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***The European Council's Financial Mega Deal:  
An unprecedented challenge for the political and  
academic world***

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Part 3

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**TRACK** Teaching and Researching  
the European Council



*More than ever before, the activities and actions of the European Council (EUCO) in July 2020 and over the following months up to their December meeting have demonstrated that studying the role of this key institution is of vital importance for understanding the European Union's (EU) fundamental trends and also the future evolution of Member States. For our academic agenda, we*

*face a considerable and perhaps even an unprecedented challenge in studying a moving target of major significance. This TRACK policy brief series provides an in-depth analysis of the European Council's actions during its management of the corona crisis. While the first policy brief gives an overview of key decisions taken by the EU institutions and in particular the European Council as well as the related academic and political discourse, the second policy brief will shed some light on the road to and from the July summit, thus, assessing the decision-making process within the European Council and among the EU institutions. Our third and final policy brief elaborates on the governance mechanisms of the Recovery and Resilience Facility (RRF). Overall, this threefold analysis aims to provide a comprehensive starting point for researching and teaching about the European Council. Further studies will deal with: internal decision making (e.g. cleavages and coalitions inside the European Council and its club spirit); the roles and powers of the European Council revisited (including its impact on the inter-institutional balance of power within the Union's constitutional architecture), the crisis management and its results/products as tests for academic approaches, short term and long term perspectives including speculation about possible scenarios.*



## The governance for the Recovery and Resilience Facility: legal rules and procedural patterns -a key issue for success or failure power and legitimacy

### Box 1: Takeaways

1. The governance of the Recovery and Resilience Facility (RRF) is an often-neglected key issue for the facility's implementation and success.
2. Governance deals with key issues of political systems: who has the power of the purse? What is the source of legitimacy for exercising it?
3. The legal texts require a careful analysis.
4. The triple C formula has been confirmed: The required consensus led to difficult compromises which explains a high degree of complexity.
5. The RRF shows traditional governance patterns of the European Union.
6. In view of common categories in political science, the rules document a strengthening of supranational procedures with intergovernmental elements.
7. In the context of power struggles between the EU institutions, we can observe a rebalancing on an upgraded level: main EU institutions share responsibilities and powers and the trend toward a horizontal fusion is reinforced.
8. Patterns of decision-making and implementation might strengthen a peer culture leading to a collective irresponsibility at that point of the procedure.
9. The sharing of powers strengthens the type of consensus democracy.
10. The power of the purse has been well balanced between the EU institutions.

Looking at major events in 2020, the academic and policy communities are faced with considerable challenges: in its July 2020 meeting, the European Council agreed on a financial mega deal, creating the Next Generation EU (NGEU) with the Recovery and Resilience Facility (RRF) at its heart and adopting the next Multiannual Financial Framework (MFF). Given the aims and amounts at stake (see table 1), a main task for practitioners and academics is to study the RRF's governance mechanisms and its impact

on the institutional architecture of the European Union. The dynamics and constraints inbuilt in the procedures are not only a question of academic curiosity but decisive for the success or failure of the whole RRF and thus the NGEU project: delays, ineffective compromises and forms of non-compliance might lead to missed targets with an overall negative consequence for the Union as such. In a broader perspective, the analysis of governance deals with a key issue for studying political systems: who has the power of the



purse to make political decisions on distributing the budget? What is the source of legitimacy for exercising it?

**Table 1: MFF 2021-2027 total allocations per heading<sup>1</sup>**

Policy Area	MFF	NGEU	Total
1. Single Market, Innovation and Digital	132.8	10.6	143.4
2. Cohesion, Resilience and Values	377.8	721.9	1099.7
3. Natural Resources and Environment	356.4	17.5	373.9
4. Migration and Border Management	22.7	-	22.7
5. Security and Defence	13.2	-	13.2
6. Neighbourhood and the World	98.4	-	98.4
7. European Public Administration	73.1	-	73.1
Total MFF	1074.3	750.0	1824.3

Against this backdrop, the aim of this policy brief is twofold. First, this policy brief provides a detailed analysis of the envisaged governance of the Recovery and Resilience Facility (RFF) by elaborating on the following questions: who has the power of the purse in the policy cycle? Which rules do the European Council conclusions and the subsequent legal acts envisage for the way members states and EU institutions prepare, take, implement and control decisions for using the amounts earmarked for the RFF (see Regulation 2021/241<sup>2</sup> and EUCO 10/20<sup>3</sup>)?

Without a doubt, members of the European Council and later also of the European Parliament (EP) have been aware that the respective provisions are of high relevance for the concrete influence they can exercise in this

crucial second level decision making. In view of perennial disputes about such procedures, it is not surprising that the EP assesses that “the position on the governance of the RFF [...] moves away from the Community method and endorses an intergovernmental approach”<sup>4</sup>. Even less surprisingly, the governance mechanisms put down in the legal texts are highly complex (see box 2 of [Policy Brief Part I](#)). We expect to confirm the triple ‘C’ approach: the need to find consensus in the European Council has forced the members of this key institution to formulate ambiguous and complicated compromises on the contested procedures which has eventually led to an increase of complexity and a loss of transparency for outsiders. For a first impression of the kind of compromises have a



look at point A 19 of the European Council's conclusions of 17-21 July 2020 (see box 2).

institutional architecture and decision-making procedures. We expect to identify traditional

**Box 2: European Council Conclusions of 17-21 July 2020, A19**

The recovery and resilience plans shall be assessed by the Commission within two months of the submission. The criteria of consistency with the country-specific recommendations, as well as strengthening the growth potential, job creation and economic and social resilience of the Member State shall need the highest score of the assessment. Effective contribution to the green and digital transition shall also be a prerequisite for a positive assessment.

The assessment of the recovery and resilience plans shall be approved by the Council, by qualified majority on a Commission proposal, through an implementing act which the Council shall endeavour to adopt within 4 weeks of the proposal. The positive assessment of payment requests will be subject to the satisfactory fulfilment of the relevant milestones and targets.

The Commission shall ask the opinion of the Economic and Financial Committee on the satisfactory fulfilment of the relevant milestones and targets. The Economic and Financial Committee shall strive to reach a consensus. If, exceptionally, 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. The Commission shall adopt a decision on the assessment of the satisfactory fulfilment of the relevant milestones and targets and on the approval of payments in accordance with the examination procedure. If the matter was referred to the European Council, no Commission decision concerning the satisfactory fulfilment of the milestones and targets and on the approval of payments will be taken until the next European Council has exhaustively discussed the matter. This process shall, as a rule, not take longer than three months after the Commission has asked the Economic and Financial Committee for its opinion. This process will be in line with Article 17 TEU and Article 317 TFEU.

As a second aim, the policy brief will assess which concrete patterns in the real world of the Brussels arena we can expect from these legal words. For observing and analysing the respective empirical evidence, we suggest revisiting extended studies on the EU's

issues of high significance concerning a perennial question: How does the exercise of power in this history-making case affect the nature and future of the EU system? In this context, the new governance mechanism will be tested with respect to the



supranational versus intergovernmental dichotomy. From a first general analysis and assessment, we observe traditional ways of how the political and administrative actors from the EU and national level interact within the EU's institutional architecture. However, we also notice some variations. The Masters of the Treaties<sup>5</sup> have agreed on some procedures we might call 'supranational' as they assign power to the Commission and to a lesser degree to the EP. At the same time, some other elements might be further characterized as 'inter-governmental' as they maintain the influence and powers of national governments and committees of national administrations. We claim that these procedures are reinforcing trends of vertical and horizontal fusion. Hence, this policy paper will assess the governance mechanism as a case of increased sharing of sovereignty between Member States and the Union as a vertical merging and fusion of competences within the multilevel game and in another step of sharing the management powers between the EU institutions in the horizontal balancing and fusion of power.

In order to assess the RRF's governance mechanism and its impact, the policy brief will use a conventional policy cycle approach with traditional four phases: preparing, making, implementing and controlling binding decisions.

### **Governance mechanisms: legal rules and their practical use**

For studying the governance of the RRF, we need to be aware of legal provisions based on primary and secondary law and of practices that the EU institutions have established over decades together with national governments and administrations.<sup>6</sup>

A main point of departure is the path-creating decision of the European Council that "NGEU and the Multi-Annual Financial Framework (MFF) go together" and that the "MFF, reinforced by NGEU, will be the main European tool" (EUCO 10/20 A2). For the amounts of the NGEU, "the Budgetary Authority shall exercise political control, to be defined in agreement between the European Parliament, the Council and the Commission" (EUCO 10/20 A11).

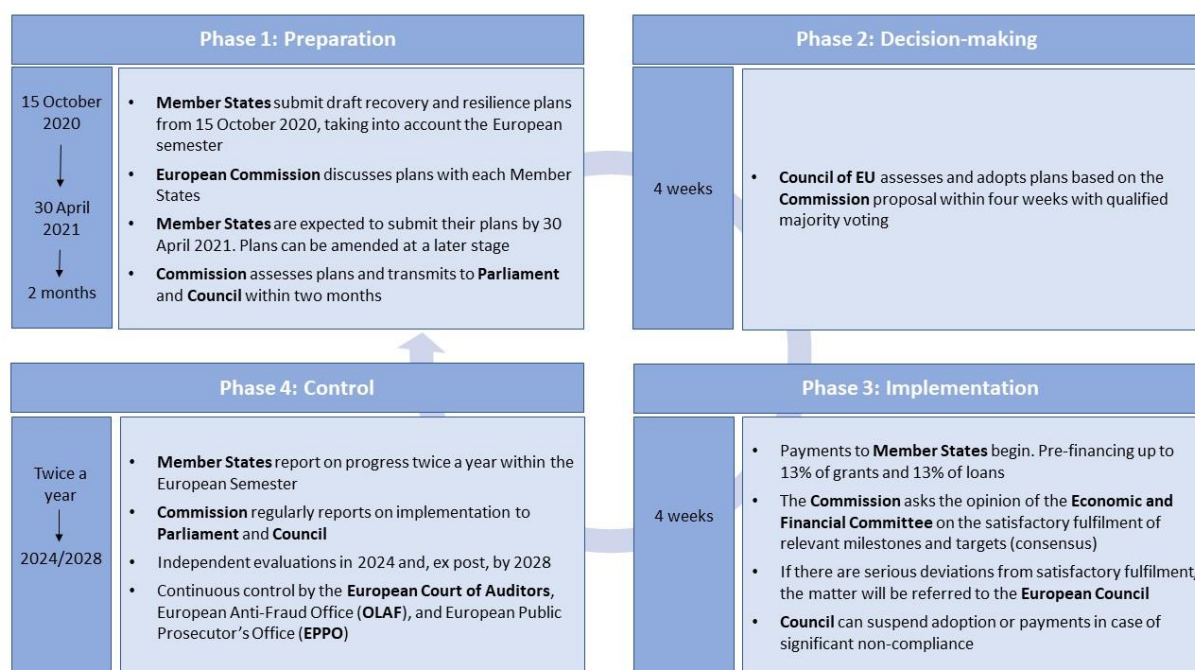
In order to assess the meaning of this fundamental decision, one has to compare this step of integrating the new facility into the treaty-based procedures with potential alternatives: During the Euro crisis, members of the European Council have created two separate satellite treaties<sup>7</sup> - the Fiscal Compact and the European Stability Mechanism – which granted the EU institutions a very limited role. Moreover, the original plans for Corona-Bonds most probably would have led to procedures outside of what is quite often still called the Community method.

The conclusions of the European Council and the following legal acts, especially Regulation 2021/241, have fixed a set of detailed rules for the policy cycle (see overview 1).





## Overview 1: Governance Mechanism of the Recovery and Resilience Facility<sup>8</sup>



As we see in all phases, the concerned actors have to work and decide under a considerable time constraint which might affect the way decisions are taken.

### The preparation phase: a mixture of bottom-up and top-down

The first phase of the policy cycle starts at the national level: “In order to ensure the national ownership and a focus on relevant reforms and investments, Member States wishing to receive support should submit to the Commission a recovery and resilience plan” (Regulation 2021/241 Recital 39).

This task is already quite demanding as the scope of objectives is broad, and the expected impact is often ambiguously formulated. Member states have to propose both investments, which might be a comparatively easy task, as well as reforms, which might be

more difficult to achieve, given domestic sensitivities. In order to receive “the highest score of the assessment” by the Commission, the national plans have to “strengthen[ing] the growth potential, job creation and social resilience of the Member State” and effectively contribute to “the green and digital transition” (EUCO 10/20 A19). In more detail, 37% of payments must contribute to the EU’s climate and biodiversity targets (on the pressures of the EP) and 20% of the expenditure must be spent on the digital transformation (Regulation 2021/241 Article 18 (4)).

This basic procedure is already known from the so-called European semester<sup>9</sup>. Implementing a similar governance structure for the RRF has the advantage that Member States as well as EU’s institutions can rely on already established patterns with experts who are generally experienced to use the Union’s



### Box 3: Regulation 2020/0104 Article 3

The scope of application of the Facility shall refer to policy areas of European relevance structured in six pillars:

- a) green transition;
- b) digital transformation;
- c) smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs;
- d) social and territorial cohesion;
- e) health, and economic, social and institutional resilience, with the aim of, inter alia, increasing crisis preparedness and crisis response capacity; and
- f) policies for the next generation, children and the youth, such as education and skills.

financial instruments. This kind of administrative network can hence be mobilized to face considerable challenges of this new facility: Member States can draw on existing lists of recommendations. However, the European semester shows considerable weaknesses in being too broad and not long-term oriented. Recommendations are often not taken seriously by national actors<sup>10</sup>.

The limited impact of the recommendations taken in the European semester can be explained by its nature as “soft coordination”<sup>11</sup>: recommendations are neither linked to negative sanctions nor positive rewards. With the financial offers of the RRF, the plans for the European semester will get a higher relevance on the national and on the European level<sup>12</sup> as Member States will profit (or not) from payments following the plans. The incentives are no more just moral imperative; like the

“open method of coordination”<sup>13</sup> had as a mode of governance.<sup>14</sup> The compliance with the jointly fixed measures is rewarded with grants or loans of a considerable size.

Even though the governance links its procedure to the European semester as a known practice, the RFF overall is a newly developed instrument for the administrative experts. Some national administrators grade the requirements as “quasi revolutionary” as they demand clearly different skills and expertise than the established practice for the Union’s cohesion fund. Member States must be aware that for getting payments the national plans must envisage credible strategies as they have to act in the shadow of the Commission assessment and of the final decision by the Council.

As the Recovery and Resilience Plans need to be “duly reasoned and substantiated”





(Regulation 2021/241 Recital 39), we expect that this bottom-up procedure creates major challenges for the Member States: The size and the aims of the RRF require an internal coordination between involved line ministries and a clear leadership from heads of the national governments. The considerable efforts to elaborate a coherent and productive national strategy is a major task for national actors. Each of them will need to assess if and how they could use or adapt the existing domestic machinery for dealing with the extensive workload coming from Brussels. The change of government in Italy has exemplified the political relevance of national plans. The RRP touches on core state powers<sup>15</sup> and apparently belongs to a category of issues for which the term “high politics”<sup>16</sup> could be applied. The respective role of national parliaments for national economic and fiscal policies also requires further attention.<sup>17</sup>

The next step, still in the preparation phase, is the top-down evaluation of the national RRP by the Commission: the recovery and resilience plans shall be assessed by the Commission within two months (Regulation 2021/241 Art.19). The Commission is bound to apply a broad set of criteria: “the relevance, effectiveness, efficiency and coherence of the RRP”. In Annex V of the respective regulation, the Council and EP have set strict assessment guidelines with a systematic rating following three stages from “A: to a large extent” via “B:

to a moderate extent” to “C: to a small extent” (Regulation 2021/241 Annex V).

Thus, among others, the Commission will have to judge whether the national RRF-plans “constitute an effective contribution to the green and digital transition” (EUCO 10/20 A19). The sanction is clearly formulated: “No financial contribution should be awarded to the Member States if the recovery and reliance plan does not satisfactorily address the assessment criteria” (Regulation 2021/241 Recital 45). However, given close pre-consultations, it is highly unlikely that the Commission asks Member States to significantly modify their national plans at that point of the procedure.

No later than two months after the Member States submitted their plans, the Commission is supposed to transmit her assessment and the proposals for Council implementing decisions to the European Parliament and the Council (Regulation 2021/241 Art. 25). The workload for the services of the Commission to assess 27 ambitious and most likely ambiguous plans in few weeks is considerable. For that purpose, the Commission has set up a Recovery and Resilience Task Force that closely cooperates with the Directorate-General for Economic and Financial Affairs. The Task Force is headed by a Steering Board consisting of the Commission’s Executive Vice-Presidents and chaired by the Commission’s President Ursula von der Leyen. The Steering Board meets every 2-4 weeks and provides the “political steer to help ensure the



Facility is implemented in a coherent and effective manner”<sup>18</sup>.

Following established patterns of cooperation between the Commission and Member States in many other procedures, e.g. for infringement and legislative procedures, both sides pursue an informal pre-consultation which means that there is not a simple unchecked bottom-up submission from the national level nor later an unexpected top-down assessment by the European level. As “a close cooperation between the Commission and the Member States should sought and achieved throughout the process” (Regulation 2021/241 Recital 39), we can thus expect an informal merging of responsibilities for a shared management.

Facing strict rules of the assessment, member states have asked the Commission to respect certain norms of its behaviour: “The Commission should fully respect the national ownership of the plan and should therefore take into account the justifications [...] provided by the Member State concerned” (Regulation 2021/241 Recital 41).

Like in the surveillance of fiscal disciplines under the Stability and Growth Pact, we again expect that for its proposal to the Council, the College of Commissioners will also take into account political considerations which will deviate from an ‘objective’ assessment based on strict observations of the ratings.

These provisions assign a discretionary power to the Commission to reject or ask for revisions.

The Commission thus has a veto power. In this sense, it has been empowered with a gatekeeper function and retained some kind of monopolistic position for initiating the following process. However, we expect that the Commission will not ask the Member States for revision of the plans after their submission. Nevertheless, before the final submission, the Commission will urge Member States to include reform plans rather than solely spending the RRF’s budget for investments.

### **The Decision-making phase: the Commission proposes and the Council disposes – a traditional pattern under time pressure**

In a second phase, that of decision making, Member States in the Council are the masters of the game and take the political decision: “The assessment of the recovery and resilience plans shall be approved by the Council, by qualified majority on a Commission proposal through an implementing act [...] within four weeks of the proposal” (EUCO 10/20 A19 and Regulation 2021/241 Recital 45). Although the Commission keeps its steering role, it needs a qualified majority inside the Council to get her proposal accepted. The Commission’s original suggestion to have a reversed qualified majority has not been accepted. Such a rule would have reinforced the power of the Commission, as her proposal could then only be rejected by a qualified majority of Member States.



We should be aware that the legal form of this decision is “an implementing act” (EUCO 10/20 A19) following Art.291 TFEU that envisages “mechanisms for control by Member States of the Commission’s exercise of implementing power” (Art. 291 (3) TFEU). The decision is not a “delegated act” (Art. 290 TFEU) which would have given the Commission a higher degree of autonomy.

As usual for using the Commission as agent for executive functions, the Member States have installed a committee of national civil servants (Regulation 2021/241 Art. 35). The envisaged “examination procedures” empower this administrative committee a veto power vis-à-vis the Commission’s proposal (Regulation 182/2011)<sup>19</sup>. This legal provision is of interest for all those who have studied different forms of ‘comitology’ procedures over the last decades.<sup>20</sup> This reference implies that national administrations follow closely and control the acts of the Commission.

The strict schedule of four weeks will create considerable time pressure on the administrative infrastructure of the Council as COREPER<sup>21</sup> and the respective working groups only have a few days to prepare a draft decision for the Council. These constraints might lead to a very limited serious scrutiny of the Commission’s proposal for each Member State. In the real world, we hence expect to observe that the peer group deliberations tend to support the acceptance of the decision for each member in particular against the backdrop that

we expect that member states unofficially exchange their respective national plans before submitting them to the Commission. Perhaps empirical research might find that plans of leading EU Member States serve as some kind of model or point of reference for other members. In such a horizontal, informal cooperation, national administrations develop a common understanding – perhaps even against some of the Commission’s preferences. In such a constellation, the decisions inside the Council will be easily adopted but might not answer all the demands of the set regulation. Thus, it might contribute to a pattern of peer group culture leading to a collective irresponsibility.

After such a decision 13% of the amount of the grant as well as 13% of the loan of the Member State concerned can be paid to the applicant countries (Regulation 2021/241 Recital 46).

### **Implementation Phase: complex and complicated rules**

In the next phase, the Commission has to adopt a “decision authorizing the financial contribution” (Regulation 2021/241 Recital 52), i.e. allowing concrete payments implementing the national RRF plans as adopted before by the Council. The relevant procedures for such an act proposed by the European Council and agreed upon in Regulation 2021/241 show a high degree of complexity. The Commission takes up its function of the guardian of “credible



commitments”<sup>22</sup>: in cases of non-compliance the Commission can propose the Council to suspend payments to Member States. However, payments are not bound to concrete targets of national plans. Hence, non-compliance will not affect the suspension of a concrete amount.

After the adoption of the national plans positively assessed by the Commission and an automatic pre-financing of 13%, “the Member State shall submit (twice per year) to the Commission a duly justified request for the financial contribution” (Regulation 2021/241 Art. 24(2)). Within two months after the respective application, the Commission is asked to control the adequate compliance: “The positive assessment of payments requested will be subject to the satisfactory fulfilment of the relevant milestones and targets”. For such a decision, the Commission has to deal with another high level administrative body: “the Commission shall ask the opinion of the Economic and Financial Committee on the satisfactory fulfilment [...]. [This committee] shall strive to reach consensus” (EUCO 10/20 A19).

Based on Art. 134 TFEU, the Economic and Financial Committee (EFC) pools considerable knowledge as it consists of senior officials of the national finance ministries (and also of national central banks), the ECB and the Commission. It is an autonomous body steered by its own president and disposes over a permanent administrative infrastructure. Thus,

in terms of expertise and procedural skills, it is an experienced partner and/or rival to the Commission’s civil servants. The EFC also has an extremely limited time frame of four weeks to prepare its opinion (Regulation 2021/241 Recital 52). Its impact on the progress of the payments depends on several factors.

A major issue will be the legal rules and real-world patterns for reaching consensus. In case of dissensus in this body no rule for majority decision is specified. However, it may decide in line with the rules of qualified majority (Art. 238 TFEU). After intensive discussions of this procedure in the July summit, the frugal four have managed to install an emergency brake mechanism by granting a veto power to each member: “If, exceptionally, 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 this matter to the next European Council” and “no Commission decision [...] will be taken until the next European Council has exhaustively discussed the matter” (EUCO 10/20 A19). This reading could mean that specific payments to Member States might be delayed: “This process, as a rule, should not take longer than three months” (Regulation 2021/241 Recital 52). This raises the question how the Heads of State or Government will decide: In view of the Treaty rules (Art. 15 (4) TEU) the European Council might need to decide by consensus.



Such suspensive veto reminds us of the Luxembourg compromise of 1966 and - now perhaps more relevant - of few articles in the Lisbon Treaty e.g. “where a member of the Council considers that draft directive [...] would affect fundamental aspects of its (here criminal justice system) it may request that the draft directive be referred to the European Council” (Art. 82 (3) TFEU). When studying the empirical evidence of the Luxembourg Compromise and especially the use of the respective articles in the Lisbon Treaty, the observer finds few direct references to these provisions. Apparently, they are not officially mentioned, but at least the Luxembourg compromise had deeply affected the attitudes and behavioural patterns of national governments of what might be called the “political culture” of the Council for more than two decades.<sup>23</sup> Thus, this procedural empowerment of applying to the European Council as Court of Appeal will most probably have a considerable effect on the way the Economic and Financial Committee is able to reach a consensus and on the attitude and power of the Commission: With the threat to turn to the European Council, representatives of governments in a minority position could force the majority to accept their position or at least start serious negotiations with those claiming to see a deviation. Thus, we might not find any direct case of using this provision, but we might observe strong trends towards a consensus culture in this Committee as members want to prevent an appeal to the

European Council. In the shadow of this veto threat, the members will probably prefer an agreement, but it is open if this leads to more or less compliance or observation of the objectives.

Closely linked to this factor is the question of its administrative style: which kind of attitudes and behavioural patterns will the committee develop as a dominant culture? Will the members exercise some kind of peer pressure to comply with the adopted plans or will they mutually accept the perhaps imperfect plans of their partner states for fear of a deadlock?

Will the evidence-based analysis of these procedures then confirm the conventional wisdom that reviewing and decision-making by a group of peers in general tend to show a strong tendency to reduce an objective quality check and instead to accept each other’s plans without too many critical voices as in the rational calculation, they do not want to block each other? This attitude as part of lenient group culture then follows the wisdom of the old proverb that “dogs do not eat dogs”. Looking backward, we might assess the results of such a behaviour as proof of collective irresponsibility.

It is remarkable that the European Council did not allocate any role for the EP at this stage. The members of the EP have struggled for a long time to get a say in the implementation procedures known as ‘comitology’. Normally, the EP has at least a co-decision power in formulating the rules: The EP and the Council





(using the Ordinary Legislative Procedure) “shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers” (Art. 291 (3) TFEU).

In the Interinstitutional Agreement (IIA) from December 2020<sup>24</sup>, the three institutions agreed on specific steps for the “cooperation on budgetary matters”. The formulations for the RRF demand a regular and full information by the Commission to the EP and Council. Moreover, the Regulation on the RRF itself establishes “a Recovery and Resilience dialogue” among the Union institutions, in particular between the European Parliament and the Commission: “The competent committee of the European Parliament may invite the Commission every two months to discuss the following matters” (Regulation 2021/241 Art. 26), followed by a list of all major steps and documents produced under the RRF. The result of this dialogue is however limited: “The Commission shall take into account any elements arising from the views expressed” (Regulation 2021/241 Art. 26(3)), envisaging some kind of suspensive veto at most: in cases of deviations “the institutions will jointly assess the matter with a view to finding common ground within three weeks of a request for a meeting” (Interinstitutional Agreement, Annex I, point 46). For the EP it obtained a new procedure “setting up a ‘constructive dialogue’ between Parliament

and Council on the basis of an assessment by the Commission in order to agree on the budgetary implications of any proposed new legal act on the basis of Article 122”<sup>25</sup>.

Further studies must evaluate whether this offer for a regular dialogue really improves the EP's weak power of being informed by the President of the Council (Art. 112 (2) TFEU). Compared to other rules such as the Ordinary Legislative Procedure and the annual budget procedure, the EP has not achieved a status near to co-decision powers.

### **Control Phase: a close set of detailed rules including the rule of law**

A fourth phase in the policy cycle is the control of the proper use of the allocated funds. The conclusions of the European Council and the Regulations have fixed a detailed set of rules for reporting, monitoring, evaluating and especially what the documents call “the protection of the financial interests of the Union” (Regulation 2021/241 Art. 22).

Obligations for reporting are fixed for the actors: Member States “should report twice a year in the context of the European semester” (Regulation 2021/241 Recital 58) and “the Commission shall provide an annual report [...] on the implementation of the Facility” (Regulation 2021/241 Recital 67).

As guardian of the rules, “the Commission shall monitor the implementation of the Facility and measure the achievements” (Regulation 2021/241 Art. 29(1)) and “Member States shall



report to the Commission on the common indicators” (for reporting on the progress) (Regulation 2021/241 Art. 29(5)). In order to improve the quality and transparency of the reporting, “the Commission shall establish a recovery and reliance scoreboard which shall display the progress of the implementation of the recovery and reliance plans in each of the six pillars” (Regulation 2021/241 Art. 30(1)).

For a longer-term feedback loop, “the Commission shall (three years after the entry) provide [...] an independent evaluation report (to which extent the objectives have been achieved) and by 31 December 2028 an independent ex post evaluation report (with a global assessment and its impact in the long term” (Regulation 2021/241 Art. 32(4)).

However, given that the final payments will be granted in 2026, more fundamental assessments of the impact of the payments might just come too late.

All documents stress the importance “to protect the financial interests of the Union [...] in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests” (Regulation 2021/241 Art. 22(1)).

The first offices responsible for these rules are national governments: “the Member States shall provide an effective and efficient internal control system” (Regulation 2021/241 Art. 22(1)). The list of respective obligations is long and detailed (Regulation 2021/241 Art. 22(2)). Beyond domestic controls by the national

governments themselves, also the Union’s institutions created for monitoring and controlling the Union budget, such as the Court of Auditors, the European Anti-Fraud Office (OLAF) or, where applicable, the European Public Prosecutor’s Office (EPPO), are explicitly authorized to exercise their usual rights also for the RRF.

One issue of fundamental importance for monitoring and control is the procedure concerning “individual breaches of the principles of the rule of law”<sup>26</sup>. In this case, “implementing powers should be conferred on the Council, which should act on the basis of a Commission proposal” within a period of one month (Regulation 2020/2092 Recital 20 and 23, Art. 6). It decides by qualified majority. However, before such a decision is taken, the Commission has to follow the rules and practices of infringement procedures, i.e. “inform the Member States concerned [...] and take the observations (of that state) into account”. For transparency reasons “the Commission should inform the European Parliament and the Council” (Regulation 2020/2092 Recital 21 and Art. 6)

After “the adoption of appropriate measures”, the Commission should regularly monitor the situation in the Member State concerned (Regulation 2020/2092 Recital 24).

Similar to the payments’ adoption (see above), the procedure envisages some kind of suspensive veto to a national government in the procedure for adopting and lifting the



measures: “if the Member States concerned considers that there are serious breaches of those principles, it may request the President of the European Council to refer the matter to the European Council”. In such exceptional cases, “no decision concerning the measures should be taken until the European Council has discussed the matter” (Regulation 2020/2092 Recital 26). The European Council will then aim to find “a common position on the matter” (EUCO 22/20, p.2). At first glance, this formulation leaves the decision-making rule within the European Council open. However, Art. 15 TEU postulates that “except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus”. In the conclusions of their meeting of 10 and 11 December 2020, the members of the European Council agreed on a set of formulations which offer a specific reading of the regulation. For some members, this position overrules the Regulation which had been adopted by a qualified majority in the Council against the votes of Hungary and Poland. Hungary’s Prime Minister Orbán declared the formulation as “unworkable”<sup>27</sup>. In March 2021, Poland and Hungary have challenged the rule of law provision at the European Court of Justice. For others as some members of the European Parliament, these formulations of the European Council are “superfluous”<sup>28</sup>. In any case, we expect that the enforcement of the rule of law conditionality will be politically difficult. The specific regulation and the

conclusions provide the European Council again with the role of highest Court of Appeal. Interesting for studying the inter-institutional balance of powers, the members of the European Council expect a judgement of the European Court of Justice on the principles of the Commission for the assessment of the breach of the rule of law. The EP is regularly and fully informed about the application of this rule, though it has no co-decision powers. National parliaments might also seek more leverage than presently granted to them.

### **Conclusion: topics on the research agenda**

The in-depth analysis of the RRF’s policy cycle has revealed that the consensus-driven decision-making within the European Council has led to highly complex and thus – at least for outsiders – untransparent governance structures, confirming our triple C approach.

As for an assessment of the rules, we need a closer analysis of the legal texts: do they confirm a common pattern of European governance structures that we identify as a mixture of what we generally call ‘supranational’ and ‘intergovernmental’ procedures? With her monopoly for initiative for submitting national plans and as guardian of credible commitments, the Commission receives additional power in core areas of the national welfare state. Following the traditional community method, Member States then take the final decision on adopting the Commission proposal with the possibility to



use qualified majority voting. However, the EP has no voice at that stage. Meanwhile, the procedures involving the EFC and the European Council as the highest instance or as a “Court of Appeal”, exhibit intergovernmental characteristics.

Another task for the academic world is to find reliable and valid methods to discover patterns of how the EU institutions, national governments and their administrations use these formal rules in the real world: A major challenge for outside observers is to get sufficient information about the patterns of decision-making behind closed doors. Even though the legal acts stress the importance of transparency (see Regulation 2021/241 Art.25), researchers do not have the opportunity to be a participant observer neither in the deliberations between the Commission and Member States nor in the EFC. Beyond the issue of getting reliable information, our studies might look at the logics and output of the policy cycle: Is the expectation that rules will be applied following a consensus culture falsified by the empirical evidence? Is the conventional wisdom of the typical behaviour of peer groups verified once again? Despite all powers given to the Commission, our operating experience with decision-making in the Union leads us to expect that the Member States will try to reach a broad consensus without always respecting the agreed criteria. We might observe that Member States subsidise politically attractive

projects to please their voters at the expense of necessary and demanded structural reforms. Following such a logic a mutual acceptance of cosmetic actions might lead to a weak economic impact of the RRF. Hence, collective irresponsibility might stabilise governments in power for a short time, but not the economic and social fabric of Member States.

The complexity of the procedures caused by compromises to get sufficient support runs the risk of reducing the effective implementation. This issue is thus not only a question of academic curiosity. Delays, non-compliances and/or compromises which do not serve the aims set by the legal acts might backfire for the Union.

Based on these findings, the academic community needs to conduct further research on the impact on the EU’s institutional architecture: do we observe a “sharing of sovereignty”<sup>29</sup>, a merging of competences and thus a vertical fusion of instruments between the national and European level? Do we witness new variations of inter-institutional balancing reinforcing a shared responsibility, or horizontal fusion, between the Commission and the Council<sup>30</sup>? For example, by comparing the (weak) powers granted to the EP for the RRF with other constitutional acts, further research must assess whether the EP was able to upgrade its role.

Linked to such an assessment we need to shed some more light on democratic legitimacy: using common indicators for a democratic



governance. How can we rate this set of rules for spending public money? We cannot discover any opportunity for a powerful control by the EP or national Parliaments. Thus, this new governance instrument has to be tested regarding its performance in view of an “output legitimacy”<sup>31</sup>.

For a longer-term theory-led perspective, the governance of legal words and in the real world offers ample evidence to test “grand theories of European integration”<sup>32</sup>.

A thorough academic analysis and assessment of the RRF procedures as put on paper and even more of the implementation by governments and administrations on the ground in their Member State is highly needed for understanding a highly significant and sensitive case of the Union’s policy making. Success or failure in the use of this governance tool will have a major impact on the Union’s reputation as a crisis manager and the member’s capacity to solve vital problems of a resilient welfare state.

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