

2023 REBUILD Annual Conference

This event report was prepared by Jasmine Faudone and Elettra Bargellini (DCU Ph.D. students, School of Law & Government).

Introduction

On the 19th and 20th January 2023, the DCU Brexit Institute held the REBUILD Annual Conference on *NGEU: Furthering Economic Legal and Fiscal Integration* in person, hosted by the European Parliament Liaison Office in Ireland.

Speakers discussed several themes across the four panels and the final roundtable. They critically and actively engaged along the two days on the legal, constitutional and political features of Next Generation EU (NGEU): in its governance, components, and the issues of accountability and conditionality. Ten academics joined from various Universities abroad (five EU Member States), as well as two members of EU institutions, ten colleagues from DCU including panels Chairs, and a colleague from UCD.

The Conference programme is available [here](#) and you will find hereafter an overview of the issues discussed during the REBUILD Annual Conference.

Thursday 19th January

The founding Director **Federico Fabbrini** (DCU Brexit Institute & Princeton University) opened the event, he thanked the European Commission (EC), the European Parliament Liaison Office in Ireland, and Doctor Christy Ann Petit (Dublin City University & Deputy Director of the DCU Brexit Institute) and all the team of the Brexit Institute. He introduced REBUILD, which was launched last year, as the first [Jean Monnet Centre of Excellence](#) in Europe about Next Generation EU. REBUILD stands for *Recovery of Europe, Budget of the Union: Integration, Law & Democracy*. The core idea of REBUILD is to explore the NGEU governance, its values, and resources with a diversified action plan regarding its dissemination to several audiences. In fact, REBUILD will hold not only academic events, but it will also engage with EU institutions, and in teaching, learning and research activities. Indeed, Professor Federico Fabbrini just published a book on [“EU Fiscal Capacity: Legal Integration After Covid-19 and the War in Ukraine”](#) with Oxford University Press.

Barbara Nolan (Head of the European Commission Representation in Ireland) gave the welcoming remarks. She reiterated that Next Generation EU is unprecedented in the EU's history, being a unique opportunity to address countries' specific challenges, while benefitting Europe collectively. Following on from her previous role in charge of EU fundamental rights in the European Commission's Directorate General for Justice and Consumers (DG JUST), she outlined the importance of protecting EU values and fundamental rights in the approval process of National Recovery and Resilience Plans (NRRPs). She provided the most recent developments in relation to Next Generation EU. The Commission is currently working to conclude Operational Arrangements with each Member State. These Operational Arrangements do not include new requirements, but rather provide further specific details on how the fulfilment of each milestone and target agreed in the Council Implementing Decision, will be fulfilled. These are a prerequisite to the payment request to ensure transparency and accountability in the allocation of taxpayer's money and consequently must be signed before a first regular payment request can be made. Barbara Nolan explained that the European Commission assessed payment requests according to the criteria set out in the Recovery and Resilience Facility (RRF) Regulation, and that the payment will be finalized only when and if all milestones and targets are fulfilled.

In her speech, she offered also a long term vision, talking about the green and digital transitions. She said that the European Commission has created a scoreboard to track the implementation of projects, which is online and public (available at this [link](#)). She clarified the Irish Recovery and Resilience Plan (RRP): even if small, it is significant for Ireland. Ireland has made a significant effort to address the challenges that it faces, with reforms and investments to address barriers to sustainable growth in its economy. The RRP contains a number of projects that aim to accelerate the green and digital transitions through: sustainable transport, reforms to reduce fossil fuel use, accelerating digitalization for businesses, and boosting skills. The Irish RRP – she said – when put into full effect, all these measures will help this country to strengthen its society and economy, and be better prepared for future challenges. Finally, she mentioned REPowerEU and its crucial importance, not only as the European Commission's response to the energy crisis caused by Russia's war in Ukraine, but also as the way to diversify our energy supplies and accelerate the rollout of renewables. She explained that the European Commission is channeling additional funds to REPowerEU. This will lead to a revision of Member States' NRRPs. In conclusion, she said that Next Generation EU is a unique and time limited instrument, it is a once in a lifetime opportunity to make Europe more resilient and make it better prepared for the future.

The **first panel** on the NGEU framework, its fiscal implications and its implementation, was chaired by Professor **Federico Fabbrini** (DCU Brexit Institute & Princeton University). Professor **Ana Belén**

Macho Pérez (Pompeu Fabra University – Barcelona) presented her paper on the transformation of EU's public finances after NGEU. She introduced the NGEU and its structures, which consist of new and old elements from the viewpoints of EU economic governance. The main feature is the shift from EU Member States coordination to EU-led fiscal funding. She focused on how to improve European citizens' participation, in order to rebalance their lack of involvement in the process, and the downsizing of the original NGEU funds for added value. In her presentation, she wondered whether the NGEU can become a permanent instrument. In her view, it is not only possible, but actually needed. In fact, she underlined that NGEU does have a qualitative control, namely the scoreboard mentioned by Barbara Nolan. Finally, she thinks that the response to Covid-19 has accelerated the process of EU reforms, and that the EU needs sustainable fiscal reforms, that could eventually lead to a fiscal Union or even federalism.

The second panelist, Professor **Fabian Amtenbrink** (Erasmus University – Rotterdam) discussed the challenges of having a permanent shock absorption capacity for the EU and which important lessons can be learned from SURE and NGEU. He raised two main points: whether NGEU represents a very strong case for a permanent supranational fiscal capacity, and how to use existing institutional mechanisms. In his view, it is not possible to make NGEU permanent under the current legal framework and available legal bases. Regarding the second point, he explained the two main mechanisms: the first one is an automatic stabilizer, while the second one a stabilizer that involves government intervention in a counter-cyclical way. Professor Amtenbrink specified that EU Law does not foresee an automatic stabilizer, and moreover this temporary mechanism has very limited financial means if one compares with other jurisdictions. According to him, NGEU was possible since there was political will for making the shift, but it is only temporary. Finally, he does not see the NGEU becoming permanent as a system to absorb shocks in the future.

Professor **Stefania Baroncelli** (Free University of Bozen – Bolzano) brought a national perspective to the panel, presenting her paper on the implementation of the NRRP in Italy, and discussed whether this would lead to a reduction in asymmetries in Italian internal governance, between central and local authorities. Her paper addresses the shift in solidarity resulting from the NRRP. She explained the content of the Italian plan that focuses on innovation, social inclusion, and green transition but also on helping the Italian economy, and on reducing inequality between generations and genders, and inequality of living standards. In particular, she explained the organizational structure in implementing the plan in Italy. Due to strict deadlines, Italy decided to centralize the Recovery Plan implementation, which resulted in a weak link between the government, and, regional and local authorities. This decision was taken also as a sign of mistrust in Italy towards local and regional

authorities, and it was justified as in the “national interest”. In her view, the NGEU should be, instead, an occasion to learn. For example, there was the possibility to hire experts in order to support the local administrators in implementing the Recovery Plan. In conclusion, she stressed the issue of emergency law, mostly decrees, used to implement the NRRP.

The discussion continued with a **second panel** on NGEU and resources in the green & digital transitions and energy crisis, chaired by Professor **Derek Hand** (Dean of the Faculty of Humanities and Social Sciences, DCU). Doctor **Edoardo Celeste** (DCU) and Doctor **Goran Dominioni** (DCU) presented their paper on reconciling the green and digital transitions in times of war and energy crisis. In fact, they explained that their research questions arose from the need to invest in the postpandemics recovery context, and how the original plan has been affected by the Russian invasion of Ukraine. **Edoardo Celeste** introduced briefly the EU Digital Agenda, and he underlined the importance of the transition from the commercial aspect (e-commerce, e-services, digital internal market) to the individual dimension (e.g. providing services for the public). **Goran Dominioni** gave a picture of the EU Green Transition including the recent legislative framework developments, i.e. the European climate law and ‘Fit for 55’ package. Then, **Edoardo Celeste** clarified the role of the digital transition in the Green Deal. He underlined how the EU decarbonization agenda can support the digitalization of the EU. Moreover, the Ukrainian war and energy crisis has several effects on the digitalisation agenda. The war in Ukraine – said **Celeste** – introduced cybersecurity risks, it raised the issue of digital sovereignty, and it stopped major data centers’ projects. From his side, **Dominioni** said that one positive effect of the energy crisis is the production of new technologies. The authors raised the question of the consistency of the initiatives and policy measures adopted for both the green and digital transitions, arguing in favour of a more integrated approach.

The second speaker, **Rosalba Fama** (Bocconi University) presented her paper on REPowerEU. She explained that the aim of REPowerEU is to increase the resilience of the European Union energy system, by decreasing fossil fuel dependency and through diversification of energy supplies at Union level. It will lead to amend the NGEU framework and plans, and will redistribute to the Member States. She also clarified REPowerEU’s financing mechanism: it consists of loans of up to 225 bn euro, and grants of 20 bn euro, and the possibility for the Member States to transfer to the RRF according to a shared management program. She underlined that the latter is very interesting, as resources are generally allocated seven years in advance under the Multiannual Financial Framework, and this instrument could be a useful tool to face an emergency (which is unpredictable by nature).

Finally, she concluded with the constitutional ramifications and constitutional innovations of REPowerEU: it is a fiscal space through cohesion policy which goes beyond the pandemic, and that allows a certain degree of flexibility in the use of cohesion funds.

The last speaker, **Nuno Albuquerque Matos** (Universidade Católica Portuguesa) presented his paper on NGEU and the balancing of economic union horizontalisation. He said that the main features of NGEU mark a shift from Member States' coordination to EU fiscal funding, together with the evolution of the nature of funding. However, he explained that the policy management remains under the old approach, as it is the typical scheme run by the European Commission. He made a comparison with the US, especially since they invested more. He proposed citizens' participation as a key for balance. In his view, Europeans are well aware of what they want, hence he suggested more democratic participation. He thinks that direct taxation is essential to increase participation and accountability: the benefits that citizens get are, indeed, an incentive to public engagement. In conclusion, he said that direct taxation could also be a benefit for EU self-financing, as it could be a source for future programs similar to NGEU.

Friday 20th January

The event continued the second day with **Panel 3**, moderated by Doctor **Ken McDonagh** (DCU Head of the School of Law and Government) on **NGEU governance and institutions**. The first panellist, Professor **Laurent Pech** (Dean of Law, Head of the Sutherland School of Law at University College Dublin), discussed the legal challenges of the European Judges Associations against the EU Council's implementing decision on the Polish Recovery Plan. The four associations argue that the Council approved the Polish Recovery Plan in a way that violates the case law of the Court of Justice of the EU (CJEU), harming the independence of judges and the judiciary. They refer to the violation of the European Commission's decision to charge Poland's Constitutional Tribunal with violating Article 19(1) of the Treaty on the European Union (TEU) last December. Laurent Pech explained the judges' group's two principal arguments. First, a re-interpretation of the 'individual and direct concern' criteria as required by the Plaumann test established by the CJEU in 1963. They argue for a new legal standing for NGOs in EU Law as they actively protect the rule of law in Europe. Second, they consider the Commission and the Council have a duty 'not to treat judgments of the Court of Justice as bargaining chips and adjustment variables for reasons of political convenience'. Finally, Laurent Pech highlighted how crucial this legal action is for the future of the EU.

The second speaker, Doctor **Maria Patrin** (European University Institute) took the floor with a presentation on Governance by funding: NGEU, solidarity and the EU institutional balance. She

argued that, by combining the features of cohesion policy and economic governance, NGEU has shifted the regulatory practices of economic policy towards a new type of ‘governance by funding’. This new type of governance enhances the solidarity-based approach to EU economic governance, by replacing hard conditionality with the availability of financial support in pre-determined investment areas (earmarking). Thus, Member States will be keen to follow recommendations if they think this will allow them to get funds, becoming a powerful instrument of compliance and policy alignment. However, by linking NGEU funding with economic governance objectives and procedures in the framework of the European Semester, NGEU exacerbates some structural imbalances, significantly strengthening the power of the supranational institutions over Member States’ economic and fiscal policies. This power is given in particular to the Commission because of its role as guardian of the Treaties.

Next, Doctor **Alastair MacIver** (EP) delivered his presentation on the legislative function under NGEU and the federal genus of Union Law. He examined whether the range, intensity and conditions for funding under RRF harbour the potential for coercive federalism by using Union funding to incentivise national policy and regulatory law-making where the Union cannot otherwise make law. After analysing other (allegedly coercive) federations such as Australia, Canada, and the United States, he questioned if there is any analogy with the EU. He argued that Article 175(3) of the Treaty on the functioning of the EU (TFEU) has the potential to coerce as regards extraneous ends of the general welfare, especially if tied to densely defined conditions under the European Semester. Finally, he outlined the implications of exhaustion of the vocabulary of cooperative federalism for the democratic accountability of the RRFs.

Finally, **Pier Mario Lupinu** (ULU & UNIROMA3) offered a presentation on whether the NGEU could be a catalyst for the international role of the euro. His presentation was based on the analysis he developed with **Anna Machura-Urbaniak** (ULU) on this topic. According to them, given the magnitude of issuance necessary to fund the NGEU, the EU is changing its status from a small supranational issuer to a sovereign size issuer. They argued that, due to the magnitude of financial markets, this evolution could not be considered sufficient to strengthen the euro's international role *versus* the USD dollar. However, it could allow the EU to become the largest green bond issuer (30% of the NGEU debt is to be issued in green bonds). Within an EU capital market characterised by insufficient depth, integration and efficiency, they pointed out that the NGEU represents a one-time opportunity for the EU to strengthen its international role whilst enhancing the competitive advantage that it has built in sustainable markets. Their analysis offers two possible solutions to increase the pool of euro-based safe assets. The first one involves the supply of more euro-denominated debt by

those Member States having a triple-A rating (i.e. Germany, Luxembourg). The second one, which is presented by them as the less risky option, is the creation of more euro-dominated safe assets at the supranational level (as in the case of the NGEU).

The conference concluded with **Panel 4** chaired by **Sarah Léonard** (DCU) on **NGEU accountability and conditionality** and started with a presentation by Doctor **Ana Bobić** (CJEU) and Professor **Paul Dermine** (ULB) on accountability for the EU's new fiscal capacity under NGEU. They first analysed the current ways in which accountability works in EU law. In particular, they examined the political and legal accountability structures that apply to EU institutions in carrying out the tasks associated with NGEU. They pointed out that the implementation side is executive-heavy and political accountability does not strongly pertain to the European Parliament. Thus, the NGEU confirms the last decade's prominent tendency towards the relative marginalisation of the European Parliament in the field of Union economic governance. In this regard, the Parliament has tried unsuccessfully to strengthen its position through two mechanisms (i.e. the Recovery and Resilience Dialogue and the special procedure set up in the interinstitutional agreement of December 2020). Moreover, they highlighted not only the notoriously difficult access to judicial review before EU courts but also the relatively low intensity of such review. According to them, the Court of Justice may be expected to continue its path covered with high access barriers of Article 263 TFEU and great deference to executive 'specialist' institutions, in particular the European Commission.

The second speaker, Doctor **Ian Cooper** (DCU) gave a presentation on the new Rule of Law Conditionality Regime. He argued that the budgetary Rule of Law Conditionality Regime should be understood as different in kind from the other rule of law measures employed by the EU. In particular, he started by saying that there are four models of the rule of law compliance oversight/control which can be classified on the basis of the key institution, procedure, decision rule and object of protection. More in detail: the first tool is Article 7 TEU which is a political process; the second tool is soft law instruments (dialogues and reports) which is a technocratic process; the third tool is Article 258 TFEU which is a legal process; and finally the fourth tool is the Rule of Law Conditionality Regulation which is the budgetary process. He then highlighted the differences between the conditionality regulation originally proposed by the Commission in 2018 and the final version as it passed into law. In particular, he pointed out that the latter, which conforms more closely to the budgetary mode of control, confers too much power to the Council. Thus, it would be improved by giving greater scope for the involvement of the European Parliament and national parliaments, as well as interparliamentary bodies (e.g. COSAC and the Interparliamentary Conference on Stability, Economic Coordination and Governance). He concluded by saying that the Rule of Law

Conditionality Regulation, for the first time triggered in December 2022, led to the withholding of a significant portion of Hungary's EU funds. In his view, this is a hopeful indication of its likely effectiveness in comparison to the other rule of law tools.

The discussion continued with Doctor **Niall Moran** (DCU), who focused on the evolution of conditionality in EU financial assistance under the Recovery and Resilience Facility. He sees this form of conditionality as a new system of economic governance: the RRF sets out a new type of conditionality where NRRPs set out reforms and investments to be made in exchange for funding under RRF. As a consequence, he pointed out that the Commission needs to think carefully about the incentive structures it will create. Systems of governance must reward the vigilance and the completion of milestones in the areas covered by the RRF must not be perceived as bargaining tools to receive EU funding. Hence, the milestones contained in NRRPs represent a form of pragmatism that could only be considered a positive step where the goals are achieved. The Commission must avoid any perception that the rule of law is negotiable and that cross-issue linkages can be made in a kind of bargaining process. Therefore, recovery funds represent serious leverage in the rule of law crisis and the green light for funding must only be given if the proposed reforms are likely to bring about the stated goals in the milestones in an unequivocal and enduring manner. In his analysis, he considered the experience of Italy, Poland and Hungary as this group includes two of the three largest, and the two most problematic, plans.

The last panellist, **Vasiliki Yiatrou** (European University Institute), delivered a presentation on how justice reforms under the conditionality of NGEU may affect consumer protection enforcement. In order to show that these reforms are going to affect financial consumer protection, she provided an empirical analysis taking into account several countries (namely Greece, Cyprus, Portugal and Ireland) which have adopted a pro-bank approach. She highlighted how this approach contradicts the approach of the CJEU. Consequently, this difference brings into question the legalistic explanation of the CJEU. These pro-bank outcomes co-occur with the European Semester setting Non-Performing Loans (NPLs) reduction as a national public priority, along with the pressure to adopt a more debt recovery approach in reforming the judicial system, and the reinforcement of traditional themes of contractual enforcement over themes of a fresh start. On the other hand, the cross-case analysis distinguishes Spain whose judges were keen to adopt an activist pro-consumer approach, for receiving lower pressure under the European Semester. According to her, this is a strong indication that the reforms of the national judicial systems and the insolvency frameworks under the conditionality of NGEU will aggravate the already low effectiveness of consumer protection, in the jurisdictions most needed, where the most aggressive debt recovery practices are present.

The Annual Conference was followed by a roundtable discussion on *Next Generation EU (NGEU), the Recovery Plan, and its implementation across the EU and in Ireland* with MEP Billy Kelleher.

You can find an overview of the issues and topics discussed [here](#).

The Conference proceedings will be published as Working Papers [on this link](#).