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strengthening
fiscal surveillance in EMU
during the euro crisis**

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‘Tightening the knot’: strengthening fiscal surveillance in EMU during the euro crisis

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Introduction¹

One of the key regularities which appeared to hold so far in European integration is that the closer a policy issue lies to the core of state sovereignty, the least likely it is for integration to occur in that domain (Boerzel, 2005; Lindberg and Scheingold, 1970). This should thus make the study of integration in fiscal policy, undoubtedly a core state power, particularly interesting. In a seminal contribution on the integration dynamics in the fiscal domain, Heipertz and Verdun (2010) looked at the unintended consequences of the Economic and Monetary Union’s (EMU) fiscal framework, the Stability and Growth Pact (SGP). They concluded that it is ‘far too early to look for substantial occurrences of political spill-over in the fiscal domain’ (2010: 82). However, recent evidence shows that the SGP’s reforms and expansion into a broader and more intrusive central fiscal surveillance regime, as part of the Six Pack, Fiscal Compact and Two Pack reforms, has led to further integration in the fiscal realm. To illustrate the most manifest signs of such a task expansion, Table 1 below summarizes the density of fiscal rules prior to the euro crisis and post-crisis. It illustrates the legalization process which Europe’s fiscal governance underwent during the euro crisis, confirming Mabbett and Schelkle’s claim that ‘if challenged in its regulatory endeavour, the EU tends to respond with more regulation’ (Mabbett and Schelkle, 2009: 1). The common thread of these substantial initiatives is that they aimed at strengthening the credibility and enforceability of EMU’s rules-based economic coordination regime through further formal competence transfer to a European fiscal centre, embodied by the Commission. In other words, the reforms changed the vertical balance of power between the EU centre and its

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Member States. A hardening of decision rules and sanctions occurred, both on the preventative and corrective arms of the Stability and Growth Pact. Overall, the new fiscal agreements allowed for further intrusion into the domestic budgetary processes and macroeconomic management within Member States.

Pre-crisis (as of 2007)	Post-crisis (as of mid-2014)
Maastricht Treaty provisions & Protocol	Maastricht Treaty provisions & Excessive Deficit Procedure (EDP) Protocol
SGP's two Regulations	SGP's two reformed Regulations (part of 6 Pack)
	Treaty on Fiscal Stability, Coordination, and Governance (Fiscal Compact)
	Regulation on the effective enforcement of budgetary surveillance (part of 6 Pack)
	Directive on minimum requirements for national fiscal frameworks (part of 6 Pack)
	Regulation on financial stability (part of 2 Pack)
	Regulation on draft budgetary plans (part of 2 Pack)

Table 1: Density of fiscal rules in EMU: pre-euro crisis vs post-euro crisis

The expansion of fiscal governance at EU level, far from being only a fiscal federalism puzzle, raises far-reaching questions about the dynamics and disparity of European integration in 'high politics'. Against this theoretical background, this paper thus attempts to explain why and how the scope of fiscal authority in EU fiscal surveillance has expanded, over the period of the euro crisis (2010-2014). More specifically it will ask the following two questions: (1) which crucial actors can account for this fiscal governance expansion? (2) how did the adoption of the 6 Pack, Fiscal Compact and 2 Pack expand the Commission's role in fiscal surveillance?

To answer these questions, three distinct case studies will be analysed in a comparative approach: the redesign of the Stability and Growth Pact's original rules and its extension by the 6 Pack (2011), the Fiscal Compact (2012) and the 2 Pack (2013). These cases have been selected because they constitute major institutional fiscal surveillance reforms of varying legal nature and scope, adopted in a similar context of 'hard times': the euro crisis (2010-2014). The analysis relies on qualitative techniques to gather data on these cases, mainly content analysis of key legal texts and proposed amendments, key declarations and official documents to trace the preferences of actors and map out the influence they had on the final provisions retained. Several interviews with senior EU policy-makers from European Commission, Parliament and Council have been conducted to gather additional observations.

The rest of the paper is organised as follows: Section 1 sets the theoretical frame and recalls the key logical steps in neo-functional models. Section 2 enters into the core of the argument and introduces the four key actors at play in EMU's fiscal governance (the European Commission, the European Central Bank, the European Parliament and Germany), lining out their preferences in terms of type of fiscal centralization. Section 3, 4 and 5 present the three case studies under

examination, using process tracing. Section 6 presents the findings while Section 7 concludes.

1. Theoretical framework and analytical approach

Against the background of the 1990s discussions on the incomplete nature of EMU and the quasi necessity of a spill-over from monetary union to fiscal and political union, the growing fiscal powers of the EU level lends itself neatly to a neo-functionalist analysis. Neo-functionalism has indeed been getting to grips with the EU's task expansion and in particular the growing density of regulatory rules, an old European integration phenomenon. Central to neo-functionalism is the often maligned notion of neo-functional spill-over: Sandholtz and Stone-Sweet (1998) contend that a 'spill-over is achieved when supranational authority is extended to new, but related functional domains, as it becomes evident that initial policy objectives cannot be adequately attained without such an extension' (1998: 6). They also formulated the conditions and mechanisms through which the spill-over plays out. Their model 'privileges the expansion of trans-national exchanges, the capacities of supranational organizations to respond to the needs of those who exchange, and the role of supranational rules in shaping subsequent integration' (Sandholtz, Stone-Sweet & Ferguson: 2001:4). The dynamic logic of their model proceeds along the following line: (1) as the autonomy of supranational actors grows, (2) as the clarity, density and formalization of EU rules increases and (3) as the power of trans-national actors amplifies with the multiplication of exchanges, supranational institutionalization proceeds.

Since the fiscal domain remained for a long time a *chasse gardée* of Member States, this strand of theory appears particularly able to explain the mechanisms of sovereignty transfer, policy innovation and institutional change in an area – fiscal policy – where there were few in the past but which is now characterised by rapid and transformative change. The application of a neo-functionalist frame to EMU is however not entirely unproblematic. Firstly, because the nature of the competences (economic policy) involved differs from the standard playground of neo-functionalism (the EU's internal market). Secondly, because the supranational actors concerned vary too: the European Central Bank is an essential player of EMU while it is a marginal player in the EU's ordinary legislative procedure and its influence has been hardly conceptualized by neo-functionalists. Thirdly, because the transnational actors whose interest in transnational exchanges (and the removal of barriers to them) lie at the core of the spill-over mechanism, are hard to be found in EMU. Applying neo-functionalism to EMU therefore implies some changes in its traditional scope conditions and assumptions to reflect the fact that business actors are key players in a common market/customs union while they appear to have less direct interests in the institutional shape of EMU. This means that the third logical sequence of the Sandholz and Stone-Sweet model, 'the power of trans-national actors amplifies with the multiplication of exchanges' cannot be used in our instance as there are no transnational actors who pushed for an extension of fiscal rules to be found. Due to these features, it is beyond the scope of this paper to apply the model in its entirety.

With a concern for parsimoniousness, we will thus stick to two classic mechanisms mapped by neo-functionalism, the agency of supranational organizations and the density, clarity and formalization of supranational rules to explain the expansion of EMU's fiscal surveillance during the crisis. We hypothesize that the centralization of fiscal powers by the European Commission occurred because of the alignment of preferences among supranational actors (ECB, European Commission, and European Parliament). The mechanism behind this alignment is that

supranational actors tend to empower other supranational actors. Furthermore, the analysis will also pay particular attention to the role played by the rules-based design of Europe's fiscal surveillance regime. This neo-functional analysis will be assessed against Germany's preference and influence mobilization across the cases to control for its leverage over the overall policy changes.

2. EMU's actors and their preferences

In this analysis, the preferences of single Members of the EU Council will not be considered. We have deliberately decided to simplify the actor-constellation and reduce the number of key influential actors in EMU's fiscal governance. Instead we will only examine the position of the key Member State who acted as a principal on fiscal rules, Germany.

2.1 The supranational actors

The crucial difference of EMU compared to the European Union (EU) lies in the fact that its political space is occupied by another supranational actor, whose role proved to be central during the euro crisis, the European Central Bank (ECB). The ECB therefore brings the number of supranational players in EMU to three, along with the European Commission and the European Parliament².

The European Commission

The European Commission has traditionally considered itself to be the uncontested EMU executive, drawing on its decades-long experience as the central executive actor of the EU's internal market, notably as its competition policeman. For sure, it could rely on its role of 'guardian of the treaties' to claim a central EMU role. Yet, this expectation denies the duality of the EU's polity, diminishing the fact that EMU was ever since the Maastricht Treaty a largely intergovernmental construct in which the Commission's role has traditionally been minimal. Nevertheless, in line with the findings of agency theory, the Commission has always sought a strong role for itself in the management of EMU's economic governance, and in particular on the control and coordination of fiscal policies. Where possible, it also attempted to establish its independence from national governments, as when it brought the Council in front of the ECJ in 2005. During the euro crisis, it rhetorically championed the widespread use of the 'Community Method' as its President explained during its 2011 State of the Union speech³.

The European Parliament (EP)

The EP was a marginal actor in the original design of EMU where its only prerogative was to be informed about the Council's recommendations (i.e. broad guidelines on economic policy) and to receive general reporting on multilateral surveillance. The Parliament was also granted the right to be consulted should further provisions on the Excessive Deficit Procedure be adopted. Having

² Due to the marginal role played, so far, by the European Court of Justice (ECJ) in economic governance, the ECJ will be left out of the scope of this study.

³ Jose Manuel Barroso – State of the Union speech delivered on 28 September 2011 in Strasbourg:
http://ec.europa.eu/commission_2010-2014/president/pdf/speech_original.pdf

a ‘foot in the door’ of EMU, the EP has usually pushed for more transparency and more information provision (through economic dialogues or hearings), playing the card of the legitimacy enhancement. The EP reached a true success along those lines when it was empowered by the Lisbon Treaty’s Article 121-6 to adopt ‘detailed rules for the multilateral surveillance procedure’, in co-decision, a change in the rules of the game that would affect the law-making process. During the euro crisis, the European Parliament was particularly vocal on three aspects: (1) the development of a more effective and automatic EU fiscal surveillance, (2) the development of euro-bonds in whatever form, (3) safeguarding the Community method. The EP will be treated as a unitary actor in this analysis, notwithstanding the presence of major cleavages on some issues of Europe’s economic governance reform, which however go beyond the three above issues (e.g. the set-up of solidarity instruments such as Eurobonds polarized the EP considerably).

The European Central Bank (ECB)

The ECB is the central actor of EMU. Since its mandate focuses on price stability and attributes it EMU’s monetary policy, it has no direct control over fiscal policy. This does not mean that the ECB is deprived of clear preferences when it comes to fiscal integration in EMU. Quite on the contrary, the ECB has routinely defended stringent fiscal rules and advocated automatic sanctions in case of non-compliance. In the context of the euro crisis, it co-sponsored the Fiscal Compact and pushed on a number of occasions for a strong enforcement of the SGP in its revised form. Setting up constitutional rules to constrain the behaviour of fiscal actors in a monetary union must be understood under the particular light of a strategic fight for monetary dominance over fiscal dominance. Another element which derived from its rather high concern for credibility, a typical trait of a young central bank, is the fact that the ECB has always been very sceptical of a central fiscal authority that would strive to manage the euro area’s aggregate fiscal stance. As the Eurogroup started to voice some of its pretensions in that area, the ECB reacted strongly⁴.

2.2 The reluctant hegemon

Germany

Germany, a traditional central player of EMU, has been the only Member State retained in our analysis as it has usually been the only Member State able to shape its further development in an autonomous way. This does not imply that all other Member States have been systematically unsuccessful in obtaining their demands, nor that Germany always acted on behalf of its own interests alone⁵, it simply means that, on average, and across the issues concerned, it has been the most influential Member State in the reform of EMU’s fiscal governance. Ever since EMU’s inception, Germany has always been its key principal. The main features of EMU’s institutional design and its fiscal rules can indeed be traced to Germany’s preferences at the time of Maastricht. So was the Stability and Growth Pact a German proposal. Due to its strong economic

⁴ On this see for example Hodson (2011)

⁵ The alignment of interests among ‘hawks’ (Finland, Austria, the Netherlands and Germany) has been on average rather high during the euro crisis period.

fundamentals, Germany has arisen from the euro crisis as EMU's key decision centre, fuelling claims that Germany's political capital is dominating Europe. In academic debates, this led to the emergence of a literature called 'Germany as a reluctant hegemon' (Bulmer and Paterson, 2013).

The German government has often operated in the shadow of a central domestic player, the German Bundesbank, a strong advocate of stringent fiscal rules at the EU level, which was instrumental in convincing Theo Waigel (then Germany's finance minister) to promote a Stability pact for Europe in 1995. A similar pattern was to be observed in 2011 as testified by Bundesbank President Jens Weidmann who made no secret of its pressuring the German government to restore a 'stability culture' in EMU through 'harder rules' (Weidmann, 2011). More recently, the German Constitutional Court has increasingly acted as a domestic constraint on Germany's fiscal agreements. Yet, due to space restrictions, Germany will be considered as a unitary actor in this analysis. As such, its preferences formation will not be traced at the domestic level nor will the intermediation of key domestic actors in the process be investigated.

3. Case 1: The Six Pack, reforming and expanding the SGP

While the SGP, in its first (1997) and second (2005) versions remained broadly in line with the minimal arrangements of the Maastricht Treaty, the euro crisis which unravelled in Europe from end 2009 led to a fundamental reshuffle and expansion of the fiscal surveillance architecture of EMU. However, it remained in the same Maastrichtian spirit of rules-based coordination. The reform of EMU's fiscal governance through what was later coined the '6 Pack', adopted in November 2011, was a large scale process which aimed at both broadening and deepening central control over domestic economic policies, and in particular fiscal policies, the focus of this analysis⁶. It resulted in a change of the vertical power balance between the fiscal centre and its periphery. The over-reliance on a rules-based framework would however be critically viewed by some actors involved. As one interviewee explained: 'you cannot write complete contracts'⁷.

3.1 Reform narrative

Only a few months after the start of the Greek debt crisis in November 2009, consensus emerged in Brussels in March 2010 for a substantial reform of the SGP's framework to 'restore the credibility of the EU vis-à-vis the markets'⁸. The reform of the SGP thus constituted the first crisis response measure undertaken by EU leaders who were put under pressure to act. As an interviewee recalled: 'this new framework had to be created in a rush'⁹. With hindsight, it appears naïve to think that changing rules would suffice to stabilize market expectations. Yet, one must bear in mind that the magnitude of the crisis was unknown at the time. Moreover, EU leaders were all very conscious that the SGP framework had suffered a strong credibility blow in 2003 (when France and Germany had orchestrated a veto within the Ecofin Council and had *de*

⁶ To be consistent with this focus on fiscal aspects, we will leave out of this analysis the two regulations which are admittedly part of the 6 Pack but which deal with macroeconomic imbalances, a broader issue that would necessitate an analysis on its own (e.g. see Gros, 2012).

⁷ Interviewee 12, Rome, 25 June 2015.

⁸ Interviewee 3 – 1 December 2014, Brussels.

⁹ Interviewee 2 – 3 November 2014, Brussels

facto put the corrective arm of the SGP in abeyance) and that inaction further to the Greek public finances crisis would lead to the Pact's *de facto* dismissal. Furthermore, reforming Europe's rules was in line with the narrative of the crisis's root cause. Interviewees recollect that 'non-compliance with rules was identified as the cause of the crisis, not the good or bad performance of economies'¹⁰ and that the political imperative 'was about respecting the rules'¹¹.

With a view to ensuring 'better budgetary discipline, exploring all options to reinforce the legal framework' (European Council, 2010), the 26-27 March 2010 European Council conclusions called on both Commission and European Council presidents to come up with recommendations to resolutely reform EMU's fiscal governance. The dual mandate, demanded by France and Germany¹², can be explained by one of the Lisbon Treaty's institutional novelties¹³: the creation of a permanent European Council President. This day also marked the start of the Task Force Van Rompuy where the consensus-building on the key provisions of the 6 Pack occurred. A true agenda-setting contest emerged between the European Commission, which has always cherished its monopoly on legislative initiative, including on EMU (the Delors Committee is a telling precedent) and the European Council, through its subordinate group: the Task Force Van Rompuy¹⁴. Later in the legislative process, the European Parliament would prove decisive and the ECB very influential in shaping the new rules.

On 12 May 2010, the Commission autonomously published a communication outlining its intention to 'resolutely strengthen (the) surveillance mechanism in order to prevent a Member State from slipping into such a situation again' (Commission, 2010a: 10). The Commission's swift move was in all probability driven by the ambition to shape the discussions of the first meeting of the Van Rompuy Task Force set to convene only ten days later, on 21 May 2010¹⁵. Content-wise, among the first concrete mechanisms proposed, one can note the willingness, 'to increase the ex-ante dimension of the (SGP) process and by giving it teeth' (EC, 2010a: 4). In the first Task Force meeting, a consensus rapidly emerged on the key principles of the reform with two particular elements standing out: the need on the one hand 'to strengthen the Stability and Growth Pact and make it more effective' (Van Rompuy, 2010: 1) and the 'need to find means to reduce the divergences in competitiveness between the Member States, at least when these divergences are too big' (Van Rompuy, 2010: 1). The shadow cast by the SGP on the surveillance reform was straightforward.

Meanwhile, the Commission was already elaborating another Communication, ultimately

¹⁰ Interviewee 4 – 10 December 2014, Brussels

¹¹ Interviewee 11 – 24 June 2015, Rome

¹² An interviewee involved in the early works of the Task Force witnessed a 'French-German pressure to take the lead and to not leave the initiative to the Commission' (Interviewee 5).

¹³ This would be one of several instances of the euro crisis which show how the adoption of the Lisbon Treaty pre-structured Europe's economic governance reform (See Laffan and Schlosser, 2015).

¹⁴ Chaired by the European Council president but encompassing several other EU institutions, such as the ECB, the Eurogroup and the European Commission

¹⁵ The Van Rompuy Task Force would subsequently meet five more times (7 June 2010; 12 July 2010; 6 September 2010; 27 September 2010; 18 October 2010) at the highest level and 7 times at alternate level.

published on 30 June 2010, in which it specified the key measures it would be striving to propose in a legislative package after the summer. The institutional rivalry with the European Council went on until the end of the proceedings of the Task Force. One interviewed Council official remembers: ‘in september [2010], there was the feeling that the TF would adopt conclusions not conform to the Commission’s views, and which were not going in the direction of the Community method’¹⁶. When the Commission unveiled its comprehensive package on 29 September, i.e. one month before the final adoption of the Van Rompuy report, the same interviewee remembers that ‘Schaüble was very angry’¹⁷. The Commission’s package, issued on 29 September 2010¹⁸ later coined as the ‘6 Pack’, was made up of 5 Regulations and one Directive to reform and strengthen rules and procedures of EMU’s fiscal surveillance. It also aimed at broadening the scope of economic policy coordination in Europe to avoid the build-up of macroeconomic imbalances. Taken together, these measures would contribute to substantially reinforce the Commission’s powers in fiscal surveillance. The key recommendations which were finally made by the Task Force Van Rompuy when its report was released in October 2010, addressed the five following pillars: (1) the reform of the SGP; (2) the inclusion of macroeconomic imbalances in the economic surveillance process; (3) greater coordination; (4) a framework for crisis management and (5) stronger fiscal institutions. Most of the key proposals of the report had previously been fuelled to the Commission’s preparation work for the subsequent legislative proposals.

In reality, the reform process of the 6 Pack operated under the shadow of the Lisbon Treaty which foresaw the creation of two new actors who suddenly popped up on the EMU scene: the permanent President of the European Council (art. 15 TFEU) and the European Parliament (art. 121-6), which has now a word to say on multilateral surveillance procedure (i.e. most aspects of the SGP) as part of the extension of co-decision foreseen by the Lisbon Treaty.

3.2. Key elements of the “6 Pack”

The overarching objective of the 6 Pack was to enhance both enforcement capabilities and compliance of the Stability and Growth thereby ‘limit(ing) discretion in the application of sanctions’ (European Commission, 2010c): an actor involved in the early discussions remembers a diffused agreement that ‘the rules were the right ones but the enforcement was the issue’¹⁹. As the Commission puts it in its press release accompanying the new legislative package, ‘the SGP will become more “rules based” and sanctions will be the normal consequence to expect for countries in breach of their commitments’ (European Commission, 2010c). This goal is achieved through a large collection of new legal principles and stringent instruments that cover all steps of the fiscal surveillance procedure. The general thread of the reform was to extend the circumstances under which the Commission would subject Member States to closer scrutiny.

The SGP’s preventive arm reform (Regulation (EU) 1175/2011) focussed on the addition of new

¹⁶ Interviewee 5 - 22 October 2014, Brussels.

¹⁷ Ibid.

¹⁸ The Commission hailed the package as ‘the most comprehensive reinforcement of economic governance in the EU and the euro area since the launch of the Economic and Monetary Union’ (European Commission, 2010c).

¹⁹ Interviewee 11, 24 June 2015, Rome

measures that, together, incentivize further Member States towards their 'Medium Term budgetary Objectives' (MTO). Financial sanctions, which take the form of an interest-bearing deposit of 0.2 % of GDP (and even of a non-interest bearing deposit if no action is taken) can now be applied earlier in case of a too significant deviation from the agreed fiscal consolidation course, regardless of the opening of an Excessive Deficit Procedure. Specifically, this would occur 'in the event of a 'major gap' with its medium-term budgetary objective or with the adjustment path designed to achieve it (a reduction in its structural deficit of 0.5% of GDP) and if that gap has not been corrected after a year' (Fernandes, 2014: 8). Moreover, an 'expenditure benchmark' was set up that warrants the matching of new expenditures by adequate resources, *de facto* 'placing a cap on the annual growth of public expenditure according to a medium-term rate of growth' (EC, 2010d). Lastly, a fine on the manipulation of statistics (an obvious follow-up to the Greek crisis) was also introduced on a 'Member State that intentionally or by serious negligence misrepresents deficit and debt data' (Regulation (EU) 1173/2011, art. 8).

The reform of its corrective arm, traditionally centred on its key instrument, the Excessive Deficit Procedure which can lead up to fines, was substantial too. The key novelty was the adoption of a system of Reverse Qualified Majority Voting in Council voting upon the proposal of sanctions falling on Member States, thereby limiting the decision-making power of the Council on sanctions. This shifted the decision power over sanctions to the Commission (who initiates the procedure) and would for example make it impossible for the same, French-German led coalition (that vetoed the Excessive Deficit Procedure's sanctions in 2003) to block the sanctions proposed by the Commission. Another crucial innovation of the corrective arm reform is the operationalization of the debt criterion (previously, surveillance was solely centred on deficit developments) and the development of a new benchmark of debt reduction of 1/20th for countries in excessive debt.

Overall, the reforms mean that the Commission disposes over both additional means²⁰, a greater variety of action levies, more progressive and more automatic sanctions which can be initiated at an earlier stage. Summed up, this leads to an overall surveillance regime which is more stringent. The 6 Pack reform featured however new requirements which went beyond the original scope of the SGP: (1) the setup of minimum requirements for national budgetary frameworks, with an insistence on constraining Member States to move towards 'multi annual budgetary planning' (EC, 2010b). The underlying objective is however to increase the 'ownership' of European rules by national fiscal actors, i.e. the internalisation of the spirit of the EU's fiscal rules into the national budgetary process. Last but not least, the 6 Pack also included the establishment of new procedure, called the European Semester, a policy tool whose aim is to integrate and centralise all surveillance procedures into a single cycle that precedes the development of national fiscal plan for the year t+1. This inversion of the budgetary calendar ensures that the logic of budget-making in EMU becomes more top-down and vertically institutionalized. Based on these new provisions, we have regrouped the powers gained by the Commission in fiscal surveillance into three categories (1) sanctions; (2) monitoring and compliance; (3) enhanced control over

²⁰ For example, the Commission was granted the right to carry out 'surveillance missions' (Regulation (EU) 1173/2011: 2; Regulation (EU) 1175/2011: 2).

national fiscal processes. Each of these categories encompasses several channels through which the Commission has seen its powers expanded. Within these categories, the below table lists the new instruments which have led to a task expansion of the Commission.

Category of new powers gained	Policy outcome	Type of measure/instrument	Impact on Commission task expansion
1. Sanctions	Higher automaticity of sanctions	- RQMV	(+)
	Higher variety of sanctions	- Application of financial sanction also under preventive arm - Data misrepresentation	(+)
	Broader eligibility for sanctions	- Operationalization of the debt criterion	(+)
2. Monitoring and compliance	Higher use of quantitative measures	- Expenditure benchmark - Debt reduction benchmark	(+)
	Broader mandate	-	
	Additional reporting requirements	-	
3. Enhanced control of national fiscal processes	Higher synchronisation of policy cycles	- Multi-annual fiscal planning - European Semester	(+)
	More reliable data	- Surveillance missions - Minimum requirements on systems of budgetary accounting and statistical reporting	(+)
	Partial delegation of compliance to national mechanism(s)		

Table 2: Mapping the EC's task expansion in the 6 Pack

3.3 The power politics of the 6 Pack

Role and strategy of the European Commission

The Commission has been keen to seize the momentum of the euro crisis to fix some of the EMU's fiscal governance flaws to prevent or limit future crises. The visible manifestation of contagion effects in the currency union was indeed a golden opportunity to challenge the institutional status quo. Exploiting this moment, the Commission referred time and again to functional arguments, highlighting the clear 'interdependence' (Commission, 2010a: 1) or the 'deep economic and financial linkages within the euro area' (Commission, 2010a: 5) to justify its task expansion in EMU's surveillance in various communications (Commission, 2010a, 2010b). Using its legislative monopoly, the Commission had sufficient leverage to promote its views during the negotiation of the 6 Pack. Being able to make a first draft for discussion and amendments by ECOFIN and the European Parliament, it could set the agenda of the reform and provide the new ideas that were to be discussed. When compared to its passivity during the height of the financial crisis in autumn/winter 2008, the Commission's activism on reforming the fiscal governance of the EU appears to be puzzling. It strongly contrasts with the contemporary *modus operandi* of the institution which usually waits for a clear mandate from the European Council – formalised in its meeting conclusions – before making formal proposals.

Yet, the Commission operated under the close watch of the Task Force Van Rompuy, which, acting as a 'police patrol' for the European Council (Chang, 2013), constrained the Commission's autonomous agenda-setting power. Given these conditions, the Commission hence did not win all battles. One of its drawbacks has been for example the refusal by co-legislators to support the Commission in its intention to monitor public finances 'based on the new concept of prudent fiscal policy-making' (European Commission, 2010c). Instead of the open-ended discretion requested by the Commission, quantitative benchmarks were set to assess national fiscal policies. Another setback was that the Treaty limited the Commission's ambition to be alone in the driving seat of the EDP implementation as the RQMV only applies to the decision on sanctions, not on the opening of an EDP as such.

Role and strategy of the ECB

The ECB's position on fiscal rules has always been rather consistent over the years and can be derived from its concerns to keep a regime of monetary dominance so as to safeguard its room for action. Historically, the ECB's dominance has been enhanced by the absence of a single European or Eurozone fiscal policy, unlike in normal economic constituencies. The ECB has, been a staunch defender of the status quo on this, and repeatedly warned against the risks of having a fiscal *pendant* to the ECB, in particular at the time of the creation of the Eurogroup in 1997. In the instance of the 6 Pack, the ECB called for quasi-automatic rules, 'based on less discretion over outcomes' (Trichet, 2010: 3) and has been a regular supporter of the SGP reform to restore its credibility. ECB President Trichet declared in November 2009 that the 'SGP is more important than ever' (Trichet, 2009: 1). Moreover, he was an active participant in the Task Force Van Rompuy, being present in 4 of the 6 working sessions of the Task Force. Speaking in November 2010 about the recommendations put forth in the final version of the Van Rompuy Report, ECB President Trichet regretted the report's lack of ambition: 'the Governing Council of the ECB considers that they do not represent the quantum leap in the economic governance that is

needed to be fully commensurate with the monetary union we have created'²¹ (Trichet, 2010: 3).

Role and strategy of the European Parliament

Following the Lisbon's Treaty entry into force, the European Parliament (EP) was a first time participant in the definition of the new economic governance rules. It had an active role during the negotiations of the 6 Pack. Although not all legislative proposals were to be adopted in co-decision (only 4 out of 6 texts), the EP strongly advocated further sovereignty transfers to the EU. For example, despite the European Semester being an old Commission idea, it was the 'EP which codified the European Semester into the 6 Pack'...'ECFIN said it wouldn't happen'²². Overall, the ultimate centralization outcome of the 6 Pack owes a lot to the crucial contribution made by the EP who mobilized its power through package deals, always working with one team of negotiators. One trilogue participant remembers that 'the trilogues were enormous in size in the 6 Pack'²³ as all aspects were negotiated as a package. In the words of one of the EP rapporteurs on the package, the EP's preference clearly went for the reduction of 'horse-trading' in Council deliberations about sanctions (Goulard, 2011:3). The EP also made several attempts at exercising its agenda-setting powers. A noteworthy example is the inserted article 13 in Regulation 1173/2011 which foresees that the Commission presents a report to the EP on the introduction of euro-securities. This was one of the several contributions made by the EP towards the mutualisation of liabilities in EMU. Lastly, and in line with the previous endeavour of the EP to increase its own power, the EP managed to put 'a foot in the door' of economic governance by institutionalizing the 'economic dialogue', a forum for exchange between the ECB, the Eurogroup, the Commission and the EP.

Role and strategy of Germany

In line with its historic insistence on the relevance of rules to constrain fiscal policies in EMU, Germany was among the leading actors to promote a new set of more stringent rules at the EU level. In consistency with its traditional preferences, Germany favoured automatic sanctions and quantitative targets. Although Germany's favoured action at the level of constitutional/primary law, it also mobilized resources on the Van Rompuy report. The summary table included in the Van Rompuy Task Force report²⁴ helps us to get an idea of the involvement of Germany in the drafting process of the report. Compared to the other Member States who made only one contribution over the whole lifetime of the Task Force, Germany made three written contributions. Moreover, its first comments were the first to arrive on Herman Van Rompuy's desk. This involvement pattern, while offering no evidence of Germany's negotiation success/failure, goes a long way in explaining the intentionality of Germany to influence the final Van Rompuy report.

²¹ No wonder then that one of the footnotes of the Van Rompuy Task Force Report, which involved several EU institutions, reads: 'the president of the ECB does not subscribe to all elements of this report'.

²² Interviewee 7 - 29 October 2014, Brussels.

²³ Interviewee 6 - 5 December 2014, Brussels.

²⁴ https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/117236.pdf

4. Case 2: The intergovernmental Fiscal Compact

On 2 March 2012, all Member States of the European Union (except the UK and the Czech Republic) adopted the ‘Treaty on Stability, Coordination and Governance’ (the so-called ‘Fiscal Compact’) with a view to ‘develop(ing) ever closer coordination of economic policies within the euro area²⁵’ (TSCG, 2012: 1). In its initial (German) concept, the adoption of the Fiscal Compact’s debt brake rule was meant to be implemented through a Treaty revision, i.e. not through an international treaty negotiated outside of the EU framework. The Compact’s innovative shape should thus be considered as an EU second best but also as a second best for Germany. Its peculiar design resulted from the UK’s strong reluctance and ultimate veto to revise the EU Treaty.

Moreover, the Compact’s rationale was also a conditionality compromise made to Germany for the injection of liquidity, through the ESM and the ECB, in a context marked by continuously rising Italian and Spanish bond spreads. Its adoption did not result in the transfer of significant formal powers to the EU. With hindsight, its key contribution has been rather symbolic: it sent a signal of commitment to sound finances at a time when financial assistance was deployed throughout Europe. The Fiscal Compact centred indeed on the ‘introduction of specific rules, including a ‘balanced budget rule’ and an automatic mechanism to make corrective action’ (TSCG, 2012: 1). It contributed to reinforce the fiscal centre in Europe by exporting European norms to the domestic level, thereby ensuring the internalisation of EU commitments within national fiscal governances. As such it was an instance of Europeanization as the EU’s fiscal surveillance regime has been expanded to encompass the national level. Compared to the 6 Pack and the 2 Pack, adopted by and large by ordinary legislative procedure, the Commission’s task expansion was less straightforward in the Fiscal Compact, an intergovernmental treaty.

4.1 Rationale and key elements

The main purpose of the Fiscal Compact was to enshrine the rule of ‘balanced budgets’ into national law, thus departing from the previous Maastricht approach which focussed only on avoiding ‘excessive deficits’. Its article 2 provides that ‘budgetary position of the general government of a contracting party shall be balanced or in surplus’ (TSCG, 2012: 2), thereby limiting Member States’ budgetary discretion further. The structural budgetary position is operationalized as the ‘lower limit of a structural deficit (is) of 0.5% of the gross domestic product at market prices’ (TSCG, 2012: 2), compared to a figure of a minimum of 1% in the SGP framework. The Compact also foresees that ‘in the event of significant observed deviations from the medium term objective or the adjustment path towards it, a correction mechanism shall be triggered automatically’ (TSCG, 2012: 2).

The Compact also stipulates that these rules should be transposed into national law ‘through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes’ (TSCG, 2012: 3). A last provision is worth mentioning: art. 16 specifies that within five years

²⁵ As the treaty has a broad scope (stability, convergence, governance) and numerous proclaimed objectives, it will not be extensively reviewed here.

following the entry into force of the Treaty, 'necessary steps shall be taken...with the aim of incorporating the substance of this Treaty into the legal framework of the EU' (TSCG, 2012: 12).

Of particular relevance is the fact that parties have committed themselves to adopt a Reversed Qualified Majority Rule in the opening of an Excessive Deficit Procedure, thereby reinforcing the automaticity of the SGP's corrective arm. Compared to the task expansion granted to the Commission by the 6 Pack (and the 2 Pack, as we will see), the Fiscal Compact did not lead to significant new implementing powers gained by the Commission. In truth, both observers and policy actors have at times been puzzled by the added-value of the Fiscal Compact compared to the previously adopted 6 Pack, a secondary EU legislative package. A diplomat called it 'an important distraction' while Mario Monti, then Italy's Premier, termed it a 'decorative songbird' (The Economist, 2012).

Also, the Fiscal Compact is currently not being enforced (Alcidi & Gros, 2014) and there remains legal uncertainty on the 'effectiveness of the control mechanisms' (Dehousse, 2012: 1). Interviewees, both from the EP and from the EU Council confirmed this interpretation: 'you do something on rules but then it is not followed'²⁶; 'the Fiscal Compact is dead'²⁷; 'no one cares about it'²⁸. In a nutshell, it can be characterised as a largely symbolic and suboptimal political outcome in contrast to the problem solving nature of the 6 Pack and of the 2 Pack: 'it's about legal symbolism and the Germans are always caught in this'²⁹. Analysing similar outcomes, Héritier (1999; 18-19), following on Brunsson (1989), documented how the hypocritical creation of symbolic political outcomes by separating talk from action could be used as an escape route to the EU's tendency towards deadlock. In bargaining theory this is referred to as 'framework solutions' (Héritier, 1999: 19), i.e. political compromises which have been adopted despite a high diversity of interests among actors and which are 'not meant to be implemented because their realisation would bring irreconcilable conflicts to the fore' (Héritier 1999:19). The Fiscal Compact seems to illustrate very well this phenomenon.

4.2 The power politics of the Fiscal Compact

Based on the press coverage and the available secondary literature, two key actors appear to have played a distinctive role in shaping the Fiscal Compact and pushing for its adoption: Germany, its initiator, and the ECB, its activist public defender. They could both rely on a unique resource: the availability of liquidity which they could exchange as a *quid pro quo* for the adoption of additional fiscal rules. Their strength in the process can also be explained by the absence of formal participation of the EP and the Commission. Indeed, unlike in the cases of the 6 and 2 Pack, there was no supranational alignment between the ECB, the Commission and the EP on the Fiscal Compact, mostly because the text was negotiated outside the Community method framework.

²⁶ Interviewee 8 – 13 November 2014, Brussels.

²⁷ Interviewee 7 – 29 October 2014, Brussels.

²⁸ Interviewee 7 – 29 October 2014, Brussels.

²⁹ Interviewee 5 – 22 October 2014, Brussels.

Role and strategy of Germany

Concerned by the risks of sustained fiscal profligacy which had been heightened by the moral hazard implications of the new financial firewalls (e.g. EFSF/EFSM), set up in May 2010, Germany began elaborating a new proposal to restore financial responsibility at the national level. Probably inspired by its own experience as a federal state³⁰, Germany started pushing, as of May 2010, for the widespread adoption, by all EU Member States, of a constitutional or quasi-constitutional debt brake to ensure fiscal discipline in the EU. Indeed, the legal nature of the Compact – an international treaty whose key provisions should be transposed into national law through either constitutional or organic law – has to be ranked higher in the hierarchy of norms than the 6 Pack. This is a chief reason why the Fiscal Compact has been staunchly advocated by Germany which managed to rally the 26 other foot-dragging Member States. As an interviewee involved in the negotiations recalls: ‘apart from the Germans, the others were not convinced’³¹.

This legalistic approach is fully aligned with Germany’s historic preferences on the matter, having always been strong defenders of ‘fiscal discipline’ through rules-based governance as the SGP instance illustrates. A brief foray into the genesis of the Stability and Growth Pact allows us to understand that, in the end, the Fiscal Compact’s design and content is nothing but “old wine in new bottles”. In his original proposal for a ‘stability pact’ - made in November 1995 - to ensure that fiscal discipline is also safeguarded in stage III of EMU, Theo Waigel, at the time Germany’s Finance Minister, made four key demands: (1) his key objective was to ensure fiscal discipline also in stage III of EMU, fearing a ‘Maastricht fatigue’ (Fatas & Milow, 2003); (2) to meet this objective he asked for automatic fines in case of deviation from their trajectory; (3) he asked to set up a European ‘Fiscal Council’ which would be in charge of enforcing the agreement on Member States and, lastly, (4) as uncovered by Heipertz & Verdun (2010), in the first meetings in which the proposal was presented, Theo Waigel made it a point to enshrine these fiscal provisions in a separate treaty. Under this historic light, the Fiscal Compact suddenly loses its novelty, be it either in its form or in its content.

Role and strategy of the ECB

The ECB, for its part, pushed unambiguously for the adoption of the Fiscal Compact, acting most clearly as a ‘supranational agent’. In his first Brussels speech and first appearance in front of the European Parliament on 1 December 2011, the newly appointed ECB President Mario Draghi declared: ‘what I believe our economic and monetary union needs is a new fiscal compact – a fundamental restatement of the fiscal rules together with the mutual fiscal commitments that euro area governments have made [...]. A fiscal compact would enshrine the essence of fiscal rules and the government commitments taken so far, and ensure that the latter become fully credible, individually and collectively [...] it is definitely the most important element to start restoring credibility’ (Draghi, 2011: 2). What ECB President Draghi did not say in his speech however is that the adoption and implementation of a Fiscal Compact would be the pre-condition

³⁰ Germany adopted in 2009 a constitutional rule (“debt brake”) which impedes both central and regional governments as of 2016 to run structural deficits which are higher than 0.35% debt/GDP

³¹ Interviewee 10 – 23 June 2015, Rome.

for the further provision of liquidity. It is worth contextualising and specifying that the timing of his speech was one of high market pressure with Spanish and Italian bond yields hovering around 6%. One should add to that the fact that no new credible financial assistance scheme was in sight due to the disagreement of several veto players in the European Council over new financial commitments. The ECB was therefore in a strong bargaining position when it offered governments to increase liquidity for banks through an extension of its Long Term Refinancing Obligations (LTRO) programme from 1 to 3 years as a *quid pro quo* for the adoption of a Fiscal Compact (Wyplosz, 2012). This could hardly be resisted by Member States (Wyplosz, 2012). As a matter of fact, the first extended LTRO programme was offered on the 21 December 2011, only a few days after a European Council meeting during which the key principles of the Fiscal Compact were committed to in a separate statement made by the euro area heads of state or government (European Council, 2011). This LTRO-Fiscal Compact *quid pro quo* would be only the first of a series of linkages between financial assistance and the adoption/support of more stringent rules. Schimmelfennig recalls that both 'ESM and ECB assistance is dependent on implementation of the Fiscal Compact' and claims that this linkage 'is now institutionalized' (Schimmelfennig, 2014: 330).

Role and strategy of the European Parliament and of the European Commission

Due to the reluctance of two veto-players (UK and Czech Republic) to agree on the Fiscal Compact and enshrine new fiscal provisions into EU law, 'Community institutions' such as the European Parliament and the European Commission were by and large left out of the negotiation on the Fiscal Compact. They could only refer to the argument of consistency with existing EU-EMU rules and procedures, i.e. the unity of EU law or legitimacy concerns to keep a foot in the door of the discussions. Despite the Parliament's ambitious demand to be treated as an 'equal partner' in the drafting of the Fiscal Compact (European Voice, 2011), the Parliament only managed to secure three observer seats to attend the discussions³². A key EP request made was the incorporation of the Fiscal Compact provisions into EU law after 5 years of adoption.

The Commission, formally not involved in the negotiation of this intergovernmental agreement, still managed to secure a few provisions that expanded its role. It has thus been attributed some implementation powers (in the monitoring, compliance and enforcement the agreement). But the Commission has also tamed its ambitions, being reluctant to become empowered on the grounds of an intergovernmental treaty. As José Manuel Barroso declared, referring to instances in which some Member States were calling for a stronger role of the Commission in implementing the Fiscal Compact: 'some of the tasks we do not want to perform them, precisely because we want to keep our role deriving from the treaties, from the EU treaties and not from an intergovernmental treaty' (Barroso, 2012: 6). This is why, as for the EP, the European Commission has always supported an integration of the Fiscal Compact provisions into EU law as its official website confirms it: 'the Commission clearly supports the objective to incorporate key provisions of the TSCG in EU law as soon as possible' (European Commission, 2014).

³² Elmar Brok (EPP), Roberto Gualtieri (S&D) and Guy Verhofstadt (ALDE) thus represented the EP in the discussions.

5. Case 3: The Two Pack - getting closer to the core of fiscal sovereignty

In May 2013, a package of two EU regulations, known as the “Two Pack” entered into force, following a year and a half of negotiation between Commission, Parliament and Council, as part of the ordinary legislative procedure. The 2 Pack affected the vertical balance of power: there is now a clearer budgetary hierarchy between the centre and Member States as enshrined in the budgetary timeline. In a context marked by a de-escalating market pressure and a lower interest of Council and Parliament compared to the 6 Pack, the 2 Pack led to additional delegated tasks to the European Commission. Such an EMU-focused legislative package was made possible by a new article of the Lisbon Treaty which allowed for those Member States which share the euro and are exposed to higher externalities/interdependence, to ‘strengthen the coordination and surveillance of their budgetary discipline’ (art. 136-1), i.e. pooling further their sovereignty.

5.1 Reform narrative

The Two-Pack’s primary goal, following the achievements of the 6 Pack, was to push the central control over the fiscal policies of euro area members to a higher level. The term ‘Two Pack’ gives however the misleading impression of a unifying logic in its objectives. At a minimum, some unity resides in its scope (a strict focus on the euro area) and in its broad aim to reinforce the EMU surveillance mechanisms to prevent contagion in EMU. One could argue however that the true rationale of the Two Pack was to deal with institutional left-overs unaccomplished by previous reforms of EMU’s economic governance. It attempted to perform this notably on the European Semester whose national roots were quite thin.

Proposed in November 2011 and adopted in May 2013, the Two Pack occurred in a policy context made up of an escalating and then, after July 2012, de-escalating pressure. Probably for this reason, the Commission could take the upper hand, acting as an intervening actor. Interviews conducted point towards the crucial role played by the Commission in conceptualizing and bringing forward the Two Pack: ‘The Two Pack? It was the Commission’³³. The same EP official recalls ‘a top-down push from the cabinet [Commissioner Olli Rehn’s cabinet] to do more and to do more Community method and a bottom up attention in DG ECFIN services where the staff became more aware of what happens in the corrective arm of the SGP, after the 6 Pack implementation’³⁴. Overall, there was an ‘outside pressure to do a bit more, the European Commission took the chance’³⁵.

5.2 Key elements

Apart from this high level objective of preventing contagion in EMU, the two regulations pursued two different goals.

Regulation 472/2013 lays down the procedures for euro area countries under financial assistance with a view to guaranteeing the financial stability of the euro area as a whole. From a legal perspective, this regulation strives also to ensure consistency between intergovernmental

³³ Interviewee 8 – 13 November 2014, Brussels.

³⁴ Interviewee 8 – 13 November 2014, Brussels.

³⁵ Interviewee 8 – 13 November 2014, Brussels.

agreements and EU law (European Commission, 2013). As such it largely elaborates on the so-called operational guidelines of both the European Financial Stability Facility and the European Stability Mechanism (European Commission, 2013). It codifies the regime of ‘enhanced surveillance’ which euro area Member State enter when they are either in a situation where their financial stability is threatened or in a situation where they receive financial assistance. This regime is differentiated into two: (1) ‘regular enhanced surveillance’ which applies when a Member State is in a severe situation but where no financial support is granted; (2) ‘enhanced surveillance with precautionary financial assistance’ which applies when a Member State receives financial assistance from the ESM/EFSF. Moreover, it sets the legal frame of ‘macroeconomic adjustment programmes’ in case of the request of financial assistance and compliance with the programmes conditions the granting of financial support. The regulation also determines a regime of ‘post-programme surveillance’ that clarifies the type of obligations that Member States under financial assistance are subject to until they reach 75% of repayment. The post-programme may be extended on the proposal of the Commission to be approved by RQMV by the Council. Several new tasks are delegated to the Commission. Provided it is able to offer evidence (against a set of predefined indicators) of a serious difficulty to financial stability, the Commission is allowed to make specific requests to Member States to obtain additional information (disaggregate data on banking system, fiscal data, stress tests). The Commission has also the privilege to prolong, in full autonomy, the enhanced surveillance of a Member State, every six months. The Commission is also tasked with the monitoring – along with the ECB and the ESAs and where relevant the IMF, of the implementation of adjustment measures by Member States. As part of this, it shall, where appropriate, conduct regular review missions.

Regulation 473/2013, on the other hand, sets a clear timeline for the assessment of draft budgets in the euro area and specifies the corrective provisions in the case of excessive deficits in euro area member states. Driven by the need to reinforce further the central control over fiscal policies, its main purpose is to institutionalize further a crucial novelty of the 6 Pack: the European Semester. It sets out a common budgetary timeline with three milestones (April, Oct, December) with a view to synchronizing the preparation of budgetary plans among EMU members. It requests euro area Member States to submit medium-term fiscal plans by 30 April and blueprints of national budgets expected to be submitted to Brussels for examination by 15 October. In case of a serious non-compliance with the rules of the SGP, the Commission can ask for a revised draft budgetary plan. Moreover, it creates the obligation to Member States under an EDP to present economic partnership programmes which includes the ‘policy measures and structural reforms that are needed to ensure an effective and lasting correction of the excessive deficit’ (art 9). It also features higher reporting requirements on budget and financial risks for Member States under EDP. On this, the Commission can adopt delegated acts and can request a ‘comprehensive independent audit of public accounts of all subsectors of the general government’. Lastly, it provides for the creation, at national level, of independent bodies monitoring compliance with fiscal rules. Overall, Regulation 473/2013 pushes the intrusiveness of the European Commission into domestic politics to a higher level. Several interviewees pointed to the fact that with the 2 Pack, Treaty provisions were stretched to their maximum: ‘we are using the existing coordination provision to their full potential’³⁶. The 2 Pack is scratching the

³⁶ Interviewee 2 – 3 November 2014, Brussels.

core state powers and this bears significant implications in terms of legitimacy. As a Commission official summarized it: ‘with some historical distance, it is a folly. Never on earth could we have imagined this a few years ago’³⁷. The below table maps the task expansion of the Commission based on the provisions of the Two Pack.

Category of new powers gained	Policy outcome	Type of measure/instrument	Impact on Commission task expansion
1. Sanctions	Higher automaticity of sanctions	-	
	Higher variety of sanctions	-	
	Broader eligibility for sanctions/corrective measures	- Commission subjects Member States to ‘enhanced surveillance in case of risks to financial stability’	(+)
2. Monitoring and compliance	Higher use of quantitative measures	-	
	Broader mandate	- Monitoring of implementation of Macroeconomic adjustment programmes - Discretion to extend the post-programme	(+)
	Additional reporting requirements	- Economic Partnership Programmes (countries under EDP) - Debt issue plans reporting (ex ante) - Financial risks (countries under EDP)	(+)
3. Enhanced control of national fiscal processes	Higher synchronisation of policy cycles	- Common budgetary timeline	(+)
	More reliable data	- ‘Comprehensive independent audit of public accounts of all subsectors of the general government’ - Independent forecasts	(+)
	Partial delegation of compliance to national mechanism(s)	- ‘Independent bodies monitoring compliance with fiscal rules’ are set up.	(+)

Table 3: Mapping the EC’s task expansion in the 2 Pack

³⁷ Interviewee 9 – 8 December 2014, Brussels

5.3 Power politics in the legislative process

The power game surrounding the Two-Pack has been held in the shadow of two more salient legal discussions: the elaboration and ratification of both the Fiscal Compact and the European Stability Mechanism Treaty. These two Treaties made the headlines. The Two-Pack, by contrast, proposed in November 2011 and adopted in May 2013, hardly did. Its negotiation occurred in a context of de-escalating market pressure and lower political salience: ‘everyone in the European Parliament had an opinion on the 6 Pack, it wasn’t the case on the 2 Pack’³⁸. Indeed, a basic research in the archives of the FT.com provides 297 results for the Fiscal Compact, 736 results for the ESM and only 14 results for the Two-Pack over the period. Yet, as we can see, the Two-Pack is probably the set of legislation that goes the farthest in terms of fiscal centralization powers, in particular for euro area Member States under financial assistance. Which role did the various EU actors play in the elaboration process of this fiscal task expansion?

Role and strategy of the European Commission

When proposing the package in November 2011, the Commission had decided to unveil the two regulation proposals together with a green paper on stability bonds, maximizing its autonomous agenda-setting power even at the cost of ‘upsetting’ Germany. Overall, the Commission’s interests largely overlap with the objectives of the Two-Pack, i.e. ‘to enhance both the coordination and the surveillance of budgetary processes for all euro area Member States and especially those with excessive deficits, experiencing or at serious risk of financial instability, or under a financial assistance programme’ (European Commission, 2011b). The Commission’s ambition was indeed to have a ‘common and graduated framework’ for the surveillance of fiscal policies (European Commission, 2011b).

A comparative analysis between the versions finally adopted versus the initial proposals has been conducted. As far as the regulation on budgetary plans is concerned, the following crucial differences in terms of Commission preferences came to the fore, although the bulk of the text remains broadly identical: (1) The initial text foresaw a provision (art. 4-1) that imposed the adoption by Member States of ‘numerical fiscal rules on the budget balance that implement in the national budgetary processes their medium-term budgetary objective’ (European Commission, 2011a). The proposed provision also foresaw that such rules ‘be of binding, preferably constitutional nature’ (European Commission, 2011a); (2) The initial text did not include the economic partnership programmes which is a document summarizing the policy reforms that a Member State under EDP commits to conduct to correct its excessive deficit. It seems that this provision of the Fiscal Compact has been imported into the Two-Pack at the request of the Parliament and the ECB, who both asked for it. As far as the financial stability regulation is concerned, fewer changes were introduced. One aspect where the Commission did initially not foresee many provisions was transparency, publicity and regular reporting procedures to Council and European Parliament, in hearings or economic dialogues (De La Parra, 2013). Another aspect, due to the insistence of the European Parliament on this issue, was the social rights provisions and the involvement of social partners. Lastly, the initial Commission proposal foresaw that the extension of the post-programme surveillance would occur on a qualified

³⁸ Interviewee 3 – 1 December 2014, Brussels.

majority vote by the Council. The final version foresees a Reversed Qualified Majority Vote which further increases the Commission's authority.

Role and strategy of the European Parliament

Despite being a rule-maker on EMU's fiscal governance since the Lisbon Treaty, the European Parliament's involvement in the day to day surveillance procedure is limited compared to the Commission and the Council. For example, the European Parliament does not exert a political control over ECOFIN and Commission in matters of economic governance. This ensures a constraint on the scope and level of involvement of the EP in the enhanced surveillance process. Against this background, it is interesting to note that it is the Parliament which managed to prolong the discussion on the package for a year and set the tone for the Two-Pack's amendment in a power struggle with both the Council and the Commission. The EU Council had indeed found a political compromise on the text on 21 February 2012, i.e. only a few months further to the Commission's proposal (23 November 2011) suggesting its broad alignment (and that of Germany) with the Commission. The Parliament's preferences were clearly spelled out in a resolution on economic governance adopted on 20 November 2012³⁹.

Ultimately, it managed to secure the following: (1) the integration of some Fiscal Compact provisions in EU secondary law (De La Parra, 2013), (2) regular information on the surveillance measures taken and (3) the ability to organize a hearing to be informed on the assessment of budgetary plans as part of an economic dialogue as well as on the outcome of both the enhanced and post-programme surveillance processes. (4) Last but not least, in a side-deal with the Commission, the EP secured a high level report on a redemption fund and euro-bills in exchange for its support of the Two Pack. Previously, it had managed to include a light provision on the reporting of debt issuance (present in the Fiscal Compact), a first step in the synchronization of debt issuance. It failed however to rally the Council on its proposal to ask Member States 'experiencing or threatened with serious difficulties with respect to their financial stability in the euro area' to submit 'a draft sovereign debt issuance schedule'.

Role and strategy of the European Central Bank

The provisions of the Two-Pack are broadly in line with the traditional preferences of the ECB for a strong top-down fiscal surveillance, and derives from its interest in securing a regime of monetary dominance in EMU. Since the ECB was formally invited by the Council in December 2011 to provide detailed comments on the Two Pack proposal, a thorough account of the ECB's preferences on the Two-Pack is publicly available, in an ECB opinion that includes general observations and even concrete amendments to the Two-Pack's two regulations⁴⁰. The ECB made the following key proposals in the document: (1) Extend the scope of revised budgetary plans from the cases of 'particularly serious non-compliance' with the obligations of the SGP to simple cases of 'non-compliance', the consequence of which would be to give more occasions to the Commission to ask for revised budgetary plans; (2) promote tougher sanctions including 'a greater use of (reputational) sanctions'; (3) encourages the Commission to get more discretion by

³⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0430+0+DOC+PDF+V0//EN>

⁴⁰ See: https://www.ecb.europa.eu/ecb/legal/pdf/c_14120120517en00070024.pdf

not restricting *ex ante* the cases of serious or severe financial difficulties that justify the placement of a MS under enhanced surveillance by the Commission; (4) advising that the ‘reversed qualified majority voting rule should be used where appropriate’ which would *de facto* reinforce the Commission’s discretionary power.

Role and strategy of Germany

In line with the previous expectations of Germany as to how a fiscal union should look like, Wolfgang Schäuble, Germany’s finance minister, was keen to see a veto-right of the European Commission over national budget adopted (Spiegel, 2012). But Germany failed to obtain this. Apart from this, interviewees pointed to a swift consensus-building on the 2 Pack within the Council, with no major opposition to be noted. The Commission texts, proposed on 23 November 2011, did not raise key controversies and as a matter of fact, the EU Council found a political agreement on the 2 Pack on 21 February 2012, only three few months after the Commission made the proposal.

6. Findings

This section brings together the evidence gathered on our three cases (6 Pack, Fiscal Compact, Two Pack), stressing the crucial actors at play in this expansion and outlining along which lines the fiscal surveillance has expanded. Compared to the initial ‘light’ structure and narrow scope of EMU’s fiscal regime, EMU’s fiscal centre has undoubtedly been expanded over the period 2010-2014. As a corollary, the Commission’s role has been increased, mostly by new powers gained with the 6 Pack and 2 Pack, much less with the Fiscal Compact. The Commission now disposes of an enhanced fiscal control and of a higher intrusion capability into domestic fiscal policies. The below table summarizes the variation in its task expansion across the three cases analysed. It also offers a differentiated account of actors influencing this type expansion.

	Sanctions			Monitoring and Compliance			Leverage over national fiscal processes		
	Higher automaticity	Higher variety	Broader eligibility	More quantitative assessment	Broader mandate	More reporting to EC	Higher synchronisation	More reliable data	Delegation of compliance
6 Pack	+	+	+	+			+	+	
Fiscal Compact	+					+			+
2 Pack			+		+	+	+	+	+

Table 4: The centralization of the Commission’s fiscal powers in fiscal surveillance: a summary of key new powers gained

The analysis reveals that no single actor displayed a strong and uniform influence over the three cases of fiscal surveillance expansion. In other words, the process tracing exposes several protagonists but no hegemon. While this is due to the varying legal procedure followed, it also reflected varying resource mobilization and changing coalitions which were rooted in differing priorities. All three supranational actors (European Commission, European Parliament, ECB) have been instrumental in shaping the policy process and its outcome (the expansion of fiscal surveillance and to the rising power of the Commission). Whereas the ECB proved particularly consistent in its policy shaping attempts over all three case, the Commission and EP leveraged more influence on the Community legislations (6 Pack and 2 Pack). The supranational actors' preferences converged when it came to the Commission's empowerment on sanctions, monitoring and compliance in the negotiations on the 6 and 2 Pack. While the ECB displayed a more marked interest in the exporting of norms to the domestic level, as a conditionality for financial provision, the EP and the Commission converged on their common agenda to promote the use of the Community method in EMU.

Germany was central in setting the agenda during the early years of the crisis (Task Force Van Rompuy/6 Pack and Fiscal Compact), was however less successful in pushing through its preferences when it came to the specific design of the fiscal surveillance regime. Moreover, its influence dropped with the Two Pack. In sum, the gathered evidence indicates that the role of Germany has been less dominant than when it came to the design and scale of financial assistance provision. The below table summarizes the actors' varying influence in the reform of EMU's fiscal surveillance regime.

	Germany	ECB	European Commission	European Parliament
Six Pack	X	X	X	X
Fiscal Compact	X	X		
Two Pack		X	X	X

Table 5: Actor's influence in reshaping EMU's fiscal surveillance

- The European Commission, often said to have been marginalised by the European Council in euro crisis management (Fabbrini, 2013) and in agenda-setting during the crisis (Hodson, 2013), has still managed to expand its implementation powers during the euro crisis. It secured a few successes as part of the 6 Pack reform, such as on the Reversed Qualified Majority vote (in coalition with the European Parliament) or on the European Semester, an old Commission idea. On the Fiscal Compact, 'drawback' cannot be the right term to define the result of its lobbying as legally speaking an intergovernmental agreement cannot reduce the Commission's prerogatives derived from the TFEU. As a matter of fact, the Commission powers were also softly expanded by the Fiscal Compact. Lastly, evidence gathered indicates that the Two-Pack was the true autonomous achievement of the Commission.

-The European Parliament, despite its marginal involvement in the daily operation of fiscal surveillance in EMU, has managed to maximize its new legislative powers when it came to the redesign of fiscal rules and procedures. As such, it proved to be an influential actor during an

EMU 'history making' moment. Although, the EP was not uniformly involved in all legislative reforms (one regulation was not in co-decision in the Six Pack and the EP had no formal role to play in the adoption of the Fiscal Compact), it managed to secure an equal influence across all areas, at times through the use of package-deals, on other occasions by invoking the spectre of the legitimacy deficit should the Parliament be completely unheard. Its influence ran beyond its own empowerment. A telling illustration of its bargaining power has been the securing of Reversed Qualified Majority voting both in the 6 Pack and in the 2 Pack (in coalition with the European Commission, and likely with the ECB). Another observation of its tough bargaining style, was its stubborn blockage of the Two Pack lest Council and Commission accepted to adopt a debt redemption fund or at a minimum investigate the feasibility of Eurobonds.

-The ECB, for its part, was active in shaping the various reforms of EMU's fiscal surveillance providing expert comments and ideational suggestions. Its President, Jean-Claude Trichet, was present in four out of six of the Task Force Van Rompuy meetings, which led the way to the Six Pack. The ECB's key support for the Fiscal Compact has been already outlined above and the ECB's detailed and reasoned remarks on the Two Pack, including a concrete set of amendments, some of which made their way into the final version of the Two-Pack, are worth noting as observations of the ECB's resource mobilization. Suggested amendments to the 2 Pack were mainly meant to ensure a higher clarity and stronger explicit character of the provisions to enhance the enforceability (by the European Commission) of the new fiscal surveillance measures adopted.

-Germany proved very influential in setting the agenda of EMU's fiscal surveillance. Very active in the proceedings of the Task Force Van Rompuy (which prepared the ground for the 6 Pack), Germany's influence reached a record peak with the Fiscal Compact which was carried along by Germany largely on its own (among Member States). Yet, several crucial features of the reformed fiscal surveillance regime differ from Germany's initial preferences and the ultimate shape of EMU's fiscal surveillance has not been determined by Germany on its own. Compromises were made on core interests, such as in the famous Deauville bargain, in which Angela Merkel agreed to water down her initial proposal for automatic sanctions⁴¹. The influence of Germany on the Two Pack, with the caution that our few observations imply, seems however to have been limited. And Germany also had to experience a few drawbacks such as in the case of the strong vetoing power of national budgets defended by German Finance Minister Wolfgang Schäuble.

The second finding of this analysis is that the cases studied show that previous features of EMU's fiscal regime have been reinforced and the reliance on rules as a coordination device in EMU has been confirmed. On top of the strengthening of the authority of the fiscal centre, our comparative examination has isolated a unifying pattern of fiscal expansion during the crisis: the stickiness of the rules-based EMU fiscal governance. The fiscal surveillance reform has been one characterised by 'more of the same'. Previous features of EMU's fiscal regime have been confirmed and strengthened. Sanctions have been reinforced and been made more gradual: they are now more automatic thanks notably to reversed qualified majority voting and display higher gradualism while the eligibility of Member States likely to be affected by sanctions has been broadened. The pattern of empowerment/task expansion of the Commission was also

⁴¹ <http://www.economist.com/blogs/charlemagne/2011/12/germany-france-and-euro>

path-dependent. In other words, new delegations occurred along the line of its previous functions. As part of its role in ensuring monitoring and compliance, the Commission disposes now of a broader mandate. It can rely on more quantitative indicators which reduce Member States' discretion and can subject them to additional and more specific reporting on their fiscal policies.

These changes are so much in line with the Maastricht spirit that they hint at the mechanism of path-dependence which seems to have been at play here. Previous policies and earlier institutional designs (the Maastricht Treaty and the SGP) pre-determined to a large extent the final outcome. The distinctive fiscal surveillance regime which has emerged appears to have been locked-in by a logic of increasing returns. Several self-reinforcing critical junctures have determined the trajectory of future fiscal governance reforms, discounting institutional alternatives which could have been envisaged (e.g. decentralization of fiscal responsibility; centralizing of fiscal control by a European finance minister). In the words of Featherstone, co-author of a seminal work on EMU's genesis: 'the euro-zone is not breaking-free of the Maastricht legacy' (Featherstone, 2012: 24). This path-dependence has been confirmed by an insider: 'you foster the system in which you have been operating'; 'we tried to defend the system and improve it'⁴². Path dependence is usually explained by the short term horizon of political actors who tend to heavily discount the long-term effects of their decisions (Pierson, 2000: 261) and thus dismiss more efficient alternatives as too costly when those deviate too much from the existing path/equilibrium. The 6 Pack and 2 Pack reforms also hint at the existence of an even more profound continuity: the reliance, in European delegation design, on integration by regulation. The regulatory system has been reproduced and expanded beyond its previously strict focus on market integration. With the advent of the 6 and 2 Packs, the EU is now increasingly looking at how to 'regulate governments rather than markets' (Schelkle, 2009: 831), providing apparent support for the Majonian claim of an emerging regulatory state in fiscal surveillance (Schelkle, 2009: 829; Majone, 1994).

The third finding is that the fiscal surveillance rules have been made more specific and complex: interviewees confirmed that the Pact 'is a very complicated box'⁴³. The density and formalization of European fiscal rules has been increased, in an attempt, as an interviewee indicated to elaborate complete contracts. One can hypothesize that as the density of rules grows and their complexity increases, room for interpretation of the rules becomes larger. Yet in the absence of a neutral third party which would clarify the rules and provide an objective interpretation of their meaning, the multiplication of rules seems to have resulted in the unintended consequence of creating more discretion by the Commission. The latter – in the absence of an active European Court of Justice which could hold the European Commission in check – now disposes of a higher discretion/interpretation room on how to enforce the rules and how national fiscal policies should be designed and implemented. A recent Finnish-German memo prepared in view of a Eurogroup meeting held end-February 2014, leaked by the Financial Times (FT)⁴⁴, illustrates this instance. The memo denounced a 'somewhat arbitrary approach' in

⁴² Interviewee 1, 19 November 2014, Brussels.

⁴³ Interviewee 13 – 28 May 2015, Rome.

⁴⁴ Financial Times, 'Berlin attacks EU's easing of austerity demands', Europe Edition, February 28 2014.

the definition of the methods through which the Commission assesses Member States' budget consolidation efforts compliance with the SGP. The assessment methodology is formulated as a 'black box'. As a senior official of the Finnish finance ministry interviewed by the FT puts it: 'our concern is that the rules and procedures are increasingly complicated so that outsiders have difficulties to understand them'.

The last finding is that the top down control over fiscal policies has vertically expanded from the EMU level to the domestic level. European norms (e.g. balanced budgets/internalisation of the budget constraint) have been exported to the domestic level, thereby ensuring the internalisation of EU commitments within national fiscal governances and strengthening the roots of the EMU's fiscal surveillance regime, thus ensuring a higher enforceability. Ever since its establishment, EMU's fiscal framework could be analysed through the simplistic lens of international cooperation between rational and interest-maximization EMU Member States who agree on common international rules (the Maastricht Treaty and the SGP) and have to rely on a third, delegated actor (an 'external enforcer') for compliance and enforcement of those rules (the European Commission) to ensure that the agreement is valid (and that their commitment is credible). The adoption of the Six Pack, Fiscal Compact and Two Pack has been a 'game-changer' in this respect. Indeed, these sets of legislation include several provisions that aimed at rooting EMU's fiscal surveillance regimes and procedures more deeply into domestic fiscal frameworks, hence spilling out of the central level. Examples include the European Semester, the minimum requirements on national budgets and the delegation of compliance to national independent agencies. Rules are no longer exclusively external but expanded into national law fiscal regimes. As a result, EMU's fiscal regime has become more vertical and more intrusive which leads to the claim that the whole EMU might be slowly moving away from the exclusive reliance on an external enforcer to the creation of a multi-level fiscal federalism system.

7. Conclusion

The euro crisis has resulted in a substantial revamp of Europe's fiscal surveillance regime. As a corollary, the European Commission has also gained new implementing powers. This examination retraced the process leading to the adoption of this new fiscal surveillance regime and explained the chief policy changes that led to a shift in the vertical power balance between the centre and the Member States. Preferences and strategies of key actors involved have been systematically analysed across three cases studies (6 Pack, Fiscal Compact and 2 Pack). The 6 Pack and the Two Pack, have proven to be key legislative steps in the permanent reinforcement, expansion and vertical institutionalization of a fiscal surveillance regime in Europe. By contrast, the Fiscal Compact appeared as a largely ad-hoc and symbolic gesture to clear the way for new liquidity provisions by the ECB.

The analysis finds that (1) the preferences of the supranational actors scrutinised (European Commission, European Central Bank, European Parliament) broadly converged when it came to the strengthening of the fiscal centre and the resulting Commission empowerment on sanctions, monitoring and compliance. The *de facto* coalition proved most effective in the cases of the 6 and 2 Packs – which feature the most significant advances in terms of the Commission's task expansion – as they were negotiated under the classic Community method, as opposed to the international Fiscal Compact. The Commission, often said to have been marginalised by the European Council has layered new competences in particular in the Two Pack where its agency

was strongest. The European Central Bank proved central in EMU's fiscal surveillance reform process. Traditionally concerned by fiscal profligacy, the ECB could play in this instance the 'conditionality card' being the only non-majoritarian and independent actor who was able to inject liquidity at a period where insolvency risks were high. The European Parliament, lastly, has managed to maximize its new legislative powers on the redesign of fiscal rules and procedures as enabled by the Lisbon treaty. Yet, its influence ran beyond its own empowerment as the EP secured lasting achievements. Together, these three supranational institutions managed to reinforce the fiscal centre and expand the Commission's intrusiveness capacity into domestic fiscal processes. As far as Germany is concerned, the EMU's fiscal framework's principal among Member States proved to be rather decisive in the agenda-setting of the 6 Pack and of the Fiscal Compact but appeared less influential when it came to the individual features of the 6 Pack and of the 2 Pack overall. At times, the broad and complex constellation of actors has also produced institutional results which were unintended, as is well illustrated by the increasing discretion gained by the European Commission on the implementation of the Stability and Growth Pact.

On top of the strengthening of the authority of the fiscal centre, the comparative approach has isolated (2) a unifying pattern of fiscal expansion during the crisis: the stickiness of the rules-based EMU fiscal governance. The cases studied show that previous features of EMU's fiscal regime have been reinforced: the reliance on rules as a coordination device in EMU has been confirmed and the empowerment/task expansion of the Commission was path-dependent.

The central control over national fiscal policies has expanded along the lines of previous delegation patterns designed at other critical junctures in fiscal surveillance (Maastricht Treaty, Stability and Growth Pact). This observation accounts for a fundamental rigidity in EMU's economic governance. Previous features of EMU's fiscal regime have been confirmed and strengthened: sanctions have been reinforced and been made more gradual. The regulatory system has been reproduced and expanded beyond its previous strict focus on market integration providing apparent support for the claim of an emerging regulatory state in fiscal surveillance (Schelkle, 2009: 829; Majone, 1993; 1996).

Moreover (3), the density and formalization of European fiscal rules has been increased, in an attempt, as an interviewee indicated to elaborate complete contracts. Yet in the absence of a neutral third party which would clarify the rules and provide an objective interpretation, the multiplication of rules seems to have resulted in the unintended consequence of creating more discretion by the Commission. The latter now disposes of a higher /interpretation room on how to enforce the rules and how national fiscal policies should be designed.

A fourth finding (4) is that in addition to the reproduction of the regulatory spirit, the top down control over fiscal policies has vertically expanded from the EMU level, in a feedback loop, to the domestic level. European norms (e.g. balanced budgets/internalisation of the budget constraint) have been exported to the domestic level, thereby ensuring the internalisation of EU commitments within national fiscal governances and strengthening the roots of the EMU's fiscal surveillance regime.

The neo-functional framework developed by Sandholtz and Stone-Sweet (1998) and its emphasis on the agency of supranational actors and the clarity, density and formalization of rules goes quite a long way – in its reduced version applied here – in explaining the dynamics of the fiscal

surveillance expansion as observed in the cases of the 6 Pack, Fiscal Compact and 2 Pack. Alignment of interests among autonomous supranational actors has led to an empowerment of the European Commission in fiscal surveillance. A crucial factor at play in this task expansion has been the fact that the previous rules-based system which featured the rule-enforcing Commission at its centre proved path-dependent and cast a strong shadow over the reform of the SGP. Europe's fiscal framework is more rules-based than any time before: the density and formalization of Europe's fiscal surveillance regime has been dramatically increased. Yet, contrary to Sandholtz and Stone Sweet's expectations, the clarity of rules was not a decisive factor in explaining this process. Quite the opposite: the Commission's task expansion seems to be enhanced by the increased ambiguity of the fiscal rules, in the absence of an external settlement authority (the so far silent European Court of Justice) that could help to clarify the rule interpretation.

Overall, our findings concur with the work of Hinarejos (2013) when the latter states that the post-euro-crisis EMU occupies a middle ground between 'two ideal models': on the one hand a fully fledged fiscal federation with its own resources and a true, autonomous fiscal authority and on the other a reductionist 'surveillance model' where all fiscal powers have remained at the decentralized level. More than anything: the fiscal arm of the Economic and Monetary Union is indeed hybrid in nature. It remains by and large rules-based yet it has seen the discretion of the Commission in enforcing the framework increasing.

LIST OF INTERVIEWS

- Interviewee 1 – 19 November 2014, Brussels.
- Interviewee 2 – 3 November 2014, Brussels.
- Interviewee 3 – 1 December 2014, Brussels.
- Interviewee 4 – 10 December 2014, Brussels
- Interviewee 5 – 22 October 2014, Brussels.
- Interviewee 6 – 5 December 2014, Brussels.
- Interviewee 7 – 29 October 2014, Brussels.
- Interviewee 8 – 13 November 2014, Brussels.
- Interviewee 9 – 8 December 2014, Brussels
- Interviewee 10 – 23 June 2015, Rome.
- Interviewee 11 – 24 June 2015, Rome
- Interviewee 12 – 25 June 2015, Rome.
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