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CORE ANALYSIS

Europe's expanding coordination space

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Abstract

Recent changes to EU fiscal policy, such as the landmark economic governance reform package passed in early 2024, have established a dense 'coordination space' that steers crucial social and economic choices at the EU and national levels. This coordination space, however, departs significantly from its historical predecessors. It largely operates within a hard law framework using finance rather than either rules or soft persuasion and peer review as its main tool of influence. In this coordination space, EU law is less a system of uniform rules underlain with sanctions than a negotiation framework where discretion abounds, and rules are never broken but rather 'adjusted'. As this paper argues, the significance of the coordination space lies not only in its unique governance model and unclear boundaries but rather its increasing centrality to the governance of the EU. As the paper will explore using the rule of law example, even areas of EU law commonly conceived as necessarily insulated from political bargaining are increasingly drawn into the negotiation logic and instruments of coordination, rendering even more crucial a clear understanding of the trade-offs policy coordination implies. By unpacking 8 core features of policy coordination in the 2020s, the paper is therefore devoted to illuminating an expanding battleground within which EU law is being re-defined.

Keywords: policy coordination; economic governance package; fiscal policy; rule of law; new governance; EU funding; conditionality

1. Introduction

In February 2024, the Parliament and Council finally reached agreement on a package of reforms aimed at significantly overhauling EU fiscal policy.[1] The package of reforms seeks to chart a way out of indebtedness while allowing key common goals requiring significant investment – like defence and the European green new deal – to go ahead. The reform package follows the well-known Next-Generation EU (NGEU) package, which added a new line of funding, paid for through debt instruments, to the EU's existing fiscal instruments.[2] Together, these two packages signal a step change in EU fiscal policy, significantly increasing the authority of the Union in the field.

The reforms also signal something of perhaps more lasting relevance. Both the economic governance and NGEU programmes are founded in law and legal instruments. For the former, a reform of the existing 'two and six-pack' legislation is envisaged; for the latter, Next Generation

[1]For the final texts, see: <Economic governance review – European Commission (europa.eu)> accessed 3 March 2025. On the initial proposal, see Commission Communication, 'On Orientations for a Reform of the EU Economic Governance Framework' COM (2022) 583 final.

[2]Commission Communication, 'Europe's Moment: Repair and Prepare for the Next Generation' COM (2020) 456 final.

EU was founded on an inventive (and legally controversial) series of legislative measures.[3] At the heart of both sets of measures, however (and as discussed in Section 2 of the paper), is a policy coordination framework, which largely relies on money (even if embedded in rules) as its main vehicle to achieve change. The heavy lifting of EU fiscal policy is not conducted through rule-making and enforcement, but instead through a process of finance-based coordination – in the case of the economic reform package, through a new process of debt adjustment based on country-specific trajectories, and for NGEU through the assessment of national recovery and resilience plans. EU fiscal policy, as the paper will argue, is governed in a 'coordination space' that carries quite different features to the legal space that constitutes the core of EU law as a discipline.

In examining this coordination space, the paper has two aims. The first is to define and to explore the space. Policy coordination is of course not a new idea in EU governance. In the 1990s and 2000s it was a central element of a key debate in EU law about 'new modes of governance'.[4] As the paper will argue, while this debate receded in significance in the last 20 years, the radical increase in the importance of coordination requires a re-visitation of that debate. Crucially, while the policy coordination of the 2020s shares features in common with 'new governance', it radically departs from other elements of the EU's historic policy coordination model, with significant normative consequences. Section 3 of the paper will therefore be devoted to unpacking eight key features of the EU's coordination space, assessing how new forms of policy coordination depart from historic comparators.

The second aim is to make a broader argument about the relevance of the coordination space to understanding EU law. It would be one thing if coordination were simply confined to EU fiscal policy. While that field is already of significant import for the future of the Union, the core features of the coordination space increasingly creep into other fields of Union activity where problems of distribution and conflicts over capacity and control between the Union and national levels are apparent. In fields from climate change[5] and energy[6] to the rule of law and the battle over the Union's global competitiveness,[7] policy coordination is an increasingly important part of the EU's legal and political system, with money and finance displacing rule-making as one of, if not the, key lever of EU power. In this coordination space, EU law is less a system of 'uniform application' of rules with sanctions for breach than a negotiation framework where discretion abounds, and rules are never broken but rather 'adjusted'. Section 4 will therefore examine another crucial area of EU law – the rule of law – to illustrate that even policy areas commonly seen as heavily judicialised (and necessarily insulated from political machination) are increasingly drawn into the logics of the coordination world.

The coordination space has therefore shifted from an ancillary area of EU law to a coloniser, both displacing many of EU law's normative safeguards and creeping outwards into new swathes of territory. Its central institutional actor, the European Commission, carries vast authority yet is, at the same time, dangerously outgunned by the gargantuan range of goals EU coordination is being asked to achieve. This expanding space, so the paper will argue, deserves greater scholarly and practical attention.

[3]On this controversy (and contrasting views), see B de Witte, 'The European Union's COVID-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift' 58 (3) (2021) Common Market Law Review 635–82; M Ruffert and P Leino-Sandberg, 'Next Generation EU and Its Constitutional Ramifications: A Critical Assessment' 59 (2) (2022) Common Market Law Review 433–72.

[4]D Trubek and L Trubek, 'The World Turned Upside Down: Reflections on New Governance and the Transformation of Law' 1 (2010) Wisconsin Law Review 719; M Dawson, *New Governance and the Transformation of European Law* (Cambridge University Press 2011).

[5]See: <https://energy.ec.europa.eu/publications/draft-national-energy-and-climate-plans-necps-submitted-2018_en> accessed 3 March 2025.

[6]Commission Communication, 'REPowerEU Plan' COM (2022) 230 final 16–18.

[7]M Draghi, 'The Future of European Competitiveness', Report of 9 September 2024 at 63. <https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en> accessed 3 March 2025.

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2. EU Fiscal policy coordination in the 2020s

Understanding the core features of the coordination space requires a brief description of the two central processes already discussed – fiscal policy coordination and the NGEU programme.[8] These two processes are linked but also separate: they have different legal sources and carry a further crucial difference: while 'normal' fiscal policy coordination is linked in different ways to the EU budget, it does not have an underlying fiscal capacity at its heart (which of course is the central feature of NGEU). The main focus of both processes is fiscal policy, ie, the coordination of spending and budgets (but with implications of course for broader EU economic policies such as monetary policy and financial supervision).

The legal framework of fiscal policy coordination has significantly evolved since the Maastricht Treaty. It remains underpinned by the same set of primary rules, namely the idea that policy is an area of 'common concern' that must be coordinated but not harmonised.[9] It also remains oriented towards the same set of overall goals – a 60 per cent of GDP debt reference and a 3 per cent annual budget rule.[10] Beyond these targets, 'market discipline' is also designed as a key constraint, with Article 125's 'no bail-out' clause ensuring that national governments are also under pressure to maintain budgetary discipline to avoid market pressure on government debt (through for example high bond yields).[11] The almost constant process of reform of fiscal policy since Maastricht, however, reflects the constant inability of Eurozone states to achieve their fiscal targets (with doing so often reflecting the economic cycle rather than changes in national policy choices). EU institutions have thus faced the same dilemma over and over – to double down on central fiscal rules even where Member States are clearly unable to meet them; or to relax them and in doing so face the accusation that they are encouraging fiscally irresponsible behaviour. In a policy area where spending and budgets carry high externalities yet remain fundamentally national, the EU level has thus faced a credibility gap whatever path it chooses.

The Euro crisis saw a significant change to the underlying architecture. The so-called six and two pack legislation altered the excessive deficit procedure (EDP) but also introduced a macro-economic imbalances (MIP) procedure designed to address a key weakness of the Maastricht architecture: that fiscal risks might emerge from a diverse range of policy choices and structural weaknesses well beyond debt and deficits.[12] This reform, however, also massively expanded the scope of policy issues brought under the rubric of fiscal policy coordination.

The centre of fiscal policy therefore became the European Semester process. This asks the Commission to identify common challenges and risks through an Annual Growth Survey as well as a set of country-specific recommendations (CSRs), adopted by the Council.[13] These CSRs tend to be broad in scope, covering areas from debt financing to pension sustainability, green investment, and social expenditure. The coordination cycle involves Euro area Member States issuing three-year budgetary plans as well as annual national reform programmes (NRPs),[14] where they are obliged to demonstrate how they intend to meet common EU fiscal goals. On the basis of these plans, states identified as presenting risks can then be subject to an in-depth review by the Commission, setting out remedial measures. Underlying the process is the shadow, but not the

[8]See also, M Dawson, *How to Democratise Europe's Fiscal Rules* (Friedrich Ebert Stiftung 2023) 5–7.

[9]Art 121(1) TFEU.

[10]Art 1, Protocol (No. 12) on the Excessive Deficit Procedure.

[11]On this form of market accountability, see A Steinbach, 'EU Economic Governance after the Crisis: Revisiting the Accountability Shift in EU Economic Governance' 26 (9) (2019) Journal of European Public Policy 1354–72.

[12]Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, OJ L 306.

[13]For the 2024 package, see "European Semester 2024: Council agrees on country-specific recommendations – Consilium" Council of the European Union, Press Release, 16 July 2024, available at: <https://www.consilium.europa.eu/en/press/press-releases/2024/07/16/european-semester-2024-council-agrees-on-country-specific-recommendations/> accessed 3 March 2025.

[14]To be issued by all EU states (along with three-year 'convergence programmes' on budgeting for non Euro-area countries).

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risk of sanction. For reasons discussed below, neither the EDP nor the MIP procedure have ever resulted in sanction.

This 'back and forth' of policy coordination has reaped some success. Prior to the onset of the Covid pandemic, there had been a marked reduction in the number of states subject to the excessive deficit procedure.[15] The Commission's economic governance review, however, is designed to tackle three key weaknesses of EU fiscal policy exposed during the Covid-19 period. The first – a pattern highly visible today – is that spending continues to be pro-cyclical.[16] Essentially, governments (often for political reasons) tend to spend when the going is good and cut back when the economic outlook tightens (thus encouraging rather than limiting economic volatility). The second is that the fiscal policy coordination framework has failed to address the massive heterogeneity the Eurozone continues to display. As put by the Commission in its 2022 Communication, 'the framework has not differentiated sufficiently between Member States despite different fiscal positions, sustainability risks and other vulnerabilities'.[17] The last challenge is increasing indebtedness – while high levels of public debt seemed relatively harmless in the 2010s, a new era of inflation and interest rate hikes had heightened the risks of indebtedness for EMU as a whole (threatening a return to the 2010 sovereign debt crisis even as inflation has gradually lowered in the last year). The last challenge is particularly demanding – the EU has to tackle debt but at a time where significant investment is needed for other priorities, particularly for defence and the green transition.

The reform package agreed in early 2024 aims to address these challenges with three legislative acts: a first Regulation on the main 'preventive' arm of the Stability and Growth Pact (which contains the most significant reforms)[18]; a second Regulation on the 'corrective' arm (which concerns the relevant reference values for deficits and thus circumstances for sanctioning them)[19] and a third Directive on national budgetary frameworks (that, for example, strengthens the role of independent fiscal institutions in *national* budgeting).[20] This legislation reforms the Union's economic framework in a series of steps. The first step is to focus on the debt challenge. While the package does not propose to remove the famous 3 and 60 per cent reference values, it places another value at the centre of fiscal coordination – long-term debt sustainability.[21] The core of the EDP's preventive arm will therefore in future be a debt sustainability analysis to be conducted both for the Union as a whole and for specific Member States.

The second step is to encourage a shift towards more long-term target-setting. The European Semester was envisaged as a largely annual process. At the centre of the new process, however, are medium-term fiscal plans 'to ensure that the debt ratio is put on a downward path or stays at present levels and the budget deficit is maintained below the 3 per cent of GDP reference values over the medium term.'[22] This longer-term planning is designed to allow a better balance between debt reduction and investment – where Member States can show that structural investments add

[15]All Eurozone states therefore carried deficits below the 3 per cent target in 2019; this though significantly deteriorated once pandemic spending started, necessitating a decision to suspend the SGP rules in 2020. See "The COVID-19 crisis and its implications for fiscal policies", ECB Economic Bulletin Issue 4 (2020), Chart A. Available at: <https://www.ecb.europa.eu/press/economic-bulletin/focus/2020/html/ecb.ebbox202004_07~145cc90654.en.html> accessed 3 March 2025.

[16]On this problem, see P Heimberger and J Kapeller, 'The performativity of Potential Output: Pro-Cyclicality and Path Dependency in Coordinating European Fiscal Policies' 24 (5) (2017) Review of International Political Economy 904–28.

[17]Economic governance review Communication, n 1 above at p 3.

[18]Regulation (EU) 2024/1263 of the European Parliament and Council on the effective coordination of economic policies and multi-lateral budgetary surveillance and repealing Council Regulation 1466/97/EC (hereinafter Preventive Arm Regulation), OJ L, 2024/1263.

[19]Council Regulation (EU) 2024/1264 of 29 April 2024 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ L, 2024/1264.

[20]Council Directive (EU) 2024/1265 of 29 April 2024 amending Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, OJ L, 2024/1265.

[21]Preventive Arm Regulation, Recital (12).

[22]Commission Communication, n 1 above at 6.

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debt *but simultaneously present better prospects for long term growth*, this 'could underpin a longer adjustment period and a more gradual adjustment path'.[23] Member States can therefore themselves request longer periods to meet common EU targets where they can justify this as part of a long-term plan for debt sustainability.[24]

Finally, the third step is a move towards greater differentiation in assessment and goal setting between Member States. At the heart of the European Semester process therefore is now a risk-based surveillance framework whereby the trajectory towards debt reduction looks different for different Member States, designed to ensure that heavily indebted states are not pushed into greater indebtedness by targets that are too ambitious for them even if easily met by others.

This element has been one of the central points of resistance from some Member States, with the German finance minister for example critical that it could lead to greater lenience towards precisely those states that pose the largest fiscal risks to the Eurozone collectively.[25] The final preventive arm legislation therefore added an additional safeguard: that the government debt ratio must always decrease by a minimum annual of 1 per cent of GDP for Member States with a debt ratio exceeding 90 per cent, or of 0.5 per cent of GDP for Member State's debt ratios between 60 per cent and 90 per cent.[26] In spite of this 'safeguard', by suggesting a reduction in the number of indicators by which Member States will be assessed and moving towards a more differentiated framework,[27]the review seems part of what Mario Draghi once referred to as a shift in the Eurozone 'from rules to institutions'.[28] In essence, the key element of the package is not a detailed set of prescriptions which all should follow but a process, with its central actor, the Commission, given high discretion to make 'prudent' fiscal decisions and define the necessary pace of reform (a point to which the next section will return).

Finally, the economic governance review has to be understood alongside the equally important Next Generation EU programme (NGEU). NGEU's overall financial envelope as established via the EU Recovery Instrument and Own Resources Decision is some 807 billion euros, 338 billion of which are in the form of direct grants and targeted mainly at states facing high economic challenges.[29] It is therefore an openly redistributive instrument. As laid down in the RRF regulation, Member States are not free to spend their grants as they wish: they must be thematically tied to Covid recovery and to the two key priorities listed in the Regulation, the green transition (amounting to a minimum of 37 per cent of investments) and digitalisation (a minimum of 20 per cent).[30]

NGEU's governance structure, however, is largely embedded in the coordination process of the European Semester.[31] As with fiscal coordination more broadly, spending disbursement is tied to the ability of Member States to demonstrate the utility of their spending via national recovery and resilience plans (RRPs). The first plans established by the Member States vary hugely in

[23]Ibid, at 13.

[24]Preventive Arm Regulation, n 18 above, Art 13.

[25]'German Finance Minister Sceptical of new EU Debt Rules' (*Euractiv* 2022). <https://www.euractiv.com/section/economic-governance/news/german-finance-minister-sceptical-of-new-eu-debt-rules/> accessed 3 March 2025.

[26]Preventive Arm Regulation, n 18 above, Art 7.

[27]J Lindner and N Redeker, '"It's the Politics, Stupid" – Don't Squander This Golden Opportunity for Reforming the Fiscal Rules' (JDC Policy Brief 2023).

[28]Speech by Mr Mario Draghi, President of the European Central Bank, on the award of *Laurea honoris causa* in law from Università degli Studi di Bologna, Bologna, 22 February 2019. I am grateful to Johannes Linder for alerting me to this connection.

[29]'The EU's 2021–2027 Long-term Budget and Next Generation EU: Facts and Figures' (European Commission 2021) at p 7.

[30]Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (hereinafter RRF Regulation), OJ L 057, Art 16(2).

[31]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' 22 (3) (2024) International Journal of Constitutional Law 893.

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precision and depth (and even in speed Ie the Dutch plan was submitted almost a year after all others).[32] NGEU therefore adds yet another layer of planning, goal-setting, and reporting to the existing Semester process, with the Commission tasked with assessing whether national plans comply with the overall goals of the RRF.

While the RRF allows an initial disbursement of funds (13 per cent), further disbursement is conditional upon states achieving the milestones laid out in their RRPs, guided by a Commission assessment on whether national plans 'contribute to effectively addressing all or a significant subset of challenges identified in the relevant country-specific recommendations'.[33] NGEU has thus become a major tool to attempt to secure compliance with what had to that point been a rather toothless Semester process. While in theory disbursement of funds is enacted by a Council implementing decision, the short period the Council carries to make such decisions implies heavy deference to Commission assessments.[34] In addition, a Commission decision to suspend funds can only be overturned by the Council by qualified majority vote (and within one month).[35] NGEU therefore adds a significant weapon to the Commission's fiscal powers, allowing Commission assessments in the context of general EU economic governance to feed in to the process of financial disbursement at the centre of NGEU.[36]

While this overall fiscal policy architecture seems an increasingly incoherent mess, as the next section will argue, it carries certain recurrent logics. These logics can be seen by I) comparing current fiscal coordination with past varieties of coordination and II) by understanding fiscal governance in terms of a series of features which seem to recur across different processes of coordination (and which increasingly reach out beyond the fiscal sphere). Uncovering the logic of this messy 'coordination space' is the goal of the next section.

3. The magnificent eight – the core features of governing in the coordination space

If one were to solely focus on Commission Communications, one might conclude that fiscal policy is a relatively innocuous process. In the minds of most students of the EU, it is a blurred chart or graph with one process of reporting leading to another and governed mostly by the constant exchange of documents. Underlying these processes, however, as this section will attempt to show, is a model of governance with certain key features. These key features relate to, but also significantly alter, the older processes of policy coordination discussed in EU studies under the rubric of 'new governance'.

Central to that debate was a particular understanding of the relationship between 'traditional' hard law and 'soft' forms of coordination. For the purposes of this article, this must also be supplemented by understanding the relation between rules on the one hand and resources, such as funding instruments, on the other. It is important not to establish an overly dichotomous relationship between these categories. Obviously, EU funding instruments are embedded in EU legislation and often in further delegated acts which direct how they should be used. The same embedded quality applies to the relation between law and coordination. Not only is it the case, as will be discussed below, that most contemporary coordination instruments are regulated by legislative acts but that even the most prescriptive of 'hard laws' carry elements reminiscent of the

[32]On variation in the national RRPs, and commonalities, see Z Darvas et al, 'European Union Countries' Recovery and Resilience Plans' (Bruegel Data Set 2022). <https://www.bruegel.org/dataset/european-union-countries-recovery-and-resilience-plans> accessed 3 March 2025.

[33]RRF Regulation, n 30 above, Art 19(3).

[34]See Art 20 RRF Regulation. According to Art 20(7), the implementing decision should be adopted within four weeks of a Commission proposal.

[35]RRF Regulation, n 30 above, Art 10(3).

[36]Underlying this remains of course the question of whether RRF guidelines are complied with; a 2024 report of the European Court of Auditors give a mixed picture, largely due to the slow pace of Member States in drawing down available funds. See 'Absorption of funds from the Recovery and Resilience Facility' (2024) ECA Special Report 13.

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coordination space. In a dense and shared administrative structure like the EU – where rules have to navigate significant uncertainty and complexity – they inevitably leave a degree of discretion to those who implement them. This has been highlighted in the EU economic governance case by Joana Mendes, whose work has described this as a problem of constitutive powers, ie, of an EU administration which often *establishes* the very frameworks to which it is supposedly bound.[37]

As this section will explore, however, there remain important differences between law, funding, and coordination (even if they are often differences of degree).[38] While rules, for example, can be agreed upon legislatively confident that the costs and benefits of implementing them will be born later – and often by private actors – funding schemes require the mobilisation of public resources (with clearer distributive implications). And while hard law always involves discretion, the coordination space often goes one step further, establishing a constant feedback loop between EU rules establishing how resources ought to be allocated and experience of what is and is not possible given structural and political constraints (meaning that norms are in motion to the extent that they are constantly being re-defined according to practice). This point will be further developed in Section 4, which will argue precisely that coordination is increasingly encroaching upon areas of policy seen as heavily legalised, blurring the relationship between law, coordination, and finance. This section will first, however, focus on coordination itself, distinguishing eight central features of EU policy coordination in the 2020s.

A. The coordination space involves the unclear sharing of power and competence

The first feature concerns the reason coordination is turned to in the first place. Here, the older debate regarding new governance and the 'open method of coordination' is instructive. The Open Method of Coordination (OMC) was explicitly designed as an instrument to allow EU action in areas primarily reserved to the Member States under the competence regime of the Treaty.[39] It thus spread first in areas like employment and social policy, where legislative action was limited. This heavily influenced the design of the OMC – it was based on coordination and persuasion rather than central coercion because the latter was not an option.

By contrast, the new coordination space is one that is largely operating in areas where both the EU and its Member States can credibly claim competence but where their powers are mixed and contested. The EU's competence regime for economic policy is confusing, with fiscal policy listed in the TFEU neither as a 'shared' nor a 'complementary' competence.[40] This leaves economic policy as an area with two contradictory legal elements. The first is that it is extensively directly regulated by the Treaty and by secondary law. The Treaties economic policy chapter lays out central guiding principles for general EU economic policy[41] and a number of legal bases.[42] These legal bases have been extensively used. Unlike earlier forms of policy coordination, current fiscal coordination is legalised under 'hard law'.

At the same time, EU legal competence runs up against a lack of competence understood in the other sense of that word. Ie, the available tools to actually make fiscal choices. Given that we are dealing with an area where the EU has limited capacity and infra-structure, and where the issues to be regulated have strong domestic salience, the ability of the EU to set common rules is limited regardless of the available legal powers. The coordination space is thus by definition a mixed and

[37]J Mendes, 'Constitutive Powers of Executive Bodies: A Functional Analysis of the Single Resolution Board' 84 (6) (2021) The Modern Law Review 1330–59.

[38]For an analytical account of the relation between hard law, soft law, and coordination, see F Terpan, 'Soft Law in the European Union: The Changing Nature of EU Law' 21 (1) (2015) European Law Journal 68–96.

[39]As put in the 2001 Commission White Paper on Governance, the OMC 'should not be used when legislative action under the Community method is possible'. Commission Communication, 'European Governance: A White Paper' COM (2001) 428 at 21.

[40]Art 5 TFEU.

[41]See the principles listed in Art 119(3) TFEU.

[42]See, eg, in the economic policy chapter, Arts 122, 126(14), 127(6), 136(1), & 138(2) TFEU.

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multi-level space. It carries high functional inter-dependencies, thus establishing a strong coordination logic. Yet, notwithstanding Next Generation EU, it also carries low functional and institutional power, lacking basic fiscal tools, such as the capacity to tax, to borrow, and thus to spend in order to incentivise desired fiscal outcomes (all of which remain national, with even NGEU providing a borrowing capacity only on an exceptional and temporary basis).[43]

The EU of the coordination space tends therefore to retreat into a dilemma common to international law.[44] It can utilise its legal powers and set ambitious standards but simply be ignored (as the experience of the excessive deficit procedure for most of the Eurozone's life illustrates). Or it can set the bar low through vague, deferred rules that allow states to do what they would like to do anyway (but in the process invite accusations of redundancy). To deal with this dilemma, the EU level thus chooses coordination – it establishes obligations for Member States to take common goals seriously, underlain by a hard law process (such as, for example, the three legislative acts agreed in 2024). But it does so without exercising the kind of coercion strong authority would imply (with those acts establishing a process of surveillance rather than strong obligations in and of themselves).

B. The coordination space regulates states not individuals. Or anything in between

A second feature of the coordination space concerns the 'objects' of regulation. To return to the example of 'new governance', while it also sought to regulate states, it was embedded in a strong logic of participatory democracy.[45] Processes like the OMC thus sought an inter-mediary actor between the EU and the state: not the individual but an emergent third sector in the form of trade Unions, NGOs, and other civic actors who would improve policy implementation and provide an alternative legitimacy basis for EU action. This therefore distinguished policy coordination from both the model of international law, which was primarily about states, and the model of the single market, where the individual or firm was the primary object of (EU) regulation.

In the coordination space, both of these sets of actors are almost entirely absent. The coordination process is primarily a *bi-lateral* process between two actors: an EU institution or set of institutions on the one hand and the state on the other. This bi-lateralism is connected to the areas which coordination seeks to operate in. In fiscal policy, while the individual matters, they tend to be subsumed into a larger macro-economy, where individual economic decisions are aggregated and collectivised.[46] The objects of regulation in the coordination space, and the relevant actors whose behaviour coordination must change, are thus the governments and officials who write budgets, who make spending decisions and who also draft the plans that form the basis of the European Semester and NGEU process.

As a corollary, the degree of individual and civil society involvement in the economic governance review and NGEU packages are minimal. The RRF regulation mentions civil society actors only once, through a duty for Member States to *report* on how they have consulted civil society groups when formulating their national RRPs.[47] This has led to significant national variation – to give the example of social partners, the European Trade Union Congress reports

[43]The question of the degree to which NGEU constitutes a permanent borrow capacity for the Union is of course contested. See, eg, the emphasis in the decision of the German Federal Constitutional Court on NGEU's temporary nature, 2 BvR 547/21, 2 BvR 798/21, Judgment of 6 December 2022 at para 89.

[44]M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2006).

[45]See K Armstrong, 'Inclusive Governance? Civil Society and the Open Method of Co-ordination' in S Smismans (ed), *Civil Society and Legitimate European Governance* (Edward Elgar 2006) 42–67; contra, S. Smismans, 'New Modes of Governance and the Participatory Myth' 31 (5) (2008) West European Politics 874–95.

[46]On the macro-micro distinction in EU economic policy, see K Tuori and K Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press 2014) 13–60.

[47]RRF Regulation, n 30 above, Art 18(4)(q).

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that there was no involvement of national trade Unions in the drafting of RRPs in 12 Member States.[48] As Vanhercke and Verdun have pointed out, there may be institutional explanations for this – as the drafting of RRPs is generally centralised within Prime Minister offices and finance ministries, the reports are drafted in an environment where social partners have weaker links.[49] In the economic governance package, the final compromise text contains similarly weak obligations to civil society namely that 'Member States may discuss the progress report in their national parliaments and with civil society, social partners and relevant stakeholders, in accordance with their national legal frameworks'.[50] Much will depend on the review's long-term impact on the European Semester – whereas new innovations like the RRF have tended to displace social stakeholders, these actors have often re-asserted their voice over time (for example through the role of the EMCO committee in the drafting of CSRs).[51]

Addressing the state as the primary regulatory actor carries a certain logic – national governments carry the most authority to make fiscal decisions. The coordination's spaces bi-lateralism, however, also poses significant functional and normative risks. The individual has been a key factor in the historic enforcement of EU law. Normatively, the narrative of individual 'emancipation', and later civil society 'mobilization', has been an important way of legitimising EU law, through providing rights to citizens and groups independently of their governments.[52] The lack of civil society involvement in goal-setting in EU fiscal policy also potentially leaves out of the picture actors, such as social partners, of importance in ensuring effective domestic implementation of EU goals. This speaks to the history of EU fiscal policy: states such as France and Italy have often agreed to debt and deficit reduction strategies at the EU level only to soften them once faced with street and civil society resistance back home (a risk that stronger civil society involvement *ex ante* could mitigate).[53] The coordination space's focus on states therefore promises more short-term delivery but with risks to long-term 'ownership' of fiscal policy from domestic actors (ironically, given that ensuring such domestic ownership is a strong element of the reform package's discourse).

C. The coordination space is not a universal or uniform space. It is 'Country-Specific'

A related third feature of the coordination space concerns its differentiated spatial logic. The classical model of EU integration has been that we need the consistent and uniform application of EU law in order to secure key EU goals like an unimpeded single market. This logic is still apparent in some more contemporary policies like the GDPR and AI acts. This also has a normative logic – uniform application implies states are subject to the same obligations and therefore carry a basic equality. In this way uniform application links to the promise of Article 4(2) TEU that 'the Union shall respect the equality of Member States before the Treaties'.

Fiscal policy coordination, however, necessarily involves regulating states in very different starting positions, who carry different risks to the system as a whole. It is difficult to persuade states in good fiscal health that they require the same level of fiscal surveillance as those in poor health. Some states may carry problems with banks, other with deficits and yet others with structural and historical features (like gender divisions, or different legacies of the pandemic). The coordination

[48]ETUC European Semester Toolkit, available at: <https://est.etuc.org/rtmt/> accessed 3 March 2025.

[49]B Vanhercke and A Verdun, 'The European Semester as Goldilocks: Macroeconomic Policy Coordination and the Recovery and Resilience Facility' 60 (1) (2022) Journal of Common Market Studies 213.

[50]Preventive Arm Regulation, n 18 above, Art 20(4)(b).

[51]Vanhercke and Vurdan, n 49 above at 217.

[52]F de Witte, 'Integrating the Subject: Narratives of Emancipation in Regionalism' 30 (1) (2019) European Journal of International Law 257–78.

[53]On such problems of national 'ownership' in the NGEU context, see M Munta, B Pircher and S Bekker, 'Ownership of National Recovery Plans: Next Generation EU and Democratic Legitimacy' 31 (11) (2024) Journal of European Public Policy 3787–811.

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space – as further amplified by the recent economic governance package – is therefore designed as a set of country-specific frameworks which envisage different rules and trajectories for different states (even if, in the long term, all states are aiming towards convergence on a single standard).[54]

This leads of course to a high scope for accusations of inequality of treatment and double standards. As was once noted by the Commission President, 'France is France'. Ie, large states are in a much stronger position to resist pressure for fiscal reforms as smaller states.[55] This problem is amplified by the significant discretion (discussed further below) which the coordination space provides the Commission, either to positively or negatively assess a state's progress towards EU targets. We have some more recent evidence of this phenomenon – perhaps unsurprisingly, the German RRP is far less detailed and less obviously connected to NGEU's overall goals than the 270 page Italian RRP.[56] This is for obvious reasons – Germany is simply less reliant on the scheme and has less to gain from it (but is in turn therefore less amenable to Commission instruction to follow common goals). The coordination space, therefore, reflects inequality between states but also forwards this logic, through increasingly stipulating differentiated paths and obligations.

This may be a feature of the contemporary coordination space where the continuity with 'new governance' can most easily be observed. New governance was also designed in terms of 'same goals, different means'. It tended, however, to see difference as a functional and normative advantage. An example is the influential framework of experimentalism and 'learning from difference' theorised by Sabel and Zeitlin.[57] Here, mutual learning, and good practice, are seen as key for policy improvements (necessitating differences between states, without which such experimentation could not occur). States should also, under this framework, be encouraged to critique and peer review each other. In this sense, new governance was an attempt to deal with the diversity of EU states differently than normal EU law: while EU law often attempted to reduce difference (through replacing divergent national rules with harmonised EU standards), new governance attempted to govern at EU level while leaving significant national divergences in applicable rules in place.

While the coordination space also recognises national difference as a starting point, it has a quite different attitude to experimentation. Importantly, it does not envisage horizontal but rather *vertical learning*. The EU-level sets the cognitive framework (eg, the annual growth survey, or debt sustainability analysis) from which Member States should 'learn'. There are few opportunities for peer learning, however: as remarked on by others, the short time-frames available for the Council to review RRPs and the Council's increasing consensus institutional culture has led to minimal peer discussion in the Council of national plans.[58] For both new governance and the coordination space, difference is therefore accepted and built into rule-making. New forms of coordination seem, however, to carry no sense of positively utilising differences as a tool to improve policy making.

D. The coordination space coordinates everything. But also, therefore, nothing

A fourth important element of the coordination space is its scope. This scope relates to some of the competence and legal features of coordination discussed earlier. As economic policy is an unclear

[54]On 'asymmetric' sovereignty transfer in the Eurozone, see M Dawson, 'The Legal and Political Accountability Structure of "Post-Crisis" EU Economic Governance' 53 (5) (2015) Journal of Common Market Studies 984.

[55]'EU Gives Budget Leeway to France "because it is France" Juncker.' *Reuters* 2016.

[56]See for the former, 'Deutscher Aufbau- und Resilienzplan' (Ministry of Finance 2022). Bundesfinanzministerium – Deutscher Aufbau- und Resilienzplan (DARP). For the latter, 'Piano Nazionale di Ripresa e Resilienza' (Ministero dell'Economia e delle Finanze 2021), available at: <https://www.governo.it/sites/governo.it/files/PNRR.pdf> accessed 3 March 2025.

[57]CF Sabel and J Zeitlin, 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU' 14 (3) (2008) European Law Journal 271–327.

[58]On peer review in the Council, see C Radaelli, 'Europeanization, Policy Learning, and New Modes of Governance' in May, Peters and Muhleisen (eds), *Regional Comparisons in Comparative Policy Analysis Studies* (Routledge 2020) 239–54.

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and a mixed competence, it also has unclear substantive boundaries. This has become more and more apparent as the Eurozone has evolved. The lessons of the Euro and later Covid-19 crises have been that economic shocks can come from everywhere, from health scares in far away countries, to asset bubbles concentrated in Eurozone states, but with implications for everyone. This therefore justifies what is well known in EU studies as functional policy spill-over, ie, that achieving goal X requires intervention in fields A, B and C.[59]

The country-specific recommendations in the context of the European Semester therefore concern a myriad of policy fields – it is hard in fact to name a policy field not touched by fiscal policy coordination.[60] Similarly, while NGEU is oriented around two central goals, Member States have used their RRPs to pursue numerous substantive goals as explicitly permitted under the RRF regulation (which lists in Annex VI actions to pursue a wide variety of goals from health care investment to integration of third-country nationals). This potential for deviation between the immediate context of pandemic recovery and the broad goals pursued by Member States under their RRPs was criticised extensively by the German Constitutional Court in its recent Own Resources Decision.[61] The changes to the EDP and MIP procedures are also likely to carry this expansive quality – threats to debt sustainability can again come from myriad sources, particularly social and investment spending, justifying greater EU surveillance of those areas.

At the same time, the coordination of everything carries obvious dilemmas. The more EU coordination spreads out into different policy fields, involving different stakeholders and national veto players, the more difficult it is for the EU level to actually achieve meaningful change in these areas. This has been a broader lesson regarding compliance with the European Semester, with the degree of national compliance with country-specific recommendations generally low, particularly in areas where formal EU competence is weak.[62] There is therefore a tension between the broadening of the scope of the coordinative space and the ability to actually coordinate – coordination invokes the image of the embattled clown, who is already juggling numerous balls in the air, only for several more to be thrown in.

This 'coordination of everything' places current fiscal policy on a continuity with earlier forms of new governance. Processes like the OMC also sprung-up in multiple policy areas with numerous attempts to promote horizontal integration – for example between employment and fiscal coordination.[63] The history of the OMC also, however, shows the dangers of horizontal coordination. The integration of social and fiscal targets was of course ambiguous, with social spending often re-conceptualised not as a vehicle to alleviate hardship but instead as a lever of productivity.[64] The new economic governance package's focus on debt sustainability, and its lack of social partner involvement, poses this question once again. The broadness of the package brings social spending firmly within its ambit, but the substantive prioritisation of debt sustainability immediately conceptualises it not primarily as a lever for social change but as a debt risk to be minimised. Coordination *can* mean the reflexive integration of policy areas but *can also* mean the colonisation of one area by the logic guiding another.[65]

[59]As put by Lindberg, policy spill-over pressures occurs when 'an established objective can be assured only by taking further integrative actions'. L Lindberg, *The Political Dynamics of European Integration* (Standford University Press 1963) 10.

[60]B Zeilinger, 'The European Commission as a policy entrepreneur under the European Semester' 9 (3) (2021) Politics and Governance 63–73.

[61]BVerfG Judgment of the Second Senate of 6 December 2022 (Own Resources Decision), 2 BvR 547/21 — 2 BvR 798/21 at [82].

[62]Z Darvas and A Leandro, 'The Limitations of Policy Coordination in the Euro Area under the European Semester' 19 (2015) Bruegel Policy Contribution 1–29; S Bekker, 'Is there Flexibility in the European Semester Process? Exploring Interactions between the EU and Member States within Post-Crisis Socio-Economic Governance' 1 (2016) SIEPS Report 1–74.

[63]See Commission Communication 'Integrated Guidelines for Jobs and Growth' COM (2007) 803.

[64]M Dawson, 'The Ambiguity of Social Europe in the Open Method of Coordination' 34 (1) (2009) European Law Review 55–79.

[65]Ibid., at 63–70.

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E. The coordination space is built on rules. But the rules do not 'rule'

As already discussed, the coordination space is structured through rules either directly through the Treaty or secondary legislation. These rules are both substantive and process oriented, ie, they lay down a division of responsibilities for target setting, monitoring and sanctioning and contain substantive goals and benchmarks for success (such as, for fiscal coordination, the need to bring down debt by 1 per cent of GDP per year as a benchmark for states where it currently exceeds 90 per cent).[66] The Commission itself has complained of the proliferation of rules in EU fiscal policy, and the complications arising from multiple, overlapping frameworks.[67] This is certainly not a 'lawless' space.

What kind of 'laws', however, are we talking of?[68] Immediately following the Euro crisis, Damian Chalmers pointed to some of the difficulties with the EU's fiscal rules. While they appear as simple quantitative targets, the number of exceptions, and the lack of certainty over the applicable methodology in calculating deficit and debt produce significant ambiguity and discretion.[69] This tendency towards fragmented and open-ended rules has only increased as EMU has developed. The economic governance package is a useful example. The package sets itself up as an exercise in simplification, promising that the preventive arm of EU fiscal policy will now rely on a single overarching indicator based on debt. This indicator was initially defined in the Commission proposal as 'nationally financed net primary expenditure, ie, expenditure net of discretionary revenue measures and excluding interest expenditure as well as cyclical unemployment expenditure'.[70]

As is already obvious, this indicator (which is the basis for the underlying rules on debt sustainability) is not really clear at all. A first problem concerns what constitutes discretionary revenue measures – what is included in the overall reference value and what is excluded? Discretionary revenue normally refers to tax measures with the amount of revenue accrued based on uncertain projections regarding the future. A second problem concerns the exclusion of interest and unemployment expenditure – while there are reasons to exclude both, this is a matter of economic judgment (ie, more hawkish observers might argue that precisely bond market yields and hence interest payments inevitably weigh on a state's debt risk). In the final legislative text, the definition became even less clear, amending for example the definition of unemployment expenditure to now exclude 'cyclical *elements of* unemployment *benefit* expenditure' (begging two additional questions, ie (i) which are these 'elements' and which types of unemployment spending fall within the category of 'benefits')?[71] As this small example shows, assessing even a seemingly 'simple' and neutral indicator depends on the Commission making discretionary judgments. Whereas 'rules' are normally understood as being decisive in normatively framing conduct, rules in the coordination space, at best, open up a large corridor of discretion for the actors applying them.

The same point applies in regard to the Commission's assessment of national plans in both fiscal coordination and NGEU. As the final preventive arm regulation makes clear, the Commission's positive approval of national adjustment plans in the European Semester will depend on whether they contribute to a 'plausibly downward' debt path.[72] This 'plausibility' is again a high discretionary standard, leaving the Commission with the call as to whether investment X is likely to simply add more debt or trigger growth such that the medium-term debt

[66]Preventive Arm Regulation, n 18 above, Art 6(a).

[67]Economic Governance Communication, n 1 above 5–6.

[68]For a broader discussion of the quality of fiscal rules from a rule of law perspective, see P Dermine, *The New Economic Governance of the Eurozone: A Rule of Law Analysis* (Cambridge University Press 2022) 170–211.

[69]D Chalmers, 'The European Redistributive State and a European Law of Struggle' 18 (5) (2012) European Law Journal 582–4.

[70]Economic Governance Communication, n 1 above at 8.

[71]Preventive Arm Regulation, n 18 above, recital (12).

[72]Ibid, Art 6(a).

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challenge will be tackled.[73] While the final legislative texts added some safeguards in this respect, ie, quantitative benchmarks for debt reduction, they rely of course on Commission assessments as to how concrete reforms might impact them.

Similarly, under NGEU, the Commission must decide whether national governments are achieving meaningful milestones from their RRPs to justify the disbursement of funds. While the overall 37 per cent and 20 per cent reference values for the green and digital transitions narrow this discretion, others have pointed to the incredible variation in projects counted by the Member States as 'green' (such as the replacement of coal-based with gas-based heating systems in the Polish and Czech RRPs).[74] Once again, the Commission has broad discretion to decide whether this fits the criteria of the Regulation and, if it does not, what to concretely do about it. This has already attracted external criticism – the European Court of Auditors has for example, found flaws in the Commission's assessment of RRPs, notably in regard to unclear milestones for financial disbursement and the Commission's failure to follow through systematically on its own assessment guidelines.[75] In the coordination space, the actor applying the rule therefore has such discretion to determine whether a rule has been breached or followed that the rule itself seems to be doing 'little of the work'.

This feature is a key contrast between new and old forms of policy coordination. Certainly, processes such as the OMC were also goal-based and often very vague and open-ended. They were also, however, soft law processes with limited enforcement. New governance's defining element was the absence of legislation and hard rules, with the OMC at best a hybrid framework but commonly not regulated through law at all (with no judicial review).[76] The coordination space, however, is a space where rules, even if vague, are laid out in legislation, and where, while judicial review is also commonly lacking, significant consequences attach to central decisions. To give some examples, for countries such as Greece and Italy according to the ECB, requested loans and grants under the NGEU will constitute around 16 and 11 per cent of national GDP respectively.[77] In terms of debt adjustment, a decision to demand or not the current debt reduction benchmarks is a decision with multi-billion-euro fiscal consequences. It is not just, therefore, that rules are discretionary but that massive consequences attach to how they are applied.

F. Rules are never broken in the coordination space. They are (re-)negotiated

The point above links to a sixth important element of the coordination space. While important consequences attach to the breach of rules, the very openness of fiscal rules means that it is never clear whether a rule has been breached or not. As rules are shifting and unclear, the space does not operate through a legal/illegal binary. While the EDP and MIP procedures carry significant scope for sanction, breaches of rules are never sanctioned: rather they are 'negotiated', ie, they lead to real consequences, but these consequences are *again part of* the discretionary space.[78]

[73]See also Blanchard et al, 'The European Commission's Fiscal Rules Proposal: A Bold Plan with Flaws that Can Be Fixed' (*Bruegel Blog* 22). <https://www.bruegel.org/blog-post/european-commissions-fiscal-rules-proposal-bold-plan-flaws-can-be-fixed> accessed 3 March 2025.

[74]See: "National Recovery Plans must work towards aims of Green Deal", Greens/EFA <https://www.greens-efa.eu/en/article/press/national-recovery-plans-must-work-towards-aims-of-green-deal> accessed 3 March 2025.

[75]European Court of Aauditors 'The Commission's Assessment of National Recovery and Resilience Plans – Overall Appropriate But Implementation Risks Remain', Special report 21/2022 <https://www.eca.europa.eu/en/publications?did=61946> accessed 3 March 2025.

[76]D Trubek and L Trubek, 'Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-Ordination' 11 (3) (2005) European Law Journal 343–64.

[77]M Freier, et al, 'Next Generation EU: A Euro Area Perspective' 1 (2022) ECB Economic Bulletin. <https://www.ecb.europa.eu/pub/economic-bulletin/articles/2022/html/ecb.ebart202201_02~318271f6cb.en.html> accessed 3 March 2025.

[78]In this regard, coordination shares some similarities with the more discretionary elements of the infringement procedure. See B Smulders and L Prete, 'The Age of Maturity of Infringement Proceedings' 58 (2) (2021) Common Market Law Review 297–300.

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This is a consequence not only of the vague nature of rules in the coordination space but also the strong authority and capacity of the actors who must follow these rules, ie, states. Given the (near) monopoly of the state on fiscal capacity, the enforcing agent is therefore in a weak position to actually sanction the actor. Sanctioning therefore follows a two-stage logic – (i) to what degree is the rule violated and how seriously; and ii) to what extent does the rule enforcer actually have the ability and authority to enforce the rule vis-à-vis the rule breaker?

This re-enforces some difficulties already mentioned. In a more positive light, it allows the Commission discretion to refuse to apply sanctions where they are likely to have negative effects (eg, applying a fiscal penalty on an actor already experiencing a high deficit). This is reflected in the possibility, under the new fiscal rules, to give states more time to meet debt reduction targets when making credible and needed structural investments.[79] More problematically, the second 'stage' makes inequal treatment of states likely, establishing a credibility gap for the system of coordination as a whole (ie, why should I follow the rules when my larger neighbour does not and can get away with it?). There is already some evidence of domestic politicisation re-enforcing this gap, ie, of politicisation patterns forcing the Commission towards a more flexible approach to rule enforcement under the SGP in the immediate post Euro-crisis period.[80]

This treatment of sanctioning and enforcement is again a difference vis-à-vis new governance in that – linked to the point about soft law above – new governance operated in an area largely without sanctioning power and where the primary tool of policy change was persuasion. This carried certain advantages, however: it was clear that national governments were in charge and therefore legally and politically accountable for the reforms they enacted. The coordination space introduces a dark zone in this regard. It is not clear who is really exercising authority – the national level who carries out reforms or the European one that steers?[81] The EU level seems neither weak enough to evade accountability for sanctioning nor strong enough to *carry* responsibility (a point further elaborated below). Instead, we are left with an unclear 'bargain'.

G. *In the coordination space, money not rules is the main instrument of power*

The feature above raises a key question – if sanctioning and broader policy change in the coordination space is essentially a negotiated bargain, what is driving the bargain? The answer is implied by the discretionary nature of the coordination space – the main leverage both sides hold concerns not rule-based authority (ie, who has the legal competence to decide?) but financial leverage (who holds the purse?). The seventh feature of the coordination space is therefore that finance and monetary incentives are the main instruments of power, not rule-making.[82]

Once law was considered, as Joseph Weiler has put it, 'the object and agent' of integration, ie, law was the way integration was forwarded and also the goal of integration in the sense of being the focal point of political attention and polity construction.[83] Increasingly, however, money takes on this role. Firstly, it is the means of governing, ie, of encouraging states to comply with EU rules. As EU fiscal governance has developed, there have therefore been increasing efforts to link policy coordination to financial incentives and the EU budget. This began loosely, with the efforts in the early 2010s to link the European Semester with social and cohesion funds.[84] It has gained renewed

[79]Preventive Arm Regulation, n 18 above, Art 13.

[80]RA van der Veer, 'Walking the Tightrope: Politicization and the Commission's Enforcement of the SGP' 60 (1) (2022) Journal of Common Market Studies 81–100.

[81]M Bovens, 'New Forms of Accountability and EU-Governance' 5 (1) (2007) Comparative European Politics 447–68.

[82]On this more general trend in EU governance, see VA Schmidt, *Europe's Crisis of Legitimacy: Governing By Rules and Ruling by Numbers in the Eurozone* (Oxford University Press 2020) 87–116.

[83]M Cappelletti, M Seccombe and JHH Weiler (eds), *Integration through Law: Europe and the American Federal Experience* (de Gruyter 1986) 4.

[84]Commission Communication, 'A Blueprint for a Deep and Genuine Economic and Monetary Union Launching a European Debate' COM (2012) 777 at 19.

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prominence through the RRF Regulation's incorporation of compliance with CSRs as one of the conditions for the disbursement of funding under NGEU.

In an inter-linked manner, however, money is also an increasing *object* of integration. Whereas political competition under the 'Community method' was about who controlled rule-making, now the main political actors seek to control the money supply.[85] On the one hand, the Commission seeks to enhance its political autonomy by carrying its own debt instruments; on the other, the Member States seek to retain control by continuing a logic of conditionality, ie, demanding that grants are tied to clear criteria and establishing certain safeguards to this effect such as the emergency clause under the RRF, allowing a referral to the European Council where a state fears NGEU funding is being mis-used, or the Council's ability to oversee the Commission's extension of debt adjustment in the EDP.[86] This is the heart of the power of the coordination space – it has opened up what was (in the case of social and agricultural funding) once a relatively confined battleground in integration based on the control of resources.

This again represents a significant difference vis-à-vis new governance. NG instruments, while sometimes loosely linked to budgetary instruments, carried limited material incentives. They thus tended to be ignored by states who soon learnt that doing so carried few negative consequences. In spite of its enforcement challenges, ignoring the coordination space carries far higher costs and risks, encouraging both states and EU institutions to more actively engage in contesting how resources are distributed (and drawing higher political contestation, particularly in states such as Italy and Poland, where NGEU disbursements are high).[87]

The 'new' coordination space's fiscal focus thus draws national political actors into a game of increasingly distributive bargaining. The difficulty, of course, is that its bi-lateral and spatial logics simultaneously *hide* the bargain or provide few avenues to consider the just distribution of resources across the Union as a whole. Let us take the new economic governance package as an example: a decision by the Commission for example either to strictly enforce debt adjustment rules or to allow longer adjustment for 'worthy' investments can have significant re-distributive consequences across the Union.[88] The assessment of these consequences, however, falls onto actors – the Commission and Council – with a limited institutional ability to weigh the *common* European interest and make policy trade-offs likely to be seen as legitimate (in the Commission's case because of its lack of political accountability and in the Council's because of its purely national one). This poses a final important question, namely the coordination's space limited legitimacy resources.

H. The coordination space lacks input legitimacy and the consensus needed for output legitimacy

With what *kind* of legitimacy does the coordination space operate? Troublingly, it seems to carry the pre-requisites of neither input nor output legitimacy. The historic 'community method' was of course designed to deliver both. EU law was largely confined to areas where the EU could deliver collective goods Member States could not achieve on their own. It was also operating in what Majone once termed 'pareto-optimising' areas of policy, where Member States agreed on the broad goals of integration largely because it was not redistributive and produced goods for all.[89]

[85]See the example of the EUCO compromise on the 2021–2017 MFF, European Council Conclusions 22/20 of 11 December 2020.

[86]RRF Regulation, n 30 above, Recital 52; Preventive Arm Regulation, n 18 above, Art 16 & 17.

[87]On this differentiated politicisation, see V D'Erman, et al, 'The European Semester in the North and in the South: Domestic Politics and the Salience of EU-Induced Wage Reform in Different Growth Models' 60 (1) (2022) Journal of Common Market Studies 21–39.

[88]A Crespy, 'The EU's Socio-economic Governance 10 Years after the Crisis: Muddling through and the Revolt against Austerity' 58 (2020) Journal of Common Market Studies 133–46.

[89]G Majone, 'The Rise of the Regulatory State in Europe' 17 (3) (1994) West European Politics 81.

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On the input legitimacy side, the displacement of national parliaments through integration was compensated by the growing role of the European Parliament (EP) as well as the legitimacy of national governments as represented in the Council and protected by unanimity or at least qualified majority voting (QMV).

The coordination space increasingly seems to reverse these gains. On the input side, the EP has no meaningful role in fiscal policy coordination and no co-decision rights. As much as NGEU has been described as a 'Hamiltonian moment' of state-building,[90]the biggest concession to the EP was a 'recovery and resilience dialogue' with the Commission to question officials (with a similar process anchoring the new fiscal rules).[91] This follows the model of the monetary and supervisory dialogues found in other areas of EMU (and which have frequently been criticised as carrying limited effectiveness in the academic literature).[92] In terms of national input, many important decisions, such as decisions to refuse disbursement of RRF funds or to impose sanctions under the EDP and MIP procedures, are conducted under reverse QMV, ie, the ability of the Council to veto decisions is significantly reduced.[93]

At the same time, the coordination space poses numerous problems regarding the displacement of national Parliaments. The adoption of the NGEU package provides the Commission with significant authority in an area of traditionally strong parliamentary prerogatives. There is not yet significant empirical work on the effects of NGEU on national Parliaments. One can, though, garner some expectations from literature on the European Semester process, which demonstrates a mixed picture. There is some evidence that transparency demands established through the two-pack legislation, and the strengthening of fiscal Councils, have provided opportunities for NPs to strengthen national budgetary scrutiny.[94] At the same time, Parliaments are notoriously under-resourced in terms of EU scrutiny, carry high heterogeneity and have particular difficulties in scrutinising 'soft' frameworks such as the recovery and resilience plans and NRPs demanded under the reformed European Semester.[95] The chances therefore that limited EP involvement is compensated for by strong domestic scrutiny are, at best, low for many Member States (with the new fiscal rules merely requiring Member States to indicate whether or not they have been consulted when national plans are drawn up).[96]

Perhaps this lack of input legitimacy could be compensated for by strong output legitimacy. Certainly, a solidaristic and stable Eurozone is a significant public good for all EU citizens. As discussed above, however, output legitimacy requires a strong baseline of agreement, ie, that Member States largely agree on the outputs that coordination should pursue.[97] The nature of fiscal policy, however, as a field with strong re-distributive effects, makes this agreement far harder to achieve. The need for the Commission to continue to tinker with fiscal rules demonstrates this lack

[90]C Georgiou, 'Europe's 'Hamiltonian Moment'? On the Political Uses and Explanatory Usefulness of a Recurrent Historical Comparison' 51 (1) (2022) Economy and Society 138–59.

[91]See European Parliament Economic Governance Support Unit, 'Recovery and Resilience Dialogue with the European Commission' (In-depth Analysis 2022) <https://www.europarl.europa.eu/thinktank/en/document/IPOL_IDA(2022)699550> accessed 3 March 2025.

[92]For an empirical overview of parliamentary scrutiny in EMU (and the relevant literature), see A Akbik, *The European Parliament as an Accountability Forum: Overseeing the Economic and Monetary Union* (Cambridge University Press 2022).

[93]Regulation No 1173/2011 (EU) on the effective enforcement of budgetary surveillance in the euro area, OJ L 306, Art 4; Regulation No 1174/2011 (EU) on enforcement measures to correct excessive macroeconomic imbalances in the euro area, OJ L 306, Art 3.

[94]For a recent summary, see R Csehi and DF Schulz, 'The EU's New Economic Governance Framework and Budgetary Decision-Making in the Member States: Boon or Bane for Throughput Legitimacy?' 60 (1) (2022) Journal of Common Market Studies 118–35.

[95]MB Rasmussen, 'Accountability Challenges in EU Economic Governance? Parliamentary Scrutiny of the European Semester' 40 (3) (2018) Journal of European Integration 341–57; M Hallerberg, B Marzinotto and GB Wolff, 'Explaining the evolving role of national parliaments under the European Semester' 25 (2) (2018) Journal of European Public Policy 250–67.

[96]Preventive Arm Regulation, n 18 above, Art 9.

[97]FW Scharpf, 'Legitimacy in the multilevel European polity' 1 (2) (2009) European Political Science Review 173–204.

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of consensus – the Union tends to continually move between different poles, from a strong insistence on austerity and fiscal rules in the early 2010s to a stronger investment and institutional orientation in recent years (and surely back again). While the adoption of NGEU was remarkable in signaling an ability of Member States to agree on an explicitly re-distributive scheme, what is notable about NGEU is also what is concealed/deferred. As indicated above, the headline agreement on climate transition and digitalisation allows a myriad of (potentially contradictory) policies to be adopted by national governments under its roof, with the decision to base the fund on borrowing, essentially deferring the more contentious question of who should shoulder the fund's liabilities. In simple terms, output legitimacy is certainly possible in distributive areas of policy but the EU of the 2020s lacks the kind of consensus needed to anchor the coordination space in a strong baseline of output legitimacy.[98]

Here there are some observable continuities with new governance. As was often observed, NG lacked parliamentary involvement.[99] There was, however, a de facto unanimity rule in the sense that – in a soft law system – MSs ultimately choose whether they follow EU rules or not. There were also, as discussed above, participatory or throughput forms of legitimacy underlying NG that are weak in the coordination space. In terms of output legitimacy, NG benefited from the fact it carried lower ambitions – its aim was coordination in the classical sense ie trying to improve compatibility between national policies and encourage mutual learning and best practice sharing. NG rarely articulated ambitious goals, and when it did for example through the 'Lisbon Strategy', it quietly dropped them in the face of failure. In the new coordination space, the EU is promising significant public goods in a policy environment where its failures are much more likely to be known and evaluated by the general (and not just elite) public, and where this attention is not being mediated by parliamentary institutions. The risks and consequences of failure are thus heightened.

4. Coordinating the rule of law?

Do the above features matter? If coordination was largely a method confined to fiscal policy and a few ancillary areas, it could be seen as an important element of EU law and policy but also a specific and isolated one. In addition, not all of the mechanisms discussed above are permanent – disbursements under the NGEU programme, for example, will run until 2027 and it is unclear what might replace it (or whether it can be replaced at all).

The reality, however, is of a growing coordination space. Firstly – as already discussed – the importance and spill-over effects of fiscal policy mean that its effects (and hence its governing instruments too) spread over an increasingly large policy space, including at the domestic level. Secondly, as this section will seek to demonstrate, even areas outside fiscal policy have begun to take-on strong 'governance' features resembling coordination. One key example is energy and climate, where the RepowerEU programme to accelerate divestment from Russian energy was integrated into the RRF framework and new 'chapters' in national reform plans;[100]even areas outside this, however, such as the EU's clean energy package, involve a coordination framework, where national governments submitted long term energy and climate plans subject to Commission assessment and peer review.[101] A further example is industrial policy. A key anchor of the new Commission's policy agenda has been delivering on Mario Draghi ambitious plans to increase the ambitions of EU industrial policy and hence the close the EU's infamous productivity

[98]M Dawson and A Maricut-Akbik, 'Accountability in the EU's Para-Regulatory State: The Case of the Economic and Monetary Union' 17 (1) (2023) Regulation & Governance 142–57.

[99]F Duina and T Raunio, 'The Open Method of Co-Ordination and National Parliaments: Further Marginalization or New Opportunities?' 14 (4) (2007) Journal of European Public Policy 489–506.

[100]Commission Communication, 'REPowerEU Plan' COM (2022) 230 final at 16.

[101]Commission Communication, 'Clean Energy for all Europeans' COM (2016) 860 final. See, for the national energy and climate plans: <https://energy.ec.europa.eu/publications/draft-national-energy-and-climate-plans-necps-submitted-2018_en> accessed 3 March 2025.

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gap with the United States. But how is this to be delivered? You guessed it: through a set of national 'competitiveness action plans' supported through a dedicated new pillar of the next EU budget.[102] This section will focus, however, on a quite different example. The rule of law is a useful field to examine when thinking about the expansion of Europe's coordination space because in many ways it is a 'least likely case' to observe coordination. Core elements of the rule of law at the national level, such as judicial independence and the separation of powers, are set out in constitutional texts precisely to avoid their political manipulation. At the EU level, the rule of law has been significantly judicialised, particularly in the period since the CJEU's landmark *Portuguese Judges* ruling in early 2018. Following that ruling, the Court has developed an ambitious jurisprudence interpreting Article 19(1) TEU, utilising it to establish standards for the independence of national judiciaries and other independent institutions, such as Central Banks.[103] This has been accompanied by other judicial innovations, both substantive (eg, the introduction of the principle of non-regression in *Republika*[104]) and procedural (such as the development of new remedies regarding interim relief, restitution and penalty payments).[105] The rule of law thus seems a necessarily judicialised policy area with quite different features to the negotiated world of 'coordination'.

If one looks closer, however, while the two fields are clearly different, coordination seems increasingly central to this policy area too. Even if not all of the above features of the coordination space are apparent, many are. This begins with the multi-level and unclear legal basis of the rule of law. While the EU carries an Article 7 procedure, it does not carry a clear legislative basis for rule of law measures. As a result, the Court is developing rule of standards in a lonely legal space – it can define these standards but the powers to actually organise judiciaries and many other relevant institutions remains national. As a result, the same dilemma is present in the rule of law area as fiscal policy – the legal authority and functional need to develop common *EU* standards is always in tension with the (largely national) ability to change standards 'on the ground'. This deficit has been noted by a number of rule of law scholars, who have contrasted the EU's increasing 'success' and pride in developing rule of law tools with the reality of a largely unchanged landscape in the two states under most scrutiny, Hungary and Poland (with the latter transformed by domestic/political, rather than supra-national/legal factors).[106]

This deficit essentially forced EU policy makers to develop coordination instruments for the rule of law. This began with the dialogue procedure developed to accompany and flesh-out Article 7.[107] This rule of law dialogue has, like policy coordination more generally, been adapted over several years to what is now a multi-lateral rule of law mechanism based on an annual 'rule of law report'.[108] This looks like a classical coordination procedure, with (i) common EU goals and benchmarks (such as the Justice Scoreboard,[109] examining national systems according to agreed indicators); (ii) national reporting (in the form of annual national input into the mechanism); (iii) central assessment (in the form of a rule of law report with 27

[102]M Draghi, The Future of European Competitiveness' Report of 9 September 2024 at 63. <https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en> accessed 3 March 2025.

[103]See, eg, Cases C-64/16 *Associacao Sindical dos Juizes Portugeses v Tribunal de Contas* ECLI:EU:C:2018:117; C-619/18 *Commission v Poland* ECLI:EU:C:2019:531; C-791/19 *Commission v Poland* ECLI:EU:C:2021:596.

[104]Case C-896/19 *Repubblika v Il-Prim Ministru* ECLI:EU:C:2021:311.

[105]See the Order of the Vice-President of the Court in Case C-204/21 R *Commission v Poland*. Press release available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200047en.pdf> accessed 3 March 2025.

[106]D Kochenov, 'De Facto Power Grab in Context: Upgrading Rule of Law in Europe in Populist Times' 40 (2021) Polish Yearbook of International Law 197–208; D Kochenov and P Bard, 'Kirchberg Salami Lost in Bosphorus: The Multiplication of Judicial Independence Standards and the Future of the Rule of Law in Europe' 60 (s1) (2022) Journal of Common Market Studies 150–65.

[107]Commission Communication, 'A New EU Framework to Strengthen the Rule of Law' COM (2014) 158 final.

[108]Commission Communication, 'Strengthening the Rule of Law within the Union A Blueprint for Action' COM (2019) 343 final.

[109]See the 2024 Justice scoreboard, available at: <EU Justice Scoreboard (europa.eu)> accessed 3 March 2025.

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national chapters); and (iv) country-specific recommendations (in the form of rule of law recommendations and greater surveillance for problematic states). The rule of law framework therefore carries other general features of coordination discussed in Section 2 – it is largely bi-lateral (a dialogue between the European Commission and individual Member States); 'country-specific' (with recommendations tailored to the justice systems of each Member State[110]); and wide-ranging (reflecting the broad causes of rule of violations, it monitors issues like corruption and media pluralism as well as judicial independence).[111]

The main difficulty with the mechanism of course has been ensuring states comply with it. As discussed by Sonja Priebus, 'dialogue' is a useful enforcement mechanism when the main issue hindering compliance is a lack of knowledge or capacity – it is less good when states are intentionally refusing to comply.[112] This problem has therefore forced rule of law decision-makers to seek to leverage the power and authority of other EU law mechanisms, drawing the rule of law closer to fiscal policy coordination. The centrepiece of this move, of course, has been the adoption of the conditionality mechanism for the protection of the EU budget.[113] As its name suggests, this is not only a rule of law measure. It allows, however, the suspension of access to the EU budget – and by extension NGEU funding – where the Commission can evidence 'that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.'[114]

The use of conditionality offers obvious teeth to a set of rule of law tools that to date have done little to ensure practical compliance. At the same time, conditionality brings the rule of law fully into the coordination space. This begins with the mechanism of power and leverage. While the conditionality regulation is a set of rules, the primary driver of compliance is not envisaged as respect for the authority of the law but rather the financial consequences that attach to rule of law erosion.[115] As in coordination more broadly, money becomes the medium of authority and the primary battleground within which disputes are settled.

The connection to coordination continues in terms of the significant discretion given to the actor determining whether conditions are met. Already in its adoption, some terms to be used by the Commission in determining whether a risk to the budget existed were removed – most famously, the reference to 'generalised deficiencies' in the rule of law in a given state. The remaining criteria still invest the Commission, however, with significant discretion as to whether a Member State should be subject to conditionality or not. The Regulation refers to several 'principles of the rule of law', including things like effective judicial review by independent Courts and the proper functioning of the authorities implementing the Union budget.[116] While the Court of Justice has given guidance on some of these criteria, it has not done so on all, leaving the implementing institution with significant manoeuvre both in applying/determining these principles and in establishing whether there is a 'direct link' between their breach and a risk to the EU budget. Some scholars have even accused the Court of Justice itself as applying such principles

[110]For the 2024 recommendations, see: <https://commission.europa.eu/document/download/40d0f293-3047-4242-8c08-5101b8c09ff7_en?filename=4_1_58125_comm_recomm_en.pdf> accessed 3 March 2025.

[111]Commission Communication, 'Further Strengthening the Rule of Law within the Union State of Play and Possible Next Steps' COM (2019) 163 final at 9.

[112]S Priebus, 'The Commission's Approach to Rule of Law Backsliding: Managing Instead of Enforcing Democratic Values?' 60 (6) (2022) Journal of Common Market Studies 1684–700.

[113]Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I.

[114]Conditionality Regulation, ibid, Art 4.

[115]A Baraggia and M Bonelli, 'Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges' 23 (2022) German Law Journal 131–56.

[116]Ibid, Art 4(2).

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confusingly.[117] The Regulation therefore chimes with the coordination space's notion of carrying rules, but rules which open-up a large discretionary space.[118]

This links with a further feature of the negotiation space, namely the consequence of breaching rules. Given that rules are open-ended and subject to a rolling process of assessment, where breached, this is always a question of 'degree' and subject to extensive negotiation. The point is illustrated by the experience of 'conditionality' under the RRF in the course of 2022. To take the examples of Poland and Hungary, legal commentators have tended to analyse the two countries in tandem as posing similar challenges regarding rule of law backsliding. Poland's RRF was, however, adopted in June 2022, allowing the disbursement of some 24 billion in grants (albeit under the condition that Poland implement several 'milestones', including the dissolution of its infamous judicial disciplinary chamber).[119] The decision to adopt the Polish RRF was extensively criticised not only by academic commentators (doubtful that the government's promises to rescind judicial reforms were credible[120]) but by members of the Commission itself, with several commissioners reportedly rebelling against the decision to release the initial disbursement (at a time when Poland was bearing the brunt of refugees from the Ukraine war but otherwise pressing on with its process of constitutional 'reform').[121]

The Commission refused in the summer of 2022 to similarly adopt the Hungarian RRF, having triggered the use of the conditionality mechanism in April (following the re-election of the Orban government). On the 18th of September 2022, the Commission also proposed freezing 7.5 billion in disbursements to Hungary from the 'ordinary' EU budget.[122] On December 12, however, Coreper advised the Council to approve Hungary's RRP (allowing 5.8 billion in grants to be released) and lowered the amount of regular funds frozen to 6.3 billion (subject to 27 'super milestones' to be monitored by the Commission over the next two years).[123] On the exact same day, Hungary lifted its veto on two key items deadlocked in the Council – its resistance to an 18 billion humanitarian package for the Ukraine and a proposal for a common minimum corporation tax.[124]

A simple outline of the chronology of 2022 is enough therefore to illustrate the way 'sanctioning' works under the rule of law system and what brings fiscal and rule of law coordination together. In both cases, it is impossible to separate enforcement from wider political issues, such that violating the rule of law becomes something to be negotiated and remedied 'to an extent' and 'bit by bit' in an analogous way to a budget deficit or lump of sovereign debt (and allowing sudden events, like the recent Polish general election, to lead to quick turnarounds). As remarked upon by others, the fate of any one state in such negotiations depends not just on their rule of law violation but their dependence on the EU budget and their broader political power.[125] As with the fiscal case, the scope for inequality between Member States is high.

[117]Kochenov and Bard, n 106 above.

[118]Note, however, the (self-adopted) guidelines used by the Commission to interpret Art 4 RRF. Available at: <https://data.consilium.europa.eu/doc/document/ST-5538-2021-INIT/en/pdf> accessed 3 March 2025.

[119]See Commission Press Release, 'NextGenerationEU: European Commission Endorses Poland's €35.4 Billion Recovery and Resilience Plan' (2022). <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3375> accessed 3 March 2025.

[120]See eg W Sadurski, 'The European Commission Cedes its Crucial Leverage vis-à-vis the Rule of Law in Poland' (Verfassungsblog 2022). <https://verfassungsblog.de/the-european-commission-cedes-its-crucial-leverage-vis-a-vis-the-rule-of-law-in-poland/> accessed 3 March 2025.

[121]'European Commission validates Polish recovery plan after year-long stalemate' (*Le Monde* 2022). <https://www.lemonde.fr/en/international/article/2022/06/02/after-yearlong-stalemate-european-commission-validates-polish-recovery-plan_5985404_4.html> accessed 3 March 2025.

[122]See Commission Press Release, 'EU Budget: Commission Proposes Measures to the Council under the Conditionality Regulation' (2022). <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5623> accessed 3 March 2025.

[123]See Council Press Release, 'Rule of Law Conditionality Mechanism: Council Decides to Suspend €6.3 Billion Given Only Partial Remedial Action by Hungary' (2022). <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/> accessed 3 March 2025.

[124]'Hungary agrees deal and lifts veto on €18bn EU aid package for Ukraine, Euronews (2022). <https://www.euronews.com/my-europe/2022/12/13/hungary-lifts-vetoes-on-ukraine-aid-and-corporate-tax-to-lower-frozen-eu-funds> accessed 3 March 2025.

[125]See Baraggia and Bonelli, n 115 above at 152.

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This relates to a final element linking the rule of law and fiscal coordination – the question of legitimacy in the coordination space. In terms of input legitimacy, while there have been some efforts to establish more 'civic space' for the rule of law,[126]an importance limitation is the absence of EP involvement in decision-making, with the Parliament reduced largely to issuing resolutions trying to fortify the Commission's resolve.[127] Regarding Council involvement, while the initial RRF regulation proposed reverse QMV, the final version maintained the need for 'normal' QMV voting.[128] Given its budgetary implications, Member States have also sought control in other ways (a strong example being the infamous 2020 European Council Conclusions and their insistence on Commission guidelines for disbursement under the RRF).[129] As already discussed, the Council's involvement may be a double-edged sword from a legitimacy perspective, both providing the national level with control and allowing for extensive and in-transparent 'side-deals' where rule of law and other objectives are traded.

In terms of output legitimacy, the presence of such side-deals illustrates that – as with fiscal coordination – the EU carries insufficient consensus on what to prioritise in this policy field, and how to weigh the rule of law vis-à-vis other objectives. EU jurisprudence is replete with reference to the Union's common values as the basis for an area of mutual trust.[130] The experience of rule of law conditionality, however, illustrates that the attachment of Member States to this goal is one of degree. Is the rule of law more important than other priorities, such as keeping onside Member States with important defence capabilities or who are managing the Union's external border? As with fiscal coordination, the EU institutions cannot be sure that strongly enforcing rule of law objectives (even where they run up against others) will meet with strong Member State approval, meaning that output legitimacy cannot compensate for input legitimacy in this field. While therefore the rule of law and fiscal coordination carry many differences, the operational logic of the latter increasingly creeps into the former (with significant normative consequences).

5. Conclusion

As already discussed in the introduction, the EU imagines itself as a community of law. EU lawyers already know the accompanying vocabulary. See, for example, the Court's justification for the preliminary reference procedure, which has according to the Court, 'the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties'.[131] EU law is therefore attached to a number of rule of law values, such as consistency and equal application of the law between Member States. To use another classical rule of law formulation, the EU is meant to be governed 'by rules, not men'.

This idea of EU law, however, sits alongside the reality of how EU law functions in many of the most important areas of policy that actually affect both individual lives and the process of national democracy. As this paper has shown, from fiscal policy to the rule of law, EU law is increasingly applied in a coordination space where consistency and uniform application (to take just one example) seem neither possible nor desirable. Rather than 'rule-governed', these coordinated areas of policy operate as discretionary, negotiated spaces where rules at most broadly frame conduct

[126]See European Parliament Press Release, 'Civil Society: Parliament Calls for EU Rules and Strategy to Counter Threats' (2022). <https://www.europarl.europa.eu/news/pt/press-room/20220304IPR24799/civil-society-parliament-calls-for-eu-rules-and-strategy-to-counter-threats> accessed 3 March 2025.

[127]See, eg, European Parliament Press Release, 'Parliament Insists that the EU Must Freeze Funding to Hungary' (2022). <https://www.europarl.europa.eu/news/en/press-room/20221118IPR55719/parliament-insists-that-the-eu-must-freeze-funding-to-hungary> accessed 3 March 2025.

[128]Conditionality Regulation, n 113 above, Art 6(10)–(11).

[129]EUCO Conclusions, n 86 above.

[130]See, eg, Case C-216/18 *PPU, LM* ECLI:EU:C:2018:586 at -[36-] and case-law cited therein.

[131]Case C-430/21 *RS* ECLI:EU:C:2022:99 at [73].

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but are rarely decisive. It is difficult to see how it could be otherwise – to return to the EMU example, how can one apply fiscal rules in a heterogenous, contested European Union without using significant discretion? The function of law in this context thus changes. Law is no longer prescribing rules of conduct in the coordination space; at most, it might curb abuses of power (for example, through ensuring parliamentary scrutiny) or tilt the range of substantive criteria that policy-makers apply (for example from debt sustainability to other values).

This changing use – and potential displacement – of law would be of little concern if it was confined to a small, irrelevant or declining slice of EU policy. As this paper has argued, however, the opposite is the case. The most important emerging fields of EU policy are those where the central dilemma driving coordination – functional pressures to scale policy up to the EU rubbing up against capacities that remain stubbornly national and thus require extensive/ongoing negotiation – constantly reappears. While this paper used the example of the rule of law, the fields of defence or industrial policy (increasingly key to the EU's ambitions) are also highly likely to rely as much on coordination as on legal tools. This poses a central question for EU law as a discipline – what does it mean to be an EU lawyer when EU law remains, but it is crowded-out, or increasingly standing on the side-lines of policy developments? EU lawyers must now find their place in Europe's expanding coordination space.

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