



The NRRP as a “Self-Restraint” and as a Development of the (Spending) Conditionality Mechanism

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Abstract

The paper analyzes the conditionality mechanism triggered by the Next Generation EU and by the National Recovery and Resilience Plan. In particular, the interpretation used sees in the NRRP the last stage of the process of conditionality and as a development of the concept of external constraint. Finally, the NRRP is related to the monetary policies of the ECB and to the reform of European economic governance.

Keywords

Next Generation EU – National Recovery and Resilience Plan – conditionality – European economic governance

1 The NRRP as a Development of the “External Constraint” and as the Final Stage of Conditionality

The contents and deadlines outlined in the National Recovery and Resilience Plan (NRRP) render it suitable for the purpose of robustly constraining the activity of the Government and Parliament in the coming years. In this sense, the Next Generation EU (NGEU) – financed for the first time by European public debt – can be viewed as a development of the conditionality mechanism, since it contains, together with the NRRP, the set of norms, rules, reforms and investments with which the States must comply in order to be able to access

the payment. The Next Generation EU is, in fact, a program aimed at stimulating demand in support of reforms on the supply side.

Compared to the other “external constraints”¹ which have acted as a limitation for political decision-makers and which have characterized the activity of Parliament and the Government in recent decades, the content of the NRRP comprises a stronger constraint. This time, it is not just a matter of not spending too much. Rather, it requires the carrying out of reforms with predetermined contents, in a more or less precise manner, in compliance with rigid deadlines, subject to scrutiny by the European institutions and therefore by the other Member States of the Union.

However, this “external constraint” constituted a quantitative constraint, which did not have the “strength” to change the quality of individual States’ expenditure. The European Semester has taken the first tentative steps in this direction, above all through the objective of differentiating national frameworks, the Medium-Term Objectives and the Country-Specific Recommendations. Even the clauses regarding investments and structural reforms during the period of the Juncker Commission respectively, despite their flexibility, resulted in unsuccessful attempts to go beyond a coordination of economic policies based only on fiscal rules and deficit and public debt control.

With the NGEU, instead, there has been a real paradigm shift in the field of the theory regarding “external constraints”, namely the new characterisation of “external constraints”, not as quantitative, but as a “qualitative direction” for the use of the Union’s resources. In this sense, the measures adopted by the EU institutions and Member States to deal with the damage caused by Covid-19 constitute a turning point, both regarding the process of European integration and because the disbursement of funds obliges States to undertake a series of reforms, largely already envisaged by the Country-Specific Recommendations of 2019 and 2020.²

The NGEU has arisen, making it progress, in the wake of the “spending conditionality” model, with considerable potential to ensure the coexistence between EU common priorities and coherent lines of economic policy in each Member State.³ Furthermore, it is possible to distinguish in the NRRP an *ex*

1 The expression ‘external constraint’ (“vincolo esterno”) was coined by Guido Carli. See CARLI, *Cinquant’anni di vita italiana*, in collaboration with PELUFFO, Roma-Bari, 1996.

2 On the NGEU, in general, see FABBRINI, *Next Generation EU. Il futuro di Europa e Italia dopo la pandemia*, Bologna, 2022.

3 VITA, “Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality”, *Cambridge Yearbook of European Legal Studies*, 2017, p. 4 ff.

ante conditionality, in the phase of elaboration of the Plans,⁴ and an *in itinere* conditionality, in the phase of implementation and constant monitoring by the European institutions.⁵

A lively debate exists as to what degree of constraint the pre-determination of this significant share of political and administrative direction (“indirizzo politico”) exerts on the activity of political and administrative bodies.⁶ While some have interpreted it as a sort of “normative” political address, which also ends up involving future governments and parliaments,⁷ others believe that it is mainly - if not exclusively - political planning, which therefore has a rather limited capacity to direct bind the institutional subjects involved in its implementation.⁸

Surely the NRRP could be modified, via the procedure referred to in art. 21 of Regulation (EU) 2021/241 of the European Parliament and of the Council of the 12th of February 2021, which establishes the recovery and resilience mechanism.⁹ However, the NRRP ends up being part of the program of the executives until 2026. Following this conception, the NRRP is not considered to be an instrument of political address¹⁰: in fact, while the Plan can be considered the “score”, the political address represents the “conducting of the orchestra”.¹¹

4 On the genesis of the Italian NRRP, see FIORELMONDO, “La genesi del PNRR”, in DI PORTO, PAMMOLLI and PIANA (eds.), *La fisarmonica parlamentare tra pandemia e PNRR*, Bologna, 2022, p. 23 ff.; on the first stages of implementation, see PIANA, “Il PNRR e la prima fase di attuazione”, in *ibid.*, p. 35 ff. and ACIERNO, “Il ruolo del Parlamento nella fase di elaborazione e approvazione del PNRR e nella prima fase di attuazione”, in *ibid.*, p. 53 ff.

5 CONZUTTI, “In conditionality we trust. Riflessioni sulle condizionalità macroeconomiche introdotte dal recovery and resilience facility”, *AmbienteDiritto.it*, 2022, p. 1 ff.

6 LUPO, “Il Piano Nazionale di Ripresa e Resilienza (PNRR) e alcune prospettive di ricerca per i costituzionalisti”, *Federalismi.it*, 12/01/2022, p. 5.

7 See SCIORTINO, “PNRR e riflessi sulla forma di governo italiana. Un ritorno all’indirizzo politico ‘normativo?’”, *Federalismi.it*, 2021, p. 235 ff. See also CINTIOLI, “Risultato amministrativo, discrezionalità e PNRR: una proposta per il Giudice”, *Lamagistratura.it*, 13/11/2021.

8 CLARICH, “Il PNRR tra diritto europeo e nazionale: un tentativo di inquadramento giuridico”, *ASTRID-Rassegna*, 2021, p. 11 ff.

9 See BARTOLUCCI, “Le modifiche del PNRR: procedura, possibilità e rischi”, *Astrid-Rassegna*, 2022.

10 *Contra* BILANCIA, “Indirizzo politico e nuove forme di intervento pubblico nell’economia in attuazione del Recovery and Resilience Facility, tra concorrenza e nuove politiche pubbliche”, *Costituzionalismo.it*, 2022, p. 34–35, according to which the NRRP, in essence, is an act of political address of extraordinary significance.

11 MANZELLA, “Il presidente del Governo”, in CASSESE, MELLONI and PAJNO (eds.), *I presidenti e la presidenza del Consiglio dei ministri nell’Italia repubblicana*, Bari-Roma, 2022, p. 1159 ff., in particular p. 1175.

At the same time, it is a genuine transformation of the way political decisions are made by the Government, in agreement with the European Council, the Union and the European Commission, which had previously never played a role in Italy, despite the significant influence that the institutions of the Union now exercise in the formation of the state budget.¹²

Therefore, the NRRP is the result of a transformation of the external constraint and of a refinement of the conditionality mechanisms. Moreover, it represents a real “change of method”¹³ or a “new method of government”,¹⁴ which will involve – at least in part – significant adjustments to the Government’s *modus operandi*: including, for example, no more space permitted for negotiations or dividing agreements, but a pre-determined government action both in terms of its objectives and in the means of intervention capable of being deployed to achieve them. These changes are also reflected in the typological choice of the legislative acts to be adopted: mainly decree-laws or delegated decrees which give rise to repercussions in relation to both the form of government and parliamentary dynamics.¹⁵

It is therefore a real “self-restraint”, because each Member State has autonomously adopted it, through the presentation of the Plan, the adoption of the governance necessary for ensuring its implementation, and finally the signing of the operational agreements.¹⁶ Having received the approval of the Parliament - via the two resolutions in April 2021 - the Plan presented by the Government evidently constitutes a self-constraint. Undoubtedly each National Plan has necessarily been written in “obligatory rhymes” with respect to the rules envisaged at a European level, but with spaces in any case suitable for a national appreciation not only of the value of the resources to be requested, but also of their concrete use.

It is no longer a firm “external constraint”, because, both from a legal and a political perspective, the will of each Member State constitutes an indefeasible element of the assumption that each is bound, in line - on a juridical-constitutional level - with those “limitations of sovereignty” that the Italian Constitution envisaged in its art. 11.¹⁷

12 CATELANI, “Profili costituzionali del PNRR”, *Associazione deicostituzionalisti.it*, 05/2022.

13 CASSESE, “Il cambio di metodo. Doverosi passaggi di governo”, *Corriere della sera*, 19/06/2021.

14 LUPO, “Next Generation EU e sviluppi costituzionali dell’integrazione europea: verso un nuovo metodo di governo”, *Diritto pubblico*, forthcoming, 2022.

15 SCIORTINO, *cit. supra* note 7, p. 251.

16 LUPO, *cit. supra* note 14. See also BARTOLUCCI, “Riforma dei regolamenti parlamentari e Piano Nazionale di Ripresa e Resilienza”, *Consulta Online*, n. 2, 2022, pp. 521 ff.

17 LUPO, “I poteri dello Stato italiano alla luce del PNRR: prime indicazioni”, *Federalismi.it*, 2022, p. 2 ff.

2 The NRRP, ECB and European Economic Governance

The conditionality of the NRRP has recently been strengthened in an exceptional way. In fact, the implementation of the NRRP over the next few years involves the creation of a real “iron triangle” between budgetary discipline, the NRRP and the European Central Bank (ECB), in an attempt to ensure that solidarity not result in the neglect of responsibility. The implementation of the NRRP is thus bound to ensure the sound management of public finances. Proceeding with unjustified and unjustifiable budget deviations would result in the blocking of resources which would otherwise be derived from the Plan. Similarly, the implementation of the NRRP is an essential condition for activating the Transmission Protection Instrument (TPI), which is the ECB’s new instrument aimed at avoiding the risk of fragmentation within the Eurozone.

All this means that the implementation of the NRRP is now completely central to the sustainability of Italian public finances, even in the short term. Consequently, the reforms of the NRRP – obviously including those less “welcome” at the national level, such as competition, justice and taxation – and the avoidance of budget slippages that are unjustified and are not the subject of agreement with the EU, become the keystone of evading financial storms that could be fatal to any Government. The same must be said for changes deemed too fundamental to the nature of the NRRP, which - if not accepted - would risk activating the consequences deriving from the interweaving of the NRRP, budgetary discipline and monetary policies.

At the same time, the new “method of government” inaugurated with the Next Generation EU should not be dismissed, as it could be suitable – even in ordinary European economic governance – for directing the economic policies of the member States in a manner which surpasses the quantitative and numerical nature which has, however, been the backbone of European rules since Maastricht.

The coordination work that, to some extent, has been undertaken by the Next Generation EU, especially as regards reforms, could be incorporated into the new European economic governance. That which was inaugurated via the NGEU and the NRRP is, in fact, a new Euro-national procedure¹⁸ which already intersects with the European semester, while appearing decidedly more

18 These are the procedures which are governed by both European and national rules and in which institutions of the European Union and the Member States participate. On this point, see MANZELLA and LUPO (eds.), *Il sistema parlamentare euro-nazionale. Lezioni*, Torino, 2014. On the Euro-national budget procedures, in particular, see BARTOLUCCI, *La sostenibilità del debito pubblico in Costituzione. Procedure euro-nazionali di bilancio e responsabilità verso le generazioni future*, Padua, 2020, p. 227 ff. and 286 ff.

stringent and more effective than the experiences of the recent past, in which the country-specific recommendations have had a very limited following in Italy as in many other countries.¹⁹ On the other hand, those country-specific recommendations were too bureaucratic, economistic and heterodeterminate,²⁰ while the Next Generation EU is instead a “new mode of EU policy-making”.²¹ Moreover, the Euro-national nature of the procedure constitutes an essential element, which is to reject the criticisms aimed at highlighting an allegedly unilateral and “impositional” nature of the Recovery and Resilience Facility.²²

NGEU can therefore represent a model for further European initiatives involving common spending in times of emergency. In fact, the new initiative called REPowerEU is now included within the legal architecture of NGEU, to manage the current energy crisis that followed the Russian invasion of Ukraine.²³

In the light of these considerations, we can welcome the communication presented by the European Commission on 9 November 2022, which outlines the guidelines for the reform of the EU economic governance framework. The greater attention to the “qualitative” side of the coordination of economic policies and the regard given to the new “governance method” inaugurated with the NGEU, underpin the Commission’s communication, which proposes to introduce a more transparent and risk-based surveillance framework, differentiated between countries, which takes into account the differences between national public debts.

In fact, the European rules currently in force – excluding the NGEU – have failed to prevent the harmful combination of budget flexibility (due to the discretion present in the application of the rules) and “bad debt”. On the other hand, tying more gradual debt reduction to expenditure agreed with the EU

19 LUPO, *cit. supra* note 14. On the country-specific recommendations see G. MENEGUS, “Gli indirizzi di massima per il coordinamento delle politiche economiche ex art. 121 TFUE nel quadro del semestre europeo”, Osservatorio sulle fonti, 2020, p. 1452 ff. and BILANCIA, “Sistema delle fonti ed andamento del ciclo economico: per una sintesi problematica”, Osservatorio sulle fonti, 2020, p. 1425 ff.

20 LUPO, *cit. supra* note 14.

21 SCHRAMM, KROTZ, DE WITTE, “Building ‘Next Generation’ after the pandemic: The implementation and implications of the EU Covid Recovery Plan”, *Journal of Common Market Studies*, 2022, p. 7 ff.

22 LUPO, *cit. supra* note 14.

23 See FAMÀ, “REPowerEU: a European fiscal space beyond the pandemic”, *Eulawanalysis.blogspot.com*, 4 January 2023: REPowerEU introduces within the framework of NGEU, an additional chapter of reforms and investments, dedicated to diversifying energy supplies and increasing energy efficiency of the Member States. In this sense, although NGEU was built as a one-off operation, the current energy crisis is showing that it is flexible enough to accommodate new emerging needs.

institutions could be the key to combining healthier public finances, albeit over a longer period of time, with public spending that is “good” and that, in turn, produces economic growth,²⁴ using the lock pick of conditionality in an intelligent manner.

In conclusion, it is an attempt to incorporate the NGEU method into European economic governance, thus overcoming that wholly quantitative approach which has been the basis of European rules since 1992, arriving at what could be an insightful development of economic rules that are placed at the intersection of the sovereignty of the Member States and of the European Union.

24 *Contra* DE ROMANIS, “È meglio non toccare il patto di stabilità”, *La Stampa*, 5/11/2022, according to which the funds were not poorly spent because of the rules, but because of political choices. The affirmation is undoubtedly acceptable, but new rules tied to shared choices could incentivize states to make less questionable spending decisions. *Contra* BUTI, “La riforma del Patto di stabilità è un’opportunità per l’Italia”, *La Stampa*, 21/11/2022.