The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe – Between Continuity and Rupture

Paul Dermine[1]

Abstract: This article offers a first analysis of the EU's fiscal response to the COVID-19 crisis. Beyond an account of the main initiatives of which it is comprised (the suspension of the Stability and Growth Pact, the SURE instrument and the recovery plan), it provides an assessment of this response's position in, and likely influence on, the long-term trajectory of economic and fiscal integration in Europe. Analyzing its main features and the core issues and challenges it raises, it identifies the elements of continuity and rupture which characterize this response, the legacies on which it builds, and the shifts and changes that it embodies. The article shows that, as a policy initiative which in many regards breaks away from past practices and orientations, the EU's fiscal response to COVID-19 presents novel, disruptive features, which raise new legal questions, and open new avenues for exploration. It also reveals that next to clear elements of rupture, this response is also largely embedded into the wider, pre-existing policy framework of EU economic governance which we inherited from the Eurozone crisis. In many regards, it continues the institutional philosophy of that system, and perpetuates the main constitutional challenges that it raises.

Keywords: European Union; COVID-19; fiscal response; recovery plan; transformations; legacies.

1. *Introduction*

Ten years after the Great Financial Crisis, the COVID-19 pandemic subjects the European Union (EU)'s economies to yet another existential test, in the form of a recession of unprecedented magnitude. The reaction of the EU to this exceptional macroeconomic situation was both diverse and forceful, and the entire EU arsenal was mobilized.[2] Most notably, the fiscal response of the EU proved no less than unprecedented, as in only a few months, the Union and its Member States took initiatives that many would have deemed unthinkable before the health crisis broke out.

Because of its violence, its exogeneity and its symmetry, the shock of the COVID-19 constituted a 'perfect storm', which rapidly convinced the EU and its States that new solutions would have to be devised, and that old cleavages needed to be bridged. The crisis also hit at a time where the EU had already initiated a process of self-reflection as to the functioning of its Economic and Monetary Union (EMU), and the organization of its economic pillar. The EU was also in the middle of intense discussions about its financial framework for the next seven years. The context was thus already ripe for new steps to be made along the path of economic and fiscal integration.

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[1] Paul Dermine, LLM (NYU), PhD (Maastricht University/KULeuven) is Max Weber Fellow at the European University Institute (Florence). The author wishes to thank the editor of this special issue, Richard Crowe and Cristina Dias for their insightful comments.

[2] For a systematic overview, see European Parliament, 'EU/EA measures to mitigate the economic, financial and social effects of coronavirus – State of Play 20 November 2020', In-Depth Analysis for the attention of the ECON Committee, PE 645.723, November 2020.

This article offers a first analysis of the EU's fiscal response to the COVID-19 crisis. Beyond an account of the main initiatives of which it is comprised, it provides an assessment of its position in, and likely influence on, the long-term trajectory of economic and fiscal integration in Europe. Analyzing its main features and the core issues and challenges it raises, it seeks to identify the elements of continuity and rupture which characterize this response, the legacies on which it builds, and the shifts and changes that it embodies.

The article will consider, in turn, the action taken on the negative side and on the positive side of fiscal policy integration. As reminded in the introduction of this special issue, the EMU was established as an asymmetric currency union. Under this template, fiscal integration has historically been primarily conducted in a negative manner: national budgetary policies were coordinated via EU supervision and surveillance under the Stability and Growth Pact (SGP) and the European Semester. Positive fiscal integration, i.e. solidarity through funding, assistance through transfers, remained clearly under-developed, with redistribution and risk-sharing across the Union kept at its lowest. As we shall see, COVID-19 prompted substantial evolutions on both sides of fiscal integration.

2. *COVID-19 and Negative Fiscal Integration – Putting Fiscal Surveillance on Hold… and More?*

The first reaction of the EU to the unfolding crisis on the fiscal side has been of a supportive nature. To accommodate national fiscal responses, the EU decided to put its fiscal surveillance system on hold. In an unprecedented move, it activated the general escape clause of the SGP.[3] The clause has been part of the EU's fiscal rulebook since 2011, and seeks to offer Member States the fiscal leeway to deal with periods of 'severe economic downturn'.[4] It does not amount to a generalized suspension of the SGP. States remain bound, as a matter of principle, by the EU's fiscal policy rules, but they are entitled to depart from their 'normal' fiscal trajectory for the purposes of crisis management. In more concrete terms, the budgetary impact of crisis measures (related to the health system, exceptional unemployment schemes, or economic relief) will not be taken into account in the EU's assessment of national fiscal policies under the SGP. The clause stands nonetheless as the most far-reaching form of flexibility under the SGP, and its activation is as significant as it is unprecedented. The signal sent is timely and welcome. For the first time in the rather short but already turbulent life of the SGP, the EU freezes adjustment trajectories and exhorts States to spend and invest, without strict regard to the stringent rules on debt and deficit which normally constrain budgetary policy in the Eurozone. Naturally, national fiscal stimuli have their limits. But the activation of the general escape clause in March 2020 shows that the EU has learned its lessons from the sovereign debt crisis,[5] and has now come to understand the importance of counter-cyclicality and coordinated fiscal stimuli in times of economic downturn.

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[3] European Commission, 'Communication to the Council on the activation of the general escape clause of the Stability and Growth Pact', COM(2020)123final, 20 March 2020. For the Council decision, see Council of the EU, 'Statement on the Stability and Growth Pact in light of the Covid-19 crisis', 23 March 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis.

[4] See Articles 5(1) and 9(1) of Regulation No. 1466/97 and Articles 3(5) and 5(2) of Regulation No. 1467/97.

[5] In the aftermath of the Great Financial Crisis, the EU did not put such a fiscal *régime d'exception* in place. On the contrary, it insisted on strict adherence with the fiscal policy rules, further exacerbating the effects and intensity of the shock.

By the end of 2020, the activation of the general escape clause remains but a political announcement, which needs to be *de facto* implemented by the EU institutions in the framework of the SGP.[6] Without precedents nor real guidelines, it remains unclear how exactly the clause will be applied. Most notably, we can expect debates as to the contours of crisis measures, and the expenditures eligible for flexibility under the clause. While the Council has specified in its statement that the clause only covers 'timely, temporary and targeted' discretionary stimuli,[7] we can expect disagreement among States as to the level of generosity afforded by the clause, and the diversity of crisis measures that it can cover.

Another crucial issue, which will have great bearing on the future trajectory of EU fiscal surveillance, is that of timing. When will the escape clause be deactivated? When will a progressive return to normalcy, i.e. to the EU's ordinary fiscal regime, be initiated? The issue is highly debated, and seems to divide Member States and EU institutions. The Commission has not evoked any formal date, and seems to be wanting to keep things as open as possible.[8] Others have been asking for a clearer expiry date.[9] Here too there is disagreement, and various deadlines (2021, 2022, ...) have been evoked.[10] This is a period of deep ambiguity for fiscal surveillance in the EU. A regime of exception currently applies. But it is unclear if, and when, this parenthesis will be closed, or if it will somehow become a 'new normal'. This ambivalence is best illustrated by this standard recommendation that all Member States were addressed in July 2020 in the framework of the European Semester:

> 'In line with the general escape clause, take all necessary measures to effectively address the pandemic, sustain the economy and support the ensuing recovery. When economic conditions allow, pursue fiscal policies aimed at achieving prudent medium-term fiscal positions and ensuring debt sustainability, while enhancing investment'.[11]

The policy dilemma is evident. On the one hand, the EU does not want to put the economic recovery into jeopardy by reactivating its fiscal discipline regime too soon. Fiscal consolidation should only start once the recovery has matured. But on the other, it also wants to avoid free-riding, prevent States from using the pandemic as an excuse to engage in excessive or irrelevant spending, and avoid the accumulation of heavy fiscal legacies which might impair the EU and its States for the decades to come.[12]

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[6] In that regard, see already the 2020 round of the European Semester, the platform for economic and fiscal policy coordination in the EU, in the framework of which the Commission and the Council have further emphasized the need for fiscal expansion and smart stimuli to counter the effects of the recession. Most notably, see the final country-specific recommendations, available here: https://www.consilium.europa.eu/en/press/press-releases/2020/07/20/european-semester-2020-country-specific-recommendations-adopted/#. (accessed 16 November 2020). See also the recent Commission's opinions on Eurozone Member States' draft budgetary plans for 2021. For a summary, see European Commission, 'Communication on the 2021 Draft Budgetary Plans – Overall assessment', COM(2020)750final, 18 November 2020.

[7] *Supra* n. 3.

[8] Even though the Commission has recently confirmed, in a letter to the EU Finance Ministers, that the clause would still apply in 2021. See Reuters, 'EU Budget Rules to Remain Suspended in 2021', 5 October 2020.

[9] See for example, the intervention of Markus Ferber, spokesman of the European Peoples's in the European Parliament, available here: https://www.euractiv.com/section/economy-jobs/opinion/the-brief-powered-by-ehfg-lets-talk-about-debt-but-not-just-yet .

[10] Euractiv, 'Portugal expects EU budget rules to be suspended until 2022', 2 October 2020; Financial Times, 'EU may need to extend suspension of budget rules, commissioner says', 11 November 2020.

[11] See *supra* n. 6.

[12] On this dilemma, and the issue of the clause's deactivation, see Jones, E., 'When and how to deactivate the SGP general escape clause?', In-Depth Analysis requested by the ECON Committee, PE 651/378, November 2020.

The discussion is all the more complex that the issue of when the SGP should be reactivated is intrinsically linked to the issue of which SGP should be reactivated. The ongoing pandemic and the necessary economic recovery of the coming years raise the question of which fiscal policy rules the Union exactly needs. To many, the COVID-19 has propelled Europe in another macroeconomic reality, and a return to an unchanged SGP would be unwise.[13] On the contrary, the current period should be used as an opportunity to rethink the EU's fiscal policy rules, and address some of its enduring dysfunctionalities.[14] Even though the pandemic gives them a whole new dimension, and will possibly accelerate them, these discussions about the necessary reforms of the EU's fiscal rulebook are far from new. That reflection has long been initiated, by external observers, but also by the institutions themselves, starting with the European Fiscal Board, and the Commission which, just before the start of the pandemic, had launched an in-depth review of the Six-Pack and the Two-Pack.[15] I can only mention them here, but the main potential axes of reform concern the level of counter-cyclicality of the rules, which will be crucial for the post-pandemic recovery, the overall complexity of the EU's fiscal rulebook (and its impact on efficiency), and its institutional management by the Commission, which is sometimes denounced as too discretionary and politicized.[16]

3. COVID-19 and Positive Fiscal Integration – A Paradigmatic Shift?

Accommodating national fiscal stimuli through an overall relaxation of the fiscal rules was a first step towards mitigating the effects of the recession prompted by the pandemic. However, the economic situation of EU Member States, and the state of their public finances, deeply diverged when the pandemic broke out. And so did their ability to fiscally react, and maintain life support for their economies.[17] The risk of uneven stimuli and an unbalanced recovery, which would have further widened disparities across Europe, was thus high. As discrepancies between national reaction capacities grew deeper, it quickly became apparent that a more ambitious European fiscal response and deeper forms of positive fiscal integration, through solidarity and redistribution, would be needed.

Agreements were soon reached on the use of available resources by the European Stability Mechanism,[18] the European Investment Bank,[19] and under existing EU budgetary programs.[20]

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[13] See, for example, Daniel Gros, 'Lessons from the Covid-19 Crisis for Euro Area Fiscal Rules', *Intereconomics*, 2020, 55(5), pp. 281-284.

[14] See for example, Niels Thygesen, Roel Beestma, et al., 'Reforming the EU fiscal framework – Now is the time', *VoxEU*, 26 October 2020; Julia Anderson, Zsolt Darvas, 'New life for an old framework – redesigning the EU's expenditure and golden fiscal rules', Study request by the European Parliament's ECON Committee, PE 645.733, October 2020; Peter Bofinger, 'Easing the EU Fiscal Straitjacket', *Social Europe*, 14 December 2020.

[15] See European Commission, 'Communication on the economic governance review', COM(2020)55final, 5.2.2020.

[16] For a recent overview, see European Fiscal Board, 'Annual Report 2020', esp. pp. 85-95. See also, Päivi Leino, Tuomas Saarenheimo, 'Discretion, Economic Governance and the (New) Political Commission', in Joana Mendes (ed.), *EU Executive Discretion and the Limits of Law* (Oxford University Press, 2018), pp. 132-154.

[17] See the figures compiled up to October 29 2020 by Bruegel, available here: https://www.bruegel.org/publications/datasets/covid-national-dataset.

[18] On the ESM's Pandemic Crisis Support scheme, see Eurogroup, 'Report on the comprehensive economic policy response to the COVID-19 pandemic', 9 April 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/04/09/report-on-the-comprehensive-economic-policy-response-to-the-covid-19-pandemic, para 16.

[19] See EIB, 'Press Release – EIB Group moves to scale up economic response to COVID-19 crisis', 3 April 2020, available at: https://www.eib.org/en/press/all/2020-094-eib-group-moves-to-scale-up-economic-response-to-covid-19-crisis.

[20] See most notably, the use of cohesion funds under the 'Coronavirus Response Investment Initiative': European Commission, 'Press-Release – Commission sets out European coordinated response to counter the economic

The Union was also quick to set up its European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE).[21] SURE offers assistance, in the form of loans, to the Member States to help them finance a defined set of measures and schemes designed to support and protect workers during the pandemic.[22] To finance those loans, the Regulation empowers the Commission to borrow up to EUR 100 billion, in the name of the EU, on the capital markets or with financial institutions.[23] SURE has proven a highly successful instrument so far. At the end of September 2020, 16 Member States had been granted financial support, and the Council had approved loans for EUR 87.4 billion.[24] In October 2020, the Commission issued its first emission of 'SURE bonds', and enjoyed high demand on the markets.[25]

The advent of a longer-term recovery programme proved much more difficult and divisive. Very much along the lines of what we had experienced during the Eurozone crisis, the North-South cleavage first resurfaced, as States failed to overcome enduring taboos about solidarity, responsibility and policy conditionality. A decisive Franco-German proposal for a European Recovery Fund,[26] coupled with the initiatives of the Commission,[27] managed to unblock the situation, and paved the way for a historical deal on a EUR 750 billion recovery plan, at the end of a marathon session of the European Council in July 2020.[28]

The EU's recovery plan, called 'Next Generation EU' (NGEU), forms the centerpiece of the EU's current socio-economic strategy. In a nutshell, the plan foresees that between 2021 and 2026, the Commission will raise, in the EU's name, some EUR 750 billion on the international capital markets, which will then be redistributed, in the form of loans or grants,[29] and through

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impact of the coronavirus', 13 March 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_459.

[21] 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 [2020] OJ L159/1. As will be further analyzed, the Regulation was based on Article 122 TFEU.

[22] The regulation precisely circumscribes the eligible measures (article 1(2)), and the relevant timeframe (articles 3 and 12).

[23] See Articles 4 and 5 of the SURE Regulation.

[24] Council of the EU, 'Press Release – Council approves 87.4 billion in financial support for member states under SURE', 25 September 2020, available at: https://www.consilium.europa.eu/en/press/press-releases/2020/09/25/covid-19-council-approves-87-4-billion-in-financial-support-for-member-states-under-sure/.

[25] See Financial Times, 'EU enjoys outrageous demand for first COVID-related bonds', 20 October 2020.

[26] See German government, 'Press Release – A French-German Initiative for the European Recovery from the Coronavirus Crisis', 18 May 2020, https://www.bundesregierung.de/resource/blob/975226/1753772/414a4b5a1ca91d4f7146eeb2b39ee72b/2020-05-18-deutsch-franzoesischer-erklaerung-eng-data.pdf?download=1.

[27] For a general overview, see European Commission (2020) 'Europe's moment: Repair and prepare for the next generation' 27 May 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940.

[28] See European Council, Conclusions of the special meeting of the European Council (17-21 July 2020), 21 July 2020, EUCO 10/20. In early November 2020, the Council presidency reached a political agreement with the European Parliament regarding the next Multiannual Financial Framework and the recovery package. See Council of the EU, 'Next multiannual financial framework and recovery package: Council presidency reaches political agreement with the European Parliament', 10 November 2020, https://www.consilium.europa.eu/en/press/press-releases/2020/11/10/next-multiannual-financial-framework-and-recovery-package-council-presidency-reaches-political-agreement-with-the-european-parliament/. Opposition from Poland and Hungary has so far prevented its endorsement by the Member States and the European Parliament.

[29] The ratio between loans and grants has been one of the most contentious, and intensively discussed, aspects of the package. While the Commission had initially proposed a grants-loans ratio of 500-250, the European Council brought it down to 390-360.

different EU funding programmes,[30] to EU Member States on the basis of their needs.[31] Funds will be used to finance structural reforms and investments, contributing primarily to the green and the digital transition of European economies. The deal also foresees that the funds borrowed by the EU will be later reimbursed through new own resources yet to be established.[32] The legal architecture of NGEU is complex, and relies on different inter-related components.[33] Its core component is the Recovery and Resilience Facility (RRF).[34] Established through a Regulation based on Article 175(3) TFEU, the RRF constitutes a new, *ad hoc* vehicle through which the greatest portion of NGEU funds will be disbursed and managed. Upstream of the RRF, there is the European Union Recovery Instrument (EURI),[35] which constitutes the technical tool which organizes the financing of NGEU and the allocation of funds. Formally based on Article 122 TFEU, EURI is a bit of an empty shell, which delegates the borrowing of the funds to the Own Resources Decision (ORD), with which it should be jointly read. The final piece is thus an amendment to the ORD,[36] the act[37] which organizes the resources financing the EU budget (Article 311 TFEU). To enable the Union to borrow, and subsequently reimburse, funds under NGEU, it was deemed necessary to amend the ORD accordingly. That is a consequence of the principle of budgetary discipline (article 310(4) TFEU), under which the Union's actions can only be financed within the limits of its multi-annual framework and of its own resources. Consequently, the amendments formally authorize the borrowings, specify the amounts at stake, clarify their budgetary status, and set the parameters for the repayment. More importantly, they provide for an increase of the own resources ceilings to ensure sufficient financial space for the full coverage of the EU's liability, and establish an additional rule which will allow the Commission to call on new (yet unspecified) resources from the Member States.

It is certainly too soon to tell if these new initiatives will bring about a 'Hamiltonian' moment in Europe. Officially, they constitute one-off, temporary measures, dictated by the necessities of the day. But their practical effects will be felt for long. Most emblematically, the reimbursement of the funds borrowed under NGEU will only end in 2058. More fundamentally, these instruments suggest the possibility of a much more integrated fiscal and economic union, through increased solidarity and redistribution. Considering the weight of path-dependence on the trajectory of European integration,[38] they might pave the way for more structural transformations in Europe.

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[30] The new Recovery and Resilience Facility (see *infra*) will constitute the main vehicle (EUR 672.5 billion), but considerable amounts will be channeled through pre-existing programmes such as ReactEU (EUR 47.5 billion), Horizon Europe (EUR 5 billion) of the Just Transition Fund (EUR 10 billion). For a complete breakout, see European Council conclusions, *supra* n. 28, § 14.

[31] See Article 10 of the draft RRF Regulation, and the methodology set out in its Annex I.

[32] In that regard, the July 2020 European Council's conclusions evoke a new resource based on non-recycled plastic waste, a carbon border adjustment mechanism, a digital levy, or a financial transactions tax. See European Council conclusions, *supra* n. 28, § 29.

[33] For a complete overview, see European Parliament, 'Next Generation EU – A European instrument to counter the impact of the coronavirus pandemic', PE 652.000, July 2020.

[34] European Commission, Proposal for a Regulation establishing a Recovery and Resilience Facility, COM(2020) 408 final, 28 May 2020.

[35] European Commission, Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM(2020) 441 final/2, 28 May 2020.

[36] European Commission, Amended proposal for a Council Regulation on the system of Own Resources of the European Union, COM(2020) 445 final, 28 May 2020.

[37] Council Decision No. 2014/335/EU of 26 May 2014 on the system of own resources of the European Union [2014] OJ L168/105.

[38] See Paul Pierson, 'The Path to European Integration – A Historical Institutionalist Analysis', *Comparative Political Studies*, 1996, 29(2), pp. 123-163.

More importantly for the purpose of this article, the recovery plan and SURE, as cornerstones of the EU's fiscal response to the ongoing recession, present certain defining features, and raise a number of legal issues and questions, which the following paragraphs intend to map. As we shall see, some are new, and form the direct consequence of the truly disruptive nature of these initiatives. Others perpetuate wider trends, legacies and challenges within the EU, signaling that beyond evident shifts and rupture, the current situation is also marked by continuity and path-dependency.

3.1. SURE, NGEU and competence allocation in the EU

First, it is interesting to consider SURE and NGEU in the light of the legal bases on which they rest, and against the broader background of the competence allocation system which governs the EU.

The EMU was established under a highly asymmetric pattern, and the EU's competences in the realm of economic and fiscal policy have been historically weak and limited to coordination. On top of that, in view of the emergency of the pandemic, and the many temporal and political constraints associated with the Treaty revision procedure, amending primary law, and consolidating the EU's prerogatives in the economic and fiscal field never really constituted a realistic option.[39] Just like during the Eurocrisis, EU institutions were thus forced to work *à droit primaire constant*, which both constrained and shaped the nature, scope and features of their response. The EU's fiscal response to the pandemic relied on two main legal bases.

The first is Article 122 TFEU, on which the SURE Regulation and the draft Regulation establishing EURI are based.[40] The provision certainly constitutes what comes closest to an emergency clause in the Treaty framework, and enables the Union to set up solidarity mechanisms to address crisis situations. There is of course a certain logic in using such provision to set up assistance mechanisms to help the Member States in mitigating the economic impact of a pandemic which undeniably qualifies as an 'exceptional occurrence beyond their control'.[41] It is against a similar background that in 2010, Article 122(2) TFEU was mobilized (for the first and only time thus far) to establish the European financial stabilization mechanism.[42] Although not unprecedented, the current use of Article 122 TFEU is far from uncontroversial however. The very extensive reading of the provision favored by the Commission is quite remarkable. Article 122 TFEU is indeed not only mobilized to set up an emergency mechanism designed to finance contingency measures directly related to a crisis situation (SURE), but also serves to finance a long-term strategic plan for economic recovery through structural reforms and investments (NGEU).[43] More fundamentally, one cannot help a certain malaise when observing that an emergency clause, whose decision-making procedure

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[39] On Treaty amendments, and their difficulties, see Steve Peers, 'The Future of EU Treaty Amendments', *YEL*, 2012, 31(1), pp. 17-111.

[40] On this provision, see Leo Flynn, 'Article 122 TFEU', in Kellerbauer, M., Klamert, M., Tomkin, J. (eds), *Commentary on the EU Treaties and the Charter of Fundamental Rights*, Oxford, OUP, 2019, pp. 1282-1284.

[41] In this regard, see Recitals 5 and 6 of the SURE Regulation, and Recitals 2 and 5 of the draft RRF Regulation. See also the CLS opinion, which validated, not without some reservations, the use of Article 122: Council Legal Service, 'Opinion on the Proposals on Next Generation EU', 9062/20, 24 June 2020, §§ 115-154.

[42] Council Regulation (EU) 407/2010 of 11 May 2010 establishing a European financial stabilization mechanism [2020] OJ L118/1.

[43] Along these lines, see Francesco Martucci, *« Ce n'est pas de la dette, c'est de l'investissement »: des coronabonds aux obligations du plan de relance*, Revue des affaires européennes 303 (2020).

is dominated by the Council and only provides for the information of the European Parliament, is being used to raise close to one trillion euros, and pass unprecedented, far-reaching institutional reforms, which have the potential to transform the founding structures and templates of European integration.[44]

Secondly, Article 175(3) TFEU serves as legal basis for the proposed RRF, the main vehicle through which NGEU funds are to be managed and disbursed. The provision is part of the title devoted to cohesion policy, and provides that 'if specific actions prove necessary outside the [Structural] Funds', such actions may be adopted through the ordinary legislative procedure. In its legislative proposal, the Commission justified its choice of legal basis by the fact that the RRF 'is aimed to contribute to enhancing cohesion, through measures that allow the Member States concerned to recover faster and in a more sustainable way from the COVID-19 crisis, and become (more) resilient'.[45] Dressing up the RRF, a programme designed to accelerate the greening and digitalization of European economies, thereby enhancing their long-term sustainability and resilience, as a cohesion policy project certainly constitutes a reasonable and convincing narrative. Such use of cohesion policy to endow the Union with additional budgetary firepower does moreover not come out of the blue, and stands in direct line with legislative proposals which were under discussion when the pandemic hit Europe. The pending proposals for a Reform Support Programme[46] and for a European Investment Stabilization Function,[47] and the later project for a budgetary instrument for convergence and competitiveness for the euro area[48] (which the RRF proposal replaces), were already based on Article 175(3) TFEU and cohesion policy considerations.[49] At the time, the approach of the Commission had been criticized for diverting cohesion policy from its purpose, and using it to camouflage an economic policy agenda (then based on macroeconomic convergence and fiscal stabilization considerations). Leino and Saarenheimo, for example, observed that under these various proposals, cohesion only came in as an 'afterthought'.[50] There is still some truth in that today. The RRF, and NGEU, seem to be about much more than cohesion policy. It stands as the core vehicle of a new pan-European economic and industrial strategy, supported by extended financial resources, and thereby embodies a new role and new prerogatives for the Union in the realm of economic and fiscal policy. From that perspective, it can certainly be deplored that this shift will occur by stealth, covered up as cohesion policy, without clearer acknowledgement of the Treaties' insufficiencies, and deeper reflection as to the sustainability of the EU's and the Eurozone's order of competences.

SURE and NGEU stand as yet other tokens of the ingenuity of the EU's and national chancelleries' institutional lawyers and their ability to rediscover the Treaties' legal bases, and

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[44] See Francesco Costamagna, Matthias Goldmann, 'The EU Recovery Plan – Constitutional Innovation, Democratic Stagnation?', *Verfassungsblog*, 30 May 2020.
[45] See draft RRF Regulation, p. 4.
[46] European Commission, 'Proposal for a Regulation on the establishment of the Reform Support Program', 31.5.2018, COM(2018)391final.
[47] European Commission, 'Proposal for a Regulation on the establishment of a European Investment Stabilization Function', 31.5.2018, COM(2018)387final.
[48] On the governance aspects of the BICC, see European Commission, 'Proposal for a Regulation on a governance framework for the budgetary instrument for convergence and competitiveness for the euro area', 24.7.2019, COM(2019)354final.
[49] See Leo Flynn, 'Greater convergence, more resilience? Cohesion policy and the deepening of the Economic and Monetary Union', in Diane Fromage, Bruno De Witte (eds), *Recent Evolutions in the Economic and Monetary Union and the European Banking Union – A Reflection*, Maastricht Law Working Papers, 2019/3, pp. 48-60.
[50] Païvi Leino, Tuomas Saarenheimo, *Fiscal Stabilisation for EMU – Managing Incompleteness*, 43 European Law Review 639 (2018).

give them updated meaning to match the political needs of the moment. The mobilization of Articles 122 and 175 TFEU to adopt SURE and NGEU embodies the Treaties' openness and flexibility, the elasticity of their legal bases, and their ability to accommodate political compromises within the law. From that perspective, there is certainly a great deal of continuity with the institutional practice developed over the past decade. But the current use of the Treaties' legal bases also exacerbates the issues associated with competence creep. Fundamentally, initiatives such as SURE or NGEU expose the limits of the law's malleability towards politics, and the risks that interpretative stretching and legal acrobatics imply for the integrity of primary law, the power balance between Member States and the Union, and the EU rule of law.

3.2. Playing with the rules of EU budgetary law

The EU's fiscal response to the pandemic and the recession that ensued must also be considered from the perspective of EU budgetary law, i.e. the set of rules which organizes the Union's finances (most notably Articles 310-324 TFEU).

We have described in the above the complex budgetary architecture which supports NGEU and the recovery plan. To establish NGEU, the two most straightforward options for the EU and its Member States would have been either to go 'all out', and set up NGEU as a separate construction, completely distinct from the EU budget and placed outside the EU legal order (following the template of the ESM), or to go 'all in', fully enshrining the recovery plan in the wider, standard framework of the EU budget and of the 2021-2027 multiannual financial framework. Interestingly, none of these options were chosen, and a hybrid template was favored. NGEU indeed stands in a contrasted relationship with the EU budget, both embedded in it and separated from it. On the one hand, the money raised on the markets under EURI will be placed 'off budget'. The portion of the funds borrowed to be later distributed as grants will be given the formal status of 'external assigned revenues',[51] whereas the funds distributed as loans will be categorized as 'back-to-back' operations. But on the other hand, NGEU is also anchored with the EU budget. The funds raised will be disbursed through the budget, under various funding programmes of the EU (either new or pre-existing). Moreover, the money borrowed will be refunded through the channel of the EU budget, via its system of own resources (which is to be reformed and complemented in that context). Finally, the NGEU and the MFF were negotiated together, as part of one single political package. Again, both legal and political constraints (primarily pertaining to the tight policy schedule, and the need to avoid a revision procedure and an extended reorganization of the own resources system) have prompted the advent of this hybrid solution, which is another testament of the law's flexibility and of the EU law-makers' creativity. As a composite construction with its very own features, an odd creature born out of necessity, NGEU is naturally imperfect and raises a number of new challenges and questions.

A first issue relates to the qualification of a large portion of the funds borrowed through EURI as 'external assigned revenues'. Assigned revenues are revenues which finance specific items

[51] In this regard, see Recital 9 and Article 4(1) of the draft EURI Regulation; see also European Council conclusions, *supra* n. 28, § 11.

of expenditure, and thereby constitute an exception to the principle of budgetary universality.[52] Over the past few years, assigned revenues have represented between 5 and 11,5% of the entire EU budget, a large portion of which constituted internal assigned revenue.[53] NGEU, whose funds have been, for a wide share, characterized as external assigned revenue under Article 21(5) of the Financial Regulation, will greatly disturb this state of affairs. External assigned revenue will indeed no longer represent a somewhat accessory budgetary item, but will amount to around a fourth of the whole EU budget (MFF and NGEU combined).[54] Most problematic is the fact that the use of external assigned revenue is only subject to very limited parliamentary oversight.[55] The approach does not raise major issues when it only concerns recoveries amounts, and a small portion of the budget. It is more problematic when a much wider share of the EU's finances, and a crucial budgetary program of the Union, are at stake.

The second issue pertains to the compatibility of NGEU with the principle of budgetary balance, consecrated by Article 310(1) TFEU.[56] Classically, the principle has been interpreted as implying a prohibition of indebtedness for the Union. The EU, unlike Member States, cannot borrow to finance its expenditures nor run deficits. NGEU, which relies on extensive borrowing to finance EU recovery, clearly breaks away with the tradition. The trick used by the EU to solve this apparent contradiction is precisely to go 'off budget', and characterize the funds borrowed as either external assigned revenue or back-to-back operations. The Commission admits that 'such way to proceed for large amounts diverges from the standard practice', but justifies this oddity as a one-off, an emergency solution to an unprecedented crisis (which justified the mobilization of the solidarity clause in Article 122 TFEU).[57] Moreover, the Commission considers that the modification of the ORD, and its approval by all Member States according to their constitutional requirements,[58] will provide 'for the necessary democratic legitimacy of that innovative proposal necessary to fulfil the Union's objectives'.[59] The Council Legal Service has approved the soundness of that legal construction, especially in light of the principle of budgetary balance and neutrality, but emphasized that it could not become a permanent feature of the budgetary landscape.[60] The solution favored has however aroused

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[52] Regulation (EU, Euratom) 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union [2018] OJ L193/1, Article 21. The Regulation distinguishes internal and external assigned revenue.

[53] For an in-depth overview, see Alexandre Mathis, 'Next Generation EU – Where are assigned revenue? Which impact in 2021?', Briefing requested by the BUDG committee, PE 656.549, July 2020.

[54] Alexandre Mathis, 'Assigned revenue in the Recovery Plan – The frog that wishes to be as big as the ox?', Briefing requested by the BUDG committee, PE 656.526, June 2020.

[55] Indeed, Article 22 of the Financial Regulation foresees that the appropriations corresponding to assigned revenue are to be made automatically available when the revenue has been received by the institution. That means that once the Commission receives the revenue, it can use it immediately as expenditure, with the Parliament coming in only at the discharge level (when the accounts are closed), with no possibility for *ex ante* oversight. Under NGEU, the Parliament is however in the process of securing additional information rights vis-à-vis external assigned revenues. See European Parliament, Draft Report on conclusion of an interinstitutional agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, 2018/2070(ACI), 17 November 2020, §§ 39-45.

[56] The provision indeed foresees that 'all items of revenue and expenditure of the Union (…) shall be shown in the budget' and that those 'shall be in balance'. See also Article 17 of the Financial Regulation.

[57] See European Commission, 'Q&A: Next Generation EU – Legal Construction', 9 June 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_1024/.

[58] The ORD has a quasi-constitutional status. Any amendment can only enter into force after approval by all Member States in accordance with their national constitutional requirements. That means that the authorization of the borrowing under NGEU will need the approval of all Member States, and, depending on national procedures, of their national parliaments.

[59] See European Commission, *supra* n. 57.

[60] See Council Legal Service, *supra* n. 41, esp. §§ 7-114.

suspicion, and observers have expressed doubts as to the scheme's compatibility with the Treaty framework on EU finances, and most notably the principle of budgetary balance.[61] National actors have also voiced concerns as to the potential *ultra vires* nature of the plan.[62] My view is that, although highly unusual, the budgetary arrangement supporting NGEU is formally sound from a legal perspective. It however stands on thin ice. Its observance of the principle of budgetary balance raises some questions, because of its problematic artificiality. The use of the 'external assigned revenue' category remains an accounting trick of gigantic proportions. And the fact that part of the funds borrowed are to be repaid through, and covered by, resources which are to be later established (and in essence do not exist yet) is also somewhat contrived.

From a budgetary perspective, NGEU stands as a clear break with the past. If the EU already had some experience with 'back-to-back' lending (although never in such proportions),[63] the idea of debt-based expenditure is entirely new. It embodies a much higher level of mutualization and risk-sharing between Member States, and brings the EU's public finances closer to those of a State, than those of an international organization. Only through a great deal of innovativeness could this unprecedented initiative be accommodated within the Treaty framework. The result is this hybrid construction, under which debt-based spending is formally placed outside the EU budget. Such oddity sits uneasily with the traditional templates of EU finances. Officially, this is a temporary and one-off solution, justified by the exceptionality of the crisis affecting the EU. Some have made clear that 'borrowing for spending' should not become common practice.[64] But it would be very innocent to believe that once the option of debt-based spending will have been tested, the Union and its Member States will refrain from ever engaging in such practice again.[65]

3.3. The persistence of the conditionality logic

SURE and NGEU must also be considered from the perspective of the principle of policy conditionality. Strict conditionality constitutes one of the main legacies of the Eurocrisis. In the name of the prevention of moral hazard and the preservation of national fiscal responsibility, it emerged as a fundamental counterpart for the creation of new forms of financial assistance in the EU. Through its explicit consecration in Article 136(3) TFEU, and the key role it played in the Court's case-law (especially so in *Pringle* and *Gauweiler*),[66] it gained a central position in the EU's macroeconomic constitution.[67]

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[61] See for example, Païvi Leino, 'Next Generation EU – Breaking a taboo or breaking the law?', *CEPS-Articles in Brief*, 24 June 2020; Martin Nettesheim, 'Legally Feasible, Constitutionally Dubious', *Verfassungsblog*, 4 December 2020.

[62] This is for example the case of the Finnish Constitutional Law Committee (see its statement on NGEU from June 2020, available here: https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_16+2020.aspx).

[63] In this regard, see Michail Vitsentzatos, 'Loans and guarantees in the European Union budget', *ERA Forum*, 2014, pp. 131-144.

[64] See Council Legal Service, *supra* n. 41, §§ 37, 63.

[65] For recent calls in favor of more permanent borrowing operations, see Le Monde, 'Lagarde: les nouvelles restrictions pèsent sur la reprise', 19 October 2020; Klaus Regling, 'Europe's response to COVID-19', Unicredit European Conference Online, 21 October 2020, available at: https://www.esm.europa.eu/speeches-and-presentations/europes-response-covid-19-speech-klaus-regling.

[66] CJEU, judgment of 27 November 2012, case C-370/12, *Pringle* v *Government of Ireland et al.*, § 129-147; CJEU, judgment of 16 June 2015, case C-62/14, *Gauweiler et al. v Deutscher Bundestag*, § 120.

[67] Along these lines, see Michael Ioannidis, 'Europe's New Transformation: How the EU Economic Constitution Changed During the Eurozone Crisis', *CMLR*, 2016, 53(6), esp. pp. 1263-1274; Klaus Tuori and Kaarlo Tuori, *The Eurozone Crisis – A Rule of Law Analysis*, Cambridge, CUP, 2014, pp. 181-204.

Recent developments beg the question of the continued relevance of policy conditionality, as a structuring principle of the law of the EU and the EMU. Of course, the question of conditionality arises in different terms than in the context of the Eurozone crisis. As highlighted by the Council Legal Service,[68] NGEU (and SURE), unlike the ESM for example, do not constitute mechanisms 'for assuming the liability of Member States before or in lieu of the markets', thus making Article 125 TFEU and the 'no bailout' clause irrelevant,[69] and thereby diminishing the legal need for strict conditionality.

Along these lines, one might be tempted to argue that SURE and NGEU evade the logic of conditionality and diminish the centrality of strict conditionality in the architecture of the EMU. There is certainly some truth in this. Under SURE and the RRF, the vocabulary of strict conditionality has been abandoned. This is further confirmed by the parallel evolution of the ESM on the matter, and the much lighter forms of policy conditionality it is favoring under its pandemic schemes.[70] It would however be premature and excessive to claim that the days of conditionality are over. Several key features of both SURE and the RRF indeed signal that conditionality remains very much present, under more subtle forms, and keeps on structuring the logic and strategies of EU action in the field of economic and fiscal policy-making.[71]

First, there is the importance of 'earmarking' in the provision of funds, either as grants or loans, to national authorities. SURE loans are only provided to fund certain types of work schemes and employment protection measures listed by the Regulation.[72] In a similar manner, grants and loans awarded under the RRF will only serve to fund measures, reforms and investments contributing to the overarching objectives of greening and digitalization,[73] that national authorities are to compile in their Recovery and Resilience Plans, which are then assessed and validated *ex ante* by the EU (see *infra*). In a nutshell, with earmarking, the one who provides the money (the EU) determines in advance what the recipients (national authorities) might use it for, thus enabling the former to critically influence and condition policy-making by the latter.[74] By closely tying financial support to projects-based recovery plans, SURE and the RFF follow and magnify the 'cash against reforms' approach, which was already present in the BICC and the aborted Convergence and Competitiveness Instrument.[75]

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[68] Council Legal Service, *supra* n. 41, §§ 160-164.

[69] The only situation in which a potential breach of Article 125 TFEU might arise is that of a State failing to reimburse the loans it has been granted under SURE or NGEU, thereby calling on the collective solidarity of the other Member States, and precipitating a potentially unlawful bailout.

[70] See ESM, 'ESM Pandemic Crisis Support – Explainer, Timeline and Documents', available at https://www.esm.europa.eu/content/europe-response-corona-crisis. See also Markakis' article in this special issue for further assessment.

[71] For a similar opinion, see Armin Steinbach, «The Next Generation EU. Are we having a Hamiltonian Moment?», *EULawLive*, Week-end Edition, 26 June 2020, pp. 2-7.

[72] See Art. 3 of the SURE Regulation. One will have also noted that Article 122 TFEU, the legal base used for SURE and EURI, provides that assistance will be granted 'under certain conditions'.

[73] The EU has deployed far-reaching efforts to provide extremely detailed (yet non-exhaustive) lists of reforms and investments that might be deemed eligible under the RRF. In this regard, see European Commission, 'Staff Working Document – Guidance to Member States: Recovery and Resilience Plans', SWD(2020)205final, 17 September 2020.

[74] All budgetary programmes of the EU do include some form of earmarking. But in view of the amounts at stake, and the degree of specificity of their funding targets, SURE and NGEU certainly stand out and will have a much stronger predetermining effect on national action.

[75] See European Commission, 'Communication – Towards a Deep and Genuine Economic and Monetary Union: The introduction of a Convergence and Competitiveness Instrument', 20 March 2013, COM(2013)165.

Second, the RRF is deeply embedded in the wider framework of the EU's economic governance. Against this background, national authorities are requested to use the funds granted or loaned to follow up on the guidance provided by the EU, and implement the recommendations they are addressed under the European Semester process.[76] Article 9 of the RRF moreover provides that the disbursement of the funds of the recovery program might be suspended in certain more extreme instances where a State does not comply with its obligations under the SGP or the macroeconomic imbalance procedure. Through these various forms of 'spending conditionality',[77] the RRF is also mobilized as a powerful incentive to give additional bite to the EU's economic governance. Its force of attraction might contribute to structurally address the compliance's deficit that the European semester, and EU economic governance more generally, have long been plagued with.

Under different forms and through renewed methods, the logic of conditionality is thus still very much present, and is deeply ingrained in the EU's fiscal response to the current crisis. Most notably, NGEU's budgetary firepower stands as an unprecedented incentive to influence and shape national economic and fiscal policy-making in the EU, following the 'cash for reform' logic. Naturally, the objectives pursued and the overarching policy agenda have changed, for the better. The EU indeed seems to have abandoned its obsession for fiscal consolidation and international devaluation, and now pushes for a reform agenda which conciliates economic, social and environmental objectives, in the spirit of Article 3 TEU. But the latest developments also mark a potential new step in the progressive emergence of a fully-fledged EU economic policy.

3.4. The institutional governance of fiscal solidarity – perpetuating the Eurocrisis model?

Finally, SURE and NGEU, as instruments of fiscal solidarity, must also be considered through the institutional structures and governance arrangements that support them. They present a certain number of features and trends as to the power dynamics and interinstitutional relationships that define them. What dominates here is a clear continuity (tempered by certain shifts) with the institutional system inherited from the Eurozone crisis, and the perpetuation of many of the issues that this system raised.

First, SURE, EURI and the RRF confirm the dominance of executive bodies over budgetary and economic matters in the Eurozone and the EU.[78] This already transpires from the policy-making processes which produced these instruments, and where the impetus of the Commission and intergovernmental fora (starting with the European Council, and the Franco-German couple) proved decisive.[79] But it is even better attested by the governance of these instruments, and the procedures through which they will be operated.

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[76] See Art. 16(3)(a) of the draft RRF Regulation.

[77] Next to those evoked, there is also the famous 'rule of law' conditionality, under which financial transfers to countries systemically breaching the rule of law might be suspended. In this regard, see European Parliament, 'Press Release – Rule of law conditionality: MEP's strike a deal with Council', 5 November 2020, available at https://www.europarl.europa.eu/news/en/press-room/20201104IPR90813/rule-of-law-conditionality-meps-strike-a-deal-with-council.

[78] See Deirdre Curtin, Challenging Executive Dominance in European Democracy, 77 *Modern Law Review* 1 (2014).

[79] For an early analysis, along these lines, see Tobias Tesche, 'The European Union's response to the coronavirus emergency: an early assessment', *LSE 'Europe in Question' Discussion Paper Series*, 157/2020, June 2020.

Overall, they confirm the European Commission in its role of main implementing force in the EU's economic governance system.[80] Both under SURE and NGEU, the Commission is in charge of the financial management, conducts the borrowing operations on the markets, and administers the loans and grants to the Member States.[81] More importantly, the Commission controls the disbursement of the funds, and plays a crucial role in monitoring the use of the EU's money by national authorities. Under SURE, the Commission examines the requests for assistance, checks the eligibility of the measures put forward by the States, and determines the terms of the loans.[82] Following a similar pattern, under the RRF, the Commission assesses (and helps drafting) the national Recovery and Resilience Plans in which States set out their reform and investment agenda for the years to come, monitors the good implementation of those plans, and makes decisions on payment requests.[83] The Commission's power of the purse, combined with the intense bilateral exchanges it will have with national authorities, and the integration of the RRF into the wider framework of the European Semester (a process which the Commission has come to dominate overtime),[84] will substantially upgrade its ability to exercise policy guidance, formulation and supervision over national decision-making in the socio-economic field, *de facto* enabling the Commission to co-construct the economic and industrial recovery strategies with the Member States.

Interestingly, as is the case in other prongs of economic governance, the Commission has to act in tandem with the Council, with which the last word often rests at key stages of the procedures. Under SURE, assistance is made available by means of Council implementing decisions, adopted on the basis of a Commission proposal.[85] Under NGEU, the Commission's assessment of the national Recovery and Resilience Plans will have to be validated by the Council (via implementing acts) acting by qualified majority. Moreover, the assessment of payment requests is conducted together with the Economic and Financial Committee, an advisory body composed of representatives of national administrations, the Commission and the ECB (Article 134 TFEU). If consensus cannot be reached within the Committee, and if one or more Member States consider that there are 'serious deviations from the satisfactory fulfilment of the relevant milestones and targets', they may request the President of the European Council to refer the matter to the next European Council. Until the matter has been dealt with by the European Council, the Commission will be prevented from proceeding with the payment. This is the famous 'emergency break', which proved instrumental in reaching a compromise on NGEU within the European Council in July 2020.[86] These elements signal that the relationship between the Commission and the Council under the positive prong of fiscal integration is much more balanced than under its negative prong, where it had overtime become heavily dominated by the European Commission.[87] This evolution is understandable. As large

[80] In general, see Renaud Dehousse, 'The Euro Crisis and the Transformation of the European Political System', in Francesca Bignami (ed.), *EU Law in Populist Times – Crises and Prospects* (Cambridge University Press, 2020), pp. 135-154.
[81] See for example, Articles 8 and 10 of the SURE regulation, and Articles 7, 11 and 12 of the draft RRF Regulation.
[82] See Article 6 of the SURE Regulation.
[83] See Articles 15-17, and 19 of the draft RRF regulation.
[84] See Carlos Closa, 'Institutional Change in EU Macroeconomic and Fiscal Governance – The Reinforcement of the Commission', in Amtenbrink, Davies, Kochenov and Lindeboom (eds), *The Internal Market and the Future of European Integration – Essays in Honour of Lawrence W. Gormley*, Cambridge, CUP, 2019, pp. 322-343.
[85] See Article 6(1) of the SURE Regulation.
[86] See European Council conclusions, *supra* n. 28, § 19. The initial proposal from the Commission did not foresee these elements, and gave the Commission a monopoly on the assessment of the plans, and the disbursement of the funds.
[87] See Leino and Saarenheimo, *supra* n. 16; Vivian Schmidt, *Europe's Crisis of Legitimacy – Governing by Rules and Ruling by Numbers*, Oxford, OUP, 2020, pp. 176-207.

amounts of budgetary resources (backed by national funds) are made available at the EU level, States, especially those most likely to be net contributors, want to retain control over their use. Moreover, certain States have progressively come to distrust the Commission's action in the realm of economic and fiscal affairs. As enforcer of the SGP, the Commission has often been accused of being too lenient a watchdog, unable to make tough calls and impose sanctions when necessary.[88] It is against this background that States have wanted to counterbalance the Commission's power through a more direct involvement of the Council in the implementation of SURE and NGEU.

As a direct corollary of the continued executive dominance over economic and fiscal policy-making in the EU, the recent developments, and the adoption of SURE and NGEU, also confirm another trend of the past decade: the relative side-lining of the European Parliament in these policy fields.[89] The Parliament was only partly involved in the adoption of the reforms, and enjoyed a much weaker position than its co-legislator in the Council. For example, the texts passed on the basis of Article 122 TFEU, and the amendment of the ORD (Article 311(2) TFEU) only require the Parliament's information or consultation. The governance of these new budgetary instruments further marginalizes the European Parliament, which is only endowed with information rights.[90] From this perspective, SURE and NGEU only continue the Parliament's marginalization under the wider framework of economic governance and the European Semester, with which NGEU is linked. The Parliament has deplored the overly intergovernmental approach of NGEU, and has claimed stronger prerogatives in the management of the RRF,[91] a call which remained broadly unanswered.

4. *COVID-19 and EU Fiscal Governance – Between Continuity and Rupture*

This article has provided a first critical account of the EU's fiscal response to the COVID-19 crisis, its underlying rationale, and the main issues and challenges that it raises. It also sought to situate this response against the wider trajectory of economic and fiscal integration in Europe. In doing so, it has identified elements of continuity and rupture which characterize this response, the legacies on which it builds, and the shifts and changes that it embodies.

Undeniably, the COVID-19 crisis is shifting the lines of economic and fiscal governance in the EU. The pandemic has forced the EU and its Member States to take unprecedented steps and break long-standing economic and political taboos, bringing about a new level of solidarity and risk-sharing between European States and citizens. In many regards, the EU's initiatives are exceptional, embody a new approach to fiscal policy, public investment, and their role in the

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[88] See for example, Tuomas Saarenheimo, 'Regulatory Integration and Political Subordination', in Alen, F., Carletti, E., Gulati, M. (eds), *Institutions and the Crisis*, EUI, 2018, pp. 57-68; Thomas Wieser, 'Deepening of EMU – Some Topical Considerations', in Alen, F., Carletti, E., Gulati, M. (eds), *Institutions and the Crisis*, EUI, 2018, pp. 173-182.

[89] On this phenomenon, see Ben Crum, 'Parliamentary accountability in multi-level governance – What Role for Parliaments in EU Post-Crisis Economic Governance', *JEPP*, 2017, 25(2), pp. 268-286. On parliamentary involvement and the management of the COVID-19 crisis, see Bruno Dias Pinheiro, Diane Fromage (eds), 'National and European Parliamentary Involvement in the EU's Economic Response to the COVID Crisis', *EU Law Live - Weekend Edition*, November 2020.

[90] See Article 14 of the SURE Regulation, and recital 34 and Article 21 of the draft RRF Regulation.

[91] In this regard, see European Parliament, 'Resolution on the conclusions of the extraordinary European Council of 17-21 July 2020', 23 July 2020, esp. §§ 19-24. Most notably, the Parliament has demanded a bigger say in the adoption of the Recovery and Resilience Plans, and asked that they be approved via delegated acts. On this matter, see Lucas Guttenberg, Thu Nguyen, 'How to spend it right – A more democratic governance for the EU Recovery and Resilience Facility', *Jacques Delors Centre/BertelsmannStiftung Policy Briefs*, 11 June 2020.

EU's policy mix, and contribute to rebalance the negative and positive prongs of fiscal integration. The crisis caused the EU to reconsider the adequacy of its fiscal surveillance regime and the opportunity of deeper fiscal solidarity. As such, the current crisis stands as a potential cut-off point, which forced Europe to yet another qualitative leap, and might have a lasting impact on the overall trajectory of economic integration on the continent.

We also saw that this leap did not come out of nowhere. When the pandemic hit, the Union was already engaged in a process of reflection and reform about the architecture of the EMU, the future development of its economic pillar, and the broader role of debt and public investment in Europe. Most emblematically, the SGP and the EU's fiscal rulebook were under policy review, and legislative proposals about new budgetary instruments were being discussed at the political level. This policy capital accumulated over the past few years proved instrumental in shaping the discussions that brought about the EU's fiscal response to the pandemic. To a certain extent, the Union was already ripe for change, and COVID-19 proved a fantastic accelerator; the catalyst, the sparkle that was needed to set the reform process in motion.

As a policy initiative which in many regards breaks away from past practices and orientations, the EU's fiscal response to COVID-19 presents novel, disruptive features, which raise new legal questions, and open new avenues for exploration. Most notably, we discussed NGEU, its reliance on EU borrowings and debt-based expenditures, and the many issues that its relationship with the EU budgetary rules raises.

Next to clear elements of rupture, we also saw that the EU's fiscal response is largely embedded into the wider, pre-existing policy framework of EU economic governance, and continues, in many regards, the institutional philosophy of that system we inherited from the Eurozone crisis. Against this background, the EU's response and the new budgetary instruments established are characterized by a certain degree of continuity, which reveals the weight of path-dependency and the endurance of legacies in European integration. Such observation was made with regard to the mobilization of competence bases, which was characterized by institutional imagination, legal acrobatics and interpretative stretching. Continuity was also seen in the strong persistence of the conditionality logic under NGEU and SURE. Finally, we found that those new solidarity mechanisms are supported by governance arrangements which very much prolong those inherited from the Eurozone crisis. As a consequence of this continuity, the article shows that the EU's fiscal response to COVID-19 also perpetuates and exacerbates some of the main institutional and constitutional challenges that the Union's economic and fiscal policy has had to grapple with since the sovereign debt crisis, such as competence creep, executive dominance or parliamentary side-lining.

At the close of this analysis, the main question we are left with is whether the exceptional fiscal response of the EU to the COVID-19 pandemic, and the alternative policy approach it embodies, will only constitutes a parenthesis which will be closed as soon as the effects of the pandemic start withering away, or if it can pave the way for more structural changes in the Union and the Eurozone. The official narrative, we saw, is that these initiatives are of a temporary nature, and are strictly dictated by the necessities of a historical emergency. This narrative is the result of political compromises, and of the constrained choice of EU actors to design their fiscal response within the existing Treaty framework. Its logical consequence would be that the improvement of the sanitary and macroeconomic conditions on the continent will prompt a progressive return to pre-COVID 19 normalcy and the state of affairs that prevailed then in the EMU. Whether this will happen, and how, remains to be seen. The

pandemic has propelled the Union in a new macroeconomic reality. The founding paradigms of the EMU are shifting, constitutional transformations are at play, and the 'exceptional' could very well become the 'new normal'. We perceived this very clearly in the case of the EU's fiscal policy rules, whose suspension seems destined to prompt their deeper overhaul. In a similar manner, with NGEU, the EU has initiated a new budgetary dynamic, and the temptation to further entrench debt-based expenditures will be high in the future. It is certainly too soon to appraise the structural legacy of COVID-19 for EU fiscal integration. It however has the true potential to open up a new era.