



## POSITION PAPER

**Repeal of concurrent audit over initiatives  
under the NRRP: what the possible risks?**

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# Repeal of concurrent audit over initiatives under the NRRP: what the possible risks?

## 1. Introduction

A discussion was prompted by the recent position of the Meloni Government which, with the Public Administration Decree<sup>1</sup>, excluded from the concurrent scrutiny of the Italian Court of Auditors the interventions falling under the NRRP and the National Plan for Complementary Investments<sup>2</sup>. In addition, Article 21 of the same piece of legislation extended for an additional year the provision limiting managers' liability to cases of intent, excluding gross negligence, unless the conduct is omissive (so-called "Scudo Erariale"<sup>3</sup>).

Both of the choices taken by the Italian Government raise concerns because they could hinder, or at least slow down, the achievement of the goals set by the Next Generation EU program<sup>4</sup>. This could mean that Italy runs the risk, not even too remote, of having its payment of the next scheduled tranches of aid blocked, reduced or delayed. The European Commission has made it clear that the total funding of the plan and the number of planned targets must be taken into account when assessing any amounts to be cut. In Italy's case, we are talking about one hundred and ninety-one billion and five hundred and twenty-seven targets, respectively. This would be, therefore, about three hundred and sixty-two million euros less for each missed target.

In addition, in two recent resolutions dated May 3, 2023<sup>5</sup>, the Concurrent Audit Board reviewed the implementation of investments related to the hydrogen road transport testing and the installation of electric recharging station infrastructure, highlighting some critical issues related to achieving milestones in the six-month reporting period. The Council's recommendations<sup>6</sup> to Italy also highlighted risks of possible delays in the implementation of the plan.

It is therefore necessary to understand whether or not this choice of the Italian Government is going in the right direction to facilitate the achievement of the goals set out in the NRRP or whether, on the contrary, it risks generating further delays that could jeopardize the payment of the next scheduled tranches of aid.

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<sup>1</sup> Article 22 Law 74/23 of conversion of Decree-Law 44 of 22 April 2023, Urgent provisions for strengthening the administrative capacity of public sector.

<sup>2</sup> Decree-Law 6 May 2021, No. 59, converted, with amendments, by Law 1 July 2021. No 101.

<sup>3</sup> Provision introduced by the second Conte Government in 2020, then further extended by the Draghi Government, in order to counteract phenomena usually called 'fear of signing' or 'defensive bureaucracy'.

<sup>4</sup> Established by Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021. See G. CONTALDI, *Il Recovery Fund*, in *Studi sull'integrazione europea*, 2020, p. 587 ff., p. 590; F. COSTAMAGNA, *Il Next Generation EU e la costruzione di una politica economica europea: quale ruolo per democrazia e solidarietà?*, in *I Post di AISDUE*, III, 2021, p. 38 ff., p. 45; M. C. GIRARDI, *Il ruolo del Parlamento europeo nel procedimento di approvazione del Next Generation EU*, in *Rivista AIC*, n. 2, 2021, p. 337 ff.; N. RUCCIA, *Il Next Generation EU: solo luci o anche ombre?*, in *Blog AISDUE*, 10 marzo 2022, available online.

<sup>5</sup> Resolutions No. 17/2023/CCC e n. 18/2023/CCC.

<sup>6</sup> Brussels, 24.5.2023 COM(2023) 612final.

## 2. Concurrent audit: rules and functions

Pursuant to Article 100 of the Constitution, the Italian Court of Auditors exercises preventive control of legitimacy over government acts and subsequent control over the management of the state budget. However, the manner in which this control is exercised, since it is a matter expressly reserved by law, is left to the discretion of the Legislator.

Under Article 3, Paragraph 4, of Law No. 20/1994, ex post control over state administrations is aimed at verifying the legality and regularity of the operations, as well as the functioning of internal controls, in addition to the correspondence of results to the objectives established by law, by comparatively assessing the costs, methods and timing of public activity. Generally, this control is performed upon completion of management. The provision, however, does not prevent it from being carried out while management is still in progress. Therefore, it can be said that Article 3 already provided for a form of concurrent scrutiny.

However, the concurrent audit was later explicitly introduced by Article 11(2) of Law No. 15 of March 4, 2009. This provision stated that the Court of Auditors, in the case of severe management irregularities or deviations from the objectives, procedures and implementation timeframes established by national or European rules or government directives, shall identify the reasons in cross-examination with the involved public office and notify the competent Minister who, on a discretionary basis, may also suspend the commitment of sums allocated to the relevant expenditure chapters.

Yet, despite an express legislative provision, this type of control, at least until recent events, has in fact remained only on paper, since no public office has ever requested it, nor has the Court of Auditors exercised it on its own initiative<sup>7</sup>.

It is, in fact, a "managerial" type of control, which supports, step by step, public action in the individual segments of the implementation of the various measures and interventions sought by the Legislator<sup>8</sup>. The distinguishing feature of this type of control, which in some ways constitutes its *quid novi* with respect to other methods<sup>9</sup>, is thus to be found in the possibility of activating corrective measures during project implementation. The purpose is to ensure, in a faster and more restricted time and manner<sup>10</sup>, the effectiveness of administrative action rooted in the principle of sound administration enshrined in Article 97 of the Constitution<sup>11</sup>.

Now the Italian Government, with a single provision, namely Amendment 1/83 to the aforementioned Decree-Law 44 of April 22, 2023, has extended the provision limiting the responsibility of managers, to which the Court of Auditors has always expressed its opposition, and has eliminated concurrent control precisely in relation to interventions planned or financed under

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<sup>7</sup> See A. PETA, *I controlli della Corte dei conti: il c.d. controllo concomitante*, in A. Giordano (a cura di), *Il procedimento amministrativo fra regole e responsabilità*, Milano, 2021, p. 553 ff.

<sup>8</sup> See Resolution 17/2023/CCC.

<sup>9</sup> Court of Auditors, Concurrent Audit Board, Resolution 1/2022, p. 3 ff.

<sup>10</sup> See SS.RR. Resolution No. 29/CONTR/09.

<sup>11</sup> See G. COLOMBINI, *Buon andamento ed equilibrio finanziario nella nuova formulazione dell'art.97 cost.*, in *Il diritto del bilancio e il sindacato sugli atti di natura finanziaria*, Milano, 2019, 381 ff.; and S. CIMINI, *Equilibri di finanza pubblica nella prospettiva del buon andamento delle amministrazioni pubbliche*, in A. Balestrino, M. Bernasconi, S. Campostrini, G. Colombini, M. Degni, P. Ferro, P. Italia, V. Manzetti (a cura di) *La dimensione globale della finanza e della contabilità pubblica*, Napoli, 2020, p. 495 ff.

the NRRP and the National Plan for Complementary Investments, which, inevitably, at this specific juncture in history, are the majority of projects launched or in the process of being launched<sup>12</sup>.

In this regard, President Guido Carlini, during the hearing with the joint Parliamentary Committees on Constitutional Affairs and Labor<sup>13</sup>, has pointed out that the Court of Auditors has generally preferred control at the end of activities because one of the risks that could be hidden behind concurrent control is that of possible co-management by the Court of Auditors of public activity.

The situation has changed in 2020. Recently, in fact, the concurrent audit has been recalled and actualized, in a more specific declination, by Article 22 of Decree-Law No. 76 of July 16, 2020, converted, with amendments, by Law No. 120 of September 11, 2020. Within this provision, it is stipulated that concurrent control is also to be carried out by the Court of Auditors on “major plans, programs and projects related to interventions to support and revitalize the national economy”.

### 3. The understandings between the Italian Government and the European Institutions

The position taken by the Italian Government is now being looked at by the European Commission as it risks undermining, indirectly, the financial interests of the European Union as well<sup>14</sup>. In fact, a form of *in itinere* monitoring of the proper and timely implementation of the interventions financed with NRRP funds had been requested by the European institutions themselves<sup>15</sup>, during the negotiations on the governance of the plan led by the Draghi Government.

On the other hand, in the aftermath of the Covid-19 pandemic, which put at risk the very resilience of the European system, the negotiations that led to the approval of the multiannual financial framework for the period 2021-2027<sup>16</sup> focused not only on the EU’s ability to provide an adequate and compact response to the emergency triggered at different levels by the global outbreak, but also, as part of the European integration process, on founding values including, in particular, safeguarding the Rule of law<sup>17</sup>. On this aspect, deemed essential, the NRRP itself has been built together with the EU regulation No. 2020/2092 of the European Parliament and of the Council of 16 December 2020<sup>18</sup> which, by establishing a conditionality mechanism, has made the disbursement of Next Generation EU funds conditional on compliance with the Rule of law.

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<sup>12</sup> See G. D’AURIA, *Tecniche e strumenti del controllo sui risultati: materiali da un corso di formazione*, in *Riv. Corte dei conti*, 2017, n.3-4, 581 ff.; G. COLOMBINI, *Corte dei conti e controlli interni*, in *Riv. Corte dei conti*, 2013, n.5-6, 667 ff.; J. SPOROLETTI, *Il collegio del controllo concomitante. Origine, aspetti sostanziali e procedurali*, in *Rivista Corte dei conti*, 6, 2022, p. 34 ff., available online; A. POLICE, *La Corte dei conti garante dell’attuazione del piano nazionale di ripresa e resilienza: l’importanza strategica del controllo concomitante*, in *Rivista della Corte dei conti*, Year LXXIV, No. 5 September-October 2021, p. 1 ff.; G. COLOMBINI, *I decreti semplificazione e rilancio alla luce dei principi generali di contabilità pubblica ovvero dei falsari di parole*, in *Federalismi.it*, 23 March 2021; “Modifiche alla disciplina relativa alla Corte dei conti a tutela del corretto riavvio del Paese” presented to the Senate (No. 2185/2022).

<sup>13</sup> The hearing took place on June 1, 2023.

<sup>14</sup> See A. DAMATO, *La tutela degli interessi finanziari tra competenze dell’Unione e obblighi degli Stati membri*, Bari, 2018, p. 3 ff., 15 ff.

<sup>15</sup> See G. MORGESE, *La governance europea del Next Generation EU*, in *PasSaggi Costituzionali*, n. 2, 2021, p. 68 ff.

<sup>16</sup> Approved by Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020.

<sup>17</sup> See S. CAFARO, *Art. 312 TFUE*, in F. Pocar, M.C. Baruffi (a cura di), *Commentario breve ai Trattati dell’Unione europea*, Padova, 2014, pp. 1472-1474.

<sup>18</sup> See R. MANKO, *Protecting the Rule of Law in the EU. Existing Mechanisms and Possible Improvements*, *European Parliament Research Service*, PE 642.280, November 2019; A. BARAGGIA, *The New Regulation on the Rule of Law*

Although the European Commission has not explicitly requested that the concurrent scrutiny under discussion today be applied to the actions fall under the NRRP, it is nonetheless true that EU Regulation 241/2021 states, based on Article 22, that Member States are responsible for taking all appropriate measures to protect the financial interests of the EU and ensure that RRF funds are used by applicable EU and national laws (including procurement and state aid)<sup>19</sup>.

#### 4. The Italian situation and the possible implications of abrogation of concurrent control

The funds of the NRRP, as noted, are directly managed and disbursed either in the form of non-repayable support and accounted for in the EU budget as externally assigned revenue, or in the form of loans, accounted for as financial assistance based on specific agreements made with each Member State<sup>20</sup>. In this regard, European institutions have made it clear that it is the responsibility of Member States to prevent, detect and correct fraud, corruption and conflicts of interest and avoid double funding. If irregularities are identified, Member States have to take action, investigate and remedy the situation, whether this involves recovering funds wrongly paid or incorrectly used, voiding contracts or other actions. In all instances, when submitting payment requests, each Member State has to provide the European Commission with all information pertaining to suspected fraud cases. To this end, Member States must provide “an effective and efficient internal control system” which plays a key role, as they are the main mechanisms through which the financial interests of the EU are safeguarded.

From this perspective, concurrent control, although not specifically designed for the NRRP, certainly could well perform the project oversight functions required by European institutions.

Incidentally, a spokesperson on the Italian issue pointed out that even although the Commission does not comment on the national legislative provision, it will examine the measure taken, as there is an agreement in place with Italy on the need to have an effective system of controls over the expenditure of NRRP funds, which requires a proportionate response given its unique nature, being a results-based spending program<sup>21</sup>.

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*Conditionality: A Controversial Tool with Some Potential*, in *IACL-AIDC Blog*, 22 December 2020; M. BUCCARELLA, *Le pronunce della Corte di Giustizia sul nuovo meccanismo di condizionalità finanziaria orizzontale: la legittimità del Regolamento (UE, Euratom) 2020/2092 nel segno della trasparenza amministrativa e di una (ri)afferma identità europea*, in *DPCE online*, 2, 2022; P. MORI, *Gli strumenti di tutela del rispetto dello stato di diritto: verso una condizionalità politico-finanziaria*, in AA.VV. *Temi e questioni di diritto dell'Unione europea, Scritti offerti a Claudia Morviducci*, Bari, 2019, pp. 187-198; A. BARAGGIA, M. BONELLI, *Linking Money to Values: the new Rule of Law Conditionality Regulation and its constitutional challenges*, in *German Law Journal*, 2021-2022; G. GIOIA, *La condizionalità nell'esperienza dell'Unione europea. Protezione del bilancio e valori costituzionali*, 1/2021, pp. 7-17; E. GALLINARO, *Il nuovo regime generale di condizionalità per la protezione del bilancio dell'Unione: verso una più efficace tutela dello Stato di diritto?*, in *Nuovi Autoritarismi e Democrazie: Diritto, Istituzioni, Società*, 1/2021, pp. 139-159; L. PECH, S. PLATON, K.L. SCHEPPELE, *Compromising the Rule of Law while Compromising on the Rule of Law*, in *VerfBlog*, 13.12.2020, available online.

<sup>19</sup> See G. CONTALDI, *La normativa per l'attuazione del programma Next Generation EU*, in *Studi sull'integrazione europea*, 2021, p. 245 ff.; C. DE LA PORTE, M. DAGNIS JENSEN, *The Next Generation EU: An Analysis of the Dimension of Conflict behind the Deal*, in *Social Policy Administration*, Vol. 55, 2021, pp. 388-402.

<sup>20</sup> Art. 15 of Reg. 242/2021 and art. 21 Reg. EU No. 1046/2018 on the EU financial budget. See G. COLOMBINI, *I decreti semplificazione e rilancio alla luce dei principi generali di contabilità pubblica ovvero dei falsari di parole*, cit., pp. 32-33.

<sup>21</sup> The interview is available at the following link <https://www.italiaoggi.it/news/pnrr-ue-monitoreremo-la-misura-on-corte-dei-contin-202306021443346818>).

Certainly, the European institutions will intervene with a freeze or reduction of funds if Italy fails to meet its European commitments and will not ensure adequate monitoring of projects to meet deadlines and avoid episodes of corruption or violations of the Rule of Law.

Lithuania, for example, having failed to meet two tax reform targets, had its funds cut by as much as twenty-three million Euro. But the cases of Poland and Hungary should also teach something, especially after the Court of Justice confirmed the legitimacy of the conditionality mechanism introduced by EU Regulation No. 2020/2092<sup>22</sup>.

The conditionality mechanism was introduced to break down resistance from the bloc of the so-called "Frugal Four"<sup>23</sup> which, during negotiations for the allocation of funds from the EU's Next Generation plan, demanded that payment be made conditional on respect for the Rule of Law. In contrast, Poland and Hungary objected, fearing interference by European institutions in domestic policy choices. A compromise was reached through an interpretive declaration limiting the scope of conditionality<sup>24</sup>.

In the case of the two countries of the Visegrád bloc, the problems mainly concerned internal reforms of the judiciary inadequate to guarantee the impartiality of judges<sup>25</sup>, anti-abortion policies, the threat to the rights of LGBTIQ+ communities, and the effective safeguarding of the Rule of Law, which was endangered by the overtly authoritarian drift undertaken by the two Governments and the ongoing change in domestic democratic order<sup>26</sup>.

As is well known, the ongoing tug-of-war between Poland, Hungary and the European institutions has even reached the Court of Justice to which the two Countries have appealed for the annulment

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<sup>22</sup> Court of Justice, 16 February 2022, C-156/21, *Ungheria c. Parlamento e Consiglio* and C-157/21, *Polonia c. Parlamento e Consiglio*. See G. CAGGIANO, *La Corte di giustizia sulla tutela dell'indipendenza della magistratura nei confronti di sanzioni disciplinari lesive dello Stato di diritto*, in *Studi sull'integrazione europea*, 2, 2020; F. CASOLARI, *Tutela dello stato di diritto e condizionalità finanziaria: much ado about nothing?*, in *Eublog*, disponibile online; B. NASCIBENE, *Il rispetto della rule of law e lo strumento finanziario. La "condizionalità"*, in *Eurojus*, 3, 2021, p. 172 ff., available online; S. GIANELLO, *La riforma giudiziaria in Polonia: la minaccia allo Stato di diritto oltre i confini nazionali*, in *Diritto pubblico comparato ed europeo*, 2, 2020, p. 489 ff.; E. GALLINARO, *Il nuovo regime generale di condizionalità per la protezione del bilancio dell'Unione: verso una più efficace tutela dello Stato di diritto?*, in *Nuovi Autoritarismi e Democrazie: Diritto, Istituzioni, Società*, 1, 2021, p. 140 ff., available online; M. FISICARO, *Rule of Law Conditionality in EU Funds: The Value of Money in the Crisis of European Values*, 2019, in *European papers*, 3, 2019, p. 695 ff.; N. CANZIAN, *Il principio europeo di indipendenza dei giudici: il caso polacco*, in *Quaderni costituzionali*, 2, 2020, p. 465 ff.; L. CAPPUCIO, *Stato diritto e difesa dell'indipendenza della magistratura in una recente pronuncia della Corte di giustizia*, in *Quaderni costituzionali*, 2, 2019, p. 470 ff.; E. CECCHERINI, *L'indipendenza del potere giudiziario come elemento essenziale dello stato di diritto. La Corte di giustizia dell'Unione europea esprime un severo monito alla Polonia*, in *DPCE online*, v. 40, n. 3, 2019; E. CIMADOR, *La Corte di giustizia conferma il potenziale della procedura d'infrazione ai fini di tutela della "rule of law". Brevi riflessioni a margine della sentenza "Commissione/Polonia" (organizzazione tribunali ordinari)*, in *Eurojus*, 1, 2020, p. 60 ff., available online; C. CINIRELLA, *"You cannot beat something with nothing": ossia la strategia della Corte di giustizia per tutelare l'indipendenza dei giudici nazionali (e lo Stato di diritto) nello spazio giuridico europeo*, in *Il Diritto dell'Unione Europea*, 2, 2020, p. 361 ff.

<sup>23</sup> Austria, Denmark, The Netherlands, Sweden.

<sup>24</sup> Bruxelles, 11 December 2020, EUCO 22/20 p. 2. See U. VILLANI, *Metodo comunitario e metodo governativo nell'attuale fase dell'Unione europea*, in *Studi sull'integrazione europea*, n. 2, 2019, p. 259 ff., pp. 267-268.

<sup>25</sup> The Court of Justice has repeatedly returned to this subject, specifically: *Associação Sindical dos Juizes Portugueses* (C-64/16) ECLI:EU:C:2018:117; *Repubblika* (C-896/19), ECLI:EU:C:2021:311; *PPU LM*, C-216/18 ECLI:EU:C:2018:586.

<sup>26</sup> See J. SAWICKI, *La pandemia Covid-19, in Polonia e in Ungheria, come possibile occasione per intensificare la mutazione illiberale delle istituzioni*, in *DPCE Online*, v. 43, No. 2, 2020.

of the aforementioned EU Regulation 2020/2092. The Court on the issue recently ruled in plenary session and, at the request of the Parliament, under an expedited procedure<sup>27</sup>.

The legal arguments put forward by Hungary and Poland, on the basis of which the two Member States challenged the legitimacy of the conditionality mechanism, focused, in particular, on the following: the absence of an adequate legal basis in the founding Treaties<sup>28</sup>; circumvention of the procedure provided for in Article 7 TEU; exceeding the limits of the Union's competences; and violation of the principle of legal certainty.

The Court of Justice, in the two cited judgments, dismissed both appeals and confirmed, on the contrary, the compatibility of the conditionality mechanism with EU law. The key passage in the judgments is where the Court recognizes the Rule of Law as an essential element of the very identity of the European legal order, respect for which is a condition for the exercise of all the rights of member states arising from the application of the Treaties. According to the Court, the mechanism of conditionality is also legitimate because of the close link between respect for the Rule of Law and the necessary protection of the Union's budget as a means for the practical implementation of common policies<sup>29</sup>.

The fact remains that at the moment the European Commission, because of this impasse, is withholding one hundred and thirty-eight billion euros of the funds that would be intended for Poland and Hungary. Both ordinary budget payments and payments from the Next Generation Eu fund are affected, and this is despite the fact that the plans submitted by the two Countries have been duly approved by the European institutions.

Therefore, returning to the Italian case, the problem is more urgent than ever. The Commission is watching very closely what Italy is doing in terms of reforms and the timing of implementation of projects financed with NRRP funds. Evidence of this is the fact that the approval of the request for the third tranche, totalling nineteen billion, and the Commission's assessment work took longer than expected and that only recently, much later than expected, were the changes requested by the Italian government approved regarding the projects' implementation and the milestones included in the fourth tranche.

In the intentions of the Italian Government, the repeal of concurrent control over projects related to the PNRR and the National Plan for Complementary Investment should move toward a deregulation of procedures to enable faster project implementation. Moreover, according to the Italian Minister for European Affairs and the PNRR, Raffaele Fitto, there would be no incompatibility between the repeal under consideration and European legislation since, from a temporal point of

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<sup>27</sup> Court of Justice, 16 February 2022, C-156/21, cit., e C-157/21, cit.

<sup>28</sup> Concerning the importance of values in the European system see G. GAJA, A. ADINOLFI, *Introduzione al diritto dell'Unione europea*, Bari, 2020, section I and VI; G. TESAURO, *Manuale di diritto dell'Unione europea*, a cura di P. De Pasquale, F. Ferraro, volume I, Napoli, 2021, p. 23 ff.; L.S. ROSSI, *Il valore giuridico dei valori. L'articolo 2 TUE: relazioni con altre disposizioni del diritto primario dell'UE e rimedi giurisdizionali*, in *Federalismi.it*, No. 19, 2020, pp. iv-xxvi; D. SPIELMANN, *The Rule of Law Principle in the Jurisprudence of the Court of Justice of the European Union*, in M. Elósegui, A. Miron, I. Motoc (Eds.), *The Rule of Law in Europe: Recent Challenges and Judicial Responses*, Cham, 2021, pp. 3-20.

<sup>29</sup> See M. CARTA, *Qualche considerazione sulla tutela dello Stato di diritto attraverso gli strumenti finanziari nell'Unione europea*, in *Ordine internazionale e diritti umani*, 2, 2019, p. 308 ff.; K.L. SCHEPPELE, D. KOCHENOV, B. GRABOWSKA-MOROZ, *EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union*, in *Yearbook of European Law*, vol. 39, n. 1, 2020, pp. 3-121.



view, in 2020, the year in which concurrent control was introduced as recalled for “major plans, programs and projects related to interventions to support and revitalize the national economy”, the NRRP had not yet been approved. In addition, the Italian government has pointed out that from a strictly formal point of view, the only controls agreed with European institutions for NRRP are those provided for within Decree Law 77 of 2021<sup>30</sup>.

The position taken by the Italian Government does not appear convincing. Moreover, the vision that guided the reform does not seem focused on accelerating the proper and timely completion of projects in order to receive the allocated funds on time. Concurrent control seems to be more in line with the peculiarities of the structure of the EU’s Next Generation program, which operates by intermediate and final milestones, on the achievement of which the disbursement of subsequent resources depends. It is understood that the Court of Auditors’ supervisory role over initiatives undertaken under the NRRP is not over. The Accounting Judiciary, according to Italian Law and the Constitution, has other tools at its disposal to supervise the proper implementation of the NRRP. However, they may not prove to be as effective as concurrent control<sup>31</sup>.

## 5. Yet, what now?

Turning to some concluding remarks on the possible consequences of the repeal under discussion could generate on the agreements made at the European level, it seems appropriate to start from the provisions of the aforementioned Article 22 of EU Regulation 241/2021 as well as Recital 54. It is envisaged that Member States shall endeavor to avoid delays, to ensure sound and proper financial management of projects, but also to avoid failures.

In this respect, the Italian Government's position appears criticisable for two reasons. Firstly, by removing one of the control mechanisms, it seems to underestimate the high risk of fraud and corruption phenomena in the management of the large funds from the NRRP. This concern is also reflected in the wording of Recital 15 of EU Regulation 2021/241, where all Member States are required to improve the effectiveness of internal judicial systems, as well as fraud prevention and anti-money laundering supervision. Secondly, it is necessary to consider that the Next Generation EU program and, in particular, the Recovery and resilience facility place demanding conditionalities. These programs require the fulfilment of a series of obligations that include having to disclose the final objectives that are intended to be achieved with each investment, having to provide evidence of their actual implementation, in compliance with precise timelines for the use of the sums allocated as well as in the proper and timely execution of the works. In this framework, concurrent control, being a form of "managerial" control, could have been a strength and not a weakness. If deregulation had been the problem, it would have been more appropriate to intervene by way of derogation to simplify the modality of exercising control, certainly not to eliminate it. The fulfilment of all the conditions set by the NRRP, which is as extraordinary in its nature as it is innovative, could have been facilitated, precisely through the controls entrusted to the Court of Auditors<sup>32</sup>.

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<sup>30</sup> See <https://www.governo.it/en/node/22788>.

<sup>31</sup> See A. SANTINI, Artt. 285, 286, 287 TFUE, in F. Pocar, M.C. Baruffi (a cura di), *Commentario breve ai Trattati dell’Unione europea*, cit., pp. 1394-1402 and <https://www.ilsole24ore.com/art/pnrr-ecco-relazione-governo-camere-valutazione-ue-terza-rata-via-completamento-AEIWijbD>.

<sup>32</sup> See G. COLOMBINI, *I decreti semplificazione e rilancio alla luce dei principi generali di contabilità pubblica ovvero dei falsari di parole*, cit., p. 31.

In addition, while it is not possible to dwell in detail on the system of controls envisaged by the NRRP, it should be noted that stand-alone actions by the Italian Government could raise problems of coordination, at the national and regional levels, and of compliance with European prescriptions. Consider, for example, the recent Decree Law No. 13 of February 24, 2023, which substantially redesigned the governance system of the NRRP, whose control room has been centralized at the Presidency of the Council of Ministers, partly downsizing the functions of the audit unit provided for by Reg. 241/2021 and the role of the State General Accounting Office.

Moreover, a possible increase in litigation could be generated by the joint operation of the two provisions considered, i.e., the extension of the treasury shield and the repeal of concurrent control, since the greater freedom left to the administration inevitably increases the risk of the adoption of illegitimate acts.

It would be even more critical if such an action were to be read as an attack on the accounting judiciary and its independence and, therefore, as a violation of the rule of law, within the meaning of the provisions of the aforementioned Article 4 of Reg. 2092/2020. Such a situation could result, as happened in the cases of Poland and Hungary, in the total or partial suspension of the disbursement of funds ordered by the Commission on the proposal of the Council.

The concern is even more serious when one considers that it has been observed that with the government's recent regulatory interventions, a studied design seems to have been undertaken to depower the functions of control of legitimacy and financial regularity as well as the jurisdictional one of the Court of Auditors. In practice, there would be a depowering of the "principle of financial accounting legality"<sup>33</sup>.

Lastly, the Italian Government's decision could lead to a violation of Article 97 of the Constitution, which stipulates that public offices must work to ensure balanced budgets and sustainability of public debt, consistent with European Union law, in addition to the well-known principle of the efficiency and impartiality of administration<sup>34</sup>. This could also entail the risk of a possible violation of the Stability Pact<sup>35</sup> and Sec2010<sup>36</sup> regulations, as well as the directives on budgetary frameworks, i.e., that set of European rules that "impose transparency on the common European accounts, including for the various internal public administrations of the member state," as well as the principle of the effectiveness of European law<sup>37</sup>.

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<sup>33</sup> See G. COLOMBINI, *I decreti semplificazione e rilancio alla luce dei principi generali di contabilità pubblica ovvero dei falsari di parole*, cit., p. 29.

<sup>34</sup> See E. PICOZZA, *Il diritto dell'economia*, in E. Picozza, V. Ricciuto, *Diritto dell'economia*, II ed., Torino, 2017, p. 208.

<sup>35</sup> Resolution of the European Council on the Stability and Growth Pact Amsterdam, 17 June 1997; Council Regulation (EC) No1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies; Council Regulation (EC) No1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure. See G. CONTALDI, *Diritto europeo dell'economia*, Torino 2019, p. 265 ff.; R. CISOTTA, *La custodia della credibilità nel Patto di stabilità e crescita e le prospettive di riforma*, in *Quaderni Aisdue*, 5 maggio 2023, available online; L. PENCH, *New Fiscal Rules for the EU: The European Commission Proposal*, in *Astrid online*, 10 January 2023; A. GUAZZAROTTI, *La riforma delle regole fiscali in Europa: Nessun "Hamiltonian Moment"*, in *Rivista AIC*, 1, 2023, available online.

<sup>36</sup> EU Regulation No. 549/2013.

<sup>37</sup> See <https://dirittoeconomi.it/sollelevata-questione-pregiudiziale-comunitaria-sulla-sospensione-dei-poteri-istruttori-della-corte-dei-conti-per-violazione-dello-stato-di-diritto/>. I. INGRAVALLO, *L'effetto utile nell'interpretazione dell'Unione europea*, in *Collana di Studi sull'integrazione europea*, Bari, 2019, spec. p. 63 ff.

Consider, for example, that recently by Order No. 37/2021, in the context of a judgment on the rebalancing plan, the Control Section for Campania raised a preliminary question to the Court of Justice. In particular, the European Court was asked to decide on the possible violation of the rule of law and EU legislation on the transparency of budgetary frameworks with reference to the suspension, ordered by Article 53 of Decree 34 of 2020, of the investigative powers inherent in the control of legitimacy and financial regularity that the Regional Sections of the Court of Auditors perform on the procedures of guided dissolution and rebalancing of local authorities. With this referral, the Regional Control Section, significantly, asked the Court of Justice to ascertain, not only the legitimacy of the Section as a “*pleno iure jurisdiction*”; but also to provide the construction of the Community parameter through the combination of the general principle of the Rule of Law and the provisions contained in Regulation No. 2092/2020.

Moreover, albeit in a partially different but somehow connected matter, the Court of Justice has already found that Italy has infringed Directive 2011/7/EU by failing to ensure that its public offices comply with the payment deadlines laid down by law, thereby depriving the Directive itself of effectiveness<sup>38</sup>.

In light of the structural problems plaguing the public administration-characterized by a tangled bureaucracy, lengthy and cumbersome procedures, staff shortages, and problems with generational turnover-and also in light of this past ruling, the decision to eliminate concurrent control over initiatives undertaken under the NRP and the National Complementary Investment Plan appears short-sighted and criticizable. Although this decision is not directly contrary to European Union law, since the Court of Auditors has other mechanisms for assessing government performance on NRRP funds, as required by European institutions, it could indirectly generate several consequences contrary to European law<sup>39</sup>.

This control, in fact, while requiring additional steps during project development, would have allowed the Court to support the public office concerned and guide it step by step on a possible path of self-correction or even anticipate possible critical issues, enabling more efficient work.<sup>40</sup>

It will be necessary to evaluate in the medium to long term the results of this abrogation, to see whether the Government will have achieved the sought-after effect of acceleration and deregulation or whether, on the contrary, this move will cause further delays that will even result in a reduction in the funds allocated to Italy.

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<sup>38</sup> See Court of Justice, C-122/18, ECLI:EU:C:2020:41.

<sup>39</sup> See editorial note of 12 March 2021, *Sollevata questione pregiudiziale comunitaria sulla sospensione dei poteri istruttori della Corte dei conti, per violazione dello Stato di diritto*, available online.

<sup>40</sup> See L. CASO, *Una riflessione su ruolo e funzioni della Corte dei Conti*, in *ISole24Ore*, 20 luglio 2023, available online.