THE EUROPEAN AND ITALIAN ECONOMIC CONSTITUTION(S) AFTER THE RECENT CRISES: TOWARDS A NEW ROLE FOR STATE POWERS?

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Abstract:

This paper aims to examine the crucial role of the European Union (EU) in shaping the economic system, with a focus on the main regulatory responses adopted to counteract the social and economic consequences of both the COVID-19 pandemic and the war in Ukraine. Additionally, it considers the significant measures introduced at the national level to understand the key features of the current Italian economic constitution and how its traditional open and mixed nature has been affected by the ongoing crises, or vice versa, how the principles of the Italian economic Constitution helped to mitigate the impact of the crises. Through this analysis, we aim to determine whether the new approach, characterized by more extensive state intervention in the economic field and a greater emphasis on protecting social rights, will become a permanent feature of the European and national economic landscapes.

TABLE OF CONTENTS

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Both Authors contributed to the article's conception. Monica Rosini drafted paragraphs 3 and 4, while Marta Tomasi paragraphs 2, 2.1 and 2.2. Introduction and conclusions were drafted together. The paper was written as part of the research project "Establishing Ethics and Human Rights as Elements for Economic Knowledge", funded by the Free University of Bolzano/Bozen.

1. Introduction

The 1948 Italian Constitution, like many modern constitutions, provides for a set of rules regulating economic relations. These rules are mainly enshrined in Title III of Part I of the constitutional text (articles 35-47) and aim to establish the milestones of the model of society envisaged by the founding fathers[1]. In order to describe these constitutional provisions relating to economic matters, the legal scholarship has developed the complex notion of 'economic constitution'[2].

In this paper, we do not intend to discuss the meaning, validity, and scope of such a complex and ambiguous notion[3], but we will mainly assume it in a descriptive sense to indicate the constitutional norms which regulate economic relations and *try* to outline the economic system to be set in our country. Indeed, the Italian economic constitution is "open"[4], as it does not draw on a specific economic model and is characterised by an intrinsic

[1] Cfr. O. Pollicino, *L'economia nella Costituzione: le scelte dell'Assemblea costituente,* in G.F. Ferrari (ed.), *Diritto pubblico dell'economia* (2019).

[2] The legal concept of economic constitution was originally developed by German public law scholars during the XX century (W. Eucken, *Der Wettbewerb als Grundprinzip der Wirschaftsverfassung,* in *Der Wettbewerb als Mittelvolkswirtschaftlicher Leistungssteigerung und Leistungsauslese* (1942); F. Böhm, *Die Bedeutung der Wirtschaftsordnung für die politische Verfassung: Kritische Betrachtungen Zu Dem Aufsatz Von Ministerialrat Dr. Adolf Arndt über Das «Problem Der Wirtschaftsdemokratie in Den Verfassungsentwürfen»*, 1 *Süddeutsche Juristen-Zeitung*, 6 (1946). *Contra* C. Schmitt, *Der Hüter der Verfassung* (1931). In Italy, G. Bognetti (*Il modello economico della democrazia sociale e la Costituzione della Repubblica italiana,* in G. Miglio, *Verso una nuova Costituzione*, 133 (1983) and *La Costituzione economica italiana. Interpretazione e proposte di riforma* (1993)) was the first to use in an effective way this category.

[3] See: P. Bilancia, *Modello economico e quadro costituzionale* (1996); M. Luciani, *Economia nel diritto costituzionale,* in *Dig. disc. pubbl.,* V, (1988); S. Cassese, *La nuova costituzione economica* (2021).

[4] U. Romagnoli, *Il sistema economico nella Costituzione,* in F. Galgano (ed.), *La Costituzione economica – Trattato di diritto commerciale e di diritto pubblico dell'economia,* 139 (1977).

flexibility, which stems from the essential compromise that the Italian Constitution represented, drawn up as it was by political forces with very different ideological backgrounds. This explains why its rules seem to implement extremely different, sometimes opposing, principles and views, such as market, guided or collectivist economy[5].

These economic rules cannot be compartmentalized but have necessarily to be read in a systematic perspective in the framework of the constitutional system as a whole and of the general configuration of the form of State. There is no 'economic constitution' that can be isolated in and from the Constitution *tout court*[6].

The adoption of this broad interpretative approach shows how the achievement of some objectives, such as substantive equality, equal social dignity, and the guarantee and promotion of social rights, play a key-role in the constitutional economic model.[7] Thus, private and public economic activities should be regulated in a way to pursue these social aims[8].

However, the welfare state is not fixed, but, in contrast, it adapts to the social, political, and economic transformations that are gradually taking place and that involve the evolution of the form of government as well as of the State.

The common thread of our economic constitutional regulation is the construction of a strong, indissoluble link between the production of wealth and the elimination of economic and social inequalities, in other words between wealth produced and the affirmation of equal social dignity. Thus, the Constitution identifies some guidelines that outline the boundaries within which the economic model has been left free to develop. Moving from these

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[5] P. Bilancia, *L'effettività della Costituzione economica nel contesto dell'integrazione sovranazionale e della globalizzazione,* 5 Federalismi.it (2019).

[6] M. Luciani *Unità nazionale e struttura economica. La prospettiva della Costituzione repubblicana*, Rivista AIC (2011).

[7] See: M. Luciani *Unità nazionale e struttura economica. La prospettiva della Costituzione repubblicana*, cit. at 6; F. Angelini, *Costituzione ed economia al tempo della crisi…*, 4 Rivista AIC (2012).

[8] See especially Articles 41 ("Private economic enterprise shall have the right to operate freely. It cannot be carried out in conflict with social utility or in such a manner as may harm health, the environment, safety, liberty and human dignity. The law shall determine appropriate programmes and checks to ensure that public and private economic enterprise activity be directed at and coordinated for social and environmental purposes" and 43 Const.

guidelines different evolutions are possible, given that the constitutional economic model leaves the legislator *de facto* wide room for manoeuvre thanks to the choice of a merely guided economy, in an intermediate position between the 'pure' models represented by the liberal market economy, on the one hand, and by the socialist state economy, on the other one.

The flexible nature of the constitutional rules in this field has enabled (and still does) the adaptation of the Italian economic system to the principles and regulations of the European integration process, according to the principle of international openness *ex* article 11 Const. This impact is particularly significant, especially since the beginning of the 1990s (with the entry into force of the Maastricht Treaty), with the consequence that it has become increasingly necessary to interpret and redesign the national economic Constitution in the framework of the European context (*infra* section 2)[9].

In this regard, an enduring and irreducible tension between the national and European economic constitutions can be noted. Their starting assumptions are, in fact, almost opposite: the national economic constitution outlines an active role for the State in order to shape the economic system that has to pursue the aim of social utility; in contrast, the European economic constitution plans a more limited role for the public authorities in the economic sphere, in order to create a more competitive economic system[10].

The solution of this tension has been a reshaping of our economic constitution according to the European principles and rules[11].

Thus, in order to study and understand the national economic constitution, it is essential to look at the changes deriving from non-state rules, such as the obligations provided by European treaties, along with the developments brought about by non-state phenomena, such as globalization, technological progress and, more recently, Covid-19 and the Ukrainian emergencies.

The Covid-19 outbreak in early 2020, as a public health challenge, quickly became the most drastic economic crisis in European and national history. It changed the economic, social, and

[9] L. D'Andrea, *I principi costituzionali in materia economica*, Consulta online (2020), at https://www.giurcost.org/contents/giurcost//studi/dandrea1.pdf
[10] P. Bilancia, *Il modello di economia tra Stati e processi di integrazione europea*, 3 Rivista AIC (2014).
[11] G. Amato, *Il mercato nella Costituzione,* 1 Quad. cost., 16 (1992).

budgetary outlook in the EU and in the world, calling for an urgent and coordinated response both at Union and national level in order to cope with the economic and social consequences in all member states. In addition, in February 2022, the war triggered by Russia's invasion of Ukraine affected peace, the most precious achievement in recent European history, reviving the geopolitical logic of opposing blocs between the United States and Russia.

The aim of this paper is to consider some noteworthy effects of these dramatic scenarios on the European and national economic constitution. It intends to analyse how and to what extent the pandemic has reshaped European economic rules, setting aside the approach followed for decades based on the balanced budget and shifting the focus on the public intervention in the economy and social rights protection[12]. In such a way the objectives of the European economic constitution have come close to those of the Italian Constitution.

In particular, the paper intends to deal with the crucial role played by the EU in shaping the economic systems, considering the main normative responses adopted to contrast the social and economic consequences caused by both the pandemic and the war in Ukraine (sections 2, 2.1 and 2.2). Then, it will consider the more significant measures introduced at national level, to understand the main features of the current Italian economic constitution and to see how its traditional open and mixed nature has been changed by the crisis we are living in or, vice versa, how the former helped to contrast the latter (sections 3 and 4).

This analysis will allow us to verify whether this new approach, characterised by more intensive state intervention in the economic field and more attention for the protection of social rights, will become a permanent feature of the European and national economic scenarios.

2. The crucial role of the EU in shaping the economic system(s)

Among the elements that contribute to shape and orient the economic system defined by the Italian Constitution, a crucial role is played by the European Union's influence in the field of

[12] F. Scuto, *La dimensione sociale della Costituzione economica nel nuovo contesto europeo* (2022).

economic relations. Therefore, before proceeding to analyse the national response to the pandemic and the war, it is necessary to consider the framework that has been drawn up in the European Union in view of the economic policy choices that have been made there. In fact, although economic policy falls within the remit of each Member State, the EU offers room for multilateral coordination between individual countries, often significantly affecting the structure of internal models.

The preamble to the TEU states that Member States are "resolved to achieve the strengthening and the convergence of their economies". The basis for economic coordination can be found in Articles 2, 5 and 119 of the TFEU: they require the Member States to view their economic policies as a matter of common concern and to coordinate them closely. According to Articles 120 and 121 TFEU, Member States are required to conduct their economic policies with a view to contributing to the achievement of the objectives of the Union and in the context of the broad guidelines that the Council formulates. Furthermore, Article 146 TFEU provides that Member States are to implement employment policies that take into account the guidelines for employment. Coordination of the economic policies of the Member States is therefore a matter of common concern even if, from the very beginning, the European integration project was unclear about how to obtain this economic policy coordination, and many attempts remained vague and intergovernmental[13].

The shortcomings of the Economic and Monetary Union (EMU), characterized by an apparent asymmetry between its decentralised 'Economic' and the fully centralised 'Monetary' parts, were highlighted by the sovereign debt crisis[14].

Moments of crisis, in general, frequently activate change and trigger forces that challenge the *status quo*, leading to new political, economic and social arrangements[15]. In this sense, the financial and economic crisis of 2008-2012 exposed the existing weaknesses of the

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[13] D. Howarth, A. Verdun, *Introduction to 'Economic and Monetary Union at Twenty: A Stocktaking of a Tumultuous Second Decade'*, 42 Journal of European Integration 3, 287 (2020).

[14] J.S. Haas, V.J. D'Erman, D.F. Schulz & A. Verdun, *Economic and fiscal policy coordination after the crisis: is the European Semester promoting more or less state intervention*, 42 *Journal of European Integration,* 3, 327 (2020).

[15] S. Mangiameli, *Covid-19 e Unione europea. La risposta alla crisi sanitaria come via per riprendere il processo di integrazione europea*, 2 Dirittifondamentali.it (2019).

European system, highlighting fundamental problems and unsustainable trends in many European countries, and made it clear that the EU's economies are strictly interdependent. Greater economic policy coordination across the EU was needed to achieve the aims of boosting economies and creating jobs. To this end, the system of bodies and procedures for economic coordination that was in place underwent a process of revision and reinforcement, a number of legislative acts have been adopted, and new institutions established[16].

As is well known, however, the easing of the economic and financial crisis has not led to an improvement in the EU's condition comparable to that of other areas of the world: the difficulties resulting from the economic and financial crisis, particularly due to the austerity policy implemented in the EU, have continued to be long felt. Furthermore, the process of political integration, based on the strengthening of supranational democracy, also due to other concomitant crises[17], has not fully achieved the desired results. All this, according to the Commission itself, has somehow produced "a growing disaffection with mainstream politics and institutions at all levels (...) easily filled by populist and nationalist rhetoric".[18]

The most recent crisis, that of Covid-19, has lent itself – in all its tragedy – as yet another opportunity for policymakers to re-think frameworks for decision-making and allow previously marginalized ideas to gain ground. The pandemic crisis - an exceptionally large exogenous shock affecting all EU member states - helped to highlight the importance of a joint and shared intervention by European institutions and Member States and of an intention aimed at the achievement of a "strategic autonomy"[19]. At least from the point of view of communicative rhetoric, the

[16] The legal framework of the EU economic governance is available at: https://www.europarl.europa.eu/factsheets/en/sheet/87/economic-governance.

[17] The Eurozone crisis, the refugee crisis, Brexit, and rule-of-law backsliding have presented distinct threats to European integration.

[18] European Commission, "White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2025", COM(2017)2025, 1° March 2017.

[19] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "Europe's moment: Repair and Prepare for the Next Generation", COM(2020) 456 final, 27 May 2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0456&from=IT, p. 2.

approach seemed very different from past crises. "We must look out for each other, we must pull each other through this. Because if there is one thing that is more contagious than this virus, it is love and compassion. And in the face of adversity, the people of Europe are showing how strong that can be". These words, spoken by the President of the Commission, Ursula von der Leyen, at the plenary session of the European Parliament (26 March 2020), appear at the top of the Commission's institutional page dedicated to the *Timeline of EU action* to combat CoViD-19. From the beginning of the crisis, the emphasis placed on the individuality of states and austerity policies that characterized the 2008 crisis was replaced by frequent calls for solidarity[20] and the need to make investments[21].

After an initial moment of bewilderment, in fact, the EU institutions were quite responsive and intervened by revising different EU's policies to counteract the effects of what was - significantly - qualified as a 'syndemic'[22], a pandemic whose effects also depend on a number of considerations, not only health, but also economic, environmental and social. Actions were developed on different fronts: to contain the spread of the virus, support national health systems and counter the socio-economic impact of the pandemic by taking unprecedented measures at both national and EU level.

With regard to the economic response, the main measures adopted can be summarized as follows:

(i) The first important step was announced on 13 March 2020 by the ECB which adopted a key role in ensuring the crisis did not spill over to financial markets. The ECB's pandemic emergency purchase programme was started in March 2020[23] to inject liquidity into the financial system, with the aim to "counter the serious risks to the monetary policy transmission mechanism and the outlook for the euro area posed by the outbreak and escalating diffusion of the

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[20] "The COVID-19 pandemic constitutes an unprecedented challenge with very severe socio-economic consequences. We are committed to do everything necessary to meet this challenge in a spirit of solidarity". See: Report on the comprehensive economic policy response to the COVID-19 pandemic.

[21] See the Communication from the Commission to the European Parliament, the European Council, the Council, the European and Social Committee and the Committee of the Regions, significatively titled *Coronavirus Response. Using every available euro in every way possible to protect lives and livelihoods* (2 April 2020).

[22] R. Horton, *Offline: COVID-19 is not a pandemic*, 396 The Lancet 874 (2020).

[23] Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).

coronavirus". The initial € 750 billion envelope for the PEPP was increased by € 600 billion on 4 June 2020 and by € 500 billion on 10 December, for a new total of € 1,850 billion. As the President of the ECB, Christine Lagarde, said "Extraordinary times require extraordinary action. There are no limits to our commitment to the euro".

(ii) On 20 March 2020 the Commission proposed the activation of the general escape clause of the Stability and Growth Pact.[24] Once endorsed by the Council, it allowed Member States to undertake measures to deal adequately with the crisis, while departing from the budgetary requirements that would normally apply under the European fiscal framework, also making clear that the cost of the crisis would have fallen in the first instance on the shoulders of each government[25].

(iii) In addition, on 19 March 2020 the Commission adopted a Temporary Framework to enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the COVID-19 outbreak[26].

(iv) Furthermore, three EU safety nets for workers, sovereigns, and businesses were established, amounting to a package worth € 540 billion, to lessen the burden of the Covid-19 catastrophe for member states: a) the temporary Support to mitigate Unemployment Risks in an Emergency (SURE), the backstop for workers managed by the European Commission, supporting short-time work schemes and similar measures, to help Member States protect jobs and thus employees and self-employed against the risk of unemployment and loss of income[27]; b) the European Stability Mechanism's Pandemic Crisis Support, tailored to the needs of sovereigns and supporting countries to cover their

[24] European Commission, *Coronavirus: Commission proposes to activate fiscal framework's general escape clause to respond to pandemic,* Press release, 20 March 2020, available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_20_499/IP_20_499_EN.pdf

[25] C. Domenicali, *La Commissione europea e la flessibilità "temporale" nell'applicazione del Patto di Stabilità e Crescita*, 19 Federalismi.it, 453 (2020)

[26] European Commission, Communication from the Commission, *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*, C(2020) 1863 final, 19.03.2020.

[27] It is interesting to note that SURE finds its legal basis in art. 122 TFEU, the only article in the Chapter devoted to economic policy in which reference is made to the principle of solidarity.

direct and indirect health-care related costs; c) EIB's Pan-European Guarantee Fund (EGF), ensuring businesses have sufficient short-term liquidity available to face the crisis, and continue their growth and development in the medium to long-term.

2.1. An unprecedented exercise in solidarity?

Until the late spring of 2020, the responses proposed by the EU fitted into patterns well established over the past decades, presenting emergency instruments, apparently compatible with the Treaties, adopted with the intergovernmental method, promoting a model of solidarity mainly understood as a loan subject to "strict conditionality", (was introduced in 2011 in Art. 136 (para. 3) TFEU, referring to the granting of "any financial assistance" by the newly established ESM).

The pandemic seems to have changed views on fiscal probity that, in previous years, opposed a possible role for debt collectively backed by member governments.

The first European instrument that appears to be truly inspired by a different notion of solidarity is the EU Recovery Plan, described as an unprecedented exercise in solidarity. The new fiscal and governance framework, which allows for direct transfers to countries, in addition to loans, financed by borrowing in markets and temporarily lifting the 'own resources' EU ceiling, is based on two pillars. The European Council worked out an agreement on the EU budget for the next seven years, the multiannual financial framework for 2021–2027 (€1.1billion) and the € 750 billion recovery plan. The latter, also called Next Generation EU, consists of a Recovery and Resilience Facility (RRF), which will make € 672.5 billion available in the form of loans (€ 360 billion) and grants (€ 312.5 billion), and a further € 77.5bn, which will be spent on EU-wide programmes like React-EU, a top-up to the union's structural and investment funds. Resources of the RF are intended to finance national recovery and resilience programmes, which contain proposals for both investment and reform. The plans are not conditional on compliance with econometric parameters but are linked to the credibility and effective implementation of the programmes for which they are granted, and compliance with the commission's previously stated "country-specific recommendations": structural-reform proposals that governments have ignored for years. The deal breaks with the norms of no common debt issuance and will result in significant redistribution across Member States through grants.

According to the Jacques Delors Centre, a Berlin think-tank, the creation of the fund marked an "irretrievable change in Europe's financial architecture"[28].

Some have argued that this is a "Hamiltonian moment"[29]. The reference is to the 1790 decision made by Alexander Hamilton to create a federal debt, which would strengthen ties between the entities brought together to form the United States of America, while increasing the authority and legitimacy of the federal power[30]. But scepticism soon set in, having the better of the argument. On closer inspection, in fact, despite clear progress, it seems that the EU recovery strategy will not lead to a radical, federally-oriented reorganisation of the European project but, at best, will institutionalise some changes while reopening crucial debates on the future of the Union[31].

This is due, in particular, to the temporary nature of the measures adopted, which must be repaid by 2058 at the latest, to their amount, which is helpful but not "a game-changer"[32], and to the lack of timeliness of the disbursements, which prevented states' being able to deal with the most acute phase of the crisis[33].

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[28] Economist. 2021. Europe's radical economic response to COVID-19, March 31, https://www.economist.com/briefing/2021/03/31/europes-radical-economicresponse-to-COVID-19. More in general, F. Fabbrini, *The Legal Architecture of the Economic Responses to COVID-19: EMU beyond the Pandemic*, 60 JCMS, 1, 186 (2022).

[29] Olaf Scholz, German Minister of Finance , recalled the "Hamiltonian moment" in an interview to "Die Zeit" on 19 May 2020 (www.zeit.de/2020/22/olaf-scholz-europaeische-union-reformvereinigte-staaten). Eurogroup President Mário Centeno described it as "a big step toward fiscal union."

[30] As first Secretary of the Treasure, after a long deadlock, Hamilton managed to find a compromise in June 1790 with Thomas Jefferson and James Madison, who had long opposed the centralisation of fiscal power at federal level. On the 4 August 1790, the Congress passed the "Funding act", which allowed the establishment of the first stock of American public debt.

[31] S. Disegni (ed.), *Europe at a Crossroads After the Shock* (2020).

[32] S. Kapoor, *This isn't Europe's 'Hamilton' moment*, Politico, 22 May 2020.

[33] As stated in the EC's "Proposal for a Regulation" the financial contribution will "be paid in instalments once the Member State has satisfactorily implemented the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan" (EC. (2020). Proposal for a regulation of the European Parliament and of the council establishing a recovery and resilience facility, COM (2020) 408 final 2020/0104 (COD), Brussels, May 28., art. 17.4.a). EU countries should have officially submitted their recovery and resilience

Furthermore, it must be borne in mind that the final agreement was the result of long and complex negotiations, showing conflicts in particular around the choice of the fiscal instruments to be used and the extent to which access to resources from the NGEU and the MFF should be linked to democracy and the rule-of-law. This latter, in particular, is a telling demonstration that major differences persist regarding the foundations and objectives of the EU.

The existing EU solidarity mechanisms are of an interstate nature, remain highly conditional and depend on national governments' willingness to enter such relationships with other EU countries[34].

As some authors have pointed out[35], the true Hamiltonian innovation of the founding period in the United States was the conferral of taxing authority on the federal government in the US Constitution; similarly, only the power and legitimacy to mobilise fiscal resources on its own would have allowed the EU to smoothen the complex exercise in political and financial engineering that brought to the adoption of the NGEU.

Certainly, the year 2020 exposed the risks and weaknesses of the market-driven global system like never before[36]: the long-lasting, widespread Covid-19 pandemic imposed huge challenges, requiring governments at all levels to take an active role in designing and enforcing economic policies to address the various problems that pure market forces cannot resolve. Covid exposed the deficiencies in current arrangements and the need to build

plans "as a rule" by 30 April 2021 (see paragraph 38 of the Preamble and Article 18(3) of the RRF Regulation), but the deadline was flexible and the Commission has argued that countries can submit their plans up to mid-2022 (see the EC Questions and answers: The Recovery and Resilience Facility). As of February 2023, thirteen countries submitted their plans by the 30 April 2021 deadline or at most with a one-day delay. 24 countries submitted their plans by the end of June 2021, while Malta submitted its plan in July 2021, Bulgaria in October 2021, and the Netherlands in July 2022.

[34] S. Pornschlegel, *Solidarity in the EU: More hype than substance?*, European Policy Centre and Charlemagne Prize Academy, issue paper, 28 July 2021, online: https://epc.eu/content/PDF/2021/EU_solidarity_IP.pdf.

[35] C. Fasone, P. Lindseth, *Europe's Fractured Metabolic Constitution: From the Eurozone Crisis to the Coronavirus Response*, Working Paper Series, SoG Working Paper 61 (2020).

[36] A. Tooze, *Has Covid ended the neoliberal era?,* The Guardian, 2 September 2021.

relations not only between governments and the market, but also to involve other institutions within society[37].

The pandemic has revealed on the one hand the transnational interrelatedness of social life and the economy, highlighting the fundamental role of a solidarity-driven economy, and, on the other, the multiplication of territorial levels crucial to social politics[38].

It might be useful to recall that the EU Commission's 2021 Work Programme indicated "an economy that works for people" as one of its priority dimensions, meaning that ongoing health and economic crises have to be managed with a social dimension in mind, thus ensuring that "no one is left behind in Europe's recovery"[39].

Furthermore, the Commission adopted an action plan for implementation of the European Pillar of Social Rights, originally launched in 2017, and another to support the social economy, proposing a set of measures aimed at creating the conditions for the social economy to thrive and fulfil its potential to contribute to sustainable and inclusive growth.

Additionally, the fiscal flexibility granted by the activation of the SGP general escape clause is also reflected in the 2020-2021 country-specific recommendations, which widely diverge from those of the previous cycles. A quite recent analysis[40] shows how the focus of EU governance drifted away from policy reforms aimed at achieving financial sustainability and macroeconomic stability (e.g. the revision of wages, the inclusivity of the labour market, and the adjustment of pension systems); instead, the accent has been placed on policy areas which are usually considered not particularly compatible with the macroeconomic objectives of the EU (consider the attention given to adequate social protection systems and income support mechanisms).

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[37] J.E. Stiglitz, *The proper role of government in the market economy: The case of the post-COVID recovery*, 1 JGE, 100004 (2021).

[38] S. Börner, *Practices of solidarity in the COVID-19 pandemic*, 6 Culture, Practice & Europeanization, 1, (2021).

[39] Remarks by Executive Vice-President Dombrovskis at the press conference on the Recovery and Resilience Facility, 28 May 2020, https://ec.europa.eu/commission/presscorner/detail/en/speech_20_961.

[40] S. Rainone, *An overview of the 2020-2021 country-specific recommendations (CSRs) in the social field. The impact of Covid-19,* Background analysis 2020.01, European Trade Union Institute (ETUI), (2020).

The 2020 Country Specific Recommendations (CSRs) represented a sea change from previous years, which were the result of extraordinary circumstances that brought with them the temporary suspension of the EU budgetary rules. It is therefore hard to tell whether this more social approach will be consolidated in the future or whether we are only witnessing a momentary, pandemic-induced deviation.

2.2. The war and the limits of "internal solidarity"

The evaluation of the scope of measures taken to respond to the pandemic, thus, cannot be separated from consideration of the ongoing war in Ukraine, which seems to have dimmed prospects of a post-pandemic economic recovery in Europe. The Russian invasion, which primarily caused a massive humanitarian crisis, forcing almost eight million Ukrainians to flee the country[41], also meant higher energy prices and trade disruptions for the EU.

Just as the pandemic was giving way to a new normal, the war required urgent action against an exogenous and security threat allied to efforts to address the immediate consequences of financial sanctions. The situation determined the EU leaders to adopt, on 10 and 11 March 2022, a declaration on the Russian aggression against Ukraine, as well as on bolstering defence capabilities, reducing energy dependencies and building a more robust economic base.

As many before, the shock brought by this crisis was evidently highly asymmetric, affecting some countries much more than others. Consider, for example, the uneven distribution of refugees on the EU territory[42] and the different degree of dependence on Russian energy sources of different European countries[43].

In this context, calls for solidarity were not long in coming and the recent post-COVID example appeared to be inspirational. The EU's Economic Commissioner Paolo Gentiloni, for instance,

[41] According to the data collected by the UNHCR, updated to 3 January 2023, refugees from Ukraine recorded across Europe are 7,915,287 (https://data.unhcr.org/en/situations/ukraine).

[42] For instance, the data collected by the UNHCR report a roughly ten-to-one difference between countries with similar populations (e.g. 1,500,000 refugees registered in Poland and 164,000 in Spain).

[43] See the data published by Statista: https://www.statista.com/chart/26768/dependence-on-russian-gas-by-european-country/.

called for European solidarity evoking the "experience we had in the previous crisis" which showed that "acting together, responding together you are not only able to avoid divisions among European countries but you have a strong, strong reaction"[44]. Similarly, Commission President von der Leyen, pointing to the Commission's proposals to address the energy crisis, said that the best response to the Russian war on energy is "European solidarity and unity"[45].

Beyond statements of principle, the most concrete expressions of solidarity can be said to have been with the Ukrainian population: the EU Commission unlocked unused regional and structural funds to be repurposed for humanitarian assistance and activated its Temporary Protection Directive for the first time[46]. Furthermore, governments beyond those neighbouring Ukraine opened their borders and offered emergency protection, showing an uncommon and evenly distributed welcoming attitude[47].

In contrast, solidarity among Member States has not been equally evident.

With regard to the changes in the framework of EU fiscal and financial integration, the suspension of the fiscal policy rule of the Stability and Growth Pact decided in March 2020 by the European Commission and the EU Council, due to last until the end of 2022, was again extended in May 2022 in light of the Ukraine invasion.

Furthermore, the Commission decided to prolong the possibility to grant investment support measures towards a sustainable recovery under the State aid COVID Temporary Framework until 31 December 2023 and, on 23 March 2022, provided for further measures to enable Member States to support the economy in the context of Russia's invasion of Ukraine, under

[44] See the interview released to CNBC at https://www.cnbc.com/2022/10/17/putins-war-on-energy-is-testing-solidarity-between-eu-nations.html.

[45] Press release at https://www.europarl.europa.eu/news/it/press-room/20221014IPR43215/act-decisively-at-eu-summit-on-energy-and-the-cost-of-living-crises-urge-meps.

[46] See the World Bank Group report "Social Protection for Recovery" Europe and Central Asia Economic Update, Office of the Chief Economist, Fall 2022.

[47] UNHCR. (2022). *Ukrainian refugee situation*, available at https://data.unhcr.org/en/situations/ukraine.

another Temporary Crisis Framework, whose duration was later also extended by one year, until 31 December 2023[48].

Finally, on 11 October 2022, the European Commission issued € 11 billion in a dual tranche transaction, which will be used to support Ukraine under the EU's Macro-Financial Assistance[49] programme and Europe's recovery under the flagship Next Generation EU programme. The deal consisted of a € 5 billion tap of the 7-year bond due on 4 December 2029 and a new 20-year bond of € 6 billion due on 4 November 2042.

A proposal for an EU "fiscal capacity" funded by common debt issuance and new income streams was put forward by the IMF. However, northern EU countries remained sceptical, pointing out that the pandemic fund was to be seen as a unique occurrence, and Germany's finance minister rejected common borrowing by the EU as a way to address the energy crisis, saying it was more advantageous for states to raise debt at the national level given the higher interest rates faced by the European Commission[50].

The more structural nature of the crisis produced by the war in Ukraine compared to that of the Covid, together with rising inflation, led to a more tempered response from European institutions.

Solidarity has been less pronounced, but a timid evolution of this principle can be glimpsed in the energy field.

At least since the Commission Communication 'Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy', from February 2015, solidarity is recognized – together with trust – as a necessary founding feature of energy security[51].

In the last year, the European Commission put forward a number of coordinated steps to gradually phase down the use of

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[48] Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022).

[49] On 10 December 2022 the Council reached an agreement on a legislative package which will enable the EU to help Ukraine financially throughout 2023 with €18 billion. All the details can be found at https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6699.

[50] G. Chazan, S. Fleming, *Germany rejects push for fresh EU borrowing to battle energy crisis*, The Financial Times, 30 October 2022.

[51] Communication from the Commission to the European Parliament and the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, COM(2015) 80 final.

Russian energy sources, improve Member States' access to other suppliers, and ensure a more equitable division of resources among them. Initial proposals conflicted with national priorities, determining the Hungarian administration to decline to take part, the German government to push for fairer distribution[52] and the Mediterranean nations, who are less exposed to Russian gas, to argue for more of a self-help approach[53].

The landing point of the discussion was the approval, on 18 May 2022, of the REPowerEU Plan[54], aimed at reducing European dependency on Russian gas and oil, through energy savings, diversification of energy supplies, and accelerated roll-out of renewable energy to replace fossil fuels in homes, industry and power generation.

The basic principle of the Plan is that "no Member State can tackle this challenge on its own. By carrying out joint needs assessments and planning, joint purchases and greater coordination, we will ensure that the phasing out of our dependency on Russian fossil fuels is both achievable and affordable for all Member States". Within this framework, however, the European Commission has called on individual Member States to take autonomous measures right away to achieve immediate results[55]. According to some critics, moreover, these "timid and fossil-fuel-driven (…) proposals" are not able to address the scale of this crisis, which in turn has led to the current approach of uncoordinated national relief packages".[56]

Furthermore, in the summer of 2022, the Commission put forward some proposals under the title *Save Gas for a Safe Winter*[57].

[52] During the crisis Germany was often criticised for using fiscal power that many smaller Member States lack, especially after the €200bn energy aid package for businesses and households. See: https://www.ft.com/content/a14c4ae4-c513-46c1-b427-23a5e046703b.

[53] V. Anghel, E. Jones, *Is Europe really forged through crisis? Pandemic EU and the Russia – Ukraine war*, in *Journal of European Public Policy*, Special Issue: The COVID-19 Pandemic and the European Union. Guest Editors: L. Quaglia and A. Verdun (2022).

[54] COM/2022/230 final.

[55] See for example C(2022) 3219 final Commission Recommendation on speeding up permit-granting procedures for renewable energy projects and facilitating Power Purchase Agreements.

[56] See the declarations by The Greens/EFA parliamentary group at https://www.greens-efa.eu/en/article/document/eu-solidarity-fund-needed-in-the-face-of-pan-eu-energy-crisis-war

[57] See https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4608.

The pack included the following: a) a communication (COM(2022) 360) aimed to review the current situation and the steps that have already been taken, as well as outlining the tools available to the EU to respond to the crisis; b) a proposal for a Council Regulation on coordinated demand reduction measures for gas (COM(2022) 361); c) a Communication about an Amendment to the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (COM(2022) 5342).

In particular, the proposed Regulation was adopted by the Council on 5 August 2022 (Regulation (UE) 2022/1369). With this act, Member States commit to "use their best efforts to reduce their gas consumption in the period from 1 August 2022 to 31 March 2023 at least by 15% compared to their average gas consumption in the period from 1 August to 31 March during the five consecutive years preceding the date of entry into force of this Regulation". The Regulation is a watered-down version of the plan originally proposed, it is hardly sufficient quantitatively, and it is full of carve-outs and exemptions, requiring for example a vote in the Council to mandate any cuts (art. 5)[58].

Another step was taken on 6 October 2022, when EU energy ministers reached a political agreement on a proposal for a Council Regulation to address high energy prices[59]. The Regulation introduces common measures to reduce electricity demand and to collect and redistribute the energy sector's surplus revenues to final customers. The Council agreed to a voluntary overall reduction target of 10% of gross electricity consumption and a mandatory reduction target of 5% of the electricity consumption in peak hours, to cap the market revenues for electricity generators, to set a mandatory temporary solidarity contribution on the profits of businesses active in the crude petroleum, natural gas, coal, and refinery sectors, which will apply in addition to regular taxes and levies applicable in Member States.

Maybe the most significant measures from the point of view of solidarity – and the ones that had the hardest time getting

[58] J. Rankin, *EU agrees plan to ration gas use over Russia supply fears*, The Guardian, 26 July 2022, https://www.theguardian.com/business/2022/jul/26/eu-agrees-plan-to-reduce-gas-use-over-russia-supply-fears.
[59] Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices.

approved[60] – concern gas supplies. Regulation (EU) 2017/1938 already established provisions aiming to safeguard the security of gas supply in the EU by ensuring the proper and continuous functioning of the internal market in natural gas. Solidarity seems to represent one of the focuses of the whole Regulation which aims "to boost solidarity and trust between the Member States" (whereas 6) and to provide "transparent mechanisms, in a spirit of solidarity, for the coordination of planning for, and response to, an emergency at Member State, regional and Union levels". In this view, according to art. 12, par. 1, where a Member State has declared the emergency crisis level as defined in the Regulation (art. 10.1) any increased supply standard or additional obligation imposed on natural gas undertakings in other Member States shall be temporarily reduced to a certain level (established in art. 5.1). The troublesome aspect of the regulation is that details of gas-sharing under the described solidarity mechanism had to be specified in bilateral agreements between neighbouring countries, which until now have been rare and sparse[61]. The lack of additional European legislation to fill that gap, has confronted solidarity with obvious practical and political challenges. A step forward in the direction of solidarity was made at the Energy Council on 19 December 2022, when EU Member States reached an agreement on the Council Regulation establishing a temporary joint purchasing tool that will come into force in early spring 2023 and aims to ensure EU solidarity in purchasing and distributing gas, ensuring security of the supply, and acting on the level of gas prices[62]. In particular, because of the aforementioned lack of agreements among Member States, default rules for bilateral solidarity were introduced. The Council agreed on a default mechanism to ensure supply for 'solidarity protected consumers' – household customers connected to a gas distribution network,

[60] H. von Der Burchard, *Germany opposes EU price cap on all gas imports*, Politico, 30 September 2022 at: https://www.politico.eu/article/germany-oppose-eu-gas-price-cap-domestic-price-limit/.

[61] However, as of now, only six such agreements have been concluded (including Germany and Denmark; Germany and Austria; Estonia and Latvia; Lithuania and Latvia; Italy and Slovenia; Finland and Estonia). See European Commission, *Secure Gas supplies*, 2022, at: https://energy.ec.europa.eu/topics/energy-security/secure-gas-supplies_en.

[62] Council Regulation (EU) 2022/2576 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders.

district heating installations and essential social services – and critical gas-fired power plants.

A few days later, Council Regulation (EU) 2022/2578 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices[63], was adopted. The market correction mechanism (MCM) aims to protect citizens and the economy against excessively high prices, limiting episodes of excessive gas prices in the EU that do not reflect world market prices, while ensuring security of energy supply and the stability of financial markets. The Regulation, taking stock of the differences in financial risks and benefits among various Member States, recognizes that "the MCM should constitute a solidary compromise, in which all Member States agree to contribute to the market correction and accept the same limits for the price formation, even though the level of malfunction of the price formation mechanism and the financial impacts of derivatives prices on the economy are different in some Member States". The MCM would therefore be able to "strengthen Union solidarity in avoiding excessively high gas prices, which are unsustainable even for short periods of time for many Member States. The MCM will help to ensure that gas supply undertakings from all Member States are able to purchase gas at reasonable prices in the spirit of solidarity".

Apart from the latter examples (in which solidarity is sometimes imposed to make up for the inactivity of member states), most of the measures taken to cope with the war-driven crisis seem to be characterised by a strong degree of decentralisation.

3. The Italian measures and the key role of the State in counteracting the impact of the Covid-19 and Ukrainian emergencies on the economic sector

The Covid-19 pandemic had a significant impact on the national rules relating to the form of State and government. Rights, fundamental principles, sources of law, government-parliament relationships, state-regions relations, were under stress and are still searching for new balances.

[63] Council Regulation (EU) 2022/2578 of 22 December 2022 establishing a market correction mechanism to protect Union citizens and the economy against excessively high prices.

As in any crisis, the role of the State in the economic field expanded in order to minimize the social and economic consequences of the pandemic[64]. In response to this serious and unforeseen emergency, budgetary measures and interventions were timely adopted by the Italian government to increase the capacity of the national health system, halt the economic slide, keep markets and the economy functioning, and provide aid to those individuals and businesses that had been particularly affected. The severe impact of the pandemic required, therefore, substantial state support and new, large public expenditures.

Italy's response was fully in line with the broader European framework, starting with the coordinated economic response to the Covid-19 outbreak, set by the EU Commission in its Communication of 13 March 2020 (*supra* section 2.1)[65] and, similarly, emphasized the role of the State in the economic sphere in order to protect social rights.

Indeed, the main response, initially, came from member states' national budgets, even though EU state aid rules were adapted to allow member states to take swift and effective actions to support citizens and undertakings, in particular SMEs, facing economic difficulties[66]. It was possible also thanks to a loosening of fiscal policies and budgetary constraints, encouraged by financial markets and international or supranational organisations, which had always been the main supporters of budgetary discipline (*supra* section 2)[67]. Thanks to this normative framework, the Italian government and parliament allocated approx. 150 billion euro, through the approval of several acts of budget variances[68].

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[64] Regarding the different ways in which States can influence the economy, see: J.E. Stiglitz, A. Heertje, *The Economic Role of the State* (1989).

[65] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final of 13.03.2020.

[66] Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C(2020) 1863 final, 19.03.2020, underlined the need for appropriate State aid measures, listing the conditions for state aids compatible with the internal market (p. 3).

[67] See: F. Bassanini, G. Napolitano, L. Torchia, *Introduzione,* in F. Bassanini, G. Napolitano, L. Torchia (eds.), *Lo Stato promotore. Come cambia l'intervento pubblico nell'economia,* (2021) 13.

[68] The relative resolutions of Chamber of deputies and Senate have to be adopted by an absolute majority of members of both Chambers (according to article 6, para. 3, Law 24 December 2012 no. 243). See: Chamber of Deputies Resolution no.

The state intervention was launched in the early days of the pandemic emergency with the Decree-Law no. 18 of 17 March 2020, so-called *Decreto Cura Italia*[69], which provided for measures to strengthen the national health service and economically support families, workers and businesses. For the entrepreneurial system the government provided liquidity support through the banking system (i.e. enhancing state loan guarantees) and fiscal measures, including tax and social security contribution deferrals[70]. After a few weeks, the Decree-Law no. 23 of 8 April 2020, the so-called *Decreto Liquidità*[71], provided additional and stronger measures to favour workers and businesses. In particular, it authorized SACE S.p.A., a joint-stock company controlled by the Ministry of Economy and Finance (MEF), to grant public guarantees on bank loans at particularly favourable conditions in order to support liquidity to enterprises based in Italy.

In May, as the 'first wave' of the pandemic was coming to an end, the so-called *Decreto Rilancio*[72] established a number of measures aimed - again - at strengthening the health service and supporting the social and productive system. In the summer, the *Decreto Agosto* (Decree-Law no. 104 of 14 August 2020[73]) was enacted to allocate additional resources to the health sector and welfare system, and to provide for measures aimed at supporting the economic recovery phase.

During the 'second wave' of the pandemic, the government passed four *Decreti Ristori* over a period of a few weeks[74], which

6-00103 and Senate Resolution no 6-00102 of 11 March 2020 (20 billion); Resolution no. 6/00107 of the Chamber of Deputies, approved on 29 April 2020 and Resolution no. 6/00106 of the Senate, approved 30 April 2020 (55 billion); Resolutions no. 6/00123 of the Chamber and no. 6/00124 of the Senate, approved on 29 July 2020 (25 billion); Resolutions no. 6/00145 of the Chamber and no. 6/00138 of the Senate of 14 October 2020 (8 billion); Resolutions no. 6-00169 of the Chamber and no.6-00169 of the Senate, of 20 January 2021 (32 billion); Resolutions no. 6-00186 of the Chamber and no. 6-00187 of the Senate of 22 April 2021 (40 billion).

[69] It was converted with Law 24 April 2020, no. 27.

[70] Titles III and IV.

[71] It was converted with Law 5 June 2020, no. 40.

[72] Decree-Law no. 34 of 19 May 2020, converted with Law 17 June 2020, no. 77.

[73] It was converted with Law 13 October 2020, no. 126.

[74] Decree-Law no. 137 of 28 October 2020; Decree-Law no. 149 of 9 November 2020; Decree-Law no. 154 of 23 November 2020; Decree-Law no. 157 of 30 November 2020. The first Decree-Law was converted with Law 18 December 2020, no. 176, which repealed the other three decrees.

introduced a set of rapid and automatic measures, such as non-refundable aids; suspension and reduction of taxes, contributions, and other payments; and additional weeks of redundancy fund (*cassa integrazione*); in favour of those sectors most affected by the new restrictions.

This strategy remained unchanged by the new government, led by Mario Draghi. It adopted the so-called *Decreto Sostegni* (Decree-Law no. 41 of 22 March 2021[75]) providing for new non-repayable subsidies, the cancellation of taxes and the extension of the Covid redundancy fund, based on the resources of the last 32-billion-euro budget variance. Finally, a *Decreto Sostegni-bis* (Decree-Law no. 73 of 25 May 2021) was adopted[76].

In general, these decree-laws injected huge amounts of money into the economic system using different instruments. Although it is difficult to outline a coherent and precise pattern, a number of trends can be identified: generalised benefits for companies, economic aids for worst-hit sectors, bonus policy, outright grants, state guarantees[77], loans at low interest rates, capital injections, and deferral of tax and social security contribution payments[78]. Basically, the State dropped a form of helicopter money, which ensured an income for families, workers, businesses in a situation of economic paralysis in which their survival was at risk[79]. Many of these measures were inspired by an emergency logic, and, consequently, they had limited duration and were not able to meet the long-term needs of our country. However, some measures had a wider scope and could act as quasi-structural drivers for the economy[80]. For example, Article 27 of the abovementioned *Decreto Rilancio* authorised *Cassa depositi e prestiti S.p.A.* (CDP[81]) to set up an asset (so-called '*Patrimonio Rilancio*'),

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[75] It was converted with Law 21 May 2021, no. 69.

[76] It was converted in Law 23 July 2021, no. 106. A. Riviezzo, *Fonti dell'emergenza e Costituzione economica*, 4 Osservatorio costituzionale, 133 (2021).

[77] See: article 1 of Decree-Law 8 April 2020, no. 23 (so-called *Garanzia Italia).*

[78] P. Nicolaides, *Unprecedented State Intervention: A Review of State Aid to Combat Covid-19 on the First Anniversary of the European Commission's 2020 "Temporary Framework",* Luiss. *Policy Brief,* no. 4. (2021),

[79] G. Amato, *Bentornato Stato, ma,* (2022), 38.

[80] G. Mocavini, V. Turchini, *Il sostegno alle imprese*, in F. Bassanini, G. Napolitano, L. Torchia (eds.), *Lo Stato promotore, come cambia l'intervento pubblico nell'economia* (2021).

[81] *Cassa depositi e prestiti* was set up in 1850 to finance, by means of special purpose loans, mainly public works by local authorities. See: M. De Cecco e G. Toniolo

financed mainly by the MEF, to carry out interventions and actions to support and relaunch the national productive system after the epidemiological emergency. These resources can be used for the subscription of convertible bonds, participation in capital increases, and the purchase of shares listed on the secondary market in the case of strategic transactions in joint-stock companies with registered offices in Italy (and not operating in the banking, financial or insurance sectors), which have "an annual turnover of more than EUR 50 million"[82]. The access requirements, criteria and procedures for the interventions of *Patrimonio Rilancio,* are established by a decree of the MEF, in compliance with the conditions of the *Temporary Framework on State Aid.* This decree[83] has provided three separate and autonomous subdivisions: a) National Temporary Support Fund (FNST), which provides financial resources in a manner consistent with the measures envisaged by the Commission to support the economy in the Covid-19 emergency; b) National Strategic Fund (SNSF), which can be used by *Patrimonio Rilancio* to participate, together with other market investors, in investment operations on the primary market (through capital increases or convertible bonds) or, directly or indirectly, on the secondary market (through the purchase of shares in strategic enterprises); National Fund for Enterprise Restructuring (FNRI) for direct and indirect investments in companies characterised by temporary financial difficulties but with prospects of future profitability.

This public intervention programme, outlined in Article 27, cannot be catalogued among the merely 'transitional' or 'exceptional' provisions of the Covid phase, considering the large number of potential beneficiaries and the time frame (12 years[84]) in

(eds.), *Storia della Cassa depositi e prestiti* (2014). On its more recent role: M. Giachetti Fantini, *La «straordinaria mutazione» del ruolo di Cassa Depositi e Prestiti nel passaggio dallo Stato azionista allo Stato investitore,* 6 Federalismi.it (2018).

[82] The allocation of state resources is significant: for 2020, the allocation of specially issued government bonds to CDP was planned "up to a maximum limit of EUR 44 billion". In the event of shortfall, on the bonds of *Patrimonio Rilancio* the state guarantee is granted. See: V. Minervini, *Il ritorno dello Stato salvatore. Nuovi paradigmi (post Covid) nel rapporto fra Stato e mercato,* in 3 *Mercato Concorrenza Regole,* 471 (2022).

[83] Decree the Minister of Economy and Finance no. 261 of 3 February 2021, published in *GU Serie Generale* no. 59 of 10 March 2021.

[84] This period may also be extended, pursuant to Article 27, by simple "resolution of the board of directors of CDP S.p.A.", at the "request" of the MEF.

which the effects of the intervention are intended to unfold. Article 27 has a general and transversal scope, aimed to set the way for the return to the model of the State as shareholder and the re-emergence of a system of state participations.

Other significant examples of this trend can be identified in the role played by SACE S.p.A. as guarantor of the entrepreneurial system; the extension of the so-called golden powers of the government[85]; the transitional (re)nationalisation of Alitalia[86].

In short, the Covid-19 pandemic has triggered the progressive consolidation of a different role of the State in the national economy, which seems likely to have a significant and long-lasting impact on the features of our economic constitution, as shown by the energy crisis that exploded in the second half of 2021 and was accentuated by the Ukrainian emergency in 2022[87]. To mitigate the effects on citizens, families and businesses of the price increases in electricity, gas and fuel, the government adopted a number of measures, using always the instrument of the decree-law.[88] Among the most significant ones, we can mention the allocation of substantial resources to temporarily reduce electricity and gas bills, mainly through interventions to offset the weight of general system charges; the strengthening of instruments to protect the most vulnerable customers, such as the social electricity and gas bonuses and the electricity bonus for the physically disadvantaged; instalment payments of energy bills for domestic users, as well as for companies based in Italy. In addition, some tax measures were introduced, such as tax credits in favour of companies for the expenditure they incur for the purchase of gas and electricity; the reduction of VAT on gas to 5 per cent, the reduction of excise duties on petrol, diesel and LPG, the reduction of VAT on gas for road

[85] Article 15, 16 and 17 of *Decreto Liquidità.*
[86] Article 202 of *Decreto Rilancio.*
[87] See: ARERA-Memoria 48/2022/I/COM and information available at www.consilium.europa.eu/en/policies/energy-prices-and-security-of-supply/
[88] See: Decree-law no. 73, 99 and 130 of 2021; budget law for 2022 (no. 234 of 2021) and Decree-law no, 4 of 2022 (so-called *"sostegni-ter"*, converted into law no. 25 of 2022. In the aftermath of Russian aggression against Ukraine, which began on 24 February 2022, other decree-laws were adopted: no. 17 (*"decreto energia"*, converted into law no. 34 of 2022), no. 21 (*"decreto Ucraina"*, converted into law no. 51 of 2022), no. 38 (repealed by law no. 51 of 2022), no. 50 (*"aiuti"*, converted into law no. 91 of 2022), no. 80 (repealed by law no. 91 of 2022), no. 115 (*"aiuti-bis"*, converted into law no. 142 of 2022) and no. 144 (*"aiuti-ter"*, converted into law. no. 175 of 2022).

transport and an extraordinary contribution obligation for energy companies.

Such a strong state role is considered an effective tool in reducing economic and social inequalities caused by emergencies. Such extraordinary and unforeseeable events justify a renovated state intervention in the economic sphere, enhancing its political role as promoter of equality, as guarantor of social rights and actor of development[89].

4. The Italian NRRP

The current economic scenario is dominated by the National Recovery and Resilience Plan (NRRP)[90], requested by the Next Generation EU programme (NGEU). The Italian NRRP is a long-term plan, consisting of € 68.9 billion in grants and € 122.6 billion in loans, aimed at relaunching the country's economy, after the disruptive impact of the Covid-19 outbreak. The amount of funds is particularly high, considering that our country was the most affected by the pandemic and its socio-economic repercussions.

In adopting this challenging plan, Italy, like other member states, has been subjected to severe 'external constraints'[91], which significantly limit the discretion of the national lawmakers and, therefore, domestic sovereignty[92]. Whilst the EU rules set the policy

[89] A. Papa, *Passato e (incerto) futuro delle "nazionalizzazioni" tra dettato costituzionale e principi europei*, in P. Bilancia (ed.), *Costituzione economica, integrazione sovranazionale, effetti della globalizzazione*, 5 Federalismi.it, 65 (2019).

[90] The full text of the *Piano Nazionale di Ripresa e Resilienza. Next generation Italia. Italia domani,* 29 Aprile 2021 is available at: https://www.governo.it/sites/governo.it/files/PNRR.pdf. See: G. De Minico, *Il Piano Nazionale di Ripresa e Resilienza. Una terra promessa,* in 2 *Costituzionalismo.it,* 2, 116 (2021); F. Fabbrini, *Next Generation EU. Il futuro di Europa e Italia dopo la pandemia,* 112 (2022).

[91] See: Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility; 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; *Annual Sustainable Growth Strategy 2021* COM(2020) 575 final. As far Italy is concerned: Council 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).

[92] It is an old story: K. Dyson, K. Featherstone, *Italy and EMU as a "Vincolo Esterno": Empowering the Technocrats, Transforming the State*, 1 SESP, 2, 274 (1996). Recently, P. De Sena, S. D'Acunto, *Il doppio mito: sulla (pretesa) neutralità della politica monetaria della BCE e la (pretesa) non-vincolatività degli indirizzi di politica*

areas of at the European level covered by the Recovery and Resilience Facility[93] along with some percentages in the distribution of resources, which cannot be varied *in peius*[94], the accurate identification of the reforms and investments to be realized by 2026 were left to the decision of each member state.

On 30 April 2021, Italy submitted its NRRP to the European Commission, after a complex process led by two different governments[95] and characterized by the limited participation of the Italian Parliament[96]. Nevertheless, the Government drew up the plan after a consultation process of regional and local authorities, civil society organisations, and other relevant stakeholders. As a result of this process, the revised plan was presented to Parliament, which endorsed its transmission to the Commission.

The Commission successfully assessed the effectiveness, efficiency and coherence of the Italian recovery and resilience plan. According to its evaluation, the Italian NRRP represents to a large extent "a comprehensive and adequately balanced response to the economic and social situation, thereby contributing appropriately

economica dell'Unione, 3 Costituzionalismo.it, (2020); F. Bassanini, *Le riforme, il "vincolo esterno europeo" e la governance del PNRR: lezioni da un'esperienza del passato*, Astrid Rassegna (2021); F. Salmoni, *Piano Marshall, Recovery Fund e il containment Americano verso la Cina. Condizionalità, debito e potere,* 2 Costituzionalismo.it (2021).

[93] Article 3 of the Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility: "…structured in six pillars: (a) green transition; (b) digital transformation; (c) smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs; (d) social and territorial cohesion; (e) health, and economic, social and institutional resilience, with the aim of, inter alia, increasing crisis preparedness and crisis response capacity; and (f) policies for the next generation, children and the youth, such as education and skills."

[94] The regulation provides for the climate target of at least 37% and for the digital target of at least 20% of the funds allocated by NRRPs (article 16).

[95] The first NRRP draft was presented on 15 January 2021 by the *Conte-bis* government; the second one by the Draghi government on 24 April 2021.

[96] The parliamentary activity was limited to the debate and approval of two resolutions: Chamber of Deputies, Resolution no. 6-00138 and Senate of the Republic no. 6-00134 of 13 October 2020.

to all six pillars referred to in Article 3 of Regulation (EU) 2021/241"[97].

Relating to such a plan, two aspects - among many others - seem interesting in order to identify the new features of our economic Constitution: (i) the same instrument used (a plan) and (ii) the role generally played by the State.

Firstly, the idea of a long-term plan is not new for our Constitution, which authorizes the law to provide for appropriate programmes and checks to ensure that public and private economic enterprise activity be directed at and, co-ordinated for, social – and also environmental[98] – purposes (Article 41, par. 3). Both the constitutional "programmes" and the European "plan" imply a lack of confidence in the self-regulating capacity of the market, which is considered unable to achieve optimum results from a social point of view[99]. Consequently, their common trait is the attribution of a substantial primacy to political decision-making in establishing the ultimate goals of economic activity. However, neither of them intends to realize integral planning, replacing the market completely as the regulator of economic life, but tend to coordinate and address public and private economic activities towards social goals.

Thus, the new European perspective embodied by the NGEU seems to revitalize the provision of Article 41, par. 3, Const., strengthening the "social purposes" towards which the entire economic system should be directed. They become more ambitious, aimed at driving the market towards environmental and social sustainability and at addressing some structural weaknesses of the Italian economy, identified by the country-specific recommendations (CSRs) of 2019 in the area of public administration, judicial system and competition[100].

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[97] Commission's Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Italy, COM(2021) 344 final, of 22 June 2021.

[98] The adjective 'environmental' was introduced into Article 41 by constitutional law no. 2 of 11 February 2022.

[99] The abovementioned constitutional rule had only a partial implementation in the 1960s when a general programming policy was set up, by Law no. 685 of 1967 on the first five-year plan 1966-1970. See: A. Predieri, P. Barucci, M. Bartoli, G. Gioli, *Il programma economico 1966-70* (1967); M. Giampieretti, *Art. 41,* in S. Bartole, R. Bin (eds.), *Commentario breve alla Costituzione,* 418 (2008).

[100] Council Recommendation on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy

More exactly, the Italian NRRP is divided into sixteen components, grouped into six missions. The latter are articulated in line with the six Pillars mentioned in the RRF Regulation although the formulation follows a slightly different sequence and aggregation: Digitalisation, Innovation, Competitiveness, Culture and Tourism (40.32 billion); Green revolution and Ecological Transition (59.47 billion); Infrastructures for Sustainable Mobility (25.40 billion); Education and Research (30.88 billion); Inclusion and Cohesion (19.81 billion); Health (15.63 billion)[101]. Cross-cutting objectives in all components of the NRRP are gender equality, the protection and development of young people and overcoming territorial disparities.

The NRRP is therefore a complex document, which not only details how Italy intends to use the EU resources of the NGEU, but also plans some long-awaited structural reforms to implement. These reforms are a key component of the recovery strategy, essential for the efficient and effective implementation of investments in that they provide a supportive business and administrative environment and prevent the misuse of EU funding. They should contribute, therefore, to increasing the structural impact of the NRRP in the medium and long term[102].

The Plan drops the idea of the public authority as a mere guardian of the markets and pursues instead the aim to recover the production process, together with real improvements in people's living conditions, especially of the most disadvantaged. The political objectives appear to have reached a turning point away from the prosperity of the market to well-being and social cohesion as the ultimate goals of a market economy.

(2019/C 301/12), 9 July 2019. See, also: Recommendation for a Council Recommendation on the 2020 National Reform Programme of Italy and delivering a Council opinion on the 2020 Stability Programme of Italy, COM(2020) 512 final, 20 May 2020; Recommendation for a Council Recommendation on the 2022 National Reform Programme of Italy and delivering a Council opinion on the 2022 Stability Programme of Italy COM(2022) 616 final, 23 May 2022.

101 Basically, the green transition mission accounts for 30% of the spending, followed by digital transition and culture (21%), education and research (14%), social inclusion and infrastructure (both 13%) and healthcare (9%).

102 Thus, the first years will be mainly devoted to reforms, with the focus shifting to investments only later. F. Corti, J. Núñez Ferrer, *Assessing Reforms in the National Recovery and Resilience Plans. Italy*. CEPS, 3 (2021).

Thus, thanks to the PNRR, the market/social justice hierarchy is reversed, with the former now contributing to the creation and distribution of wealth. In fact, the pandemic emergency has led to the emergence of a public interest of the European Union that is, for the first time, unrelated to the strictly economic context.

This new European and national approach implies a stronger role of state powers in the economy, even though the NRRP does not clarify this issue. More exactly, public authorities are certainly committed to the fulfilment of three types of reforms: horizontal, enabling, and sectoral[103]. *Horizontal reforms* are defined as structural innovations of the Italian legal system and include the reform of the public administration and the judiciary system. These reforms are of transversal interest to all the missions of the plan and are designed to improve equity, efficiency, and competitiveness. *Enabling reforms* are functional interventions to ensure the implementation of the NRRP and generally to remove administrative obstacles, regulations and procedures that affect economic activities and the quality of services provided to citizens and businesses. Two major groups of reforms are provided: simplification and rationalisation measures for existing legislation and the adoption of new rules to promote competition. *Sectoral reforms* are included in the NRRP as part of the individual missions. They consist of regulatory innovations related to specific areas of intervention or economic activities, intended to introduce more efficient regulatory and procedural regimes in their respective sectoral areas.

Thus, the State has, as essential task, the creation of the pre-conditions for a better implementation and development of the NRRP actions. It has basically three fundamental roles to play: (i) to indicate the direction of development, so that initiatives of public and private players contribute synergistically to this plan; (ii) to create the infrastructures and an appropriate set of rules; and (iii) to ensure compliance with these rules.

The NRRP seems to accept the idea of public deficit spending, even substantial, as long as it is virtuous; in other words, the idea of high public spending is acceptable, in the renewed institutional framework, if it is aimed at producing new and greater

[103] F. Corti, J. Núñez Ferrer, *Assessing Reforms in the National Recovery and Resilience Plans. Italy,* cit. at 102, 6.

wealth in the future, even if this leads to a significant deviation from the principle of balanced budgets.

In such a framework the private sector has an ancillary role: even though competitiveness is encouraged, public authorities strive to take over the strongest areas of the economic system as they are able to contribute significantly to the productivity of the economic system as well as citizens' social needs.

These interventions plus future scenarios point to an 'economic constitution', which - under the pressure of crises – appears to moving away from the previous defence of private autonomy towards one characterized by the predominance of the state (or public) intervention in the economic system.

The current moment could be the starting point of a new economic scenario, in which the state plays the main role, by carrying out activities of guidance, coordination, and planning, as well as of direct management. In short, a state that governs the economy, overturning its hegemony over politics.

5. Concluding remarks on how to value the centripetal force triggered by the recent crises

The pandemic and, more recently, the energy crisis, induced by the war in Ukraine, had (and still have) severe social and economic consequences which have triggered a significant change in the relationship between State and economic system. These crises have clearly shown the incapacity of the market to regulate itself properly thereby strengthening the role of the State in the economic sphere.

Surprisingly, the driving force behind this significant change is mainly the EU, which opted for a different approach, compared to its previous experience, characterized by a constant and progressive retreat on the part of the State. The measures and actions put in place by the EU to cope with the effects of the pandemic have no precedent in the process of European integration (*supra* par. 2 and 2.1.). Notwithstanding their extraordinary nature, they could form the basis for structural changes to the European model of the market economy and its main features[104].

[104] F. Fabbrini, *The Legal Architecture of the Economic Responses to COVID-19: EMU beyond the Pandemic*, cit. at. 28.

This new trend involves all member states as well, and it has been implemented in the Italian context thanks to both temporary and structural measures as well as NRRP which give public authorities a more significant role in the economy (*supra* par. 3 and 4). To face the current multiple crises – pandemic and energy – and their severe economic and social repercussions, new resources are not sufficient, but a new guiding role for public action is needed, in Rome as in Brussels. The conjunctural moments recently experienced have engendered renewed demands for welfare and social protection; a sense of belonging and trust in institutions (both at the national and supranational level) will ultimately depend on the extent these demands are met. This brings back to centre stage the value of planning to achieve and protect economic outcomes, pointing towards more socially inclined ends[105].

This turning point could reduce the enduring tension between the Italy's and Europe's economic constitutions. This convergence requires fully implementing Article 3(3) TEU, which stresses the social dimension of the EU, setting as its objective "a highly competitive social market economy, aiming at full employment and social progress". The aim of building a social Europe was confirmed by *The Porto declaration* of 8 May 2021[106], in which the Council called for intensified efforts to implement the European Pillar of Social Rights of 2017, by focusing on reducing inequalities, fighting social exclusion, and tackling poverty. To achieve these goals a strengthening of public intervention is necessary, and public authorities are inevitably called to return to the centre stage.

The coming years will be crucial to understand whether we are facing a one-off deviation imposed by the times of crisis or a structural evolution that will be able to assert itself, overcoming the reluctance shown by some countries.

Certainly, Next Generation EU and its national implementation through NRRP represent a unique opportunity to reconsider the economic model that has characterized Europe for the past 30 years. The centripetal force triggered by the recent crises, which makes it possible to reinforce the pursuit of solidarity and

[105] H. Lokdam, M.A. Wilkinson, *The European Economic Constitution in Crisis: A Conservative Transformation?*, in *The Idea of Economic Constitution in Europe* (2022).
[106] European Council, *The Porto declaration,* Press Release, 338/21, 08.05.2021, available at: https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/pdf.

sustainable growth goals, deserves to be preserved and enhanced. All the more so considering that, in contemporary society, moments of crisis seem to be destined to become almost inevitable physiological constants.