# The Recovery & Resilience Facility as the New Legal Technology of European Governance

Federico Fabbrini*

Abstract

This paper examines the innovative legal technology of European governance introduced by the Recovery & Resilience Facility (RRF) and its growing diffusion to a plurality of internal and external EU programs. It explains that the RRF created a new governance model, based on a 5-step process: definition of EU priorities, design of national plans, EU assessment of national plans, national implementation of the plans, and EU monitoring. Since 2021, the RRF legal technology has been replicated in a half dozen contexts – including RePowerEU, the EU Social Climate Fund, the Macro-Financial Assistance+ Instrument for Ukraine 2023, the Ukraine Facility and even the new Stability and Growth Pact. The RRF model has several legitimacy advantages, because it favors national ownership, while still endowing the EU institutions with significant leeway to shape national policy-making. Moreover, as a performance-based arrangement, it has effectiveness advantages too. Yet this model has also drawbacks worth exploring.

Keywords

Recovery & Resilience Facility – Governance – European Union – National Ownership – European Influence

* Full Professor of European Law, Dublin City University; Founding Director, Brexit Institute; PI Jean Monnet Centre of Excellence REBUILD (Recover of Europe, Budget of the Union: Integration, Law & Democracy).
Email: Federico.Fabbrini@gmail.com
Address: DCU, Glasnevin Campus, Dublin 9, Ireland

# 1. Introduction

The establishment by the European Union (EU) of the Next Generation EU (NGEU) Recovery Fund in response to the Covid-19 pandemic has been hailed as a turning point in the project of European integration (Wozniakowski et al 2023). First, NGEU empowered the European Commission to issue bonds on the financial markets for a value of EUR 750 bn at 2018 price, corresponding to over EUR 800 bn at current prices. Second, NGEU enabled to Commission to transfer these resources to the member states, both as loans and as grants, with the aim to secure their post-pandemic recovery. Third, NGEU committed the EU institutions to eventually introduce real EU taxes to repay the common debt, and the interest, when it becomes due starting in 2035. By endowing the EU with significant new borrowing, spending and prospectively taxing powers, NGEU profoundly modified the EU architecture of economic governance (Buti 2022), and positively contributed to complete the EU's Economic & Monetary Union (EMU) with a centralized fiscal capacity (Fabbrini 2022).

Needless to say, NGEU is formally designed as a one-off initiative, specifically aimed at addressing the devastating socio-economic consequences of the pandemic. The Commission's power to issue common EU debt is limited in size, and time; and the NGEU spending is due to end by summer 2026 – by when all member states must complete the implementation of their National Recovery & Resilience Plans (NRRP). In fact, significant uncertainty also persists on what taxes, if any, the EU will be able to introduce to repay its debt (Kendrick 2023): while by the end of 2023 the EU had rolled out both a new plastic package tax, and a carbon border adjustment mechanism, the resources levied through these are a small percentage of the amounts due to repay close to EUR 1 tr of debt and interests. This leaves open the possibility that either the member states may have to increase their contributions to future EU budgets, or that EU debt will be rolled over. And this creates uncertainties as to the prospects of turning NGEU into a permanent mechanism of EU economic governance (Buti & Fabbrini 2022).

Yet, beyond the question of whether the NGEU financing system can turn from a temporary to a permanent feature of EMU, there seems to be already a major legacy effect from this experimental tool (Sabel & Zeitlin 2007). In particular, this paper argues that the Recovery and Resilience Facility (RRF) – the core program funded by, and within NGEU – has become a new legal technology of European governance. In fact, the RRF has increasingly been used by the EU institutions as the legal template to set up a plurality of new programs – both in the field of EU internal policy and in the field of EU external affairs. Among others, the legal technology of the RRF has been now reproduced by the EU institutions for the RePowerEU program, for the EU Social Climate Fund, as well as for the new Stability and Growth Pact. Moreover, the RRF has been the model used by the EU to lay out its engagement with Ukraine, first through the Macro-Financial Assistance+ Instrument for 2023, and subsequently via the Ukraine Facility.

So what is the RRF legal technology of European governance? In what circumstances it is used? And why so? The purpose of this paper is to answer those questions. The paper argues that the RRF model is a 5-step governance system based on: the EU definition of policy priorities; the drafting of national implementing plans; the EU assessment of these plans; the national implementation of the plans; and finally the EU ongoing monitoring thereof. The paper suggests that the RRF has provided the EU institutions with a new governance arrangement to deal both with member states and with third countries, which is

attractive both in terms of legitimacy and effectiveness: compared to alternative governance models, the RRF increases national ownership but also the EU's leverage in the definition of several political priorities, as well as the EU's ability to monitor implementation through a performance-based review. Nevertheless, as the paper points out, the RRF model also has several potential shortcomings, both related to legitimacy and effectiveness: the RRF model 'locks-in' states in implementing plans that outlast the governments that negotiated them, and so far is only partially able to evaluate the effect 'on the ground' of public policies.

As such the paper is structured as follows. Section 2 highlights the legal design of the RRF and the multi-stage governance mechanism that it creates. Section 3 underlines how since 2021 the RRF legal technology has been copy-pasted in a growing number of other contexts, in both EU internal and external affairs. Section 4, then, reflects on the rationale for the diffusion of the RRF as a legal technology of European governance, discussing some of its advantages but also some of its limitations. Section 5, finally, concludes.

## 2. The legal technology of the RRF

The centerpiece of the NGEU Recovery Fund is the RRF – which is established through a regulation adopted by the European Parliament (EP) and the Council, and entered into force in February 2021.[1] The RRF governs the use of the largest component of NGEU – an envelope of EUR 672.5 bn out of a total of EUR 750 bn. (The rest of the NGEU budget is channeled through smaller programs, including ReactEU, InvestEU and RescEU, which are managed by the European Commission). As explained by Fabbrini (2022) the RRF regulation is one piece of the complex legal constellation that sets up NGEU – which includes also the EU Recovery Instrument (EURI),[2] the EU Own Resources Decision (ORD),[3] as well as the Multi-Annual Financial Framework (MFF)[4] and a new rule of law conditionality regulation. The RRF finds its legal basis in Article 175 Treaty on the Functioning of the EU (TFEU), which is the treaty provision granting to the EU competence in the field of cohesion policy. The legal basis chosen for the RRF (and other elements of the NGEU) has been the object of debate in EU law scholarship (De Witte 2021). But this is not what this paper focuses on. Rather, what matters for our purposes is that the RRF designs a new legal process of governance, essentially structured in five steps.

In detail, Chapter I of the RRF regulation outlines the objectives and the priorities that the EU co-legislators aim to achieve through this program. As stated in Article 3, the RRF is organized in six pillars, covering: "(a) green transition; (b) digital transformation; (c) […] inclusive growth, including economic cohesion […]; (d) social and territorial cohesion; (e) health […]; (f) policies for the next generation […] such as education and skills." Article 4(1) lays out the general objective of the RRF, which is to promote the EU's economic, social and territorial cohesion by improving the resilience, crisis preparedness, adjustment capacity and

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[1] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ 2021 L 57/17

[2] Council Regulation (EU) 2020/2094, of 14 December 2020, establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, OJ 2020, L 433 I/23.

[3] Council Decision (EU, Euratom) 2020/2053, of 14 December 2020, on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ 2020 L 424/1 [hereinafter ORD].

[4] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ 2020, L 433 I/11.

growth potential of the member states, by mitigating the social and economic impact of that crisis in particular on women, by contributing to the implementation of the European Pillar of Social Rights, by supporting the green transition, by contributing to the achievement of the EU's 2030 climate targets and of the digital transition, thereby contributing to the upward economic and social convergence, restoring and promoting sustainable growth and the integration of the economies of the EU, fostering high quality employment creation, and contributing to the strategic autonomy of the EU alongside an open economy and generating European added value. To achieve these general objectives, as stated in Article 4(2), "the specific objective of the Facility shall be to provide Member States with financial support with a view to achieving the milestones and targets of reforms and investments as set out in their recovery and resilience plans."

In order to access the financial support, Member States must prepare NRRPs, whose terms are stated in chapter III of the RRF regulation. Article 18 states that Member States wishing to receive a financial contribution shall submit to the Commission a recovery and resilience plan, "as a rule, by 30 April [2021]."[5] Each NRRP must be "duly reasoned and substantiated"[6] and must reflect a number of features, including: "an explanation of how the recovery and resilience plan, taking into account the measures included therein, represents a comprehensive and adequately balanced response to the economic and social situation of the Member State;"[7] "envisaged milestones, targets and an indicative timetable for the implementation of the reforms, and investments to be completed by 31 August 2026;"[8] and "the estimated total costs of the reforms and investments covered by the recovery and resilience plan submitted."[9] Furthermore, the same provision foresees that "at least 37 % of the recovery and resilience plan's total allocation"[10] must be devoted to support the environmental transition. At the same time, "at least 20 % of the recovery and resilience plan's total allocation"[11] should contribute to the digital transition. Finally, the same clause also requires member states to explain "how the recovery and resilience plan contributes to effectively address all or a significant subset of challenges identified in the relevant country-specific recommendations" which the EU institutions address annually to the member states in the framework of the European Semester.[12] In fact, as underlined in Article 17, "the recovery and resilience plans shall be consistent with the relevant country-specific challenges and priorities identified in the context of the European Semester,"[13] and this is a condition for eligibility of the NRRP.

Once a member state has submitted its NRRP, according to Article 19 of the RRF regulation, it is for the Commission to assess the NRRP, evaluating their "relevance, effectiveness, efficiency and coherence."[14] In particular, for each of these criteria, the Commission must assess each NRRP, within two months from its submission, and has also the possibility to reject it, and ask the member state to rewrite it. If the Commission assesses positively the NRRP, it proposes to the Council an implementing decision, which "shall set out the reforms and investment projects to be implemented by the Member State, including

[5] Ibid., Art. 18(3).
[6] Ibid., Art. 18(4).
[7] Ibid., Art. 18(4)(a).
[8] Ibid., Art. 18(4)(i).
[9] Ibid., Art. 18(4)(k).
[10] Ibid., Art. 18(4)(e).
[11] Ibid., Art. 18(4)(f).
[12] Ibid., Art. 18)4)(b).
[13] Ibid., Art. 17(3).
[14] Ibid., Art. 19(3).

the milestones and targets, and the financial contributions."[15] According to Article 20 of the RRF regulation, the Council shall adopt the implementing decisions, "as a rule, within four weeks of the adoption of the Commission proposal."[16] Once the Council has adopted the implementing decision, on the basis of Article 23, "the Commission shall conclude an agreement with the Member State concerned constituting an individual legal commitment." This agreement – which in case of loans is for all practical purposes a contract – sets "the financial contribution to be paid in instalments,"[17] "the description of the reforms and of the investment projects and the amount of the estimated total costs of the recovery and resilience plan"[18] and "the time limit, which should be no later than 31 August 2026, by which the final milestones and targets for both investment projects and reforms must be completed."[19]

The EU's approval of the NRRPs kicks the ball in the member states' field, as it is for national authorities to implement he NRRPs – subject to the Commission's regular control and oversight. Indeed, the punctual respect of targets and milestone set in the NRRP is a condition for member states to continue receiving NGEU financial support: as stated in Article 24(2) of the RRF regulation, "[u]pon completion of the relevant agreed milestones and targets indicated in the recovery and resilience plan […] the Member State concerned shall submit to the Commission a duly justified request for payment." Yet, according to Article 29 the "Commission shall monitor the implementation of the Facility", and pursuant to Article 24 (6), if "the Commission establishes that the milestones and targets set out in the Council implementing decision [...] have not been satisfactorily fulfilled, the payment of all or part of the financial contribution and, where applicable, of the loan shall be suspended."

Otherwise, precisely to guarantee that the resources made available by NGEU will not be wasted, the RFF recognizes also a sort of emergency brake procedure. As indicated in recital 52 of the regulation "[i]f, exceptionally, one or more Member States consider that there are serious deviations from the satisfactory fulfilment of the relevant milestones and targets, they may request the President of the European Council to refer the matter to the next European Council. [...] In such exceptional circumstances, no decision authorising the disbursement of the financial contribution and, where applicable, of the loan should be taken until the next European Council has exhaustively discussed the matter. That process should, as a rule, not take longer than three months after the Commission has asked the Economic and Financial Committee for its opinion." Although this extraordinary control mechanism is not regulated in the substantive text of the regulation, but only in the opening recital – whose legal efficacy is dubious – this reflects the difficult political agreement reached within the European Council in July 2020:[20] At the time when the European Council approved the Commission's NGEU proposal, the abovementioned proviso was agreed to reassure the frugal member states of Northern Europe that NGEU funds would be used wisely and prudently. In fact, Article 10 of the regulation, which introduces measures linking the RFF to pre-existing EMU rules on sound economic governance, states that the Commission shall suspend payments to a member state "where the Council decides in accordance with Article 126(8) or (11) TFEU that a Member State has not taken effective action to correct its excessive deficit": hence a violation of the Stability and Growth Pact excessive deficit rule will lead to suspension of funding under the RFF. Lastly, the RRF introduces a number of

[15] Ibid., Art. 20(2).
[16] Ibid., Art. 20(7).
[17] Ibid., Art. 20(5)(a).
[18] Ibid., Art. 20(5)(c).
[19] Ibid., Art. 20(5)(d).
[20] European Council Conclusions, 17-18-19-20-21 July 2020, EUCO 10/20.

final provisions, including duty by member states to protect the financial interests of the EU,[21] as well as reporting,[22] monitoring,[23] communication and information[24] requirements.

In conclusion, the RRF legally delineates a novel governance arrangement, which can be conceptualized in five steps, each involving different institutions and occasionally the member states. 1) First, the EU identifies a number of objectives which must be achieved through this program – with the Commission, EP and Council being all involved in this initial step of priority-setting. 2) Second, the member states are asked to design multi-annual national plans, identifying country-specific paths to achieve these objectives, through clear milestones and targets. 3) Third, the Commission assesses and the Council approves the national plans, or if these fail to meet the EU priorities, call for member states' to revise them. 4) Fourth, member states implement their national plans, acting to achieve the milestones and targets indicated therein – and with the financial help provided by the RRF. 5) Fifth, the Commission monitors with a six-months' frequency member states' implementation of their national plans and the achievement of the milestones and targets indicated therein – thus deciding on the continuing disbursement of financial aid – with the potential for an emergency involvement of the European Council in exceptional cases. Table 1 summarizes the legal technology of the RRF.

Table 1

| Steps | Action | Institutions involved |
|---|---|---|
| 1 | Priorities and objectives | Commission + Council + EP |
| 2 | Design of national plans | Member states |
| 3 | Assessment and approval | Commission + Council |
| 4 | Implementation | Member states |
| 5 | Monitor and control | Commission (+ European Council) |

## 3. Reproducing the RRF technology in other EU policies

When the RRF was set up in February 2021 it designed a unique governance arrangement. Since then, however, the RRF has served as the model used by the EU to govern other programs. In the internal and external policies of the EU, at least a half dozen examples can now be identified of EU legislation borrowing the legal technology of the RRF.

### 3.1. RePowerEU

A first example is the RePowerEU program, which was adopted through a regulation of the EP and the Council in February 2023.[25] The RePowerEU is the EU response to the spike in energy costs resulting from the war in Ukraine, and seeks to provide an additional EUR 20 bn of financial support to member states to help them phasing out of Russia's fossil fuels, and accelerate the transition towards renewable energy. RePowerEU is designed as an add-on to

[21] RRF, Art. 22
[22] Ibid., ch. VI
[23] Ibid., ch. VII
[24] Ibid., ch. VIII
[25] Regulations (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC

the RRF, and consequently the 2023 RePowerEU regulation introduces a number of amendments to the 2021 RRF regulation. The governance design of RePowerEU therefore, entirely tracks that of the RRF.

Specifically, Article 1 of the RePowerEU regulation amends Article 4 of the RRF regulation introducing among its priorities the new objective to "increasing the resilience, security and sustainability of the Union's energy system through the necessary reduction in dependence on fossil fuels and diversification of energy supplies at Union level, including by means of an increase in the uptake of renewables, in energy efficiency and in energy storage capacity." Moreover, the RePowerEU regulation introduces a new Article 21c in the RRF regulation, titled "RePowerEU chapters in recovery and resilience plans". Based on this new clause, member states are asked to prepare RePowerEU chapters to be added to their NRRPs, which "shall aim to contribute to at least one of the following objectives: (a) improving energy infrastructure […]; (b) boosting energy efficiency in buildings […]; (c) addressing energy poverty; (d) incentivizing reduction of energy demand; (e) addressing internal and cross-border energy transmission and distribution bottlenecks." Once Member States have presented their RePowerEU chapters, the Commission shall assess them and the Council approve them – in line with the rules of the RRF. Moreover, the implementation and oversight principles of the RRF applies *mutatis mutandis* here.

### 3.2. Social Climate Fund

Since RePowerEU is conceived as an amendment to the RRF, its borrowing of the RRF's legal technology may be unsurprising. However, the five-step governance procedure invented by the RRF has been now used by the EU also to design the EU Social Climate Fund (SCF). This new tool, established through a regulation of the EP and the Council in May 2023,[26] is designed to support member states in mitigating the impact of the environmental transition on the most vulnerable households and enterprises – a pressing social need after the protest movement of the Gillet Jaunes in France, triggered by the increase of fuel taxes. The SCF provides financial assistance for a maximum of EUR 65 bn in the period 2026 to 2032 – through a legal technology that mirrors that of the RRF.

To begin with, the EU has identified the overall objectives of the SCF, which is as indicated in Article 3 "to contribute to a socially fair transition towards climate neutrality." In particular, as stated in Article 2, the SCF tackles "energy poverty", that is "a household's lack of access to essential energy services that underpin a decent standard of living and health", and "transport poverty", that is "individuals' and households' inability or difficulty to meet the costs of private and public transport." Pursuant to chapter II of the SCF regulation, member states must prepare and submit to the Commission their Social Climate Plan (SCP). According to Article 6, the SCP shall set out "concrete measures and investments", with specific targets and milestones to be achieved. Pursuant to Article 16, "[t]he Commission shall assess the" national SCP. Moreover, contrary to what occurs in the RRF, it can directly decide to approve the SCP "by means of an implementing act"[27] without need for Council involvement. Once member states' SCP have been approved, it is for them to implement them – subject to the Commission's periodic monitoring and oversight. In fact, according to Article 7 of the SCF regulation, "[p]ayments of financial support […] to each Member State

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[26] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Fund and amending Regulation (EU) 2021/1060, OJ 2023 L 130/1.

[27] Ibid., Art. 17(1)

shall be conditional upon that Member State achieving the milestones and targets" enshrined in their SCP. Indeed, pursuant to Article 20(4), when "the Commission establishes that the milestones and targets […] have not been satisfactorily achieved, the payment of the part of the financial allocation proportional to the unachieved target or milestone shall be suspended." Finally, customary oversight and accounting rules are enshrined in the SCF regulation, to secure the protection of the financial interests of the EU,[28] to ensure complementarity with other EU instruments,[29] to provide visibility,[30] and transparency[31] to the SCF, as well as to monitor its implementation[32] and secure its final review and evaluation.[33]

### 3.3. Macro-Financial Assistance Instrument for Ukraine 2023

The EU has also resorted to the technology of the RRF to streamline its financial support to Ukraine, in its military resistance against the Russian illegal invasion (Fabbrini 2023). In particular, besides deploying the newly created European Peace Facility (EPF)[34] – an intergovernmental funding tool established in 2021, and worth initially worth EUR 5.6 bn – the EU rolled out in 2023 a new Macro-Financial Assistance Instrument (MFA+) adopted in the form of a regulation of the EP and Council.[35] Going beyond the piecemeal support that the EU had given to the Ukrainian government in the initial months of the war,[36] the MFA+, worth EUR 18 bn funded through common debt, was designed to provide predictable, continuous, orderly and timely financial relief to Ukraine in 2023, thus supporting its rehabilitation and post-war reconstruction.

The MFA+ provides funding to a third country – albeit one that has been promised EU membership[37] – rather than to an EU member state. Yet, ceteris paribus it presents features that resemble the RRF. As clarified in Article 2 of the MFA+ regulation, the objective of the instrument is to provide "short-term financial relief to Ukraine [...] and initial support towards post-war reconstruction," and the MFA+ areas of support include financing of Ukraine's funding need, restoring critical infrastructure as well as alignment with the EU regulatory framework.[38] Based on Article 4 of the regulation, the MFA+ provides support in the form of loans, although additional amounts can be contributed by member states as grants. From a governance viewpoint, the MFA+ regulation expects the Ukrainian government to identify a financial planning and vests the key decision-making power in the European Commission. According to Article 9 the Commission signs the memorandum of understanding (MoU) with

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[28] Ibid., Art. 21
[29] Ibid., Art. 22
[30] Ibid., Art. 23
[31] Ibid., Art. 25
[32] Ibid., Art. 24
[33] Ibid., Art. 27
[34] Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility and repealing Decision (CFSP) 2015/528, OJ 2021 L 102/14
[35] Regulation (EU) 2022/2463 of the European Parliament and the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +), OJ 2022 L 322/1 [herein after MFA+ regulation].
[36] See e.g. Decision (EU) 2022/1201 of the European Parliament and the Council of 12 July 2022 providing exceptional macro-financial assistance to Ukraine OJ 2022 L 186/1 (providing 1bn€ of emergency funds)
[37] European Council conclusions 23-24 June 2022, EUCO 24/22, para. 11; European Council conclusions, 14-15 December 2023, EUCO 20/23, para. 15.
[38] MFA+ regulation, Art. 3

Ukraine, which sets out priority actions to be achieved through EU funding.[39] Pursuant to Article 11, "the support under the Instrument shall be made available by the Commission in installments." The regulation however introduces a number of pre-condition for the support under the MFA+, including "that Ukraine continue[s] to uphold and respect effective democratic mechanisms [...] the rule of law, and […] respect for human rights."[40] The Commission reviews compliance with the *ex ante* conditionality;[41] and can reduce, suspend or cancel support under the MFA+.[42] The usual annual reporting obligation is imposed by the regulation on the Commission,[43] which must also constantly keep the EP and Council informed on disbursement operations.[44]

### 3.4. Ukraine Facility

The MFA+ instrument was created as annual funding tool to support Ukraine only for 2023. With the continuation of the Russian war of aggression, and the worsening of the humanitarian, security and economic conditions of Ukraine, however, the European Commission proposed a more structured funding plan, also to support Ukraine on its path to EU membership. In particular, in June 2023 the Commission put forward legislation for a Ukraine Facility, worth EUR 50 bn for the period 2024 to 2027 to secure long-term and predictable financial support to the Ukrainian government. The Ukraine Facility, which is funded through common debt through an amendment of the EU MFF, was endorsed by 26 out of 27 Heads of State and Government meeting in the European Council in December 2023.[45] Due to Hungary's opposition, however, the mid-term revision of the MFF, and thus the approval of the Ukraine Facility was delayed, with a new European Council meeting convened to discuss this matter in January 2024.

The Ukraine Facility mirrors the RRF legal technology even more explicitly than the MFA+ 2023. According to Article 3 of the proposed Ukraine Facility regulation[46] the objective of the instrument is to "(a) address the social, economic and environmental consequences of the war, thereby contributing to the recovery, reconstruction and modernization of the country; (b) foster […] progressive integration into the Union." Article 5 outlines pre-conditions for EU support under the Facility, including Ukraine's continuing commitment to respect effective democratic mechanisms, the rule of law and human rights. From a governance perspective, Chapter III of the Ukraine Facility regulation requires Ukraine to design a multi-annual plan, which must sets out among others "reforms and investments, an envisaged timetable"[47] as well as "an explanation of how the Plan corresponds to the recovery, reconstruction and modernization needs stemming from the war."[48] Ukraine must present its Plan to the European Commission,[49] which must assess its

[39] Ibid., Art. 9
[40] Ibid., Art. 8
[41] Ibid., Art. 12
[42] Ibid., Art. 13
[43] Ibid., Art. 20
[44] Ibid., Art. 15
[45] European Council meeting 15 December 2023, Multiannual Financial Framework 2021-2027 Negotiating Box, EUCO 23/23.
[46] European Commission Proposal for a Regulation of the European Parliament and the Council on establishing a Ukraine Facility, 20 June 2023, COM(2023) 338 final.
[47] Ibid., Art. 16(2)(c)
[48] Ibid., Art. 16(2)(e)
[49] Ibid., Art. 17

"relevance, comprehensiveness and appropriateness."[50] In case of a positive assessment of the Ukraine Plan by the Commission, "the Council shall approve [it] by means of implementing decision."[51] On this basis, the Commission can conclude with Ukraine both a framework agreement[52] and a financing agreement.[53] While considering that Ukraine is at war the regulation introduces in Article 13 a provision for "exceptional financing", in principle Ukraine will receive funding under the Facility only by complying with the Plan, which the Commission monitors. In fact, according to Article 25(2), "[e]very quarter Ukraine shall submit a duly justified request for payment", which the Commission shall assess on the basis of compliance with the qualitative and quantitative steps of the Plan. If the targets are not met, the Commission can reduce or withheld payments. Finally, Ukraine and the Commission must take all appropriate measures to protect the financial interests of the EU,[54] and the usual auditing,[55] monitoring and reporting,[56] evaluation,[57] and information[58] provisions apply.

### 3.5. The new Stability and Growth Pact

The RePowerEU, the SCF, the MFA+ and the Ukraine Facility are all tools designed to provide EU financial support to Member States, or candidate countries like Ukraine, hence the borrowing of the RRF legal technology may be a natural step. However, the RRF template has now been used also in an entirely different context, that of the new SGP. The SGP is the cornerstone of EMU (Heipertz & Verdun 2010) and was originally established in the aftermath of the Maastricht Treaty to constrain Member States' budgetary policy and secure sound public finances, thus avoiding negative economic externalities (Eichengreen 1993). The SGP was amended in the aftermath of the euro-crisis but had been criticized for its pro-cyclical economic consequences and weak legal compliance (Estella 2018). Before the Covid-19 pandemic, therefore, the Commission had started a reflection on how the reform the EU economic governance framework, going beyond the original SGP. With the outburst of the pandemic, the SGP was suspended for the first time in Spring 2020 (Estella 2021), and with the outburst of the war in Ukraine the suspension was prolonged until the end of 2023. In the interim the Commission proposed a significant overhaul, by putting forward a package in April 2023 which revised both the preventive and the corrective arms of the SGP.[59] In December 2023, the Council of the EU found a political agreement on a slightly revised new SGP text,[60] which will now have to be formally approved *pro parte* also by the EP to enter into force in 2024.

While the Council negotiations have added both new safeguards and short-term flexibility to the original Commission proposal, they have not modified its core ideas. In

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[50] Ibid., Art. 18
[51] Ibid., Art. 19
[52] Ibid., Art. 9
[53] Ibid., Art. 10
[54] Ibid., Art. 33
[55] Ibid., Art. 34
[56] Ibid., Art. 36
[57] Ibid., Art. 37
[58] Ibid., Art. 40
[59] See Commission proposal for a Regulation of the European Parliament and the Council on the effective coordination of economic policies and multiannual budgetary surveillance and repealing Council regulation (EC) No 1466/97, 26 April 2023, COM(2023) 240 final.
[60] Council of the EU press release, 'Economic Governance Review: Council agrees on reform of fiscal rules', 21 December 2023, 1076/23.

detail, the new preventive arm of the SGP identifies a series of objectives that member states must pursue when undertaking their national budgetary policy, consistent with the deficit and debt criteria set in Protocol 12 to the EU treaties. In particular, as indicated in Article 1, the aim of the regulation is to "promote sound and sustainable public finances, inclusive growth and resilience through reforms and investments and prevent the occurrence of excessive government deficits." To this end, the regulation modifies the pre-existing European Semester framework by requiring Member States to present "national medium-term fiscal-structural plans." As explained in Chapter IV of the regulation, these multi-annual plans shall "(a) present a multi-annual net expenditure path […] (c) explain how it will ensure the delivery of investment and reforms."[61] Moreover, the plan, shall also explain how the Member State concerned will "address relevant country-specific recommendations" that the Commission advances in the context of the European semester.[62] As explained in Chapter III of the regulation, member states should draw up their national plans taking into account the technical trajectory for net expenditure put forward by the Commission in a report for the Council,[63] and are encouraged to have a technical discussion with the Commission.[64] As a rule, national plan should cover an adjustment period of 4 years,[65] but according to Article 13 it can be extended for an additional 3 years "[w]here a Member State commits to a relevant set of reforms and investments." At the request of the Council, national plans must in any case include quantitative debt sustainability and deficit resilience safeguards.[66]

Pursuant to Article 15, the European Commission assesses the national plans, and recommend their endorsement to the Council, which under Article 16 must approve them. The Commission however retains monitoring powers.[67] In particular, under Article 20 each member state shall submit to the Commission an annual progress report. Independent national fiscal authorities are asked to assess it.[68] While exceptional escape clauses are foreseen in the regulation for cases of severe economic downturn in the euro area as a whole,[69] or for exceptional circumstances outside the control of the Member State,[70] therefore, failure to abide by the mid-term fiscal-structural plan would lead to the Council activating the corrective arm of the SGP procedure, with the possibility to impose financial sanctions. This aspect is further disciplined in another part of the SGP reform package, which focuses precisely on the excessive deficit procedure.[71]

## 4. Explaining the diffusion of the RRF model

As the prior section pointed out, during the past two years the legal technology of the RRF has been increasingly used by the EU to govern other programs – both in internal and

[61] Ibid., Art. 11
[62] Ibid., Art. 13(iv)
[63] Ibid., Art. 5
[64] Ibid., Art. 7
[65] Ibid., Art. 5
[66] Ibid., Art. 6bis, 6ter
[67] Ibid., Art. 21
[68] Ibid., Art. 22
[69] Ibid., Art. 24
[70] Ibid., Art. 25
[71] Commission proposal for a Council regulation amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, 26 April 2023, COM(2023) 241 final

external affairs. The RRF template has been reproduced by RePowerEU, the SCF, the MFA+, the Ukraine Facility and the new SGP (and this list may be under-inclusive). The programs have different beneficiaries: some of this are designed for EU member states, while others target a third country – namely Ukraine, which now is also a candidate for EU membership. These programs pursue different goals, which range from energy security, to a just climate transition, to support for a country at war, to debt sustainability and sustainable growth. Moreover, these programs pertain to different policy areas, and therefore have different legal bases: some of these relate to internal EU cohesion policy, or to EU economic governance, while others are technically about international development aid, and pre-accession preparation. Lastly, some of these programs involve the expenditure of EU funding (all raised through the use of common debt), but others do not: in particular, contrary to RePowerEU, the SCF, the MFA+ and the Ukraine Facility, the new SGP's preventive arm governs national budgetary policy, without any disbursement of EU money at play.

Despite these differences all these disparate EU programs track the legal technology of European governance introduced by the RRF: that is, they are established through legally binding EU legal acts (specifically regulations adopted by the EP and the Council) and structured through the same 5-step process. First, the EU co-legislature – through the approval of the regulation creating the instrument – sets the priorities identifying the objectives that are to be pursued. Second, states – be it EU member states or third countries – have to draft a multiannual national plan (variably called) with specific targets and milestones to be achieved. Third, the Commission assesses these national plans, and either directly approves them, or recommends its approval to the Council. Fourth, states – be it EU member states or third countries – must implement their plans. Fifth, the Commission regularly monitors compliance with the national plans, and approves disbursement of EU funding or *mutatis mutandis* the flexible application of EU fiscal rules.

Needless to say, there are some technical peculiarities to each of the five abovementioned programs using the RRF technology. For example, the Commission is the sole authority in charge of approving NCP in the SCF regulation, as well as to validate the use of funding by Ukraine under the MFA+ regulation, while instead the ultimate decision-making authority for national plans in RePowerEU, the Ukraine Facility and the SGP is the Council. Moreover, while most programs require multi-annual plans (of usually 4, 5 or more years), the MFA+, given its nature as an annual funding instrument just for 2023, only required Ukraine to develop a 12-month list of priorities. Finally, because the new SGP entails EU surveillance of national budgetary policies – in line with the deficit and debt rules set in Protocol 12 to the EU treaties – the Commission's monitoring role is different there than in the other programs: rather than suspending payment in case of non-compliance, as it would happen in RePowerEU, SCF, MFA+ and Ukraine Facility, the Commission can recommend to the Council to activate the excessive deficit procedure, with its sanctions mechanism. Yet, these details notwithstanding, the governance of all these programs largely tracks the 5-steps legal technology of the RRF, as highlighted in Table 2.

Table 2

| | RRF | RePowerEU | SCF | MFA+ | Ukraine F | SGP |
|---|---|---|---|---|---|---|
| Priorities-setting | X (cohes.) | X (energy) | X (climate) | X (war) | X (war & enlargm.) | X (budgets) |
| Design of nat'l plans | X (5 years) | X | X | X (1 year) | X (4 years) | X (4 years + 3 pox) |

| | | | | | | |
|---|---|---|---|---|---|---|
| Approval nat'l plans | X (Comm + Council) | X (Comm + Council) | X (Comm) | X (Comm) | X (Comm + Council) | X (Comm + Council) |
| Implement. nat'l plans | X | X | X | X | X | X |
| Monitoring & controls | X | X | X | X | X | X |

All the above raises the interesting question of why the RRF has become a preferred legal technology for European governance, quickly spreading from its original context to a variety of other new EU programs. What is so attractive for the EU institutions, and possibly for the member states, in the RRF model? What are its advantages as a governance mechanism, and what may be also its downsides?

The RRF model has arguably two significant strengths: First, it increases *national ownership*; Second, however, it also increases the EU institutions' *supranational leverage* in influencing EU member states or third countries in conducting policy and acting in a specific way. As Jonathan Zeitlin et al (2023) have pointed out in a study of the RRF governance, this model increases national ownership because member states are heavily involved in the process. States autonomously decide on the content, and outlook of their national plans. Moreover, states remain in charge of implementing their plans. At the same time however, the RRF model also empowers the EU institutions to significantly shape the direction of national policy-making. The EU institutions themselves decide the overall objectives that national plans should achieve. The EU institutions must approve national plans. And ultimately, EU institutions monitor compliance with the national plans – thus deciding on whether to authorize continue disbursement of EU funding, or *mutatis mutandis* on the flexibility in the application of EU fiscal rules.

Given its features, the RRF model avoids some of the pitfalls of other technologies of EU governance. On the one hand, because it depends on national plans autonomously proposed by states, the RRF model is more *legitimate*, as it eschews complaints of supranational diktats which characterize other more coercive technologies of EU governance (Bokhorst & Corti 2023). For example, under the 2013 'two pack' reform of the SGP, the Commission is empowered to compel a member state to rewrite their national budget laws (Fabbrini 2016). Yet, this invasive exercise of EU supranational power can stir national resistance and resentment, and in the end undermine the EU goals. On the other hand, however, because the continuous implementation of national plans as monitored is the condition for EU funding (or equivalent), the RRF model appears to be more *effective* than other EU programs. For instance, contrary to the traditional cohesion policy, where EU spending is based on receipts, where the Commission reimburses costs incurred by member states *ex post* (Vita 2017), the RRF is based on results. Since in the RRF model is performance-based and progress is monitored on the go, there is greater ability to assess the implementation of a program, and time to correct deviations if need be.

From this point of view, therefore, the RRF model reflects the logic of subsidiarity, where the EU identifies broad goals, leaving however to lower levels of government, which are closer to the citizens and know better the context, the power and responsibility to achieve these ends through specific means. Moreover, the RRF model does not technically compel states to execute their plans – it only creates an incentive for them to do so, as faithful implementation of the plan will result in continuing EU financial support, or greater leeway in the reduction of public deficit. Yet, through the use of carrots, rather than sticks, the RRF

model significantly empowers the EU institutions to shape national policy-making. And because all programs modelled on the RRF legal technology are multi-annual, this gives to the EU institutions an influence on national policy-making in specific domains that stretches for many years – often half a decade or more.

And herein lies also the first weakness of the RRF model. National plans in all the programs using the RRF legal technology are drafted by national *governments*, often without the mandatory involvement of national legislatures, sub-national authorities and civil society. Yet, national governments do change as a result of national elections and a competitive party system. This therefore creates a challenge for newly elected governments that come into power but find a national plan with legally binding targets and milestones which was pre-agreed and approved by its predecessor (Lupo 2023). Admittedly, the RRF – and most of the other programs modelled out of it, including the RePowerEU, SCF, Ukraine Facility and even the new SGP – explicitly allow for amendments to be made to national plans. But often this possibility is subjected to objective changes of circumstances – not just to changes in electoral results. This of course creates a democratic conundrum, indeed a democratic cost, which may outweigh some of the benefit of the RRF model described above. The example of the Italian NRRP provides a case in point: the Meloni Government resulting from the 2022 general elections was initially lukewarm toward the NRRP originally designed in 2021 by the Draghi Government, and engaged in a year long negotiation with the Commission to adjust the NRRP. Eventually, the approval of RePowerEU offered a window of opportunity for the new Government to insert in the NRRP its preferences. But from a legitimacy perspective, this state of affairs no doubt raises issues, which the EU institutions will need to consider – especially if they further expand the use of the RRF model.

Moreover, a second weakness of the RRF model is that performance is assessed through a box ticking exercise by which the Commission verifies implementation of the milestones and targets agreed in the national plans. As the European Court of Auditor has pointed out in a recent report,[72] this means that the assessment is mostly done on paper, without evaluating the consequences in action of specific national measures. In practical terms, the Commission can assess if a member state has spent the money indicated in a national plan, or approved the reforms listed therein – but has no way to effectively measures how that spending has benefited say, the climate transition, or energy security, 'on the grounds'. Admittedly, this is something that potentially can be technically addressed – through more scrupulous supranational monitoring of the implementation of the national plans, learning by doing, as well as the involvement by the Commission of other technical bodies at the state level that may have greater expertise and capacity to measure the impact of public policies. But from an effectiveness perspective, this is a potential problem of the RRF technology that has to be refined if the model is retained forward.

## 5. Conclusions

This paper has examined the innovative legal technology of European governance introduced by the RRF, and its growing diffusion to a plurality of internal and external EU programs. The paper explained that the RRF created a new governance model, based on a 5-step

[72] European Court of Auditors, Special report 26/2023: The Recovery & Resilience Facility's Performance Monitoring Framework – Measuring Implementation Progress but Not Sufficient to Capture Performance.

process: definition of EU priorities, design of national plans, EU assessment of national plans, national implementation of the plans, and EU monitoring. Since its establishment with the RRF in 2021 this legal technology has been replicated in a half dozen contexts – including RePowerEU, SCF, MFA+ 2023, the Ukraine Facility and even the new SGP. As this paper pointed out, the RRF model has several advantages in terms of legitimacy and effectiveness. Because it favors national ownership, the RRF avoids the pitfalls of other, more coercive EU governance systems, while still endowing the EU institutions with significant leeway to shape national policy-making. At the same time, because the RRF is a performance-based arrangement, it favors the ability to reach results – at least on paper. In fact, the RRF is not immune from weaknesses, including the limited ability (so far) to evaluate the impact of national plans 'on the ground', and the democratic cost it creates given the mismatch between the timing of national multi-annual plans and the electoral cycle. Yet, the RRF is arguably one of the main legacy of the EU response to the pandemic, that will be used ahead regardless of the future of common debt issuance in the EU.

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