

The European Union's socio-economic recovery program of the Covid-19 pandemic: the legal peculiarities of the proposal¹

LUÍS FELIPE BORGES TAVEIRA²

Universidade Estadual Paulista (Brasil)

luis.taveira@unesp.br

Abstract

Faced with the Covid-19 pandemic, which has had repercussions in several areas of supranational and international competence, the European Union was forced to launch a concatenated and comprehensive recovery program in order to face the harmful consequences for the bloc's citizens. However, the agility to find consensus and the legal design of such a program happened in an unprecedented way in the history of integration. Despite the notorious mobilization of political agents about this pandemic crisis, it is necessary to look into the factual and legal factors that made such a quick and consensual response possible. Thus, the object of this research translates into the identification, based on a dogmatic and documentary analysis, of the factual and legal conjuncture that involved European integration before and during the advent of such a pandemic. The general hypothesis to be answered is: did previous experiences and the protagonism of key actors in the discussion help the consensus and speed in the approval of the legal design of the European recovery program? By means of a documentary and bibliographical research, the recovery programs previously launched by the European bloc and their legal and socio-economic implications will be adopted as a starting point, then the analysis of the particularities and specificities of the new program launched to face the effects of the pandemic.

Keywords: European Union; Covid-19; Recovery Plan.

Summary

1. Introduction. 2. The Next Generation EU: content analysis of the decision-making process. 3. Does the Next Generation EU differ from predecessor rescue packages? 4. The legal dispute: what are the legal limits in the adoption of exceptional measures to face crises? 5. Conclusion. 6. References list.

¹ This study was financed in part by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (CAPES) - Finance Code 001.

² Master's student in Law at the Faculty of Human and Social Sciences (FCHS) at São Paulo State University (UNESP), campus Franca, e-mail luis.taveira@unesp.br, Lattes iD <http://lattes.cnpq.br/2784572759156523>, Orcid iD <https://orcid.org/0000-0002-0104-6276>, funding institution: CAPES.

1 INTRODUCTION

In July 2020, the European Union faced an overwhelming reality: at the beginning of the month, fatal victims from the Covid-19 virus already numbered more than 130,000 (World Health Organization, 2020, p. 11-13). Thus, the leaders and heads of State or Government met in an extraordinary way between the 17th and 21st of July of the same year, in order to address the measures and paths to be adopted by the bloc with the objective of facing the socio-economic effects caused by the pandemic (European Union, 2020b).

The conclusions presented by the General Secretariat of the Council, at the end of the meeting, were surprising: in just five days there was an agreement on the European Commission proposal that covered the recovery package called “Next Generation EU”, without giving up the Multiannual Financial Framework (“MFF”). The speed and apparent political homogeneity, as will be presented in this work, in the construction and approval of such an agreement deserve an accurate reflection on the factual and legal elements that provided the structuring and legal design of such agreement, when compared with previous programs of economic-budgetary viability in the EU.

It is also noted that there are three main legal and political components regarding the construction of such an agreement: (i) the time limitation of the recovery program; (ii) the extraordinary situation arising from the pandemic, which even gives rise to more flexible judicial interpretations; (iii) the role of European actors with previous experience in modeling similar programs.

The three aspects mentioned above are especially relevant when it is verified that the Union assumed the role of coordinating and programming, in a supranational way, the budgetary and financial response to the socio-economic repercussions that European citizens were experiencing at the time. Evidently, this finding gives rise to the fourth legal problem related to recovery packages: the legal conflict between European and national attributions on such exceptional measures.

Therefore, the goal of this research is the identification, from a dogmatic and documentary analysis, of the factual and legal conjuncture that involved European integration before and during the advent of such a pandemic. The general hypothesis to be answered is: did the previous experiences and the protagonism of key actors in the discussion help the consensus and speed in the approval of the legal design of the European recovery program?

Through documentary and bibliographic research, the decision-making process of the Next Generation will be adopted as a starting point and, later, the analysis of the particularities and specificities of the new program launched to face the effects of the pandemic will be carried out.

Hence, in the first part, will be addressed the European institutional decisions that cover the elaboration of the “Next Generation” recovery package, mainly through a documentary research aimed at the description and content analysis of the factual and legal elements that involve the discussions and decision-making process on such a package. In the second part, the object will be the comparison between the main elements that involve the approval process of the “Next Generation” and other rescue packages, among which the Public Sector Purchase Program and the Recovery Program resulting from the 2008 Crisis. Finally, the third part will be dedicated to the judicial discussion on the dispute that exists between the European Union and the national

plan on the legal challenges to make such exceptional measures viable in extraordinary circumstances, including referring to the judicial processes seen in the national courts and the Court of Justice of the European Union, which have as their object the aforementioned rescue packages.

2 THE NEXT GENERATION EU: CONTENT ANALYSIS OF THE DECISION-MAKING PROCESS

Considering the impacting socio-economic effects that the European Union has experienced throughout the Covid-19 pandemic, the institutional choice for the feasibility of a voluminous and comprehensive recovery plan brings relevant legal justifications and repercussions. In this context, the examination of the rationale used by the European institutions for the creation of such a program becomes relevant, notably to assess the proportionality between the scope of the plan and the Union's competences in such a context.

The European Commission, on 27th of May 2020, forwarded the proposal for the Multiannual Financial Framework from 2021 to 2027, in order to include a recovery plan that made possible the financial framework against the economic and social effects of Covid-19, with the claim to also unlock investments in the European Green Deal and in European digitization efforts (European Union, 2020a).

This plan was the subject of deliberation by the European Council between the 17th and 21st of July 2020. Clearly, in the conclusion published by the General Secretariat of the Council, it is evident that this collegiate was mobilized "focused on protecting citizens and overcoming crisis", thus justifying innovative measures that promote "convergence, resilience and transformation in the European Union" (European Union, 2020b, p. 2).

The trigger that made the Union adopt such a program is budgetary adequacy to the health reality, attributing an "exceptional character" to the economic and social crisis, demanding also exceptional measures. The consensus on the attributes of the program are also exposed in the document published by the General Secretariat, which characterizes it as: (i) substantial - "the effects of the crisis are far-reaching"; (ii) targeted - "must target the regions and sectors most affected by the crisis"; (iii) limited in time - "the MFF and the rules governing it continue to constitute the basic framework for the Union's budget planning and execution" (European Union, 2020b, p. 3).

The choice about the volume of resources and the best distribution instruments, however, is not trivial. Not coincidentally, the document itself underlines the apparent homogeneity in the approval of such a package: "the conclusions present a balanced solution that takes into account the interests and positions of all Member States" (EUROPEAN UNION, 2020b, p. 2). In particular, the Council's intention was, in the context of the creation of such a program, to simultaneously support "the ecological and digital priorities of the Union", including authorizing the contracting of loans on behalf of the Union in the capital markets (European Union, 2020b, p. 3).

O volume de recursos autorizado de modo consensual para a contratação de tais empréstimos alcançou o valor de 750 bilhões de euros, a serem atualizados monetariamente a partir de 2018. Por outro lado, as contratações teriam como limite o final de 2026, isto é, este é o prazo final para "qualquer nova atividade líquida de

contratação de empréstimos”. No entanto, a quitação do passivo, em si, deveria ocorrer até o último dia de 2058 (European Union, 2020b, p. 4-6).

The destination of such resources, in turn, would suffer some limitations: (i) they could only be used to “deal with the consequences of the COVID-19 crisis”; (ii) up to 360 billion euros should be earmarked for lending, the entirety of which is earmarked for the “recovery and resilience mechanism”³; (iii) up 390 billions euros should be use to the payment of expenses or subsidies, with 312,5 billions euros earmarked for the “recovery and resilience mechanism” and the remainder divided between the REACT-EU⁴, Horizon Europe⁵, InvestEU⁶, Rural Development⁷, Just Transition Fund⁸ e RescEU⁹; (iv) the loans to Member States, which would be provided through the Recovery and Resilience Mechanism, could not exceed 6.8% of each country's respective gross national income, in addition to having to be authorized by the end of 2023; (v) the criterion for apportioning amounts lent to Member States should be the “loss of real GDP observed throughout 2020 and the cumulative loss of real GDP observed during the period 2020-2021” (European Union, 2020b, p. 4-6).

As it was found that the economic implications were not identical between Member States, with a large variance between the real GDP losses of each country (Zorell and Tordoir, 2021), the EU proposed a criterion for the allocation of subsidies and of loans that takes into account such heterogeneity.

In particular, the feasibility of such a program was linked to the EU's climate goals, given that 30% of the total value of the Next Generation should be allocated to meet actions and projects related to the EU's climate neutrality objective by 2050, in addition to “contributing to towards the achievement of the Union's new climate goals for 2030”. Furthermore, “all EU expenditure must be in line with the objectives of the Paris Agreement” (European Union, 2020b, p. 8).

With the Council's approval, an important paradigm was established in the definition of the Union's long-term budget: the Framework would cover the period from 2021 to 2027, aiming not only to provide answers to the effects of the pandemic in the EU, but also “to respond to the challenges current and future and implement their political priorities” (European Union, 2020b, p. 11).

³ As described by the European Commission, the Recovery and Resilience Mechanism “will make it possible to provide financial support for investments and reforms, including with regard to ecological and digital transitions and the resilience of national economies, linking them with EU priorities” (European Union, 2020a)

⁴ The REACT-EU is a recovery program created within the framework of the Next Generation EU, to which 50.6 billion euros will be allocated. The intention is that the package is particularly intended for job recovery and investments for growth and cross-border cooperation. The criteria for distributing the values follows the same pattern: countries that have suffered the greatest social and economic impact, especially through the measurement of the drop in employability and GDP, will receive more resources (European Union, 2022b).

⁵ The Horizon Europe “is the EU's key funding programme for research and innovation. It tackles climate change, helps to achieve the UN's Sustainable Development Goals and boosts the EU's competitiveness and growth” (European Union, 2022c).

⁶ The InvestEU is the EU's investment program aimed at supporting initiatives related to sustainability, innovation and job creation in the bloc. The program aims to enable more than €370 billion in additional private investment between 2021 and 2027 (European Union, 2022d).

⁷ The Rural Development Program is aimed at growth, employment and quality of life in rural areas of the EU, having as global objectives: “improving the competitiveness of agriculture, achieving sustainable management of natural resources and climate action, and a balanced territorial development of rural areas” (European Union, 2022e).

⁸ The Just Transition Fund is one of the instruments through which the EU aims to make the transition to climate neutrality viable in 2050. Thus, unlike InvestEU, which focuses on private investments, the Fund aims to promote grants, as another European promotion measure to the climate transition (European Union, 2022f).

⁹ The RescEU is the Union's civil protection mechanism, aiming to strengthen cooperation between Member States to improve disaster prevention, preparedness and response (European Union, 2022g).

In fact, the analysis of the content of the negotiation between the European Parliament and the Council admits that there are six pillars around the Recovery and Resilience Mechanism: (i) ecological transition; (ii) digital transformation; (iii) smart, sustainable and inclusive growth and employment; (iv) social and territorial cohesion; (v) health and resilience; (vi) policies for the next generation, children and youth (European Union, 2020d).

The structuring of such a rescue program is reportedly related to the security of investment financing and the strengthening of European integration, as expressed by European Commission President Ursula von der Leyen and Executive Vice President Valdis Dombrovskis (European Union, 2020d). The same perception is shared by Giovannini *et al* (2020), who claim that such a package represents “an important milestone in European economic policy integration”.

The volume of resources, in fact, is extensive and the distribution criterion includes the design of the quota that each Member State will receive under the heading of grants, that is, without the need for reimbursement, under the Recovery and Resilience Mechanism:

Country	Total amount of grants (billions euros)	Percentage of the total
Austria	3,75	1,11%
Belgium	4,52	1,34%
Bulgaria	5,69	1,68%
Croatia	5,51	1,63%
Rep. of Cyprus	0,915	0,27%
Czech Rep.	7,67	2,27%
Denmark	1,42	0,42%
Estonia	0,863	0,26%
Finland	1,82	0,54%
France	37,45	11,08%
Germany	28,02	8,29%
Greece	17,43	5,16%
Hungary	5,81	1,72%
Ireland	0,914	0,27%
Italy	69,04	20,43%
Latvia	1,83	0,54%
Lithuania	2,09	0,62%

Luxembourg	0,082	0,02%
Malta	0,025	0,01%
Netherlands	4,70	1,39%
Poland	22,52	6,66%
Portugal	15,54	4,60%
Romania	12,12	3,59%
Slovakia	6,00	1,78%
Slovenia	1,49	0,44%
Spain	77,23	22,85%
Sweden	3,18	0,94%
TOTAL	337,969	100%

Source: prepared by the author himself, based on the European Union (2020e).

While approval by the Council guarantees the Commission the possibility of authorizing the use of own funds within the scope of Next Generation, the contracting of loans still requires the ratification of the decision by all Member States, in accordance with their respective national constitutional requirements (European Union, 2020c).

3 DOES THE NEXT GENERATION EU DIFFER FROM PREDECESSOR RESCUE PACKAGES?

Unequivocally, the volume of resources and the homogeneity in the decision to create the stimulus package as a result of the Covid-19 pandemic do not take precedence. The dynamism of the Next Generation, in relation to the exceptional circumstance facing the European bloc, requires a detailed analytical examination of the factors that explain the reasons why the decision-making process made possible the originality that such a plan carries, in relation to the stimulus packages previously created by the EU.

The first difference that stands out is the financing model of the package: while the European Economic Recovery Plan, of 2008, was only intended to coordinate national budgetary stimuli, the Next Generation effectively constitutes a financing model that supports and opens up opportunities for public expenditure, through the EU (Giovaninni et al, 2020).

Another substantial difference concerns the co-responsibility of Member States' debts: unlike other fiscal or monetary stimulus packages, Next Generation does not assign co-responsibility between Member States, that is, in the event of default, a country will not assume the debt of another (Hinarejos, 2020).

Notably, this change aims to respond to European fears arising from the German Federal Constitutional Court's decision on the Public Sector Purchase Program (PSPP), as will be seen in the next topic of this work. However, it is also noted that the same asset purchase program, created in 2015, left a positive impression on the

Governing Council of the European Central Bank (ECB) on its ability to fulfill the objective of promoting greater liquidity in the markets and driving inflation to its target (European Union, 2015b; European Union, 2015c; European Union, 2020f; European Union, 2020g).

Faced with such responsive discourses on the success of the PSPP, the existence of the co-responsibility mechanism would bring more harm than good: at the same time that the mechanism was no longer relevant for the economic balance of rescue programs, the mere existence of such co-responsibility became crucial for examining the legal feasibility of asset purchase programs.

Furthermore, an original conditionality mechanism was introduced in the new package: for loans and grants to be approved, each Member State must ensure national recovery and resilience plans consistent with the recommendations and key areas defined by the Parliament, Commission and Council - namely, the European environmental and digital intention should be the object of priority planning by each country (Hinarejos 2020; Zorell and Tordoir, 2021).

A curious effect that such a conditionality mechanism produced was the choice of former President of the ECB's Governing Council, Mario Draghi, for the post of Italian Prime Minister, from February 2021. Notably related to the national political debate on how the country should use the funds arising from Next Generation, Draghi's appointment to the post, intended that the Italian choices on the destination of the funds' resources were approved by the EU. Evidently, the realization was that Draghi was "more trustworthy player to European partners", tending to harmonize the conditional arrangement required by the Union and the pretensions of Italian policy (Mingardi, 2021).

The fourth original feature of the Next Generation plan is the dichotomy in the perception of the speed of the EU's response to the health crisis: the bloc was criticized, at the beginning, for having neglected its attributions and not having taken a leading role in the response to the crisis. However, with the approved package, the idea was to present the opposite to citizens, that is, the signs that European solidarity is the way to face the crisis and break the common sense that the EU only approves austerity measures (Krumpholz et al, 2022). Furthermore, this popular perception coexists with the opposite opinion of another part of the citizens: the package can help to quickly face the effects of the crisis (Zorell and Tordoir, 2021).

This dichotomy, not by chance, coexists with the change of recommendations that the International Monetary Fund usually prescribes: in the face of the pandemic crisis, the IMF momentarily sidelined the Washington Consensus¹⁰ and went on to recommend that countries increase public spending, particularly on public health-related expenditures and on investment and consumption, in order to ensure "large output effects"¹¹ (International Monetary Fund, 2020; Celasun, Christiansen and MacDonald, 2020).

¹⁰ Academically, the Washington Consensus is identified, within the scope of the IMF's activities, as the prescription of a homogeneous prescription for the entire world, which mainly involves five elements: (i) trade liberalization; (ii) deregulation of the economy; (iii) privatizations; (iv) reduction of the tax burden; (v) reduction of public spending (Aziz and Wescott, 1997; Naim, 1998; Williamson, 2004).

¹¹ The IMF's explicit recommendation text is: "The evidence suggests that public spending (investment and consumption) is the most potent fiscal instrument, generating large output effects with multipliers greater than one. Fiscal stimulus is especially powerful when the economy has slack and monetary policy is accommodative—circumstances that characterize a demand-driven

4 THE LEGAL DISPUTE: WHAT ARE THE LEGAL LIMITS IN THE ADOPTION OF EXCEPTIONAL MEASURES TO FACE CRISES?

The European legal debate about emergency programs related to the fight against socio-economic effects caused by exceptional circumstances started to gain relevance as more initiatives were needed to face the recurring crises that the European Union faces in the 21st century. The explosive combination of austerity measures and monetary easing and decision-making at the supranational level caused legal actions representing the importance of the subject in the scope of European Union Law.

In the decade that began in 2010, the Constitutional Court of Portugal examined relevant questions about the emergency programs brought to the fore by European institutions, especially in the judgments n°. 396/2011 (Portugal, 2011), 353/2012 (Portugal, 2012), 187/2013 (Portugal, 2013a) e 474/2013 (Portugal, 2013b), which, respectively, have as their object the reductions in remuneration applicable to civil servants, the suspension of payment of holiday and Christmas allowances in 2012, the suspension of the same payment in 2013 and the dismissal of civil servants. All these judgments concern the conditionalities and requirements of the *Troika* for the feasibility of the economic rescue program that the country enjoyed at the time - as can be seen, the requirements are related to the austerity measures demanded.

After analyzing such decisions, it is possible to distinguish two periods over which the Portuguese Constitutional Court takes the lead in its decisions: (i) at first, there is greater tolerance for measures and requirements by the *Troika* for the fiscal tightening in the country - the application of fiscal austerity measures were not judged as unconstitutional by the Court, "taking into account the international economic and financial situation"; (ii) with the continuity of the austerity measures, the second moment of the Portuguese Court on such measures is entered - tolerance for the constitutional erosion caused by the *Troika*, aiming at reassuring rights and constitutional principles to citizens, especially to civil servants, notably in view of the realization that there was an indefinite extension of such austerity measures, which should be temporary (Medeiros, 2015, p. 66-70).

In addition to the decisions of the Portuguese Court, the German Constitutional Court also carried out important decisions - and jurisprudential changes - on emergency programs created by the European Union.

The monetary program Public Sector Purchase Programme (PSPP), created by the European Central Bank in 2015 and which involves the purchase of public assets on the secondary market, was the subject of a lawsuit in the German Federal Constitutional Court (GFCC). In May 2020, the 2nd Panel of that Court ruled that the transfer of sovereign powers to the European Union would not cover the creation of the aforementioned government asset purchase program, as this would be disproportionate. The decision was that the *Bundestag* and the German Executive should adopt measures so that the program was adequate to the proportionality required by the Basic Law (Germany, 2020).

Evidently, the decision of the national Court brought a new concern to the emergency programs that the European Union creates to face the exceptional circumstances that result from the successive crises that the bloc has faced. As the need

downturn and will likely be relevant after the pandemic recedes. Discretionary fiscal measures have helped counter shocks in the past, but often come with a delay" (International Monetary Fund, 2020).

to maintain or create new monetary and fiscal stimuli does not cease, the shadow of the 2020 decision of the German Court grows, demanding that European institutions reinforce the legal design of its proposals.

In response, the official discourse of the European Central Bank is that its decisions are subject to judicial control only by the Court of Justice of the European Union (European Union, 2020e) - which is convenient, after all, the CJEU revalidated the legal adequacy of monetary stimulus programs in previous ECB decisions, as in the Weiss case¹² (European Union, 2018) and the Gauweiler case¹³ (European Union, 2015a).

In fact, the official position of the ECB came in handy above all until the 2015 decision of the European Court. After all, the Gauweiler case was referred by the same national court, the CCFA, so that the CJEU could examine the adequacy of the monetary programs brought up by the ECB in 2010, in the Euro rescue plan, with the constitutive Treaties. As the decision of the European Court validated the decisions of the ECB, endorsing the foundations provided by the monetary authority to justify the creation of the program (European Union, 2015a), the CCFA complied with the decision of the CJEU, although it has noted that it is up to the *Bundestag* and the Federal Government the responsibility to adapt the European decision to the "integration agenda", including using judicial measures before the CJEU and national courts, if they observe that such decisions exceed the competences constitutionally transferred to the Union (Germany 2016).

With the change caused by the same German Court in 2020, the fear was that, due to the legal innovation brought about by the CCFA, the traditional German and European jurisprudence on emergency programs created by the ECB and the European Commission to face exceptional circumstances arising from crises that affect the bloc.

However, in 2021, in a preliminary judgment, the German Court addressed the "Next Generation" program, which is the object of study in this work and which involves measures to combat the socio-economic effects resulting from the pandemic. Although it is a preliminary decision, this ruling faces, again, allegations that the European act goes beyond the constitutional transfer of national powers to the European Union. Although the judgment expressly states that a summary decision does not address the characterization of such programs as "ultra vires" (Germany, 2021, p. 5), in order to prevent the lengthy process of referral to the CJEU from being carried out (Germany, 2021, p. 14), it is unequivocal that the rights of the Basic Law invoked are linked to the constitutional identity and the doubt about its adequacy to the "European agenda".

In the preliminary decision, the CCFA judged that the act that ratifies the "Own Resources Decision" and the multiannual financial framework should not be understood as an act that transfers sovereign powers, given that such programs do not alter the European integration agenda that the Basic Law admits (Germany, 2021, p. 7). Whether from the perspective of internal admission, through the ratification process,

¹² In the Weiss case, the CJEU decided that the already discussed PSPP is in line with the ECB's attributions provided for in the Constitutive Treaties of the European Union (European Union, 2018).

¹³ The Gauweiler case was the court decision, by the CJEU, on the 2010 Euro rescue program, which covered the purchase of public bonds from Member States that make up the Euro area, in order to ensure indirect financing in the secondary. The European Court interpreted that the Constitutive Treaties allow the execution of such programs in the secondary market (European Union, 2015a).

or under the pillar of preserving the fundamental rights of national citizens, the CCFA rejected the authors' arguments (Germany, 2021, p. 7-8).

Thus, the argument that there was a violation of the democratic principle and the preservation of the Bundestag's budgetary powers was not accepted, namely due to the non-permanent nature of the measures and given that it was not possible to verify whether the position of the national Parliament of retain "sufficient influence" to determine how the funds will be used (Germany, 2021, p. 8-9). According to the Court, it is necessary to wait for the design and final application of such programs, in order to observe the role of the *Bundestag* in such decisions.

Although the Court has expressed concern about the possibility of the "slice" of financial responsibility that Germany may assume, in the event of a possible European insolvency regarding the raising of financial resources in the capital market, within the scope of the "Own Resources Decision", there would be no feasibility to stop the ratification of programs at this point - although there remains an open controversy about the possibility of rescue mechanisms harming the budget allocation of the *Bundestag* (Germany, 2021, p. 11).

It is noted, therefore, that the very change of interpretation by the CCFA requires from the European institutions an additional concern about the adequacy of the programs to the new interpretative path that this national Court applies. Similarly, the decision of the Portuguese Court on the requirements of the *Troika* could also lead to widespread fear in the Union, so as to paralyze the creation of new emergency programs.

However, in the case of the Next Generation program, the political arrangement in the Council, the Commission and the Parliament was surprisingly homogeneous - at least from a discursive perspective - and aimed at combating the socio-economic effects of the pandemic in the exact measure of the terms approved by the institutions. of the EU. The result of this is that there was no feared stoppage, but an agile approval of the package with the most volume of resources in the history of the Union.

5 CONCLUSION

The aim of this work was to investigate the factual and legal elements that provided the quick and apparently homogeneous decision to create the rescue package to face the health crisis resulting from the Covid-19 pandemic. The specific objective was to investigate whether such elements were not present in previous responses to relevant socio-economic crises in the European bloc, from four perspectives: (i) was there any previous experience in the legal structuring of recovery programs?; (ii) was it possible to observe theoretical and institutional support - and even alignment - at the national, supranational and international levels?; (iii) was there a consensus and homogeneity among European leaders on the measures to be adopted, the volume of resources and the counterparts?; (iv) what is the jurisprudential context of national and EU courts on such recovery programmes?

At first, the means was to go through the particularities seen in the approval of the Next Generation UE. Subsequently, the path used was to set this process in a historical perspective, namely by comparing the decision-making processes that include the PSPP and the 2008 Crisis Recovery Plan. Under this pillar, it became evident that the Next Generation benefited from the experience previous approval of such

emergency programs, being able to concatenate unprecedented arrangements: simultaneously, the Next Generation is more ambitious, from an institutional perspective, with the creation of a conditionality mechanism for the allocation of funds, requiring EU approval of rescue plans although, at the same time, it assures the Member States of national budgetary sovereignty, with the absence of any form of co-responsibility between the countries for possible defaults.

In a similar way, the jurisprudential reality, from the examination of decisions handed down by the CJEU and by national courts, showed to political actors the need to design a legal structure capable of avoiding questions about the competence of the Union in relation to the adoption of such laws. exceptional measures. The decisions of the German and Portuguese Constitutional Courts, instead of paralyzing supranational decisions in relation to emergency programs, served to bring more homogeneity in the plan and greater powers to the EU, including the conditionality mechanism for the release of funds.

However, substantial changes in relation to previous restoration programs are noticeable: it was not intended to create conditional arrangements identified as “austere”, but rather conditionality mechanisms linked to environmental sustainability and digital innovation. There is also no co-responsibility between Member States in the event of default on any Next Generation-related credit.

In view of this, it is concluded that there are five factors that explain the volume of resources, the speed in approving the package, the conditionality mechanism elected and the homogeneity in the agreement: (i) the success of the largest monetary stimulus program seen so far, the PSPP; (ii) the appointment of “euro-friendly” leaders, capable of creating national rescue plans in line with European digital and environmental ambitions, such as Mario Draghi in Italy; (iii) the change in IMF recommendations, bringing an important instrument to validate the substantial increase in European public expenditure; (iv) changes in the interpretation of national Courts on stimulus programs and the previously tried conditionality and austerity mechanisms.

6 REFERENCES

1. Aziz, Jahangir; Wescott, Robert (1997). Policy complementarities and the Washington Consensus. *IMF Working Paper*. Available at <https://www.imf.org/external/pubs/ft/wp/wp97118.pdf> (Accessed on 21st August 2022).
2. Celasun, Oya; Christiansen, Lone; MacDonald, Margaux (2020). *The Crisis is Not Over, Keep Spending (Wisely)*. Washington: IMF Blog, 2020. Available at <https://blogs.imf.org/2020/11/02/the-crisis-is-not-over-keep-spending-wisely/> (Accessed on 21st August 2022).
3. European Union (2015a). Tribunal de Justiça da União Europeia. Grande Seção. *Processo C-62/14*. ECLI:EU:C:2015:400. Autor: Peter Gauweiler e outros. Réu: Bundestag. Pedido de decisão prejudicial: Bundesverfassungsgericht - Alemanha. Luxemburgo, 16 de junho de 2015. Available at <https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:62014CJ0062&from=EN> (Accessed on 4th October 2021).
4. European Union (2015b). Banco Central Europeu. *Account of the monetary policy meeting*. 14-15 April 2015. Frankfurt am Main: BCE. Available at <https://www.ecb.europa.eu/press/accounts/2015/html/mg150521.en.html> (Accessed on 29th March 2022).
5. European Union (2015c). Banco Central Europeu. *Account of the monetary policy meeting*. 2-3 September 2015. Frankfurt am Main: BCE. Available at <https://www.ecb.europa.eu/press/accounts/2015/html/mg150521.en.html> (Accessed on 29th March 2022).
6. European Union (2018). Tribunal de Justiça da União Europeia. Grande Seção. *Processo C-493/17*. ECLI:EU:C:2018:1000. Autor: Heinrich Weiss e outros. Réu: Bundestag e outros. Pedido de decisão prejudicial: Bundesverfassungsgericht - Alemanha. Luxemburgo, 11 de dezembro de 2018. Available at <https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:62017CJ0493&from=EN>

- lex.europa.eu/legal-content/PT/TXT/?uri=CELEX%3A62017CJ0493&qid=1622844043109 (Accessed on 04th June 2021).
7. European Union (2020a). Comissão Europeia. *A Hora da Europa: Reparar os Danos e Preparar o Futuro para a Próxima Geração*. Bruxelas: Comissão Europeia. Available at https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_940 (Accessed on 11st August 2020).
8. European Union (2020b). Conselho Europeu. *Reunião extraordinária do Conselho Europeu (17, 18, 19, 20 e 21 de julho de 2020)*. Bruxelas: Conselho Europeu. Available at <https://www.consilium.europa.eu/media/45120/210720-euco-final-conclusions-pt.pdf> (Accessed on 9th August 2020).
9. European Union (2020c). Comissão Europeia. *Orçamento da UE: A Comissão Europeia congratula-se com a adoção do orçamento de longo prazo da UE para 2021-2027*. Bruxelas: Comissão Europeia. Available at https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_2469 (Accessed on 11st August 2020).
10. European Union (2020d). Comissão Europeia. *Comissão congratula-se com acordo político sobre o Mecanismo de Recuperação e Resiliência*. Bruxelas: Comissão Europeia. Available at https://ec.europa.eu/commission/presscorner/detail/pt/ip_20_2397 (Accessed on 11st August 2020).
11. European Union (2020e). Banco Central Europeu. *Press conference*. Christine Lagarde, President of the ECB, Luis de Guindos, Vice-President of the ECB, Frankfurt am Main, 4 June 2020. Frankfurt am Main: BCE. Available at <https://www.ecb.europa.eu/press/pressconf/2020/html/ecb.is200604~b479b8cfff.en.html> (Accessed on 27th March 2022).
12. European Union (2020f). Banco Central Europeu. *Account of the monetary policy meeting*. 11-12 December 2019. Frankfurt am Main: BCE. Available at <https://www.ecb.europa.eu/press/accounts/2020/html/ecb.mg200116~973b558e59.en.html> (Accessed on 29th March 2022).
13. European Union (2020g). Banco Central Europeu. *Account of the monetary policy meeting*. 22-23 January 2020. Frankfurt am Main: BCE. Available at <https://www.ecb.europa.eu/press/accounts/2020/html/ecb.mg200220~c4d71ec138.en.html> (Accessed on 29th March 2022).
14. European Union (2022a). Comissão Europeia. *Plano de recuperação para a Europa*. Bruxelas: Comissão Europeia. Available at https://ec.europa.eu/info/strategy/recovery-plan-europe_pt (Accessed on 9th August 2022).
15. European Union (2022b). European Commission. *REACT-EU*. Bruxelas: European Commission. Available at https://ec.europa.eu/regional_policy/en/newsroom/coronavirus-response/react-eu/ (Accessed on 16th October 2022).
16. European Union (2022c). European Commission. *Horizon Europe*. Bruxelas: European Commission. Available at https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes/horizon-europe_en (Accessed on 16th October 2022).
17. European Union (2022d). European Commission. *InvestEU*. Bruxelas: European Commission. Available at https://investeu.europa.eu/index_en (Accessed on 16th October 2022).
18. European Union (2022e). European Commission. *Rural Development*. Bruxelas: European Commission. Available at https://ec.europa.eu/regional_policy/en/policy/themes/rural-development/ (Accessed on 16th October 2022).
19. European Union (2022f). European Parliament. *Just Transition Fund*. Bruxelas: European Parliament. Available at <https://www.europarl.europa.eu/factsheets/en/sheet/214/fundo-para-uma-transicao-justa-ftj-> (Accessed on 16th October 2022).
20. European Union (2022g). European Commission. *Union Civil Protection Mechanism (rescEU)*. Bruxelas: European Commission. Available at https://ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes/union-civil-protection-mechanism-resceu_en (Accessed on 16th October 2022).
21. Germany (2016). Federal Constitutional Court (Second Senate). *Headnotes to the Judgment of the Second Senate of 21 June 2016*. 2 BvR 2728/13. Karlsruhe: Bundesverfassungsgericht, 2016. Available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2016/06/rs20160621_2bvr272813en.html (Accessed on 21th October 2021).
22. Germany (2020). Federal Constitutional Court (Second Senate). *Headnotes to the Judgment of the Second Senate of 5 May 2020*. 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15 e 2 BvR 980/16. Karlsruhe: Bundesverfassungsgericht. Available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/05/rs20200505_2bvr085915en.html (Accessed on 3rd May 2021).
23. Germany (2021). Federal Constitutional Court (Second Senate). *Headnotes to the Judgment of the Second Senate of 15 April 2021*. 2 BvR 547/21. Karlsruhe: Bundesverfassungsgericht. Available at https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/2021/04/rs20210415_2bvr054721en.pdf?__blob=publicationFile&v=2 (Accessed on 23rd October 2021).
24. Giovaninni, Alessandro; Hauptmeier, Sebastian; Leiner-Killinger, Nadine; Valenta, Vilém (2020). The fiscal implications of the EU's recovery package. *Economic Bulletin Boxes*, European Central Bank 6.
25. Hinarejos, Alicia (2020). Next Generation EU: On the Agreement of a COVID-19 Recovery Package. *European Law Review* 4: 451-452. Available at <https://dialnet.unirioja.es/servlet/articulo?codigo=7570996> (Accessed on 21st August 2022).

26. International Monetary Fund (2020). *World Economic Outlook - 2020 April*. Washington: IMF. Disponível em <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020> (Accessed on 21st August 2022).
27. Krumpholz, Barbara; Turnbull-Dugarte, Stuart J; Devine, Daniel (2022). Europe's Covid-19 recovery package has failed to increase public support for the EU. *LSE European Politics and Policy blog*, Londres, 11 Feb 2022. Available at <http://eprints.lse.ac.uk/113997/> (Accessed on 9th August 2022).
28. Medeiros, Rui (2015). *A constituição portuguesa num contexto global*. Lisboa: Editora Universidade Católica.
29. Mingardi, Alberto (2021). *Draghi leverages the EU Covid fund to push reforms*. GIS Reports, Liechtenstein, 26th Aug 2021. Available at <https://www.gisreportsonline.com/r/nextgenerationeu/> (Accessed on 23rd August 2022).
30. Naim, Moises (1999). Fads and Fashion in Economic Reforms: Washington Consensus or Washington Confusion?. *Foreign Policy Magazine*, oct. 1999. Available at <https://www.imf.org/external/pubs/ft/seminar/1999/reforms/Naim.HTM> (Accessed on 23rd August 2022).
31. Portugal (2011). Tribunal Constitucional (Plenário). *Acórdão n° 396/2011*. Processo n° 72/11. Lisboa: Tribunal Constitucional. Available at <http://www.tribunalconstitucional.pt/tc/acordaos/20110396.html> (Accessed on 21st August 2022).
32. Portugal (2012). Tribunal Constitucional (Plenário). *Acórdão n° 353/2012*. Processo n° 40/12. Lisboa: Tribunal Constitucional. Available at <http://www.tribunalconstitucional.pt/tc/acordaos/20120353.html> (Accessed on 21st August 2022).
33. Portugal (2013a). Tribunal Constitucional (Plenário). *Acórdão n° 187/2013*. Processo n° 2/2013, 5/2013, 8/2013 e 11/2013. Lisboa: Tribunal Constitucional. Available at <http://www.tribunalconstitucional.pt/tc/acordaos/20130187.html> (Accessed on 21st August 2022).
34. Portugal (2013b). Tribunal Constitucional (Plenário). *Acórdão n° 474/2013*. Processo n° 754/2013. Lisboa: Tribunal Constitucional. Available at <http://www.tribunalconstitucional.pt/tc/acordaos/20130474.html> (Accessed on 21st August 2022).
35. Williamson, John (2004). **The Washington Consensus as Policy Prescription for development**. Washington: World Bank. Available at <https://www.piie.com/publications/papers/williamson0204.pdf> (Accessed on 23rd August 2022).
36. World Health Organization (2020). **Coronavirus disease**. Situation Report - 163. Geneva: WHO. Available at <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200701-covid-19-sitrep-163.pdf> (Accessed on 09th August 2022).
37. Zorell, Nico; Tordoir, Sander (2021). Towards an effective implementation of the EU's recovery package. **Economic Bulletin Boxes**, European Central Bank 2.