The Role of Law and Regulation in Sustaining Financial Markets

THE ECONOMICS OF LEGAL RELATIONSHIPS

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2 The new architecture of European economic governance

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2.1 Introduction

Due to the accumulation of structural deficits by certain EU Member States, bail-outs of debt-ridden banks and fiscal stimulus plans intended to relaunch growth, budget deficits started rapidly expanding after 2009. Accordingly, the 2008 financial crisis was followed by a substantial fiscal crisis that compromised the financial stability of the Eurozone as a whole.

Among the different reasons for the crisis that is undermining the European construction, many authors have been highlighting the asymmetry of the Economic and Monetary Union (EMU). On the one hand, there is a single currency falling under an exclusive competence with its own independent central bank (the European Central Bank (ECB)), which has permitted the monetary Europe to speak with one single voice, whilst on the other hand, there is the prevailing disorder where national economic policies are not integrated but only set within limits.[1] As far as the latter is concerned, as it is known the Member States retain their sovereignty subject to compliance with a certain number of headline principles, such as sound public finances and an 'open market economy with free competition' (Treaty on the Functioning of the European Union Article 119(1)). The ECB has therefore been required to determine monetary policy without being able to count on the support of a genuine European economic government. This situation has persisted since the German authorities for many years considered that the establishment of a European economic government would end up leaving a sword of Damocles hanging over the independence of the ECB (Jabko 2011: 12). Nevertheless, the framers of the Maastricht Treaty took greater care to prevent a feeling of impunity from developing within the Member States that did not keep public expenditure under control, which would have had the effect of subjecting monetary policy to uncontrolled budgetary policies. Against this backdrop, the TFEU contains a no bail-out clause (Article 125) and a prohibition on the ECB and the central banks from granting overdraft facilities or any other type of credit facility (Article 123).

Although the EMU has been able to avoid any fundamental change during the various reviews of the fundamental treaties (Amsterdam, Nice, Lisbon), the crisis has brought to light the fragile and asymmetrical nature of this union.

The lack of any effective coordination of economic policies and the weak nature of budgetary discipline has thus drawn the EMU into a vicious circle. Initially, it was only possible to prevent its fall thanks to the implementation by the ECB of "non-conventional measures to support the banking sector and the sovereign debt market" (Allemand and Martucci 2012: 21).

Whilst this new crisis laid bare the weaknesses within economic integration, it has not, however, sounded the death knell for political union, which has to some extent been reinforced.

In the wake of the financial crisis, the EU has implemented various mechanisms in incremental stages in order to stop the financial and the budgetary crisis from spreading. In an attempt to remedy inadequacies within the organisation of the prudential oversight system for financial establishments which the 2008 crisis had laid bare, it first adopted a European System of Financial Supervisors (ESFS) comprised of three sector authorities (banks, insurance and pension companies, and markets and financial services) as well as a European Systemic Risk Board (ESRB) (Moloney 2010: 1317–83; Martucci *et al.* 2011: 4–9; Van der Mensbrugghe 2011: 165–83; Louis 2012a). Since this chapter is focused on macroeconomic and fiscal control, the oversight of financial establishments will not be addressed, even though we are all aware of the role that the ESFS is required to play within the new control structure within the system of economic governance.[2]

From 2011 onwards, a range of new mechanisms have risen out of the depths of the European Union: the Euro Plus Pact, the European Semester, the 'six-pack', the 'two-pack', the Treaty on Stability, Coordination and Governance (Fiscal Compact) and several financial capacities (the European Financial Stabilization Mechanism (EFSM), the European Stability Mechanism (ESM) and the European Financial Stability Facility (EFSF)). All in all, these mechanisms are intended to bring significant changes to the economic governance of the EU.

The discussion within this chapter will be structured in the following manner. The first part of the chapter summarises the succession of mechanisms that have made economic governance possible and discusses their contribution to the reinforcement of fiscal discipline. There is indeed a question as to whether this reform masks a deep-seated crisis of identity within the EU institutions that are simply at a loss what to do, or should one see here a real desire to reinforce the EMU, which recently fell victim to a congenital defect? The second part shows how this flurry of treaties and secondary acts is impinging on the principle of institutional balance (Jacqué 2004: 383).

2.2 The architecture of the new economic governance

2.2.1 Introductory comments

The financial crises and the turmoil in sovereign debt markets have clearly highlighted challenges in the EU's economic governance. Taking account of the unprecedented scope of this crisis, the European Council of 25–26 March 2010

established a Task Force on Economic Governance in the EU. The Task Force was called on to devise proposals for better budgetary discipline in improving the Stability and Growth Pact (SGP), and an improved crisis resolution framework.[3] The recommendations addressed the high economic interdependence of the euro area, while preserving national sovereignty on fiscal and economic policies.

At the first stage, taking account of the recommendations made by the Task Force as well of the unprecedented scale of this crisis, the European Parliament and the Council of the European Union adopted six legislative measures (five Regulations and a Directive (the 'six-pack')) during the Autumn of 2011 intended to remedy deficiencies in the SGP, in particular by reinforcing and expanding the range of preventive and corrective mechanisms. Four acts deal with fiscal issues and two aim at detecting and addressing emerging macroeconomic imbalances with the EU and the Eurozone.

At the second stage, with a view to reinforcing the 'six-pack', on 9 December 2011 the heads of State and government meeting within the European Council, with the exception of the British Prime Minister and later the Czech authorities, decided to sign an intergovernmental agreement on 1 March 2012 on Stability, Coordination and Governance in the EMU (Treaty on Stability, Coordination, and Governance (TSCG) or Fiscal Compact).

At the third stage, treaties concluded between the Eurozone countries have been setting up financial facilities (EFSF and ESM).

At the fourth stage, given that the edifice was far from being complete, the European Parliament and the Council adopted on 21 May 2013 two additional Regulations, known as the 'two-pack', with a view to reinforcing the 'six-pack'.

All in all, the 'six-pack', the 'two-pack', as well as the Fiscal Compact, are intended to reinforce fiscal and macroeconomic discipline – whereas the ESM, replacing the EFSF, provides for a permanent crisis resolution framework.

In order to highlight more clearly the impetus provided by the Task Force established by the European Council of 25–26 March 2010, the left-hand column in Table 2.1 lists its propositions, whilst the right-hand column identifies each of the regulatory results achieved.

The first section will be dedicated to crisis management mechanisms (2.2.2). The second section will provide an indepth analysis of the economic and employment coordination (2.2.3). The third section will deal with the frameworks of fiscal and macroeconomic surveillance (2.2.4). Finally, in the fourth section there will be a discussion of the added value of the Fiscal Compact (2.2.5).

2.2.2 *First approach: improved and permanent crisis management mechanisms*

2.2.2.1 *EFSM and EFSF*

In the wake of the financial crisis, in the course of 2010 financial rescue mechanisms were activated with the aim of rescuing highly indebted

Table 2.1 EU approaches to tackle the 2008 financial crisis

2010 Task Force on Economic Governance Proposals	*Implementation*
Enhancing fiscal discipline	Euro Plus Pact 'six-pack' 'two-pack' Fiscal Compact
Broadening multilateral surveillance	Regulations 1174 and 1176/2011 on macroeconomic surveillance and Directive 2011/85
Policy coordination	European Semester
Crisis management	EFSF EFSM ESM
Reinforcement of economic governance	Euro Plus Pact 'six-pack' Fiscal Compact

Euro-area Member States. In this connection, bilateral agreements were concluded between the Eurozone States. The financial assistance granted to Greece, for instance, was supervised by the Commission, the ECB and the International Monetary Fund (IMF).

Additionally, in 2010 the Council adopted a Regulation establishing the EFSM that provided financial assistance to EU Member States in financial difficulties (Council Regulation No. 407/2010 of 11 May 2010 that was adopted on the basis of Article 122(2) TFEU). Under EFSM, the Commission was allowed to borrow up to a total of EUR60 billion in financial markets on behalf of the EU under an implicit EU budget guarantee. The Commission was then lending the proceeds to the beneficiary Member State.

However, the financial capacity of the EFSM was not enough to be credible on the grounds that it could not be increased for the small size of the EU budget (De Streel 2013: 349–51). Due to the fact that Spain, Portugal, Italy and Ireland were facing budgetary difficulties, a more ambitious approach was needed. It was therefore necessary to do more. However, any far-reaching change to the basic rules of the EMU with a view to incorporating a permanent crisis management mechanism is inconceivable, as it would without doubt be at odds with the principle of the division of competences (Article 5(1) of the EU Treaty). The EU has powers of coordination and not harmonisation in relation to the economy. The need to uphold the division of competences thus obliges the Members States to act on the margins of EU action and, in the absence of soft law, to complete it with the use of satellite treaties. Thus, the adoption of satellite treaties is justified in the area of crisis management. This initially involved the adoption of the EFSF, which was subsequently replaced by the ESM. This calls for a closer analysis.

The 17 Member States of the Eurozone set up a common debt fund on 9 May 2010 in the form of a limited company incorporated in Luxembourg (EFSF) with a lending capacity of EUR440 billion.[4] The German Constitutional Court delivered an ambivalent verdict as to the compatibility of the EFSF with the budgetary rights of the German parliament that is embedded in the so-called eternity clause of Article 79(3) of the Basic Law (Calliess 2012: 402–15).[5]

One further point may be of relevance. The EFSM and the EFSF could only be activated after a request for financial assistance has been made by the concerned Member State and a macroeconomic adjustment programme, incorporating strict conditionality, has been agreed with the European Commission (EC), in liaison with the ECB. By way of illustration, the EC has been empowered to contract borrowings on behalf of the EU for the purpose of funding loans made under the EFSM (Article 2 of Council Regulation 407/2010) contributing to the overall loan packages for Ireland and Portugal, which were co-funded by the EU, the EFSF and the IMF, each acting independently but in a coordinated way.[6] As discussed below, strict conditionality is clearly of central importance.

What is more, in order to assuage the markets, the ECB adopted the securities market programme (SMP) allowing the purchase of government bonds on the secondary market with a ceiling of EUR209 billion.[7]

2.2.2.2 *ESM Treaty*

The Greek crisis highlighted that financial distress in one Member State can rapidly threaten macro-financial stability of the EU as a whole. Accordingly, the Task Force considered the need to establish a credible crisis resolution mechanism capable of avoiding contagion.[8]

That recommendation has been taken over by the Eurozone States. Since January 2013, the ESM, a new inter-governmental agreement concluded by the 18 Member States of the Eurozone, is replacing both the EFSM and the EFSF.[9] The ESM aims at permanently providing financial assistance to the Member States of the Eurozone. In contrast to the other funds, the ESM is a permanent international financial institution with a lending capacity of EUR500 billion. It has full legal personality. The ESM's purpose is to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financial problems. That support may be granted only if indispensable to safeguard the financial stability of the Euro area as a whole and of its Member States.

In line with the previous crisis management frameworks, the granting of any required financial assistance under the ESM is subject to strict conditionality. By the same token, the new Article 136(3) TFEU recalls that obligation. The strict conditionality to which any support must be

subject may take the form, notably, of a macroeconomic adjustment programme or the obligation continuously to respect pre-established eligibility conditions.

Given that the founding treaties did not provide for any legal basis allowing permanent financial assistance mechanisms, the intergovernmental fund had to be based on a treaty between the Eurozone countries. Against this background, Germany requested the revision of Article 136 TFEU (Louis 2012a: 284–319) in order to circumvent the no bail-out rule enshrined in Article 125 TFEU (Louis 2010: 971–86).

The European Council took the view that the simplified revision procedure provided for under Article 48(6) TFEU was sufficient to achieve such a revision of Article 136 TFEU. On 25 March 2011, the European Council adopted Decision 2011/199/EU,[10] which amends Article 136 TFEU with regard to a stability mechanism for Member States whose currency is the euro. The third paragraph added to Article 136 TFEU reads as follows: 'The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality'.

The ESM Treaty has been challenged before the German Constitutional Court[11] and before the Irish Supreme Court. Regarding the second challenge, it must be noted that the Irish Supreme Court has decided to refer to the Court of Justice pursuant to Article 267 TFEU the question of the validity of the European Council Decision and the question of whether Ireland, by entering into and ratifying the ESM Treaty, would undertake obligations incompatible with the Union Treaties. The full Court of Justice ruled on the validity of the European Council Decision on 27 November 2012. Given that a complete discussion on this case is beyond the scope of this chapter, a bare outline of this judgment will be given.

Given that the European Council used the possibility of amending the TFEU by a simplified revision procedure, the Court of Justice of the European Union (CJEU) had to verify whether the conditions were fulfilled and in particular whether the EMS did not increase the competences conferred on the EU in the Treaties. Among these conditions, it must be noted that the modifications are limited to the provisions related to internal policies and the actions of the EU (TFEU, third section) and that they cannot increase the competences of the Union.

First, the Court took the view that the challenged amendment did not encroach on the exclusive competence held by the EU in the area of monetary policy for the Member States whose currency is the euro. Given that the primary objective of the EU's monetary policy is maintaining price stability (§ 54 and 94), the Court stressed that ESM pursues an objective which is clearly distinct, namely to safeguard the stability of the Eurozone as a whole. The Court justified its interpretation on the grounds that an economic policy

measure cannot be treated as equivalent to a monetary policy measure for the sole reason that it may have indirect effects on the stability of the euro (§ 56 and 96) (Craig 2013: 3; Louis 2013).

Second, the claimant argued that the challenged amendment did affect the competences held by the EU in the area of the coordination of national economic policies. In his view, the EU has already pre-empted the area. The CJEU rejected this second contention on the basis that the EU Treaties do not confer any power on the EU to set up such a stability mechanism. As a result, the area was not pre-empted. Accordingly, the Court upheld Decision 2011/199.

Further, in response to the question of whether certain provisions of the Treaty on European Union (TEU) and TFEU and the general principle of effective judicial protection preclude the conclusion between the Member States whose currency is the euro of an agreement, such as the ESM Treaty, the Court held that the founding treaties and the general principle do not preclude the conclusion and ratification of the ESM Treaty.

One of the claimant's key contentions was the violation by the Eurozone countries of the 'no bail-out' clause enshrined in Article 125 TFEU. That clause provides that neither the EU nor a Member State are to be liable for the commitments of another Member State, or assume those commitments. The *raison d'être* of this clause is to secure that indebted Member States 'are sanctioned via the financial market by higher interest rates on their government bond' (Calliess 2012: 408). As a result, the clause enhances financial responsibility.

Though the interpretation of the 'no bail-out' clause has been dogged by controversy, the CJEU asserted that such a clause is not intended to prohibit either the EU or the Member States from granting any form of financial assistance to another Member State (§ 130 and 131). Admittedly, the Court held that the aim of Article 125 TFEU is to ensure that the Member States follow a sound budgetary policy by ensuring that they remain subject to the logic of the market when they enter into debt (§ 135). Accordingly, the clause does not prohibit the granting of financial assistance by one or more Member States to a Member State that remains liable for its commitments to its creditors provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy (§ 137, 143 and 146). In effect, the budgetary responsibility is enhanced by the strict conditionality requirements imposed by the fund which have to be fulfilled before successive tranches of funding can be released. Admittedly, neither the ESM nor the Member States who participate in it are liable for the commitments of a Member State which receives stability support and do not assume liability within the meaning of the 'no bail-out' clause. Account must also be taken of the fact that the CJEU ruled that the revision of Article 136 TFEU was not a necessary condition for the validity of the Treaty on the ESM with regard to EU law (§ 120).

2.2.3 Second approach: improved economic and employment policies coordination

As stressed in the introduction, the principal weakness of the EMU is that it is not based on a pillar but rather on an economic crutch, whilst monetary competence is based on solid foundations (Article 3(1)(c) TFEU). Initially, coordination prevailed over the harmonisation of economic rules. Subsequently, their coordination did not necessarily enable the different economies to converge, as had been conceived by the founders of the EMU. By contrast, the macroeconomic differences accentuated as the crisis progressed. Over the course of these last years, several mechanisms have been adopted with a view to remedying the weaknesses within the coordination of economic policies. We are shedding light on the EU 2020 Lisbon Strategy (2.3.1), the Euro Plus Pact (2.3.2), the Compact for Growth and Jobs (2.3.3) and the Fiscal Compact of 1 March 2012 (2.3.4). In contrast to budgetary and macroeconomic frameworks that are analysed in the third section, these texts only generate soft law.

2.2.3.1 The Europe 2020 Strategy

By replacing the Lisbon Strategy whilst retaining the open coordination method, the 2020 Strategy adopted by the European Council in 2010 is principally aimed at enhancing competitiveness. Its success is conditional upon the means implemented by the Member States. The Strategy has three priorities:

- intelligent growth
- based on knowledge and innovation
- which is sustainable and inclusive (high employment rates and economic, social, and territorial cohesion).

National reform programmes (NRP) must be presented at the same time as stability and convergence programmes within the context of the European Semester, which will be discussed below. In contrast to convergence and stability programmes which pursue the sustainability of public finances, the NRP implement major planks of economic and social policy.

2.2.3.2 The Euro Plus Pact

At their meeting on 11 March 2011, the heads of State and government from the Eurozone as well as six other Member States which do not use the euro as their currency adopted the idea initially mooted by Germany of a competitiveness pact. Following a non-binding inter-governmental approach aimed at reinforcing the treaty mechanisms on the fight against excessive deficits, the Euro Plus Pact is based on four leading rules:

- the reinforcement of economic governance
- the improvement of competitiveness and convergence of States' levels of competitiveness
- the integrity of the single market
- the involvement of the Member States.

It may be recalled in particular that the Euro Plus Pact invites the parties and national Parliaments to establish the 'budgetary golden rule' that is already written into certain national constitutions (Louis 2012b[12]) which will now be imposed on the parties to the Fiscal Compact.

Moreover, this Pact applies to matters that in some cases are amenable to harmonisation under EU law (e.g. tax harmonisation pursuant to Article 113 TFEU), whilst in other cases fall under national jurisdiction (agreements between social partners on wage moderation). Control over the commitments made by the States' parties to the Pact is assured by their peers. Each year, the State parties will report on the projects adopted in order to honour their commitments. Their implementation must be incorporated into the NRP provided for under the EU 2020 Strategy, as well as into stability and convergence programmes provided for under the SGP. The Commission is also required to play a role in assessing compliance with these commitments.

2.2.3.3 Compact for Growth and Jobs

The Compact for Growth and Jobs that was agreed at the European Council in June 2012 aims at relaunching growth, investment and employment. Under this Compact, EU Member States are committed to tackling unemployment and addressing the social consequences of the crisis effectively. The promotion of employment is encouraged by the Fiscal Compact (Article 9). Another aim of the Compact is faster progress towards the goals set out in the EU 2020 Strategy. This Compact is accounted for under secondary law: the priorities of economic partnership programmes seeking to ensure the correction of excessive deficits must be consistent with this strategy (Article 9(1) of Regulation (EC) No. 473/2013).

2.2.3.4 Coordination of economic policies under the Fiscal Compact Treaty

As regards the coordination of economic policies, Articles 9 to 11 of the Fiscal Compact specify in greater detail the obligations provided for under Articles 120 and 121 TFEU on economic policy. These provisions are more statements of good intentions rather than new obligations. Since the role of these new obligations is to provide an impetus, they do not impose new tasks on the EU institutions (10th Recital Treaty on Stability, Coordination, and Governance (TSCG) in the EMU ('Fiscal Compact')) (Pernice 2012: 18),

as the extension of tasks is reserved exclusively to the Court of Justice (Article 273 TFEU).

In its final report, the Future of Europe Group is proposing to make 'economic policy coordination between Member States more binding in selected areas which are key for sustainable economic growth and employment and essential for the stability of the Eurozone'. Such coordination should 'help overcome existing imbalances and strengthen overall competitiveness'.

2.2.4 *Third approach: reinforcement of the preventive and corrective dimensions of the SGP*

2.2.4.1 *Introductory remarks*

2.2.4.1.1 THE SGP PREVENTIVE AND CORRECTIVE DIMENSIONS

Mindful of the fragility of this construction and of the risk that the Member States will relax their budgetary discipline due to the protective function of the Euro, in 1997 the European Council and the Council of the European Union adopted an alternative form of European governance: the SGP. Concluded after the Maastricht Treaty once EMU had become a reality, the SGP had the merit of setting out guideline rules within the Euro area. It consists formally of a Resolution of the European Council of 17 June 1997 and two Regulations adopted by the Council on 7 July 1997 (Louis 2009: 108–15).[13]

The SGP is based on two pillars: a preventive approach involving multilateral surveillance and a corrective dimension relating to the sanctions procedure for excessive deficit procedure (EDP). The preventive and corrective limbs should not be regarded in isolation.[14] Indeed, both mechanisms are intended to force Member States to reduce the ratio between their forecast or actual public deficit as a percentage of gross domestic product (GDP) to 3 per cent and to lower their public debt as a proportion of GDP to 60 per cent (Article 126(2) TFEU and Protocol no. 12 on the EDP). The intention of these thresholds is to ensure that, assuming 5 per cent growth, a deficit of 3 per cent will then lead debt to stabilise at 60 per cent (Lefeuvre 2011: 27). In thereby guaranteeing sustainable levels of public debt, compliance with these two thresholds could have led to a harmonisation of fiscal policies without feeling the need, following the spirit of the framers of the SGP, to establish genuine economic governance (Fitoussi 2010: 253).

2.2.4.1.2 THE 2005 REFORM

The Council of the EU reformed the surveillance mechanisms in 2005 (Regulation (EC) No. 1055/2005), in particular by introducing medium-term budgetary objectives (MTOs).[15]

Since 2005 the Member States have been subject to an obligation to achieve their MTOs in a differentiated manner along the adjustment trajectory. As

far as Eurozone countries are concerned, MTOs have to be specified within a defined range between 1 per cent GDP and balance or surplus (Article 2 bis (2) of Regulation (EC) no. 1466/97 as amended by Regulation (EC) no. 1055/2005). MTOs pursue three main aims:

- providing a safety margin with respect to the 3 per cent of GDP deficit limit
- ensuring rapid progress towards sustainability
- allowing room for budgetary manoeuvre, in particular taking into account the needs for public investment.[16]

Accordingly, the MTOs are differentiated for individual Member States according to the diversity of economic and budgetary positions and developments, the fiscal risk to the sustainability of public finances and the prospective demographic changes. As a result, the country-specific MTOs may diverge from the SGP requirement of a close-to-balance or in-surplus fiscal position (Articles 2a(2), 3(2) and 7(2) of Regulation (EC) No 1466/97). They are likely to be more stringent where the level of debt and estimated costs of an ageing population are higher.

The MTOs are reviewed every three years (Article 2 (a)(3) of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011). They are set out within a stability programme (for Member States in the Eurozone) or a convergence programme (for Member States outside the Eurozone), which is updated every year. These programmes serve as a basis for multilateral surveillance by the Council, which by virtue of Article 121 TFEU should ward off, at an early stage, the occurrence of EDP and promote the coordination of economic policies. Accordingly, the annual stability or convergence programmes must demonstrate how the Member States are intent on achieving sound fiscal positions in the medium term. In the context of their assessment, the Commission assesses these programmes and the Council gives its opinion on them. Where the Council considers that the MTO should be strengthened, it can invite the Member State concerned to adjust its programme. Pursuant to Article 121 TFEU, a rapid alert system enables the Ecofin Council to address a recommendation to a State in the event of budgetary overrun.

2.2.4.1.3 THE SHORTCOMINGS OF THE SGP

The preventive virtues of the SGP were not able to prevent the growth in public deficits, especially after the 2008 economic downturn. Whereas they should have been close to equilibrium, certain budget deficits continued to grow significantly. The legislation in place was flawed for three reasons.

First, the SGP has not produced the expected effects since the Council enjoyed broad discretionary powers as to compliance by national authorities with the criteria which, following the difficulties encountered by France

and Germany in respecting them (Case C-27/04 *Commission* v. *Council* [2004] ECR I-6649), were relaxed in 2005.[17]

Second, the SGP approach focusing exclusively on the debt and deficit criteria can account for the fiscal crises in Ireland and Spain, where public debt, levels as a proportion of GDP lay at around 30 per cent in 2007. In effect, this narrow approach prevented the Commission from detecting problems at an early stage. Indeed, the surveillance mechanisms put in place were not able to detect the rapid increase in debt levels for these two Member States. Compared to the 30 per cent of GDP in 2007, Spain's debt had doubled by 2010. As regards Ireland, whilst the Commission had forecast public sector debt at less than 30 per cent of GDP in 2008, in 2010 it suddenly rose to more than 80 per cent. In retrospect, it is clear that the economic and budgetary crises are interlinked. In fact, price increases, salary indexation, low levels of worker mobility and qualifications, competitiveness losses, over-emphasis on certain economic sectors (the financial sector in the United Kingdom and construction in Spain), bubbles (such as the housing bubble) and the failure to diversify the tax base are all factors fuelling public deficits.

Third, any application of the regime of fines provided for under the sanctions procedure for excess public deficits would have been tantamount to using a sledgehammer to crack a nut; when the nuclear option is available one tends not to use it.

2.2.4.1.4 THE SIX-PACK REFORM

The subprime crisis that resulted from inadequate surveillance of the banking and financial sectors did not immediately call into question the budgetary limits laid down in the SGP. Two dynamics operated in opposition to one another. The Member States that had room for budgetary manoeuvre called for the maintenance of fiscal orthodoxy, whilst those that did not have such room for manoeuvre conversely called for the suspension of compliance with these criteria due to the exceptional economic circumstances with which they were confronted (Allemand and Martucci 2012: 28).

To a certain extent, the basic tenets of budgetary orthodoxy prevailed. In effect, the exceptional circumstances relied on by the Member States running deficits did not prevent the implementation of the EDP under Article 126 TFEU (Allemand and Martucci 2012: 28). Consequently, between April 2009 and July 2010, 22 of the 27 Member States were subject to EDP. Nevertheless, due to the deterioration of the economic situation between 2009 and 2011, the Commission and the Council displayed greater flexibility, in particular by granting extra time in order to correct certain national deficits.[18]

Such circumstances inevitably led the institutions to reinforce the requirement to comply with the criteria laid down in the SGP and, as the case may be, to adopt a more strict approach against Member States that were not able to reduce their budget deficit and public debt at the same time. Accordingly, as will be shown below, budgetary rigour finally carried the day over flexibility.

Thanks to the 2011 'six-pack', which was completed by the 2013 'two-pack', additional rigour was finally imposed under secondary law.

Seeking to reinforce economic governance within the EU and more specifically within the Eurozone, the fiscal discipline has been reinforced significantly by the 'six-pack', which is comprised of five Regulations and one Directive. These six acts, which were adopted by the Parliament during the first reading on 28 September and by the Council on 4 October 2011, entered into force on 16 December 2011. The architecture of the 'six-pack' is somewhat complicated.

Two Regulations (1175/2011 and 1177/2011) contain significant amendments to the preventive and corrective mechanisms of the SGP provided for under Regulations 1466/97 and 1467/97 (subsections 2.4.2 and 2.4.3). A third Regulation (1173/2011) concerning the effective implementation of fiscal surveillance of the Eurozone reinforces the two limbs of the SGP.[19] A Directive (2011/85) harmonises the budgetary frameworks of the Member States with a view to avoiding excessive deficits (subsection 2.4.7). Moreover, two additional Regulations on macroeconomic surveillance (1176/2011 and 1174/2011) are introducing a new mechanism for macroeconomic surveillance entailing an excessive imbalance procedure (subsection 2.4.5).

In addition to strengthening fiscal discipline with the intention of reducing public debt levels, the 'six-pack' will also guarantee enhanced coordination of surveillance and evaluation rules which had proved to be indispensable due to the accumulation of the programming process. Since the programming and assessment of several national programmes by different institutions raises important coordination problems, enhanced coordination has proved to be indispensable, in particular through the 'European Semester' (subsection 2.4.6). All in all, four of these acts are related to fiscal control and macroeconomic convergence.

Finally, in order to add additional teeth to the 'six-pack', the European Parliament and the Council adopted a new regulatory package on 21 May 2013, known as the 'two-pack'. Under the first Regulation, the Member States from the Eurozone have to present their draft budgets to the Commission, which may, if appropriate, issue an opinion.[20] The Commission is entitled to require that the draft budgets be amended if it considers that the terms of the budget exceed the SGP criteria. However, it does not amount to a veto power. The second Regulation seeks to reinforce the surveillance of those Member States which benefit from a financial assistance programme thanks to bilateral loans, the EFSF or the ESM, or which are seriously threatened by financial instability.[21] This Regulation therefore appears to offer a common framework and a gradualist approach to surveillance requirements.

2.2.4.2 Enhancing fiscal discipline through the reinforcement of the preventive arm of the SGP

As stated above, the SGP is focused on a preventive dimension under Regulation 1466/97 based on multilateral surveillance of States from the

Eurozone, which are required to present their MTOs in order to ensure public finance sustainability. Let us turn to the more fundamental questions that arise here: the criteria underpinning the budgetary surveillance framework and the sanctions.

So far, the implementation of the SGP has focused mainly on the *deficit criterion*. However, in the past, certain governments have run up public debts during periods of growth, whilst they should have taken advantage of such periods in order to reduce their debts. In doing so they voluntarily deprived themselves of the ability to adopt stimulus policies during subsequent periods of deep recession. In other words, the debts became so high that it was no longer possible to increase them in order to deal with emergency situations.

Admittedly, there has been a growing awareness of the need to broaden the scope of the multilateral surveillance. In this connection, the Task Force on Economic Governance established by the European Council of 25–26 March 2010 took the view that 'the high indebtedness is a drag on medium- and long-term growth prospects, aggravates the risk of financial instability and reduces the ability to run counter-cyclical fiscal policies when the need arises'.[22]

In placing henceforth the focus on public debt and fiscal sustainability in the budgetary surveillance framework, the 'six-pack' marks a turning point. In effect, the priority will now focus on *debt reduction*, in particular through the allocation to future years of exceptional debt reduction measures.[23] This should make it possible to avoid situations in which measures are not allocated as a priority to reducing the debt, which had occurred in the past. In other words, indebted Member States will have to start putting aside after years of lavish spending.[24]

In addition, the 'six-pack' defines a new 'expenditure benchmark' to assess progress towards the country-specific MTOs. This benchmark places a cap on the annual growth of public expenditure according to a medium-term rate of growth. For Member States that have not yet reached their MTOs, the rate of growth of expenditure should be below this reference rate with a view to ensuring adequate progress. In particular, if that norm is not matched, the Member States are called on to increase government revenues. Conversely, discretionary revenue reductions have to be compensated by reductions in expenditure (Recital 20 of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011).

That being said, as far as the fiscal positions of the Member States are concerned, the MTO can still be watered down. In effect, Member States may disregard it, while providing a safety margin with respect to the 3 per cent of GDP government deficit ratio (Article 2 bis(2) of Regulation 1466/97 as amended by Regulation (EU) 1175/2011).

It must also be noted that the MTOs have to be included in the national medium-term budgetary frameworks in accordance with Chapter IV of Council Directive EU 2011/85 of 8 November 2011 on requirements for budgetary frameworks of the Member States, as will be elaborated on below

(Article 2 bis(4) of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011).

The new regime of sanctions also merits special note. As discussed above (see the discussion in Section 2.4.1.3), the SGP has been suffering from a credibility problem for a long time. Indeed, during the first decade, when the violation of the EDP was chronic, no fines were imposed against the offending Member States. From now on, however, the preventive arm will be reinforced by the adoption of a regime of progressively increasing sanctions starting from an early stage. If a Member State in breach fails to adopt measures following a recommendation by the Council identifying a significant departure of its fiscal position from the country-specific MTO, the Council may require it to lodge an interest-bearing deposit of 0.2 per cent of GDP (Article 4(1) of Regulation (EU) 1173/2011[25]) with it, as a precursor to infringement proceedings, which may be transformed at a later stage (corrective limb) into a non-interest-bearing deposit (Section 3). These sanctions have been put in place in order to reinforce the credibility of the prevention measures (Louis 2012b: 6). Moreover, the reverse qualified majority procedure guarantees henceforth that these sanctions will be applied almost automatically (Article 4(2) of Regulation (EU) No 1173/2011). It follows that the Council's powers are in actual fact extremely limited because the Commission's proposals can only be amended or rejected within a specific time limit by qualified majority. At the outset the European Parliament supported this reform, whereas Germany and France opposed it. The Commission is fully aware of its new prerogatives.

2.2.4.3 Enhancing fiscal discipline through the reinforcement of the corrective arm of the GDP

Article 126 TFEU lays down an EDP. Since 1997, this procedure is further specified in Council Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the EDP, which is part of the SGP. The EDP is triggered by the deficit exceeding the 3 per cent of GDP threshold. In case the deficit is deemed to exceed this threshold, the Council issues a recommendation to the Member States concerned to correct their excessive deficits and gives a time frame for doing so. Today, 17 out of 28 Member States are still in EDP; Germany, Luxembourg, Finland, Sweden, Bulgaria, Hungary, Romania, Lithuania and Estonia are not subject to an EDP.

The changes brought to the corrective arm of the SGP by the 'six-pack' originated in response to the concern that the EDP has not been effective in curbing debt development. As far as the corrective aspect is concerned, the debt surveillance framework has been strengthened: in addition to the public sector deficit criterion (3 per cent), the debt criterion (60 per cent) will now be applied (Article 2 (1bis) 2nd al. of Regulation 1467/97 as amended by Regulation (EU) 1177/2011).

Table 2.2 Debt reduction obligations (Belgium) 2013–33

Fiscal year	*Ratio debt-GDP (%)*
2013	104.0
2014	101.8
2015	99.6
2016	97.4
2017	95.2
2018	93.0
2019	90.8
2020	88.6
2021	86.4
2022	84.2
2023	82.0
2024	79.8
2025	77.6
2026	75.4
2027	73.2
2028	71.0
2029	68.8
2030	66.6
2031	64.4
2032	62.2
2033	60.0

Accordingly, the Member State must reduce by one-twentieth annually (on average over three years) the gap between its debt level and the 60 per cent reference for the debt-to-GDP ratio.[26] As emphasised below, Article 4 TSCG enshrines the same requirement. In other words, the ratio of the difference between public debt and the 60 per cent debt-to-GDP threshold must fall by 5 per cent annually (Article 2 (1bis) 1st al. of Regulation 1467/97 as amended by Regulation (EU) No 1177/2011).

As far as Belgium is concerned, Table 2.2 illustrates the budgetary efforts that need to be accomplished with a view to achieving in 2033 the ratio debt-GDP of 60 per cent.

It must be noted, however, that the possibility to alter efforts to reduce the debt over the course of a three-year cycle increases the flexibility granted to the Member States. As the rate of reduction of one-twentieth must be reached at the end of the period, the Member State is able to defer most of its efforts to the end of the three-year cycle, or to do the opposite. As regards the Member States whose debt is lower than the fateful threshold of 60 per cent of GDP, they are free to decide whether it is convenient to reduce their level of debt any further. However, they are not subject to any obligation to improve their structural budget balance (Allemand and Martucci 2012: 58–9).

What is more, even Member States that respect the public deficit criteria will now be required to adopt measures in order to bring their public debt

below the 60 per cent threshold. Accordingly, bringing the deficit below 3 per cent of GDP is not sufficient any more for the abrogation of the EDP, unless the debt has been put on a satisfactory declining path. As a result, an EDP may be launched where the Member State does not comply with the debt-reduction pace requirement. Nonetheless, Member States already in EDP in January 2012 having to comply with agreed fiscal consolidation paths, benefit from a transitional period of three years. The Council of the European Union and the Commission are called on to examine whether the Member State concerned is improving its budget situation in applying such standards.

It should be added that the Fiscal Compact and one of the 'two-pack' Regulations require Eurozone countries that are subject to EDP to submit to an 'economic partnership programme' setting out the policy measures and structural reforms intended to correct excessive deficits.[27] The 'two-pack' provides in relation to Member States in serious financial difficulties for the replacement of the 'economic partnership programme' intended to guarantee the correction of an economic deficit (Article 9 of Regulation (EU) No 473/2013) with an 'economic adjustment programme' (Article 7 of Regulation (EU) No 473/2013).

What is more, financial sanctions provided for in Article 126(11) TFEU must henceforth constitute a real incentive for compliance with the notices under Article 126(9) TFEU (Recital 21 of Regulation 1467/97 as amended by Regulation (EU) No 1177/2011).

As far as the Eurozone members in breach of their SGP obligations are concerned, this change in scale will further imply a new set of gradual financial sanctions that can be imposed throughout the procedure. The Council may require the Member State concerned to lodge an interest-bearing deposit of 0.2 per cent of GDP with it, which may be transformed into a non-interest-bearing deposit (Articles 4 and 5 of Regulation (EU) No 1173/2011[28]). The interest-bearing deposit imposed should be released to the Member State concerned together with the interest accrued on it once the Council has been satisfied that the situation giving rise to the obligation to lodge that deposit has come to an end. Besides deposits, fines may be imposed. In effect, if no action is taken in order to correct the excessive deficit, in a third stage the Council may, acting on the basis of a Commission recommendation, impose a fine of up to 0.2 per cent of GDP on the State concerned (Article 6(1) of Regulation (EU) No 1173/2011). The effectiveness of these sanctions should be buttressed by the new reverse qualified majority procedure (Article 5(2) of Regulation (EU) No 1173/2011). What is more, the parties to the Fiscal Compact are committing themselves to support the proposals submitted by the Commission where it considers that a Member State whose currency is the euro is in breach of the deficit criterion in the framework of an EDP procedure (Article 7 TSCG).

Table 2.3 describes the new enforcement measures underpinning the SGP in the Eurozone.

In contrast, for non-Eurozone members in breach of their SGP obligations, the Council is empowered to adopt decisions (qualified

Table 2.3 Sanctions for Eurozone members in breach of their SGP obligations

Trigger for sanction	*Sanction*	*Voting procedure*
Council decision establishing failure to take action in response to a Council recommendation under Article 121(4) TFEU	Interest-bearing deposit in virtue of Article 4 of Regulation 1173/2011 (as a rule 0.2% of GDP)	Reverse qualified majority voting (RQMV)
Council decision based on Article 126(6) TFEU	Non-interest-bearing deposit in virtue of Article 5 of Regulation 1173/2011 (as a rule 0.2% of GDP)	RQMV
Council decision based on Article 126(8) TFEU (i.e. non-effective action in response to the recommendation to correct the excessive deficit under Article 126(7))	Fine in virtue of Article 6 of Regulation 1173/2011 (as a rule 0.2% of GDP)	RQMV
Council decision based on Article 126(11) TFEU (i.e. non-effective action in response to the notice to correct the excessive deficit under Article 126(9))	Fine in virtue of Article 11 of Regulation 1467/97 as amended (0.2% of GDP + variable component)	Qualified majority voting (QMV)

majority) imposing fines based on Article 126(11) TFEU with respect to non-effective action in response to the notice to correct the excessive deficit under Article 126(9) TFEU (Articles 10 and 11 of Council Regulation (EU) No 1177/2011). Therefore, the Commission has to reckon upon the suspension of Cohesion Fund commitments for non-Eurozone Member States, subject to an EDP, which are not taking effective action at an early stage to correct it. For instance, in January 2012 the Commission threatened Hungary with a freeze on its EU development funds for the year 2013 if it did not comply with the new rules.[29]

2.2.4.4 *Broadening economic surveillance to encompass macro-imbalances and competitiveness*

The SGP also suffered from other faults. In effect, the debt crisis has uncovered gaps within the surveillance both of fiscal and economic policies. Since healthy public finances may mask excessive levels of household debt, housing bubbles, lack or loss of competitiveness, price and salary growth, unbalanced patterns of trade and investment, the deficit threshold is certainly not the only bulwark against the risk of insolvency. Indeed, in focusing exclusively on fiscal aspects, the surveillance regime disregarded macroeconomic questions. It is therefore necessary to enlarge the horizon.

As was provided for under the 2020 EU Strategy, the 'six-pack' broadens the SGP to macro-structural surveillance for individual countries. To this effect, Regulation 1176/2011 addresses macroeconomic imbalances and divergences in competitiveness in all Member States.[30] In line with the SGP, this Regulation reckons upon a preventive and a corrective mechanism. It introduces a procedure applicable to 'excessive macroeconomic imbalance' based on an alert mechanism entailing a scoreboard. This mechanism is designed to detect macroeconomic imbalances quickly by using a limited number of economic indicators. The imbalances will be picked up using a scoreboard and a detailed balance sheet, and may, upon the detection of imbalances, result in the adoption of preventive measures.

In the case of particularly serious imbalances, the Council may decide to place the Member State in an 'excessive imbalances position' based on a recommendation by the Commission. This would trigger the 'corrective arm' of the mechanism (Article 121(4) TFEU).

Twelve Member States have already been subject to an in-depth assessment.[31] That being said, the 2013 Annual Growth Report of the Commission is stressing that the Alert Mechanism Report adopted alongside this Survey shows that developments in price and non-price competiveness are contributing positively to improving external imbalances ... (Commission Communication, Annual Growth Survey 2013, COM (2012) 750 final).

The 'two-pack' provides, in relation to Member States in serious financial difficulties, for the replacement of the economic partnership programme with an economic adjustment programme (Article 7 of Regulation (EU) No 472/2013).

As far as the Eurozone is concerned, Regulation 1174/2011 reinforces Regulation 1176/2011 by making provision for different sanctions in the event of failure to comply with Recommendations regarding the correction of excessive macroeconomic imbalances from the Council of the Union.[32] The Council decisions concerning the sanctions based on Article 136 TFEU will be restricted to Eurozone Member States (the vote of the member of the Council representing the Member State concerned by the decisions shall not be taken into account). These sanctions may indeed be cumulated with those laid down in relation to budgetary surveillance (Allemand and Martucci 2012: 74).

Last but not least, there is a question as to whether EU lawmakers were able to extend the regime of sanctions applicable to excessive public debts to the new excessive macroeconomic imbalance procedure. Indeed, there are several stumbling blocks to overcome. Given that Article 352 TFEU requires a vote of unanimity, neither the Commission nor the Council have considered that provision as a relevant legal basis to endorse such mechanisms. What is more, Article 136 TFEU does not contain any specific provision to this effect (Ruffert 2011: 1800). For Louis, everything has happened as if this provision amounted to a simplified amendment of the Treaty by way of legislative provisions enacted to bolster the effects of Article 121 on the

surveillance and coordination of economic policies and Article 126 on excessive deficits (Ruffert 2011: 1801; Louis 2012b; Allemand and Martucci 2012: 72). Louis takes the view that Article 136 TFEU has been conceived more on the model of reinforced cooperation, in line with Article 20 of the TEU and Articles 326 to 334 TFEU.

Finally, this new form of multilateral surveillance is, moreover, completed by the Euro Plus Pact, which requires commitments from its parties in the areas of priority action, such as the reduction of labour costs, productivity increases, labour market reforms, etc. (see the discussion in Section 2.4.1.3). EU law thus intersects with the non-binding commitments made by certain Member States.

2.2.4.5 *The European Semester: deeper and broader coordination*

2.2.4.5.1 THE SUBMISSION OF ALL MEMBER STATES TO THE FIRST 'EUROPEAN SEMESTER'

The synchronisation of political and macroeconomic budgetary calendars is now assured through the European Semester. Given that the surveillance is conducted over the first semester of the year, whilst the directions and recommendations issued by the EU institutions are implemented during the second semester, the new procedure has been coined as the 'European Semester'.

The European Semester indubitably constitutes the great novelty of the reform (Louis 2011: 58–61; De Sadeleer 2012: 364–66). From now on, the cycle of surveillance and coordination will operate within a synchronised framework. The first European Semester was organised in an informal manner in 2011 on the basis of a decision of the Ecofin Council of 6 September 2010. A second and a third European Semester have been implemented during 2012 and 2013 under Regulation (EU) No 1175/2011 amending Regulation (EU) No 1466/97 (Articles 11 and 12 of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011). The objective of these procedures is to ensure closer coordination of economic policies and a sustained convergence of economic performance of the Member States within the context of multilateral surveillance under the preventive part of the SGP (Article 2 bis (1) of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011).

This will make it possible to monitor in particular the implementation of broad economic policy guidelines (BEPG) (Articles 5(1) and 121(2) TFEU)[33] as well as guidelines for employment (Article 148(2) TFEU, see Council Decision 2010/707 of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L 308/46). It also includes the stability[34] or convergence programmes provided for under Regulation 1466/97[35] and the surveillance may prevent and correct macroeconomic imbalances in accordance with Regulation (EU) No 1176/2011 (see the discussion in Section 2.4.5). Furthermore, the NRP intended to implement the EU's growth and employment strategy has to be assessed with the other documents (see the discussion

section in 2.3.1). For countries that are subject to a regime of enhanced surveillance, the rules providing for surveillance of the sustainability of public finances are suspended (Article 12 of Regulation (EU) No 472/2013).

Since the European Semester is more a matter of rationalisation than of innovation synchronisation does not entail a merger of procedures. Indeed, each initiative continues to be subject to self-standing procedural arrangements (Allemand and Martucci 2012: 51). In other words, the SGP does not have to be incorporated into the surveillance of macroeconomic policies, or vice versa. However, convergence does actually occur where the Council no longer limits its action to issuing distinct recommendations to the Member States relating on the one hand to their stability or convergence programmes, and on the other hand to their NRPs. Henceforth, the two issues will be incorporated into one single recommendation, adopted on the dual basis of Article 121(2) and Article 148(4) TFEU (Conclusion of European Council, Brussels, 25 and 26 March 2010, EUCO, 7/10).

This coordination certainly has the merit of increasing interdependence between the different programming processes, which appears to be justified given that structural policies are closely related to fiscal policies. On the one hand, the former must be financed by the latter, whilst on the other hand; the EC States are entitled to expect tax revenues to climb following increases in growth.

Though they remain separate, the existing surveillance processes are henceforth aligned in terms of timing. The European Semester commences at the start of the year with a horizontal assessment by the Commission based on an annual report on growth (January)[36] that enables the European Council to formulate strategic guidance (March). Starting from April, this guidance has to be taken into account within medium-term budget strategies as part of stability programmes (for the 18 Member States of the Eurozone) or convergence programmes (for the ten other States) as well as in NRP seeking to guarantee the objective of the Europe 2020 Strategy. The last stage of the European Semester is concluded during June and July with the formulation of political guidelines by the Council and the Commission for each country. Moreover, the budgetary criteria specified for the following year will be required to comply with the guidelines specified during the Semester.

- January: the Commission publishes its annual report on growth, setting priorities for the EU in order to stimulate growth and create employment over the coming year.
- March: the European Council adopts the EU guidelines on national policies.
- April: the Member States submit their stability or convergence programmes, as well as their NRP.
- June: the Commission evaluates the programmes and addresses its own recommendations to each State. The Ecofin Council examines these recommendations and the European Council approves them.
- July: The Ecofin Council formally adopts the recommendations for each country.

Is the coordinated assessment at EU level likely to ensure that the EU/Euro area dimension is better taken into account when Member States prepare their budgets and their NRP? Whether this coordination will contribute to a higher degree of policy coordination among Member States still remains to be seen.

That being said, the Member States must take due account of the recommendations issued by the European Council when drawing up their economic, employment and fiscal policies before taking any major decision concerning their national budgets for the coming years. The failure by the State authorities to respond to the guidelines that are issued to them could result in new recommendations from the Council of the EU, a warning from the Commission under Article 121(4) TFEU on multilateral surveillance, or in economic control measures (Article 2 bis (3) of Regulation (EC) 1466/97 as amended by Regulation (EU) No 1175/2011).

2.2.4.5.2 THE SUBMISSION OF EUROZONE COUNTRIES TO THE SECOND EUROPEAN SEMESTER

The 'two-pack', as the two Regulations adopted by EU lawmakers on 21 May 2013 have been baptised, constitutes the last plank of the reform of the EU's economic governance. One of these regulations is dedicated to the monitoring and assessment of draft budgetary plans and the correction of excessive deficit of the Member States in the Euro area.[37] Regulation 473/2013 is predicated upon the assumption that Member States whose currency is the euro are particularly subject to spill-over effects from each other's budgetary policies (Recital 19). With the aim of strengthening the coordination and surveillance of the Eurozone budgetary discipline, the specific measures laid down by Regulation 473/2013 in the Euro area go beyond the provisions applicable to all Member States. Accordingly, its legal basis is Articles 121(6) and 136 TFEU, which authorise the Parliament to 'strengthen coordination and surveillance' of the fiscal discipline of Member States of the Eurozone.

Given that 'biased and unrealistic macroeconomic and budgetary forecasts can considerably hamper the effectiveness of budgetary planning and, consequently, impair commitment to budgetary discipline', Regulation 473/2013 sets up 'a common budgetary timeline' for Eurozone States (Recitals 10–11). Admittedly, these States are called on to better synchronise the key steps in the preparation of national budgets, thus contributing to the effectiveness of the SGP and of the European Semester for economic policy coordination (Recital 12).

As a first step in that common budgetary timeline, Member States have to make public their national medium-term fiscal plan at the same time as their stability programmes, preferably by 15 April and no later than by 30 April. Those fiscal plans should include indications on how the reforms and measures set out are expected to contribute to the achievement of the targets and national commitments established within the framework of the EU's strategy

for growth and jobs (Recital 13). What is more, the national medium-term fiscal plan and the stability programme can be the same document.

As a second step, Member States are required to publish the draft central government budget by 15 October. The Commission must adopt an opinion on the draft budgetary plan in any event by 30 November. Where the Commission identifies particularly serious non-compliance with the budgetary policy obligations laid down in the SGP, the Commission may request that a revised draft budgetary plan be submitted.

As a third step, Member States are called on to adopt their budget by 31 December.

The following template sets out the deadlines of the new budgetary framework:

- By 15 April but no later than 30 April each year: submission of the medium-term fiscal plans in accordance with the medium-term budgetary framework. Such plans are presented together with the NRP and the stability programmes.
- By mid-October: submission to the Commission of draft budgetary plan for the forthcoming year.
- By 30 November: European Commission adopts its opinion.
- By 15 December: submission of the revised draft budgetary plan where the Commission has been identifying particularly serious non-compliance with the budgetary policy obligations laid down in the SGP.
- By 31 December: the budget for the central government shall be adopted or fixed.

One is struck by the sheer complexity of the review processes. For the sake of clarity, Table 2.4 describes the different mechanisms underpinning the SGP's preventive branch.

2.2.4.6 Harmonisation of the requirements applicable to national fiscal frameworks

The Directive on the requirements applicable to the national fiscal frameworks of Member States, which was adopted by the Council following consultation with the European Council – due to the fact that it was based on Article 126(14) TFEU – contributes to reinforcing both the preventive and the corrective approach of the SGP by requiring the Member States to comply with their obligations relating to fiscal matters.[38] Effective and timely monitoring of compliance with these rules must be based on reliable and independent analyses assured by the 'institutions or independent fiscal offices' (Article 6(b)).

Given that most fiscal measures have budgetary implications that go well beyond the annual budgetary cycle, annual budget legislation has to incorporate the multiannual budgetary perspective of the budgetary surveillance

Table 2.4 SGP's preventive branch arrangements

	Acts	*Measures*	*Obligations placed on Member States*	*Obligations placed on institutions*
SGP 1997	European Council 1997	Orientations regarding the SGP enforcement	Debt and deficit criteria	European Council and Commission
Europe 2020	European Council 2010	Intelligent growth	NRP	Commission and Council recommendations
Euro Plus Pact	European Council March 2011	Coordination economic policies	Golden rule and additional commitments	Member States Assessment by the Commission
Compact for Growth and Jobs	European Council June 2012	Enhancing investments	National investments	Assessment by the Commission
First European Semester	Specifications SGP and Guidelines ECOFIN 7/9/2010, Article 2 bis Règl. 1466/97	Cycle of surveillance and coordination operates within a synchronised framework	Stability/convergence programmes NRP, macroeconomic data and medium-term budgetary framework	UPSTREAM • Commission report • ECOFIN • European Council orientations DOWNSTREAM • Commission project • Council approval • ECOFIN orientations
Second European Semester	Regulation 473/2013	Common budgetary timeline	Submission of draft budgetary plan, revised draft budgetary plan and adoption of the budget	Non-binding opinion from the Commission

framework of the EU. In other words, in order to be consistent with both the preventive and the corrective parts of the SGP, the planning of annual budget legislation should adopt a multi-annual perspective stemming from the MTOs framework. Against this backdrop, in accordance with Article 5 of the Directive, Member States are called on to adopt numerical fiscal rules over a multiannual horizon with a view, on the one hand, to comply with the reference values on deficit and debt and, on the other, to promote a multi-annual fiscal planning horizon, including adherence to the Member State's MTOs.

Furthermore, MTOs go hand in hand with a medium-term budgetary framework providing for the adoption of a fiscal planning horizon of at least 3 years. This new framework must ensure that national fiscal planning follows a multiannual fiscal planning perspective (Article 9(1)). It follows that annual budget legislation must be consistent with the provisions of the medium-term budgetary framework (Article 10).

2.2.4.7 *Enhanced control of Member States facing serious financial difficulties*

As stated above, the two-pack, as the two Regulations adopted by EU lawmakers on 21 May 2013 have been baptised, constitutes the last plank of the reform of the EU's economic governance. A second Regulation (No 472/2013) of this supplementary plank applies to Member States facing serious financial difficulties: the Member States in receipt of financial assistance flowing from bilateral loans or under the ESM, or those that are seriously threatened by financial instability. Regulation No 472/2013 tightens up the procedural arrangements by a notch.[39] It is more demanding than Article 5 of the Fiscal Compact, which also provides for an enhanced surveillance mechanism for States subject to an EDP. The legal basis for Regulation 472/2013 are Articles 121(6) and 136 TFEU, which authorise the Parliament and the Council to 'strengthen coordination and surveillance' of the fiscal discipline of the Member States of the Eurozone.

2.2.5 *Reinforcement of the SGP by the Fiscal Compact*

2.2.5.1 *Introduction*

Will the range of mechanisms intended to guarantee balanced national budgets bear fruit? In the eyes of certain heads of government, since the edifice put in place over the previous years had remained incomplete, something additional had to be done in order to reassure the markets. Accordingly, in 2011 the German authorities – backed up by the French – proclaimed their intention to amend the TFEU which, having been concluded at Lisbon on 18 and 19 October 2007, only entered into force two years later on 1 December 2009, despite the urgent need to find a response to the crisis which had resulted from the termination of the defunct European Constitution. For a long time there

had been questions as to whether the reforms planned should be applied to the 18 (Eurogroup), the 23 (Euro Plus Pact) or the 28 (EU) and whether they should bring the coordination of economic policies under genuine shared competences where EU law exercises its primacy.

Taking account of the opposition of the UK's representative,[40] the European Council held on 9 December 2011 finally decided to conclude an inter-governmental agreement between an initial 26, which later fell to 25 Member States. The negotiations, which were swiftly initiated under the aegis of the President of the European Council, resulted in a political agreement on 30 January 2012. The Fiscal Compact Treaty was signed on the fringes of the European Council of 1 March 2012.

Contrary to the wishes of the German authorities, this new inter-governmental agreement does not result in an amendment of the fundamental treaties to which the 27 Member States were parties. As a treaty concluded between the 17 Member States of the Eurozone (18 since 2014), and 8 other Member States which do not use the euro as their currency, it constitutes a self-standing legal framework which is superimposed on EU law, whilst borrowing various techniques from EU law. To put it simply, although the Treaty aims at fostering the implementation of the SGP, it is not part of the *acquis communautaire*. This piece of legal wizardry that could be described as an 'Economic Schengen' – due to the British veto – therefore, for the moment, prevents the adoption of a fully fledged amendment treaty.

The Fiscal Compact entered into force on 1 January 2013 (Louis 2012c; De Streel and Etienne 2012; Martucci 2012; Craig 2012) following its ratification by Finland, the twelfth Euro area Member State to ratify the Treaty (Article 14(2) TSCG). Given the misadventures to which the Treaties amending the founding treaties (including the Maastricht, Nice and Lisbon Treaties) have been subject, the path of the Fiscal Compact is littered with pitfalls. By way of illustration, in a referendum that took place on 31 May 2012, 60 per cent of Irish voters have been backing the Treaty, most of whom were aware that its rejection would hurt Ireland's chances of attracting further EU bail-outs. It must be noted that, for several Member States, the ratification of the Fiscal Compact went hand in hand with the granting of financial assistance by the ESM. In effect, starting from 1 March 2013, any assistance has been conditional upon the prior ratification of this Treaty (Recital 5 TSCG). In December 2013, Belgium finally ratified it, though some regional sub-entities requested various reservations regarding the implementation of several budgetary obligations.

The 16 provisions of the Fiscal Compact are grouped under five titles. The titles on the Fiscal Compact (Title III, Articles 3–8), on the coordination of economic policies (Title IV, Articles 9–11) and on the governance of the Euro area (Title V, Articles 12–13) are of central importance. Since it is not possible to provide a detailed commentary on this Treaty, this chapter shall be limited to briefly highlighting some of the relationships that it will have with the measures discussed above.

2.2.5.2 *Fiscal Compact*

The core obligations are found in Title III of the Fiscal Compact. It is the aim of this subsection to explore some of the key issues arising in discussion of Article 3 (golden rule), Article 7 (reversed qualified majority (RQM)) and Article 8 (control of the obligation to balance budgets).

2.2.5.2.1 GOLDEN RULE

Article 3 enshrines the golden rule, according to which 'the budgetary position of the general government of a Contracting Party shall be balanced or in surplus' (Article 3(1)(a) TSCG). This requirement is deemed to have been met where the structural deficit does not exceed 0.5 per cent of GDP at market prices, or 1 per cent for countries with a debt above 60 per cent of GDP (Article 3(1)(b) and (d) TSCG).

Four separated, albeit related issues, must be distinguished. The first issue concerns the golden rule. It must be noted that the new inter-governmental golden rule does not match the traditional definition of a golden fiscal rule, which requires that public authorities borrow only to cover investments, and not to fund current spending (Artis 2002: 101–16).

The second issue concerns the added value of the so-called golden rule. This provision is less innovative than certain heads of State have asserted on the account that it reasserts the commitments made in the Euro Plus Pact of 11 March 2011 (Supra B). The essential difference consists in the fact that the 2011 Pact is not binding. Second, it was only signed by 23 Member States and not the 25 Member States that undertook to ratify the Fiscal Compact. Another difference should also be highlighted: compared to the Euro Plus Pact, the new Treaty limits the States' powers of appreciation.

The third issue concerns the relationship between Article 3 and the obligations stemming from the 'six-pack'. As regards its relations with secondary law, Article 3 restates the obligation as laid down by Regulation 1476/97 amended by Regulation 1177/2011, whilst also reinforcing it. A first difference must be noted: the deficit threshold may not exceed 0.5 per cent of GDP at market prices or 1 per cent for States whose debt is lower than 60 per cent. Given that these thresholds are more stringent than those established under the 'six-pack', the Treaty imposes significantly stricter fiscal rigour. In practice, future MTOs will have to be in line with the 0.5 per cent limit imposed by the golden rule (Verhelst 2012). Another difference relates without doubt to the fact that the preventive approval of the SGP has previously been based on a permanent tension between automatism (the application of the thresholds on an arithmetical basis) and the capacity for judgment (the discretionary power exercised by the Commission). How will things work under the Fiscal Compact? In providing for an automatic correction mechanism, will the new Article 3(1)(e) remove this capacity for judgment?

The fourth issue concerns the implementation of the golden rule which will have to be set in constitutional stone, or failing that, in a rule of equivalent standing (Article 3(2) TSCG). Since only the German, Italian and Spanish constitutions contain such a rule, 22 other States will have to cross the proverbial Rubicon. Moreover, the national rule will have to provide for an automatic correction mechanism that will be engaged if there is a sustained imbalance (Article 3(2) TSCG). This mechanism should aim at correcting deviations from MTOs, or the adjustment path.

Furthermore, it should be added that the 'national appropriation' of the requirement of a balanced budget, in particular through its incorporation into the Constitution or a provision of equivalent nature, is destined to shift control from EU level to State level. It goes without saying that this obligation should, depending upon the circumstances, permit opposition parties to initiate proceedings before the Supreme Courts, with controls thus being shifted from EU to national level. However, this move will raise various questions: Will such laws be subject to actions for annulment? Who will have standing? Will it be easy to correct a budgetary law that has been annulled by national courts? Will they take sufficient time in order to rule on such applications with the aim of not compromising the proper implementation of the contested budget? How will the automatic correction mechanism work? It can easily be imagined that in 2014 this international law obligation will cause upheaval within constitutional circles.

Will the findings reached within the case law of the German Federal Constitutional Court relating to the constitutionality of the Lisbon Treaty and the EFSM act as an inspiration for other Supreme Courts? In these two judgments, the Court held that since the principle of democratic self-determination can only be exercised on the level of the Nation State, the EU cannot deprive the Member States of essential powers in relation to the latter, including fiscal powers.[41] In particular, in the Lisbon judgment the Court went on to say:

> A transfer of the right of the *Bundestag* to adopt the budget and control its implementation by the government which would violate the principle of democracy and the right to elect the German *Bundestag* in its essential content would occur if the determination of the type and amount of the levies imposed on the citizen were supranationalized to a considerable extent. The German *Bundestag* must decide, in an accountable manner *vis-à-vis* the people, on the total amount of the burdens placed on citizens. The same applies correspondingly to essential state expenditure.
>
> Budget sovereignty is where political decisions are planned to combine economic burdens with benefits granted by the State. Therefore the parliamentary debate on the budget, including the extent of public debt, is regarded as a general debate on policy. Not every European or international obligation that has an effect on the budget endangers the

> viability of the *Bundestag* as the legislature responsible for approving the budget. The openness to legal and social order and to European integration which the Basic Law calls for, include an adaptation to parameters laid down and commitments made, which the legislature responsible for approving the budget must include in its own planning as factors which it cannot itself directly influence. What is decisive, however, is that the overall responsibility, with sufficient political discretion regarding revenue and expenditure, can still rest with the German *Bundestag*.

However, the German constitutional case law is not as clear-cut as one might believe. In the first place, EU obligations with a budgetary impact do not compromise the freedom of action of the *Bundestag*. Second, the Constitutional Court indicated that international budgetary rules cannot call into question 'the general responsibility' of the *Bundestag*, which 'to this effect must have a sufficient margin of political appreciation, both over revenues as well as expenditure' (§ 256). Accordingly, in the same manner as the SGP, the Fiscal Compact offers the Contracting Parties a certain degree of flexibility, provided that they respect the thresholds specified, although they may depart from them in exceptional cases.[42] Consequently, this Treaty does not appear to have the effect of annulling the fiscal self-determination of its signatory States.

Article 8 enshrines the jurisdiction of the Court of Justice to verify the implementation of this rule on national level (Article 8 TSCG). In expanding the jurisdiction of the Court, which is possible under Article 273 TFEU, the framers of the Fiscal Compact have done more than redrafting substantive law. Absent of any power to control the implementation of Article 3 by the Commission, the State parties to the Treaty take on responsibility to implement it. Admittedly, on the basis of the applications initiated by the national authorities, the Court of Justice will be required to rule on the compatibility of national law with the golden rule, and not of national budgets as desired by German Chancellor Merkel. This operates alongside the 'double infringement' mechanism in the event that the State in breach, fails to comply with the judgment against it (Article 3(2) TSCG). Whilst the enshrinement of this new competence results from a compromise of jurisdiction, in accordance with Article 273 TFEU, it does not however modify EU law. Formally speaking it will be the Member States that take action before the Court of Justice.[43] That being said, the borderline between a genuine settlement mechanism and the EU legal order is a fine one. Though the control of the implementation of the golden rule is not an EU legal issue in its own rights, it is likely to involve considerations of EU legal problems.[44]

2.2.5.2.2 DEBT CRITERION

The Fiscal Compact is also less innovative than has been asserted, since it expressly or implicitly consolidates obligations under secondary law. For

example, Article 4 on the reduction of debt levels for Contracting Parties with a debt exceeding 60 per cent of GDP reasserts the obligation provided for under Article 2 Regulation 1467/97, as amended by Regulation 177/2011 (the preventive limb of the SGP) (see Section 2.4.2). In effect, the ratio of the gap between public debt and the 60 per cent debt-to-GDP threshold must be reduced by 5 per cent annually.

2.2.5.2.3 SANCTIONS AND REVERSE QUALIFIED MAJORITY

With respect to sanctions against States in breach of their SGP obligations, the Fiscal Compact is also less innovative than has been asserted. Proof of this lies in the reinforcement of fiscal discipline through the means of sanctions that are almost automatic. In this regard, Article 7 of the Treaty reinforces the considerable powers which the Commission exercises over the Council of the Union, as the latter must establish a 'blocking qualified majority' in order to oppose sanctions proposed by the Commission, whilst at present a blocking minority is sufficient. This Copernican Resolution will guarantee the semi-automatic nature of sanctions (see the discussion above in Section 2.4.3). Account must be made of the fact that Article 7 has not been amended by Article 126(6) TFEU.

2.2.5.3 *Added value of the Fiscal Compact*

The Fiscal Compact is certainly not a pure copy of existing law. Although it does not amend either primary or secondary EU law, the fact remains nonetheless that it adds new elements to EU law in order to guarantee its efficacy. This is the case for example, where it reinforces the budget deficit thresholds, as specified in Article 3. It is also apparent in the possibility for the Court of Justice to review the correct transposition of the golden rule into national law. On a strict interpretation of the principle of the attribution of competences enshrined in Article 13(2) TEU it may appear that these additions may constitute an amendment to applicable law and would therefore be illegal. However, a pragmatic interpretation is called for. Pursuant to Article 4(2) TEU, the Fiscal Compact provisions have the sole objective of facilitating compliance with the goal of achieving a balanced budget, and avoiding excess deficits (by analogy, see Joined Cases C-181/91 and C-248/9 *Parliament* v. *Council and Commission* [1993] ECR I-3713).

Has this Treaty really been worth it? On the one hand, the answer is affirmative if the Treaty is placed within its political context. Whilst undeniably betraying a certain scepticism regarding the classical mechanisms of EU law contained in the 'six-pack', it will be clear with hindsight that the adoption of such a Treaty was really necessary. Moreover, by playing the card of 'national appropriation', its framers certainly sought to reassure the financial markets and the electorates of various Member States. Furthermore, a link is established with the ESM, which was revised on 2 February 2012.

On the other hand, the answer is negative if one considers its contents objectively, since the Fiscal Compact does not introduce practically anything new into EU law (Carrera Hernandez 2012; Hinajeros 2012; Vitorino 2012). Whilst it certainly does guarantee greater efficacy for various mechanisms, nonetheless, no supplementary powers are granted either to the Commission or the Court of Justice, which would in any case have run contrary to Articles 5(2) and 13(2) TEU. Moreover, the integrity of the market has been maintained. At worst, according to some critics, the Fiscal Compact will have the effect of ossifying rules which would undoubtedly have been better placed within secondary law than in an inter-governmental agreement.

In summary, it is a pointless Treaty, which is without doubt insufficient in order to stave off a budgetary crisis, the end of which is still not in sight, although it is certainly indispensable within the current crisis situation.

2.3 The impacts of the reforms on the institutional equilibrium

2.3.1 Introductory remarks

As was stressed at the outset, the institutional balance in relation to budgetary and economic matters has always been atypical. On the one hand, the coordination of economic policy has been a matter for national sovereignty, whilst on the other hand budgetary control has been based on an equilibrium which is highly skewed in favour of the Council, where a blocking minority can easily stand in the way of Commission proposals. The European Parliament has only played a secondary role in such matters.

Does the reform enshrine the victory of the Community method over intergovernmentalism or the opposite? As is known, the recourse to multilateral cooperation has proved to be necessary in order to adopt the Euro Plus Pact and to set up the EFSF, the ESM as well as the Fiscal Compact. Control by fellow signatories has become more significant in the implementation of the commitments under the Euro Plus Pact and Europe 2020 Strategy which in a clear departure from the Community method, is based on the good will of the States. Finally, compliance with the implementation of the golden rule into constitutional law or a rule of equivalent effect will be approved by the Court of Justice on the basis of applications introduced not by the Commission but by other Contracting Parties to the Fiscal Compact.

However once again, the developments have been contradictory. In effect, the crisis has enabled a gradual improvement in the efficacy of this institutional framework by reinforcing the role of the Euro Group, the Council of the Eurozone and the Commission to the detriment of inter-governmentalism.

2.3.2 European Commission

Needless to say the 'six-pack' and the 'two-pack' significantly increase the powers of the Commission over the surveillance and evolution of the

Member States' public finances (Recital 12 of the preamble of Regulation 1466/97 as amended by Regulation (No 1175/2011). In effect, the implementation of programmes detailing structural reforms, and annual fiscal plans will be monitored both by the Commission and the Council.

Moreover, the Commission henceforth disposes of considerable powers with regard to the Council of the European Union, which must now establish a 'blocking qualified majority' in order to oppose sanctions proposed by the Union executive, whereas before, the entry into force of the 'six-pack', a blocking minority was sufficient.[45] This Copernican Revolution, which was strongly supported by the European Parliament, guarantees the semi-automatic nature of sanctions.

Finally, both the Fiscal Compact (Article 5(1) and (2); Article 6; Article 8(2) TSCG) and the ESM (Article 4(4); Article 5(3); Article 6(2); Article 13(1), (3) and (7); see Case C-370/12 *Pringle*, para. 158) confer various tasks on the Commission. In *Pringle*, the Court of Justice held that the tasks vested by the ESM in the Commission do not distort the powers of that institution under the fundamental treaties. Various questions spring to mind. Should one see within the new governance a Leviathan wearing down national sovereignty to the benefit of increased EU powers over economic matters? Often decried as the quintessence of technocratic power, surely the European Commission is itself the best placed, in terms of legitimacy, to exercise a right to monitor the contents of national budgets (Regulation (EU) No 73/2013) or to control highly political functions in a neutral manner? However, surely the mere fact of asking the question already implies an answer. Within a Europe in which it is necessary to put out one fire after another, without being able to count on a sufficient number of firemen, surely the role of the legislature will have to be reviewed? Moreover, the Ecofin Council, which does not lack any legitimacy whatsoever (Jacqué 2010: 82), has the last word. Nonetheless, as has been seen with Greece, Portugal and Ireland, budgetary constraints now appear to determine the scope of the substantive law implementing policies which have not, however, been harmonised on EU level (Triantafyllou 2011: 195–208). In effect, financial assistance was granted to these Member States on the strength of their commitment to implement significant reforms to their fiscal, social, employment and health policy, as well as public finance law, commercial law and their public administrations.[46]

2.3.3 *Euro Group*

As an *ad hoc* structure for informal coordination established with the implementation of the EMU, the Euro Group is not one of the ten formations of the Council of the Union (Louis 2009: 127–31; Kasel 2012) (see Protocol no 4). It is comprised of the finance ministers of the Member States that have adopted the euro as their currency. The President of the ECB is invited to attend its meetings, whereas the Commission participates as of right. It is certain that the Euro Group has been called upon to play a decisive role in

the implementation of the European Semester for the Member States from the Euro area. It is charged with the preparation and follow-up of the Euro Summit meetings. Moreover, its President may be invited to attend these meetings (Article 12(4) TSCG). In contrast to other formations, it has the advantage of having a stable Presidency with terms of two-and-a-half years. On the other hand, due to its informal nature, it cannot issue Recommendations since it is for the Ecofin Council to formally ratify these acts.

2.3.4 *Council of the euro area*

The Euro Summit Meeting of 26 October 2011 concluded that the different heads of State and governments from the Euro area will meet 'informally' twice per year and elect a President for a term of two-and-a-half years. The President of the ECB is invited to attend its meetings, whereas the Commission participates as of right. The Summit should meet at key moments of the annual governance cycle, where possible, after meetings of the European Council. This will accordingly seek to prevent the official institution from being short-circuited by the decisions taken by the 18 Member States of the Euro area.

In providing for similar institutional arrangements, the Fiscal Compact formally provides for the existence of this Council (Article 12(1) TSCG). This parallel council will be called upon to determine strategic guidelines on the conduct of economic policy, the improvement of competitiveness and the reinforcement of governance within the Eurozone (Article 12(2) TSCG).

2.3.5 *Economic and Financial Committee*

As a body that engages in studies, preparation, dialogue and consultation, the Economic and Financial Committee plays a central role in the preparation of decisions relating to the functioning of the EMU.[47] Pursuant to Article 134(2) TFEU the EFC's tasks are, among others, to contribute to the preparation of the work of the Council, particularly as regards recommendations required as part of the multilateral surveillance and decisions required as part of the EDP (Article 126(4) TFEU) as well as to promote policy coordination among the Member States. It provides opinions at the request of the Council of the EU or the European Commission. The EFC shall be consulted within the framework of the European Semester (Article 2 bis (4) of Regulation (EC) No 1466/97 as amended by Regulation (EU) No 1175/2011). As a serious competitor to the Committee of Permanent Representatives (COREPER), this Council plays a key role in the preparation of Ecofin meetings. In particular, its preparatory work for the Council includes the assessment of the economic and financial situation, the coordination of economic and fiscal policies, contributions on financial market matters, exchange rate polices and relations with third countries and international institutions. In order to ensure a consistent application of the principles mentioned above for defining the country-specific MTOs, regular methodological

discussions take place in the Economic and Financial Committee (Ecofin Council, Specifications on the Implementation of the SGP). It may also represent a threat for the Commission's prerogatives by standing between it and the Council. Its penchant for secrecy and the complete lack of political responsibility raise difficulties in terms of democratic control (Louis 2009: 119).

The 'two-pack' reinforces this body even further. The EFC has in effect been charged with numerous missions relating to the control of Eurozone Member States faced with financial stability difficulties (Recital 14, Article 3, par. 1st and Article 7, par. 4 of Regulation (EU) No 472/2013) or which are subject to an EDP (Article 10, par. 3 et 11, par. 2 of Regulation (EU) No 473/2013).

2.3.6 *European Central Bank*

Various tasks are conferred on the ECB by the 'six-pack' and the 'two-pack' Regulations. What is more, the ECB is an integral part of the ESM regime (Article 13(1), (3) and (4)). In *Pringle*, the Court held that the allocation by the ESM Treaty of new tasks to the ECB is compatible with its powers. The Court stated, inter alia, that the duties conferred on the ECB within the ESM Treaty do not entail any power to make decisions of its own, and that the activities pursued by this institution within the ESM Treaty solely commit the ESM.

2.3.7 *Respective roles of the European Parliament and the national parliaments*

The progress made under the Treaty of Lisbon for parliamentary institutions was welcomed by most commentators (Piris 2011: 113–14). There is now a question as to whether the European Parliament[48] and the national parliaments have missed out on the reform (Ruffert 2011: 1801).

Legitimacy of the fiscal approach is indeed becoming a touchstone issue. In this connection, two examples will suffice. First, the European Council held in the conclusions of its 18/19 October 2012 meeting that:

> Strong mechanisms for democratic legitimacy and accountability are necessary. One of the guiding principles in this context is to ensure that democratic control and accountability take place at the level at which decisions are taken and implemented. In this spirit, ways to ensure a debate in the context of the European Semester, both within the European Parliament and national parliaments, should be explored.
>
> (EUCO 156/12, para. 17)

Second, in its final report, the Future of Eurogroup stress that: 'a fundamental deepening of the EMU must go hand in hand with greater democratic legitimacy. Wherever new competences are created at European level or closer coordination of national policies is established, full democratic control has to be ensured'.

Needless to say, it is likely that these political commitments will enhance parliamentary participation in the decision-making process.

2.3.7.1 *The European Parliament*

The European Parliament did indeed adopt five of the six principles from the 'six-pack' on their first reading. Nevertheless, both the definition and assessment of objectives as well as the control of national policies and budgets is the prerogative of an institutional network within which the European Council, the Ecofin Council, the Euro Group and the Commission divide up these roles. Is the European Parliament entirely absent from this network? This again calls for a nuanced response.

First and foremost, the European Parliament is required to take action at the start of the annual cycle of surveillance before the European Council has defined the strategic guidelines for macro-economic and micro-budgetary policy within the context of the European Semester. In effect, there must be discussions within the Parliament.[49]

Moreover, according to Article 121 TFEU, the President of the Council, the Commission and, depending upon the circumstances, the President of the Euro Group must report to the European Parliament on the results of the multilateral surveillance and the implementation of EDPs (Article 2 bis(4) al. 2 of Regulation (EC) No 1466/97 as amended by Regulation (EU) No 1175/2011). Exchanges of opinion with the Member State that has been the object of a recommendation by the Council may occur within the competent parliamentary committee.[50] Similarly, the Euro Summit Councils may invite the President of the European Parliament to be heard (Article 12(5) TSCG). Last, Article 13 of the Fiscal Compact provides for the oversight of the budgetary policies and other issues covered by this Treaty by both the European Parliament and national parliaments.

2.3.7.2 *National parliaments*

By the same token, national parliaments warrant special attention (Clerc 2012: 759). Given that following the entry into force of the Lisbon Treaty the national parliaments dispose of the power to control the correct application of the principle of subsidiarity, have the tables now been turned on them? In accordance with the principle 'no taxation without representation', one of their main functions is to approve annual budget legislation. Has their autonomy been seriously cut back?

It is certain that national parliaments must be fully involved with the European Semester and the preparation of the various programmes.[51] However, in the final analysis, national budgets will now be drawn up within a framework that leaves decidedly less room for manoeuvre than in the past (see Regulation (EU) No 473/2013).

First, the European Semester is called upon to reinforce the powers of the Prime Minister and the Finance Minister to the detriment of those of Parliament, just at it enhances the Economic and Monetary Affairs portfolio within the Commission, currently held by the Commissioner Oli Rehn.

Second, on the account that most fiscal measures have budgetary implications that go well beyond the annual budgetary cycle, Member States are now required by Directive 2011/85 to base their annual budget legislation on multi-annual fiscal planning stemming from the medium-term budgetary framework. Any departure from this framework shall be duly explained (Article 10 of Directive 2011/85/EU of the Council of 8 November 2011 on requirements for budgetary frameworks of the Member States, [2011] OJ L306/41). As a matter of course, the Directive does not prevent a Member State's new government from updating its medium-term budgetary framework to reflect its new policy priorities.

Whilst in the wake of the constitutional litigation it has ended up embracing the positions adopted by German Ministers within European institutions (Dechâtre 2011: 321[52]) the *Bundestag* will in any case have to pass beneath the Caudian yoke and accept the constraints introduced by the new budgetary arrangements.

2.3.8 *Concluding remarks*

The Euro Plus Pact, the ESM and the Fiscal Compact are testament to a move towards inter-governmentalism. Nonetheless, neither the Fiscal Compact nor the ESM call into question the primacy of EU law. Since they were not able to amend either the TEU or the TFEU, the parties to the Fiscal Compact ensured that it would be consistent with EU law. Given that there is no question of its encroachment upon the competences of the EU (Article 2(2) TSCG, see also Articles 3 and 7 stating that the Treaty is to be applied without prejudice to EU law), the principle of primacy remains unaffected. Moreover, with the Fiscal Compact obligations strengthening pre-existing mechanisms of primary and secondary law calling for reinforced cooperation (Article 20 TEU and Articles 326 to 34 TFEU), the Community method need not give ground to any inter-governmental method (Louis 2012c: 4). On the contrary, the parties to this Treaty are making full use of the existing EU institutional mechanisms.

Moreover, the adoption of the 'six-pack' is testament to the fact that Directives and Regulations have not been dwarfed by these inter-governmental arrangements. Moreover, the 'two-pack' appears as an appropriate vehicle to flesh out the economic partnership programmes set out by the Fiscal Compact.

At the end of the day, all EU institutions except for the European Parliament appear to be much stronger, given that they were granted more competences. In particular, the new powers conferred on the Commission and the Council are likely to give real teeth to economic governance in the EU. The Fiscal Compact confirms some of the surveillance mechanisms introduced by the

'six-pack' and the 'two-pack'. Whether the balance of power has tilted in favour of one institution remains to be seen. Some institutional developments have been contradictory. Besides, the crisis has shown the extent to which informal mechanisms are likely to prevail over formal mechanisms. Lastly, given that an avant-garde of countries whose currency is the euro is likely to foster more integration in the field of economic policies, this might be the beginning of a permanent 'two-class' EU (Piris 2012: 13).

2.4 Conclusions

Whilst the financial crisis highlighted the inadequacies in the surveillance and regulation of markets, the debt crisis has brought to the fore the gaps within the structuring of economic and fiscal policies. In order to remedy this, EU institutions have not tarried in reforming and beefing-up the Stability and Growth Pact (SGP) and, absent of any power to amend any provisions of the TFEU, in adopting several inter-governmental agreements overarching EU law (the EFSF, the ESM, the Fiscal Compact).

Needless to say, the budgetary surveillance framework currently in place, defined in the SGP, remains broadly valid. Indeed, the SGP is still an essential part of the fiscal and macroeconomic framework of the EMU, which contributes to achieving macroeconomic stability in the EU and safeguarding the sustainability of public finances.

Nonetheless, the modifications brought to the SGP by the 2011 'six-pack' and the 2013 'two-pack' reflect a significant shift towards greater focus on debt and fiscal sustainability, with a view to reinforcing compliance and ensuring that national fiscal frameworks reflect the EU's fiscal rules. In particular, the criterion of public debt is henceforth better reflected in the budgetary surveillance mechanism. Accordingly, the Commission and the Council will be able to scrutinise the Member States' public finances much more carefully and pre-emptively than before. By the same token, the introduction of a new mechanism for macroeconomic surveillance is broadening the EU fiscal surveillance. Moreover, to increase the effectiveness of the SGP, a wider range of sanctions and measures are provided for in both the preventive and the corrective arms of the SGP. The financial sanctions range from interest-bearing deposits to fines. For Euro area countries, the Commission will be able to enforce more strongly than before the Council's recommendations by proposing sanctions at an earlier stage. What is more, the introduction of a reverse majority rule for the adoption of enforcement measures is likely to reinforce the effectiveness of the sanctions. In addition, the European Semester (a reinforced *ex-ante* coordination) allows a simultaneous assessment of both fiscal discipline (stability and convergence programmes), macroeconomic stability and structural reforms, fostering growth and employment. Needless to say, the 'six-pack' represents hitherto the most drastic reinforcement of economic governance since the launch of the EMU (Rehn 2011; de Sadeleer 2012).

Last but not least, the TSCG, better known as the Fiscal Compact, represents a step forward in providing 'national appropriation' of the fiscal control mechanisms. It buttresses some of the 'six-pack' obligations. In particular, it reinforces the two nominal anchors of the SGP: the GDP reference value for the deficit ratio (from a 3 per cent to a 1 or 0.5 per cent threshold) and confirms the 60 per cent of GDP reference value for the debt ratio (through a reduction at an average rate of one-twentieth per year as a benchmark) as well as the control of the medium-term budgetary objectives which are the centrepiece of multilateral surveillance.

At this stage, various observations may be made. The crisis undeniably and very clearly renders the need to replace the rules at the heart of economic governance, following decades of deregulation. Measures taken in soft law or the control over fiscal policies through the sanctioning of markets are no longer sufficient.

Nevertheless, one has the impression of meandering through an English-style park rather than a classic French garden. Indeed, one can only be struck by the heterogeneous nature of the texts setting out the new structure of governance, which is based on provisions forming part of international law (the EFSF, the ESM and the Fiscal Compact), treaty (Articles 121, 126 and 136 TFEU) and secondary law, hard law (the 'six-pack' and the 'two-pack'), soft law (the 2020 EU Strategy and Euro Plus Pact), Directives, and Regulations.

Competences are not clear-cut: the 2020 EU Strategy and the Euro Plus Pact stand astride EU and national competences, whereas the Fiscal Compact requirements reckon upon EU competences.

Moreover, the scope of these measures varies. As shown below, some rules are applicable to the 18 States with the euro as their common currency (Regulation (EU) No 1174/2011), whilst others apply to the whole of the EU (Regulation (EU) No 1173/2011 and No 1176/2011; Directive 2011/85/EU), and others still to the 23 States (Euro Plus Pact). This has led to a balkanisation of economic governance.

Moreover, these measures seek to proliferate the regimes of preventive control and sanctions (notices, reports, warnings, deposits, fines, etc.).

In addition to its Byzantine structure, the new governance also involves an accumulation of coordination and evaluation procedures (the European Semester, the Euro Plus Pact and the 2020 EU Strategy), with all of the problems of scheduling and overlap which this entails for a public service operating under budgetary constraints.

It also results in an increase in informal decision-making procedures, whether this may be with the Euro Group – an informal grouping within the Council – or more recently with the Council of the Euro area which, following its creation by the European Council on 26 October 2011, has now been called upon to play a significant role in economic integration within the Euro area. One also has the feeling that the informal procedures will progressively replace formal decision-making procedures, even if this involves formalising them as well.

Table 2.5 Economic governance in the EU

Measures	*Member States*
'Six-pack' Regulations 1175/2011, 1176/2011 and 1177/2011	28 EU Member States
Reference values mentioned in the Protocol No 12 on EDP and Numerical Fiscal Rules (Articles 5 to 7 Directive 2011/85)	27 (all EU Member States except UK)
'Six-pack' Regulations 1173/2011 and 1174/2011 and 'two-pack' Regulations 472/2013 and 473/2013	18 Member States having the euro as currency
Fiscal Compact	25 (all EU Member States, except UK, Cz and Croatia)
SEM	18 Member States having the euro as currency
Euro Plus Pact	23 (all EU Member States, except Sw, Hu, Cz and UK)

Furthermore, this governance still resembles a flat-footed colossus since it is liable to fall foul of the principle whereby powers must be allocated (Article 5(1) TEU). There is also a valid question as to whether the rules adopted by the Euro area (Article 136 TFEU) enable the sanctions applicable to excessive public deficits (EPDs) (Article 126 TFEU) to be extended to other pillars of the SGP, including in particular macroeconomic surveillance. Or is this a false problem? Only time will tell.

Will the accumulation of these processes distract us by throwing sand in our eyes? Will the application of the 'six-pack' and the 'two-pack' rules in a strict manner make sense in the face of a significant economic downturn? Is the new Treaty sufficient in order to set up a new economic governance whilst respecting the powers of the national parliaments and the European Parliament? Would the Fiscal Compact be any more effective than the reformed SGP? Will these reforms live up to the task? Will they be able to reduce imbalances in terms of indebtedness and competitiveness? In any case, will the waves of reform be able to reassure the markets, or will it all be necessary to do more in order to reassure the financial markets? Given that fiscal challenges differ among the Member States, the question arises as to whether a 'one-size-fits-all' approach fits the need for a differentiated speed of consolidation.

By themselves, the 'six-pack', the 'two-pack' and the Fiscal Compact will not bring the EU out of the crisis that started with Greece, spread to other peripheral Eurozone Member States and is likely to continue to challenge the future of the monetary union, let alone the EU itself.

Nevertheless, the grey areas remaining must not mask the will to bolster fiscal discipline through an enhanced coordination and a range of sanctions. Despite all the imperfections within the edifice which we are now describing, the signal given by the EU and the parties to the Fiscal Compact is as clear as crystal.

Be that as it may, that is still not the full story. Since the EU has been backed into a corner, the identity crisis that is undermining the integration project will at any cost have to lead to significant progress in terms of economic governance. The monetary federation has now been complemented by a budgetary federation, which in the end will inevitably lead the EU towards a tax federation. One day, with or without the UK authorities, it will be necessary to reform the Treaties establishing the EU, and that reform will certainly no longer be limited only to Articles 121 and 126 TFEU.

Notes

1 The powers of the EU are shared in the area of coordination of economic and employment policies as well as of social policies (Articles 4(1) and 5 TFEU). Unlike shared competences listed in Article 4(2), these competences are only the subject of coordination measures, and not of legislative harmonisation (Article 5 TFEU). On the other hand, the EU enjoys exclusive competence in the area of monetary policy for Member States whose currency is the euro (Article 4(1)(c) TFEU).

2 The work of the ESRB shall be taken into due consideration in the drafting of indicators relevant to financial market stability. The Commission shall invite the ESRB to provide its views regarding draft indicators, relevant to financial market stability. See Article 4(5) Regulation (EU) No 1176/2011 of the European Parliament, and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, [2011] OJ L306/25.

3 Final report of the Task Force to the European Council, *Strengthening Economic Governance in the EU*, Brussels, 21 October 2010.

4 Decision of 10 May 2010 of the Representatives of the Governments of the Euro area Member States Meeting within the Council of the European Union establishing the European Financial Stability Facility, doc. 9610/10 and the EFSF Framework Agreement of 7 June 2010 between the participating Member States.

5 BVerfG, 7 September 2011, 2 BVR 987/10, *et al.*

6 The EFSM has been activated for Ireland and Portugal, for a total amount up to EUR48.5 billion (up to EUR22.5 billion for Ireland and up to EUR26 billion for Portugal), to be disbursed over three years (2011–13).

7 Decision 2010/281 of the European Central Bank of 14 May 2010 establishing a securities markets programme, [2010] OJ L 124/8.

8 Final Report of the Task Force to the European Council, *Strengthening Economic Governance in the EU*, para. 48.

9 Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, [2010] OJ L118/1.

10 On 25 March 2011, the European Council adopted in virtue of Article 48(6) TFEU, under the heading *Simplified revision procedures*, Decision 2011/199/EU. See the Decision of the European Council of 25 March 2011, OJ [2011] L 91/1.

11 In an interim ruling, the Court allowed the German authorities to ratify the Treaty. See BVerfG, 12 September 2012, BVR 1390/12. The final decision is still pending.

12 Article 109 of the *Grundgesetz* provides that 'In managing their respective budgets the Federation and the Länder shall take due account of the requirements of the overall economic equilibrium'. Spain was the second country after Germany to approve a golden rule of budget stability in the Constitution. On 7 September 2011,

the Spanish Senate approved an amendment to Article 135 of the Constitution introducing the requirement of a balanced budget provision and a strict limit on the indebtedness that both the national government and the regional governments may incur. On 7 September 2011, the Italian Lower House approved a constitutional reform introducing a balanced budget obligation (Article 81).

13 Regulation (EC) No 1466/97 of the Council of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, [1997] OJ L209/1; Regulation (EC) No 1467/97 of the Council of 7 July 1997 on speeding-up and clarifying the implementation of the EDP, [1997] OJ L209/6.

14 Recital 19 of Directive 2011/85/EC of the Council of 8 November 2011 on requirements for budgetary frameworks of the Member States, [2011] OJ L306/41. See in particular Regulation (EU) No 1173/2011 of 16 November 2011, which sets out a system of sanctions for enhancing the enforcement of the preventive and corrective parts of SGP in the Euro area.

15 Regulation (EC) No 1055/2005 of the Council of 27 June 2005 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, [2005] OJ L 174/1.

16 Ecofin Council, *Specifications on the implementation of the Stability and Growth Pact and Guidelines on the format and content of Stability and Convergence Programmes* (2010), p. 4.

17 Regulation (EC) No 1055/2005 of the Council of 27 June 2005 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJ [2005] L174/1.

18 Regulation (EC) No 1467/97, which enacted more detailed legislation on the EDP on the basis of Article 126 TFEU, contains a flexible element that enables negative and unexpected economic shocks to be taken into account. It follows that the Council may decide, acting on a recommendation by the Commission, to extend the time limit granted in order to correct an excessive deficit, initially by one year. Accordingly, on the basis of '*special circumstances*', in 2009 the Council granted Ireland and Greece a supplementary period of two years beyond the normal time limit in order to enable them to correct their budget deficits.

19 Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the Euro area, [2011] OJ L306/1.

20 Regulation 473/2013 of European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area, [2013] L140/11.

21 Regulation 472/2013 of European Parliament and of the Council on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the Euro area, [2013] L140/1.

22 Final report of the Task Force to the European Council, *Strengthening economic governance in the EU*, Brussels, 21 October 2010, p. 7.

23 Recital 18 and Article 5(1), 2nd al. of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011; Recital 18 of Directive 2011/85/EU of the Council of 8 November 2011 on requirements for budgetary frameworks of the Member States, [2011] OJ L306/41.

24 It must be noted that in its 2010 *Specifications on the Implementation of the SGP*, the Ecofin Council already invited the Member States to use unexpected extra

revenues for deficit and debt reduction. See Ecofin Council, *Specifications on the Implementation of the Stability and Growth Pact* (2010), p. 5.

25 Article 4(1) of Regulation (EU) No 1173/2011 16 November 2011 on the effective enforcement of budgetary surveillance in the Euro area, [2011] OJ L306/1.

26 Article 5(1) al. 1 and 2 of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011. It ought to be remembered that in accordance with the report on the SGP reform endorsed by the European Council on 22 March 2005, Euro area and ERM II Member States that have not yet reached their MTOs should achieve an annual adjustment in cyclically adjusted terms, net of one-offs and other temporary measures of 0.5 per cent of GDP as a benchmark. By the same token, in its *2010 Specifications on the Implementation of the SGP*, the Ecofin Council invited the Member States subject to an EDP procedure to achieve a minimum annual improvement in its cyclically adjusted balance of at least 0.5 per cent of GDP as a benchmark. See Ecofin Council, *Specifications on the implementation of the Stability and Growth Pact* (2010), p. 8.

27 Article 9 of Regulation (EU) No 473/2013 and Article 5 TSCG. See Section IV, Specifications of 1 July 2013 on the implementation of the Two Pack and Guidelines on the format and content of draft budgetary plans, economic partnership programmes and debt issuance reports.

28 Regulation (EU) No 1173/2011 of 16 November 2011 on the effective enforcement of budgetary surveillance in the Euro area, [2011] OJ L306/1.

29 However, in May 2012 the Commission has concluded that Hungary has taken the necessary corrective action to correct its excessive deficit for the lifting of the suspension of its Cohesion Fund commitments amounting to EUR500 million.

30 Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, [2011] OJ L306/25.

31 Commission, *Alert Mechanism Report prepared in accordance with Articles 3 and 4 of the Regulation on the prevention and correction of macro-economic imbalances*, COM(2012) 68 final.

32 Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the Euro area, [2011] OJ L306/8.

33 See Council Recommendation 2008/390/EC of 14 May 2008 on the BEPG for the Member States and the Community (2008–10), [2011] OJ L 137/13.

34 Eurozone Member States that are subject to a macroeconomic adjustment procedure need not submit stability programmes under the terms of the European Semester. See Article 10(1) of Regulation (EU) No 472/2013.

35 See the Code of Conduct of the Ecofin Council of 7 September 2010. (See, *Specifications on the implementation of the Stability and Growth Pact and Guidelines on the format and content of Stability and Convergence Programmes.*)

36 The 2012 Commission Report was adopted on 23 November 2011 and not in January 2012. See Communication from the Commission, *Annual Growth Survey 2012*, COM(2011) 815 final.

37 Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the Euro area, OJ L140/11.

38 Directive 2011/85/EU of the Council of 8 November 2011 on requirements for budgetary frameworks of the Member States, [2011] OJ L306/41.

39 Regulation (EU) No 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the Euro area experiencing or threatened with serious difficulties with respect to their financial stability, [2013] OJ L 140, p. 1.

40 The UK Prime Minister vetoed the treaty, largely on the grounds that he had not managed to secure a guarantee that it would not affect the UK's financial services industry. See House of Commons, *The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union*: political issues, Research Paper 12/14, 27 March 2012.

41 Lisbon Case, BVerfG, 2BvE 2/08, 30 June 2009, §§ 250 and 256; aid measures for Greece and against the euro rescue package Case, 2BvR 987/10, 2BvR 1485/10, 2BvR 1099/10, 7 September 2011, § 124. With respect to the guarantees in the framework of the ESM, the Constitutional Court ruled that by adopting this act, the German *Bundestag* did not impair in a constitutionally impermissible manner its right to adopt the budget and control its implementation by the government or the budget autonomy of future Parliaments. Nonetheless, the Federal Government is obliged to obtain prior approval by the Budget Committee before giving guarantees.

42 Pursuant to Article 3(1)(c), the Contracting Parties may temporarily deviate from their medium-term objective or the adjustment path towards it only in exceptional circumstances.

43 The Commission is merely called on to submit a report regarding the implementation of Article 3(2). Accordingly, the initiators of the infringement proceeding are the Member States, not the Commission.

44 Council Legal Service Opinion on the compatibility with EU law of draft Article 8 TSCG, 26 January 2012.

45 Article 6(2) al. 5 of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011; Article 6(2) of Regulation (EU) No 1173/2011 on the effective enforcement of budgetary surveillance in the Euro area; Article 3(3) of Regulation (EU) No 1174/2011 on enforcement measures to correct excessive macroeconomic imbalances in the Euro area, [2011] OJ L306/8, (TSCG. Article 7).

46 Decision 2010/320/EU of the Council of 10 May 2010 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit, [2010] OJ L145/1; Council implementing decision 2011/77/EU of 7 December 2010 granting EU financial assistance to Ireland, [2011] OJ L30/4; Council implementing decision 2011/344/EU granting EU financial assistance to Portugal, amended by decision of 2 September 2011, [2011] OJ L240/8.

47 The Committee is composed of senior officials from national administrations, and central banks, the ECB, and the Commission. See Council decision 2003/476/EC of 18 June 2003 on a revision of the Statutes of the Economic and Financial Committee, [2003] OJ L 158.

48 Ever since the entry into force of the Maastricht Treaty, the institutional arrangements regarding MEU are specific. In sharp contrast with other EU economic policies such as internal market, the role of the European Parliament has always been belittled. The Lisbon Treaty does not bring any improvement.

49 14th Recital of the preamble and Article 2 bis (4) and 2 bis of Regulation 1466/97 as amended by the Regulation (EU) No 1175/2011. In this connection, the Future of Europe Group proposes that the European Parliament 'should, among other things, be consulted within the scope of the European Semester before the formulation of fundamental aspects (e.g. the Annual Growth Survey) or on concrete recommendations affecting the EU, or the euro area as a whole'.

50 Article 2 bis ter (3) of Regulation (EC) No 1466/97 as amended by Regulation (EU) No 1175/2011. See also Article 8(4) on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the Euro area, COM(2011) 819 final.

51 Regulation (EU) No 1175/2011 modifying the Regulation (EC) No 1466/97 underscores the association of national parliaments in drafting different programmes. See the 16th Recital of the Preamble of Regulation 1466/97 as amended by Regulation (EU) No 1175/2011. See also Article 8(4) of the proposal for a regulation on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the Euro area, COM(2011) 819 final.

52 See also BVerfG (2BvE 2/08), of 11 September 2011 on the MESF, § 128, by virtue of which the *Bundestag* is called on to give its assent to the considered aids.

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