

ECONOMIC PLANNING AND ADMINISTRATIVE
TRANSFORMATIONS IN THE NGEU AND NRRP:
A PARADIGM SHIFT

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1. European law crisis response

Sabino Cassese observes that the evolution of European law is the result of the passage from one crisis to another and, therefore, the endemic repetition of crises. The European integration process has emerged stronger and more advanced with each crisis.

Will this also be the case this time?

The coronavirus and Ukrainian emergencies have unquestionably been more disruptive than the empty chair crisis and the various economic and financial crises of the distant - and recent - past.

The pandemic has threatened the constitutional resilience of Europe's democratic orders. The war has affected the most precious asset in recent European history: peace, which had been broken in the previous seventy years only by the conflict in the former Yugoslavia. And it has dealt a further significant blow to globalisation, with a return to a geopolitical logic of opposing blocs between the United States and China, in which Europe constitutes the intermediate shard.

These dramatic scenarios have brought the inherent problems of the European order to the surface: suffice it to recall the issues of European governance, the weakness of European foreign policy, and the lack of a European defence system. Thus, at least the

pandemic crisis provided an opportunity to restart the integration process, primarily through the Next Generation European Union (NGEU) recovery plan.

In this respect, the European order seems to be showing enviable resilience and confirms its ability to fuel the integration process. This is especially true of the NGEU, which is an example of how the Union has the potential to face crises together and try to overcome them. It addresses them in the only way it knows how: through economics, at least when the crisis can be tackled using economic and financial means, which make it possible to develop and grow the technical expertise that is by now so well established in the European institutions.

But, the NGEU is certainly also a strong driving force in the direction of cohesion policies.

The fact is that the NGEU has produced a sharp paradigm shift as the resilient driver of not only economic but, above all, institutional and legal European recovery. All this has taken place under the lead of European administrative law as the NGEU has also entailed a significant transformation and further growth of administrative law, both at the European level and in the individual member States themselves.

2. The Revival of the European Integration Process through the NGEU

The NGEU has brought with it the issue of joint debt; the financing plan consisting partly of non-repayable grants, which meant that it was not only a financial operation but also a decidedly political one. Ultimately, it is an initiative that goes beyond the scope of international law or agreements between States. Unlike the previous sovereign debt crisis, it is wholly a matter for the European order, with a manifest revival of the Community method.

Obviously, the NGEU and, in particular, the Recovery and Resilience and Facility (RRF) are not the result of a sudden creative genesis. They fit into the furrow already traced by the financial policies of the last fifteen years. Indeed, the conditionality mechanism, already amply tried and tested in the US federal system, had already been employed through the instruments of financial assistance adopted in previous crises.

The link with the financial mechanisms of the European Semester is also nothing new. Thus, there has been no break with

the recent past in terms of forms and procedures, but the NGEU has been grafted onto a terrain, namely the financial one, that has already been tried before.

What is truly innovative and, in a sense, represents the new paradigm dictated by the RRF, is the collection of primary strategic objectives set out in the plan. These include ecological and digital transformation in the medium term, but also social and territorial cohesion, health and resilience, and policies for generational solidarity, and so on.

The close connection with innovation, sustainable development, and institutional and structural reform policies have led to innovation in the genesis and nurture of public policies. What has happened in practice is that a financial instrument, a European financing fund, has become the core instrument setting the direction and dictating the economic planning of the member States involved. We can therefore envisage a sort of return to economic planning in the nation States, albeit under the direction of the European institutions, especially the European Commission. The Commission has also been given substantial powers of control over how the single States implement the national plans and, in the event of non-compliance with the obligations undertaken or non-compliance with the principles of the rule of law, it may suspend the aid programmes and recover the funds disbursed.

3. The renewed centrality of the European Commission through the NGEU

The European Commission plays an absolutely pivotal role in the NGEU. Indeed, the Council has the critical task of approving the national plans when requested to do so by the Commission. However, it is the Commission that carries out the in-depth six-monthly periodical check on the state of implementation of the NGEU and especially on whether targets and milestones have been achieved, approving requests for payments coming from the States after consultations with the Economic and Financial Committee. The financial mechanisms are therefore functional to achieving major reform policies. If, on the one hand, we observe a process of financialisation in the sense outlined above, there is also a recovery of functionality concerning 'material' public interest through the prism of the two medium-term transition plans (ecological and digital) and the six major objectives identified by the NGEU.

It remains to be seen whether the European Commission's scrupulous control will continue to be strict and inflexible or will become more elastic and measured over the years. Some scholars tend to favour the latter hypothesis, especially if the markets continue to look favourably on these instruments.

4. The NGEU's organisational and functional effects of Italian government administration

In reality, European Commission control has already produced ripple effects on administrative law in the member States and, in particular, on the Italian system since ours is the State that benefits the most from NGEU funds. The member States must meet the prescribed targets and milestones to be considered to have achieved the six-monthly objectives set by the NGEU. This results in substantial changes in terms of structure, procedure, and administrative controls.

Concerning the first point, as we are all aware, a control room has been set up by the Presidency of the Council of Ministers, and the Presidency and the Ministry of Economy and Finance (and particularly the State General Accounting Office) have assumed an even more significant role than before. In many individual administrations then, mission units have been set up with the explicit purpose of implementing the NRRP, thus overlapping with the ordinary administrative organisation of the individual States. Their own personnel and resources work in close contact with the political leadership, coordinating and guaranteeing the pursuit of the planned goals within the established timeframe. We might, in fact, speak of a parallel administration.

As for activities and procedures, the fact that objectives must be realised within a contingent timeframe implies powerful planning capability and foresight, such as devising projects and investments that will be challenging in a few years' time. For several decades, this capacity for economic planning, if it existed in the past, has been 'mothballed' in our legal system, sacrificed in the name of previous European economic governance, which tended to leave the fundamental development choices to the regulated markets and economic operators.

On the other hand, there have been significant effects on execution methods as public administrations not only have to use the investments envisaged by the plan through standard tenders

and procedures, but they must also meticulously plan and implement – especially regarding timeframes – the multiple phases and numerous steps that come between one *tranche* of European funding and the next. In essence, failure to complete a procedure or a phase within the timeframe ‘scheduled’ in the agreements between the European Commission and the individual member States implies a breach of supranational obligations, with consequences which, at least in terms of formal severity, may prove to be extremely damaging to their economies.

There is, therefore, an outcome constraint linked to the length of the proceedings; it has now become central and decisive and perhaps even more important than the substantive outcome resulting from the actual impact of the investment or reform. The consequences are twofold: on the one hand, the NGEU, as an instrument related to economic policy, should enjoy greater freedom; otherwise, investment might be discouraged if caught in a legal stranglehold. On the other hand, it leads to ‘bureaucratising’ the proper performance of the action undertaken, which is measured in terms of processes and time rather than a concrete evaluation of the substance.

The fact is that the techniques of organisational science, corporate project management, and business engineering, which had previously made their way into the life of public administrations, have become absolutely fundamental in this emergency phase of recovery and resilience.

In particular, the techniques and models of project management, which have led to a transition from process-based to project-based organisation, have now come to be tools used by the public administrations during this transformation phase.

As a result, the legal, and therefore very structured and rigid rules and operating phases within the process, regarding the setup, the person responsible, the deadline, fact finding, the decision, and so on, are today flanked by the contemporary mechanisms of project-based organisation, based on flexibility and speed, supple personnel management, the ability to adapt to different needs, and a constant and regular reporting system. However, these mechanisms can also bring drawbacks, one of which is considerable stress within the organisations due to the strict, and frequent, deadlines running through the entire project. Another is focus on the individual project and the consequent risk of losing sight of the general picture, which must be recovered within the organisation

itself (by the general manager or office manager). Further drawbacks include the many projects that have to go ahead and that may actually prove incompatible (e.g., in the use of staff resources) and a relationship with the personnel linked to the completion of the project and with the person in charge of the procedure, who becomes a sort of project manager, with all the advantages and costs that this may entail.

Lastly, as far as administrative controls are concerned, the most significant new aspect is the relaunch and reinforcement of the Court of Auditors' external controls during implementation, whereby concomitant external controls have been added to internal management controls, resulting in constant monitoring of the implementation of NRP objectives. This transformation, however, seems to focus on achieving the objectives within the planned timeframe, so the question will be whether this in-progress effort will divert attention away from the verification of concrete results.

5. European administrative law as the driver of the integration process

Based on what has been said, we can gain a reasonable idea of the ability of these new instruments intervening in the economy to direct national economic development policies towards the pursuit of supranational policy objectives.

The result is a legal framework favouring increased integration, but its effectiveness will be tested in the coming years in terms of real-world implementation at national level.

The energy crisis could lead, among other things, to adopting other public investment mechanisms through public financing funds, gradually giving more stability to the instruments that were introduced 'in one shot'.

It seems reasonable to say that, in this phase, the NGEU has brought radical transformations not only in the European integration process, giving new impetus to the construction of the European project, but, through a ripple effect, it has also brought about a series of important changes to the structure of national institutions and administrations. This is undoubtedly a further demonstration of the extent to which European administrative law is the fundamental driver of the integration process.