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Article

Funding the War in Ukraine: The European Peace Facility, the Macro-Financial Assistance Instrument, and the Slow Rise of an EU Fiscal Capacity

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Abstract
The war in Ukraine represented a major geopolitical shock for the EU. In the face of an illegal Russian aggression, EU institutions and member states rallied to support Ukraine. Nevertheless, the war in Ukraine also exposed the limited fiscal capacity of the EU. As a result, EU institutions and member states had to come up with creative ways to financially back Ukraine's military and civilian efforts. This article examines the two key tools deployed by the EU so far to fund Ukraine in its war against Russia, namely the European Peace Facility and the Macro-Financial Assistance Instrument. The article details the legal features of these tools, evaluates their intergovernmental vs. supranational nature, and reflects on their significance for the consolidation of an EU fiscal capacity. As the article argues, the war in Ukraine quickly prompted the EU to replicate some of the novelties it used to respond to the Covid-19 pandemic, namely the use of common borrowing and spending. Nevertheless, structural fiscal and governance weaknesses still limit the ability of the EU to mobilize resources and leverage power on the international stage.

Keywords
debt; EU budget; European Peace Facility; Macro-Financial Assistance Instrument; war in Ukraine

Issue
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1. Introduction

The war in Ukraine has posed an unprecedented challenge for the EU. The return of war on the European continent shattered illusions of perpetual peace and forced the EU to confront the demands of hard power at its eastern borders. In this context, a pressing need for the EU has been to support Ukraine financially in its efforts to defend itself against the Russian aggression. The Russian military invasion of Ukraine, in fact, caused a dramatic death toll, with probable cases of war crimes, massive displacement of refugees, and widespread damage to critical infrastructures. Reacting to these horrific facts and such a blatant breach of international law, the EU mobilized resources to assist the Ukrainian military in purchasing defense weapons and the Ukrainian civilian authorities in funding operational government expenses and rebuilding critical infrastructures.

The purpose of this article is to examine from an EU law and policy perspective the two key instruments that the EU deployed in 2022 to finance Ukraine in the war against Russia's aggression, namely the European Peace Facility (EPF; Council Decision (CFSP) 2021/509; see Council of the EU, 2021) and the Macro-Financial Assistance Instrument (MFA+) for Ukraine (Regulation 2022/2463; see European Parliament & Council of the EU, 2022). The article endeavors to detail the legal features of these tools, evaluate their intergovernmental vs. supranational nature, and reflect on their impact on EU fiscal integration. As the article points out, at the beginning of the war in Ukraine, the EU resorted to the EPF, a novel funding instrument dedicated to foreign policy

objectives, worth €5.6 billion, which is fully funded by member states' transfers and subjected to their unanimous intergovernmental decision-making in the Council. Subsequently however, as the war in Ukraine continued, the EU crafted the MFA+, a larger €18 billion financing tool approved jointly by the European Parliament and Council, which enables the Commission to issue common debt, backed up by states' guarantees, and to transfer these own resources to Ukraine.

As the article argues, the war in Ukraine quickly prompted the EU to replicate some of the novelties it used to respond to the Covid-19 pandemic. As it is well known, to address the devastating socio-economic consequences of the pandemic, the EU agreed in 2020 to establish ground-breaking instruments such as a €100 billion unemployment re-insurance system called SURE (Council Regulation 2020/672; see Council of the EU, 2020a) and a €750 billion recovery fund, known as Next Generation EU (NGEU; Council Regulation 2020/2094; see Council of the EU, 2020d). The latter, in particular, empowered the Commission to raise funds by issuing common debt on the financial markets, to transfer these amounts to the member states as grants and loans, and prospectively to levy new taxes to repay capital and interests on the debt. Formally speaking, the financial tools rolled out to address Covid-19 were designed to be temporary. Yet, NGEU and SURE provided a model that the EU promptly re-used when facing the war in Ukraine. In particular, the MFA+ entails once again common borrowing and spending. This suggests a trend towards consolidating at the EU level of government what I called a "fiscal capacity" (F. Fabbrini, 2022) or what the editors of this thematic issue call a "budgetary capacity" (Woźniakowski et al., 2023).

Nevertheless, if this development is in line both with accounts of historical institutionalism (Dopfer, 1991; Pierson, 1996) and the logic of failing forward that drives European integration (Jones et al., 2021), a number of caveats are in order. The consolidation of fiscal capacity in the EU continues to be hampered by structural weaknesses. In particular, as the article highlights, the MFA+ is exclusively designed to fund Ukraine *in 2023*—for a 12-month period. Moreover, tactical opposition by a single member state—Hungary, which vetoed the measures for several months—almost derailed the effort to pass the MFA+. In fact, the need to modify the general EU budget act—the Multi-Annual Financial Framework (MFF; Council Regulation 2020/2093; see Council of the European Union, 2020c)—in order to enable to Commission to issue common debt proved so daunting that the MFA+ was adopted by resorting to member states' financial guarantees, which will only in time be replaced by a single guarantee from the EU budget when the MFF is amended. This confirms that several constitutional and governance shortcomings still limit the EU's ability to mobilize resources and leverage power on the international stage. While, certainly, the war in Ukraine supports the insight from historians, political scientists, and sociologists that war is a powerful driver of state-building and institutional change (Centeno & Enriquez, 2016; MacMillan, 2020; Tilly, 1975), at the moment, the effort to establish a permanent fiscal capacity in the EU remains a process still in the making.

As such, this article is structured as follows. Sections 2 and 3 analyze respectively the EPF and the MFA+, highlighting their main legal features, legal bases, funding mechanisms, and governance arrangements. Section 4 contextualizes the EPF and MFA+ in light of the legal and institutional innovations created by the EU and its member states to respond to Covid-19, it points out that the war in Ukraine increased the need for the EU to reproduce funding mechanisms based on common debt akin to those rolled out during the pandemic, and it reflects on how the war in Ukraine contributed to the slow consolidation of a fiscal capacity in the EU. Section 5, however, underlines how this trend is slowed by governance shortcomings and constitutional constraints, which make it difficult for the EU to decide, and to upscale its financial firepower. Finally, Section 6 concludes and highlights some very recent developments relevant to this topic.

2. The European Peace Facility

The EPF is a novel funding mechanism that the EU created in 2021 as part of the financial package for 2021–2027, which is centered on the MFF and also includes (in response to Covid-19) the NGEU Recovery Fund. Its name notwithstanding, the EPF was specifically established as a €5.6 billion special fund to finance the common costs of military operations by EU member states under the EU Common Security and Defence Policy (CSDP), as well as actions to improve the military and defence capabilities of third states and partners. The EPF—which is adopted in the form of a Council decision—is based on Articles 28(1), 41(2), 42(4), and 30(1) of the Treaty on European Union (TEU; 2012), which respectively allow the EU to act when the international situation so requires, to pool resources to this end, and to adopt initiatives unanimously in the Council. The EPF is built as an off-budget fund, outside the MFF, because Article 41(2) of the TEU explicitly prohibits charging to the EU budget "expenditure arising from operations having military or defense implications.''

The EPF, as a tool of the EU Common Foreign and Security Policy and CSDP, is exhibit A of intergovernmentalism in the EU. The Council Decision 2021/509 (see Council of the European Union, 2021) establishing the EPF is extremely long—76 articles and five annexes—and over-complicated. The EPF, as clarified in Article 9, should be used to achieve "the strategic priorities set by the European Council and the Council," and must be consistent with the Common Foreign and Security Policy goals of the EU (Article 8). Importantly, according to Article 36, "assistance measures can be implemented through grants." Yet, from a governance viewpoint, the

EPF is managed by a Facility Committee (FC), composed of representatives from all 27 member states, which must take decisions by unanimity (Article 11(14)). A large administrative bureaucracy operates under the direction of the FC (Articles 12, 13, and 15). Moreover, as a further guarantee to member states, the decision establishes a direct link between participation in decisions on and contribution to the financing of operation and assistance measures: In particular, pursuant to Article 5, "a member state which has abstained in a vote on a Council decision…is not obliged to contribute to the funding of that operation.''

From a financing viewpoint, the EPF is entirely resourced through member states' transfers. According to Article 18(7)(a), the EPF revenues consist primarily of "contributions payable by the contributing member states." As clarified in Article 26, member states' contributions are determined on the basis of the gross national income and are requisitioned by the FC annually (Article 29). Nevertheless, as a further guarantee of member states' intergovernmental discretion, Article 27 states that a "member state which has indicated its intention to abstain from the adoption of an assistance measure…may identify other assistance measures to which it will make an additional contribution." This means that while the EPF is a common financial pot, each member state still maintains full control of where its share of the funding is directed. Furthermore, numerous reporting and accounting obligations are connected to the EPF, including a duty by administrators to report to the FC on expenditures every three months (Article 38) and a right for the Council to review the decision whenever a member state so requires, and at least every three years (Article 75).

At the explosion of the war in Ukraine, the EU quickly decided to mobilize the EPF to provide financial support to the Ukrainian military, including funding for the purchase of lethal weapons—a step which was hailed as historic (not least given that some EU member states still abide by a policy of military neutrality). In particular, in February 2022, the Council approved Decision 2022/338 (see Council of the EU, 2022a) on assistance measures for the supply to the Ukrainian armed forces of military equipment. The decision empowered the EU High Representative to implement the measure (Article 4), making arrangements with the beneficiary, including ensuring compliance with international human rights law and humanitarian law (Article 3) and foresaw a disbursement of €450 million (Article 2). This amount was subsequently doubled in March 2022 (Council Decision 2022/471; see Council of the EU, 2022b) and tripled in April 2022 to a total of €1.5 billion (Council Decision 2022/636; see Council of the EU, 2022c). Subsequently, EPF funding to support the Ukrainian military was further tapped in May 2022 (Council Decision 2022/809; see Council of the EU, 2022d) and July 2022 (Council Decision 2022/1285; see Council of the EU, 2022e), bringing the total size of support to €3.1 billion. This, combined with other EPF expenditures towards other third countries carried out in 2022, largely depleted in a single year a budget that had been designed for a seven-year time frame. As a result, the Council decided in December 2022 for a €2 billion increase in the EPF for 2023 (Council Decision 2023/577; see Council of the EU, 2023a).

3. The Macro-Financial Assistance Instrument

Given the limited resources available under the EPF, and as the war in Ukraine worsened, in the fall of 2022, the European Commission proposed to establish the MFA+ in the form of a regulation of the European Parliament and Council. The MFA+ is based on Article 212 of the Treaty on the Functioning of the European Union (TFEU; 2012), which allows the EU to provide financial assistance to third countries. This provision is similar to but different from Article 148 TFEU, which allows the EU to support a country threatened with difficulties as regards its balance of payments because the latter only applies to EU member states, which are outside the Eurozone. In fact, Articles 212 and 213 TFEU had long been used by the EU to assist countries under the European Neighbourhood Policy (Erlbacher, 2019). Going beyond the piecemeal support that the EU had given to the Ukrainian government in the initial months of the war, the MFA+, worth €18 billion, was designed to provide predictable, continuous, orderly, and timely financial relief to Ukraine in 2023, thus supporting its rehabilitation and reconstruction and prospectively its preparation for EU membership (European Council, 2022). The Commission's proposal was endorsed by the European Parliament and the member states in the Council, but Hungary vetoed it, mostly as a bargaining chip to obtain a concession from the Commission on an unrelated measure: To tackle the problem of rule of law backsliding at play in Hungary, in fact, the Commission had suspended the transfer of NGEU funds to Hungary, which was thus eager to use every available card to overcome the application of the rule of law conditionality regulation (Regulation 2020/2092; see European Parliament & Council of the EU, 2020) and obtain EU funds.

In the end, in order to circumvent Hungary's veto, in December 2022, the Council decided to amend slightly the Commission proposal and passed it with the European Parliament's approval. Specifically, the Council changed the original funding scheme proposed by the Commission, which envisaged guaranteeing the issuance of €18 billion of common debt through the EU budget. Since that required an amendment to the MFF—a change on which Hungary had a right to veto on the basis of Article 312 TFEU—the Council rather opted to back up the €18 billion of new common debt of the MFA+ through member states' guarantees, provided by 26 member states pro-quota (European Parliament, 2022c). In what is certainly not a coincidence, though, two days before the Council also approved the Hungarian National Recovery and Resilience Plan (NRRP; Council of

the EU, 2022f), thus ensuring that Hungary could access, in the future, NGEU money, if the Commission were to de-block them pursuant to the rule of law conditionality regulation. Admittedly the MFA+ still foresees that were an amendment to the MFF to be approved then the EU budget would replace member states' guarantees; but, as the MFA+ only operates in 2023, it is unclear if that will actually occur.

The MFA+ presents more supranational features than the EPF. The Regulation 2022/2463 (see European Parliament & Council of the EU, 2022) is only 21 articles long and fairly linear. As clarified in Article 2, the objective of the instrument is to provide "short-term financial relief to Ukraine…and initial support towards post-war reconstruction," and the MFA+ areas of support include financing Ukraine's funding need, restoring critical infrastructure, as well as alignment with the EU regulatory framework (Article 3). Based on Article 4 of its regulation, the MFA+ provides support in the form of loans, although additional amounts can be contributed by member states as grants. From a governance viewpoint, the MFA+ regulation vests the key decision-making power in the European Commission. Pursuant to Article 11, "the support under the instrument shall be made available by the Commission in installments." The regulation however introduces a number of pre-condition for the support under the MFA+, including "that Ukraine continue[s] to uphold and respect effective democratic mechanisms…and the rule of law" (Article 8). The Commission signs the memorandum of understanding with Ukraine setting out priority actions (Article 9); reviews compliance with the ex-ante conditionality (Article 12); and can reduce, suspend, or cancel support under the MFA+ (Article 13).

From a financing viewpoint, the MFA+ instrument is based on the issuance of common EU debt, rather than member states' transfers. Specifically, Article 16 states that "in order to finance the support under the instrument in the form of loans, the Commission shall be empowered, on behalf of the Union, to borrow the necessary funds on the capital markets or from financial institutions." Loans to Ukraine, which are set at a very favorable term, "shall have a maximum duration of 35 years" (Article 16(2)) and the EU can offer an interest rate subsidy to Ukraine (Article 17). The supranational dimension of EU common debt, though, is counterbalanced by the intergovernmental left-over of member states' guarantees. As mentioned, given the impossibility to amend the MFF and raise the EU budget ceiling, Article 5(2) states that member states contribute to guaranteeing the debt "in the form of irrevocable, unconditional and on-demand guarantees through a guarantee agreement to be concluded with the Commission." Such national guarantees are determined pro quota on the basis of each member state's gross national income (Article 5(3)), but "shall cease to be callable as of the date of application of an amendment to" the MFF regulation (Article 6(f)). The usual annual reporting obligation is imposed by the regulation on the Commission (Article 20), which must also constantly keep the European Parliament and Council informed on disbursement operations (Article 15).

4. Exogenous Threats and Path Dependency: The Consolidation of an EU Fiscal Capacity

The EU's financial response to the war in Ukraine in 2022 reveals a trend towards the consolidation of fiscal capacity in the EU (F. Fabbrini, 2022). The unprecedented geopolitical threat posed by the Russian military aggression at Europe's eastern borders forced the EU institutions and member states to resort to funding mechanisms analogous to those rolled out in response to the Covid-19 pandemic. At the start of the war in Ukraine, the EU member states deployed for the first time the EPF, a new tool designed to back up the EU voice in foreign affairs. Nevertheless, the limited size of the EPF—and arguably its complicated governance arrangements—quickly led the Commission to propose an alternative funding instrument: the MFA+. Grounded on a different treaty legal basis—and justified also in light of the EU grant of candidate status to Ukraine—the MFA+ enabled the Commission to raise €18 billion on the financial markets on behalf of the EU and to transfer these to the Ukrainian government in 2023 as concessionary loans subject to standard conditionality.

While the EPF presents features which resemble the traditional EU budget, the MFA+ rather tracks the solution that the EU adopted to tackle the Covid-19 pandemic. As is well known, the EU budget—the MFF—is mostly funded by member states' transfers (Zamparini & Villani-Lubelli, 2019), and, as pointed out above, the same is true for the EPF. On the contrary, in response to the Covid-19 pandemic, the EU experimented with novel financial instruments, legally engineering a constitutional transformation in the EU architecture of economic governance (De Witte, 2021). To address the socio-economic damages caused by the pandemic, in particular, the EU set up SURE, worth €100 billion, and subsequently the NGEU Recovery Fund, worth €750 billion. Under SURE, the Commission was empowered to raise €100 billion on the financial markets by issuing common debt on behalf of the EU, subject to €25 billion of member states' guarantees. In the case of NGEU, instead, the Commission was empowered to raise €750 billion by issuing common debt on behalf of the EU, with the general EU budget serving as a backup through an increase of the EU's own resources decision (ORD) ceiling (Council Decision 2020/2053, Article 5(1); see Council of the EU, 2020b).

From this point of view, the MFA+ follows in the footsteps of SURE and NGEU. In particular, the MFA+ scheme tracks SURE, to the extent that both mechanisms rely on member states' guarantees to empower the Commission to issue EU common debt. Moreover, like SURE, the MFA+ provides loans rather than grants. At the same time, the MFA+ also draws from the example of NGEU—

and specifically the Recovery and Resilience Facility (RRF), the main program funded under the Recovery Fund (Regulation 2021/241; see European Parliament & Council of the EU, 2021). The RRF requires member states to design NRRPs, with specific targets, milestones, and objectives to be achieved in order to receive NGEU funds and empowers the Commission to assess them. At the same time, the rule of law conditionality regulation subjects disbursement of funding to the respect of basic rule of law principles, which again the Commission is empowered to evaluate. Along the same lines, as mentioned, the MFA+ regulation foresees that Ukraine and the Commission will enter into a memorandum of understanding outlining the specific objectives to be achieved with EU funding, and empowers the Commission to evaluate compliance as a condition for the payment of installments. At the same time, while the EPF conditions funding to continuing respect of international human rights law and humanitarian law, the MFA+ requires Ukraine to abide by democratic and rule of law principles to receive cash, effectively replicating—albeit arguably in a lighter form—the EU rule of law conditionality rules.

Therefore, the EU funding response to the war in Ukraine, culminating with the adoption of the MFA+, seems to confirm existing political science theories of European integration, as well as legal scholarship work on emergency governance. In political science, the theory of historical institutionalism has long argued that EU integration is path-dependent. According to this view, history matters and shapes the direction of integration, because past events or decisions constrain later events or decisions. For Pierson (1996, p. 126), in particular, the path of European integration can be discerned as a process whereby key political actors "carry out institutional and policy reforms that fundamentally transform their own positions (or those of their successors) in ways that are unanticipated." Along the same lines, more recently, Jones et al (2021, pp. 1519–1520) have explained that:

> European integration proceeded through a pattern of failing forward: In an initial phase, lowest common denominator intergovernmental bargains led to the creation of incomplete institutions, which in turn sowed the seeds of future crises, which then propelled deeper integration through reformed but still incomplete institutions—thus setting the stage for the process to move integration forward.

Otherwise, in law, scholars (Gross & Ní Aoláin, 2006) have long pointed out that once norms are adopted in times of emergency, they set a precedent and often become entrenched over time.

The abovementioned theoretical concepts of path dependency, failing forward, and emergency governance help to make sense of the developments at play here. Interestingly, all measures enacted by the EU to address the Covid-19 pandemic had a sunset. In particular, given the difficult political negotiation (de la Porte & Jensen, 2021), NGEU was presented as an exceptional tool, with the decision to empower the Commission to issue common debt on behalf of the EU as a purely one-off initiative. Moreover, by design, NGEU also revealed a number of ambiguities, which potentially limited its extension in the future. On the one hand, EU institutions and member states agreed on the common borrowing and spending, but effectively postponed the issue of debt repayment, and common taxes: While an Interinstitutional Agreement (2020) binds the Council, Parliament, and Commission on a roadmap to introduce new EU own resources in the years ahead, the possibility always remains that member states may have to increase their share of national contributions to the MFF to repay the NGEU debt if no alternative source is found. On the other hand, the largest envelop of NGEU, the RRF is designed as a program to provide support to member states: This however raises the question of time-bound implementation, with the risk that not all funds may be spent successfully, within the tight deadlines. Clearly, if member states were to be forced to pay back the NGEU debt with national funds or if NGEU funds were not to be used properly, then the appetite for further common EU debt would decline.

Yet, the explosion of the war in Ukraine in February 2023—exactly two years since the outburst of Covid-19, and as the EU and the world were slowly re-emerging from the pandemic—quickly changed the circumstances. Facing a sudden geo-strategic threat at its border the EU mobilized to raise necessary resources and fund the war efforts. In this new scenario, SURE and NGEU offered the policy template and legal technique that the EU could use in order to address a new crisis. Hence, after deploying the innovative EPF, the EU institutions quickly agreed to empower the Commission to issue yet again more common debt on behalf of the EU, this time to fund the Ukrainian government. As such, a policy strategy that had emerged in the context of the pandemic was redeployed to deal with a different occurrence, suggesting that the use of common debt by the EU may become less of an emergency measure and more of a standard practice. In the end, a number of question marks still remain, not least whether the Ukrainian government will be in a financial position to repay the loans it is receiving from the EU, and whether EU member states will continue to be unwavering in their support to Ukraine. However, the EU's financial response to the war in Ukraine seems to confirm that external threats are one of the strongest drivers of fiscal integration (Woźniakowski, 2022) and that, despite some of the rhetoric, the EU has become accustomed to resorting to common debt to address unexpected crises.

5. Governance Problems and Constitutional Constraints: Challenges Towards Fiscal Integration

Nevertheless, the road towards the consolidation of a fiscal capacity in the EU remains fraught with difficulties

and uncertainties. Indeed, as also the approval of the MFA+ highlights, the EU is hampered by governance problems and constitutional constraints which severely undermine its capacity to raise a fiscal capacity and rise to the geopolitical challenges it is facing. A rough comparison between the EU and the US funding to Ukraine in the first year of the war drives home the point. The €3.1 billion of EPF funding combined with additional smaller EU grants and the €18 billion of MFA+ support (which however applies to 2023) pale in comparison to the $54 billion of spending the US provided to Ukraine in just three months, between March and May 2022 (Pallaro & Parlapiano, 2022), which were further increased by an additional $44 billion in December 2022 as part of a stunning $858 billion military bill for 2023 (Edmondson, 2022). Needless to say, US defense spending is the backbone of NATO. Yet, even accounting for the additional spending that EU member states provided on their own, how can we make sense of this embarrassing imbalance?

To begin with, there are a number of constitutional constraints on the ability of the EU to raise fiscal resources. At the time of the approval of NGEU, a debate occurred on whether EU efforts to establish a fiscal capacity were limited by national or EU constitutional rules (Gordon, 2022). In the end, legal concerns were largely overcome, including in the most reluctant member state: Germany. In particular, in an important ruling delivered in early December 2022, the German Federal Constitutional Court rejected the legal challenges that had been raised against the NGEU and ORD (Bundesverfassungsgericht, 2022). As the Court clarified in a 7–1 judgment, the establishment of NGEU and the empowerment of the European Commission to issue €750 billion of common debt violated neither the EU treaties nor the German Basic Law. According to the Court, the Recovery Fund was compatible with Articles 122, 125, and 311 TFEU, and did not constitute an ultra vires action by the EU, thus complying with the integration agenda foreseen in the Basic Law, particularly as the size of NGEU funded by raising common debt was inferior to the size of the MFF, resourced via states' transfers. As a result, albeit with caveats that may come to haunt it later, the German Federal Constitutional Court endorsed the path towards common debt.

Yet, other EU constitutional rules weaken the EU's ability to mobilize resources at need. On the one hand, Article 41(2) TEU explicitly prohibits charging to the EU budget "expenditure arising from operations having military or defense implications," which means that CSDP expenses have to be covered by separate funds, like the EPF, set up outside the MFF. On the other hand, Title II of Part VI of the TFEU, which sets the "financial provisions" of the EU, lays out daunting rules. In particular, according to Article 310(1) TFEU, the revenues and expenditures of the EU budget "shall be in balance." Moreover, Article 312 TFEU states that the MFF, which is to be approved by the Council unanimously with the consent of the European Parliament, must set "the amounts of the annual ceilings on commitments appropriations by category of expenditures and of the annual ceilings on payment appropriations." Finally, Article 311 TFEU requires the EU budget to "be finance[d] wholly from own resources," to be approved by the Council unanimously, and ratified by each member state in accordance with its constitutional requirements. The combined effect of these provisions is to require a cumbersome amendment to the MFF and ORD every time the EU wants to increase spending and borrow money. This is why, in the MFA+ case, national guarantees had to be used to empower the issuance of €18 billion of EU debt.

A second main structural obstacle towards the development of a permanent fiscal capacity in the EU also flowing from the EU Treaties is the governance problem. As scholars have emphasized, Common Foreign and Security Policy and CSDP are by design fully intergovernmental policies: Supranational institutions like the European Parliament and the Commission have hardly a role and decision-making power is fully vested in the member states in Council and European Council. These arrangements however constantly subject EU actions to member states' vetoes, and, as a result, the EU has so far punched well below its weight in foreign relations (S. Fabbrini, 2013). In fact, the institutional features of the EPF, detailed above, reflect this state of affairs. The EPF has a highly cumbersome governance structure, with a 27-member FC at the helm, and member states still have multiple prerogatives, including the right to opt out of funding operations they dislike. While in the end member states unanimously agreed to deploy the EPF to support Ukraine in 2022, it is clear that this is not congenial to fast and vigorous decision-making.

Otherwise, intergovernmental governance also afflicts the core decision-making procedures about EU public finances. As noted, member states' governments must unanimously approve the MFF or amendments thereof and the ORD—which must also be ratified by each member state in accordance with its constitutional requirements (usually parliamentary procedure). This again means that a single member state can veto efforts by the others to enable further EU borrowing and spending—even for unrelated, idiosyncratic reasons. This is exactly what happened in the case of the MFA+: As explained, Hungary vetoed an amendment to the MFF, which was needed to raise the EU budget ceiling required to issue €18 billion of new common debt, seeking to leverage its vote in order to obtain the Council endorsement of its NRRP, overcoming the Commission's rule of law concerns (Scheppele, 2023). The shrewd blackmail by the Hungarian government forced the other member states to resort to member states' guarantees. Clearly, however, the dependence on the consent of 27 member states for any financial operation is bound to continuously create challenges for the EU in the long term.

In this context, it appears therefore a number of institutional reforms are clearly needed to increase the EU's capacity to act—as pointed out by the European

Parliament (2022a). In particular, if the EU wants to make its fiscal capacity permanent it must remove the balance budget obligation enshrined in Article 310 TFEU and overcome unanimity requirements on decisions about borrowing and spending, as well as taxing, as proposed by the European Commission (2019). In fact, the EU must also be endowed with the power to levy direct taxes—a practical necessity, particularly as the EU step by step increases the amount of common debt it will have to repay. At the same time, enhanced EU powers in the fiscal domain require constitutional adjustments to make sure that the European Parliament—the sole EU institution directly elected by European citizens—gains an equal voice to the Council on revenues, in line with the old adage "no taxation without representation" (European Parliament, 2022b). Some of these constitutional changes can be achieved through the use of *passerelle* clauses (Article 48 TEU), while others require an outright treaty amendment. Be that as it may, support for such steps has increased not only among EU institutions and leading national policy-makers (Macron, 2022; Scholz, 2022) but also in the European citizenry at large: The Conference on the Future of Europe (2022) listed these reforms in a package of recommendations for future action. It remains to be seen though if the war in Ukraine will provide the spur to achieve these constitutional reforms (F. Fabbrini, 2020).

6. Conclusion

The war in Ukraine has posed yet another unprecedented challenge for the EU. The Russian military aggression of a sovereign country at the EU's eastern borders shattered European illusions of perpetual peace and forced the EU to face the reality of hard power. In response to the illegal Russian invasion, the EU mobilized to support Ukraine. In particular, the EU deployed for the first time the EPF, funding the purchase of weapons for the Ukrainian military, and it then established the MFA+, devising a scheme to predictably fund the Ukrainian government in 2023. As this article argued from an EU law and policy perspective, the EU efforts to support Ukraine increased over time through the use of funding mechanisms which track the model employed to address the Covid-19 pandemic. In particular, while the EPF is a new mechanism of common EU spending, the MFA+ also relies on the issuance of common EU debt. As such, the war in Ukraine reveals a trend towards the consolidation of a fiscal capacity, or budgetary capacity, in the EU.

Needless to say, the above-mentioned trajectory should not be seen as inevitable. On the one hand, the economic policy measures adopted in response to Covid-19, which served as a template to address the war in Ukraine, present a number of ambiguities. In particular, NGEU effectively postponed the issue of debt repayment, leaving open the possibility that member states may have to increase their national contributions to the EU budget, thus reducing their willingness to issue new common EU debt. And NGEU still depends on the member states' capacity to implement the reforms and investment programs enshrined in their NRRP, leaving open the possibility that member states may not successfully use the available funds, thus reducing their willingness to issue new common EU debt. On the other hand, the financial instruments deployed to support Ukraine also leave some questions open, including whether the Ukrainian government, whose creditworthiness is challenged by the war, will be able to repay the loans it is receiving and whether political support for the war efforts will remain unwavering in the EU as the conflict drags on.

Nevertheless, the demands of the war create financial pulls which are difficult to resist. In fact, as this article was going to press in June 2023, the Council agreed to a further €3.5 billion top-up of the EPF, increasing its size to €12 billion (Council of the EU, 2023b). Moreover, and most remarkably, the Commission proposed, as part of a mid-term revision of the MFF (European Commission, 2023c), to establish a new Ukraine Facility worth €50 billion for the period 2024 to 2027, to secure long-term financial support to the Ukrainian government in its war efforts beyond the MFA+, which is limited to 2023 (European Commission, 2023d). The facility would provide both grants and loans to Ukraine, along with the model of the RRF, and be funded both by empowering the Commission to issue additional common EU debt, guaranteed by the EU budget headroom and by an increase in the EU budget itself. The Commission also proposed to amend the ORD with an adjusted package of the EU's own resources (European Commission, 2023a) and identified additional sources of EU revenues, including profits from the sales of the new Carbon Border Adjustment Mechanism certificates, and novel statistical-based own resources on company profits (European Commission, 2023b). The Commission's MFF reform package, which is worth over €75 billion and includes also extra resources in the field of migration and technological development, will now have to be approved by the European Parliament and the Council, and there may be resistance in the latter on spending increases unrelated to the war. However, a budget increase to support Ukraine seems to be almost guaranteed, which would confirm that wars and external security threats remain the most powerful engine of fiscal integration in federal unions of states.

Yet, as this article pointed out, the process of fiscal union in the EU remains in the making because constitutional constraints and governance problems hamper the EU's ability to raise resources and rise to the geopolitical challenges it faces. While the EPF is a purely intergovernmental arrangement, an idiosyncratic veto by Hungary forced the EU to set up the MFA+ through member states' guarantees—rather than the single guarantee provided by the EU budget. Otherwise, the EU treaties currently prevent the use of EU resources for CSDP purposes and

severely constrain the ability of the EU to borrow money and spend. As a result of this, the EU has faced challenges in financially supporting a neighbor—and now candidate member state—like Ukraine and had to find a creative solution to fund the war efforts. Longer term, as the article claimed, a number of constitutional reforms are needed if the EU wants to endow itself with the means to act autonomously on the international stage. From this point of view, while the EU funding of the war in Ukraine has strengthened the path towards fiscal integration that the EU had taken in addressing the Covid-19 pandemic, further steps will be needed to make this legally permanent and economically sustainable.

Conflict of Interests

The author declares no conflict of interests.

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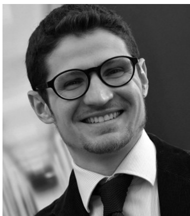

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