The EU recovery strategy

A blueprint for a more Social Europe or a house of cards?

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Abstract

This paper explores the EU recovery strategy with a specific focus on its potentially transformative aspects vis-à-vis European integration and on its implications for the social dimension of the EU's socio-economic governance. It aims, in particular, to provide a reflection on whether the established measures put forward sufficient safeguards against the spectre of austerity and on whether these constitute steps towards disfranchising social and labour policies from being used as 'variables' of economic growth. Our analysis suggests that the EU recovery strategy has taken remarkable steps in the direction of a more solidaristic and socially embedded Union. However, the foundations of this progress are fragile. European political leaders must ensure that the measures taken are just a first step and are translated into structural reforms. Without changes to the Union's regulatory and governance framework, the only barrier to economic downturns being translated into socially regressive policies is political will.

1. Introduction

In March 2020, Covid-19 shook the world and, with it, the Union's political agenda. From a policymaking perspective, the pandemic triggered processes and enabled initiatives that were previously unthinkable. Among the most remarkable is the launch of the NextGenerationEU (NGEU) recovery strategy.

With the NGEU, EU heads of state and government and the European Commission reached an agreement on an unprecedented level of resources to be allocated to the Member States in the form of grants and loans, as well as on an innovative method of financing the EU budget. Through the elaboration and negotiation of the Covid-19 recovery strategy, the Union may thus have broadened its horizons and may be changing its appearance. First, to budget for the recovery strategy, the EU has resorted to common debt (through the emission of a sort of Eurobond), which some consider a first step towards greater fiscal integration (Schelkle 2021). Second, the recovery fund was conceived not only as a means of overcoming the emergency situation created by the pandemic but also as an incentive to deepen the internal market and achieve the green transition and the digital transformation that the Union has set out to accomplish (Theodoropoulou et al. 2022). This indicates that the Union is moving towards the promotion of large-scale investment as an instrument to foster economic recovery, much more than in the past. Third, the recovery strategy includes a social dimension, centred on the European Pillar of Social Rights (EPSR). This emerges from the valorisation of principles such as fairness, solidarity, inclusivity and sustainability. The political consensus around the Porto Declaration of May 2021 and its emphasis on the centrality of the EPSR and its Action Plan can be read as positive signals towards a strengthening of the Union's social market economy (Ferrera 2021).

All in all, the NGEU was perceived by some experienced observers as a historic step in the direction of a more integrated, solidaristic and politically mature Union (Schmidt 2022). At the same time, considering the Union's reaction to the Eurocrisis,[1] one can see that, while many aspects differ, there are also some significant similarities (Degryse 2012). This is especially the case when looking at the first steps that were taken in the immediate aftermath of the outbreak of the financial crisis; that is, before it became a sovereign debt crisis. In 2011, when the public debt crisis was rising, the EU established a 750 billion euro fund (the same amount mobilised with the NGEU), in part financed through Commission

1. For 'Eurocrisis' we refer to the period between 2010 and 2014 although, for the purposes of evaluating EU crisis management, we take into account especially the initiatives taken by the European institutions as of 2011.

borrowing on the financial market, to provide a cash influx to the Member States and prevent stagnation. But then, after this brief neo-Keynesian moment, the main institutional response to the Eurocrisis quickly turned into strengthening the multilateral surveillance of national governments' public debt and public spending (Degryse et al. 2013; Degryse 2012). 'Structural reforms', which in reality were coincident with austerity measures, were imposed in order to restore national finances. From the point of view of labour and social policies, this overlapped with a strongly deregulatory approach, justified by a clearly neoliberal narrative in which the key to economic growth lay in lowering labour costs and ensuring greater flexibility in labour market entry and exit (Piasna and Myant 2017). The structural reforms that were implemented during the Eurocrisis added up to 'years of neoliberal and deregulatory policies' and have led to tragic results with diminished social cohesion, deteriorated working conditions, greater inequality and increased poverty in many EU countries (Theodoropoulou 2015).

The legacy left by the previous crisis legitimately leads to a questioning of the actual potential impact of the NGEU and the recovery strategy on the social and solidaristic underpinning of EU integration; even more so considering that the current instruments will need to be further adapted to the negative economic forecasts linked to the war in Ukraine, the energy crisis and the spike in inflation.

This contribution addresses this issue through a multidisciplinary approach. Indeed, it mixes the typical perspective of legal studies, concentrated on the legal and constitutional framework of the NGEU, with a political science focus on actors and processes.

The structure of the paper is organised as follows. In sections 2 and 3, the paper explores the innovative aspects of the Union's recovery strategy, with particular consideration of its social and solidaristic implications. Section 2 is specifically dedicated to outlining the main initiatives taken by the European Union as an emergency reaction to the outbreak of the pandemic. Section 3 focuses in turn on the NextGenerationEU recovery plan before section 4 evaluates the innovative elements brought by the EU recovery strategy in view of the broader socio-economic and political framework. Finally, concluding remarks review the transformative scope of the NGEU, identify its major weaknesses and propose potential avenues for providing a stronger social embedding for EU integration.

2. The Covid-19 crisis and the EU emergency response

The outbreak of the Covid-19 pandemic imposed a sudden halt on the European (and global) economy as never before. EU Member States found themselves having to prepare business support and income protection initiatives for entire production sectors affected by containment and lockdown measures (OECD 2020). All this took place in the midst of a dramatic health crisis in which the various governments intervened by significantly increasing resources for public health.

Although the first European state to be hit hard was Italy, the pandemic crisis soon spread throughout the Union, taking the form of a symmetric shock that would confront all national governments with similar challenges. The need for supranational action led to a quest for a European coordinated response to counter the economic impact of the pandemic.

2.1 The earliest response: greater flexibility in public spending

At the beginning of March 2020, it had already become clear that the scale of the crisis was going to require an unprecedented mobilisation of public money. Hence, the first initiatives taken by the Union were conceived as an emergency response to grant Member States access to liquidity and to retarget public spending to alleviate the social consequences of the pandemic (European Commission 2020a).

Among the Union's first responses was to make EU state aid rules more flexible, thus widening the leeway for governments to provide support to businesses in economic distress. This was done through the adoption of a State Aid Temporary Framework, whereby public funds could be channelled in a targeted manner to companies that would otherwise have gone bankrupt due to the total shutdown of the economy (European Commission 2020d). Although state aid rules were also adopted during the previous financial crisis, it is important to note that, at that time, public resources were predominantly aimed at supporting financial institutions (European Commission 2011).[2] Instead, in the period between March 2020 and Spring 2022, state aid was channelled to a multitude of business actors, providing effective assistance to Member States' productive systems (European Commission 2022d).

2. Between October 2008 and December 2010, 50 per cent of state aid was granted to 10 financial institutions.

Moreover, in order to allow governments to channel public funds where necessary, the EU made immediate recourse to the activation of the general escape clause of the Stability and Growth Pact (SGP) (European Commission 2020e). This was the first time this clause had been used. Its effect was to allow Member States to derogate temporarily from the Union's fiscal rules under which national governments must aim to keep the state deficit below 3 per cent of GDP and national public debt below 60 per cent of GDP (European Commission 2015). More precisely, the activation of the general escape clause meant that Member States could resort to an increase in public debt in order to finance themselves, without necessarily incurring the risk of being subject to the corrective arm of EU economic surveillance, namely the Excessive Deficit Procedure (EDP).[3] On the one hand, countries for which the EDP had been triggered before the crisis could count on an extension of the deadline for the implementation of corrective measures. On the other, the general escape clause gave the Commission more discretion as to whether initiate an EDP against Member States whose public deficits had risen in the course of dealing with the pandemic. This gave national governments more leeway to make public (social) investments.

At the same time, support for public finances was provided through the launch of a Pandemic Emergency Purchase Programme (PEPP) by the European Central Bank,[4] consisting of a package of 750 billion euros (subsequently enriched with an additional 600 billion euros), providing a monetary stimulus (Rocca 2022). Beside this, the European Investment Bank set up a 25 billion euro guarantee fund in support of businesses (EIB 2020). In addition, all resources still available in the EU budget were channelled to support national governments in limiting the damage caused by the crisis. Access to existing EU funds was also made more flexible by establishing the Coronavirus Response Investment Initiative (CRII).[5]

2.2 SURE

In addition to the initiatives supporting access to public finance, in April 2020 the Commission proposed a mechanism providing support to mitigate unemployment risks in an emergency (SURE), which then became operational in Summer 2020. SURE was designed as a safety net for both employees and self-employed workers against the risk of loss of income and could be used to finance national short-time working schemes (European Commission 2020f). This consisted of 100 billion euros of financial assistance which could be accessed in the form of loans from the European Commission to Member States at low interest rates (Andor 2022).

3. Article 3(5) and 5(2) Regulation 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure.
4. Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17) *OJ L 91*, 25.3.2020, p. 1-4.
5. 'The CRII combines the mobilisation of immediate financial support from the structural funds to address the most pressing needs [...] with the maximum possible flexibility in the use of the funds', in Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No. 1301/2013, (EU) No. 1303/2013 and (EU) No. 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative).

2.2.1 In line with the Treaty's provisions...

To finance this fund of 100 billion euros, the regulation by which SURE was adopted allowed the Commission to borrow the necessary amount on financial markets.[6] This regulation had Article 122 TFEU as its legal basis, which consents to the Union adopting measures in the spirit of solidarity to confront difficulties in economic situations, in particular where severe problems have arisen in the supply of certain products (para. 1 Article 122 TFEU); and to providing financial assistance, in a regime of conditionality, to Member States in trouble due to natural or human-origin disasters (para. 2 Article 122 TFEU). Instruments based on Article 122 TFEU are thus linked to situations of emergency and, as the Court of Justice has reiterated in the *Pringle* judgment,[7] this means that this Article could only provide backing for non-permanent and ad hoc financial assistance (Leino-Sandberg and Ruffert 2022).

At first glance, SURE was in continuity with the wording of the Treaties and with the initiatives taken previously by the EU. The establishment of funds financed by the Commission borrowing on capital markets was not new, however. This possibility had already been used on several occasions, notably during the 1970s oil crisis and during the Eurocrisis (De Witte 2021).[8] Nor was it the first time that such loan-based programmes had been created under the legal basis conferred by Article 122 TFEU. This had happened most notably with the European Financial Stabilisation Mechanism (EFSM) in 2010 (De Witte 2021).[9] Even in the early days of the outbreak of the Eurocrisis, the Union did in fact experience a brief neo-Keynesian moment before turning to embrace austerity-like policies (Degryse 2012).

A decade later, this similarity in the approaches is rather interesting and calls for caution when evaluating the innovative features of the Union's current recovery strategy. Indeed, it shows that an initial inclination towards fiscal solidarity and an expansion of public investment does not per se prevent a later turn towards a more conservative and frugal approach.

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6. Recital 8 and Article 4, 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 ST/7917/2020/INIT *OJ L 159*, 20.5.2020, p. 1-7.

7. Judgment of the Court of Justice, 27 November 2012, C-370/12, *Pringle*, ECLI:EU:C:2012:756, para. 105: '[...] neither Article 122(2) TFEU nor any other provision of the TEU and TFEU confers a specific power on the Union to establish a permanent stability mechanism'.

8. During the 1970s crisis, this was done on the basis of Article 235 TEEC (currently 352 TFEU providing a flexibility clause) and Article 108 TEEC. Then, this possibility was regulated by Council Regulation 1969/1988 (Balance of Payment Facility). Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, Article 220(1), whereby 'the Commission shall be empowered [...] to borrow the necessary funds on behalf of the Union on the capital markets or from financial institutions', now applies.

9. Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism.

It is also worth underlining that the adoption of SURE did not contravene the principles of sound public finance governing the EU budget. Formally, the establishment of the SURE programme did not derogate from the equilibrium principle according to which the Union shall not incur a deficit.[10] Equally, the emergency nature of SURE meant that it is was adopted as a temporary and ad hoc mechanism, in line with the interpretation that, in *Pringle*, the Court of Justice had given to Article 122 TFEU.

2.2.2 ... but with innovative elements

Although SURE does not derogate from EU public finance principles, it is nevertheless interesting to note that its adoption constituted a potentially evolutionary step in the Union's integration process.

First, and differently from the solidarity funds created in the past, SURE was established on the basis of a particularly broad interpretation of the legal basis conferred by Article 122 TFEU (Fabbrini 2022). The Commission resorted to an innovative combined reading of paragraphs 1 (adoption of solidarity measures without mentioning conditionality) and 2 (financial assistance, with conditionality requirement) of Article 122 TFEU in order to provide financial support in the form of loans without conditionality for the Member States requesting them (Claeys 2020). In other words, and unlike previous financial assistance programmes, SURE beneficiaries did not have to commit to any kind of structural reform in return for the assistance. By that, the Union seems to have moved away from the interpretation of the no bail-out rule (Article 125 TFEU) that the Court of Justice had laid down in *Pringle*. There, the Court had in fact linked financial assistance programmes to the existence of 'strict conditions' aimed at incentivising beneficiaries to conduct a sound budgetary policy.[11]

Second, although the EU had in the past relied on Article 122 TFEU to establish a solidarity fund raised via the creation of common debt, the amount borrowed for SURE was unprecedented. It has been mentioned that, in 2010, the Commission funded the European Financial Stabilisation Mechanism (EFSM) with resources obtained on the financial markets. At the time, however, the Commission had to limit its borrowing to 60 billion euros since its financial assistance was not allowed to exceed the 'margin available under the own resources ceiling for payment appropriateness'.[12]

This technical terminology requires some background explanation. It should be noted that the Union budget is outlined every seven years in the Multiannual Financial Framework (MFF).[13] As De Witte explains (De Witte 2021), the Union

10. Article 310 TFEU and Regulation 2018/1046.
11. *Pringle*, para 136.
12. Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, Article 2(2).
13. Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

has to make sure that it has all the necessary resources available to comply with the MFF. Member States' contributions constitute the Union's largest resource, but they are not the only one as the Union also has resources of non-national origin (i.e. VAT and customs duties). These own resources, however, are not predictable in advance, meaning that the contribution that Member States are actually called upon to make may vary year-to-year. For this reason, on top of the contribution that, at the beginning of each budgetary cycle, national governments devolve to the Union, Member States are required to have a 'reserve' which they can draw on in order eventually to transfer further funds and replenish the EU budget. The maximum amount ('ceiling') of contributions that they may be called upon to make to the Union budget is defined in the Own Resources Decision (ORD).[14] The difference between the ceiling and the contribution that is actually requested from them is thereby defined as the 'margin'.

The rule whereby EU financial assistance shall not exceed the 'margins available under the own resources ceiling for payment appropriateness' thus ensures that funds borrowed on the market are offset by collaterals or liabilities which are accessible to the EU, in accordance with the principle of the payments and appropriations of the Union being in balance. In fact, even when the Commission devolves funds to the Member States in the form of a loan, repayment by the beneficiary state is not assured: it may occur late or not at all. In that case, the EU budget could incur a deficit if the amount the Commission had borrowed from the financial markets exceeded the 'margin available' under the 'own resources ceiling'. This was, therefore, the reason why in 2010 the Commission raised 'only' 60 billion euro from the financial markets:[15] this was the amount available in consideration of the 'available margin'.

But then, with SURE, the Commission established a facility with almost twice the firepower of the EFSM (amounting to 100 billion euros) despite having a smaller budgetary margin. The available margin was indeed not sufficient to cover the amount that the Commission raised on the financial market to finance the programme. In order to ensure compliance with the principle of financial equilibrium, an innovative scheme thus had to be set up. Eventually, the solution was to ask individual Member States to counter-guarantee the risk borne by the Union (De Witte 2021).[16] The provision of this guarantee by national governments preserved the soundness of EU finances as it meant that, formally, SURE was not set up through deficit. Interestingly, the EU having resorted to this solution is a sign that the rigidity of EU public finance rules had started to become untied.

The third aspect that marks SURE as a significant and potentially transformative element in the process of European integration is a change in the EU approach vis-à-vis job retention schemes and income support policies in general (Andor

14. Council of the European Union, Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 1014/335/EU.
15. Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, Article 2(2).
16. In particular, it was established that SURE would only become available if all Member States counter-guaranteed at least a quarter of the total fund (25 billion euros).

2020; Claeys 2020). Admittedly, the impact of SURE could have been broader if it was accessible through grants and not loans. Suffice it to consider that not all Member States found it advantageous to draw on it: nine did not apply for it as their interest rate for obtaining capital market financing was lower than that offered by the Commission.[17] With SURE, nevertheless, the Union has for the first time effectively endorsed wage support policies; policies that, until then, had failed to take hold in the context of Union policymaking (European Commission 2021a; European Commission 2021c; European Commission 2021d). One thinks of the attempts, which in the past had never been successful, to establish a European unemployment benefit scheme (De la Porte and Palier 2022; Valero 2021).[18] SURE, which had been presented precisely as an emergency operationalisation of a future European unemployment benefit reinsurance scheme, had the effect of reviving the institutional debate over the creation of a structural mechanism for job loss support or a job guarantee (European Parliament 2022; Corti and Alcidi 2021; Andor 2022). This might be difficult under Article 122 TFEU, as it only provides for financial assistance of an emergency nature, but other legal bases cannot be ruled out.[19]

The establishment of SURE is not the only element indicating the opening of EU policymaking towards job retention and income support mechanisms. This also emerged from the policy recommendations of the Commission and the Council in the context of the European Semester. In fact, the 2020 Country Specific Recommendations (CSRs) promoted the creation of short-time working schemes across the Member States as well as their harmonisation where already in existence, and placed emphasis on the need to strengthen national income support systems and make them more inclusive (Rainone 2020b; Drahokoupil and Müller 2021). Even more eloquently, the Commission has recently put forward a proposal for a Council Recommendation on minimum income (European Commission 2022a, 2022b).

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17. Those that requested access to SURE resources are: Slovenia, Cyprus, Czechia, Croatia, Malta, Italy, Greece, Ireland, Spain, Slovakia, Lithuania, Belgium, Portugal, Romania, Latvia, Hungary, Poland and Bulgaria. These are the states which found it more convenient to contract a loan with the Commission than to borrow funds from the financial market. Indeed, as explained by the Commission Directorate-General for Budget, 'Due to the construction of the EU budget and the fact that all EU borrowings are direct and unconditional obligations of the EU, the EU's credit rating (AAA/Aaa/AAA/AAA (outlook stable) by Fitch, Moody's, DBRS and Scope, and AA+ (outlook stable) by Standard & Poor) is better than the rating of 22 out of the 27 EU Member States' (European Commission 2022c).

18. The idea of establishing a European unemployment insurance system had already been mobilised by Social Affairs Commissioner Andor (2010-2014) but was not pursued because of the redistributive implications for the Member States. Similarly, a European unemployment benefit reinsurance scheme had appeared among the priorities of the Von der Leyen Commission, presented in January 2020 in the Communication 'A strong Social Europe for Just Transition', only to disappear from the policymaking pipeline.

19. Article 175 TFEU could be explored; this is the same legal basis used for the Recovery and Resilience Facility as discussed in Section 3 below.

3. The Recovery Fund: NextGenerationEU

The adoption of SURE was followed by another potentially evolutionary moment with respect to the institutional and constitutional framework of the Union, coinciding with the adoption of the form of the NextGenerationEU recovery plan (NGEU). In defining and establishing this unprecedented instrument, the institutional actors undertook a rather creative revisitation of the Treaty provisions as well as of the existing instruments and governance mechanisms available to the Union.

3.1 A European response through the creation of a recovery fund

The delineation of the NGEU was not easy as it was the outcome of complex negotiations involving the Commission and national governments. The first political signals in favour of a strong European response were already emerging at the European Council of 26 March 2020. The joint statement issued at the conclusion of the Summit stressed the need to depart from the solutions employed during the 2011 Eurocrisis, when the first and foremost priority had been to ensure the stability of public finance. It was instead recognised that ‘Member States need flexibility to do everything that is necessary’ and that the Union ‘must also draw all the lessons of the present crisis and start reflecting on the resilience of our societies when confronted with such events’. The European Council therefore invited the Commission to make proposals for a ‘more ambitious and wide-ranging crisis management system within the EU’ (European Council 2020a). The same view also emerged from the subsequent Eurogroup meeting of 9 April which called for a European solution based on solidarity, explicitly considered as a key element to avoid further fragmentation in the Euro area (Eurogroup 2020).

Then, a few days later, the Commission proposed a Roadmap for Recovery in which it outlined some firm and specific points (European Commission and European Council 2021). Among them was the recognition that the shock of the pandemic was symmetric and that it was important to avoid the recovery having asymmetric effects. This, in practice, meant providing all Member States, even those with already high levels of public debt, with the possibility of financing themselves without being exposed to the risk of speculation on the grounds that another public debt crisis would further endanger the stability of the whole Eurozone. Moreover, the recovery had to be inclusive and co-owned by all involved, with specific reference to the social partners. It was reiterated that the management of the crisis had to take place with respect for the fundamental values and rights of the Union, with particular reference to the rule of law. The Commission also expressed the importance of attributing a social dimension to the recovery strategy and not establishing any form of conditionality other than that linked to respect for fundamental rights. Finally, the Commission placed unprecedented investment, with a focus on the green transition and digital transformation, at the centre of the strategy, thus prospecting a 'Marshall Plan-type investment effort to fuel the recovery and modernise the economy' (Spagnolo 2020; European Commission and European Council 2021).

The foundations were therefore laid for the creation of a recovery fund whose access and functioning would avoid further polarisation between 'fiscally responsible' and 'fiscally irresponsible' countries. The principles outlined in the Roadmap were later endorsed by heads of state and government at the European Council meeting on 23 April which tasked the Commission to come up with an actual proposal for a recovery fund (European Council 2020b).

3.2 Frictions between Member States on the nature of the recovery fund

While there was agreement on the need to present a fast and effective solution capable of stimulating the economy, political leaders struggled in April and May 2020 to agree on some contentious points. Two dominant positions could be identified (Armingeon et al. 2022). On the one hand, a large group of governments supported the creation of a fundamentally innovative recovery fund, based on solidarity and grants, and debt mutualisation through the issue of Eurobonds. In particular, Eurobonds would allow the European Commission to borrow on the financial market on behalf of the Union, so as to alleviate the increase in Member States' public debt (Schelkle 2021). For most Member States this would also imply an access to liquidity at reduced cost since the interest rate of the communitarised debt would be substantially lower than the interest rate that is applied to the borrowing of highly indebted countries (Porcaro et al. 2020). In this way, the EU approach would depart from its traditional emphasis on the budgetary stability of public accounts and which had dominated its management of the 2011 Eurocrisis. At the same time, Member States would not need to rely on financial assistance issued by organisms of an intergovernmental nature, such as occurred during the previous crisis with the European Financial Stabilisation Facility (EFSF), then replaced by the European Stability Mechanism (ESM).[20] The creation of such instruments was considered politically detrimental, being a reminiscence of austerity, deregulation, growing inequalities and moral hazard (Degryse et al. 2013). This position was mainly supported by the Italian, Spanish and Portuguese governments.

On the other hand, there was the faction of the so-called 'frugal' countries (the Netherlands, Denmark, Sweden and Austria), which saw any form of debt-sharing and relaxation of budgetary rules as potentially endangering the stability of the

20. Treaty establishing the European Stability Mechanism, T/ESM 2012-LT/en 3, Recital 1.

Eurozone (Bofinger 2020). In a non-paper circulated during the negotiation period, the heads of government of the 'frugal four' expressed their preference for an emergency recovery fund that would be fully in line with a rigid interpretation of the principles governing the EU budget (Denmark, Austria, Sweden and The Netherlands 2020). This implied that access to the fund had to be subject to strict conditionality, meaning that it had to be linked to a commitment to structural reforms that would improve the fiscal framework and allow greater room for expenditure in the event of future crises. Among the forms of conditionality, adherence to the rule of law, anti-corruption mechanisms and the protection of spending against fraud were explicitly mentioned. Furthermore, these countries were in opposition to any form of mutualisation of debt and to the creation of Eurobonds (Schelkle 2021; Pochet 2022). The recovery fund ought therefore to be based on instruments of an intergovernmental nature (created by the various States), as had happened during the 2011 Eurocrisis. A third priority for these countries was that Member States should only be able to access the recovery fund in the form of loans, as grants would endanger the Union's budgetary stability. Finally, it had to be an instrument of a purely temporary nature.

Decisive in unblocking the situation in favour of the position of the more 'integrationist' states was eventually the stance taken by the French and German governments (Armingeon et al. 2022). In May 2020, President Macron and Chancellor Merkel adopted a joint proposal in favour of an EU recovery fund of a temporary nature financed by the Commission through borrowing on the capital markets. Their shared view was that the creation of this fund should also be accompanied by an increase in Member States' contributions to the EU budget so as to give the Union sufficient collateral and to ensure borrowing activity at advantageous interest rates.[21] More precisely, the Franco-German position concerned the creation of a fund of 500 billion euros that Member States could draw on in the form of grants. National governments should channel these resources into investments to promote the green transition and digital transformation, research and innovation. There was no explicit mention of conditionality, even if reference was made to the recovery fund being 'based on a clear commitment from Member States to apply sound economic policies and an ambitious reform programme'.[22]

The Franco-German proposal eventually paved the way for the European Commission to publish, at the end of May 2020, its proposal for a recovery programme. In its Communication 'The EU budget powering the recovery plan for Europe', the Commission presented a framework in which the central role was to be played by the NextGenerationEU strategy (European Commission 2020h). The main pillar of the NGEU was the Recovery and Resilience Facility, a fund of 750 billion euros (in 2018 prices) which could be drawn on by the Member States either through loans or grants and which the Commission would finance by borrowing on the capital markets (European Commission 2020j).

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21. French-German initiative for the European recovery from the coronavirus crisis, Paris, 18 May 2020: https://www.elysee.fr/en/emmanuel-macron/2020/05/18/french-german-initiative-for-the-european-recovery-from-the-coronavirus-crisis.
22. Ibidem.

The proposal for the NGEU was welcomed by many observers as a long-awaited and necessary step in a correct and genuinely integrationist direction (Schmidt 2022; Weeks 2020). However, it was clear from the onset that the Commission's plan would not lead to a Copernican revolution. Although the proposal for the NGEU mirrored the Franco-German position far more than that of the 'frugal four', the Commission did eventually include a 250 billion euros loan component (European Commission 2020q). The underpinning of the strategy was thus not fully solidaristic. Furthermore, while the proposed NGEU was clearly meant to provide Member States with a greater margin for public spending, the Commission did not openly depart either from the orthodoxy of the Union's fiscal rules or from their debt control and stability rationale. Nowhere in the Commission documents that accompanied the NGEU is there any mention of the opportunity to revise the existing fiscal rules. This is a significant shortcoming especially since, even with the financial assistance of the EU, the Covid-19 crisis (now worsened by the increase in energy prices and inflation) is inevitably connected with an increase in public debt. Once the financial constraints established in the Stability and Growth Pact are reactivated, it is likely that the spending flexibility provided by the NGEU will be halted.

It is interesting to note that, even if the NGEU has a strong communitarian nature, the Union has not given up the use of intergovernmental facilities altogether. In April 2020 the Eurogroup meeting decided to establish pandemic crisis support based on the Enhanced Conditions Credit Line of the ESM (European Commission 2020g). This allowed Member States to access low interest loans that were to be used exclusively for direct and indirect costs in the area of healthcare. Unlike the loans the ESM had granted in the past, this time there would be no direct conditionality attached, meaning that national governments would not be bound to adopt structural reforms with the aim of reducing public spending (Rainone 2020a). Notwithstanding these adaptations, the stigma of austerity connected to the ESM resulted in no state having recourse to it (Schelkle 2021).

3.3 NextGenerationEU: innovative elements

This section discusses the NGEU in the light of its impact on the legal and governance architecture of the EU and on the significance for its social and solidaristic underpinning. It is shown that the adoption of NextGenerationEU was based on a dual regulatory approach. On the one hand, there are the legislative instruments that set up the special recovery fund and regulated its disbursement to requesting governments in the form of grants (390 billion euros) and loans (360 billion euros) (European Council 2020c).[23] On the other, there is the reform of the rules governing the Union's resources concerning both the contributions received from Member States and the resources that the Union raises on its own account (De Witte 2021; Leino-Sandberg and Ruffert 2022). In both cases, the Union has taken steps in directions that had not previously been explored,

23. The definition of the allocation key that took place during the intense four-day European Council meeting between 17 and 21 July 2020.

with potential impact on the future of European integration. Finally, this section addresses the weak(er) conditionality aspect that characterises the financial assistance provided through the Recovery and Resilience Facility.

3.3.1 The creation of the recovery fund

Starting from the first element, in May 2020 the Commission proposed a Council Regulation, approved in December the same year, establishing a European Union Recovery Instrument (EURI) outlining the various resources that form NextGenerationEU (European Commission 2020l). The EURI regulation found its legal basis, as had SURE, in an expansive reading of Article 122 TFEU, which gives the Union the possibility to provide financial assistance in emergency situations. Among the components indicated in the Council Regulation, the most substantial is the Recovery and Resilience Facility (RRF), which national governments could draw on both in the form of grants and loans to support investment and reforms (European Commission 2020i).

The details on how to access the RRF were then further defined in a specific regulation, also proposed by the Commission in May 2020 and then adopted in February 2021, this time having Article 175(3) TFEU as the legal basis (European Commission 2020n).[24] Article 175(3) is in TFEU Title XVIII (Economy, social and territorial cohesion) and constitutes a sort of flexibility clause allowing the Union to establish cohesion measures proven necessary outside the framework of the existing funds (De Witte 2021).[25] In the RRF Regulation, it emerged that the raison d'être of the facility was to ensure that the recovery process took place under the banner of more and better targeted public and private investment. In particular, the Commission indicated that it is crucial that 'the recovery strategies put into place by the Member States adequately integrate the challenges regarding green and digital transitions and support investments and reforms in these two key areas' (European Commission 2020n: 1). It was thus stipulated that in order to access funds, whether grants or loans, national governments were required to present a national recovery and resilience plan (NRRP) specifying prospective investment and reforms. Each NRRP had to allocate 37 per cent and 20 per cent of the resources to the green transition and digital transformation respectively (European Commission 2020o; Theodoropoulou et al. 2022; Corti et al. 2022).

The RRF was also conceived as a mechanism whose implementation had to be integrated into existing governance procedures and instruments (Karaboytcheva 2021). It was thus established that the submission of NRRPs, as well as their reporting and the monitoring of their implementation, had to take place through the processes already in place in the European Semester (European Commission

24. Then transposed into Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

25. Article 175(3) TFEU has already been used several times in the past, for instance in relation to the European Solidarity Fund, the European Globalisation Adjustment Fund, the Fund for European Aid for the Most Deprived and also for a Commission proposal on the Just Transition Fund, later merged into the components of the NGEU.

2020j). Furthermore, in drafting the NRRPs, national governments had to address the CSRs that the Council and the Commission address to the Member States at the end of each European semester cycle (Bekker 2021).

In the light of the EURI and RRF Regulations, several potentially transformative elements can be identified with respect to the previously dominant approach of the Union in managing economic shocks. First, Articles 122 TFEU (the legal basis of the EURI Regulation) and 175(3) TFEU (the legal basis of the RRF Regulation) have been used in a much more flexible manner than in the past. It is certainly not without cause that some commentators have expressed reservations about the creative use of the Union's competences (De Witte 2021; Leino-Sandberg and Ruffert 2022). With reference to Article 122 TFEU, it should be remembered that this provision gives the EU the competence to establish mechanisms to cope with emergency situations, while the NGEU and the RRF are not instruments of a strictly emergency nature. Structural investments in support of the digital and green transitions do not have a direct connection with the Covid-19 crisis and were already among the priorities of the Von der Leyen Commission when it took office in 2019 (European Parliament 2020). Similarly, the non-emergency nature emerges also from the distribution of the NGEU funds among the Member States. There is indeed a redistributive rationale as the allocation key contains an unemployment criterion (European Council 2020c). A questionable interpretation of the Treaty also stems from the decision to use Article 175(3) TFEU – which, as mentioned, relates to cohesion policies – as the legal basis for the RRF Regulation. The EU legislator has decided to treat the RRF as a cohesion fund, although the 'promotion of economic, social and territorial cohesion' is just one of its multiple objectives (De Witte 2021). All in all, the expansive reading of Articles 122 and 175 TFEU sets a precedent that may facilitate the EU's adoption of similar instruments in the future.

The second potentially transformative aspect of the recovery strategy is that it has at its centre the objective to support public (and private) investment. Suffice it to consider that 'Support to Member States for investment and reforms' is the first of the pillars that define the 'mission' of the NGEU (European Commission 2020j).[26] The unprecedented amount mobilised, and the acceptance that Member States might have to increase their public debt to access it, represents a stark difference with the way the Barroso Commission approached the 2011 financial crisis. At the time, the priority was indeed to push Member States towards financial stability.[27] The distance from the previous crisis management approach is explicitly stressed by the Commission itself: '... the 2008-2009 global financial crisis illustrated that cutting public investment has been a common way for governments to limit high deficits and corresponding financing needs. This strategy came at the expense of economic growth in the medium to long run; investment levels in a number of Member States with high debts (e.g. ES, IT, PT, and EL) have never recovered.

26. As further explained in Section 3.3.3, these reforms are not to be interpreted as a form of direct conditionality of the sort that was established in the aftermath of the Eurocrisis.

27. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, Recital 7.

Therefore, it is important to support the recovery and foster potential growth through structural reforms and investments' (European Commission 2020k: 19).

A third substantially innovative element brought along by the NGEU lies in that the integration of the RRF in the existing instruments and procedures of EU governance potentially heralds a change to the nature and function of the European Semester. Created as an instrument of fiscal and macroeconomic surveillance, the European Semester is now turned to the monitoring of the implementation of the investments outlined in the NRRPs (Creel et al. 2021). This, combined with the increased spending flexibility granted by the suspension of the SGP budgetary rules gives national governments more breathing space.

Interestingly, this is reflected in the country specific recommendations that Member States receive at the end of each Semester cycle (Rainone 2022). From 2012 to 2019, the CSRs placed a strong accent on reforms aimed at reducing public debt and making public spending more efficient, especially in relation to highly indebted counties (Degryse 2012; Jordan et al. 2021). This aspect is less prominent in the 2022 CSRs, with the exception of recommendations targeting the sustainability of pensions systems. The link with the RRF implies that the CSRs have been predominantly concerned with ensuring that national governments correctly implement the reforms identified in their NRRPs, with a very strong focus on the green transition and digital transformation (European Commission 2019; European Commission 2020o; Hagelstam and Dias 2020).[28]

Finally, it is worth noting that the integration of the RRF into the European Semester also has potential implications for a stronger inclusion of social and labour policy objectives in European governance. The Commission has indeed established that the NRRPs need to take into account the principles of the European Pillar of Social Rights (European Commission 2020n: Recital 3; European Commission 2021). This may therefore give more teeth to the Pillar, which has been integrated into EU governance since 2017 but so far without a substantial impact on the CSRs (Rainone and Aloisi 2021). However, from a first assessment (Petmesidou et al. 2022; Tassinari 2022), it seems that the way in which the NRRPs have given expression to the principles of the Pillar will not, at least not in the short term, disfranchise social and labour policies from their deployment as 'variables' in the context of shifts in economic trends, a role that was aggravated during the Eurocrisis (Degryse et al. 2013; Costamagna 2018).[29] The emphasis of the national plans is prevalently on labour market policies, skills and the adaptation of education to employment needs rather than on social investment and redistributive policies. This is not surprising in itself, since the Pillar is an instrument largely focused on employment activation, growth, productivity and competitiveness targets (Petmesidou et al. 2022). On the other hand, it must be

28. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, Recital 58.

29. Moreover, the NRRPs are rather difficult to compare due to the lack of consistency between one plan and another in the representation of the different reforms and investments in relation to the various 'pillars' and priorities of the RRF (Petmesidou et al. 2022).

acknowledged that anchoring the Pillar to the recovery strategy has contributed to a better benchmarking of structural social issues such as the poor inclusion of marginalised and vulnerable individuals, inefficiencies in social security systems and the excessively high poverty rate across the EU.

3.3.2 Changes to the EU system of own resources

In order to establish the NGEU, the Union had to rearrange the rules governing its own resources. Indeed, as seen when outlining SURE in section 2, the TFEU contains rules of public fiscal law that, amongst others, oblige the Union to respect the principle of fiscal balance (or the 'principle of equilibrium'). This implies that the EU budget cannot be run in deficit and that the Union needs to have a sufficient 'margin' to ensure budgetary balance. It is worth recalling that the 'margin' refers to the difference between the contributions the Member States have committed to the Union in a given year and those they have actually been requested to pay.[30] As mentioned, these amounts are defined in the Own Resources Decision (ORD).[31]

In setting up NextGenerationEU, the Union granted the European Commission the possibility to contract debt through the issue of bonds and to raise on the financial market some 750 billion euros at 2018 prices. As with SURE, the fund was too high to be covered by the budget margin defined in the ORD in force when the NGEU was being elaborated. It was also too high to ask the Member States to counter-guarantee the debt incurred by the Commission (which was the solution eventually adopted for SURE). Moreover, unlike SURE, the RRF is not only drawn in the form of loans but also includes a substantial grant component. This is even more difficult to reconcile with the principle of equilibrium (Leino-Sandberg and Ruffert 2022). In the case of loans, the Commission could theoretically count on the obligation of the beneficiary state to fulfil its own obligation to repay the borrowed sum.[32] Things are different for that part of the facility that is allocated through grants because non-reimbursable funds are not offset by a future credit and therefore alter the budgetary balance of the Union. Thus, the creation of the RRF required an innovative solution to ensure compliance with EU public finance principles.

It is with this view in mind that, as part of the package of measures proposed in May 2020, the Commission also proposed an amendment to the Own Resources Decision (ORD). This reform was linked to the ongoing negotiations on the definition of the new Multiannual Financial Framework of the Union that was to enter into force in 2022 (MFF 2021-2027) (European Commission 2020p). The Commission's proposal, later largely transposed in Council Decision (EU, Euratom) 2020/2053, included three central elements (European Commission 2020m).

30. See above, section 2.2.2.
31. See above, section 2.2.2.
32. Council of the European Union, Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 1014/335/EU, Recital 19.

The first consisted of a structural increase, not huge but nevertheless substantial, in the resources that Member States reserve for the EU budget. In particular, it was decided to increase the ceiling of what Member States have to reserve to the EU budget in a given year from 1.23 per cent to 1.40 per cent of the sum of all their gross national incomes (GNI).[33]

The second novelty was the introduction of an '*extraordinary* and *temporary* increase in the own resources ceilings' [italics added].[34] In particular, the maximum amount of 1.40 per cent mentioned above was to be increased by an additional 0.6 percentage points for the sole purpose of covering all the liabilities of the Union resulting from borrowings on the capital market in relation to NextGenerationEU. This is presented in Figure 1 below. The duration of this increase was temporary and linked to the maturity of the debt incurred by the Union, i.e. 31 December 2058 (Kömer and Böttcher 2020). In other words, this means that, were the appropriations entered in the Union budget to be insufficient to repay the debt that the Commission has contracted on the financial market to finance the NGEU, the Commission may call on the Member States, exceptionally, to make additional resources available, at most equal to the increase of 0.6 percentage points in the appropriations ceiling.[35] The ORD also specifies that, in the particular circumstances of a Member State failing to honour that call to cash, the Commission is authorised to make additional calls on other Member States on a pro rata basis.[36]

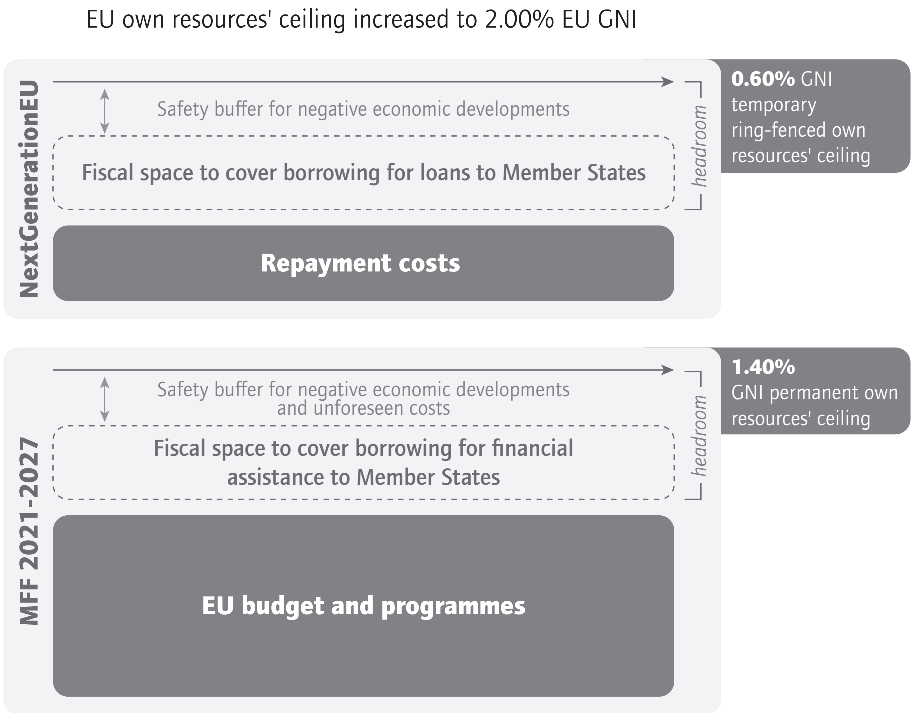
33. A comparison between Article 3(2) ORD 2014 and Article 3(1) ORD 2021 shows the change. It is worth mentioning that the ceiling for appropriations for payments is different from the ceiling for appropriations for commitments in that it refers to appropriations covering expenditure due in the current year, arising from legal commitments entered into in the current year and/or earlier years. Regarding the commitments, there is also a change from 1.29 per cent to 1.46 per cent of the sum of all Member States' GNIs, as emerges from a comparison between Article 3(2) ORD 2014 and Article 3(2) ORD 2021. For more details on the financial regulation applicable to the general budget of the Union, see: https://op.europa.eu/en/publication-detail/-/publication/e9488da5-d66f-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-86606884.

34. Council of the European Union, Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 1014/335/EU, Article 6.

35. Council of the European Union, Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 1014/335/EU, Recital 23.

36. Council of the European Union, Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 1014/335/EU, Recital 23 and Article 9.

Figure 1 **Temporary increase of EU own resources' ceiling**



Source: Adapted from European Commission (https://ec.europa.eu/info/strategy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en).

It is important to emphasise that the eventuality of the Commission requiring Member States to mobilise these additional appropriations is treated as a last resort option. Ideally, this should not be necessary as the Union should be able to repay its borrowing on the financial markets through the creation of new resources of its own – which is the third new element introduced in the framework of the ORD reform (European Council 2020c: A29). In fact, the Commission's borrowing activity will only last until 2026 while the repayment will have to take place by the end of 2058, which should give the Union sufficient margin to create additional sources of revenue. To this end, the Commission has already announced new forms of direct taxation in December 2021 connected to the EU's Emissions Trading System, the Carbon Border Adjustment Mechanism and to the multinational residual of the largest multinational companies (European Commission 2021e; Reininger 2021: 34). The Commission's strategy is thus to increase these own resources over time so that the Union has enough fiscal capacity to pay the liabilities related to the NGEU (European Commission 2021e).[37]

With this ORD reform, the Union has strengthened the capacity of the EU budget and provided guarantees for the repayment of the liabilities related to the Commission's borrowing activity to finance the NGEU. The increase of the appropriations ceiling and the constitution of new own resources (i.e. new EU

37. The Commission will propose new additional own resources by the end of 2023.

direct taxation) have been designed to make the EU budget compliant within the principle of budgetary equilibrium (Council of the European Union 2020).

It is, however, interesting to note that the Union has entered hitherto uncharted terrain. Contrary to the 2011 Eurocrisis and to the wishes of the 'frugal four', the creation of the NGEU can be seen as a step towards the mutualisation of debt (Weeks 2020). This stands out clearly when considering that the 750 billion euros was raised on the basis of EU common debt and that the resources to repay that part of the Union's debt used to award grants are shared between the Member States, since they are being taken from the EU budget. It is especially worth stressing that the decision to contract debt in order to give grants is unprecedented for the EU. As De Witte explained, this called for a revision of the traditional interpretation that EU resources should not be raised through debt (De Witte 2021, with reference to Article 311 TFEU). The choice of creating EU debt to provide non-repayable assistance is also difficult to reconcile with the no bail-out principle (Article 125 TFEU). The NGEU finds its legal basis in Article 122 TFEU which authorises the Union to provide financial assistance only in the case of emergency. This was reiterated by the Court of Justice in *Pringle*, where it was established that, in the absence of an emergency situation, financial assistance would constitute a bail-out, thereby amounting to a violation of the Treaties.[38] Instead, as explained in 3.3.1, the NGEU is largely aimed at supporting long-term reforms and investment, not necessarily related to the pandemic (European Commission 2021a: 8).[39] This potential clash with Article 125 TFEU was brought to the attention of the Council's Legal Service, which clarified that the NGEU is compatible with the TFEU mostly in consideration of its 'exceptional character [...] and its one-off nature and limited duration' (Council of the European Union 2020: para. 70). Nonetheless, it is interesting to note that the creative interpretation of the EU public finance rules has exposed the limits of the Treaties, which deter stronger forms of fiscal integration (Leino-Sandberg and Ruffert 2022).

3.3.3 Absence (or almost) of macroeconomic and fiscal conditionality

The distance from the traditional interpretation of EU fiscal rules emerges additionally in that, in contrast to the situation during the 2011 Eurocrisis, financial assistance is this time linked to rather weak(er) forms of conditionality (Pisani-Ferry 2020), the only exception being respect for the rule of law (Gyulavári forthcoming).[40]

38. Judgment of 27 November 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, ECLI:EU:C:2012:756.
39. For instance, the Commission required Member States to be consistent with the 2019 CSRs and the EPSR when drafting their NRRPs, these being instruments and policy recommendations that were adopted before the pandemic.
40. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget *OJ L 433I* , 22.12.2020, p. 1-10.

Certainly, in order to obtain RRF funds, national governments have to comply with a number of procedural steps and requirements (Bekker 2021). They must draft a national investment and reform plan which must ultimately be approved by the Commission, often following lengthy negotiations. They must then meet the quantitative thresholds with respect to investments in the green transition (37 per cent) and digital transformation (20 per cent). The national plans must also address 'all or a significant subset' of the 2019 and 2020 CSRs and take into consideration the European Pillar of Social Rights as well as the country's performance on the Social Scoreboard (European Commission 2021b). And it is worth noting that in some CSRs (especially those of 2019) Member States were required to realise reforms aimed at repairing macroeconomic imbalances and lowering public debt and deficits, often in relation to pension and public administration expenditure (Rainone 2020b). Then, once the plans have been approved, national governments must comply with the milestones set out therein in order to obtain disbursement of funds.[41]

However, the RRF does not present those stricter forms of conditionality that De Witte defines as clauses pursuing 'an additional policy objective which goes beyond the primary purpose of spending' and which have often consisted in the obligation of beneficiaries to carry out reforms aimed at fulfilling the SGP criteria (De Witte 2021: 676).[42] This sort of macroeconomic and fiscal conditionality clauses have often appeared in the context of EU funds and they certainly characterised the forms of financial assistance implemented in the course of the 2011 Eurocrisis (Rocca 2022; Degryse 2012; Dawson 2018). They were further legitimised by the Court of Justice in *Pringle*, which established that all forms of EU financial support had to be linked to conditions assuring that Member States follow a sound budgetary policy.[43]

The NGEU does not present this kind of explict conditionality, however, and it has thus emerged as a significant break with the past, boding well for the effective greater fiscal integration of the Union. On closer inspection, it is important to note that the concerns of the 'frugal four' in relation to budgetary responsibility and to the repercussions of high public debt are still, to a certain extent, incorporated in the NGEU architecture (Bekker 2021). The final agreement on the RRF included intergovernmental and fiscal safeguards, even if considerably milder than those established during the previous crisis.[44] Among these, it is worth mentioning that Article 10 RRF Regulation introduced a clause whereby the Commission can activate a procedure to suspend payments where Member States have not taken necessary effective actions to correct excessive deficits and macroeconomic

41. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, Recital 52.
42. The weaker macroeconomic and fiscal conditionality might indicate a cautious distancing from the long-held majority conviction in the EU executive that high public debt is an obstacle to economic growth (Heimberger 2022).
43. Judgment of 27 November 2012, *Thomas Pringle v Government of Ireland and Others*, C-370/12, ECLI:EU:C:2012:756, para. 138.
44. General Secretariat of the Council, Council Conclusions on the recovery plan and multiannual financial framework for 2021-2027, EUCO 10/20, Brussels, 17-21/7/2020, para. 69.

imbalances.[45] In addition, the RRF established a system of peer surveillance regarding the correct implementation of the NRRPs. If one or more Member States consider that there are serious deviations with regard to the implementation of the NRRP of another Member State, they may activate a procedure leading to the suspension of the disbursement of financial assistance until the issue has been exhaustively discussed in a European Council meeting (European Council 2020c: A19).[46] Finally, access to the RRF is terminated if a Member State is found to be in breach of the rule of law.[47] As mentioned, this is perhaps the only form of strict and explict conditionality introduced in relation to the recovery fund and is indirectly linked to preventing the sound management of public finance from being compromised by systematic corruption, conflict of interests and ineffective law enforcement (European Council 2020c: para 22-23).[48]

45. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, Article 10.
46. See also Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, Recital 52.
47. See also 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, Article 4.
48. 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, Recitals 7 and 8.

4. Towards a solidaristic and social Union?

In light of the analysis of the recovery strategy carried out in the previous sections, how should we define the EU approach in relation to the tension between 'fiscal stability' and 'fiscal integration'? And what are the implications for the social dimension of the EU?

There are elements that indicate that the Union has embarked on a more solidaristic path, breaking with the legacy of the 2011 crisis (Schmidt 2022; Fabbrini 2021). Among the most significant innovations is greater openness towards forms of fiscal integration (Schelkle 2021). This can be seen first and foremost in the issue of common debt to budget for financial assistance instead of resorting to intergovernmental instruments, as was the case during the previous crisis. Another sign in this direction is the agreement to increase the EU budget by raising the 'own resources ceiling' to provide sufficient guarantees against the debt incurred by the Commission in financing the NGEU.[49]

Furthermore, unlike the 2001 Eurocrisis – when the focus was on the sustainability of public finances – the priority of the recovery strategy is now to promote growth through investment. The RRF provides an important stimulus for the green transition and digital transformation, as well as for investment in research, education and training. The support provided by the various instruments put in place during the recovery framework (outlined in Table 1) has indeed provided greater spending capacity to Member States, further complemented by the activation of the SGP's general escape clause and the absence of strict macroeconomic and fiscal conditionality connected to the RRF (Corti et al. 2022).

An explicit social dimension has also been attributed to the recovery strategy as the NRRPs have had to engage with the European Pillar of Social Rights and the conduct of national policies with respect to the Social Scoreboard. In addition, the plans have had to implement the 2020 CSRs which, having been formulated in the midst of the Covid-19 crisis, embody a strong focus on social protection (Rainone 2020b).

However, all the major innovations introduced in the context of the recovery strategy have a temporary and emergency nature, as the final column of Table 1 clearly shows. It suffices to recall that the debt mutualisation that has taken place in the context of the NGEU is tied to the emergency nature of the pandemic crisis.

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49. See section 3.3.2.

Table 1 **Implications and effects of the most relevant initiatives taken to cope with the Covid-19 crisis**

Instruments	Content	Implications for social dimension	Duration
State aid Covid-19 Temporary Framework	Relaxation of state aid rules to channel public funds to non-financial institutions.	National governments could support businesses in difficulties, preventing closures and dismissals (whereas in the 2011 Eurocrisis public aid was mainly directed to large financial institutions).	Temporary, ended in June 2022. A (similar) Temporary Crisis Framework was adopted in March 2022 to cope with the effects of the Ukraine war and the energy crisis.
SGP general escape clause	Extension of the deadline for Member States to correct their excessive deficits under the excessive deficit procedure, provided those Member States take effective action as recommended by the Council.	Greater margin for public spending by national governments. This is reflected in the 2020 and 2022 CSRs, which place less pressure on fiscal stability with respect to their predecessors.	Temporary, the plan is to deactivate it in 2024.
Pandemic Emergency Purchase Programme (PEPP) by ECB	European Central Bank provided support to Member States' financing by purchasing state bonds on the secondary market.	Provision of liquidity to national governments while reducing risks of capital market speculation.	Emergency nature. Now complemented by Transmission Protection Instrument (TPI) – but only for Member States with a sound fiscal and macroeconomic framework.
SURE	100 billion euro fund which Member States can access to provide support to businesses in crisis to establish short-time working schemes. Financed through EU debt. Flexible interpretation of Article 122 and 125 TFEU.	Promoted national income support schemes. Prevention of dismissals. Absence of conditionality.	Emergency nature, also linked to the limited amount available.
NGEU/RRF	Creation of a facility of 750 billion euros that Member States can access in the form of grants and loans. Financed through EU debt. Flexible interpretation of Articles 175 and 125 TFEU and the principle of financial equilibrium. Resources should be used to promote investment and reforms, with particular focus on digital and green transitions. Potential increase in national contributions to EU budget to guarantee Commission's debt. Absence of macroeconomic and fiscal conditionality for the beneficiary. Rule of law conditionality.	First step for fiscal integration. Promotion of public and private investment. The NRRPs have to consider the 2019 and 2020 CSRs as well as the EPSR, leading to the inclusion of socially progressive reforms in the plans (albeit not everywhere). Difficult to compare NRRPs because of different possible interpretations of how investment and reforms relate to the various pillars and priorities of the RRF.	The facility will finance national reforms and investment until 2026.
Adaptation of the European Semester	The implementation of the RRF has been integrated into the European Semester. The 2022 CSRs also monitor the implementation of the NRRPs. Monitoring of EPSR implementation is potentially strengthened as NRRPs supposedly had to take the Pillar into account.	Evolution of the Semester from a system of macroeconomic and fiscal surveillance to a mechanism for ensuring the correct allocation of public and private investment. More space for socially progressive initiatives, albeit pressure for the sustainability of public finance did not disappear.	The adaptation of the European Semester is linked to the activation of the SGP general escape clause and to the RRF, both of a temporary nature.

Source: Authors' own elaboration.

Of a temporary nature is also the increase in resources that Member States (may) have to allocate to the Union's budget as a result of the (indeed, temporary) regime set out in the ORD. Most crucially, the broader leeway enjoyed by national governments to manage public spending flexibly will come to an end when the derogation from the usual state aid regime and from the SGP rules is deactivated.

The novelties introduced over the past couple of years have thus been programmed to disappear, leaving only a few traces of their passage (Schmidt 2021).[50] Indeed, rather than on structural changes in the legal and governance architecture of the Union, the more integrationist and solidaristic aspects underpinning the recovery strategy reside in the political will of the actors involved in its elaboration as well as in the predominance of a favourable ideology (Pochet 2022).

As for the actors, the Covid-19 crisis has unfurled in a relatively stable political environment, a little more rebalanced towards the political left. The governing coalition in Germany (until the end of 2021) was the same as during the previous crisis, but it seemed to have a more open attitude to alternative solutions. There was (and still is at the time of writing) an overwhelming majority of centre-right/populist governments in central and eastern Europe and in the Baltic countries. While the previous crisis could be clearly linked to the left/right imbalance, the political map in 2020-2021 is much more complex. The left-right divide is no longer relevant when it comes to the Covid-19 crisis, which has unfolded rather in vertical terms between national responsibility and European solidarity (Delwit 2021). The Commission, despite being under the presidency of the conservative Ursula von der Leyen, is slightly more left-leaning with nine centre-left commissioners out of 27, on a par with the EPP. But, above all, it is the positions held that are more central to the debate. Vice-President Timmermans is in charge of climate change; Gentiloni is Commissioner for the Economy (though still under vice-president Dombrovskis); Schmit for Jobs and Social Rights; Dalli for Equality; Terereira for Cohesion and Reforms; and Šefčovič vice-president for Interinstitutional Affairs and Foresight. The main difference in comparison with the financial crisis concerns Germany, which has undergone an internal change (Ferrera et al. 2021; Becker 2022). The country has redefined its interests, first in terms of safeguarding Europe and second in terms of closer, albeit still imperfect, alignment with France and the Commission (Pochet 2022).

Looking now at the underlying ideology which has informed the institutional approach to the recovery strategy, it interesting to note that, in 2020, the narratives on public health and on the green recovery helped to marginalise the narrative on 'sound' public finance (Sabato et al. 2021). The change of discourse was radical and swift, occurring in the course of only a few weeks. There are therefore signs of a weakening of the orthodox approach that, from the Maastricht Treaty

50. Out of what has been achieved in the context of the recovery framework would remain the general regime of conditionality to protect the EU budget referring to respect for the rule of law (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. 1-1) and a few initiatives to increase forms of EU direct taxation.

onwards, led to the creation of a monetary union without a solidarity mechanism (Bouget 1998). The model of European integration that, until the Covid-19 crisis, seemed to be undisputed was that monetary policy has to be immunised against political decision-making and entrusted to independent experts. In the absence of adjustment instruments, achieved through political integration and solidarity, this approach has been focused on adjustment via a flexibilisation of labour and social policies at national level (decentralisation of wage bargaining, flexibilisation of hire-and-fire arrangements, reduction of replacement income and so on) (Schulten and Müller 2015). Under this monetary union model, employment and, in turn, social policies have thus become adjustment variables in the event of a shock (Degryse et al. 2013).

To date, however, this has amounted mainly to a challenge to mainstream ideas rather than a real consolidation of a new dominant paradigm (Pochet 2022). Still, this has meant that the question of 'moral hazard', which had impaired the debate during the 2011 Eurocrisis, has not (yet) been reflected as strongly as in the past in the instruments adopted under the NGEU (Ferrera 2021).

The rebalancing of fiscal and monetary priorities with the more solidaristic approach that has characterised the recovery strategy from Covid-19 can thus be traced back to a changed political and ideological context compared to the one that framed the management of the 2011 Eurocrisis. From this it follows that, if the actors change and, in a related manner, if the theoretical approach with respect to the relationship between monetary union and political and social union also changes, there could be steps backwards with respect to the positive evolution which has been recorded in recent years (Ladi and Tsarouhas 2020; Fabbrini 2022).

It is important to note, that, even if the innovations made in the context of the recovery strategy were made permanent, the goal of strengthening the social dimension of the Union would still not be achieved. Indeed, the social component of the NGEU and of the analysed initiatives is rather weak. This is partly due to the EPSR and the Social Scoreboard having no binding force (Rasnača 2017). Furthermore, the drafting of the NRRPs often took place without the genuine involvement of the social partners or of the citizenry (Bekker 2021; ETUC 2022b). This is reflected in the substantial continuity between the labour and social policies included in the plans and the political programme and orientation of the government in power (Tassinari 2022). Theodoropoulou et al. also note that the absence of an effective promotion of social objectives within the more general framework of the objectives pursued by the NGEU results in new 'reason[s] for concern about a new imbalance at the expense of the EU's social dimension, beyond that which arises from the economic dimension; namely that there is an imbalance between the environmental/green and the social dimensions' (Theodoropoulou et al. 2022: 30).

Finally, it is highly regrettable that the elaboration of the recovery strategy was not accompanied by a serious proposal to reform EU economic governance rules. The ongoing institutional debates, which were initiated before the Covid-19 crisis, do not herald radical changes in the current fiscal stability rules (European

Commission 2020b). It is therefore likely that, once the derogation from the SGP is deactivated, public spending surveillance in the context of the European Semester will become more stringent (Maccarrone et al. forthcoming). A significant indication that the fiscal stability narrative has by no means disappeared is that references to the sustainability of public budgets are already resurfacing in the 2022 CSRs, sometimes with serious implications for social and labour policies (Rainone 2022). Most notably, several Member States (CZ, DE, FR, HR, HU, LU, NL and PL) have received recommendations to reform the pensions system in view of making it more sustainable from a macroeconomic and financial perspective. Furthermore, all Member States received the recommendation to start a 'gradual fiscal adjustment to reduce high public debt as of 2023'.

All in all, the promising developments realised in the context of the recovery strategy rest on the weak foundation of the recovery framework and contribute only moderately to strengthening the social dimension of the Union. To continue to build in the direction of social progress, it seems necessary to make structural and lasting changes in the legal and governance architecture of the EU (Fabbrini 2022).

5. Concluding remarks: lessons for future crises

The reflection conducted in this paper has shown that the recovery strategy which the Union activated in the context of the Covid-19 crisis represents a potential break with the past. Right from the start the Union gave signals in the direction of greater fiscal flexibility and it actively supported national income support schemes by creating SURE. Moreover, the adoption of the NGEU is based on a creative and flexible reading of the Union's public finance rules and could represent a significant step in the direction of greater fiscal integration (Schmidt 2022). This would entail a strengthening of the Union's solidaristic underpinning and, at the same time, deliver further space in which to develop policies which have a genuine social rationale, at national but also at European level.

However, it was also seen that the instruments put in place in the recovery strategy reflect the limits of a normative and governance architecture that is still anchored to an incomplete vision of European integration: a vision that focuses on market and monetary integration but not on the creation of a fiscal, social and political union (Degryse et al. 2013).

Under the present regulatory and governance framework, politics and the ideology that informs the actions of political actors constitute the needle of the balance between further solidaristic and fiscal integration and a return to full public spending surveillance. In other words, there are no guarantees that the integrationist and more social opening up that occurred with the creation of the NGEU will survive the next political cycle.

How can we avoid a return to the past? It is necessary to build stronger foundations that support this recent solidaristic turn in EU policies. Fortunately, there are many possible solutions. What is crucial is that reforms are reflected in changes in the Union's regulatory framework to make them resistant to the political winds. While it is true that the current wording of the Treaties has not prevented the adoption even of solidaristic mechanisms such as SURE and the NGEU, this was only possible due to a creative interpretation of the public fiscal provisions and due to the instruments being predisposed to be temporary in nature. One of the avenues that could be pursued is to continue in the direction of debt mutualisation by creating a permanent facility for financial assistance on the blueprint of the RRF (Schmidt 2022: 31). This would ensure greater fiscal flexibility without endangering the stability of national public finance. It would, however, probably demand a reform of the Treaties' budgetary rules (in particular Articles 122 and 125 TFEU) in order to decouple debt mutualisation and non-repayable financial assistance from situations of an emergency nature. It would also require a stable increase to the EU budget, both in the form of national contributions and the Union's own resources, to ensure sufficient fiscal manoeuvre. As Schmidt suggests, the funds raised by this facility could be directed to a variety of purposes. These could include unemployment benefit and income support, the management of migration crises, refugee integration and energy price alleviation (Schmidt 2022).

Another set of reforms that would be desirable to consider concerns the 'socialisation' of EU governance (Jordan et al. 2021). If, in the context of the recovery strategy, EU governance has developed a more social dimension, it is also the result of the increased fiscal flexibility granted by the SGP's general escape clause. It is worth emphasising, however, that this is only a temporary mechanism which will be deactivated in 2023. It is therefore crucial to take advantage of the ongoing revision process of the EU economic governance framework to revise the budgetary targets established in the Stability and Growth Pact (ETUC 2022b). This would allow Member States to maintain a sufficient spending margin to continue public (social) investment without necessarily having to fear the imposition of corrective fiscal measures.

Complementary to these reforms on the fiscal surveillance front, it is also important to adopt measures requiring the EU executive and national governments to promote effective upward convergence in living and working conditions. At present, this task is entrusted to the EPSR. However, it has already been mentioned that this instrument lacks prescriptive force and is predominantly oriented towards labour market activation policies. It is therefore necessary to strengthen it with additional safeguards. One possibility is the creation of a social imbalances procedure, mirroring the current macroeconomic surveillance, to be integrated into the European Semester (Sabato et al. 2022). Similarly, minimum thresholds for social investment applying to the disbursement of EU funds could also be introduced. Equivalent requirements exist in the RRF with respect to investment in the area of digital transformation and the green transition. The socialisation of EU governance could also occur through the establishment, preferably in the Treaties, of a no-harm principle regarding social and labour standards, similar to what currently applies with respect to environmental policies in the context of the RRF (Rainone and Aloisi 2021). Alternatively, explicit social conditionality could be introduced to offset or counterbalance the socially regressive implications of the macroeconomic and fiscal surveillance regime. To that end, not only the Pillar but the entire social acquis of the Union should be considered. Access to social and cohesion funds could thus be linked to compliance with EU labour standards (and namely the promotion of collective bargaining, minimum incomes and decent wages), as well as to the promotion of the social objectives of the Union as laid down in Article 3 TEU and Title X TFEU.

Timid steps forward in this direction have been taken with the recent reform of the Union's funds, including the Cohesion Funds and the European Social Fund

Plus (ESF+).[51] It has been established that, when implementing ESF+, Member States must take into account the EPSR and the Social Scoreboard.[52] However, this progress does not seem sufficient, as compliance with the economic governance and fiscal and macroeconomic stability framework still constitutes a requirement for the actual enjoyment of these funds.[53] Establishing a stronger link between the social acquis and EU funds may also have the effect of reinforcing the effectiveness of the social CSRs which, in general, have less impact than the macroeconomic and fiscal recommendations (Al-Kadi and Clauwaert 2019).

Finally, a governance that is more social is also a governance that is more democratic and decentralised (Schmidt 2022). It is important to ensure a greater and more effective involvement of the social partners, national parliaments and civil society in the elaboration of policy directions, reforms and investments, both at national and European level (Vanhercke and Verdun 2021).

The list of policy initiatives could continue. Whatever form they take, it is of utmost importance that policymakers capitalise on the window of opportunity that has opened up thanks to the integrationist, progressive and, at times, solidaristic political environment that has accompanied this initial moment of crisis management. As Fabbrini argues, there is good hope on the horizon since the recent proposals that emerged from the Conference on the Future of Europe bode well for the opening of a serious institutional debate aimed at amending the Treaties (Fabbrini 2022; Vasques and Fortuna 2022; Conference on the Future of Europe 2022).

But windows of opportunity are by nature temporary and it is therefore crucial that the necessary reforms do not take too long. The political landscape is rapidly changing and not in an encouraging way.[54] Without rapid structural follow-up, the one positive legacy of the pandemic would be squandered and that would be all the more painful in view of all the suffering that has been experienced. Namely, the Union would have demonstrated its inability to learn from its mistakes and would find itself unprepared to handle the next crisis, whether it be energy or climate-related, or triggered by migration emergencies, rising inflation, wars or another pandemic. It would also be a missed opportunity to realign the Union's regulatory and governance framework with the ideals of solidarity, social cohesion and improved living and working conditions that stand at the core of the values and objectives of European integration.

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51. Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, PE/47/2021/INIT, *OJ L 231*, 30.6.2021, p. 159-70.

52. Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 PE/42/2021/INIT, *OJ L 231*, 30.6.2021, p. 21-59, Recital 22 and Article 7.

53. See, for instance, Article 19 Regulation 2021/1060.

54. The results of the Swedish and Italian general elections (11 and 25 September 2022 respectively) indicate that political preferences are shifting towards extreme right parties whose programmes are difficult to reconcile with a Europeanist agenda.

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