

Public Finance Law and Public Administrations

The Shaping Power of Public Finance
in the European Union

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V Constructing a theory of the shaping power

General trends and perspectives

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General trends and perspectives

1. Lessons learned from the analysis

The previous chapters highlighted a number of important issues and trends serving to construct a theory of the shaping power of public finance law. To this end, this chapter first examines the main issues and general aspects that emerged in the foregoing analysis, identifying at least four lessons that can be drawn from the study. The lessons concern the tools on which the shaping power is based, how the power works, the context within which it arises and the relationships between the shaping power and certain administrative law reforms.

According to the theory, certain critical questions emerge, relating to an assessment of the impact of public financial rules on the public administration. First and foremost: do these rules improve or worsen public administration?

Answering this question requires revisiting some general concepts and principles, such as the principle of good administration, and relating them to the general principle of sound financial management. This implies considering the “relational dimension” of the shaping power. This dimension is characterized by three facets.

First, the relationship between public finance law and individuals (or, generally, civil society), in connection with the notion of good administration. In this regard, not only does financial regulation shape the structure of the public administration, but financial rules also affect how the public administration relates to civil society and, therefore, its ability to pursue general public interests and to protect fundamental rights.

The relational dimension of the shaping power also includes the relationship between the public administration and other public powers. From this perspective, the shaping effect of public financial rules involves the relationship between the national public administration and EU institutions (especially the Commission) and between the public administration (especially the budget administration) and other centres of public power within national systems.

Finally, the shaping power of financial rules affects the relationship between the public sector and private powers, especially economic power (enterprises, economic operators, etc.), reconfiguring it.

1.1. *The tools of the shaping power*

The tools of the shaping power consist especially of rules. As seen in previous chapters, these comprise EU rules and the national rules adopted to transpose and/or implement them. Therefore, throughout this book, the expression “EU public finance rules” encompasses national transposition and implementation rules as well.¹

Rules can belong to different categories. For example, there are the principles and constraints deriving from the EU Treaties and agreements, such as the SGP. The principle of sound financial management and the principle of the balanced budget (according to which the budgetary position of a Member State’s government must be balanced) are other examples. These are stringent and coercive rules, in that their violation leads to negative consequences for noncompliant Member States – initiation of an excessive deficit procedure, imposition of sanctions, etc. At the same time, the application of these rules leaves Member States some leeway.

More precisely, the principle of balanced budget is a highly “relative” rule and is dynamic and tendential in nature. Indeed, it refers to the sustainability of the budget in the medium term, encouraging the Member State’s gradual approximation to the EU’s parameters. The balance allows for forms of cyclical compensation between budget surpluses and deficits, as well as deviations from the objective in case of exceptional events. Although this category of rules is the most coercive type of tool, the rules are relatively pliable given that Member States can deviate from the parameters under certain conditions.

Another category consists of the EU acts adopted within the European Semester(s). In all cases examined in Chapter IV, it could be seen that the Commission’s recommendations (as CSRs) and reports or the Council’s recommendations and opinions, as well as other types of EU public acts, specified the interventions Member States were to adopt to pursue certain financial objectives, relevant to the national economic and financial cycle. These rules were not coercive in the strict sense, but, especially in some cases, their implementation was essential to obtain a positive assessment by the EU institutions and/or access to EU funds and other financial assistance.

European Semester acts are usually closely related to the parameters and principles defined in the EU Treaties and in the SGP. All rules are linked to one another. The recommendations of the European Semester are based on an assessment of the Member State’s compliance with parameters indicating stability. In turn, those recommendations affect the ESM’s financing programmes, and so on.

Generally, the tools through which the shaping power operates are characterized by a legal nature, necessary to produce the shaping effects.² Indeed, legal

1 The nature of financial rules is seen in detail in Chapter II, Section 1.2.1., which sets out a detailed description and taxonomy of EU financial rules. Only some types of rules are mentioned here.

2 This finding is in line with studies on the general impacts of EU law on national legal systems: among many, see T. Van Den Brink, *The impact of EU legislation on national legal systems: Towards a new approach to EU – member state relations*, in *Cambridge Yearbook of European Legal Studies*, vol. 19, 2017, p. 211; P. Eeckhout, *The growing influence of European Union law*, in *Fordham International Law Journal*, 2011, p. 1490. More generally, the phenomenon of “juridification” indicates

rules have a recognizable form, valid for all Member States. They are official, as emanations of the EU's power. Also, they are supported by enforcement instruments. In other terms, the tools of the shaping power are “legally existing” rules.³ Means without a legal nature may have the capacity to produce effects; consider rating agencies' assessments, which are not legal in nature but have incisive effects on markets and national economies. However, these effects are not legally shaping – they cannot affect the public administration.

In this sense, the legal nature of the instruments, through which the power manifests, is a specific and structural characteristic of power itself. The shaping power of public finance needs legal rules – hence, the shaping power of public finance law. This has been clear since the beginning of this book, to the extent that could almost be considered to presuppose the study. However, this is not a foregone conclusion, because these legal rules are quite peculiar.

The means are, in fact, rules “with broad meshes”. They are neither general rules nor detailed rules in the strict sense. They are “open-structured” rules conditioned by utilitarian considerations. They are necessary in order to follow the right direction. If the Member State does not comply and takes the wrong path, it commits an infringement (given the legal nature of the rule) and suffers negative consequences that it would be convenient to avoid (utilitarian perspective). If the State takes the right direction, the rules support and encourage it, relying on the State's capabilities and timing.

As regards their contents, the rules (especially those examined) often contain very well-defined indications. The EU financial rules indicate the interventions that the Member State must implement. Therefore, the contents and types of national interventions are directly decided at the EU level, especially by the Commission's technical bodies and offices. This is an interesting trend, which has grown over time (significantly accelerated by NextGeneration EU). It is a break with the past or, at least, a new configuration of the relationship between Member States and the EU.⁴

Some important questions emerge: at the EU level, and in the Commission especially, is there a clear idea of how national public administrations work and how they can be improved? Or is this a “one-size-fits-all” approach, generically applied to all Member States?

Both in the European Semester CSRs and in the assessments and reports associated with the RRP and related funding, a uniform method emerges. The EU acts and rules consider the same aspects for each Member State, analyze the state's

the centrality of law or regulation and its effects: more recently and with regard to the financial sector, S. Eriksson, The centrality of law for EU sustainable finance markets: Outlining a research agenda, in *Review of European, Comparative & International Environmental Law-RECIEL*, vol. 33, no. 1, 2024, p. 57.

3 A definition elaborated by A.M. Sandulli, *L'attività normativa della pubblica amministrazione. Origini-funzioni-caratteri*, Naples: Jovene, 1970, especially p. 95.

4 In more general terms, A. Bradford, *The Brussels effect. How the European Union rules the world*, Oxford: Oxford University Press, 2020, p. 67.

(recent) history, focus on the state of the art and rely heavily on acts and declarations of national authorities (although they do not consider case law or scholarship).

As stated in one of the Commission's evaluation reports published within Next-Generation EU, the RRF has been a mechanism for the Commission to become closely acquainted with the Member States. Indeed, it could study national systems in detail, in order to evaluate their reforms and investment programmes.⁵ Moreover, "the governance structure of the RRF combines a strong role for both the Commission and the Council in a multilateral setting and provides for close scrutiny by the European Parliament during the implementation".⁶ In this sense, a form of co-management has developed between the EU institutions and Member States. Therefore, these rules and measures are the result of an almost contractual and, more recently, co-management process, which examines the merits of the interventions. This is all the more so, considering that some areas of administrative relevance are already governed by EU rules, such as public procurement, competition and public services, etc.

This form of co-management and influence of EU institutions on the contents of national measures and programmes implies a gradual process of standardization of public policies in the Member States. This process seems set to strengthen through the design of EU funding instruments, which is increasingly characterized by "a clear focus on EU policy priorities, including by way of mandatory expenditure targets to promote the climate and digital transitions, combined with a country-specific approach based on the European Semester process".⁷

Hence, we can answer both questions. EU financial rules and acts are the result of the Commission's in-depth studies of Member States, analyzing individual sectors and matters in detail. Such a trend has become even stronger with the RRF. Nevertheless, these studies take a macro approach and are unaware of the concrete internal situation of the public administration in each Member State. Individual recommendations and reports are based on a homogeneous method that considers national realities and differences, but not the real needs of public administrations (especially at local level). As will be seen later, this is a vicious cycle. The Commission can only consider what Member States actually communicate to it. Thus, the more precise and timely the information provided by Member States, the better the Commission can reconstruct the situation of the national public administration and adopt effective recommendations. Conversely, there is a sort of short circuit.⁸

5 Commission staff working document, Mid-term evaluation of the Recovery and Resilience Facility. Accompanying the document "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Mid-Term Evaluation of the Recovery and Resilience Facility: Strengthening the EU through ambitious reforms and investments {COM(2024) 82 final}", 21 February 2024.

6 Commission staff working document, "Mid-term evaluation of the Recovery and Resilience Facility", p. 80.

7 Commission staff working document, "Mid-term evaluation of the Recovery and Resilience Facility", p. 84.

8 See Section 3.3. of this chapter and Chapter VI.

Moreover, it is becoming increasingly evident that such EU acts and rules lead to increasingly convergent public programmes and policies in Member States. These policies pursue EU interests and affect national public administrations to an increasingly complete extent and in multiple areas, even beyond the EU's spheres of competence (exclusive or shared). From this point of view, public finance law exercises a shaping power that is specifically oriented towards EU values and interests, determining – an indirect and de facto – expansion of EU competence, which appears to challenge the principle of conferral.⁹

1.2. How the shaping power works

The second lesson concerns how the shaping power of public finance law works. This is a complex point that can be expressed as follows: the shaping power operates on the basis of a “strong impetus”, which is different from the nudging approach, the logic of moral suasion or the conditionality mechanism.

Some differences are evident. The nudging approach is characterized by implicit encouragement towards a certain option that is preferable for several reasons.¹⁰ This is not the case with EU public finance regulation: the case studies show how EU measures and recommendations contain precise indications that, generally, leave no scope for multiple options and attach specific consequences to violations. Moral suasion is even more different. This consists in authoritative moral persuasion, which aims to guide choices and behaviours based mainly on prestige and the positive value of what is addressed.¹¹

The difference between the shaping power and the conditionality mechanism is less clear. A vast body of literature on EU public finance law and NextGeneration EU highlights how the latest EU programmes and measures use conditionalities when granting funds.¹² However, conditionalities are only one tool of EU public

9 The trend consists in the development of peculiar and informal implied competences in the financial sector. “Informal”, because they emerged beyond the scope of Article 352 TFEU. More generally, P. Eeckhout, *The doctrine of implied powers*, in *EU external relations law*, 2nd edition, Oxford: Oxford European Union Law Library, 2011, p. 70. See also B. De Witte, *Legal methods for the study of EU institutional practice*, in *European Constitutional Law Review*, vol. 18, 2022, p. 637, who interpreted the Treaties in an evolutionary manner, also in terms of competences.

10 A renowned work on this topic, examined as a general trend, is R.H. Thaler and C.R. Sunstein, *Nudge*, The final edition, New York: Penguin, 2021.

11 C.J. Ting, *Examining the influence of moral suasion on sovereign debt default risk*, in *Asia Pacific Management Review*, vol. 4, no. 1, 2019, p. 44, which studied whether moral suasion contributed towards reducing the sovereign debt default risk in some EU Member States. A similar logic is described by L. De Lucia, “Pastorato” e “disciplinamento” nella governance economica europea, in *Diritto pubblico*, 2016, p. 867.

12 Economic and financial conditionality has a long history and has always been controversial: G. Bird, *The effectiveness of conditionality and the political economy of policy reform: Is it simply a matter of political will?* in *The Journal of Policy Reform*, vol. 2, no. 1, 1998, p. 89; S. Schadler, A. Bennett, M. Carkovic, L. Dicks-Mireaux, M. Mecagni, J. John and M.A. Savastano, *IMF conditionality: Experience under stand-by and extended arrangements, part I: Key issues and findings, and part II: Background papers, occasional papers, no. 128*, IMF, 1995.

finance law; the mechanism does not exhaustively describe the dynamics characterizing EU public finance law and its impacts on the Member States. In relation to the shaping power, it differs from the conditionality mechanism in at least two respects.

First, the logic behind the EU regulation of public finance is much more complex than that of a mere conditionality approach. This logic can be defined as a “strengthened” logic. It is divided into three components, that can be called “political-compromise”, “legal-imposing”, and “evolutionary-programmatic”.

The political-compromise component is the preeminent and foundational one. It consists in the fact that EU public finance instruments are the result of an inter-governmental will (expressed especially by the Council), aimed at ensuring certain balances between the Member States, especially on the economic level. The legal-imposing component seeks to strengthen and solidify this will by transferring decisions into legal acts and instruments, thus making it possible to attach consequences (responsibilities, procedures, sanctions) to their infringement. The evolutionary-programmatic component further strengthens intergovernmental balances, providing that public finance rules and measures must follow specific programmes, with future impacts especially on the public sector, as seen in the case studies in Chapter IV.

Second, the logic inspiring the shaping power of EU public finance law is both permanent and mutually useful, features that the notion of conditionality does not have. As for permanence, conditionality is usually a requirement to obtain something, but is (often) temporary in nature. The instruments of EU public finance law seek to consolidate permanent behaviours in Member States, based on financial rigour and aimed at the stability of the euro area.

As for mutual utility, conditionality aims to satisfy the interests of those who set the conditions. Thus, the interest generally belongs to the party who set the condition, to the detriment of the one who must meet it to obtain something in exchange (a loan or something else). Conversely, in the case of EU financial rules – even those that provide for financial conditionalities – both the EU and the Member State in question have an interest in the fulfillment of the condition. The EU because fulfillment responds to a specific plan linked to the EU project (consider the conditionality mechanisms linked to compliance with the rule of law). The Member State because fulfillment brings not only income (financing) but especially an improvement and evolution of the State in terms of long-term development (and of the advancement of democratic values).¹³ Hence, EU conditionalities too are not genuinely characterized by a conditionality logic, despite their name.

Therefore, how can the logic or approach characterizing the shaping power of EU public finance law be defined?

The case studies in Chapter IV help answer this question. Portugal had to comply with the privatization programme to obtain the financial assistance granted by the Council, which was essential to escape an irreversible crisis. Spain, which

13 Although this aspect may not be as pronounced in certain national contexts.

requested financial assistance from the ESM, had to follow the EU institutions' recommendation to reduce the number of its municipalities, under pain of regional slippage, budget imbalances and local authorities' bankruptcy. Greece had to comply with the draconian administrative reforms indicated by the EU, especially by cutting public employment, in order to restore market confidence in the (scarcely credible) national finances and preserve the country's economy and stability.

In all these cases, although the Member States could – at least in theory – avoid following the EU's recommendations, in practice they followed and implemented them correctly. Member States have become increasingly dependent on the recommendations, decisions and financial interventions of the EU institutions, as the case studies clearly demonstrate. The EU measures shape national administrative systems exactly as the EU institutions want, under pain of lack of funding and other irreversible and drastic consequences that would be unacceptable for any Member State.

From this perspective, the shaping power of EU public finance rules appear to present a “logic of addiction” or codependency, a sort of addictive mechanism or cycle. This has strengthened following the evolutions of the EU public finance system due to the COVID-19 crisis. It is a mechanism that is far more intense than conditionality.

Certain studies have described the institution of the euro, and therefore of the monetary union, as a source of crisis for the EU's stability (as emerged especially with the 2010 sovereign debt crisis), highlighting how the euro area was “born ill”. The euro area was defined as an imperfect structure, characterized by mistaken policies and devoid of the mechanisms and measures that are necessary for the proper functioning of a common currency.¹⁴ The studies proposed mainly two types of solutions: leaving the euro area, believing that the Member State's exit would be manageable through certain measures (for example, by resorting to a new national electronic currency); or maintaining the single currency and safeguarding the euro area, but adopting radically non-austerity policies.¹⁵

In practice, the second of these paths has been followed, and many of the indicated policies have been adopted, especially the mutualization of debt (creating a European debt) and the establishment of a banking union. As examined in Chapter III, the fundamental impetus for the adoption of these policies (especially

14 J.E. Stiglitz, *The Euro: How a common currency threatens the future of Europe*, New York: Norton, 2016, highlighted how the common currency involves a fixed exchange rate between countries and a single interest rate. Even if these are set according to the financial conditions of most member countries, there must be a series of institutions capable of helping countries. However, he argued, in the EU there are neither the policies nor the institutions for this. Furthermore, the coercive mechanisms resulting from the euro area would have caused a contraction of the economy, reducing the probability of repayment of the sums borrowed. Stiglitz quoted Robert Mundell's studies on the essential conditions for the common currency.

15 Stiglitz, *The Euro: How a common currency threatens the future of Europe*, maintained that it would have been possible to exit the euro “and prosper”. However, this argument was based on a regulatory and economic framework that no longer exists, the EU having made several far-reaching interventions since 2020.

debt mutualization) was the need to deal with the devastating economic effects of the COVID-19 pandemic.

The most recent EU financial policies, starting with the new regulation of the EU's system of own resources and debt mutualization, have confirmed the "addiction" mechanism, making it bidirectional. On one hand, each Member State is dependent on the EU's financial rules and measures, without which its economy and social welfare would collapse; on the other, the EU, by providing financing and loans to Member States with resources collected on the financial market (social bonds, Eurobonds, etc.), is dependent on the States' ability both to honour their debts and to implement the policies and reforms for which the resources were allocated within the RRF. One party depends on the other, and vice versa.

Therefore, the dependence is not so much, and not only, related to the negative economic consequences that leaving the euro area could have for a Member State. Rather, it derives especially from the EU financial regulatory framework, as seen in previous Chapters II and III.¹⁶

This is also confirmed by the Member States' growing receptiveness to CSRs: indeed, CSR effectiveness has increased significantly following the implementation of the national RRFs within the RRF. In particular,

the RRF has significantly accelerated policy action to implement CSRs . . . over the 2011–2017 period, only 1.6 % of CSRs were deemed to have been "fully implemented" within one year after issuance, and that only 26 % of the CSRs have been implemented over the full 2011–2018 period. In the two years preceding the RRF, the share of 2016–2017 CSRs reaching at least "some progress" increased by only six percentage points from 53% in 2018 to 59% in 2020. In comparison, the share of 2019–2020 CSRs reaching at least "some progress" increased by percentage points from 2% in 2021 before the RRF to almost 69% in 2023, after two years of RRF implementation.¹⁷

This shows how the trend has become increasingly permanent and irreversible.

In conclusion, it could be argued that the EU financial regulatory framework, especially since 2020, has led to a form of dependence that acts like a "glue" within the EU. Currently, the EU's main aggregating element is precisely the financial law framework (European Semester, RRF, NextGeneration EU, etc.). In this sense, the

¹⁶ Moreover, the euro does not provide its members with an option to leave. It was designed as a one-way street: Europa Briefing, *Leaving the Euro: An emergency exit for the currency union?* Berlin: Bertelsmann Stiftung and Jacques Delors Institut, 2017. See also M. Gastinger, Introducing the EU exit index measuring each member state's propensity to leave the European Union, in *European Union Politics*, vol. 22, no. 3, 2021, p. 566, who highlighted that the United Kingdom was uniquely positioned to leave the European Union, while all other states were far behind. The author posited that the EU would be in better shape today than before the Brexit referendum and that, currently, no further exits are – and could be – on the horizon, especially considering specific factors.

¹⁷ Commission staff working document, "Mid-term evaluation of the Recovery and Resilience Facility", p. 50.

establishment of an EU fiscal union, as described in Chapter III, would consolidate and safeguard the EU's financial framework and its uniting function.¹⁸

1.3. The context within which the shaping power manifests

The third lesson regards the context within which the shaping power has impact. The “context” means the public sector, with special regard to the public administration. Previous chapters have reconstructed how public finance rules affect the public administration, also conditioning public policies in the field of public services, organization and civil service.

In this regard, two clarifications must be made. The first is a potential objection: financial rules clearly place conditions on public administration, because administrative action requires financial resources – to pay public employees' salaries, finance public services and carry out other functions. This might seem self-evident. However, this analysis has shown that the impact of financial rules goes far beyond such simple observations. Financial rules can shape fundamental aspects of national administrative systems, in the name of external (EU) interests that orient the action of public administrations in Member States.¹⁹

The second clarification concerns the context. Public administration varies significantly across Member States in terms of traditions, regulation, evolution and efficiency. This variety raises questions. Which countries have experienced a stronger impact of public finance rules on their public administration? Are there common indicators? Why have some public administrations been more affected than others?

Analyzing the context allows us to hypothesize a correlation – based on the case studies seen in Chapter IV – between the characteristics of public administrations and the intensity of the shaping power of financial rules. At least three types of correlation can be identified.

The first correlation is the most direct and applies generally. The EU's financial rules have a more evident shaping effect in Member States that are more financially vulnerable, because they have a greater need to align with EU financial parameters. This has been evident not only during the austerity period, but also under Next-Generation EU. Member States that had to make greater efforts to approach the objectives defined in the European Semesters and to avoid the risk of excessive deficit procedures, and their consequences, faced greater pressure to adapt. The same need to adapt was equally strong for states receiving the highest amounts of

18 P. Dermine, The EU's response to the COVID-19 crisis and the trajectory of fiscal integration in Europe: between continuity and rupture, in *Legal Issues of Economic Integration*, vol. 47, no. 4, 2020, p. 337; F. Fabbrini, *EU fiscal capacity. Legal integration after Covid-19 and after the war in Ukraine*, Oxford: Oxford University Press, 2023, especially pp. 99 and 127.

19 In this sense, an alternative approach to EU integration via public spending steering could be recognized. From a general perspective, U. Villani-Lubelli, The EU budget and the European integration process: A historical analysis, in L. Zamparini and U. Villani-Lubelli (eds), *Features and challenges of the EU budget*, Cheltenham and Northampton: Edward Elgar Publishing, 2019, p. 12.

financial resources under the RRF, which had to use the resources received strictly in line with the agreements made with EU institutions.

In this sense, there is a directly proportional relationship between two factors: the weaker and more exposed a Member State, due mainly to high public debt, the greater the impact of EU financial rules. In other words, the “financial weakness” of a Member State (its financial exposure due to high public debt and scarce or reduced GDP growth) is closely related to a stronger impact of EU financial rules on its national institutional structure and, more specifically, public administration. The case studies examined in Chapter IV prove this trend.²⁰ But why does this happen?

One reason is that EU financial rules and measures are formulated in line with the “good shepherd” approach. Through legal mechanisms (see Section 1.1. of this chapter) and an “addiction” logic (Section 1.2.), Member States are prompted to follow a “proper” direction. This direction aims to achieve the financial rigour required for the stability and good functioning of the euro area, as well as towards implementing policies aligned with EU interests.

The second correlation concerns the proportion public spending allocated to the functioning of public administration, with specific reference to the establishment of new public bodies and the recruitment of public employers. The greater the proportion of these expenditures in national budgets, the greater the impact of EU public finance rules on the relevant public administration. This correlation is linked to the first: Member States with high levels of public spending, for example on public administration, generally also have a problematic public debt/GDP and deficit/GDP ratios, as indicated in the SGP.²¹

It should also be noted that the Member States with high levels of public expenditure on these items are often contexts in which the public administration has historically functioned as a “social safety net”. Examples are Greece and Italy, where the creation of new public entities and large-scale public recruitment (which occurred especially in certain historical periods) served primarily to provide many people with employment, rather than meet specific needs within the exercise of public functions and services.

This correlation has been evident in several circumstances. For example, when EU financial rules made funding available (such as under NextGeneration EU), Member States with a history of using the public administration as a “social safety net” significantly increased these practices. These included mass recruitment, outsourcing tasks and establishing new offices and special units without specific needs linked to the public functions to be performed. A recent example is Italy. In such cases, it would have been preferable to map the public functions in detail, eliminate the superfluous ones and base the need for further public staff on this evaluation.

In other cases, when EU financial rules imposed resource cuts, Member States with disproportionately large staff levels and entities compared to actual needs

20 Portugal, Ireland and Greece are significant examples (Chapter IV, Sections 2.1., 2.4. and 4.1.).

21 The Italian case is paradigmatic (Chapter IV, Sections 3.3. and 4.2.).

experienced strong impacts. Drastic interventions on the public administration were often made, as in Greece. Even in France, the EU financial rules under austerity had led the national government to plan public employment cuts. However, in practice, the rules had little impact, to the point that the cuts did not materialize.²² One explanation is that the French administrative apparatus is more proportionately sized to actual needs (unlike in Greece and Italy).

Here too a directly proportional relationship emerges: the larger the disproportion between the size of the public administration (in terms of organization and personnel) and actual needs, the greater the impact of EU financial rules on the public sector. Again, one might ask: why does this correlation exist?

The answer can be found by considering the content of EU financial rules and measures. The acts and rules adopted under the European Semester, financial assistance mechanisms or NextGeneration EU have usually sought to foster the “innovation and modernization” of national public administrations, ultimately to achieve greater efficiency and effectiveness in administrative actions. Thus, EU financial rules aim to encourage Member States to implement the public administration model that the EU considers optimal. This raises an important question. What is the “ideal model” of public administration, according to the EU regulatory framework?

In this regard, at least two considerations emerge. First, the EU’s “ideal model” does not correspond to those present in various Member States. The EU’s model can be defined as “centralized in coordination” and “ramified in articulation”. Examples are networks of authorities and agencies (the networking model), centralized public procurement, decentralization and devolution in the relationship between central administrations and local authorities.²³

Second, the EU model for public administration results from a discretionary choice, which may align with some national realities but not others. For example, decentralization in Spain and France has led to a very high number of local authorities, which can be difficult to reconcile with the coordination and rationalization required by the EU. Likewise, the centralized public procurement system imposed in Italy as part of its RRP under NextGeneration EU created various challenges for local authorities.²⁴ No one model fits all, because each Member State has different and unique histories and traditions in public administration.

As for the third correlation, EU rules tend to have a stronger shaping effect where there is a greater need for change in the national public administration, due to high inefficiency and an inability to meet community and, especially, business

22 Moreover, the French Government lowered its job-cuts target within the public sector to about 85,000 by 2022 (<https://www.politico.eu/article/france-to-cut-15000-jobs-in-state-public-sector-by-2022-emmanuel-macron/>). In this context, the problem was especially local government spending.

23 These models are promoted by several CSRs, as examined in Chapter IV.

24 Italian local authorities usually prefer to manage tenders on their own and with simplified methods. For a general view, OECD, *Centralised and decentralised public procurement*, Sigma papers no. 29, Paris: OECD Publishing, 2000, where arguments for/against centralization in public procurement are analyzed.

needs. It is well known that excessive bureaucratic complexity can have adverse effects on business start-up times and the proper functioning of the economy.²⁵ The greater the bureaucratic complexity and the negative effects on businesses and economic activities, the more incisive will be the EU financial rules imposing interventions on public administration, aiming to innovate it. In these cases, the measures usually envisaged and recommended promote simplification, as well as transparency, anti-corruption measures or even accelerating payment terms. Therefore, EU financial rules can promote transformation in public administration, making it more responsive to the needs of businesses and economic operators. This explains why for countries such as Greece, Italy and Portugal – where this gap is especially pronounced – EU financial rules mostly contain provisions intended to reform and “innovate” public administration.

The various correlations examined here are closely interlinked. They highlight how, in various cases, EU financial rules and acts are tools to pursue ends far beyond financial rigour. They serve to orient administrative reforms, as will be analyzed in even further detail in the next section.

1.4. Relationship between the shaping power and administrative law reforms

The fourth lesson regards the relationship between the shaping power of public finance law and administrative reforms. EU financial rules bear a significant impact on the content of national administrative reforms. Some cases, examined in Chapter IV, are paradigmatic in this respect.

Two types of relationship deserve consideration: the first regards the relationship between public finance law and the administrative reforms concerning local authorities; the second deals with the relationship between public finance law and administrative reforms aimed at promoting privatization in the public sector.

As for the first relationship, Spain, France, Italy and the United Kingdom are illustrative. In Spain, EU financial recommendations emphasized the need to enhance control and improve coordination among the national, regional and local administrations.²⁶ According to the Commission, this would be the optimal way to achieve fiscal consolidation, reducing waste in public spending by Spanish municipalities. Enhanced coordination between the various public administrations would also reduce costs and limit the administrative burden on companies and households. In summary, EU financial rules encouraged a particular type of administrative reform in Spain, one aimed at “tempering” the country’s strong municipal decentralization. This was done by implementing forms of coordination, especially in order to safeguard financial needs.

This reform led neither to the suppression of local authorities, nor to any curtailment of their powers. On the contrary, the financial rules and measures, which

25 P.C. Patel and M. Wolfe, Public administration and new venture startups: The association between economic development and the role of bureaucracy in startup activity, in *Journal of Small Business Management*, vol. 61, no. 6, 2022, p. 3255.

26 Chapter IV, Section 3.1.

Spain gradually transposed into and implemented within its legal system through several budgetary stability laws (“stability paths”), in line with the prudent fiscal policy promoted by the Commission, provided greater fiscal space for autonomous communities and local councils. This allowed them to strengthen the public services provided to citizens.²⁷ Therefore, the coordination and rationalization promoted by EU financial rules did not lead to centralization. Rather, they brought about a new type of decentralization, in which local authorities retained or even strengthened their powers. However, such powers are to be coordinated to achieve greater efficiency and financial control. In other words, there are more powers but also more controls.

In the French case, EU recommendations highlighted that the number and variety of subnational governments were significantly higher than in other EU countries, creating the risk of inefficiencies due to duplicated functions and costs.²⁸ Thus, the need to contain the rise in the administrative costs for local authorities became clear, and the Commission pushed for a more effective rationalization of these bodies.

Similarly to Spain, EU financial rules and measures did not promote a centralization model in France. In this respect, it is worth mentioning that France historically adopted a centralized administrative system, although one featuring several territorial entities. Rather, the EU’s recommendations sought to make decentration financially sustainable.

The model promoted by EU rules is also different from the type of decentralization that characterizes the Italian system.²⁹ EU measures noted the weaknesses of the Italian federal project, and recommended that rules on fiscal federalism be adopted to improve the accountability of local governments and foster efficiency. The country was invited to reduce the persistent disparities between regions, by strengthening administrative capacity and improving political governance. Therefore, from the EU’s perspective, the Italian federal model needed adjustments, in particular to enhance the powers of regional and local authorities and, at the same time, strengthen (central) controls.

In the United Kingdom, austerity rules contributed to a disaggregation of the central public administration. Central grants were cut and local authorities were allowed to collect additional revenue from different sources.³⁰ In this case too, the

27 According to the declarations of the Minister for Treasury, Maria Jesus Montero, released in September 2024, the Spanish path (2025–2027) includes less demanding deficit targets for the autonomous communities and local entities than in the past, so that the additional resources can be allocated to public services: “We are redoubling our effort so that we can preserve the welfare state, which is provided mainly by the autonomous communities and local councils” (Council of Ministers, The Government of Spain approves a stability path that fuses fiscal rigour and the strengthening of public services, in *La Moncloa*, 10 September 2024).

28 Chapter IV, Section 3.2.

29 Chapter IV, Section 3.3.

30 We recall that, from 2015, local councils were permitted to increase local taxes, for example to raise money for adult social care; they also introduced or increased charges for garden waste collection and NHS parking income (Chapter IV, Section 2.2.).

trend was to strengthen the powers of local authorities in response to inefficiencies in local public spending.

In all countries, the common problem was excessive local government spending. However, the solution pursued by Member States in light of EU recommendations was not the centralization or concentration of public functions. As discussed in Chapter IV, decentralization led to a significant growth in public spending in several Member States, incompatibly with the principle of sound financial management. However, EU rules did not challenge the decentralized model. They rather aimed towards a new configuration: one that could be called “financially sustainable decentralization”, a “rationalized and coordinated decentralization”, in light of EU recommendations.³¹

This model orients some of the national administrative reforms analyzed in Chapter IV. However, several difficulties in implementation were encountered. This was due to an evident paradox: the existence of multiple power centres has not contributed to the development of mechanisms for financial accountability, but to an increase in public spending because of duplication and waste. This why the model of coordinated and rationalized decentralization promoted by EU rules may – and often has been – an “oxymoron”.³²

The most interesting result of this trend is that decentralization models in EU Member States are evaluated not based on the best exercise of public functions and services (that is, the “ordering nature” that should characterize the allocation of administrative activities) but rather on economic–financial evaluations, related to the best way to manage public spending. The two priorities can sometimes coincide, but also lead to divergent results. In some cases, decentralization is not a financially virtuous model, as demonstrated especially by the case studies seen in Chapter IV.³³

As for privatization reforms, Portugal, the United Kingdom and Ireland are illustrative.

In Portugal, EU financial acts recommended privatization in key public sectors, such as transport and postal services.³⁴ The recommendations led Portugal to

31 It is interesting to note how the model recommended by the EU financial acts, aimed at regulating the relationships between the centre and the periphery within the Member States, has nothing to do with the wider debate on the model to adopt in the relationships among Member States in the Union (see the long-standing debate on the adoption of a federal or confederal model, etc.). Among many studies, S.R. Larsen, *The constitutional theory of the federation and the European Union*, Oxford: Oxford University Press, 2021.

32 The aim is not to discuss the validity of models and reforms, but how European financial rules have promoted certain models and reforms without systematic and ongoing in-depth studies on the scope of the models and measures recommended by the CSRs and other financial acts.

33 As seen in Chapter IV, Section 2.2., in the United Kingdom, the increase of local taxes to raise money for the provision of certain public services was insufficient to offset the drop in grants. In some cases, decentralization led to inequalities in treatment, placing at a disadvantage the poorest areas and those in most need (this became clearer in the aftermath of the COVID-19 pandemic). S. Hoddinott, M. Fright and T. Pope, “Austerity” in public services. *Lessons from the 2010s*, Institute for Government, October 2022, especially p. 14.

34 Chapter IV, Section 2.1.

cut the number of state-owned enterprises by at least 20 percent, privatizing some large state enterprises in strategic public service sectors. Public–private partnerships were also introduced to reduce the impact of public spending. EU financial rules strongly encouraged and drove the privatization of public bodies responsible for providing public services, thus reducing the scope of the public sphere.³⁵

In the United Kingdom, where privatization in the public sector has historically been prominent, EU financial measures supported the continued involvement of private subjects. This was clear especially in adult social care and education,³⁶ where public finance rules achieved savings by redefining the role of public administration in delivering the services.

In Ireland, EU financial measures noted the need to reform the healthcare system to align with standards prevailing in other EU countries, especially in relation to essential principles and conditions such as universal access to care. The EU financial rules called for a structural solution by promoting the development of universal service on a public basis, without (explicit, at least) references to involving the private sector, although the Irish Government concluded various agreements with private entities to compensate for the shortcomings in public health and ensure wider access to care (Chapter IV, Section 2.4.).

The previous examples and the case studies show that the EU rules adopted during the European Semester sometimes directly supported the privatization of public services. Other times, they did so indirectly, inducing the Member States to privatize in order to guarantee the required quality of service. In any case, there is a connection between EU financial rules, and the promotion and development of privatization and outsourcing reforms in the public sector. This is not particularly surprising. Indeed, the impact of EU financial rules and measures perfectly aligns with the policies of liberalization and competition that have always prevailed in the EU.³⁷

EU financial rules and measures are thus used as a “crowbar”, to push Member States towards public reforms in line with EU economic policy objectives. This is an interesting trend, that has also strengthened in recent times, as noted by the Commission itself: “at the same time, as CSRs respond to broader EU policy priorities, the implementation of the measures included in the RRFs also support the broader EU agenda”. Further, “by design, the RRF ensures a strong alignment of Member States policies with EU priorities”.³⁸

Denmark is also worthy of consideration. Although the country is not in critical financial straits and is theoretically able to access more convenient forms of credit

35 The privatization process in Portugal is ongoing: in summer 2024, the Portuguese Government reaffirmed its plans to privatize the state-owned airline TAP Air Portugal, adding that the terms of the sale were still to be defined.

36 Chapter IV, Section 2.2.

37 From a similar perspective, some studies link the development of EU policies to the limitation of the welfare state: M. Răileanu-Szeles, *Crisis and prospects for the welfare state in the EU*, in M. Răileanu-Szeles (ed), *Re-examining EU policies from a global perspective*, London: Palgrave Macmillan, 2013, p. 32.

38 Commission staff working document, “Mid-term evaluation of the Recovery and Resilience Facility”, pp. 72 and 79.

through national debt financing, it still requested and received subsidies through the RRF. Access to the RRF subjected Denmark to the same control and evaluation procedures applied to other Member States (in much worse financial situations) and expressed in the measures undertaken under the European Semester. In these measures, the Commission went so far as to praise the work of the Danish Government on digital transition, as seen in Chapter IV.³⁹

In other words, the application of EU financial rules and mechanisms no longer entails only accounting controls (as in the pre-austerity phase, especially) but, increasingly, forms of conditioning, orientation and sharing of national public policies, even towards Member States that are not in critical financial situations (another case, which was not examined in Chapter IV, is Germany).⁴⁰

The latter consideration highlights another side of the “addiction logic” examined previously in Section 1.2. The dependence of Member States’ public sector on the EU public financial system relies not only on financial needs but above all on balances and symmetries that each Member State, even the most financially virtuous, has an interest in safeguarding. Germany, Denmark and other so-called frugal countries constitute a specific group in the EU that is not particularly favourable to the EU mechanism of public debt mutualization. However, they entered the mechanism all the same, by accessing funding under NextGeneration EU, in order to take advantage of the funds available to promote policies that they had already put in place (namely, the green and digital transitions). They were thus able to further strengthen their national programmes.

Moreover, the green and digital transitions promoted at the EU level under NextGeneration EU are much more effective when all Member States engage in them. The countries that have already reached an advanced stage of these transitions (Germany, Denmark, etc.) have every interest in everyone going in the same direction.⁴¹ Therefore, the addiction logic characterizing the shaping power of EU public finance rules in these Member States works differently, but is still a mechanism of dependence and interdependence.

2. Do public finance rules improve or worsen the functioning of public administration?

The foregoing analysis has shown us how the shaping power of the public finance law follows purposes and presents characteristics that depend only limitedly on the type of public administration considered. The measures, logics, context and impact of the power depend on complex and composite dynamics.

At this point, a question arises: does the shaping power produce benefits, or does it exacerbate the dysfunctions affecting the public administration of EU Member

39 Chapter IV, Section 2.3.

40 Germany will be considered in the conclusions of the book (Chapter VI).

41 There is cross-influence between some national policies (such as German public policies) and EU policies. More generally, C. Knill, European policies: The impact of national administrative traditions, in *Journal of Public Policy*, 1998, p. 1.

States? In other words, does the shaping power improve or worsen the performance of public administrative bodies?

The problem emerged clearly when analyzing, for instance, the links between EU financial rules and the development of privatization programmes in the Member States. In both Portugal and the United Kingdom, privatization and the reduction of state intervention, induced by EU rules on public services, left aside the issues of the quality of services and the general public interest.

The definition and adoption of public financial rules and measures did not consider whether privatization has a positive or negative impact on the good functioning and quality of public services. These assessments were entirely secondary compared to other aims. Therefore, the financial rules' shaping capacity acted regardless of evaluations of the administrative activities covered by the interventions. At the same time, it did not exclude the possibility that the interventions could and did concretely improve the provision of public services; however, this was a secondary question compared to the financial reason. Indeed, in the case of the United Kingdom, privatization in the education sector was heavily criticized because it bore negative repercussions on the quality of educational services, thus worsening the exercise of an administrative function.

Some points can be drawn from the scholarship that, recognizing a neoliberal streak to EU financial rules and programmes, commented on how the European integration process was used to mainstream neoliberal policies and thereby circumvent and erode the public sphere.⁴² More generally, some studies describe the EU's development as a chapter in the history of neoliberalism.⁴³

It is useful to examine whether and what contribution this approach has made to the evolution of public administration in EU Member States. It is not, therefore, a question of examining the goodness or correctness of the approach, nor whether shaping power is a neoliberal instrument or not, but rather of reflecting on how public administration has reacted to the expansion and impact of EU financial rules and measures. Was this a positive or negative reaction?

To this end, two dimensions of public administration's sphere of action can be considered. The first is the relationship between public administration and society: has the shaping power affected this relationship? Has shaping power made public administration and administrative functions more responsive to the needs of individuals and of society more generally?

The second dimension concerns the relationship between public administration and other public institutions, starting with EU institutions. Has shaping power transformed these relationships? Has public administration been strengthened or weakened by the application of EU financial rules?

The following sections seek to answer these questions.

42 C. Hermann, Neoliberalism in the European Union, in *Studies in Political Economy*, vol. 79, no. 1, 2007, p. 61.

43 J. Elvander, *Disciplinerad Demokrati: EUs nyliberala historia*, Stockholm: Verbal förlag, 2024.

2.1. Sound financial management and good administration: the relationship between public administration and civil society

The EU legal framework considers the relationship between public administration and civil society (or individuals) in a specific and significant way. This emerges especially in the meaning of “good administration”, as codified in Article 41 of the EU Charter of Fundamental Rights.⁴⁴ Some scholars highlight how good administration is, first of all, a principle related to “a general category under which may be subsumed a whole set of subjective rights intended to limit arbitrary administrative conducts in the Union”.⁴⁵ The EU Charter recognizes good administration as a fundamental right, thus linking it to the individual sphere that can be affected by public administrative action.

This analysis neither delves into the characteristics of this principle or right nor enquires why Article 41 of the EU Charter considers only certain general procedural rights and duties and not others.⁴⁶ There is ample literature on these and other aspects of good administration.⁴⁷ There are also various studies on the relationship between public finance and rights. However, there are only very few on the relationship between public finance and good administration.

On the relationship between public finance and rights, the focus is usually on the negative impacts and limitations that can derive from public financial constraints to the exercise and protection of certain social rights.⁴⁸ Protecting rights is costly, which is why financial resources are needed to ensure adequate levels in the implementation of these rights. Consider, for example, the costs of services to protect the right to health, to social security, to education, to individual freedom (the exercise of which requires the functions of security and public order), etc.⁴⁹

As analyzed in Chapter I, administrative functions need an administrative machine for their exercise, and this machine entails a cost. The more the state intervenes in the protection of rights by providing benefits, according to the welfare state model, the more the costs necessarily increase. In EU Member States, public finance is therefore the necessary means through which the exercise of rights is possible, but also, consequently, the negative limit to the level of rights protection – consider how financial cuts affect the exercise and protection of various social rights.

44 Article 41(1): “Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union”. Article 41(2) describes the contents of the right (i.e. the right of every person to be heard, to have access to his or her file, the obligation of the administration to give reasons for its decisions).

45 L. Azoulay, *Le principe de bonne administration*, in J.B. Auby and J. Dutheil de La Rochère (eds), *Droit administratif Européen*, Brussels: Bruylant, 2007, p. 493.

46 J. Mendes, *Good administration in EU law and the European Code of good administrative behaviour, working papers no. 9*, EUI, 2009, pp. 3–4.

47 Among the various studies, N. Vogiatzis, *The European Ombudsman and good administration in the European Union (European administrative governance)*, London: Palgrave Macmillan, 2017.

48 Note that the public administration both protects and enables the conditions of the exercise of the rights.

49 Famously, S. Holmes and C.R. Sunstein, *The cost of rights: Why liberty depends on taxes*, New York: W.W. Norton & Company, 2000.

From this theoretical setting arises the singular theory of “financially conditioned rights” and “financially incompressible rights”, in relation to the rules of public spending cuts affecting the protection of social rights.⁵⁰ The theory, explored in some Member States’ constitutional case law, recognizes that generally the law can limit the exercise of rights, if there are real financial needs. However, the exercise of certain fundamental rights can never be limited, not even due to specific financial reasons. In these cases, financial limits are not recessive, but rather should be mitigated and made compatible with the protection of rights. In this sense, these rights are incompressible.

For example, specialist assistance for students with disabilities is functional to support teaching and, as such, constitutes part of the incompressible content of the right to education. Therefore, this social service cannot be hindered by the principles of financial and patrimonial coverage applied by the public administration. These must be fulfilled through a correct and planned management of expenses, but this cannot automatically impair the right to school assistance. Otherwise, the effective protection of a fundamental right would be subject to the arbitrariness of the public administrative action in distributing financial resources.⁵¹

Thus, good administration, defined as a fundamental right by EU legal order, can be “limited” and challenged by public finance rules and principles (the second type of relationship is considered here). At the EU level, Article 317 TFEU provides that the Commission is formally responsible for the implementation of the EU budget and the ECA, pursuant to Article 287(2), is called upon to examine the soundness of the financial management. The two principles of good administration and sound financial management are sometimes intertwined, as emerged in some European Ombudsman inquiries, in which public finance principles are considered as part of good administration.⁵²

Nevertheless, there are usually tensions between the principles. Public finance principles and rules fuel the philosophy that errors are unacceptable, which hinders administration: a zero risk of error would imply zero activity. Financial rules increase audits and controls, and would contribute to “defensive administration” (or “fear of signature”).⁵³

Moreover, public finance rules limit some activities that are instrumental to good administration. Originally, EU institutions published consultations only in English, and did not accede to requests to translate them due to resource and budgetary constraints. However, this impeded the right of all citizens to participate in

50 See, especially, the Italian Constitutional Court’s case law, such as Judgment No. 275 of 19 October 2016.

51 Italian Constitutional Court, Judgment No. 275 of 19 October 2016.

52 N. Vogiatzis, On the interplay between good administration and sound financial management. The view from Strasbourg, in P. Stephenson, M.-L. Sanchez-Barrueco and H. Aden (eds), *Financial accountability in the European Union. Institutions, policy and practice*, London and New York: Routledge, 2021, p. 79.

53 The phenomenon is studied by F.M. Artinger, S. Artinger and G. Gigerenzer, C.Y.A.: Frequency and causes of defensive decisions in public administration, in *Business Research*, vol. 12, 2019, p. 9, who examined 950 public administration managers to analyze the frequency and causes of “defensive decision making”.

the public procedures and consultations of EU institutions (the right to participate in the democratic life of the Union). Another example concerned the legislation on EU funds, which was considered incompatible with good administration.⁵⁴

At the EU level, the (apparent) contrast between public finance rules and good administration was somewhat reconciled in the principle of proportionality. This is a general principle of EU administrative law, and is often applied to balance conflicting interests or principles.⁵⁵ Financial constraints that affect good administration, including by restricting fundamental rights, can go no further than is necessary to achieve administrative and financial needs. Therefore, public finance rules and measures must be proportionate, in order to avoid challenging good administration.

In European administrative law, the principle of proportionality is often considered the needle in the balance. However, its application in administrative decisions on the use of public resources encounters a limit: the highly technical nature of the assessments involved in the governance of public financial resources. The public administration's financial choices express an "administrative reserve", characterized by a degree of technical discretion. For example, these decisions are not directly subject to judicial review.⁵⁶

Thus, the quantification of a financial burden and the identification of its coverage are objective and technical activities, with respect to which there is often little room for bureaucratic discretion. Financial coverage is either provided or not. Also, it is often linked to historical spending and planning. Where no such financial coverage is provided, it is necessary to partly or wholly stop financing a certain service, or to reduce the funding for another service, thus shifting resources around (unless new tax revenues are deemed necessary).

These considerations highlight how the relationship between good administration (and therefore a proper exercise of administrative discretion) and sound financial management is not only a matter of balancing interests or rights, nor a question that can be resolved with sole reference to the principle of proportionality. The key point for the public administration is not to balance two plates, but to be able to use financial rules as a tool to improve (in other words, a "smart application" of financial limits, combined with the capacity to perform in a more effective and efficient way).

More precisely, financial rules should not be interpreted as a limit to good administration but as a stimulus and incentive that fuels the public administration's

54 These examples are drawn from Vogiatzis, On the interplay between good administration and sound financial management . . . , pp. 82–86: for example, the Commission had imposed "unreasonable bureaucratic obligations on recipients of EU funding"; therefore, financial regulation on EU funds was deemed incompatible with good administration.

55 There is ample literature on the proportionality principle. Among many, G. de Búrca, The principle of proportionality and its application in EC law, in *Yearbook of European Law*, vol. 13, no. 105, 1993, p. 126. J. Schwarze, *European administrative law. Revised first edition*, London: Sweet & Maxwell, 2006, pp. 664–665, recognized that proportionality is the most important general principle in EU economic law.

56 This is the problem generally concerning the judicial review of administrative discretion: G. della Cananea and M. Andenas, *Judicial review of administration in Europe. Procedural fairness and propriety*, Oxford: Oxford University Press, 2021.

good performance (or good administrative behaviour). The performance of the public administration includes more than “good administration” as codified in Article 41 of the EU Charter. It includes all administrative functions and services, also related to the public administration’s internal functioning, with the general aim of satisfying the public interest and creating public value. Civil society needs good performance by the administration. This means not only protecting individual rights in administrative procedures (good administration) but also receiving good services and relying on the execution of public functions.⁵⁷

From this perspective, the implementation of public finance rules should improve the performance and efficiency of public administration. It starts a virtuous cycle geared towards innovation of the public administration, as was seen in some case studies. This assumption is true even when the financial rules impose limits or cuts. Consider the spending review rules. As noted, “they could help targeting spending towards growth-friendly items, or items that promote long-term sustainability, including of the environment. In addition, by improving expenditure controls, they help make space for more resources, especially in those settings with limited fiscal space”.⁵⁸ A better allocation of financial resources, induced by the implementation of public finance rules, produces benefits for civil society. For this reason, under the European Semester, the Council over time addressed CSRs to some Member States to carry out spending reviews.

On the contrary, improper implementation of public finance rules contributes to maladministration. Consider the many studies on corruption in the public administration or public procurement, financial accountability in the public sector or the management of EU funds.⁵⁹ These studies share their analysis of the dysfunctions in the public administration. A better application of public financial rules would systematically contribute to mitigating all of these pathological situations. Other scholarship highlights how the application of EU public finance management instruments can be essential to protect global, European and national public goods, for instance in the areas of environmental protection, transnational infrastructure projects and social policy.⁶⁰ In this regard, an important initiative was the EU Budget Focused on Results. This was launched in 2015 as a multi-pronged initiative to improve the EU budget’s effectiveness in contributing to the

57 The notion of good administration is expanding, also to include the quality of public services and the prevention of maladministration: J. Wakefield, *The right to good administration*, 58 *European monographs*, Alphen aan den Rijn: Wolters Kluwer, 2007.

58 E. Bova, R. Ercoli and X. Vanden Bosch (eds), *Spending reviews: Some insights from practitioners*, discussion paper no. 135, European Commission, December 2020, p. 6.

59 C.A. Bowsheer, Sound financial management: A federal manager’s perspective, in *Public Administration Review*, vol. 45, no. 1, 1985, p. 176, highlighted that government managers face many challenges, dealing with budget deficits that increase pressures to cut programmes, reduce costs and administer activities more effectively. However, financial management structure and systems do not usually provide managers with the timely and reliable information required to overcome this challenge.

60 M. Postula, *Public financial management in the European Union*, London and New York: Routledge, 2022.

achievement of EU objectives for growth, jobs and stability in the Member States. The initiative included analysis of how the application of EU funds and related rules and measures helped to improve national public administration and the satisfaction of important public interests.⁶¹

Briefly, EU public finance regulation is not only as a negative limit or source of tension between public administration and the civil society in Member States (the aspect most highlighted in public debate, especially by Eurosceptics). On the contrary, multiple elements should point towards the EU financial system being a set of tools for improving the performance of public administration. Although there is always a gap between theory and practice, rules and measures are aimed at ensuring a more balanced and controlled use of public resources, less subject to political conditioning by the national government in power in the moment – political conditioning being the main cause of the increase in public debt in various countries – and more accountable.⁶²

2.2. The impacts of public finance rules on the public administration's ability to protect fundamental rights

The tension between the protection of fundamental rights and public finance rules concerns not only the methods of allocating financial resources and the choices connected to public policies, as seen in Chapter IV. It also affects how the public administration concretely exercises welfare functions, especially in relation to the exercise and protection of social rights.

In the history of Europe, towards the end of the nineteenth century, “the State [had] become aware of its social tasks”, providing “for the primary needs of citizens with its welfare and economic functions”.⁶³ Until then, the administrative apparatus served mainly to support the exercise of (the sovereign’s) power and the activity of enforcing the law (done by the judicial bodies). Therefore, the contemporary state’s current phase is characterized by the transition from a “guarantee administration” to a “performance administration”, intended to provide essential services for life.⁶⁴ To what extent is the performance administration conditioned by public financial rules? To what extent does shaping power affect it?

The answers can be gleaned by considering the material consequences of the application of certain public finance rules. The United Kingdom case study provides some interesting elements. The British austerity programme, adopted within the EU austerity framework, supported greater involvement of private parties in the provision of public services. This led to lower-quality services, because costs

61 R. Downes, D. Moretti and S. Nicol, Budgeting and performance in the European Union: A review by the OECD in the context of EU budget focused on results, in *Journal of Budgeting*, no. 1, 2017, p. 9.

62 This process is closely connected with broader economic integration in the EU: more generally, R. Pomfret, *The economic integration of Europe*, Harvard: Harvard University Press, 2021, who commented on the several benefits of European integration in the economic dimension. In this sense, many important achievements also affect the development of national administrative systems.

63 L. Mannori and B. Sordi, *Storia del diritto amministrativo*, Rome-Bari: Laterza, 2001, p. 487.

64 E. Forsthoﬀ, *Der totale Staat*, Hamburg: Hanseatische Verlagsanstalt, 1933, is key in this respect.

(such as staff costs) were cut and profits maximized, but without any real savings for State. The conversion of schools to academies was paradigmatic.⁶⁵

This vicious cycle, caused by the tension between the growing costs of welfare functions and the protection of social rights, is one of the main reasons for the crisis of the welfare state model. The previous section's findings always apply: crisis, and therefore worsening of the conditions aimed at ensuring the exercise of social rights, is caused not so much by financial constraints and rules. Nor is it due to the contents of these constraints and rights, that is, whether they allow access to financial resources or whether it limits those very resources. Rather, the main cause is the inability of the public administration (and governing bodies) to identify appropriate organizational measures in the application of the financial constraints and rules ("good performance").⁶⁶

The United Kingdom case study can be useful to further explain this point. Outsourcing to private entities can be advantageous if the public administration maintains control over the prices and quality of the outsourced services. Unfortunately, the public administration rarely attempts to do so, leaving too much freedom to the private sector. This happens especially in areas where services have not been liberalized but there is outsourcing, namely state management through private entities (such as education and healthcare). Instead, where public services have been fully liberalized, market competition is an important compensation factor for the public administration's poor quality control.

Another broad example concerns social security and related rights. The need for financial rigour and containment of public spending is somewhat incompatible with an increase in social security spending, especially in systems such as Ireland or Italy, where the trend appears extremely difficult to reverse even in the medium and long term. The financial aspect and the social dimension tend inevitably to conflict. In this regard, it is recalled the main EU public finance rules – such as the austerity measures – do not mention the need to adequately protect social rights or to balance them with the economic interest, despite the unavoidable impact of financial constraints.⁶⁷

In this connection, it is noteworthy that there is a peculiar relationship between the protection of social rights and the financial constraints, depending on whether present or future generations are considered. In other words, while financial constraints can limit and affect social security functions for current generations, the same constraints are purportedly a tool for safeguarding the interests of future generations. Thus, the interest in safeguarding the economic–financial context and public debt sustainability consists in the interests of future generations. Hence, these interests too are inevitably and significantly affected by the financial choices and measures adopted by the public administration.⁶⁸

65 Chapter IV, Section 2.2.

66 This can also be defined as "institutional capacity building", the public administration's power to perform in a more effective and efficient way.

67 G. Contaldi, *Politica economica e monetaria*, in *Enciclopedia del diritto*, "Annali" VII, Milan: Giuffrè, 2014, p. 811.

68 James M. Buchanan's well-known studies on public debt show that the primary burden of public debt is shifted to future generations (such generations being any set of individuals living in any time

These considerations highlight how the real balance between financial rules and constraints and the protection of rights lie in the administration's ability to manage and organize the system. It is therefore an organizational problem, in which bureaucratic discretion assumes highly technical features. This was seen in the previous section, which explores how bureaucratic discretion works in a peculiar way in the financial field, and how even the balancing of interests takes on novel forms, especially with regard to the principle of proportionality. As noted, in the financial field, bureaucratic discretion is peculiar because it combines a high level of technical complexity – treading a difficult line between convenience and proper action – and a significant level of relativity in evaluation.⁶⁹

Generally, the balancing or weighting of interests is dichotomous: the public administration evaluates each case based on certain factors, to ascertain which one weighs more in the specific circumstances. Think of: the balancing between transparency and the protection of personal data; the construction of public infrastructure and the protection of landscape; environmental protection and the economic development of businesses; etc. In the financial field, financial interest cannot be effectively weighed, nor can it ever completely give way; it can, at most, be adapted (as emerges in the case law on “incompressible” rights). This exercise requires a high organizational capacity, which implies competence in financial management, in improving performance without wasting resources, and in achieving the protection of certain rights by adapting the needs of the administrative apparatus to those of civil society, and not the other way round.

In this sense, the relationship between financial interest and rights is especially a matter of organizational capacity, aimed at ensuring proper exercise of the administrative function (performance), protecting rights and at the same time managing public resources correctly.

3. Does public finance law affect the balance among public powers?

The second dimension considered in analyzing the shaping power concerns the relationship between public administration and other public powers. There are at least three main findings.

First, EU public finance rules have changed the structure and balance of relations among public powers, both at a supranational level and within Member States. The relationship between national public administrations and EU institutions has changed profoundly, considering not only the relationships between national governments and the Council but especially the relationship between national public administrations and the Commission. This radical change was brought about, first

period following that in which the debt is created). Therefore, financial rules aimed at limiting and containing public debt meet the interests of future generations. J.M. Buchanan, *The collected works of James M. Buchanan, with a foreword by G. Brennan, vol. 2: Public principles of public debt. A defense and restatement*, Indianapolis: Liberty Fund, 1999, especially p. 27.

⁶⁹ On the relationship between discretion and public finance choices, D. Robbins, Administrative discretion: Its use in budgetary analysis, in *Public Administration Quarterly*, vol. 29, no. 2, 2005, p. 187.

and foremost, by the evolution of EU financial regulation and, by extension, of national public finance regulation.

Second, public financial rules have affected the weight of the administration in charge of the budget (the treasury). In various Member States, the budget administration already had a leading role compared to other public administrative bodies. However, the application of EU financial rules in recent decades has bolstered its role.

Finally, the application of financial rules has changed the relationship between Member States and economic power, meaning the panoply of economic operators, companies and private entities operating in markets. In general, EU financial rules have supported the development of Member States' economic policies in the pursuit of common objectives, in the primary interest of the Union. On this point, several scholars highlight, primarily, how EU public finance rules have also contributed to the development of neoliberal policies, buoyed especially by some Member States with stronger economies. Above all, those rules have contributed to modifying the relationship between the public and private sectors, and therefore between public administration and the market.

The following sections analyze each of these three points.

3.1. How public financial rules affect the relationships between European Union institutions and Member States' public administrations

EU public finance rules have decidedly affected the relationships between EU institutions and Member States, with particular regard to the relationship between the Commission's technical apparatus and national public administrations.

The impact can be reconstructed examining at least three steps. The first is the establishment of a new administrative function within the EU legal framework; the second step concerns the constraints arising from the exercise of this function for Member States; the last consists in the evolution of a new organizational relationship, an intersubjective relationship between national and European institutions in the implementation of the national RRP.

As regards the first step, previous chapters have shown that the latest EU regulatory framework has granted the Commission a new financial role, linked to the implementation of recovery and support programmes for Member States affected by the COVID-19 pandemic. This role entails collecting resources directly on financial markets, by issuing specific instruments and acting as a financial intermediary in relations with Member States. Moreover, some organizational innovations have been implemented within the Commission, in order to ensure the full exercise of its debt management capacities.⁷⁰ This development has produced significant

⁷⁰ The Commission has been entrusted with the typical tasks of a debt management office. In this sense, the configuration of an almost "European Union Treasury" has been recognized: F. Spielberger, D. Hodson, D. Howarth and I. Mugnai, Building a European Union 'treasury': Explaining the European Commission's new approach to debt issuance and management, in *Journal of Common Market Studies*, November 2024, pp. 11–13.

changes not only in the exercise of the power of the purse at various levels of government, but especially in the relationship among parliaments, governments and administrations at both European and national levels. As noted in earlier sections, the Commission's new role affirms and implements the "development of a European macroeconomic policy".⁷¹

The second step entails the distribution of resources by the Commission to the Member States according to a performance-based system, linked to their achievement of objectives set in national plans. This is a direct consequence of the Commission's new role, at the basis of the RRF mechanism, which was analyzed in Chapters II and III.⁷²

The third step, which is pivotal to this analysis, concerns the technical bodies in Brussels. These are called upon both to approve the contents of national programming, and especially to verify that the objectives enshrined therein have been properly implemented at the national level. Verification is done in close and direct contact with the relevant national public administrations, which are mainly central-state bodies. This remains the case even though implementation is often entrusted to territorial administrations in many Member States.⁷³

What is innovative about this type of "interaction", resulting from the evolution of the EU financial regulatory framework?

This interaction involves a multilevel and intersubjective relationship between the EU's technical apparatus and national public administrations, which takes on the new form of a "hetero-directed co-administration". It does not fall within existing conceptual categories for composite administrative procedures or other types of euro-national procedures (or methods), nor under the organizational category of networks or integrated administrations.⁷⁴ There are subtle differences, which call for a more detailed analysis.

71 L. Lionello, Next generation EU: Has the Hamiltonian moment come for Europe? in *Eurojus*, vol. 4, 2020, pp. 22–42.

72 Through the operational agreements (concluded on the basis of Article 20, Regulation EU 2021/241) between the Commission and Member States, national RRFs defined national objectives and commitments "as in a private law contract". The plans meticulously list the respective commitments in a context different from the traditional one of partnership agreements for the European Structural and Investment Funds (ESIF): F. Corti and J.N. Ferrer, Steering and monitoring the recovery and resilience plans: Reading between the lines, in *Recovery and Resilience. Reflection Papers*, no. 2, Brussels: Centre for European Policy Studies, April 2021, especially p. 6. The operational agreements defined the monitoring and implementation calendar, the indicators for the achievement of goals and objectives, the methods of access by the Commission to the data and, where applicable, additional goals and objectives connected to loan disbursement.

73 J. Zeitlin, D. Bokhorst and E. Eihmanis, National recovery and resilience plans, in F. Fabbrini and C.A. Petit (eds), *Research handbook on post-pandemic EU economic governance and NGEU law*, Cheltenham and Northampton: Edward Elgar Publishing, 2024, p. 145.

74 About these categories of organization, E. Schmidt-Aßmann, Introduction: European composite administration and the role of European administrative law, in O. Jansen and B. Schöndorf-Haubold (eds), *The European composite administration*, Mortsel: Intersentia, 2011, p. 2.

As a first point, the Commission carries out a thorough control over the execution of the objectives established in national RRFs within the NextGeneration EU framework. This technical activity: (i) takes place systematically throughout the year according to a general schedule; (ii) regards not only the fulfillment of targets and milestones but, especially, the upstream definition of specific measures to implement the objectives; (iii) occurs both through systematic and online – formal and informal – meetings between the Commission offices and the relevant national administrations, and through on-site inspections; (iv) employs various tools to involve national administrations, such as fiche comments and requests for clarification requiring responses by administrations; and (v) can be ongoing and can lead to additional examinations or “pending issues”.

The second point to note is that the aforementioned practice is not a formal administrative procedure. Composite administrative procedures consist of phases taking place at both the European and national level and aim to adopt a single administrative act.⁷⁵ In the practice being discussed, the procedure may provide for various phases, but is not intended to result in adoption of an administrative provision. Rather, its purpose is to advance and support the national implementation of the national programme.

Under the RRF, the Commission disburses financing instalments to Member States upon their submission of a payment request, based on achieving the established milestones and targets and corroborated with detailed and comprehensive evidence. The Commission thoroughly examines this information before it can make a positive preliminary assessment of the payment request.⁷⁶ Then, the Commission refers the preliminary assessment to the Economic and Financial Committee (EFC) for its opinion, which the Commission is obliged to consider. Next, the Commission can adopt the final disbursement decision, through a comitology committee.

Consequently, there is no link between the preliminary technical activities carried out by the EU apparatus in synergy with national public administrations, and the adoption of the Commission’s assessments, although such assessments can take into account any information that may have emerged in technical meetings.

Hence, the practice in question can be considered neither an administrative procedure aimed at verifying the prerequisites for disbursement of financing tranches, as procedures for the other European funds (cohesion funds, etc.) might be.⁷⁷ Rather, it has become much more complex. The Commission does not simply check the achievement of the milestones and targets *ex post*. On the contrary, it collaborates with national public administration at a preliminary stage to define the best and most suitable measures to achieve the objectives.

75 On the composite administrative procedures, S. Cassese, *European administrative proceedings*, in *Law and Contemporary Problems*, vol. 68, 2004, p. 21.

76 Payments under the RRF are performance-based and contingent on Member States implementing the investments and reforms outlined in their respective RRFs.

77 For a detailed description of procedures for the use of other European funds, V. Margaras and B. Széchy, *Guide to EU funding 2023 edition*, Brussels: Research Service of the European Parliamentary Research Service (EPRS), 2023.

As for the third point, the category of euro-national institutional procedures does not seem appropriate either.⁷⁸ This category comprises the mixed-nature procedures associated with, for example, the functioning of the European Semester. The European Semester endows EU institutions with a supervisory activity, envisaging document exchange between the European and national levels in order to define national budget planning. Within NextGeneration EU, instead, the interaction between the European and national levels no longer concerns only decision-making and the planning phase but, above all, the administrative and executive phases.

The fourth point is that the interaction between the Commission and national public administrations cannot be traced back to the organizational figures that have traditionally characterized the relationships between the European and national level. It is not a network, such as those supervising antitrust matters, which entail the participation of the Commission and in which the independent national authorities participate. Nor is it a form of integration, such as the process in the banking sector. Nor, again, do there seem to be shared functions, such as those underlying common administrative systems or other forms of coordination or cooperation.⁷⁹

The co-administration model, often used to describe the functioning of European structural funds, is probably the most similar one to the interaction between the European and national levels in the NextGeneration EU context. Co-administration consists in “close consultation between the Commission and the Member States, at various levels, in the management of the funded interventions and, in particular, in the preparation, financing, monitoring and evaluation phases”.⁸⁰

Nevertheless, some peculiarities must be considered. The interaction between the Commission and public administrations in the Member States entails: the definition of common general objectives linked to common EU interests (digital transition, environmental protection, energy independence, military defense, etc.); the step-by-step support in the implementation of measures linked to the targets and milestones; meticulous oversight, including in the field; introduction of a reversal ban, so that established measures cannot be modified without the EU’s approval (following a complex process) and there is no scope for self-regulation.⁸¹ Moreover,

78 C. Fasone and N. Lupo, Learning from the euro crisis: A new method of government for the European Union’s economic policy coordination after the pandemic, in *International Journal of Constitutional Law*, vol. 22, no. 3, July 2024, p. 882.

79 For a general analysis of the different organizational figures in the EU, D. Hodson, U. Puetter, S. Saurugger and J. Peterson (eds), *The institutions of the European Union*, 5th edition, Oxford: Oxford University Press, 2025, who classified them according to their tasks (providing direction, managing the Union, governing the EU policies and managing interests).

80 E. Chiti and C. Franchini, *L’integrazione amministrativa europea*, Bologna: Il Mulino, 2003, p. 63, who added that “[t]he procedure for implementing the interventions is rather complex because it develops on different levels, and is also divided into sub-procedures. First of all, there is a programming phase; this is followed by the investigation phase, the decision-making phase and the implementation phase; finally, there is the control phase. The Commission and the national administrations participate in all of these stages, albeit with different tasks and responsibilities” (author’s own translation).

81 Some aspects are described by the ECA, special report no. 7 of 2023 (*Design of the Commission’s control system for the RRF. Assurance and accountability gap remains at EU level in the*

European regulations do not provide for the establishment of fully independent management authorities at the national level, unlike the case with EU structural funds. National public administrations engage in such management directly. In this connection, the financial/budget administration and the Commission enjoy a significant role. As the RRF follows a performance-based mechanism, the Commission carries out direct control and evaluation, albeit on the basis of national reporting.

Therefore, this is a particularly intensive form of co-administration. One key aspect is worth exploring in detail. Co-administration generally presupposes joint ownership of functions and a unitary purpose, in the mutual interests of the EU and each Member State. The context of structural funds is however characterized by sectoral interests, and concern specific actions and interventions within States. The NextGeneration EU framework introduced cross-cutting and wide-ranging interventions, in light of specific predefined missions. In this framework, the EU has defined a hierarchy of prevailing public interests, regardless of States' specific needs.

These characteristics indicate that a “hetero-directed co-administration” model exists, whereby the EU level directs and co-manages, and the national level co-manages and interacts with the implementing bodies. Therefore, the European level does not only direct; it also engages in management, examining the details of the measures implemented to meet the targets and milestones set in national plans (and the content of national rules). This is a modern version of the indirect rule model, which is most strikingly manifested in the field of public finance.⁸²

3.2. *How public financial rules boost the role of budget administration in relation to other powers*

Historically, public finance first determined the development and strengthening of public administration in Europe, and financial administration especially, during the gradual transition from medieval empires and regimes to national States. In this period, it became increasingly necessary to establish a stable administrative body that not only collected revenue from taxes and tributes across the national territory, as already occurred in the past, but above all maintained state accounts (originally in the monarch's primary interest) and ensuring their order (accounting function).⁸³ This administrative apparatus was vast and complex, as demonstrated

new delivery model, despite extensive work being planned). Moreover, Commission, *Report on the implementation of the recovery and resilience facility: Moving forward*, Luxembourg: Publications Office of the European Union, 19 September 2023 COM(2023) 545 final.

82 On the relationship between the EU and Member States, some scholars noted the emergence of a (new) indirect model to elevate and protect supranational interests. If indirect administration initially served the inviolability of national administrative rights, today, influenced by the “European constraint”, it is a powerful driver of convergence between state systems (G. Vesperini, *Il vincolo europeo sui diritti amministrativi nazionali*, Milan: Giuffrè, 2011, p. 146).

83 From this perspective and for a comparison with the US experience, see the well-known book written by E.J. Ferguson, *The power of the purse. A history of American public finance 1776–1790*, Durham: University of North Carolina Press, 1961.

by the French experience of administrative centralization, with the institution of the budget administration and the inspectorate body (intendants). This model was later transposed to other legal systems, such as the Italian one.⁸⁴

Today, the budget administration in France has received further powers by Article 47(3) of the French Constitution, which establishes that “should Parliament fail to reach a decision within seventy days, the provisions of the [Finance] Bill may be brought into force by Ordinance” adopted by the government (author’s own translation). This procedure is similar to that applied, for example, to the adoption of laws financing social security, in which the role of French Parliament is greatly reduced in favour of the executive power.⁸⁵ In this context, the *Direction du Budget* has always played a central role, as all public policies rely on its financial intervention. Over time, the *Direction du Budget* retained not only this role but also became the main driving force behind the entire reform of the French Organic Law on Budget Acts (LOLF).⁸⁶

Another significant example is the role of the Treasury in the history of the United Kingdom, as illustrated especially by John Maynard Keynes.⁸⁷ Today, HM Treasury

is perhaps the most powerful department in Whitehall. Its ownership of public spending means it has direct control over the money available to the rest of government, while the Treasury’s responsibility for tax policy gives it enormous influence over the finances of households and businesses.⁸⁸

Echoing this finding, the weekly publication *The Economist* published an article titled *Reducing the power of the Treasury is a good idea. Don’t break it up. But do give departments more freedom*, highlighting the budget administration’s growing strength at the expense of other public powers.⁸⁹

84 E. D’Alterio, *I controlli sull’uso delle risorse pubbliche*, Milan: Giuffrè, 2015, p. 1.

85 Article 47–1 of the 1958 French Constitution provides a special procedure for bills financing social security, which is largely analogous to that established in Article 47 for bills of finance. See also Article 49(3): “The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly. In that event, the Bill shall be considered passed unless a resolution of no-confidence, tabled within the subsequent twenty-four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members’ Bill per session” (<https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>). The French Conseil Constitutionnel has ruled on the pensions law in response to complaints about the abuse of the special procedure provided for by Article 47–1 of the Constitution, based on the constitutional principle of clarity and sincerity of parliamentary debate (Conseil Constitutionnel, Décision no. 2023–5 RIP, 3 May 2023).

86 Again in 2024, the bill on financing social security was adopted based on Article 49(3) of the Constitution (see: French PM forces social security budget bill through, exposing his government to a no-confidence vote, in *Le Monde*, December 2, 2024).

87 See Chapter I, Section 3.3.

88 As reported by the English Institute for Government, 20 March 2024, <https://www.instituteforgovernment.org.uk/event/treasury-power-government>, which studied the significant role of the Treasury in the English administrative system.

89 The article was published on 25 August 2022.

Therefore, public finance rules have affected not only the development of public administration but have also acted to strengthen budget administration within Member States, including by influencing the balance of public powers within States themselves.⁹⁰

This strengthening occurred mainly in two ways.

As for the first way, as studied extensively in sociology, complexity – especially in the finance field – tends to keep the inexperienced away and enhances the role of experts and the professional bureaucracy.⁹¹ The more numerous the constraints and complexities, as in EU financial regulation, the more knowledge and expertise are needed, generally located in technical–administrative bodies.

Returning to the example of French budget administration, two major challenges induced by EU financial regulation have recently led to significant changes. One is the elaboration of a “budgetary constitution”, that is, the LOLF, and the need to “cure” public finances. Since January 2006, the French budget administration has led to the implementation of the LOLF, under pressure from EU financial rules and acts.⁹² This responsibility prompted the budget administration to redefine its position towards other ministries, to adapt its tools in the light of the innovations brought about under the financial constitution and to accept new functions, such as the negotiation of objectives and the monitoring of performance indicators in collaboration with other ministries.

The second way derives from the specific functioning of the EU rules. From this perspective, there are various aspects to take into consideration.

First, the balanced budget rule is decisive in economic–financial planning, relying on specific estimates. These estimates, which form the basis for negotiating the objectives with the EU institutions by the Prime Minister and the Minister of Economy and Finance, are made by the national budget administration. Although the EU rules apply criteria for greater “independence”, this crucial activity remains almost completely the prerogative of the State’s budget administration. According to the Two Pack, Member States must, in their programming documents, indicate whether the macroeconomic forecasts were drawn up by an independent institution, or by the government and then validated by an independent institution.⁹³

Second, the balanced budget rule requires Member States to carefully assess the financial effects of expenditure forecasts on financial balances. This applies not

90 On the expanding role of the Italian budget administration, E. D’Alterio, *Dietro le quinte di un potere. Pubblica amministrazione e governo dei mezzi finanziari*, Bologna: Il Mulino, 2021, especially p. 27.

91 On the power of bureaucracy, Max Weber’s theses are very well known: especially M. Weber, *Economy and society*, vol. 2, English edition by G. Roth and C. Wittich, Berkeley and Los Angeles: University of California Press, 1978, p. 956.

92 See, for instance, Council opinion of 27 February 2007 on the updated stability programme of France, 2006–2010, in which the Council invited France to “strengthen the monitoring and enforcement of expenditure rules for all sub-sectors of the general government so as to ensure the respect of the ambitious multi-annual expenditure ceilings”, p. 3.

93 This is the solution adopted in Italy, where the task falls to the Parliamentary Budget Office: see Article 18(1) of Law No. 243/2012 and Article 10-ter of Law No. 196/2009.

only to the State budget law, but also to legislative acts adopted during the year and involving new or greater burdens than those foreseen in the budget. Identifying these effects, especially on net borrowing, is crucial to ensure compliance with EU parameters. For budget forecasts, this calculation is entrusted to the Member States' national budget administrations. For additional legislative forecasts involving new or greater burdens, the task would fall to the ministries competent for the subject matter of the expenditure forecast. In both cases, the budget administration plays an essential coordinating role.

Third, EU rules provide that Member States can temporarily depart from the programmatic objectives or the adjustment path, in exceptional circumstances. This was the case, for example, with the COVID-19 health emergency. Here too, the budget administration played an essential role, preparing the reports supporting requests for authorizations for such departures. On this point, it has been noted that in EU Member States, the State has been “reduced to government and administration”, in the face of semi-paralyzed parliaments.⁹⁴

Under the RRF, within NextGeneration EU, this has become even more accentuated. The RRF led to a key role for the public administration: implementing targets and milestones defined in the national recovery plans, while at the same time receiving interventions. These rules expanded the public administration's role in several fields (public recruitment, technical assistance, databases, reforms, etc.). In turn, national public administration, and especially the budget administration, used circulars, guidelines, technical instructions and more to impose common rules and practices on other institutions, such as local authorities, in order to correctly apply national resilience plans, and to promptly comply with RRF obligations. These measures established operational specifications, in particular with respect to drafting, selection and control activities. They mostly regulated or detailed the EU acts, with the result of compressing decision-making spaces, limiting choices, directing activities and setting up procedural initiatives.

This significant strengthening of budget administration in (especially some) Member States occurred mainly at the expense of the role of national parliaments.⁹⁵ More generally, EU integration and the development of EU powers have led to a gradual compression of the role of national parliaments. This phenomenon, usually described as due to top-down pressure, is also caused by bottom-up dynamics, precisely because national executives and national budget administrations have strengthened within Member States, because of the EU financial rules seen in previous chapters.⁹⁶

The long-standing debate on parliaments' inability to control public administration persists. Historically, this inability has been associated with the difficulty for

94 From a general perspective, M. Tushnet (ed), *The administrative state in the twenty-first century: deconstruction and/or reconstruction*, special issue of *Daedalus*, in *Journal of the American Academy of Arts & Sciences*, vol. 150, no. 3, 2021, pp. 5 ff.

95 W. Bateman, *Public finance and parliamentary constitutionalism*, Cambridge: Cambridge University Press, 2022, p. 199.

96 P. Krause, *Executive politics and the governance of public finance*, in M. Lodge and K. Wegrich (eds), *Executive politics in times of crisis*, London: Palgrave Macmillan, 2012, p. 136.

national parliaments to be effectively aware of the state of public resources and to fully exercise its power of the purse.⁹⁷ The phenomenon has several causes, including: the complexity of financial mechanisms, the reduced weight of parliament even in the production of spending legislation and the significant information asymmetry between government and parliament.

Another cause is the different powers that parliament and government can exercise over the budget. In the United Kingdom, Parliament can only approve or reject the budget as a whole, without being able to modify its provisions except for expressing a vote of no confidence in the Government. In France, when approving the draft budget, members of Parliament can propose to increase specific appropriations, provided that they also suggest cutting other expenditures, in the same amount. In Italy, Parliament can modify, approve or reject the budget, but the limited time available and other conditions significantly reduce the scope for parliamentary initiative. Indeed, most of the amendments to the budget are proposed by the Government itself, and not by members of Parliament. In Germany, the Minister of Finance can veto individual spending proposals if he considers that they do not meet the requirements of necessity and economic viability.⁹⁸

In this framework, EU financial rules, such as those of the European Semester, hinder the interaction between parliaments and executive powers at the national level. This operates especially to the detriment of parliaments, given that Council and Commission indications and recommendations are evaluated by government, which then proceeds to implementation. The European indications have precedence and prevail over those of national parliaments.

In conclusion, this trend should not be interpreted as a limitation for national democratic institutions or as a source of democratic deficit, a concern often noted in scholarship with regard to the development of EU powers. On the contrary, EU financial rules do not threaten the democratic systems of the Member States; with the appropriate adjustments, they can strengthen democracy, as seen in previous sections.

3.3. How public financial rules reshape the relationship between the public administration and the private sector

EU public finance rules have influenced the relationship between the public and private sectors, more specifically between the public administration and the market. The term “private sector” or “market” refers to the economic power exercised

97 P.E. Coleman described this well in relation to the early Australian legal system, noting a peculiar paradox: “it is paradoxical that, whilst no adequate constitutional, statutory or Parliamentary control is exercisable over a Government or a Treasurer who conceals the true financial position, yet Parliament insists on exercising more or less stringent control over the financial administration of companies, local governing bodies, friendly societies, etc., and both civil and criminal law may be invoked where statutory provisions are infringed”: P.E. Coleman, *Public finance and parliamentary methods*, in *The Australian Quarterly*, vol. 4, no. 15, September 1932, p. 31.

98 This comparative analysis is taken from A. Monorchio and L. Mottura, *Compendio di contabilità di Stato*, 4th edition, Bari: Cacucci, 2018, pp. 169–170.

by enterprises, multinational corporations, economic operators, trading agents, etc., distinct from civil society, discussed in Section 2 previously.

In this connection, at least five key points are especially pertinent.

The first point concerns how EU public finance rules have, over time, stimulated outsourcing in the provision of public services. This phenomenon was analyzed both in the case studies of Chapter IV and in Section 1.4. on how EU financial rules have influenced national administrative reforms.

However, a core of activities and services in which the public sector “prevails” over the private sector persists. This occurs when public management turns out to be more advantageous than outsourcing, either because private management showed flaws or because stronger public control is appropriate for certain strategic functions. This might contrast the ample scholarship that highlights the increasingly drastic curtailment of the public sphere in Member States, in favour of the private management of public services.⁹⁹

However, the issue must focus on the financial perspective. Although EU rules have often encouraged a greater involvement of the private sector, especially to contain public spending, public management has proven to be solid in various cases, counter to some common assumptions. For example, privatization does not always produce greater savings than public management (Portugal);¹⁰⁰ it is uncertain whether private management ensures a higher quality of services for the same level of public spending (United Kingdom);¹⁰¹ full accessibility of a service is not always easier to achieve financially through outsourcing (Irish healthcare system).¹⁰²

Thus, occasionally, the public sector remains strong in the provision of services, based on financial reasons. This produces a paradox: EU financial rules encourage States to resort to private provision of public services (outsourcing or privatization), yet due to financial reasons, in Member States it may be preferable to retain public management. Why does this happen?

There are several factors, including primarily the public administration’s organizational and managerial efficiency. In countries where the public administration is relatively efficient (such as the United Kingdom), outsourcing or privatization has revealed dysfunctions that could be better managed through public administration. Instead, where efficiency is low, outsourcing or, especially, privatization has produced greater benefits, because it compensated for the inefficiency and shortcomings of public administration. In other words, private management is not always preferable for financial reasons; rather, the level of organizational efficiency in the public administration can be decisive.

99 There is a rich literature on the phenomenon of the “hollow state”, which is “a metaphor for the increasing use for third parties, often nonprofits, to deliver social services and generally act in the name of the state”, H. Brinton Milward and K.G. Provan, *Governing the hollow state*, in *Journal of Public Administration Research and Theory*, vol. 10, no. 2, Tenth Anniversary Issue, April 2000, p. 359.

100 Chapter IV, Section 2.1.

101 Chapter IV, Section 2.2.

102 Chapter IV, Section 2.4.

For this reason, EU financial rules and acts – especially those adopted within the European Semester – should assess individual Member States’ situations in detail. Outsourcing and privatization do not necessarily always lead to better management of public resources. The ability of outsourcing and privatization to better manage public resources and contain public expenditure depends mainly on the level of efficiency of the national public administration in question. However, such an assessment does not emerge clearly in the European Semester measures, which focus on other factors.

The second point regards the main effect of outsourcing: a considerable increase in public procurement. This clearly reflects a chain reaction.

The public procurement sector has become increasingly significant in Member States, a trend bolstered by EU regulation. According to the ECA, “around €2 trillion, or 14 % of the EU’s gross domestic product, is spent each year on public procurement”.¹⁰³ Under EU law, public procurement is a key element of the single market, helping public authorities obtain the best value for money when purchasing works, goods and services. A successful model in several Member States is that of public–private partnerships.¹⁰⁴

Nevertheless, the ECA concluded that

the level of competition for public contracts to deliver works, goods and services, decreased over the past 10 years in the EU single market. There is a lack of awareness for competition as prerequisite for value for money procurements. Commission and member states have not made systematic use of data available to identify the root causes of limited competition, they took only scattered actions to reduce obstacles to competition in public procurement.¹⁰⁵

Moreover, the EU rules contributed to new administrative burdens, poor transparency and scarce development of competition (“some of the objectives of the 2014 reform may at times go against the overarching objective of ensuring competition in public procurement”).¹⁰⁶

Thus, EU legislation has promoted increasing recourse to outsourcing, which in turn results in the expansion of public procurement. Conversely, there is no corresponding increase in the level of competition (the ECA certified a high number of direct contract awards in most Member States, and a limited level of direct cross-border procurement).

103 ECA, *Public procurement in the EU. Less competition for contracts awarded for works, goods and services in the 10 years up to 2021*, no. 28, Luxembourg: Publications Office of the European Union, 2023, p. 4.

104 From a comparative perspective, G.A. Hodge, C. Greve and A.E. Boardman, *International handbook on public–private partnerships*, Cheltenham and Northampton: Edward Elgar Publishing, 2010, p. 3.

105 ECA, *Public procurement in the EU . . .*, p. 4.

106 ECA, *Public procurement in the EU . . .*, p. 5.

These data prove not so much a failure of EU legislation as, more specifically, the difficulty to pursue a common European objective by applying equal standards and rules for all. This “one-size-fits-all” approach fails to adequately consider the specific context: the reality of public administration within each Member State. On one hand – as seen in Section 1.1. – EU institutions, and especially the Commission, take into account Member States’ specificities when evaluating and supervising them within the European Semester. However, they do not do so when formulating the rules to be applied at the national level, because they rely excessively on the States’ ability to make the necessary adjustments during transposition. This tendency has arisen several times in EU legislation, both in public finance matters and in the field of public procurement, bodies of law that are moreover closely interlinked.

The third point deals with another chain reaction effect: the growing and ever-deepening interaction between public administration and the market. This has forced the former to develop significant predictive capabilities that it lacked before and that it is still struggling to develop.

Consider, for example, the “do no significant harm” (DNSH) principle, required for all public contracts relating to the use of RRF resources. As provided for by EU public finance rules, in public procurement the DNSH principle applies in the execution of multiple public investments financed by the RRF.¹⁰⁷ In this context, the definition of “EU sustainable finance regulations” was used.¹⁰⁸ Public administrations must ensure compliance with the DNSH principle, even if the public work is entrusted to private entities. In particular, the public administration must adopt “DNSH assessments” for each project financed by the RRF. The public administration must provide hard proof for the DNSH assessment, from start to finish of the outsourced intervention. Proof must also be provided for monitoring and reporting activities, when controlling expenditure. All these requirements result in a considerable administrative burden; in addition, a lack of homogeneity in the application of the principle must be noted.

The DNSH principle has produced the positive effect of obliging public administration to develop specific evaluation skills, in terms of environmental impact of projects. On the other hand, however, the principle has revealed some problems in application, especially in countries that are less advanced in conducting impact assessments.

Accordingly, in some Member States, the public administration suffers from a structural operational deficit in the field of impact assessments. An example is Italy. Other Member States, however, have more experience in this field, such as

107 The obligation to comply with the “horizontal principle” of “not causing significant damage to the environment” (or DNSH) is strictly connected with the European mission of the “just transition” towards a sustainable future. The hypotheses of “significant harm to the environment” are detailed in the Article 17 of the “Taxonomy Regulation” (Regulation EU 2020/852), by considering the six environmental objectives set out in the Article 9 of the same Regulation.

108 N. Pfaff and O. Altun, *Ensuring the usability of EU taxonomy*, Zurich: International Capital Market Association (ICMA), February 2022, p. 18.

France.¹⁰⁹ This difference significantly affects the proper implementation of the DNSH rule, to the point that in some States such assessments are reduced to mere “exercises in style”. Here, too, it is clear that EU financial rules, including the DNSH principle (which operates more as a conditionality rule for disbursing RRF and other EU funds), should be better tailored to the characteristics and level of experience of public administrations in each Member State.

The fourth point concerns a cultural aspect. EU public finance rules, especially those adopted under NextGeneration EU, have pushed public administrations in Member States towards emerging market sectors.

An example is the digital sector. NextGeneration EU includes digital transition among its main objectives. The programme thus required Member States to include several targets and milestones linked to the digital sector in their RRP. In Member States where digitalization in the public sector was already advanced, such as Denmark, these European rules did not entail major changes. However, in Member States where digital evolution was still in its infancy, the EU rules did have enormous impact.

Public administrations in countries such as Greece, Italy, Portugal and Ireland had to undertake a substantial cultural and organizational shift, often while facing challenges such as a high average age within the public administration, or the poor development of technologies in administrative processes.

From this perspective, EU public finance legislation has succeeded in encouraging Member States to develop digitalization in the public sector, with important benefits both within and beyond the public administration. This has been associated with growing attention, also on the part of scholarship, to the use of more advanced technologies, such as artificial intelligence, in the performance of public functions. Public finance law has been used as a tool to innovate and modernize public administration, promoting a cultural revolution over its traditional reliance on paper.¹¹⁰

The last point concerns the increasing information asymmetry between public administration and the market. In several Member States, public administrations have retained an old, if not obsolete, organizational structure. Conversely, economic power evolves much more rapidly, driven by major global powers such as the United States of America or China, the economic influence of which exceeds that of the EU.

This asymmetry is clear in certain Member States, leading to the EU’s repeated invitations, contained in CSRs, to innovate the public administration.¹¹¹ The trend thus triggered a race for the public administration to catch up with the market, and, more generally, economic power.

109 An interesting analysis was carried out by T. Perroud and S. Rose-Ackerman, Impact assessment in France: U.S. models and French legal traditions, in *European Public Law*, vol. 20, no. 4, 2014, p. 649.

110 C.M. Profiroiu, C.I. Negoită and A.V. Costea, Digitalization of public administration in EU member states in times of crisis: The contributions of the national recovery and resilience plans, in *International Review of Administrative Sciences*, vol. 90, no. 2, 2024, p. 336.

111 R. Peña-Casas, S. Sabato, V. Lisi and C. Agostini, *The European Semester and modernisation of public administration. Final report*, European Social Observatory (OSE)-European Public Service Union, November 2015, especially p. 20.

This phenomenon has yielded several interesting consequences. For example, EU financial regulations push public administrations to align not only with the market, but also with the trends and needs characterizing certain economic sectors, such as energy. Implementation of the REPowerEU regulation, linked to the RRF, required national public administrations to reformulate various milestones and objectives, despite sometimes lacking adequate knowledge of the complex and continuously evolving energy sector.¹¹²

Moreover, the concrete application of the REPowerEU rules highlighted how, in some cases, public administrations lacked the knowledge required to effectively manage energy transition processes and related financial resources, thus obliging them to rely entirely on corporate giants in the sector, including when programming objectives.¹¹³

In conclusion, at least three general findings can be mentioned. First, EU public finance rules have led not only to greater resort to the private sector, but also to greater blending between public and private. Under public finance law, the type or nature (core or noncore) of the function and service considered is irrelevant. If private management is financially more sustainable and preferable, it should be adopted. However, this approach has clashed with the public sector's greater suitability, in some cases, with respect to the management of certain services and functions. This trend emerged where the public administration is relatively efficient, and private management is not particularly more suitable.

Second, this combination between the public and private sector stimulated by EU public finance rules has often failed to achieve the results desired, such as fostering competition or environmental protection. This reveals a significant aspect: the financial nature of the rules tends to “interfere” with the theoretical and main aim of the rule itself. A similar situation occurred in the application of the rules on financial conditionality (Regulation EU 2020/2092) in Hungary and Poland, where the financial scope of these rules interfered somewhat with the pursuit of the rule of law principles.¹¹⁴

Finally, the Commission generally carries out in-depth impact assessments of EU rules in Commission staff working document impact assessments.¹¹⁵ Assessments can be preliminary (ex ante), ongoing and ex post. However, these activities do not regard all EU public finance rules and, especially, their impact on the

112 A. Widuto, *Energy transition in the EU*, Brussels: Research Service of the European Parliamentary Research Service (EPRS), November 2023, p. 2.

113 The implementation of certain national RRFs required the support of some big companies, especially in the energy sector, in order to identify, programme and carry out works and build infrastructures.

114 We recall that there was a strong resistance by these countries to respect the conditionality mechanism, by pressing the need to separate the provision of funding from the implementation of the rule of law and, therefore, the financial dimension from the protection of fundamental rights. See Chapter II, Section 1.2.1. for the details of the cases.

115 A description of the activity is available at https://home-affairs.ec.europa.eu/whats-new/evaluations-and-impact-assessments_en.

functioning of public administration and on the private sector within each Member State.¹¹⁶

This book has shown how financial rules can produce remarkably different consequences depending on the national reality considered. For example, the EU financial rules that induced and promoted the digital transition have had very different consequences in individual Member States, depending on the level of efficiency and innovation of the public administration and on the development of the digital market in each national context (compare the case of Denmark to that of Greece or Italy).

It would not be far-fetched to think of an *ex ante* and, especially, *ex post* impact assessment of EU financial rules that is calibrated to the characteristics and specificities of public administrations in Member States and, above all, to the level of “maturity” and the characteristics of the relationship between the public and private sectors within each national context.

This is not easy to implement, given that the Commission generally finds it difficult to obtain information from states on the application of public policies. Indeed, Member States are jealous of the information on their respective administrative apparatuses, as well as on the national application of public policies. This gives rise to a short circuit in the EU financial regulatory framework. How can one imagine a common, useful and effective financial policy and regulatory framework, if the EU is not aware of the impact that these rules have on the public and private sectors within its Member States?

Against such a backdrop, there may be a risk of insisting on inappropriate tools or pursuing unrealistic aims, as seen in the case of certain public procurement rules that were intended to foster competition but failed to do so.

These issues highlight a series of weak links in the complex structure of the EU public finance system, especially from the perspective of national public administrations.

116 The Commission staff working documents on the evaluation of the RRF, for example, are assessments of the RRF implementation, but not specific and effective analyses of the impacts on the public administrations in the Member States.