

«The European Union's Extraordinary Measures facing the Actual Economic Crisis and the Difficulties of the Member States»

ELPIS Joint Conference Introductory Speech (Handout)

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Ladies and Gentlemen

Good Morning! Welcome to the first ELPIS Research Joint Conference on the theme «The European Union's Extraordinary Measures facing the Actual Economic Crisis and the Difficulties of the Member States». This Conference has the participation of distinguished colleagues that are some of the most well-known members of our ELPIS network:

- Prof. Massimo Luciani (Sapienza, University of Rome)
- Prof. Claas-Friedrich Germelmann (Leibniz University Hannover)
- Prof. Sylvia Brunet (University of Rouen / Normandie)
- Prof. Francisco Balaguer Callejón (University of Granada)
- Prof. Dovilė Gailiūtė-Janušonė (Mykolas Romeris University, Vilnius)
- It will be moderated by me, Prof. Vasco Pereira da Silva (University of Lisbon)

As a moderator I'll just do a short Introduction to the theme – a kind of “road map” in order to prepare the conferences and open the discussion.

A) Looking to the facts

In the 2nd half 2020 (German Presidency of the EU) there was a succession of meetings, agreements, decisions, regulations of the EU institutions that reached to a “Recovery and Resilience Plan for Europe”. Here, you find some of the steps:

- 18 November - The German Presidency of the Council and the European Parliament reached a political agreement on REACT-EU, an emergency legislative initiative to release €47.5 billion through the structural funds to the member states and regions hardest hit by the

COVID-19 pandemic. REACT-EU stands for Recovery Assistance for Cohesion and the Territories of Europe, is intended primarily to support health services, jobs and small and medium-sized enterprises while stimulating the twin green and digital transitions. This additional funding, which is part of the EU's recovery effort, Next Generation EU (NGEU), will be available over two years: €37.5 billion in 2021; €10 billion in 2022.

- 17 December - Following the European Parliament's consent on 16 December 2020, the Council adopted the regulation laying down the EU's multiannual financial framework (MFF) for 2021-2027. The regulation provides for:
 - a long-term budget of €1 074.3 billion for the EU27 in 2018 prices, including the integration of the European Development Fund. Together with
 - the Next Generation EU recovery instrument of €750 billion,

In total amount, the Recovery and Resilience Plan will allow the EU to provide an unprecedented €1.8 trillion of funding over the coming years to support recovery from the COVID-19 pandemic and the EU's long-term priorities across different policy areas.

- 18th. December - Council and Parliament reach provisional agreement on the Recovery and Resilience Facility

B) Looking to the interpretation

Analysis of the situation from 2 different perspectives: EU and Member States – balance of pros and cons

From the EU's Perspective

Pros:

- 1- Reinforcement of the Union – Rebirth of European solidarity – Reaction to multiple causes: the disruptions created by the Brexit, the anti-European populisms, the Covid-19 sanitary crisis and the economic crisis.
- 2- Constitutional affirmation of EU's fiscal competence – response of the EU to the German Constitutional Court of 5 May 2020 that has

questioned the competence of the European Central Bank – quarrel for constitutional legitimacy – the European Union uses (material) constitutional power to counterbalance the attempt of use of constitutional power by Constitutional courts of the member states – See the reaction of the 27 Law Professors (in which I took part) against the decision of the German Constitutional Court on the «Verfassungsblog» - [National Courts Cannot Override Court of Justice EU Judgments | Verfassungsblog](https://verfassungsblog.de/national-courts-cannot-override-cjeu-judgments), <https://verfassungsblog.de/national-courts-cannot-override-cjeu-judgments>.

- 3- New green and digital European public policies – constitutional importance of “green and grey” goals and principles. By the way, the “grey” colour seems to me like a good denomination for the use of digital law.

Cons:

- 1- A “shadow” in the principles – Kind of suspension of the “state law clause” in order to avoid the veto from Hungary and Poland - 11 December 2010 – EUCO established conclusions regarding the “draft Regulation of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget”. The “EUCO interpretative declaration” (after a compromise between German presidency and Poland and Hungary) was established in order to postpone the application of the rule of law for the protection of Union budget until there is a sentence from the Court of Justice and afterwards the settling of guidelines by the Commission.

Some criticism towards this declaration:

ALBERTO ALLEMANO / MERIJN CHAMON , «To save the Rule of Law you must apparently Break it», in «Verfassungsblog» 2020 /12/11. The authors claim for the “ultra vires” nature of the decision (invasion of legislative power of the Commission and the Parliament by the Council), violation of the principal of institutional balance. This “interpretative declaration” is seen as «as a dark page for the rule of law in the Union legal order» (5) – «that might relegate it into yet another rule of law oversight ghost» (5).

KIM LANE SCHEPPELE/LAURENT PECH/SÉBASTIEN PLATON / «Compromising the Rule of Law while Compromising on the Rule of Law», in «Verfassungsblog» 2020/12/13. The authors claim that this interpretation of the «conditionality regulation» does «undermine the rule of law in all the fronts» (1). After this, Poland and

Hungary «can now look forward to years of non-enforcement and only weak, too-weak-too-late enforcement after that» (1/2).

- 2- Implementation of measures implies for specific needs for coordination and leadership at the EU level, otherwise problems may emerge. See for instance the present case of the vaccination public procurement at the EU level. There is a need to negotiate well and interpret even better the vaccination public procurements to fight the COVID-19 pandemic. In general, skills for negotiation and application of public procurement - of any kind - are precious.

Perspective of the Member States

Pros:

- 1- Rebirth of the European solidarity is also a new opportunity for the European member States public policies. A new national argument for the EU in times of pandemic. It creates a positive reaction from the part of the national citizens towards European Union.
- 2- Big amount of money to help the fight against the economic and the sanitary crisis. The Portuguese Prime Minister compared it to a strong weapon (a “bazooka”) to fight the crisis- Others may call it an “atomic bomb”. A new kind of European “breath of hope” against Covid-19.

Cons:

- 1- Difficulties of implementation: criteria, planning, bold goals and principles, new challenges for environmental and digital law.
- 2- Public procurement issues: facilitation of public procurement rules may also bring (more) corruption to the national level.
- 3- Mid (and long)-term problems with public national debts and balanced budget rules.

Balance:

There is no doubt that the clearly positive outcome is far more relevant than some negative consequences (that should be avoided, as much as possible). The Recovery and Resilience Plan seems to be a brand new “opportunity” both to the EU and to the Member States.

These are, in short, some guidelines of a “Road map” to situate the following presentations and the discussion that will followed.

It is time now to give the floor to the panel members, distinguished colleagues from the ELPIS Network. The rules of the game are as follows: a first round for the presentations (15 to 20 minutes for each participant), a second round for the discussion, including the answering of questions from the audience.

The floor is yours now.

Lisbon, 5th. of February 2021.