

## THE MULTILEVEL GOVERNANCE CHALLENGES OF NEXTGENERATIONEU: THE SPANISH AND ITALIAN DECENTRALISED SYSTEMS VIEWED THROUGH THE LENS OF FEDERALISATION

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### Abstract

The post-COVID-19 panorama presents serious economic and social challenges, prompting the European Union (EU) to allocate extensive funds to its Member States. The central financing instrument created for this purpose, NextGenerationEU (NGEU), requires the Member States to implement ambitious reforms to bring about green and digital transitions within their National Recovery and Resilience Plans (NRRPs). Despite innovative elements in NGEU's decision-making process, legal basis and fiscal integration policy, the role of sub-state authorities in the context of multilevel governance (MLG) demonstrates a centralised tendency. In order to understand this issue, the management of NRRPs in the Spanish system of autonomous communities and Italian regionalism will be taken as emblematic case studies. Specifically, the constitutional significance of the MLG model in the context of the NGEU recovery package will be evaluated in light of the principles of solidarity, subsidiarity, proportionality and partnership. This paper ultimately aims to offer broader insights into NGEU's role in the ongoing EU federalisation process and its shortcomings with respect to national decentralised systems.

Keywords: NextGenerationEU; Recovery and Resilience Facility; National Recovery and Resilience Plan; EU federalisation; multilevel governance; decentralisation.

## ELS REPTES DE LA GOVERNANÇA MULTINIVELL DELS NEXTGENERATIONEU: ELS SISTEMES DESCENTRALITZATS ESPANYOL I ITALIÀ DES DE L'ÒPTICA DE LA FEDERALITZACIÓ

### Resum

*L'escenari postcovid-19 presenta importants reptes econòmics i socials, la qual cosa ha impulsat la Unió Europea (UE) a assignar fons quantiosos als estats membres. L'instrument central de finançament creat a aquest efecte, NextGenerationEU (NGEU), exigeix als estats membres l'aplicació de reformes ambiciosos que afavoreixin transicions verdes i digitals en el context dels plans nacionals de recuperació i resiliència (PNRR). Malgrat els elements innovadors del procés de presa de decisions, la base jurídica i la política d'integració fiscal de NGEU, el paper de les autoritats subestats en el context de la governança multinivell (GMN) demostra una tendència centralitzada. Per entendre aquesta qüestió, es prendran com a casos emblemàtics la gestió dels PNRR en el sistema espanyol de comunitats autònomes i en el regionalisme italià. En concret, s'avaluarà la importància constitucional del model GMN en el context del paquet de recuperació de NGEU tenint en compte els principis de solidaritat, subsidiarietat, proporcionalitat i associació. En darrer terme, aquest article vol oferir una visió més àmplia del paper de NGEU en el procés de federalització actual de la UE i de les seves deficiències respecte als sistemes descentralitzats nacionals.*

*Paraules clau: NextGenerationEU; Mecanisme de Recuperació i Resiliència; Pla nacional de recuperació i resiliència; federalització de la UE; governança multinivell; descentralització.*

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## Contents

1 Introduction

2 The bottom-up innovations of the NGEU decision-making process

3 Centralised trends in the negotiation and implementation phases of the National Recovery and Resilience Plans: the cases of Spain and Italy

4 NGEU and the EU federalisation process

4.1 The advancements of NGEU in fiscal federalism in light of the solidarity principle

4.2 The shortcomings of the NRRPs in relation to the principles of subsidiarity, proportionality and partnership

5 Conclusion

References

## 1 Introduction<sup>1</sup>

The coronavirus pandemic has posed significant challenges to the ability of states to safeguard numerous constitutionally protected interests, such as public health and government finance. Within the European context, this problematic scenario has necessitated an intense revitalisation strategy, resulting in the substantial financial package known as NextGenerationEU (NGEU). This consists in a new, temporal recovery instrument that has powered the current 2021-2027 long-term EU budget<sup>2</sup> to mitigate the economic and social damage caused by COVID-19 and modernise the European Union (EU) through policies developed around three strategic shared axes: digitisation and innovation, ecological transition and social inclusion.

The core of NGEU lies in the Recovery and Resilience Facility (RRF), a temporary instrument through which the Commission raised funds, borrowing on capital markets to support the Member States to implement reforms and investments in line with EU priorities and address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination. Namely, according to Regulation (EU) 2021/241<sup>3</sup> of the European Parliament and the Council of the European Union, the RRF provides grants and structured loans based on six pillars<sup>4</sup> and is currently in its implementation phase. To benefit from this fund, Member States had to submit a National Recovery and Resilience Plan (NRRP) to the European Commission for approval, outlining general objectives, transformative reform initiatives, implementation procedures, milestones, and sources of funding. In these national plans, Member States were required to determine the content, procedures and timing of the implementation of the proposed interventions.<sup>5</sup> Based on such commitments at the national level, the European Commission initiated the lending process and commenced the disbursement of the initial tranche of funds.

The conception and management of NGEU raise a wide range of legal issues concerning multilevel governance (MLG), intended as “coordinated action by the EU, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies”.<sup>6</sup> However, while a number of scholars, among them Olesti Rayo (2021), have previously examined the intergovernmental and supranational forces at play in the decision-making phase of NGEU and the challenges experienced by decentralised Member States in the implementation of their national plans (Kölling, 2021, pp. 9-11), an analysis of these funds through the lens of the EU federalisation process that is in accordance with the MLG model remains partially unexplored. This kind of investigation is especially advisable in light of the programme’s implications for consolidating some form of *constitutionalisation*<sup>7</sup> and accomplishing long-term political reforms in the EU.

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1 This paper is the final research result of the project entitled “The impact of Next Generation EU on decentralized systems of governance: a constitutional comparative study of Spain and Italy”, conducted at the Observatori de Dret Públic (IDP) of the University of Barcelona between January 2023 and June 2023 under the supervision of Prof. David Moya Malapeira and funded by the grant programme 2022 of the Institute for Self-Government Studies (IEA) of the Government of Catalonia (project number: PRE150/22/000021).

2 The 2021-2027 Multiannual Financial Framework (MFF) was adopted by the Council Regulation (EU, Euratom) 2020/2093.

3 The Regulation (EU) 2021/241 is legally founded upon Article 175 of the TFEU, which serves as the legal reference for structural funds aimed at supporting the territorial, economic and social cohesion of Europe’s regions. Specifically, this Regulation establishing the Recovery and Resilience Facility is grounded in paragraph 3 of this provision, which enables further “specific actions” deemed necessary outside the fund. These actions are to be undertaken in accordance with ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, with the goal of expanding and integrating the measures already planned under Cohesion Policy. Prior to that, the Council adopted the European Union Recovery Instrument by Council Regulation 2020/2094.

4 The six pillars consist of green transition; digital transformation; economic cohesion, productivity and competitiveness; social and territorial cohesion; health, economic, social and institutional resilience; and policies for the next generation.

5 The RRF Regulation expected Member States to submit their RRFs by the end of April 2021. Spain was the first Member State to adopt its regulatory framework to meet the requirements arising from the management of the funds through Royal Decree-Law No. 36/2020. Afterwards, the Spanish Government approved its *Plan de Recuperación, Transformación y Resiliencia*, entitled *España Puede*, on 31 December 2020. Italy established its *Piano Nazionale di Ripresa e Resilienza*, entitled *Italia Domani*, on 5 May 2021, and established the governance of the Plan through Decree-Law 77/2021, subsequently amended by Decree-Law 13/2023. Both NRRPs were positively assessed by the European Commission in June 2021 and definitively approved via Council implementing decisions in July 2021.

6 The full text can be found in [The Committee of the Regions’ White Paper on Multilevel Governance](#) (2009/C 211/01, 17-18.06.2009).

7 In general terms, the constitutionalisation of the EU refers to processes that might tend to confer upon it a constitutional status within the basic legal framework. However, this notion is not limited to the process of legal integration but should also encompass

This paper aims to fill this gap by addressing the following questions: how does NGEU align with the EU federalisation process and what potential consequences might it have for the role of sub-state authorities? More precisely, was the NGEU policymaking process inherently destined to have a disproportionate impact on MLG, or could alternative approaches arising from its heightened level of European integration be applicable in decentralised Member States?

To address this problem, instead of examining such transformations solely from the perspective of higher-level MLG concerning the constraints existing between EU institutions and Member States, this paper also explores the lower level, that is, the relationship between the EU and centralised governments with sub-state authorities. By situating NGEU within this broader analysis, we delve into the nature and developmental state of the ongoing *sui generis* experiment that can be termed European *federalisation*.<sup>8</sup> To this end, we embrace the concept of *federalisation as a dynamic process* rather than a static pattern. From this perspective, we align primarily with the theoretical viewpoint provided by Carl J. Friedrich, who defined the notion of federalising a political community as “the process by which a number of separate political organisations, whether states or any other kinds of associations, enter into arrangements to make joint decisions on shared problems” (Friedrich, 1955, pp. 514-5; Burgess, 2012, pp. 131-179). In this vein, we also adopt the normative and legal notion of MLG as apparent in relevant political documents of the EU, namely the *White Paper on Multilevel Governance* (Olesti Rayo, 2021) and the *Charter for Multilevel Governance in Europe*,<sup>9</sup> both issued by the European Committee of the Regions (CoR) and corroborated by relevant EU primary and secondary law, and the constitutional law of decentralised systems. The rationale of NGEU will thus be observed through the lens of a supposed transition from dual to more cooperative federalism, by accounting for the constitutionalisation process of fundamental principles aimed at “sharing functions and, therefore, power” (Reagan, 1972) between the EU and the Member States.<sup>10</sup>

Furthermore, under this theoretical frame of reference, we aspire to answer the aforementioned research question by paying special attention to the management of RRF funds in Spain and Italy. Despite being classical examples of comparison in the legal literature on decentralisation, these governance systems have been selected as case studies because they are particularly suited to analysis of the design and implementation of national plans within the European integration project for several reasons.

Firstly, it is important to note that NGEU is a redistributive instrument based on the logic that the Member States hardest hit by the pandemic should benefit the most from the funds. Consequently, in light of the severe economic downturn they suffered, the major beneficiaries are Spain and Italy, in net and absolute terms, respectively. Secondly, a conflict between decentralised and centralised tendencies in these countries had already emerged, even before the allocation of funds, particularly regarding the State’s establishment of legal acts that were perceived to encroach on territorial responsibilities.<sup>11</sup> Thirdly, Spain and Italy, more than other decentralised Member States such as Germany and France, relegated sub-state authorities to executive roles instead of giving them co-decision roles in the design of their respective national plans (Gimeno Feliú, 2021, p. 69). In this regard, Spain and Italy have much in common with respect to the resources allocated, the tensions between central and decentralised forces, and the potential drawbacks of designing the RRF funds within their MLG systems.

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those related to “deepening and delimitation”, including diverse processes such as democratisation, the creation of solidarity, or the establishment and maintenance of boundaries. Further reading can be found in Snyder (2003, pp. 62-63); Rittberger & Schimmelfennig (2006, p. 1149); and more specifically on the EU constitutionalisation process in relation to multilevel constitutionalism, Martinico (2022, pp. 39-42).

8 The interpretation of the EU, considered both as a *sui generis* reality and a supranational federation sharing many elements of a traditional federation, is discussed by, among others, Schütze (2012, pp. 77-79).

9 European Committee of the Regions (CoR), 106th Plenary session, 2-3.04.2014, Resolution of the Committee of the Regions on the Charter for MLG in Europe (2014/C 174/01).

10 With regard to the differentiation made by dual and cooperative federalism, Schütze (2009, p. 5) defines the former as a structure in which “the federal government and the State governments are co-equals and operate independently in their separate spheres” and the latter as a structure whereby sovereignty is shared.

11 Ridao (2021) and Belletti (2021, pp. 25-39), respectively, explore the lack of involvement of the Spanish autonomous communities and the Italian regions during the management of the pandemic emergency.

Regarding the structure of this paper, Section 2 and 3 will scrutinise the way in which the architecture of NGEU aligns with the division of powers among different territorial levels of decentralised systems of governance. Specifically, Section 2 will examine the bottom-up innovative elements derived from the decision-making process of NGEU concerning higher-level MLG. Section 3 will assess whether specific insights can be gleaned from the management of national plans in Spain and Italy concerning the lower level of the MLG model, covering both the design and implementation stages. Subsequently, Section 4 will explore the significance of NGEU from the perspective of the EU federalisation process. In more detail, Section 4.1 will analyse the main enhancements of NGEU through the perspective of financial federalism and the principle of solidarity. Section 4.2 will delve into the deficiencies within the structure of NRRPs in terms of the principles of subsidiarity, proportionality and partnership. Finally, Section 5 will provide concluding remarks on the current state and “health” of the federal project in the EU, drawing from the impact of NGEU on decentralised systems of governance, especially those in Spain and Italy.

## 2 The bottom-up innovations of the NGEU decision-making process

The extent of collaboration and interrelation among the various levels of government in the EU hinges on the areas of competence involved. Cohesion policy stands out as one of the competences jointly managed by the EU institutions and the Member States. *Per contra*, it is undeniable that the negotiation process of regional financial policies within the EU framework has consistently posed a major challenge for decentralised systems of governance (Kölling, 2021, p. 9). While these programmes are theoretically designed to have a strong horizontal character, they are in fact typically deliberated by the centralised authorities of the Member States. However, their implementation relies on partnerships between regions, is facilitated by local authorities, and is subject to the direct oversight of the European Commission.<sup>12</sup>

Within this framework, NGEU should primarily be framed as a temporary instrument, established according to a “new mode of EU policy-making” (Schramm et al., 2022, p. 120). This perspective arises from the fact that, although the decision-making process of the RRF initially began with the EU institutions through the adoption of a binding secondary law via a co-decision procedure, the high level of national involvement in the process infuses the funding with a bottom-up nature to a certain extent.

In addition, the coordination procedure among the fiscal policies of Member States triggered by the RRF has been significantly more effective than previous instruments, especially when compared to the so-called country-specific recommendations.<sup>13</sup> To elaborate further, while these recommendations had a limited impact on national policies due to high levels of bureaucratisation, heterogeneity, and, most importantly, a lack of clear binding effects for Member States, the RRF led to increased national engagement. In more detail, on the one hand, the RRF is the result of a political decision made at the EU level, while on the other, the actual implementation of the funds relies on a considerable degree of state political autonomy and comprises a set of actions taken by governments in their national plans, both in terms of policy reforms and legislation that comply with their respective constitutional frameworks.

Moreover, under the procedure established by Regulation (EU) 2021/241, Member States are obliged to adhere to the rules and timing of the RRF in order to receive the various tranches of the allocated resources. This does not necessarily mean that the management of the RRF was predetermined or primarily imposed at EU level onto the Member States. Rather, it emphasises that the more ambiguous and ineffective constraint approach of the country-specific recommendations has been significantly mitigated by an increase in conditionalities, directly engaging the centralised administration of the Member States in the activation and development of the funds (Lupo, 2023, pp. 3-4).

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12 A number of interest groups called for greater emphasis on partnership and MLG in the EU Cohesion Policy 2021-2027, aimed at reducing disparities in the levels of development of the regions (Committee of the Regions, 2021).

13 On the scarce level of implementation of country-specific recommendations between 2011 and 2019, see Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. 2020 European Semester (COM(2020) 500 final, 20.05.2020, p. 18).

### 3 Centralised trends in the negotiation and implementation phases of the National Recovery and Resilience Plans: the cases of Spain and Italy

Despite incorporating certain revolutionary financial redistributive measures and having increased constraining effects on Member States that may reinforce the European integration process, recovery and resilience plans essentially remain *national* plans. In this regard, the governance of the funds seems inadequate in its consideration of the role of regions and local authorities in various aspects, ultimately resulting in a top-down process as the multilevel federalisation of the EU advances (Gimeno Feliú, 2021, pp. 59-90; Cecchetti, 2023, pp. 137-159). This approach can be deduced from both the preparation and implementation of the NRRPs.

Firstly, although regulations recommend that the plans of the Member States include local and regional authorities in the consultation process, the CoR and the Council of European Municipalities and Regions (CEMR) have pointed out that, in practice, most regions did not play a central role in the design of the plans, despite being called upon by centralised governments to take part. Specifically, the joint targeted consultation of the CoR and the CEMR, involving national associations of local and regional governments and authorities across the EU, revealed insufficient involvement of sub-state government representatives in the negotiation process of their recovery and resilience plans, primarily due to “a simple lack of willingness on behalf of the national government” (CoR & CEMR, 2021).

Furthermore, respondents highlighted that, in most cases, the actual format of the exchange did not enable effective participation. The process was led by a ministry with which their organisation had limited contact, and the time allocated was insufficient for the government to organise consultations with local authorities. Overall, the collected data thus suggest that recovery plans are more successful in addressing the green and digital transitions at the national level than the specific challenges faced by local and regional authorities.

Spanish local and regional authorities, along with those of Finland and Lithuania, were among the few in the EU that indicated their involvement in a structured and institutional manner at both political and technical levels in the preparation of the national plan (CoR & CEMR, 2021).<sup>14</sup> Nevertheless, the actual decision-making capacity of autonomous communities in reform planning was limited to residual consultative input. As a consequence, even Spanish sub-state authorities did not have the opportunity to influence the activation lines and the selection of reforms and projects – a process which should have been consistent with the distribution of constitutional competences among different levels of governance.<sup>15</sup>

Similarly, in Italy, during the initial phase of negotiations, spanning from September to December 2020 under the so-called Conte II government, sub-state authorities aimed to contribute to formally shaping concrete proposals for the national plan by actively participating in the State-Regions Conference. However, the limited availability of information regarding the ongoing work of the various ministries engaged in formulating it, along with the challenges faced by the Conference in consolidating the numerous and diverse project proposals from regions within strict time constraints, resulted in a minimal impact on the plan’s content.<sup>16</sup> Subsequent convocations have been episodic and mostly informal, also as a consequence of the – then unexpressed – intention of some regions to appeal to the Constitutional Court in case of the absence of modifications to the NRRP that would better align with the constitutional competences of sub-state authorities (Profeti, 2022, p. 274).

Secondly, in the implementation phase, the governance of the funds demonstrates a general trend towards centralisation, leaving mere operational competences to the European regions to achieve territorial goals

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14 In Spain, specific institutional channels were activated to ensure the consultation process between the centralised government and sub-state authorities. These included a social dialogue table, dedicated to the Plan, involving social agents; the NRRP Sectoral Conference for cooperation and coordination with the autonomous communities, as well as sectoral conferences for each specific policy; high-level consultative forums or councils by sector; expressions of interest published by different ministries to learn about projects from various stakeholders; parliamentary appearances; and public consultations on the reforms to gather opinions and suggestions from the public.

15 Gimeno Feliú (2021, p. 70) also stresses that “*En un contexto de co-gobernanza, las Comunidades Autónomas deberían haber adelantando su estrategia de futuro*”.

16 On the lack of involvement of regional authorities in the consultation phase and negotiation process of the Italian NRRP, see, among others, Mainardis, (2022, pp. 917-918) and Formisano (2023, pp. 49 & 56).

(Ministry for Foreign Action and Open Government, 2022, p. 6). This tendency is corroborated by both Spanish and Italian governance of the national plans.

Notably, in Spain, the allocation criteria for the plan's resources formally established a co-governance system.<sup>17</sup> In more detail, a Commission for Recovery, Transformation, and Resilience, led by the President of the Government and comprising all Ministers responsible for the plan, was set up. The Deputy Ministers for Economic Affairs and Business; Finance; Budget and Expenditure; and Social Rights, along with the Secretary-General for European Funds and the Secretary-General for Economic Affairs, are also participating members. Assisting in its work is a Technical Committee composed of twenty members from the public administration, presided over by the new Secretariat-General for European Funds at the Ministry of Finance, which serves as the plan coordinator. The central government General State Comptroller (IGAE) functions as the control authority. To enhance coordination, a dedicated working group is envisaged between the IGAE, serving as the audit authority, and the regional bodies (European Parliamentary Research Service, 2023, p. 7).

In particular, within this institutional framework, special attention should be given to the Sectoral Conference on the Recovery, Transformation, and Resilience Plan (*Conferencia Sectorial del Plan de Recuperación, Transformación y Resiliencia*), which coordinates the regions, local authorities and the central government.<sup>18</sup> This ad hoc sectoral conference, chaired by the Ministry of Finance and composed of the relevant ministers/councillors from each of the autonomous communities, would be empowered (literally, *podrá*)<sup>19</sup> to invite representatives of the local administration designated by the Spanish Federation of Municipalities and Provinces, the most established association of local authorities with the largest presence in Spain, to its meetings. However, this co-governance is questionable from a practical perspective, as all the decision-making capacity and management of funds are held and carried out directly by the Ministry of Finance at the centralised level of governance, placing the autonomous communities in a mere executor role (Gimeno Feliú, 2021, p. 70). Furthermore, this co-governance scheme excludes the territorial and administrative levels of provincial councils and island councils, despite warnings from the Spanish Federation of Municipalities and Provinces. Some scholars, among them Colás Tenas (2021, p. 49), emphasise that this omission risks compromising the efficacy of the Plan's implementation and contradicting one of its strategic objectives, specifically, the social and territorial cohesion that provincial governments consistently provide.

Within the Italian context, the legislative framework governing the NRRP also draws attention to the limited involvement of sub-state authorities (Cavasino, 2022a, p. 72). In summary, two main bodies at the apex of the governance system can immediately be identified: the Presidency of the Prime Minister, overseeing the coordination, management and implementation of the NRRP; and the Ministry of Economy and Finance, responsible for monitoring and reporting. In particular, Italy instituted a Steering Committee (*Cabina di Regia*), led by the Prime Minister, to oversee the progress of the NRRP, reinforce administrative capacity and coordinate with the relevant authorities. Additionally, a Permanent Discussion Table – among social actors, the Government, the regions, and the autonomous provinces (*Tavolo permanente per il partenariato economico, sociale e territoriale*) – was endowed with consultative powers to the Steering Committee (Cecchetti, 2022, p. 281). Although, on paper, local authorities manage over one-third of the funds, the Ministry of Economy and Finance centrally coordinates the NRRP, overseeing its implementation and acting as the main contact for the European Commission (European Parliamentary Research Service, 2022, p. 7).

Italy further reinforced state executive power in governance of the NRRP after the adoption of Decree-Law No. 13/2023. This Decree-Law in fact replaced the duality of the executive powers provided by the Presidency of the Prime Minister and Ministry of Economy and Finance with an even more evident centralisation in favour of the Prime Minister (Menegus, 2023, p. 209). This was principally achieved through the creation of a new structure for the mission of the NRRP within the Presidency of the Prime Minister, bringing together the

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17 The MLG system to ensure the implementation, monitoring and control of the plan is declared essential in the Preamble of Royal Decree-Law 36/2020. The [criteria of distribution of NRRP's funds transfers to autonomous communities and autonomous cities](#) is carried out through various mechanisms, with distribution approved in sectoral conferences being the most prominent among them.

18 V. Art. 19, Royal Decree-Law No. 336/2020.

19 According to Colás Tenas (2021, p. 39), the use of the term "*podrá*" instead of a more imperative formulation (e.g., "*realizará*") in Art. 19 of Royal Decree-Law No. 36/2020 is not accidental, but rather emphasises the facultative nature of the above-mentioned measure.

main strategic functions of the NRRP, such as support for the direction and coordination of the government's strategic action in its implementation, dialogue with the European Commission, monitoring of objectives, definition of any corrective measures, and preliminary activity. Among the main changes of the Decree-Law, the abolition of the Permanent Discussion Table is emblematic; and negotiations with stakeholders are transferred to the meetings of the Steering Committee that the President of the State-Region, the President of the National Association of Municipalities, and the Presidency of the Italian Provinces can attend (Cecchetti, 2022, pp. 144-147). These adjustments were motivated by the need to enhance efficiency and better coordinate the plan with requests for modification of the resources allocated (Mainardis, 2022, p. 898).

Therefore, the management of NRRPs in Spain and Italy highlights relevant criticisms from the perspective of MLG, prompting reflection on the current trajectory of the EU federalisation process. In particular, beyond the widely debated concerns about the constitutional legitimacy of the distribution and exercise of competences between the centre and the periphery within the framework of the NRRPs,<sup>20</sup> it raises the question of whether such centralised approaches at the national level can be justifiable in the light of NGEU's architecture. To assess the impact of the management of these funds on decentralised systems of governance and discern broader trends under the EU integration process, it will be essential to scrutinise at least two potential federalisation impulses deriving from NGEU: the financial and the political-constitutional.

## 4 NGEU and the EU federalisation process

### 4.1 The advancements of NGEU in fiscal federalism in light of the solidarity principle

Fiscal federalism can be broadly interpreted as a system which efficiently allocates tax and spending functions to different levels of government.<sup>21</sup> However, comparative federalism studies suggest that economic redistribution is a complex issue, particularly when dealing with highly heterogeneous countries. This challenge is exacerbated by the fact that constructing and consolidating any form of federalisation inevitably intersects, and often conflicts with the principle of solidarity.<sup>22</sup> Mechanisms of "economic solidarity" are in fact rarely adopted within the EU, and the negotiation and implementation phases between state executives are commonly contentious (Leconte, 2010).

Furthermore, enforcing such an expectation is a delicate matter within the EU due to the porous nature normally associated with solidarity. Although considered a well-established principle in most European constitutions, the legal relevance and enforceability of solidarity remain contested. However, we can observe that solidarity has at least two fundamental connotations, which are political and legally binding.

Firstly, solidarity is enshrined in several provisions of primary law, such as the Preamble and Article 2 of the Treaty on European Union (TUE) and the Preamble of the Charter of Fundamental Rights (CFR), and therefore fully aligns with the political objectives of the EU. This vision is reinforced by the fact that the Lisbon Treaty not only gives the CFR the same relevance as a treaty, but also confers on this document a *para-constitutional* meaning, partly shifting the focus from the predominant dimension of the common market to also encompassing duties of assistance to Member States in difficulty (Alpa, 2022, p. 184).

Secondly, although its scope and tangible instruments of action may vary according to the policy area, solidarity calls for means of concrete enforceability and implies constraints *for* and *among* Member States (Alpa, 2022, p. 185). Specifically, Article 122 of the Treaty on the Functioning of the European Union (TFEU) establishes that, in the context of emergencies resulting from severe difficulties caused by natural disasters

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20 With reference to the Spanish case, see Ríos (2021, p. 259); Galán Galán, (2021, pp. 110-111); and Gimeno Feliú (2021, p. 71). With reference to the Italian case, see Cavasino (2022b, p. 267); Cecchetti, (2022, p. 292); and Colapietro (2022, p. 337).

21 In adopting this definition we refer to the so-called first-generation fiscal federalism (FGFF) theory (Oates, 1999, p. 1149).

22 Trein (2020, pp. 985-990) offers further insights into the relationship between federalism and the fiscal implications of solidarity in the EU, and the broader tension that may arise between fiscal federalism and the principle of solidarity, highlighting that previous EU anti-crisis policies – in response to financial, economic, and migration crises – have increased solidarity among territories. However, this has occurred at the expense of a "fully-fledged federal crisis". The policy measures implemented to enhance solidarity actually reflect a preference for "negative solidarity", wherein solidarity is deemed appropriate only within the confines of intergovernmental agreements, and fiscal consequences take precedence over social consequences.



or exceptional occurrences beyond the control of Member States (para. 2), the Council, in response to a proposal from the Commission, may decide on “appropriate measures” for the economic situation “in a spirit of solidarity” (para. 1). Although this provision may be deemed rather generic, referring to crises different from the pandemic emergency, the combination of the two paragraphs has been interpreted in an innovative and creative way in the context of the pandemic crisis (Lupo, 2023, p. 8). The approach embraced by the EU actually enabled the substantial overcoming of the initially divergent positions among Member States and ultimately led to the adoption of NGEU (Krotz & Schramm, 2022, pp. 526-544). Subsequently, it served as the legal foundation for the NGEU recovery instrument and the allocation of its resources, as established in Council Regulation (EU) 2020/2094.

Within this “creative legal engineering” (De Witte, 2021, p. 670), we can observe concrete ways in which NGEU funds represent a significant step toward consolidating fiscal federalism based on solidarity. In essence, the support provided by the RRF offers substantial financial assistance, proportionate to the diverse crisis situations in the Member States, to ultimately facilitate structural, social and economic changes deemed to be in the general interest of the EU in relation to its sustainable growth. This logic appears to be inspired by the concept of the so-called EU social market economy, directly associated with the principle of solidarity, considered a fundamental element in the process of European integration since the Schuman declaration of 1950.

Primarily, the grant component of the RRF is an innovative tool that can be interpreted as a concrete expression of the principle of solidarity in the fiscal arena. In fact, every Member State initially submitted applications for the entire sum of their allocated grants. Subsequently, those Member States with advantageous access to capital markets opted to entirely forego the RRF’s loans or, at the very least, accept less than their designated allocation (Schramm et al., 2022, p. 116).

Moreover, although the RRF is conceived as a performance-based instrument, meaning that Member States need to comply with a set of EU priorities and accomplish milestones and targets in order to receive continued funding of their allocated sums, the conditionality of the disbursements is weaker if compared to previous instruments and programmes.<sup>23</sup>

Finally, further application of the principle of solidarity is detectable in redistributive spending and the “mutualisation” of Member States’ debt triggered by the RRF. This is indeed another new element, and the opposite of the austerity policies implemented during the “euro-crisis” (Fabbrini, 2022). Essentially, the RRF allowed the EU, through the approval of various secondary legal acts, to issue common debt, creating a novel funding instrument alongside the regulation of resource disbursement to its Member States (Schramm et al., 2022, p. 115). In addition, the RRF is aligned with the MFF 2021-2027 and aims to introduce new European taxes through a roadmap to reimburse the capital and interest on funds collected from financial markets.<sup>24</sup>

The EU thus achieves the dual objective of leading economic recovery through new mechanisms to support Member States while also nurturing the European market through common debt issuance, securing autonomous resources. This virtuous mechanism finds confirmation in the half-yearly report, published in February 2024 by the Commission to the European Parliament and the Council, on the implementation of borrowing, debt management and loan operations.<sup>25</sup> Furthermore, from a federalisation perspective, the above legal structure not only places the RRF entirely within the framework of existing European treaties, but also carries constitutional consequences for configuring the EU’s economic governance, rebalancing the asymmetry that has characterised the functioning of the Economic and Monetary Union from its inception (Fabbrini, 2022, p. 65).

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<sup>23</sup> An example is provided by the conditionality required for the European Stability Mechanism or the strict conditions set out by the ad hoc authority known as the “Troika”, formed as a consequence of the European debt crisis in the years 2009-2010. See also Schramm et al. (2022, p. 117).

<sup>24</sup> The Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, sheds light 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.

<sup>25</sup> Read the full text in the [Report from the Commission to the European Parliament and the Council](#) (COM(2024) 93 final, 22.2.2024).

In spite of the above, the fact that constitutional boundaries to the development of European fiscal federalism still exist cannot be overlooked. In particular, we are referring to Member State fiscal sovereignty, which is justified in light of the principles of conferral, under which the EU can have no powers other than those accorded to it by the Member States as limited by their own constitutional identities. Additionally, fiscal federalism must ensure the fundamental guiding principles of price stability and fiscal discipline enshrined in the mandate for European and Monetary Union under Article 119(3) of the TFEU (Gordon, 2022, pp. 199-200).

We can therefore identify, within the NGEU's architecture, a positive achievement in the fact that constraints on the expansion of the EU legal order as a whole have not prevented the "socialisation" of debt and the translation of financial support to address Member States' difficulties into a more mature and solidarity-driven economic federalisation. This enhances the significance of solidarity as a principle that encompasses an autonomous, prescriptive, programmatic, and cogent legal *vis* within the progress of a more "genuine fiscal federalism" (Fabbrini, 2022, p. 58).

On the other hand, while the active participation of Member States in the decision-making process of the RRF and the social character of NGEU implies a shift in the centralised approach that has characterised fiscal federalism until now (Gordon, 2022, p. 199), this enhancement primarily pertains to the higher level of MLG. In other words, even in this new scenario of advanced fiscal integration, Member States remain the sole entities responsible for complying with the conditionalities of the NGEU. Furthermore, despite substantial resources being allocated at the sub-state level,<sup>26</sup> for the purposes of oversight the Commission only requires a single national coordinator with overall responsibility for the NRRPs to act as a single point of contact; as a consequence, no direct interaction with sub-state actors is necessary (Kölling & Hernández-Moreno, 2023, p. 6).

Therefore, although the principle of solidarity certainly assumes relevance under the EU policy objective of territorial cohesion, it continues to be predominantly characterised by its vertical dimension (Apostoli, 2023, p. 162). We can thus detect some sort of tension between the principle of solidarity and decentralised systems of governance under the EU federalisation process, a tension which may be tempered by the application of the principles of subsidiarity, proportionality and partnership.

#### 4.2 The shortcomings of the NRRPs in relation to the principles of subsidiarity, proportionality and partnership

The analysis of NGEU as a key instrument with which to stimulate the process of EU federalisation must also include a reflection about the relevance and applicability of MLG in the NRRPs of decentralised Member States in light of the principles of subsidiarity, proportionality and partnership. The basic premise behind these considerations is that, in the MLG model, the allocation and sharing of powers must occur among different territorial jurisdictions. In particular, in a system resembling federalism such as the EU, these levels of governance include three main dimensions: European, national, and regional or local (Marks & Hooghe, 2004, pp. 17-20; Piattoni, 2010, pp. 246-247).

Along this "centre versus periphery" axis (Piattoni, 2010, 26-31), we should find the participation of sub-state authorities in the EU process (Panara, 2016, p. 708). However, as highlighted by the CoR in the *White Paper on Multilevel Governance*, this participation cannot be conceived of as a legal instrument simply oriented at the division of powers. Rather, it consists in a dynamic process encompassing a political "action blueprint" which is able to increase joint ownership and the implementation of diverse EU policies (CoR, 2009, p. 7). According to this perspective, MLG can be efficiently understood as a *procedural principle* that should guide the manner in which decisions are made in the EU and the coordination of actions between the different levels of administration (Panara, 2016, p. 711).

This notion, although derived from non-legally binding documents, assumes a relevant normative value and enables understanding of the complexity of arrangements related to the management of NRRPs. In the context

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<sup>26</sup> In particular, according to the [distribution criteria established within the framework of the Spanish NRRP](#) (2022), Spain's autonomous communities are expected to manage up to 54% of the funds for the deployment of investments in their areas of competence. In contrast, in the case of Italy, it is estimated that sub-national authorities will be implementors (*soggetti attuatori*) of about 36% of the total resources of the NRRP. For further details, see the [First Report to the Parliament on the state of implementation of the Italian NRRP](#) (Italia Domani, 2021, p. 14).

of NGEU, the importance of MLG does not only relate to the negotiation or lobbying activity of sub-state entities, but also regards the involvement of such authorities in the EU legislative process through official channels, such as preliminary consultations or through the role of the CoR, in addition to their active part in the implementation and monitoring phases of the NRRPs. This mechanism seems to be primarily central to the development of *multilevel constitutionalism*, whereby sub-state authorities participate in the EU legislative process to compensate for the loss of autonomy of Member States that results from the shift of powers to the European level, with a renewed level of “bottom-up” legitimacy (Pernice, 2002, p. 11). In decentralised systems of governance, sub-state authorities do indeed act as elected representatives in the name of the autonomy of the community of reference, and hence are a concrete expression of the democratic principle (Cecchetti, 2023, p. 149). Furthermore, this approach can provide European legislation and its execution with the necessary experience and knowledge of relevant sub-state actors and stakeholders (Panara, 2016, p. 712).

Notably, the normative significance of MLG is underpinned by a constitutional foundation at both EU and national levels in decentralised states. While at EU level a legal basis can be found in both primary and secondary EU law, at the national level this lies in the constitutions of states.

With reference to the treaties of the EU, we refer first to Article 4.2 of the TEU, which expresses respect for the national identities of the Member States, defined as “inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government”. Although the character of “national identity” cannot be considered automatically attributable to certain sub-state entities (Cloots, 2015, p. 125), there is no room for doubt in the cases of Italian regionalism and the so-called Spanish *Estado de las Autonomías*, both of which encompass specific constitutional provisions in this regard.<sup>27</sup>

Moreover, there are concrete channels through which MLG is applied under EU law, consisting above all of the advisory capacity exercised by the CoR in the law-making process, in compliance with Article 13.4 of the TEU.

In this legal framework, MLG inevitably intersects with the principles of subsidiarity, proportionality and partnership. Specifically, the principle of subsidiarity is secured by Article 5.3 of the TEU and aims to ensure a paradigm which situates citizens as close as possible to power. Constant checks must be made to verify that action at the EU level is justified in light of the possibilities available at the national, regional or local level. As a consequence, the EU may only take action in areas that fall within its exclusive jurisdiction, except where EU action would be more effective than action taken at different levels of governance. In any case, it should not go beyond action necessary to achieve the aims of the treaties, in accordance with the principle of proportionality. The subsidiary role in decision-making is further explicated in Protocol No. 2 of the TEU, in particular Article 2, which prescribes that the Commission shall “consult widely” and “where appropriate, take into account the regional and local dimension of the action envisaged”.

Furthermore, these principles are invoked in strong connection with the MLG approach in the context of Cohesion Policy under Regulation (EU) 1303/2013, which remains central to the discourse on NGEU. In particular, under Article 5 of this Regulation, the Member States are requested to organise a *partnership* with competent regional and local authorities and establish participatory mechanisms for the involvement of these actors in the preparation, implementation and monitoring of these programmes. In this perspective, Cohesion Policy traditionally relies on shared responsibility among authorities at different levels of governance, and the partnership principle emphasises the significance of decentralisation for participation in European public policies (Kölling & Hernández-Moreno, 2023, p. 4). Subsidiarity, however, although a cornerstone concept

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<sup>27</sup> Spain and Italy present similar constitutional architectures with regard to MLG. The right to self-governance and the legitimacy of the three levels of governance (i.e., central, regional and local) are enshrined in Articles 2 and 137 of the Spanish Constitution and Articles 5 and 118 of the Italian Constitution. Moreover, while the former sets out the division of competences between the autonomous communities and the State in Articles 148 and 149, respectively, the latter establishes the division of legislative competences between the State and the regions in Article 117. To this must be added that the third chapter of the 1978 Spanish Constitution delves into the governance of the autonomous communities, establishing the principles guiding the formation of these territorial entities. Specifically, the Statutes of Autonomy, subject to approval through various procedures, define the powers of each autonomous community within the framework outlined in Articles 148 and 149 of the Constitution. Thus, this constitutional model can be characterised as open, necessitating the endorsement of diverse Statutes of Autonomy for its development. For a deeper examination of the constitutional framework of the Spanish State of Autonomies, its progressive evolution, and challenges amid the process of political decentralisation, while also considering the principle of unity of the State, see, among others, Tornos Mas (2018, pp. 51-61) and Navas Castillo (2018).

of the EU, is difficult to enforce, as is evident from the reluctance of the Court of Justice to apply it to ensure more substance to the rights of sub-state authorities in the EU decision-making process (Panara, 2016, p. 726). This also links to the fact that, despite the presence of a constitutional architecture that ensures MLG, the EU cannot oblige Member States to create participation channels for sub-state authorities or to use those proposed by the Union. In other words, the EU is formally *neutral* with respect to the decision-making model adopted at the national level, and this implies that the extent to which sub-state entities are involved ultimately depends on centralised governments (Gimeno Feliú, 2021, pp. 70-71). That is, the Member States have not been bound to adhere to the partnership principle when submitting their national plans (Kölling & Hernández-Moreno, 2023, p. 6). In fact, the regulations only recommend the inclusion of local and regional authorities in the consultation phase and request a summary of such a process for the implementation of the plans “where available”.<sup>28</sup>

But having said that, behind the façade of legal neutrality lies a political reality: the propulsion of a more centralised decision-making model is inherently favoured by European institutions and state governments of Member States, *de facto* if not *de jure*. Moreover, the apparent lack of enforceability of MLG at the EU level does not exempt decentralised states from the obligation to involve sub-state authorities in accordance with the constitutional, institutional and legal structures of the Member States. These authorities are indeed widely affected by the management of NRRPs that relate to their legislative and administrative competences in several fields such as health, social, education and social measures (Kölling & Hernández-Moreno, 2023, p. 6; Pajno, 2022, p. 237).

However, as explained above, in the cases of the Spanish and Italian systems, co-governance has been formally established – in a more robust, albeit unsatisfactory manner for the former, and at a very minimal level for the latter, especially after the latest reforms. Sub-state authorities have encountered several practical difficulties, from the initial design of the NRRPs to the current stage of implementation. In this regard, a report by the initiative “Regions for EU Recovery” shows that the main issue faced by the Spanish autonomous communities has been the limited scope allowed for planning and prioritising policies. For the Italian regions, the major challenges have been linked to a lack of technical assistance and support for stakeholders (Ministry for Foreign Action and Open Government, 2022, pp. 1, 8 & 11-12). Specifically, some regional authorities from Spain (i.e., Valencia and Catalonia) and Italy (i.e., Emilia-Romagna) stress that, even though RRF calls for participation have been transparent and published on a dedicated portal, staying informed and effectively accessing financing opportunities have been problematic for potential beneficiaries due to a multiplicity of convening bodies. Other complexities derive from the need to find synergies between the RRF and other channels of EU funding, such as the current Multiannual Financial Framework (MFF), covering the period 2021-2027. Concerns about an already inadequate administrative capacity to efficiently absorb European funds in both countries seem understandably serious (Hidalgo-Pérez et al., 2022, pp. 77-80).<sup>29</sup> This is also in light of the fact that the monitoring process is carried out at the national level by the Ministry of Finance, and sub-state authorities can only rely on government guidelines to avoid misallocation of funds, as stated in the Regions for EU Recovery report (Ministry for Foreign Action and Open Government, 2022, p. 12).<sup>30</sup> In some cases, the authorities even declare that they lack the necessary tools to follow up on projects financed by the RRF (Ministry for Foreign Action and Open Government, 2022, p. 15). As emerges from more recent targeted consultations of the CoR and CEMR, while the scarce involvement of sub-entities in the implementation phase can be traced back to the severe timelines of the RRF itself, it needs to be stressed that this remains primarily the product of deliberate political unwillingness on the part of the central administrations of the Member States (CoR & CEMR, 2022, p. 6).

The scenario described above confirms, at the very least, a lack of application of the principles of subsidiarity and proportionality, as well as extremely poor, or almost non-existent, implementation of the partnership principle. In particular, both the EU institutions and the Spanish and Italian governments have steered the governance of NRRPs toward centralisation without providing sub-state authorities with sufficient instruments of cooperation for their active involvement at the implementation stage. In this respect, it also seems that

28 Article 18.4 (q) Regulation (EU) 2021/241.

29 Moreno (2020, pp. 27-50) writes more generally on the challenge of effectiveness in the absorption capacity of EU funds at regional level.

30 Spanish regional authorities, for instance, emphasised the need for additional tools to provide common indication and avoid double funding, such as access to the official database of beneficiaries.

insufficient attention has been paid to addressing national pluralism and the political, economic, sociological and legal asymmetries that exist among the Spanish autonomous communities and the Italian regions. It may be appropriate, for instance, to tailor support instruments to enhance fund allocation and the execution of planned reforms, considering the *national* diversities within these decentralised systems.<sup>31</sup>

In this regard, the European Commission in particular may play a part in ensuring better MLG in the execution of national plans, relying on the existing EU law framework that safeguards this model. In practice, for instance, the Commission may consider introducing some degree of flexibility in terms of extended deadlines, activating direct channels of communication with the regions on the challenges of the RRF, and adopting operational programmes that leave sufficient room for regional needs and the appropriate shaping of funding schemes (Ministry for Foreign Action and Open Government, 2022, p. 16). On the part of Member States, among other things, improvements may encompass simplifying the requirements of the RRF application process, offering training and clearer rules for the execution of the funds, and adopting a stronger monitoring system, particularly at the regional level.

## 5 Conclusion

This paper has analysed the challenges of NGEU with regard to MLG. In this context, the governance of the NRRPs in Spain and Italy has served as a comparative case study to highlight specific deficiencies in decentralised systems and develop broader considerations on EU integration. Although the design and implementation of these two NRRPs, including the timing for requesting certain kinds of resources, naturally present some divergences regarding the mechanisms of co-governance employed, similar issues have arisen as a consequence of the predominantly centralised approach embraced by both Member States. Finally, we sought to shed light on the relevance of NGEU under the ongoing process of the federalisation of the EU, paying special attention to the principles of solidarity, subsidiarity, proportionality and partnership.

We primarily noted that NGEU has made notable advances in the federalism process, by enhancing integration through innovative interpretation of the EU's constitutional framework, with reference to the methodology and legal basis of its decision-making process, maintaining unity all the while.<sup>32</sup> A genuine balance between constraining effects and the political autonomy of Member States has emerged. Furthermore, NGEU is a turning point in terms of redistributive measures if compared to past strategies in times of crisis; it effectively strengthens fiscal federalism, relying on the tangible application of the principle of solidarity.

On the other hand, the regulations for the NRRPs only recommended the involvement of local and regional authorities in the consultation and implementation phases, and the format and timeframe envisaged at the EU level produced a *de facto* narrowing of the regional manoeuvring space and strengthened the Member States as primary interlocutors. From this angle, the NGEU's architecture prioritises inter-state solidarity and marginally addresses the activation of an inter-territorial solidarity principle to overcome socioeconomic disparities and governance asymmetries in respect of sub-state authorities.

In particular, while the tight time constraints and formalities imposed to access the allocated amounts enabled a rapid economic recovery for the EU, this model inherently hampered MLG in the administration of national plans. This is reflected in the experiences of the Spanish autonomous communities and Italian regions, which have not sufficiently engaged in negotiation of the content of the respective NRRPs, but have essentially been reduced to the role of executors of decisions made at the national level. Furthermore, during the current implementation of the NRRPs on which this research is focused, the centralised power structure still ensured supervision and coordination. When sub-state authorities have been called upon to participate in the RRF allocation process, they have experienced administrative difficulties due to inadequate timing, absence of full information and improper training.

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31 Monti (2021) offers a comprehensive analysis of the regional asymmetries and national minorities that exist in Spain and Italy, focusing on the cases of the Basque Country, Catalonia, South Tyrol and the Aosta Valley, as well as their connection with secessionist movements.

32 Kotzur (2004, p. 57) discusses the potentialities of federalism in terms of integration and preservation of national pluralism within the EU, without compromising its unity.

The centralisation trend in the management of the NRRPs is the result of a chain of deficiencies that begins with a lack of binding mechanisms for the partnership principle on the part of the EU institutions. This tendency is further reinforced by the political unwillingness of the Member States to create sufficient channels for participation and technical support.

From a practical standpoint, subsidiarity, proportionality and partnership thus appear somewhat hypothetical in the context of NGEU, consequently undermining the MLG model central to the EU federalisation process. However, they are neither mere normative values nor are they merely programmatic by nature. Instead, they can be framed as constitutional cogent principles, both at EU and national levels of decentralised systems such as Spain and Italy. Additionally, compliance with the aforementioned principles is instrumental to political legitimacy and sense of ownership at the lowest levels of power. These political goals in fact represent historic deficits for EU integration as a whole, also in consideration of previous top-down measures of social revitalisation put in place in times of economic and financial crises.<sup>33</sup> Therefore, the constitutional significance of MLG is undeniable and its application remains crucial to conceive EU federalisation that is not only economically oriented but is also a *political project* of integration.

Even the need to limit the role of sub-state authorities to ensure the urgent and timely implementation of the reforms of NRRPs, as envisaged by NGEU, seems improper in several respects. Rather, it cannot be disregarded that, in decentralised systems, regional and local entities are on the front line for the realisation of the reforms financed by the RRF in several fields where they share legal and administrative competences with the central administration. Hence, the risk of failing to reach the targets and milestones of the NRRPs, and of central governments absorbing the funds or misallocating resources, is likely to be higher if MLG is not achieved and encouraged by instruments of assistance (CoR & CEMR, 2022, p. 7).

In this perspective, we conclude that, under the dynamic pattern of federalisation, the full potentialities of NGEU remain untapped. Despite the advanced level of constitutionalisation of the principle of subsidiarity and complementary competencies achieved in the EU, NGEU has mainly reinforced cooperative federalism concerning the sovereignty of centralised government, neglecting to adequately consider the role of sub-state entities. This suggests that, beyond the formalisation of constitutional and legal safeguards, enacting cooperative federalism at various levels of governance remains a political choice.<sup>34</sup> Nevertheless, the EU and its Member States remain at a crossroads if reconsidering NGEU with a view to efficiently integrating decentralisation, at least in the remaining years of implementation of the NRRPs, especially by advancing concrete instruments of cooperation and monitoring between the different levels of governance.

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33 According to Sciarra (2018, pp. 65 & 133), fears stemming from a lack of legitimacy can undermine the administrative solidarity fostered by EU economic policy in times of crisis, but policymakers at the governance level should address these concerns by placing emphasis on the instrument of European social dialogue.

34 With regard to the concept of cooperative federalism constitutionalised in the EU, see Schütze (2009, pp. 241-286).

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