs, and proposals for enhancing transparency in future funding instruments*, European Parliament's Committee on Economic and Monetary Affairs, 2026.

[61] J. Miró, A.M. Fernández-Pasarín, *Negotiated and negotiable? Contractual governance and the flexibility of the EU's recovery and*

the NRRPs are also a vehicle to consolidate or, to safeguard the rule of law and the EU financial interests, and fundamental rights.

The need to address several interconnected issues, such as efficiency, value-based disbursement of funds and flexibility in the event of disruption caused by crises, has made the planning method contentious. This was especially the case regarding the protection of EU financial interests in Poland, Hungary and Slovakia. The first two cases are linked to the illiberal projects pursued by the ruling parties (PiS in Poland and Fidesz in Hungary), and to the end of their respective majoritarian rule in 2023 and 2025. The outcomes of both general elections brought about a "reversal" of illiberal projects and access to EU funds. Conversely, Slovakia appears to have embarked on a different course under Prime Minister Fico. Therefore, without conducting an in-depth analysis, it is worth recalling how the EU Institutions managed these NRRPs.

5.1 Poland

The Polish plan is the third biggest under the RRF (€54.7 billion) and shows a strong link between fund disbursements and the rule of law. In the Polish case, the funds allocated under the RRF must be added to those under the Cohesion Policy (€76.5 billion). The story of the Polish NRRP has been difficult from the outset. In fact, it was the first to be submitted on 3 May 2021, but it was not approved by the Council Implementing Decision until 14 June 2022 due to a violation of the independence of the judiciary (Article 19 TEU),

resilience facility, in Journal of European Public Policy, 2026, pp. 1–26.

which was assessed by the ECJ in July 2021.[62] Thus, the plan was formally implemented in summer 2022. However, the first payment was only approved in February 2024 after three 'super milestones' related to judicial independence, audit control, and fraud safeguards were met.[63] The Polish NRRP has been amended six times since then, and the fifth payment request is currently being evaluated by the Commission.[64] Similarly, Cohesion funds were unlocked on 29 February 2024 under the CPR, the same day of the first RRF payment[65]. The case of Poland demonstrates the extent to which the delay in implementing the NRRP was related to the protection of the rule of law, as well as the interplay between the two types of conditionality. Currently, it would be difficult to disburse all the funds before the approaching deadline of December 2026. Without an extension, the rush to spend EU funds will most likely compromise transparency and overlook the administrative burden for both the EU Commission and Poland.

5.2 Hungary

The implementation of the Hungarian Plan was far more complex for two reasons. Firstly, the Orbán re-

[62] Case C-791/19, Judgment of the Court (Grand Chamber) of 15 July 2021. European Commission v Republic of Poland.

[63] N. Moran, *Milestones and Targets*, in F. Fabbrini, C.A. Petit, *cit.*, p. 185-186.

[64] L. Sánchez Cabanillas, M. Szczepański, *Poland's National Recovery and Resilience Plan Latest state of play*, European Parliamentary Research Service, April 2026.

[65] P. Thinus, *Rule of Law Protection through RRF Performance-based Spending Conditionality: Lessons from the Polish, Hungarian and Slovak Plans*, in European Journal of Risk Regulation, 16(3), 2025, pp. 882-895.

gime violated the rule of law systematically. Secondly, the Commission's discretion in releasing CPR funds in exchange for lifting the veto on Ukraine's accession talks was criticised.[66] The rule of law was central to the Hungarian NRRP, as most of the milestones and targets are related to the rule of law. This was particularly important before the 2026 elections and the restoration of the rule of law currently being pursued by the new Prime Minister, Magyar. For Hungary, it was crucial to comply with 27 "super-milestones" in order to proceed with payment requests.[67] They were measures already included in the Article 7 TEU procedure, the Country Specific Recommendations (CRSs) and the Rule of Law Reports[68]. For the same purpose, the Conditionality Regulation was activated against Hungary which led the Council to suspend 55% of the funds for three operational programmes under the Cohesion Policy in December 2022[69]. Nevertheless, one year later, an at least opaque bargaining gave way to the release of €10.2 billion under the CPR for the opening of the accession talks with Ukraine[70]. This

[66] K.L. Scheppele, J. Morin, *Money for nothing? EU institutions' uneven record of freezing EU funds to enforce EU values*, in Journal of European Public Policy, Vol. 32(2), 2025, pp. 486–490.

[67] Amongst many see K.L. Scheppele, *Can Péter Magyar Restore Hungary's Democracy?*, in Journal of Democracy, vol. 37 (3), 2026, pp. 97-111; F. Fazekas, A. Kádár, N. Novoszádek, *Temporary fixes and long-term commitments: Hungary's 17th Amendment to the Fundamental Law*, ConstitutionNet, International IDEA, 2 August 2026.

[68] A. Schwarcz, *Rule of law-related 'super milestones' in the recovery and resilience plans of Hungary and Poland*, European Parliament, January 2023.

[69] Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

[70] See M. Fisicaro, *Enforcing the Charter of Fundamental Rights through EU funding: A first assessment ahead of the next Multian-*

Decision[71] was challenged by the EP, through an action for annulment before the ECJ, advancing three pleas: the fulfilment of the horizontal enabling conditions; the EC lack of transparency in explaining its reasons; misuse of powers, since the Decision followed the veto threat manifested by Hungary[72]. Essentially, as argued by A.G. Ćapeta in her Opinion, the Commission failed in its assessment and in providing a sufficient reasoning for its action[73].

While the ECJ Judgement is still pending, the fate of the Hungarian NRRP is unique. The previous version, made by Orban, was put aside and a new one was agreed between the Tisza Government and the Commission. The new plan was approved by the Council on 10 July 2026 and amended on 27 August 2026.[74] Due to the inability to comply with the "super milestones" in time, the plan was revised with a mandatory deadline of 31 August 2026 for milestones and targets, particularly the

nual Financial Framework, in Maastricht Journal of European and Comparative Law, 33(2), 2026, 145-146.

[71] Commission Implementing Decision C(2023) 9014 of 13 December 2023 on the approval and signature of the Commission assessment, in accordance with Article 15(4) of Regulation (EU) 2021/1060, of the fulfilment of the horizontal enabling condition '3. Effective application and implementation of the Charter of Fundamental Rights' with regard to the deficiencies in judicial independence in Hungary.

[72] I. Gambardella, *Op-Ed: "Freezing and Unfreezing EU Funds to Ensure Fundamental Rights Compliance: The Commission's Discretion Under Review Before the Court of Justice: Parliament v Commission (C-225/24)"*, EuLawLive, September 29, 2025.

[73] Opinion of Advocate General Ćapeta delivered on 12 February 2026, Case C-225/24 European Parliament V European Commission.

[74] European Commission, *Proposal for a Council Implementing Decision amending the Implementing Decision of 15 December 2022 on the approval of the assessment of the recovery and resilience plan for Hungary*, {SWD(2026) 171 final}, Brussels, 19.6.2026, COM(2026) 316 final.

24 connected to protecting the EU's financial interests, as a prerequisite for releasing RRF payments. Therefore, Hungary's ability to formally implement the entire NRRP within a few months is at stake, as payment requests must be submitted by the end of September 2026. At the same time, several legislative and constitutional reforms must be adopted, and the EC must speed up its assessment process in order to meet the December 2026 deadline.[75]

5.3 Slovakia

Unlike the Polish and Hungarian plans, the Slovakian NRRP was quickly adopted, but has since faced several implementation issues. The plan has been revised five times, most recently in July 2026, with many milestones and targets relating directly to the rule of law, such as the fight against corruption, the anti-money laundering framework, and the judicial system. Threats to EU financial interests and the rule of law emerged once Robert Fico became Prime Minister in 2023. His political manoeuvring culminated in the Twenty-Third Amendment to the Constitution in September 2025.[76] During this period, concerns were raised about the reversal of milestones achieved in areas such as anti-corruption and the justice system, which led to a subsequent slowdown in the release of payments.[77] In fact, the Commission reduced Slovakia's

[75] A. D'Alfonso, M. Kiss, *Hungary's National Recovery and Resilience Plan Latest state of play*, European Parliamentary Research Service, Next Generation EU Monitoring Service, 15-09-2026.

[76] M. Steuer, *No Skyfall: The Twenty-Third Amendment to the Slovak Constitution*, VerfBlog, 2025/10/20.

[77] In particular, Fico abolished the Special Prosecutor's Office.

loan support by €1.2 billion following a recommendation from the European Anti-Fraud Office (OLAF). All the three NRRPs shows the extent to which their implementation is connected to the rule of law protection and how much they can be slowed down for that purpose. Overall, the three NRRPs are in the midst of constrained delays, which pave the way for the fastest implementation possible. This would imply, without a prorogues after the December 2026 deadline, shortcomings in the assessments of the Commission together a mounting burden over the national administrations[78].

6. Conclusions: the RRF constitutional features in the next Multiannual Financial Framework.

At the beginning of their drafting and implementation, the RRF and the NRRPs were considered a potential "constitutional moment" and a booster for EU fiscal integration. A wide-ranging debate has emerged over the consequences of the €700 billion measure, comprising grants and loans, and its strengths and weaknesses. The balance between EU supranational and intergovernmental institutions, the impact of strengthening dialogue between MS executives and the Commission, and the renewed debate over European public goods are just a few of the many issues at stake.[79]

Therefore, a major question arises: what is the

See M. Domin, *Abolition of the Special Prosecutor's Office in Slovakia: Violation of the Rule of Law in the Name of Protecting Human Rights?*, ConstitutionNet, International IDEA, 26 February 2024; P. Thinus, *cit*., pp. 891-893.

[78] Therefore, a problem of transparency and legal certainty. See M. Fisicaro, *cit*. pp. 151-155.

[79] See C. Fasone in this volume.

constitutional legacy of the new method of government in the face of growing challenges that the EU must address? In other words, what constitutional feature was pushed forward amid years when the imperative was for the EU to play a more nuanced strategic role alongside more funding and incisive policies in key sectors?[80]

Some insights can be gained from the new Multiannual Financial Framework Proposal of July 2025, which is currently under negotiation.[81] The Commission has proposed a slight increase to the 2028–2034 MFF compared to the 2021–2027 MFF plus the NGEU allocation. Therefore, the RRF legacy has not resulted in a significant increase to the EU budget or stronger fiscal integration. In fact, the MFF ceilings, expressed as a percentage of EU gross national income (GNI), have been increased from 1.13% to a proposed 1.26% (almost €2 trillion at 2026 prices); to the latter, it must be excluded 0.11% which are funds allocated for the NGEU repayment, reaching no more than 1.15%.[82] Therefore, the impact of the RRF's legal architecture must be found

[80] Such as industry and defense, digital technology, security, health protection, environment and climate, migration and border protection. It shall be remembered that the broadening of European public goods entails the problem of competences creep as well as the extensive use of article 122 TFEU. See on this debate see lastly A. Steinbach, *European public goods*, International Journal of Constitutional Law, 00(00), 2026, pp. 1–37

[81] This chapter was finalised in September 2026. Proposal for a Council Regulation laying down the multiannual financial framework for the years 2028 to 2034, COM/2025/571 final. See for a first overwiev C. Fasone, *La proposta di Quadro finanziario pluriennale UE 2028-2034, tra continuità e innovazione*, in federalismi.it, n. 33/2025.

[82] M. Pari, S. Pradier, *EU BUDGET 2028-2034. Overview of the Commission's proposal*, European Parliamentary Research Service, PE 775.885, September 2025; European Court of Auditors, *EU budget 2028-2034 - The ECA's view: Many changes may not make it better*, Publications Office of the European Union, 2026, p. 4.

elsewhere, specifically in the replication of the NRRPs.

Besides the overall simplification of the budget proposal, which includes reducing the number of headings from seven to four and increasing the proportion of unprogrammed resources, allowing for faster, more tailored responses to evolving needs, the performance-based approach is the tangible spillover of the RFF into the next MFF.[83] In fact, most of the resources (€1062 billion) belongs to the first heading; amongst them, €865 billion are pooled into a single tool, which comprises the Common Agricultural Policy (CAP), Fisheries and Maritimes, Cohesion policy, Social policy (European Social Fund Plus)[84], migration and borders[85]. All these funds must be spent, according to the proposal, under National and regional partnership plans (NRPPs) are agreed between the Member States and the Commission. The only no-

[83] See Fasone in this volume; European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A dynamic EU Budget for the priorities of the future - The Multiannual Financial Framework 2028-2034 {SWD(2025) 570 final} - {SWD(2025) 571 final}, Brussels, 16.7.2025; Commission Staff Working Document Accompanying the Document Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A dynamic EU budget for the priorities of the future: the Multiannual Financial Framework 2028-2034, SWD(2025) 570 final/2, Brussels, 16.7.2025.

[84] For example, on the social policy in the next MFF Proposal see M. Steiert, *The social legacy in EU budget law: Imaginary-making, retreat and the 2028-2034 Multiannual Financial Framework*, in Maastricht Journal of European and Comparative Law, Vol. 33(2), 2026, pp. 185-209.

[85] Proposal for a regulation establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028-2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509 – COM(2025) 565/2, 16.7.2025.

table difference from the RFF is that the NRPPs must be co-financed by the Member States, in line with the standard practice of previous MFF programmes (Article 7(4) of the Proposal). The rest mirrors the NRRPs under the RFF, beginning with the performance-based nature and fulfilment of targets and milestones in order to obtain payments. Concerns have been raised about the continuous centralisation of the plans, whereby the Member States must provide a list and description of the measures to be adopted. In order to preserve the role of regional and territorial entities, as well as NGOs and stakeholders, Member States may include national, sectoral, regional, and territorial chapters in their plans. Procedurally, the NRPPs resemble the RFF, since they must be transmitted to the Commission for assessment, after which the Commission will draft a proposal for a Council Implementing Decision (CID). [86]

While NRRPs structure and procedure are examples of the euro-national method of government[87], I argue that the constitutional features are the conditions set for accessing funds: the Charter of Fundamental Rights and the rule of law[88]. Like the CPR, the RRF and

[86] A. D'Alfonso, K. Kowald, M. Mileusnic, *National and regional partnership plans, European territorial cooperation and EU facility 2028-2034*, European Parliamentary Research Service, PE 782.606 – January 2026. Similar concerns are raised by P. Leino-Sandberg, P. Lindseth, *European Integration in the Constitutional Borderlands*, p. 289.

[87] See C. Fasone, in this volume.

[88] The Conditions are valid also for the INTERREG Plan (€9 billion). The remaining funds are allocated in the EU Facility, with three objectives: supporting transnational and innovative projects; helping Member States in facing urgent and specific needs (such as natural disaster); providing additional flexibility to handle emerging priorities at EU level. The EU Facility is not subjected to the horizontal conditions valid for the NRPPs and INTERREG Plan. See A. D'Alfonso, K. Kowald, M. Mileusnic, *Na-*

the Conditionality Regulation, the NRPPs must comply with Article 2 TEU, as well as the Country Specific Recommendations (CSRs) and the recommendations in the Rule of Law Report. The purpose of this is to rationalise the different procedures and avoid overlaps between the conditionalities. These are the "horizontal principles": the NRPPs must comply with the relevant provisions of the CFR (the Charter horizontal condition), and the assessment procedure remains with the Commission (Article 8 of the Proposal). In addition, the Proposal sets out the rule of law protection, specifically the Conditionality Regulation (the rule of law horizontal condition); however, in this case, the Council ultimately decides the assessment (Article 9 of the Proposal). To avoid overlaps, the proposal also establishes a hierarchy between the two horizontal conditions. According to Article 8, paragraph 8 of the Proposal, in the event of breaches to both, the Commission must prioritise the rule of law horizontal condition. The Commission's commitment seems to extend the scope of the CFR, as the "measures" in the NRPP implementation are considered "a reform, an investment or another intervention" (Article 4(10) of the Proposal). This clause has raised concerns about the scope of the CFR and the extent to which it would exceed the limits set out in Article 51(1), thereby encroaching on areas beyond the Union's competence.[89]

tional and regional partnership plans, p. 7.

[89] See M. Fisicaro, *Enforcing the Charter of Fundamental Rights through EU funding: A first assessment ahead of the next Multiannual Financial Framework*, in Maastricht Journal of European and Comparative Law, Vol. 33(2), 2026, pp. 155-157. See on the possibility of the competence creep Id, *Conditionality and the making of the EU spending power: The question of competence*, in Common Market Law Review, Vol.

The RFF spillover or "follow-up" in the next MFF shows that the most relevant constitutional features are those conditionalities which links budget expenditure to fundamental rights and the rule of law. I have argued that it is difficult to identify an "Hamiltonian moment" or a constitutional moment for the EU with the NextGenerationEU, given the exceptional nature of the measures adopted following the COVID-19 Pandemic. The NRRP Plan has also demonstrated significant administrative burdens and critiques regarding funds management and Commission discretion, as shown by the cases of Hungary, Poland and Slovakia.[90] In this context, the constitutional *fil rouge* is found in the role of conditionalities connected to the EU's fundamental values, the rule of law and the CFR. These constitutional features have emerged not only from the implementation of the NRRPs, but also from the proposal for the next MFF, which aims to incorporate the structure and procedures of the RFF, as well as the compliance of the Member States with the rule of law and the CFR.

63(2), 2026, pp. 345-370; M. Coli, *A New Form of Competence Creep? Rule of Law Conditionality as a Case Study for Integration through Funding in the European Union*, in European Law Review, Vol. 50(5), 2025, pp. 619-633; S. Gerben, *The delimitation and the use of EU competences*, in L.F.M. Besselink, N. Lupo, M. Wendel (eds.), *Research Handbook on European Constitutional Law*, cit., pp. 283–302.

[90] To this end the Commission has proposed also the "Performance Regulation", which aiming to establish an expenditure tracking and a performance framework for the budget, including rules on the monitoring of all budget expenditure (article 1, par. 1). It is significant that the Regulation purpose is to harmonise provisions across the EU budget as regards horizontal principles: climate and biodiversity, do no significant harm to environmental objectives and, above all, social policy and gender equality. See Proposal for a Regulation of the European Parliament and of the Council establishing a budget expenditure tracking and performance framework and other horizontal rules for the Union programmes and activities, COM/2025/545 final, Brussels, 16.7.2025.

Enrico Ciappi

I Foresight, therefore I am: The informal origins of the EU's strategic culture before Next Generation EU

Summary: 1. Introduction. - 2. Foresight and the Euro-National Crisis Management. - 3. Strategic Foresight during the Delors Era. - 4. Onion Europe: The Spatiality of Multi-tier EU Integration in the 1990s. - 5. The Brains of EU Common Defense. - 6. The end of the beginning: 9/11 and the institutionalisation of EU knowledge regime. - 7. Conclusion.

1. Introduction.

Next Generation EU (NGEU) represents a watershed initiative in the history of the European Union (EU) for the strategic culture it promotes and mobilises. Regardless of its shortcomings and accomplishments, NGEU stands out as a bold, collective vision of the EU's future: it endorses a certain understanding of the EU's positioning in the global economy and its responsibility towards EU citizens. Tackling present vulnerabilities of the EU society for the benefit of future generations is ipso facto an ambitious political agenda. At the same time, the €750 billion recovery plan is an exceptional and temporary measure; the instruments it

employs, including the Recovery and Resilience Facility (RRF), are not intended to be permanent. This makes us wonder whether the NGEU will ever leave a legacy, and if so, what kind. The imminent closure of this initiative is prompting scholars to address this issue mainly by evaluating its outcomes and potential 'afterlife'[1]. This study will take a different approach. Like salmons swimming upstream, readers will trace the intellectual origins of this initiative, highlighting the cultural and scientific roots of the ethos of resilience in times of fluid uncertainty and the practice of euro-national crisis management. Where does this strategic approach come from? How have EU institutions applied the principle of resilience in concrete policies?

In short, it is argued here that strategic foresight has been the ideational bedrock of this operation and, more broadly, of the EU's strategic culture in geoeconomics and geopolitics. Indeed, this culture is still hesitant and contested. Yet, it exists and deserves scholarly attention. I here understand strategic foresight as a 'structured and systematic approach of exploring plausible versions of the future which can support better policy-making and incentivise forms of anticipatory governance'[2]. Strategic foresight is a policy-oriented language that, theoretically, generates the cognitive premises for

[1] M. Buti, S. Fabbrini, *Next generation EU and the future of economic governance: towards a paradigm change or just a big one-off?*, in «Journal of European Public Policy», XXX(4), 676–695; M.a. Almazan-Gomez, C. Llano, J. Perez, D. Kallioras, M. Tsiapa, *Regional economic impact of the Next Generation European Union recovery plan*, in «Papers in Regional Science», CIV (4) (2025).

[2] S. Giusti, *Embedding the Future in the European Union: Advancing Towards Strategic Foresight*, in «Studia Europejskie» (2025), p. 191.

self-government in interdependence, for cultivating agility towards crisis, which is the quintessence of resilience and preparedness. In the decades of existential poli-crises - the eurozone crisis, Brexit, two Trump administrations, the War in Ukraine, the aggressive expansion of Israel, the fragmentation of global interdependence, inter alia - strategic foresight has been widely used in Brussels[3]. In particular, von der Leyen's Commission endorsed and adopted this flexible method for scanning future potentialities and challenges from a long-term perspective[4].

Drawing on new primary sources from the late 1980s and 1990s, this study argues that thinking strategically about possible futures showed off extra or para legem in the early post-Cold War context. While the institutionalisation of these practices occurred in the early 2010s, the informal and intellectual origins are much older and fall back to the Delors era. From 1989 to 2001, a largely informal strategic community experimented with techniques of strategic foresight and advised the Commission, the EU Council and other hybrid Brussels-based agencies to frame the priorities of the EU global agenda in critical sectors. From this angle, the NGEU represents the culmination or 'maturation' of a longer intellectual process of scientific-based and partic-

[3] E. Noonan, *The ESPAS network and the growth of EU foresight*, in «Eur Law Journal», XXX(3) (2024), p. 397-400; M. SUS, *Towards the European Union's Foreign Policy 2025 – Taking Stock of the Dahrendorf Foresight Project*, in «Global Policy», XVI(4) (2017), p. 115–125. M. SUS, *Dare scholars look to the future? Academia and strategic foresight for the European Union's foreign policy*, in «Eur Law Journal», XXX(3) (2024), p. 434-442.

[4] M. Sus, *Dare scholars look to the future?*, cit.

ipatory policy-framing, open to several national and supranational, private and public, policy actors gravitating around Brussels-based institutions[5].

This chapter adopts a specific perspective: it analyses the intellectual prodromes of the NGEU by borrowing ideas and categories from the thematic literature on informal governance, supranational think tanks and EU foreign policy (EUFP). While addressing different problems and following different norms, NGEU and the EUFP, specifically the Common Foreign and Security Policy (CFSP), are connected by a twofold common thread: conceptually, they are aimed at shielding EU citizens from exogenous threats; institutionally, these policies follow the paradigm of intergovernmental coordination, in which national governments and administrations maintain a key role, especially in the phase of planning and implementation. Besides, EUFP offers a reverse look at the European integration history, usually driven by or focused on the most integrated sectors and agencies. Thanks to this perspective, we shall discover that the grey zone of informal governance proved to be one of the most fruitful for experimenting with multiple-scenario framing for EU agenda-setting[6].

The footsteps of the EUFP strategic community are instrumental in understanding how the Union's experts critically assessed and tackled exogenous crises after the signature of the Maastricht Treaty. To counter

[5] F. Bicchi, H. Maurer, K. Raube, *Maturation by practice: shaping the EU's international identity in the absence of formal institutional change*, in «European Security», XXXIII (3) (2024), p. 364–382

[6] For a definition and conceptualization of the term informal governance see K. Abbott, T. Biersteker, *Informal Governance in World Politics*, Cambridge University Press, Cambridge 2024

the intrinsic vagueness of the term community, this paper draws on the notion of knowledge regime. This term refers to unstructured groups of informed policy actors and agencies 'producing policy-relevant knowledge—research, temporary and permanent advisory bodies, think tanks, etc.—and the institutions that govern them'[7]. To a closer look, the protagonists of this story are independent think tanks and Brussels-based hybrid strategic units. In the heyday of neoliberalism, private-based think tanks and semi-official agencies within the EU executive perimeter ran pioneering foresight initiatives in the name of efficiency and scientific control of politics, bridging academia and policymaking at the supranational level[8]. The Cellule de Prospective (CDP), the Centre for European Policy Studies (CEPS), Institut français des relations internationales (IFRI), the International Institute of Strategic Studies (IISS), the Policy Planning and Early Warning Unit (PPEWU), and the Royal Institute of International Affairs (RIIA, Chatham House) are among the most influential players of this first season of EU strategic studies. By reconstructing their networks and exchanges with supranational agencies, this intellectual history seeks to stimulate debate with the fast-growing literature on the political use of science in the EU policy-framing, the Brusselisation of European crisis management, and the evolution of EU geopolitical identity in the post-Cold war era[9].

[7] J.L. Campbell, O. Pedersen, *The National Origins of Policy Ideas: Knowledge Regimes in the United States, France, Germany, and Denmark*, Princeton University Press, Princeton 2014, p. 3.

[8] J. D. Kelstrup, *The Politics of Think Tanks in Europe, Routledge*, London 2018; A. Missiroli, I. Ioannides (eds.), *European Think tanks and the EU*, Berlaymont paper, Brussels 2012.

[9] These thematic niches are reach and expanding. I am going to

I will proceed as follows: after this short introduction, section two will provide an overall description of the current EU crisis management system and the important role of foresight in this process. Section three will focus on the pioneers of supranational foresight during the Delors era (1985–1995). Section 4 will reveal future-oriented plans for the post-1989 European political landscape inspired by theories of multi-tier integration. Section 5 will then shift to multi-speed alternative scenarios, which proved quite influential in shaping EU intelligence and common defence between the St. Malo Declaration and 9/11. Finally, a concluding remark will compare the foresight culture of the 1990s with the current one, highlighting the hidden strengths and overwhelming weaknesses of a strategic culture without planning capacity.

2. Foresight and the Euro-National Crisis Management

The release of a 750 billion euro recovery plan as a response to the spread of the pandemic is, by its very nature, temporary and exceptional. In fact, NGEU is a reactive deviation from consolidated norms, first and foremost, the dogmas of member states' financial responsibility and fiscal austerity[10]. At first glance, the

provide one reference reading for the use of science, the Brussellisation of crisis management, and EU geopolitical identity post-1989 respectively: V. Abazi, J. Adriaensen, T. Christiansen *The Contestation of Expertise in the European Union*, Palgrave, London 2020; C. Sabel, J. Zietlin, *Experimentalist Governance in the European Union*, Oxford University Press, Oxford 2010; P. Morillas, *Strategy-Making in the EU. The European Union in International Affairs*, Palgrave Macmillan, Cham 2019.

[10] J. Abels, *Making "strategic autonomy" rhyme with "fiscal austerity?" Unresolved conflicts of (geo) economic ideas in EU infrastructure policy*, in «Competition & change», XXIX(2) (2025), p. 204-224

NGEU seems to be a creative and ultra-executive initiative whose rationale lies in the need to counter the distress and concern caused by an unpredictable and imminent threat such as the Coronavirus pandemic. However, the NGEU should not be analysed in isolation, both synchronically and diachronically. Indeed, this policy is part of a broader phenomenon whose prodromes fall back to the early post-Cold War era.

During the ongoing von der Leyen era (2019-2029), European integration has undergone a process of non-federal Europeanisation and increasing politicisation. The notion of EU strategic autonomy (EUSA) has emerged as the cornerstone of the EU's global identity and the so-called geopolitical turn. While remaining conceptually and politically blurred, this Europeanist notion aims to enhance the European Union's capacity to act, alone if necessary, in critical policy areas like energy, space and high technology, guided by a self-made vision and its own values and principles, through a careful diversification of critical resources, greater integration in decision-making and reinforced adaptability to global crises[11]. EUSA is a future-oriented political project for realising what the EU should be and it is not. This approach filters into the NGEU, but also in the White Paper for European Defence, called Readiness 2030 as well as the Niinistö, Letta and Draghi Reports. Despite their

[11] The thematic literature on EUSA is rich and plural. To start with, read N. Helwig, V. Sinkkonen, *Strategic Autonomy and the EU as a Global Actor: The Evolution, Debate and Theory of a Contested Term'*, in «European Foreign Affairs Review», XXVII (2022), p. 1-20; D. Fiott, *The three images of EU strategic autonomy: perspectives on wedging, binding and hedging*, in «Journal of European Integration», XLVII(6) (2025), p. 825–842.

differences, all these compasses for the future try to operationalise strategic autonomy in practice and increase EU resilience by tackling its structural internal and external vulnerabilities with an eye on the turbulences coming from abroad[12].

While promoting resilience and responsiveness, EUSA has significant institutional implications: it increases the politicisation of EU affairs without any treaty change, confirms the presence of different decision-making regimes and finally reinforces the logic of compromise and convergence[13].

In this overall scheme, the Commission stands central for improving coordination and harmonisation, while key decisions still rest with the European Council. EUSA is based on a marriage of convenience between national and supranational powers, that is, a euro-national governance dominated by executive authorities. They are called, somehow together, to shield citizens from external threats and realise autonomy and resilience. NGEU money talks: the Commission assembles the 750 billion recovery fund through joint European bonds. These financial resources serve a collective vision, a common vision through common debt. Yet, NGEU funds filled national investment plans, proceeding country by country. On the one hand, the Commission set the priorities and the milestones; on the other, the voice of member states is paramount in the actual exploitation of resources[14].

[12] D. Gros, *The Draghi and Letta Reports: Overloaded Messages and Limited Impact*, in «JCMS: Journal of Common Market Studies», LXIII (2025), p. 138–145.

[13] S. Fabbrini, *A Federalist Alternative for European Governance*, Cambridge University Press, Cambridge 2024, p. 199.

[14] O. Picek, *Spillover effects from next generation EU*, in «Inter-

Similar patterns filter in other major 'post-neoliberal' documents and initiatives shaping the ongoing geopolitical moment of EU identity, like the Strategic Compass of 2022, and also in the SAFE initiative for joint armaments procurement[15]. These initiatives share an ultra-executive, multi-level, hybrid and flexible Europeanisation of crisis-solving. While productive, this executive-driven model presents some major biases: accountability is pretty low, the democratic deficit is granitic, and the sociological profile of the driving policy actors is elitist. Citizens appear largely as symbolic beneficiaries rather than active participants in governance. Actually, the civil society has a voice in the EU policy-framing, but not democratically. Commission's legislative initiative is based on a certain practice of deliberation, which is informal and participative: at the early stage, the deliberative process depends on a process of socialization open to civil servants, scientific experts and representatives of national and corporate interests. Further research should confirm whether NGEU diverted from these consolidated habits.

This model of exogenous crisis management has facilitated the formation of a strategic foresight community. Future knowledge production by experts represents an instrument for decision-makers to guide political action in the present. This culture's strength lies in its ability to transform anxieties about the future into science-based projects and to foster consensus among

economics» LV(5) (2020), p. 325-331.

[15] K. Mcnamara, *Transforming Europe? The EU's industrial policy and geopolitical turn*, in «Journal of European public policy», XXXI (09) (2024), p. 2371-2396.

private-public and national-supranational elites. In Brussels, experts and policymakers has forged around this technique a shared platform for assessing common threats and converging on common solutions. While a-democratic and opaque, this process might reinforce ex-post legitimisation of EU institutions as rational and cooperative agenda-setters and problem-solvers.

Officially, the EU has developed a foresight toolkit more than ten years prior to the pandemic. From 2009 onwards, the European Union has developed a first permanent and structured strategic and foresight capacity thanks to the foundation of the European Strategy and Policy Analysis System (ESPAS), the EU Institute for Security Studies (EUISS), the Directorate for Academia, Research and Foresight of the European Parliament, the Joint Research Centre (JRC), the Inspire, Debate, Engage and Accelerate (IDEA) and also the Vice-President for Foresight of the Commission, inter alia. EU forecasters are also reunited in the European Strategy and Policy Analysis System, a network of EU institutions spreading the culture of foresight and anticipatory governance through annual conferences and joint research programs.[16] Thanks to these experiences, foresight increased devotees and became the technical language of future studies in Brussels. Techniques of horizon scanning, computerised simulations, multiple scenario framing inform policy papers or studies like the Global Trends to 2030 Report, Commission's (an-

[16] For a more comprehensive overview see: M. Sus, *Dare scholars look to the future? Academia and strategic foresight for the European Union's foreign policy*, «Eur Law Journal», 30, 3 (2024): 434-442 and S. Giusti, *Embedding the Future*, op. cit.

nual) Strategic Foresight Reports and the Global Trendometer[17].

Framing, scanning, forecasting, visioning, planning and acting are the key stages of any serious foresight analysis. Notably, the EU is not alone in performing these operations: the United Nations (UN), the OECD and many other International Organisations (IOs), non-governmental organisations (NGOs) are systematically applying foresight techniques for strengthening institutional resilience and adaptation to global crises. A quite famous example of global foresight is the definition of the Sustainable Development Goals (SDGs) and the UN agenda for the 2030 global economy[18]. Notably, all these IOs started to systematically apply this method in the late 1980s and early 1990s, when neoliberal philosophy legitimised transnational private-public partnership and the end of the bipolar system generated expectations for a brighter future.

3. Strategic Foresight during the Delors Era

The formation of a strategic community traditionally depends on three basic factors: one cultural, one sociological, one political. Culturally, networks of experts flourish when society at large, despite ideological clashes, converges on believing that science might (or must) influence politics, that ideas and discourses matter and can transform society itself through rational thinking and persuasion; sociologically, such a community

[17] E. Noonan, *Foresight within the EU institutions*, cit. p. 1.

[18] A. Krishnan, S. Robele, *Anticipatory Development Foresight: An approach for international and multilateral organizations*, in «Development Policy Review», XLII (2024), e12778.

needs spaces where experts and civil servants can learn, train, exchange and have a privileged access to the labor market, preferably through the system of the 'revolving doors' characteristic of the US system. Politically, charismatic leaders, more than institutions, lure experts and facilitate the formation of politically committed and ideologically cohesive epistemic communities or policy networks.

In Brussels, at the supranational level, these conditions materialised during the Delors era. Seizing his charisma, the President of the Commission Delors forged a wide and cohesive web of consultants, experts and stakeholders around himself since the mid-1980s. While contesting Thatcherism and Reaganomics, Delors and his knowledge regime did embrace deregulation, globalisation and private-public partnership as driving principles for his agenda[19]. United around a common (federalist) vision of the future, the 'men of the president' operated in the space of informal governance to define EU values, interests and positioning in the globalised world. This informal community of experts experimented with foresight techniques in the hope that it would elevate the Union to the status of a self-aware and influential global actor. Scenario planning, Delphi surveys or the prospective method might have led to a superior analytical, policy-framing and networking capacity in support of Commissions' legislative initiative[20].

[19] B. Zaccaria, *Jacques Delors, the end of the cold war and the EU democratic deficit*, in «JEIH Journal of European Integration History» XXVI (2021), p. 285-304.

[20] I provide a more structured explanation of CDP's social network in E. Ciappi, *The EU Commission and Its Research Community: The Experience of the Cellule de Prospective (1989–2001)*, in «Journal of Euro-

True, there is a pre-Delors history of supranational foresight. Projects of foresight, anticipatory governance and computer-based modelling and forecasting had been tested since the early 1970s. Pilot projects such as Europe Plus Thirty and FAST (Forecasting and Assessment for Science and Technology) introduced future research as a reliable scientific source of inspiration for imagining the new frontiers of the Single Market, and drafting policy plans for a new industrial policy accordingly. Overall, these studies conceived the European society as an integrated socio-economic ecosystem.[21]. While historically meaningful, this and other similar pilot projects were tentative, short-lived, and did not address core state powers, including foreign and security policy. Yet, the echo of these pilot projects endured until the mid-1980s, when other similar projects were launched under Delors' supervision.

One of the most representative examples in this regard is the Cecchini Report, also known among specialists as the Cost of Non-Europe or The European Challenge[22]. Prepared by informal advisers working for the Commission's presidency, the report provided a critical assessment of the costs of economic fragmentation among member states (i.e. the cost of non-Europe) and also a roadmap for completing the Single Market by the target year of 1992. The Report was performative and

pean Integration History», XXXIII (2026) (forthcoming).

[21] W. Kennet (ed.). *The futures of Europe,* Cambridge University Press, Cambridge 1976.

[22] P. Cecchini, with M. Catinat, A. Jacquemin, *The European Challenge 1992. The Benefits of a Single Market*, Wildwood House Limited, Aldershot 1988.

policy-oriented: it did not merely analyse the estimates of the future, but also determined the future according to its estimates[23]. This vision served as a valuable source of external, i.e. scientific, legitimation for a visionary, future-oriented roadmap called Europe 1992. This latter label represented the manifesto Brussels used in the late 1980s to operationalise the full integration of the Single Market, reducing vulnerabilities, tackling inefficiencies and disparities and increasing what now would have been defined as socio-economic resilience. NGEU philosophy started here. The continuity is also institutional: Cecchini and colleagues endorsed the formation of a highly integrated and post-national business community and a multilevel system of governance. Nevertheless, the epoch-making collapse of the Soviet-Union and consequent end of the Cold War made the Report's predictions suddenly obsolete. Europe 1992 became old before time[24].

A few months after the release of the Cecchini Report and a few months before the fall of the Berlin Wall, Delors took the decision to create a permanent internal observatory to monitor, reflect on and possibly anticipate the driving forces of European integration with an eye to global trends). Also known as the Forward Studies Unit, the Cellule de Prospective (CDP) was the

[23] I have already analysed the philosophy and contents of the Cecchini Report in: E. Ciappi, G. Lella, *A Community Beyond the Single Market: The Cecchini Report and the Making of Europe 1992*, in «*History of European Ideas*» (2025), p. 1–17

[24] By that time, the fallibility of prediction was often addressed by scholars specialised in EC/EU and transatlantic affairs. See for instance N. Rizopoulos, *Sea-Changes: American Foreign Policy In A World Transformed*, Council on Foreign Relations Press, New York 1990.

main foresight unit inscribed in the institutional framework of the European Community (EC, then the European Union, EU), from 1989 to 2001. The establishment of the Cellule reflected Delors's will to use science for political purposes and to set the EC/EU agenda accordingly. CDP's raison d'être was to foster debate, mutual understanding, and collaboration between the Commissioners and private research institutes specialised in EU affairs, cultural clubs and business firms active at the supranational level. Inspired by the French administrative tradition and futurolog the Cellule embraced la prospective (forward-looking method) to define long-term strategic goals and objectives. The basic idea was to explore alternative paths for the EU, comparing the most worrying with the most promising trajectories of integration across a variety of disciplinary perspectives, including macro and microeconomics, political philosophy, theology, demography, sociology and, to a lesser extent, applied sciences.

Given its limited staff and budget, the Cellule could tackle these topics only thanks to and through its ties with civil society, thus the private world, including firms, business associations, universities and scientific communities, citizens' associations and political parties active at the European level. In particular, the Cellule established ties with think tanks specialised in EC affairs[25]. In fact, the zeitgeist of neoliberalism in the mid-1980s made this model of private and policy-oriented research

[25] INT-1026, "Interview with Fonseca Morillo, Francisco", February 15, 2017, Historical Archives of the European Union in Fiesole [hereafter HAEU], p. 15-16; INT-1065,"Interview with Lebessis, Notis", March 17, 2017, HAEU, p. 13.

institutes more attractive, and the number of research institutes specialised in EC politics soared[26]. The symbol of the first wave of this movement at the very centre of the private-public nexus is the foundation of the Brussels-based Centre for European Policy Studies (CEPS). While this latter was the most supranational organisation in nature, many other prominent research centres all over the EC/EU capitals – the IAI in Rome, the IFRI in Paris, RIIA in London, Sfiftung Wissenshaft und Politik (SWP) in Berlin, inter alia - contributed to initiating a new tradition of contacts and exchanges with European institutions. The power of think tanks was limited and consultative, but not neutral nor marginal: they acted as trustworthy gatekeepers of a policy-oriented knowledge regime by selecting 'rational' choices, thereby limiting the perimeter of best practices and feasible or desirable reforms and actions[27]. European think tanks combined expertise with networking, foresight and social activities, acting as both observers and agents of change[28].

Within the think tank community, future-oriented analysis was largely explored, but foresight remained largely unknown and embraced by only a minority group of analysts throughout the 1990s. Yet, the new dilemmas and challenges of post-1989 geopolitical

[26] C. Rastrick, *Think Tanks in the US and EU: The Role of Policy Institutes in Washington and Brussels*, Routledge, London 2017, p. 63-4.

[27] See in this regard D. Stone, *Public policy analysis and think tanks*, in *Handbook of public policy analysis*, Routledge, London 2017, p. 175-184.

[28] T. Bajenova, *European think tanks as a channel of EU public diplomacy towards transnational publics*, in «Politics and governance» XI (3) (2023), p. 208.

ecosystem made forecasting attractive. The CDP led this movement by running joint research projects based on multiple scenario analyses from a long-term perspective that eventually led to major thematic publications. Two examples above all: Europe 2010 scenarios and The European Challenges post-1992. Shaping Actors, Shaping Factors, two monographs explicitly sponsored by the Commission, drafted by a variety of experts from different organisations. These two framed a variety of possible trajectories of EU integration and global identity in the hope that this knowledge might have informed the EU agenda-setting in critical policy areas[29].

CDP was not alone. On January 11-12, 1996, the European Science Foundation (ESF) set up a thematic conference called New Perspectives for Science in Europe' at the Royal Society in London. On that occasion, representatives from different scientific and business realities, and from all over Europe, explored the potential and actual applications of foresight in a variety of strategic sectors, ranging from high technology, space, demography and warfare, among others. The participants stressed the socio-political benefits of this practice and pointed out that 'the aim of foresight is to aid reorientation, facilitate dialogue and discussion, develop partnering for improved technological transfer, and ensure that relevance does not eliminate quality'[30]. Whereas economic governance and high technology dominated

[29] A. Jacquemin, *The European Challenges Post-1992. Shaping Factors, Shaping Actors*, EE ELGAR, 1993; L. Pench, G. Bertrand, A. Michalski, *Europe 2010: Five Possible Futures for Europe*, European Commission Forward Studies Unit, Brussels, 1999.

[30] ESF-874, "New Perspectives for Science in Europe. Foresight, Planning and Evaluation", January 11-12, 1996, HAEU.

CDP and ESF reflections, European security was explicitly defined as a growing concern. In this regard, foresight experts were aware that they could not predict the future but just increase EU preparedness towards new trends and threats.

4. Onion Europe: The Spatiality of Multi-tier EU Integration in the 1990s

The unfinished integration of Maastricht opened different integrative scenarios, characterised by different geometries and patterns of growth. In the field of foreign and security affairs, these scenarios were both multi-tier and multi-speed trajectories with sophisticated conceptual features and a limited political impact. Multi-tier configurations represent a sort of 'what if' of European integration history: post-Maastricht integration has privileged a multi-speed solution, that confined the alternative paradigm to the domain of academic speculation. However, in the early 1990s, the idea of a multi-tier Europe with a federal core and external, less-integrated edges around it – what I define Onion Europe – was much discussed and often explored through foresight techniques of horizon-scanning.

After the eclipse of the bipolar order, this knowledge regime started to reconsider the spatial dimension of the EU integration and its potential power projection in the post-Cold War Europe[31] Whereas the US main-

[31] Publications on this subject were virtually countless. See for instance P. Roger (ed.), *The Future of European Security. The Pursuit of Peace in an Era of Revolutionary Change*, St. Martin's Press, New York 1993; S. Garcia, *Europe's Fragmented Identities and the Frontiers of Citizenship*, RIIA Discussion Paper n. 45, London 1992.

tained an imperial prominence, now extended beyond the Iron Curtain, the European Union raised curiosity and optimism as an alternative model of governance and a new-generation geopolitical entity, with (potentially) cutting-edge features, even from a spatial, geopolitical standpoint. As borders, alliances and perspectives were in flux, scholars were invited to reconsider the spatial representations and scenarios of Europe. The idea of a distinctive EU actorness in the post-Cold War era passed through the definition of its geo-political positioning within the new European framework. The discourse on the 'return to Europe' animating the political life in Central-Eastern Europe invited scholars to reflect on the spatiality of European integration and the dynamic relationship between identity, space and citizenship[32].

Nicole Gnesotto embodied the spirit of this debate. In 1991, after heading the policy planning staff of the French Foreign Minister, Nicole Gnesotto became a senior research fellow at the International Institute of Strategic Studies (IISS), drafting an influential paper entitled European Defense: Why Only the Twelve?[33]. This was the first Chaillot paper, a series of policy-oriented studies published by the French think tank IFRI in partnership with the Western European Union (WEU)[34]. This series is a plastic representation of how the EU-specialised think tanks produced policy-oriented future studies comparing different scenarios of common defence.

How should the 'West' regulate the new Euro-

[32] S. Garcia, *Europe's Fragmented identities*, cit.

[33] N. Gnesotto, *Why Only the Twelve?*, Chaillot Paper n. 1, Paris 1990.

[34] *Ibidem.*

pean order? Preferred future scenarios diverged sharply. However, specialists of that time converged on saying that the complexity of European collective security required the maintenance of a flexible and cooperative framework, a network or constellation of interlinked national, supranational and international organisations with a common set of methods and values. In this overall scheme, the EU was one, but not the sole agent of regional stability and peace. Brussels could gain new competencies without replacing existing national and local institutions. It could gain international recognition within a crowded policy environment in which EU agencies cooperated daily with member state governments, the White House, NATO, the Organisation for Security and Cooperation in Europe (OSCE), and other Ios. This multilateral system of relations was preferable, but inherently imperfect: uncertainties, hesitations and fears conditioned a debate characterised, nonetheless, by hope and faith in progress. A leading scholar from RIIA, William Wallace, stated in this regard that

> [at the transatlantic level] so we shared uncertainties and fears, more than hopes and plans for the future. Our old mental maps of East and West have gone. We no longer have a clear territory to defend, or an agreed dividing line between 'in' and 'out' of our security area. Confusion was evident in the use of the term 'Europe' and 'Europeans' to describe what we are learning again to call Western Europeans, and even more evident in references to 'Russia and Europe' and 'European Russia', as well as to the importance and future position of Turkey. The political division of Eu-

> rope has ended, as one participant observed, but the division between prosperity and poverty, stability and instability, remains. So does the psychological division, as those brought up within the idea of a united 'West' attempt to come to terms with the idea of a wider Europe in which Poland and Hungary, the Baltic states and the Balkans rediscover the links which before the world ears tied them into 'West Central ' and 'Western' Europe[35].

Geographically, the spatial configuration of the new enlarged Union appeared as a sort of giant onion. Onion Europe is here used as an allegorical image of the EU as a multi-layered framework characterised by a unique stratification of political and geographical realities. Made of concentric geographic layers and policy spheres, post-Cold War Europe emerged as an organic polity made of multiple players, institutions, norms, and territories[36]. Post-Cold War Europe was perceived as a sort of Ptolemaic cosmology, divided into rings of the willing. The onion scheme emerged in briefings and policy papers published by renowned private research institutes such as CEPS, IFRI, and Chatham House in the early 1990s[37]. In this production, the Union appeared as the centre of gravity

[35] W. Wallace, *The US and the European Community: the Common European Foreign Policy and the place of bi-lateral relationship within it*, pamph 1992/93 RC/RY: N/P, Royal Institute of International Affairs Archive (henceforth RIIAA), London.

[36] See in this regard J. Sperling, *Two tiers or two speeds?: the European security order and the enlargement of the European Union and NATO*, Manchester University Press, Manchester 1999.

[37] D. Moisi, M. Mertes, *Europe's Map, Compass and Horizon*, in «Foreign Affairs» (January 1995); G. Lenzi, L. Martin (eds.) *The European Security Space*, ESG paper, Paris, 1996.

of a stratified Europe no longer divided along ideological lines. Several scenarios of pan-European integration were possible. The most optimistic pro-European predictions imagined an enlarged Union with a federal core often corresponding to the Six founding members, with its 'capital' in Brussels. This layer was then surrounded by a second level gathering the candidate countries from EFTA and Central-Eastern Europe. A more distant layer gathered a selected number of former communist associated (but not member) countries, like Ukraine and Georgia. The external edge corresponded to the MENA countries and Turkey. Significantly, the finis terrae of the European Union, and extensively European society, was Russia, a country that Brussels could reach only through economic exchange and high diplomacy[38].

Despite the quality of these studies, the EU's geostrategic mentality remained inward-looking and had a narrow geographical scope. In fact, discussions about the future of the new European landscape focused on one specific topic: enlargement. Often described as the most effective EU foreign policy instrument, the EU's eastward and southward enlargement radically changed the EU's global actorness and its geopolitical configuration and orientation. All five main rounds of enlargement have been a major source of change and growth in EC/EU history[39]. The 1990s proved to be a special season as it saw both the realisation of the fourth and the preparation of the fifth,

[38] P. Ludlow, *Setting European Community priorities 1991-2*, Brassey's for Centre for European Policy Studies, London 1991, p. 113-116.

[39] G. Laschi, *An Enlarged Europe, two Europes or East and West?: the EC/EU from Domestic Agent to International Actor of Cooperation, in Self-determination and sovereignty in Europe: from historical legacies to the EU external role*, Longo, Ravenna 2013.

namely the so-called Big Bang Enlargement (2004-2007). This great leap forward transformed the Union into a truly regional-sized polity, uniting Western and Eastern Europe in a way that studies on the European future in the 1980s could not have even dared to imagine[40].

5. The Brains of EU Common Defense.

In the second half of the 1990s, multi-tier integrative scenarios lost momentum. Experts shifted attention and expectations towards multi-speed solutions, which bridged the need to extend the range of integration to strategic sectors and the need to respect member states' control over core state powers. Intergovernmentalism denied federal-like reforms and facilitated the development of ideas and discourse on EUFP in the domain of informal governance.

The debate on common defence, or, to be precise, its lack, became a pressing and divisive topic between the signature of the Amsterdam Treaty (1996) and 9/11. The Amsterdam treaty made clear that steps towards a closer union were possible, mainly thanks to the new figure of the High Representative. However, in the management of hard power matters, NATO remained the cornerstone of European collective security and the US as the main (or the sole?) security provider of the region. Within the EUFP knowledge regime, this external dependence and internal division fueled frustration[41]. Future studies

[40] For an overview of post-1989 enlargement: H.A. Ikonomou, A. Andry, R. Byberg (eds.), *European Enlargement across Rounds and Beyond Borders*, Routledge, London 2017.

[41] See for instance R. Withman, *Amsterdam's unfinished business? The Blair's government's initiative and the future of Western European Union*, January 1999, occasional paper 7, PAMPH 2000/01, RC/RY:

flourished precisely in this interplay between delusion for the present state and hope for the next 10 or 20 years. Besides, dreams of a robust EUFP crashed against the poor performances of CFSP: reports on the carnages in Croatia and Bosnia during the years of war in the former Yugoslavia posed serious doubts on the credibility of EU diplomacy and, more broadly, on the idea of the EU as a security provider[42].

How to realise European defence and intelligence remained a mystery. Experts and policymakers relied on strategic foresight to solve this never-ending dilemma and thereby generate a first, very limited and tentative, Brussels-based strategic community. Within this milieu, the EU was perceived as actually weak and potentially powerful. Europeanist thinkers bet on science to bridge this gap. EUFP foresighters hoped that the IT (information technology) revolution would have empowered the Union with new 'smart' tools. This act of faith in the power of knowledge was global and neoliberal in spirit: intelligence communities worldwide embarked on a radical transformation of intelligence and security accelerated by computer technology and rampant globalization[43]. In particular, Open Source Intelligence (OSINT) seemed ideal to bypass the evident limits of CFSP as it offers new means of developing innovative crisis management through early warning and critical assessment of sensitive information. The EU could not conduct clas-

NP/0, RIIAA.

[42] F. Larrabee, *East European Security After the Cold War*, RAND Corporation, Santa Monica, CA, 1993.

[43] L. Block, *The long history of OSINT*, in «Journal of Intelligence History» XXIII (2) (2024), p. 95-109.

sic warfare, but could have a say in combatting non-state terrorism, mafia trafficking, weapons proliferation and similar hybrid threats[44]. The International Institute of Strategic Studies (IISS), a spin-off think tank derived from a joint venture between the British RIIA and the French IFRI, played a crucial role in these studies. The IISS paper Towards a European Intelligence Policy is representative of the mental schemes of the EU strategic community[45]. According to the authors, both the nation states and supranational agencies alone were unequipped to meet the borderless challenges of globalisation. Instead of a centralisation of powers or rigid separation of competencies, they favoured the formation of a mixed intelligence community using strategic foresight and operating in between national and supranational agencies, beyond traditions and disciplines. OSINT would have contributed to the emergence of 'coordinated approach' towards security that 'would not prejudice the tailoring of information, but it would help to save time and money'[46].

IISS's analysts were not preaching in the desert. They did their very best to reach similarly-minded policymakers and stakeholders and eventually developed a special relationship with WEU, the so-called European branch of NATO. By that time, this small-scale institution worked as a platform for defining a common trans-

[44] On OSINT see also D. Van Puyvelde, F.t. Rienzi, *The rise of open-source intelligence*, in «European Journal of International Security», X (2025), p. 530-544.

[45] G. Lenzi, *Forefront*, in A. Politi (ed.), *Towards a European Intelligence Policy*, December 1998, IISS Chatillon Paper n°34, phamph 1998/99, RC/RY:NP/0, RIIA.

[46] *Ibidem*.

atlantic strategy and let Europeans to implement the guidelines of the Petersberg Tasks (peacekeeping, rescue operations and humanitarian aid) in case of armed conflicts and crises. The new WEU introduced new methods of policy-framing and anticipatory governance applied to the new frontiers of foreign policy, including conflict prevention and space policy. A quite representative example was the establishment of the Satellite Centre in Torrejòn, Spain. In May 1995, the Centre became a permanent body of WEU and launched pilot projects in space observation, remote crisis monitoring and critical information gathering. The EU's approach to orbit management—particularly through its Space Traffic Management (STM) initiative—demonstrated the ambition of this cluster of interlinked institutions (EU, WEU and European Space Agency (ESA)) to regulate space in line with its values of sustainability, transparency and multilateralism. The satellite centre also promoted a certain strategic culture based on scientific evidence and crisis prevention, the embryo of current EU anticipatory governance[47].

The EU strategic community remained dispersed and continued to rely on informal private-public partneship. A key nodal point of this hybrid network was the Policy Planning and Early Warning Unit (PPEWU). Posed under the control of the EU Council and the High Representative Javier Solana, this unit was called to monitor geopolitics, frame the European interests and provide feasible solutions to European leaders, wheth-

[47] Assembly of Western European Union, *A European Intelligence Policy, Report submitted on behalf of the Defence Committee by Mr Baumel*, Forty-first ordinary session, document 1517, (13 May 1996) p. 31.

er national or supranational, to enforce a European voice(s) in conflict resolutions. More than planning and thus running concrete policies, PPEWEU had the virtue of aggregating elites around the persona of Javier Solana[48]. The so-called 'Solinisation' of the EU's Common Foreign and Security Policy (CFSP) reinforced a flexible and highly executive model of cooperation within the EU. Informality and convergence were essential for a system that was still affected by the need for unanimity, a lack of material capabilities, and strategic dependence on NATO and US guidance. After all the future of European security rested in the hands of transatlantic elites.

6. The end of the beginning: 9/11 and the institutionalisation of EU knowledge regime

The Franco-British Declaration of St. Malò institutionalised the principle of a European Security Defence Policy, then turned into the Common Security and Defence Policy (CSDP). This epoch-making declaration codified a culture that had grown informally in the early 1990s. CSDP accelerated the learning curve for EU geopolitical identity that culminated in between 9/11 and the publication of the first EU strategic manifesto, the European Security Strategy (ESS), in 2003. Officially called A Secure Europe in a Better World, the ESS marked the end of the informal phase of EU strategic preparedness culture, which then culminated in EUSA and NGEU[49].

[48] P. Morillas, *Strategy-Making in the EU*, cit.,p. 119-120.

[49] *A Secure Europe in a Better World. See also* S. Duke, *Europe as a Stronger Global Actor. Challenges and Strategic Responses*, Palgrave Macmillan, Basingstoke 2017.

In the critical juncture of 2001 and 2003, the very first European force of reaction and resilience was introduced. In parallel, the EU initiated its first missions abroad and reached through a mixture of civilian and military operations conflict or post-conflict theatres like Bosnia, Kosovo, Niger and Congo. From an intellectual standpoint, this was also a phase of incremental growth and change that confirmed the power of informal cross-fertilisation. Indeed, expertise continued to be transferred from the private to the public and from the informal to the formal, as evidenced by the establishment of the Political and Security Committee (PSC) and the EU Military Staff (EUMS). Limited by poor budgets and limited staff, these planning units borrowed ideas, management systems and ideational models from the think tank milieu[50].

The shock of 9/11 brought this phase to an end. Indeed, the terrorist attack on the Twin Towers shattered the early post-Cold War order and subsequently many certainties (or illusions?) largely accepted by the EUFP knowledge regime. The tectonic movements caused by 9/11 opened a new season in the strategic discourse over the EU's global actorness and positioning in the world system. The impact of 9/11 and the subsequent War on Terror on the EUFP was paradoxical. The crisis represented both rupture and continuity, unity and disunity. On the one hand, the EU Council split into two factions: some member states (the United Kingdom,

[50] For a valuable introduction to CSDP activities and missions see N. Bremberg, A. Danielson, E. Hedling, A. Michalski, *The Everyday making of EU Foreign and Security Policies: Practices, Socialisation and the Management of Dissent*, Edward Elgar, New York 2022.

Denmark, Italy, the Netherlands and Poland) supported the US-led operations in Iraq, while others (France and Germany) opposed this course of action, which was extremely unpopular among large sections of the public[51]. On a more profound level, the debate over EU international actorness went on. THE EUFP knowledge regime expanded and achieved valuable results. The symbol of this hidden though substantial growth was the foundation of a new in-house think tank, the European Union Institute for Security Studies (EUISS), which declared to act as an 'interface between the EU institutions and external experts […] to develop the EU's strategic thinking'[52]. Just one year after the beginning of its research programme, the EUISS supported HR Javier Solana in drafting of the ESS.

It was normative Europe at its finest. Characterised by a marked holistic, long-term and multilateral approach, the ESS promoted the idea of consensual and win-to-win management over foreign and security affairs. Rather than resilience, the ESS was forged around the two paradigms of fragility and multilateralism. On the side, European countries were called to intervene in situations of turmoil and chaos, i.e. in civil wars and humanitarian crises occuring in failed states inside and outside Europe. The gospel of resilience came later and substituted fragility in late 2000s, when the idea of exporting democratic values and stability was contested.

[51] J.M. Hanhimäki, *Pax transatlantica: America and Europe in the post-cold war era*, Oxford University Press, Oxford 2021; A. BITUMI, *La Comunità atlantica*, Carocci editore, Roma 2023.

[52] D. Fiott, G. Lindrom (eds.), *Strategic Compass, New Bearings for EU Security and Defense?*, EUISS Chaillot Paper, 2021, p. 6

Yet, the continuity in ambiguity between the two existed and endured until today[53]. On the other side, foreign and security policies maintained an intergovernmental and multilateral setting. The EU's future was embedded in a broader international community from which it could not and should not divorce.

> 'The future – the manifesto states -- will depend partly on our actions. We need both to think globally and to act locally. To defend its security and to promote its values, the EU has three strategic objectives [...] [The EU] has responded after 11 September with measures that included the adoption of a European Arrest Warrant, steps to attack terrorist financing and an agreement on mutual legal assistance with the U.S.A. […] It has pursued policies against proliferation over many years. […] The European Union and Member States have intervened to help deal with regional conflicts and to put failed states back on their feet, including in the Balkans, Afghanistan and it the DRC [Democratic Republic of Congo]. (ESS, 2003, 34-35, italics added by myself)[54].

The EU was and promoted itself as the inner workings of a larger and crowded security community, a key gear of the Pax Transatlantica. In this regard, we can appreciate a sharp difference with our turbulent times.

[53] E. Baldaro, I. Costantini, *Fragility and Resilience in the European Union's Security Strategy: Comparing Policy Paradigms*, in «Italian Political Science Review», LI (2021), p. 307-310.

[54] J. Solana, *A Secure Europe in a Better World*, Institute for Security Studies, Paris 2003, p. 35.

In the following years, a phase of intellectual rarefaction within the EUFP knowledge regime occurred. Except for a few relevant policy papers, the idea of an EU strategic compass in the domain of foreign and security affairs lost momentum. Future-oriented strategic studies crashed on the 2007-8 financial crisis and the early 2010s eurozone crisis[55]. The Treaty of Lisbon brought new stamina to the debate over the EU's global identity and strategic autonomy. However, this major treaty change does not represent a revolution in EUFP strategic thinking and making. True, the Treaty of Lisbon abolished the pillar structure, clarified the distribution of competences, granted the European Union legal personality, and introduced a new Brussels-based institutions (the EEAS) and new foresight units (ESPAS). However, the essence remained intergovernmental and executive euro-national governance was strengthened[56]. Other strategic manifestos, such as the EU Global Strategy (EUGS, 2016), attempted to further define the EU's distinct geopolitical identity and achieve closer integration in strategic policy areas, but without dismantling consolidated practices of shared assessment and mediation[57]. Overall, we can conclude that there has been no revolution in the history of CFSP and CSDP. The EU's strategic culture,

[55] E. Noonan, *The ESPAS network and the growth of EU foresight*, cit.

[56] J. Hoeksma, *Beyond the EU's democratic deficit: From union of states to European democracy*, in «European View», XXI (2) 2022, p. 178-185.

[57] N. Tocci, *From the European Security Strategy to the EU Global Strategy: explaining the journey*, in «Int Polit», LIV (2017), p. 487–502.

including foresight, has grown through accumulation and agile responsiveness.

7. Conclusion

Predictions offer aspirational narratives that can take the form of political roadmaps with specific milestones and objectives. This chapter pointed out that the NGEU forecasted a particular vision for the future of the EU that should be realised in the present. Indeed the NGEU was neither the first nor the only major EC/EU initiative to be based on this forward-looking approach, which became a permanent feature of supranational strategic culture from 1989 onwards. This culture of foresight has been the cornerstone of an emerging, albeit contested and constrained, paradigm for managing external crises through anticipatory governance and euro-national partnership.

At the supranational level, future-oriented strategic studies go back in time to the Delors era, when the first supranational foresight units framed the trajectories of the EU political agenda while forming a cohesive and plural knowledge regime. In fact, a significant element of continuity between the debate over EU global role in the post-Cold War landscape and the present discourse over EU strategic autonomy and resilience is the need to create a strategic unit or community framing of interests, values and purposes of common action. This (perceived) lack of an informal scanning and planning capacity in Brussels derived from the constraints and limits of the post-Maastricht institutional framework. Throughout the 1990s, the debate over the possible geopolitical futures of the EU was rich and plural. Multi-tier,

multi-speed and hybrid scenarios were analysed and compared by members of the EUFP knowledge regime while advising the Commission, the Western European Union and the European Council. Contacts between Euro-national executives and European elites paved the way for the crisis management model of the late 2010s, including the NGEU model.

At the same time, the emergence of a cohesive strategic community has not led to greater coherence in EU external action, centralisation of power or rationalisation of EU capacities. Nor has it led to greater accountability or democracy in EU external action. The EU is still struggling to define its geopolitical design, implement it and mobilise society accordingly[58]. Today, as in the 1990s, foresight has been as elitist as the policy-framing process that it is supposed to inform, but often does not. Long-term foresight is perceived as useful, if not needed, but strategic planning is virtually impossible due to the multilayered and polinodal architecture of the European Union.

Neither a federal state nor a consortium of fully independent states, the Union has been a protean power[59] that responds to crises with agile responsiveness, by adapting to new circumstances rather than controlling them. From this angle, we can appreciate a certain continuity between 1989 and 2020. What is new with the NextGenEU? Considering the findings of this article, I

[58] See in this regard B. Szewczyk, *Europe's Grand Strategy. Navigating a New World Order*, Palgrave Macmillan, Cham 2021.

[59] Reference to the seminal book: P.J. Katzenstein, L.A. Seybert, *Protean Power: Exploring the Uncertain and Unexpected in World Politics*, Cambridge University Press, Cambridge 2017.

conclude that NGEU presents a valuable and rare virtue: the capacity to implement a common vision and mobilise member states accordingly. Whereas most visions of the EU's future remained speculative, NGEU realised a bold project into action. Not imagination but implementation, the last mile of the foresight process, made NextGen unique. The future will show us whether this approach is a one-hit wonder or the new polar star of EU governance.

Serena Sileoni

From execution to politics: the evolution of the European Commission

Summary: 1. The evolution of the European Commission's role between cCrises and the exercise of political power – 2. The European Commission: where it comes from – 3. The European Commission: where it is going – 3.1 The NGEU laboratory – 3.2 The reform of the Stability Pact – 3.3 Oversight of digital markets – 3.4 The tariff negotiation – 3.5 Common defence – 3.6 The EU budget 2028-2034 – 3.7 Other initiatives that have strengthened the Commission's role – 4. The Commission's present, the Union's future.

1. The evolution of the European Commission's role between crises and the exercise of political power

Today's European Union is no longer the one of just five years ago, even – if one may put it that way – as a form of State[1]. The relationship between the European

[1] In the sense explored by F. Palermo, *La forma di Stato dell'Unione europea. Per una teoria costituzionale dell'integrazione sovranazionale*, Cedam, Padova 2005, and, earlier still, by J.H.H. Weiler, The Transformation of Europe, in «Yale Law Journal», 100 (8), 1991, p. 2403 ss., esp. ch. IV. The question of classifying the EU's form of State (and form of government) is concisely but precisely addressed by T.E. Frosini, *La dimensione europea*

institutions and European citizens, enshrined in the provisions on Union citizenship since the Maastricht Treaty but above all in the articles devoted to the Union's values[2], appears in recent years – after the distance of an austere Europe and the crisis caused by Brexit – to be gaining a vigour that goes beyond the legal value of the treaties and the legal path of integration[3], reaching into the political and social dimension of the Union[4]. Despite political and institutional difficulties, 52% of Europeans today tend to trust the Union: the highest percentage since 2007[5]. 87% of Europeans believe that the European Union should be more involved in crisis management[6]. In general, Europeans appear to have shown greater interest in the 2024 vote than in the 2019 one[7].

Indeed, a much more massive presence of the European institutions, including in public communication, has been evident since the pandemic crisis onward. The face of this prominence is that of Commission President

della forma di stato e di governo, in «*federalismi.it*», 5, 2012.

[2] Article 20 TFEU (formerly Article 17 TEC, originally Article 8 EC as introduced by the Maastricht Treaty); Article 2 TEU, which develops Article 6(1) TEU and, before it, Article F of the Maastricht TEU.

[3] J.H.H. Weiler, *The Transformation of Europe*, cit.; M.P. Maduro, M. Wind (eds.), *The Transformation of Europe, Twenty-Five Years On*, Cambridge University Press, Cambridge 2017.

[4] On the relationship between Europe's historical, social, and legal dimensions, P. Grossi, *L'Europa del diritto*, Laterza, Roma-Bari 2016.

[5] Eurobarometer, Survey STD103, Spring 2025.

[6] Eurobarometer, Survey 3220/FL546 of the European Commission, «Perception of EU Crisis Management» series, June 2024.

[7] For the 2024 elections, 60% of Europeans said they were interested; for the previous ones, 50%. Comparison between Eurobarometer data, Survey 3272/EB045EP of the European Parliament, «European Elections» series, April 2024, and data from Survey 89.2 of the European Parliament, taken from the European Parliament's Directorate-General for Communication, *Democracy on the Move. European Elections – One Year to Go*, May 2019, PE 621.866.

Ursula von der Leyen. On 29 May 2025, on the occasion of the award of the Charlemagne Prize in Aachen, the Commission President invited us Europeans to «shed our fear of change.» Interest in this and other similar speeches by Ursula von der Leyen is not purely political. The determination with which the President continues to express a long-term vision of the Commission's mandate and of the Union's political-institutional tasks suggests a perception of her own role not in executive or comitology terms, so to speak, but as an active guarantor of a political direction whose intergovernmental dimension is combined with a prominence of the Commission – or perhaps, more accurately, of its presidency – that takes on the task of representing some form of European will[8].

The main question, from a constitutional point of view, both European and national, is twofold: first, where this will originates from; second, whether these ambitions for a European political dimension, of which the Commission would be the spokesperson, are matched by a clear institutional adjustment consistent with the letter of the Treaties.

Indeed, it is not immaterial whether the strengthening of the Commission is merely a reflection of a stronger general political impulse coming from the European Council, or whether it expresses greater autonomy. In the first case, the transfer of national sovereignty ben-

[8] E. Baracani, *Ideational Agenda-Setting Leadership: President von der Leyen and the EU Response to the Invasion of Ukraine*, in «West European Politics», 46 (7), 2023, p. 1451 ss.; E. Baracani, H. Kassim, The *"Geopolitical Commission": An End of Term Review*, in «Journal of Common Market Studies», 62 (1), 2024, p. 41 ss.

efits that intergovernmental method which continues to express and reflect a final decision by the States, including the power plays among individual governments. In the second case, by contrast, an autonomous strengthening of the Commission on the one hand appears to stabilise the path of European integration, but on the other hand – with the rules unchanged – raises questions still in search of answers concerning the European form of government and, ultimately, the identification of the centre of political responsibility which, in a constitutional system, is the linchpin of its democratic character.

Some of the activities that the Commission has recently taken on do not represent new elements compared with the past, except from the point of view of how they are used, recounted, and therefore perceived. This is the case with the Commission's activism in supporting Ukraine's military operations: despite a marked presence of the President, to the point of overshadowing the figure of the High Representative for Foreign Affairs and Security Policy, and an attempt to raise the issue of strengthening competences and resources in the field of defence, decisions continue to be taken according to the intergovernmental method that characterises foreign policy. The same can be said with regard to the Commission's prominence in negotiating tariffs with the United States. Often, then, it is the facts and events on the agenda that inevitably place the European institutions – the Commission among them – at the centre of attention, even for the most inattentive public opinion.

But this is not always the case. The expansion of the Commission's action has also come about through a series of greater powers, as if events had provided the oc-

casion for the von der Leyen Commission to strengthen its own role. Its increased political weight stems less from its legislative output – which only slightly exceeds that of the Juncker Commission – than from shifts in inter-institutional dynamics. Furthermore, it reflects the rise of complex Euro-national actions that bypass traditional legislation, driving a stronger Euro-national political agenda with the Commission at its core[9].

This "Ursula effect" has manifested itself in numerous areas, also bearing in mind the need to react to the Covid-19 pandemic, the war in Ukraine, and economic tensions with the United States. If it is true that, as Jean Monnet foresaw, «*l'Europe se fera dans les crises et elle sera la somme des solutions apportées à ces crises*»[10], it is equally true that the events of the last five years have accelerated objectives and institutional transformations already latent in the Commission's intentions, as can already be noted from the overlap between the policy guidelines of the first von der Leyen Commission and the objectives of *Next Generation EU* and the new Stability Pact[11]. The combination of ambitious goals (such as the

[9] The available data (https://eur-lex.europa.eu/statistics/legislative-acts-statistics.html) show a tendency towards a quantitative decline in European law-making from one legislature to the next, notwithstanding a slight but significant increase in regulations in the last legislature compared with the previous one. This indicates that it is not the intensity of legislative activity that defines the incisiveness of action in terms of the Commission's greater political weight and of steps forward on the path of European integration.

[10] J. Monnet, *Mémoires*, Fayard, Paris 1976, p. 488.

[11] Years ago already, well before the issue became topical, E. Gianfrancesco, *La Commissione nel quadro istituzionale dell'Unione: una ricognizione*, in «Forum di Quaderni Costituzionali, Rassegna», 9, 2012, p. 36, observed that «the vital contest for the Commission is played out on the terrain of political legitimation and of taking on a leading role in defining the Union's political direction».

digital and environmental transition) and external events such as the pandemic, the war in Ukraine, and tensions with the US has, however, challenged not only European integration but the very principles on which it is based, from the principle of conferral to that of subsidiarity, down to budgetary principles.

This contribution attempts to offer some preliminary considerations on this point, from the perspective of the Commission's role, starting from the obvious observation that any relevant novelty, even from a constitutional and institutional point of view, is occurring while the treaties remain unchanged, and from the assumption that, at least in the short term, there will be no initiatives to amend them.

The work is firstly to briefly aim of the Commission's role, its nature, its functions; secondly, analyse some of the main and recent political initiatives of the Union and the role played in them by the Commission, as a reflection of the institutional challenges the Union is going through.

2. The European Commission: where it comes from

The European Commission[12] is, as is well known, the evolution of an original body of the European Eco-

[12] The literature on the European Commission is vast. See, in particular, F. Capotorti, *Commissione delle Comunità europee*, in «Enciclopedia giuridica», VII, Treccani, Roma 1994, p. 1 ss.; E. Spatafora, *Commissione europea*, in «Enciclopedia del Diritto», Aggiornamento VI, Giuffrè, Milano 2002, p. 311 ss.; P. Ponzano, *La Commissione europea: composizione e ruolo nel sistema istituzionale dell'Unione*, in «Il Diritto dell'Unione Europea», 3, 2004, p. 501 ss.; S. Gozi, *La Commissione europea. Processi decisionali e poteri esecutivi*, il Mulino, Bologna 2005; G. Strozzi, R. Mastroianni, *Diritto dell'Unione europea. Parte istituzionale*, Giappichelli, Torino 2011[5]; G. Tesauro, *Diritto dell'Unione europea*, Cedam, Padova 2012[7]; E. Gianfrancesco, *La Commissione nel quadro istituzionale dell'Unione*, cit.

nomic Communities, designed on the ideal type of independent authorities[13]. This explains why it combines legislative, executive, and quasi-judicial functions, rather than any claim to embody the will of the Union. Indeed, one might even argue the opposite: its original importance, as the engine of European integration, lies in the capacity it has been given to combine executive, legislative, and oversight functions, as well as the external representation of the Union itself, thereby acting as the driving force of an ever more united Europe. To summarise with the aid of the classic tripartition of powers, one could say that, with regard to legislative powers, the Commission has the general power of initiative but also exercises a delegated and implementing power through which it implements the Union's policies. With regard to executive power, it manages and implements the European Union's policies, including the management of funds, and holds the power of external representation. Finally, with regard to judicial power, it can bring proceedings against defaulting Member States before the Court of Justice and, in antitrust matters, is itself endowed with a supervisory power that allows it to issue decisions prohibiting anti-competitive conduct. Some of these functions, as will be seen, have seen their scope and relevance increase since the first von der Leyen Commission.

[13] The Treaties of Rome had, in fact, established two Commissions, one for the EEC Treaty and one for the Euratom Treaty. These were later merged into a single Commission of the European Communities by the Merger Treaty of 8 April 1965, which, by unifying the two aforementioned Commissions and the High Authority provided for under the ECSC Treaty, thereby strengthened decision-making coherence. On the Commission as an independent authority, L. Elia, *Prime osservazioni sulla forma di governo nella costituzione per l'Europa*, in «Diritto pubblico», 3, 2003, p. 757 ss.

With the 1992 Maastricht Treaty, the EU competences were extended and the Commission gained a role in multilateral surveillance in the economic and monetary Union, saw its competences expanded in line with the premises of the adoption of the euro. The 2007 Lisbon Treaty, which entered into force in 2009, marked a further turning point, strengthening the role of the President and his or her capacity to define the European political direction. His or her appointment, as will shortly be discussed, gained greater democratic legitimacy following the introduction of a vote by the European Parliament on the election, after the proposal by the European Council. Not least, the normalization of the legislative co-decision procedure between Parliament and Council confers on the Commission an even more central role among the European institutions, in particular through the practice of informal inter-institutional meetings (the so-called trilogues) that serve to reach agreement between Council and Parliament and in which the Commission also participates.

Building on the initial roots of an independent authority, the Commission's power has thus branched out in line with the growing political and institutional weight of the Union, without however being grafted onto a different conceptual basis. The result is a kind of "original sin," seen through today's eyes, whereby the Commission's technical dimension has been joined by a political one, and its executive function by a governing one[14].

The methods of composition and appointment

[14] M. Patron, *The European Commission Between Institutional Unity and Functional Diversification: The Case of Economic Governance*, in «European Papers», 6 (1), 2021, p. 269 ss.

likewise follow this overlap of characters and this growing ambiguity[15]. According to Article 17(3) TEU, members are chosen on the basis of their general competence and their commitment to Europe, from among personalities offering every guarantee of independence, while, as a collegiate body, the Commission exercises its responsibilities in full independence. Indeed, this predominantly technical nature was reflected, up until the Treaty of Amsterdam, in Parliament's role being limited to ratifying an intergovernmental agreement. As noted, «the fact that Parliament's vote concerns the whole set of nominations indicates how difficult it would be for Parliament to vote against»[16]. With the Amsterdam Treaty, Parliament was given the power to approve the nomination of the Commission President, prior to the composition of the Commission itself. From this point on, therefore, the parliamentary vote doubled and was strengthened: first, on the President designated by the States, then on the entire body, after hearings of the individual Commissioners-designate before the parliamentary committees, as already provided for under Parliament's rules of procedure. With the Lisbon Treaty, the relevance of Parliament's role in forming the Commission became clearer and more explicit: it is for Parliament to elect the President of the Commission on a proposal from the European Council and, subsequently, to give a single vote of approval on the Commission as a whole, after hearing

[15] On the procedure for the Commission's nomination and formation, see, in general, G. Tesauro, *Diritto dell'Unione europea*, cit.; G. Strozzi, R. Mastroianni, *Diritto dell'Unione europea*, cit.

[16] G. Gaja, *Introduzione al diritto comunitario*, Laterza, Roma-Bari 1997, p. 22.

the individual Commissioners proposed by the Council on a proposal from the States. The hearing stage is anything but a formality. Between 2004 and 2019, across four renewals, six Commissioners-designate have failed to pass it: Rocco Buttiglione in 2004, for his conservative positions, in particular on homosexuality; Rumiana Jeleva (2010), over suspected conflicts of interest and doubts about her experience; Alenka Bratušek (2014), over doubts about her competence and controversies linked to her nomination; Rovana Plumb (2019), over conflicts of interest; László Trócsányi (2019), over legal issues relating to his term as Minister of Justice in Hungary; Sylvie Goulard (2019), over an investigation into the alleged misuse of European funds in 2019. Confirming the non-formal nature of the parliamentary passage is the fact that, in the previous legislature, the withdrawal of the two candidacies of Plumb and Trócsányi led to a delay of over two months in finalising the composition of the Commission.

In sum, the composition of the Commission opens with a double parliamentary vote. A first vote on the candidate for the presidency, after the presentation of the political guidelines for the new legislature, and a second vote on the European Commission as a whole, after the formal hearings of the individual candidates chosen by the President before the Parliament's committees, which have in the meantime been constituted.

The process of forming the second von der Leyen Commission brought out even more clearly how this stage is subject to political negotiation very similar to

that which would be found within a single State[17]. The negotiations over the proposed Commissioners that took place between the summer and early autumn of 2024 confirmed the accentuation of the Commission's role and political face, even though it remains – from the point of view of its competences and powers – it is still formally conceived as a technical body. The postponement of the official announcement of the names of the Commissioners, communicated on 17 September by von der Leyen, shows that the constitutive moment of the Commission has openly become, that is, before public opinion, a genuinely political passage, caught between the Community method – with the Commission's institutional role as representative of the Union – and the intergovernmental method – with the negotiations over names transferring the methods of national politics to the European level. The issue, evidently, is not merely political but concerns the very form of government – if one may call it that – of Europe and the evolution of the Commission's role among the European institutions[18].

Among the latest developments introduced by way of practice is, finally, that of the *Spitzenkandidaten*, that is, the identification, already during the electoral

[17] S. Sileoni, *Brevi note sui profili costituzionali del rinnovo della Commissione*, in «Quaderni costituzionali», 1, 2025, p. 241 ss.

[18] L. Mezzetti, *Le istituzioni e la forma di governo dell'Unione*, in P. Costanzo, L. Mezzetti, A. Ruggeri, *Lineamenti di diritto costituzionale dell'Unione europea*, Giappichelli, Torino 2006; G.E. Vigevani, *Dalle elezioni europee alla scelta del presidente della Commissione: brevissime note sull'evoluzione della forma di governo europea*, in «Quaderni costituzionali», 4, 2019, p. 917 ss.; S. Mangiameli, *L'Europa tra riforma dei Trattati e competitività internazionale*, in «Dirittifondamentali.it», 1, 2025, p. 158 ss. Critically, C. De Fiores, *Unione Europea e legittimazione politica*, in «Etica & Politica», 22 (2), 2020, p. 361 ss.

campaign, of the leaders of the parties running in the elections as candidates for the presidency[19]. This was a novelty with respect to the letter of the Treaties, one that fostered a kind of parliamentarisation of the candidacy for the Commission presidency, to the point that, on the eve of the 2019 elections, the outgoing Parliament warned the Council that it would reject any candidate for the presidency who had not been indicated as the lead candidate in the elections (European Parliament resolution of 13 February 2019), after having renewed to that effect the framework agreement on relations with the European Commission (European Parliament decision of 7 February 2018). It should be noted, however, that the *Spitzenkandidaten* practice is not only very recent but was not even decisive in one out of three cases in identifying the Commission President. In the 2019 renewal, precisely when Parliament – as noted – was seeking to consolidate the practice of prior indication of the candidate, the election of the Commission President fell not on Manfred Weber, the EPP's *Spitzenkandidat*, the party that had obtained the (slim) relative majority, but on Ursula von der Leyen. In fact, then, in von der Leyen's reconfirmation, this is only the second time that the practice has been followed and respected.

The procedure for the nomination and formation

[19] D. Dinan, *Governance and Institutions: The Year of the Spitzenkandidaten*, in «Journal of Common Market Studies», 53, 2015, p. 93 ss.; S.B. Hobolt, *A Vote for the President? The Role of Spitzenkandidaten in the 2014 European Parliament Elections*, in «Journal of European Public Policy», 21 (10), 2014, p. 1528 ss.; S. Illari, *Osservazioni sulla pratica degli spitzenkandidaten nel contesto della forma di governo dell'Unione europea*, in «Nomos - Le attualità nel diritto», 3, 2018; G.N. Penalver, J. Priestley, *The Making of a European President*, Palgrave Macmillan, London 2015.

of the European Commission is thus rather intricate, if not incongruous, because it was built up through the layering of an initial formula of a technical and governmental character onto a subsequent one of a political and parliamentary character[20]. On the other hand, the Commission answers collectively to Parliament, which may table a motion of censure that, if approved, leads to its resignation. Like rock strata, the different eras of the Commission have piled up one on top of the other, raising ever higher the level from which the Commission exercises its functions.

3. The European Commission: where it is going

Following the Covid-19 pandemic, the relations between the Member States and the European Union, on the one hand, and between the European institutions themselves, on the other, have undergone significant transformations. The need to address the immediate economic crisis resulting from the pandemic accelerated, but did not in itself originate, reform processes.

In particular, the Recovery and Resilience Facility and the reform of the Stability Pact have, one after the other, facilitated the emergence not only of a «method of government»[21], but also of a Euro-national political direction that now places the Commission's activity more than ever at its centre, bringing to fruition intentions

[20] R. Dehousse, *Quelle union politique en Europe?*, Fondation Jean Monnet pour l'Europe, Collection débats et documents, 5, 2016.

[21] N. Lupo, *Next Generation EU e sviluppi costituzionali dell'integrazione europea: verso un nuovo metodo di governo*, in «Diritto pubblico», 3, 2022, p. 739 ss., and N. Lupo, *L'aggiornamento e l'integrazione del PNRR, tra crisi energetica e (parziale) mutamento di indirizzo politico*, in «Quaderni Costituzionali», 2, 2023, p. 435 ss.

already latent since the policy guidelines of the first von der Leyen Commission[22]. Other initiatives have also strengthened the Commission's role.

The measures adopted were therefore not episodic and due solely to the chain of events that have followed one another since 2020, but brought about changes in the relations between Member States and the European Union and between the European institutions, which see the Commission increasingly at their centre. In order to understand them, and to understand whether and how the Commission's role has thereby been strengthened, it is worth mentioning individually the initiatives in which the Commission has become, and continues to become, the protagonist, trying to distinguish what it was required to do from what it has taken upon itself to do.

3.1 The NGEU laboratory

The design and development of NGEU signals the maintenance of a kind of dual track: the use of the intergovernmental method, with the European Council's role of impetus and the identification of a political agreement within it, together with the enhancement of the Commission, tasked with elaborating, in a broadly discretionary manner, objectives, resources, methods of their disbursement and allocation, timing and procedures. Partly thanks to this, the ambition of the Recovery and Resilience Facility's objectives reflects that of the Commission's own programme, which President Ursula von der

[22] S. Sileoni, *Primi spunti per una individuazione di un indirizzo politico euro-nazionale, dal Dispositivo per la ripresa e la resilienza al Patto di stabilità*, in «Rivista trimestrale di diritto pubblico», 1, 2025, p. 73 ss.

Leyen had presented to Parliament only a year earlier[23].

Given its exceptional nature, the management entrusted to the Commission has followed specific procedures for control, monitoring, and disbursement. Partly, but not only, for this reason, the Commission has been much more than the body implementing the financing. Rather, it has been the central institution and protagonist both in the phase of negotiating the plans and in that of verifying their execution and payment[24]. The Commission's role has been, however, part of a complex procedure that did not take place entirely in Brussels but that involved, to a large extent, the States receiving the funds. In essence, the design, organisation, and implementation of the Facility has been the result of a more complex and shared method of governance between the two levels[25].

[23] In fact, the work programme was updated compared with the initial one precisely in order to accommodate the priorities imposed by the pandemic and by the programmes to address it, starting with NGEU, but, in practice, the hierarchy of objectives was maintained, beginning with the *European Green Deal*, announced by the President on 11 December 2019. On the *Green Deal* as an element of constitutional discourse, see R. De Paolis, *Constitutional Implications: The European Green Deal in the Light of Political Constitutionalism*, in «Rivista quadrimestrale di diritto dell'ambiente», 1, 2021, p. 112 ss. F. Polacchini, *I riflessi del PNRR sulla forma di governo e sui processi di indirizzo pubblico*, in «Forum di Quaderni Costituzionali», 4, 2022, p. 234 ss., by contrast, speaks of an «"emergency" political direction within the general political direction». On the exceptional nature of the context, see also A. Sciortino, *PNRR e riflessi sulla forma di governo italiana. Un ritorno all'indirizzo politico "normativo"?*, in «federalismi.it», 18, 2021, p. 235 ss.

[24] A. Martinelli, *L'Unione europea di fronte alla pandemia covid-19*, in «Federalismi.it», 4, 2022, p. 546 ss.; M. Dawson, B. De Witte, *EU Law and Governance*, Cambridge University Press, Cambridge 2022; N. Lupo, *L'aggiornamento e l'integrazione del PNRR*, cit.; M. De Bellis, *Il ruolo di indirizzo e controllo della Commissione europea nel dispositivo per la ripresa*, in «Diritto costituzionale», 2, 2022, p. 31 ss.

[25] N. Lupo, *Next Generation EU e sviluppi costituzionali*, cit.,

The Commission's centrality at European level emerged also through two specific functions. First, it was responsible for adopting the decision authorising the disbursement of funds. Second, where it considered that targets and objectives had not been satisfactorily achieved, it could autonomously decide to suspend disbursement, up to and including the definitive withdrawal of funds or termination of the agreement (or, more likely, the lifting of the suspension). A specific form of suspension that confirms what is being argued here is the emergency brake specific to the Plans[26], which differs from the one generally provided for by the Lisbon Treaty[27]. Unlike the ordinary emergency brake, indeed, it has been the Commission that ultimately decided whether to withdraw the contributions. This confirms that it has been precisely the exclusive management of the implementation of the national Plans that made the Commission's role cen-

and *L'aggiornamento e l'integrazione del PNRR*, cit.; S. Sileoni, *Primi spunti per una individuazione di un indirizzo politico euro-nazionale*, cit.

[26] The emergency brake for the national Plans is a mechanism not governed by Regulation 241 but agreed during the European Council of 17-21 July 2020. See the Conclusions of the Special European Council meeting of 17-21 July 2020, EUCO 10/20, point A19.

[27] Under the ordinary procedure, the brake may be activated with reference to three specific cases: measures on the coordination of social-security systems for migrant workers (Article 48 TFEU), judicial cooperation in criminal matters (Article 82 TFEU), and the adoption of common rules concerning certain particularly serious offences (Article 83 TFEU). In these cases, it is the Council of the EU – or rather one of its members – that, where it considers that a piece of European legislation would breach fundamental principles of its domestic law, may request that the matter be referred to the European Council so that it may, where appropriate, definitively block the European legislative initiative. This is, in substance, an individual right of States to trigger a kind of Council veto power, in areas that have moved from unanimous voting to qualified-majority voting.

tral, more so than the initial phase of initiative and negotiation, which nonetheless remained subject to the Council's deliberative burden.

Faced with this method, Parliament has been the body most marginalised. The Facility's architecture provides that Parliament be informed «without undue delay» of the plans and of the preparatory information, on the same terms and within the same timeframe as the Council. The list of obligations to inform Parliament on the part of the Commission, as well as of Parliament's powers of control and direction over the Commission and the Council, is apparently demanding: reports and annual accounts on the one hand, resolutions and hearings on the other, characterise a commitment to dialogue between the European institutions (Articles 25, 26, 31, 32 of Regulation (EU) 2021/241). It is precisely this insistence on obligations of transparency and dialogue that suggests a sort of compensatory effect: since Parliament had no active and central role in the *governance* of the Facility, recourse to instruments and tools of control has been emphasised, without, however, its role being thereby strengthened.

3.2 The reform of the Stability Pact

In 2021, in the midst of managing the pandemic, with the related financial efforts of national public budgets, the Commission put forward a proposal to reform the Stability Pact in order to give economic *governance* a more flexible framework for budgetary and public finance policies, intended, in principle, to focus more on growth needs – including through public investment – than on the verification of general safeguards, within a

framework of greater interaction between States and the Union[28].

The Commission's initial proposal was based on assessing the level of risk of national public finances and eliminated the general numerical safeguards that characterised the old Stability Pact, focusing the model on a bilateral dialogue between individual States and the Union. This paradigm shift was partly tempered by the Council's reintroduction of some numerical safeguards, in particular at Germany's request, which was sceptical of a system based on adjustment criteria not anchored to any quantitatively measurable element.

In any case, the underlying idea remained that the adjustment of imbalances is based on a technical assessment by the Commission and a subsequent bilateral negotiation between the Commission and the State concerned. The final formula thus attempts to reconcile the presence of certain numerical rules with a *bargaining* system that represents the element of novelty (and flexibility) of the new Pact and that, like NGEU, places the Commission's own assessment and monitoring activity at the centre.

Because the reform took place without amending the Treaties, the thresholds of 3% for the deficit and 60% for debt-to-GDP remained. Precisely in order not to touch the Treaties, these thresholds were, however, inserted within a different preventive system, no longer uniform for all States but based on a bilateral discussion

[28] COM(2021)662. In fact, an earlier communication of February 2020 (COM(2020)55) had already identified the issue, which had, however, been set aside owing to the need for the European institutions to concentrate their efforts on addressing the pandemic in the immediate term.

for debt reduction between the Commission and national governments: under the preventive-arm procedure, each State must submit to the Commission a medium-term national structural fiscal plan, lasting four years and extendable to five depending on the length of the national legislature, in which it must indicate not only the budgetary path in terms of net primary expenditure but also the reforms and investments it intends to carry out. The Plan, which must be approved by the Council, thus replaces the Stability Programmes (and Convergence Programmes, for States that have not adopted the euro) and the National Reform Programmes. At the same time, the Commission must analyse the debt sustainability of each State. For those with a public deficit below 3% and debt below 60% of GDP, the sustainability analysis will serve only to provide technical information to ensure that the deficit remains below the threshold value even in the medium term. For those, on the other hand, with debt above 60% or a deficit above 3% of GDP, the Commission sets reference trajectories for net expenditure, anchored to a debt sustainability analysis that ensures a «plausibly declining» and gradual path throughout the period of the Plan. Compared with an initial Commission proposal that did not envisage quantitative constraints in formulating the reference trajectory, in the final agreement, at Germany's insistence, two types of safeguards on debt and deficit were added, calibrated gradually according to the situations of public-finance risk, useful in any case to anchor the adjustment path to objective elements[29].

[29] S. Sileoni, *La riforma del Patto di stabilità e il riflesso sull'in-*

On the basis of the trajectory it proposes, then, the Commission is entitled to negotiate with the State concerned a plan setting out, in addition to the budgetary and public-accounts adjustment objectives, the instruments and measures to follow up on the specific recommendations received by the State. These include the reforms and investments needed to achieve the common policies on the environment, digitalisation, energy security, economic and social resilience, and defence. The Commission itself oversees the implementation of the Plan, which may not include cuts to public investment as an adjustment measure, where the adjustment period is extended.

As will have been gathered, the preventive-arm scheme appears methodologically similar to that of the national recovery and resilience plans, since it is based on a two-step process. The technical elaboration of an initial starting point (in this case, the baseline trajectory or the technical information), which is the result, precisely, of a technical qualitative-quantitative analysis by the Commission based on predefined data; and, at a second stage, a customised budgetary path directly negotiated between governments and the Commission, according to the conditionality mechanism applied to reforms and investments, already codified with the national recovery plans, with which, moreover, the budgetary and adjustment plans must be consistent. The emphasis on the flexibility of the instruments thus goes hand in hand with shared political discretion at the negotiating stage, starting, however, from a given and calculated situation

dirizzo politico nazionale, in «Rivista AIC», 3, 2024, p. 281 ss.

(the debt sustainability analysis) on which the final decision rests – the result of a sharing of method and substance between governments and the Commission[30].

As with the national recovery plans, here too there is a reference to the common policies deemed most urgent and important since the establishment of the von der Leyen Commission in 2019: the environment, digitalisation, resilience, and, most recently added, energy security and defence[31].

Where reforms and investments are not carried out on time and as planned, the Commission may ask the Council to adopt a recommendation to shorten the consolidation period, thereby making the annual budgetary adjustment more restrictive. There is one actor missing from this system: once again, Parliament (both European and national), whose marginalisation within economic *governance* has long been widely noted[32]. In-

[30] On the risk that the debt sustainability analysis is not a particularly solid instrument, see G. Pisauro, *La riforma delle regole fiscali europee*, in «il Mulino», 2024, p. 110 ss.

[31] U. von der Leyen, *A Union That Strives for More. My Agenda for Europe. Political Guidelines for the Next European Commission 2019-2024*, 2019, p. 9. In particular, the reforms and investments that may be used are those – as the regulation states – aimed at: improving growth and economic resilience; contributing to budgetary sustainability through structural improvements to public finances; addressing the Union's common priorities such as the green and digital transitions, economic and social resilience, energy security, and a common defence capacity; responding to the specific recommendations addressed by the Council to the country under the European Semester and the excessive macroeconomic imbalance procedure; ensuring that the planned level of investment financed with national resources is not lower than the average for the period preceding the submission of the Plan; and addressing the country's structural difficulties, in particular the specific recommendations issued under the European Semester and the Union's common priorities.

[32] On national Parliaments, P. De Wilde, T. Raunio, *Redirecting National Parliaments: Setting Priorities for Involvement in EU Affairs*, in

deed, it takes no part in defining the guidelines within the European Semester, nor in the individual recommendations addressed to States[33]. Compared with the framework prior to the reform, the heteronomous character of the intergovernmental or technical decision-making venues (however "technical" the Commission may be considered) appears to soften, in favour of a negotiating model that, although still conducted between bodies that are not directly representative, allows for greater activism on the part of national governments, which are accountable to their own Parliament and their own electorate for what is agreed with Brussels[34]. A model in which the Commission gains a greater autonomous role as negotiator, as compared with its previous role of monitoring and translating the Council's indications into technical-administrative terms, as was the case under the earlier formulation[35].

«Comparative European Politics», 16 (2), 2018, p. 310 ss. At European level, C. Fasone, *European Economic Governance and Parliamentary Representation. What Place for the European Parliament*, in «European Law Journal», 20 (2), 2014, p. 164 ss.; E. Bressanelli, N. Chelotti, *The European Parliament and Economic Governance: Explaining a Case of Limited Influence*, in «The Journal of Legislative Studies», 25, 2018, p. 72 ss.

[33] T.P. Wózniakowsni, A. Maatsch, E. Miklin, *Rising to a Challenge? Ten Years of Parliamentary Accountability of the European Semester*, in «Politics and Governance», 9 (3), 2021, p. 96.

[34] For an account bringing together the Council and the European Council, as well as the Commission and its agencies and committees, as a single manifestation of executive power, see J. Trondal, *An Emerging European Executive Order*, Oxford University Press, Oxford 2010; F. Nugnes, *I riflessi della nuova governance economica europea sul ruolo del Parlamento europeo e del Parlamento italiano*, in F. Lanchester (ed.), *Parlamenti nazionali e Unione Europea nella governance multilivello*, Giuffrè, Milano 2016, p. 373 ss.

[35] In any case, already with the first reform the Commission had gained a role of greater weight and discretion, as also noted by F. Nugnes, *I riflessi della nuova governance economica europea*, cit.

The Commission thus plays a central role, but the impetus and coordination remain, as ever, decided by the Member States in the twin fora of the Council and the European Council. Under Article 121 TFEU (formerly Article 99 TEC), the broad guidelines are the result of an exchange between the two bodies, of which Parliament is merely informed. The Commission, by contrast, is the linchpin of multilateral surveillance and of the preventive- and corrective-arm procedures. On the one hand, it is a technical and supervisory body, as shown, within the new preventive system, by its elaboration of the models used to construct the trajectory. On the other hand, however, it is also a body representing the Union's will in bilateral dealings with the States. Moreover, the coordination of economic policies is, under Article 121 TFEU, a Council competence, and is thus entrusted to the intergovernmental system[36]. A method taken to its extreme by the institutionalisation, through the *Fiscal Compact*, of the Euro Summit, which brings together the heads of State and government of the euro-area States and the Commission, «whose economic-policy conditioning is comparable to that of the European Council»[37]. Thus, even allowing for the greater role assigned to the Council compared with what happens in the case of the national recovery plans, it is hard not to recognise, in the

[36] On the intergovernmental method chosen for coordinating economic policies, S. Cafaro, *Unione monetaria e coordinamento delle politiche economiche. Il difficile equilibrio tra modelli antagonisti di integrazione europea*, Giuffrè, Milano 2001; L.S. Rossi, *Gli instabili equilibri istituzionali dell'Unione europea*, in G. Amato, R. Gualtieri (eds.), *Prove di Europa unita*, Passigli, Firenze 2013.

[37] F. Nugnes, *I riflessi della nuova governance economica europea*, cit.

new Stability Pact, an expansion of the Commission's powers and role, to which – already under the previous system of economic *governance* – «wide margins of political discretion» were acknowledged, «even in an area, such as the coordination of economic policies, where it ought to operate as the executive arm of the Council»[38]. And this is precisely thanks to the use of that flexibility invoked by the Member States, which has made the Commission the guardian, in addition to the Treaties, of the negotiating discretion between national governments and Europe in their bilateral dealings. One might also consider, moreover, the *comply or explain* mechanism now provided for Regulation (EU) 2024/1263, Article 29, according to which «the Council is presumed, as a rule, to follow the Commission's recommendations and proposals or to publicly set out its own position».

3.3 Oversight of digital markets

The Commission, as is well known, is also the European authority responsible for guaranteeing competition: Article 105 TFEU (formerly Article 85 TEC) confers on it the competence to investigate cases of alleged infringement, at the request of a Member State or of its own motion, and in liaison with the competent national authorities[39]. Indeed, it is not only the institution with

[38] C. Caruso, *Le prospettive di riforma dell'Unione economico-monetaria. Il mito dell'unità politica europea*, in «Rivista di diritti comparati», 1, 2018, p. 14.

[39] A. Pappalardo, *Il diritto della concorrenza dell'Unione europea. Profili sostanziali*, Utet, Torino 2018; M. Libertini, *Diritto della concorrenza dell'Unione europea*, Giuffrè, Milano 2014; Id., *Concorrenza*, in «Enciclopedia del Diritto, Annali», vol. 3, Giuffrè, Milano 2010, p. 195 ss.; B. Caravita di Toritto, *I fondamenti europei della concorrenza*, in M. Ainis, G. Pitruzzella (eds.), *I fondamenti costituzionali della concorrenza*, Later-

the broadest competence in competition law, from both a normative and an applied standpoint, but is also, to all effects, at the apex of the European network of the relevant competition authorities.

Its role consists, first of all, in implementing Articles 101 and 102 TFEU, which broadly govern restrictive agreements and abuse of a dominant position. Another fundamental function of the Commission is the control of concentration operations, such as mergers or acquisitions. The Commission is also responsible for the ongoing review of State aid[40], as provided for by Article 108 TFEU.

Recently, however, in the digital-markets sector, the *ex post* protection provided by competition rules has been deemed insufficient by the EU legislature[41], notwithstanding the fact that Article 102 has allowed the Commission to intervene heavy-handedly in the sector[42]. The first von der Leyen Commission therefore moved to propose a series of measures that further expanded its powers.

The Regulation of the European Parliament and of the Council on the *Digital Markets Act* (DMA)[43] starts

za, Roma-Bari 2019, p. 41 ss. On the Commission's antitrust functions, see also S. Sileoni, *The Sphinx and the Chimera. Antitrust Proceedings in the European Union*, IBL Special Report, 2014.

[40] Cf., among others, K. Bacon, *European Union Law of State Aid*, Oxford University Press, Oxford 2017.

[41] L. Torchia, *I poteri di vigilanza, controllo e sanzionatori nella regolazione europea della trasformazione digitale*, in «Rivista trimestrale di diritto pubblico», 4, 2022, p. 1101 ss.

[42] G. Monti, *The Digital Markets Act – Institutional Design and Suggestions for Improvement*, TILEC Discussion Paper, 22 February 2021, p. 3; A. Iannotti della Valle, *Le regole di Internet tra poteri pubblici e privati. Tutela dei diritti e ruolo dell'antitrust in una prospettiva costituzionale*, ES, Naples 2023. Reference is made to the decisions of 18 July 2018, Case AT.40099, *Google Android*; 27 June 2017, Case AT.39740, *Google Shopping*; 20 March 2019, Case AT.40411, *AdSense*.

[43] Regulation (EU) 2022/1925.

from the premise that, although more than 10,000 online platforms operate within the European digital economy, most of them SMEs, a small number of large online platforms capture the largest share of the overall value generated (the so-called *gatekeepers*[44]). The pursuit of the objective of regulating, and where appropriate limiting, gatekeepers has coincided with the conferral of new functions on the Commission itself. First of all, it is the Commission that designates a digital-service provider as a gatekeeper where the conditions laid down are met, and that modifies or revokes that designation[45]. Moreover, the DMA's orientation towards forms of *ex ante* protection emerges above all from those provisions that allow for continuous monitoring by the Commission, which is thereby endowed with strong powers of investigation and enforcement that enable it to concentrate the predictive functions of digital-market oversight. In particular, it is granted powers to conduct hearings and take statements (Article 22), carry out inspections (Article 23), and adopt interim measures (Article 24). Downstream, it is granted sanctioning powers (Articles 29-31). The framework of enforcement powers, as well as of supervisory and control powers, is therefore «strong-

[44] P. Manzini, *Equità e contendibilità nei mercati digitali: la proposta di Digital Markets Act*, in «I Post di AISDUE», 2021, p. 32 ss.; J. Zittrain, *History of Online Gatekeeping*, in «Harvard Journal of Law & Technology», 19 (2), 2006, p. 253 ss.; E.B. Laidlaw, *A Framework for Identifying Internet Information Gatekeepers*, in «International Review of Computer Law and Technology», 24 (3), 2012, p. 1 ss.

[45] Art. 3, para. 1: (a) significant impact on the internal market; (b) operation of a core platform service that constitutes an important gateway for business users to reach end users; (c) enjoyment of an entrenched and durable position in its operations, or the foreseeable prospect of acquiring such a position in the near future.

ly centralised in the Commission, to a degree certainly greater than that of the framework currently in force for the protection of competition law»[46].

The path of the DMA proceeded almost in step with that of the reform of digital services, known as the *Digital Services Act* (DSA)[47], whose proposal was published at the same time, on 15 December 2020. The DSA's ambition is to build a safe, predictable, and trustworthy online environment, enabling citizens to exercise their fundamental rights, with express regard to freedom of expression and information. These rights must be given particular consideration by providers of very large online platforms, according to the specific classification carried out by the Commission[48].

[46] L. Torchia, *I poteri di vigilanza, controllo e sanzionatori*, cit. The author states that «the reasons for this choice appear to lie, on the one hand, in the novelty of the rules – with the introduction of ex ante regulatory measures generally applied by regulatory authorities rather than by antitrust authorities – which, in the absence of established experience, could lead to dispersion, fragmentation, and inconsistent outcomes in application, and, on the other hand, in the need to prevent regulatory disparities within the European digital single market».

[47] Reg. 2022/2065/EU.

[48] Very large platforms, within the meaning of Article 33 of the DSA, are those with an average monthly number of active recipients of the service in the Union equal to or greater than 45 million, and that are designated as such by the European Commission, following consultation with the Member State of establishment or taking into account information provided by the Digital Services Coordinator of the place of establishment. Nineteen very large platforms and online search engines were designated by the European Commission on 25 April 2023: this entails the application, from 25 August 2023, to those platforms of the obligations set out in Section V of the DSA (on «additional obligations for providers of very large online platforms and of very large online search engines to manage systemic risks»). The designated platforms are AliExpress, Amazon Store, App Store, Bing, Booking, Facebook, Google Maps, Google Play, Google Search, Google Shopping, Instagram, LinkedIn, Pinterest, Snapchat, TikTok, Twitter (now X), Wikipedia, YouTube, and Zalando.

As with the DMA, the application of the Regulation is guaranteed by the European Commission, together with the Digital Services Coordinators of the Member States, according to a distribution of powers appears less centralised than under the DMA, establishing, in the case of the DSA, a Commission competence that is not exclusive but concurrent for the exercise of powers of supervision, investigation, enforcement, monitoring, and review[49].

Ultimately, the DSA, and above all the DMA, expand the Commission's competences well beyond its traditional role as guarantor of competition, moreover in markets that are highly sensitive both in terms of the technological innovation they express and of the freedom of opinion they enable.

The Artificial Intelligence Regulation (AI Act)[50] likewise emphasises the Commission's role, which is entrusted not only with executive and monitoring tasks but, generally and systematically, with developing «the Union expertise and capabilities in the field of AI» (Article 64) through a dedicated internal office. Executive functions and functions of ensuring compliance with European legislation are thus combined with a more strategic role in directing artificial-intelligence policy.

3.4 The tariff negotiations

On 2 April 2025, US President Trump announced from the Rose Garden a strategy of tariff tension under which products imported from European Union coun-

[49] L. Torchia, *I poteri di vigilanza, controllo e sanzionatori*, cit., p. 109-110.

[50] Regulation (EU) 2024/1689.

tries would face a 20% duty. As with other countries, this was – as soon became clear – a threat useful to the American president for opening bilateral negotiations with individual States. The European Union, despite all the differing interests represented by its various governments, managed to maintain a common line up until the conclusion of a framework agreement in Scotland at the end of July 2025.

The agreement was announced by Trump and Ursula von der Leyen. Once again, and for a matter of vital importance to the European economy and geopolitical balance, the face of the European Union was that of the twice-serving Commission President. This time, however, her prominence seems to have been more reactive than proactive.

International trade is, indeed, an exclusive competence of the European Union, according to Art. 3, par. 1, lett. e) TFEU. Article 206 TFEU assigns responsibility for this area to the Union, including through the promotion of trade with third countries. This exclusive competence is the other side of the coin of the internal market. The creation, on the one hand, an area of free movement of goods and services with a prohibition on internal tariffs and equivalent restrictions (Article 28 TFEU), was matched, on the other, by the imposition of a common customs system ensuring a single tariff policy for goods entering and leaving, which are then free to circulate internally. Within this competence, the Commission is responsible for issuing recommendations but, above all, for what is relevant here, for directing the negotiation of agreements with third countries. It is thus the Commission that stands on the front line.

This does not mean, however, that international trade is a competence managed exclusively by the Commission. The Council and Parliament, indeed, adopt under the ordinary procedure the measures defining the framework for implementing the common commercial policy. Moreover, the Commission must be authorised by the Council to open negotiations and is assisted, for that purpose, by a special committee designated by the Council itself, within the framework of the directives the Council may issue to it. It is then the Council that concludes the agreement, deliberating, as a rule, by qualified majority (Article 207). It is again the Council, on a proposal from the Commission, that sets the duties of the Common External Tariff (Article 31 TFEU). Parliament, for its part, in addition to co-legislating on the implementing framework of the common commercial policy, must give its mandatory consent to the conclusion of agreements (Article 218).

Given these functions, the Commission President does not act under a free mandate but is the endpoint of a chain of decisions and of a common will involving the other European bodies and, with them, the heads of government of the Member States.

The tariff affair undoubtedly placed the Commission at the centre of debate, both among European public opinion and among governments. However, this is a consequence of unsought external factors, with respect to which the Commission's prominence appears, more clearly than in previous initiatives, as a reflection of a more general theme: namely, that the main issues on the agenda increasingly pose challenges to be addressed on a scale broader than that of individual State sovereignties.

3.5 Common defence

In her 2021 State of the Union address, President von der Leyen called for a «European Defence Union»[51]. Russia had not yet attacked Ukraine – an event that would change the geopolitical context, particularly for Europe – and, in the United States, President Biden had only just taken office. A few months later, with the aggression against Ukraine barely begun, the EU adopted the Strategic Compass for security and defence. The question of European defence was thus already present as a programmatic horizon for the Union, but the needs that would later manifest themselves had not yet emerged: to the east, from Russian ambitions on the borders of the European continent, and to the west, from a Trump administration that would radically call into question the American role as guarantor and financier of order in the NATO area.

It is against this changed backdrop of political needs for autonomy and integration in the defence sector that the words of the State of the Union address became a plan presented by the European Commission in March 2025, initially named ReArm Europe, later changed to the Rearm Europe Plan/Readiness 2030. In this case, the Commission's activism, and that of its twice-serving President, does not appear to be solely the effect of events, nor the result of a precise political strategy to achieve greater integration by circuitous routes rather than through institutional change. In this case, reality seems to lie somewhere in between.

[51] U. von der Leyen, *State of the Union Address 2021*, Strasbourg, 15 September 2021.

European defence is not starting from scratch. European coordination instruments already exist, from Permanent Structured Cooperation on defence and security to the European Defence Fund, but these are specific projects for the coordinated enhancement of certain capabilities. The Defence Plan, by contrast, is financially ambitious, being a strategic proposal aimed at substantially increasing spending through a series of financial mechanisms worth 800 billion euro in public funding, predominantly national. According to the Plan, the resources will come from the greater deficit allowed to Member States by the activation of the Stability Pact's safeguard clause, which would enable national budgets to increase defence spending allowing deviations from the net expenditure path for this kind of expenditure. It is from this that the Commission President expects the bulk of the investment (an expected 650 billion). For the smaller share of 150 billion, the EU is preparing to finance a new lending instrument, to be disbursed for a series of investments in categories predefined by the Plan itself. The figure of 800 billion euro is thus largely a projection of the potential fiscal space created by the loosening of deficit rules for defence spending. The 150 billion in loans will instead come from a fund called Security Action for Europe (SAFE), designed to raise funds directly on the capital markets. The funds will thus be disbursed as long-term loans to Member States to support joint procurement efforts and may be repaid over an extended period of up to forty-five years.

To approve the financial instrument, the Commission proposed the emergency procedure under Article 122 of the Treaty on the Functioning of the European

Union (TFEU), the same legal basis used for the European Union Recovery Instrument. The two instruments are in fact similar in allowing States to draw up a national investment plan for a common, predetermined objective in exchange for financial support. A smaller impact is instead reserved, on the one hand, for the unlocking of defence- and security-related programmes that the European Investment Bank (EIB) may finance, granting loans to military programmes of up to two billion in 2025; and, on the other hand, for the mobilisation of private capital through financial instruments also dedicated to the defence sector[52]. The Plan was followed, on 19 March 2025, by the White Paper on European Defence.

On the merits, the European defence strategy does not guarantee a common defence but is an attempt to mobilise largely state-based capital in order to secure for the European Union the independence demanded of it, first of all, by the United States. In terms of method, this is a much more traditional strategy than the Recovery and Resilience Facility. The reasons are understandable, given the political difficulty of overcoming the reluctance of much of the European electorate – and, consequently, of national governments – regarding a

[52] This is indeed an attractive sector for the financial markets, in which a prudential funding need of 4 billion euro, between equity and debt financing, is already estimated for small and medium-sized enterprises alone. Private financing would likely be found were access to it made easier – access hindered, as Mario Draghi wrote in M. Draghi, *The Future of European Competitiveness, Part B, In-depth Analysis and Recommendations*, by «the interpretation given by financial institutions to the EU's sustainable-finance and ESG (environmental, social, and governance) frameworks», by the complexity of the legal systems governing industrial activities and procurement in the sector, and by the European Investment Bank's exclusion policies for core defence activities».

common defence project, as well as the legal difficulty of overcoming the principle of conferral of competences, under which defence remains a State competence. Nevertheless, despite these far from secondary difficulties, the SAFE instrument, which as noted concerns 150 billion euro, draws on the experience of the Facility by allowing the disbursement of *one-off* loans for national spending, financed through recourse to the market and managed, once again, by the Commission.

On 27 May 2025, the Council of the Union adopted the SAFE Regulation using, as noted, the emergency procedure under Article 122 TFEU, thereby reviving the friction between perceived (or narrated) urgency and Parliament's democratic oversight of the decisions of the other European bodies, first and foremost the Commission. In the first instance, Parliament expressed regret at the recourse to Article 122 and the resulting lack of involvement in approving the instrument[53]. Subsequently, it discussed, even without approving, a motion of censure against the Commission in July 2025, which also concerned this point.

The controversy over the use of Article 122 TFEU highlights a recurring tension in EU *governance*. Only apparently does this tension concern the perceived need for rapid, executive-led action in times of crisis, as against the imperative of parliamentary oversight and democratic legitimacy. More deeply, it concerns a creeping erosion of the principle of conferral, since the constant recourse to the emergency procedure allows the

[53] European Parliament resolution of 2 April 2025 on the implementation of the common security and defence policy, A10-0011/2025.

Union to systematically bypass the allocation of competences and, in the case of defence, to circumvent the intergovernmental decision-making mechanisms that govern common security and defence policy[54]. This erosion, which had already affected defence – given that in May 2023 the Council of the European Union had approved the use of national recovery funds to purchase heavy and light artillery ammunition[55] – contributes to a strengthening of the Commission's role, since it allows for the adoption and management of the measures needed to address the crises referred to in that same article to be entrusted respectively to the Council and the Commission. In particular, as regards the SAFE programme, the Commission is delegated to receive, assess, and approve national defence investment plans, which are then, following the national-recovery-plan model, adopted by Council implementing decision. Again similarly to NGEU, the resources made available as loans will be raised on the capital markets, under the Commission's direct management.

SAFE is not the common defence that von der Leyen has been calling for at the start of her second term. As with the Stability Pact and the new multiannual financial framework, discussed shortly, the resistance of governments has brought the President's ambitions back down to earth. We are far from the generalisation of the

[54] For an account of the institutional limits of European defence, F. Fabbrini, *Una proposta per integrare l'Europa della difesa: il Trattato della Comunità europea di difesa e la fattibilità giuridica del suo rilancio oggi*, in «Rivista trimestrale di diritto pubblico», 1, 2025, p. 47 ss.

[55] Noted by I. Ruggiu, *Mutamenti della forma di governo e integrazione europea. Gli influssi sulle istituzioni e sul formante patriarcale*, in «Rivista AIC», 1, 2024, p. 336.

conditionality system, which is a latent objective on the Commission's horizon and which would see it exercise a consistently stronger role in implementing a genuinely common political direction[56]. But we are nonetheless close, especially within an unchanged institutional system, to a stabilised strengthening of the Commission's role in co-managing sectoral national policies.

3.6 The EU budget 2028-2034

The resistance just mentioned emerges even more clearly in the discussion on the Union's multiannual budget.

On 16 July 2025, the Commission presented a proposal for the new framework[57] as a budget «equal to […] the ambitions [of the Union], able in particular to ensure the repayment of NextGenerationEU while at the same time keeping national financial contributions stable without thanks to new own resources[58]. In the proposal, the strengthening of the link between the general coordination of policies (that is, political direction) and the Union's budget is based on «a steering mechanism linking the Union's priorities to its budget». Significantly, however, this mechanism does not mean a Europeanisation of political direction, but rather «greater coherence in the financing of internal and external policies». Reading between the lines, the Commission thus appears to want to emphasise coordination between

[56] S. Sileoni, *L'indirizzo politico tra unione europea e Italia*, Es, Napoli 2026.

[57] As required by Art. 21, Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020.

[58] A dynamic EU budget for the priorities of the future – the 2028-2034 multiannual financial framework, COM/2025/570 final.

the Union's policy guidelines and economic *governance*, so that, starting with the European Semester, decisions on investment and reform at both national and EU level may be consistent[59]. Indeed, among the Commission's proposals is that of «a plan for each country containing key reforms and investments and focused on common priorities, including the promotion of economic, social, and territorial cohesion». For this reason, the Commission President has announced a new budgetary structure, centred on «national and regional agreements for investment and reform, shaped around European priorities»[60]. Alongside this proposal, which replicates the national-recovery-plan model, there is also a European Competitiveness Fund, which instead draws on the lesson of the Juncker Plan, offering the possibility of financing projects of common interest that are, precisely, investments in European projects.

In addition to these proposals, there is a third that likewise touches on the institutional or constitutional level, since the Commission suggests increasing the guarantees protecting the rule of law. The conditionality regulation[61] has equipped the Union with an instrument for protecting the budget and monitoring Member States' compliance with the *rule of law*. The intention is to strengthen this active oversight, once again confirming a tendency to strengthen the Union's political dimension, one that also embraces respect for the demo-

[59] *Ibidem*, p. 6.

[60] U. von der Leyen, *Speech at the 2025 Annual Budget Conference*, 20 May 2025.

[61] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council, of 16 December 2020.

cratic principles on which that dimension must rest[62]. The Commission acts as guarantor of this oversight, notifying the State concerned of findings regarding breaches of rule-of-law principles that risk undermining protection of the Union's financial interests, acting as counterpart in the resulting exchange of information, assessing any measures to be adopted, and proposing them to the Council so that it may adopt them by decision.

Finally, confirmation of the Commission's ambition to make the budget an ever more incisive instrument of European political direction, of which it acts as guarantor and implementer, lies in the attempt to increase in own resources, since, essentially, there is no viable political direction without the financial capacity to implement it.

Parliament, however, has already rejected the idea «of replicating the "one national plan per Member State" approach, adopting the Recovery and Resilience Facility as the model for spending under shared management after 2027»[63]. The criticisms that have emerged concern in particular the possibility of distributing funds at national level, excluding regions and the actors involved in cohesion policy. In reality, the greatest concern should relate to the separation between the responsibility for implementing policies and that for financing them, which is the great test bed of the national recovery plans. A budget built to finance so-called European public goods,

[62] On the system of rule-of-law monitoring mechanisms, European Commission, Communication on the situation of the rule of law in the European Union, 2024 Report, COM(2024) 88 draft, esp. para. 2.

[63] European Parliament, resolution of 7 May 2025 on a renewed long-term budget for the Union in a changing world, P10_TA(2025)0090, 1.

including defence, would be different. For this to be the case, however, it would be consistent to recognise not only a different organisation in the management of the distributed resources but also the possibility of resorting, on an ongoing basis – rather than as a one-off, as with the national recovery plans – to common debt. The Commission's proposal, by contrast, confines itself, with appropriate realism, to providing for a debt-financed fund of around 400 billion euro, to be used in the event of crisis to offer loans on favourable terms. The Member States, starting with Germany, have already firmly rejected even this idea, precisely by arguing the difference between the exceptional and occasional nature of NGEU and the ordinary nature of the budget. If the idea of such a fund were accepted, it would be a step towards a partial federalisation of spending, but we would still be far from a federal budget. For that to happen, the will of a Commission stronger than yesterday is not enough; what is also needed is the will of Member States that remain as strong as yesterday, at least as regards decisions of last resort, since they would have to accept «pooling more sovereignty» and finding «new forms of representation and a centralised decision-making process»[64].

3.7 Other initiatives that have strengthened the Commission's role

As stated at the outset, the consolidation of the Commission's role has not come about through an increase in legislative initiative but through greater ex-

[64] M. Draghi, *Mario Draghi on the Path to Fiscal Union in the Euro Zone*, in «The Economist», 6 September 2023.

posure of the Commission on the main issues of the European agenda and through the creation of complex administrative procedures. Of this process of consolidation, the Commission is, on the one hand, a spectator and, on the other, a director: the problems Europe faces are the factual condition fuelling a strengthening of European politics through a strengthening of its sectoral policies, achieved, for want of anything better (that is, of institutional reforms), even through not entirely orthodox interpretations of the competences and procedures assigned by the Treaties (above all, recourse to Article 122). Below, further sectoral policies are cited that confirm this underlying trend, reflected in an enhancement of the Commission's role.

Reference is made first of all to the vaccine procurement plan for Covid-19. On 17 June 2020, the Commission published its vaccination strategy, proposing for the first time a centralised procedure, based on an agreement with the 27 Member States whereby they authorised the Commission to conclude, on their behalf, advance purchase agreements with vaccine manufacturers, without yet knowing whether or when the vaccines would come to market. The advance purchase agreements were financed through the Emergency Support Instrument, funding managed directly by the Commission in the event of disasters[65]. In order for the Commission to be able to carry out this centralised procurement procedure, it was necessary to amend the regulatory framework. The rules on the Union's emergency sup-

[65] The European Union's Strategy for Covid-19 vaccines, COM(2020)245.

port would not, in fact, have allowed the Commission to purchase supplies on behalf of States, and were therefore amended accordingly[66].

A further example is the operation of the Social Climate Fund, which is part of the reform of the Emissions Trading System[67]. The Fund, financed with the revenues generated by that system, is intended to allow the financing of initiatives to mitigate the impact of the energy transition, on the basis of national financing plans that function similarly to the national recovery plans: submission by governments, approval by the Commission, implementation at national level, monitoring by the Commission.

The Commission's activism has also manifested itself with regard to events related to the Russo-Ukrainian war. On the one hand, there was the energy-supply crisis. To address it, in addition to more traditional instruments and activities such as communications on energy prices or the European Plan for gas-demand reduction, the Commission extended the national recovery plans through the RePowerEU initiative, funding for decarbonisation and the EU's energy autonomy, which was absorbed into NGEU. RePowerEU is, indeed, «a replication of the same "method of government" even beyond the post-pandemic phase»[68], since it grafted onto the Recovery Facility a system of further funding dedicated

[66] Council Regulation (EU) 2020/521 and 2016/369.

[67] Regulation (EU) 2023/955 of the European Parliament and of the Council; Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023.

[68] N. Lupo, *L'aggiornamento e l'integrazione del PNRR*, cit., p. 436; R. Famà, *RePowerEU: Next Generation EU's Architecture Beyond the Pandemic*, in «REBUILD Centre Working Paper», 6, 2023.

to environmental and energy investments. The Union, therefore, not only confirmed the method but – and this is what matters most here – further widened and stabilised the central role the Commission plays within it. On the other hand, the initiatives directly undertaken by the Commission to support Ukraine also present novel elements. The Ukraine Assistance Instrument 2023 established a fund of 18 billion euro, financed through debt, to assist, in the form of loans, Ukraine's initial reconstruction in 2023, on the basis of a regulation of Parliament and the Council[69]. The regulation entrusts the Commission with signing the relevant agreements with Ukraine, verifying compliance with the required conditionality, and reducing, suspending, or cancelling the loans. This instrument was followed by a subsequent plan, the Ukraine Facility, worth 50 billion, financed through debt in loans and grants for the four-year period 2024-2027, likewise approved by regulation of Parliament and the Council[70]. In this case the Commission's role is even more significant, since reconstruction and modernisation projects must be submitted by Ukraine according to a structure similar to that of the national recovery plans.

4. The Commission's present, the Union's future

The shadows over the future of the European Union depend on intrinsic and extrinsic factors, intertwined with one another. On the one hand, there are the difficul-

[69] Regulation (EU) 2022/2463 of the European Parliament and of the Council of 14 December 2022.

[70] Regulation (EU) 2024/792 of the European Parliament and of the Council of 29 February 2024.

ties of a political reconciliation within this Commission, even just compared with von der Leyen's first term, as shown by the initial voting margins[71], the motion of censure voted in July 2025, and the one already announced for September on the proposal for the new multiannual financial framework. On the other hand, there are the objective problems the Union faces, first among them the confrontation with its principal commercial, political, and military ally, the United States, now governed by a president intent on calling that alliance into question, thereby accelerating Europe's marginalisation relative to emerging powers.

This twofold difficulty does not diminish the value of the progress made by the EU system from 2020 to today, briefly noted here. The Commission's role is closely intertwined with these developments, the result of the European institutions' attempt to govern the demanding political processes that States have had to confront in recent years. A chain of crises, from 2008 onward, has led governments to become persuaded – some more firmly than others – that the Union would provide strength, without, however, inducing them to set in motion an institutional path that would attempt to reach where the project for a Constitution for Europe stopped. While the Conference on the Future of Europe masked the failure of constitutional reform from the outset – a reform once entrusted, with differing intentions, to the

[71] In this second renewal, the first vote took place in mid-July 2024 and saw von der Leyen reconfirmed with 401 votes in favour, 284 against, and 15 abstentions. The second, held on 27 November, with 370 votes in favour, 282 against, and 36 abstentions, produced a much thinner outcome, both compared with the vote on the President and with previous final votes on Commissions.

Giscard Convention – the Commission and the Council tightened the Union's political grip. Operating with the tacit assent of a largely powerless Parliament, they acted on individual sectoral policies and procedures, extending their reach into areas of national competence primarily through conditionality mechanisms. This power of co-determining fundamental lines of action, even in matters falling within the competence of the national States such as budget and defence, has undoubtedly had effects on the Commission's role. On the other hand, it did not arise out of nothing but is the product of a specific political choice. To whom is this choice to be attributed? The answer to this question appears essential in order to understand whether, and to what extent, the Commission today has a role and a political-institutional strength radically different from, and superior to, that of the past, with effects on the European institutional balance itself and on its compatibility with the Treaties.

As has been seen, von der Leyen and her Commission have carved out for themselves, over the years, a decisive position in shaping European public policy[72]. Apparently, this prominence is the expression of a political dimension that the EU has today and did not have yesterday, thanks also to the President's own prominence. If that were all there was to it, we would be facing a significant change in the identity of the European Union, guided by her and implemented by the Commission:

[72] On the link between the strengthening of the Commission and of the Commission Presidency, H. Kassim, S. Connolly, R. Dehousse, O. Rozenberg, S. Bendjaballah, *Managing the House: The Presidency, Agenda Control and Policy Activism in the European Commission*, in «Journal of European Public Policy», 24 (5), 2017, p. 653 ss.

from a Europe of bureaucrats to a Europe of politics. A change with respect to which the formula of the Treaties risks being inadequate. We would, that is, be facing a Europe capable of expressing a political direction and of financing it, yet lacking a theory and practice of limiting power that is the very essence of democracies. What is still missing, indeed, is a form of government capable of tying political responsibility to a clear balance of powers.

This strengthening of the President's role, however, does not necessarily correspond to an autonomous political capacity of the Commission as against that of national governments. The alternative is that the credibility and authority of the President and her Commission depend less on the former's leadership and the latter's greater political character than on the capacity to interpret and mediate the wishes of governments and parties: a Europe that does more, but on the mandate of (some) national leaders, precisely because it still lacks a (form of) government. The strength of the Commission and of its President risks, in this case, being the strength of one who knows how not to disappoint the various political souls within Europe and among the States, with their difficult and, above all, largely invisible balances. The way von der Leyen handled her reconfirmation (to give just two examples, the Breton affair in France or the Albania case in Italy), the ease with which she put the brakes on her Green Deal, and the need to settle for milder ambitions on the multiannual budget and the Defence Plan may perhaps be signs of something other than an autonomous political vision on the Commission's part. Should this second alternative prove to be the explanation for her success, we would face the opposite risk to

the previous one. Not that of an institutional garment too tight for a Europe that has grown large, but that of a Europe that appears more mature and more emancipated from the will of the States (with their mutual balances) than it actually is.

Undoubtedly, the Commission's proposals push towards a strengthening of decision-making capacity by sector, but the Union's form of government remains such that, without the will of national governments – expressed in Council decisions – the Commission's *desiderata* cannot but remain just that. At the same time, the Commission's ability to define the Union's priorities and an agenda of measures influences the very negotiations within the Council which, still being conducted in an entirely political (and opaque) manner, leave little room for constitutional-type procedures and formalities but continue to express the (political) balance of power among national governments.

The Commission's strength is thus perhaps only an apparent strength, due to the transitional state in which the European system finds itself following the failure of the Constitutional Treaty. Having got halfway along the path of institutional reform with the Lisbon Treaty has had both an inhibiting effect on any new attempt at integration through Treaty amendment and, conversely, a propulsive effect on uncontrolled integration (not regulated by the Treaties)[73]. Called upon

[73] Effects also due to a different perception of the Union, itself due to a different "narrative" stemming from the attempted Treaty reform of 2004. On this, see J.H.H. Weiler, *On the Power of the Word: Europe's Constitutional Iconography*, in «International Journal of Constitutional Law», 3 (2-3), 2005, p. 173 ss.

to respond to challenges on an ever-larger scale, the European Union tries to overcome them without touching primary law but only through sector-by-sector procedures that entail, time after time, a renewed prominence for the Commission, though not necessarily a concentration of power. Indeed, the amendments made to the Treaties so far have actually reduced the Commission's institutional centrality, within the overall balance, even as they strenghtened its President within the College rationalising a balance of powers that today, more than in the past, tends to converge towards some form of State-like government. The strengthening of Parliament, the figure of the High Representative for Foreign Affairs, the institutionalisation of the European Council and its President, together with the parliamentarisation of the Commission's investiture procedure, have all eroded the Commission's exclusivity as the permanent holder of the «monopoly of supranationality» and have contained its President, who «tended (and often managed) to appear as the true leader of the Union»[74].

This reduction in institutional centrality, however, has been complementary to an increase in its political centrality, so that, from a body more technical than political, it has become a body more political than technical, as its appointment procedures demonstrate. What follows from this is not so much a general strengthening of its role as a diversion from its function as guardian of EU law[75] – which is nonetheless assigned to it – towards

[74] L. Elia, *Prime osservazioni sulla forma di governo nella costituzione per l'Europa*, cit., p. 760.

[75] L. Garicano, *The Myth of the Single Market*, in «siliconcontinent.com», 14 May 2025.

becoming a venue for the elaboration of politics, as well as of policies, for Europe. The constitutional question thus becomes not so much whether the Commission is stronger than it was, but to whom a political dimension, of which the Commission acts as spokesperson, is to be attributed.

If it is true, as Jean Monnet foresaw and as others have likewise argued[76], that Europe is the sum of the solutions to the crises it has had to face[77], the most recent crises – from the sovereign-debt crisis to the pandemic and inflationary crises – have brought to the fore a Europe more capable of expressing a political nature, including through the involvement of its technical institutions, yet one that struggles to fit into the garment tailored by its legal dimension. The expansion of the ECB's role from guarantor of monetary stability to lender of last resort, the invention of a common borrowing programme such as *Next Generation EU*, the codification of recommendations, and the conditionality system[78] are only the most manifest examples of a political choice to interpret the European legal toolkit expansively, starting from the very same legal bases of the Treaties and from an extensive interpretation of the functionalist approach[79], one also endorsed by the Court of Justice[80].

[76] T. Padoa Schioppa, *Europa, una pazienza attiva. Malinconia e riscatto del vecchio continente*, Rizzoli, Milano 2006.

[77] According to the view already recalled of J. Monnet, *Mémoires*, cit., p. 488.

[78] On the conditionality of financial-assistance programmes, A. Pisaneschi, *Bilancio dello Stato e condizionalità*, in C. Bergonzini (ed.), *Costituzione e bilancio*, Franco Angeli, Milano 2019.

[79] See in this sense the reasoning of the Legal Service of the Council, doc. n. 9062/20, 24 June 2020, p. 11-12.

[80] Consider the *Pringle* judgment, in which the Court of Justice

In the interrupted transition from a Europe of Treaties to a constitutional Europe, the Commission too has made its way forward to face the challenges that, whether it likes it or not, it and the European States find themselves confronting today. But if this is the point we have reached – if the pandemic crisis represented, perhaps even more than the sovereign-debt crisis, a qualitative leap towards a European political dimension in which ownership of political direction is shared under a new method of government – it is necessary to begin acknowledging that the Union of the Treaties, the Union as a normative space, needs to be rethought, so as to prevent the Euro-national political space from becoming a space *extra ordinem* with respect to the legal-constitutional one[81].

moved towards a teleologically oriented interpretation of Article 125 TFEU, concluding that only financial-assistance mechanisms having a "moral hazard" effect on lax budgetary policies are prohibited (CJEU, *Pringle v. Ireland*, C-370/12, and later *Weiss*, C-493/17); or the *Gauweiler* judgment, which held that it was lawful for the ECB to purchase securities on the secondary market, since this was aimed at ensuring price stability (CJEU, *Gauweiler*, C-62/14).

[81] On NGEU as the starting phase of the federalisation of economic policies in the European Union, see F. Fabbrini, *Next Generation EU: Legal Structure and Constitutional Consequences*, in «Cambridge Yearbook of European Legal Studies», 24, 2022.

Claudia Marchese

The resort to expertise in the European dimension. A focus on the European Commission's reliance on experts

Summary: 1. Typologies and purposes of resort to expertise in the European dimension – 2. The European Commission's reliance on expert groups – 3. Scientific advice to the European Commission: the Scientific Advice Mechanism – 4. Resort to expertise: between the pursuit of knowledge, compromises, and democracy.

1. Typologies and purposes of resort to expertise in the European dimension

The European governance system appears to be characterized by an increasing resort to expertise[1]. The

[1] On the increasing resort to expertise by European institutions, see C.M. Radaelli, *The Public Policy of the European Union: Whither Politics of Expertise*, in «Journal of European Public Policy», 1999, 6, pp. 757–774; Y. Papadopoulos, P. Warin, *Are Innovative, Participatory and Deliberative Procedures in Policy Making Democratic and Effective?*, in «European Journal of Political Research», 2007, 46, pp. 445–472; A. Gornitzka, U. Sverdrup, *Who Consults? The Configuration of Expert Groups in the European Union*, in «West European Politics», 2008, 31, pp. 725–750; A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, in «Politique européenne», 2010, 32, pp. 125–150; C. Robert, *Les groupes d'experts dans le gouvernment de l'Union européenne. Bilans et perspectives de recherche*, in «Politique européenne», 2010, 32, pp. 7–38; E. Krick, J. Christiansen, C. Holst, *Between "Scien-*

reasons for this amplified recourse to expertise lie in the progressive broadening of the European Union's competences and the necessity to acquire knowledge to intervene in highly specialized sectors[2]. Various forms of recourse to expertise can be observed within the European sphere: these include expert groups tasked with assisting the European Commission during the initial stages of the legislative procedure, the Scientific Advice Mechanism established in 2015, and, with regard to the European Parliament's activities, expert hearings as well as the establishment of the European Parliament Research Service in 2013. Furthermore, reference can be made to specialized European agencies operating in different fields. The purposes pursued through the resort to expertise are also diverse: it can serve as a tool for acquiring knowledge useful in guiding public action, it can represent an instrument for legitimizing political choices, and it can even transform into a tool for democracy by enabling the acquisition of diverse perspectives[3].

tisation" and a "Participatory Turn": Tracing Shifts in the Governance of Policy Advice, in «Science and Public Policy», 2019, 46, pp. 927–939; A. Elomäki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, in «Journal of European Integration», 2024, 46, pp. 321–339; E. Krick, A. Gornitzka, *Tracing scientisation in the EU Commission's expert group system*, in «Innovation: The European Journal of Social Science Research», 2024, 37, pp. 319–339.

[2] To this effect, see J. Metz, *Expert groups in the European Union: A sui generis phenomenon?*, in «Policy and Society», 2013, 32, pp. 267–278, who highlights a phenomenon of externalization of policy advice. More recently, see E. Krick, A. Gornitzka, *Tracing scientisation in the EU Commission's expert group system*, cit., p. 322.

[3] For an overview of the different purposes pursued through the resort to expertise, see A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, cit., pp. 725–750; C. Robert, *Les groupes d'experts dans le gouvernment de l'Union européenne.*

However, this latter aim is not unanimously endorsed in the literature. Some authors have, in fact, highlighted how the resort to experts tends to shift decisions outside the institutional circuit, thus escaping democratic logics[4]. According to this perspective, recourse to expertise would lead to an elitist approach, consequently increasing the democratic deficit and the participation gap. Such a concern finds its basis, among other things, in the methods of selecting experts and the composition of advisory bodies. A further risk factor is found in the possibility of undue influence on experts. Such criticisms lead us directly to observe how the relationship between expertise and the democratic process represents one of the most delicate issues.

This article will attempt to delineate the criteria for navigating between these two opposing reconstructions that view, on the one hand, the recourse to expertise as a democratic instrument and, on the other hand, the recourse to expertise as the affirmation of an elitist claim. It will also attempt to reconstruct the position of experts within the European institutional framework. To this end, it will first be necessary to examine what is meant by expertise, who experts are, what competencies

Bilans et perspectives de recherche, cit., pp. 7–38; T. Blom, *Conceptualizing the Role of Expertise in EU Policy-Making*, in *The Contestation of Expertise in the European Union*, edited by V. Abazi, J. Adriaensen, T. Christiansen, Palgrave Macmillan, Cham 2021, pp. 21–45.

[4] In this sense, see E.O. Eriksen, *The Unfinished Democratisation of Europe*, Oxford University Press, Oxford 2009; B. Gilley, *Technocracy and Democracy as Spheres of Justice in Public Policy*, in «*Policy Sciences*», 2017, 50, pp. 9–22; S. Fuller, *Post-Truth: Knowledge as a Power Game*, Anthem, London 2018. For a deeper analysis of the critical arguments regarding the resort to expertise by European institutions, see V. Abazi, J. Adriaensen, T. Christiansen (eds.), *The Contestation of Expertise in the European Union*, Palgrave Macmillan, Cham 2021.

are required of them, and how they intervene in public decision-making processes and in their relationship with European institutions. Only after reconstructing these profiles, it will be possible to understand whether the recourse to expertise constitutes a threat to the democratic circuit or if it represents an additional moment of participation. Given the extensive resort to expertise by European institutions, this article will address the topic from a specific perspective: the European Commission's recourse to expertise. The European Commission's recourse to expertise holds particular significance considering the intervention of experts in the initial stages of the policy cycle leading to the exercise of legislative initiative and the impact of expert intervention on the sphere of political decision-making. This domain therefore represents a privileged perspective for reflecting on the relationship between the recourse to expertise and the democratic process.

Having outlined the scope of the research and its objective, it seems appropriate to focus first on defining the concepts of expertise and experts.

Expertise is defined differently depending on the aspects one intends to emphasize. With regard to the conception that views expertise as a tool for problem-solving, it can be defined as «*une procédure au cours de laquelle une personne physique au morale – l'expert – est chargé d'éclairer sur le fondement de donnée et connaissances scientifiques une autre personne afin qu'elle puisse prendre une décision*»[5] or, alternatively, as

[5] This definition is due to A. Ghozia, *Le droit de l'expertise médicale et sanitaire*, LEH Editions, Bordeaux 2016, p. 48.

«*content generated by professional, scientific or technological methods of enquiry*»[6].

Conversely, emphasizing the political implications of expertise, it has been defined as «*une activité politique à part entière que les acteurs pratiquent les plus généralement en toute conscience*»[7]. Furthermore, it has been observed that expertise does not constitute an intrinsic quality, but rather a quality attributed by the audience[8]. For this reason, expertise would constitute a flexible category, characterized by an «*inherent subjectivity in what constitutes legitimate knowledge in policymaking*»[9]. This insight places particular emphasis on the criteria for selecting experts: experts are not experts a priori by virtue of their competences, but rather by virtue of having been selected as experts. Consequently, expertise itself does not constitute an intrinsic quality. Expertness is an ascribed quality and equally, the quality of an expert stems from being recognized as such. Such an approach has been defined in literature as

[6] Thus, C. M. Weible, *Expert-Based Information and Policy Subsystems: A Review and Synthesis*, in «Policy Studies Journal», 2008, 36, p. 615.

[7] This conceptualisation is attribuable to C. Robert, *Les groupes d'experts dans le gouvernment de l'Union euopéenne. Bilans et perspectives de recherche*, cit., p. 21. The approach that views expertise as a political action highlights how it is not neutral: however independent experts may be, their appointment is grounded in choices stemming from the politics of expertise regarding the structure of advisory bodies, appointment procedures, experts' competencies, their mechanisms of intervention in decision-making processes, and the effects resulting from their opinions.

[8] Thus, A. Elomäki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, cit., p. 321.

[9] See R. Wood, *Hyper-Active Governance: How Governments Manage the Politics of Expertise*, Cambridge University Press, Cambridge 2019.

a "constructivist approach" and has implications[10]: deriving expertise and the quality of an expert not from intrinsic characteristics but from external recognition implies an enlargement of the pool of experts. In this perspective, expert status is not exclusively recognized to scientists. On the contrary, "*expertise comprises any form of knowledge that key actors deem legitimate and important in policymaking, including tacit knowledge acquired through practical experiences in real-world environments*"[11]. This broader understanding of expertise appears to be embraced by the European Union, which includes among the members of the expert groups habitually consulted by the European Commission not only scientists, but also stakeholders such as professionals, businesses, and NGOs. However, as will be seen below, such a composition affects the type of activity performed by these advisory bodies. The observations made so far lead to a further reflection: expert status is not exhausted by the qualification of a scientist.

Undoubtedly, scientists can be called upon to act as experts within public decision-making processes; however, other subjects may fall into the category of experts by virtue of their professional competences. Having clarified the relationship between the role of the expert and the figure of the scientist, it seems appro-

[10] Regarding the constructivist approach, see A. Elomäki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, *cit.*, p. 325.

[11] For this framing of expertise, see A. Elomäki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, op. cit., where they draw upon the concepts developed by F. Fischer, *Democracy and Expertise: Reorienting Policy Inquiry*, Oxford University Press, Oxford 2009.

priate to specify that the following sections will analyse both the scenario in which the resort to expertise offers the possibility to consult advisory bodies composed of experts from diverse backgrounds, and the scenario in which the advice provided to the European Commission is of purely scientific nature.

2. *The European Commission's reliance on expert groups*

Among European institutions, the European Commission is the one that tends most to rely on experts, particularly by engaging expert groups. Expert groups can be defined as «*consultative bodies set up for the purpose of providing the Commission or its departments with advice and expertise on legislation and implementation*»[12]. Expert groups perform a range of articulated functions such as: assisting the European Commission in exercising its legislative initiative, providing advice, facilitating the exchange of viewpoints, and monitoring the follow-up to legislative initiatives. Among these functions, assisting the European Commission during the exercise of legislative initiative and facilitating the exchange of viewpoints play a central role. Indeed, expert groups are composed of experts from diverse backgrounds: they include not only scientists but

[12] This definition stems from the recommendations adopted by the European Commission in 2016; see European Commission, *Communication to the Commission. Framework for Commission Expert Groups: Horizontal Rules and Public Register*, 2016. For a precise definition in the literature, see A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, cit., p. 139, who identify expert groups as «*consultative entities, comprising external experts, advising the Commission in the preparation of legislative proposals and policy initiatives as well as in its tasks of monitoring, coordinating and cooperating with the member states*».

also stakeholder organisations, professionals, enterprises, Member States' authorities and NGOs. An exclusively scientific composition of expert groups is an exception. Within expert groups, different viewpoints usually emerge, allowing the Commission to assess prevailing attitudes and evaluate different policy options. The relevance of the scientific and economic components within expert groups varies according to the specific sector, the historical phase of the European integration process, and the type of expert group. Legal scholars, through statistical studies, have highlighted that scientists tend to assert their presence more in expert groups operating in sectors where European policies are less consolidated[13]. Furthermore, greater participation of scientists is found in expert groups established temporarily to meet specific needs, whereas permanently established expert groups are characterized by robust participation from economic stakeholders. Moreover, significant participation by scientists is observed in subgroups established within expert groups: the complexity of the tasks assigned to these subgroups, in fact, requires solid scientific competences.

Beyond these general considerations, it can be observed that the composition of expert groups may be modulated differently depending on the phase that European institutions are called upon to address. If we consider expert groups that have operated in the economic-financial sector from 1985 to the present, it is possible to note that in the period between 1985 and 1995, expert

[13] For these findings, see A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, cit., p. 133.

groups had a more varied composition, including experts from central banks, the financial world, and academics. In the period between 1997 and 2006, the participation of financial sector experts intensified. During the economic-financial crisis, however, a different, more variegated, and academically oriented type of expertise was required to strengthen the Union's foundations and outline prospects for recovery. Finally, from 2017 onwards, the participation of financial sector experts has again become more pronounced[14]. The composition of expert groups thus appears directly related to the objectives they intend to achieve: a greater presence of scientists can be observed when knowledge needs to be acquired in innovative, highly specialized sectors, or when an impetus for long-term planning is required. Conversely, if the European Union's interest lies in understanding the viewpoints of various involved stakeholders and securing prior agreement as a basis for exercising its legislative initiative, the participation of economic actors such as professionals and enterprises will be broader. In any case, in the activity conducted by expert groups, a coproduction of knowledge and policy can be observed[15]. The activity carried out by expert groups is not, in fact, simply aimed at collecting elements of knowledge, but rather seeks to create preliminary platforms for discussion among stakeholders and to prevent difficulties at a later

[14] These analyses concerning the composition of expert groups operating in the economic and financial field were conducted by C. Schmidt-Wellenburg, *Between science, economics and politics: the changing face of political-economic European Expert Groups (1966–2018)*, in «European Politics and Society», 2025, 26, pp. 321–345.

[15] Thus, A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, cit., p. 140.

stage during the subsequent legislative process. In the activity of expert groups, the pursuit of knowledge and political agreement are intertwined behaviors. From this perspective, expert groups constitute negotiation forums. Therefore, expert groups do not stand in opposition to politics, but rather constitute an expression thereof[16].

Having thus established that the expert groups consulted by the European Commission do not perform a merely scientific activity but constitute forums for discussion and negotiation between scientific actors and stakeholders, it is necessary to examine their relationship with European institutions and democratic circuits. In this regard, it can be noted that the establishment of expert groups has received attention from both the Council and the European Parliament. In particular, from the late 1990s, the Council intervened directly to establish expert groups within the Commission, asserting its own scope of intervention[17]. In response to the

[16] On the relationship between the activity of expert groups and politics, see C. Robert, *Les groupes d'experts dans le gouvernement de l'Union européenne. Bilans et perspectives de recherche*, cit., p. 20; A. Gornitzka, U. Sverdrup, *Who Consults? The Configuration of Expert Groups in the European Union*, in «West European Politics», 2008, 31, pp. 725–750. On the relationship between expertise and political decision-making at the European level, see C.M. Radaelli, *The Public Policy of the European Union, Whither Politics of Expertise*, cit., pp. 757–774; E. Fouilleux, J. de Maillard, A. Smith, *Technical or Political? The Working Groups of the EU Council of Ministers*, in «*Journal of European Public Policy*», 2005, 12, p. 609; A. Elömaki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, cit.; J. Newman, J. Clarke, *The Instabilities of Expertise: Remaking Knowledge, Power and Politics in Unsettled Times*, in «Innovation: the European Journal of Social Science», 2018, 31, pp. 40–50; M. Góra, C. Holst, M. Warat (eds.), *Expertisation and Democracy in Europe*, Routledge, London-New York 2018.

[17] On this topic, see C. Robert, *Les groupes d'experts dans le gouvernement de l'Union européenne. Bilans et perspectives de recherche*,

exercise of this power, the Commission affirmed its exclusive prerogative to establish expert groups to consult. The European Parliament, on the other hand, intervened in relation to the establishment of expert groups to highlight how the reliance on such experts tends to shift decision-making venues and risks undermining the democratic process. This latter criticism has been reiterated, as already mentioned, by legal scholars and by certain minority components within expert groups. In particular, NGOs participating in expert groups often denounce the risks of a «corporate capture», given the significant presence of enterprises and economic stakeholders within these expert bodies, which tends to imbalance their functioning[18].

Further criticisms directed at expert groups concern the methods of expert selection, transparency guarantees, and the risk of conflicts of interest[19]. In the face of these criticisms, the European Commission has not remained inactive, but has instead defined an institutional framework aimed at regulating the activity of expert groups. Formally, the role of expert groups was recognized in 2001 by the White Paper on European Governance[20]. This act was followed by a progressive refinement

cit., p. 16.

[18] On this issue, see E. Radulova, J. Breuer, A. Spendzharova, *The European Commission's Expert Groups: Adapting to the Contestation of Expertise*, in *The Contestation of Expertise in the European Union*, ed. by V. Abazi, J. Adriaensen, T. Christiansen, Palgrave Macmillan, Cham 2021, p. 91.

[19] For an overview of the criticisms raised in the literature regarding expert groups and, more broadly, experts at the European level, see V. Abazi, J. Adriaensen, T. Christiansen (eds.), *The Contestation of Expertise in the European Union*, Palgrave Macmillan, Cham 2021.

[20] European Commission, *European Governance. A White Paper*, Brussels, 2001.

of the regulations concerning expert groups through the adoption of horizontal rules in 2005, 2010, and 2016[21]. In particular, the 2005 guidelines introduced the Commission's public register of expert groups, which provides information on experts, the mandate of expert groups, and discussion topics, thereby ensuring greater transparency and facilitating the identification of potential conflicts of interest. This register undoubtedly represents a valuable tool for identifying experts who have provided consultancy services to European institutions over time; however, it still presents critical elements today. Specifically, it is left to the experts themselves to fill the register and decide how to indicate their title of participation in the expert groups, resulting in a tendency to register as independent experts, regardless of their professional background. Such a registration method risks undermining the objective of detecting potential conflicts of interest[22].

The horizontal rules adopted in subsequent years reveal an increasingly detailed framework, showing a growing attention to expert selection methods. Indeed, in 2005, the identification of expert group members was left to the Commission's discretion, with the publication of a call being a mere possibility; in the 2010 horizontal rules the call was identified as the preferred instrument for selecting experts. Finally, in the 2016 Decision, the issuance of a call is identified as the ordinary method for selecting experts. The provision of a call as the ordi-

[21] See C(2005) 2817 of 27.7.2005; C(2010) 7649 final of 10.11.2010 and Commission Decision C(2016) 3301.

[22] This criticism is shared by J. Metz, *Expert groups in the European Union: A sui generis phenomenon?*, cit., p. 269; E. Krick, A. Gornitzka, *Tracing scientisation in the EU Commission's expert group system*, cit., p. 320.

nary instrument for expert selection is relevant both for providing a framework within which the Commission is called upon to exercise its power to identify experts and for ensuring transparency and detecting possible conflicts of interest. However, the horizontal rules do not provide indications on the competences and experiences that experts must possess. Furthermore, they leave the regulation of working methods to the internal rules of procedure of the expert groups. These profiles still represent elements of vulnerability in the Commission's reliance on expert groups. The most delicate aspect, regarding which the Commission continues to display a lack of intervention, concerns the risk of undue corporate influence, i.e., an imbalance in the internal functioning of expert groups that leads economic stakeholders to prevail in the group's dynamics. Such a risk must be carefully examined considering the impact of the opinions rendered by expert groups on the European Commission's activity. In relation to this profile, as highlighted in academic literature, the Commission is still seeking a fair balance[23]. Despite this criticality, it does not seem possible to agree with the view that regards expert groups as a threat to democracy. Indeed, while some critical issues are evident in their internal mechanisms, the valuable functions performed by expert groups are undeniable: providing the Commission with additional knowledge and offering prior legitimation in relation to the choices it will be called upon to make. From this perspective, expert groups are characterized as partici-

[23] Thus, E. Radulova, J. Breuer, A. Spendzharova, *The European Commission's Expert Groups: Adapting to the Contestation of Expertise*, cit., p. 91.

patory instruments that, although perfectible, broaden the scope of democracy without imposing constraints on European institutions. The participatory significance of expert groups for the democratic process can also be inferred from the terminology used in the European lexicon: from 1960 to 1970, the term "consultation" was commonly used in relation to the intervention of expert groups; from 1980 to 1990, the term "partnership" was employed; while from 1990 onwards, reference is usually made to the "participation" of expert groups. In conclusion, if expert groups represent an additional forum for participation, it appears even more important to ensure and enhance transparency regarding both the selection of experts and the working methods, and to guarantee a proper balance among the different components. Expert groups can provide a valuable contribution to democracy as long as these requirements are met.

3. Scientific advice to the European Commission: the Scientific Advice Mechanism

While expert groups predominantly represent advisory bodies where scientific expertise merges with political-economic evaluations, it is possible to find other advisory bodies to the European Commission in which the profile of scientific advice appears exclusive. This is the case of the Commission's Chief Scientific Adviser, replaced today by the Scientific Advice Mechanism.

The position of the Chief Scientific Adviser was established in 2012, although as early as 2009 the President of the European Commission, José Manuel Barroso, had proposed its creation to receive stable scientific advice regarding the development prospects of the Eu-

ropean Union[24]. In particular, scientific advice was perceived as a valuable instrument for responding to the economic-financial crisis. A similar approach emerged in the previous section from the analysis of the composition of expert groups operating in economic-financial matters. The European Union therefore appears well aware of the key role of experts in managing crisis situations and in long-term strategic planning. President Barroso, in establishing the Chief Scientific Adviser, was inspired by the model of scientific advice present in the United Kingdom, Canada, Australia, and New Zealand[25]. The reference was thus to a precise model of scientific advice, characterized by the stable presence of a technical-scientific advisory body alongside the executive, aimed at outlining scientific development strategies and providing opinions on new scientific and technological challenges[26].

The British advisory model is characterized not only by the permanent presence of a technical-scientific body alongside the decision-maker, but also by the adoption of a centralized and top-down structure. Specifically,

[24] See the speech by the President of the European Commission, José Manuel Durão Barroso, "*Passion and responsibility: Strengthening Europe in a Time of Change - European Parliament Plenary Strasbourg*", 15 September 2009, available at ec.europa.eu/commission/presscorner/detail/en/SPEECH_09_391.

[25] This reference to a precise model of scientific advice is reported by S. Tsui, *Contesting Concentrated Scientific Power: the Case of the European Commission's Chief Scientific Adviser*, in *The Contestation of Expertise in the European Union*, ed. by V. Abazi, J. Adriaensen, T. Christiansen, Palgrave Macmillan, Cham 2021, p. 201.

[26] Regarding the British model of technical-scientific advice, see C. Marchese, *Il ricorso all'expertise da parte dell'esecutivo e nella dinamica dei rapporti tra esecutivo e legislativo*, in «*Federalismi.it*», 2025, 26, pp. 60–85.

a scientific advisory body operates alongside the executive, coordinating other advisory bodies embedded within individual departments. In addition to the presence of a permanent, centralized, and hierarchical advisory structure, the British model is distinguished by pronounced transparency in the selection of experts and in the functioning of the advisory body, as well as by the provision of codes of conduct for experts to prevent and counteract conflicts of interest. Considering these characteristics, only a partial correspondence of the European Chief Scientific Adviser model with the British model can be observed. In particular, while the placement of the Chief Scientific Adviser alongside the Commission President might align with the British model, both the systemic vision of technical-scientific advice and the levels of transparency appear to be lower.

Indeed, in 2012, the Chief Scientific Adviser was established by the President of the European Commission and reported directly to him through trust-based mechanisms[27]. The selection criteria were not made public, nor was transparency guaranteed regarding the advisory activity carried out. These critical issues, together with the concentration of the advisory function in a single expert, led in 2014 to the abolition of the Chief Scientific Adviser, replaced by the Scientific Advice Mechanism (SAM). The latter has a completely different structure and operating modalities from the Chief Scientific Adviser. The Scientific Advice Mechanism is based on the presence of a Group of Chief Scientific Advisors

[27] In 2012, the President of the European Commission appointed the scientist Anne Glover as Chief Scientific Adviser; between 2006 and 2011, she had already served as Chief Scientific Adviser in Scotland.

(GCSA), a collegial body composed of seven members from different countries with the task of providing scientific advice to the Commission in its plenary and not just to the President. In addition to this task, the Group of Chief Scientific Advisors supports the Commission in identifying innovative topics for which scientific advice would be useful and provides recommendations to improve interactions between the Commission and independent experts.

In its activity, the Group of Chief Scientific Advisors is supported by the SAPEA Consortium (Scientific Advice for Policy by European Academies) and, at an administrative level, by the secretariat. The members of the Group of Chief Scientific Advisors are appointed by the Commissioner responsible for Research, Science and Innovation following a selection based on a call for nomination. Names are proposed by the relevant scientific communities. Once the nominations are received, the Commission, together with an identification committee, draws up a shortlist from which the experts are chosen[28]. The term of office is three years, renewable once, and the members of the college meet between four and six times a year.

In addition to the provision of a collegial structure, the Scientific Advice Mechanism differs from the Chief Scientific Adviser due to the high standards of transparency it adheres to. The Scientific Advice Mech-

[28] Regarding the appointment procedures for experts, see the Commission Decision of 16 October 2015 setting up the High Level Group of Scientific Advisors, which in Article 3 regulates the appointment procedures and selection criteria, giving weight to participation in advisory councils, government scientific advisory councils, and academies.

anism is activated upon request from the Commission. However, from 2023, the Council and the European Parliament can also submit requests for opinions, although these are channelled through the European Commission. The Group of Chief Scientific Advisors can also solicit requests for opinions from the Commission on new scientific topics that may be of interest to the Commission itself. As can be noted, the Scientific Advice Mechanism demonstrates greater embeddedness in the institutional framework.

The opinions rendered can pertain to various areas, such as legislation, communication, strategies, and political negotiations. Over time, there has been a rearticulation of the methods of responding to requests for opinions: in particular, not only scientific opinions can be adopted, but also evidence review reports and statements. The members of the Group of Chief Scientific Advisors, despite having different scientific competences, do not work in isolation. Given the varied nature of the requests, the Group of Chief Scientific Advisors relies on SAPEA, a consortium bringing together over 120 academies from more than 40 countries, to conduct research activities. The research carried out by SAPEA forms the basis for discussion within the college of Chief Scientific Advisers. Therefore, when the Scientific Advice Mechanism receives a request for an opinion, the first step is the creation of a working group of independent experts under the auspices of the SAPEA consortium. The working group provides the knowledge for drafting the policy recommendations. The members of the working group are chosen for their scientific excellence and do not receive remuneration for their work. The selec-

tion is based on a call and is entrusted to a committee composed of members of the SAPEA board and independent experts. Occasionally, the SAPEA Board can directly provide a list of experts to consult. This method of identifying experts represents an exception that can only be resorted to in urgent cases. Regarding the members of the working group, the absence of conflicts of interest is verified, and declarations of interest are published online. Working groups hold private meetings, but members of the Group of Chief Scientific Advisors can participate in these meetings. The first draft report is discussed in an expert workshop. The report is then subjected to a double-blind peer review process, and the names of the reviewers are made public in the final report. The report is finally transmitted to the SAPEA Board so that it can also be examined by the college of Chief Scientific Advisers.

Focusing on the opinions rendered from 2019 to date, it can be observed that eleven scientific opinions have been produced on disparate subjects, from climate change to the use of AI. In particular, during the pandemic crisis, a first statement on Covid-19 was adopted in June 2020, followed in November 2020 by the statement "Improving pandemic preparedness and management." From a broader perspective, to provide guidance on crisis management, advice on "Strategic crisis management in the EU" was published in November 2022. Several scientific opinions concern health protection, among which we can recall the opinion of June 2020 on "Adaptation to the health effects of climate change in Europe", the opinion of March 2022 on "Improving cancer screening in the European Union", and most recently, the opinion

of November 2024 "One Health Governance" presented at the 2024 European Public Health Conference. During the first Von Der Leyen presidency, a significant part of the opinions were rendered on the European Green Deal. In particular, it is possible to cite the 2020 opinion on "Biodegradability of plastics in the open environment", the advice of June 2021 on "A systemic approach to the energy transition in Europe", and the 2023 advice on "Towards Sustainable Food Consumption". Furthermore, the topic of artificial intelligence was addressed in the April 2024 opinion titled "Successful and timely uptake of artificial intelligence in science in the EU"[29]. As can be

[29] For a detailed analysis of these opinions and their follow-up, see the report drawn up by the European Commission, *Scientific Advice Mechanism. Outputs and Impacts*, Brussels, 2025. In particular, it can be noted that the June 2020 statement on Covid-19 and the subsequent statement "*Improving pandemic preparedness and management*" formed the basis for proposing the regulation on serious cross-border threats to health and Regulation (EU) 2022/2370, which extended the mandate of the European Centre for Disease Prevention and Control; the opinion "*Strategic crisis management in the EU*" served as the basis for the European Commission Recommendation of 8 February 2023 "*On Union disaster resilience goals*". The March 2022 opinion "*Improving cancer screening in the European Union*" paved the way for the Recommendation "*Strengthening prevention through early detection: A new approach on cancer screening*". The June 2020 opinion on the health effects of climate change inspired the European Parliament resolution on the "*EU Strategy on Adaptation to Climate Change*". Furthermore, the 2020 opinion on "*Biodegradability of plastics in the open environment*" informed the Commission Communication on a "*Policy Framework on Biobased, Biodegradable and Compostable Plastics*". The June 2021 opinion on "*A systemic approach to the energy transition in Europe*", followed by the October 2021 statement, formed the basis for the Commission's report to the European Parliament and the Council on "*Progress on competitiveness of clean energy technologies*". The 2023 opinion "*Towards Sustainable Food Consumption*" is cited across key strategic documents (including the Farm to Fork Strategy and the Strategic Dialogue on the Future of EU Agriculture). Finally, the 2024 opinion on the "*Successful and timely uptake of artificial intelligence in science in the EU*" laid the groundwork for the Commission's Competitiveness Compass. As can be observed, opinions issued through the Scientific Ad-

noted, the opinions delivered through the Scientific Advice Mechanism concern the major challenges facing the European Union. This aspect helps us understand the strategic significance of technical-scientific advice. Advisory mechanisms such as the Scientific Advice Mechanism operate on a totally different plane from expert groups: they do not engage in political-economic negotiations, but rather provide knowledge and long-term projections to European institutions, and in doing so, they contribute to shaping the future of the Union.

4. Resort to expertise: between the pursuit of knowledge, compromises, and democracy.

The preceding analysis demonstrates the extent to which the European Commission relies heavily on expertise. However, behind this term lie diverse conceptions of expertise. As demonstrated by the reconstruction concerning expert groups and the Scientific Advice Mechanism, expertise should not be understood exclusively as scientific expertise; on the contrary, there are multiple forms of expertise that allow for the attribution of relevance also to professional experience in a given sector. The qualification as an expert does not, therefore, necessarily coincide with that of a scientist. The choice regarding the type of expertise to prioritize rests with the institutions. Depending on the type of expertise that institutions intend to valorise, the types of activities performed and the objectives pursued by experts may vary. As highlighted, the recourse to purely scientific exper-

vice Mechanism constitute an important foundation for defining European strategies.

tise allows for the acquisition of knowledge useful not only in the short term, but also for broad-range planning. Conversely, when advisory bodies are composed of experts with diverse professional backgrounds, they tend to focus on the current moment and transform into a forum where different viewpoints converge. In such cases, the advisory bodies offer the institutions complex elements of knowledge to decipher reality and allow for a preliminary understanding of support for a potential initiative. The institutions' choice regarding the type of expertise to leverage, the selection of experts, the definition of advisory bodies' tasks, and their working methods is therefore decisive. These elements allow us to shed light on a profile rarely given attention: the politics of expertise. Indeed, studies on expertise generally focus on concerns surrounding the scientification of politics; conversely, almost no attention is paid to the politics of expertise and the risks of a politicisation of science[30]. These aspects, on the contrary, appear extremely interesting when studying the relationships between technical-scientific advisory bodies and institutions. In particular, the term politics of expertise specifically refers to the institutions' choices regarding the modalities of recourse to expertise, the selection of experts, and the functioning of advisory bodies.

[30] Regarding the risks of a scientification of politics and a politicisation of science, see A. Gornitzka, U. Sverdrup, *Enlightened Decision Making? The Role of Scientists in EU Governance*, cit., pp. 125–150. For an overview of the concept of the politics of expertise, see A. Elömaki, T. Haapala, *Politics of expertise in the European Parliament: discursive constructions and contestations of expertise by party-political actors*, cit., p. 321, who attribute to this concept the processes through which ideas of expertise are constituted and institutionalised.

With regard to the politics of expertise pursued at the European level, this paper has highlighted the adoption of a broad approach to expertise, resulting in the valorisation of diverse forms of knowledge. In particular, it was possible to observe a tendency to foresee a varied composition of experts within expert groups and a predominantly scientific composition in the case of the Scientific Advice Mechanism. Both types of expertise are functional in providing the European Commission with valuable insights, which can enhance the legitimacy of its decisions. In expert groups, however, scientific input intertwines with politico-economic considerations, allowing the Commission to capture stakeholder demands at an early stage.

Such forms of resort to expertise could theoretically give rise to various types of risks emphasised in the literature: in particular, the Scientific Advice Mechanism may carry the risk of a scientification of politics, while in the case of expert groups, the main risk lies in displacing the decision-making process beyond established democratic arenas. In both cases, these fears are unfounded. As for the Scientific Advice Mechanism, the risk of a scientification of politics appears inconsistent, as it is a sporadically utilized instrument, even if to secure advice on crucial issues for the development of the Union. In the case of expert groups, the risk of technocracy does not arise *ab origine* because, as we have verified, the composition of these groups appears heterogenous, and their very activity implies negotiation and a balancing of diverse interests. As for the risk of shifting decisions outside the institutional circuit, this risk is absent because the indications provided by expert groups – like

the opinions rendered by the Scientific Advice Mechanism – are not binding on the Commission; indeed, their contribution expands participatory engagement by providing additional viewpoints. It is clear, however, that such a reconstruction, which views recourse to expertise as an additional form of participation and an enrichment of the evaluative process, functions only if transparency is guaranteed and if conflicts of interest are rigorously combated. From this perspective, expertise does not conflict with democratic dynamics but rather is permeated by them, both in terms of the contribution provided to European institutions and in terms of internal operating mechanisms. Indeed, both expert groups and experts within the Scientific Advice Mechanism are called upon to act in compliance with the majority principle: thanks to the majority principle, diverse viewpoints find their synthesis, and in function of the majority principle, individual positions are overcome. As noted by scholars, experts are artisans of compromise[31].

Having re-situated expertise within the democratic circuit and contained the fears of a scientification of politics, it can be highlighted that recourse to expertise does not seem to be a reversible process. Such an assertion, with regard to the European sphere, finds its foundation in the expansion of the European Union's functions, the specific nature of its areas of intervention, the proliferation of technology, and the rapid scientific advancements of the contemporary world. Expertise today appears to be an indispensable element in pub-

[31] Thus, C. Robert, *Les groupes d'experts dans le gouvernement de l'Union européenne. Bilans et perspectives de recherche*, cit., p. 26.

lic decision-making processes: it contributes to making public action more rational and efficient, in addition to constituting a powerful legitimization strategy. As noted in the literature: «*Knowledge, rather than budget, is the critical resource in policy making and the Commission utilizes this resource extensively*»[32].

[32] This statement is due to C. M. Radaelli, *The Public Policy of the European Union: Whither Politics of Expertise?*, cit., p. 759.

Aldo Iannotti della Valle,
Giacomo Antonio Lombardi[1]

The common defence as a driver for a more integrated Europe

Summary: 1. *L'Europe se fera dans les crises…* – 2. *…et elle sera la somme des solutions apportées à ces crises*: instruments of a renewed CSDP. – 3. International perspectives, between the UN and NATO. – 4. Some conclusions from a constitutional and EU law perspective.

1. L'Europe se fera dans les crises…

As Jean Monnet famously stated: '*J'ai toujours pensé que l'Europe se ferait dans les crises, et qu'elle serait la somme des solutions qu'on apporterait à ces crises*'[2]. Monnet's insight remains relevant, as the development of European integration — now more than ever — shows that what may be defined as 'constituent moments' tend to emerge from periods of crisis.

[1] The present work is the result of a joint reflection by the authors; however, sections 1 and 4 may be attributed to Aldo Iannotti della Valle, while sections 2 and 3 may be attributed to Giacomo Antonio Lombardi. For a broader discussion of these issues, see: A. Iannotti della Valle, G.A. Lombardi, *L'afflato costituente della difesa comune europea: da una somma di Stati membri a una più stretta Unione*, in «Federalismi.it», XXXI (2025), p. 62-91.

[2] J. Monnet, *Mémoires*, Fayard, Paris 1976, p. 488.

Most recently, the need to revitalise the European economy following the shock of the COVID-19 pandemic led to the adoption of the Next Generation EU programme. Its most innovative feature – bringing it close to a genuine constituent moment – was the assumption of common debt by the Member States in order to finance it. From a substantive point of view, this method has led to greater integration without a formal proposal to amend the Treaties[3], which would have encountered the same objective difficulties that have already blocked the project of a Constitution for Europe at the beginning of the millennium[4]. Turning to the crises of a warlike nature, the protracted conflict in Ukraine, the resumption of hostilities in the Middle East, and the new international scenario unfolding also as a result of the 2024 US presidential elections, are inevitably having repercussions within the European Union as well. First and foremost, they are leading to a growing debate about defence expenditure in Europe, and, consequently, about relations among the Member

[3] For a more detailed discussion of this thesis, see: A. Iannotti della Valle, *Il decreto legge ai tempi del PNRR: verso una ordinaria straordinarietà*, in «Federalismi.it», XXIV (2024), p. 157 ff.; see also: G. Casalone, *Il PNRR tra vincoli e opportunità di finanza pubblica*, in *Il Piano Nazionale di Ripresa e Resilienza. Una prospettiva costituzionale*, eds. G. Casalone, A. Sciortino, I. Massa Pinto, ES, Naples 2023, p. 9, who observes that the programme 'is probably the most innovative economic policy instrument implemented within the European Union since its foundation and, in its design, represents the first embryonic form of a federal fiscal policy for the EU'.

[4] *Treaty establishing a Constitution for Europe*, 29 October 2004. As is well known, the European Constitution never entered into force following its rejection in the ratification referendums in France and the Netherlands. More recently, on the concept of the 'constitutionalisation' of the European Union, see: A. Ruggeri, *Se ed in che senso è appropriato discorrere di una "costituzionalizzazione" dell'Unione europea*, in Id., *"Itinerari" di una ricerca sul sistema delle fonti. Studi dell'anno 2025*, Vol. XXIX, G. Giappichelli Editore, Turin 2026, p. 29-69.

States themselves. It is debated whether the Next Generation EU method may also constitute a model for European defence. The present contribution will focus on this very hypothesis.

Monnet's conception of a 'Europe forged in crises' is thus rendered particularly relevant by the 2020s economic and military crises.

As stated by Robert Schuman in its celebrated *Declaration* of May 1950, 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity'[5].

If Europe is gradually built, the contribution made over the last five years to European construction appears particularly significant.

Next Generation EU already appears to function as a 'model'. This is also suggested by Mario Draghi in his *Report* of 9 September 2024, which envisages the assumption of common debt as a method to enhance European competitiveness[6].

In the defence sector, the so-called SAFE will allow common defence to be even more 'common', strengthening integration in the military field, significantly reducing the possible residual risks of intra-European conflicts and, at the same time, strengthening the path towards a more united Union.

In the long term, spending on common defence means spending less on armaments but more effectively, avoiding waste and enhancing the Union's influence

[5] R. Schuman, *Declaration*, 9 May 1950.

[6] M. Draghi, *The future of European competitiveness. Part A | A competitiveness strategy for Europe*, 9 September 2024, p. 66.

on the geopolitical stage, which would otherwise remain faint to the point of irrelevance. It also means setting aside nationalist impulses, which typically lead to the strengthening of national armies, to fully embrace the ideals that have supported European integration from the outset. It is no coincidence that Schuman himself, in the aforementioned 1950 *Declaration*, spoke of a 'first concrete foundation of a European federation indispensable to the preservation of peace'[7].

The *leitmotiv* to be pursued should therefore be to spend less, but to spend together and better[8].

Success in this regard would have positive implications on several fronts. When the European Union has finally equipped itself with a true common defence and with a renewed CSDP, it could be regarded as a global power. Within the Union, the Member States would be bound by tighter financial agreements for the assumption of common debt, thus experiencing a new and markedly strengthened integration, with a corresponding reduction of national fragmentation in favor of the 'community'.

Such an arrangement would also guarantee enhanced protection of the body of rights of European constitutionalism as well as respect for the rule of law[9],

[7] R. Schuman, *op. cit.*.

[8] By way of introduction, see the reflections of: S. Sileoni, *Per la difesa comune non basta solo spendere*, in «La Stampa», 13 March 2025, according to whom 'it would be appropriate to draw a fundamental lesson from the experience of the NRRP: it is worse not to have funds than to have them and be unable to spend them (properly). The risk is not only that of wasting them on unproductive expenditure […]. But also, more importantly, that of carrying out a series of differentiated national investments whose sum does not amount to a common defence, which, before being what the EU aims for, is what is required to ensure greater deterrent capacity'.

[9] For further discussion, see also: *Rule of law come costituzionalismo*, ed. T.E. Frosini, Il Mulino, Bologna 2023.

thereby enabling the Union to withstand external illiberal or authoritarian tendencies. Overall, this would be consistent with the principles of international law — without conflicting with NATO commitments —, while also ensuring a more effective application of Article 51 of the Charter of the United Nations.

Moreover, the framework thus outlined would not contradict Article 11 of the Italian Constitution, as it could fall within the scenarios permitted under that provision, as will be further examined.

It may be hoped that, from this *lustrum horribilis* studded with crises, a 'new' Union may emerge, firm in its values but with innovative instruments for their protection. As preconised by Jean Monnet, the new Europe will necessarily be 'the sum of the solutions adopted for those crises'[10].

2. *…et elle sera la somme des solutions apportées à ces crises: instruments of a renewed CSDP.*

The long and troubled path of the CSDP has, in recent years, reached its culmination[11]. The Russian in-

[10] On the continued relevance of Jean Monnet's thought, in a predominantly but not exclusively economic perspective, see, most recently: M. Buti, *Jean Monnet aveva ragione? Costruire l'Europa in tempi di crisi*, Egea, Milan 2023, part. p. 207 ff.. Authoritatively takes up the concept of «*méthode Monnet*»: M. Draghi, *La méthode Monnet: sa pertinence pour l'Europe hier et aujourd'hui*, in Aa.Vv., *Liber Amicorum per Antonio Tizzano. De la Cour CECA à la Cour de l'Union: le long parcours de la justice européenne*, G. Giappichelli Editore, Turin 2018, p. 345-350, who, in particular at p. 349, recalls that '*Pour asseoir le soutien au projet européen, il convient en effet, d'une part, de démontrer les bienfaits de la coopération, mais aussi, d'autre part, de coopérer efficacement. Et c'est ici que les autres enseignements de la méthode Monnet sont essentiels*'.

[11] On the origins of the CSDP and of European common defence, in a vast body of literature, see: L. Micheletta, *Ex pluribus... 25 e*

vasion of the Donbass *oblasti*[12] has made increasingly evident the need for the European Union to equip itself with an effective capacity for military deterrence, coexisting with and complementary to NATO, albeit centrally coordinated within the EU.

Military expenditure has been regarded as insufficient, above all because it has so far followed national and non-unitary criteria: not enough is spent, and the expenditure is not spent jointly. The idea of a common debt for defence had already been suggested by authoritative commentators[13], as well as by

più: l'allargamento dell'Unione Europea in una prospettiva storica, in «La Comunità Internazionale. Trimestrale della Società Italiana per l'Organizzazione Internazionale (SIOI)», II (2005), p. 246-251; F. Graziani, *Lo spazio di sicurezza europeo. L'Unione europea e i suoi rapporti con la NATO e con l'OSCE*, ES, Naples 2006, p. 15 ff.; R. Adam, A. Tizzano, *Manuale di diritto dell'Unione europea*, G. Giappichelli Editore, Turin 2017 (2ª ed.), p. 17 ff., 856 ff.; E. Carli, *La Politica di Sicurezza e di Difesa Comune dell'Unione europea. Profili di responsabilità internazionale*, G. Giappichelli Editore, Turin 2019, p. 9 ff.; V. Eboli, *Difesa Comune Europea e Sovranità Nazionale. Analisi e forme di possibile convergenza tra concetti apparentemente contrastanti*, Centro Militare di Studi Strategici, Rome 2021, p. 9 ff.; S. Izzo, *La politica estera, di sicurezza e di difesa comune*, in G. Tesauro, *Manuale di diritto dell'Unione Europea*, Vol. II, eds. P. De Pasquale, F. Ferraro, ES, Naples 2021, p. 404 ff.; E. Greppi, *Politica estera e difesa europea*, in *Sicurezza e difesa comune dell'Unione Europea*, eds. M. Vellano, A. Miglio, CEDAM, Padua 2023, p. 12 ff.; L. Paladini, *La graduale definizione di una politica di difesa comune dell'UE*, in «DPCE Online», III (2023), p. 2397 ff.; L. Micheletta, *Veni Creator Spiritus. La sicurezza europea in una Europa trasformata*, in «Rivista di Studi Politici Internazionali», I (2024), p. 13 ff.; B. Nascimbene, *Contenuti e cogenza del diritto dell'Unione europea in tema di aiuti bellici, politiche di difesa e solidarietà militare tra gli Stati membri*, in «Rivista AIC», IV suppl. (2025), p. 144-146. See also: S. Mattarella, *Italy's new defence model and its contribution to CESDP*, trans. G. Tonne, in «The International Spectator», XXXVI (2001), p. 61-66.

[12] B. Sabene, *Ucraina*, Meltemi Editore, Sesto San Giovanni 2023.

[13] Among others, see in particular: F. Giavazzi, *Il debito comune? Oggi è possibile*, in «Corriere della sera», 17 February 2024; F. Giavazzi, *Il debito pubblico a volte fa bene*, in «Corriere della sera», 6 December 2024.

figures such as Mario Draghi[14] or Paolo Gentiloni[15]. Through its implementation, common defence may become a field of growth for the European Union, both economically and from the perspective of European integration[16], as already *ab origine* envisaged by Alcide De Gasperi and the founding fathers[17].

The point is convincingly articulated in the *Draghi Report*, which refers to a 'fragmentation' in the European defence sector[18]. Member States tend to act in-

[14] M. Draghi, *Audizione al Senato della Repubblica sul Rapporto sul futuro della competitività europea*, 18 March 2025, according to whom: 'Recourse to common debt is the only viable path'.

[15] P. Gentiloni, *Debito comune scelta urgente*, in «la Repubblica», 24 March 2025.

[16] M. Draghi, *The future of European competitiveness. Part B | In-depth analysis and recommendations*, 9 September 2024, p. 159 ff.; F. Giavazzi, V. Guerrieri, G. Lorenzoni, *Boosting EU demand and a stronger euro would prevent trade war*, in «Politico», 3 February 2025.

[17] V. Martín de la Torre, *L'Europa raccontata dai padri fondatori*, Rubbettino, Soveria Mannelli 2019, p. 133 ff.. For further insight into the specific features of the EU economic model, see: N. Boccella, F. D'Orlando, A. Rinaldi, *Macroeconomia*, LED, Milan 2014, p. 245 ff..

[18] See: M. Draghi, *The future of European competitiveness. Part B*, cit., p. 166: 'For historical reasons, governance at the EU level of defence industrial policy is weak and fragmented. EU Member States have lacked the political will, as well as an effective mechanism to pool resources and jointly finance, procure, maintain and upgrade defence products or technologies. Similarly, they were largely unwilling to integrate their defence industrial capacities to achieve efficiencies and scale. The EU does not have a centralised authority entrusted with the appropriate structure to manage industrial defence and security initiatives, to provide funding on a more integrated basis, or with a clear political mandate to act in this domain. This is in part also related to the traditional division of roles and responsibilities between the EU Common Foreign and Security Policy (CFSP), the Single Market and industrial policies under the Treaty on the Functioning of the European Union (TFEU). The current institutional set-up would need to be strengthened to define a new governance model for defence industrial policy between EU bodies (the European Commission, the European External Action Service (EEAS) and the European Defence Agency (EDA))'.

This concept was reiterated by the former Italian Prime Minister and President of the European Central Bank in a keynote speech to

dividually rather than according to a coherent EU-level approach, thus causing, albeit involuntarily, a slowdown in growth potential. This situation calls for a response based on deeper European integration, in the awareness that 'the fragmentation of European spending across member States reduces its effectiveness'[19].

The ultimate objective must be to act not as 27 separate entities, but as a single Union.

In an effort to follow up on these developments, in March 2025 the von der Leyen Commission II intervened with a series of proposals aimed at strengthening the CSDP.

Of particular relevance, given the scale of the resources involved, was the introduction of *ReArm Europe* (subsequently renamed *Readiness 2030*), a package proposing investments of approximately €800 billion in the military and defence sector, shortly followed by the *White Paper for European Defence – Readiness 2030*[20].

the European Parliament in February 2025: 'the report addressed several vulnerabilities in Europe, one of which is our defence system, where fragmentation of industrial capacity along national lines prevents the necessary scale. Even if we are collectively the third largest spender in the world. We would not be able to satisfy a ramp up in defence expenditure through our own productive capacity. Our national defence systems are neither interoperable nor standardised. In some key parts of the supply chain, this is one of the many examples where the European Union is less than the sum of its parts').

[19] R. Garofoli, B.G. Mattarella, *Governare le fragilità. Istituzioni, sicurezza nazionale, competitività*, Mondadori, Milan 2025, p. 66.

[20] On the CSDP instruments of 2025, see: P. Dermine, *Funding Europe's Defence. A First Take On the Commission's ReArm Europe Plan*, in «Verfaßungsblog», 5 March 2025; A. Miglio, *Risorse europee per una difesa... europea? Il Libro bianco e le proposte della Commissione per il finanziamento della difesa*, in «Eurojus», II (2025), p. 159 ff.; F. Munari, *La politica di sicurezza e difesa comune al tempo di Trump*, in «Unione Europea e diritti», I (2025), p. 97 ff.; B. Nascimbene, op. cit., p. 150 ff..

The aim is to create a deterrent force such as to prevent future wars of aggression, thereby guaranteeing security: to do so, however, it is necessary to identify adequate funds.

To this end, in May — attracting understandable criticisms due to the exclusion of the European Parliament from the decision-making process, which led it to bring an action before the Court of Justice[21] — the SAFE (*Security Action For Europe*) was introduced[22]. Guaranteed by the EU budget, it allocates €150 billion, raised through common borrowing, to finance Member State investment in the defence sector.

Among the most recent instruments within the CSDP, at the time of writing, figures the *EU Defence Readiness Omnibus*, presented by the Commission in June in order to introduce bureaucratic and administrative simplifications to support the implementation of a common market for the defence industry[23].

Steps are therefore being taken forward towards

[21] On the exclusion of the only representative body, see first of all: B. Nascimbene, *op. cit.*, p. 153 ff., as well as: E. De Capitani, *Come ridurre il crescente deficit democratico della politica di difesa europea?*, in «Eurojus», II (2025), p. 144 ff. On the action brought by Parliament (case C-560/25, *European Parliament v. Council*, 20 August 2025), see: L. Paladini, S*i vis pacem, para pecuniam (et statim utere). Presupposti e contenuti del "riarmo europeo"*, in «Queste istituzioni», III (2025), p. 229 ff..

[22] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument.

SAFE is modelled on the earlier example of the European instrument for temporary *Support to mitigate Unemployment Risks in an Emergency* (SURE; Council Regulation (EU) 2020/672 of 19 May 2020). About SAFE, see: F. Fabbrini, *Regole fiscali e spese per la difesa: l'impatto di Trump sulla costituzione economica europea*, in «Diritto pubblico comparato ed europeo», III (2025), p. 481 ff.

[23] B. Nascimbene, *op. cit.*, p. 152 ff..

greater European integration also in the defence field.

The mechanism that above all arouses interest is the aforementioned SAFE. Introduced in May 2025 following the spirit assumed by the *Draghi Report*[24] on the matter, as well as by the less widely discussed *Niinistö Report*[25], it replicates, at least in part, the model of Next Generation EU[26] and SURE (*Support to mitigate Unemployment Risks in an Emergency*) by introducing a European common debt for financing in the defence sector. The envisaged €150 billion will be raised through the issuance of EU Bonds and EU Bills, guaranteed by the EU budget, contributing to an overall potential debt of up to €1 trillion. This represents the most indicative element of the new course undertaken by the European Union, albeit the smallest in purely economic terms and subject to Member State participation[27].

[24] M. Draghi, *The future of European competitiveness. Parte B*, cit., p. 159-171.

For commentary on the defence chapter, see: V. Alessandro, *La difesa europea secondo Draghi*, in «IRIAD Review. Studi sulla pace e sui conflitti», IX (2024), p. 5 ff..

[25] S. Niinistö, *Safer Together. Strengthening Europe's Civilian and Military Preparedness and Readiness*, 30 October 2024.

[26] M. Clarich, *Il Piano Nazionale di Ripresa e Resilienza tra diritto europeo e nazionale: un tentativo di inquadramento giuridico*, in «Il Corriere Giuridico», VIII-IX (2021), p. 1025 ff.; G. D'Arrigo, P. David, *Next Generation EU e PNRR italiano. Analisi, governance e politiche per la ripresa*, Rubbettino Editore, Soveria Mannelli 2022; F. Fabbrini, *Next Generation EU. Il futuro di Europa e Italia dopo la pandemia*, Il Mulino, Bologna 2022; N. Lupo, *I fondamenti europei dei Piano Nazionale di Ripresa e Resilienza*, in *Scritti costituzionali sul Piano Nazionale di Ripresa e Resilienza*, eds. D. De Lungo, F.S. Marini, G. Giappichelli Editore, Turin 2023, p. 1 ff..

[27] Art. 9 of SAFE Regulation: 'In order to finance support under the SAFE instrument in the form of loans, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions in accordance with Article 224 of Regulation (EU, Euratom) 2024/2509 (the 'Financial Regulation')'.

A further €650 billion may be mobilised by individual Member States according to more traditional and atomistic logics, namely through the activation of the safeguard clause of the *Stability and Growth Pact*, which allows, over a four-year period, an increase in public defence expenditure of up to 1.5% of GDP[28].

The combined total of European and national borrowing would thus amount to approximately €800 billion, as envisaged in the presentation of the *ReArm Europe*[29].

Points of convergence with NGEU and SURE may be identified under several aspects[30].

First, the legal basis is the same: Article 122 TFEU[31]. This provision, which allows recourse to a simplified procedure in the event of 'serious difficulties', has

[28] Article 26 of Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024. The technical modalities for activating the clause were set out in Commission Communication C(2025) 2000 final of 19 March 2025 (*Accommodating increased defence expenditure within the Stability and Growth Pact*).

This approach was explicitly supported by: S. Niinistö, *op. cit.*, p. 155 ff..

[29] U. Villani, *Dalla dichiarazione Schuman al Libro bianco sulla prontezza alla difesa europea: verso una revisione del progetto europeo?*, in «Freedom Security Justice», II (2025), p. 7 ff.

[30] A favourable position in this sense is expressed by: F. Munari, *op. cit.*, p. 112 ff..

[31] Art. 122 TFEU: '1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. 2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken'.

the advantage of facilitating rapid adoption and implementation, but entails a 'democratic *deficit*'[32] as it excludes the European Parliament from the decision-making *iter*, limiting it to being merely 'informed'.

Turning to the regulatory framework, SAFE provides 'financial assistance to Member States, enabling them to carry out urgent and major public investments in support of the European defence industry in response to the current crisis situation' (Article 1). Such assistance takes the form of a loan granted by the European Union to the Member States (Article 5), with availability extending until 31 December 2030 (Article 12).

Under Article 7, Member States wishing to access SAFE funding must submit a request to the European Commission, accompanied by a 'European defence industry investment plan', not dissimilar to the NGEU NRRPs. This plan must set out the activities to be undertaken, including the expected expenditure and any involvement of Ukraine.

All activities must be implemented through 'common procurements' (Article 16), involving at least two Member States, or one Member State with at least one EEA-EFTA State, or one Member State with Ukraine (Article 2), as well as one Member State with third countries in certain circumstances (Article 17). This is a crucial element, as it imposes a cooperative mechanism and prevents purely national allocation of funds: no financ-

[32] It is not possible to focus in this context on the constitutional implications of the marginalisation of Parliament. Reference is made, *inter alia*, to: E. De Capitani, *op. cit.*, p. 144 ff.; M. Bergo, *Rearm EU: dall'integrazione attraverso i diritti all'integrazione attraverso le armi?*, in «Bilancio Comunità Persona», II (2025), p. 70-78; B. Nascimbene, *op. cit.*, p. 153 ff..

ing is granted without a project shared by at least two countries[33].

The developments outlined above open up significant prospects and appear compatible with both the international and constitutional framework, while also having potentially far-reaching implications for the future of the European Union.

3. International perspectives, between the UN and NATO.

An advancement from the current fragmentation towards a common defence, financed through common debt, may also have a significant impact on Europe's role on the international stage.

First, the European Union could reaffirm its own primacy within the geopolitical framework. As underscored by the *Draghi Report*, the *Pax Europæa*, together with the centrality of NATO, have induced Europe to place itself under the United States' 'umbrella', thus largely renouncing its own decision-making and strategic autonomy, while at the same time consolidating a certain subordination to the USA[34].

[33] Namely those Member States of the European Free Trade Association that are also members of the European Economic Area, *i.e.* Norway, Iceland and Liechtenstein.

[34] M. Draghi, *The future of European competitiveness. Part B*, cit., p. 160: 'Public defence spending by EU Member States is insufficient in the current geopolitical environment. Thanks to a prolonged period of peace in Europe and to the security umbrella provided by the US, military spending in the EU has been in decline for fifty years. The absence of demand and long-term procurement planning has deprived the European defence industry of the ability to predict potential demand, which has in turn been reflected in decreasing industrial capacity. […] The EU's defence expenditure is currently approximately one-third of that of the US, with spending rapidly increasing in China'. See also: S. Niinistö, *op. cit.*, p. 37 ff..

From a legal perspective, a European common defence would be consistent with the possible application of Article 51 of the Charter of the United Nations[35]. The capacity to ensure effective self-defence pending a decision of the UN Security Council constitutes an essential safeguard for the protection of State integrity.

Self-help and self-defence probably represent the principal exceptions to the prohibition on the use of force. As rules of customary origin, they constitute a cornerstone of the international community and a universally recognised natural right. The International Court of Justice has reiterated on several occasions how codification *ex* Article 51 of the UN Charter does not preclude the survival of custom in the matter[36]: although the collective security system is to be preferred, this cannot exclude the right of a State to defend itself in the event of an armed attack without having to await the decision-making delays of the Security Council[37].

In practice, a single veto is sufficient to block any initiative of the Security Council, and it would be unre-

[35] Art. 51 of the Charter of the United Nations: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security'.

[36] For all: ICJ, Judgment of 27 June 1986, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, para. 176.

[37] P. Bargiacchi, *Alcune riflessioni sulla legittima difesa nel diritto internazionale (I parte)*, in «La Comunità Internazionale», III (2023), p. 439 ff..

alistic to deny that the current geopolitical situation entails a situation of stalemate, such as to pose significant obstacles to any resolution. The decisions adopted could prove contrary to the European perspective, particularly with regard to the attribution of international responsibility, reflecting a longstanding structural issue inherent in the very nature of the Security Council[38]. Moreover, the modalities of self-defence adopted by an attacked State may be contested and deemed excessive[39], even in situations of genuine armed conflict[40].

[38] 'The activity of the [Security] Council is essentially that of a police authority, aimed at maintaining social order and directed against those who disrupt that order, with the peculiarity that the Council itself determines, with full discretion, who is to be regarded as a disturber of social peace. Having been deprived by the Charter of the competence to settle international disputes, and its action limited to mere recommendations, it is inevitable that such extraordinary power to pronounce, with such serious effects, on the responsibility of States in relation to breaches of peace raises significant concerns' (G. Balladore Pallieri, *Diritto bellico*, CEDAM, Padua 1954 (2ª ed.), p. 93-94). See also: P. Ceola, *Sempre giovane. L'articolo 11 della Costituzione italiana di fronte ai nuovi scenari di guerra e di crisi internazionali*, Istituto per la storia della Resistenza e della società contemporanea nel Biellese, nel Vercellese e in Valsesia, Varallo Sesia 2017, p. 49 ff..

[39] B. Conforti, C. Focarelli, *Le Nazioni Unite*, CEDAM, Padua 2023 (12ª ed.), p. 261 ff., in which an attempt is also made to delineate the thorny question of the scope and limits of Article 51: 'Art. 51 unequivocally limits the use of force in self-defence to the specific case of response to an armed attack, namely an attack already carried out by one State […] against another; only in this case can self-defence not be regarded as a threat or breach of peace for the purposes of enforcement measures. […]. It is reiterated that the view according to which self-defence would justify preventive attacks, or attacks aimed at saving lives (humanitarian interventions) or at combating States that support terrorism […] finds no basis in the Charter. The prohibition on the use of force is expressed in Art. 2(4) in such terms as to allow no exceptions other than that contained in Art. 51, and the enforcement measures involving the use of force under Art. 42 decided by the Security Council' (p. 262).

[40] On which, however, see G. Balladore Pallieri, *Diritto internazionale pubblico*, Dott. A. Giuffrè Editore, Milan 1962 (8ª ed.), p. 250 ff., part. p. 251: 'There is certainly no self-help or self-defence in the case of a State resisting acts of war exercised by another against it: where there is

Overall, the international framework appears in clear and constant deterioration. Such a context could not only slow UN procedures beyond normal bureaucratic times, but even decisively obstruct them. It will therefore be necessary to develop instruments of self-defence that are both effective and resilient.

From this perspective, European common debt for defence appears in line with Article 51 of the UN Charter.

A common defence supported by a common debt would not conflict with Article 5 NATO[41]; on the contrary, it would strengthen its effectiveness. What emerges is thus a relationship of complementarity rather than an alternative[42]. European defence would strengthen and

an act of war, this presupposes […] the existence of a state of war, which in turn allows the use of force by both parties, so that the State repelling the enemy attack is merely exercising a freedom deriving from the existence of the state of war. A very different situation arises where unlawful violence is exercised in peacetime: if a State crosses the border with some of its agents, it is by no means implied that the State which has suffered the violation is thereby entitled, for example, to kill all foreign agents who have entered its territory. The limits of reaction, and even the possibility of reaction itself, must be governed by international law; this is even clearer where reaction is intended to prevent what is at that stage merely a threat of harm by others, as in incursions into foreign territory to prevent the commission of a harmful act against oneself. The vague concept of self-help is not sufficient'.

[41] Art. 5 of the North Atlantic Treaty: 'The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security'.

[42] On complementarity, see.: F. Salmoni, *La difesa comune eu-*

support NATO capabilities, providing more effective instruments of deterrence through coherent coordination and in line with the defined *Strategic Compass for Security and Defence*[43]. EU Member States that are also members of NATO would be able to provide a joint and far more organised support than the mere sum of 23 national defence systems. At the same time, the existence of PESCO shows how there are no real elements of conflict between the European Union and NATO, evidencing how the *North Atlantic Treaty* can coexist with tighter European defence integrations[44].

SAFE would thereby strengthen EU defensive capabilities, at the same time enhancing the Union's role

ropea come pilastro della NATO. Un esercito senza Stato per un'Europa senza sovranità, in «Costituzionalismo.it», II (2022), p. 67 ff.. Mario Draghi himself, speaking as President of the Council of Ministers at the outbreak of the war in Ukraine, stated: 'As has happened on other occasions in European history, the Union has accelerated its path of integration in the face of crisis. It is now essential that the lessons of this emergency are not wasted. In particular, we must move swiftly towards a common defence, in order to acquire genuine strategic autonomy that is complementary to the Atlantic Alliance. The threat currently posed by Russia is an incentive to invest in defence more than we have done so far. We can choose whether to do so at national or European level. My hope is that all countries will increasingly adopt a common approach. An investment in European defence is also a commitment to being allies' (M. Draghi, *Comunicazione alle Camere*, 1st March 2022).

[43] On 2022 *Strategic Compass*, see: G. Fiengo, *La Bussola strategica nel quadro degli strumenti di politica di difesa e sicurezza comune*, in «Studi sull'integrazione europea», XIX (2024), p. 227 ff. (also published as: *La Politica di Difesa e Sicurezza Comune dopo l'attacco armato della Russia in Ucraina: la Bussola strategica*, in *Autodeterminazione e diritti dei popoli. Diritti umani e democrazia, interdipendenza planetaria e sovranità [dis]armata, credibilità della giustizia*, ed. G. Stanco, Giuffrè Francis Lefebvre, Milan-Casamassima 2024, p. 194 ff.).

[44] It should nevertheless be noted that doubts were expressed by the Minister of Defence: G. Crosetto, *La difesa comune ora non è possibile nell'Unione europea. Ma solo nella Nato*, in «Corriere della sera», 19 March 2025.

within the Alliance and, concurrently, its deterrence capability, without relying blindly on the United States leadership[45]. Of NATO's 32 members, 23 are also members of the European Union: this represents more than ⅔ of the Alliance and is therefore capable of assuming a renewed strategic role in full autonomy, particularly necessary in light of recent developments concerning Greenland[46]. Recourse to SAFE would thus enable Member States to pursue their objectives in a coordinated manner compatible with national fiscal requirements, while at the same time avoiding further fragmentation of expenditure and implicitly reinforcing the Atlantic Alliance.

Ultimately, European debt for common defence may also prove beneficial for the Organization for Security and Co-operation in Europe (OSCE). Historically a symbol of cooperation on security matters, it now finds itself in a state of substantial institutional and political paralysis due to the actions of some of its members (*e.g.*, Russia and Belarus)[47]. The European Union could therefore assume a complementary role as a guarantor of dialogue between the parties, providing the OSCE with the security basis necessary to fulfil its functions.

4. Some conclusions from a constitutional and EU law perspective.

The implementation of a common defence constitutes a further step forward towards a true European

[45] F. Salmoni, *op. cit.*, p. 79 ff..

[46] A. Sharp, *Europe Confronts Trump's Greenland Ambitions*, in «Foreign Policy», 15 January 2026.

[47] A. Graef, *From crisis to strategy: The OSCE and arms control in a divided Europe*, in «ELN Policy Briefs & Reports», 14 March 2025.

Federation whose purpose is to maintain peace, in accordance with Article 11 of the Italian Constitution.

Pursuant to Article 11 of the Constitution, 'Italy rejects war', yet this does not mean that it disavows it or adopts a position of neutrality: rather, it 'agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations'[48].

[48] As regards Article 11 of the Constitution, the literature is boundless and any selection would risk appearing arbitrary. First and foremost, the principal commentaries are recalled, among which: G. Vedovato, *I rapporti internazionali dello Stato*, in *Commentario sistematico alla Costituzione italiana*, Vol. I, eds. P. Calamandrei, A. Levi, Florence 1950, p. 94-97; E. Naso, *La Costituzione italiana nell'interpretazione della Corte costituzionale. Commento sistematico. Art. 1-23*, PM Edizioni, Rome 1971, p. 278 ff.; A. Cassese, *Art. 11*, in *Commentario della Costituzione. Princìpi fondamentali: art. 1-12*, ed. G. Branca, Zanichelli, Bologna-Rome 1975, p. 565-588; M. Cartabia, R. Chieffi, *Art. 11*, in *Commentario alla Costituzione*, Vol. I, eds. R. Bifulco, A. Celotto, M. Olivetti, UTET, Turin 2006, p. 263 ff.. Among monographic works, see the classic: M. Bon Valsassina, *Il ripudio della guerra nella Costituzione italiana*, CEDAM, Padua 1955. See then, in more recent literature: C. De Fiores, *L'Italia ripudia la guerra? La Costituzione di fronte al nuovo ordine globale*, Ediesse, Rome 2002; T.E. Frosini, *Alcune osservazioni sull'Europa nella Costituzione italiana e la modifica dell'art. 11*, in «DPCE», III (2003), p. 1532 ff.; L. Carlassare, *L'art. 11 Cost. nella visione dei Costituenti*, in «Costituzionalismo.it», I (2013), p. 1 ff.; G. de Vergottini, *Guerra, difesa e sicurezza nella Costituzione e nella prassi*, in «Rivista AIC», II (2017), p. 1 ff.; Id., *La Costituzione e il ritorno della guerra*, in «Osservatorio AIC», III (2022), p. 71 ff.; N. Lupo, *L'art. 11 come "chiave di volta" della Costituzione vigente*, in «Rassegna Parlamentare», III (2020), p. 379 ff.; Id., *L'art. 11 della Costituzione e l'appartenenza dell'Italia all'Alleanza atlantica*, in «Il Filangieri» (2022), p. 19 ff.; L. Longhi, M. Ortiz Torres, *Il valore precettivo del principio pacifista nelle sue plurime implicazioni costituzionali*, in *Estado en transformación: debates y teorías del derecho y la sociedad (pos)moderna*, eds. F. Pattaro Amaral, L. Salcedo Díaz, Corporación Universitaria Americana – Sello Editorial Americana, Barranquilla 2025, p. 123-135; as well as the monographic issue of «Rivista AIC», IV suppl. (2025), especially: R. Balduzzi, *La pace e la guerra nella Costituzione. Introduzione*, p. 1-7; R. Ibrido, *Perché l'articolo 11 della Costituzione è il prodotto di un attore geopolitico razionale*, p. 195-203. Finally, see also: A. Iannotti della Valle, G.A. Lombardi, *La difesa comune. Una prospettiva costituzionale ed eurounitaria*, in *Le vie del mare. Processi*

Defence and the maintenance of peace remain fundamental elements of the Italian legal order. Participation in international and/or supranational organisations is aimed at preventing war, never by using military means offensively, but exclusively for purposes of defence and protection.

The wording of Article 11 is unequivocal in repudiating wars of an offensive nature, with the notion of 'just war' being of no avail[49]. The concept, known in various forms since antiquity[50], represents a syncretism of ideas which risks justifying armed interventions far removed from the concept of 'defence', exceeding the constitutional text. It evolves into a *de facto* jusnaturalism of uncertain boundaries, conditioned by moral values that aim to dehumanise the enemy by pursuing visions not in line with the Constitution[51].

Article 11 authorises recourse to armed force exclusively for defensive purposes, never for offensive purposes. The Constitution could not, in fact, fail to provide for a form of self-defence, on pain of being contrary to the

economici, dinamiche socio-istituzionali e sfide geopolitiche, eds. M.V. Bramante, V. Fronzoni, L. Longhi, Tab Edizioni, Rome 2026, p. 106-114; and: A. Ruggeri, *Vicende belliche e vicende istituzionali*, ES, Naples 2026.

[49] M. Luciani, *Dalla guerra giusta alla guerra legale?*, in «Teoria politica», XII (2022), p. 111 ff.. The Author, developing and building upon a thought of N. Bobbio (*Il problema della guerra e le vie della pace*, Il Mulino, Bologna 1979, p. 25 ff.), goes so far as to deny 'the possibility of qualifying any war as 'just', since any war may serve the interests of immoderate nuclear powers, which can do everything except stay at home, so that any war, even a conventional one, may be the prelude to a conflict' (p. 116). On how 'the "just war" theory, which has all too often been used to justify any kind of war, is now outdated', see: Leo XIV, *Magnifica Humanitas*, Libreria Editrice Vaticana, Vatican City 2026, p. 186-188.

[50] F.M. d'Ippolito, F. Lucrezi, *Profilo storico-istituzionale di diritto romano*, ESI, Naples 2012 (3ª ed.), p. 29 ff.; M. Luciani, *op. cit.*, p. 97 ff..

[51] M. Luciani, *op. cit.*, p. 112 ff..

provision of Article 51 of the UN Charter, itself derived from customary international law[52]. The constitutional order itself, moreover, refers *ex* Article 78 to an eventual 'state of war', also recalling in Article 52 that: 'The defence of the country is a sacred duty for every citizen'[53].

Although all forms of offensive war are excluded, the right to defend oneself and to defend remains fully legitimate, within the limits of international law.

By adhering to the European Union, Italy has accepted the necessary limitations of sovereignty for the purpose of maintaining peace, thereby linking its participation to that objective[54].

This must occur 'on conditions of equality with other States', not in a subordinate manner, but while preserving autonomy within a decision-making framework that balances the needs of the Member States: an objective to which the institution of the Council of the European Union gives concrete expression. The assumption of common debt, also at the basis of SAFE, is by its nature an 'equal' measure, as it is undertaken jointly with other Member States and in accordance with their respective capacities. Such a method

[52] M. Dogliani, *Il divieto costituzionale della guerra*, in Id., *La ricerca dell'ordine perduto. Scritti scelti*, Il Mulino, Bologna 2015, p. 461 ff..

[53] M. Luciani, *op. cit.*, p. 119 ff.; P. Bonetti, *Il dovere costituzionale di difendere la patria di fronte alle nuove minacce*, in «Rivista AIC», IV suppl. (2025), p. 165-180.

[54] See: G. Amato, *Poteri e sovranità nel mondo globale. Relazione al Convegno annuale dell'Associazione Italiana dei Costituzionalisti, Costituzionalismo e globalizzazione*, 23-24 November 2012, p. 1, according to whom: 'it was precisely the exclusivity of State sovereignty that lay at the root of the interstate conflicts which shaped European history for centuries, until, after the intolerable disgrace of two world wars that erupted within a few decades of each other, the limitation of national sovereignty in the name of a higher European unity came to be seen as a salvific necessity'.

guarantees equity in the allocation of funds and financing, allowing specific national needs to be satisfied but within an EU-unitary perspective. It is not mandatory but is entrusted to State autonomy, which may decide whether and to what extent to commit itself.

This provides further confirmation of the replicability of the NGEU model, positively implemented in the immediate post-pandemic period and now finding renewed application. The assumption of common debt emerges as a key instrument to achieve goals that would otherwise be unattainable for individual States, through a methodology based on cooperation and greater unity of intent.

The assumption of common debt operates as a leveller in intra-EU State relations, bringing closer together countries with very different economic capacities through a single instrument. In this way, the principle of equal sharing of limitations of sovereignty with other States under Article 11 finds fuller realisation, facilitating the achievement of common objectives. The States would, in fact, act as members of a more effective Union and under its strategic coordination.

This process strengthens European integration towards an effective federation, with the aim of preserving peace[55].

This new model of common defence, emerging albeit *in nuce* from SAFE, is therefore not contrary to

[55] At present, however, it is not yet possible to speak of a federal structure: cf. G. Amato, *op. cit.*, p. 4, according to whom there currently prevails an 'intrusive and paralysing intergovernmentalism' in place of a desired 'supranational system of government, organised according to democratic rules'.

the constitutional framework, but rather contributes to its realisation, always and in any event within the limits in which it contributes to purely defensive purposes. Increased common military expenditure for preventive and peace-oriented purposes appears to pursue the *ratio* of Article 11 of the Constitution, provided that it does not become a pretext to justify acts of offence or 'preventive defences'. Defence cannot and must not be interpreted as offence, on pain of contravening to what is established by the Constitution. The 'rejection' of war must, instead, serve as an incentive for the cessation of hostilities, supporting only the right of self-defence against armed aggression.

From this perspective, SAFE also appears consistent with Article 42(7) TEU, which refers to Article 51 of the UN Charter and establishes a clause of mutual military assistance in the event of aggression against a Member State. This provision complements Article 5 NATO by specifying its effects within the EU legal order. In light of this, strengthening European defence through common instruments appears also in line with the TEU. Clearly, at the time when the provision was written, NATO membership among Member States was less pervasive than it is today; nonetheless, even in current times it retains strategic value. It may be expressed through a criterion of speciality, offering margins for integrated collective protection. This constitutes a necessary and non-redundant complementarity, compatible with both European and Atlantic requirements.

On this basis, the model inaugurated by NGEU and today applied to SAFE may provide a decisive impulse towards strengthened European integration, fos-

tering closer relations among States in a manner that, while not yet amounting to a true federation, increasingly approximates it. It is hoped that such closer European integration may also have its effects in an improvement of the decisions undertaken, to be discussed collectively and on an equal footing in order to safeguard the fundamental European values.

In this sense, common defence would, indeed, 'put in common' one of the fundamental requirements for State survival, preserving individual national prerogatives, but harmonising them for the benefit of safeguarding shared values. The sum of 27 defences does not make the total, and fragmentation leads to irrelevance[56].

The atomistic investment of individual Member States suffers from a vision limited to national interest, which does not adequately serve the common interest of the EU. On the contrary, common debt provides a shared and binding framework, imposing a multilateral strategic vision in the awareness that only joint action can ensure effective use of resources. The 'common procurements' to access the €150 billion of common debt require multi-State collaboration, on the understanding that it would not be possible to proceed towards a shared defence without an effort and a political will in that sense.

The ultimate objective could then be the realisation of the goal set out in Article 42(2) TEU, transitioning from a common security and defence policy to a true common defence.

The pursuit of this aim appears desirable: defensive unity would consolidate the original mission of the Euro-

[56] R. Garofoli, B.G. Mattarella, *op. cit.*, p. 68 ff..

pean Union and would bring the integration process to its highest point so far, with an increasingly clear orientation towards a truly united Union.

Common borrowing appears to be the most effective instrument for achieving this objective, no equally effective alternatives having been identified.

In conclusion, SAFE represents an instrument to be welcomed favourably, coherent with the legal framework of the Union and with its current strategic challenges, although at present certainly insufficient.

The €150 billion are, indeed, symbolically the most important part for the direction that seems intended to be undertaken, but at the same time it is the least economically significant.

It is moreover worth noting that the outcome of the path undertaken with SAFE will depend on the political will of the Member States, which must decide whether to mobilise up to approximately €650 billion through national instruments to complement the €150 billion of common borrowing or, as in the case of the 1952 *Treaty establishing the European Defence Community* (EDC), to allow the project to fail.

In this regard, the mechanism remains exposed to potential blockages by Member States, the possibility of withdrawing from the project being guaranteed. This concern is heightened by the presence of governments with sovereignist orientations — notably among, but not limited to, the Visegrád Group — which may be reluctant to assume additional financial burdens, particularly on a common basis, thereby creating significant obstacles[57].

[57] Obstacles, moreover, also arose during the approval of NGEU.

The concrete risk is that the path undertaken may be abruptly halted by pressures coming from several sides, as already occurred moreover in the past with the projects of the EDC and of a *Constitution for Europe*.

Moreover, there is still a lack of unified coordination that would justify speaking of a truly common and integrated defence.

In sum, only the essential traits of a possible path are sketched, within the limits of what at present would have been plausible to pursue and without excessive utopian impulses.

To SAFE, therefore, more incisive actions must necessarily follow, if the aim of common defence is to be genuinely pursued; otherwise, what has thus far been envisaged risks remaining a mirage.

Following the model of NGEU, with which it shares the legal basis of Article 122 TFEU, SAFE nevertheless represents a positive signal of the European Union's continued resilience in time of crisis.

It also constitutes a timely instrument for addressing the increase in defence expenditure within NATO, in pursuit of the objective of reaching 5% of GDP by 2035, although in the longer term it may contribute to reducing overall expenditure. As paradoxical as it may seem, the assumption of common debt for rearmament may indeed result in lower overall spending on weapons.

For example, it is possible to recall the immediate opposition represented by Hungary and Poland to the conditionality rules, on which see: M.C. Girardi, *Il ruolo del Parlamento europeo nel procedimento di approvazione del Next Generation EU*, in «Rivista AIC», II (2021), p. 348-349; F. Fabbrini, *Next Generation EU*, cit., p. 67 ff.; for a description of the consequences: A. Martinelli, *L'Unione Europea di fronte alla pandemia Covid-19*, in «Federalismi.it», IV (2022), p. 554-555.

There would not be individual States spending atomistically for their own defence, perhaps spending more, but rather a coordinated and centralised system which would better align resources with actual needs, avoiding excess and guaranteeing a better allocation. Once again: spending less, but spending better and together.

This also in the hope of being able to reach — in a future perhaps not near, but not for this reason utopian — that 'peace that is unarmed and disarming, humble and persevering' invoked by Pope Leo XIV in his first *Urbi et Orbi* blessing[58].

In the path of European integration, common borrowing for defence, in addition to providing the European Union with financial capacities hitherto unimaginable, enhances cohesion at the financial level and, consequently, political unity. From this perspective, the desired outcome is therefore the creation of a peaceful deterrent power and the partial recovery of Europe's geopolitical relevance.

Once again, '*l'Europe se fera dans les crises*': the sum of the solutions brought to these may represent that success of European integration desired by the founding fathers and a step forward in the maintenance of peace.

[58] Leo XIV, *First Blessing 'Urbi et Orbi' of His Holiness Pope Leo XIV*, 8 May 2025, in *Vatican.va*.

Luigi Servadei

From crisis response to strategic planning in the European budget. Critical issues and prospects in integrating Next Generation EU and the 2028-2034 Multiannual Financial Framework

Summary: 1. Introduction - 2. The pandemic crisis as a turning point. - 3. Next Generation EU and ordinary funds: a difficult coexistence. - 4. The crux of European financial governance. - 5. The proposed MFF 2028-2034: continuity, simplification, and new risks. - 6. From emergency to strategic planning. - 7. Reform prospects. - 8. Conclusions.

1. Introduction

The Next Generation EU experience has profoundly impacted the way the European Union conceives and uses its budget, strengthening its strategic function and its ability to guide shared priorities. This was not only an extraordinary increase in available resources following the pandemic crisis, but for the first time the EU built a common response based on European debt, the definition of shared priorities, and a closer link between reforms, investments, and verifiable results[1]. This

[1] *Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility* , in «Official Journal of the European Union», L 57, 18 February

shift has shifted the European budget from a primarily allocative and compensatory function to a more political one, geared towards supporting structural transformations in the economic and institutional systems of Member States.

The disruption introduced by Next Generation EU, however, has not resolved the issue of the relationship between extraordinary instruments and ordinary programming. On the contrary, it has made it more evident. Indeed, the instrument was born as a temporary intervention, linked to the health, economic, and social emergency caused by COVID-19. Its architecture complemented the 2021-2027 Multiannual Financial Framework,[2] introducing an extraordinary financing component alongside the Union's ordinary programming. This coexistence has expanded the EU's financial capacity at a critical juncture, but has also made policy governance more complex, multiplying procedures, timelines, conditionalities, and levels of accountability.

The proposed Multiannual Financial Framework (MFF) for 2028-2034, presented by the European Commission in July 2025, allows us to assess whether the legacy of Next Generation EU has been organically absorbed into the new budget architecture or whether it has remained confined to the emergency period[3]. The issue is not merely financial but con-

2021, p. 17–75.

[2] *Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021-2027* , in «Official Journal of the European Union», L 433 I, 22 December 2020, p. 11-22.

[3] European Commission, *A dynamic EU budget for the priorities of the future. The Multiannual Financial Framework 2028-2034* ,

cerns the political direction of European integration, the Union's ability to address recurring crises and long-term transformations, the role of regions and territories in defining investments, and the balance between flexibility, democratic control, and cohesion.

This paper addresses this transition by starting from a fundamental question: to what extent has Next Generation EU paved the way for a new European financial governance, and which elements of that experience can be consolidated in the 2028-2034 cycle? The analysis focuses on the political and institutional nature of Next Generation EU, the critical issues that have emerged in the interaction between the extraordinary mechanism and ordinary funds, and the prospects for the proposed 2028-2034 MFF, with particular attention to the National and Regional Partnership Plans.

2. The pandemic crisis as a turning point

The COVID-19 pandemic represented a systemic crisis, not only from a health perspective but also from a political and economic one. The rapidity of the crisis called into question the adequacy of traditional European coordination tools, particularly in a context in which Member States had very different fiscal space. The Union faced the choice of simply coordinating national responses, accepting the risk of growing divergence between economies and regions, or introducing a common instrument capable of simultaneously supporting recovery and the transformation of development models.

Next Generation EU stems from this second option[4]. Its

COM(2025) 570 final, Brussels 16 July 2025.

[4] C. Alcidi, D. Gros, Next Generation EU: A Large Common Response to the COVID-19 Crisis , in «Intereconomics», LV (2020), p. 202-203; M. Motta, M. Peitz, *The EU recovery fund: An opportunity for change*, in *Europe in the Time of*

innovative scope is understood when compared to the responses adopted during the financial and sovereign debt crises. At that stage, European economic governance was characterized primarily by disciplinary rules, corrective conditionalities, and stabilization measures constructed outside the ordinary budget. After 2020, however, the EU chose to intervene with a different logic, linking financial solidarity to a program of economic and institutional modernization. Common debt was presented as a tool to support the green transition, digitalization, resilience, and cohesion[5].

The central instrument of this response was the Recovery and Resilience Facility (RRF). This instrument provided for the financing of national recovery and resilience plans (NRRPs), built around reforms and investments, with milestones and targets associated with payments[6]. This model introduced a principle of positive conditionality, with resources being disbursed not simply on the basis of expenditure incurred, but in relation to the progress made towards agreed objectives. This is one of the main innovations of the NGEU: the attempt to link the European budget to the achievement of measurable results, at least partially overcoming the approach focused on financial absorption.

Covid-19, eds. A. Bénassy-Quéré, B. Weder di Mauro, CEPR Press, Paris-London 2020.

[5] *Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument*, in «Official Journal of the European Union», L 433 I, 22 December 2020, p. 23-27.

[6] European Commission, *Mid-Term Evaluation of the Recovery and Resilience Facility: Strengthening the EU through ambitious reforms and investments, COM(2024) 82 final, Brussels 21 February 2024*.

3. Next Generation EU and ordinary funds: a difficult coexistence

The relationship between the NGEU and ordinary programming was one of the most delicate points of the entire 2021-2027 cycle. On the one hand, the national recovery and resilience plans mobilized significant resources relatively quickly. On the other, cohesion policy, the common agricultural policy (CAP), and other shared management funds continued to operate according to their own rules, with programming deadlines, control systems, and territorial logics not always compatible with those of the RRF. The coexistence of these instruments resulted in a regulatory layering that required a significant administrative effort on the part of Member States and national and regional administrations.

A significant challenge has been institutional fragmentation. The European Structural and Investment Funds (ESIF) are based on multilevel governance in which economic, social, and territorial partnerships have a consolidated role. The RRF, by contrast, has favored centralized national programming, negotiated primarily between the European Commission and governments. This difference has impacted the quality of territorial integration. In many cases, investments in national plans have overlapped with interventions already envisaged in regional or national programs co-financed by European funds, without always establishing a unified, complementary design.

A critical issue concerns interoperability between the different regulatory frameworks. Each instrument has retained its own procedural framework, with distinct criteria for eligibility, reporting, control, timelines,

and evaluation. This difference is not merely technical but reflects two distinct approaches to administrative accountability. In the first case, control of spending and procedural compliance prevails, while in the second, payment is tied to the achievement of formalized results.

Another critical issue concerns administrative capacity. The acceleration provided by the RRF required technical structures capable of designing, implementing, monitoring, and certifying complex interventions within tight deadlines. Administrations with greater experience and technical resources were able to better manage this pressure, while those with less administrative capacity encountered greater difficulties. This leads to the paradox that the instrument, also designed to reduce territorial disparities, risks producing less balanced effects if it is not accompanied by a sustained strengthening of local and regional administrative capacity.

The lesson for the 2028-2034 cycle is therefore that simplification cannot be limited to reducing the number of programs or concentrating resources in national plans, but must address the effective compatibility between objectives, rules, tools, and levels of government. Without such compatibility, the risk is that visible fragmentation will be replaced by a less obvious, but no less problematic, fragmentation linked to centralized political decision-making and differentiated territorial implementation.

4. The crux of European financial governance

The difficulties that have emerged in implementing the NGEU are not solely due to technical issues. They point to a broader problem facing the EU, which

has increasingly broad objectives but still has limited and politically controversial fiscal capacity. EU policies on defense, economic security, climate transition, industrial competitiveness, strategic autonomy, territorial cohesion, and migration management require long-term investments. The European budget, however, remains constrained by intergovernmental compromises, an incomplete system of own resources, and a heavy dependence on national contributions.

Next Generation EU demonstrated that common debt can be used to respond to systemic shocks. It also demonstrated that, under specific political conditions, it is possible to overcome certain historical obstacles. However, it did not automatically create a European fiscal policy. The issuance of common debt remained tied to a specific and temporary mandate. Debt repayment, scheduled for 2028 and over a very long time horizon, will be incorporated into the Union budget as a structural constraint[7]. This element changes the nature of the next MFF, with part of the resources to be allocated to financial obligations arising from a choice made in the previous cycle.

The issue of own resources is therefore central[8]. Without new, stable revenues, the repayment of the NGEU debt could compress the budgetary space availa-

[7] European Commission, *NextGenerationEU*, institutional page on the common debt issuance and repayment programme. *Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom*, in «Official Journal of the European Union», L 424, 15 December 2020, p. 1–10.

[8] European Commission, *Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053*, COM(2025) 574 final, 16 July 2025.

ble for future policies or accentuate the conflict between priorities. The EU risks finding itself in a contradictory position, having successfully used a form of common fiscal capacity without equipping itself with the political and financial tools necessary to manage its long-term effects. The debate on the 2028-2034 MFF cannot be separated from this issue.

5. The proposed MFF 2028-2034: continuity, simplification, and new risks

The proposed MFF 2028-2034 seeks to make the European budget simpler, more flexible, and more aligned with the EU's political priorities. The Commission has earmarked nearly €2 trillion (equivalent to 1.26% of the EU's average gross national income) for the period 2028-2034, linking the new budget to security, competitiveness, migration, energy, climate resilience, and support for regions[9]. The proposal includes a significant reorganization of programs and introduces National and Regional Partnership Plans (NPPs) as the main instrument for channeling various spending components[10].

The inspiration from the RRF model is clear. The idea of a plan for each Member State, built around agreed-upon priorities and expected results, recalls the experience of the NRRPs. In the European Commission's view, this approach should simplify management, reduce

[9] European Commission, *Proposal for a Council Regulation laying down the multiannual financial framework for the years 2028 to 2034*, COM(2025) 571 final, 16 July 2025.

[10] European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security*, COM(2025) 565 final, 16 July 2025.

fragmentation, and allow for better alignment between European funds and national reforms. In theory, this approach can foster greater strategic coherence. Concentrating resources in integrated plans can help overcome the dispersion between programs and strengthen the ability to measure policy outcomes.

However, this very element raises some critical questions. First, the risk of renationalizing the European budget. Indeed, if national plans become the cornerstone of programming, it is necessary to ensure that they do not diminish the European dimension of common policies. Cohesion, agriculture, rural development, and territorial cooperation are not simply national investment areas, but are genuine European policies based on common objectives, shared rules, and forms of solidarity between territories. An excessive centrality of national governments could weaken the role of the regions and the partnership, reducing their ability to adapt interventions to different territorial contexts.

The European Parliament has already expressed concerns about a potential model based on a single national plan per Member State, especially if applied to all shared management expenditure[11]. The criticism does not concern simplification itself, but rather the way it is pursued, since simplification does not necessarily mean centralization. On the contrary, well-constructed simplification should clarify the relationship between the European, national, and regional levels, avoiding duplication while maintaining the added value of multilevel governance.

[11] A. D'Alfonso, K. Kowald, M. Mileusnic, *National and regional partnership plans, European territorial cooperation and EU facility 2028-2034*, European Parliamentary Research Service, Brussels 2026.

6. From emergency to strategic planning

The transition from emergency to strategic planning cannot be interpreted as a simple normalization of Next Generation EU. The challenge is more complex, as it is necessary to identify which NGEU innovations deserve to be preserved and which need to be improved. Among the elements that must be preserved is certainly the results-oriented approach. The connection between resources, objectives, and monitoring can help make the European budget more transparent, understandable, and accountable for the results achieved. However, this approach must be adapted to the nature of the different policies. Not all interventions produce results in the same timeframe, just as not all impacts are measurable with simple indicators, and not all transformations can be traced back to administrative milestones.

Another useful element is the integration of reforms and investments. The RRF has shown that public investments are more effective when accompanied by regulatory, administrative, and institutional changes. This lesson is also important for cohesion policy, the ecological transition, and competitiveness. However, integration must not become an indistinct conditionality. Reforms must be consistent with European objectives and local needs, preventing financial plans from becoming overly broad containers where political responsibility becomes difficult to identify.

7. Reform prospects

A reform of Europe's financial architecture should begin with certain criteria. The EU's political priorities must be linked to appropriate financial instruments, en-

suring that ambitious strategies are not left without stable resources. This applies to the green and digital transitions, but also to economic security, agriculture, social cohesion, and territorial resilience. The European budget cannot support every objective with the same intensity, but must make the hierarchy of choices transparent.

Another key aspect is complementarity. European funds must be designed to integrate with each other and with national resources. This requires more uniform rules, interoperable information systems, and indicators capable of interacting with each other. Complementarity is not achieved through formal references in programming documents but requires institutional building, especially in sectors where multiple instruments target the same territories and beneficiaries.

Finally, a credible reform requires clarification of common fiscal capacity. The Union cannot base every step forward on the political exceptionality of the moment. While some challenges are structural, the instruments designed to address them must also ensure continuity over time. This does not mean automatically replicating the NGEU, but rather building ordinary mechanisms for common investment, with an adequate legal basis, democratic oversight, and own resources.

8. Conclusions

Next Generation EU represented one of the most significant innovations in the recent history of European integration. It introduced common debt, strengthened the role of the budget as a policy-making tool, and linked reforms to investments and results. At the same time, it exposed the limitations of an extraordinary model ap-

plied within a still fragmented institutional framework. Its coexistence with ordinary funds led to coordination difficulties, overlaps, and tensions between rapid decision-making and territorial governance.

The proposed MFF 2028-2034 incorporates some lessons learned from the NGEU, particularly in terms of simplification and results-oriented thinking. However, the underlying problem remains unresolved, which concerns the possibility of transforming an emergency response into a stable strategic capability for the Union.

National and regional partnership plans can strengthen coherence between policies and territories, but they risk creating critical issues if they weaken the common dimension of European policies or undermine the role of multilevel governance.

The legacy of Next Generation EU should not be reduced to its debt, nor to the technique of national plans. It consists above all in having demonstrated that the EU can act as a political community when it recognizes the existence of common public goods and shared risks. The 2028-2034 MFF will be a crucial test to determine whether this awareness can translate into a new financial architecture capable of supporting cohesion, competitiveness, resilience, and democratic legitimacy in an integrated manner. Without this qualitative leap, the European response to the crisis will remain a relevant precedent, but not yet a turning point in the construction of the European budget.

Francesco Spera

A possible answer to the territorial divide: the principle of "do not harm cohesion"

Summary : 1. Introduction – 2. Cohesion and coherence – 3. The EU Treaties and the cohesion policy – 4. New tendencies post-Covid 2020 and the effect on cohesion – 5. The response: the proposed "Do not harm cohesion" – 6. The Committee of Regions' opinion – 7. The principle and the new MFF 2028-2034 proposal – 8. The principle in the post-2027 cohesion policy: a solution to territorial gaps? – 8. Conclusions

1. Introduction.

Delors described Europe as founded on "competition that stimulates, cooperation that strengthens, and solidarity that unites."[1] 30 years after the creation of the single market and cohesion policy, the Commission highlighted that many EU regions have experienced upward economic and social convergence, in its ninth co-

[1] J. Delors, *Intervention de Jacques Delors, president de la Commission Europeenne, devant le Parlement Europeen*, Strasbourg, 19/01/1995, Speech, Press release, available at the following *https://dorie.ec.europa.eu/en/details/-/card/340975*.

hesion report.[2] However, convergence has been uneven, and some have fallen behind, caught in the now-familiar "development trap."[3] Consequently, a third of the EU's population lives in areas experiencing a systemic decline in services, well below the European average. In this regard, the European Committee of the Regions (CoR) also recently addressed the "costs of non-cohesion" in its opinion entitled "The future of cohesion policy after 2027," published on 9 February 2024.[4] In this document, the consequences of widening territorial disparities due to the incorrect implementation of cohesion policy are addressed since the CoR emphasizes that neglecting economic, social, and territorial cohesion could only increase disparities between the European Union's regions, fueling a "geography of discontent"[5] and alienating citizens from the idea of a united Europe. The opinion highlights that the costs of non-cohesion would be a serious blow to the idea of a stronger and more supportive Europe.[6]

[2] European Commission, *Ninth Report on Economic, Social and Territorial Cohesion*, 27 March 2024, available at the following: *https://ec.europa.eu/regional_policy/information-sources/cohesion-report_en*

[3] *Ivi*, p. 20-35; A. Rodríguez-Pose, L. Dijkstra, H. Poelman, *The Geography of EU Discontent and the Regional Development Trap*, in «Economic Geography», 100(3) (2024), p. 213–245; A. Diemer, S. Iammarino, A. Rodríguez-Pose, M. Storper, *The Regional Development Trap in Europe*, in «Economic Geography», 98(5) (2022), p. 487–509; P.A. Balland, R. Boschma, *An evolutionary approach to regional development traps in Europe*, in «Regional Studies», 59(1) (2025), p. 1-16.

[4] Committee European from the Regions, *Resolution of the European Committee of the Regions on a renewed cohesion policy post 2027 that leaves no one behind. Responses of the CoR on the Report of the High-Level Group on the future of cohesion policy and on the 9th Cohesion report,* (C/2024/3661), 26 June 2024, available at: *https://eur-lex.europa.eu*.

[5] *Ivi*, p. 8.

[6] *Ibid.*

The importance of the cohesion policy as a pillar of EU integration is also reinforced by Enrico Letta's report on the future of the single market, which confirms that economic, social, and territorial cohesion should remain the central objective of the single market. The report includes proposals stating that efforts to deepen or expand the single market should be accompanied by EU-level action to prevent major economic and social imbalances.[7]

Finally, the proposed Multiannual Financial Framework 2028–2034 (MFF) constitutes a critical test of the EU's commitment to cohesion under Article 174 TFEU. The Commission's proposal introduces a major structural shift, and this model has been criticised for lacking a clear intervention logic for cohesion, for risking the reallocation of resources towards competitiveness priorities, and for potentially weakening convergence outcomes. Overall, the proposed MFF reveals a structural tension between competitiveness and cohesion, raising concerns about the Union's ability to uphold its Treaty-based obligation to promote balanced territorial development.

In this context, the "do no harm" principle, introduced in the Eighth Cohesion Report,[8] emphasizes strengthening coherence between cohesion policy and other European policies, with the aim of strengthening their complementarities. At its core, the current approach to synergies within the EU budget, which focuses on in-

[7] E. Letta, *Enrico Letta's Report on the Future of the Single Market*, available at the following *https://single-market-economy.ec.europa.eu/news/enrico-lettas-report-future-single-market-2024-04-10_en*.

[8] European Parliament, Think Tank, *Cohesion in the EU towards 2050: 8th Cohesion Report and stakeholder views*, Briefing, 24 November 2022, available at: *https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)739210*.

puts and financial flows, should be refocused on genuine policy complementarities. To this end, the Commission hopes to direct specific regional attention to new areas of the Union, such as strategic interdependencies, social and climate policy, and European industrial alliances, where cohesion policy could be particularly relevant. The "do no harm" principle, meaning that no action should hinder the convergence process or contribute to regional disparities, should be further developed and integrated into European policymaking. This contribution, therefore, aims to clarify the origins of this principle and its scope in light of the provisions of the European Treaties, seeking to contextualise it within the new framework of Cohesion Policy. Finally, it analyses the impact it could have in addressing territorial disparities.

2. Cohesion and coherence.

The importance of cohesion policy and the need for coherence with other European policies is not new. Indeed, the connection with other policies was a key focus and priority for the European Commission under Jacques Delors (1985-1995). In those years, the transformative role of this relationship was evident in the deepening of European integration and in the reduction of territorial disparities. In his speech to the European Parliament on 17 January 1989, Delors emphasised that Europe was created to serve all its member states and must therefore be based on the principles of coherence, consistency, and solidarity.[9] Coherence, according

[9] J. Delors, *Address given by Jacques Delors to the European Parliament*, 17 January 1989, available at the following *https://www.cvce.eu* p. 5.

to Delors, meant the determination to advance all other policies simultaneously through deregulation and harmonisation. Cohesion was associated with cohesion, in a European Community that aspired not simply to be a free trade area supported by occasional financial transfers, but to become an organised economic and social space. Finally, cohesion and coherence are associated with solidarity, which, through the programming and concentration of aid, will allow the richest Member States to support the poorest in adapting and converging their economic and infrastructural systems towards the European average.

Cohesion Policy was viewed not only from an economic perspective but also from social and political perspectives, linking it to the European social dialogue and the Community Charter of Social Rights (1989). The aim was to use Cohesion Policy as a tool to legitimise the Community first, and then the Union, in the eyes of its citizens, demonstrating that European integration is not merely a bureaucratic project for a narrow elite but includes measures of redistribution and inclusion.[10]

Delors promoted a holistic vision of community policies, in which economic, social and territorial cohesion became a complementary pillar to the single market and the Economic and Monetary Union (EMU).[11]

With the Maastricht Treaty (1992), cohesion was formalised as a fundamental objective of the EU, linking

[10] G. Ross, *Jacques Delors and European integration*, in «Progress in Human Geography», 20(1) (1995), p. 148-149.

[11] J. Bachtler, C. Mendez, *Who Governs EU Cohesion Policy? Deconstructing the Reforms of the Structural Funds*, in «Journal of Common Market Studies», 45(3) (2007), p. 535-564.

it to the need to rebalance the effects of economic liberalisation. Cohesion Policy was therefore seen as a compensatory tool for the Union's less developed regions, mitigating disparities accentuated by market policies. To achieve this goal, the Delors Commission strengthened the link between the Structural Funds (ERDF, ESF) and other community initiatives, such as research programmes (Framework Programme) and the Trans-European Networks (TEN-T).[12] Furthermore, cohesion was integrated with industrial and innovation policies, encouraging growth that adapted to the needs of the affected area. For example, infrastructure funding was aligned with cohesion objectives, improving connectivity in peripheral regions.[13]

Delors' strategy, which strengthened the coherence of Cohesion Policy with European policies, represented a medium-term plan for job creation, the fight against unemployment, and the importance of economic and social cohesion. This was the path inaugurated by the White Paper "Growth, Competitiveness, Employment" (1993).[14] Finally, with the reform of the Structural Funds, the Delors Commission promoted greater coordination with the Common Agricultural Policy (CAP), particularly in rural areas, and with emerging environmental policies (e.g., LIFE). The integrated approach avoided duplication and promoted sustainable development, antic-

[12] See R. Leonardi, *Cohesion Policy in the European Union: The Building of Europe*, Palgrave Macmillan, London 2005.

[13] *Ibid.*

[14] European Commission, *Secretariat-General, Growth, Competitiveness and Employment: The Challenges and Ways Forward into the 21st Century*: White Paper, Publications Office, 1994, available at the following *https://op.europa.eu*.

ipating the principle of "policy coherence" enshrined in the Lisbon Treaty.[15]

In conclusion, the Delors Commission's contribution to linking cohesion policy with other European policies was fundamental, as it institutionalised cohesion policy as a strategic lever for balancing other EU policies, ensuring that deepening integration did not exacerbate inequalities. This model was termed "integrated cohesion" and has remained a benchmark in European governance and multilevel governance studies.[16]

3. The EU Treaties and the cohesion policy.

The Maastricht Treaty undoubtedly marked a pivotal moment for Cohesion Policy, which became one of the European Union's key objectives, alongside the single market and economic and monetary union. This led to a significant increase in financial resources allocated to Cohesion Policy, with the Delors II package, adopted at the Edinburgh European Council in 1992, doubling funding for the period 1994–1999.[17]

Subsequently, the Lisbon Treaty, which entered into force in 2009, further strengthened cohesion by in-

[15] Y. Meny, P. Muller, J.L. Quermonne, *Adjusting to Europe: The Impact of the European Union on National Institutions and Policies*, Routledge, London & New York 1996, p. 1 ff.

[16] See more in-depth, L. Hooghe, G. Marks, *Multi-Level Governance and European Integration*, Rowman & Littlefield Publishers, Inc., New York 2001.

[17] European Commission, *The Maastricht Treaty: A Boost to Cohesion Policy*, 9 December 2016, available at the following *https://ec.europa.eu* cft. C. Rossi, *Le politiche di coesione dell'Unione europea. Un percorso storico e l'azione propositiva del Regno Unito*, a cura di M. Bartoli, *L'Europa per i giovani, i giovani per l'Europa: Riflessioni sulla politica di coesione europea dal progetto TRUE - TRUsting Europe*, Morlacchi Editore, Perugia 2024, p. 50-74.

troducing the concept of "territorial cohesion" alongside economic and social cohesion. This broadened the policy's scope, with greater attention to territorial specificities and the promotion of balanced development across all EU regions. Consequently, Cohesion Policy is one of the Union's general objectives under Article 3 TEU.[18] At the same time, under Article 4(2) TEU, the Union recognised the system of local and regional self-government as part of each Member State's national identity.[19]

Article 174 of the Treaty on the Functioning of the European Union (TFEU) sets out the objectives of Cohesion Policy: to promote the harmonious development of the Union as a whole by reducing the gap between the most advanced and the least advantaged regions. This policy is a solidarity-based, redistributive regional policy that now absorbs approximately one-third of the EU budget.[20]

What is significant is that Article 175 TFEU, paragraph 1, already gives cohesion policy a horizontal dimension, requiring the Union to take it into account in all its policies and actions.[21] This provision translates one of the foundations of the integration process into a vision of solidarity in which cohesion is the prerequisite for the

[18] Cfr. M. Patrin, *Solidarietà e coesione tra continuità e trasformazione. La politica di coesione come strumento di governance dell'Unione*, in «European Union Law», 3/2024:(2025).

[19] *Ibid.*

[20] E. Medeiros, J. Zaucha, D. Ciołek, *Measuring territorial cohesion trends in Europe: a correlation with EU Cohesion Policy*, in «European Planning Studies», 31(9) (2022), p. 1869.

[21] I. Ottaviano, *Politica di coesione e governance economica europea: prospettive giuridiche di un'interazione in evoluzione*, in *Rivista. eurojus.it*, IV (2023), p. 108.

very legitimacy of European integration.[22] After peace, cohesion therefore represents one of its *raison d'être*.

However, while Article 175(3) TFEU has certainly served as the basis for a "constitutional transformation through its revolutionary reinterpretation"[23] that led to the adoption of *NextGenerationEU* and the Recovery and Resilience Regulation, Article 175(1) has not received particular attention or implementation in secondary acts or in any ruling by the Court of Justice.

One wonders, therefore, whether it is coincidental that over the past decade cohesion policy has come under attack, ahead of the negotiations on the 2021-2027 Multiannual Financial Framework (MFF). In the European Commission's initial 2018 proposal, cohesion policy was reduced by 5% to reallocate these resources to new priorities such as "research, migration, border control, or defence."[24] Some studies have emphasized that, rather than a paradigm shift, this approach represented a "pragmatic drift"[25] without a clear *leitmotif* in the new post-2020 Cohesion Policy,[26] partly due to the Unit-

[22] M. Patrin, *Solidarietà…*, cit.; European Parliament, *Thematic Notes on the European Union*, available at the following *https://www.europarl.europa.eu*.

[23] P. Leino-Sandberg, P. Lindseth, *How Cohesion Became the EU's Vehicle for Economic Policy: Tracing the Hidden History of Article 175(3) TFEU*, in «VerfBlog», 2023/8/14.

[24] European Commission, *EU Budget: A modern budget for a Union that protects, empowers and defends*, 2 May 2018, available at the following *https://ec.europa.eu/commission/presscorner/detail/it/ip_18_3570*; European Parliament, *Fact Sheets on the European Union, Multiannual Financial Framework*, available at the following *https://www.europarl.europa.eu*.

[25] J. Bachtler, C. Mendez, F. Wishlade, *Reforming the MFF and Cohesion Policy 2021-27: pragmatic drift or paradigmatic shift?* in «European Policy Research Paper», No. 107 (2019), p. 69.

[26] M. Kölling, J. Hernández-Moreno, *The Multiannual finan-*

ed Kingdom's withdrawal from the European budget. While previous cohesion reform proposals were characterised by conceptualisation, structuring, and communication around a set of EU strategic objectives, including, for example, facilitating enlargement and achieving the EU objectives outlined in the Commission's work plans, this approach appears to be absent from the Commission's proposals for 2021-27. It has been highlighted that the five policy objectives proposed by the Commission lack an overarching EU strategic framework, potentially weakening the commitment to and visibility of EU Cohesion Policy in achieving EU objectives at the European and national levels.[27] The strategies proposed by the Commission in 2018 appear functional and administrative (e.g., modernisation, flexibility, simplification) rather than strategic. This is reflected in the much more limited role for the Commissioner for Regional Policy and DG REGIO, and in the Commission's more centralised and significant oversight. The development of the new 2021-2027 MFF has taken little account of OECD recommendations and academic research on the need for more place-based policies for economic development. Instead, sectoral interests emerge and prevail, with the Commission less inclined to strengthen Cohesion Policy, which is now considered more of a political instrument. This attitude differs substantially from the past, when Cohesion Policy was considered a structural tool

cial framework 2021–2027 and Next Generation EU - A turning point of EU multi-level governance? in «Journal of Contemporary European Studies», 32(2) (2023), p. 459–473.

[27] J. Bachtler , C. Mendez, F. Wishlade , *Reforming…*, cit., p. 61.

for pursuing European policies.[28] In short, the Commission's proposals confirm a clear trend toward centralizing Cohesion Policy and weaken the commitment to a coordinated and coherent use of the Funds. The proposals therefore depart from and call into question a key principle of the 1988 Cohesion Reform, reaffirmed and strengthened in subsequent reforms and the basis of Article 175(1) TFEU.

A tendency that has been confirmed by the Von der Leyen Commission, which took office in 2019, prioritizing sectoral policies, paying little attention to territorial inequalities within the European Union and the central role of cohesion policy in addressing regional challenges.[29] Paradoxically, it was highlighted that, through the new parameters and methodology, the proposed regulations provide for increased funding for the more prosperous regions and reduced funding for the poorest countries.[30]

Finally, with the final approval of the 2021-2027 MFF, the Cohesion Policy has been substantially modified in its objectives of regional equity and competitiveness, broadening its scope but inevitably diluting territorial cohesion.[31]

In this context, only the European Parliament has intervened, reiterating the need to improve the relation-

[28] *Ibid.*

[29] *Ivi*, p. 59.

[30] *Ivi*, p. 41.

[31] F. Molica, A. De Renzis, S. Bourdin, *Between re-renationalisation and hyper- Lisbonisation: the long goodbye to the EU Cohesion Policy original goals*, in «Discussion Paper series in Regional Science & Economic Geography 2024-10», Gran Sasso Science Institute, Social Sciences, 2024, p. 6-7.

ship between Cohesion Policy and EU economic governance, while avoiding punitive approaches. Parliament, in fact, demands that the European Semester at least respect and reflect the objectives of Cohesion Policy set out in Articles 174 and 175 TFEU.[32] The same concept is reiterated in the 2024 resolution.[33]

4. New tendencies post-Covid 2020 and the effect on cohesion.

The new framework emerging with the approval of the 2021-2027 MFF has therefore led to what has been defined as a "hyper- Lisbonization " of the post-2020 Cohesion Policy.[34] This policy is characterized by a short-term vision, linked to reactive agendas driven by various situations defined as emergencies (e.g., COVID-19, the war in Ukraine, the energy crisis),[35] and by the prevalence of sectoral logic over territorial one (just look at the priorities that characterize the planned funds).[36]

Furthermore, the new Cohesion Policy 2021-2027 reflects and confirms the trend towards its renationalisation and centralisation, as outlined in the proposals of the Commission and the Member States during the

[32] European Parliament, *European Parliament resolution of 15 September 2022 on economic, social and territorial cohesion in the European Union: Eighth Cohesion Report (2022/2032(INI))*, available at the following *https://eur-lex.europa.eu*.

[33] European Parliament, *P9_TA(2024)0174 — Cohesion policy 2014-2020 - Implementation and results in the Member States — European Parliament resolution of 14 March 2024 on Cohesion policy 2014-2020 – Implementation and results in the Member States (2023/2121(INI))*, available at the following *https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX:52024IP0174&qid=1743444849307*.

[34] F. Molica, A. De Renzis, S. Bourdin, *Between…*, cit., p. 7.

[35] *Ivi*, p. 8.

[36] *Ivi*, p. 9.

pre-2021 negotiation phase. The new regulations on the 2021-2027 MFF have given Member States greater flexibility in using the funds, thereby weakening the participation of local and regional authorities, in violation of the principles of subsidiarity and proportionality, territorial autonomy, and, last but not least, the aforementioned Article 175, paragraph 1, TFEU.[37]

Some indicators confirm this new trend. The new legislative framework for the funds allows Member States to transfer funds between different regions[38] and have thematic control over the type of distribution, reducing the participation of local and regional authorities.[39] For example, in the Just Transition Fund,[40] national governments have designated the eligible areas using a *top-down approach*, contrary to the governance model adopted for cohesion policy, the so-called multilevel *governance*. Some authors have noted that, under this new approach, only regions whose local governments are more aligned with the national government could gain an advantage in resource distribution.[41]

These new trends, therefore, indicate that Cohesion Policy risks losing its *place-based approach*. New policies such as *NextGenerationEU* are now characterised by a strong centralisation of funds, and the involvement of local and regional authorities in the de-

[37] *Ivi*, p. 10.
[38] *Ivi*, p. 11-12.
[39] *Ivi*, p. 12-13.
[40] Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund, available at the following *https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex:32021R1056*.
[41] F. Molica, A. De Renzis, S. Bourdin , *Between…*, *op. cit.*, p. 13.

cision-making process for the use of funds has been minimal, in a direct relationship between the capitals and *Brussels*.[42]

In this context, the Commission's ninth Cohesion Report, published in 2024, highlighted that 30 years after the creation of the single market and cohesion policy, territorial divides and subnational disparities between large metropolitan areas and other regions caught in the so-called "development trap" are widening.[43] Furthermore, demographic changes are further impacting these challenges, as many regions face a decline in their working-age population, the departure of younger people, and difficulties retaining talent. It is estimated that a third of the EU's population lives in places that are slowly falling behind the European average.

The cuts envisaged in the 2021-2027 MFF, and the new trend towards centralising funds, may exacerbate the gaps highlighted by the ninth cohesion report, thereby undermining the initial objectives and the very identity of Cohesion Policy. Some studies have highlighted the policy's slow decline and dismantling. On the one hand, through the diversion of cohesion funds to *NextGenerationEU*. The latter would, in fact, represent an "existential threat" to the very structure of Cohesion Policy, given its alternative approach based on centralised and performance-focused implementation. On the other hand, Cohesion Policy itself is increasingly characterized by sectors whose allocation and implementation are driven by an emergency and crisis logic, such as

[42] *Ivi*, p. 15.
[43] European Commission, *Ninth Report on Cohesion*, op. cit.

recent proposals to link Cohesion Policy to the European Rearmament Plan. [44]On this issue, also considering the European Commission's proposal for *the European Defense Industry Reinforcement through common Procurement Act*[45] which provides funding for the joint production of armaments and Regulation (EU) 2021/1060 on Structural Funds, which allows flexibility for investments in innovation and industrial competitiveness,[46] some studies have suggested that defense investments could be integrated into cohesion policies to reduce regional disparities.[47] One example is the case of Poland,

[44] F. Cappellano, F. Molica, T. Makkonen, *Missions and Cohesion Policy: Living separately or dancing together, in* «JRC Working Papers on Territorial Modeling and Analysis», No 02 (2023), Joint Research Centre; European Commission, *A modernized cohesion policy to boost the EU's strategic priorities*, 1 April 2025, available below *https://ec.europa.eu*.

[45] EDIRPA, *The European Defense Industry Reinforcement through common Procurement Act at a* glance, available below *https://defence-industry-space.ec.europa.eu/eu-defence-industry/edirpa-addressing-capability-gaps_en*.

[46] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund, the European Maritime, Fisheries and Aquaculture Fund, and on the financial rules applicable to those Funds and to the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for financial support for border management and visa policy, available at the following *https://eur-lex.europa.eu/eli/reg/2021/1060/oj?eliuri=eli:reg:2021:1060:oj&locale=it*.

[47] See A. Marrone, *Il Programma per l'industria europea della difesa: rilevanza, sfide e opportunità per l'Italia*, in «Istituto Affari Internazionali», n. 2 (2025), p. 9; J. Mejino-Lopez, G.B. Wolff, *A European defense industrial strategy in a hostile world, Any strategy will need to take account of evolving Russian capacities, evolving political willingness and evolving defense industrial capacities*, in «Bruegel», Policy Brief, 20 November 2024, available at the following *https://www.bruegel.org/policy-brief/european-defence-industrial-strategy-hostile-world*; L. Scazzieri, *Towards an EU "Defense Union"*, in *Center for European Reform*, available at the following *https://www.cer.eu/publications/archive/policy-brief/2025/towards-eu-defence-union*; G. Ravazzolo, A. Marrone,

which plans to use EU funds to modernize civil-military infrastructure, demonstrating the feasibility of an integrated approach.[48]

The governance of Cohesion Policy itself (ministries, designated authorities, intermediary bodies, and beneficiary local authorities) does not reflect the efficiency required to address ongoing crises.[49] Furthermore, it appears that cohesion is receiving increasingly less interest and attention from senior officials in the European Commission, resulting in fragmented future programming and the use of the allocated resources.[50] In light of all this, the European Committee of the Regions (CoR) has expressed clear opposition to any attempt to centralize Cohesion Policy, which would undermine its effectiveness and efficiency. According to the CoR, the positive impact of Cohesion Policy depends heavily on the knowledge and involvement of local and regional authorities, who can ensure that projects are relevant, effective, and sustainable.[51]

EU Defence Industrial Initiatives: A Quantum Leap Is Needed, in «Istituto Affari Internazionali», 20/12/2024, available at the following *https://www.iai.it/en/pubblicazioni/c05/eu-defence-industrial-initiatives-quantum-leap-needed*; A. Hunter, *An EU era of heightened security: What role for the future Cohesion Policy?*, in «European Policy Centre», discussion paper, 14 May 2024, available at the following *https://www.epc.eu*.

[48] *Poland plans to use EU Covid recovery funds for defense and security spending*, 26 March 2025, Notes from Poland, available below *https://notesfrompoland.com/2025/03/26/poland-plans-to-use-eu-covid-recovery-funds-for-defence-and-security-spending/*.

[49] J. Bachtler, C. Mendez, *Navigating Stormy Waters: Crises and Cohesion Policy Beyond 2027*, in «EoRPA Report 23/3», European Regional Policy Research Consortium, December 2023, p. 38.

[50] *Ibid.*

[51] COM (2023) Mid-term revision of the Multiannual Financial Framework 2021-2027, Commission Staff Working Document accompanying the document Communication from the Commission to the European

Therefore, the CoR argues that increased centralization could undermine these crucial aspects. A new Cohesion Policy should necessarily embrace local involvement as a method that is not only more democratic but also more effective. According to the CoR, the future of Cohesion Policy must prioritize partnership over centralization, subsidiarity over uniformity, and local action over centralized management. Furthermore, in a 2024 study, the CoR highlighted the cost of non-cohesion.[52] The study makes clear that limiting Cohesion Policy support to a limited number of regions in the future would only increase disparities.

Many authors have emphasized that, while EU funding programming should be guided by strategic EU guidelines, it is essential to maintain a *bottom-up approach* that actively involves local and regional stakeholders. Excessive centralization could, in fact, limit the effectiveness of interventions tailored to specific territorial conditions.

Furthermore, Enrico Letta's report on the future of the single market confirms that economic, social, and territorial cohesion should continue to be the central objective of the single market. The report includes proposals stating that efforts to deepen or expand the single market should be accompanied by EU-level action to prevent major economic and social imbalances.[53]

Parliament, the European Council the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 20.6.23, COM(2023) 336 final; European Commission, *Regional Policy – Performance Cohesion Fund and European Regional Development Fund*, available at the following link *https://commission.europa.eu*.

[52] European Committee of the Regions, *Resolution…*, cit.

[53] E. Letta, *Enrico…*, cit.

5. The response: the proposed "Do not harm the cohesion".

In response to this new legislative framework, the future of Cohesion Policy was discussed at an informal meeting of ministers under the Czech Presidency as early as September 2022. The meeting focused on Cohesion Policy as a "strategic instrument" for regional development, including its impact on regions, its relationship with the Regional Fund for Regional Development (RRF) and other new instruments, and its role in addressing the impacts of unforeseeable events. Among the key points that emerged was that Cohesion Policy should not become an anti-crisis tool but should instead focus on structural change and long-term development. It should maintain its core principles (multilevel governance, partnership, territorial focus) and the values of solidarity.[54]

This debate informed the General Affairs (Cohesion) Council in November 2022, following the evaluation of the effectiveness of Cohesion Policy over the 2014-2020 period. The background document for the Council highlighted both the centrality of cohesion for EU integration and how cohesion itself is addressed through sectoral policies at the national and EU levels:[55] "Policy alone cannot ensure that no territory or person is left behind, but it can certainly contribute significantly to economic, social, and territorial cohesion, including by ensuring spatial and territorial considerations for national and sectoral policies. The design and implementa-

[54] J. Bachtler, C. Mendez, *Navigating*, op. cit., p. 41.

[55] Permanent Representatives Committee/Council, *Long-term impacts of cohesion policy on EU regions = Exchange of views*, Brussels, 10 November 2022 (OR. en) 14479/22.

tion of cohesion policy should be able to rely on a robust and effective mix of national and EU policies and instruments."[56]

The General Affairs Council's conclusions echo all the concerns about the future of Cohesion Policy expressed in the aforementioned informal meeting documents, such as that Cohesion Policy should not become a tool for addressing crises, and reaffirm the importance of cohesion as a foundation for European integration. The Council emphasizes that cohesion is such a significant instrument that it itself represents a principle of European action and its construction. However, it notes that the commitment to integrating cohesion into the objectives of other policies has been weak: the conclusions merely "invite" national and EU authorities "to bear in mind not to undermine cohesion when preparing investment instruments".[57]

In response to the Council's criticisms from the CoR and the European Parliament, the European Commission, in its eighth cohesion report,[58] introduced the "do not harm cohesion" principle, emphasizing strengthening cohesion policy with other EU policies. This represents a response to the tendency toward centralizing

[56] *Ibid.*; General Secretariat of the Council, Permanent Representatives Committee/Council, *Conclusions on cohesion policy Approval*, Brussels, 10 November 2022 (OR. en) 14481/22.

[57] *Ibid.*

[58] European Commission, *Eighth Report on Economic, Social and Territorial Cohesion*, 9 February 2022, available at the following *https://ec.europa.eu/regional_policy/information-sources/8cohesion-report_en?etrans=it*; European Parliament, Think Tank, *Cohesion in the EU towards 2050: 8th Cohesion Report and stakeholder views*, 24 November 2022, available at the following *https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)739210*.

cohesion policy toward state authorities by strengthening complementarities between cohesion and other EU policies. This contrasts with the current approach, which sees synergies in the EU budget focused on production factors and financial flows. The Commission therefore aims to give a specific regional dimension to new areas of intervention, such as strategic interdependencies, social and climate policy, and European industrial alliances.

The Commission proposes including this principle among the evaluation criteria in the preparation and implementation of European policies, which are primarily carried out by national authorities. This principle, according to which no action should hinder the convergence process or contribute to regional disparities, should be further developed and integrated into decision-making. Therefore, it proposes strengthening environmental impact assessments and rural audits to better take into account the needs and specificities of the Union's different territories.[59]

The introduction of the principle was welcomed by the Council, which, in its June 2022 Conclusions reaffirmed the concept of "do not harm cohesion" as a principle to be taken into account generally in all EU policies and initiatives in the implementation of the internal market, in line with Article 175 TFEU[60] and Article 174 TEU.[61] To this end, the Council encourages the European Commission to consider including territorial impact

[59] *Ibid.*, p. 9.

[60] Council of the EU, *Cohesion in Europe towards 2050: Council approves conclusions*, Press release, 2 June 2022, available at: *https://www.consilium.europa.eu*, p. 4.

[61] Recalled in recital 17 of the conclusions, *Ibid.*

assessments as essential elements of EU policies in all relevant procedural processes. The European Parliament, in a resolution of 15 September 2022, also welcomed the idea of a "do not harm cohesion" principle, according to which no action should hinder the convergence process or contribute to regional disparities. However, Parliament urges the Commission to involve the European Committee of the Regions in the more systematic and practical development of the principle, and to have it incorporated into European legislation, clearly defining its scope and the modalities of its application, so that it is enshrined as a cross-cutting principle in EU policies.[62]

6. The Committee of the Regions' opinion.

The new principle of "do not harm cohesion" is certainly an important step and helps offset trends toward centralization and the adoption of the so-called "NRRP method" for all cohesion fund spending. However, the introduction of this principle has raised several criticisms from institutions and experts regarding its content, as it has been highlighted that the Eighth Cohesion Report contains several omissions, including the failure to provide details on its nature and application. Specifically, already in 2022, one month after the publication of the Commission's Eighth Report, the *Conference of Peripheral Maritime Regions* (CPMR) highlighted that this uncertainty is further exacerbated by the lack of a

[62] European Parliament, *European Parliament resolution of 15 September 2022 on economic, social and territorial cohesion in the European Union: Eighth Cohesion Report (2022/2032(INI))*, available at the following *https://www.europarl.europa.eu/doceo/document/TA-9-2022-0326_IT.html*.

strategic framework for Cohesion Policy[63] and that the report does not comprehensively address the situation of territories affected by permanent geographical handicaps as defined in Article 175(1) TFEU.[64] For this reason, it is reiterated that the principle should be integrated and better defined in decision-making processes at the European level.[65] A priori, the principle would respond to the long-standing request made by the CPMR regarding the need for EU policies with a strong territorial impact to be designed taking into account the diversity of regional realities. However, the body notes that regional authorities are not systematically considered by the European Commission and EU Member States as true partners in the implementation of public policies outside of Cohesion Policy. For this reason, it believes it is essential for the European Commission to fully develop this principle, indicating how it will be concretely integrated into EU sectoral policies. For example, it will be necessary to consider how it could be applied to new legislative acts that may have a potentially strong but overlooked territorial impact, such as the *Fit for 55 package*.

A similar opinion was expressed by the European Committee of the Regions, which, at the request of the above-mentioned resolution of the European Parliament, expressed its criticisms in an opinion on the theme "Do not harm cohesion – A cross-cutting princi-

[63] Conference of Peripherical Maritime Regions, *CPMR Technical Note – Deconstructing the 8th Cohesion Report*, February 2022, available at: *https://cpmr.org/wpdm-package/cpmr-technical-note-deconstructing-the-8th-cohesion-report/*.

[64] European Parliament, *Resolution…*, cit., p. 9.

[65] Conference of Peripherical Maritime Regions, *CPMR…*, cit., p. 3.

ple that contributes to cohesion as overall objective and value of the EU".[66]

The opinion, presented by Michiel Rijsberman (NL/Renew E.), Provincial Councillor of Flevoland, welcomes the introduction of the principle.

The CoR emphasizes that cohesion is one of the fundamental values underpinning the European Union and should therefore be a cross-cutting objective adopted by all EU policies and actions.[67] The opinion emphasizes that a connection between European policies and actions and cohesion policy is already present in Article 175(1) TFEU, as highlighted in paragraphs 1 and 2 of this contribution. Unfortunately, the CoR believes that there are no mechanisms in the Treaties to ensure that the value or principle[68] of "cohesion" is respected in other EU policies.[69] The CoR notes that, in addition to cohesion policy, other EU policies, such as funding policies, regulatory initiatives, or trade agreements, have a positive or negative impact on the process of territorial convergence by widening territorial disparities. For example, the relaxation of state aid rules often benefits

[66] Committee of the Regions, 155th Plenary Session of the CoR, 24.5.2023 - 25.5.2023, *Opinion of the European Committee of the Regions on 'Do no harm to cohesion – A cross-cutting principle contributing to cohesion as an overall EU objective and value'*, (2023/C 257/01), available at the following *https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=OJ:C:2023:257:FULL*.

[67] *Ibid*., para. 2.

[68] As defined in the Conclusions of the General Affairs Council in Council of the EU, *Long…*, *cit*. and *Conclusions…*, *cit*.

[69] Emilia-Romagna Region, *Outcome of the 155th Plenary Session of the Committee of the Regions (May 2023)*, para. 5, available at the following *https://www.assemblea.emr.it/europedirect/news/2023/lesito-della-155deg-sessione-plenaria-del-comitato-delle-regioni-maggio-2023*.

more developed Member States to a greater extent.[70] Furthermore, the various crises that have hit the Union have severely tested cohesion, slowing convergence and affecting the most vulnerable citizens. The CoR draws attention to the use of Cohesion Policy funding to respond to recent crises: while this has helped prevent further widening of disparities, it is also important to uphold cohesion principles, such as strategic planning, partnership, and multilevel governance, even in crisis response.[71]

For this reason, the principle in question is certainly an important and interesting response. Furthermore, the principle serves as a counterbalance to the observed trend towards centralisation that increasingly characterises Cohesion Policy and other funds, as repeatedly emphasised in this contribution and strongly criticised by the Committee, in line with the opinion expressed in its resolution on the European Parliament's eighth report. This centralisation at Member State level has excluded regions and local authorities from both the funding approval and implementation processes. Added to this is the limited capacity of local and regional actors to access funding opportunities and manage projects, due to a lack of technical expertise or the ability to provide the expected co-financing, combined with the complexity of EU funds.[72] The Committee rejects any attempt to further centralise EU programmes by once again ignoring the local and regional levels, as it believes that shared management has proven effective and should

[70] Committee of the Regions, *Opinion…*, *cit.*, para. 12-13.
[71] *Ivi*, para. 22.
[72] *Ivi*, para. 16.

not be undermined by centrally managed programmes.[73] The Committee also sees it as an antidote to the populism and extremism that could spread in those areas affected by the so-called "development trap."[74] In line with the aforementioned Council conclusions of June 2022, the Committee proposes that the principle be incorporated into all Union policies and initiatives, as well as into the implementation of the internal market and State aid rules.[75]

However, in its opinion, the Committee expressed concerns about its practical application and interpretation, stressing the importance of its effective implementation at all levels of governance: for now, the principle remains "merely a concept."[76] The Commission report, according to the CoR, does not provide "in-depth guidance for a clear picture of the problems (elements that undermine cohesion) and possible solutions."[77]

The Committee therefore proposes a broad interpretation of the principle, which, in its view, should be mandatory for all European policies with a territorial impact, including relevant national policies, including compliance with cohesion principles such as partnership and multilevel governance. It therefore proposes that the Commission apply a mandatory "comply or explain" rule linked to the principle of "do not harm cohesion" in the explanatory memorandum for each proposed initiative, and that it develop an analysis of cohesion-re-

[73] *Ivi*, para. 23.
[74] *Ivi*, para. 2.
[75] *Ivi*, para. 4.
[76] *Ivi*, para. 6.
[77] *Ivi*, para. 1.

lated aspects within the European Semester, particularly through a requirement to include regional economic and social performance in country reports.[78]

The Committee warns the Commission that the principle is "far from ready to be used as a tool for achieving cohesion and risks undermining the objective of cohesion policy as such".[79]

In practice, the Committee proposes to implement the principle by adding an ex-ante evaluation to the adoption process of a relevant EU policy, in line with the Council's proposal in its 2022 conclusions, which consists of a series of elements.

First and foremost, the design phase should include a systemic ex ante assessment of the potential differentiated territorial impacts on all types of regions that could arise from any new EU policy with a territorial dimension.[80] The territorial impact assessment, whose regulatory framework is set out in the 2016 Better Regulation Agreement and the Commission's 2021 Better Regulation Package, should be systematically strengthened through a series of actions, including the inclusion of a question along the lines of "Does the initiative hinder the convergence process or contribute to regional disparities?"; mandatory reporting in Better Regulation Toolbox No. 34, the use of the new TIA Necessity Check tool *and giving strong* preference to the use of the European Spatial Planning Observatory (ESON) TIA Rapid Check tool over public consultations to assess potential territorial impacts, as it relies on a combination of ex-

[78] *Ivi*, para. 10.
[79] *Ivi*, para. 7.
[80] *Ivi*, para. 25.

pert judgement and quantitative spatial data available for all EU regions; the inclusion of a recommendation that stakeholder consultations should explicitly address territorial cohesion aspects, either through a reference in the call for evidence and/or a set of questions in the public consultation, or through targeted consultations reaching out to regional and local authorities, keeping in mind that specific channels may be needed to reach target groups in remote and rural areas with less accessible internet; The introduction of a reporting requirement in the impact assessment report on the assessment of potential differentiated territorial impacts and potential harm to cohesion, similar to the "do no significant harm" principle for environmental impacts; the requirement for impact assessments to clarify whether there will be an impact on EU cohesion and what trade-offs there might be between cohesion and other objectives; and the inclusion of a specific mandatory section in the report explaining how the initiative is aligned with the "do no harm" principle, based on the "comply or explain" rule, in which the Commission demonstrates that the implementation of the initiative does not hinder EU cohesion – and is compliant with this principle – or explains why the potential harm (that which remains even after mitigation measures) is justified in relation to other objectives.[81] Furthermore, in the Better Regulation package, the Committee proposes introducing a recommendation on the impact on cohesion and (in)coherence with cohesion policy for all legislative projects and programmes evaluated.

[81] *Ibid.,* para. 27.

The assessment of the do-no-harm principle should also take place at the evaluation stage (ex-post) through monitoring and evaluating the impact of EU sectoral policies on cohesion.[82]

Both ex-ante and ex-post evaluations should, according to the Committee, be based on solid data and statistical tools that can provide a more realistic picture than a mere assessment based on GDP per capita, such as "the EU Social Progress Index or the Regional Competitiveness Index, which reflect all aspects of harmonious development at a time when new sources of inequality risk emerging."[83]

In this process, the Committee declares its willingness to actively participate by involving a permanent member designated by the CoR in the Regulatory Scrutiny Board, or by the possibility of assisting the Commission in conducting TIAs[84] or by conducting TIAs on EU policies itself if it has "additional means" at its disposal.

To further strengthen the VIT in implementing the principle, the Committee also proposes actions aimed at developing models and methods – in collaboration with the Joint Research Centre (JRC) and ESPON – and coordination and training that go in that direction, such as "providing mandatory training in this area to all Commission officials dealing with impact assessments".[85]

[82] *Ibid.*, para. 33.

[83] *Ibid.*, para. 36.

[84] In particular, the Committee proposes to "identify relevant questions to ask local and regional authorities in the Commission's consultations and to help the Commission find local and regional experts who could participate in the seminars it organizes under the VIT".

[85] *Ibid.*, para. 29.

Finally, the Committee calls on the Commission and national governments to adopt a different methodology for coordinating policies to avoid divergences between regions, to strengthen systematic ex-ante territorial impact assessments, and to adopt the principles of Cohesion Policy—evidence-based strategic planning, multilevel governance, and partnership—within the Recovery and Resilience Facility.[86] This stands in stark contrast to the opposite trend, namely the aforementioned proposals to integrate the methodologies and principles envisaged for the Recovery and Resilience Facility and national plans into future cohesion policy.

In short, the new principle proposed by the Commission and developed by the Committee is crucial for countering the new centralization trends observed in recent years and implementing Article 175(1) TFEU. It could certainly play an important role in counterbalancing the renationalization of cohesion policy by strengthening the monitoring principle, as advocated by the European Parliament, for example by integrating it into the European Semester.[87]

7. The principle and the new MFF 2028-2034 proposal.

The principle should then be considered in light of the new MFF 2028-2034 proposal.[88] While the prin-

[86] *Ibid.* para 42.

[87] European Parliament, *The future of EU cohesion: Scenarios and their impacts on regional inequalities, Cost of non-Europe*, 17-12-2024, available at: *https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2024)762854*.

[88] European Commission, *Proposta di REGOLAMENTO DEL CONSIGLIO che stabilisce il quadro finanziario pluriennale per il periodo 2028-2034*, COM/2025/571 final, available at *https://eur-lex.europa.eu/legal-content/IT/ALL/?uri=CELEX:52025PC0571*.

ciple has not been codified in explicit statutory form within the current cohesion policy framework, it should operate as a cross-cutting obligation binding upon all Union institutions in the design and implementation of budgetary instruments. The proposed Multiannual Financial Framework (MFF) for 2028–2034, presented by the Commission on 16 July 2025, constitutes a critical test case for the operationalisation — or the erosion — of this principle.

The most structurally significant departure from the existing framework is the Commission's proposal to merge all Union funds under shared management — encompassing cohesion policy, the Common Agricultural Policy (CAP) and internal affairs — into a single European Fund implemented through national and regional partnership plans. This integrated model raises fundamental questions about "the objectives, governance and implementation of EU support relevant for cohesion policy".[89]

The "do no harm" dimension of this architectural shift manifests most acutely in the absence of a clearly articulated intervention logic for cohesion. The proposed framework "is not underpinned by a clearly articulated intervention logic to promote cohesion" and assumes that "directing resources to less developed regions and ensuring a balanced territorial distribution will be sufficient to support cohesion".[90] This presumption does not

[89] Dipartimento tematico Sviluppo regionale, agricoltura e pesca Direzione generale della Coesione, dell'agricoltura e delle politiche sociali (CASP), *Navigare nella proposta di QFP 2028-2034 della Commissione europea - Mappare rischi e opportunità per la politica di coesione e lo sviluppo regionale*, PE 776.029 - marzo 2026, p. 1.

[90] *Ibid.*

seem in line with the current EU treaties approach. The mere allocation of resources to disadvantaged regions does not, without a structured link between interventions and cohesion outcomes, satisfy the substantive requirements of Article 174 TFEU. The result is that, while failing to actively pursue convergence, this framework cannot be considered compliant with the positive obligation to reduce territorial disparities embedded in the Treaty.

This structural deficiency is further compounded by the relative contraction of cohesion-related funding within the integrated architecture. Within the First Pillar of the new MFF — which groups cohesion, CAP, fisheries, maritime affairs, prosperity and security — the funds linked to cohesion policies undergo a sharp contraction, while the Second Pillar, encompassing competitiveness, research and defence, records a proportional increase of 140%.[91] The reallocation of budgetary weight away from cohesion instruments towards competitiveness-oriented ones constitutes, in itself, a structurally harmful tendency: it reconfigures Union budgetary priorities in a manner that privileges economy of scales over territorial convergence, thereby exacerbating rather than correcting pre-existing asymmetries.

A second and related vector that might harm cohesion concerns the governance architecture of the proposed partnership plans and their implications for the principles of subsidiarity and partnership, both of which are constitutive of the cohesion policy acquis.

[91] C. Fasone, *La proposta di Quadro finanziario pluriennale UE 2028–2034, tra continuità e innovazione*, in «Federalismi.it», XXXIII (2025), p. 11.

Fasone identifies a risk of potential re-nationalisation and centralisation of resource management at the level of central government, with a considerably more marginal role for stakeholders and regional and local authorities that, for decades, have been the backbone of the management of structural funds, making them accountable.[92] This observation carries significant normative weight: the principle of multi-level governance, as institutionalised in Article 5 of Regulation (EU) 2021/1060 (the Common Provisions Regulation), requires the meaningful involvement of regional and local authorities, social partners and civil society in the preparation, implementation, monitoring and evaluation of programmes. A shift towards exclusively national programming, unmediated by genuine sub-national participation, does not merely raise institutional concerns — it directly undermines the territorial specificity upon which effective cohesion interventions depend.

The CoR articulates this concern explicitly. In its Resolution on the proposed MFF 2028–2034 (C/2025/6318, OJ C, 3 December 2025), the CoR states that it is convinced that the preparation, negotiation, implementation and monitoring of national and regional partnership plans must not be left exclusively in the hands of central governments,[93] and that the transfer of decision-making to the national level, without a strong involvement of the regions, would be contrary to the fundamental principle of subsidiarity, would substan-

[92] *Ivi*, p. 11-12.

[93] Comitato Europeo delle Regioni, *Risoluzione del Comitato europeo delle regioni sulla proposta relativa al quadro finanziario pluriennale (QFP) 2028-2034*, C/2025/6318, 3 December 2025.

tially weaken the well-established multilevel governance and would be in outright contradiction with the partnership principle.[94] The CoR further expresses serious concern that the proposal for the fund for national and regional partnership plans could lead to further centralisation in the hands of the Commission and to the nationalisation of cohesion policy.[95] Consequently, a framework that concentrates programming authority at the national level — leaving sub-national actors as mere implementers rather than co-designers of territorial strategies — cannot be reconciled with the multilevel governance model that Article 174 TFEU presupposes as its institutional corollary.

Furthermore, the CoR underlines that cohesion policy should remain available to all regions and access to this policy should not be left exclusively to the discretion of national authorities.[96] This point carries a "do no harm cohesion" implication of considerable significance: where access to cohesion instruments is mediated exclusively through national discretion, the risk arises that politically or institutionally weaker regions are systematically disadvantaged in the allocation of Union resources, producing an outcome directly contrary to the equitable territorial distribution that Article 174 TFEU mandates.

The integration of heterogeneous policy instruments under a single budgetary envelope introduces a third dimension of potential harm to cohesion, rooted in intra-fund competition for resources. Whilst the shift

[94] *Ivi*, p. 1, point 7.
[95] *Ivi*, p. 1, point 6.
[96] *Ivi*, p. 1, point 3.

towards integrated programming offers the opportunity to reduce overlaps between CAP and cohesion expenditure, in a context of real-term reductions, it risks intensifying budgetary competition between the two.[97] The CoR echoes this concern stating that the disconnection between cohesion policy and the areas of intervention falling under the heading 'Competitiveness, Prosperity and Security' and the growing tendency towards centralised fund management", underscores that "cohesion policy is one of the main drivers of regional competitiveness in the EU".[98] The normative implication is clear: cohesion cannot serve as an instrument of territorial convergence if it is subsumed within a broader competitive logic in which sectoral priorities structurally set territorial ones aside.

To address these risks, some above-mentioned studies recommend, inter alia, replacing the 10% rural objective with "a 10% allocation in support of integrated local development strategies", and, critically, excluding CAP and common fisheries policy expenditure from counting towards minimum allocations for less developed regions so as to ensure that such funds support cohesion-related interventions rather than being reallocated towards agricultural objectives.[99] The latter recommendation might indirectly reflect the "do no harm cohesion" principle: minimum allocations for the least developed

[97] Dipartimento tematico Sviluppo regionale, agricoltura e pesca Direzione generale della Coesione, dell'agricoltura e delle politiche sociali (CASP), *Navigare…*, *cit.*, p. 2.

[98] Comitato Europeo delle Regioni, *Risoluzione…*, *cit.*, p. 1, point 4.

[99] Dipartimento tematico Sviluppo regionale, agricoltura e pesca Direzione generale della Coesione, dell'agricoltura e delle politiche sociali (CASP), *Navigare…*, *cit.*, p. 2.

regions should not be diluted by counting expenditure serving non-cohesion objectives.

The generalised extension of a performance-based delivery model — borrowed clearly from the Recovery and Resilience Facility (RRF) — across all funds encompassed by the proposed MFF introduces a fourth, structurally embedded source of harm to cohesion. This approach could initially increase administrative complexity and that milestones may also be more difficult to apply to innovative and high-risk operations.[100]

On this issue, European Court of Auditors highlighted that if the results-based approach is not accompanied by a quantification of actual costs, the approach risks producing an imprecise evaluation, compounded by the absence of a uniform supranational methodology to be applied consistently to the determination and monitoring of milestones and targets.[101] The legal and policy significance of this observation for the "do no harm cohesion" principle cannot be overstated: performance-based conditionality, when applied without methodological harmonisation, produces systematically unequal outcomes across Member States and regions. Administrative capacity — the very variable that cohesion policy is in part designed to strengthen — becomes the decisive determinant of a region's ability to access Union funds. The weakest administrations, which govern the least developed regions, are consequently penalised under a framework ostensibly designed to serve them.

[100] *Ivi*, p. 3.
[101] C. Fasone, *La proposta…*, *cit.*, p. 12.

The Commission should therefore provide clear methodologies for defining milestones, targets and payment values, develop standard unit costs or flat rates, and offer targeted support to weaker administrations.[102] These corrective measures might represent a necessary, if partial, indirect operationalisation of the "do no harm cohesion" principle in the context of performance-based delivery: the system must be calibrated so as not to structurally disadvantage the territories whose convergence constitutes the primary rationale for cohesion policy.

Overall, the proposed MFF 2028–2034 reflects a possible tension between the Union's competitiveness agenda and the cohesion policy. As a result, a fundamental tension exists between European Competitiveness Fund (ECF) which supports competitiveness by leveraging economies of scale and the partnership plans which aim to ensure territorially balanced development and promote convergence".[103] It is recommended then that the Union instrument explicitly "complement ECF actions to support the 'overall harmonious development' of the Union pursuant to Article 174 TFEU".[104] This recommendation reflects a doctrinal imperative: Article 174 TFEU does not merely authorise cohesion policy as a discretionary political choice, but imposes a positive obligation upon the Union to pursue harmonious development. A budgetary framework that systematically directs resources towards competitive centres of excellence

[102] Dipartimento tematico Sviluppo regionale, agricoltura e pesca Direzione generale della Coesione, dell'agricoltura e delle politiche sociali (CASP), *Navigare…*, *cit.*, p. 3.

[103] *Ibid.*

[104] *Ibid.*

without adequate corrective mechanisms for territorial redistribution fails to honour this Treaty-based commitment and, by definition, causes harm to cohesion. Fasone situates this tension within the broader constitutional architecture of the Union, observing that the new MFF insists further on the national programming of Union expenditure, moving away from the traditional idea of fiscal federalism and autonomous 'federal' spending, while genuinely autonomous own resources remain structurally absent.[105] The implication for cohesion is significant: without an autonomous and dedicated budgetary capacity, the Union's ability to pursue convergence independently of national political priorities remains structurally constrained.

A further and last dimension of the "do not harm cohesion" principle might have implications on democratic accountability. On this regard, the CoR warns that the new MFF proposal could aggravate the democratic deficit and undermine trust in EU institutions due to the envisaged lack of scrutiny by the European Parliament and national or regional parliaments.[106] For this reason, the Commission should be required to submit more frequent implementation reports, and that Parliament be granted access to the annual review meeting reports so that scrutiny goes beyond milestone completion control and evaluates actual results.[107] (PE 776.029, p. 3–4).

Fasone further notes that the four main pro-Eu-

[105] C. Fasone, *La proposta…*, *cit.*, p. 15.

[106] Comitato Europeo delle Regioni, *Risoluzione…*, *cit.*, p. 1, point 5.

[107] Dipartimento tematico Sviluppo regionale, agricoltura e pesca Direzione generale della Coesione, dell'agricoltura e delle politiche sociali (CASP), *Navigare…*, *cit.*, p. 3-4.

ropean political groups in the European Parliament transmitted a letter to Commission President von der Leyen on 30 October 2025, criticising inter alia the supposed fragmentation and re-nationalisation in the management of European resources brought about by national and regional partnership plans, and the grouping of cohesion and agricultural policy under a single funding framework.[108] This parliamentary reaction confirms that the accountability deficit inherent in the proposed architecture is not merely a technical concern, but a political and constitutional one bearing directly on the legitimacy of the cohesion spending process.

8. The principle in the post-2027 Cohesion Policy: a solution to territorial gaps?

The Committee's appeal risks going unheard or failing to substantially impact current trends, which reflect a now consolidated practice by the Commission and Member States of diverting cohesion policy funds to other priorities when they arise in so-called emergency situations, with little coordination and spotty interventions.

In a discussion paper published in February 2023, Alison Hunter of the *European Policy Centre* provides examples of Commission departments supporting EU regions and territories without systematic coordination between cohesion policy programmes or departments (demonstrating a "siloed" mentality). Furthermore, funding calls from different Commission directorates-general often apply different time-

[108] C. Fasone, *La proposta…*, *cit.*, p. 13.

frames and conditions. Recognizing the critical need to improve the scalability and targeting of public interventions, and the coordination of policies and funding, the author argues that the EU's multilevel governance system requires significant improvement if the "do not harm cohesion" principle is to be respected. Hunter believes that a major problem with cohesion policy is its operational complexity within the "shared management" model with EU Member States and regions. Furthermore, as supported by the Committee of the Regions and the European Parliament, a clearer and more strategic relationship between Cohesion Policy and the European Semester will be necessary after 2027 to facilitate Cohesion Policy's support for the EU's economic, social, and territorial security. Cohesion Policy could play an important role in significantly boosting Recovery and Resilience Facility investments beyond 2026, adopting a more targeted, bottom-up approach to complementing reforms.[109]

The principle of "doing no harm to cohesion" thus becomes the only certain future for cohesion policy post-2027. This safeguard against centralization was reiterated by the Committee in another 2027 opinion, where it called for the principle to apply "to all EU policies so that they support the objectives of social, economic, and territorial cohesion referred to in Article 3 TEU and Article 174 TFEU." Safeguarding cohesion as a Union principle is considered a prerequisite for maintaining peace, stability, and security in Europe.[110] There-

[109] A. Hunter, *An EU…*, *cit.*, p. 17.

[110] Committee of the Regions, *Opinion of the European Committee of the Regions — The future of cohesion policy after 2027*

fore, in the context of post-2027 EU policies, the Committee of the Regions has proposed that the principle be explicitly applied to centrally managed programs as well, not just those under shared management like Cohesion Policy. This includes programs such as *Horizon Europe*, *InvestEU*, and other EU budget instruments.[111]

However, neither the ninth cohesion report of March 2024 nor the Committee's resolution of June 2024 explicitly defines how the principle should be applied, nor do they refer to Article 175(1) TFEU. On the one hand, the Commission, ignoring the Committee's 2023 opinion on the principle, merely calls on Member States to apply it to all national policies under their obligations under *Articles* 174 and 175 TFEU.[112] On the other hand, the Committee only makes a general reference to compliance with the principle in national and EU policies.[113]

Nonetheless, the importance of implementing the principle of non-harm to cohesion by the Union and the Member States, in the manner proposed by the Committee in 2023, and in line with the obligation for them under Article 175(1) TFEU, is crucial to finding a solution to combat the territorial disparities that continue to worsen following the pandemic, energy, and security crises the EU has endured. The Commission itself, in

(C/2024/1041), para. 9.

[111] *Ivi*, para. 30. See also J. Bachtler , C. Mendez , *Who…*, *cit.*, p. 50.

[112] European Commission, *Ninth Report on Economic, Social and Territorial Cohesion*, p. 244, available at the following *https://ec.europa.eu/regional_policy/information-sources/cohesion-report_en*.

[113] Committee of the Regions, *Resolution of the European Committee of the Regions on a renewed cohesion policy after 2027 that leaves no one behind Responses of the CoR to the report of the High Level Group on the future of cohesion policy and the 9th cohesion report*, C/2024/3661, para. 19, p. 2.

its ninth report, emphasizes how Cohesion Policy has helped some regions escape the so-called "development trap" over the last 30 years, thanks also to its *spillover effect*.[114] The European Parliament itself emphasized in December 2024 that the only way to effectively address the problem of territorial disparities and counter the shift toward centralization would be to apply the principle. However, its development and integration into European and national decision-making processes remains at the conceptual and proposal level. However, it is hoped that the Commission's future proposals for the post-2027 budget will take into account the various approaches, especially that of the Committee, supported by the European Parliament, on the practical application of the principle.[115]

9. Conclusions.

Despite various proposals from *think tanks* and scholars for a post-2027 reform of Cohesion Policy,[116] the principle, formally recognized only recently, reflects a long-standing concern and response to ensure that EU policies do not have negative effects on territorial cohesion, serving as a counterweight to the centralizing and nationalizing tendencies of Cohesion Policy.

Its practical application requires that impact as-

[114] European Commission, 9th report, cit., p. 293.

[115] The future of EU cohesion: Scenarios and their impacts on regional inequalities Cost of non-Europe, p. 3.

[116] F. Molica, E.L. Fontás, *Back to the future: 5 scenarios for post-27 cohesion policy*, in «Reflection Paper», Conference of Peripheral Maritime Regions (CPMR), 2022; K. Böhme, P. Mehlbye, P. Schon, D. Martin, *Territorial Cohesion: The New Core Of Cohesion Policy Post-2027*, in «Spatial Foresight», XI (2023), p. 2-6.

sessments of other European policies take into account their potential impact on regional disparities, ensuring that no EU-funded measure contributes to increasing such disparities. This approach aims to integrate cohesion as a cross-cutting value into all EU initiatives, promoting balanced and sustainable development across all European sectoral policies.

However, the introduction of the principle has sparked several debates among policymakers, experts, and regional authorities, highlighting the need to clarify how this principle will be applied in practice across various EU policies and its impact on funding decisions. Furthermore, the importance of ensuring that the principle's implementation does not hinder the effectiveness of existing policies but rather strengthens them in pursuing the common goal of greater cohesion, has been emphasized.

In summary, the "do not harm cohesion" principle represents a significant step towards integrating territorial cohesion as a central element of EU policies, including the full implementation of Article 175(1) TFEU, which has so far remained unimplemented. However, its effective implementation will require a coordinated effort and a clear definition of operational procedures to ensure that all initiatives contribute positively to reducing territorial disparities. In the author's view, a future full development of the new principle will also require consideration of its relationship with two other fundamental principles in the development of European initiatives, namely the principles of subsidiarity and proportionality. Above all, it will require that the development and possible integration of the principle into the

bottom-up and bottom-up phases of European policy development and implementation take into account the structural contribution of the European body that best represents the needs and concerns of the regions, namely the Committee of the Regions.

Finally, the analyses of the proposed MFF 2028–2034, in its current configuration provided seems to converge on a common diagnosis: it risks violating the "do not harm cohesion" principle through multiple and mutually reinforcing mechanisms — the dilution of cohesion's intervention logic within the integrated architecture; the re-nationalisation of governance and the resulting subsidiarity deficit; intra-fund budgetary competition that structurally disadvantages cohesion objectives; the regressive distributional effects of a performance-based delivery model applied without methodological harmonisation; the unresolved tension between competitiveness and convergence; and an accountability deficit that weakens ex post scrutiny of territorial outcomes. The tension and dilemma between centralisation and re-nationalisation of the European budget remain central to the proposed MFF 2028–2034. This diagnosis points to a systemic incompatibility between the proposed budgetary architecture and the positive obligation, under Article 174 TFEU, to strengthen territorial cohesion that applies to all Union institutions — a tension that the forthcoming interinstitutional negotiations will be called upon to resolve if a framework genuinely respectful of the "do not harm cohesion" principle is to emerge.

Martina Lillo

Institutions for the future. European Union's normative efforts in the pursuit of Transgenerational Justice

Summary: 1. Introduction – 2. Institutions for the future. Transgenerational Justice and Institutional Sustainability – 3. On institutions' social ontology. Institutions' transcendental quality and normative ontology: The European Union case, through space and time 4. What's next after Next Generation EU? Implementing Transgenerational Justice within the EU's normative "capital": on the necessity of supranational Constitutionalism in the case of the European Union

1. Introduction

«Rien n'est possible sans les hommes,
Rien n'est durable sans les institutions.»
Jean Monnet[1]

The present work will explore the foundational role that the principle of Transgenerational Justice plays in institution-building and, in particular, in the case of the European Union's institutional construction.

[1] J. Monnet, *Mémoires*, Fayard, Paris 1976, p. 412.

In his *Mémoires*, Jean Monnet eloquently highlighted institutions' capacity to endure over time, crossing and overpassing different generations, surviving those individuals who founded them. This work will focus on European Union's normative efforts towards the principle Transgenerational Justice, with the aim to define a plausible approach to a more future-oriented institution-building.

This dissertation will aim at answering the following questions:

> What ontology, or, differently said, constitutive nature,[2] do institutions have?
>
> How are institutions able to endure over time, overpassing multiple, potentially infinite, generations?

The literature stating the institutional and political *sui generis* nature of the European Union as a supranational institution, presenting unique features of hybridization among international organizations and supranational institutions, and even some nation-state-like qualities, is wide and interdisciplinary. For example, to explain this unique, hybrid nature of the European Union as an institution, the EU has been interestingly defined [3] as an institutional globalization "container": this definition, while resulting surely fitting for the EU

[2] Here the term is intended to point at that particular field, in social theory and social philosophy, that is, social ontology, that aims at defining the constitutive nature of social objects, explaining the nature of the social world.

[3] M. Telò, G. Joffe (Eds.) *The European Union and New Regionalism: Europe and Globalization in Comparative Perspective*, Routledge, New York 2018

as a political project,[4] is intended to define the EU on the basis of the purpose of her construction; rather, intention of this this work will be to provide a definition of the EU that is based on her ontology as an institution.

The "*sui generis* argument" concerning the European Union, an argument that has been however relativized, if not refuted[5], is an argument that is probably often mobilized to justify the political and juridical traditional westphalian-based categories, rather than to address the reality of the European Union as a political project. In this work the so-called "*sui generis*" nature of the European Union will be however mobilized in a different way. The particular case of the EU as object of the present research has been selected exactly in virtue of this institutional "uniqueness": purpose of the work will be in fact, thanks to - and not in spite of - this uniqueness or exceptionality of the EU as an institutional case, that it would be possible to extract the ontological qualities that, on the opposite, are common, and are attributable to, all institutions. The reasons for choosing the case of the European Union is hence not only of geographical proximity but are founded also in methodology, given by the EU's specificities as a supranational institution.

After an introductory definition of Transgenerational Justice, the answers to these two research ques-

[4] S. Keukeleire, T. Delreux, *The foreign policy of the European Union*, Bloomsbury Publishing, London 2008, p. 30-34.

[5] R. Schütze, *Two-and-a-half Ways of Thinking about the European Union*, in «Politique europeenne» III (2016), p. 31ff.; N. Lupo, *La costruzione del diritto dell'Unione europea e la legittimazione politica*, XL AIC annual conference, Università degli studi di Torino, 10-11 ottobre 2025, p. 7-8.

tions will be provided in the first two part of the work. In the first part, it will be explained how institutions, and, in particular, the European Union's institutional case, have a "transcendental[6] ontology", a quality that make institutions able, by definition, to overpass the limits of both the dimensions of space and time. In the second part of the work it will be answered the second question, that is, how do institutions have this transcendental capacity of enduring over time and overpassing multiple, potentially infinite generations. The answer that will be provided, considering the European Union as a Normative Power[7], is that institutions acquire this transcendental capacity through value transmission, and hence, that institutions' transcendental capacity is value-driven and value-based.

In this part of the work will be hence explain why institutions are able go beyond the dimensions of space and time, a capacity that in this work will be addressed as "transcendental capacity": according to these results, institutions are thought to be able to transcend imma-

[6] The term "transcendental" has a significant historical weight in philosophy, identifiable since the Scholastic tradition and then continuing with Kant. However, for the purposes of the work, it is sufficient to state that the term "transcendental" in philosophy leads the action of going beyond a given limit, or border, limit can be of different nature (e.g. mental, spiritual, etc.) but also geographical and chronological, as it will be mobilized in this case with the European Union as a social object and a political institution. The term hence always implicitly acknowledges the existence of some given limits of some sort and the overcoming of that limit. The transcendental character of the European Union as an institutional object, as inserted in a wider social sciences phenomenon that has been defined as "transcendentalization of the social". For more about this particular topic in social philosophy, see A. Ferrara, *The idea of a social philosophy*, in «Constellations», IX, 3 (2002), p. 419-435

[7] I. Manners, *Normative Power Europe: A Contradiction in Terms?*, in «Journal of Common Market Studies», XL, 2 (2002), p. 235-258.

nence, both according to the dimension of space (e.g. EU's member states or, potentially, even non-member States) and time (e.g. different generations). This ability is explainable by the fact that institutions are normative, value-based systems, and acquire this transcendental capacity through the provision of norms or values across peoples and generations. The institutional case of the European Union will be hence defined as a trans-spatial system and as a transgenerational system.

Finally, a third part of the work will bring the results of this dissertation and will make some considerations on the future of the European Union's institutional development as a political project, with particular attention to future prospects of implementation of the principle of Transgenerational Justice, a principle that, as the name of the 2021-2026 economic recovery package launched in December 2020, "Next Generation EU" already evocates, is starting to be included within the European normative "capital".

This final part of the work will highlight how considering the role of the principle of Transgenerational Justice in pursuing sustainability allows a deeper understanding of the role of global institutions as relations- and future-shapers. As a result, a theory of institutions – including supranational ones – on the basis of the findings of this research will be proposed. In this section, in particular, it will be explained why, on the basis of the results obtained from this work, the elaboration of a European Constitution would represent a fundamental action, and, maybe, a necessity, for the European Union as an institutional system to endure across next generations to come, advocating in favor of the importance

of European constitutionalism as a discipline, and, more widely or globally speaking, of supranational or global constitutionalism[8] in Constitutional law.

2. Institutions for the future. Transgenerational Justice and Institutional Sustainability

Transgenerational Justice can be defined as the form that the principle of justice assumes among different generations[9].

The topic of Transgenerational Justice is often mobilized first in the studies devoted to sustainability. The problem of Transgenerational Justice has revealed itself as particularly evident when considering climate change, which is an exemplary case in showing the weight of time, especially for what concerns the inequality of distribution of resources when adopting a diachronic frame of analysis. When considering Transgenerational Justice, it is in fact impossible to do not take into account the role of the temporal dimension in distributive justice, and hence on diachronic relations, which is at the core of the structural, asymmetrical character of transgenerational relations.[10] Beside the climate emergency, the rising uncertainty towards the future, due the unprecedented level of large-scale, multidimensional global phenomena such as the Covid-19 pandemic and the digital transformation catalyzed an increasing attention

[8] L. Ferrajoli, *Per una Costituzione della Terra*, in «Teoria politica», X (2020), p. 39-57; C.E. Schwöbel, *Global Constitutionalism in International Legal Perspective*, Vol. IV, Brill, Leiden 2011.

[9] T. Andina, *Beyond Rawls: the Principle of Transgenerational Equity*, eds. T. Andina, F. Corvino, *Global Climate Justice: Theory and Practice*, E-International Relations Publishing, 2023, p. 127.

[10] *Ivi*, p. 125-126.

towards youngest generations' growingly fragile welfare; more widely, the sustainability of the current welfare and economic systems are increasingly questioned, especially with reference to future generations' ability to benefit from it at least at the same level of current generations[11]. In this sense, a revision of the transgenerational pact underlying our current welfare systems is also growingly perceived as a central issue for ensuring sustainable development and a more future-framed institutional setting that is meant to last through shocks or unexpected difficulties.

However, besides the notion that implies a given principle of distributive justice, more broadly speaking, it can be argued that the concept of Transgenerational Justice is strictly correlated with institution-building and institutional sustainability, representing a powerful conceptual synonym for Sustainable Development in a relational, holistic, human-based perspective.

Talking about Transgenerational Justice is talking about the essence itself of Sustainable Development – a relational approach towards human development, based on the awareness of the rights of future generations to have their own. In this sense, Transgenerational Justice could represent the most accurate synonym of sustainability, underlying an expansion of the borders of justice, in Rawlsian terms[12], as wide as possible, through both the dimensions of space and time.

[11] OECD, *Governance for Youth, Trust and Intergenerational Justice: Fit for All Generations?* OECD Public Governance Reviews, OECD Publishing, Paris 2020.

[12] J. Rawls, *The Law of Peoples,* Harvard University Press, London 1999.

Transgenerational Justice has been one of the core underlying motives of the United Nations since its conception: born with the intention of preventing any future global conflicts, posing the problem of reparation for past injustices/genocides, the relationship with past generations has always been a central issue within the United Nations framework.[13]

More recently, with the development of environmental and social sustainability governance, Transgenerational Justice has been gradually developed also with reference to future generations.

Since her first UN-based conceptualization (1987), the notion of Sustainable Development already contains *per se* a transgenerational connotation in its same definition. Already in Our Common Future in fact the UN institutional framework has provided a relational interpretation of sustainability that implies a transgenerationally-inclusive distribution of resources, that do take into account the right of future generations to access those same resources:

> "Sustainable development is development that meets the needs of the present *without compromising the ability of future generations to meet their own* needs".[14]

[13] United Nations, *Charter of the United Nations – Preamble*, UN Documents, New York 1945; L. Meyer, *Intergenerational Justice - Stanford Encyclopedia of Philosophy*, online 2021; I. Testa, V. Ottonelli, *Filosofia Politica (o del governo della comunità)*, in *Filosofia contemporanea*, eds. T. Andina, G. Fracchia, Carocci, Rome 2020, p. 383.

[14] World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, UN Documents, New York 1987 A/42/42; §IV.1.

Also, the notion of sustainability presupposes, even in its etymology, the feature of being able to sustain something over time (from the latin sub-tenere) as some point out[15], thus referring to some stability that may be provided across changes.

With the adoption of the Agenda 2030 at the global level, the consolidation of Sustainable Development as a global framework added an innovative dimension on the issues concerning Transgenerational Justice, as for the first time not only past, but also future generations has been taken into account by global leaders and policymakers, proposing a multidimensional, relational, human-centered interpretation of sustainability, in a holistic interrelation of environmental economic and social dimensions. The Agenda 2030 explicitly refers to future generations as an important part of her wider political objective:

> "We are determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations"[16]

> "We are announcing today 17 Sustainable Development Goals with 169 associated targets which are

[15] F. Corvino, G. Frigo, *Sostenibilità*, in *Filosofia contemporanea*, eds. T. Andina, G. Fracchia, Carocci, Rome 2020, p.394.

[16] United Nations, *Transforming Our World: the 2030 Agenda for Sustainable Development*, UN Documents 2015, A/RES/70/1; Preamble; emphasis added.

> integrated and indivisible. Never before have world leaders pledged common action and endeavor across such a broad and universal policy agenda. […] We will implement the Agenda for the full benefit of all, for today's generation and for future generations."[17]

> "The future of humanity and of our planet lies in our hands. It lies also in the hands of today's younger generation who will pass the torch to future generations. We have mapped the road to sustainable development; it will be for all of us to ensure that the journey is successful and its gains irreversible." [18]

In this sense, the global institutional framework of the United Nations seems to apply a notion of community which is the most inclusive as possible, of both backward- and forward-looking nature and thus representing an example of a transpatial (global) and transgenerational community.

One of the feature of institutions identified by some authors[19] is exactly the expansion of the "boundaries" of her community, which can happen also through transgenerational relationships and that hence could transcend both space and time. This particular reasoning brought some authors to propose an interpretation

[17] *Ibidem;* §18; emphasis added.

[18] *Ibidem;* §53; emphasis added.

[19] For example see: J. Thompson, *Birthright Entitlements and Obligations in an Intergenerational Political Society*, in «The Monist», CVI, 2, (2023) p. 132-144; T. Andina, F. Corvino, *Transgenerational Social Structures and Fictional Actors: community-based responsibility for future generations*, in «The Monist» CVI,2 (2023), p. 150-164; A. Ferrara, *Sovranità intergenerazionale: potere costituente e liberalismo politico*, Società Aperta, Sesto San Giovanni 2024.

of the birthright principle, transposed at a global level, as the theoretical ground for justifying all obligations towards future generations in our current UN-based global political system, as future people will be born on the same planet than us. This philosophical argumentation attempts to solve the problem trough extending universally the notion of citizenship not only according to the territorial dimension, but also on the trans-temporal one, including in a very innovative way also diachronic relations in citizenship rights attribution.[20]

The correlation between Transgenerational Justice and institutional sustainability – a topic which has a whole dedicated SDG Goal to, that is, Goal 16 – is growing in perception of importance for policymakers.

In such a global context, United Nations are making a profound reflection on the future of the Sustainable Development paradigm: in this perspective, the next step for the survival of the Sustainable Development framework seems to be the one which further highlights the very core principle of the whole Sustainable Development paradigm – which is, our relationship towards future generations.

In 2024 the "Summit for the Future" took place in New York, the 22nd and 23rd of September 2024, with the explicit aims of: reaffirming the UN Charter, reinvigorating multilateralism, boosting implementation of existing commitments, agreeing on solutions to new challenges, and restoring trust, all under the slogan of

[20] On the Birthright principle see in particular J. Thompson, *Birthright Entitlements and Obligations in an Intergenerational Political Society*, cit.

"shaping Our Common Future"[21], quoting the famous Declaration that brought the concept of Sustainable Development to life. The results of this initiative from the UN General Secretariat were the ratification of two important documents: the Pact for the Future and the UN Declaration for Future Generations, confirming and further stressing, with unprecedented intensities, the role of Transgenerational Justice in the whole sustainability and Sustainable Development global framework paradigm. The strong incorporation of a transgenerational approach to the UN discourse is also the referral to this event by the same United Nations as a "once-in-a-generation opportunity"[22]. The initiative covered a wide range of topics, including peace and security, climate change, digital cooperation, human rights, gender equality, youth policies, throughout the theme of the evolution of global governance and of the Sustainable Development framework.

At the moment of writing this introduction (2025), the Agenda 2030 is opening her last 5-years of implementation. Ten years has passed from the elaboration of the Agenda 2030 framework, and 5 years only are last: at 2/3 of the implementation period completed, a significant state-of-the-art reflection is needed on the gap between expectations, commitments and reality.

Peace is the most necessary condition for Sustainable Development – and, above all, for democratic insti-

[21] United Nations, *Summit for the Future Outcome Documents: Pact for the Future, Global Digital Compact and Declaration on Future Generations*, UN Documents, New York 2024, A/RES/79/1

[22] United Nations, *Summit for the Future*, Official Website; United Nations, *UN Library – Voice: Summit for the Future*.

tutional endurance and good governance - and yet is still an objective to attain at the global level. When thinking about the Ukraine war and the crisis in the Middle East, it is impossible not to reflect on the unbreakable bond between peace and the attainment of a prosperous, inclusive, democratic, Sustainable Development-focused society.

Moreover, time towards 2030 is running by, and it seems that the score of SDG goals attainment is not only not reached, but are even decreasing in score: it has been calculated that, if the current trend will persist, only the 17% of the Targets will be reached at the global level by 2030, while no progress will be found (with some worsening even) for at least one third of the Targets[23].

Indeed, a deep reaffirmation of the political, human, salience of Sustainable Development Goals should be addressed. In this sense, some elements of hope have to be acknowledged: at the national level, in 2022 Italy mentioned the preservation of natural resources in correlation with future generations' interests in the Italian Constitution[24]; also, the enormous amount of projects initiated thanks to the Recovery and Resilience National Plan (PNRR) undoubtedly breathed new life to the Sustainable Development implementation policy paradigm. At the

[23] To know more about SDG implementation at the Italian and global levels, see ASvIS, *Coltivare ora il nostro futuro: l'Italia e gli Obiettivi di Sviluppo Sostenibile: Rapporto ASviS 2024,* Alleanza italiana per lo Sviluppo Sostenibile, ASviS, Rome 2024.

[24] Art. 9: "The Republic shall promote the development of culture and of scientific and technical research [*cf. artt.* 33, 34]. It shall safeguard the natural beauties and the historical and artistic heritage of the Nation. It shall safeguard the environment, biodiversity and ecosystems, also in the interest of future generations. State law shall regulate the methods and means of safeguarding animals".

European Level, EU's confirmed political willingness and commitment towards the Agenda 2030 implementation, despite the geopolitical emergencies recently faced, still gives hope; and the recent elaboration of the "Pact for the Future" and on the "Declaration on Future Generations" ratified by the United Nations in 2024 at the Summit for the Future is a signal about the political willingness to state the aliveness of Sustainable Development as global policy paradigm with Transgenerational Justice as a transversal guiding principle in policy-making.

Institutions themselves are hence growingly aware of the strong, and yet very fragile link, between institutional endurance and our relationship with future generations.

3. On institutions' social ontology. Institutions' transcendental quality and normative ontology: the European Union case, through space and time

Definitions of the European Union are numerous across multiple disciplines. For the purposes of introducing the European Union in this work, it is sufficient to start defining the EU as a complex supranational institutional system whose first objective is the provision of an institutional framework for member states to cooperate on joint activities[25].

This common institutional framework is both rule-based, as can be identified in her jurisprudence, and normative, as it expresses a set of common shared principles or values and practices, such as democracy, the

[25] P. Magnette, *What is the European Union: Nature and prospects*, Bloomsbury Publishing, London 2017.

respect for the rule-of-law and human rights, economic liberalism, sustainable development, good governance, and potentially, new others.[26]

To explain European Union's international role and agency, the EU has been defined as a "Normative Power".[27] According to this concept, a Normative Power is "the ability to shape or change what passes for normal in international relations"[28], and which will "undoubtedly have utilitarian, social, moral, and narrative dimensions to it".[29] The notion has explicit ontological implications[30] concerning the nature of the European Union as an international actor and agent, that is defined, through this concept as normative and ethical-based. In explaining the nature of the European Union's influence, the concept of Normative Power Europe defines the nature of EU's power and influence across the world, asserting hence that the ontological quality of the European Union is essentially ethically-based.

The concept of Normative Power Europe has originally been elaborated in the field of International Relations; it obtained a considerable amount of success in the domain of European integration, up to the point of being one of the most identifiable streams of literature in that field.

The concept is intended to address that particular

[26] F. Foret, O. Calligaro (eds.), *European values: Challenges and Opportunities for EU governance*, Routledge, New York 2018.

[27] I. Manners, *Normative Power Europe: A Contradiction in Terms?* cit.

[28] *Ivi*, p. 239.

[29] I. Manners, *Normative Power Europe: A Contradiction in Terms?*, Copenhagen, Peace Research Institute, Copenhagen 2000, p. 32.

[30] *Ivi*, p. 252.

capacity of the European Union, as a supranational institution, to expand her borders or limits of some kind, be they borders of influence (in international relations), or of jurisdiction (in law) or of competence (in public policy). Other concepts have addressed that same quality of the European Union as a supranational institution: a similar intention can be addressed to other concepts related to European integration studies, for example the "Brussels effect" notion [31] in comparative public law or the phenomenon that scholars call "Europeanization" in the field of public policy.[32]

The concept of Normative Power Europe is also focused on the trans-spatial dimension, which is typical of International Relations as a discipline, when dealing with the EU's capacity to exercise her influence throughout the world, outside of her geographical and institutional borders. In this sense, Manners' concept is the fruit of his time. In a moment where the European Union is knowing an expansion in terms of foreign influence (2002), while experiencing the success of the Eastern enlargement which is still today considered[33] as one of EU's most succeeded foreign policies, the NPE concept aimed at explaining why the European Union's institutional example could exercise an influence that was able to transcend her local dimension, having an effect on territories outside of her actual borders.

The concept hides nonetheless philosophical as-

[31] A. Bradford, *The Brussels Effect: How the European Union Rules the World*, Oxford University Press, Oxford 2020.

[32] C.M. Radaelli, K. Featherstone, *The Politics of Europeanization*, Oxford Scholarship, Online 2003, p.1-30.

[33] S. Keukeleire, T. Delreux, *The Foreign Policy of the European Union*, cit., p. 207-211.

sumptions that are worthy of consideration, especially concerning the ontology of the European Union's power and the social function of institutions in a broader sense.

Firstly, it contains important ontological implications concerning European Union's constitutive nature as an institution. The concept, while attempting to explain the nature of European Union's power or influence around the world, it *de facto* defines the ontology of the European Union, as it recurs to ontological arguments in explaining the nature of her power.

According to this concept, it is thanks to this ethical essence that the European Union would be able to "export" some of her norms, practices or even regulations to other countries, that would voluntarily adopt and put them into practice because of a communal sharing of those same values.

According to this reasoning, it would then be European Union's ethical essence that would give her the ability to transcend her actual spatial dimension of influence (e.g. her member States) as an institution.

Considering the European Union as a "Normative Power" would hence open the way to new debates questioning the issue of the transcendental function of institutions, a topic which is felt with growing interest in social philosophy[34].

The transcendental character of the European Union's institutional system has been also highlighted by Maurizio Ferraris, when calling the EU as a "documental

[34] To know more about the concept of the transcendentalization of the social world, see A. Ferrara, *The idea of a Social Philosophy*, in «Constellations», IX, 3 (2002), p. 419-435.

power"[35]. In his elaboration of a wider theory of social ontology, the philosopher indirectly pointed at the transcendental character of the European Union's institutional system, in particular to his supranational feature. Ferraris highlighted how the almost purely bureaucratic, documental nature of the European Union, despite being often criticized could instead represent her main institutional strength – in terms of resilience capacity - as it allowed (and still allows) all peoples from different jurisprudences and cultures to transcend their local particularisms to convey into a supranational, regional community. The argumentation, indirectly, proposed an answer to the well-known debate about the so-called European "democratic deficit", a position that, with good reason, highlights the dangers of a political project that disposes of a κράτος without a reciprocal δῆμος.[36]

But are really documents (for example, Treaties) that gives the European Union the capacity to exist?

In 2002, Ian Manners[37] coined the concept of the European Union being a Normative Power for explaining the capacity of the European Union influence to go

[35] M. Ferraris, *Documentalità: perché è necessario lasciar tracce*, Laterza, Bari 2009; M. Ferraris, *Documentality, or Europe*, in «The Monist», XCII, 2 (2009) p. 286-314

[36] The literature on the "democratic deficit" of the European Union, highlighting the dangers of a political project that may lack in legitimacy sourced from popular support, contains both advocates and opponents, an example of which: A. Moravcsik, *Is there a 'democratic deficit' in world politics? A framework for analysis*, in «Government and opposition» XXXIX,2 (2004), p. 336-363; A. Moravcsik, *The myth of Europe's' democratic deficit*, in «Intereconomics» XLIII,6(2008), p. 331-340; A. Follesdal, S. Hix, *Why there is a democratic deficit in the EU: A response to Majone and Moravcsik*, in «Journal of Common Market Studies», XLIV, 3 (2006) p. 533-562.

[37] I. Manners, *Normative Power Europe: A Contradiction in Terms?*, cit.

beyond her geographical "borders", taking from the experience, for example, of the *acquis communautaires* – but not only, since, according to this theory, even less formalized or institutionalized practices of conduct can be part of European Normative Power - a sort of "European standard" that even non-EU member States would voluntarily comply with. This power that is named "normative" is described as essentially ethically-based, giving the European Union's identitarian values a very concrete and important role in policy-making.

So, according to the notion of Normative Power Europe, the European Union, as a supranational institution would be able expand her "ray of influence" beyond her geographical borders through the transcendental capacity of ethical values.

Up until now, the concept of Normative Power Europe has explained how the European Union, as a supranational institution, can be able to transcend her geographical limits, making possible, for example, that some non-EU member States may willingly assume EU's identitarian values as their own. But how do institutions can be able to last *over time*?

It can be argued that institutions are able to overpass generations through the enactment of Transgenerational Actions, a theoretical construct which would make allow cooperative, trust-based transgenerational bonds to take form among non-contemporaries.[38] Transgenerational Actions have been theorized as a particular class of trust-based, cooperative social actions that occur

[38] T. Andina, *Transgenerational Actions and Responsibility* in «Journal of Critical Realism», XVII,4 (2018), p. 364-373; T. Andina, *Transgenerazionalità: una filosofia per le generazioni future*, Carocci, Rome 2020.

through the involvement of different, even non-simultaneous, generations; this particular class of social actions would be fundamental for providing social structures the ability last over time and, as a result, for explaining institutional survival. The mechanism of Transgenerational Actions would be possible thanks to the creation of a transgenerational bond of dependence among those generations involved in that particular action, making intergenerational cooperation possible over an indefinite time span that is potentially infinite.

Transgenerational Actions[39] can be a theoretical tool of fundamental importance for two reasons. First, they add a relational approach to the topic of Transgenerational Justice, highlighting that when dealing with future generations, even if non-simultaneous, there is still a reciprocity in action; this allows that there can be a cooperation with future generations, through the transgenerational transmission of values, providing social structures the ability last over time. As a result, TAs could have a potential in explaining institutional solidity and resilience, that is, survival of institutions across multiple, potentially infinite, generations.

4. What's next after Next Generation EU? Implementing Transgenerational Justice within the EU's normative "capital": on the necessity of supranational Constitutionalism in the case of the European Union

In this paper institutions have been defined as *transcendental systems*, disposing of the capacity of

[39] On Transgenerational Actions see also: T. Andina, *Revising Ontology to Reshape Transgenerational Justice: A Framework for Vertical Justice in Democratic Societies*, in «Global Policy», 2026.

going beyond their immanence, be it a given limit, or border, on the temporal or spatial dimension. As a result, institutions can also be defined:

- as trans-spatial systems, when the "limit" overpassed by their transcendental capacity is spatial, or geographical (e.g., in the case of the European Union: EU/non-EU member States);
- as trans-temporal, transgenerational systems, when the "limit" overpassed by their transcendental capacity is temporal or chronological (e.g., in the case of the European Union: involving multiple generations over time).

In this work it has been explained how, according to the concepts mobilized, institutions dispose of this transcendental capacity because they are *normative systems*: they can transcend immanence thanks to their normative capital - that is, ethical values which are transmitted to the alterity, be them other non-EU member countries or future generations and, of course, received, through space and time.

This definition of institutions proposed here is in line with perceiving institutions as providers of public common goods, including in this perspective not only material goods but also immaterial goods, such as a common ethical set of identitarian values upon which the European "identity" can form and expand through space and time. This common normative set of ethical values is also at the basis of the capacity of individuals to have relationships within a given political and social system, not only through space but also through time.

The concept of Normative Power Europe provides the benefit of highlighting the transcendental function of ethical, identitarian values of the European Union: values such as democracy, human rights, sustainable development, good governance, economic liberalism, respect for the rule-of law, and, potentially, other may add onto these into the future, one being, for example, the principle of Transgenerational Justice.

This concept also provides a very important function to EU jurisprudence, that *per se* may be not necessarily the source of EU's Normative Power, but is without doubt a very powerful, if not the most powerful, tool for the European Union to diffuse her norms or values – and make them to last over time. The concept of norm in fact implies not only jurisprudence – but also less institutionalized practices of standardization: that may include administrative practices but also ethical principles and codes of conducts. This makes so that the European Union is, surely a legal entity, but it is, first of all, a political project: and, as such, it decides legitimate common values to act upon collectively.

The theory of institutions hereby presented - that sees institutions, included supranational ones, as transcendental systems by definition - can help understand why, in the case of the European Union institutional integration process, adopting the approach of supranational, or, as some have further specified, post-national form of Constitutionalism[40] can be the best way to understand the institutional case of the European Union.

[40] P. Linden-Retek, *Postnational Constitutionalism: Europe and the Time of Law*, Oxford University Press, Oxford 2023.

In order to face our big contemporary global challenges, a more future-oriented institution- and community-building is needed. Incorporating Transgenerational Justice within the EU "normative studies" as a European institutional, functional, value, while providing a common vocabulary among different disciplines could provide a new perspective on the existing debate concerning the contemporary challenges faced by Western liberal democracies today, especially those related to the problem of ensuring a more long-term vision to decision-making, that is increasingly emergency-based. Incorporating Transgenerational Justice within the EU "normative studies" as a European institutional, functional, value, could provide a new perspective on the existing debate concerning the contemporary challenges faced by Western liberal democracies. For example, the consideration of the quality of diachronic relationships of democratic institutions is often overlooked when assessing democratic inefficiency in institutional decision-making, although being one of its core problems[41]: in a continuously evolving and changing society, a future-oriented institutional and law-making approach is necessary for avoiding institutional dysfunctions such as politico-administrative paralysis or the institutional phenomenon that has been recently indicated as "presentism"[42], a term intended to institutional trend of confining, intentionally or unintentionally, law-making

[41] J. Zielonka, *Democrazia miope: il tempo, lo spazio e la crisi della politica,* Laterza Editore, Bari 2023.

[42] L. Bartolucci, *La valutazione di impatto generazionale delle leggi come forma di attuazione degli articoli 9 e 97 della Costituzione*, in «Federalismi.it», IV (2024), p. 39-49.

processes and effects to an excessively limited time-span, a timing which is probably often insufficient to solve structural problems. This idea is based on the reflection affirming the necessity and functionality of transgenerational relations for institutions and not exclusively on the morality of those actions. Moreover, recurring to the notion of functional values would allow to go beyond, - and hence, maybe, proposing an indirect solution to - the unresolved debate, explored both juridically and philosophically, about the assignation of rights to future individuals[43] while still affirming the importance of ensuring Transgenerational Justice.

The very same principle of Transgenerational Justice seems to be a potential "new entry" within the normative "capital" of the European Union, not only in the words of the same author that named the European Union as a Normative Power,[44] but also looking at the European Commission' s most recent political initiatives. The reference to future generations within the same name of one of the biggest most recent EU financial initiatives, Next Generation EU, already indirectly testifies the normative, in ethical terms, attempt of the European Union to incorporate transgenerational solidarity within her normative institutional architecture; if then the long-term effects of the initiative on EU-member States national administration is considered, the institutional, structural, transgenerational impact of the plan is al-

[43] For a comprehensive overview of the debate, see A. Gosseries, L. H. Meyer (eds.), *Intergenerational justice*, Oxford University Press, Oxford 2009.

[44] I. Manners, *Arrival of Normative Power in planetary politics* in «JCMS: Journal of Common Market Studies», LXII, 3 (2024), p. 830.

ready potentially very impactful, as the topic of this Jean Monnet Conference highlighted.

In line with this apparent intention, in 2026 the European Commission has released the "First Ever" [45] Strategy on Intergenerational Fairness, a designation that already contains a declamatory, normative intention within the very same act of issuing it.[46]

However, following the results of this dissertation, we have seen that institutional endurance and survival over time, and across generations, is dependent upon the legitimacy of the values that we decide to transmit. Those same values would be much more ensured through a Constitutional document, which, after this analysis, can be defined as the ultimate Transgenerational Action that an institution can do. What is a Constitution, if not a document that is intended to transcend space and time, addressed to whom who may come in the future, in the hope that posterity may share those same values and transmit them again to those who will come after, making those same values survive through that Document?

Adopting a transgenerational approach would maybe help to face the dilemma of legitimacy in supranational constitutionalism that even Hannah Arendt suspected[47], the risk of making of Europe a project with-

[45] EU Commission, *Commission presents First Ever Strategy on Interngenerational Fairness*, Press Release in Brussels March 5, 2026.

[46] EU Commission, "*Strategy on Intergenerational Fairness*" - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, March 5, 2026.

[47] H. Arendt, *Dream and Nightmare* in: H. Arendt, *Essays in Understanding 1930 - 1954, Formation, Exile, and Totalitarianism*, New York Schocken Books, New York 1994, p. 409–417.

out a real legitimacy sourced from the European reality, that is, European peoples. Adopting a transgenerational approach, and seeing a constitution as a Transgenerational Action, means considering that a constitution is a relational, even if non simultaneous, two-step process: one is the moment where the Constitution, or the Transgenerational Action is written to be transmitted; the second is when future generations will decide to cooperate to this Transgenerational Action, by complying and transmitting again, to their posterity, that same heritage.

In 2003 the European Union attempted one of her widest Transgenerational Actions, with the attempt of drafting the first European Constitution, after the "Declaration on the Future of the European Union"[48]. The whole process, that comprehended not only a unified Charter of Fundamental Rights but also a "Declaration on the Future of the European Union", rests an event of undeniable institutional newness for a supranational entity such as the European Union; and, despite her lacked ratification, according to this findings, was maybe going potentially in the right direction in some way very ahead of its time.

[48] Council of the european union, *Draft Treaty Establishing a Constitution for Europe*, 18 July 2003, OCJ, 169/1.

Gaia Lucilia Romano

Digital constitutionalism and the NGEU: is the emerging European digital sovereignty compatible with democracy?

Summary: 1. Introduction. – 2. Digital constitutionalism and EU regulatory strategy. – 3. The NGEU as a constitutional engine: conditionality and institutional reconfiguration. – 4. Italy's NRRP and the digitalisation of justice. – 5. Artificial intelligence in the judicial sector: constitutional implications. – 6. Digital sovereignty, democratic accountability, and the risk of technocratic drift. – 7. Concluding remarks.

1. Introduction

The digitalisation of public services, administrative systems, and judicial institutions has long ceased to be a matter of mere technical modernisation. In the contemporary European landscape, the digital transition has acquired a distinctly constitutional character. The Next Generation EU (NGEU) programme, launched in response to the COVID-19 pandemic, has accelerated this process by conditioning the disbursement of unprecedented financial resources upon the implementation of structural reforms in member states, many of which bear directly on fundamental

rights, institutional balance, and democratic governance. This paper explores the constitutional implications of NGEU-funded digital reforms, using the Italian National Recovery and Resilience Plan (NRRP) as a privileged case study. It argues that such reforms are not merely economic or technical measures, but drivers of a structural transformation in the EU's institutional and constitutional order – contributing to the emergence of a European digital sovereignty that is simultaneously strategic, legal, and institutional. The analysis pays particular attention to the digitalisation of the justice sector, which represents a paradigmatic case of constitutional relevance: digital tools reshape guarantees of due process, affect the distribution of competences between national and European levels, and challenge the balance between efficiency, fundamental rights, and democratic oversight.

The paper proceeds as follows. Section 2 situates the analysis within the broader debate on digital constitutionalism and the EU's regulatory strategy in the digital domain. Section 3 examines how NGEU conditionality operates as a constitutional engine, reshaping the distribution of competences and influencing national policy agendas. Section 4 focuses on Italy's NRRP and the specific reforms concerning the digitalisation of the justice sector. Section 5 addresses the constitutional implications of artificial intelligence (AI) deployment in judicial functions, with reference to the AI Act and the GDPR. Section 6 critically assesses the democratic dimension of the emerging model, raising concerns about accountability and civic participation. Section 7 offers concluding remarks.

2. Digital constitutionalism and EU regulatory strategy

The concept of digital constitutionalism has emerged in recent years as a key analytical framework for understanding the intersection between technological transformation and constitutional law. As Caramaschi has noted, the challenges posed by AI and digital power structures force the jurist to question which categories and legal instruments can be suited to address them, particularly with regard to forms of regulation oriented towards balancing the economic interest in developing a European digital market and that of protecting the democratic values of the European legal order and the fundamental rights and freedoms of individuals[1].

Digital constitutionalism should not be understood as a separate constitutional order, but rather as contemporary constitutionalism engaged in a phase of renewal – not transformation – to respond effectively to the new challenges arising from the digital dimension[2]. This renewal requires revisiting and adapting the categories of constitutionalism in light of the changes that digital technology has produced in the lives of individuals and communities. In essence, digital constitutionalism is the effort to carry on the historical task of constitutionalism – limiting the 'sovereign' and guaranteeing rights – applied to the new private powers that govern the digital world, above all the so-called big tech.

From a regulatory standpoint, the EU has pro-

[1] O. Caramaschi, *Il costituzionalismo al cospetto dell'intelligenza artificiale: nuove sfide, quali soluzioni?*, in «Rivista italiana di informatica e diritto», VII (1/2025), p. 29-51.

[2] See O. Pollicino, *L'algoritmo e la nuova stagione del costituzionalismo digitale: quali le sfide per il giurista (teorico e pratico)?*, in «Giustizia insieme», 15 April 2021.

gressively shifted from a liberal approach, leaving considerable space to self-regulation by technological actors, towards a constitutional model oriented to the protection of fundamental rights and democratic values through the limitation of private digital power[3]. This shift is embodied in a sequence of landmark legislative instruments: the General Data Protection Regulation (GDPR, Regulation (EU) 2016/679), the Digital Services Act (DSA, Regulation (EU) 2022/2065), and, most recently, the Artificial Intelligence Act (AI Act, Regulation (EU) 2024/1689). Together, these instruments constitute what scholars have described as a new season of European digital constitutionalism – a phase of normative interventions through which the EU has sought to regulate the technological-digital phenomenon through the specific tools of European and contemporary constitutionalism[4].

The AI Act, signed on 13 June 2024, represents the most comprehensive and ambitious element of this regulatory architecture. It establishes a risk-based framework for AI systems, classifying them into four categories – unacceptable risk, high risk, limited risk, and minimal risk – and imposing differentiated obligations on providers and deployers. The Act explicitly aims to balance the economic interest in developing the European AI market with the protection of 'European values', including human dignity, freedom, equality, democracy, the rule of law, and fundamental rights[5]. This dual objec-

[3] See G. De Gregorio, *The rise of digital constitutionalism in the European Union*, in «International Journal of Constitutional Law», XIX (1/2021), p. 41-70.

[4] See O. Caramaschi, *Il costituzionalismo al cospetto dell'intelligenza artificiale: nuove sfide, quali soluzioni?*, cit., p. 31.

[5] See *Recital 28, AI Act* (*Regulation (EU) 2024/1689 of the Eu-*

tive – which De Gregorio has described as the characterisation of the European approach at the intersection between digital humanism and digital capitalism[6] – reflects the constitutional nature of the balancing exercise at the heart of EU digital regulation.

Importantly, Floridi has argued that digital sovereignty should be understood as the ability to influence and control the digital – including data, software, standards and protocols, hardware, services, and infrastructures[7]. In this sense, the EU's regulatory strategy can be read as an assertion of supranational digital sovereignty, understood not merely as strategic geopolitical positioning, but as a legal and institutional claim to authority over the digital domain within the internal market. This claim is supported by the so-called 'Brussels Effect': the EU's demonstrated capacity to export its regulatory standards globally, compelling non-EU companies to comply with European rules in order to access the internal market[8].

Yet the emergence of digital sovereignty as a constitutional concept is not without tensions. As Floridi has observed, the debate is not about replacing national analogue sovereignty, which remains necessary, but about complementing it with a supranational, contemporary-digital one – which is often its condition of pos-

ropean Parliament and of the Council of 13 June 2024).

[6] G. De Gregorio, *The Normative Power of Artificial Intelligence*, in «Indiana Journal of Global Legal Studies», XXX (2/2023), p. 76.

[7] L. Floridi, *The fight for digital sovereignty: what it is, and why it matters, especially for the EU*, in «Philosophy & Technology», XXXIII (3/2020), p. 370-371.

[8] See A. Bradford, *The Brussels Effect. How the European Union rules the world*, Oxford University Press, Oxford-New York 2020, p. 12-13.

sibility[9]. This multi-level architecture of sovereignty raises complex questions about democratic legitimacy, accountability, and the relationship between national constitutional orders and the supranational regulatory framework.

3. The NGEU as a constitutional engine: conditionality and institutional reconfiguration

The Next Generation EU programme, established through Regulation (EU) 2021/241 creating the Recovery and Resilience Facility (RRF), represents an unprecedented experiment in EU economic governance. With a total budget of approximately 750 billion euros, of which 672.5 billion are allocated through the RRF in the form of grants and loans, the NGEU constitutes the largest fiscal instrument in EU history. Its design, however, is not merely economic: it is deeply constitutional in its implications.

The RRF regulation introduces a conditionality mechanism that ties the disbursement of funds to the achievement of binding milestones and targets, as set out in national Recovery and Resilience Plans (RRPs). These plans, submitted by member states and assessed by the European Commission, must dedicate at least 20% of expenditure to digital transition measures[10].

[9] L. Floridi, *The fight for digital sovereignty: what it is, and why it matters, especially for the EU*, cit., p. 375.

[10] See See Art. 18(4)(f) of Regulation (EU) 2021/241, as well as Annex VII on the methodology for digital tagging; on the content of the plans, see also J. Zeitlin, D. Bokhorst, E. Eihmanis, *National recovery and resilience plans*, in F. Fabbrini, C.A. Petit (Eds.), *Research Handbook on Post-Pandemic EU Economic Governance and NGEU Law*, Edward Elgar Publishing, Cheltenham 2024, p. 144-159.

This requirement transforms the digital agenda from a policy priority into a binding legal obligation, enforceable through the withholding of financial resources. In this way, NGEU conditionality functions as a constitutional engine, reshaping the distribution of competences and influencing national policy agendas in ways that go beyond the formal division of powers established by the Treaties.

The constitutional implications of this architecture are manifold. First, the conditionality mechanism enhances the European Commission's coordinating role in national digital transitions, effectively extending EU influence into areas that have traditionally remained within national competence, such as the organisation of justice, the structure of public administration, and the design of digital infrastructure. This shift has been described by scholars as contributing to the reconfiguration of the EU's institutional order[11]. As Mayer and Gabrielli have argued, the digital transformation embedded in the NGEU strategy can only benefit European citizens, businesses, and the environment if it is based on a thorough understanding of the criticalities of the digital transition[12].

Second, the NGEU conditionality mechanism rais-

[11] See, *inter alia*, V. Cavani, *Nuovi poteri, vecchi problemi. Il costituzionalismo alla prova del digitale*, in «Diritto pubblico comparato ed europeo», XXV (1/2023), p. 223-248; F. Fabbrini, *Next Generation EU: legal structure and constitutional consequences*, in «Cambridge Yearbook of European Legal Studies», XXIV (2022) p. 45-66; P. Leino-Sandberg, M. Ruffert, *Next Generation EU and its constitutional ramifications: a critical assessment*, in «Common Market Law Review», LIX (2/2022), p. 433–472.

[12] See M. Mayer, F. Gabrielli, *Next Generation EU: The digital transition's policy dilemmas*, in «Rivista di Digital Politics», II (3/2022), p. 485-506.

es questions about the quality of democratic deliberation underlying the digital reforms it funds. National RRPs are negotiated between member state governments and the European Commission, with limited involvement of national parliaments and civil society. The binding character of milestones and targets constrains the discretion of future governments, raising concerns about the capacity of democratic processes to steer or revise the digital agenda once committed to in the plan. This tension between the efficiency logic of conditionality and the imperatives of democratic accountability is a central theme of the present analysis.

Third, the NGEU introduces a novel form of multi-level digital governance anchored in supranational standards and cross-border interoperability requirements. The 2030 Digital Compass, presented by the Commission on 9 March 2021, sets four key priorities for the EU's digital decade: digital skills, digital infrastructures, digitalisation of businesses, and digitalisation of public services. These targets are binding on member states as key performance indicators and provide the framework within which national digital reforms – including those funded by the NGEU – must be situated[13]. The Italian NRRP, as we shall see, illustrates both the opportunities and the constitutional risks of this model.

4. Italy's NRRP and the digitalisation of justice

Italy's NRRP allocates approximately 48 billion euros – roughly 27% of the overall recovery budget – to

[13] See M. Mayer, F. Gabrielli, *Next Generation EU: The digital transition's policy dilemmas*, cit., p. 497-498.

digital transformation in both the public administration and the private sector[14]. Italy's starting position in the Digital Economy and Society Index (DESI) in 2021 was 20th out of 27 EU member states, with a score approximately five points below the EU average, making the digital transition a particularly urgent national priority[15].

Within this framework, the digitalisation of the justice sector occupies a prominent and constitutionally significant place. The Italian NRRP includes a series of reforms aimed at reducing the duration of civil and criminal proceedings, modernising the information systems of the Ministry of Justice, and introducing digital tools – including AI-assisted systems – in support of judicial functions. These reforms are closely monitored by the European Commission as part of the country-specific recommendations addressed to Italy since 2019, which identified judicial inefficiency as a major obstacle to economic development and investor confidence[16].

The reforms entrusted to the Ministry of Justice

[14] See F. Fabbrini, *Italy's national recovery and resilience plan: context, content and challenges*, in «Journal of Modern Italian Studies», XXVII (5/2022), p. 658-676.

[15] The Commission published the results of the 2021 Digital Economy and Society Index (DESI), which tracks digital progress made in EU Member States in key areas. The DESI 2021 reports present data from 2020 for the most part, providing an insight into key developments in the digital economy and society during the first year of the COVID-19 pandemic. See *Digital Economy and Society Index (DESI) 2021 – Italy*, available at *https://digital-strategy.ec.europa.eu/en/library/digital-economy-and-society-index-desi-2021*.

[16] See 2019 European Semester: Country Specific Recommendation / Commission Recommendation – Italy, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0512; *2020 European Semester: Country Specific Recommendation / Commission Recommendation – Italy*, available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0512*.

and its Directorate General for Automated Information Systems (DGSIA)[17] include the digitalisation of case management, the electronic filing of procedural acts, the development of remote hearing systems, and the implementation of automated analytical tools for judicial data. These are not merely administrative modernisation measures: they reshape the procedural environment within which the fundamental right to a fair trial – enshrined in Article 24 and Article 111 of the Italian Constitution, as well as in Article 6(1) of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights – is exercised[18].

The introduction of AI tools in the justice sector raises immediate constitutional questions. Who is responsible when an AI-assisted decision causes harm?

[17] In Italy, the Ministry of Justice (MoJ) oversees ICT development for courts and prosecutors' offices. Therefore, this institution owns and controls the software, including the platform (suites of applications), used by clerks and judges to handle civil proceedings. Through the Directorate General for Automated Information Systems (DGSIA), it carries out constant research and development activities aimed at identifying up-to-date technologies and infrastructures applied to justice in line with the latest developments in the digital sector. In 2015 DGSIA proceeded to publish the technical specifications required by the Decree of the Minister of Justice of 21 February 2011, no. 44, concerning certificates of conformity of documents and orders to be filed and served; see F. Contini, *Artificial intelligence and the transformation of humans, law and technology interactions in judicial proceedings*, in «Law, Technology and Humans», II (1/2020), p. 10; Ministry of Justice, Directorate General for Automated Information Systems (DGSIA). *Technical Specifications (ex Art. 34 D.M.44/2011)*, Rome 2015, available at *https://pst.giustizia.it/PST/it/paginadettaglio.page?contentId=ACC1262#*.

[18] See, *ex plurimis*, A. Andreangeli, *Digital technologies and the right to a fair trial*, in «The Digital Constitutionalist», III (2025), p. 31-35; C. Schmidt, *Digital Justice and the Protection of Fundamental Rights from the Perspective of European Union Law*, in G. Gadbin-George, A. Taleb-Karlsson (Eds.), *La Justice pénale numérique en France et au Royaume-Uni*, Éditions Panthéon-Assas, Paris 2024, p. 253-262.

What are the procedural guarantees available to individuals affected by automated processes? How can the principles of judicial independence and impartiality be reconciled with the use of algorithmic tools in case management and legal analysis? These questions are not merely technical: they go to the heart of constitutional guarantees that define the relationship between the state and the individual, and between different branches of government[19].

The constitutional significance of the digitalisation of justice is further amplified by the dual compliance framework applicable to AI systems used in this sector. Such systems must comply with both national constitutional guarantees – including those derived from Articles 111 and 117 of the Italian Constitution – and EU-level regulations, most notably the GDPR and the AI Act[20]. This dual compliance requirement exemplifies the evolving interaction between national sovereignty

[19] To further explore the constitutional challenges related to AI procedural implementation, see, *ex plurimis*, A. Burgun, V. Do, A. Elamrani, T. Kirat, J. Lang, T. Poibeau, *Challenges in AI-assisted decision-making: insights from the medical and the legal domains*, in «HAL open science», hal-05062847, 2025, p. 1-21; L. Floridi *et al.*, *AI4People – An ethical framework for a good AI society: opportunities, risks, principles, and recommendations*, in «Minds and machines», XXVIII (4/2018), p. 689-707; P. Parycek, V. Schmid, A.S. Novak, *Artificial Intelligence (AI) and automation in administrative procedures: potentials, limitations, and framework conditions*, in «Journal of the Knowledge Economy», XV (2/2024), p. 8390-8415; S.O. Perez, *Proliferation of e-Evidence: reliability standards and the right to a fair trial*, in «European Journal of Crime, Criminal Law and Criminal Justice», XXXIII (1-2/2025), p. 187-211; O. Pollicino, *The quadrangular shape of the geometry of digital power(s) and the move towards a procedural digital constitutionalism*, in «European Law Journal», XXIX (1-2/2023), p. 10-30.

[20] See O. Pollicino, F. Paolucci, *Digital Constitutionalism*, in L. Floridi, M. Taddeo (Eds.), *A companion to digital ethics*, Wiley-Blackwell, Hoboken 2025, p. 313-323.

and EU regulatory integration in the digital domain and illustrates the complexity of multi-level constitutional governance[21] in practice.

It is worth noting that the AI Act classifies AI systems used in the administration of justice as high-risk, subject to stringent requirements regarding transparency (Article 13), human oversight (Article 14), accuracy (Article 15), and fundamental rights impact assessment (Article 27)[22]. This classification reflects the constitutional sensitivity of judicial functions and the recognition that AI systems in this domain may have profound effects on individuals' rights and freedoms. However, as critics have observed, the AI Act's procedural approach – focused on conformity assessments, certification systems, and administrative obligations – may not be sufficient to guarantee substantive protection of fundamental rights in practice[23].

[21] G. De Gregorio, *Digital constitutionalism in Europe: reframing rights and powers in the algorithmic society*, Cambridge University Press, Cambridge 2022, p. 10 ff.

[22] AI systems intended to be used by judicial authorities or on their behalf to assist them in researching and interpreting facts and the law and in applying the law to a concrete set of facts fall within the category of high-risk AI systems under Art. 6(2) and Annex III, point 8(a), of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024. The requirements applicable to such systems – including transparency obligations, human oversight, accuracy and robustness, and fundamental rights impact assessment (FRIA) – are set out in Chapter III, Section 2, (in particular Arts 13-15) and, as regards the FRIA specifically, in Art. 27 AI Act. Purely ancillary administrative activities that do not affect the actual administration of justice in individual cases, such as the anonymisation of judicial decisions or communication between personnel, are not covered (Recital 61).

[23] See M. Veale, F. Zuiderveen Borgesius, *Demystifying the Draft EU Artificial Intelligence Act*, in «Computer Law Review International», XXII (4/2021), p. 97-112.

5. Artificial intelligence in the judicial sector: constitutional implications

The deployment of AI systems in judicial functions represents one of the most constitutionally sensitive frontiers of the digital transition. In the Italian context, the reforms included in the NRRP envisage the use of AI tools for a range of judicial support functions: from the analysis of case law and legal precedents, to the prediction of case outcomes for settlement purposes, to the automated management of procedural timelines. These applications span the spectrum from decision-support tools to more autonomous automated processes, raising distinct constitutional questions depending on their nature and degree of autonomy[24].

At the constitutional level, the use of AI in judicial contexts must be assessed against a cluster of fundamental principles. The right to a fair trial, as guaranteed by Article 6 ECHR and Article 47 of the EU Charter, requires that judicial decisions be based on law and reasoned arguments, and that individuals have the opportunity to contest the evidence and reasoning underlying decisions that affect them. The principle of judicial independence, enshrined in Article 104 of the Italian Constitution, requires that judges exercise their functions free from external pressures – including, it may be argued, the normative pressure exerted by algorithmic recommendations. The principle of transparency of judicial

[24] On the typology of AI applications in judicial functions, spanning from legal research and case law analysis to outcome prediction and automated case management, see F. Contini, *Artificial intelligence and the transformation of humans, law and technology interactions in judicial proceedings*, cit., p. 4-18.

reasoning, implicit in the constitutional obligation to motivate judicial decisions (Article 111(6) of the Italian Constitution), requires that the grounds for decisions be intelligible and communicable[25].

These constitutional principles enter into tension with features that are intrinsic to many AI systems: opacity (the so-called 'black box' problem), probabilistic rather than categorical reasoning, and the risk of encoding and perpetuating existing biases present in historical data. Simoncini has argued powerfully that algorithms may be structurally unconstitutional insofar as their opacity makes the decisions they inform effectively unreviewable – creating 'free zones' in which the incomprehensibility of certain AI systems renders decisions based on them practically unjusticiable[26]. This concern is particularly acute in the judicial context, where the right to an effective remedy (Article 47 of the EU Charter) presupposes the ability to challenge and contest the reasoning underlying decisions.

The AI Act addresses some of these concerns through its requirements for high-risk AI systems, including those used in the administration of justice. Article 13 requires that such systems be designed and developed in such a way as to ensure that their operation is sufficiently transparent to allow deployers to interpret the system's output and use it appropriately. Article 14

[25] See P.F. Bresciani, M. Palmirani, *Constitutional opportunities and risks of AI in the law-making process*, in «Federalismi.it», II (2024), p. 1-18.

[26] A. Simoncini, *L'algoritmo incostituzionale: intelligenza artificiale e il futuro delle libertà*, in «BioLaw Journal – Rivista di BioDiritto», I (2019), p. 63-89; A. Simoncini, *Il linguaggio dell'intelligenza artificiale e la tutela costituzionale dei diritti*, in «Rivista AIC», II (2023), p. 38-39.

requires that high-risk AI systems allow for effective human oversight. Article 26(1)-(2) requires that deployers ensure that AI systems are used in accordance with the instructions for use and that natural persons overseeing the system have the necessary competence and authority to intervene.

However, as some critics have noted, the legal regime introduced by the AI Act may resolve itself into a 'bureaucratisation' of the European AI market – with numerous obligations that are often formal rather than substantive – without necessarily generating relevant and substantial benefits in terms of effective protection of fundamental rights[27]. The risk of 'procedural fetishism'[28] – where compliance with formal requirements becomes an end in itself, disconnected from the substantive protection of constitutional values – is a genuine concern in the context of AI deployment in the justice sector.

The constitutional principle of anthropocentrism[29] – the idea that AI systems must place the human being at the centre, ensuring the valorisation of the centrality and respect of human beings as objectives and

[27] See P. Carbone, G. Rossi, *Is bureaucracy the answer of the law to digital technologies?*, in «Pólemos», XVII (1/2023), p. 137-161; D. Lousqui, *AI regulation and the new geography of influence*, in «SSRN», 18 June 2025.

[28] M. Zalnieriute, *Against procedural fetishism: a call for a new digital constitution*, in «Indiana Journal of Global Legal Studies», XXX (2/2023), p. 227-263.

[29] See L. Gatt, *Legal anthropocentrism between nature and technology: the new vulnerability of human beings*, in «European Journal of Privacy Law & Technologies», (1/2022), p. 15 ff; G. Zarra, R. Ruoppo, *Artificial intelligence and supranational law: between anthropocentrism and technological development*, in D. Brasioli *et al.* (Eds.), *The Routledge Handbook of Artificial Intelligence and International Relations*, Routledge, London 2025, p. 40-54.

central values in the use of this technology[30] – provides a normative anchor for evaluating the constitutional adequacy of AI deployment in judicial functions. This principle, which is explicitly embedded in the AI Act (Article 1(1)) and in the European Declaration on Digital Rights and Principles (2023), requires that AI tools in the justice sector be designed and deployed in ways that reinforce, rather than undermine, the constitutional guarantees of due process, judicial independence, and access to justice[31].

The compliance framework applicable to AI systems in the Italian justice sector illustrates the complexity of multi-level constitutional governance. DGSIA, as the competent authority responsible for the implementation of digital reforms in the justice sector, must ensure that AI systems comply with national constitutional requirements – as interpreted by the Constitutional Court, the ordinary courts, and the administrative tribunals – as well as with EU-level obligations under the GDPR, the AI Act, and, where applicable, the DSA[32]. This dual compliance framework creates both opportunities – for the development of coherent and rights-respecting AI governance – and risks – of regulatory fragmentation, jurisdictional conflicts, and accountability gaps.

[30] See O. Caramaschi, *Il costituzionalismo al cospetto dell'intelligenza artificiale: nuove sfide, quali soluzioni?*, cit., p. 31, citing M. Fasan, *I principi costituzionali nella disciplina dell'Intelligenza Artificiale. Nuove prospettive interpretative*, in «DPCE Online», (1/2022), p. 189-190.

[31] On the principle of anthropocentrism as embedded in EU digital regulation, see Recital 6 and Art. 1(1) of Regulation (EU) 2024/1689 (AI Act); European Declaration on Digital Rights and Principles for the Digital Decade, OJ C 23, 23.1.2023, Chapter I. For doctrinal analysis, see A. Pirozzoli, *The Human-centric Perspective in the Regulation of Artificial Intelligence*, in «European Papers», IX (1/2024), p. 105-116.

[32] See F. Contini, *Artificial intelligence and the transformation of humans, law and technology interactions in judicial proceedings*, cit., p. 10.

6. Digital sovereignty, democratic accountability, and the risk of technocratic drift

The emerging model of European digital sovereignty embodied in the NGEU and the EU's digital regulatory architecture raises fundamental questions about democratic accountability and civic participation. While the EU's regulatory approach aims to contain risks to fundamental rights and democratic processes, it tends to empower institutions and states more than citizens. The increasing centralisation of digital policy at the EU level, coupled with limited civic participation in technological decision-making, raises concerns about democratic accountability and pluralism in Europe's digital future[33].

As Floridi has argued, the fight for digital sovereignty is not merely a technical or geopolitical matter: it touches everyone, even those who have never used an online service[34]. The question of who exercises digital sovereignty – and on what terms – is ultimately a constitutional question about the legitimate exercise of power and the protection of individual rights. In the

[33] On the state-centric and institution-empowering character of European digital sovereignty as opposed to citizen participation, see E. Celeste, *Digital sovereignty in the EU: challenges and future perspectives*, in F. Fabbrini, E. Celeste, J. Quinn (Eds.), *Data protection beyond borders: transatlantic perspectives on extraterritoriality and sovereignty*, Hart Publishing, Oxford 2021, p. 211-228; see also J. Pohle, T. Thiel, *Digital Sovereignty*, in «Internet Policy Review», IX (4/2020), p. 1-19. For an analysis specifically addressing the diminishing democratic participation strand in EU digital policy, see R. Youngs, *Rethinking EU digital policies: from tech sovereignty to tech citizenship*, in «Carnegie Endowment for International Peace», 16 June 2025, available at *https://carnegieendowment.org/research/2025/06/rethinking-eu-digital-policies-from-tech-sovereignty-to-tech-citizenship*.

[34] L. Floridi, *The fight for digital sovereignty: what it is, and why it matters, especially for the EU*, cit., p. 369.

European context, this question is complicated by the multi-level character of the EU's constitutional order, in which popular sovereignty is distributed across national and supranational levels in ways that are not always transparent or easily navigable by citizens[35].

The NGEU conditionality mechanism exemplifies this challenge. The binding character of milestones and targets, negotiated between national governments and the European Commission, constrains the discretion of democratic processes in ways that may be difficult to reverse. Once committed to in the plan, digital reforms acquire a quasi-constitutional status: they are enforceable through the withholding of financial resources, and their modification requires agreement between the member state and the Commission. This creates a form of digital path dependency that limits the capacity of future governments – and, ultimately, of citizens – to steer the digital agenda in different directions[36].

The risk of 'technocratic drift' is further compounded by the technical complexity of digital governance[37]. This risk intersects with, though is analytically

[35] See I. Pernice, *The Treaty of Lisbon: multilevel constitutionalism in action*, in «Columbia Journal of European Law», XV (3/2008), p. 349-407.

[36] See C. Fasone, M. Simoncini, *Next Generation EU and governance by conditionality: a transformation of the European economic constitution?*, in «European Papers», IX (3/2024), p. 1148-1179; P. Leino-Sandberg, M. Ruffert, *Next Generation EU and its constitutional ramifications: a critical assessment*, cit., p. 433-472.

[37] The concept of 'technocratic drift' refers to the progressive displacement of democratic deliberation by technical expertise in regulatory and governance processes, whereby decisions of inherently political significance are reframed as purely technical questions and thereby removed from meaningful public contestation. See A. Alrawi, *Regulating AI without the people: Europe's technocratic drift*, in «SSRN», 26 May 2025.

distinct from, the broader structural critique advanced under the notion of 'technofeudalism' – the argument that Big Tech platforms have replaced markets and profit with rents and algorithmic control, concentrating structural power in the hands of a small number of digital actors and reshaping the conditions under which both states and citizens operate. Varoufakis argues that Big Tech platforms have supplanted capitalism's twin pillars – markets and profit – with platforms and rents, giving rise to a new economic order in which 'cloudalist' actors extract rent not only from users but also from traditional capitalists, who are reduced to vassals dependent on digital infrastructure they do not control. The structural concentration of power over digital infrastructure that this thesis describes – however contested its political-economy premises may be – is analytically relevant to the constitutional concerns raised in this section, insofar as it highlights the ways in which the governance of digital transformation is shaped by actors and dynamics that operate largely outside the reach of democratic accountability mechanisms[38]. While this critique operates at a political-economy level rather than a strictly constitutional one, the concentration of decisional power over digital infrastructure it describes compounds the constitutional concerns raised here about democratic accountability and pluralism. Decisions about the design

[38] Y. Varoufakis, *Technofeudalism: what killed capitalism*, Bodley Head, London 2023. For a related, though institutionally oriented, critique of the power asymmetries generated by platform capitalism in the European context, see also G. De Gregorio, *Digital constitutionalism in Europe: reframing rights and powers in the algorithmic society*, cit., which addresses the constitutional implications of the concentration of digital power and the adequacy of existing rights frameworks to contain it.

and deployment of AI systems, the choice of digital infrastructure, the standards for data interoperability, and the parameters of algorithmic systems have a significant technical component and require specialised expertise[39]. Yet these decisions have profound constitutional implications – affecting the distribution of power, the protection of rights, and the structure of democratic governance – that cannot be reduced to technical questions. The challenge is to develop institutional arrangements that combine technical expertise with democratic accountability, ensuring that the constitutional dimensions of digital governance receive adequate political and judicial attention.

Mayer and Gabrielli have identified a set of properties that characterise digital societies – hyperspeed, hyperconnectivity, hypermemory, hyper-automation, hyper-identity, hyper-binary logic, hyper-attraction, and hyper-reality – each of which represents a challenge for the effective performance of democratic institutions and the relevant decision-making processes[40]. These properties are not merely descriptive: they highlight the ways in which digital transformation can undermine the conditions for democratic deliberation, including the capacity for informed consent, the possibility of effective par-

[39] See J. Danaher, *The threat of algocracy: reality, resistance and accommodation*, in «Philosophy & Technology», XXIX (3/2016), p. 245-268. Danaher argues that the increasing reliance of public decision-making processes on algorithmic systems poses a significant threat to the moral and political legitimacy of governance, identifying in what he terms 'algocracy' – governance by algorithm – a structural risk analogous to epistocracy: the replacement of democratically accountable judgment by opaque, expertise-driven processes.

[40] M. Mayer, F. Gabrielli, *Next Generation EU: The digital transition's policy dilemmas*, cit., p. 500-501.

ticipation, and the availability of meaningful alternatives.

The democratic dimension of digital constitutionalism requires, in this perspective, a dual orientation: on the one hand, the development of constitutional guarantees that protect individuals against the risks of digital power – including the use of AI systems in ways that are opaque, biased, or unaccountable; on the other hand, the creation of institutional mechanisms that ensure meaningful democratic participation in the governance of digital transformation. This dual orientation is implied by the concept of digital constitutionalism itself, which – as Pollicino has argued – should be understood not merely as a form of digital global constitutionalism or an expansion of the 'rhetoric of rights', but as an expansion of the analytical perspective that includes constitutionalism in its diverse forms: liberal, social, and global[41].

In the context of the NGEU and Italy's NRRP, this dual orientation translates into a set of specific constitutional requirements. First, the design and implementation of digital reforms should be subject to meaningful parliamentary scrutiny, ensuring that the constitutional implications of NGEU conditionality are adequately deliberated at the national level[42]. Second, the deployment of AI systems in public functions – including the justice sector – should be accompanied by robust transparency and accountability mechanisms, including mandatory disclosure of the systems' design, training data,

[41] O. Pollicino, *Di cosa parliamo quando parliamo di costituzionalismo digitale?*, in «Quaderni costituzionali», XLIII (3/2023), p. 586-587.

[42] See C. Fasone, M. Simoncini, *Next Generation EU and governance by conditionality: a transformation of the European economic constitution?*, cit., p. 1148-1179.

and decision-making logic[43]. Third, individuals affected by AI-assisted decisions should have access to effective remedies, including the right to explanation, the right to contestation, and, where necessary, the right to judicial review[44].

The experience of the Italian NRRP suggests that these requirements are not yet fully met. The digitalisation of justice has proceeded largely as a top-down administrative process, driven by the imperatives of NGEU conditionality and the technocratic logic of efficiency gains[45], rather than by a constitutional deliberation about the fundamental values at stake. The involvement of civil society, legal professionals, and citizens in the design of digital reforms has been limited, and the constitutional implications of AI deployment in judicial functions have not received adequate political and judicial attention.

This observation does not imply that the digital transition itself is constitutionally problematic: on the

[43] See E. Bayamlioğlu, *The right to contest automated decisions under the General Data Protection Regulation: beyond the so-called "right to explanation"*, in «Regulation & Governance», XVI (4/2022), p. 1058-1078.

[44] On the legal bases of these rights, see Art. 47 of the Charter of Fundamental Rights of the European Union; Art. 86 AI Act (right to explanation of individual decision-making); Art. 22 GDPR and, in criminal matters, Art. 11 of Directive (EU) 2016/680. On the scope of Art. 22 GDPR and of the information owed to the data subject, see also Court of Justice, Case C-634/21, SCHUFA Holding (Scoring), judgment of 7 December 2023, and Case C-203/22, Dun & Bradstreet Austria, judgment of 27 February 2025. In the scholarship, see M.E. Kaminski, J.M. Urban, *The right to contest AI*, in «Columbia Law Review», CXXI (7/2021), p. 1957-2048.

[45] See C. Dallara, G. Vecchi, D. Cavallini, M. Di Giulio, *Implementing NRRP policies and the interest groups perspective in the justice sector: the "Ufficio per il processo" reform*, in «Contemporary Italian Politics», XVI (1/2024), p. 39-53.

contrary, the digitalisation of justice – if adequately designed and implemented – can contribute to the realization of the constitutional right to a fair trial within a reasonable time, improve access to justice for disadvantaged groups, and enhance the transparency and consistency of judicial decision-making. The constitutional challenge is not to resist digital transformation, but to ensure that it is governed by constitutional values and subject to democratic accountability.

7. Concluding remarks

The NGEU-funded digital reforms, exemplified by Italy's NRRP and the digitalisation of the justice sector, are not merely technical or economic measures, but drivers of a structural transformation in the EU's institutional and constitutional order. The emerging model of European digital sovereignty – characterised by supranational regulatory integration, binding conditionality, and the deployment of AI systems in public functions – raises fundamental questions about democratic accountability, fundamental rights protection, and the constitutional identity of the European polity. The constitutional implications of this model are manifold. At the level of institutional architecture, NGEU conditionality reconfigures the distribution of competences between the EU and its member states, extending supranational influence into areas traditionally reserved for national discretion, including the organisation of justice. At the level of fundamental rights, the deployment of AI systems in judicial functions challenges the constitutional guarantees of due process, judicial independence, and access to justice, requiring robust transparency and

accountability mechanisms that the current regulatory framework – including the AI Act – may not yet fully provide. At the level of democratic governance, the increasing centralisation of digital policy at the EU level, coupled with limited civic participation in technological decision-making, raises concerns about the quality and legitimacy of the democratic process that underlies the digital transition.

The concept of digital constitutionalism – understood as the effort to adapt the categories of contemporary constitutionalism to the new digital context, while preserving and reinvigorating their normative content – provides a framework for addressing these challenges. This framework requires, first, that constitutional values – including human dignity, equality, the rule of law, and democratic participation – be embedded in the design of digital systems from the outset, not added as an afterthought. Simoncini and Suweis have argued for a 'hybrid' constitutional law capable of understanding and expressing itself in the language of digital technology[46]. This aspiration requires not only technical expertise on the part of lawyers and judges, but also constitutional awareness on the part of technologists and policymakers.

Second, digital constitutionalism requires that the legislative power reclaim its central role in the governance of digital transformation, complementing and constraining – rather than being supplanted by – the regulatory initiatives of the executive and the judicial activism of courts. As Pollicino and Dunn have observed,

[46] See A. Simoncini, S. Suweis, *Il cambio di paradigma nell'intelligenza artificiale e il suo impatto sul diritto costituzionale*, in «Rivista di filosofia del diritto», (1/2019), p. 103.

the urgency for the legislator to reclaim its own role – only suppletively and provisionally integrated by judges – is also a function of valorising the representative political circuit that is its basis of legitimation[47]. In the context of the NGEU, this means ensuring that national parliaments are genuinely involved in the design and oversight of digital reforms, and that the constitutional implications of EU conditionality are subject to adequate democratic deliberation.

Third, digital constitutionalism requires a genuinely multi-level approach to governance, in which national constitutional orders, EU law, and international human rights standards interact in a coherent and rights-respecting manner. The dual compliance framework applicable to AI systems in the Italian justice sector – requiring simultaneous adherence to national constitutional guarantees and EU-level regulations – illustrates both the complexity and the potential of this multi-level architecture. The challenge is to develop institutional mechanisms that can manage this complexity without generating accountability gaps or jurisdictional conflicts.

Finally, this analysis has foregrounded the democratic dimension of digital constitutionalism as a critical, and often underappreciated, aspect of the debate. The emerging European digital sovereignty, while strategically important and constitutionally grounded, risks empowering institutions and states at the expense of citizens. The digital transition must be democratic not only in its outcomes – protecting fundamental rights

[47] O. Pollicino, P. Dunn, *Intelligenza artificiale e democrazia: opportunità e rischi di disinformazione e discriminazione*, Bocconi University Press, Milan 2024, p. 220.

and preserving democratic institutions – but also in its process: inclusive, transparent, and responsive to the diverse values and interests of European citizens. This risk is further compounded, at a structural level, by the concentration of digital power in the hands of a small number of private actors. The emergence of technofeudalism – in which Big Tech platforms extract rent from both users and traditional capitalists through algorithmic control – reshapes the conditions under which both states and citizens operate and compounds the constitutional risks of a digital transition governed primarily by institutional and market logics rather than by democratic deliberation. Only a digital constitutionalism that is genuinely responsive to citizens – not merely to states and institutions – can provide an adequate constitutional foundation for Europe's digital future.

Authors

Serena Sileoni is Associate Professor of Constitutional Law at Suor Orsola Benincasa University.

Enrico Ciappi is a Postdoctoral Researcher at LUISS Guido Carli University.

Gianluca Contaldi is Full Professor of European Union Law at the University of Macerata.

Giacomo D'Arrigo holds a Ph.D. from the University of Messina.

Adriano Dirri is Adjunct Professor at LUISS Guido Carli University.

Cristina Fasone is Associate Professor of Comparative Public Law at LUISS Guido Carli University.

Aldo Iannotti della Valle is Adjunct Professor in Constitutional Justice and Public Internet Law at the Suor Orsola Benincasa University.

Martina Lillo is a PhD candidate in Sustainable Development and Climate Change at the University of Turin.

Giacomo Antonio Lombardi is a Ph.D. candidate at Suor Orsola Benincasa University.

Claudia Marchese is a Fixed-term Researcher (Type A) in Comparative Public Law at Suor Orsola Benincasa University.

Gaia Lucilia Romano is a Ph.D. candidate in Constitutional Law at the University of Parma.

Luigi Servadei is a Researcher at CREA – Council for Agricultural Research and Analysis of Agricultural Economics.

Francesco Spera is Adjunct Professor at the University of Salento and the Libera Università Mediterranea (LUM «Giuseppe Degennaro»).

Finito di stampare a Napoli nel novembre 2026
presso l'University Press
dell'Università degli Studi Suor Orsola Benincasa