



EUROPEAN CENTRAL BANK

EUROSYSTEM

# Building Europe's Autonomy: Law, Institutions, Cooperation

ECB Legal Conference 2025

December 2025



# Contents

<b>Introduction</b>	<b>5</b>
Chiara Zilioli	
<b>Building European autonomy: cooperation and the rule of law</b>	<b>16</b>
Christine Lagarde	
<b>Part I Building budgetary autonomy</b>	<b>21</b>
<b>Building budgetary autonomy: an introduction</b>	<b>22</b>
Bruno de Witte	
<b>The financial autonomy of the Union</b>	<b>24</b>
Alberto de Gregorio Merino	
<b>Common debt and the EU budget: between autonomy and vulnerability</b>	<b>31</b>
Paul Dermine	
<b>The autonomy of the EU spending powers: legal constraints and challenges</b>	<b>40</b>
Cristina Fasone	
<b>Part II Autonomy through the Internal Market and the Capital Markets Union</b>	<b>59</b>
<b>Introduction</b>	<b>60</b>
<b>The implications of the principle of autonomy for the single market</b>	<b>62</b>
Catherine Barnard	
<b>Autonomy as an objective of the internal market</b>	<b>74</b>
Emanuele Rebasti	
<b>The Savings and Investments Union: advancing the internal market for financial services</b>	<b>92</b>
Larisa Dragomir	
<b>Part III Resilience, autonomy, and cooperation in payments and clearing systems</b>	<b>106</b>
<b>The Eurosystem's response to the digital transformation in payments and finance</b>	<b>107</b>
Piero Cipollone	
<b>Enhancing cross-border payments. Reconciling technological innovation and legal requirements: the model of BIS Innovation Hub Project "Nexus"</b>	<b>114</b>
Dessislava Guetcheva-Cheytanova	

<b>European payments resilience</b>	<b>120</b>
Ruth Wandhöfer	
<b>Part IV Extraterritoriality, equivalence, and mutual recognition</b>	<b>134</b>
<b>Introduction</b>	<b>135</b>
<b>Inspecting the supervisory toolkit for cross-border matters: extraterritoriality, equivalence, and mutual recognition</b>	<b>137</b>
Matthias Lehmann	
<b>Equivalence in financial services: combining technical assessment and political judgement</b>	<b>152</b>
Maria Raffaella Assetta	
<b>Cross-border decisions in crisis management: recognition and cooperation</b>	<b>160</b>
George Johnston	
<b>Part V Navigating sanctions, tariffs, and blocking statutes</b>	<b>174</b>
<b>Introduction</b>	<b>175</b>
<b>Trade war v <i>Rechtsgemeinschaft</i>: the EU's trade policy course in a perfect storm</b>	<b>177</b>
Christoph Herrmann	
<b>Open strategic autonomy and EU foreign policy: current challenges and available instruments</b>	<b>191</b>
Frank Hoffmeister	
<b>Reviewing sanctions: effectiveness and legality</b>	<b>203</b>
Laila Medina	
<b>Part VI Independent administrative discretion and the rule of law</b>	<b>218</b>
<b>Independent administrative discretion and the rule of law: balancing autonomy, accountability, and oversight</b>	<b>219</b>
Frank Elderson	
<b>Independent administrative discretion and the rule of law: standards of review at the CJEU</b>	<b>223</b>
Nicholas Emiliou	
<b>Supervisory discretion under judicial review: a transatlantic perspective</b>	<b>231</b>
Pedro Machado	
<b>Becoming more alike? Comparing EU and US substantive review of administrative action</b>	<b>241</b>
Mariolina Eliantonio and Oren Tamir	

<b>Part VII</b>	<b>The role of the EU legal services in building EU autonomy</b>	<b>255</b>
	<b>Safeguarding the rule of law and institutional autonomy: on the role of Legal Services</b>	<b>256</b>
	Chiara Zilioli	
	<b>The role of the Legal Service of the European Commission</b>	<b>261</b>
	Daniel Calleja Crespo	
	<b>The Legal Service of the European Parliament: role and mission in a political institution</b>	<b>270</b>
	Freddy Drexler	
	<b>Balancing dual legal responsibilities: the role of NCB legal services in building EU autonomy and upholding the rule of law</b>	<b>275</b>
	Lucia Arranz	
	<b>Shaping international law in an evolving global landscape: the strategic role of the IMF's Legal Department</b>	<b>285</b>
	Yan Liu	
<b>Part VIII</b>	<b>The rule of law: on rights, risks, and responsibilities</b>	<b>298</b>
	<b>The rule of law: on rights, risks, and responsibilities</b>	<b>299</b>
	Susanne Baer	
	<b>Biographies</b>	<b>308</b>

# The autonomy of the EU spending powers: legal constraints and challenges

Cristina Fasone\*

## 1 Introduction

The objectives pursued by the EU have expanded significantly over the decades, particularly since the Maastricht Treaty. Article 3 TEU now lists, among other things, objectives such as “a highly competitive social market economy, aiming at full employment and social progress”, the promotion of peace and of the well-being of its peoples, the “improvement of the quality of the environment”, the establishment of “an area of freedom, security and justice without internal frontiers” for its citizens, the safeguarding and enhancement of Europe’s cultural heritage, the promotion of scientific and territorial advancement, as well as economic, social, and territorial cohesion. Article 3(6) TEU concludes by emphasizing that the EU pursues “its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.” This specification has to be paired with Article 311 TFEU’s call for the EU’s capacity to “provide itself with the means necessary to attain its objectives and carry through its policies.” The question then arises: to what extent is the EU able to achieve these ambitious objectives through its own budget?

The topic of the EU’s spending autonomy<sup>1</sup> directly addresses these questions and opens up further paths of investigation. For example, from whom is the EU expected to be autonomous in terms of spending? From third countries and the international community – a theme that is often framed under the term of the EU’s strategic autonomy – or also from its Member States? Moreover, should we assess the EU’s spending autonomy primarily in procedural or in substantive terms?

Indeed, at least *prima facie*, the procedures governing EU spending – from the Multiannual Financial Framework (MFF) to the annual budget and the legal acts authorizing the appropriations from the EU budget – all take place at supranational level. This contrasts, for example, with the revenue cycle, where the adoption of the Own Resources Decision requires approval at the domestic level as well (Article 311 TFEU). Yet, in terms of the EU’s ability to unilaterally determine the level and allocation of its expenditures, significant constraints become apparent. After all, the EU and the national budgets are deeply intertwined, also on the expenditure side,

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<sup>1</sup> By autonomy we refer to the capacity of self-determination, self-governance, and self-rule, free from coercion and domination. Here, by spending autonomy we will deal with the EU’s ability to direct and control its own expenditures.

particularly within the Economic and Monetary Union (EMU), as the sovereign debt crisis of 2010-2014 clearly demonstrated.

In its basic terms, the EU's expenditure cycle was established in the 1980s, particularly, under the leadership of Jacques Delors, with the introduction of multi-year programming and the adoption of the MFF in 1988. Initially spanning five years, the MFF was later extended to a seven-year period. Negotiations over the MFF, and, to a lesser extent, the adoption of the annual budgets, are very cumbersome, "baroque", procedures. These procedures mirror the challenges of reaching a compromise on EU spending: between EU institutions, between the institutions and the Member States, and among the Member States themselves. The rigidity of the MFF, particularly in an era of "poly-crisis", has prompted a reflection on whether the EU's expenditure cycle is really fit for purpose.<sup>2</sup>

On a substantive level, the "emergency governance" that has characterized EU decision-making for more than a decade has further highlighted the insufficiency of EU expenditure mechanisms, necessitating unprecedented interpretative approaches to achieve greater flexibility. This context explains not only the broad interpretation of the legal bases to provide financial assistance during and beyond the pandemic (as it will be analysed), but also the unconventional monetary operations put in place by the European Central Bank (ECB), particularly since 2011. While it could be questionable to qualify the various programmes launched by the ECB to support Euro area countries as "EU spending", they have nonetheless de facto contributed to "rescuing" or strengthening national economies within the EMU.

This contribution is organized as follows. It first reviews the evolution of the EU's spending powers over time; second, it analyses the legal constraints on EU spending; third, it delves into the EU's response to the Covid-19 pandemic as a potential "game changer" for EU spending autonomy; fourth, the contribution evaluates the main legal bases for EU spending and their evolutive interpretation. Finally, it offers some concluding reflections on the legitimacy and autonomy of the arrangements governing EU expenditures.

## 2 Evolution of the EU spending powers: continuity and discontinuity

While the gap between increasingly ambitious EU objectives and limited spending autonomy has not been addressed by the Treaties,<sup>3</sup> the adoption of the MFF was meant to ensure greater predictability in the allocation of expenditures across a progressively broader range of EU policies (cohesion and common agricultural policies as well as in the area of freedom, security and justice and the EU's engagement in the external action). To a large extent, the MFF has succeeded in

<sup>2</sup> Padoan, P. C., "The MFF Process and Global Challenges", in Laffan, B. and De Feo, A. (eds), *EU Financing for Next Decade. Beyond the MFF 2021-2027 and the Next Generation EU*, European University Institute, 2020, 43.

<sup>3</sup> Laffan, B., *The Finances of the European Union*, Springer, 1997, 15; Fasone, C., "EU Budget and Spending Power", in Hinarejos, A. and Schütze, R. (eds), *EU Fiscal Federalism: Past, Present, Future*, Oxford University Press, 2023, 233.

providing greater certainty and effective programming of EU expenditures, albeit at the cost of increased rigidity and inter-institutional conflicts. Once expenditure ceilings are set, they are extremely difficult to revise, and this is especially so since the Lisbon Treaty. The adoption of the MFF, under Article 312(2) TFEU, requires not only the conclusion of an inter-institutional agreement but also the approval of a Regulation by unanimity in the Council, with the consent of the European Parliament, by a majority of its component members. This process now precedes the sealing of the inter-institutional agreement. Moreover, the Lisbon Treaty eliminated the previous de facto distinction between compulsory and non-compulsory expenditures, which had historically given the European Parliament significant leverage over spending not directly mandated by EU law.<sup>4</sup>

EU budgetary procedures have long been marked by a degree of inter-institutional conflict, occasionally requiring resolution by the Court of Justice.<sup>5</sup> Over time, the European Parliament has struggled to expand its powers in this domain, achieving some success. With the post-Lisbon obligation for the Council and the Parliament to agree on any single item of the expenditures, however, the compromise has been much more difficult to reach, also on the annual budget, which indeed, once approved is then frequently amended in the course of the financial year. The Commission, which traditionally acts as “honest broker”, has found this role increasingly difficult. Meanwhile, despite being nominally equal as budgetary authorities under Articles 14 and 16 TEU, the roles of the Parliament and the Council in EU spending have become increasingly asymmetrical.

The euro area crisis exposed these asymmetries and highlighted the limitations of EU spending autonomy. The EU’s response to the asymmetric shocks relied, at least in part, on instruments outside the European Parliament’s direct purview, such as the ECB’s Securities Market Programme and the Outright Monetary Transactions (the latter merely announced). Furthermore, significant crisis-response mechanisms such as the bilateral loan programmes, the European Financial Stability Facility and, notably, the European Stability Mechanism (ESM) were established outside the framework of EU law and did not envisage any role for the European Parliament.<sup>6</sup> Even in the adoption and governance of the only fund established under EU law (Article 122(2) TFEU) back in 2010, the European Financial Stabilization Mechanism (EFSM),<sup>7</sup> the European Parliament was excluded. Conversely, the European

<sup>4</sup> Vitrey, A., “The First Multiannual Financial Framework after the Lisbon Treaty: The Dynamics in the European Parliament from the Perspective of an Insider”, in Becker, S., Bauer, M.W., and De Feo, A. (eds), *The New Politics of the European Union Budget*, Nomos, 2017, 133.

<sup>5</sup> Fasone, C., Lupo, N., “The Union Budget and the Budgetary Procedure”, in Schütze, R., Tridimas, T. (eds), *Oxford Principles of European Union Law*, Oxford University Press, 2018, 820.

<sup>6</sup> See, amongst many, Beukers, T., de Witte, B., Kilpatrick, C., “Constitutional Change through Euro-Crisis Law: Taking Stock, New Perspectives and Looking Ahead”, in Beukers T., de Witte B., Kilpatrick C. (eds), *Constitutional Change through Euro-Crisis Law*, Cambridge University Press, 2017, 1. By the same token, EU norms regulating the procedures for the coordination of national economic policies, like those enshrined in the so-called “six-pack” and “two-pack”, provides for a very marginal role of the European Parliament, see Bressanelli, E., Chelotti, N. (2018), “The European Parliament and Economic Governance: Explaining a Case of Limited Influence”, *The Journal of Legislative Studies*, Vol. 28(1), 72.

<sup>7</sup> Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, p. 1., whose Art. 3(5), just requires that the Parliament and the Council are informed by the Commission of the Memoranda of Understanding concluded. Likewise, under Art. 122 TFEU the Parliament is just informed by the President of the Council of the decision taken.

Council, along with the Euro Summit and the Eurogroup – has de facto expanded its authority over EU spending, shaping the supranational response to the crisis.<sup>8</sup>

The euro area crisis and the response to it have exposed the limits of the EU spending autonomy. Of the three traditional functions a public budget is expected to fulfil – allocation, stabilisation, and redistribution – the EU budget was unable to “score high” on any of them. Allocation is largely supported by the functioning of the internal market, stabilization relies, with all its constraints, on the governance of the EMU, and redistribution depends on the implementation of the cohesion policy (and the related funds) and the relatively small European Social Fund. During the crisis, neither stabilization nor redistribution, under strict conditionality,<sup>9</sup> was guaranteed through the EU’s standard political decision-making procedures. Instead, support came mainly through the ECB and national budgets. The “no bailout clause”, Article 125(1) TFEU, in that context has certainly limited the capacity of the EU budget to deliver in this respect.<sup>10</sup>

Despite these procedural and substantive constraints, the EU budget has managed to grow and adjust to the needs and to address emerging crises, often operating outside the typical routes and requirements established by supranational rules. Besides the funds that are not covered outside EU law, such as the ESM, the proliferation of EU-regulated but extra-budgetary funds, from the European Development Fund to the Recovery and Resilience Facility (RRF) and to the European Peace Facility (EPF), reflects the need to expand the capacity of the EU budget and adopt an evolutionary interpretation of EU rules. However, the creation of a “budgetary galaxy”<sup>11</sup> of funds, financed through external assigned revenues and operating alongside the EU budget, calls for the rationalization and fine-tuning of EU spending mechanisms to ensure control and accountability.<sup>12</sup>

### 3 Constraints on the EU expenditures

As anticipated, EU law poses several limits to supranational spending. Article 310 TFEU sets principles governing the EU budget: the principle of balanced budget, the principles of universality and unity of the budget, the principles of sound financial management and budgetary discipline. Whether budgetary discipline actually prohibits the debt financing of EU expenditures is contested and the practice,

<sup>8</sup> Bickerton, C.J., Hodson, D. and Puetter, U. (eds), *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*, Oxford University Press, 2015, 165.

<sup>9</sup> Judgment of the Court of Justice of 27 November 2012, *Pringle*, C-370/12, ECLI:EU:C:2012:756.

<sup>10</sup> According to Art. 125(1) TFEU, “The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.”

<sup>11</sup> Crowe, R. (2017), “The European Budgetary Galaxy”, *European Constitutional Law Review*, Vol. 13(3), 428; Crowe, R., “The European Union’s Public Finances in Times of Crisis Fragmentation, Innovation, and Consolidation”, in Kilpatrick, C., Scott, J. (eds), *New Frontiers of EU Funding. Law, Policy, Politics*, Oxford University Press, 2024, 25.

<sup>12</sup> Indeed, in the case of “external assigned revenue” the corresponding expenditure is not counted within the MFF ceilings.

especially since the pandemic crisis, has moved toward overcoming a strict interpretation of Articles 310 and 311 when read together.<sup>13</sup>

Moreover, “[t]he implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure” (Article 310(3) TFEU), in accordance with the Financial Regulation. Adopted under Article 322 TFEU,<sup>14</sup> this Regulation is thus “constitutionally necessary” under the Treaties and serves as the standard for the legality of the EU spending. Per Article 2 of the Financial Regulation currently in force, for example, “a legal act, other than a recommendation or an opinion, (...) provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the budget.”<sup>15</sup> This requirement is in addition to the obligation to respect the expenditure ceilings defined in the MFF Regulation and the provisions of the Common Provisions Regulation, including conditionality mechanisms such as the horizontal enabling conditions that underpin the disbursement of EU money.<sup>16</sup>

The basic act required for appropriating EU resources “must have a legal basis in the Treaties, that is, it must fall within the scope of a competence conferred on the EU.”<sup>17</sup> This requirement, many have argued, distinguishes the ground of EU’s spending capacity from other composite constitutional systems. Indeed, for the EU, in principle, spending autonomy ends where the conferral of competences ends, lacking sovereign authority. This would justify, in turn, a textual interpretation of the legal bases for spending, which should not be used to directly or indirectly expand EU’s authority.

A common comparison is made with the US Constitution, which is said to provide a general and wide constitutional basis for federal spending. In other words, the existence of a “general welfare” clause under Article I, Section 8 of the US Constitution substantially differentiates the autonomy of the federal spending in the US from the selective and ad hoc bases for the EU expenditures.<sup>18</sup> However, this argument underestimates the evolution of the interpretation of the US “general welfare” clause. Although the clause has been part of the US Constitution since

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<sup>13</sup> See, amongst many, Paul Dermine in this volume. Arts 310(4) and 311(1) TFEU in principle point to the ability for the EU to finance its expenditures exclusively through its own resources.

<sup>14</sup> That is the general legal basis to implement the budget.

<sup>15</sup> Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, p. 1. Therefore a dual legal basis is needed save for the funding of non-significant actions, i.e. pilot projects or preparatory actions designed to assess the pros and cons of a proposal for a basic measure (see also Judgment of the Court of 12 May 1998, *United Kingdom v Commission*, C-106/96, ECLI:EU:C:1998:21, paragraph 19), for which the legal basis is provided by the Commission’s power of initiative directly grounded in the Treaties.

<sup>16</sup> See, e.g. Art. 15 and Annex III, Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, p. 159.

<sup>17</sup> De Witte, B., “Integration Through Funding. The Union’s Finances as a Policy Instrument”, in Weber, R. (ed.), *The Financial Constitution of European Integration: Follow the Money?*, Hart Publishing, 2023, 221 (222).

<sup>18</sup> Leino-Sandberg, P., Lindseth, P. L. (2024), “Crisis, Reinterpretation, and the Rule of Law: Repurposing ‘Cohesion’ as a General EU Spending Power”, *The Hague Journal on the Rule of Law*, 587 (591).

1787, its actual meaning was contested. Notably, James Madison and Alexander Hamilton disagreed on its interpretation: the former argued that federal revenues could be spent only to cover measures falling under the enumerated federal powers; by contrast, the latter claimed that extra-jurisdictional spending was allowed.<sup>19</sup> In fact, until the Sixteenth Amendment entered into force in 1913, federal revenues were so limited that this debate remained theoretical. It was due to the combined impact of the adoption of the Sixteenth Amendment, of the US Supreme Court's jurisprudence in favour of federal revenue powers, of the Great Depression (1929), and the later start of the New Deal that the general welfare clause and its implications for federal conditional spending became significant legal issues. While a Madisonian interpretation of the general welfare clause initially prevailed, in 1936-1937 the Supreme Court shifted toward the Hamiltonian reading. In *United States v Butler*,<sup>20</sup> the Court invalidated the payments to the farmers foreseen under the 1933 Agricultural Adjustment Act. It did so under the Tenth Amendment while recognizing that the general welfare clause established an autonomous federal power distinct from the division of legislative competences.

The US federal experience demonstrates how an autonomous federal spending capacity can be derived from an evolutive, purposive interpretation of constitutional text that departs from a literal and "originalist" reading of the general welfare clause. Thus, it remains unclear why a similar interpretative approach could not be applied to the EU Treaties,<sup>21</sup> if not to second the argument supporting the ontologically different or *sui generis* nature of the EU. Furthermore, a purposive interpretation of the EU Treaties' legal basis to grant spending autonomy would also be consistent with what has been described as the dominant constitutional interpretative approach at the Court of Justice, namely teleological interpretation.<sup>22</sup>

Therefore, there is space for constitutional interpretation to be used to expand the EU's spending capacity, provided that robust mechanisms for review and accountability are in place, especially given the extreme rigidity of the Treaty revision procedures and the lack of political feasibility of any formal "constitutional change". As will be shown, the practice of the last five years abundantly confirms that it is precisely such a purposive and systematic interpretation of EU primary law that has been used to build and strengthen EU's spending autonomy, beyond a formalistic reading of the nexus between legal bases and competences conferred.<sup>23</sup> Without such interpretative flexibility, the ambitious objectives set out in the Treaties for EU action risk becoming largely unattainable.

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<sup>19</sup> Tushnet, M. (2015), *The Constitution of the United States of America: A Contextual Analysis*, Hart Publishing, 2015, 176.

<sup>20</sup> 297 U.S. 1 (1936).

<sup>21</sup> Along the same line see de Gregorio Merino, A. (2021), "[The recovery plan: solidarity and the living constitution](#)", *EU law live*.

<sup>22</sup> See, notably, Poiares Maduro, N. (2007), "Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism", *European Journal of Legal Studies*, Vol. 1(2), 137 (139).

<sup>23</sup> Fabbrini, F. (2024), "From the Pandemic to the War: The EU Fiscal Response to Russia's Aggression of Ukraine, the Legacy of NGEU, and the Challenge to 'Promote the General Welfare'", *AJIL Unbound*, Vol. 118, 177.

Depending on how it is conceived,<sup>24</sup> conditional spending can be seen as an instrument fostering EU spending autonomy, rebalancing the logic of the *juste retour* – i.e. you get the money back based on what you paid for – that for decades has dominated the budgetary negotiations in the EU.<sup>25</sup> The addressees of the spending conditions are typically Member States, so the use of this leverage implies that the EU and national budgets become even more interdependent. At the same time, conditional spending is an instrument to direct EU resources towards shared and uniform goals, thereby prompting a more effective use of the supranational budget, particularly if performance-based conditionality works properly.<sup>26</sup> In other words, spending conditionality can be turned into a tool of homogenisation and coordination between national policies toward EU expenditures' priorities. As proven by the recent experience of the RRF and, to a lesser extent, of the Rule of Law Conditionality Regulation,<sup>27</sup> as already occurred in many other federalizing processes – the case of the US, again, offers a good illustration – conditionality tends to trump the division of competences and to expand the scope of action of the supranational/federal level of government.<sup>28</sup>

## 4 The Covid-19 crisis as a game changer?

A shift in the pursuit of greater EU spending autonomy became evident in the response to the Covid-19 pandemic. A significant learning process had been set in motion following the Euro area crisis, once the limits of strict conditionality and of the measures largely adopted outside the EU legal framework became clear.<sup>29</sup>

Indeed, already under the Juncker Commission a series of initiatives, mainly instrumental to the Euro area, were taken to stimulate growth, investments and structural reforms in the Member States through EU spending and entailing an extensive interpretation of the Treaty bases, notably of Article 175(3) TFEU alone or in combination with other legal bases. Of them, only the Structural Reform Support

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<sup>24</sup> On the different types of conditionality, see Viță, V. (2018), "Revisiting the Dominant Discourse on Conditionality in the EU: The Case of EU Spending Conditionality", *Cambridge Yearbook of European Legal Studies*, Vol. 19, 116.

<sup>25</sup> Citi, M., "EU Budgetary Politics and the Paradox of *Juste Retour*", in Becker, S., Bauer, M.W., De Feo, A. (eds), *The New Politics of the European Union Budget*, Nomos, 2017, 83.

<sup>26</sup> That has been questioned in several reports of the European Court of Auditors, see, e.g. European Court of Auditors, *Performance-orientation, accountability and transparency – lessons to be learned from the weaknesses of the RRF*, Review 02, 2025, 24.

<sup>27</sup> See Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17., and Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1., respectively.

<sup>28</sup> Viță, V. (2017), "The Rise of Spending Conditionality in the EU: What Can EU Learn from the US Conditional Spending Doctrine and Policies?", *EUI LAW Working Paper*, 2017/16, 1; Fasone, C., Simoncini, M., "Conditional Spending as an Instrument of Government", in Lindseth P. L et al. (eds), *Comparative Administrative Law. New Voices, New Perspectives*, 3rd ed., Edward Elgar Publishing, 2026 (forthcoming).

<sup>29</sup> Ioannidis, M. (2016), "Europe's new transformations: How the EU economic constitution changed during the Eurozone crisis", *Common Market Law Review*, Vol. 53(5), 1237.

Programme (2017-2020),<sup>30</sup> with a limited budget of €142 million, was effectively mobilized. More ambitious proposals, in terms of scope and resources, such as the European Investment Stabilisation Function (2017) and the Budgetary Instrument for Convergence and Competitiveness (BICC, 2019) ultimately failed to materialize.

Yet, these proposals and envisioned instruments marked a shift in the EU's approach toward the use of the EU expenditures to direct domestic priorities and decision-making, moving beyond the remit strictly confined to an orthodox interpretation of EU competences.<sup>31</sup>

Through a sophisticated operation of constitutional engineering,<sup>32</sup> the Next Generation EU (NGEU) and its main component, the RRF, with its massive envelope of €750 billion (in 2018 prices), have temporarily “changed the game” of the EU spending capacity, at least until the end of 2026. Financing ex post the (satisfactory) achievement of domestic milestones and targets, corresponding to reforms and investments envisaged by the Member States in the National Recovery and Resilience Plans (NRRPs), through the disbursement of instalments no more than twice a year, the EU spending, once again under external assigned revenues, has been oriented to stimulate the resilience and growth of national economies following the pandemic crisis.

From a legal perspective, the RRF has attracted both praise and criticism. On the first “front”, the RRF has been viewed as bringing forward a “constitutional transformation”, promoting a shift in the traditional interpretation of the no bailout clause (Article 125 TFEU) against too rigid constraints on spending.<sup>33</sup> In other words, the RRF has paved the way to a “transformative moment” for the EU budget functions, in favour of redistribution.<sup>34</sup> The second “front”, instead, highlights the too fragile legal foundations of the RRF as being grounded on an interpretative “overstretching” of the Treaties’ legal bases (on this point, see the next Section).<sup>35</sup> Moreover, the scope of the RRF was considered as broad as to cover spending on all possible policy areas save for security and defence and financial markets’ regulation.<sup>36</sup>

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<sup>30</sup> Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013, OJ L 129, 19.5.2017, p. 1.

<sup>31</sup> For different positions, see De Witte, B. (2021), “The European Union’s covid-19 recovery plan: the legal engineering of an economic policy shift”, *Common Market Law Review*, Vol. 58(3), 635; Leino-Sandberg, P., Ruffert, M. (2022), “Next Generation EU and its constitutional ramifications: a critical assessment”, *Common Market Law Review*, Vol. 59(2), 433.

<sup>32</sup> See De Witte, B. (2021), “The European Union’s covid-19 recovery plan: the legal engineering of an economic policy shift”, *Common Market Law Review*, Vol. 58(3), 635 (652); Fabbrini, F. (2022), “Next Generation EU: Legal Structure and Constitutional Consequences”, *Cambridge Yearbook of European Legal Studies*, Vol. 24, 45 (50).

<sup>33</sup> Panasci, M.A. (2024), “Unravelling Next Generation EU as a Transformative Moment: From Market Integration to Redistribution”, *Common Market Law Review*, Vol. 61(1), 13.

<sup>34</sup> *Ibid.*, 20.

<sup>35</sup> Leino-Sandberg, P., Ruffert, M. (2022), “Next Generation EU and its constitutional ramifications: a critical assessment”, *Common Market Law Review*, Vol. 59(2), 433 (439).

<sup>36</sup> Leino-Sandberg, P., Raunio, T. (2025), “From Bad to Worse: The Continuous Dilemma Facing Parliaments in European Economic and Fiscal Governance”, *Government & Opposition*, Vol. 60, 86 (94).

Since 2021, the RRF has served as a model for EU spending, with its “method of government”<sup>37</sup> spreading to other policy sectors. Five main features define this new “method”: 1) a performance-based approach, anchored to 2) multi-year programming at domestic level based on EU common priorities and 3) instrumental to support structural reforms and investments, 4) to stimulate national ownership, 5) through procedures that are essentially based on a bilateral dialogue between the Commission and the national government shaping the interpretation and the implementation of the various conditions.

The RRF “method”, also referred to as the “planning method” due to its focus on domestic multi-annual programming,<sup>38</sup> has been “transplanted” with a series of adaptations to policy areas or instruments such as the Common Agricultural Policy,<sup>39</sup> the Social Climate Fund,<sup>40</sup> defence industry and, in prospect, cohesion policy.<sup>41</sup> However, none of these adaptations involve resources on the same scale as the RRF.<sup>42</sup> This has entailed an unprecedented rise of EU conditional spending over national public policies at first glance, a mode of operation that has been labelled as “integration through funding”.<sup>43</sup> In other terms, once famous for its regulatory capacity, the EU is now exploiting also the financial leverage to influence domestic decision-making, including in areas sensitive to national sovereignty, such as defence, fiscal policy, and the protection of the rule of law.

Does this move boost the EU spending autonomy, i.e. in these circumstances the ability of the EU budget, through conditionality, to direct and steer domestic policies according to the supranational agenda and targets? After all, such possibility seems consistent with what has been argued before, notably that conditional spending can be framed as a “centralizing force” with the “centre” being in this case the EU vis-à-vis the Member States.

Yet, this conclusion is not straightforward when examining the functioning of this euro-national “method of government”. After all, the EU budget is financing national plans, investments and reforms, which are strongly linked to the domestic context,

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<sup>37</sup> See Fasone, C., Lupo, N. (2024), “Learning from the Eurocrisis. A new method of government for the European Union’s economic policy coordination after the pandemic”, *International Journal of Constitutional Law*, Vol. 3, 882.

<sup>38</sup> Dermine, P. (2024), “The Planning Method: An Inquiry into the Constitutional Ramifications of a New EU Governance Technique”, *Common Market Law Review*, Vol. 61(4), 959.

<sup>39</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435, 6.12.2021, p. 1.

<sup>40</sup> 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, OJ L 130, 16.5.2023, p. 1.

<sup>41</sup> More questionable is the use of the RRF under the Stability and Growth Pact as reformed in 2024. Indeed, the revised rules emphasise the performance-based approach for reforms and investments linked to national medium-term fiscal structural plans, but the leverage of the EU resources is much less visible than under the RRF. Indeed, there are not funds granted to the Member States for compliance with the fiscal rules, rather the opposite. Under the Common Provisions Regulation structural funds can be suspended and withdrawn for lack of respect of those rules.

<sup>42</sup> RePowerEU, instead, is somehow organic to the RRF, using its resources and taking advantages of the NRRPs by inserting an *ad hoc* RePowerEU chapter.

<sup>43</sup> De Witte, B., “Integration Through Funding. The Union’s Finances as a Policy Instrument”, in Weber, R. (ed.), *The Financial Constitution of European Integration: Follow the Money?*, Hart Publishing, 2023, 221 (221).

also to strengthen the national ownership of EU strategic decisions. This dynamic introduces a countervailing trend: the nationalization of EU expenditures.<sup>44</sup> Although the resources are European, rather than being used to guarantee supranational public goods, their management and effectiveness rely on the Member States, which contrasts with the idea of enhanced EU spending autonomy.

This underlying tension is quite evident when looking at the potential reform of cohesion policy under the proposal for the MFF 2028-2034. The Commission's proposal for the new MFF, published in July 2025,<sup>45</sup> if approved as it is, is going to trigger a comprehensive restructuring of the EU budget, shifting from programmes to priorities and from cost-based to performance-based payments. Notably, Heading 1 of the multi-year budget (1 out of 4 headings only, summing up 53.7% of the MFF resources) would consolidate funds for "Economic, social, territorial cohesion, CAP, fisheries and maritime affairs, prosperity and security". This consolidation would require each Member State to submit a mandatory "national and regional partnership plan" encompassing all these policy areas. The pooling of resources into such plans – to increase synergies and flexibility in the national spending of EU resources across policy areas – is supposed to support domestic investments and reforms to achieve EU priorities, i.e. each plan has to respect an EU social target set at 14%, with funding conditional on their implementation.

While the shared management system would remain in place for structural funds, the significance of cohesion policy vis-à-vis the EU budget is decreased in proportion. Already in the first assessments of the new MFF proposal doubts were casted on the desirability of integrating several successful programmes, with different aims, into one national plan per Member State and to use a "cash for reform" approach.<sup>46</sup> Concerns were also expressed on the potential re-nationalisation and centralization of the resources' management at the level of the central government, with a much more marginal role of stakeholders and regional and local authorities.<sup>47</sup>

Subsumed into comprehensive national and regional partnership plans, structural funds will be subject to a performance-based measurement rather than on reimbursements based on the costs effectively incurred, and, thus to an assessment methodology that is inevitably more context-dependent – looking at the practice developed under the implementation of the RRF – as its concrete interpretation is influenced by the bilateral negotiations between the Commission and the national authorities. If not streamlined and focused on the actual outcomes of reforms and

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<sup>44</sup> Leino-Sandberg, P., Raunio, T. (2025), "From Bad to Worse: The Continuous Dilemma Facing Parliaments in European Economic and Fiscal Governance", *Government & Opposition*, Vol. 60, 86 (94).

<sup>45</sup> European Commission, Communication on A dynamic EU Budget for the priorities of the future - The Multiannual Financial Framework 2028-2034, COM (2025) 570 final/2, and Proposal for a COUNCIL REGULATION laying down the multiannual financial framework for the years 2028 to 2034, COM (2025) 571 final, both published on 16 July 2025.

<sup>46</sup> See Pari, M., Predier, S. (2025), *EU Budget 2028-2034 – Overview of the Commission's Proposal*, European Parliament, EPRS, PE 775.885, 7.

<sup>47</sup> See Zeitlin, J., Bockhorst, D. and Eihmanis, E., *Rethinking the Governance and Delivery of the Cohesion Policy Funds: Is the Recovery and Resilience Facility (RRF) a Model? Final report*, October, 2023; Committee of the Regions, *EU long-term budget 2028-34: CoR President denounces massive renationalisation and undermining of Cohesion Policy through "Monster National Plans"*, Press Release, 16.07.2025.

investments,<sup>48</sup> the extension of the performance-based approach to other funds, can entail a more discretionary and nationally-driven understanding and a case by case appreciation of the fulfilments of the targets promised.

## 5 Assessing the (main) legal bases on the EU spending and their evolutive interpretation

The practice of EU institutions, particularly the Commission and the European Parliament, engaging in an evolutive interpretation of budgetary rules to expand the Union's spending capacity is not new. Back in the 1970s and 1980s, pilot projects were promoted by the European Parliament and the Commission beyond the competences conferred upon the Community by the Treaties.<sup>49</sup> The practice was subsequently considered in breach of the Treaties insofar as the dual legal basis requirement of EU spending was not fulfilled. In *UK v Commission*, the Court of Justice annulled the Commission's decisions announced in an institutional press release in 1995 and providing grants to finance projects to overcome social exclusion, as they had paved the way to "significant actions" without a legislative entitlement.<sup>50</sup> Notably, the decisions were not invalidated for breach of the principle of conferral, falling beyond the then Community competence remit, as the Council had also supported, but rather for violation of the requirement for a legislative basic act authorizing the expenditures. Such an approach is typical of many federalizing processes whereby the central/federal authorities are implicitly authorized, via interpretation, to trump the competence divide through federal spending.<sup>51</sup>

Since the pandemic, the number of funds and instruments created outside the EU budget has increased exponentially. Examples, include the European instrument for Temporary Support to mitigate Unemployment Risks in an Emergency (SURE),<sup>52</sup> the RRF, the EPF,<sup>53</sup> the Social Climate Fund, and the Security Action for Europe (SAFE).<sup>54</sup> In parallel, the evolutive interpretation of the legal bases, in particular of Articles 122 and 175(3) TFEU has become somewhat mainstream.

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<sup>48</sup> Beetsma, R., Buti, M. (2024), "Designing conditionality in the supply of European public goods", *Working Paper 20/2024*, Bruegel; European Court of Auditors, Performance-orientation, accountability and transparency – lessons to be learned from the weaknesses of the RRF, Review 02, 2025, 24.

<sup>49</sup> De Witte, B., "Integration Through Funding. The Union's Finances as a Policy Instrument", in Weber, R. (ed.), *The Financial Constitution of European Integration: Follow the Money?*, Hart Publishing, 2023, 221 (222).

<sup>50</sup> Judgment of the Court of 12 May 1998, *United Kingdom v Commission*, C-106/96, ECLI:EU:C:1998:218.

<sup>51</sup> Palermo, F., Kössler, K., *Comparative federalism. Constitutional arrangements and case law*, Hart Publishing, 2017, 230.

<sup>52</sup> Council Regulation (EU) 2020/672 on the European instrument for Temporary Support to mitigate Unemployment Risks in an Emergency, OJ L 159, 20.5.2020, p. 1.

<sup>53</sup> As the EPF refers to expenditures under the CFSP.

<sup>54</sup> Council Regulation 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the reinforcement of the European Defence Industry Instrument, OJ L, 2025/1106, 28.5.2025, p. 1.

For years, Articles 122 and 175(3) TFEU have been “dormant clauses”,<sup>55</sup> re-discovered in the aftermath of the Euro area crisis.<sup>56</sup> They both refer to “purposive competences, used to define broad policy objectives rather than a well-defined policy domain”.<sup>57</sup>

Article 122 TFEU is seen as a counterweight or a complement to the no bailout clause,<sup>58</sup> but its two paragraphs, often used in combination as a legal basis, are in principle meant to address different issues.<sup>59</sup> Article 122(1) TFEU, which served as the legal basis for SURE Regulation, is an exceptional provision, a rather generic clause, with a solidaristic intent,<sup>60</sup> while Article 122(2) TFEU is a genuine emergency clause. The latter, for good or for bad, has become instrumental to provide temporary financial assistance to Member States, including both grants and loans.

Article 122(2) TFEU is a more specific legal basis with a narrower focus, in principle. It refers to a Member State that “is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control”, paving the way to Union financial assistance to the Member State concerned under “certain conditions”. Beyond the EFSM during the Euro area Crisis, this clause has never been used as stand-alone legal basis.

Recent measures such as the European Union Recovery Instrument (EURI), which finances the RRF, and SAFE have relied on a generic reference to Article 122, exploiting the fact that the decision-making procedure for both paragraphs is the same: a non-legislative procedure, where the Council decides on a Commission proposal and subsequently informs the European Parliament. Also following the disclosure of the opinion of the Council’s legal service,<sup>61</sup> a lot has been written on

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<sup>55</sup> De Witte, B. (2021), “The European Union’s covid-19 recovery plan: the legal engineering of an economic policy shift”, *Common Market Law Review*, Vol. 58(3), 635 (653).

<sup>56</sup> For example, the European Financial Stabilisation Mechanism (EFSM), worth 60 billion euro, and its Regulation (Council Regulation (EU) No 407/2010 of 11 May 2010), were based on Art. 122(2) TFEU; the already mentioned Structural Reform Support Programme was grounded on Art. 175(3) TFEU as well as Art. 197(2) TFEU.

<sup>57</sup> De Witte, B. (2021), “The European Union’s covid-19 recovery plan: the legal engineering of an economic policy shift”, *Common Market Law Review*, Vol. 58(3), 635 (653).

<sup>58</sup> Louis, J. V. (2010), “Guest Editorial: The no-bail-out clause and rescue packages”, *Common Market Law Review*, Vol. 47(4), 971 (983).

<sup>59</sup> This is particularly emphasised by De Witte, B. (2022), “Guest Editorial. EU emergency law and its impact on the EU legal order”, *Common Market Law Review*, Vol. 59(1), 3 (8); Chamon, M., *The use of Article 122 TFEU: Institutional implications and impact on democratic accountability*, Study commissioned by the AFCCO Committee, European Parliament, 2023, 19.

<sup>60</sup> It should be recalled that in *Pringle*, the Court of Justice affirmed that “Article 122(1) TFEU does not constitute an appropriate legal basis for any financial assistance from the European Union to Member States who are experiencing, or are threatened by, severe financing problems. (para 116)”. In 2016 it was used to establish a permanent EU program for emergency financial support to EU countries hit by natural or human disasters: Council Regulation (EU) 2016/369 on the provision of emergency support within the Union [2016] OJ L70/1. According to the clause, “Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, *in a spirit of solidarity between Member States*, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy (emphasis added)”. See Chamon, M. (2024), “The non-emergency economic policy competence in Article 122(1) TFEU”, *Common Market Law Review*, Vol. 61(6), 1501, stressing the non-emergential nature of the clause.

<sup>61</sup> Legal Service of the Council of the EU (CLS), [Opinion of the Legal Service on Proposals on Next Generation EU](#), 9062/20, 2020.

the choice for a generic reference to Article 122 TFEU.<sup>62</sup> It appears as a pragmatic determination by the Commission (and the Council) to endorse a purposive reading of the Union financial assistance capacity, also beyond the crisis and targeting all EU Member States, with important procedural and democratic implications. The European Parliament is completely excluded from decision-making, being informed only ex post, and national parliaments, if not involved by their own government or through the political dialogue with the Commission, are equally sidelined, as the early warning mechanism is only activated in relation to draft legislative acts.

This extensive interpretation of Article 122 TFEU requires justification on two key grounds, particularly under the terms of paragraph 2. First, the existence of exceptional occurrences beyond the Member States' control has to be proven as the trigger for the difficulties experienced or threatened by the EU countries. Second, clear and operative conditions have to be provided in the legal act for granting financial assistance.

For instance, looking at the SAFE instrument, the fulfilment of the first justification has been questioned. In the action for annulment against the SAFE Regulation,<sup>63</sup> the European Parliament pleaded that the measure deals with boosting defence industry across the Union,<sup>64</sup> so it would have required Article 173 TFEU (industrial policy) as its legal basis and an ordinary legislative procedure. While the war between Russia and Ukraine is an exceptional occurrence beyond the Member States' control, it is less clear that it has caused severe or immediate difficulties for their defence capacities. Notably, the common procurement procedures on defence products financed by SAFE can also involve third countries.<sup>65</sup>

Moreover, although this is not highlighted in the Parliament's action, the SAFE Regulation, especially its Article 4, remains very vague regarding the conditions for loans to Member States, and the operationalization of the conditions will be only provided in relation to each country through the European defence industry investment plans, thus potentially with significant variations across the States on the level of details and precisions and on the Commission's assessments, as already experienced with the NRRPs.

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<sup>62</sup> The same German Constitutional Court showed "suspicion" toward the use of Art. 122 TFEU for the EURI Regulation in the Judgment of the Second Senate of 6 Dec. 2022 – 2 BvR 547/21, paragraphs 182-185. See Grund, S., Steinbach, A. (2024), "Debt-financing the EU", *Common Market Law Review*, Vol. 61(4), 993 (1002).

<sup>63</sup> The management of another fund related to defense, but unlike the SAFE Regulation, grounded on CFSP/CDSP provisions (Arts 30(1) and 41(2) TEU), the EPF, instrumental to conflict prevention and to preserve peace and international security, has become the object of controversy: not the Council Decision (CFSP) 2021/509 of 22 March 2021 establishing the Facility and its legal basis, but Decisions adopted by the European Peace Facility Committee, respectively, on the allocation of the amounts to assistance measures for the supply of military support to the Ukrainian Armed Forces and to the amounts granted to the Facility due to the exclusion of Hungary from the voting. See *Hungary v Council and European Peace Facility*, T-452/25 and T-605/25, actions brought on 6 May and 4 September 2025, pending.

<sup>64</sup> *European Parliament v Council of the European Union*, C-560/25, action brought on 20 August 2025, pending.

<sup>65</sup> First of all, Ukraine as well as EU candidate or potential candidate countries; Iceland, Liechtenstein, Norway (the three EEA-ETA countries); Canada, Japan, Moldova, North Macedonia, Norway, South Korea, and the United Kingdom, which have concluded Security and Defence Partnerships.

In principle, Article 175(3) TFEU is less problematic from a democratic and procedural standpoint, as it provides for the use of the ordinary legislative procedure. It is commonly described as the “flexibility clause” under the cohesion policy chapter<sup>66</sup> and it was envisioned to re-balance the asymmetry and the incompleteness of the EMU’s economic leg.<sup>67</sup> The provision is framed as a residual power clause, to be activated “[i]f *specific actions* prove necessary outside the [Structural] Funds and without prejudice to the measures decided upon within the framework of the other Union policies (emphasis added)”.

Article 175(3) TFEU, as well as its predecessor pre-Lisbon, Article 159(3) TEC, were used, alone or together with other Treaty provisions, in a number of instances ranging from the European Solidarity Fund in 2002, the European Globalisation Adjustment Fund in 2006, the Fund for the European Aid to the Most Deprived in 2014, the Reform Support Programme in 2017, the BICC in 2019, the Just Transition Fund, and the RRF in 2021, amongst others. From the opinions of the Council’s legal service on the Reform Support Programme and the BICC,<sup>68</sup> we can get an understanding of the reasoning behind the extensive interpretation of this legal basis, which has reached its apex with the RRF so far: structural reforms in the Member States through the RRF and the other funds will improve the performance of their national economies, which in turn will favour economic and social convergence.

While the textual reference to “specific actions” has been emphasized to argue that Article 175(3) is misplaced as the legal basis for the RRF, which is a very broad and cross-sectional policy instrument, thus lacking specificity, this interpretation draws on the only case decided by the Court of Justice, in 2009, dealing with then Article 159(3) TEC. In *International Fund for Ireland (IFI)*, the Court excluded that the Community contribution to an international fund established between the Republic of Ireland and the UK could be based exclusively on the cohesion policy’s flexibility clause because adherence to the economic and social objectives specific for this policy was not guaranteed and were rather connected to action that exceeded the scope of cohesion policy.<sup>69</sup>

It is hard to infer clear interpretative guidance by the Court on this legal basis based on the *IFI* ruling. Indeed, there, the Court concluded that the contested Regulation had to be annulled, that Article 308 TEC, the general flexibility clause, alone was not sufficient to ground the measure, and that Articles 159(3) and 308 TEC combined should have provided the correct legal basis. The case in itself was quite peculiar in that it referred to an intergovernmental fund established between two Member States at the time of the 1985 Anglo-Irish Agreement, instrumental to the pacification

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<sup>66</sup> Leino-Sandberg, P., Lindseth, P. L. (2024), “Crisis, Reinterpretation, and the Rule of Law: Repurposing ‘Cohesion’ as a General EU Spending Power”, *The Hague Journal on the Rule of Law*, 587 (587).

<sup>67</sup> Flynn, L., “Greater convergence, more resilience? - Cohesion policy and the deepening of the economic and monetary Union”, in Fromage, D., De Witte, B. (eds), *Recent evolutions in the economic and monetary union and the European banking union: a reflection*, Maastricht Law Faculty of Law Working Paper Series 2019/03, 60.

<sup>68</sup> See Council Legal Service, Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the establishment of the Reform Support Programme, 6582/19, 19 February 2019 and Opinion on the BICC – compatibility of the proposed allocation method with the cohesion legal basis (Art. 175(3) TFEU), 5483/20, 23 January 2020.

<sup>69</sup> Judgment of the Court of Justice of 3 September 2009, *European Parliament v Council*, C-166/07, ECLI:EU:C:2009:499.

process in Northern Ireland and “to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland.”<sup>70</sup>

For sure, as already occurred for some measures,<sup>71</sup> in the future, other legal bases can better “accompany” Article 175(3) TFEU to ground the creation and management of EU funds providing assistance to Member States, starting from the EU budget’s general implementation clause, Article 322(1) TFEU. Spending programmes dealing with environmental policy can be based on Article 192 TFEU; those affecting the industrial policy can refer to Article 173 TFEU; “the financing of transnational infrastructure could be based on Article 171 TFEU; trans-European research by invoking Articles 179 and 173(3) TFEU”.<sup>72</sup> There are certainly other legal bases to exploit, depending on the primary or ancillary nature of the objectives pursued by the measure.

Yet, these options by no means rule out the path of an extensive reading of Article 175(3) TFEU for the sole reason that it would make it more difficult to disentangle, on a conceptual and practical level, the divide between cohesion policy and economic policy.<sup>73</sup> After all, as convincingly argued, under the cohesion policy flexibility clause, financial assistance “is not specifically mentioned but is not excluded either”,<sup>74</sup> so the interpretative route endorsed by the EU institutions is a possible one, applying a teleological interpretation. Following the vocabulary used by courts elsewhere, where fundamental rights not explicitly stated are recognized as existing in the “penumbra” of constitutional provisions,<sup>75</sup> financial assistance can similarly be understood as belonging to the “penumbra” of Article 175(3) TFEU.

## 6 Conclusion: how legitimate and autonomous is the arrangement for the EU expenditures?

The evolution of EU spending has highlighted considerable limits, both procedurally – due to the extremely rigid decision-making framework, especially in the context of the MFF – and substantively, as spending remains heavily influenced by the national “juste retour” logic. At times, as it was during the euro area crisis, Member States

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<sup>70</sup> Ibid., paragraph 5.

<sup>71</sup> See Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, OJ L 63, 28.2.2023, p. 1., which lists next to Arts 175(3) and 322(1) TFEU, also Art. 177(1), Art. 192(1), and Art. 194(2) TFEU.

<sup>72</sup> Grund, S., Steinbach, A. (2024), “Debt-financing the EU”, *Common Market Law Review*, Vol. 61(4), 993 (1007).

<sup>73</sup> Leino-Sandberg, P., Lindseth, P. L. (2024), “Crisis, Reinterpretation, and the Rule of Law: Repurposing ‘Cohesion’ as a General EU Spending Power”, *The Hague Journal on the Rule of Law*, 587 (603).

<sup>74</sup> De Witte, B., “Integration Through Funding. The Union’s Finances as a Policy Instrument”, in Weber, R. (ed.), *The Financial Constitution of European Integration: Follow the Money?*, Hart Publishing, 2023, 221 (232).

<sup>75</sup> See US Supreme Court, *Griswold v Connecticut*, 381 U.S. 479 (1965).

“have exercised their budgetary competences collectively to compensate for shortcomings in the EU’s own spending capacity”.<sup>76</sup>

Nevertheless, the EU has also shown a significant level of adaptation, resilience, and gradual strengthening of its spending autonomy, especially in the aftermath of the pandemic crisis, viewed here as a “game changer”. The risk of witnessing the collapse of the European project, with a series of crises unfolding since 2010, has led to an expansive reading of the relevant Treaty provisions. In front of a “Constitution” extremely difficult, if not (politically) impossible, to amend, the teleological interpretation, in line with the main interpretative approach followed by the Court of Justice for decades, has offered a crucial avenue for the fine-tuning of the EU legal response with the economic and societal needs. The “living Constitution”<sup>77</sup> that has emerged enabled the EU to mobilise its budget in support of sustaining integration.

“Integration through funding”, as labelled, has been accused by some of triggering a competence creep. Indeed, where regulatory harmonization is in principle forbidden, the EU’s steering of (national) public policies through spending conditionality, for the fulfilment of common transnational objectives in exchange for EU money, is expected to prompt convergence and homogeneity across the Union. However, the post-pandemic era has seen a departure from the Euro area crisis’s model of strict conditionality. Since the NGEU, conditional spending has lacked a uniform enforcement methodology, has become highly context-dependent, relying more on outputs than outcomes.<sup>78</sup> At times it is highly discretionary, anchored to bilateral negotiations between the Commission and the domestic government and to national multi-years plans – akin to the NRRPs’ experience – now required by EU legislation in several fields. This has led to question the capacity of the EU budget to guarantee truly supranational public goods.<sup>79</sup> While the RRF has generated considerable redistributive effects, favouring countries with lower GDP per capita and enabling substantial grant allocation, the entire RRF envelope and the new extra-budgetary funds have been used to finance Member States’ individual plans rather than supranational projects.

The tension and dilemma between centralization and re-nationalization of EU spending remains a central issue in the new 2028-2034 MFF proposal.<sup>80</sup> While the proposal allows for more flexibility in the use of the EU budget, it also insists further

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<sup>76</sup> Crowe, R., “The European Union’s Public Finances in Times of Crisis Fragmentation, Innovation, and Consolidation”, in Kilpatrick, C. and Scott, J. (eds), *New Frontiers of EU Funding. Law, Policy, Politics*, Oxford University Press, 2024, 25.

<sup>77</sup> On the use of this terminology see de Gregorio Merino, A. (2024), “The EU Treaties as a Living Constitution of the Union in Times of Crisis”, *AJIL Unbound*, Vol. 118, 162.

<sup>78</sup> For this difference, see Fabbrini, F. (2025), “The recovery and resilience facility as a new legal technology of European governance”, *Journal of European Integration*, Vol. 47(1), 85 (86).

<sup>79</sup> Beetsma, R., Buti, M. (2024), “Designing conditionality in the supply of European public goods”, *Working Paper 20/2024*, Bruegel.

<sup>80</sup> Also the recent idea of “pragmatic federalism” envisaged by Mario Draghi, Speech on the occasion of the Princess of Asturias Award for International Cooperation ceremony, Oviedo, 24 October 2025, hinting to further differentiated integration, relying on coalitions of willing between Member States, seems to run in contrast to increasing the EU autonomous spending capacity.

on national programming of EU expenditures – a departure from the traditional idea of fiscal federalism and autonomous “federal” spending.

This approach, aiming to build an autonomous spending capacity, but subject to a questionable enforcement of conditionality and largely connected to the fulfilment of domestic plans and projects to ensure their national ownership, would call, especially when from emergency we shift to ordinary times, for a more robust and effective system of monitoring and control: technical, democratic, and judicial. The European Court of Auditors has been very clear in highlighting the pitfalls of the RRF spending model.<sup>81</sup> In its reports, the Court of Auditors noted that if not coupled with an evaluation of the effective costs incurred, the performance-based approach to assess the implementation of the national spending plans leads to an evaluation that risks being inaccurate. The same holds for the lack of a consistently applied supranational methodology in the assessments of milestones and targets, diverted from an appreciation of the actual immediate and medium-term outcomes. It remains difficult to evaluate the European added value of EU spending, fragmented across projects of the 27 Member States. The call for a revision of this approach, as supported by the European Court of Auditors, has not been taken seriously into account yet by the 2028-2034 MFF proposal, which aims to extend many features of the RRF model to traditional categories of EU funds like structural funds.<sup>82</sup>

Moreover, especially in light of the pivotal role played by the European Council and the Commission on the EU budget, the democratic control should also be reinforced. The seven-year duration of the MFF is misaligned with the five-year European electoral cycle, which disconnects the development of an autonomous EU spending capacity from the mandate of elected representatives in the European Parliament. This comes in addition to the fact that, as well-known, whenever Article 122 TFEU is used, the European Parliament is formally excluded from decision-making despite being, in theory, a budgetary authority on an equal footing with the Council. Furthermore, a “shadow budget” effectively operates alongside the MFF: for the expenditures financed by external assigned revenues, the Parliament is sidelined as it does not need to authorize the relevant appropriation from the EU budget. Thus, increased spending capacity and autonomy should not come at the expense of transparency, accountability and bottom-up participation by regional and local authorities and stakeholders.

Finally, the rise in the EU spending autonomy must remain subject to rigorous (European) judicial scrutiny. With the first legal challenges to post-pandemic budgetary measures, such as SAFE and the EPF, now reaching the Court of Justice, there is an opportunity to clarify the choice of legal bases and decision-making processes underpinning these funds. This will also test whether teleological and

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<sup>81</sup> Amongst many, see European Court of Auditors, *The Recovery and Resilience Facility's performance monitoring framework. Measuring implementation progress but not sufficient to capture performance*, Special Report no. 26, 2023, p. 22.

<sup>82</sup> Although it has been echoed in several studies already, see, e.g. Corti, F., *Performance-based Programmes under the post-2027 MFF*, EP Briefing requested by the BUDG Committee, Directorate-General for Internal Policies, PE 766.275, 2024., and some fine-tuning is advanced in the Proposal for a Regulation of the European Parliament and of the Council establishing a budget expenditure tracking and performance framework and other horizontal rules for the Union programmes and activities, COM (2025) 545 final, 2025.

systematic interpretations prevail over literal interpretation. However, judicial review of spending measures faces inherent challenges, particularly when assessing conditions and implementation ex post, after funds have already been disbursed. The Court of Justice's rulings on these cases will be critical not only for resolving legal ambiguities but also for shaping the future trajectory of EU spending autonomy under the rule of law.