

ARTICLE

# From Bad to Worse: The Continuous Dilemma Facing Parliaments in European Economic and Fiscal Governance

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## Abstract

Analysing how the roles of national parliaments and the European Parliament have changed in European economic governance since the euro crisis, this article argues that their situation has deteriorated in the post-Next Generation EU regime. It identifies structural factors impeding more effective parliamentary engagement, relates these to empirical evidence about the role of domestic legislatures and the European Parliament and mirrors these practices against constitutional interpretations concerning the democratic role of parliaments in budgetary matters. The broader Economic and Monetary Union architecture has grown to encompass a variety of rules and mechanisms, many of which are located outside of the treaties and the budget of the Union. As a result, parliaments lack formal powers that would guarantee them meaningful participation rights in European economic and fiscal governance. The key to more effective parliamentary involvement is ensuring that the parliaments can genuinely shape policies and that a strong link is established between elections and budgetary politics.

**Keywords:** European Union; crises; parliaments; accountability

The euro crisis set in motion an architectural change around the Economic and Monetary Union (EMU) that has transformed its deep structures and foundational principles, and the COVID-19 pandemic did much the same to the whole European Union (EU). These reforms have not resulted from deep-sighted constitutional deliberation but from reactions to imminent crises. The Next Generation EU (NGEU) represents a significant step in the direction of deeper fiscal integration, but does so in a manner that is deeply problematic from the perspective of democratic principles. The Four Presidents' Report from 2012 assured that 'democratic control and accountability should occur at the level at which the decisions are taken'<sup>1</sup> and the 2017 Commission Reflection Paper still underlined that the

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‘European Parliament and national parliaments need to be equipped with sufficient powers of oversight, following the principle of accountability at the level where decisions are taken’.<sup>2</sup> Since then, official concern has declined, as developments have led in the opposite direction. As was the case with the policies and mechanisms adopted during the euro crisis, the COVID-19 response has led to an empowerment of executives at the expense of parliaments (Leino-Sandberg and Ruffert 2022). Democratic control and accountability have become even more difficult to exercise.

The existing literature has shown that the decision-making processes related to crisis solutions such as bailout packages, the creation of the European Stability Mechanism (ESM), the banking union and the NGEU were dominated by bargaining between the governments of the member states. This is not surprising, as during crises executives tend to be strengthened at the expense of legislatures: decisions need to be taken swiftly, leaving little time for parliamentary scrutiny and deliberation either in domestic legislatures or in the European Parliament (EP), which has largely been sidelined from decision-making. The use of crisis language is accompanied with references to executive managerialism, light review, deference to expert decision-makers, a lack of alternatives, chaos prevention and ad hoc institutional redesign (Joerges and Weimer 2013). However, from the point of view of parliaments, the main problem – which forms the core argument of our article – is that the decisions taken to tackle acute crises tend to have permanent or semi-permanent outcomes that also emphasize intergovernmentalism and executives, leaving national parliaments and the EP with limited participation rights in economic governance.

This need not be the case. Research has established that there is considerable variation between the member states: in some countries parliaments are, through specific national solutions, more involved in the EU’s evolving economic and financial governance architecture, while in others their input remains marginal (e.g. Auel and Höing 2015; Griglio 2022; Hallerberg et al. 2018; Jančić 2017; Miklin et al. 2021). The EP in turn has over the decades proven remarkably inventive in pushing for stronger powers, both through treaty changes and more informal, interinstitutional arrangements, or even by adopting on its own initiative practices that have over time become the established course of action (Héritier et al. 2019) – and the same applies, at least to some extent, to economic governance (Akbik 2022; Schmidt 2020). This is far from sufficient: from the perspective of democratic participation and accountability the problem for parliaments is exactly the lack of formal, codified rules that would guarantee members of national parliaments (MPs) and members of the EP (MEPs) meaningful information and participation rights in matters that are increasingly covered by new layers of executive decision-making. This matter is particularly pressing regarding those issues that formally fall under the competence of national parliaments, such as questions involving national budgetary policies.

Hence, drawing on insights from political science and law, the research question guiding our article is how the roles of national parliaments and the EP have changed in European economic and fiscal governance since the euro crisis. The rationale for combining arguments and findings from political science and law is that the continuous dilemma we emphasize is both legal and political, with inadequate

formal powers undermining parliamentary scrutiny of budgetary and economic policies. We contribute to the debate by identifying and analysing the structural factors impeding more effective parliamentary engagement and relate these to both the rulings of constitutional courts and existing empirical evidence about domestic legislatures and the EP. This leads us to conclude that the situation of parliaments has deteriorated in the post-NGEU regime. Our approach has also normative elements, as we outline practical solutions for remedying the dilemmas facing parliaments.<sup>3</sup>

The next section explores how questions of democratic decision-making in economic and fiscal policies have been understood more generally and how key constitutional actors, and particularly the German Constitutional Court, have reacted to the prospect of deeper fiscal integration. The EU institutions like to emphasize the unique *sui generis* nature of European integration. However, many of the questions faced by the EU today are not novel but similar to those tackled by established federations in the past. The solutions proposed in the EU take it in the direction of a federal structure, but do so in a manner that is indeed ‘unique’ and noteworthy in particular for its lack of democratic control. This article argues that having the representatives of the people exercise legislative powers and decide on the budget is the cornerstone of democracy. The third section outlines the EU’s main problem: the weak position of parliaments in fiscal integration and the similarities and differences between the euro crisis and the new Multiannual Financial Framework (MFF) and the NGEU in this respect. Space does not allow us to examine in detail the rules and practices of parliamentary involvement: instead, we focus on the main features of decision-making and compare the euro crisis with the NGEU and key post-NGEU developments. The final part of our article outlines some potential reform proposals through focusing on the institutional solutions for ensuring stronger parliamentary accountability while paying attention to the sensitive question of vertical distribution of competencies between the EU and its member states.

## Budgets, democracy and fiscal integration

Parliaments exercise legislative powers. Among their legislative endeavours, the budget law is special. It is probably the single most important expression of political will on the legislative calendar, and having the representatives of the people decide on the budget is one of the cornerstones of democracy (e.g. Kahn 1997). Historically, parliamentary democracy has grown out of the demand of taxpayers to decide on how their money should be collected and spent (‘no taxation without representation’). Budgets frame the most important decisions made in a political system each year. They are ‘the lifeblood of government, the financial reflection of what government does and intends to do’ (Posner 2011: 53; Wildavsky 1961: 184).

It seems broadly accepted that the budget process is an essential part of democracy and that the legislature should play an important role in shaping the annual budget and in providing budgetary oversight. In the absence of strong accountability arrangements on the government, there is a risk that budgetary policies reflect the wishes of unelected elites (Lienert 2013). There is widespread constitutional recognition of the importance of parliamentary control over the purse even if there is substantial variation in the level of financial scrutiny of government by the legislature among contemporary liberal democracies (Stapenhurst et al. 2008; Wehner

2006, 2014). But while the parliamentary prerogatives in legislative and budgetary matters are taken as granted in the legal and political science literature, strikingly little has been written about the actual exercise of the parliaments' budgetary powers in general, and in the EU context in particular.

The division of budgetary power between institutions and different levels is equally, or even more, relevant in federations. In the United States, the Federalist Papers classically stress that decisions regarding taxation and expenditure should be made in our most representative of institutions (Mikva 1986). Federal states have established rules on the use of federal and state funds and normally can build on decades of political integration and strong institutions. They also have constitutional provisions on debt issuance and the means to pay back the debt. To the extent intra-state transfers take place in federations, the way in which this happens is a politically sensitive issue, and therefore tends to form a part of a clearly defined constitutional settlement that the federation builds on, including the way in which a no-bailout principle is applied (Leino and Saarenheimo 2018). The Federalist Papers also emphasize a strong national fiscal system, as the defence of the nation rests on the financial credibility of its budget and revenue sources and an exercise of foresight to enable the nation to respond to emerging challenges and crises that may develop over time (Posner 2011).

Even if EU institutional documents (like the Four Presidents' Report quoted above) have paid lip service to the need to ensure that 'democratic control and accountability should occur at the level at which the decisions are taken', discussion about the possible constitutional limits to further fiscal integration and its effects on parliamentary powers has remained scarce in the EU. The competence division in the EU treaties emphasizes national responsibility for fiscal policy and its outcomes, building on a principle of no bailout. As in federations in general, as a matter of principle, budgetary powers are exercised at two levels in the EU: at the national level where national parliaments are in charge, and at the EU level where the EP's role is central. Policies falling under the competence of national parliaments' legislative powers have been funded from national budgets.

The EU's revenue builds on the so-called Own Resources Decision (ORD), which emphasizes the role of member states, who approve it unanimously and then subject it to separate approval according to their own constitutional procedures (Treaty on the Functioning of the European Union (TFEU), Article 311). As regards the European level, the line of accountability for the use of EU funds towards the citizens has always run in a rather indirect and opaque manner (Lenaerts and Verhoeven 2002), even if the Court of Justice of the European Union (CJEU) has acknowledged that 'in a democratic society, taxpayers and public opinion generally have the right to be kept informed of the use of public revenues'.<sup>4</sup> The ceiling to EU expenditure is set in the MFF, which the Council approves unanimously with the Parliament's consent (TFEU, Article 312). The Parliament's role is strongest in the approval of the annual budget (TFEU, Article 314), where it can even have its amendments approved against the will of the Council. It also grants discharge to the Commission (TFEU, Article 319). The CJEU has earlier emphasized how 'the exercise by the Parliament of its budgetary powers in plenary sitting is of particular importance for the transparency and democratic legitimacy of [EU] actions' and 'constitutes a fundamental event in the democratic life of the European Union'.<sup>5</sup>

This line of thinking has many similarities with the arguments of the German Constitutional Court (FCC), which analyses the relevance of national budgetary procedures from the perspective of the German Constitution and the rights of the German parliament.<sup>6</sup> For the FCC, citizens' democratic rights are best ensured by national parliaments, as the EP cannot completely fill the gap between the extent of the decision-making power of the EU institutions and the citizens' democratic rights in the member states.<sup>7</sup> The FCC also treats the European Council and the Commission as non-majoritarian bodies of a supranational organization, and thus unsuited for taking key democratic decisions. In the vision of the FCC, the EU is essentially an alliance of democratic states where the peoples of the individual states through their national parliaments provide democratic legitimation for EU decisions, and it expresses concerns that democracy on the level of the individual states is 'weakened to such an extent that the parliaments of the Member States would no longer be able to convey adequately that legitimation of the sovereign power exercised by the Union'.<sup>8</sup> For the FCC, 'the right to decide on the budget serves as an instrument of comprehensive parliamentary monitoring of the government', which offers 'the elected parliament ... a paramount constitutional position'. For the FCC, the budget

is not merely an economic plan, but at the same time a sovereign act of government in the form of a statute. It is subject to a time-limit and task-related. ... Budget sovereignty is the place of conceptual political decisions on the correlation of economic burdens and privileges granted by the state. Therefore the parliamentary debate on the budget, including the extent of public debt, is regarded as a general debate on policy.<sup>9</sup>

These principles are most elaborated in the practice of the FCC, even if similar elements can also be found – for example, in the practice of the Constitutional Law Committee of the Finnish Eduskunta, which has repeatedly emphasized budgetary sovereignty and the need to uphold the prerogatives of the Eduskunta in relation to various crisis arrangements of EU origin (Leino-Sandberg and Salminen 2013). These interpretations are also relevant for the subsequent development of fiscal and budgetary integration.

Particularly visible in the German constitutional thinking are the considerations on how the requirements of democracy affect the possibilities of delegating decisions on public revenue and public expenditure to the supranational level. For the FCC, they form a fundamental part of the ability of a constitutional entity to democratically shape itself and bring about a specific responsibility to the people. For this reason, they belong to parliamentary procedures and are to be taken with responsibility to the people.<sup>10</sup> The provisions of the EU treaties presuppose national budget autonomy as an essential competence, which national parliaments cannot relinquish.<sup>11</sup> Yet, in the context of the crises of the last decade, various developments have taken place constraining the budgetary powers of national parliaments. The same development has also taken place at the EU level. While the treaties give the EP strong legislative and budgetary powers, its actual powers to steer the Union's expenditure have in recent years been steadily eroded in relation to the EU's multiple executives: the European Council, the Council and the Commission.

## Crisis decision-making: executive dominance, marginalized parliaments

### *Euro crisis*

Overall, the handling of the euro crisis required strong managerial steering and emergency measures that have resulted in potentially permanent shifts of power towards the executives at the expense of the other branches of government at both EU and national levels. The actual key decisions from bailouts to subsequent temporary and permanent crisis mechanisms were taken swiftly in the European Council, leaving little time for scrutiny and debate by national parliaments. The EP, for its part, was essentially just kept informed of the bargaining.

One of the enduring legacies of the euro crisis was the conviction that the Union needed stronger tools to prevent national policy mistakes from turning into yet another crisis for the whole EU. The result was an overhaul of the economic governance framework and substantially increased control from the centre. New debt brakes and deficit and debt rules were introduced to constrain national policy-making. The Stability and Growth Pact (SGP) was beefed up and accompanied by the European Semester, a comprehensive process of coordination and negotiation between the Commission and national executives that guides the member states' budgetary policies at every stage of the budgetary cycle. National parliaments – who are formally in charge of budgetary decisions – have no formal role in the procedure at the EU level. The more difficult the negotiations between the Commission and the national government, the more carefully they are kept out of the public eye, which makes it difficult for the national parliaments to hold their own governments accountable. If the system really 'worked' – in the sense of the Commission providing *de facto* binding guidance on national budgetary policies that the member states would follow – it would significantly infringe parliamentary powers at the national level; yet the European Semester recommendations have a weak level of implementation (Verdun and D'Erman 2022). This is explained as a problem of a lack of ownership of the EU recommendations by the member states (see Leino-Sandberg and Losada Fraga 2020).

Second, the mechanisms created to solve the euro crisis built largely on structures outside the EU legal and institutional framework. Member states allocated tasks to the Commission, while the European Central Bank (ECB), with the silent consent of the member states' executives, gradually created a monetary safety net for member states that became a recurrent constitutional battleground. The Eurogroup – an informal, secretive and intergovernmental preparatory body whose acts cannot be judicially reviewed at the EU level – became a central locus of power.<sup>12</sup> The CJEU has approached the intergovernmental solutions formalistically, placing the emphasis on national constitutions. It was left to national parliaments to provide parliamentary oversight, limited to controlling national contributions and decisions of national ministers. And, as noted above, there remains significant variation between member states, with too many legislatures only weakly involved (e.g. Auel and Höing 2015; Griglio 2022; Hallerberg et al. 2018; Jančić 2017; Miklin et al. 2021). Constitutional courts in the programme countries (Greece, Portugal and Cyprus) have addressed the constitutional questions involved in the rescue packages and the reform programmes imposed on these states, but their possibilities to conduct constitutional reviews and protect

the prerogatives of national parliaments have been constrained by the economic needs of their states (Kombos 2019). The EP has also struggled to carve a meaningful role for itself, with an emphasis on more informal, interinstitutional agreements (Akbik 2022; Héritier et al. 2019; Schmidt 2020). However, as far as *national* budgetary policies are concerned, the EP's primary role is holding the Commission to account for its actions. The limitations of national parliaments' powers cannot be compensated by strengthening the role of the EP to fill the gap.

Finally, a key feature of these arrangements was their strong reliance on heavy macroeconomic conditionality. Emergency funding was available only based on detailed reform programmes prepared under the technocratic leadership of the 'troika', which then scrutinized their implementation. The only national parliament that participated in the implementation of the programme was that of the programme country itself, and even it was reduced to just largely rubberstamping the measures enlisted in the programme. While macroeconomic conditionality was considered necessary for legal and political reasons on the side of lenders, both its principles and substance were contested and divided opinions. In the programme countries national decision-making was fundamentally constrained and the function of national elections was reduced in a way that spread both apathy and polarization among the electorate (De Giorgi and Moury 2016).

Despite these obvious structural weaknesses, democratic legitimacy has, until recently, largely been absent from the discussions on the future of the EU's economic governance. Practical suggestions have been mainly limited to dialogue and interaction with the EP and national parliaments in the context of the European Semester.<sup>13</sup> A recent Commission document underlines how Commissioners should visit the EP to enhance the democratic accountability of the European Semester and 'enhance ownership and therefore reform implementation' – which actually is not a matter for the EP but national parliaments. In relation to the latter, the Commission declares an intention to 'continue the dialogue with Member States, and invites the Member States to involve national parliaments, social partners and all other relevant stakeholders'.<sup>14</sup> Dialogue is, of course, good, but it is a poor substitute for a proper foundation of democratic accountability. Nor do we deny the potential importance of the Interparliamentary Conference on Economic Governance in facilitating scrutiny and exchange of information (Crum 2018; Dias Pinheiro and Dias 2022; Fromage and Markakis 2022), but no amount of dialogue or interparliamentary networking can replace effective rights of legislatures to participate in the formulation of substantive policies.

### ***The Next Generation EU***

The euro crisis was characterized by a focus on the member states forming the monetary union, intergovernmental solutions and the key role of the Commission and the Eurogroup in dictating the policy conditionality that came with the rescue packages. The NGEU was in many ways different: born out of the outbreak of the COVID-19 pandemic, it coincided with the negotiations on the EU's new MFF and was also shaped by the rule-of-law crisis. The arrangements, which entail massive use of EU funds to steer legislative programming and reform in the member states, were placed within the EU institutional structure and are



managed by and for the EU-27, making the Eurogroup essentially a bystander. A genuine effort was made to place political ownership more firmly in the member states whose governments prepare and sign the national reform plans – in contrast to the euro crisis adjustment programmes, which were formally political contracts between the creditors and the recipient country. Compared to the euro crisis approach, the NGEU strengthens the national ownership of reform agendas but creates new problems by further strengthening executives in areas previously falling under parliamentary decision-making at both EU and national levels.

As to its scope, the NGEU goes far beyond the EU's traditional redistributive instruments. Through the NGEU, the EU issues debt to provide grants and loans to member states to be spent during the next few years. The package amounts to €750 bn (in 2018 prices), most of which is allocated to the Recovery and Resilience Facility (RRF) (€724 bn). The substantive national spending plans are refined in confidential negotiations with the Commission prior to the formal submission of the National Recovery and Resilience Plans (NRRPs). A similar method is used for assessing disbursements: a member state submits a payment request, documenting completion of milestones and targets. After the Commission's preliminary assessment, the Economic and Financial Committee submits an opinion, followed by Commission assessment in comitology. The assessment of milestones and targets is likely to be a complex and heavily political process, especially since many of them are ambiguous, and national governments and parliamentary majorities may change during the relevant period, which may result in a need to amend the plans frequently.

Altogether, the preparation and submission of NRRPs and the monitoring of their implementation is procedurally and technically heavy and subject to frequent consultation with the Commission, which effectively limits domestic consultations and weakens the practical possibilities of domestic legislatures to direct the outcomes. Furthermore, the extent to which domestic legislatures have a say on national plans depends on national practices; in some member states, the plan is purely the government's document and is never subjected to parliamentary approval. Even in the countries where the parliament has a role, the opaque and bilateral and confidential nature of the negotiations between the government and the Commission inevitably emphasizes the role of the executives and makes it more difficult for national parliaments to fulfil their normal budgetary roles. A recent study by Follow the Money (2021) demonstrated how 'several parliaments across Europe hardly had any say in the drafting of the plans or had little opportunity to propose amendments. This is alarming because it shows a lack of democratic control of how and where these billions will be spent and especially troubling because the payment of the recovery money is conditional on potentially controversial reforms.' These reforms require national legislative processes, the parliamentary debate and accountability of which can be substantively weakened by the funding decisions already taken between national and EU executives.

Again, the EP cannot fill the gap left by national parliaments. Its role is to act as co-legislature in charge of the EU legislative framework and ensuring the accountability of the Commission. Following the July 2020 European Council, the EP was involved in fine-tuning the high-level criteria for the use of the RRF funds as part of the ordinary legislative procedure. Much EU legislation is today approved in



'trilogues', whereby EU laws are adopted without much public debate (Leino-Sandberg 2023; Shackleton and Raunio 2003). These debates are even further diminished when the legislative process is effectively steered by the European Council. The outcome for the RRF is that criteria for fund allocation are high level indeed. The RRF finances a very wide variety of measures, spanning nearly all sectors of public policies in the member states.<sup>15</sup> A cursory look into the national recovery plans confirms their wide reach: traditional investments in infrastructure and energy, IT projects in a variety of different fields, reforms of budgetary planning, judicial systems, insolvency systems, taxation, pension systems, labour markets, measures in the field of education, social policies and housing. Only security and defence and financial market policies are excluded.<sup>16</sup> Compared with the relatively restrictive way that normal EU spending programmes target the funds, the NGEU provides remarkably few limits to how the money is used. A further problem is the way funds are allocated to member states instead of using them to finance European-level public goods. This division of member states into 'winners' and 'losers' of the deal reinforces the cleavage between net payers and beneficiaries of the EU budget, particularly as governments can use the money for their own pet projects with hardly any control from the Commission. There is no macroeconomic conditionality. Instead, the RRF is 'an innovative, performance-based instrument, where payments are made to Member States, as beneficiaries, upon delivering reforms and investments pre-agreed in national recovery and resilience plans. The funds are therefore disbursed solely on the basis of the progress in the achievement of the reforms and investments that Member States committed to.'<sup>17</sup>

In practice, the member states define, together with the Commission, a number of projects to be realized. Many of them are legislative in character, fall under national competence and involve little or even no direct costs. EU money serves as a reward. Instead of funding direct costs (as in normal EU cohesion policy action), the Commission explains, 'Disbursements thus depend on the delivery of the pre-agreed investments and reforms rather than the final costs incurred.'<sup>18</sup> In other words, EU funding is used to buy compliance with the priorities set in high-level executive processes.

In the process of allocating funds, there is virtually no role for the EP, beyond a rather mysterious 'recovery and resilience dialogue' led by an ad hoc committee of the EP. Following the dialogue, the Commission needs to 'take into account any elements arising from the views expressed'.<sup>19</sup> In practice, the EP holds a dialogue with the Commission regarding its attempts to convince national executives and legislatures to approve the national legislation envisaged in the plans.<sup>20</sup> This is in line with the EP's role under the treaties, but seems modest keeping in mind the amount of EU funds at stake. In its first audit on the RRF, the European Court of Auditors (ECA) examined how the Commission had assessed the plans of six member states and identified a number of weaknesses and risks.<sup>21</sup> It pointed out that the Commission's assessment was based on comprehensive internal guidelines and checklists that were not systematically used and often difficult to trace. While the assessment had improved the quality of member states' milestones and targets, some of them lacked clarity or did not cover all key stages of implementation. The same deficiencies and other challenges identified by the ECA will also make it more

difficult for the EP to hold the Commission to account for how the member states have spent the funds. When vast amounts of public funds are used, their control is important both for democracy and for public perception and trust.

However, the way in which the EP's role is most fundamentally affected by the NGEU is in its function as the EU's budgetary authority. The NGEU relies for its funding on the ORD, which – as noted above – the Council approves unanimously, and member states ratify, but the EP is merely consulted. One of the key principles of EU budgetary law is the principle of universality, according to which 'total revenue shall cover total payment appropriations' and 'all revenue and expenditure shall be entered in the budget in full without any adjustment against each other'.<sup>22</sup> External assigned revenue and internal assigned revenue, used to finance specific items of expenditure, are an exception to normal budgetary procedure. The NGEU funds involve a very substantial amount of such external assigned revenue and escape annual budgetary negotiations between the Council and the EP, defined by the CJEU earlier as 'a fundamental event in the democratic life of the European Union'. As such, the arrangement is clearly problematic in terms of the institutional roles outlined in the treaties. The Council Legal Service signalled these problems in its 2020 legal opinion and stressed that the use of external assigned revenue must 'remain additional or complementary in nature in order to avoid deconstructing the system of own resources and the regular budgetary mechanisms, in circumvention of the applicable procedures'.<sup>23</sup> Given the size and length of the NGEU arrangement, its complementary nature can be questioned. Its effects on a core constitutional function of the EP are remarkable. In the case of external assigned revenues parliamentary control is limited to the discharge procedure, which suffers from the deficiencies identified by the ECA (see above). In the context of the NGEU the EP's role was addressed in a separate interinstitutional agreement forming a part of the overall compromise.<sup>24</sup> It recognizes that 'the role of the European Parliament and of the Council, where acting in their capacity of budgetary authority, needs to be enhanced in relation to the external assigned revenue under the European Union Recovery Instrument, with a view to ensuring a proper oversight of and involvement in the use of such revenue'.<sup>25</sup> The interinstitutional agreement therefore provides informal institutions as compensation for the loss of the EP's formal role in institutional mechanisms.

While the EP has generally underlined its democratic credentials and commitment to transparent budgetary procedures (Fasone 2022), it accepted an astonishingly weak role as the price to be paid for progress towards a potentially permanent borrowing and redistributive mechanism for the Union. Yet, the NGEU clearly dilutes its democratic powers and, as a model for future fiscal integration, is thus deeply flawed from the perspective of parliamentary participation and the possibility of ensuring political accountability for how the funds are spent. In a solid fiscal structure, the EU funds would be spent on purposes where the EP can exercise both budgetary and legislative powers.<sup>26</sup>

Therefore, while the NGEU increases national ownership of the recovery and resilience plans through intense dialogue between EU and national executives with a view to addressing some of the shortcomings of the euro crisis adjustment programmes, it does little to remedy the lack of parliamentary oversight. Like the adjustment programmes, it transfers a great deal of budgetary powers from the

legislator to the executive, particularly at the EU level but also at the national level. It directs the EU towards a model of fiscal integration that is institutionally and legally fragile, compared with proper federal states. Few of the constitutional constraints found in federal structures are present, and the country-specific allocation of money in the NGEU is largely foreign to established federations. Enzo Cannizzarro (2020) concludes that the NGEU creates an unbalanced structure where national authorities assume a central role in deciding how Union funds are spent. The EU assumes the role of sole debtor while lacking a capacity to impose taxation in return for the common good prospectively to be attained. These broader implications of the NGEU have received little attention. The result is a system that builds on executive dominance and where democratic debate is almost impossible. It is simply a bad structure for allocating money and flawed in ways that are difficult to address.

### ***Post-NGEU developments***

In 2020, the NGEU was formally presented as ‘an exceptional response to those temporary but extreme circumstances’ that would not be ‘used for any purpose other than tackling the direct economic and social consequences of the COVID 19 pandemic’.<sup>27</sup> Despite such assurances, one does not need the powers of an oracle to predict that the NGEU has opened the door for further discussions and proposals about similar solutions. For example, the Commission’s November 2022 Communication on orientations for a reform of the EU economic governance framework argued that ‘a central fiscal capacity for the EU or euro area could take into account the examples of recent years’ successes’ such as the RRF, which it defines as a ‘successful EU policy response to the crisis’ that is ‘useful for the review of the economic governance framework’.<sup>28</sup> Given that not all national plans are even approved and even fewer are implemented, we find such conclusions premature.

Through the NGEU, debt issuance by the EU is now part of the supranational toolbox, opening up the possibility (and temptation) of maintaining debt as a long-term feature of fiscal integration. Repayment of NGEU borrowing will start as of 2028 and will take place over a long time horizon – until 2058. There is so far no clear agreement on how the NGEU debt will be paid back beyond the political agreement in the European Council in July 2020 that the NGEU process would pave the way for the introduction of new own resources to be used for early repayment of NGEU borrowing.<sup>29</sup> However, the Commission REPowerEU Communication indicates various new policy measures that will add to Union expenditure.<sup>30</sup> Instead of raising new debt, the Council and the EP decided to fund its costs through redirecting a bulk of unused RRF funding to cover the costs of the EU’s energy transition.<sup>31</sup>

The introduction of new own resources is not a legal problem. The EU treaties provide a broad competence for the Council to establish new categories of own resources by acting unanimously and after consulting the EP (TFEU, Article 311 (3)). This provision is remarkably open and includes no limitations as to what such own resources could be. This is balanced by the requirement that the ORD will ‘not enter into force until it is approved by the Member States in accordance

with their respective constitutional requirements'. The broad use of these provisions, introduced under the shadow of multiple crises and through the Conclusions of the European Council,<sup>32</sup> marks a significant change in how the EU is funded. The 'Fit for 55' package promoting the EU's climate goals includes various elements that affect the system of own resources, as it introduces a revised Emissions Trading System (ETS) and a new Carbon Border Adjustment Mechanism, which will both be new 'own resources' for the Union.<sup>33</sup> However, unlike what was agreed in July 2020, these new own resources will be used not only to repay the funds raised by the EU to finance the grant component of the NGEU, but also for a new Social Climate Fund, which supports measures and investments that reduce emissions in road transport and buildings sectors, and in addition finances temporary direct income support for vulnerable households – something that so far has been considered a social policy measure clearly falling under national competence. The two new own resources are included in a proposal for a revised ORD<sup>34</sup> that would be needed for the creation of new own resources. However, while the secondary legislation on Fit for 55 is now approved and has entered into force, the handling of the revised ORD seems to have stalled in the Council, as it is considered politically unlikely that all member states would be willing to ratify it. This may yet lead to new creative legal techniques being invoked to further reduce the role of national parliaments in decisions involving EU revenue.

The Fit for 55 example demonstrates that while the ORD is approved unanimously, the secondary legislation defining the use of the new funds is adopted in the ordinary legislative procedure, which gives the EP a strong role. However, its broader role as the EU's budgetary authority continues to be under pressure. Like the grants under the RRF, the Commission has structured its recent proposals (the innovation fund attached to the ETS and the sanctions from the FuelEU Maritime Regulation and the proposal for renewable air fuels) as an external assigned revenue.<sup>35</sup> This indicates that the practice that was only to be used in highly exceptional cases for exceptional purposes is now becoming the 'new normal', and the EU's formal system of own resources is being reconstructed in a manner that undermines the role of the EP. The fact that the EP is involved in approving the relevant secondary legislation on spending the funds is not a satisfactory compensation, since parliaments need to maintain their role as both the legislative and budgetary authority.

## Concluding reflections

Leaning on the arguments and findings of this article, this final section looks ahead and argues that the priority should be making sure that the formal rules on budgetary and economic politics guarantee sufficient parliamentary participation rights. Informal institutions based on dialogue and information are simply not enough. Such a call for parliamentary involvement is obviously nothing new, with both scholars as well as MPs and MEPs themselves recognizing the executive bias in EU economic governance. However, while we concur with, for example, Elena Griglio (2022) that parliaments are in many ways resilient, with several national legislatures adapting their scrutiny procedures in response to the evolving fiscal integration, our analysis has demonstrated that the position of both the EP and national

legislatures has arguably become weaker in the post-NGEU environment. Therefore, it is even more imperative to ensure that parliaments, as representatives of the voters, have meaningful opportunities for shaping the EU's budgetary and fiscal policies at the EU level while retaining their right to steer equivalent policies in the member states.

Ensuring formal participation rights would also connect citizens via their elected representatives to fiscal integration. This is particularly important in light of the salience of economic policies for citizens (De Wilde and Raunio 2018). Yet, currently there is no real link between elections and budgetary or fiscal decisions at the European level. Probably the biggest challenge relates to timing and how citizens are excluded from decision processes. The rules of fiscal governance currently underline the 'output' or even 'throughput' versions of legitimacy at the expense of 'input' from the people (Schmidt 2006, 2020). Decision-making is opaque and complex, and to a large extent separated from EP or national election campaigns. Such exclusion can benefit nationalist parties, as it provides a basis for claiming that citizens have not given their consent to the EU-level decisions. During the crises, the EU and the member states have needed to act quickly, and therefore individual deals from bailouts to the ESM and NGEU have lacked a direct electoral connection. But as the EU's budgetary and fiscal decisions carry considerable weight, there should be public electoral contestation between rival forces and policy alternatives about the direction of economic integration (Follesdal and Hix 2006).

National electoral cycles vary, but EP elections are held every five years. The duration of the MFF should coincide with the term of the EP, as suggested, for example, by the main Europarties ahead of the Conference on the Future of Europe (Johansson and Raunio 2022). This would incentivize both national parties and the Europarties to campaign about how EU funds are collected and used (Crowe 2020).<sup>36</sup> However, as argued in this article, the problem is exacerbated by the increasing decoupling of the funding mechanisms from the budget. The practice of adding new expenses outside the normal budget has become more common both in the EU and in the member states. When reflected against the basic principles of budgetary powers and their importance in democratic societies, this practice raises serious questions about the legitimacy of budgetary procedures. The usefulness of debt brakes, deficit and debt rules aimed at securing good budgetary policies becomes questionable, if such rules are possible to circumvent through creative accounting rules at the same time as the parliamentary control on the use of funds diminishes. This is also a way to add new expenditure to existing ones without any substantive debate about priorities, which forms a normal part of budgetary negotiations in the member states and has been considered a vital part of democratic will formation regarding political decisions on the correlation of economic burdens and privileges.

The 'one Treaty, one budget' principle should apply, whereby the funding instruments would be brought under one roof and subjected to budgetary negotiations where EU priorities can be set. To quote Richard Crowe (2017: 451), 'Ideally, every euro collected from citizen-taxpayers to pursue Union policy objectives should be processed through procedures that involve clearly-defined roles for the institutional actors concerned, and which ensure respect for certain uniform European standards of transparency, accountability and budgetary control.'

Dialogue and informal interinstitutional agreements are not sufficient: redistributive revenue and expenditure mechanisms should be co-decided together by the EP and the Council. Crises do not follow electoral calendars, but at least the decisions would be conditional on support from the EP as well as the majority of national governments.

Coming back to the rulings of the FCC discussed in this article, national ownership of national legislative agendas and budgetary priorities is fundamentally important. Ownership means that the setting of these agendas should not be outsourced to executives in Brussels. This highlights the importance of competence limitations (as in all established federal countries) and the relevance of ‘whose money’ and ‘whose policies’. Accountability can be ensured only if it is clear who is responsible for decisions. The European Semester is largely technical and executive-driven, and the considerable variation in national parliamentary engagement indicates that a large section of MPs across Europe probably feels that investing time and energy into the EU’s fiscal policymaking is not worth the effort. The executive is even more dominant in relation to the spending plans under the NGEU, which escaped serious parliamentary scrutiny in most member states. This is in part understandable, as the processes may appear less salient, particularly as the role of the Commission, both in terms of instructions let alone sanctions, has so far been rather limited.

It is here that we come to the question of vertical parliamentary division of labour. To the extent that EU funds are allocated to member states as opposed to proper European-level public goods, the appropriate forums for deciding on national spending plans are domestic legislatures. The EP should decide together with the Council the EU-level budgetary issues. Ideally, the EU should focus on ‘federal programmes’ that promote the realization of European common goods settled in EU legislative procedures and falling under the competence of the Union. Deciding the allocation of EU funds through primarily bilateral mechanisms where the interaction is almost exclusively between the Commission and the member state government is not an appropriate mechanism for democratic societies. Not only do such bilateral mechanisms favour the executives, they also complicate lines of accountability and can create institutional tensions as the EP is sidelined and national parliaments might justifiably not welcome interventions by EU institutions. Clear and stable schedules and transparent processes improve the capability of MPs to scrutinize both the broad EU-level plans and the national policies. Spending should be subject to parliamentary debate at appropriate levels as opposed to remaining primarily a matter for EU and member state executives. We underline the importance of allowing sufficient time for public plenary debates, as they offer political parties and MPs the opportunity to justify their positions, and – particularly if the debates are covered by the media – the citizens can learn about the topics and the views of their elected representatives (Auel 2007; Auel and Raunio 2014).

To conclude, the ‘continuous dilemma’ we have outlined deserves attention in the increasingly complicated legal and political architecture of European economic governance. As we have argued, the situation has only become worse since the euro crisis. The post-NGEU institutional environment favours the Commission and national governments at the expense of parliaments. Yet decisions on revenue



and expenditure are a central element of the democratic development of informed opinion and must be taken with responsibility to the people. Therefore, parliamentary scrutiny and debates on the budget, including the extent of public debt and how to pay it back, is central at all levels of politics. Parliamentary involvement may delay decision-making, but is essential for the legitimacy of fiscal integration.

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## Notes

- 1 'Towards a Genuine Economic and Monetary Union, Report by President of the European Council Herman Van Rompuy', Brussels, 26 June 2012, EUCO 120/12.
- 2 European Commission, 'Reflection Paper on the Deepening of the Economic and Monetary Union', 2017.
- 3 While our focus is on economic governance, we recognize that parliaments face broadly similar challenges also in other policy areas, such as foreign and security affairs or policies related to the freedom, security and justice (e.g. Fromage and Herranz-Surrallés 2021).
- 4 Joined cases C-465/00, C-138/01 and C-139/01 *Rechnungshof v. Österreichischer Rundfunk and Others and Christa Neukomm and Joseph Lauermaun v. Österreichischer Rundfunk*, ECLI:EU:C:2003:294, para. 85.
- 5 Case C-73/17, *French Republic v. European Parliament*, ECLI:EU:C:2018:787, para. 35.
- 6 BVerfG, Judgment of the Second Senate of 30 June 2009 – 2 BvE 2/08 –, para. 237.
- 7 Lisbon Urteil, paras 258–260.
- 8 Maastricht Urteil, Cases 2 BvR 2134/92, 2 BvR 2159/92, at p. 19.
- 9 (BVerfGE 123, 267 <361>) (paras 121–124). (BVerfGE 55, 274 <302–303>).
- 10 BVerfGE 123, 267 <359>.
- 11 BVerfGE 89, 155 <199ff.>; 97, 350 <373>; BVerfGE 70, 324 <355–356>; 79, 311 <329>. See also BverfG (aid measures for Greece and against the euro rescue package), Judgment of the Second Senate of 7 September 2011 – 2 BvR 987/10 –, paras 1–142.
- 12 Joined cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P *Council v. Chrysostomides & Co. and Others*, ECLI:EU:C:2020:1028.
- 13 European Commission, 'Five Presidents' Report: Completing Europe's Economic and Monetary Union', 2015, p. 17.
- 14 European Commission, 'Annual Sustainable Growth Strategy 2020', COM(2019) 650 final of 17 December 2019.
- 15 Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (RRF Regulation), Arts 3 and 4.
- 16 The national plans can be found at [www.ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility\\_en#national-recovery-and-resilience-plans](http://www.ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_en#national-recovery-and-resilience-plans).
- 17 European Commission, 'Recovery and Resilience Facility: Two Years on. A Unique Instrument at the Heart of the EU's Green and Digital Transformation', COM(2023) 99 final.
- 18 Ibid.
- 19 See (RRF-)Regulation (EU) 2021/241, Article 26.'
- 20 European Parliament, 'European Parliament Involvement in Scrutinising the Recovery and Resilience Facility', Briefing, [www.europarl.europa.eu/RegData/etudes/BRIE/2021/659627/IPOL\\_BRI\(2021\)659627\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659627/IPOL_BRI(2021)659627_EN.pdf).
- 21 The Commission's assessment of national recovery and resilience plans – Overall appropriate but implementation risks remain, ECA special report pursuant to Article 287(4), second subparagraph, TFEU.
- 22 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, 20 Article.
- 23 Council Legal Service, Opinion, Council Doc. 9062/20 of 24 June 2021, para. 62.
- 24 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the

introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ 2020, L 4331/28.

25 Interinstitutional Agreement, para. 39.

26 This has been the core principle that ‘implementation of Community expenditure relating to any significant Community action presupposes not only the entry of the relevant appropriation in the budget of the Community, which is a matter for the budgetary authority, but in addition the prior adoption of a basic act authorising that expenditure, which is a matter for the legislative authority’. See case C-106/96, para. 26.

27 European Commission, ‘Amended Proposal for a Council Decision on the System of Own Resources of the European Union’, COM(2020) 445 final.

28 European Commission, ‘Communication on Orientations for a Reform of the EU Economic Governance Framework’, COM(2022) 583 final.

29 European Council Conclusions, 17–21 July 2020, Brussels, 21 July 2020, EUCO 10/20.

30 COM(2022) 108 final.

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

32 See also the Interinstitutional Agreement, para. 29.

33 The relevant secondary legislation is now published in Official Journal of the European Union, L 130, 16 May 2023.

34 The revision of the EU Emissions Trading System, including Maritime, Aviation and Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) as well as a proposal for ETS as own resource and a Carbon Border Adjustment Mechanism (CBAM) and a proposal for CBAM as own resource. Two new own resources were included in the Commission proposal for ‘next generation of own resources for the EU budget’ in December 2021 together with a third envisaged new own resource based on the share of residual profits from multinationals (COM(2021) 570 final).

35 For the revision of the EU Emissions Trading System, see European Commission, ‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757’, COM(2021) 551 final. For the FuelEU Maritime Proposal, see European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC’, COM(2021) 562 final.

36 We acknowledge that this would not automatically result in parties campaigning on the EU budget. After all, the problem so far has been also or even primarily political, as national parties have often prioritized ‘domestic’ issues in their EP election campaigns.

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