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Europe's Economic & Monetary Union Beyond Covid-19

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Abstract / Executive Summary

This report analyzes the measures adopted by the European Union (EU) to address the devastating economic effects of Covid-19, assessing their implications for Europe's Economic & Monetary Union (EMU). To this end, the report first sets the background by exploring the main features of EMU before Covid-19 and identifying the issues that remained outstanding for completing EMU. Subsequently, the report examines the multiplicity of policies deployed by the EU institutions and the member states to contain the socio-economic damages of the pandemic – including most crucially the EU recovery fund – and underlines their transformative effect on the EU architecture of economic governance. Finally, the report considers the mid to long term consequences of the measures adopted during Covid-19 for the future of EMU, discussing whether a return to normal post-Covid-19 would be feasible, whether the recent development could facilitate further EMU deepening, and whether, in fact, new EU reforms should be needed to support the recent unprecedented centralization of fiscal powers. As the report suggests, if the measures adopted to tackle Covid-19 have gone a long way towards rebalancing the monetary and the economic legs of EMU, they will also necessitate new constitutional adaptations in the EU to sustain this new major step forward in the process of European integration.

1 Introduction

The outburst of coronavirus – a new, severe acute respiratory syndrome known also by its medical acronym Covid-19 which has resulted in the largest pandemic the world has experienced,[1] at least since the 1918 Spanish influenza – has profoundly challenged and changed the world we live in. This is particularly true in the European Union (EU) – the constitutional framework in which today 27 member states share their political and economic destiny. Since the spread of Covid-19 from China towards Europe and the rest of the world in spring 2020, the EU institutions and member states have taken unprecedented steps to tackle first this dramatic health crisis and then its devastating socio-economic consequences. These extraordinary measures, however, have had important implications also for Europe's Economic & Monetary Union (EMU), i.e. the architecture of economic governance for the EU.

The purpose of this report is to study the consequences of Covid-19 and the responses to it on Europe's EMU, reflecting on its future prospects. EMU represents a pillar of the EU,[2] and one of the most tangible achievements of European integration. Since its establishment with the 1992 Maastricht Treaty, EMU has served as the framework in which member states have shared their monetary policy and coordinated their economic policies. Moreover, since the euro-crisis during the last decade, growing awareness has emerged on the effects that the EU architecture of economic governance has on growth, employment and social inclusiveness. In fact, in addition to the important set of reforms introduced in EMU in response to the euro-crisis, a lively debate has been ongoing to further deepen EMU and make it more resilient. Until the Covid-19 pandemic, however, this debate made only partial progress, leaving a number of issues outstanding.

The argument of this report is that the policy measures adopted by the EU institutions and the member states to address the economic damages of Covid-19 constitute a watershed in the process of European integration. In particular, besides the early emergency support measures deployed by the European Commission,[3] the European Central Bank (ECB),[4] and the Eurogroup,[5] an event with game changing potentials was the adoption of the EU recovery plan, Next Generation EU (NGEU): proposed by the Commission,[6] and several EU

[1] World Health Organization Director General Tedros Adhanom Ghebreyesus, remarks, 11 March 2020.
[2] See Article 3 TEU.
[3] See European Commission press release, "Coronavirus: the Commission mobilizes all of its resources to protect lives and livelihood", 2 April 2020,IP/20/582.
[4] See Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17), OJ 2020 L 91/1.
[5] See Council of the EU, Report on the comprehensive economic policy responses to the Covid-19 pandemic, 9 April 2020.
[6] See European Commission Communication "Europe's Moment: Repair and Prepare for the Next Generation", 27 May 2020, COM(2020) 456 final.

member states[7] in May 2020, the recovery fund was approved by the European Council in July 2020,[8] and eventually sealed in December 2020,[9] overcoming the last vetoes by Hungary and Poland which had threatened the entry into force of NGEU out of their opposition to rule of law conditionality on the disbursement of EU funds.

NGEU is a new €750bn Recovery Fund, connected to the EU 2021-2027 Multiannual Financial Framework (MFF), designed to kick-start the EU economy after the pandemic. In a major break with the past, however, NGEU is to be resourced by resorting to the financial markets (rather than state transfers), and to be disbursed to the member states primarily in the forms of grants (rather than loans). As such, the European Commission has been empowered to raise new financial resources issuing common bonds on behalf of the EU, and the EU Own Resource Decision (ORD), the legal instrument regulating EU revenues, has been amended to increase the expenditure ceilings. At the same time, a new EU Recovery Instrument has been put in place to regulate financial transfers from the EU to the member states, notably in the form of a Recovery and Resilience Facility. These new crisis-related measures – while formally established as temporary and exceptional – marked a major development in the functioning of the EU, pushing its architecture of economic governance towards an arrangement reminiscent of that of federal regimes.

After contextualizing the state of the development and debate on EMU, and examining the multiplicity of EU measures adopted to respond to Covid-19, therefore, this report considers what are the mid to long term implications of these pandemic-related economic governance policies for the future of EMU. In particular, the report asks whether, after the pandemic, it is realistic and feasible to envision a return to the pre-Covid-19 normal, or whether in fact, the settlement reached in response to the health crisis constitutes the new normal for the EU. The report then examines whether the Covid-19-related policy developments facilitate further steps in EMU deepening, and suggests that indeed they offer a window of opportunity for completing some contentious elements of EMU. Finally, the report reflects on the broader consequences of the legal and institutional measures adopted to address the economic damages of Covid-19 and highlights how these actually will require additional EU reforms: given the supranational, rather than intergovernmental, nature of the responses to Covd-19, centred on NGEU, it appears necessary to strengthen the democratic legitimacy and decision-making efficiency of the EU.

In fact, even before the explosion of the coronavirus pandemic the EU had started a reflection process about its future. Notably as a result of Brexit – the decision of the United Kingdom (UK) to withdraw from the EU[10] – the EU had agreed to establish a Conference on

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7 See French-German Initiative for a European Recovery from the Coronavirus Crisis, 18 May 2020.
8 See European Council Conclusions, 17-18-19-20-21 July 2020, EUCO 10/20.
9 See European Council Conclusions, 10—11 December 2020, EUCO 22/20.
10 See Federico Fabbrini (ed), *The Law & Politics of Brexit. Volume 2: The Withdrawal Agreement* (OUP 2020).

the Future of Europe designed to renew the EU and relaunch the project of European integration. While Covid-19 has delayed the start of the process, however, it has made it also more needed than ever. After all, by transferring significant new spending and taxing powers to the EU, the recovery plan creates a need to back these new EU powers with appropriate constitutional adjustments. As such, the report suggests that if the Covid-19-related responses have gone a long way in addressing the ongoing weaknesses of EMU, they call for other, broader reforms to sort out the remaining institutional and substantive shortcomings of the EU.

This report is structured as follows. Section 2 examines the state of EMU before the Covid-19 pandemic, setting the background for the subsequent analysis. To this end, this section summarizes the original EMU constitutional settlement and the transformations brought about in response to the euro-crisis, and outlines the main issues left outstanding in the debate on completing EMU. Section 3 analyses instead EMU during Covid-19, shedding light on the multiplicity of EU policy measures to tackle the pandemic and their consequences for EMU. As such, this section examines the initial responses of the ECB and the European Commission, the Eurogroup package and finally the Recovery Fund proposed by the Commission and endorsed by the European Council. Section 4 considers EMU after Covid-19, reflecting on the consequences of the pandemic-related measures for the future. With this aim, this section considers whether a return to the pre-Covid-19 normal would be possible, whether the responses to Covid-19 could facilitate further EMU deepening and, in fact, whether the developments in the field of economic governance should necessitate further EU constitutional reforms. Section 5, finally, concludes.

2 Past: EMU before Covid-19

EMU has significantly developed over the years. Since the 1992 Maastricht Treaty, the EU has been endowed with a framework to coordinate the member states economic policy, and since 2002, when the euro started circulating as legal tender, the majority of EU member states has had a single currency, with monetary policy centralized at EU level. Subsequently, the euro-crisis challenged the sustainability of the original EMU constitutional settlement, and prompted a number of important legal and institutional reforms, which significantly changed the outlook of EMU during the last decade. Moreover, the reform debate triggered by the euro-crisis continued in its aftermath, with a number of road-maps advanced at the highest institutional level to complete EMU. Nevertheless, until Covid-19, progress towards further EMU deepening had stalled due to the seemingly unbridgeable divisions, and looming distrust, among member states leaving a number of issues outstanding on the road towards completing EMU.

2.1 The original architecture of EMU

The 1992 Maastricht Treaty represented a major step forward in the process of European integration, as if formally established the EU (embedding the pre-existing European Communities) and it set the foundations for EMU. Nevertheless, EMU was created as an asymmetric system. While in the run-up to the intergovernmental conference that resulted in the Maastricht Treaty both policy-makers[11] and academics[12] had emphasized the importance of integrating in parallel both monetary and fiscal policies, EU member states involved in the treaty-drafting process ultimately struck a compromise:[13] on the one hand, they decided to fully federalize monetary policy while, on the other, they maintained economic policy decentralized, subject to a number of fiscal rules and mechanisms of intergovernmental coordination.

On the monetary side, the Maastricht Treaty paved the way for the introduction of the euro as the currency of the EU. The majority of EU member states – with the exception of the UK and Denmark, which secured an opt-out to maintain their national currencies[14] – transferred their monetary sovereignty to the EU, establishing a fully-fledged federal institution, the ECB, to govern the single currency.[15] The ECB was tasked with the specific

11 See Jacques Delors, *Report on Economic and Monetary Union in the European Communities* (Publication Office of the EC 1989) 89.
12 See Barry Eichengreen, *European Monetary Unification* (MIT Press 1993).
13 See Markus Brunnermaier, Harold James & Jean-Pierre Landau, *The Euro and the Battle of Ideas* (Princeton UP 2016).
14 See today Protocol No. 15 and Protocol No. 16.
15 See Tommaso Padoa Schioppa, *The Euro and its Central Bank* (MIT Press 2004).

mandate to maintain price stability (an objective it identified as a level of inflation below, but close to 2% per year) and protected by the interference of national governments or private actors by a strong guarantee of independence.[16] This institutional architecture operated as the background for the introduction of the euro, which, in brief, started circulating as the currency of 12 EU member states in 2002, and progressively expanded to encompass today 19 EU member states (with all other member states, except those enjoying a treaty-based derogation, expected at least on paper to join the Eurozone, as soon as they meet all convergence criteria).

On the economic side, however, the Maastricht Treaty did not accomplish any major transfer of powers from the member states to the EU institutions. In fact, rejecting the supranational logic of integration, member states did not delegate fiscal powers to the EU, and EMU was born without a fully-fledged federal budget. Rather, member states maintained control over their budgetary policies – albeit accepting to subject them to mechanisms of mutual coordination. On the understanding that in a currency union the economic policy of each member states was a matter of common concern,[17] in 1997 EU member states decided to create an institutional framework: the Eurogroup – an informal gathering of Finance Ministers of the EU member states which use the euro as their currency[18] – in which they could coordinate their national budget policies. At the same time, in order to avoid cases of moral hazard and minimize the risks of negative externalities, the Maastricht Treaty backed-up the decentralized economic framework with two legal tools.

First, the Maastricht Treaty entrenched the so-called Stability and Growth Pact (SGP), a set of legally-binding mathematical rules[19] designed to ensure that member states would run sound national budgetary policy. Specifically, the SGP compelled EU member states adopting the euro as their currency to maintain an annual budget deficit of below 3% of gross domestic product (GDP), as well as to reduce their overall public debt to 60% of GDP. Moreover, the SGP introduced surveillance procedures as well as a possible correction mechanism to sanction member states running excessive deficits.[20] In particular, the Commission was vested with the responsibility to monitor member states budgetary policy, with the possibility to propose measures (including, in the extreme case, fines) in cases of serious deviation from the rules – which had however to be adopted by the Council by qualified majority voting.[21]

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16 See Art 282 TFEU.
17 See Art 121(1) TFEU.
18 See today Protocol No. 14.
19 See today Protocol No. 12.
20 See Art.s 121 and 126 TFEU.
21 See also Case C-27/04 *Commission v. Council* [2004] ECR I-6649, ECLI:EU:C:2004:436 (recognizing wide discretion to the Council whether to impose sanctions under the SGP or held in abeyance the excessive deficit procedure against two member states recommended by the Commission).

Second, to enhance the credibility of the SGP, the Treaty of Maastricht also codified a no-bailout rule, geared toward excluding any form of debt mutualisation vis-à-vis member states which, due to their unsound budgetary policy, were unable to service their debt. In fact, the no-bailout rule both prohibited EU institutions and member states from providing financial stability support to countries in distress,[22] and banned the ECB from coming to the rescue via its monetary policy of Eurozone member states which faced a budget crisis.[23] The original architecture of EMU, in other words, relied on a strong centralized monetary institution as well as on market pressure to govern a system in which each member state maintained sovereignty over its budget.

2.2 The transformation of EMU following the euro-crisis

The original architecture of EMU endured more or less unchanged for the first decade of the euro's life. However, the explosion of what came to be known in the academic and public debate as the euro-crisis quickly exposed the weaknesses of the original EMU constitutional settlement, and prompted a number of major legal and institutional responses. In fact, precisely the deficiencies of EMU transformed a financial crisis which was due partially to unsustainable sovereign debts and partially to excessive private lending into an existential challenge for the EU, to the point that the survival of the euro as a currency union was itself in question at a time.[24] Yet, through their concerted action, the EU institutions and the member states managed to address at least the most immediate effects of the euro-crisis by reforming the constitutional architecture of EMU. In particular, as it has been pointed out in the scholarly debate,[25] three main legal and institutional responses to the euro-crisis have taken place in the last decade.

First, EU institutions and member states acted to strengthen budgetary constraints on the understanding that the lax enforcement of the SGP was the main cause of the euro-crisis. To this end, in 2011 and 2013 the EU institutions amended EU fiscal rules with the adoption of several new EU regulations and directives – the so-called "6-pack"[26] and "2-

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22 See Art. 125 TFEU.
23 See Art. 123 TFEU.
24 See German Chancellor Angela Merkel, statement to the German Bundestag, 7 September 2011 (saying that "if the euro fails, Europe fails"), also available at .
25 See Federico Fabbrini, *Economic Governance in Europe* (OUP 2016).
26 See Regulation 1173/2011, of the European Parliament and of the Council of 16 November 2011 on the Effective Enforcement of Budgetary Surveillance in the Euro Area, OJ 2011 L 306/1; Regulation 1174/2011, of the European Parliament and of the Council of 16 November 2011 on Enforcement Measures to Correct Excessive Macroeconomic Imbalances in the Euro Area, OJ 2011L. 306/8; Regulation 1175/2011, of the European Parliament and of the Council of 16 November 2011 Amending Council Regulation (EC) No 1466/97 on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies, OJ 2011 L 306/12; Regulation 1176/2011, of the European Parliament

pack"[27] – which strengthened both the preventive and corrective arms of the SGP, among others by enhancing the Commission surveillance power over member states budget laws and introducing a reversed qualified majority rule in the Council as a condition to block Commission's proposals to sanction a disobedient member states. Moreover, 25 out of the then 27 EU member states adopted in 2012 a treaty outside the EU legal order – the Treaty on Stability, Coordination and Governance in the EMU, generally referred as the Fiscal Compact[28] – which compelled signatory parties to introduce a balanced budget amendment within their national constitutional system, and further tightened the deficit rule which states had to respect in drafting their budget laws.

Second, EU institutions and member states created new mechanisms of financial stabilization for countries in fiscal stress, moving beyond a strict construction of the no-bailout rule.[29] In particular, in 2011 the Council set up a temporary European Financial Stability Mechanism (EFSM) – a facility funded with EU budget money and established on the basis of the EU law.[30] This was soon replaced by a European Financial Stability Facility (EFSF), a private law entity incorporated under Luxembourg law, and participated by the Eurozone member states.[31] And finally, the EFSF was replaced by a permanent European Stability Mechanism (ESM), an international organization established in 2012 by an intergovernmental treaty between the Eurozone member states to which member states contributed with capital and guarantees pro quota, and which they managed through a Board of Governors (comprising the Minister of Finance of the Eurozone states, i.e. the same format of the Eurogroup).[32] The EFSM, EFSF and ESM supported 5 Eurozone member states which had lost access to the international bond markets – Greece, Portugal, Ireland,

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and of the Council of 16 November 2011 on the Prevention and Correction of Macroeconomic Imbalances, OJ 2011 L 306/25; Council Regulation 1177/2011, of 8 November 2011 amending Regulation (EC) No 1467/97 on Speeding Up and Clarifying the Implementation of the Excessive Deficit Procedure, OJ 2011 L 306/33; Council Directive 2011/85/EU of 8 November 2011 on Requirements for Budgetary Frameworks of the Member States, OJ 2011 L 306/41.

27 See Regulation 473/2013 of 21 May 2013 of the European Parliament and the Council on monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits in euro-area Member States OJ 2013 L 140/11; Regulation 472/2013 of 21 May 2013 of the European Parliament and the Council on enhanced surveillance of euro-area Member States experiencing or threatened with serious difficulties with respect to their financial stability OJ 2013 L 140/1.

28 See Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, 2 March 2012, available at http://www.eurozone.europa.eu/media/304649/st00tscg26_en12.pdf

29 See Case C-370/12 *Pringle v. Ireland*, ECLI:EU:C:2012:756.

30 Council Regulation No. 407/2010/EU of 11 May 2010 establishing a European financial stabilisation mechanism OJ 2010 L 118/1.

31 Decisions of the Representatives of the Government of the Euro Area Member States Meeting within the Council of the EU, ECOFIN, 9 May 2010. Doc. No. 9614/10.

32 Treaty Establishing the European Stability Mechanism, 25 March 2011, available at http://www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf

Cyprus and Spain – giving loans subject to conditionality detailed in specific macro-economic adjustments program negotiated with the respective country.

Stabilization of public finances, otherwise, was complemented by new steps designed to integrate financial markets. Notably, while the EU took steps towards a capital markets union, it created an EU banking union, composed of a first pillar, the Single Supervisory Mechanism (SSM),[33] centralizing supervision of the largest transnational banks, and a second pillar, the Single Resolution Mechanism (SRM)[34] developing a common framework to wind-down failing credit institutions across the EU, and establishing a Single Resolution Fund (SRF) for this task.[35] All this was then backed-up by ground-breaking policies of the ECB which, after launching a Securities Market Program (SMP) in 2010 to purchase government bonds on the secondary market,[36] announced an Outright Monetary Transaction (OMT) plan to buy state securities of countries which accepted to enter into an ESM-financed support program.[37] In fact, it was the statement by then ECB President Mario Draghi in July 2012 that the ECB would do "whatever it takes" to save the euro[38] which was perceived to be crucial in stabilizing the single currency. The ECB in 2015 also launched a quantitative easing program – known as Public Sector Purchase Programme (PSPP),[39] which significantly contributed in supporting growth policies in the EMU states.

Third, on top of the abovementioned developments, the EU institutions and member states also created new governance mechanisms for EMU. In order to ensure greater surveillance of budget rules and better implementation of country specific recommendations, a new European semester was established, whereby member states are now requested to submit their draft budgetary plans to the Commission for review before these are tabled for approval in national parliaments. In order to manage financial support programs and secured respect for the conditionality attached to it in member states receiving ESM aid, the format of the troika – a grouping of the Commission, ECB and the International Monetary Fund (IMF) – was experimented at the height of the crisis.[40] Moreover, the Fiscal Compact also created the Euro Summit, an informal gathering of the heads of state and government of the EU

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33 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions OJ 2013 L 287/63.

34 Regulation (EU) No. 806/2014 of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No 1093/2010 of the European Parliament and of the Council OJ 2014 L 225/1.

35 See Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, 21 May 2014 available at: http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208457%202014%20INIT

36 Decision of the ECB of 14 May 2010 establishing a securities market programme (ECB/2010/5), OJ 2010 L124/8.

37 ECB, Press release, "Technical Features of Outright Monetary Transactions", 6 September 2012.

38 ECB President Mario Draghi, speech at the Global Investment Conference, London, 26 July 2012.

39 See Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (ECB/2015/10), OJ 2015 L 121/20, amended several times.

40 See also European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries, P7_TA(2014)0239.

member states using the euro as their currency, chaired by a full-time president[41] (although by practice this has always corresponded to the President of the European Council) – to provide a forum for top-level discussion on the functioning of the EMU and its challenges, giving to the Eurozone also ever greater institutional autonomy from the EU as a whole.

2.3 The ongoing debate on completing EMU and outstanding issues

Notwithstanding the important reforms carried out in responses to the euro-crisis, EMU remains incomplete.[42] In fact, while the legal and institutional measures adopted in response to the euro-crisis have introduced new rules, governance processes and crises-management tools, they have not fundamentally altered the original asymmetry of EMU. As a result, a number of high-level reports by the EU institutions – including the Four Presidents Report,[43] the Five Presidents report[44] and several other roadmaps by the European Commission[45] and the EP[46] – have called for further steps forward to deepen EMU. Nevertheless, the euro-crisis tainted inter-state relations, deepening the North-South divide within the Eurozone.[47] In particular, the strategy followed to address the euro-crises deepened the cleavage between Northern Member States, which pushed for greater fiscal discipline and tight surveillance of national budget, and Southern Member States, which instead called for greater financial solidarity among EU countries, and for bolder steps towards fiscal federalism. In this context of growing confrontation between regional blocs, it has become very difficult to progress in EMU reforms, complete EMU, and prepare it for the next crisis.[48]

In particular, member states have struggled to move towards the establishment of a fiscal capacity – that is a counter-cyclical tool designed to stabilize the EMU by supporting states facing asymmetric economic shocks – which would outweigh the pro-cyclical effects of EMU fiscal and economic rules. Despite support for this initiative from both the EP[49] and

41 Art. 12 Fiscal Compact.

42 See ECB President Mario Draghi, speech at the session of the plenary of the European Parliament to mark the 20th anniversary of the euro in Strasbourg, 15 January 2019 (stating that “EMU remains incomplete”).

43 See Four Presidents, Final Report “Towards a Genuine EMU”, 5 December 2012.

44 See Five Presidents Report “Completing Europe’s EMU”, 22 June 2015.

45 See e.g. European Commission reflection paper on “The Deepening of Economic and Monetary Union”, 31 May 2017.

46 See e.g. European Parliament Resolution of 24 June 2015 on the review of economic governance framework: stock-tacking and challenges, P8_TA(2015)0238.

47 See also French President Emmanuel Macron, speech, Athens, 7 September 2017 (defining the euro-crisis as “une forme de guerre civile interne” due to North vs. South divisions in the Eurozone).

48 See Henrik Enderlein et al, “Repair and Prepare: Growth and the Euro after Brexit”, Bertelsmann Stiftung & Jacques Delors Institut 2016.

49 See European Parliament resolution of 16 February 2017 on budgetary capacity for the Eurozone, P8_TA(2017)0050.

the European Commission,[50] and several member states, this initiative was stalled in the Euro Summit.[51] In fact, even though in November 2018 France managed to convince on paper Germany to support a Eurozone budget,[52] in the end, after much debate, the Eurogroup in an inclusive format (also open to non-Eurozone member states) reached in June 2019 a minimalist consensus agreeing to create a budgetary instrument for competitiveness and convergence (BICC): the BICC – whose envelope was left to be decided as part of the new EU budget – would be open to all Eurozone member states on a voluntary basis, and subject to the strategic guidance of the Euro Summit.[53] However, as the name of BICC made plain, the purpose of this instrument explicitly excluded a stabilization function, effectively still leaving the Eurozone without a fiscal capacity.

In addition, member states made very little progress also on the establishment of the third pillar of banking union – the European deposit insurance scheme (EDIS) – which is regarded as essential in avoiding a doom loop between banks and sovereign defaults in the Eurozone.[54] Despite repeated calls, particularly from the ECB, to complete Banking Union, EDIS has remained contentious, and the Eurogroup has failed to move beyond a technical discussion on the matter. Otherwise, progress has been limited also on institutional reforms.[55] In particular, while the Commission had also proposed to transform the ESM into a European Monetary Fund,[56] repatriating it within the EU legal order, member states have rather opted for a more minimalist reform of the ESM – which made it the backstop to the SRF, and increased its surveillance powers on the member states' budgets.[57] Moreover, no real discussion took place on the Commission's plan to establish a Eurozone treasury,[58] suggesting that the ideological divide between risk-reduction vs. risk-sharing remained an obstacle preventing member states from deepening EMU.[59]

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50 See e.g. European Commission Communication "New Budgetary Instrument For a Stable Euro Area Within the Union Framework", 6 December 2017 COM(2017)822 final; and European Commission Communication, "on The establishment of a European Investment Stabilisation Function", 31 May 2018 COM(2018)387 final.
51 See Euro Summit statement, 14 December 2018, PRESS 790/18.
52 See Franco-German Proposal on the architecture of a Eurozone Budget within the Framework of the European Union, 16 November 2018.
53 Council of the EU, Term sheet on the Budgetary Instrument for Convergence and Competitiveness, 14 June 2019.
54 See also European Commission Communication "Deepening Europe's Economic and Monetary Union: Taking stock four years after the Five Presidents' Report", 12 June 2019, COM(2019) 279 final, 10 (stating that "regrettably, the impasse that characterized the past several years has persisted and no tangible progress has been made" on EDIS).
55 See Marco Buti, Gabriele Giudice & Josè Leandro (eds), *Strengthening the Institutional Architecture of the Economic and Monetary Union* (CEPR Press VoxEU.org e-book 2020).
56 European Commission Communication "on the establishment of the European Monetary Fund", 6 December 2017 COM(2017)827 final.
57 See Eurogroup, Term Sheet on the European Stability Mechanism Reform, 4 December 2018.
58 See European Commission Communication, "A European Minister of Economy and Finance", 6 December 2017 COM(2017)823 final.
59 See also Federico Fabbrini & Marco Ventoruzzo (eds), *Research Handbook on EU Economic Law* (Elgar 2019).

3 Present: EMU during Covid-19

The explosion in the spring of 2020 of the coronavirus health crisis constituted a major challenge for the EU, and EMU specifically. Indeed, as former ECB President Mario Draghi quickly emphasized, Covid-19 appeared to be "a human tragedy of potentially biblical proportions."[60] While EU member states in an earlier phase of the pandemic mostly focused on containing the spread of contagions through draconian measures including prolonged lockdowns, designed to invert the spiking curve of death rates, the focus rapidly shifted to the devastating socio-economic consequences of the health crisis. Although the responses by the EU institutions and the member states to the economic effect of Covid-19 were incremental, the cumulative steps taken to address the pandemic made the EU advance in unprecedented ways. Covid-19, therefore, had profound implications for EMU and the economic constitution of the EU.

3.1 The initial responses

Even though the immediate response by the EU member states to the pandemic revealed a lack of coordination, with some countries unilaterally suspending intra-EU exports of medical devises, or introducing intra-EU border checks also on goods, in blatant disregard of EU law,[61] , the EU supranational institutions started mobilizing to support member states worse hit by the health crisis. In particular, in March 2020 the European Commission suspended the application of state aid rules, giving greater leeway to member states in supporting ailing firms.[62] Moreover, the Commission also for the first time triggered the SGP general escape clause, putting on temporary hold the application of pro-cyclical EMU fiscal rules,[63] which the Council accepted on 23 March 2020.[64] At the same time, the Commission activated the EU Solidarity Fund, to provide some cash aid to member states,[65] and also put together a coronavirus response investment initiative, redirecting towards Covid-19-releted expenses

[60] See former ECB President Mario Draghi, "We Face a War Against Coronavirus and Must Mobilize Accordingly", Op-Ed, *Financial Times*, 26 March 2020.
[61] See also European Parliament resolution of 17 April 2020 on EU coordinated action to combat the Covid-19 pandemic and its consequences, P9_TA(2020)0054.
[62] See European Commission Communication "Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak", 20 March 2020, 2020/C 91 I/01.
[63] See European Commission press release, "Coronavirus: Commission proposes to activate fiscal framework's general escape clause to respond to pandemic", 20 March 2020,IP/20/499.
[64] See Council of the EU, statement, 23 March 2020 (agreeing with the assessment of the Commission that the conditions to suspend the SPG were fulfilled).
[65] See Regulation (EU) 2020/461 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency, OJ 2020 L 99/9.

up to €37bn of available cash reserves in the EU Structural and Investment Funds.[66] Finally, the Commission also proposed the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) – a re-insurance system designed to support the heavily under-pressure national unemployment insurance regimes through loans backed-up by member states' guarantees.[67]

At the same time, a significant effort to support the EU member states response to the economic consequences of Covid-19 came also from EU financial institutions. Besides the European Investment Bank (EIB), which developed a first, special Covid-19 investment scheme of €40bn to support SMEs,[68] it was especially the ECB to put together a wide-ranging response to Covid-19: specifically, the ECB launched a new pandemic emergency purchase programme (PEPP), committing to buy public bonds and commercial papers in the financial markets up to €750bn,[69] which was subsequently almost doubled in size to €1350bn.[70] The PEPP presented features similar to the PSPP, but also differed from it in allowing the ECB to buy government bonds without having to adhere to the member states capital key allocation, so as to maximize its impact in supporting those Eurozone member states most affected by the pandemic and its consequences.[71] The launch of the PEPP confirmed the continuing centrality of the ECB in the EMU system of governance, notwithstanding the growing legal challenges that the ECB has faced, particularly by Germany's Constitutional Court: the Bundesverfassungsgericht (BVerfG).

In fact, on 5 May 2020 the BVerfG took the unprecedented step to declare the ECB PSPP program illegal, and simultaneously declared a judgment of the European Court of Justice (ECJ) inapplicable in Germany.[72] Whereas already in 2014 the BVerfG has raised concerns for the monetary policy of the ECB,[73] but eventually retracted its views,[74] abiding by a judgment of the ECJ which had upheld the legality of the OMT program,[75] in its recent judgment the BVerfG crossed the Rubicon and for the first time ever declared EU action ultra

66 See Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No 1301/2013, (EU) No 1303/2013 and (EU) No 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative), OJ 2020 L 99/5.

67 See European Commission Proposal for a Council Regulation on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, 2 April 2020, COM(2020)139 final.

68 See EIB press release, "EIB Group Will Rapidly Mobilize up to €40 billion to Fight Crisis Caused by Covid-19", 16 March 2020.

69 See Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17), OJ 2020 L 91/1.

70 See ECB press release, "Monetary policy decision" 4 June 2020.

71 See further Annelieke Mooij, "The Legality of the European Central Bank's Pandemic Emergency Purchase Programme" BRIDGE Working Paper 5/2020.

72 See BVerfG, 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15, judgment of 5 May 2020.

73 See BverfG 2 BvR 2728/13 et al, order of 7 February 2014.

74 See BverfG 2 BvR 2728/13 et al, judgment of 21 June 2016.

75 See Case C-62/14 *Gauweiler*, ECLI:EU:C:2015:400.

vires. In a highly criticized ruling,[76] the BVerfG refused to follow the judgment of the ECJ in *Weiss*[77]– which had already declared the PSPP as compatible with the EU treaties – and imposed a three-month time-frame on the ECB to better explain the proportionality of its program. The ruling of the BVerfG drew a strong response from the EU institutions, with the Commission preparing infringement proceedings.[78] In fact, there is no doubt that the BVerfG ruling threatens the EU legal order,[79] and constitutes an illegal breach of the principle of the supremacy of EU law, which is designed to guarantee the equality of the member states in front of the treaties.[80] However, the judgment also posed a potential threat to further ECB action because, even though it explicitly declared that it was considering PSPP and not PEPP, it still endeavoured to set limits on the ability of the ECB to pursue its mandate.

3.2 The Eurogroup package

The action by the Commission and the ECB was eventually backed up also by the intervention of the intergovernmental institutions, which was slower in decision making due to the need of building consensus. In fact, the EU27 initially split heavily on what new measures to put in place to sustain the economy during the pandemic and relaunch it afterwards. In particular, on 25 March 2020 a group of 9 Eurozone states – Belgium, France, Greece, Ireland, Italy, Luxembourg, Portugal, Slovenia, and Spain – requested in a letter to the European Council President that the EU start "working on a common debt instrument issued by a European institution to raise funds on the market on the same basis and to the benefit of all Member States."[81] Yet, this proposal was fiercely rejected as an unacceptable effort of debt mutualisation by Germany and the Netherlands – which rather called for using the ESM as a crisis response tool.[82] In this context, the European Council, meeting by video-conference for three times in two weeks in March 2020, failed to reach a deal[83] – and asked the Eurogroup to consider the matter further.

76 See also Case C-824/18 *A.B et al*, Opinion of Advocate General Tanchev, 17 December 2020, par. 83 (stating that the BVerfG "approach undermines the rule of law in the EU, which is a *conditio sine qua non* to integration").
77 See Case C-493/17 *Weiss*, ECLI:EU:C:2019:1046.
78 See European Commission President Ursula Von der Leyen, Statement, 10 May 2020, 20/846.
79 See also Federico Fabbrini and Daniel Kelemen, "With one court decision, Germany may be plunging Europe into a constitutional crisis", Op-Ed, *The Washington Post*, 7 May 2020.
80 See Federico Fabbrini, "After the OMT Case: The Supremacy of EU Law as the Guarantee of the Equality Between the Member States" (2015) 16 *German Law Journal* 1003.
81 See Joint letter by Belgium, France, Greece, Ireland, Italy, Luxembourg, Portugal, Slovenia and Spain to European Council President Charles Michel, 25 March 2020.
82 See Dutch Finance Minister Wopke Hoekstra, statement at the Twedde Kammer, 7 April 2019, available at. https://debatgemist.tweedekamer.nl/debatten/eurogroep.
83 See Joint statement of the Members of the European Council, 26 March 2020.

Eventually, after three days of intense negotiation, on 9 April 2020 the Eurogroup, meeting in an inclusive format (open to non-Eurozone member states) came up with a package of measures to respond to the economic consequences of Covid-19, worth potentially 540bn€.[84] First, the Eurogroup decided to create a pan-European guarantee fund of 25bn€ for the EIB, thus expanding its ability to deploy up to 200bn€ of financing for companies.[85] Second, the Eurogroup decided to open the possibility of using the ESM to support domestic financing of direct and indirect healthcare, cure and prevention related costs due to the Covid-19 crisis. Specifically, in their role as members of the Governing Board of the ESM, Ministers of Finance decided to establish a Pandemic Crisis Support Line (PCSL), which would be available to all euro area Member States during these times of crisis, with standardised terms and for a value up to 2% of a member state GDP at end-of-2019 terms.[86] Third, the Eurogroup also approved the Commission proposal for the establishment of SURE, committing guarantees allowing the raising of capitals on the market.[87]

Moreover, the Eurogroup also "agreed to work on a Recovery Fund to prepare and support the recovery, providing funding through the EU budget to programmes designed to kick-start the economy in line with European priorities and ensuring EU solidarity with the most affected member states."[88] However, due to the continuing divisions among member states, the details on the latter were scant. In fact, on 18 May 2020, France and Germany jointly put forward an initiative for a European Recovery Fund – a temporary and targeted facility connected to the new EU budget and worth €500bn, to be funded by borrowing on the markets, and to be disbursed through grants (rather than loans) to the member states worse hit by the crisis.[89] Nevertheless, on 20 May 2020, a coalition of Nordic countries – the Netherlands, Austria, Denmark and Sweden – responded to the Franco-German initiative with a joint non-paper which instead proposed the creation of an Emergency Fund disbursing loans to states, de facto along the model of the ESM.[90] Moreover, criticism against the Recovery Fund were articulated by the Visegrad countries – Poland, Hungary, Czechia and Slovakia – which complained that the instrument did not set aside sufficient

84 See Council of the EU, Report on the comprehensive economic policy responses to the Covid-19 pandemic, 9 April 2020.
85 See EIB press release, "EIB Board Approves €25 Billion Pan-European Guarantee Fund in Response to Covid-19 Crisis", 26 May 2020.
86 See also Giovanni Zaccaroni, "The Future of the ESM within a Hybrid EMU law", BRIDGE Working Paper 6/2020.
87 See Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the Covid-19 outbreak, OJ 2020 L 159/1.
88 Council of the EU, Report on the comprehensive economic policy responses to the Covid-19 pandemic, 9 April 2020, para. 19.
89 See French-German Initiative for a European Recovery from the Coronavirus Crisis, 18 May 2020.
90 See Austria, Denmark, the Netherlands, Sweden, Non-paper EU support for efficient and sustainable Covid-19 recovery, 20 May 2020.

funding for lower income member states and introduced against their wish a rule of law conditionality.[91]

3.3 The Recovery Fund

In the end, on 27 May 2020 the European Commission presented an ambitious proposal for a EU recovery plan, in order to repair the economic damages of the health crisis and to prepare the EU for the next generation: this dramatically increased the EU resources, revamping the size of the next MFF 2021-2027,[92] and creating a new €750bn recovery fund NGEU), connected to the MFF, and specifically designed to support member states and businesses affected by Covid-19.[93] In particular, the Commission proposed that this new €750bn EU Recovery Instrument[94] – and especially the Recovery and Resilience Facility (RRF),[95] the component of NGEU designed to directly support states, and worth €560bn – would provide resources, to be disbursed 2/3 as grants and 1/3 as loans, to support the re-constitution of the EU economy along the Commission priorities of a green deal, digitalization and social inclusion.[96] Moreover, in a major break with the past, the Commission proposed that the recovery instrument would be funded by the issuance of new EU debt on the financial markets (rather than states' transfers), to be repaid after 2028 and before 2058 through an increase of the headroom in the own resource ceilings,[97] and prospectively the introduction of new EU taxes.[98]

The Commission grand plan represented a major step forward in the federalization of the EU.[99] In fact, by endowing the EU with new fiscal resources to be raised on the financial markets, the Commission proposal – despite being designed as a temporary, one-off

[91] See Government of the Czech Republic, press release "V4 Common Lines regarding the Multiannual Financial Framework / Next Generation EU", 11 June 2020.
[92] See European Commission Communication "The EU budget powering the recovery plan for Europe", 27 May 2020, COM(2020)442 final.
[93] See European Commission Communication "Europe's Moment: Repair and Prepare for the Next Generation", 27 May 2020, COM(2020) 456 final.
[94] See European Commission proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the Covid-19 pandemic, 28 May 2020, COM(2020)441 final.
[95] See European Commission proposal for a Regulation of the European Parliament and the Council establishing a Recovery and Resilience Facility, 28 May 2020, COM(2020)408 final.
[96] See European Commission Communication "Europe's Moment: Repair and Prepare for the Next Generation", 27 May 2020, COM(2020)456 final.
[97] See Commission amended proposal for a Council Decision on the system of Own Resources of the European Union, 28 May 2020, COM(2020)445 final.
[98] See also Leaders of the main EP Parliamentary Groups, Manfred Weber et al, Letter to the European Council, 18 June 2020 (indicating that the EP "will give its consent to the next MFF only of a basket of new own resources is introduced").
[99] See European Commission President Ursula Von der Leyen, speech at the European Parliament, 27 May 2020.

solution – constituted a profound restructuring of the EU architecture of economic governance. After all, this is why NGEU faced strong resistance. In fact, the Commission's plan – which built on prior proposals by Spain,[100] and France and Germany jointly,[101] and tracked the strategy endorsed by the EP[102] – was met with push-backs both by a group of Nordic member states – the Netherlands, Austria, Denmark and Sweden – which criticized it for being based on grants (rather than loans);[103] and by the Visegrad countries – Poland, Hungary, Czechia and Slovakia – which criticized it for not being generous enough towards lower income member states.[104] As a result, a first European Council meeting scheduled on 19 June 2020 to discuss the Commission proposal was unable to find an agreement,[105] prompting the organization, a few days afterwards, of a new summit.[106]

Eventually however, after five days of meeting on 17, 18, 19, 20 and 21 July 2020 – in the longest European Council since the Nice summit of 2001 – heads of state and government of the EU27 managed to find a deal on the EU recovery plan, and relatedly on the next MFF.[107] To muster the necessary unanimity, the Commission plan for NGEU was amended, reducing the overall size of grants from €500bn to €390bn, and increasing the loans component from €250bn to €360bn.[108] Moreover, to appease the recalcitrant Nordic member states, the European Council agreed to cap the size of the next MFF,[109] and maintain their rebates;[110] and to obtain the crucial support of Central and Eastern member states, it watered down the obligation to respect the rule of law as a condition to received EU funding.[111] At the same time, the European Council left somehow unsettled the governance of NGEU – entrusting the management to the Commission, but subject to control of the Economic and Financial Committee (EFC), and with a back-up role for the European Council.[112]

Some of the details in the European Council agreement were met with scepticism by the EP, which under the treaty has a veto right on the approval of the MFF.[113] In subsequent

100 See Spain Non-paper on a European recovery strategy, 19 April 2020.
101 See French-German Initiative for the European Recovery from the Coronavirus Crisis, 18 May 2020.
102 See European Parliament resolution of 15 May 2020 on the new multiannual financial framework, own resources and the recovery plan, P9_TA(2020)0124.
103 See Austria, Denmark, the Netherlands, Sweden, Non-paper EU support for efficient and sustainable Covid-19 recovery, 20 May 2020.
104 See Government of the Czech Republic, press release "V4 Common Lines regarding the Multiannual Financial Framework / Next Generation EU", 11 June 2020.
105 See European Council President Charles Michel, remarks, 19 June 2020, 415/20.
106 See also European Council President Charles Michel, remarks, 10 July 2020.
107 See European Council Conclusions, 17-18-19-20-21 July 2020, EUCO 10/20.
108 Ibid para. A6.
109 Ibid para. A23.
110 Ibid para. A30.
111 Ibid para. A24.
112 Ibid para. A19.
113 See European Parliament resolution of 23 July 2020 on the conclusions of the extraordinary European Council meeting of 17-21 July 2020, P9_TA(2020)0206.

negotiations, designed to turn NGEU into EU legislation, the EP however managed to secure a slight increase in the MFF, as well as to strengthen the rule of law conditionality applicable to the disbursement of EU funds, both under the MFF and the NGEU. Yet, while a political agreement between the EP and the Council was achieved on such revised package deal,[114] in November 2020 Hungary and Poland jointly vetoed the MFF, ORD and NGEU as a way to block the entry into force of the EU regulation protecting the financial interests of the EU against breaches of the rule of law.[115] The action by Hungary and Poland, two countries which are experiencing a dramatic backsliding in respect for the rule of law and democracy,[116] threatened the Recovery Fund. Nevertheless, ultimately in December 2020 member states in the European Council managed to overcome the Polish and Hungarian veto,[117] opening the door to the entry into operation of the MFF 2021-27,[118] the ORD,[119] a new rule of law regulation,[120] and the Recovery Instrument,[121] later followed by the RRF.[122]

As multiple academics have pointed out, NGEU represents an historic step forward for the EU.[123] On the one hand, the European Commission is authorized for the first time to act as a quasi-EU treasury, borrowing substantive amounts of funds, totalling €750bn "on behalf of the Union on the capital markets."[124] On the other hand, the EU also agreed on a roadmap to repay this common debt through new, genuine EU taxes. While the European Council agreed to increase the EU spending ceiling during the next MFF,[125] it also committed to "work towards reforming the own resources system and introduce new own resources."[126] In particular, the European Council indicated that as a first step a new plastic

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114 See Council of the EU, press release, "Next MFF and Recovery Package: Council Presidency Reaches Political Agreement with European Parliament", 10 November 2020, PRESS 763/20
115 See Joint Declaration of the Prime Minister of Poland and the Prime Minister of Hungary, 26 November 2020.
116 See Federico Fabbrini, *Fundamental Rights in Europe* (OUP 2014)
117 See European Council Conclusions, 10-11 December 2020, EUCO 22/20.
118 See 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.
119 See 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.
120 See Regulation (EU, Euratom) 2020/2092 of the European Parliament and the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ 2020 L 433 I/1.
121 See 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.
122 See Regulation (EU) 2021/241 of the European Parliament and the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ 2021 L 57/17.
123 See Jesus Carrera Hernandez, "Del Mecanismo europeo de estabilidad (MEDE) al nuevo mecanismo de reconstruccion y resiliencia (MRR). Ha sido necesaria una pandemia para renforzar la solidaridad financiera en la Union europea?" (2020) 75 *Revista Española de Derecho Europeo* 9; and Peter Becker, "A European Economic Policy in the Making", Stiftung Wissenschaft und Politik Research Paper October 2020; Francesco Martucci, " 'C'est nes pas de la dette, c'est de l'investissement': Des coronabonds aux obligations du plan de relance" (2020) 30 *Revue des Affaires Européenne* 209.
124 European Council Conclusions, 21 July 2020, EUCO 10/20, para. A3.
125 Ibid para. A9.
126 Ibid para. 145.

tax will be introduced and apply as of January 2021;[127] it called on the Commission to put forward proposals for a carbon border adjustment tax and a digital tax;[128] and it indicated readiness to discuss during the next MFF about an EU financial transaction tax.[129] Hence, the recovery plan represents a milestone for the EU: thanks to NGEU, intra-European solidarity has moved to the next level, and EMU increasingly presents features resembling those of mature federal fiscal systems.[130]

127 Ibid para. 146.
128 Ibid para. 147.
129 Ibid para. 149.
130 See generally Serdar Ylmaz & Farah Zahir (eds), *Intergovernmental Transfers in Federations* (Elgar 2020).

4 Future: EMU beyond Covid-19

The multiplicity of legal and institutional measures adopted to address the economic consequences of Covid-19 profoundly affected the architecture of EU economic governance and its prospects. In fact, as a result of the pandemic-response initiatives of the EU institutions and the member states, the process of European integration has experienced in less than 100 days an unprecedented step forward, with the EU now enjoying fiscal powers that had until recently been seen as impossible to achieve.[131] Nevertheless, it is important to consider whether these post-pandemic changes are only temporary; whether they favour further steps towards completing EMU; and whether they actually create the need for new EU reforms, designed to back up these new EU fiscal powers with proper constitutional adjustments.

4.1 Returning to Normal after Covid-19?

The extraordinary measures deployed by the EU institutions and the member states to tackle the Covid-19 emergency are mostly crafted as temporary responses, which raises the question whether it is conceivable after the pandemic to return to a pre-Covid-19 normal. Indeed, the suspension of EU state aid rules and the SGP are meant to be provisional, with the aim to gradually re-introduce the application of these rules as soon as the health situation improves.[132] Moreover, the SURE unemployment insurance scheme has a sunset clause, which foresees that the availability of the instrument shall end on 31 December 2022[133] – even though the Council, on a proposal of the Commission, may decide to extend the instrument operation each for time for a period of six months.[134] Most crucially, then, NGEU is conceived as an exceptional, one-off initiative. As the July 2020 European Council conclusions state, "the powers granted to the Commission to borrow are clearly limited in size, duration and scope."[135]

Certainly, the use of sunset provisions is not unprecedented, and it may reflect best practice law-making by limiting in time policy interventions, so they can be reviewed in due

[131] See also European Commissioner Thierry Breton, "La fin de la naiveté", Op-Ed, *Les Echos*, 10 August 2020.
[132] European Commissioner Valdis Dombrovskis, Interview, *Corriere della Sera*, 4 July 2020, available at

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[133] See Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the Covid-19 outbreak, OJ 2020 L 159/1, Art. 12(3).
[134] Ibid Art. 12(4).
[135] European Council Conclusions, 21 July 2020, EUCO 10/20, para A4.

course.[136] Moreover, by the EU institutions and member states own admission, the return to normal in EMU rules and governance will not occur before a number of years.[137] In fact, with continuing uncertainty on when the pandemic will be fully contained, it cannot be excluded that the emergency measures adopted to tackle the socio-economic consequences of Covid-19 will need to be continued, or even expanded, in the time ahead. Evidence of this is offered by the ECB decision in December 2020 to further increase the PEPP by an extra amount of €500bn of bond purchases, to a total of €1850bn.[138] At the same time, most Covid-19-related EMU instrument still have to be rendered operational in practice: while the Commission has now approved the grant of temporary support under the SURE mechanism,[139] and disbursed funding to now 18 of member states, no country has still requested the activation of the ESM's PCSL,[140] and national recovery and resilience plans are still awaited in early 2021 to successfully operationalize NGEU.[141] Yet, the question remains whether after Covid-19 – whenever that will be – it would be possible for the EU to scale back the post-pandemic economic settlement, or whether in fact this is the new normal for the EU.

On the one hand, the measures adopted to respond to Covid-19 will leave a legacy in EMU. In fact, political economists have emphasized that institutions generally follow a logic of path-dependency, and that once an economic process or a governance arrangement is in place over-time, it becomes locked-in and it will be difficult to change it, as institutional actors become accustomed to the status quo.[142] At the same time, legal scholars have also pointed out that measures adopted in times of emergency tend to sediment, and become normalized as the emergency ends.[143] From this point of view, therefore, one cannot exclude that the policy measures put in place in response to Covid-19 will become a part of the new normal for the EU, even after Covid-19. Otherwise, when time-limited measures prove successful, there is an interest in continuing them. And it should be born in mind that several of the measures deployed to address Covid-19 reflected policy proposals that had long been sought for by several institutional actors. For instance, SURE tracks earlier proposals for a

136 See also Sofia Ranchordas, *Constitutional Sunsets and Experimental Legislation: A Comparative Perspective* (Elgar 2014).
137 See also Eurogroup statement on Covid-19 developments this autumn, 3 November 2020, 741/20 (considering "vital that fiscal support" continues in 2021 given the aggravation of the pandemic).
138 See ECB press release, "Monetary policy decisions", 10 December 2020.
139 See e.g. European Commission proposal for a Council implementing decision granting temporary support under Council Regulation (EU) 2020/672 to Italy to mitigate unemployment risks in an emergency situation following the Covid-19 outbreak, 24 August 2020, COM(2020)466 final.
140 See ESM Managing Director Klaus Regling, Speech at Ambrosetti Forum, Cernobbio, 5 September 2020.
141 See European Commission Staff working document, Guidance to Member States Recovery and Resilience Plans, 17 September 2020, SWD(2020)205 final.
142 See Kurt Dopfer, "Toward a Theory of Economic Institutions: Synergies and Path Dependency" (1991) 25 *Journal of Economic Issues* 535.
143 See Oren Gross & Fionnuala Ní Aoláin, *Law in Times of Crises: Emergency Powers in Theory and Practice* (CUP 2006).

permanent EU unemployment insurance system[144] – and as such, its success in the Covid-19 context may pave the way for its institutionalization on a broader scale.

On the other hand, the hypothetical feasibility of a return to a pre-Covid-19 situation in EU economic governance is also dependent on the choices that are being made in addressing the pandemic. As the May 2020 Franco-German initiative for the European recovery underlined, the need to establish of a temporary and targeted recovery fund supporting states via grants (rather than loans) was crucial to support the relaunch of the EU economy without increasing states' debts at a time when national budgets were already under huge strain.[145] From this point of view, however, the decision of the European Council in July 2020 to alter the original Commission proposal for NGEU – reducing the grant component of the Recovery and Resilience Facility from €334bn to €312bn, while increasing the loans component from €267bn to €360bn – complicates a return to normal, because loans count as state debt. Paradoxically, therefore, while the pressure to reduce the grant component of NGEU came from Nordic member states that were wary of empowering the Commission with federal fiscal powers, their apparent success in increasing the loan component of the Recovery Fund will only make more likely that a return to the SGP rules will be delayed, rather than anticipated.

4.2 Completing EMU after Covid-19?

While it is possible that the new EU economic governance settlement reached during Covid-19 will endure after the pandemic, it is worth asking also if the responses to the coronavirus can create a new momentum to complete EMU post-Covid-19. At one level, the measures adopted by the EU institutions and member states in response to Covid-19 did not specifically address the laundry list of reforms which the Eurogroup had identified in its December 2018 report as necessary for completing EMU,[146] but which had remained outstanding due to cleavages among member states (as explained in Section 2.3). In fact, in a June 2020 report, the French Senate also complained that the Commission recovery plan no longer integrated a BICC within the new MFF[147] – as had been long requested by France and accepted by the Eurosummit. Yet, beyond nominalist disputes, there seems no doubt that NGEU goes a long way in completing EMU with a fiscal capacity – which was the original idea behind BICC. In fact, arguably the NGEU connected to the MFF is a much

144 See European Commission, "Roadmap for a European Unemployment Benefit Scheme", January 2017.
145 See French-German Initiative for a European Recovery from the Coronavirus Crisis, 18 May 2020.
146 See Eurogroup report on EMU deepening, 4 December 2018.
147 See French Sénat, Rapport fait au nom de la commission de finances sur la proposition de résolution au nom de la commission des affaires européennes, relative à la proposition révisée de cadre financier pluriannuel 2021-2027 et à la proposition de mise en place d'un instrument de relance pour faire face aux conséquences de la pandémie de Covid-19, N° 516, 16 June 2020, 29.

better crafted fiscal capacity for the EU than the BICC that the Eurogroup had envisioned creating through an intergovernmental agreement in February 2020.[148]

As I had pointed out in a report commissioned by the EP Constitutional Affairs (AFCO) Committee, contrary to all other federal unions by aggregation, the EU lacked a fiscal capacity conceived as a budgetary instrument, funded by genuine own resources, to support its spending programs.[149] As is well known, even though the spirit and the letter of the EU Treaties require the EU budget to be funded by own resources, the EU budget is for the most part today financed by contributions from the Member States.[150] As a result, most EU countries consider the contributions they make to the EU budget as *their* money, and aggressively measure the difference between their contributions to, and their receipts from, the EU budget.[151] As explained in a report by the High Level Group on Own Resources, jointly instituted by Commission, EP and Council, and chaired by former Italian Prime Minister and European Commissioner Mario Monti, this state of affairs is not ultimately in the interest of the EU, as it has distorted attention from the pursuit of EU public goods, and has created an embarrassing spectacle, visible at every new MFF negotiations, where member states quarrel about what they pay to, and get from, the EU budget.[152] From this point of view, therefore, NGEU represents a change of paradigm: by allowing the EU to run its own budget, funded by resources raised on the capital markets and to be payed long-term by raising new transnational taxes, NGEU now endows the EU with a fiscal capacity independent from state transfers, and suitable to invest on EU programs to promote EU public goods.

At the same time, the positive developments connected to the common response by the EU member states to Covid-19 have also created new momentum to complete EMU, with steps to address some of the issues which had remained outstanding in the pre-Covid-19 debate on EMU deepening. This was most visible in the reform of the ESM, which had initially been agreed in principle in December 2019,[153] but which had effectively failed to advance due to foot-dragging by some member states. In November 2020, the Eurogroup (in inclusive format) agreed to several amendments to the ESM Treaty,[154] strengthening its

148 See Eurogroup report on a possible inter-governmental agreement for the BICC, 17 February 2020.
149 See also Federico Fabbrini, "A Fiscal Capacity for the Eurozone", study commissioned by the European Parliament Constitutional Affairs Committee, February 2019.
150 See Luca Zamparini & Ubaldo Villani-Lubelli (eds), *Features and Challenges of the EU Budget* (Elgar 2019).
151 See Miguel Maduro, "A New Governance for the European Union and the Euro", study commissioned by the European Parliament Constitutional Affairs Committee, September 2012.
152 See High Level Group on Own Resources, "Future Financing of the EU", final report and recommendations, December 2016.
153 See Eurogroup President Mario Centeno, Letter to Euro Summit President Charles Michel, 5 December 2019 (reporting that the Eurogroup had "reached an agreement in principle, subject to the conclusion of national procedures, on the package of documents related to the ESM reform").
154 See Council of the EU, Statement of the Eurogroup in inclusive format on the ESM reform and the early introduction of the backstop to the Single Resolution Fund, 30 November 2020, 839/20.

toolkit with the ability to provide precautionary financial assistance, introducing collective action clauses on euro-denominated debt, formalizing cooperation between the ESM and the Commission, and making the ESM the backstop to the SRF. At the same time, also in light of positive efforts in the reduction of non-performing loans in banks' balance sheets, the Eurogroup decided to anticipate the entry into force of the backstop to the beginning of 2022 – almost two years earlier than originally envisioned – and authorized a corresponding revision of the intergovernmental agreement on the SRF.

The progress achieved by the Eurogroup was welcomed by the Euro Summit, which in December 2020 praised the steps taken to further strengthen EMU and simultaneously invited the Eurogroup to continue further work on the last remaining pillar of Banking Union: the EDIS, "with a stepwise and time-bound work plan on all outstanding elements needed."[155] While it remains to be seen whether member states will be able to muster the compromise necessary to approve this, the shift of positon by Germany, which for the first time opened towards the creation of common EU debt,[156] represents an important change. Hence, while one cannot exclude that the measures adopted to tackle Covid-19 may have unexpected side-effects (e.g. unwillingness by some member states to make further concessions towards burden-sharing after agreeing on NGEU), it seems rather that the momentum created by the common response to the pandemic has potentially opened a window of opportunity to further advance on EDIS and other EMU-related matters, including Capital Markets Union and the European Pillar of Social Rights.[157]

4.3 Reforming the EU after Covid-19?

If the responses to Covid-19 possibly open to door to a completion of EMU, they also create needs for further EU reforms. As is well known, many observers had long underlined, in the context of the debate on the future of Europe, the urgency for the EU to renew itself – increasing its effectiveness and legitimacy.[158] However, the need for EU reforms is now compounded by the exigencies of the post-Covid-19 recovery.[159] In response to the pandemic, EU institutions and member states have taken unprecedented steps, which will

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155 See Euro Summit statement, 11December 2020, EURO 502/20, par. 3.

156 See also German Finance Minister Olaf Scholz, Interview, *Die Zeit*, 19 May 2020, available at:

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157 See e,g.European Commission Proposal for a Directive of the European Parliament and the Council on adequate minimum wages in the European Union, 28 October 2020, COM(2020)682 final.

158 See also Viviene Schmidt, *Europe's Crisis of Legitimacy* (OUP 2020) and Sergio Fabbrini, *Europe's Future* (CUP 2019).

159 See further also Federico Fabbrini, *Brexit & the Future of the European Union: The Case for Constitutional Reforms* (OUP 2020).

necessitate further adjustments to the EU constitutional architecture.[160] In particular, the entry into force of NGEU constitutes a turning point for the EU, by endowing it for the first time with a real fiscal power. This change however must be backed-up with reforms increasing the democratic legitimacy of the EU and its decision-making efficiency.

Contrary to the logic that inspired the responses to the euro-crisis, which was driven by intergovernmentalism, the responses to the pandemic are built around the *methode communautaire*.[161] In an intergovernmental framework, resources, and the legitimacy thereof, derive from the member states. Hence, e.g. it is unsurprising that the ESM – arguably the centre-piece of the responses to the euro-crisis – is based on national contributions, subject to authorization by national parliaments. In a supranational framework, instead, resources are truly communitarian – and so should be their legitimation. Indeed, the key response to Covid-19, NGEU revolves around the ability of the Commission as a quasi-EU treasury to raise common resources on the financial markets. The funds which the EU disburses through grants and loans, therefore, are not member states' money, but resources generated by the issuance of common (euro-)bonds. In fact, to avoid a scenario in which the intergovernmental logic of inter-state transfers may sneak into NGEU down the road, the EP, the Council and the Commission have concluded a legally binding inter-institutional agreement with a road-map towards the introduction of new own resources, which foresees the progressive roll-out of new own resources between 2021 and 2027 to secure "the repayment of the principal and the interests of the funds borrowed."[162]

In light of the above, the legitimacy of the measures adopted to respond to Covid-19 cannot be secured exclusively by the member states' parliaments separately. Clearly, national parliaments remain essential to legitimize *national* taxing and spending, and, in *intergovernmental* contexts, interstate transfers. Moreover, obviously, national parliaments jointly and severally play a crucial role in approving the ORD,[163] which allows the EU to indebt itself by correspondingly increasing the spending ceiling. Nevertheless, for the limited share of taxing and spending transferred at the *supranational* level (in accordance with the principles of subsidiarity and proportionality), it is essential that corresponding mechanisms of legitimacy are developed at that level of government. This is consistent with the philosophical and political foundation of legitimacy.[164] And this is after all what happens in federal, multilevel regimes, where state action is legitimated at state level and federal/supra-

160 See also joint document of the European Council and the European Commission, A Roadmap for recovery: Towards a more resilient, sustainable and fair Europe, 21 April 2020.
161 See also European Commissioner Paolo Gentiloni, Speech at the Conference "Progettiamo il Rilancio", 13 June 2020.
162 Interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, Annex II, par. 1(a)
163 See Art 311 TFEU.
164 See e.g. Arthur I. Applbaum, *Legitimacy: The Right to Rule in a Wanton World* (Harvard UP 2019), and Peter Lindseth, *Power & Legitimacy* (OUP 2010).

state action is legitimated at the federal/supra-state level. As such, this point has not only been defended by the EP,[165] as one could expect, but also enshrined in the influential Four Presidents' Report towards a genuine EMU,[166] and accepted by the European Council.[167]

Yet, if the responses to covid-19, and particularly NGEU, partake of a real supranational spirit, reforms appear inevitable to improve the EU's *own* legitimacy and decision-making effectiveness. From a substantive point of view, the establishment of a recovery and resilience facility forces a rethink of the powers to tax and spend conferred on the EU. On the one hand, Article 310(1) TFEU requires that "[t]he revenue and expenditure shown in the [EU] budget shall be in balance" – thus constraining the EU ability to issue debt, unless the expenditure ceiling is raised accordingly. But this situation is harder to sustain with an enlarged budget. On the other hand, Article 311 TFEU allows the EU to "adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition." However, the EU does not currently have the power of direct taxation. Yet, this state of affairs severely reduces the EU's effectiveness – raising the question whether time has not arrived for the EU to enjoy a competence to introduce new direct taxes. Moreover, from an institutional point of view, there is no doubt that the recovery plan would also require adequate reforms to increase the legitimacy and accountability of the EU decision-making system in financial matters. On the one hand, as the EU increases its powers in the fiscal domain, the exclusion of the EP – which is only consulted by the Council in its decisions on the adoption of harmonized taxes,[168] and on the EU own resources[169] – can no longer be justified, given the principle of "no taxation without representation."[170] On the other hand, as the EU will need to raise an increasing amount of resources, there will be a growing call to

165 See European Parliament resolution of 12 December 2013 on constitutional problems of a multitier governance in the European Union, P7_TA(2013)0598, par AO (stating that "democratic legitimacy and accountability must be assured at the level at which decisions are taken").

166 See European Council President, "Towards a Genuine Economic & Monetary Union", interim report, 12 October 2012, 8 (stating that as "a general principle, democratic control and accountability should occur at the level at which the decisions are taken. This implies relying on the European Parliament as regards accountability for decisions at European level but also maintaining and securing the pivotal role of national parliaments, as appropriate").

167 See European Council conclusions, 14 December 2012, EUCO 205/12 par. 14 (stating that "the process, the general objective remains to ensure democratic legitimacy and accountability at the level at which decisions are taken and implemented.")

168 Art 113 TFEU.

169 Art 311 TFEU.

170 See Giacinto Della Cananea, "No Representation without Taxation: the European Union", in Lina Papadopoulou et al (eds), *Legitimacy Issues of the European Union in the Face of the Crisis* (Nomos 2017) 95.

move towards a more democratic and effective system of decision-making in tax matters as proposed by the Commission's plan to introduce qualified majority voting.[171]

The problem of unanimity in decision making on fiscal matters was dramatically exposed recently in November 2020 when the governments of two member states – Hungary and Poland – threatened to veto the MFF, NGEU and the ORD in order to emasculate the regulation on rule of law conditionality, which had been approved at political level by the Council and the EP – against their liking.[172] While ultimately, the European Council managed to neutralize their veto[173] – albeit with an interpretative declaration of the rule of law regulation whose value is contested[174] – this example vividly highlighted how unanimity rule may turn into the tyranny of the minority, which (just like its opposite: tyranny of the majority) is itself a challenge to democratic self-governance.[175] As such, proper consideration should be given on options to reform the EU decision-making system on genuine own resources in a way which complies with the constitutional requirements of checks and balances – including through the preservation of super-majority voting in the Council (the institution representing the member states) – while neutralizing negative and idiosyncratic veto points that may paralyze the EU.

In conclusion, the growing economic integration resulting from the EU post-Covid-19 recovery plan also raises a democracy challenge,[176] which can only be addressed through a reformed EU constitutional settlement, in which new substantive taxing and spending powers at EU level are matched by new institutional mechanisms of democratic legitimacy and accountability at that same level of government. In fact, contrary to the intergovernmental path that was taken in response to the euro-crisis, the responses to Covid-19 are built around the *methode communautaire*:[177] nevertheless, reforms are needed to back-up the recovery plan with adequate EU constitutional adaptations so as to increase the EU's effectiveness and legitimacy. As, incidentally, this is one of the ambitions of the nascent Conference on the Future of Europe, there appears to be a window of opportunity to address

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171 See also European Commission Communication "Towards a more efficient and democratic decision making in tax policy", 15 January 2019, COM(2019)8 final.
172 See Joint Declaration of the Prime Minister of Poland and the Prime Minister of Hungary, 26 November 2020.
173 See European Council Conclusions, 10-11 December 2020, EUCO 22/20.
174 See also European Parliament resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulations, P9_TA(2020)0360.
175 See generally Robert Dahl, *A Preface to Democratic Theory* (Chicago UP 1956).
176 See also Richard Young, "Democracy is the Missing Link in EU Coronavirus Recovery Plans", Carnegie Europe, 13 May 2020, available at
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177 See also European Commissioner Paolo Gentiloni, Speech at the Conference "Progettiamo il Rilancio", 13 June 2020.

the weaknesses of the EU's decision-making system so as to enhance its democratic legitimacy for the post-pandemic era.[178]

[178] See Federico Fabbrini, "Possible Avenues for Further Political Integration in Europe", study commissioned by the European Parliament Constitutional Affairs Committee, May 2020.

5 Conclusion

Covid-19 represented a watershed moment – not just for the life of millions of Europeans, but also for the life of the EU itself. In response to a dramatic health crisis, and with the aim to contain its devastating socio-economic consequences, in the spring and summer of 2020 the EU institutions and member states have taken unprecedented steps, which will shape the future of European integration for years to come. In particular, the multiplicity of legal and institutional measures adopted to respond to the economic costs of the pandemic have profoundly affected EMU and the EU architecture of economic governance.

As this report pointed out, EMU had been originally established by the Maastricht Treaty as an asymmetric regime, with a full centralization of monetary policy but without an equivalent federalization of economic policy. Otherwise, if the responses to the euro-crisis – an existential threat to the survival of the currency union – had prompted a number of important transformations, EMU remained incomplete. Before the outburst of the Covid-19 pandemic, therefore, the ability of the EU member states to deepen EMU had been limited, and a number of outstanding issues remained to complete EMU.

Since the explosion of the Covid-19 pandemic, however, the EU institutions and the member states have adopted several sweeping measures. In particular, besides the early response measures deployed by the European Commission and the ECB, and the package of reforms approved by the Eurogroup, the game changer was represented by the approval by the European Council in summer 2020 of NGEU. This innovative instrument empowers the Commission to borrow money on the financial markets and to transfer these resources to the member states mostly as grants to support an inclusive recovery and the re-alignment of the EU economies towards the shared EU priorities of a green deal, digitalization and a socially-oriented growth.

As this report argued, the transformations brought about in the architecture of EU economic governance during Covid-19 constitute a paradigm change, with mid to long term consequences for EMU. In fact, while most pandemic-related measures are designed to be temporary, it is uncertain whether it would be feasible for the EU to return to a pre-Covid-19 normal, or rather whether this is the new normal for the EU. At the same time, while many of the pandemic-related measures do not specifically fit into the laundry list of outstanding reforms identified as needed to complete EMU, they have gone a long way to addressing some of its ongoing weaknesses – namely the absence of a fiscal capacity. In fact, with NGEU the EU has now been empowered to raise new fiscal resources to kick-start the recovery and promote EU public goods.

Moreover, as this report suggested, the progress the EU made in tackling Covid-19 facilitates further efforts at EMU deepening – an calls for additional reforms of the EU governance system to back up the new EU fiscal powers with proper constitutional adjustments. Needless to say, neither the more specific EMU nor the broader EU reforms will be easy. In fact, the negotiations on the Commission's recovery plan highlighted continuing disagreements and conflicting preferences among member states – even after Brexit – with particularly tensions around respect for the rule of law emerging as one of the most critical issues in budget negotiations, and with the potential to return prominently on the agenda in the near future.

At the same time, it remains to be seen whether further adjustments in the EU architecture of economic governance will take place in a format Eurozone-only, or rather open also the non-Eurozone member states. In fact, while this report has not focused on the question of the relationship between member states which use the euro as their currency, and the others, the point is likely to increase in relevance in the coming years due to, on the one hand, the implications of Brexit, and, on the other, the decision to launch NGEU as a EU (rather than Eurozone) project. This opens interesting, additional questions on the future of EMU – including its further development.

Nevertheless, the new Eurogroup Presidency – which was elected in summer 2020 with the plan to build bridges between Northern and Southern Eurozone member states[179] – and the launch of the Conference on the Future of Europe – an initiative designed to renew the EU and enhance its effectiveness and legitimacy[180] – offer a window of opportunity to improve the economic resilience and the democratic functioning of the EU architecture of EMU governance, marking a new step towards "ever closer union."[181]

179 See Irish Minister of Finance Paschal Donohoe, Letter of candidature for the position of Eurogroup President, 25 June 2020.
180 See Federico Fabbrini, *Brexit and the Future of the European Union* (OUP 2020).
181 Preamble TEU.

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