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Next Generation Labour:
what the EU is asking to Italy and Spain

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1. *Foreword: the EU approach to conditionality*

There is no doubt that the European Union is in the habit of linking the disbursement of its structural and investment funds to “strict conditionalities”¹, consisting of systemic reforms in line with “sound economic governance”, i.e. with what has been undertaken at the European level within the common procedures for the coordination of national fiscal policies², and monitoring this through a system of sanctions allowing for the suspension of payments to the Member States that fail to take effective measures within the framework of the overall supranational macroeconomic priorities³.

¹ The expression was introduced in 2011, in Article 136.3 TFEU, about the granting of “any required financial assistance” by the forthcoming European Stability Mechanism (ESM). On this point, see PINELLI, “*Conditionality*”, in *MPEnc PubInt*, 2013, p. 1 ff.

² In this regard, see Article 23 of Regulation (EU) n. 1303/2013 of the European Parliament and of the Council of 17 December 2013 on the European Structural and Investment Funds designed as an instrument to promote cohesion in the European Union area, expressly headed “Measures linking effectiveness of ESI Funds to sound economic governance”.

³ For an analysis of the origins of macroeconomic conditionality, first established in the context of International Monetary Fund and World Bank interventions, see PINELLI, *Conditionality and Economic Constitutionalism in the Eurozone*, in *IJPL*, 2019, n. 1, p. 22 ff.

Indeed, such a *modus procedendi*, evocatively referred to as the “reform market”⁴, is now a constant practice in the development path of European integration, which has been fuelled, in recent years, especially during the restructuring of sovereign debts, which grew exponentially as a result of the 2008 financial crisis⁵.

It is therefore not surprising if this same paradigm applies today, once again, to the Next Generation EU (NGEU). That is to say, an exceptional temporary stimulus instrument that, with a total budget of no less than EUR 750 billion allocated under the Multiannual Financial Framework (MFF) for 2021–2027, aims at stemming the severe macroeconomic impact triggered by the Covid-19 pandemic, by providing European countries with the necessary resources to enable the stimulation of the real economy⁶.

As was to be expected, the modalities and criteria for the allocation of the resources contemplated by this programme of epoch-making proportions have, from the outset, attracted the interest of the constitutionalist doctrine, which, however, has mainly focused on one aspect, albeit of particular interest: Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. This is an unprecedented act, through which the European institutions, following a lively controversy between Poland and Hungary on the one hand and the rest of the Member States on the other, definitively agreed to make the disbursement of funds under the NGEU conditional on the respect of the rule of law in the various EU Countries⁷.

⁴ In this perspective SOMMA, *Il mercato delle riforme. Appunti per una storia critica dell'Unione europea*, in *MSCG*, 2018, n. 1, p. 167 ff., explicitly reasons about structural reforms imposed as a *quid pro quo* for financial assistance and directed towards a decisive alignment with neoliberal economic orthodoxy.

⁵ The literature on the Eurozone financial and economic crisis is endless. Studies that offer a comprehensive view of the effects induced by macroeconomic conditionality during this phase include: CRAIG, *Member States Economic Governance and the Euro Crisis: Constitutional Architecture and Constitutional Implications*, in ADAMS, FABBRINI, LAROCHE (eds.), *The Constitutionalization of European Budgetary Constraints*, Hart Publishing, 2014, p. 19 ff.; TUORI, TUORI, *The Eurozone Crisis. A Constitutional Analysis*, Cambridge University Press, 2014.

⁶ For further details see CHESSA, *La governance economica europea dalla moneta unica all'emergenza pandemica*, in *LD*, 2020, n. 3, p. 409 ff.

⁷ The breadth of the scholarship on the so-called rule of law conditionality, which today constitutes the most controversial but at the same time most defined application of conditionality, provides a measure of the relevance of the issue for public-sector doctrine. On this topic

Focusing predominantly on the so-called “rule of law conditionality” introduced by the aforementioned Regulation, however, another central aspect of European recovery has been neglected, essentially leaving it in the background: the conditional mechanism established by the Recovery and Resilience Facility, i.e. the key instrument of the NGEU.

Nevertheless, the concept and the mechanism of conditionality also arouses the interest of labor-law doctrine when it is related to the social policies of each Member State.

In fact, cohesion and social progress are two of the objectives of the European Union⁸. As such, and even though social policies are essentially national competences, the EU has, over the course of European integration, developed a set of instruments in the social field (financial support, European legislation, and mechanisms to coordinate national policies), which makes it possible to refer to a “Social Europe”. The latter involves a “social *acquis*”⁹ which has, over several decades, supported a process of convergence between Member States and been fundamental to the simultaneous pursuit both of economic progress on the one hand and of social progress and cohesion on the other¹⁰.

In this context, one of the most significant tools arranged by the EU is the so-called horizontal social clause¹¹ contained in Article 9¹² of the Treaty

in the most recent Italian debate see, at least: BUZZACCHI, *Le condizionalità finanziarie a salvaguardia dello Stato di diritto, o il rule of law a protezione del bilancio?*, in *D&C*, 4 aprile 2022. As for the two judgments of 16 February 2022, the first in Case C-156/21, rendered on the action brought on 11 March 2021 by Hungary against the European Parliament and the Council, and the second in Case C-157/21, rendered on the action brought on 11 March 2021 by the Republic of Poland against the European Parliament and the Council, through which the Court of Justice of the European Union (CJEU), sitting in plenary session, dismissed both actions seeking the annulment of Regulation (EU) 2020/2092 on the rule of law, we refer, among the very first comments, to BARTOLE, FARAGUNA, *La condizionalità nell’Unione, i carrarmati fuori dell’Unione*, in *RDCompar*, 17 March 2022.

⁸ See Article 3 of the Treaty on the European Union.

⁹ For a first account of the development of the social *acquis* in Europe, see EC, *The EU Social Acquis*, SWD(2016) 50 final, March 2016.

¹⁰ On this topic see FERNANDES, RINALDI, *Is there such a thing as “Social Europe”?*, in *RevPP*, Special Issue “*L’Europe dans la tourmente*”, April-June 2016, n. 1079.

¹¹ For the analysis of the Art. 9 TFEU and the possible applications of the horizontal social clause introduced by the Lisbon Treaty, with particular references to social and economic mainstreaming and the European Impact Assessment see FERRARA, *L’integrazione europea attraverso il “social test”: la clausola sociale orizzontale e le sue possibili applicazioni*, in *RGL*, 2013, n. 2, p. 295 ff.

¹² “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of

on the Functioning of the EU, which obliges EU, already since December 2009, to ensure that in all its activities certain social principles are reflected. Although in the 2009 a significant potential was attributed to this new Treaty provision, looking back at the post-Lisbon EU developments, Commission's documents and decisions of the EU Court of Justice, it's clear that the horizontal social clause has not changed the EU as hoped.

No one can argue that from the beginning, and especially right after, the pandemic, the EU is, indeed, still suffering from the same "social deficit" for which the European left and the unions has been criticizing it in the pre-Lisbon period and which is depriving it of the support of EU citizens¹³.

It should also be pointed out that the so-called horizontal social clause of Article 9 TFEU, along with other provisions of primary Euro-Unitarian law, constitute a development, and not an alteration, of the premises on which European construction was conceived and proposed, and that the biunivocal overlap between economically sustainable development and the strengthening of the social dimension constitutes an indefectible postulate¹⁴ especially in a period of economic crisis such as the one currently ongoing, caused by the pandemic of Covid-19.

This paper will therefore attempt to highlight two profiles of significant importance: *in primis*, it will try to trace the content of the specific constraints to which the granting of financial aid is subject. In this way, it will be possible to identify the overall reference framework of European economic support action and verify the concrete attitude of the relations between national and supranational attributions in the current post-emergency juncture: to question the thesis of the Union's meddling in national political, institutional and social structures¹⁵, with the consequent *de facto* "receivership" of the

adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health".

¹³ See ŠMEJKAL, *The horizontal social clause of art 9 TFEU and its potential to push the EU towards social Europe*, in *Prague WP*, 2016, vol. III, n. 1, p. 1 ff.

¹⁴ BALDUZZI, *Unione europea e diritti sociali: per una nuova sinergia tra Europa del diritto ed Europa della politica*, in *FederIT*, 2018, Special Issue 4, p. 245.

¹⁵ This is argued, for example, by SALMONI, *Piano Marshall, Recovery Fund e il containment americano verso la Cina. Condizionalità, debito e potere*, in *CostIT*, 2021, n. 2, p. 80, according to whom the impressive number and wide scope of conditionalities to which European financial assistance is subject could "lead to a sort of structural homologation of the Member States, possibly even to a significant change in their form of state and government".

Countries receiving financial assistance, which, although it has appeared in the limited scholarly debate that has developed on the subject, appears mostly distant from the real dynamics of Euro-national recovery¹⁶.

Secondly, starting from the agenda of the European Pillar of Social Rights, the paper will focus on the content of the NGEU with specific reference to the social policies: the goal is, in fact, to identify and cross-cuttingly analyze the constraints, targets and milestones that characterize the new EU's social policies arranged in response to the Covid-19 pandemic.

In order to do so, a comparative analysis will be made between Italy and Spain, two of the Member States that were found to be among the biggest beneficiaries of the funds prepared by the European Union to cope with the crisis, identifying the differences and the identities that characterize the two countries in terms of social policies.

2. *The Recovery and Resilience Facility*

The largest part of the financial contributions allocated under the NGEU will be distributed by the aforementioned Recovery and Resilience Facility (RRF), whose total endowment, fed through the issuance of special European bonds¹⁷, amounts to EUR 672.5 billion, broken down as follows: EUR 312.5 billion in grants and EUR 360 billion in loans at subsidised rates to be repaid.

To understand the functioning of this exceptionally far-reaching instrument, it is crucial to start from its legal basis, namely Regulation (EU) 2021/241. This is an act of the European Parliament and the Council, approved on 12 February 2021, based on which the various EU Countries that

¹⁶ See the analyses by DANI, MENÉNDEZ, *Recovery Fund: dietro i sussidi il commissariamento?*, in *CostiINFO*, 25 July 2020; SOMMA, *Commissariare il parlamento. Il piano nazionale di ripresa e resilienza e le sue condizionalità (parte I)*, in *La fionda*, 11 October 2021.

¹⁷ In this context, the new Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, having authorised the European Commission to borrow exceptionally on the capital markets up to EUR 750 billion, has been the key pivot for the financing of the strategy adopted by the European Union to overcome the pandemic crisis. On this subject, see the contribution by BONINI, *Il Bundesverfassungsgericht tedesco e la legge federale di ratifica della "Decisione sulle Risorse Proprie" dell'Unione europea: ancora una volta, una pronuncia problematica nel nome del sindacato sugli atti ultra vires?*, in *DPCE online*, 2021, n. 1, p. 2759 ff.

have requested supranational assistance have been called upon to prepare and implement – over six years, from 2021 to 2026 – ambitious packages of structural investments as well as of legal reforms: the National Recovery and Resilience Plans (NRRPs or Recovery Plans)¹⁸.

The Regulation in question represents, in essence, a “framework law containing the fundamental principles and coordinates” that the beneficiary States must follow to obtain the disbursement of considerable sums of European money¹⁹. It is, therefore, appropriate to dwell on the main prescriptions contained in the Recovery and Resilience Facility which, as we shall see more analytically below, impose strict conditionalities on the countries of the Union, which can essentially be subdivided according to two different timeframes:

i) *ex ante* conditionality, concerning the stage of elaboration of national Recovery Plans;

ii) *in itinere* conditionality, about the implementation of what was previously planned²⁰.

3. Ex ante conditionality

Starting from the analysis of the *ex ante* conditionality, i.e. the European context that formed the backdrop to the process of writing the NRRPs, it should first be noted that the conception phase of these National Plans, whose structural reforms are conceived as a counterpart for financial assistance, undoubtedly intersected with the functioning of EU governance, and was inevitably influenced by the guidelines emanating from the latter²¹.

In fact, on 17 September 2020, the European Commission released the

¹⁸ A lively doctrinal debate is developing on National Recovery and Resilience Plans. Among the many contributions already published, limiting ourselves to the literature in Italian, we would like to mention: CLARICH, *Il PNRR tra diritto europeo e nazionale: un tentativo di inquadramento giuridico*, in *Astrid*, 2021, n. 12, p. 1 ff.; STAIANO, *Il Piano Nazionale di Ripresa e Resilienza guardato da Sud*, in *FederIT*, 2021, n. 14, p. iv ff.

¹⁹ SCIORTINO, *PNRR e riflessi sulla forma di governo italiana. Un ritorno all'indirizzo politico "normativo"?*, in *FederIT*, 2021, n. 18, p. 236.

²⁰ BARAGGIA, BONELLI, *Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges*, in *GermLJ*, 2022, n. 23, pp. 154-155.

²¹ See SOMMA, *L'Europa tra momento hamiltoniano e momento Polanyi*, in *Nomos*, 2021, n. 1, p. 3.

first guidelines for the preparation of Recovery Plans, which were followed, on 21 December 2020, by the publication of some sectoral guidance models to assist the various countries in the drafting of their Recovery Plans, in compliance with the European provisions on State aid²². Subsequently, on 12 February 2021, the aforementioned Regulation establishing the Recovery and Resilience Facility was approved. Precisely for this reason, in January 2021, the European Commission intervened again by updating the previous version of the guidelines to align it with the text of the agreement on the proposed Regulation²³.

In particular, Art. 18 RRF provided that the National Plans had to be duly justified through a meticulous series of explanations from which the coherence of “milestones” (goals, qualitative), “targets” (objectives, quantitative), and “timetable” (indicative calendar) both with the European priorities contemplated in the six pillars of the Recovery and Resilience Facility itself – among which the green economy and digitalisation stand out – and with the Country Specific Recommendations (CSRs) expressed, within the framework of the European Semester, by the Council on a proposal by the European Commission in 2019 and 2020²⁴. These are therefore a sort of *ad hoc* constraints addressed to the individual States of the Union²⁵ which, to Italy, impose, among other measures, to:

- “pursue fiscal policies aimed at achieving prudent medium-term fiscal positions and ensuring debt sustainability”²⁶;
- “enhance coordination between national and regional authorities”²⁷;
- “improve the efficiency of the judicial system and the effectiveness of public administration”²⁸;
- “address restrictions to competition, particularly in the retail sector and in business services, also through a new annual competition law”²⁹.

²² EC, *Staff Working Document, SWD (2020) 205 final*, 17 September 2020.

²³ EC, *Staff Working Document, SWD (2021) 12 final*, 22 January 2021.

²⁴ RIVOCCHETTI, *Il bilancio nel diritto pubblico italiano*, in *Nomos*, 2020, n. 3, p. 32.

²⁵ Also called “Country Specific Conditionalities”. In this sense, see SALMONI, *Recovery fund, condizionalità e debito pubblico. La grande illusione*, Cedam, Padova, 2021, p. 46.

²⁶ CoEU, *Recommendation of 20 July 2020 on the 2020 National Reform Programme of Italy and delivering a Council opinion on the 2020 Stability Programme of Italy*, 2020/C 282/12, 26 August 2020, point 1.

²⁷ CoEU, *cit.*, point 1.

²⁸ CoEU, *cit.*, point 4.

²⁹ CoEU, *cit.*, point 3.

In a nutshell, in the light of all these “set rhymes” dictated by the supranational level, with which the financially assisted countries would, in any case, have had to comply to access European economic resources, it can be seen that the national margin for manoeuvre in the writing of Recovery Plans was, from the outset, considerably circumscribed³⁰.

4. *In itinere conditionality*

Having briefly described the conditionalities conceived as “prodromal” for the elaboration of the various Recovery Plans, it is now necessary to analyze the specific *in itinere* conditionalities, i.e. those related to the subsequent implementation phase of the National Recovery Plans.

In this regard, while the economically assisted States undoubtedly did not enjoy complete freedom in drawing up their NRRPs, insofar as the basic outlines of their recovery policies were already substantially pre-determined by the supranational level, it can be preliminarily noted that substantially similar considerations also apply to the implementation of what was planned, which is mostly governed at the European level³¹.

The “key player” in the entire NRRPs enforcement process is the European Commission, which plays a crucial role in the disbursement of EU resources³². In particular, the European Commission, with the help of the Economic and Financial Committee, is responsible for thoroughly verifying the “satisfactory fulfilment” of the commitments made by the various ben-

³⁰ See LUPPO, *La delega legislativa come strumento di coordinamento dell'attività normativa di Governo e Parlamento: le lezioni che si possono trarre dalla legge n. 421 del 1992 (anche ai fini dell'attuazione del PNRR)*, in *AmmCam*, 5 January 2022, p. 11, who reflects on the European guidelines, conceived as an obligatory point of reference for the conception of national Recovery Plans, pointing out that these and, above all, the Country Specific Recommendations “certainly do not represent blinkered indications coming from the “Brussels bureaucrats”, but rather express political guidelines that any government with common sense and not the victim of crossed vetoes should pursue with conviction, in the name of the national interest and the very competitiveness of the European common market”.

³¹ BILANCIA, *Indirizzo politico e nuove forme di intervento pubblico nell'economia in attuazione del Recovery and Resilience Facility, tra concorrenza e nuove politiche pubbliche*, in *CostIT*, 2022, n. 1, p. 1 ff.

³² See also DE MINICO, *Il Piano nazionale di ripresa e resilienza. Una terra promessa*, in *CostIT*, 2021, n. 2, p. 115.

eficiary States, to which the disbursement of financial aid is linked on a six-monthly basis (Art. 24(3) RRF).

In this context of constant monitoring, the European Commission also has the possibility of activating, independently or together with the Council, a sort of “sanctioning mechanism”³³ resulting in the partial or total suspension of commitments and payments, not only in the hypothesis that the country has failed to meet the aforementioned milestones and targets (Art. 24, par. 6, RRF), but also in the hypothesis that it has violated the requirements of the European rules on “sound economic governance” (Art. 10 RRF)³⁴. In fact, the Recovery and Resilience Facility operates a close link between the RRF and the fiscal rules introduced since the Maastricht Treaty and the subsequent Stability and Growth Pact (SGP), making European disbursements conditional upon the adoption of appropriate corrective actions for any excessive deficits or imbalances³⁵.

In short, concerning the *in itinere* conditionalities to which financial assistance is subject, there is no doubt that they are numerous and penetrating, a clear sign of the growing presence of the European Union within the constitutional architecture of the Member States³⁶. In this sense, the vastness of the action covered by the Recovery and Resilience Facility, although it does not exhaust the entire decision-making activity that the public authorities will be able to put in place from now until 2026, is undoubtedly such as to

³³ On the articulated sanctioning procedure introduced by the Recovery and Resilience Facility, such as to confer a high coefficient of compulsoriness to the European conditionalities, see DE SENA, D’ACUNTO, *Il doppio mito: sulla (pretesa) neutralità della politica monetaria della BCE e la (pretesa) nonvincolatività degli indirizzi di politica economica dell’Unione*, in *CostIT*, 2020, n. 3, p. 148.

³⁴ In this respect, Art. 24 RRF, dedicated to “Rules on payments, suspension and termination of agreements regarding financial contributions and loans”, stipulates that failure to meet the mentioned milestones and targets may even lead to the termination of the agreements concluded between the European Commission and the beneficiary State, as well as to the full recovery of the funding granted by the European Union.

³⁵ See, in particular, Art. 10 RRF, under the heading “Measures linking the Facility to sound economic governance”. On European fiscal rules the literature is endless. See at least: RIVOSACCHI, *L’indirizzo politico finanziario tra Costituzione italiana e vincoli europei*, Cedam, 2007; CHESSA, *La costituzione della moneta. Concorrenza, indipendenza della banca centrale, pareggio di bilancio*, Jovene, 2016.

³⁶ SALMONI, *Piano Marshall, Recovery*, cit., p. 69. In a similar perspective, see also: SOMMA, *Il mercato delle riforme. Come l’Europa è divenuta un dispositivo neoliberale irrimediabile*, in MOSTACCI, SOMMA (eds.), *Dopo le crisi. Dialoghi sul futuro dell’Europa*, Rogas, 2021, p. 236 ff.

influence a very broad spectrum of domestic policies, occupying a very dense timetable, where almost everything is already significantly conditioned³⁷.

5. *The Next Generation EU: towards a (new?) social Europe*

Having explained, albeit briefly, the articulated conditionality mechanism used by the European Union, it now seems appropriate to focus on the path taken by the Union regarding social policies.

A preliminary remark is necessary: the creation of a “Social Europe” was not a priority at the outset of the European project. The founding fathers considered that social progress would result from the economic progress brought about by the creation of the common market. The European Economic Community (EEC) was therefore created to focus on economic openness, whilst Member States would remain responsible for the development of their welfare states³⁸.

However, this assumption does not deny that from Maastricht onwards, via Amsterdam, Nice, the second and less successful Treaty of Rome and, finally, Lisbon, the evolution of primary European Union law has shown a rise in the “rank” of the recognition of the Union’s social objectives and, thanks to the inclusion of the Charter of Nice in the body of the Treaties, of the correlative “solidarity rights”³⁹, nor that the progressive construction of a more political Union has certainly also brought with it the ambition for a more social Europe⁴⁰.

On the other hand, this means that in the founding spirit of European integration, the economic and social dimensions are understood to be inextricably intertwined, and therefore the Lisbon formula of the “highly com-

³⁷ LUPPO, *Il Piano Nazionale di Ripresa e Resilienza (PNRR) e alcune prospettive di ricerca per i costituzionalisti*, in *FederIT*, 2022, n. 1, p. v.

³⁸ See FERNANDES, RINALDI, *Is there such*, cit. p. 1.

³⁹ CIANCIO, *All’origine dell’interesse dell’Unione europea per i diritti sociali*, in *FederIT*, n. 13, 2016, p. 1 ff.; DE SCHUTTER, *La Carta sociale europea nel contesto dell’attuazione della Carte dei diritti fondamentali dell’Unione europea. Studio per la Commissione Afco*, Parlamento europeo, Direzione generale politiche interne, 2016 (available on <http://www.europarl.europa.eu/committees/it/-studies.html>).

⁴⁰ PATRONI, GRIFFI, *Ragioni e radici dell’Europa sociale: frammenti di un discorso sui rischi del futuro dell’Unione*, in *FederIT*, 2018, n. 4, p. 33 ff.

petitive social market economy” (Art. 3 TEU) is to be welcomed as an acknowledgement and an explanatory clarification of an *acquis* already acquired⁴¹.

Nevertheless, in recent years, some more concrete actions for strengthening the social foundations of the Union have been taken by the “European Pillar of Social Rights” (EPSR)⁴². In fact, the opportunity to implement its principles has also been recalled in recent times, identifying its action guidelines as an essential component for deepening the European social dimension⁴³. It is true that the Social Pillar does not have binding force for the Member States, and therefore it runs the risk of failing to guarantee the legal effectiveness of those rights that it emphatically proclaims⁴⁴; however, it constitutes a valid programmatic basis to initiate a process of recomposition of rights between national experiences characterized by strong social differences, moving along the axis of fundamental labour and welfare protections. It is no coincidence that, in the experience following its approval, the vitality of the Social Pillar has been far more intense than expected: the integration of its objectives within the procedures of the European Semester, for instance, has made possible to launch numerous activities aimed at measuring the performance of individual States also based on indicators of a social nature⁴⁵.

⁴¹ BALDUZZI, *cit.*, p. 246.

⁴² The EPSR was endorsed in Göteborg, on 17th November 2017, following the joint proclamation by the European Parliament, the Council and the Commission. It was preceded by a number of documents in which the EU institutions emphasized the importance of transparency in decision-making processes, both from the point of view of recovering political consensus in the face of the abuse of the intergovernmental method outside the law of the Treaties, and as an axiological indication for their own work, in order to not allow themselves to be carried away by the ideological contrapositions that emerge in the European Council, where the different economic weight of the Member States is highlighted. On this topic see KILPATRICK, *Social Europe via EMU: sovereign debt, the European semester and the European pillar of social rights*, in *DLRI*, 2018, p. 737 ff.; SIKEL, *Dove porta il Pilastro europeo dei diritti sociali*, in *WP FES Italia*, 2018, p. 1 ff.

⁴³ PITRONE, *La crisi sociale dopo quella sanitaria da Covid-19. È possibile ripartire dal pilastro europeo dei diritti sociali?*, in *IusII*, 28.4.2020; SCIARRA, *European Social Policy in the Covid-19 Crisis*, in *IACL-IADC Blog*, 14.5.2020.

⁴⁴ RATTI, *Il pilastro europeo per i diritti sociali nel processo di rifondazione dell'Europa sociale*, in FERRARA, CHIAROMONTE (ed.), *Bisogni sociali e tecniche di tutela giuslavoristiche*, Milano, 2018, p. 7 ff.; GIUBBONI, *Oltre il Pilastro europeo dei diritti sociali. Per un nuovo riformismo sociale in Europa*, in BRONZINI (ed.), *Verso un Pilastro Sociale europeo*, Roma, 2018, p. 15 ff.

⁴⁵ MACCABIANI, *Il duplice “stress test” del Pilastro europeo dei diritti sociali nell'UEM in via di completamento: nuove iniziative, vecchie questioni*, in *FederIT*, n. 24, 2018, p. 1 ff.

And it is precisely from the EPSR that the NGEU and thus the Recovery and Resilience Facility (RRF) take their cue for the relaunch of Europe from a social perspective⁴⁶.

As previously mentioned, the instrument of RRF is structured in six pillars, deemed as key to achieving recovery from the Covid-19 crisis and to enhancing the long-term resilience of the EU and of its Member States: a) green transition; b) digital transformation; c) smart, sustainable and inclusive growth; d) social and territorial cohesion; e) health, and economic, social and institutional resilience; and f) policies for the next generation, children and youth.

At least three pillars are particularly relevant to social policy goals. Regarding the social and territorial cohesion pillar, reforms and investments should contribute – among others – to fighting poverty and tackling unemployment, leading to the creation of high-quality and stable jobs, the inclusion and integration of disadvantaged groups, and should enable the enforcement of social dialogue, infrastructure, and services, as well as of social protection and welfare systems⁴⁷. Reforms and investments in health, and economic, social, and institutional resilience, should aim – among others – to increase crisis preparedness and crisis response capacity, by improving the accessibility and capacity of health and care systems⁴⁸. Finally, reforms and investments related to the pillar next generation, children and youth are considered as essential to promote education and skills, including digital skills, up-skilling, reskilling and requalification of the active labour force, integration programmes for the unemployed; investment in access and opportunity for children and young people related to education, health, nutrition, jobs,

⁴⁶ In fact, in the Commission's view the recovery and transition process should be "fair for all Europeans [...] to prevent growing inequalities, ensure support from all parts of the society and contribute to social, economic and territorial cohesion". Thus, in defining their responses to the crisis, the Member States were invited "to factor in" the need to ensure a just and socially fair transition and to adopt measures ensuring equal opportunities, inclusive education, fair working conditions and adequate social protection "in the light of the European Pillar of Social Rights"; see Communication EC (2020) *Annual Sustainable Growth Strategy 2021*, COM(2020) 575 final, 17 September 2020.

⁴⁷ Reg. 2021/241 of 12 February 2021 establishing the Recovery and Resilience Facility, recital 14. See also CENTURELLI, *Verso un futuro migliore: azioni nazionali ed europee sulla politica di coesione per riparare il tessuto sociale, disattivare gli squilibri causati dalla crisi Covid-19 e rilanciare l'economia*, in *RGM*, 2020, n. 3-4, p. 732 ff.

⁴⁸ Reg. 2021/241, recital 15.

and housing; and policies that bridge the generational gap⁴⁹. These actions should ensure that the youngest segments of the population are not permanently affected by the impact of the Covid-19 crisis and that the generational gap is not further deepened⁵⁰.

It emerges that the social issues are addressed in the documents related to the RRF in two ways: first of all, there is an explicit focus on specific target groups and social policy areas; secondly, there is a more generic (even if reiterated) request for full implementation of the principles and rights of the European Pillar of Social Rights⁵¹.

Indeed, *in primis*, emphasis is placed on target groups such as children, young people, women and vulnerable groups, and frequent mention is made of several social policy areas – such as education and skills development, active labour market policies, the promotion of quality employment, healthcare, housing, and the promotion of gender equality and equal opportunities. In particular, the objectives of the promotion of gender equality and equal opportunities for all are to be mainstreamed in the NRRPs, and the Member States should provide an explanation of how the measures included in their plans will contribute to those objectives⁵².

Second of all, the overall requirement is that the national Recovery and Resilience Plans should contribute to the implementation of the EPSR, i.e. also taking into account principles and policy areas not explicitly mentioned in the RRF Regulation. In this respect, the Member States are asked to explain how their NRRPs (and specific components of those plans) would contribute to the implementation of the Pillar and, while reporting on the expected impact of the NRRPs, they are requested to use the indicators of the EPSR's Social Scoreboard. The contribution of the NRRPs to the implementation of the EPSR is indeed one of the criteria to be used by the Commission for the assessment of the plans⁵³.

⁴⁹ See DELFINO, *Social Europe in times of crises: what lessons can be gleaned from the past?*, in *ILLJ*, 2022, vol. 15, n. 1, p. 136.

⁵⁰ Reg. 2021/241, recital 16.

⁵¹ SABATO, MANDELLI, VANHERCKE, *The socio-ecological dimension of EU Recovery: From the European Green Deal to the Recovery and Resilience Facility*, in *EuroSoc*, 2021, n. 24, p. 40 ff.

⁵² Reg. 2021/241, article 18.4 (o); EC, *Guidance to Member States Recovery and Resilience Plans, Commission Staff Working Document, PART 1/2, SWD(2021) 12 final*, 22 January 2021, points 10–11.

⁵³ Reg. 2021/241, recital 42 and art. 19c.

In conclusion, the EPSR and its Social Scoreboard constitute a very important element, because they are expected to act as a sort of benchmark to assess the social consequences of reforms and investments planned by the RRF and implemented by the NRRPs⁵⁴.

6. *The more you get, the more is asked. What's expected from Italy and Spain from a social point of view*

In order to better understand the concrete enforcement of the provisions of the RRF on social policies, it seems useful to focus in comparative terms on Italy and Spain for two reasons: first of all, both countries were among the States most severely affected by the pandemic and its disastrous social and economic consequences⁵⁵ (a factor that, as already mentioned, led them to be among the Member States receiving the most funds)⁵⁶; secondly, even during the pre-pandemic period, both countries were in a situation of weak economic recovery after the strong economic crises of the previous years⁵⁷.

In this context, the NGEU, and each NRRPs, are a milestone on the way to a more integrated EU. Indeed, the financial assistance provided by the European institutions represents a golden opportunity, not only to invest in the areas most affected by the pandemic⁵⁸, but perhaps more importantly,

⁵⁴ See GUARRIELLO, *Da una crisi all'altra, il risveglio dell'Europa sociale*, in *DLM*, 2022, n. 1, p. 16.

⁵⁵ BAYLOS GRAU, *Emergencia sanitaria, legislación laboral de crisis y diálogo social*, in *RMTEC*, 2021, n. 149, pp. 15-36.

⁵⁶ VANHERCKE, SPASOVA (ed.), *Social policy in the European Union: state of play 2021. Dealing with the pandemic: re-emerging social ambitions as the EU recovers. Twenty second annual report*, European Trade Union Institute (ETUI) and European Social Observatory (OSE), 2022, p. 149 ff.

⁵⁷ In these terms, BRAUN, RÜRUP, SCHILDBERG, *Europe's South on the path to recovery?*, in *IntPS*, 14th June 2021, p. 1 ff.

⁵⁸ In terms of policy areas, the two countries show different priorities. The Italian plan focuses (35 per cent of total social spending) largely on general education policies. Particularly significant is the investment in health-care infrastructure (30 per cent) and in urban regeneration and social housing (20 per cent). Spain, instead, prioritizes investments in social infrastructure and housing (33 per cent of the entire social envelope), followed by adult learning (19 per cent) and general education policies (14 per cent). In these terms, see CORTI, LISCAI, RUIZ, *The Recovery and Resilience Facility: boosting investment in social infrastructure in Europe?*, in *ILLJ*, 2022, vol. 15, n. 1, p. 25.

to target prevailing deficiencies in the countries' economy and make it more resilient to future threats⁵⁹.

The Italian plan is divided into six missions and 16 components and includes a total of 190 measures, of which 132 are investments and 58 are reforms. It is, therefore, a very ambitious plan that intends to address, in line with the CSRs, the structural weaknesses of the Italian economy, accompanying, at the same time, the country along the path of ecological transition and helping to foster social inclusion and reduce territorial disparities, with the indication of three transversal priorities: women, youth and the South⁶⁰.

As for Spain, instead, the recovery plan is all about the bottom line⁶¹. It has set itself the task of transforming the economic model – a project that has been discussed in Spain for a long time – as well as the ecological transformation to combat climate change, the digitalization of government services, making the economy and society fit for the 21st century, the advancement of women to achieve gender equality and the social cohesion of society⁶². In addition to the four guiding objectives (ecological transformation, digital transition, social/regional cohesion, and gender equality), the plan defines 10 policy areas and 30 projects to boost economic growth, which include 211 measures, of which 102 are reforms and 109 are investments⁶³. The emphasis on social equality and social cohesion as one of the four guiding objectives is a unique feature of the Spanish plan.

Specifically, from the social policies point of view, the Italian plan has been appreciated for the emphasis it places on social and territorial cohesion, which is pursued by introducing measures and tools to support the most

⁵⁹ See ARANGUIZ, *National Recovery and Resilience Plan: Spain*, in *ILLJ*, 2022, vol. 15, n. 1, p. 1 ff.

⁶⁰ The Italian Government and the European Commission have agreed on 525 milestones and targets: the targets are concentrated in the first two years and concern the introduction of new legislation and measures to initiate the various investments (tenders, activation of recruitment platforms, etc.). Targets, on the other hand, prevail from the end of 2023 and can be: intermediate/final indicators of the progress of a work or result indicators of an intervention.

⁶¹ BRAUN, RÜRUP, SCHILDBERG, *cit.*, p. 3.

⁶² BAYLOS GRAU, *Un primo approccio alla riforma del lavoro spagnola*, in *DLRI*, 2022, vol. 174, n. 2, pp. 225–246. See also BAYLOS GRAU, *La reforma laboral en España: primeras impresiones*, in *DLab*, 2021, 282, p. 295 ff.

⁶³ DI DOMENICO, CATALDI, DE CRESCENZO, *Un confronto tra i piani nazionali di ripresa e resilienza (PNRR) di sei paesi europei, con focus sulle politiche di genere*, in *NT-MEF*, 2021, n. 1, p. 23 ff.

vulnerable groups, especially women, young people, and the population of southern Italy, by strengthening the education sector and by acting to reduce territorial gaps also through investments in physical capital⁶⁴.

The Spanish plan also received a positive assessment, particularly developing the green and digital, the social and territorial cohesion and the equal opportunities pillars. Indeed, more than half of the plan's components contribute to social and territorial cohesion with measures in education, social housing, social services, active labour market policies, also with a view to closing regional gaps⁶⁵. The economic growth is driven by actions to support the country's productivity and competitiveness, such as removing barriers to investment and incentivizing innovation, labour market efficiency and reforming the education system⁶⁶. Specific measures are geared towards improving the social protection system by intervening in the unemployment assistance scheme and the family benefit system, in order to reduce child poverty and through the full implementation of the national minimum income scheme adopted in 2020. Furthermore, active labour market policies, reinforcement of training and reviewing hiring incentives are geared towards improving the functioning of the labour market⁶⁷.

A theme common to Spain and Italy is the reference in the Recommendations to the sustainability of the pension system. On this aspect, however, the approaches differ: Italy confirmed in the NRRP the 2021 deadline for the "Quota 100" measure⁶⁸ and does not include further measures in the Plan, although there is an ongoing discussion between the government and social partners on a pension reform; Spain, on the other hand, announced a

⁶⁴ The Italian plan aims at reducing the North-South territorial gaps, also through investments in infrastructures (broadband, high-speed, waste, water resources, ports, last-mile connections) in the southern areas and, in order to do so, the 40% of the Italian plan's resources are earmarked for the South. On this topic see GAROFALO, *Gli interventi sul mercato del lavoro nel prima del PNRR*, in *DRI*, 2022, n. 1, p. 114 ff.

⁶⁵ See BAYLOS GRAU, *Presentación: Acuerdo social y reforma laboral*, in *RMTEC*, 2022, n. 152, pp. 9-17.

⁶⁶ HEILMANN, PATULEIA, REITZENSTEIN, *Green Recovery Tracker Report: Spain*, Wuppertal Institute, E3G, Berlin, 29th April 2021, p. 3 ff.

⁶⁷ ESADEECPOL – CENTRE FOR ECONOMIC POLICY, *Next Generation EU: For a True Country Plan*, in *Esade*, 28th June 2021.

⁶⁸ CSR1 2019 called for "fully implementing past pension reforms in order to reduce the burden of old age pensions on public expenditure". EC, *Staff Working Document*, SWD(2019), 1011 final, 27th 2019.

comprehensive reform of the pension system, the impact of which on public finances and system sustainability is still uncertain⁶⁹.

On the labour market, the Recommendations for Italy and Spain highlight the need to reduce the unemployment rate and increase labour market participation. In response, both countries invest significant resources in this regard (around RRF 6 billion for both) and plan to strengthen active and passive labour policies⁷⁰. More specifically, the Italian plan includes measures introducing a comprehensive and integrated reform of active labour market and vocational training policies, defining, in close coordination with the Regions, the essential levels of training for the most vulnerable groups. The reinforcement of active labour market policies and the improvement of capacity building of public employment services, including their integration with education and training providers and private operators, aims at increasing the effectiveness of the services offered⁷¹. Furthermore, the measures under this component aim to reduce social vulnerabilities to shocks, by focusing on undeclared work in all its forms and in all sectors, by outlining initiatives for more effective controls and sanctions together with stronger incentives to work legally. This component also promotes gender equality (e.g. equal pay) and female entrepreneurship.

Spain aims to reduce the unemployment rate, especially youth unemployment⁷². To this end, the reforms contained in the plan aim to simplify contractual arrangements by reducing exceptions to open-ended contracts. Building on the experience of short-time work programmes, the reforms will also seek to preserve employment through the introduction of a flexibility and stabilization mechanism that will provide firms with the tools to cope with adjustments without job destruction and should retrain and up-

⁶⁹ On this topic see NATALI, TERLIZZI, *The Impact of COVID-19 on the future of pensions in the EU*, Expert study for the project SociAll, CES, 2021.

⁷⁰ CORTI, NÚÑEZ FERRER, RUIZ DE LA OSSA, REGAZZONI, *Comparing and assessing recovery and resilience plans. Italy, Germany, Spain, France, Portugal and Slovakia*, in CEPS RRRP, 2021, n. 5, p. 3 ff.

⁷¹ For a thorough analysis of how the adoption of the Italian plan has impacted on the still troubled political landscape, but also how the Italian institutions have managed to allocate funding efficiently by providing, among other things, unprecedented financial and structural support for social and labour market policies, see ALES, *National Recovery and Resilience Plan: Italy*, in *ILLJ*, 2022, vol. 15, n. 1, p. 1 ff.

⁷² ARANGUIZ, *cit.*, p. 7.

grade workers and thus facilitate job transitions⁷³. Moreover, the active labour market policies will be strengthened, including through a reform of recruitment incentives.

It is very clear that the NRRPs put a strong emphasis on efforts towards advancing in the labour and social dimension, with significant investments and reforms in various areas⁷⁴. Some of the main concerns posed by previous CSRs are addressed by some of these reforms, particularly regarding temporary employment and (youth) unemployment (especially in Spain)⁷⁵. At the same time, virtually all the principles of the EPSR have been translated into implementing actions in the Italian and Spanish RRP. More transversal changes, including the efficiency of the public administration, the tax system and employment services are also an important part of the plans. No less importantly, the two main axes of the plans, the green and digital transitions, are also expected to boost the economy in a sustainable and inclusive manner (for example by improving the (social) housing market and the population's digital skills), which should also bring a positive outcome to the social and labour dimensions⁷⁶.

Moreover, the positive involvement of the social partners⁷⁷ in the plan-

⁷³ In this regard, an interesting analysis focusing on the Italian RRP is provided in TASSINARI, *Labour market policy in Italy's recovery and resilience plan. Same old or a new departure?*, in *CompItPol*, 2022, vol. 14, n. 4, p. 441 ff.

⁷⁴ NATALI, TERLIZZI, *Access to Social Protection for All at the time of Covid-19: The role of the EPSR and the NGEU*, Expert study for the project SociAll, ETUC, 2021 (available on https://spa.etuc.org/images/2020/ThematicFocuses/ETUC_PaperII_DN_AT_13072021_lat-est.pdf).

⁷⁵ On this topic CLAUWAERT, *The country-specific recommendations (CSRs) in the social field: An overview and initial comparison. Update including the CSRs 2019-2020*, ETUI Background Analysis 2019.3, ETUI, 2019.

⁷⁶ The importance of active labour market policies, education, training, and skills development policies is strongly highlighted and explicitly linked to the green transition. In particular, in the "methodology for climate tracking" annex to the RRF Regulation (European Union 2021:Annex VI), the highest coefficient for the calculation of support to climate change objectives (100%) has been attributed to measures in the NRRPs "contributing to green skills and jobs and the green economy"; see Reg. 2021/2041, *cit.* See also BAPTISTA *et al.*, *Social protection and inclusion policy responses to the COVID-19 crisis. An analysis of policies in 35 countries, Luxembourg, European Social Policy Network (ESPN)*, Publications Office of the European Union, 7th September 2021, p. 34 ff.

⁷⁷ For further details about the future possible role of the social partners in the European social dialogue see ALES, DELFINO, *The European social dialogue under siege?*, in this journal, 2022, p. 21 ff.

ning and monitoring of the RRP's also brings some hope regarding future implementation of the two RRP's⁷⁸.

7. Concluding remarks: the crucial role of financially assisted States

Given the foregoing, one could potentially be tempted to conclude that the European recovery and resilience conditionalities are, on the whole, entirely consistent with that alleged *de facto* “receivership” of the States receiving financial assistance, mentioned at the beginning of this paper⁷⁹. To be more explicit, the recurrence, as much in the phase of drafting as in that of the subsequent enforcement of national Recovery Plans, of pervasive constraints to which the disbursement of supranational contributions is subordinated – which European countries could not afford to renounce, on pain of a further worsening of their debt exposure – could be considered in line with the conviction of an unacceptable interference of the European Union in the domestic politics of the assisted States. An interference that, moreover, “would not end in a single act, but would be prolonged in the future, with the consequence of binding by its definitiveness and recurrence, not only the majority forces of today – a legitimate cogency having promoted the Recovery Plans’ ascendant phase – but also those of tomorrow, who would themselves be bound to respect these commitments”⁸⁰.

Such a reconstruction is not persuasive for one basic, peaceful but unavoidable reason: the crucial role played by the Member States within the institutional architecture of the European Union⁸¹.

Certainly, at the current post-emergency juncture, strategic economic recovery policies are also a product, to a significant extent, of the action of

⁷⁸ CORTI, NÚÑEZ FERRER, *Steering and Monitoring the Recovery and Resilience Plans. Reading between the lines*, in *CEPS RRRP*, 2021, n. 2, p. 12 ff.; TKALEC, UMBACH, *NextGenerationEU under a Social Equity Lens*, Robert Schuman Centre, Policy Brief, 2022, n. 36, p. 4.

⁷⁹ SOMMA, *Quando l'Europa tradì se stessa. E come continua a tradirsi nonostante la pandemia*, Laterza, 2021, p. 140 ff.

⁸⁰ DE MINICO, *Il Piano nazionale*, cit., p. 117. In very sharp terms, see also SCIORTINO, *PNNR e riflessi*, cit., p. 260.

⁸¹ In this regard, BILANCIA, *Indirizzo politico*, cit. p. 32, emphasises the fundamental role assumed by national governments in the European dimension and, in particular, in the EU's institutional bodies, where the need to promote public policies expressly aimed at combating the pandemic crisis has emerged.

European institutions⁸². If the latter were not included in the analysis, it would be difficult to have a correct picture of how these policies will be articulated in the pending implementation of the Recovery Plans. However, this entirely acceptable observation should not lead one to think that the contribution of national constitutional bodies to the determination of these policies has failed: in other words, one should not be misled into believing that supranational choices are something distinct and separate from the internal legal systems⁸³.

On closer inspection, indeed, the decision-making process that, on the one hand, led to the adoption of the Recovery and Resilience Facility and that, on the other hand, will govern the disbursement of financial resources follows the usual government-centric approach that characterizes European economic governance, dominated by the two-tier executive, the Council and the European Commission⁸⁴. These are institutions in which the national governments exercise a decisive weight (as in the case of the Council) or at least a very significant influence (as in the working groups of the European Commission), on behalf of and representing their countries, in the planning, negotiation and determination of all the various European policies. Thus, the States receiving financial assistance, far from being bypassed by the Union, participate fully in the European recovery process and the related decision-making circuits that develop in the supranational sphere⁸⁵.

⁸² TORCHIA, *Il sistema amministrativo italiano e il Fondo di ripresa e resilienza*, in Astrid, 2020, n. 17, p. 4 ff.

⁸³ See SCIORTINO, *PNNR e riflessi*, cit., p. 260, who points out how this misunderstanding has “often served governments well at various junctures to offload responsibility at the European level for unpopular choices”.

⁸⁴ In this regard, it should also be noted that this decision-making process, dominated by the Council and the European Commission, has by no means exhausted the entire *spatium deliberandi*, having left considerable room for manoeuvre to the European Parliament, which, far from being marginalised in the political dialogue, has shown itself to be “an active participant in the discussion, amendment and final approval of the operative content of Regulation (EU) 2021/241, occupying the spaces that the co-decision procedure with the Council allowed”: DE MINICO, *Il Piano nazionale*, cit., pp. 114–115.

⁸⁵ See LUPO, *Il Governo italiano*, in *GCost*, 2018, n. 2, pp. 944–948, who, in observing that the governments of the Member States operate in two fora, one national and one supranational, quotes a sentence by Federica Mogherini: “Italy has two capitals, Rome and Brussels”, to remark how “The recognition of a single government, which is based and acts simultaneously in two capitals, in two institutional contexts, and therefore of closely intertwined European and national forms of government, which give rise to a Euro-national parliamentary system, allows us to

Therefore, the Recovery and Resilience Facility, in outlining what has rightly been defined as a “maxi euro-national procedure”⁸⁶ of elaboration and implementation of the various NRRPs, gives us a subjectively complex setting of the function of political direction (so-called *indirizzo politico*), distributed among several centers of authority: an osmotic circuit that, in line with art. 10 TEU, is fed by the multiple relations and procedures that link national actors to those of the Union.

If we want to draw the thread of the argument, there seems to be little doubt that the European conditionalities for recovery and resilience configure a stringent “external constraint”⁸⁷ on the policy decisions of the assisted States, which inevitably implies for them some degree of coercion to implement supranational dictates in exchange for financial aid, which is difficult to give up in the face of the serious economic emergency caused by the Covid-19 epidemic. Nonetheless, the general impression is that such a constraint, far from determining a veiled form of substitution of the Union for its Member States, must still be framed as the result of choices that are not exclusively European, i.e. of options that are concerted and shared also with the States receiving assistance⁸⁸: the result, in the final instance, of a certain unity of purpose, of a certain *idem sentire* of objectives and aims between national and supranational levels, in the light of what – rightly or wrongly – has been extolled as the “Hamiltonian moment” in the history of European integration⁸⁹.

frame and understand much better the dynamics that have developed in recent years, both at national and at European level”.

⁸⁶ LUPO, *La delega legislativa*, cit., p. 15.

⁸⁷ On macroeconomic conditionality as an expression of an external constraint, see GUAZZAROTTI, *Sovranità statale e vincolo finanziario. Potere pubblico e potere privato nel governo degli Stati europei*, in *DCost*, 2018, n. 2, p. 85 ff. More generally, on the theory of the external constraint, understood as an instrument to impose on Italy the necessary investments and reforms, otherwise unfeasible due to the inadequacy of the Italian political class, one cannot but refer to the reconstruction carried out by one of its most fervent supporters, Guido Carli: see, CARLI, *Cinquant’anni di vita italiana*, Laterza, 1993, p. 3 ff.

⁸⁸ See BILANCIA, *Sistema delle fonti ed andamento del ciclo economico: per una sintesi problematica*, in *OSF*, 2020, n. 3, p. 1428, who, in relation to macroeconomic policies, refers to a shared European sovereignty.

⁸⁹ The quotation is taken from a statement by the then German Vice-Chancellor Olaf Scholz, who, in an interview with *Die Zeit* on 19 May 2020, imagined that through the issuance of common bonds by the European Commission, i.e. by sharing the debt needed to finance the NGEU, albeit based on stringent expenditure conditionalities, a real “Hamiltonian

In the end, a final remark must be made regarding the social dimension of the actions taken by the EU because of the crisis and the disbursement of funding.

It is necessary to think about where Europe is going and what institutional trajectories need to be followed to create a truly social Europe, whose physiognomy, however, is even more difficult to define in the scenario opened by a health and social crisis affecting all its Member States at the same time. In this context, hopes for greater economic and political integration at supranational level are described by the ideological divide that has pitted the countries in favor of public debt mutualization programmes against the Nordic bloc of the so-called “frugal four”⁹⁰: beyond the compromise reached, it is clear that, as previously argued, there is a crucial role of the Member States whose sovereignty allows them to paralyze the development of the Union by exercising a power of veto⁹¹.

Today more than ever, the Union must resolve the basic contradiction in which it has always been entangled, namely that of aspiring to a state-like constitutional legitimacy without having the characteristics of the welfare state: the common monetary policy is in fact matched neither by a common fiscal policy, nor by a common economic policy, nor by mutual financial assistance instruments⁹².

Therefore, what is needed is a profound revision of the current system of economic and financial governance, coupled with measures to recompose

moment” was taking place, laying the foundations for a finally centralised fiscal and budgetary policy. The allusion is, in particular, to the proposal by Alexander Hamilton, then US Treasury Secretary, to mutualise the debt accumulated by the 13 former British colonies during the struggle for independence from the United Kingdom. That proposal, approved in 1790, laid the foundation for the fiscal unity of the nascent Federation of the United States of America. On this point, however, the doctrine tends to be divided. Among the authors who seem, to some extent, to liken the current phase of European recovery and resilience to a sort of “Hamiltonian moment”, one may recall SANDULLI, *Le relazioni fra Stato e Unione Europea nella pandemia, con particolare riferimento al golden power*, in *DP*, n. 2, 2020, p. 409, who defines the *Next Generation EU* “the first concrete step towards fiscal union”. In contrast, see CHESSA, *Critica del neo-costituzionalismo finanziario. Sul nesso tra scienza economica e diritto pubblico*, in *D&C*, 2021, n. 1, p. 96 ff.

⁹⁰ BRUNSDEN, FLEMING, *EU divisions laid bare by “frugal four” recovery proposal*, in *Financial Times*, 24th May 2020.

⁹¹ See BASCETTA, *La democrazia azzoppata dal veto di una minoranza*, in *Il Manifesto*, 21st July 2020.

⁹² DE WITTE, *A new phase in the trajectory of social Europe*, in *DLRI*, 2018, n. 4, p. 72 ff.

the asymmetries produced by years of clash between liberalism and the protection of social rights⁹³.

Thus, the social soul of the EU needs mechanisms to absorb the setbacks suffered by national welfare systems that are more exposed to economic downturns, whether symmetrical or asymmetrical⁹⁴.

In the absence of a common equalisation scheme, the guarantee of essential levels of social rights will continue to be shattered by the impact of the different health conditions of households, depriving European solidarity of the capacity it needs to ensure the emancipation from need of those European citizens who struggles more. To achieve this, it is necessary to restore mutual trust between the Member States, laying the foundations as of now to enable countries whose gross domestic product is highly differentiated to accept a risk-sharing system that offers guarantees of stability and discourages the so-called “moral hazard”⁹⁵.

Finally, it could be also pointed out that an effective socialization of EU governance could be achieved through the introduction of more tangible forms of social conditionality that are based not only on the European Pillar of Social Rights, but more broadly on the EU social *acquis*⁹⁶.

⁹³ On this topic see GUZZAROTTI, *Crisi dell’Euro e conflitto sociale. L’illusione della giustizia attraverso il mercato*, Milano, 2016, p. 82 ff.; CLEMENTI, FABBRINI, *Sdoppiamento: perché serve un nuovo patto politico e istituzionale*, in *Rivoluzione Europa. Istituzioni, economia, diritti, quali proposte per un big bang europeo*, Milano, 2019, p. 19 ff.

⁹⁴ Regarding this matter, there are several proposals suggesting the institutionalization of forms of fiscal transfer between Member States, in a logic of risk-sharing. In addition to the introduction of a European unemployment insurance scheme, the introduction of a European wage standard, a European fund against social exclusion and, above all, the creation of a single Eurozone budget headed by an EU finance minister are being discussed. See FERRERA, LEONARDI, in *Rivoluzione Europa. Istituzioni*, cit., p. 52 ff.

⁹⁵ In these terms see RICCOBONO, *Un “salto di specie” per l’UE? La solidarietà europea alla prova della crisi pandemica*, in *WP C.S.D.L.E. “Massimo D’Antona”*, INT - 154/2020, p. 51.

⁹⁶ See RAINONE, *From deregulatory pressure to laissez faire: the (moderate) social implications of the EU recovery strategy*, in *ILLJ*, 2022, vol. 15, n. 1, p. 51. In this paper the Author analyzes from a critical point of view the instrument of RRF focusing on the social policies, pointing out that the European Pillar of Social Rights is too weak to effectively steer the EU and national social and labour policies towards the upward convergence demanded by the Treaties.

Abstract

The paper aims at analyzing the articulated conditionality regime contemplated by the Recovery and Resilience Facility (RRF) which, especially in the field of social and labour policies, significantly affects the use of the financial resources allocated by the European Union, within the framework of the Next Generation EU (NGEU), in order to stem the severe macroeconomic impact triggered by the Covid-19 pandemic.

For this purpose, the constraints, targets, and milestones affecting Italy and Spain, two of the largest recipients of supranational financial assistance, will be examined in comparative terms. Moving from this analysis, an attempt will therefore be made to question the idea of the alleged *de facto* receivership of these countries, pointing out how they, while respecting certain identities and other physiological differences, are called upon to play a crucial role in the field of labour and social policies.

Keywords

Next Generation EU, Recovery and Resilience Facility, conditionality, social policies, Italy and Spain.