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Part II

The Governance of Economic, Monetary and Financial Affairs

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The Confusion of Tasks in the Decision-Making Process of the European Economic Governance

ALEXANDRE DE STREEL

I. INTRODUCTION

SINCE THE START of the Euro-crisis in 2010, the governance of the Eurozone has been substantially revised to an extent unthinkable before the crisis. The governance is now based on four main pillars whose objectives, scope and European oversight vary.[1] The first pillar relates to *surveillance of national fiscal imbalances*. It aims to prevent and, if necessary, correct fiscal imbalances having spill-over effects between Member States and threatening the stability of the Eurozone; it applies to all Member States of the European Union (EU) with the possibility of more sanctions against the states of the euro area. The second pillar relates to the *surveillance of national macroeconomic imbalances*. As for fiscal imbalances, it aims to prevent and correct macro-economic imbalances having spill-over effects. The third pillar relates to the *coordination of national economic and social policies*. It aims to achieve economic convergence within the EU; it applies to all Member States; and it does not provide for sanctions against defaulting Member States. The fourth pillar relates to *conditional solidarity between Member States*. It aims to alleviate the bankruptcy of a Member State and ensure the stability of the Eurozone; it is limited to the Member States of the euro area.

This paper focuses on the first two pillars of the reformed economic governance applied to the Member States of the euro area. Section II describes the new decision-making process to ensure surveillance and coordination of the national economic policies as well as to sanction the violation of the rules by the Member States. Section III explains how the functioning of the national governments, the

[1] For a description of the evolution of the different pillars of the economic governance, see J-P Keppenne, 'Institutional Report' in *The Economic and Monetary Union*, XXVI FIDE Congress in Copenhagen (2014) 179–257; A de Streel, 'The Evolution of the EU Economic Governance since the Treaty of Maastricht: An Unfinished Task' (2013) 20 *Maastricht Journal of European and Comparative Law 20th Anniversary Issue* 336.

European Commission and the Council of Ministers has been improved for a better compliance with the rules. Section IV claims that the new process does not sufficiently distinguish between the technical assessment and the discretionary choices made by each institution, and does not sufficiently subject each of those tasks to effectiveness and legitimacy requirements. Section V shows that a different allocation of competences could make the decision-making process more effective and legitimate.[2] Finally, Section VI concludes with proposals for policy reforms.

II. THE DECISION-MAKING PROCESS FOR THE GOVERNANCE OF THE EURO AREA

The decision-making process for the first two pillars of the reformed economic governance is based on: (a) a dialogue between the national governments, the European Commission and the Council of Ministers for the surveillance and the coordination of national economic and social policies; which (b) may lead to financial sanctions decided by the Council; and which (c) takes place in the shadow the EU and national courts.

A. The Annual Cycle of Surveillance of Imbalances and Coordination of Economic Policies: An Executive Dialogue

1. The Surveillance of National Fiscal Imbalances

The surveillance of national fiscal imbalances takes place as follows.[3] In April, each Member State submits to the Commission its *Stability Programme (SP)* which describes its fiscal policy for the next three years.[4] Such stability programme should be based on macroeconomic forecasts produced or endorsed by a national independent fiscal council.[5] At the same time, each Member State adopts

[2] The effectiveness and the legitimacy of the EU budgetary constrain are analysed in several contributions published in M Adams, F Fabbrini and P Larouche (eds), *The Constitutionalization of European Budgetary Constraints: Comparative and Interdisciplinary Perspectives* (Oxford, Hart Publishing, 2014).

[3] For an overview of the revised Stability and Growth Pact, see European Commission, 'Building a Strengthened Fiscal Framework in the European Union: A Guide to the Stability and Growth Pact' (2013) European Economy: Occasional Paper 150; European Commission, 'Vade mecum on the Stability and Growth Pact' European Economy: Occasional Paper (2013) 151.

[4] Art 4 Council Regulation (EC) 1466/97 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, amended by Council Regulation (EC) 1055/2005 of 27 June 2005 [2005] OJ L174/1 and by Regulation (EU) 1175/2011 of the European Parliament and of the Council of 16 November 2011 [2011] OJ L306/12; Specifications of 3 September 2012 on the implementation of the Stability and Growth Pact and Guidelines on the format and content of Stability and Convergence Programmes.

[5] Art 2(1b) Regulation (EU) 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 [2013] OJ L140/11.

a *medium-term fiscal plan* compatible with the fiscal country-specific recommendation addressed previously by the Council to the Member State.[6]

In May, the Economic Department of the European Commission (the Directorate-General for Economic and Financial Affairs, DG ECFIN) produces the Spring Economic Forecast, which projects the macroeconomic and budgetary indicators for each Member State. On that basis, the DG ECFIN assesses whether each stability programme complies with the EU deficit rules (the 3 per cent of the GDP ceiling set for the nominal public deficit and the Medium Term Objective set for the structural public balance) and debt rule (the 60 per cent of the GDP ceiling).[7] On the basis of this analysis, and within the discretion provided by the EU fiscal rules, the Commission College recommends to the Council of Ministers the adoption for each Member State of *one fiscal country-specific recommendation (CSR)* which sets fiscal targets and/or means to achieve those targets.

In June, the Economic and Financial Committee, which is composed of senior officials of the national finance ministries and of the European Commission,[8] analyses the economic assessment made by the Commission services and negotiates the fiscal country-specific recommendations proposed by the Commission's College. Then, the Council of Finance Ministers (ECOFIN) adopts by qualified majority the fiscal CSRs[9] and can only amend the Commission proposal by explaining the reasons for the changes ('comply or explain' rule).[10] As was the case for the Commission, the Ministers decide within the discretion provided by the EU fiscal rules.

Note that if a Member State does not comply with its fiscal country-specific recommendation, the Commission addresses a warning and proposes a new and more prescriptive recommendation. The Council adopts this recommendation by qualified majority and following the 'comply or explain' rule.[11] The Commission may also propose a deposit bearing interest of 0.2 per cent GDP. This sanction is automatically adopted by the Council unless a qualified majority opposes, that is, under a reverse qualified majority voting system.[12]

Then in October, each Member State submits to its national parliament its *draft budget*[13] and submits to the European Commission a *draft budgetary plan*, which summarises the draft budget.[14]

[6] Art 4 Regulation 473/2013.

[7] Those rules are provided by primary EU law (Art 126 TFEU and Protocol 12), secondary EU law (Art 2(a) Regulation 1466/97) and international treaties (Arts 3–4 TSCG).

[8] The Economic and Financial Committee is established by Art 134 TFEU and the Council Decision 2012/245 of 26 April 2012 on a revision of the Statutes of the Economic and Financial Committee [2012] OJ L121/22.

[9] Such recommendation is adopted on the basis of Art 121(2) TFEU.

[10] Art 2-ab(2) Regulation 1466/97 amended.

[11] Such recommendation is adopted on the basis of Art 121(4) TFEU.

[12] Art 4 Regulation (EU) 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.

[13] Art 4(2) Regulation 473/2013.

[14] Art 6 Regulation 473/2013, Section II of the 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.

In November, the Economic Department of the European Commission produces the Autumn Economic Forecast. On that basis, the DG ECFIN assesses whether each draft budgetary plan complies with the EU fiscal rules, respects the Stability Programme and takes into account the fiscal country-specific recommendation. On the basis of this analysis, the Commission College adopts an *opinion* on each draft budgetary plan, and if it does not comply with EU rules, it may request a revision of the plan.[15] Here again, the College decides within the discretion left by EU fiscal rules.

2. *The Surveillance of Macroeconomic Imbalances and the Coordination of National Economic and Social Policies*

The surveillance of macroeconomic imbalances and the coordination of national economic and social policies runs as follows. In November, the Commission adopts the *Annual Growth Survey* which summarises the economic situation of the EU and proposes priorities for economic reforms at European and national levels to stimulate growth and jobs. The Commission also reviews the *macroeconomic evolution* of the Member States on the basis of a scoreboard of 11 indicators and indicates the States which justify an in-depth review.[16]

In the spring, the priorities of the Annual Growth Survey are discussed by several Council configurations (in particular, the Council of Finance Ministers, the Council of Employment and Social Affairs Ministers and the Council of Competitiveness Ministers), the European Council (composed of the heads of state or government) and the European Parliament. The Commission also concludes the macroeconomic in-depth review indicating the Member States which present imbalances to be corrected.[17]

Then in April, each Member State submits its *National Reform Programme (NRP)*, which describes their past and future reforms for economic, employment and social policies.[18] Such national reform programme should be based on national macroeconomic forecast produced or endorsed by a national independent fiscal council and be consistent with the stability programme.

In May, a core group of the Commission departments (mainly Economic and Financial Affairs, Employment and Social Affairs and the Secretariat General) assesses whether each national reform programme takes into account the Council integrated economic policies guidelines,[19] the Commission Annual Growth Survey and the country-specific recommendations previously addressed by the Council

[15] Art 7 Regulation 473/2013.

[16] Arts 3 and 4 Regulation (EU) 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.

[17] Art 5 Regulation 1176/2011.

[18] Art 2-a (2d) Regulation 1466/97 amended.

[19] Council Recommendation (EU) 2010/410 of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L291/28 and Council Decision (EU) No 2010/707 of 21 October 2010 on guidelines for the employment policies of the Member States [2010] OJ L308/46.

Table 1: Annual Cycle of Surveillance and Coordination Procedures[20]

			Fiscal Surveillance	**Macroeconomic Surveillance**	**Socio-economic Coordination**
April	National Government	*T: Independent Fiscal Councils*	— Budgetary statistics — Macroeconomic forecasts		
		C: National Ministers	Stability Programme (SP)	National Reform Programme	
May	European Commission	*T: Economic and Employment Departments*	— Macroeconomic and budgetary forecasts — Technical assessment — Macroeconomic imbalance review		
		C: College of Commissioners	Fiscal draft country-specific recommendation (CSR)	Other draft country-specific recommendations (CSR)	Other draft country-specific recommendations (CSR)
June–July	Council of Ministers	*T: Expert Committees*	Economic and Financial Committee Negotiate fiscal CSR	Economic Policy Committee: Negotiate other CSRs	Economic Policy Committee, Employment Committee, Social Protection Committee: Negotiate other CSRs
		C: Ministers	Council of Finance Ministers Adopt CSR	Council of Finance and of Employment Ministers Adopt other CSRs	
October	National Government	*T: Independent Fiscal Council*	— Budgetary statistics — Macroeconomic and budgetary forecasts		
		C: National Ministers	Draft Budgetary Plans		
November	European Commission	*T: Economic Department*	— Macroeconomic and budgetary forecasts — Technical assessment		
		C: College of Commissioners	Opinion (pos. revision request)		

[20] T refers to technical analysis and assessments while C refers to discretionary choices.

to the Member State concerned. It also assesses the evolution of macroeconomic imbalances. On the basis of those analyses, the Commission College recommends to the Council the adoption of several *country-specific recommendations (CSR)* to be combined with the fiscal recommendation. Such recommendations may set objectives to be met and/or socio-economic policies to achieve those targets. In doing so, the College enjoys a broad political discretion.

In June, four Council committees composed of senior national officials (the Economic and Financial Committee, the Economic Policy Committee, the Employment Committee and the Social Protection Committee) analyse the Commission services economic assessment and discuss the recommendations proposed by the College. Then, Council of Finance Ministers and the Council of Employment Ministers negotiate the draft CSRs. Then, the Summer European Council endorses the texts of the Councils and, finally, the Council of Finance Ministers formally adopts the country-specific recommendations by qualified majority and following the 'comply or explain' rule. Like the Commission, the Council enjoys political discretion in the negotiation of the CSRs.

B. Sanctions when Rules are Violated

If a Member State violates the EU fiscal rules or presents excessive macroeconomic imbalances, it faces corrective procedures leading to the imposition of financial sanctions by the Council.

In case of violation of the EU deficit or debt rules, a Member State may be subject to the *excessive deficit procedure (EDP)* with the following steps: (i) On the basis of a thorough economic analysis by Economic Department of the European Commission, the College of Commissioners may propose to the Council of Finance Ministers to place a Member State under an excessive deficit procedure and to set up a fiscal trajectory to comply with EU rules.[21] In proposing this trajectory, the Commission enjoys some political discretion. (ii) After an opinion of the Economic and Financial Committee, the ECOFIN Council adopts a decision opening the excessive deficit procedure by reverse qualified majority of the Member States of the euro area[22] and the State concerned cannot vote to alleviate an obvious conflict of interest.[23] The Council also adopts a recommendation setting a deadline to reduce the deficit to below 3 per cent of the GDP with a fiscal trajectory to reach such deadline.[24] Here again, the Council enjoys some political discretion. (iii) In this case, the Member State is subject to extensive reporting requirements

[21] Art 126(3) TFEU.
[22] Art 126(6) TFEU, Art 139(4b) TFEU and Art 7 TSCG.
[23] Art 126(13) TFEU.
[24] Art 126(7) TFEU.

with the regular submission of economic partnership programmes which allow the DG ECFIN and then the College of Commissioners to closely monitor the implementation of the budgetary trajectory imposed by the Council.[25] In case of non-compliance, the College of Commissioners proposes a graduation of financial sanctions. The ECOFIN Council decides those sanctions by reverse qualified majority.[26]

This EU corrective procedure is now complemented by a *national correction procedure*. If the national independent fiscal council observes a significant deviation from the Medium Term Objective set for the structural public balance, a national correction procedure proportionate to the deviation should be triggered.[27]

In case of excessive macroeconomic imbalances, a Member State may be subject to an *excessive imbalance procedure (EIP)* with the following steps: (i) After a thorough economic analysis by Economic Department of the European Commission, the College of Commissioners may propose to the Council of Finance Ministers to place a Member State under excessive imbalance procedure.[28] Here also, the Commission enjoys some political discretion in making this choice. (ii) After discussion in the Economic and Financial Committee, the ECOFIN Council adopts, by qualified majority and following the 'comply or explain' rule, a decision opening an excessive imbalance procedure. It also adopts a recommendation[29] on the socio-economic policies to be adopted to correct the imbalances. (iii) In this case, the Member State submits a corrective action plan, which should be endorsed by the Council of Finance Ministers.[30] (iv) The DG ECFIN monitors the implementation of the plan and, in case of violation, the College of Commissioners proposes financial sanction (up to 0.1 per cent of GDP). After discussion in the Economic and Financial Committee, the ECOFIN Council decides the sanction by reverse qualified majority.[31]

[25] Arts 9–10 Regulation 473/2013 and Section IV of the 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.

[26] Art 126 (11) TFEU, Art 7 TSCG, Arts 5–6 Regulation 1173/2011.

[27] Art 6 Council Directive EU 2011/85 of 8 November 2011 on requirements for budgetary frameworks of the Member States [2011] OJ L306/41, Art 5 Regulation 473/2013, Art 3(1e) TSCG and Communication of the Commission, 'Common principles on national fiscal correction mechanisms' COM (2012) 342.

[28] Art 7 Regulation (EU) 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.

[29] This recommendation is adopted on the basis of Art 121(4) TFEU.

[30] Art 8 Regulation 1176/2011.

[31] Art 10(4) Regulation 1176/2011 and Art 3(2a) 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.

Table 2: EU Corrective Procedures[32]

			Excessive Deficit Procedure (EDP)	**Excessive Imbalance Procedures (EIP)**
Decision to require correction	European Commission	*T: Economic Department*	— Macroeconomic and budgetary forecasts — Technical assessment	Macroeconomic in-depth review
		C: College of Commissioners	— Report — Proposal to place in EDP	Proposal to place in EIP
	Council of Ministers	*T: Experts Committee*	Economic and Financial Committee Opinion	
		C: Council of Finance Ministers	— Decision EDP — Recommendation: deadline and fiscal trajectory	— Decision EIP — Recommendation: policy actions
Implementation of the correction	National Government	*T: Independent Fiscal Councils*	— Budgetary statistics — Macroeconomic forecasts	
		C: National Ministers	Economic Partnership Programmes	— Corrective Action Plan — Progress Reports
	European Commission	*T: Economic Department*	— Macroeconomic and budgetary forecasts — Technical assessment	— Macroeconomic and budgetary forecasts — Technical assessment
		C: College of Commissioners	— Pos. Proposal for non-compliance — Pos. Proposal for sanctions (up to 0.5% GDP)	— Pos. Proposal for non-compliance — Pos. Proposal for sanctions (up to 0.1% GDP)
	Council of Ministers	*T: Experts Committee*	Negotiation in the Economic and Financial Committee	Negotiation
		C: Ministers	Pos. Decision on sanctions	Pos. Decision on sanctions

[32] T refers to technical analysis and assessments while C refers to discretionary choices.

C. The Shadow of the Courts

As several authors have observed, the reformed economic governance increases substantially the role of the national and EU courts in budgetary and economic choices and policies.[33] Although Article 126(10) TFEU excludes an infringement procedure against a Member State violating the EU fiscal rules, EU courts have other means to control the budgetary compliance of the Member States. First, the Court of Justice of the European Union controls the transposition (but not the implementation) of the golden rule and the national automatic correction mechanism provided by the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG).[34] Secondly, when the Council imposes a financial sanction against a defaulting Member State, that State may request an annulment of the Council decision by the EU Court. In adjudicating such a case, the Court has to review the compliance by the State concerned of the EU budgetary rules. In addition, at the national level, the automatic correction may allow national courts to annul or suspend a budget violating the Medium Term Objective (MTO) rule.

III. BETTER INSTITUTIONS FOR BETTER RULES COMPLIANCE

As the reformed economic governance is mainly based on an interaction between national governments, the European Commission and the Council of Ministers, it is essential that each of those institutions performs their tasks properly. That is why EU law, and sometimes international law such as the TSCG, impose minimum requirements on national executives and improve the functioning of the Commission and the Council.

Regarding national institutions, EU law requirements mainly focus on the production of statistical data and economic forecasts as well as on the implementation of the national correction mechanism. First, public accounting systems should be subject to national internal control and independent audits[35] as well as to the control of Eurostat, the statistics department of the Commission.[36] Secondly, macroeconomic forecasts should be realistic, produced or endorsed by an independent fiscal council, and significant divergences with the Commission forecasts should be explained.[37] Moreover, budgetary forecasts should be realistic

[33] For instance, F Fabbrini, 'The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective' (2014) 32 *Berkeley Journal of International Law* 64.

[34] Art 8 TSCG.

[35] Art 3 Directive 2011/85.

[36] Arts 11–11b Council Regulation (EC) 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community [2009] OJ L145/1, amended by Council Regulation (EC) 679/2010 of 26 July 2010 [2010] OJ L198/1.

[37] Art 4 Directive 2011/85 and Art 2(1) Regulation 473/2013.

and may, but should not necessarily, be produced or endorsed by an independent fiscal council. Thirdly, the implementation of the national correction mechanism in case of violation of the fiscal rules should be monitored by the independent fiscal council.[38] Thus, EU requirements mainly relate to the technical tasks of the national executives and the main innovation is the obligation to set up a national fiscal authority whose independence and resources are guaranteed.[39]

Regarding the European Commission, improvements were achieved at the technical as well as the political levels. At the technical level, the DG ECFIN has been reinforced notably with more staff. At the political level, the Commissioner for Economic and Monetary Affairs and the Euro received extensive empowerment in order to increase the independence of its decision-making process.[40]

Regarding the Council of Ministers, improvements have also been achieved at the technical and the political levels.[41] At the technical level, the Economic and Financial Committee, and its Eurogroup sub-committee (the Eurogroup Working Group (EWG)) have a full-time and Brussels-based President. At the political level, it is envisaged that the Eurogroup will also have a full-time and Brussels-based President.[42] Moreover, the decision-making process has been made more automatic as the majority of the recommendations and the decisions are adopted following a 'comply or explain' rule and under reverse qualified majority voting.

IV. CONFUSION OF ROLES IN THE DECISION-MAKING PROCESS

The recent reforms of the EU economic governance gives important new tasks to each of its three main actors (national governments, European Commission and Council of Ministers) but it does not sufficiently distinguish between technical assessment and discretionary choices and, more critically, it does not sufficiently ensure the effectiveness and the legitimacy of each task.

A. Technical Analysis and Assessments

Before taking budgetary and economic decisions in economic governance, each of the three main institutions involved has to undertake complex technical macroeconomic assessments. At the national level, government departments and independent fiscal councils produce statistical data as well as macroeconomic and

[38] Art 5(2) Regulation 473/2013, Art 3(1e) TSCG and Communication of the Commission, 'Common principles on national fiscal correction mechanisms' COM (2012) 342, Principle 7.

[39] On the usefulness of the independent fiscal council in correcting the short-term bias of the budgetary authority, see X Debrun, D Hauner and M Kumar, 'Independent Fiscal Agencies' (2009) 23 *Journal of Economic Surveys* 44.

[40] See European Commission Press Release, 27 October 2011, IP/11/1284.

[41] Points 7 and 8 of Annex I to the Euro Summit Statement of 26 October 2011: Ten measures to improve the governance of the euro area.

[42] ibid point 5.

budgetary forecasts and, when necessary, implement a national correction mechanism. At the European Commission level, Eurostat controls the statistical data sent by the Member States and the DG ECFIN produces macroeconomic and budgetary forecasts. At the Council level, the expert committees (Economic and Financial Committee, Eurogroup Working Group, Economic Policy Committee, Employment Committee and Social Protection Committee) analyse implicitly in their discussions the validity and the robustness of the Commission technical analysis.

To be legitimate and reliable, those technical macroeconomic analyses should comply with good governance principles.[43] (i) They should be based on methodologies that are transparent, non-discriminatory between Member States and consistent over time, and reflect mainstream economic theories. (ii) Those methodologies should be periodically assessed and, when needed, corrected or adapted. (iii) They should be produced by departments or agencies that are sufficiently independent from the political and budgetary authority to alleviate capture and time inconsistency, and that have sufficient financial and human resources to deliver quality work. (iv) Those departments or agencies should cooperate in a vertical way (between the national and the European levels) as well in a horizontal way (between national authorities) to exchange best practices as well as to develop common methodologies.

Unfortunately, those principles are not sufficiently met today. At the national level, the most important analysis and forecasts are produced or endorsed by fiscal agencies whose independence and resources are guaranteed.[44] However, a vertical cooperation between those independent fiscal councils and the European Commission as well as a horizontal cooperation among independent fiscal councils have not yet been formally organised. The creation of a European network composed of the national independent fiscal councils and the European Commission could improve the quality of each member of the network, reinforce their independence vis-à-vis their national budgetary authorities and contribute to the development of European methodologies.[45]

At the Commission level, the DG ECFIN depends on the political orientation given by the College of Commissioners. It is true that the Commissioners are independent from the Member States[46] but they are not independent from political tendencies. On the contrary, the new President of the Commission, Juncker, made clear that he wants a more political Commission. In this context, it is more difficult to guarantee the independence of the DG ECFIN's analysis. If the

[43] On those principles see, eg R Baldwin, M Cave and M Lodge, *Understanding Regulation: Theory, Strategy and Practice*, 2nd edn (Oxford, Oxford University Press, 2012).

[44] Art 2(1a) Regulation 473/2013.

[45] Such networks of authorities have been set up for the regulation of network industries: Regulation (EC) 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office [2009] OJ L337/1, and Regulation (EC) 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators [2009] OJ L211/1.

[46] Art 17(3) TEU.

Commission becomes a fully-fledged political government of the EU, then the DG ECFIN should be removed from the Commission and made an EU fiscal agency with similar independence and resource requirements to those imposed by EU law for national fiscal councils.[47]

At the Council level, the functioning and the methodologies used by the technical committees, in particular the Economic and Financial Committee, remain very secretive. For instance, the implementation of methodologies used to determine the medium-term objective set for the structural public balance of each Member State is not public although this objective is now one of the key rules of the economic governance.[48] In addition, the methodologies used to propose the budgetary trajectory in case of excessive deficit procedure are not clear. Therefore, the functioning and the methodologies of those technical committees should be more transparent.[49]

B. Discretionary Choices

On the basis of those technical assessments, each of the three main institutions involved in economic governance enjoys some political discretion in making choices about fiscal and economic policies. At the national level, the governments decide their budgetary trajectories as well as the level of public expenses and revenues to meet those trajectories. At the Commission level, the College of Commissioners proposes recommendations and decisions on compliance with EU hard and soft law by the Member States. In case of corrective procedures, the College also proposes the imposition of financial sanctions against defaulting Member States. At the Council level, the Ministers decide, often by reverse qualified majority voting, on all the proposals made by the College of Commissioners.

To be legitimate in a parliamentary democracy, those discretionary fiscal and economic choices should be made by a parliamentary assembly or, at least, by an institution directly accountable to a parliamentary assembly. However, the parliamentary oversight needed for economic governance recommendations and decisions is complex because, on the one hand, it relates budgets and policies adopted at the national level which calls for national oversight but, on the other hand, it relates to decisions having spill-over effects between Member States which calls

[47] A similar argument can be made for the other quasi-judicial or technical tasks done by the Commission and requiring independence, such as the enforcement of competition rules.

[48] The methodological principles to calculate the Medium Term Objective are described in the Specifications of the Council of 3 September 2012 on the implementation of the Stability and Growth Pact and in European Commission, 'Vade mecum on the Stability and Growth Pact' (2013) (n 3) 151. However, the implementation of those principles to calculate the MTO of each Member State is not made public.

[49] J-V Louis, *L'union européenne et sa monnaie*, Commentaire Mégret, 3rd edn (Brussels, Université de Bruxelles, 2009).

for European oversight. Because of this inherent complexity, the parliamentary involvement in the economic governance remains weak to date.[50]

Recommendations and decisions, and the political choice they imply, are proposed by the Commission and adopted by the Council. The European or national parliaments are only indirectly involved as the Commission is accountable before the European Parliament and each Minister, member of the Council, is accountable before his or her own national parliament. Moreover, a soft economic dialogue has been set up between, on the one hand, the European Parliament and, on the other hand, representatives of EU executive institutions (Commission, Council and European Council) or the Member State concerned.[51]

The question is whether this mere indirect parliamentary involvement is adequate to give democratic legitimacy to budgetary and economic choices having far-reaching consequences for the citizens. I think it is not adequate for several reasons. First, it involves mainly the European Parliament and not sufficiently the national parliaments whose core competences in fiscal, economic and social policies are at stake. Secondly, it leads merely to a bilateral relationship between the European Parliament and EU or national institutions and not to a multilateral relationship between national national parliaments. Thirdly, it merely leads to a dialogue and not to recommendations or decisions.

Thus the next question is how to ensure a more important involvement of parliamentary assemblies without impeding effectiveness. I think this involvement should be based on national parliaments (because economic governance relates to national budget decisions), having a horizontal dialogue (because those national budget decisions have spill-over effects between Member States). Such horizontal parliamentary dialogue would parallel the horizontal executive dialogue in the Council. To be efficient, the horizontal dialogue could be organised within a permanent Conference of representatives of national parliaments[52] adopting non-binding opinion before the Council of Ministers takes decisions and recommendations on economic governance.

In summary, to improve the effectiveness and the legitimacy of the current decision-making process of the European economic governance, I call for a clearer distinction between the technical assessment and the discretionary choices made by the national governments, the European Commission and the Council of Ministers. I also suggest subjecting the technical assessments to more transparency,

[50] On that point, see also F Amtenbrink, 'General Report' *The Economic and Monetary Union*, XXVI FIDE Congress in Copenhagen (2014) 107 and the references to the national reports.

[51] Art 2-ab Regulation 1466/97 amended; Art 2a Regulation 1467/97 amended; Art 3 Regulation 1173/2011; Art 14 Regulation 1176/2011; and Art 15 Regulation 473/2013.

[52] This is not the same as the inter-parliamentary conference set up by Art 13 TSCG which comprises representatives of the national parliaments but also the EU Parliament. I think the representatives of the EU Parliament should not be part of the Conference because it creates a confusion between the EU and the national levels of legitimacy and because economic governance relates to purely national decisions. On the difficulties of the functioning of the Art 13 Inter-parliamentary Conference, see V Kreilinger, 'The new Inter-Parliamentary Conference for Economic and Financial Governance' (Notre Europe—Jacques Delors Institute, 2013).

consistency, non-discrimination and independence and submitting political choices to more democratic parliamentary control. However, such reforms are hard to implement for several reasons. Technical assessments and discretionary choices are closely related and may be difficult to separate. Moreover, the additional control by parliamentary bodies, in particular national parliaments, is difficult to set up in an efficient manner.

V. THE ALTERNATIVE ROUTE: INTEGRATION INSTEAD OF SURVEILLANCE

Thus a more radical reform may be required to achieve effectiveness and legitimacy more easily. Instead of leaving economic policies entirely in the hands of the Member States and increasing their surveillance and coordination, federalising part of the economic policies with an increase of the EU budget and/or the creation of a fiscal capacity for the euro area (and ideally with the granting of taxation power to the EU) is the alternative route. This route could be more effective and raise fewer legitimacy concerns.

Regarding effectiveness, many economists[53] and the Four Presidents Report[54] claim that a federal budget and partial federal economic policies are needed to balance a federal monetary policy. In particular, the creation of a euro area fiscal capacity to absorb asymmetric macroeconomic shocks may be necessary to guarantee the sustainability of a monetary zone.[55] Regarding legitimacy, the increased EU budget or a newly created euro area fiscal capacity could be adopted by the European Parliament (or a euro area Parliament) to achieve the double legitimacy on which the European integration is now based.

VI. CONCLUSION

Ideally, a policy reform should meet three conditions: political feasibility, maximisation of its effectiveness and maximisation of its legitimacy. A reform of the EMU

[53] P De Grauwe, *Economics of Monetary Union*, 9th edn (Oxford, Oxford University Press, 2012).

[54] H Van Rompuy in close collaboration with JM Barroso, J-C Juncker and M Draghi, 'Towards a Genuine Economic and Monetary Union' 5 December 2012.

[55] See also, F Fabbrini, 'From Fiscal Constraints to Fiscal Capacity: The Future of EMU and its Challenges' in M Adams, F Fabbrini and P Larouche (eds), *Constitutionalization of European Budgetary Constraints: Comparative and Interdisciplinary Perspectives* (Oxford, Hart Publishing, 2014) 399–418. However, the leaders refused at this stage to create such fiscal capacity. It is striking to observe that the European Council discussed at the same time the reform of the economic governance and the future of the EU budget (the Multiannual Financial Framework 2014–2020) and both issues were never linked politically, although they are clearly related economically. Since then, a single resolution fund for the banking sector has been agreed and may be the first step of a euro area fiscal capacity: Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) 1093/2010 [2014] OJ L225/1 and International Agreement of 21 May 2014 on the transfer and mutualisation of contributions to the Single Resolution Fund.

ensuring effectiveness and legitimacy is the partial federalisation of the economic policies to balance the full federalisation of the monetary policy and the establishment of a fiscal capacity for the euro area. However, this reform is at present not politically acceptable although the recently established single resolution fund for the banks is an encouraging step in this direction.

As the only politically feasible option today is the surveillance and coordination of the national economic policies based on an executive dialogue between national governments, the European Commission and the Council of Ministers in the shadow of the Courts, improvements are needed to increase effectiveness and legitimacy. First, the technical assessment and the discretionary political choices made by each institution should be better distinguished. Secondly, each of those tasks should be subjected to additional effectiveness and legitimacy requirements.

Regarding the technical analysis and assessments, the newly created national fiscal councils should have sufficient resources and expertise and be truly independent from their budgetary authorities, the independence of the DG ECFIN should be guaranteed especially as the European Commission becomes more politicised and the dialogue among national fiscal councils as well as with the Commission should be strengthened, possibly by establishing a formal European network of fiscal councils. Moreover, the functioning of Council committees, in particular the Economic and Financial Committee and their use of economic methodologies, should be more transparent.

Regarding discretionary choices, these need to be explicitly recognised instead of remaining hidden behind complex economic analysis and EU rules. Once recognised, they should be better legitimised. One way to do that is to require that economic governance recommendations and decisions adopted by the Council of Ministers take into account an opinion of a newly created conference of representatives of national parliaments.