Learning from the euro crisis: A new method of government for the European Union's economic policy coordination after the pandemic

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Has the European Union been able to learn from the experience of the euro crisis to shape its response to the economic consequences of the pandemic? This article aims to show that an effective learning process was set in motion in the aftermath of the pandemic emergency, although it looks still incomplete. To address the economic consequences of the COVID-19 outbreak and drawing on lessons from the euro crisis, a new method of government has been forged through the NextGenerationEU. Grounded in a creative interpretation of legal foundations and shaped by a process that is both national and European, involving domestic and supranational institutions, the governance of the Recovery and Resilience Facility (RRF) unfolds through the setting of EU-wide priorities, their articulation in national medium-term, performance-based plans, and continuous monitoring by the Commission to ensure compliance with multiple conditionality regimes. The first years of implementation of the RRF have proved successful not only for the use of the Fund by the member states but also for the spread of the RRF method of government in other areas of EU law, including the European Semester, REPowerEU, and the revised Stability and Growth Pact, despite the

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uncertainties surrounding the temporary nature of the instrument and some weaknesses in terms of democratic accountability.

1. Introduction

Many observers have highlighted the overlap and intertwining of several crises within the European Union during a limited timeframe.[1] It may seem that a new crisis would amplify the impact of unresolved preexisting crises.[2] Thus, when the global COVID-19 pandemic broke out in 2020, it looked as though it might worsen the legacy of the euro crisis: the asymmetry between a supranational monetary policy, based on a common currency, on the one hand, and a predominance of national fiscal policies, on the other,[3] was at risk of being exacerbated by purely domestic uncoordinated economic recovery responses.[4]

In fact, the European Union's response to the pandemic crisis has demonstrated that a process of collective learning from the previous crises, in particular from the euro crisis, was set in motion.[5] In other words, the COVID-19 pandemic has triggered "the collective identification and embedding of practices and behaviours"[6] that could lead to policy, procedural, and governmental changes, with some suggesting it has prompted a paradigm shift through the Recovery and Resilience Facility (RRF).[7] Most likely, the time proximity between the two economic crises "has enabled quicker and deeper learning"[8] by the EU institutions (and its member states). Indeed, crises favor learning-based institutional change,[9] prompting to "beliefs or policies based on lived

1 Jonathan Zeitlin, Francesco Nicoli, & Brigid Laffan, *Introduction: The European Union beyond the Polycrisis? Integration and Politicization in an Age of Shifting Cleavages*, 26 J. Eur. Pub. Pol'y 963 (2019); Francesco Nicoli & Jonathan Zeitlin, *Introduction: Escaping the Politics Trap? EU Integration Pathways beyond the Polycrisis*, 31 J. Eur. Pub. Pol'y 3011 (2024).

2 Jonathan White, Politics of Last Resort: Governing by Emergency in the European Union 64–105 (2019) (speaking, by no coincidence, of the politics of emergency as the new normal in Europe and a sign of its weakness).

3 On this enduring asymmetry, see David Howarth & Amy Verdun, *Economic and Monetary Union at Twenty: A Stocktaking of a Tumultuous Second Decade: Introduction*, 40 J. Eur. Integration 287(2020).

4 Peter Lindseth & Cristina Fasone, *The Eurozone Crisis, the Coronavirus Response, and the Limits of European Economic Governance*, *in* The Idea of Economic Constitution in Europe 528 (Guillaume Grégoire & Xavier Miny eds., 2022).

5 Andrea Capati, *Collective Policy Learning in EU Financial Assistance: Insights from the Euro Crisis and Covid-19*, 11 Pol. & Governance 40 (2023); Lucia Quaglia & Amy Verdun, *Explaining the Response of the ECB to the COVID-19 Related Economic Crisis: Inter-crisis and Intra-crisis Learning*, 30 J. Eur. Pub. Pol'y 635 (2023).

6 Donald P. Moynihan, *From Intercrisis to Intracrisis Learning*, 17 J. Contingencies & Crisis Mgmt. 189 (2009).

7 Marco Buti & Sergio Fabbrini, *Next Generation EU and the Future of Economic Governance: Towards a Paradigm Change or Just a Big One-off?*, 30 J. Eur. Pub. Pol'y 676 (2023); Maria Antonia Panascì, *Unravelling Next Generation EU as a Transformative Moment: From Market Integration to Redistribution*, 61 Common Mkt. L. Rev. 13 (2024).

8 Stella Ladi & Dimitris Tsarouhas, *EU Economic Governance and Covid-19: Policy Learning and Windows of Opportunity*, 42 J. Eur. Integration 1041, 1045 (2020). On the intra-crisis learning during the euro crisis, see Jonathan Kamkhaji & Claudio Radaelli, *Crisis, Learning and Policy Change in the European Union*, 24 JEPP 714 (2017); Matthias Matthijs & Mark Blyth, *When Is It Rational to Learn the Wrong Lessons? Technocratic Authority, Social Learning, and Euro Fragility*, 16 Persp. on Pol. 110 (2018).

9 Edward Deverell, *Crises as Learning Triggers: Exploring a Conceptual Framework of Crisis-Induced Learning*, 17 J. Contingencies & Crisis Mgmt. 179 (2009).

or witnessed experiences, analysis and social interaction."[10] The nature of the crisis influences the type of learning process initiated: for example, while the euro crisis is considered a fast-burning crisis that promotes contingent learning, the pandemic is a slow-burning crisis that encourages a form of inferential learning.[11] This can only be properly assessed once the EU's "pandemic measures" are fully implemented, a process that is still ongoing at the time of writing. Only then will it be possible to confirm whether the European Union's response to this crisis has resulted in "single-loop" learning, which involves using new instruments and strategies while leaving the core of an organization or policy unchanged, or, as hypothesized here, "double-loop" learning, which alters the fundamental objectives and rationale of an organization or policy.[12]

This article aims to show that an effective learning process began in the aftermath of the pandemic emergency, although it remains incomplete. To address the economic consequences of the COVID-19 outbreak, and drawing on the experience of the euro crisis (Section 2), a new method of government has been established through the NextGenerationEU (NGEU) (Section 3). Like in the euro crisis, this method of government is characterized by a "Euro-national procedure"[13] and introduces innovative elements both at the European level and within each member state's legal system. It is founded on a creative interpretation of the legal bases embedded in the EU Treaties and is instrumental in allocating EU common resources—partly as grants and partly as loans—in compliance with national recovery and resilience plans (NRRPs) proposed by member states and approved by the Commission and the Council.[14] The implementation of "spending conditionality"[15] is meant to ensure the coexistence between priorities common to the European Union and economic policies proposed by each member state.

The new method of government has worked rather well during the first two and a half years of its implementation in coordinating reforms and investments across the Union. This is demonstrated not only by the fact that all member states, albeit

10 Claire A. Dunlop & Claudio Radaelli, *Systematizing Policy Learning: From Monolith to Dimensions*, 61 Pol. Stud. 599 (2013).

11 Claudio Radaelli, *Policy Learning and European Integration*, 60 J. Common Mkt. Stud. 12 (2022).

12 *See* Quaglia & Verdun, *supra* note 5, at 238, citing Peter A. Hall, *Policy Paradigms, Social Learning and the State: The Case of Economic Policymaking in Britain*, 25 Comp. Pol. 275 (1993).

13 *See further* Cristina Fasone & Nicola Lupo, *Conclusion. Interparliamentary Cooperation in the Framework of a Euro-national Parliamentary System*, *in* Interparliamentary Cooperation in a Composite European Constitution 345, 349 (Nicola Lupo & Cristina Fasone eds., 2016); Paul Dermine, *The Planning Method: An Inquiry into the Constitutional Ramifications of a New EU Governance Technique*, 61 Common Mkt. L. Rev. 959, 970ff. (2024) (proposing the notion of the "planning method" as a "new EU governance technique" experienced through the RRF presents some points of contact, being defined as "a policy method through which national public action in particular policy fields is coordinated and co-constructed between supranational institutions and the member states").

14 *See* Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 Establishing the Recovery and Resilience Facility, 2021 O.J. (L 57) 17 [hereinafter Regulation 2021/241].

15 *See* Viorica Vita, The Rise of Spending Conditionality in the European Union (2018); Antonia Baraggia & Matteo Bonelli, *Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges*, 23 Ger. L.J. 131, 143 (2022); Louise Fromont & Arnaud Van Waeyemberg, *Trading Rule of Law for Recovery? The New EU Strategy in the Post-Covid Era*, 27 Eur. L.J. 127 (2021).

according to different timeframes and terms, decided to use the funds by presenting their own NRRPs and thus adhered to this method of government, but also by two additional factors. First, the same method has been used to address the economic consequences of the war in Ukraine through a new investment program aimed at increasing EU autonomy in energy production (REPowerEU), and a parallel program will be implemented for managing the European Social Climate Fund.[16] Second, a similar, though not identical, method of government based on medium-term plans has been adopted also during "ordinary times" through the reform of the European Semester (ES) and, in particular, of the Stability and Growth Pact (SGP) (Section 4).

2. The euro crisis of the past decade: The rise and fall of the European Semester

With respect to the learning process, the euro crisis that struck Europe in 2010—a sovereign debt crisis that destabilized the Economic and Monetary Union (EMU)—led many to question whether it triggered a constitutional "mutation" in the European Union or just "increased institutional variation."[17]

Although its most acute phase had ended by 2015, the euro crisis left long-lasting divisions within the European Union and created structural consequences for the mechanisms and procedures of European economic governance. These divisions were fueled by several asymmetries within the economic governance regime: between monetary and fiscal policies and, consequently, between countries inside and outside of the euro area as well as between creditor and debtor countries;[18] between supranational and newly developed intergovernmental methods;[19] and between technocratic and democratic institutions.[20]

16 *See* Regulation (EU) 2023/435 of the European Parliament and of the Council 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, 2023 O.J. (L 63) 1 [hereinafter Regulation 2023/435]; 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, 2023 O.J. (L 130) 1. Lastly, Regulation 2021/241, *supra* note 14, was modified by Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241, 2024 O.J. (L series), February 29, 2024 [hereinafter Regulation 2024/795] allowing to revise the NRRPs to include investment projects contributing to the STEP.

17 *Compare* Augustín J. Menéndez, Editorial, *A European Union in Constitutional Mutation*, 20 Eur. L.J. 127 (2014) *with* Bruno De Witte, *Euro Crisis Responses and the EU Legal Order: Increased Institutional Variation or Constitutional Mutation?*, 11 Eur. Const. L. Rev. 434 (2015).

18 *See* Claire Kilpatrick, *On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe's Bailouts*, 35 Oxford J. Legal Stud. 333 (2015).

19 The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era (Chris J. Bickerton, Dermot Hodson, & Uwe Puetter eds., 2015).

20 Stéphanie Hennette, Thomas Piketty, Guillaume Sacriste, & Antoine Vauchez, How to Democratize Europe (2019).

The euro crisis led to stronger coordination of national fiscal policies under the SGP through the introduction of the ES annual cycle,[21] which became one of the most innovative and controversial interplays between domestic and EU institutions in terms of its design, practice, and impacts on the domestic budgetary process.[22]

The ES was intended to remain in place long after the euro crisis to ensure predictability and stability in national public accounts under the close supervision of the EU institutions.[23] While domestic and supranational executive bodies lead the ES, parliamentary institutions—both the European Parliament and domestic legislatures—have remained marginalized.[24]

Before the start of the fiscal year, the Commission offers an outlook of the economic situation in each member state. The European Council then sets the strategic priorities for the euro area and for the Union as a whole. Under the old Stability and Growth Pact (SGP), every April, national governments were expected to transmit their national reform programs (NRPs) (on macroeconomic indicators) and stability or convergence programs (on the fiscal variables) to the Commission, which then assessed them in light of the previously identified medium-term budgetary objective (MTO).

Under the revised SGP, member states submit their annual progress reports on the implementation of their medium-term fiscal-structural plans, which envisage investments and reforms over a four- to five-year horizon, in line with the domestic net expenditure path and the reference trajectory set by the Commission.[25] Country-specific recommendations (CSRs) are then drafted by the Commission, endorsed by the European Council, and adopted by the Council in July. These recommendations form the basis for euro area countries to prepare and submit their draft budgetary plans to the Commission by mid-October. The plans, along with any revisions suggested by the Commission, must be approved by national parliaments by the end of December.

Despite its sophisticated design, the implementation of the ES, at least prior to the NGEU and the new SGP, has been largely disappointing.[26] Although EU institutions,

[21] *See, in particular*, Regulation (EU) No. 1175/2011 of the European Parliament and the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies, 2011 O.J. (L 306) 12.

[22] Ramona Coman, *The Legitimacy Gaps of the European Semester: Who Decides, What and How*, L'Europe en formation, nos. 2–3, at 47 (2017); James D. Savage & David Howarth, *Enforcing the European Semester: The Politics of Asymmetric Information in the Excessive Deficit and Macroeconomic Imbalance Procedures*, 25 J. Eur. Pub. Pol'y 212 (2018); Vivienne A. Schmidt, Europe's Crisis of Legitimacy: Governing by Rules and Ruling by Numbers in the Eurozone 95ff. (2020); Adina Akbik, The European Parliament as an Accountability Forum. Overseeing the Economic and Monetary Union 97ff. (2022).

[23] Camilla Mariotto, *The Implementation of Economic Rules: From the Stability and Growth Pact to the European Semester*, 60 J. Common Mkt. Stud. 40 (2022).

[24] *See* Deirdre Curtin, *Challenging Executive Dominance in European Democracy*, 77 Mod. L. Rev. 1 (2014).

[25] For countries whose debt exceeds 60% of the GDP: *see* Regulation (EU) No. 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, arts. 3–5, 2024 O.J. (L 2024/1263) [hereinafter Regulation 2024/1263].

[26] *See, e.g.*, Konstantinos Efsthatiou & Guntram B. Wolff, Policy Brief, *Is the European Semester: Effective and Useful?*, Bruegel: Policy Contribution, no. 9 (2018), www.bruegel.org/system/files/wp_attachments/PC-09_2018_3.pdf; Case C-27/04, Comm'n v. Council, ECLI:EU:C:2004:436 (July 13, 2004).

particularly the Commission, were granted extensive oversight powers,[27] these enforcement mechanisms have not operated effectively. The ES has been criticized both for being overly intrusive in national democratic processes[28] and for being just another soft governance tool that fails to bring about meaningful changes in fiscal policies.[29]

Member states' rates of compliance with the CSRs are very low.[30] Although all EU countries have been subjected to the excessive deficit procedure and to in-depth reviews under the macroeconomic imbalance procedure—or both—the corrective arm has never issued sanctions. As a result, the ES has not served as an actual deterrent against violations of economic and fiscal rules, nor has it provided a concrete mechanism for addressing deviations from the MTOs.

On the one hand, national institutions, including legislatures, have viewed the ES as a bureaucratic exercise with little political engagement, perceiving the CSRs as mere guidelines provided by "external" actors.[31] Often, after being approved by the Council, the CSRs were not even reviewed by national parliaments.[32] On the other hand, imposing high fiscal standards (such as a balanced budget or surplus) and overly detailed numerical fiscal rules, while allowing for generous "escape clauses," turned the ES into an empty framework, as the Commission frequently authorized deviations from the MTO whenever requested by a national government.[33] In other words, the flexibility introduced by the Juncker Commission[34] to move away from the austerity mantra that shaped the debate during the most acute phase of the crisis[35] gave significant leverage to member states to pursue their own policies at the expense of coordination. Unsurprisingly, it has been noted that, within the ES framework, there was a persistent tension between efforts to limit the autonomy of national budgetary authorities (*limiting*) and the perception that those authorities, in fact, had the license to exercise new powers or broader discretion (*licensing*).[36]

27 For a comparative perspective, *see* Federico Fabbrini, *The Fiscal Compact, the "Golden Rule" and the Paradox of European Federalism*, 36 B.C. Int'l & Comp. L. Rev. 1 (2013).

28 Mark Hallerberg, Benedicta Marzinotto, & Guntram B. Wolff, *Explaining the Evolving Role of National Parliaments under the European Semester*, 25 J. Eur. Pub. Pol'y 250 (2018).

29 Kenneth Armstrong, *The New Governance of EU Fiscal Discipline*, 38 Eur. L. Rev. 601 (2013); Mark Dawson, *The Legal and Political Accountability Structure of "Post-Crisis" EU Economic Governance*, 53 J. Common Mkt. Stud. 976 (2015).

30 *See, e.g.*, Eur. Comm'n, 2020 European Semester: Country-specific recommendations, COM (2020)500 final (May 20, 2020); Zsolt Darvas & Lennard Welslau, First Lessons from the Recovery and Resilience Facility for the EU Economic Governance Framework, EU Doc. PE 741.478 (May 2023), www.europarl.europa.eu/thinktank/en/document/IPOL_IDA(2023)741748.

31 Ben Crum, *Parliamentary Accountability in Multilevel Governance: What Role for Parliaments in Post-Crisis EU Economic Governance?*, 25 J. Eur. Pub. Pol'y 268 (2018).

32 *See* Constitutional Change through Euro-Crisis Law Project, EUI Law Department, 2013–15, https://eurocrisislaw.eui.eu/ (providing comparative analyses and national reports).

33 Schmidt, *supra* note 22, at 98–116; Augustín Menéndez, *The Sleep of Numbers Produces Monsters: The Case of "Numerical Rules*," *in* Governing with Numbers: Economic Indicators and the Budget Decision in the Constitutional State 95 (Corrado Caruso & Marta Morvillo eds., 2020).

34 *See* Eur. Comm'n, Communication on Making the Best Use of Flexibility within the Existing Rule of the Stability and Growth Pact, COM(2015)12def. (Jan. 13, 2015); Eur. Comm'n, Communication on the Review of the Flexibility under the Stability and Growth Pact, COM(2018)335 def. (May 23, 2018).

35 *See* Michael Wilkinson, Authoritarian Liberalism and the Transformation of Modern Europe pt. IV (2021); Clemens Kaupa, The Pluralist Character of the European Economic Constitution 337ff. (2016).

36 Turkuler Isiksel, *Constitutionalism as Limitation and Licence*, *in* Constitutions in Times of Financial Crisis 187, 198ff. (Tom Ginsburg, Mark D. Rosen, & Georg Vanberg eds., 2019).

In response to these limitations, the Commission initiated the process of revising the SGP in early 2020, following a period of reflection on completing the EMU.[37] However, the arrival of the COVID-19 pandemic soon after altered plans and priorities, ultimately leading to the SGP's suspension.[38]

3. The COVID-19 crisis and NGEU as a turning point

The economic consequences of the COVID-19 pandemic, which affected the entire continent, required a quick and effective response at every level of government. After some initial hesitation, the European Union decided not only to relax or suspend the fiscal rules that were in force, thereby allowing each member state to make use of its fiscal leverage, but also to initiate a common action plan that included new investments carried out at the national level using EU funds and aligned with supranational priorities and targets. This gradual and incremental process suggests the onset of inferential learning, not just in response to the euro crisis but also as the pandemic crisis unfolded.

As is often the case, a crisis presents an opportunity to overcome veto powers. In this instance, it allowed for the use of EU debt issuance to finance the EU budget and expanded EU spending conditionality across various sectors. This unprecedented shock, felt equally across all member states,[39] triggered the creation of a new method of government for the design and implementation of the RRF. Building on its successful implementation in 2021 and 2022, this method of government has been extended to address new emergencies, such as the energy crisis resulting from the war in Ukraine, and has also inspired, with some caveats, the reform of the SGP.

By the time the RRF was finalized, the last signs of resistance—particularly strong in Germany and in the so-called "frugal countries"[40]—had been overcome, at least regarding the EU common debt and the structure of the new fund.[41] For the first time, the European Union has borrowed large amounts from the markets to finance a series of reforms and investments in each EU country through grants and loans, co-determined with the member states. The disbursement of these resources to each member state is conditional on the satisfactory achievement of a series of measures defined through

[37] *See, in particular*, Five President's Report: Completing Europe's Economic and Monetary Union 13ff. (June 22, 2015), https://commission.europa.eu/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en.

[38] Eur. Comm'n, Economic Governance Review: Report on the Application of Regulations (EU) Nos. 1173/2011, 1174/2011, 1175/2011, 1176/2011, 1177/2011, 472/2013 and 473/2013 and on the Suitability of Council Directive 2011/85/EU, COM(2020)55 final (Feb. 5, 2020).

[39] Buti & Fabbrini, *supra* note 7; Capati, *supra* note 5 (all insisting on the symmetric and exogenous nature of the shock).

[40] Magnus G. Schoeller & Gerda Falkner, *Acting in the Shadow of German Hegemony? The Role of Small States in the Economic and Monetary Union*, 31 Ger. Pol. (Special Issue) 197 (2022).

[41] *See, in particular*, Council Regulation (EU) No. 2020/2094 of 14 December 2020 Establishing a European Union Recovery Instrument to Support the Recovery in the Aftermath of the COVID-19 Crisis, 2020 O.J. (L 433I) 23 [hereinafter Council Regulation 2020/2094]; Regulation (EU) No. 2021/241 of the European Parliament and of the Council of 12 February 2021 Establishing the Recovery and Resilience Facility, 2021 O.J. (L 57) 17.

milestones and targets. These measures are to be implemented over a five-year period, ending on December 31, 2026, according to a precise timetable codified in the individual NRRPs and the accompanying operational arrangements.

This method of government is based on spending conditionality mechanisms, which were first tested as tools of EU internal governance in the second half of the last decade.[42] However, under NGEU and the RRF, these mechanisms depart significantly from the problematic strict conditionality standards used during the euro crisis and the rescue programs.[43] Instead, the new method has considerable potential to ensure coexistence and complementarity between EU-wide and domestic priorities.[44]

The Union's borrowing of resources to fund investments in individual member states—something that had not occurred for years—was promoted to address the economic consequences of the COVID-19 pandemic and to foster recovery, utilizing a creative interpretation of Treaty provisions.

3.1. The creative interpretation of the legal bases

The adoption of NGEU has been described as an exercise in "creative legal engineering" to enable "a major shift in EU economic policy."[45] Given the substantial difficulty in revising the Treaties, an evolutive interpretation had to be quickly devised to allow the European Union to financially support the recovery. As in systems where constitutional amendments are extremely difficult, the European Union's creative interpretation of Treaty provisions has circumvented and mitigated the rigidity of constitutional change and formal adaptation.[46] This time, unlike during the euro crisis, all member states were keen to agree on a common objective once the initial reluctance of the frugal countries was overcome.[47] As a result, intergovernmentalism did not entirely dominate the European Union's response to the pandemic.[48] In designing NGEU, the European Commission and the Parliament played a leading role,[49] while intergovernmental institutions—particularly the European Council—were tasked with resolving stalemates in negotiations (e.g., on rule-of-law conditionality) and finalizing the terms

42 Antonia Baraggia, *Conditionality Measures within the Euro Area Crisis: A Challenge to the Democratic Principle?*, 4 Cambridge J. Int'l. & Compar. L. 268 (2015).

43 *See* Case C-370/12, Thomas Pringle v. Gov't of Ireland & Ors., ECLI:EU:C:2012:756, ¶ 69 (Nov. 27, 2012). *Cf. also* Menelaos Markakis, Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance 66ff. (2020).

44 Viorica Vita, *Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality*, 19 Cambridge Y.B. Eur. Legal. Stud. 116, 120ff. (2017).

45 *See* Bruno De Witte, *The European Union's Covid-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift*, 58 Common Mkt. L. Rev. 635, 670ff. (2021).

46 For a parallel with the US debate on constitutional interpretation, see Panascì, *supra* note 7.

47 Skepticism, however, persists. *See* Sebastian Heidebrecht & Magnus G. Schoeller, *The Austrian-German Relationship in EMU Reform: From Asymmetric Partnership to Increased Independence*, 31 Ger. Pol. 240, 250ff. (2022); Amy Verdun, *The Greatest of the Small? The Netherlands, the New Hanseatic League and the Frugal Four*, 31 Ger. Pol. 302, 307ff. (2022).

48 *See* Sergio Fabbrini & Andrea Capati, *Adjustments in Economic Crises: The Different Outcomes of the Sovereign Debt and Pandemic Crises in Europe*, *in* The Cambridge Handbook of European Monetary, Economic and Financial Integration 363 (Dariusz Adamski, Fabian Amtenbrink, & Jakob de Haan eds., 2023)

49 See, in particular, the resolution adopted by the European Parliament on 17 April 2020 on coordinated Union action to combat the pandemic (2020/2616(RSP)), Aug. 6, 2021, 2021 O.J. (C 316), 2.

of the agreement.[50] Because of the general consensus on the desirability of NGEU, no intergovernmental agreements were adopted outside EU law, and no new intergovernmental bodies were created. Similarly, the many asymmetries that emerged after the euro crisis—such as the sharp euro area vs. non-euro area divide—pale in comparison to the Union's response to the COVID-19 crisis.[51] The differences in member states' positions were acknowledged in the criteria for distributing funds under the RRF,[52] but procedurally all member states were on equal footing regarding the conditions for requesting grants and loans.

The consensus needed to adopt the NGEU benefited from an institutional situation that was favorable in many respects. Indeed, following the European elections of May 2019, the 2021–27 Multiannual Financial Framework had not yet been adopted. This allowed changes to the overall amount and the ceilings of the so-called EU-own resources and expenditures. Therefore, in addition to traditional categories of EU revenues, the new Own Resources Decision authorized the European Union to borrow from capital markets to finance the RRF, providing "extraordinary and temporary additional means to address the consequences of the COVID-19 crisis."[53]

The European Commission built NGEU on a multifaceted legal foundation.[54] More specifically, the legal basis for the first two regulations addressing the COVID-19 pandemic was identified as article 122 of the Treaty on the Functioning of the European Union (TFEU).[55] This provision is cited in both Council Regulation 2020/672 of May 19, 2020, which established a European instrument for temporary support to mitigate unemployment risks in the state of emergency (SURE) in the early months of the COVID-19 outbreak, and Council Regulation 2020/2094 of December 14, 2020, which established the EU recovery instrument and determined the amount of resources mobilized for that purpose.[56]

To this end, an innovative interpretation of article 122 TFEU was proposed, relying on a joint reading of its two paragraphs.[57] Paragraph 1 references the "spirit of solidarity between Member States" to enable the Council, under article 289(2) TFEU, to adopt "measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, in particular in the area of energy." This deliberately generic formula, originally intended for issues like energy supply

[50] *See* Eur. Council Meeting (July 17–21, 2020), Conclusions EUCO 10/20 (July 21, 2020); Eur. Council Meeting (Dec. 10–11, 2020), Conclusions EUCO 22/20 (Dec. 11, 2020).

[51] Alexander Schilin, *EU or Euro Area Crisis? Studying Differentiated Integration as an Idea Structuring Elite Perceptions of the Sovereign Debt and the COVID-19 Crisis*, 46 J. Eur. Integration 47 (2024).

[52] Regulation 2021/241, *supra* note 14, annex I.

[53] Council Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union, art. 5 (Dec. 14, 2020).

[54] *See* Federico Fabbrini, *The Legal Architecture of the Economic Responses to COVID-19: EMU beyond the Pandemic*, 60 J. Common Mkt. Stud.186, 191 (2022).

[55] Consolidated Version of the Treaty on the Functioning of the European Union art. 122, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

[56] 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, May 20, 2020, 2020 O.J. (L 159) 1; Council Regulation 2020/2094, *supra* note 41.

[57] Enzo Cannizzaro, *Neither Representation nor Taxation? Or, "Europe's Moment"* (Part 1), 2 Eur. Papers 703, 705 (2020).

problems rather than the pandemic, had no concrete effect in legislative practice until 2020.[58] Paragraph 2 of article 122 TFEU has been broadly interpreted to allow the European Union, using the same procedure, to grant "financial assistance," under certain conditions, 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." This last clause, which was used in 2010 as the legal basis for the Regulation Establishing the European Financial Stabilization Mechanism (EFSM),[59] has thus been very extensively reinterpreted and applied to all member states.[60] It has been recognized that COVID-19 constituted an exceptional situation that "is beyond the control of Member States," and thus "calls for a coherent and unified approach at Union level."[61]

The legal basis of Regulation 2021/241, which established the RRF, is instead provided by article 175(3) TFEU. Unlike Council Regulations 2020/672 and 2020/2094, Regulation 2021/241 was adopted in accordance with the ordinary legislative procedure.

Article 175 TFEU, the provision underlying the structural funds, allows in paragraph 3 for specific actions beyond those implemented through these funds, aimed at strengthening economic, social, and territorial cohesion. The RRF falls within the scope of article 175(3), being financed in part by resources allocated to the structural funds, but primarily through borrowing, as mentioned earlier. This debt is justified by the exceptional nature of the measure, and the governance of the RRF follows procedural rules that largely differ from those of the structural funds, despite sharing both general and specific objectives.[62]

The exceptional circumstances surrounding the adoption of NGEU led the German Constitutional Court, on December 6, 2022, to reject allegations regarding the *ultra vires* nature of the Act ratifying the EU Own Resources Decision.[63] While excluding the possibility of establishing a fiscal union through NGEU, the Court considered the relevant borrowing operations to legitimately fall within article 311(2) TFEU as "other revenues" for the Union, rather than "own resources." Several conditions must be met in this regard, one of which specifically addresses constraints on the volume and

58 Leo Flynn, *Article 122 TFEU*, *in* The EU Treaties and the Charter of Fundamental Rights: A Commentary 1282 (Manuel Kellerbauer, Marcus Klamert, & Jonathan Tomkin eds., 2019); Merijn Chamon, The Use of Article 122 TFEU: Institutional Implications and Impact on Democratic Accountability, Doc. No. PE753.307 (Sept. 2023), www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)753307.

59 Council Regulation (EU) No. 407/2010 of 11 May 2010, establishing a European Financial Stabilisation Mechanism (EFSM), May 12, 2010 O.J. (L 118) 1.

60 Chamon, *supra* note 58, at 25ff.

61 *See* Council Regulation 2020/2094, *supra* note 41, pmbl. ¶ 5.

62 *See* Päivi Leino-Sandberg & Peter Lindseth, *Crisis, Reinterpretation, and the Rule of Law: Repurposing "Cohesion" as a General EU Spending Power*, vol# Hague J. on Rule L. (forthcoming 2024)

63 Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 6, 2022, 2 BvR 547/21, paras. 1–47. *See also* Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 26, 2021, 2 BvR 547/21, Rn. 1-1; Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Apr. 15, 2021, 2 BvR 547/21, paras. 1–112 (rejecting a request for temporary injunction against the Own Resources Decision Ratification Act allowing the President of the Republic to sign the Act of ratification into law). *See also* Eigenmittelbeschluss-Ratifizierungsgesetz [ERatG] [Own Resources Decision Ratification Act], July 8, 2021, BGBl. I at 1754 (Ger.).

duration of lending, indicating the necessarily temporary nature of NGEU and the RRF.[64]

This innovative use of the legal bases has drawn criticisms from scholars, who have questioned its adherence to the principles of financial responsibility (article 125 TFEU) and of balanced budget (article 310 TFEU). It has been argued that to legitimize such a paradigm shift, a Treaty reform is needed to strengthen the Union's fiscal integration and create an autonomous fiscal capacity.[65] At the same time, other scholars have defended the legitimacy and correctness of this interpretative effort, initially carried out by the legal services of EU institutions.[66]

3.2. New financing and spending mechanisms

At first glance, neither the financing mechanisms nor the spending mechanisms devised through NGEU appear to be entirely new. However, what is unprecedented is their combination, scope, and the *finalité* of the EU action, which aims to overcome the traditional detachment between EU and national budgetary procedures.[67] This is not the first time that the EU budget has been financed through borrowing. This occurred during the euro crisis through the European Financial Stabilisation Mechanism.[68] Yet, the size, scale, and prominence of the common debt created (EUR 750 billion in 2018 prices) are unprecedented,[69] as are the timeframe and the technique chosen for its repayment.[70] The borrowing operation, which began in 2021, will continue until 2026, with repayment scheduled between 2028 and 2058. However, as already noted, borrowing is not the usual method for generating EU own resources.[71] The prohibition on debt financing for the EU budget has been circumvented by classifying the resources allocated to the RRF as externally assigned funds.[72] This approach had been used before,[73] though never for such a large amount. At first glance, this may appear as the

[64] Thu Nguyen & Martijn van den Brink, *An Early Christmas Gift from Karlsruhe? The Bundesverfassungsgericht's NextGeneration EU Ruling*, Verfassungsblog (Dec. 9, 2022), https://verfassungsblog.de/an-early-christmas-gift-from-karlsruhe/.

[65] Päivi Leino-Sandberg & Matthias Ruffert, *Next Generation EU and its Constitutional Ramifications: A Critical Assessment*, 59 Common Mkt. L. Rev. 433 (2022).

[66] De Witte, *supra* note 45, at 638; Bruno De Witte, Editorial, *EU Emergency Law and Its Impact on the EU Legal Order*, 59 Common Mkt. L. Rev. 3 (2022); Richard Crowe, *The EU Recovery Plan: New Dynamics in the Financing of the EU Budget*, *in* The Future of Legal Europe: Will We Trust in It? Liber Amicorum in Honour of Wolfgang Heusel 117, 131, 136 (Gavin Barrett et al. eds., 2021).

[67] Richard Crowe, *An EU Budget of States and Citizens*, 26 Eur. L. J. 336 (2020).

[68] *See* Gian Luigi Tosato, *The Recovery Fund: Legal Issues* 3 (LUISS School of Eur. Pol. Econ. Policy Brief No. 23, 2020), https://leap.luiss.it/wp-content/uploads/2022/09/PB23.20-The-Recovery-Fund.-Legal-Issues.pdf; Josefin Meyer, Christophe Trebesch, & Sebastian Horn, *Coronabonds: The Forgotten History of European Community Debt*, VoxEU, Ctr. for Econ. Pol'y Rsch. (Apr. 15 2020), https://cepr.org/voxeu/columns/coronabonds-forgotten-history-european-community-debt.

[69] Moritz Rehm, *Shocks and Time: The Development of the European Financial Assistance Regime*, 60 J. Common Mkt. Stud. 1645 (2022).

[70] In comparison to alternative schemes, such as the Eurobonds: Aida Regan et al., *It Is Time for Brussels to Launch a Eurobond*, Fin. Times (Mar. 23, 2020), www.ft.com/content/12ca6b18-6abc-11ea-800d-da70cff6e4d3; David Howarth & Amie Verdun, *supra* note 3, at 288.

[71] *See* Cristina Fasone & Nicola Lupo, *The Union Budget and the Budgetary Procedure*, *in* Oxford Principles of European Union Law 809, 815–16 (Robert Schütze & Takis Tridimas eds., 2018).

[72] Leino-Sandberg & Ruffert, *supra* note 65.

[73] Richard Crowe, *The European Budgetary Galaxy*, 13 Eur. Const. L. Rev. 441 (2017).

result of a "mere" single-loop exercise, as a preexisting policy tool was used in a new way without altering the fundamentals of the EU financing system.

Despite speculation over whether the financing of NGEU triggered a "Hamiltonian moment in the EU," comparable to the United States after the American Revolution,[74] the spending mechanisms surrounding NGEU and especially the RRF are even more intriguing and innovative in their structure.[75]

Unlike the rescue funds established during the euro crisis, the RRF is established under EU law,[76] guaranteed by the EU budget, and administered by EU institutions—especially the Commission—in coordination with the member states. Moreover, its resources are given to (all) member states through loans (up to EUR 360 billion) and grants (up to EUR 312.5 billion), according to the national choice, to be made explicit in the national plans. Most countries, with the notable exceptions of Italy, Greece, Portugal, and Romania, have requested non-repayable financial support. Furthermore, the RRF is linked to a clear redistributive effort by the European Union among member states, policy sectors, and citizens' groups by financing investments and reforms aimed at reducing inequality. Excluding cohesion funds—which, in any event, mobilize significantly less EU money—this is the first time the EU budget has genuinely pursued resource redistribution as a key function alongside allocation and stabilization.[77]

Due to the massive volume of borrowing, the distribution of the RRF is subject to a series of conditions, ranging from green standards to rule-of-law principles, as well as a set of spending conditionality tools that both the national plans and their implementation must follow.[78] Regulation 2021/241 also establishes conditions connected to the development of the ES. To be eligible, the NRRPs must align with the CSRs, the priorities set in the Council recommendation on the economic policy of the euro area, and the information contained in the NRPs.[79]

The RRF can also be used to enforce the corrective arm of the SGP for countries facing fiscal and economic difficulties.[80] In such cases,[81] the Commission submits a proposal to the Council for the total or partial suspension of commitments and payments under the RRF. Any suspension, which is always reviewable, is accompanied by several safeguards, such as prioritizing the suspension of commitments over payments and respecting the principle of proportionality and equality among member states. Any proposal by the Commission to suspend payments due to economic governance concerns can only be rejected by the Council with a reverse qualified majority.[82] Therefore, it is theoretically difficult to circumvent. Conversely, the NRRPs are approved and amended by the Council through an implementing decision requiring a

[74] Tomasz P. Woźniakowski, Fiscal Unions. Economic Integration in Europe and the United States 22ff. (2022).
[75] Antonio-Martín Porras-Gomez, *The EU Recovery Instrument and the Constitutional Implications of its Expenditure*, 19 Eur. Const. L. Rev. 1 (2023).
[76] Regulation 2021/241, *supra* note 14.
[77] On the three functions of the public budget, see Richard Musgrave, The Theory of Public Finance (1959).
[78] *See* Dermine, *supra* note 13, at 980.
[79] Regulation 2021/241, *supra* note 14, art. 17(3).
[80] *Id.* art. 10.
[81] For the detailed circumstances, see *id.* art. 10(2).
[82] *Id.* art. 10(3).

qualified majority. However, changing NRRPs is not straightforward, given the cumbersome procedure outlined in article 21 of Regulation 2021/241, and the requirement for "objective circumstances" to trigger the amendment.[83]

Article 10 of this Regulation serves an important function by linking the governance of national budgets, through EU coordination of economic policies, to EU budget spending. An attempt to mend the so-called "Common Provisions Regulation" in 2013 was unsuccessful,[84] but the stakes were much lower in terms of both the funds and credibility. However, the real impact of these articles remains to be seen, given that the SGP has been suspended from March 2020[85] through 2023 and has only recently resumed its operation following its reform.[86]

3.3. The promising start of the new method of government

The RRF has given rise to a new method of government between the European Union and the member states, drawing on elements from the ES while incorporating significant innovations. It has fundamentally transformed the procedures for implementing and enforcing EU law and the objectives of economic policy coordination, shifting toward redistribution and growth[87] and pointing to a potential double loop learning process. The innovative elements of this new method of government can be summarized as follows: (i) the design of the RRF relies on an evolutive interpretation of the legal bases, especially articles 122 and 175(3) TFEU; (ii) the NRRPs are performance-based plans, with actual funding linked to the satisfactory achievement of milestones and targets; (iii) the drafting and implementation of the NRRPs depend on adherence to macro-objectives and conditions—such as cohesion, green, and rule-of-law principles—set by the European Union at a general level and detailed by each member state according to its domestic context, to be deployed over a medium-term period; (iv) the measures enshrined in the NRRPs are initially proposed by the member states, but must be agreed upon by EU institutions—namely the Commission and the

[83] Considering the addition of a RePowerEU chapter into the NRRPs following the adoption of Regulation 2023/435, *supra* note 16 (on which see Sections 3.3. and 5), the Commission adopted a specific Guidance on how to amend NRRPs in the context of REPowerEU, first published on Feb. 1, 2023. *See* Comm'n Notice, Guidance on Recovery and Resilience Plans, July 7, 2024, 2024 O.J. (C/2024/4618), 1 (published after the adoption of Regulation 2024/795, *supra* note 16).

[84] *See* Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 Laying Down Common Provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and Repealing Council Regulation (EC) No. 1083/2006, Dec. 20, 2013, 2013 O.J. (L 347), 320 [hereinafter Common Provisions Regulation]. *See also* Section 2.2.

[85] *See* Eur. Comm'n, Communication on the Activation of the General Escape Clause of the Stability and Growth Pact, COM(2020)123 final (Mar. 20, 2020). *See also* Statement of EU Ministers of Finance on the Stability and Growth Pact in Light of the COVID-19 Crisis (Mar. 23, 2020), www.consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis/.

[86] *See* Section 4.

[87] Panascì, *supra* note 7.

Council—according to a procedure centered on the European Commission and national executives to guide the implementation and assessment. This method has had a promising start.[88] Notably, "the process so far has evolved smoothly, and both EU officials and national civil servants appear confident of further development."[89]

By the end of 2022, the plans of all twenty-seven member states had been submitted, positively assessed by the European Commission, and approved by the Council as annexes to Council implementing decisions. The last one to be submitted was the Dutch plan, on July 8, 2022, while the last one to be approved, due to problems relating to respect of the rule of law, was the Hungarian plan, on December 16, 2022. By June 2024, the Commission had positively assessed the milestones and targets connected to the first five installments by Italy, the largest recipient by far, and had paid four installments to Croatia, three installments to five member states (France, Greece, Portugal, Slovakia, and Spain), two installments to eight member states (Czech Republic, Denmark, Estonia, Latvia, Lithuania, Malta, Romania, and Slovenia), and the first installment to seven member states (Austria, Bulgaria, Cyprus, Finland, Germany, Luxembourg, and Poland). Lithuania and Romania, at the time of writing, are the only two countries where the achievement of milestones and targets has been assessed as partially positive, with two milestones each not yet "satisfactorily fulfilled."[90]

These positive assessments of the initial payment requests do not necessarily mean that the substantial and ambitious objectives of each plan will all be accomplished. In many cases, milestones and targets are vaguely defined or overly aggregated, and often include reforms and investments that had been planned domestically for some time but were not fully implemented. Thus, the disbursement of RRF funds by the Commission can trigger the prompt and effective fulfillment of the targets supporting the reform agenda.[91] Nevertheless, even considering the formal satisfactory achievement of the milestones and targets, significant improvements are evident when compared with the ordinary mechanism of fiscal policy coordination, which is primarily centered on CSRs and is typically viewed as an external constraint on national policymaking and very rarely adhered to by member states. Likewise, the inclusion of recently attempted national reforms in the NRRPs seems to confirm the added value of the RRF method of government, as it facilitates and accelerates the reform process by weakening the veto powers that, in previous years, had hindered their achievement or implementation.

88 *See* Eur. Comm'n, Recovery and Resilience Facility: Two Years On. A Unique Instrument at the Heart of the EU's Green and Digital Transformation, COM(2023)99 final, at 3ff. (Feb. 21, 2023) [hereinafter Eur. Comm'n, Recovery and Resilience Facility: Two Years On]; Eur. Comm'n, Mid-Term Evaluation of the Recovery and Resilience Facility: Strengthening the EU through Ambitious Reforms and Investments, COM(2024)82 final (Feb. 21, 2024).

89 Lucas Schramm, Ulrich Krotz, & Bruno De Witte, *Building "Next Generation" after the Pandemic: The Implementation and Implications of the EU Covid Recovery Plan*, 60 J. Common Mkt. Stud. 114, 124 (2022).

90 *See* Commission Implementing Decision of on the Partial Suspension of the Disbursement of the First Instalment of the Non-repayable Support for Lithuania, C(2023)2956 final (Apr. 28, 2023); Commission Implementing Decision on the Partial Suspension of the Disbursement of the Second Instalment of the Loan Support for Romania, C(2023)6466 final (Sept. 21, 2023).

91 *See* Francesco Corti & Tomás Ruiz de la Ossa, *The Recovery and Resilience Facility: What Are We Really Monitoring with a Performance-Based Approach?*, CEPS Explainer (2023), www.ceps.eu/ceps-publications/the-recovery-and-resilience-facility-2/.

As the enforcement of the NRRPs is still underway, it remains to be seen whether this overall positive assessment of the new method of government will endure. Most NRRPs require the fulfillment of their quantitative targets during the second half of the five-year period (2024–26).[92] Meeting these types of targets is more challenging than achieving the approval of legislative reforms, which have, by contrast, more frequently been completed during the first half of the RRF period (2021–23). When considering the difficulties arising from the war in Ukraine, the rise in the energy prices, and the disruptions in some supply chains, it is understandable why a major update to the plans was carried out in 2023, along with the addition of a new chapter aimed at increasing EU energy autonomy and security (REPowerEU chapter).

Exactly two years after the entry into force of Regulation 2021/241, Regulation 2023/435 was approved on February 27, 2023 to cope with the energy crisis. The latter regulation amends the former to extend the same method of government to additional reforms and investments in the energy sector, financed partly with unused RRF funds (mainly from the loan component) and partly with new funds. As a result, not only has the same method of government been applied, but also the same actors at both the EU and national levels have been tasked with new commitments, which must be accomplished by December 2026. Further confirming that the method of government applied to the RRF has become a benchmark, the management of the Social Climate Fund, newly established under Regulation 2023/955 and slated to become fully operational in 2025, is based on a similar scheme to the RRF, centered on national social climate plans. Moreover, the launch of the new method of government has already impacted the functioning of the ES and shaped the reform of the SGP.

4. Applying lessons from the euro crisis and NGEU to the reform of the Stability and Growth Pact

4.1. The transformed nature of the European Semester

Whether NGEU and the RRF are here to stay or, as seems to be the case, are temporary measures, these instruments have already transformed the ES, even before the formal amendment of the SGP and despite its suspension. On the one hand, the "EU institutional response to the COVID-19 pandemic built on, and further cemented, the EU's socio-economic governance architecture."[93] Indeed, some of the reporting obligations under the RRF draw on requirements and documents that are already required of member states within the framework of EU fiscal and macroeconomic coordination. On the other hand, incorporating the implementation of the RRF into the ES framework has enriched and transformed its nature, moving away from the strict austerity logic that inspired the adoption of the "six pack" and "two pack." Indeed,

[92] *See* Eur. Comm'n, On the Implementation of the Recovery and Resilience Facility: Moving Forward, COM(2023)545 final (Sept. 19, 2023).

[93] Bart Vanhercke & Amy Verdun, *The European Semester as Goldilocks: Macroeconomic Policy Coordination and the Recovery and Resilience Facility*, 60 J. Common Mkt. Stud. 204 (2022).

the combination of the ES and the RRF has turned the ES into a vehicle for guiding and channeling national investments and reforms.[94] This is a remarkable innovation, as the ES had never been conceived as a governance framework for allocating and monitoring of funds.[95] The Commission and the European Council made their intention to move in this direction clear at the outset of the European Union's response to the pandemic.[96] The decision to embed RRF governance within the ES timeline was not initially guaranteed, given the mixed reaction to this procedure after nearly ten years of implementation (see Section 2). According to the Commission, the ES was the most suitable candidate for this purpose due to its consolidated and predictable timeframe and its ability to identify priorities in the reform agenda. These are important advantages, considering that the implementation of the NRRPs follows a very tight schedule to reach the promised milestones and targets in a timely manner. Thus, the ES format gives member states "a chance to get reform and investment priorities 'right' from the very beginning, especially given the one-off nature of the formulation of the RRP."[97] At the same time, the ES format ensures that member states enjoy an appropriate margin of flexibility to pursue the most suitable policy options for their domestic context. This is particularly relevant for the use of the RRF in "purely" internal matters (e.g., public administration organization, judicial system effectiveness, etc.).[98]

The integration between the RRF and the ES was solidified by Regulation 2021/241, which refers to the ES in several ways (some highlighted in Section 3.3), such as the spending conditionality attached to economic governance requirements and the use of NRPs for national reporting on the NRRPs.[99] To this end, article 31(4) of the Regulation 2021/241, which addresses the Commission's annual report to the Parliament and the Council on the progress made by the various member states in achieving milestones and targets, allows the Commission to use "the relevant documents officially adopted by the Commission under the ES, as appropriate." For example, the Euro Area Recommendation for 2021 was instrumental in providing guidance as to the implementation of the NRRPs by identifying the key areas for the member state to focus on for the use of the RRF's funds.[100]

[94] David Bokhorst, *The Influence of the European Semester: Case Study Analysis and Lessons for its Post-Pandemic Transformation*, 60 J. Common Mkt. Stud. 101, 114 (2022); Amandine Crespy, Tom Massart, & Vivien Schmidt, *How the Impossible Became Possible: Evolving Frames and Narratives on Responsibility and Responsiveness from the Eurocrisis to NextGenerationEU*, 31 J. Eur. Pub. Pol'y 950 (2024).

[95] Ben Crum, *How to Provide Political Guidance to the Recovery and Resilience Facility?* 13 (Study for the Economic Governance Support Unit (EGOV), Directorate-General for Internal Policies, Eur. Parl., 2020), www.europarl.europa.eu/RegData/etudes/IDAN/2020/651371/IPOL_IDA(2020)651371_EN.pdf.

[96] Eur. Comm'n, Communication on 2020 European Semester: Country-specific Recommendations, COM(2020) 500 final, at 15–16 (May 20, 2020); Eur. Council, Special Meeting of the European Council (July 17–21, 2020) Conclusions, EUCO 10/20, para. 17 (July 21, 2020).

[97] Vanherecke & Verdun, *supra* note 93, at 209. *See also* Manuela Moschella, *What Role for the European Semester in the Recovery Plan?* 9, 20 (Study for the Economic Governance Support Unit (EGOV), Directorate-General for Internal Policies, European Parliament, 2020), www.europarl.europa.eu/RegData/etudes/IDAN/2020/651377/IPOL_IDA(2020)651377_EN.pdf.

[98] Vanherecke & Verdun, *supra* note 93, at 208.

[99] Regulation 2021/241, *supra* note 14, art. 27. See also Sections 2 and 3.2 on the NRPs.

[100] Eur. Comm'n, Recommendation for a Council Recommendation on the Economic Policy of the Euro Area, COM (2020) 746, at 7 (Nov. 18, 2020).

According to many observers, the relationship between the ES and the RRF is mutually beneficial.[101] Because the RRF's implementation aligns with the ES's reporting mechanisms and procedures, the ES has gained visibility and prominence through the NRRPs. In other words, the character of the ES has been fundamentally altered: "From being a non-binding structure for policy coordination to a vehicle for the allocation of a major economic impetus. . . which is to have more teeth."[102] While the enforcement of strict numerical fiscal rules and macroeconomic indicators has exposed several weaknesses in economic governance post euro crisis, the current approach through the RRF aims to revamp the ES by offering financial incentives for structural reforms and investment expenditures, thereby stimulating growth and creating more sustainable and reliable budget accounts. Moreover, the spending conditionality introduced by the RRF Regulation with respect to the CSRs encourages member states to take these recommendations more seriously, foster real political debate, and increase the domestic ownership and the effectiveness of the Semester.[103]

Undoubtedly, NGEU—especially the RRF—and its connection to the ES can "lead towards a major rebalancing between the economic and the monetary elements of EMU"[104] and alleviate the traditional asymmetry between euro-area and non-euro-area countries. However, it cannot be assumed that the benefits from this framework, potentially the outcome of a "double-loop" learning process, will manifest,[105] especially considering that the old SGP was suspended and the new SGP is still in its early stages of implementation. For example, in its 2022 special report on the RRF, the European Court of Auditors highlighted that significant gaps persist in the implementation of the CSRs, indicating that the leverage of the new funds has been insufficient to enhance compliance with the fiscal and macroeconomic targets.[106]

Another issue concerns the duration of the "marriage"—as it has been described[107]—between the RRF and the ES. Although there have been calls to convert the RRF into a permanent instrument,[108] its duration is limited to five years due to the current legal framework and national constitutional obstacles (see Section 3.1). Thus, it is legitimate to question what will happen to the anticipated revamping and politicization of the ES

[101] Crum, *supra* note 95, at 10ff.; Reinout Arthur van der Veer, *Walking the Tightrope: Politicization and the Commission's Enforcement of the SGP*, 60 J. Common Mkt. Stud. 81 (2022).

[102] Vanhercke & Verdun, *supra* note 93, at 217–18.

[103] Jean Pisani-Ferry, *European Union Recovery Funds: Strings Attached, But Not Tied Up In Knots*, Bruegel Policy Contribution, no. 19 (2020), www.bruegel.org/policy-brief/european-union-recovery-funds-strings-attached-not-tied-knots.

[104] Fabbrini, *supra* note 54, at 187.

[105] For a critical appraisal, see Berthold Rittberger, *Democratic Control and Legitimacy in the Evolving EU Economic Governance Framework* 28ff. (Study for the Economic Governance and EMU Scrutiny Unit (EGOV), Directorate-General for Internal Policies, European Parliament 2023), www.europarl.europa.eu/RegData/etudes/STUD/2023/733742/IPOL_STU(2023)733742_EN.pdf.

[106] Eur. Court of Auditors, Commission's Assessment of National Recovery and Resilience Plans: Overall Appropriate but Implementation Risks Remain, Special Report No. 21, at 40–53 (2022).

[107] Thu Nguyen & Nils Redeker, *How to Make the Marriage Work: Wedding the Recovery and Resilience Facility and European Semester* (Hertie School, Jacques Delors Ctr. Pol'y Brief, 2022), www.delorscentre.eu/en/publications/detail/publication/how-to-make-the-marriage-work.

[108] Elisabetta Cornago & John Springford, Why the EU's Recovery Fund Should Be Permanent 11ff. (2021), www.cer.eu/sites/default/files/pbrief_recovery_fund_11.11.21.pdf.

once the RRF funds are depleted.[109] Conversely, given the common debt created to finance NGEU—ultimately backed by national budgets, as genuine EU taxes to support debt repayment are still lacking—enhancing the ES's effectiveness and budgetary sustainability in member states should be viewed as key achievements.

4.2. The reformed Stability and Growth Pact and new medium-term fiscal-structural plans

Acknowledging the *de facto* update of the ES following the RRF and the new method of government introduced, the European Commission outlined the content and path for reforming the SGP in its November 2022 Communication and in a package of legislative proposals aimed at amending the "six pack" tabled in April 2023.[110] The package was approved and entered into force on April 30, 2024.[111]

Following the three-year suspension of the Pact and using the RRF as a benchmark, the revised SGP is anchored in a medium-term perspective with a forward-looking approach, incorporating reforms and investments to promote counter-cyclical fiscal policies and to adopt debt sustainability and multiannual net expenditure as the main standards. While the legal basis for the reform does not pose specific problems—legislative amendments are necessary to change the fiscal rules, whereas the existing legal provisions can be used for the macroeconomic imbalance procedure[112]—the new medium-term fiscal-structural plans are designed to be performance based (similar to the NRRPs) and implemented over a period of at least four years, which can be extended to match the duration of the legislative term. To make these plans more comprehensible and transparent, previously used indicators—such as the output gap and structural balance—are replaced by a focus on debt and the quality of the expenditures. Likewise, the new fiscal-structural plans are proposed by member states, assessed by the Commission, and endorsed by the Council through recommendations. They can only be amended in specific circumstances, such as if adjustments are needed to address macroeconomic imbalances or in the event of a change in the national executive.[113]

To ensure the overall debt sustainability, the Commission provides a reference trajectory to member states with a debt–GDP ratio above 60% over a four-year period. This period can be extended by up to three additional years if the member state commits to implementing a program of investments and reforms (again, like the NRRPs) to balance the longer net expenditure path through growth.

[109] Moschella, *supra* note 97, at 22.

[110] Eur. Comm'n, Communication on Orientations for a Reform of the EU Economic Governance Framework, COM(2022) 583 final (Nov. 9, 2022). *See also* Proposal for a Council Regulation of the European Parliament and the Council on the Effective Coordination of Economic Policies and Multilateral Budgetary Surveillance and Repealing Council Regulation (EC) No 1466/97, COM(2023)240 final (Apr. 26, 2023).

[111] *See* Regulation 2024/1263, *supra* note 25; Council Regulation (EU) No. 2024/1264 of 29 April 2024 amending Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, 2024 O.J. (L 2024/1264) [hereinafter Regulation 2024/1264]; Council Directive (EU) No. 2024/1265 of 29 April 2024 amending Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, 2024 O.J. (L 2024/1265).

[112] Eur. Comm'n, *supra* note 110, at 21.

[113] Regulation 2024/1263, *supra* note 25, art. 14.

Just as the drafting and implementation of NRRPs must follow a series of conditions related to green and digital transitions and adherence to rule-of-law principles, the new medium-term plans must comply with similar conditions set as targets at the EU level and detailed by each member state according to the domestic priorities. The plans must also be consistent with national energy and climate plans (aligned with the targets of EU climate law) as well as with the national digital decade roadmaps.

According to the Commission's original intent, the reform aimed to move away from stringent numerical rules imposed on every member state, regardless of fiscal situation: the "medium-term approach would allow for differentiation between member states, within a revised common EU framework that has sustainable growth and risks to debt sustainability as a common basis."[114] However, neither the debt–GDP ratio (60%) nor the deficit–GDP ratio (3%), as enshrined in the Treaties, has been altered.[115] What is more, both the deficit and debt sustainability safeguards have been retained to guide the reference trajectory,[116] allowing different types of indicators—such as quality and performance-based indicators like net expenditure—to coexist with numerical fiscal targets. The result risks being less tailored to national situations and not as streamlined and simplified as an effective policy learning process addressing the weaknesses of the previous SGP's design would suggest.

The greater discretion the Commission is likely to enjoy under the new SGP will need to be balanced with a more predictable and credible national monitoring system. To this end, the Commission initially planned to reinforce both national fiscal councils and the European Fiscal Board by empowering them to evaluate "the adequacy of the plans with respect to debt sustainability and country-specific medium-term goals," and to monitor "compliance with the plan."[117] Nevertheless, the novelty of this monitoring mechanism has been diminished, as member states are not required to consult independent fiscal councils before the first submission of the medium-term fiscal structural plans, which had to take place exceptionally by September 2024.[118] However, the enforcement mechanisms of the revised governance are crucial to its success, given the deficiencies experienced under the previous regime.

4.3. Changes to the enforcement system

One of the main weaknesses of the economic governance framework established after the euro crisis was the difficulty in enforcing strict numerical fiscal rules and applying corrective and sanctioning measures. The reformed SGP aims to simplify and reduce

[114] Eur. Comm'n, *supra* note 110, at 7.

[115] On the legal and political sustainability of the present Treaty arrangements, see Marco Dani et al., *"It's the Political Economy . . .!" A Moment of Truth for the Eurozone and the EU*, 19 Int'l J. Const. L. 309, 326 (2021).

[116] However, the reference trajectory varies depending on the debt level: if the debt is between 60% and 90% of the GDP, it must decrease by an average of 0.5% of GDP annually; if the debt exceeds 90%, the expected decrease is at least 1% per year.

[117] *See, e.g.*, Stefano Micossi, *On the Commission's Orientations for a Revised Economic Governance in the EU*, VoxEU.org (Feb. 23, 2023), https://cepr.org/voxeu/columns/commissions-orientations-revised-economic-governance-eu.

[118] Regulation 2024/1263, *supra* note 25, arts. 11, 15, 23, 24, 36.

fiscal constraints while making them more predictable and effective. Although financial penalties have not been entirely eliminated, they will no longer be central to the enforcement system. The excessive deficit procedure has been maintained. However, for member states with substantial debt challenges (i.e., debt exceeding 60% of GDP), departing from the multiannual adjustment path will, by default, trigger the commencement of an excessive deficit procedure.[119] With the entry into force of Regulation 2024/1264, the Commission announced on June 19, 2024 that twelve member states had either exceeded their deficit or debt criteria for the fiscal year or were expected to do so, meeting the condition for the opening of excessive deficit procedures.[120] At the same time, reputational sanctions have been strengthened. Under the excessive deficit procedure, the ministers of member states can be asked to appear before the European Parliament to publicly explain the measures planned and adopted to comply with the Commission's recommendations under the corrective procedure.

Due to its performance-based approach, the enforcement of reform and investment commitments supporting a more gradual adjustment path will be closely monitored. However, the most significant change concerns spending conditionality. As previously noted, both *ex ante* and, since 2013, *ex post* macroeconomic conditionality have already applied to structural funds. *Ex ante* macroeconomic conditionality was triggered in 2012 against Hungary, suspending cohesion funds due to persistent violations of the SGP rules during a period of austerity and the onset of an illiberal drift. By contrast, *ex post* macroeconomic conditionality has never been applied. Now, under Regulation 2021/241, macroeconomic conditionality will also apply to the RRF, providing a significant incentive for compliance, at least until 2026. EU financing can also be suspended when member states fail to take effective action to correct their excessive deficit.[121] This is particularly significant from the perspective of debt sustainability, given that the macroeconomic conditions here are attached to spending financed through EU common borrowing.

However, it is clear that, unlike the conditionality mechanisms of the RRF, the conditional spending under the new SGP remains primarily punitive. The only "carrot" available is the option for a member state to request an extension of the adjustment period if its medium-term fiscal structural plans include a program of investments and reforms supporting growth.

Finally, the logic of spending conditionality is spreading from the realm of economic and fiscal policies to that of the monetary policy, possibly further contributing to their alignment. The RRF, once again, is a tool for achieving that. Indeed, it is now well known that the transmission protection instrument (TPI), launched by the European Central Bank (ECB) in July 2022, makes the purchasing of national bonds by the ECB

119 Regulation 2024/1264, *supra* note 111.

120 *See* Eur. Comm'n, Report Prepared in Accordance with Article 126(3) of the Treaty on the Functioning of the European Union on Belgium, Czechia, Estonia, Spain, France, Italy, Hungary, Malta, Poland, Slovenia, Slovakia and Finland, COM(2024) 598 final (June 19, 2024).

121 Regulation 2021/241, *supra* note 14, art. 10.

conditional upon the compliance by the member state with the conditions set by the RRF Regulation and with the CSRs.[122]

5. Conclusion

Jean Monnet predicted that "Europe would be built through crises. . . and it would be the sum of their solutions."[123] Indeed, the European Union has been in crisis mode for years, trying to learn from each one. The learning process triggered by the COVID-19 pandemic has worked differently this time compared to the euro crisis. The latter prompted a process of contingent learning, which took years to pave the way for a new governance architecture. In 2020, the possibility of relying on well-established feedback that had been properly "digested" led to a process of inferential learning, tested at the outset of the pandemic.[124] Unsurprisingly, it took only a few months for EU institutions to establish NGEU after the SGP had been suspended and a few other immediate measures had been adopted.

The learning process has been effective in many ways. This time, the European Union promoted a common response that went beyond the traditional dichotomy between euro-area and non-euro area member states, resulting in the use of the recovery plan to redistribute resources across the Union as a solidarity effort.[125] Additionally, the response was framed under the auspices of EU law without resorting to questionable intergovernmental agreements.

Moreover, the reaction to the pandemic drew upon and refined existing procedures designed after the euro crisis, the most important of which was the ES. Moving away from strict numerical targets and constraints that characterized the original ES, and its almost overly rigid sanction-oriented scheme, the RRF was embedded into the ES to transform it from within through a performance-based mechanism of assessment and rewarding, which uses more "carrots" than "sticks." The result of the design and initial implementation of the RRF is a new method of government for the EU, anchored in "spending conditionality" and performance-based national plans drafted with consideration of macro-objectives and priorities set by the European Union, but then specified by each member state, to be fulfilled within a five-year period, according to a schedule agreed upon by both national and EU institutions.

This new method of government has not only been incorporated into the framework of the procedures, timeline, and conditions defined under the ES to revamp it and increase the sense of ownership of the related reforms at the national level, but it can also be applied, with adaptations, beyond the RRF. In 2023, Regulation 2023/435 on RePowerEU prompted the update of the NRRPs and the addition of a new chapter

[122] Nils Redeker, Policy Brief, *Wielding the Big Gun: What the ECB's New Bond Purchasing Program Means for EU Governance*, Jacques Delors Ctr. (Aug. 2, 2022), www.delorscentre.eu/en/publications/detail/publication/transmission-protection-instrument.

[123] Jean Monnet, Mémoirs 430 (Richard Mayne trans., Collins 1978).

[124] Radaelli, *supra* note 11, at 16ff.

[125] Crespy, Massart, & Schmidt, *supra* note 94; Phillip Genschel & Markus Jachtenfuchs, *Postfunctionalism Reversed: Solidarity and Rebordering during the Covid-19 Pandemic*, 28 J. Eur. Pub. Pol'y 350 (2021).

aimed at fostering EU and domestic autonomy in the field of energy supply while still pursuing, albeit with some adjustments, the milestones and targets already set.[126] The same method of government has also inspired, although more indirectly, the design of the management of the Social Climate Fund.

To some extent, the revised SGP itself appears inspired by the RRF's method of government. The process of drafting and implementing the new medium-term national fiscal-structural plans mirrors the procedures on the NRRPs in terms of interplay between national executives and EU institutions. The new plans must also refer to a medium-term perspective and assume a forward-looking and performance-oriented approach focused on debt sustainability. Spending conditionality will be used as leverage to strengthen the enforcement mechanisms of the Pact: macroeconomic conditionality will continue to apply to structural funds and the RRF, triggering the suspension of these EU funds for member states that fail to take remedial action to reduce the excessive deficits. The TPI is managed by the ECB considering if and how the CSRs are followed.

However, unlike the conditionality embedded in the RRF, the new SGP's method of government mainly involves negative conditional spending, which may reduce political appetite for the effective enforcement of the new rules once the flow of money of the RRF ceases. There are several uncertainties surrounding the operation of this new method of government and the complex relationship between the NRRPs and the SGP. Even though the "marriage" between the RRF and the ES has been celebrated, it is difficult to predict how it will work and for how long. Unless the RRF is turned into a permanent instrument and the European Union is eventually endowed with fiscal capacity, it appears that this fixed-term relationship will expire at the end of 2026.

The legal construction of NGEU is anything but straightforward. Although the ultimate aim of NGEU was certainly desirable, "the adoption of the recovery plan was not only a politically bold move but also a case of creative legal engineering."[127] Without a Treaty change, the solution devised, which revolves around articles 122 and 175(3) TFEU, could be questionable in the long term from a constitutional standpoint.[128] To respect EU rule of law and procedures, a Treaty amendment would be necessary to prevent excessive stretching of Treaty bases, should the RRF and the common borrowing be extended or similar instruments with comparable capacity be established. The political unfeasibility of a Treaty revision so far—due to the unanimity requirement and the (unpredictable) domestic procedures of ratification—not differently from the path taken by countries with very rigid constitutions, has justified a creative interpretation of Treaty clauses to navigate one of the most serious economic crises of the last century. Constitutions do not evolve solely through formal amendments but also through interpretation and "constitutional moments," although this typically

[126] Eur. Comm'n, Recovery and Resilience Facility: Two Years On, *supra* note 88, at 16ff. *See also, e.g.*, Lucas Schramm & Chiara Terranova, *From NGEU to REPowerEU: Policy Steering and Budgetary Innovation in the EU*, 46 J. Eur. Integration 943 (2024).

[127] De Witte, *supra* note 45, at 636.

[128] Leino-Sandberg & Lindseth, *supra* note 62.

happens with the involvement of citizens and civil society,[129] which does not always appear to be the case in the European Union.

At the same time, the intertwinement between the RRF and the ES has not addressed the democratic shortcomings that emerged after the euro crisis. Problems of democratic oversight and accountability persist, and some argue that technocratic governance,[130] on the one hand, and proceduralism,[131] on the other, have actually been strengthened by the RRF.

From this perspective, one of the greatest constitutional challenges relates to the enforcement of spending conditionality as a specific feature of the new method of government. The RRF is based on multiple conditionality regimes. Now that it is going through the second half of its lifecycle, when most reforms must be accomplished at the national level to reach the expected milestones and targets, the way conditionality is managed can make a significant difference, including in terms of democratic perception.

Alongside the "carrots," the "sticks" have also gradually become more visible three years after the entry into force of the RRF Regulation. The Commission published the payment suspension methodology applicable to the Fund.[132] Partial (or full) suspension of payments to address implementation shortcomings on the NRRPs is indeed an option that the Commission has pursued for the first time with regard to Lithuania and, later, Romania in 2023. When the relevant milestones and targets remain unmet six months after the suspension, "the respective amount will be permanently suspended and deducted from the budget of the plan."[133]

Ad hoc mechanisms of democratic control and oversight for the implementation of spending conditionality have not been devised. The issue of the EU debt repayment from 2028 onward has not yet been seriously addressed, despite being a matter of utmost importance for the overall sustainability of the NGEU architecture.[134] The learning process still has a long way to go.

129 *See, e.g.*, Bruce Ackermann, We The People: Foundations (1995).
130 Dani et al., *supra* note 115, at 326.
131 Rittberger, *supra* note 105, at 31.
132 Eur. Comm'n, *supra* note 88, at 10ff. and Annex II.
133 *Id.*
134 Maria Kendrick, *NextGenerationEU: Will the Debt Be Repaid by EU Own Resources or Member State Taxpayers?*, 48 Eur. L. Rev. 29 (2023).