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European Sovereign Debt Crisis and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union—New Instrument of the European Union's Economic Governance

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Abstract

In December 2011, the European Union heads of state or government, with the exception of the United Kingdom, agreed to adopt a "Fiscal Compact" as part of an overall strategy to tackle the sovereign debt crisis in the euro area. The United Kingdom vetoed its adoption as an EU treaty, so the other member states agreed to adopt it as an intergovernmental treaty instead. On 30 January 2012, 25 member states formally agreed to the "Treaty on Stability, Coordination and Governance in the Economic and Monetary Union" (Fiscal Compact Treaty), signing it in March 2012. The Fiscal Compact Treaty entered into force on 1 January 2013, owing to its

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ratification on 21 December 2012 by a 12th country. However, the United Kingdom and the Czech Republic are not parties to the new treaty. This paper offers a review of the Fiscal Compact Treaty, with the aim of assessing whether and how the new treaty can be expected to strengthen EU fiscal governance and national fiscal discipline. This paper looks at some of the issues that arise, such as its legal status, its relationship with the EU treaties and EU law, the use of EU institutions, and whether the treaty could constitute a cornerstone of a fiscal union.

Key Words: euro area, European sovereign debt crisis, Fiscal Compact Treaty, European Stability Mechanism, European fiscal union

I. Introduction

The global economy has been hit by a series of shocks following the banking and financial crisis of 2008. The effects have been deeply felt in the EU where both euro area and non-euro area countries have experienced economic difficulties. The problems vary from country to country, but broadly include excessive public debts, low economic growth rates, rising unemployment, and poor competitiveness. The sovereign debt crisis in the euro area has revealed that the monetary and fiscal policy framework of the Economic and Monetary Union (EMU) still leaves much room for improvement. Obviously, the rules-based mechanism created by the Stability and Growth Pact (SGP) was insufficient to prevent or resolve a debt crisis, despite its emphasis on keeping government deficits low and ensuring budgetary discipline. Moreover, once the crisis broke out and financial markets became agitated, it became obvious that the EMU did not have the policy tools to manage and remedy the crisis. In the end, the European Union (EU) responded to the crisis, first by agreeing on stabilization for Greece, and then by creating the European Financial Stability Facility (EFSF), which succeeded in calming the markets. However, these responses were developed in an ad hoc manner, and on a temporary basis only, and do not provide a sufficient basis for dealing with the lingering debt crises in the euro area. One lesson to be learned from the European sovereign debt crisis is that monetary union, by itself, is insufficient. The crisis exposed the interdependence of the European economies and created an urgent need to improve coordination, in particular on fiscal policy. The EU will need far more fiscal and economic integration, meaning that member states will have to give up a significant amount of sovereignty. The creation of a European fiscal union will aim at both improving crisis prevention and financing a mechanism for sovereign debt resolution. More importantly, it will deepen European integration.

When trying to improve EU-level policy coordination, and to

strengthen the credibility of the existing financial instruments, the question is how to improve the economic governance framework. Pressed by Germany, European leaders agreed on a new treaty to tighten fiscal discipline in the euro area and deepen economic integration as a means of addressing the sovereign debt crisis. On the margins of the European Council meeting on 2 March 2012, the leaders of twenty-five EU member states[1] formally signed the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (so-called the European Union's new Fiscal Compact Treaty) in order to reinforce budgetary discipline among governments in the wake of the debt crisis. The new Fiscal Compact Treaty aims at establishing a permanent framework to ensure "orderly" crisis management in the future, and allowing member states to adopt coordinated measures to safeguard financial stability of the euro area; however, the vast majority of the content of the fiscal treaty reproduces provisions that already exist in either the EU treaties or secondary legislation. The treaty required ratification by a minimum of twelve member states before entering into force; it entered into force at the beginning of 2013, owing to its ratification on 21 December 2012 by a 12th country, Finland. Subsequently, other member states may ratify the treaty if they wish.

The treaty has been described by its proponents as the first foundation stone of a fiscal union, while its opponents criticize the agreement as a meaningless distraction from resolving the debt crisis in the euro area. This paper analyses the legal status, the content, and the impact of the new treaty, as well as the long road leading to the creation of the European fiscal union. If the legal requirements and provisions are to be properly implemented, strengthening political commitments will be the key.

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[1] One other member state of the EU (the Czech Republic) may sign the treaty later; the UK does not propose to sign it.

II. Legal Status of the Fiscal Compact Treaty

The Fiscal Compact Treaty deals with issues related to fiscal stability, economic coordination in the EU, and governance of the euro area. There are already detailed EU rules in existence concerning these issues, particularly with respect to fiscal stability. The Fiscal Compact Treaty restates some of these rules, reinforces others, and introduces some new rules. One point must be made at the start: the Fiscal Compact Treaty, in its present form, is not part of EU law; it is an instrument that is coordinated with, and to large extent dependent on, primary EU law. This is the main problem of the treaty.

A. Fruit of Compromise: By-passing the British Veto and EU Treaty Revision Procedures

The Fiscal Compact Treaty entails further EU integration, though it is an intergovernmental agreement, not an EU Treaty, and it does not amend existing EU treaties. It is not, therefore, in the same category as the Lisbon Treaty. Although it is not itself an EU treaty, it is to be applied and interpreted in conformity with EU treaties and EU law.

The European Council meeting on December 9, 2011, discussed the incorporation of the reinforced SGP rules into EU treaties.[2] Only the United Kingdom (UK) openly opposed the proposal, and its veto effectively blocked the treaty amendment. The UK tried to win concessions in return for backing an amendment to the EU's existing treaties, as Prime Minister David Cameron sought to exempt the UK financial services industry from

[2] See Regulation (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, Official Journal of the European Union L 306/12, 23 November 2011.

EU regulations, a demand deemed unacceptable by its European partners. It is well known that under Article 48 of the Treaty on European Union (TEU), any amendments to the treaties must be agreed unanimously and ratified by all member states. It is important to note that the countries in the euro area can negotiate a treaty regarding an area outside the EU's exclusive competence, but cannot breach EU law. Also, any intergovernmental agreement to change the rules concerning the powers of EU institutions requires the agreement of all member states.

As a means of circumventing the British veto, EU leaders, led by France and Germany, pressed ahead with a new treaty of their own. Outside the EU legal framework, a separate intergovernmental agreement is expected to be negotiated between and ratified by as many EU member states as possible, but with a special emphasis on participation by countries in the euro area. Negotiating the text of the new treaty was left to the Eurogroup Working Group, a reconfiguration of the Economic and Finance Committee chaired by Thomas Wieser, reconstituted as an ad hoc working group with participation from a small number of members of the European Parliament and with the UK delegation as an observer. The new treaty text was finalized on 30 January 2012. Two months later, twenty five EU countries signed up to German-led fiscal treaty. This would allow elements of the SGP to hold the status of treaty law, while allowing the UK to remain unaffected by the new rules.

To address concerns over the legality of by-passing of EU treaty revision procedures, Article 2 of the Fiscal Compact Treaty requires that the Treaty be interpreted and applied in conformity with the EU treaties, with reference made to the principle of "duty of loyal cooperation" laid down in Article 4(3) of the TEU, and with EU law (secondary legislation, decisions of the Court of Justice of the European Union), and that the EU treaties and EU law take precedence in the event of a conflict.

As an intergovernmental agreement, the Fiscal Compact Treaty is established outside of the EU's existing treaties and under

the general rules of public international law. It cannot, therefore, be part of EU law. However, the leaders of the countries in the euro area stressed that the "objective remains to incorporate these provisions into the treaties of the Union as soon as possible" (European Council, 2011: 7), so it can become part of the EU legal order. Article 16 of the Fiscal Compact Treaty states that within five years, at the latest of its entry into force, "steps shall be taken" to incorporate the agreement into the legal framework of the EU.[3] This provision is very similar to one included in the Prüm Convention.[4] In the past, the EU used such bridging measures when member states were unable to reach unanimity on treaty revisions, and the treaty serving as a bridging measure was subsequently incorporated into the EU treaties or into the EU legal framework, via secondary legislation, as happened with the Prüm Convention. There is now a clear aim of incorporating the Fiscal Compact Treaty into the EU legal framework, so it should not be a stand-alone mechanism on a permanent basis.

In terms of both its origin and negotiations, the Fiscal Compact Treaty marks an important departure from the text of the ordinary revision procedure. The new treaty is a non-EU treaty, but confers functions on EU institutions, particularly the European Commission and the European Court of Justice (ECJ). Some commentators argue that a group of member states, operating outside the EU legal framework without unanimous approval of

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[3] This provision of the Fiscal Compact Treaty is sometimes called the "repatriation clause."

[4] The 2005 Prüm Convention was signed among seven member states outside the legal framework of the EU, but it was foreseen "Within three years at most following entry into force of this Convention, on the basis of an assessment of experience of its implementation, an initiative shall be submitted, . . . with the aim of incorporating the provisions of this Convention into the legal framework of the European Union." Then, in 2007, the Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, incorporated in the framework of the EU the main provisions of the Prüm Treaty. Nevertheless, it is important to note that neither Schengen and Prüm initially provided for the involvement of the EU institutions.

the other member states, seeking to confer new powers on EU institutions, is illegal. The European Commission, or the ECJ, should not enforce the Fiscal Compact Treaty because doing so is simply not within their mandate (Miller, 2012: 26-33; "No backsliding," 2012; "The Treaty on Stability," 2012). Some questions remain as to how EU institutions, such as the European Commission or the ECJ, could enforce what is, for now, essentially an intergovernmental agreement among sovereign nations. Some commentators argue that there is no legal basis to formally institutionalize the Euro Summit as there is no reference in the EU treaties to this new EU institution, nor to the new post of president of the Euro Summit (European Foundation, 2012: 14). The legal basis of the new treaty is still not clear, and it will be very complex, in a legal sense, for the new Fiscal Compact group to use EU institutions to enforce the new treaty.

Another issue arises as a result of the intergovernmental nature of the new treaty. The Fiscal Compact Treaty is silent on what will happen to countries—especially countries within the euro area—that fail to ratify the new treaty because of a negative referendum outcome or parliamentary vote. As a consequence, the future of these countries, as countries within the euro area, could be brought into question should they fail to ratify. Could the Treaty provisions nonetheless be implemented? How effective will the Treaty be in such a circumstance (Miller, 2012: 21)?

Crucially, many politicians, experts and commentators did not think the new treaty would, for practical, political, and economic reasons, achieve its aims and produce the intended effect. Questions have already been raised over whether the treaty would add anything of substance to recently adopted economic governance measures, or be any more effective than the SGP (Miller, 2012: 18-20). In short, it remains to be seen whether the new treaty will really help to resolve the crisis in the euro area. The new treaty represents a compromise of half-measures which aim at responding to market expectations and political realities.

B. The New Treaty as an Instrument of EU Economic Governance

The economic and financial crisis has revealed a number of weaknesses and severe shortcomings in the economic governance of the EU generally, of the euro area in particular. Clearly, the crisis has challenged the basic premise that underpinned the creation of the EMU—namely that the coordination of economic policies would be sufficient to safeguard the consensus over the single currency. It was recognized that the single currency was incomplete in that it lacked a common fiscal policy. The euro area is atypical as an economic union because monetary policy is decided at the European level while fiscal policy is mostly carried out at the level of the Member State (Bordo, Markiewicz, & Jonung, 2011: 26). To qualify for membership in the Euro, candidates had to meet the so-called Maastricht convergence criteria, which included deficit and debt limits similar to those in the SGP (Mortensen, 2013: 6-9; van Aken & Artige, 2013: 144-148). Some member states had already accumulated large fiscal imbalances; however, the SGP—the fiscal surveillance mechanism in place to safeguard the stability of EMU—did not provide sufficient incentives to ensure that these fiscal imbalances were corrected. The build-up of severe macroeconomic financial and fiscal imbalances within the euro area, and the following sovereign debt crisis in several countries in the euro area, called for the decisive reinforcement of the EU economic governance framework, in particular for the euro area, to ensure the stability and smooth functioning of the EMU.

The outbreak of a global financial crisis was unpredictable, and the absence of a treaty-based toolbox of measures to assist in tackling severe instability in the euro area prompted the EU and its member states to consider negotiating a clear treaty basis for supporting their crisis resolution policies. The emerging fiscal policies architecture of the EU aims at building a more effective

framework for the coordination and surveillance of the fiscal policies of the member states. The cornerstone of the EU's direct response to the sovereign debt crisis is the new set of stricter rules on enhanced EU economic governance, which draws on the experiences of the initial design failures of the EMU and attempts to reinforce the guiding principle of sound public finances.

The evolution of the sovereign debt crisis prompted the EU and its member states to adopt a number of instruments of various legal natures and durations. Economic governance is therefore seen as the preferred response to this situation and has been described as "reforming the rules that govern the euro area and the coordination of economic policies within the EU as a whole" (European Commission, 2010b). According to the European Commission, the EU has set five ambitious objectives—on employment, innovation, education, social inclusion and climate/energy—as part of the Europe 2020 strategy for "smart, sustainable and inclusive" growth (European Commission, 2010a). To ensure that the Europe 2020 strategy delivers, a new system of economic governance has been set up to coordinate policy actions between the EU and national levels.

According to the European Commission, the new EU economic governance is based on three main blocks (European Commission, n.d.), which also reflect the EU's reactions to the crisis:

(1) a reinforced economic agenda with closer EU surveillance, including the SGP, the Euro Plus Pact, the European Semester, the Economic Governance Package (so-called "Six Pack"), and the Fiscal Compact Treaty.

(2) action to safeguard the stability of the euro area, including the instruments of crisis management, such as the EFSF in 2010 subsequently replaced by the permanent European Stability Mechanism (ESM) which became operational in October 2012.

(3) action to repair the financial sector, i.e. a new financial

supervision architecture established in January 2011, including a European Systemic Risk Board (ESRB) for macro-prudential oversight of the financial system, and three European supervisory authorities: the European Banking Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority.

With regard to the surveillance of economic and fiscal policies, the current EU rules on government debt and deficits are set out in the treaties which govern the EU and in a series of EU laws. The two major rules are contained in the Treaty on the Functioning of the European Union (TFEU, Article 126 and Protocol No. 12). The detailed rules on implementing these major rules are generally contained in EU Directives and Regulations.

The EU rules are referred to as the SGP. The SGP came into force in 1998,[5] and has been amended a number of times since then, most notably in December 2011 when five of the six pieces of legislation in the so-called "Six Pack" came into effect.[6] The

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[5] The original rules set out in Regulation (EC) 1466/97 of 7 July 1997 addressed strengthening the surveillance of budgetary positions, and the surveillance and coordination of economic policies; Regulation (EC) 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure. These regulations were amended by Regulation (EC) 1055/2005 and Regulation (EC) 1056/2005.

[6] Further amendments to the SGP came into effect on 13 December 2011. These new rules are contained in five regulations and one directive (so-called the "Six Pack"). The following five regulations came into effect on 13 December 2011: 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; 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; Regulation (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97, on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies; 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; Council Regulation (EU) No. 1177/2011 of 8 November 2011 amending Regulation (EC) No. 1467/97, on speeding up and clarifying the

SGP is intended to ensure that member states maintain budget discipline in order to avoid excessive deficits. The SGP is of great importance because it includes two major rules addressing government debt and deficits: these rules state that no country should have a government deficit higher than 3% of gross domestic product (GDP), except in particular circumstances, nor a government debt higher than 60% of GDP.

In the fiscal field, the Six Pack strengthens the SGP. According to the SGP, member states' budgetary balances shall converge towards the country-specific medium-term objective (MTO)—the so-called "preventive arm"—the general government deficit must not exceed 3% of GDP, and public debt must not exceed 60% of GDP. Originally, this surveillance applied only to government deficits and debt. Since December 2011, it has also applied to other macroeconomic imbalances. The Six Pack also reinforces the "corrective arm" of the SGP, which involves intervention to correct breaches of the rules. There are now two procedures involved: the "Excessive Deficit Procedure" (EDP) and the "Excessive Imbalances Procedure" (de Sadeleer, 2012: 5-6; Louis, 2012: 411). Breaches of these rules have implications not only for the country concerned, but for the euro area as a whole. It is important to note that the rules on excessive deficits also apply to member states not in the euro area; however, these countries are not subject to sanctions if they break the rules.[7] In sum, the Six Pack includes reforms to both the preventive and corrective arms of the SGP, new minimum requirements for national budgetary frameworks, new Macroeconomic Imbalance Procedure (MIP), and

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implementation of the excessive deficit procedure. The Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the member states must be brought into national legislation by the end of December 2013.

7 For analysis of the Six Pack, see McArdle (2011: 9-10). The SGP has been criticized by some as being insufficiently flexible or ineffective, see Belke (2010: 6-7); Daianu (2012: 16-17); Kajaste (2004: 603-605); Paliouras (2011: 13-14).

a stronger enforcement mechanism through new financial sanctions under both the SGP and the MIP (European Central Bank, 2011: 114-116).

Giving further impetus to the governance reforms, twenty-three EU member states, including six outside the euro area (Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania), signed the Euro Plus Pact in March 2011 (Heads of state or government of the euro area, 2011). The Pact is a political commitment and aims at closer coordination of economic policies in order to preserve the single currency. The Pact contains a list of commitments linked to the Europe 2020 strategy and sets out four objectives that the member states wish to achieve: to foster competitiveness; to foster employment; to contribute further to the sustainability of public finances; and to reinforce financial stability. The intention is that these objectives be addressed by all member countries of the pact; however "the choice of the specific policy actions necessary to achieve the common objectives remains the responsibility of each country." The main policy instruments of the Pact include: monitoring and adjusting Unit Labor Costs, while "each country will be responsible for the specific policy actions it chooses to foster competitiveness"; tax reforms, such as lowering taxes on labor; aligning the pension system to the national demographic situation; putting in place national legislation for banking resolution; enacting appropriate legislation in order to "translate" at the national level the fiscal obligations of the SGP, and the development of a common corporate tax base (Paliouras, 2011: 27). The Euro Plus Pact is integrated into the European Semester and the Commission monitors implementation of the commitments. Compliance with these commitments is being monitored but there is no mechanism for enforceability (Abdallat, 2012: 23).

The European Semester has undoubtedly been the major innovation of the reforms (Louis, 2011: 58-61). In 2010, the Council approved a procedure for closer coordination of national

budgets and economic policies (European Council, 2010). This procedure, called the European Semester, divides the year into two semesters. The European Semester is the economic policy cycle that covers economic, budgetary and structural changes as well as measures to improve growth. In the first semester, member states present their draft budgets, stability and convergence programs to the Commission and member states for a review of their conformity with the rules of the SGP and the targets set in the Europe 2020 strategy. Based on this review, the European Council and the Commission issue policy advice to member states, following which the latter finalize their national budgets in the second semester. This process gives member states time to take EU considerations into account when planning their national budgets. Throughout the year the Commission undertakes a peer review of member states compliance with recommendations which could lead to possible enforcement measures, either the Excessive Deficit Procedure or the Excessive Imbalance Procedure (Eurodiaconia, 2011).

The last instrument that the EU has applied to the reform of economic governance is the Fiscal Compact Treaty. The Treaty aims to strengthen fiscal discipline through the introduction of more automatic sanctions and stricter surveillance, and in particular through the application of the "balanced budget rule" explained below.

III. Innovations of the Fiscal Compact Treaty

The Fiscal Compact Treaty has several significant features. The overall objective of the Fiscal Compact Treaty, as stated in the preamble, is to reaffirm "the need for governments to maintain sound and sustainable public finances and to prevent a general government deficit becoming excessive is of essential importance to safeguard the stability of the euro area as a whole" (Fiscal Compact Treaty, Preamble, third recital). Accordingly, the new treaty introduces some specific rules, including a "balanced budget rule"

and an automatic mechanism to take corrective action. Indeed, the Fiscal Compact Treaty includes a number of points which build directly on European legislation already in place, and the vast majority of the content of the fiscal treaty reproduces provisions that already exist in either the EU treaties or secondary legislation. Arguably, the new treaty is a stronger instrument for fiscal discipline than the EU framework. Questions arise as to how the Fiscal Compact Treaty interacts with the existing EU treaties and laws.

A. Core Elements of the Fiscal Compact Treaty

The essential features of the Fiscal Compact Treaty are that:

(1) the governments agree to be bound by rules on the level of government deficits and government debt;

(2) these rules must be implemented in national legislation;

(3) the ECJ may impose penalties for failures to abide by these rules;

(4) the excessive deficit procedure and the financial sanction thereof is more effective;

(5) the Euro Summit is formally institutionalized for governance in the euro area.

1. Balanced Budget Rule/Golden Rule

The core provision of the Fiscal Compact Treaty, Article 3, introduces an obligation for the contracting parties to respect the "golden rule" of a balanced budget in every fiscal year. The new treaty requires that the general government budget must be balanced or in surplus. The establishment of the "golden rule," at the heart of the Fiscal Compact Treaty, mainly aims at ensuring budgetary discipline (Baratta, 2013: 44). In general, the government's annual structural deficit must not exceed 0.5% of GDP (Fiscal Compact Treaty, Article 3[1][b]).[8] In comparison, the

[8] The "structural deficit" is the general government deficit adjusted for the economic

EU rules are not as strict as the limit on structural deficits is 1% or less of GDP. If the structural deficit is more than this, the government is obliged to work towards reducing it within time limits set by the EU. If government debt is significantly below 60% of GDP and the public finances are sustainable in the long term, the structural deficit may be up to 1% of GDP (Fiscal Compact Treaty, Article 3[1][d]).

The new treaty provides that the rules on the structural deficit are met if the deficit is at its "country-specific medium-term objective (MTO)" (Fiscal Compact Treaty, Article 3[1][b]), meaning that a separate objective is set for each country with the specific circumstances of each country being taken into account when setting the objective. The objective is revised from time to time to take account of economic changes. Each country is obliged to work towards achieving the objective set for it within a timetable set by the EU.

Deviations are only allowed in "exceptional circumstances" or deep recessions. The new treaty allows for a transition period, the length of which is not specified. "Exceptional circumstances" are defined as "an unusual event outside the control" of a state "which has a major impact on the financial position of the general government" or in "periods of severe economic downturn" (Fiscal Compact Treaty, Article 3[3][b]). However, the exceptional circumstances clause could be invoked by almost all participating countries from the moment the new treaty enters into force, which could nullify the impact of the numerical benchmarks in the treaty (o Broin, 2012: 7).

In the event of significant deviations from the MTO or the timetable set to achieve it, a correction mechanism will be triggered automatically. The mechanism will oblige the country to correct the deviations over a defined period of time. Signatories are obliged to put in place national automatic correction mechanisms

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cycle and for one-off or temporary measures. This requires a definition of a country's business cycle; however, it is difficult to estimate it accurately. See o Broin (2012: 7).

in case of a deviation from the agreed upon rules. This mechanism will be based on common principles to be set out by the European Commission. These will deal with, among other things, the nature, size and time-frame of the corrective action to be undertaken, and the role and independence of the institutions which will have responsibility at national level for monitoring how the rules are put into effect (Fiscal Compact Treaty, Article 3[2]).

The "golden rule" of a balanced budget must be transposed in the national law of the participating EU member states within one year of the entry into force of the Fiscal Compact Treaty through provisions of "binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes" (Fiscal Compact Treaty, Article 3[2]). Although the new treaty expresses a preference that the participating countries insert the new rule into their constitutions, this is not an obligation—other legal guarantees that the rules will be respected are also to be accepted.

2. National "Debt Brakes"

Under the current rules, all countries are required to maintain their general government debt below 60% of GDP. When the ratio of the general government debt to GDP exceeds the 60%, the new treaty requires that the participating countries reduce it at an average benchmark rate of one-twentieth (5%) per year until the target is met (Fiscal Compact Treaty, Article 4). This rule is applied over a three-year-average. In addition, countries are given a three-year grace period after the correction of their current deficit below the 3% target before the 1/20 rule is to come into effect. Here, the new treaty reiterates a similar rule already included in the Six Pack. Under the new treaty, a participating country can, on the basis of a report from the Commission or at its own initiative, bring another state before the ECJ if it believes that the other country has not fulfilled the provisions of passing a national "debt brake" into national law. The ECJ can impose a fine of up to 0.1%

of GDP (Fiscal Compact Treaty, Article 8). However, no specific sanction is foreseen in relation to this rule if a country fails to bring the debt-to-GDP level down to that threshold with "sufficient" speed (Blizkovsky, 2012: 4).

A Report issued by Deutsche Bank shows that if national debt brakes apply across the euro zone from 2016 and assuming a symmetrical business cycle and ruling out major macroeconomic imbalances for the coming years, many countries will meet the 60% debt-to-GDP ratio target between 2018 at the earliest (for Slovakia) and 2042 at the latest (for Greece) (Heinen, 2010: 12).

3. Court Supervision

The Fiscal Compact Treaty requires that the rules on government deficits and debts be put into national law, and that there be a national body with responsibility for monitoring their implementation. The new treaty sets up a mechanism for judicial enforcement centered on the ECJ.[9] The ECJ, on its own initiative or at the request from the European Commission or a participating country, can pass judgment over a lack of incorporation of these rules into the national legal system in due time (Fiscal Compact Treaty, Article 8[1]). The ECJ will have the power to impose penalties on the country in question—up to a maximum of 0.1% of GDP. A possible penalty is also foreseen if the country fails to comply with an ECJ ruling (Fiscal Compact Treaty, Article 8[2]). In cases involving "countries in the euro area," sanctions would be paid into the ESM; in the case of "non-euro area countries," the money would be attributed to the EU budget (Fiscal Compact Treaty, Article 8[2]).

[9] Article 273 of the TFEU provides that the ECJ may "have jurisdiction in any dispute between member states which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties." According to this provision, the ECJ can be used to enforce an intergovernmental agreement among EU member states, such as the Fiscal Compact Treaty. See Editorial Comments (2012: 8).

4. Reinforced EDP/Reverse Qualified Majority Voting (Reverse QMV)

The EDP is part of the SGP, and generally referred to as its "corrective arm." The EDP is contained in Article 126 of the TFEU, as well as EC Regulation 1467/97 on speeding-up and clarifying the implementation of the excessive deficit procedure. The launch of an EDP can now result from gross government debt (60% of GDP) as well as from general government deficit (3% of GDP). Once an EDP is opened for a country, the Council of the EU, on the basis of a recommendation from the Commission, issues recommendations which define the size of the fiscal adjustment to be delivered, and the deadline by which an excessive government deficit must be corrected.

The EDP has been reinforced by the Six Pack. In addition to rendering operational the debt criterion for opening an EDP, the Six Pack also strengthened the enforcement mechanisms including, in particular, financial sanctions, which have been significantly strengthened for countries in the euro area. Now, sanctions can be imposed throughout the EDP on a recommendation by the Commission for a Council decision. This decision is deemed adopted unless a qualified majority of member states votes against it. This is the so-called "reverse qualified majority voting" (reverse QMV) procedure, which makes the enforcement of financial sanctions in the framework of EDP "semi-automatic." A non-interest-bearing deposit of 0.2% of GDP may be requested from a country in the euro area that is newly placed in EDP. Should a country in the euro area that is already subject to an EDP fail to comply with recommendations for corrective action, the result will be a fine of 0.2% of GDP.[10]

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[10] EU member states that are not part of the euro area do not face sanctions in the form of a financial deposit or a fine under the Six Pack. But for beneficiaries of the Cohesion Fund (some of which are non-euro area countries), failure to comply with the recommendations under the EDP may lead to the suspension of Cohesion Fund commitments, as foreseen by the Regulation governing the Fund.

The Fiscal Compact Treaty introduces a number of changes designed to make the procedure more effective and less dependent on political votes in Council. Article 5 requires a participating country subject to an excessive deficit procedure under the EU treaties to put in place a "budgetary and economic partnership programme" that contains a detailed description of the structural reforms to be followed. The content and format of such programmes will be set out in EU legislation, and they are to be monitored by the Council and the Commission. Article 7 commits countries in the euro area to voting in the Council in support of the Commission's recommendations against a country in the euro area that it considers to be in breach of the deficit criterion in the framework of an excessive deficit procedure, unless a qualified majority is against the recommendation (a "reverse QMV"). In other words, the Council can only stop sanctions by a reverse qualified majority voting, requiring the votes of roughly two-thirds of member states to prevent the automatic application of sanctions.

In general, EU decisions are made in the following manner: the Commission makes a proposal, the European Parliament and the Council then decides on that proposal by means of a qualified majority. However, any decision to impose a financial sanction is taken differently: the Commission makes a recommendation to the Council, and the Council then imposes the financial sanction unless a qualified majority of its members vote against it. The excessive deficit procedure may be used in cases of breaches of the debt requirement, as well as breaches of the deficit requirement. The new treaty allows for a type of reverse qualified majority voting in the excessive deficit procedure that does not exist in the EU treaties. Article 7 of the new treaty obliges the participating countries to act as a coordinated voting bloc, and as a result, a shift to greater "automaticity" of the EDP.[11]

[11] On 23 November 2011, the European Commission submitted a proposal for two new regulations to further strengthen fiscal discipline and surveillance in the euro area. The proposal is often referred to as the "Two Pack." This is still under

5. Governing the Euro Area /Euro Summit

The Fiscal Compact Treaty formalizes the present practice whereby leaders of countries in the euro area hold informal meetings. It requires that the Heads of state or government of countries in the euro area that ratify the Treaty must meet informally in "Euro Summit" meetings. A President of the Euro Summit will be appointed by the Heads of state or government of the countries which have ratified the Fiscal Compact Treaty, by a simple majority, at the same time the European Council elects its President and for the same term of office (Fiscal Compact Treaty, Article 12[1]). Countries in the euro area that fail to ratify the new treaty will be unable to participate in the vote electing the President of the Euro Summit. As fiscal treaty entered into force on January 1, 2013, the first opportunity to elect the President of the Euro Summit will be in early December 2014. This increases the likelihood that the President of the European Council will, in practice, also be President of the Euro Summit (o Broin, 2012: 10). The meetings must be held with the President of the European Commission (Fiscal Compact Treaty, Article 12[1]). The President of the European Central Bank must be invited to take part (Fiscal Compact Treaty, Article 12[1]) and the President of the European Parliament may be invited (Fiscal Compact Treaty, Article 12[5]). Euro Summit meetings must take place at least twice a year, with non-euro pact signatories invited "at least" once per year (Fiscal Compact Treaty, Article 12[2]).

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discussion in Parliament and Council. For countries in the euro area in the EDP, the planned rules introduce a new system of monitoring. If adopted by the Council, this would more regularly provide the Commission with the information needed to judge whether or not there was a risk of non-compliance with the deadline set by the Council to correct the excessive deficit. If this was the case, the Commission would address a recommendation to the country in question. See Europa Press Releases (2011).

B. Different Paths to the Same Goal: The Fiscal Compact Treaty vs Other Instruments

In addition to the SGP, the European leaders reacted by introducing several incremental reforms: the European Semester, undertaking additional policy commitments in the Euro Plus Pact, and implementing the Six Pack. Moreover, in November 2011, the European Commission proposed two additional regulations to further strengthen surveillance of countries in the euro area, known as the "Two Pack." The "Two Pack" is intended to complement what has already been agreed under the Six Pack of economic governance measures, mainly through enhancing macroeconomic surveillance for countries subject to the excessive deficit procedure, or countries subject to a macroeconomic programme. There are also provisions for submitting draft budget plans to the European Commission.

The main goal of the Fiscal Compact Treaty is to foster fiscal discipline, notably in the euro area, by building on and enhancing the reinforced SGP. In fact, much of what is enshrined in the new treaty comes from the original rules of the SGP and tightened measures already passed as part of the Six Pack. The Fiscal Compact Treaty, together with the other policy instruments, aims to decisively reinforce the EU economic governance framework, in particular for the euro area, in order to ensure the stability and smooth functioning of the EMU.

The Fiscal Compact Treaty consists of two main modules: a balanced budget rule including an automatic correction mechanism, and a strengthening of the excessive deficit procedure. The general provisions of the balanced budget rule in the new treaty are basically in line with the EU regulations of the preventive arm of the SGP (see Table 1).

While the new treaty does not significantly modify assessments concerning the implications of the SGP, it does provide for a slightly revised excessive deficit procedure and, in contrast to the SGP, stipulates the direct involvement of the ECJ. Where the

new treaty differs is essentially in two areas. The first key difference is the “golden rule” on deficit. The new treaty’s rules are stricter as the limit for structural deficits are 0.5% or less of GDP.[12] The second innovation is that the ECJ, under the new treaty, will have the competence to impose sanctions on a country that fails to incorporate the “golden rule” into the national legal system in due time. Possible penalties of up to 0.1% of GDP are foreseen for countries in violation of the financial rules. The new treaty imposes constraints on the implementation of such rules at the national level and attributes to the ECJ the power to adjudicate the proper implementation of the rule. Article 8(1) of the new treaty obliges Contracting Parties to bring a lawsuit before the ECJ if the Commission reports that one of the Contracting Parties has failed to integrate the balanced budget rule into domestic law. The filing of a lawsuit is contingent on the will of the Commission and not that of the Contracting Parties, but, according to Article 273 of the TFEU, the Commission cannot have locus standi as an applicant. It should be noted that the new treaty empowers the ECJ to act on its own if a party is alleged to have failed to transpose correctly the balanced budget rule into the domestic law. In this way, the Court has to verify compliance with two essential obligations only: the establishment, at a national level, and timely implementation of the correction mechanism. It seems that the roles given the court and the Commission are limited, and that the new treaty aims at de-politicising bringing disputes on the implementation of the rule into domestic law before the ECJ.

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[12] However, it has been argued that the Fiscal Compact Treaty does not involve any significant new fiscal limits though the failure to adhere to the existing wording of the SGP introduces an element of confusion. Rather, it seeks to incorporate existing provisions into national law, preferably at constitutional level. The references in the new treaty to structural deficits of 0.5% and 1%, respectively, should not be interpreted as more restrictive than the original 3% deficit. In fact, they are already in use and are designed to ensure that the 3% limit is respected even in times of an economic downturn when the cyclical component of the deficit turns negative. See McArdle (2012: 14).

Table 1 Comparison of the preventive arm of the reinforced SGP with the balanced budget rule of the Fiscal Compact Treaty

	Revised SGP (preventive arm)	Fiscal Compact Treaty (balanced budget rule)
Legal basis	Secondary EU law	Primary law (intergovernmental and national level)
Budgetary objective	• Close to balance or in surplus • Country-specific MTO: maximal structural deficit of 1% of GDP for euro area countries	• Balanced or in surplus • Country-specific MTO: maximal structural deficit of 0.5% of GDP (or at most 1% if debt-to-GDP ratio is below 60% and risks to sustainability are low)
Escape clauses	• Severe economic downturn in euro area or EU as a whole • Unusual event outside the control of the government with major financial impact • Implementation of structural and/or pension reform (under strict conditions)	• Replicates reinforced SGP (without explicit reference to structural and/or pension reforms)
Convergence to budgetary objective	• Assessed on the basis of the structural balance and primary expenditure rule • Benchmark: annual improvement of structural balance of 0.5% of GDP (higher in economic good times and/or if debt-to-GDP ratio exceeds 60% or pronounced risks to sustainability of overall debt; might be lower in bad economic times)	• Rapid convergence to MTO (details to be proposed by the Commission) taking sustainability risks into consideration • Evaluation of progress as in the revised SGP
Assessing compliance	• Significant observed deviation (for a member state that has not reached its MTO) in case of simultaneous breach of the two following criteria (or breach of one and limited compliance with the other):	• Assessment of "significant observed deviations from the MTO or the adjustment path towards it" follows the revised SGP • Common principles on the role and independence of additional monitoring institutions proposed by the Commission

	1. Structural deficit criterion: exceeding adjustment path to MTO by at least 0.5% in one or 0.25% on average in two consecutive years; 2. Expenditure criterion: negative impact of expenditure developments (net of discretionary revenue measures) on adjustment path of government balance of at least 0.5% of GDP in one or cumulatively in two consecutive years.	
Correction mechanism	• In case of a significant observed deviation from the adjustment path towards the MTO: warning by European Commission • Council recommendation for the necessary policy measures on the basis of a Commission recommendation (deadline of not more than five months [three months in particularly serious cases] for addressing the deviation)	• Shall be triggered automatically in the event of significant observed deviations from the MTO or its adjustment path (including obligation to implement measures to correct the deviations over a defined period of time) • Implemented at the national level on the basis of common principles (nature, size and time-frame of the corrective action, also in the case of exceptional circumstances) as proposed by the Commission • Correction should (according to FC) include the cumulated impact of past deviations on government debt dynamics
Enforcement	• Commission can propose financial sanction (interest-bearing deposit of 0.2% of GDP) in case of no effective action taken • Automatic approval (sanction)—unless Council rejects the Commission recommendation by qualified majority (only euro area member states without country concerned)	• In addition to the reinforced SGP, financial sanctions can be imposed if the balanced budget rule and the correction mechanism are not properly implemented in national law despite earlier judgment by the European Court of Justice on non-compliance (imposed by the Court)

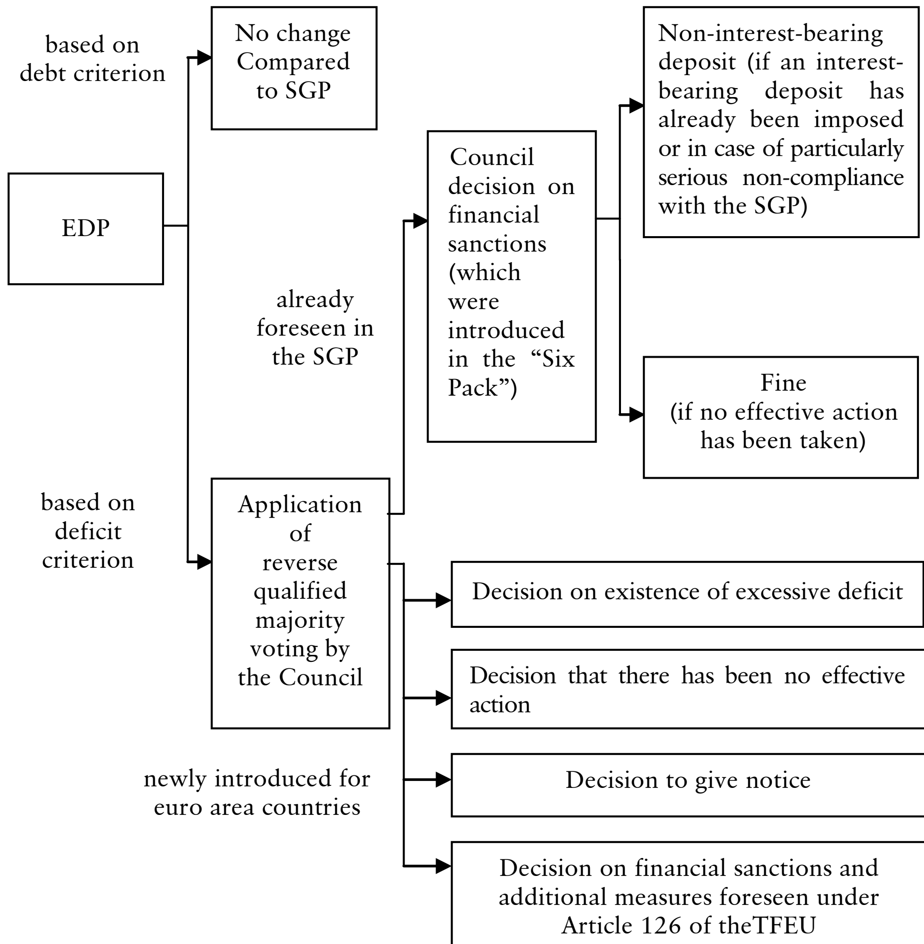
Source: European Central Bank (2012: 89).

The Fiscal Compact Treaty leads to more automatic procedures in the corrective arm of the SGP following a breach of the deficit criterion by a country in the euro area. Under the reinforced SGP, an excessive deficit procedure can be initiated on the basis of a breach of the deficit criterion and/or a breach of the debt criterion. The Fiscal Compact Treaty strengthens the decision-making procedures of the excessive deficit procedure following a breach of the deficit criterion by a country in the euro area, but not procedures in cases of a breach of the debt criterion (see Figure 1).

In particular, the Fiscal Compact Treaty provides for the application of reverse qualified majority voting by the countries in the euro area on important steps in the excessive deficit procedure, for which Article 126 of the TFEU demands qualified majority voting. This increases the automaticity of the excessive deficit procedure following a breach of the deficit criterion. If a member state repeatedly fails to comply with a decision by the Council, the Council may apply additional measures under Article 126 of the TFEU. The Council may, for example, require the member state concerned to publish additional information, or to invite the European Investment Bank to reconsider its lending policy towards that member state (European Central Bank, 2012: 91).

The "golden rule" comes in addition to the existing EU fiscal rules. The EU rules (based on the EU treaties and on the Six Pack secondary legislative rules) essentially comprise three norms: the 3% deficit-to-GDP ceiling, the medium-term budgetary objective (MTO) and the debt-reduction rule. In comparing these EU rules with the "golden rule," it becomes clear that the latter will impose significantly stricter fiscal discipline than is required by the EU rules.[13] In terms of economic governance, the new fiscal rules under

[13] For a comparison of the key provisions of the Fiscal Compact Treaty with the previous corresponding provisions, see Abdallat (2012: 24-31). For a comparison of the fiscal rules under the Six Pack with those under the Fiscal Compact Treaty, see Blizkovsky (2012: 4-6) and European Commission (2012).



Source: European Central Bank (2012: 91).

Figure 1 Comparison of the corrective arm of the reinforced SGP with the Fiscal Compact Treaty

the Fiscal Compact Treaty are based on, and compatible with, the EU rules, but go further both in terms of fiscal objectives and enforcement. The EU fiscal rules would become merely a safety net to be triggered in the event that the "golden rules" are not implemented effectively (see Table 2).

A senior research fellow at Egmont, argues that, if introduced successfully, a nationally implemented "golden rule" will completely overturn fiscal governance in the euro area. The "golden

Table 2 Order of likelihood of activation of the fiscal instrument (likely order of economic severity of the instrument)

Order	Legal basis	Instrument	Parameter	Sanction	Decision on sanction	Participating member states
1	Fiscal Compact Treaty	Deficit rule	Structural deficit below 0.5% of GDP	Penalty up to 0.1% of GDP (lack of incorporation of the rule into the national legal system)	ECJ	25 (does not include UK, CZ)
2	Fiscal Compact Treaty	Debt rule	1/20th annual reduction of debt above 60% of GDP	N/A	N/A	25 (does not include UK, CZ)
3	EU secondary legislation	Six Pack	Adjustment to MTO (preventive part) and excessive structural deficit over 0.5% of GDP	From the interest-bearing deposit of 0.2% of GDP to a fine of 0.2% of GDP	Council (reverse QMV)	27, sanctions to 17 (euro area) only
4	EU primary legislation	TFEU, Article 126, Protocol 12	"Nominal" deficit below 3% of GDP	Up to a fine of an appropriate size	Council (QMV)	27, sanctions to 17 (euro area) only

Source: Blizkovsky (2012: 7).

rule" enshrined in the new treaty would almost always be more stringent than EU fiscal rules. The importance of the EU fiscal rules will, as a consequence, diminish considerably as they are overshadowed by the "golden rule." The same commentator demonstrates how the nominal growth rate and the debt-to-GDP ratio of a country determine whether the debt- reduction rule or the "golden rule" will be more effective, and concludes that the "golden rule" would prevail in almost all economic circumstances. Therefore, the "golden rule" is supposed to be activated first to prevent fiscal imbalances; the debt-reduction rule would be more rigorous enforced only for countries with very high debt-to-GDP ratios and very low growth. The EU fiscal rules will hence evolve into a safety net in case a national "golden rule" proves ineffective (Verhelst, 2012: 3, 5-8, 10).

C. Implementation Issues

There is a great controversy over the relationship between the Fiscal Compact Treaty and other instruments, and the exact nature of this relationship remains subject to some degree of legal uncertainty. The Fiscal Compact Treaty was concluded under international law and therefore is not part of the EU law, although it is clearly intended to uphold the aims of the EU treaties and EU law. How will an intergovernmental treaty work in practice alongside the detailed EU rules already in existence? The repeated acknowledgement in the Fiscal Compact Treaty that the EU treaties and EU law take precedence over the new treaty's requirements (Fiscal Compact Treaty, Articles 2, 3, 7 and 10) probably will not solve the potential problems of duplication and inconsistency, or even simple contradiction, between these instruments, since there is significant degree of overlap between the provisions of the new treaty and the EU's own competences in the primary provisions of the TEU and TFEU, and secondary legislation such as the Six Pack and the Euro Plus Pact (Dougan & Gordon, 2012). Insofar as there may be a conflict or overlap

between the new treaty and the EU treaties, the EU treaties shall prevail. However, it is possible to argue that the balanced budget rule goes beyond what has already been agreed under EU law. Moreover, is it possible, legally, for the participating countries of the new treaty to adopt rules that are explicitly different from those set forth under EU treaties (e.g. the use of reverse QMV to block sanctions for breaching the deficit criterion in the framework of an excessive deficit procedure)? Can the participating countries make use of existing EU institutions to monitor and enforce the fiscal rules under the new treaty, for example, as provided for in Article 3 (2) of the Fiscal Compact Treaty (Armstrong, 2012; Miller, 2012: 23; "The Treaty on Stability," 2012)?

Fiscal deficits and growing debt ratios are two of the main causes of the financial and economic crisis afflicting countries in the euro area in 2011 and 2012. In the short and medium term, the recovery of the euro area can only be achieved through full implementation of the Fiscal Compact Treaty and budgetary discipline. The efficiency of public spending will be closely scrutinized. In the longer term, however, more ambitious policy objectives, intended to design a more economically and financially integrated Europe, have to be set. Fiscal convergence among the EU member states, or at least the countries in the euro area, is a complex but highly necessary task that needs to be prioritized. Obviously, the Fiscal Compact Treaty forces participating countries to adopt stronger national fiscal frameworks at home. Full implementation and strict adherence to the Fiscal Compact Treaty represent breakthroughs in terms of the management of national fiscal policies. Countries have to proceed to structural reforms, avoid additional burdening of capital and other production factors, and improve efficiency of public spending.

The current EU plan contains a requirement that national governments collectively agree to "upper limits" for each member state's annual debt and deficit levels. However, the key issue is how to ensure that targets are met. The Fiscal Compact Treaty

introduced new stricter version of the SGP, which previously failed to achieve fiscal discipline and stabilization. The SGP, although revised in 2005, received a great deal of criticism. Although the excessive deficit procedure was activated both for principal and peripheral countries, the sanction mechanism was not adequately implemented, and the debt ratio criterion was at several occasions ignored. Some countries, such as France and Germany, violated the parameters of the SGP without being sanctioned in 2003 (S. Fabbrini, 2013: 110). For the implementation of comprehensive and ambitious reforms imposed by the Fiscal Compact Treaty, France and Germany should take the lead and provide positive examples for the rest of the EU member states. However, while France is subject to the Fiscal Compact Treaty's 3% budget deficit target, the legal transposition of the Fiscal Compact Treaty into German law will be postponed (Zipfel, 2013). Nonetheless, in May 2013, the Commission granted France, along with a few other countries, two years' grace before they need to achieve that target, while the Netherlands was given only one year ("EU Eases Austerity," 2013). Crises in the public finances of many countries with painful austerity adjustment programmes are under way. Some commentators argue that the main problem with the Fiscal Compact Treaty is that its debt brake does not consider the revenue aspect of public budgets. The debt brake and related severe austerity policies will probably result in economies shrinking and impair both the economic recovery and foreseen reductions of the debt burden (Radice, 2013; Whelan, 2012). In fact, fiscal consolidation will be difficult to achieve if the European economy does not soon rapidly recover. Recession, or a low growth rate, in European countries, and an escalation of high levels of long-term unemployment will likely constitute the principle obstacles to the full implementation of the Fiscal Compact Treaty. As far as implementation is concerned, economic conditions will be the key factor, along with the participating countries' commitments.

IV. Impact of the Fiscal Compact Treaty

The Fiscal Compact Treaty lays the foundation for a reinforced surveillance and coordination of economic policies. This new treaty is a stronger instrument for fiscal discipline than the EU framework, and has the potential to push EU countries towards needed structural reforms. Although the new treaty itself does not set a timetable for the participating countries to bring their budget balances and debt brakes into conformity with the new treaty, it goes without saying that these rules will have a direct impact on national fiscal policy, and that the institutions at the national level will have responsibility for monitoring how the rules are put into effect.

In addition to the new obligations imposed on the participating countries, the Fiscal Compact Treaty relies on institutions such as the European Commission and the ECJ for its implementation. Some countries, especially the UK,[14] are seriously concerned about whether this arrangement is lawful or compatible with the EU treaties. The situation is complicated by the legal status of the new treaty, which refers to EU institutions, yet remains outside the EU treaties, and will likely have different signatories. Materially, the impact of the Fiscal Compact Treaty might be much less than hoped for by many observers, as it is but a step on the road to fiscal union.

A. Impact on the EU's Institutions

The Fiscal Compact Treaty relies on the Commission and the ECJ to serve certain purposes which might extend beyond their functions under the EU treaties. In other words, the EU institutions

[14] The UK Government's view has been that "the EU institutions can only be used outside the EU treaties with the consent of all member states, and must respect the EU treaties and the responsibilities and rights that all share under those treaties." See Miller (2012: 26).

will be used in new procedures and would exercise new powers created by the Fiscal Compact Treaty. This would involve further EU integration through an intergovernmental agreement that confers new powers on the EU institutions outside the EU legal framework, and probably changes the rules concerning the powers of the EU institutions. The main issue during the negotiations on the new treaty was whether the participating countries should be allowed to use EU institutions, or their mechanisms, for monitoring rules or imposing sanctions for breaches of these rules.

The EU institutions were created by the EU treaties, which conferred upon them powers and duties. The role of the EU institutions is not only defined by the European treaties, but also delimited by those treaties, and it would be unlawful for an institution to operate beyond the powers granted to it by the treaties. Nevertheless, Article 3(2) of the Fiscal Treaty provides that the automatic correction mechanism is to be implemented nationally "on the basis of common principles to be proposed by the European Commission." Article 8(1) and (2) set out the enforcement mechanism for Article 3(2), which involve the role of the Commission and the ECJ. According to Article 8(1) and (2) of the new treaty, the Commission will issue a report to each of the Contracting Parties assessing whether they have fully transposed Article 3(2). If the Commission, after having given the State concerned an opportunity to submit its observations, concludes in its report that a State has failed to comply with Article 3(2), the matter will be brought to the ECJ by one or more of the Contracting Parties. In addition, when a Contracting Party considers, independently of the Commission's report, that another State has failed to comply with Article 3(2), it may also bring the matter to the ECJ. In both cases, the judgment of the ECJ shall be binding on the parties in the procedure. In addition, the complainant Contracting Party may request that the ECJ impose financial penalties on the State in breach of Article 3(2). The ECJ may fine a State in breach of Article 3(2) if it concludes that the

State concerned has not complied with its judgment. There is some question as to whether the new set-up goes further than the powers and duties ascribed to the Commission and the ECJ under existing EU treaties (Baratta, 2013: 47-50; Cisotta, 2013: 11-13; Craig, 2012; Howe, 2012; Kusák et al., 2013: 106-107; Miller, 2012: 26-30).

In fact, for practical reasons, it was unlikely that the participating countries of the new treaty would use institutions other than the existing EU ones, and for that reason, the new treaty confers new functions on EU institutions. The Commission's power to judge national budgets is based on the logic of emergency rule. The Fiscal Compact Treaty goes beyond the existing powers of the EU institutions, and also takes precedence over the parliamentary procedures of the member states. The official justification for this is that budgetary deficits are such an exceptionally serious matter that there was a need to depart from normal operating procedures. At the same time, the Fiscal Compact Treaty includes no provisions for its own amendment or termination. In all these respects, it is doubtful whether the Fiscal Compact Treaty is contrary to the principle of the rule of law.

In response to concerns over the legality of the use of the EU institutions, Article 8 of the new treaty provides roles for the Commission and the ECJ on the grounds that it is a "special agreement" within the meaning of Article 273 of the TFEU (Article 8[3], Fiscal Compact Treaty). The related preamble of the new treaty recalls Article 260 of the TFEU, which empowers the ECJ to impose a lump sum, or penalty payment, on a member state of the EU, which has failed to comply with one of its judgments. It has been argued that, as the transposition of the "golden rule" for a balanced budget in constitutions at a national level is not an obligation under the EU treaties, the ECJ would be exceeding its legal competence under Article 13(2) of the TEU[15] in enforcing

[15] Article 13(2) of the TFEU: "Each institution shall act within the limits of the

incorporation. Others point out, on the contrary, that the balanced budget rule relates to the subject matter of the EMU in a general way, and that this is therefore a legitimate use of both Article 260 and 273 of the TFEU (Miller, 2012: 31).

The Council's Legal Service is confident that the EU institutions can be involved lawfully in the implementation the Fiscal Compact Treaty. The ECJ should therefore be able to play a role in the incorporation of the balanced budget rule in domestic law (Miller, 2012: 32-33; Sebag, 2011). However, the questions of principle and legality remain unsettled. First, the Commission plays a vital role in reporting on the proper transposition of the balanced budget rule into domestic law in the participating countries, and in proposing common principles on the role and independence of their monitoring institutions. However, under EU law, conferring new powers on the Commission requires the consent of all member states. Secondly, the EDP and the financial sanctions thereof, as developed in the Six Pack, contradict EU primary law. Making national budgets subject to prior approval by the EU will require revisions of the EU treaties.

The Fiscal Compact Treaty, with its balanced budget rule, intends to enhance the role of the EU judicial and political institutions, increasing centralization in the EU constitutional framework (F. Fabbrini, 2013: 20). Nevertheless, as regards the relation to EU law, the Fiscal Compact Treaty must be applied and interpreted in conformity with the EU treaties and EU law, including procedural law for the adoption of secondary EU legislation. This is an obvious consequence of the mandatory character of EU law. In consequence, uncertainty remains as to whether the new treaty, with the conferral of new powers to the EU institutions, can produce the intended effect.

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powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them."

B. Long Road to the Establishment of the European Fiscal Union

According to the German Chancellor, Angela Merkel, member states of the euro area have set themselves on an "irreversible course towards a fiscal union" to underpin their common currency, even if it may take years to reach that goal (Peel, 2011). But in the debates over reform of the fiscal governance of the euro area, it is not always clear what exactly the term "fiscal union" is supposed to mean. Fuest and Peichl suggest five possible elements of a European fiscal union, including: (1) fiscal rules, policy coordination and supervision; (2) a crisis resolution mechanism; (3) a joint guarantee for government debt; (4) a fiscal equalization and other mechanisms for transfers between countries and (5) a larger EU budget and European taxes (Fuest & Peichl, 2012: 3-7). A fiscal union may, but does not have to, include all five elements (Fuest & Peichl, 2012: 3). Action taken by the EU and the leaders of the countries in the euro area is mainly focused on tightening the fiscal discipline and short-term crisis management and therefore emphasizes elements one through three. The first and most widely discussed element of fiscal union includes a set of rules contained in the SGP, the Six Pack, the Euro Plus Pact and the Fiscal Compact Treaty. The second element involves the EFSF and the ESM. The third element may include the Eurobond proposal or the idea to introduce a debt redemption fund (German Council of Economic Experts, 2011).[16]

The Fiscal Compact Treaty is only one instrument among many in terms of economic governance, and it merely constitutes a first step towards fiscal union. Although the new treaty is currently the popular embodiment of austerity, it is not responsible for actually shaping fiscal policy and austerity in the euro area at present. Arguments in favour of the new treaty first highlight the

[16] For a discussion on elements 4 and 5 of fiscal union, which are more relevant in the long term, see Bargain et al. (2012: 23-24).

introduction of the "golden rule," setting the deficit and debt brake for the participating countries and specifying the conditions for deviating from these targets in cases of "exceptional circumstances" as well as the automatic mechanisms for ensuring compliance. Second, the Fiscal Compact Treaty requires that the participating countries introduce the "golden rule" into their national constitutions, through an act of parliament, or via some binding measure on the national budgetary process. Third, in addition to the reinforced SGP, financial sanctions can be imposed by the ECJ if the balanced budget rule and the correction mechanism are not properly implemented in domestic law. Failure to respect the "golden rule" could result in being unable to obtain financial assistance under the ESM. The Fiscal Compact Treaty therefore establishes a legal regime to strengthen the EMU by agreeing on a set of rules on budgetary discipline as a precondition for financial stability in the euro area (F. Fabbrini, 2013: 6-7).

The entry into force of the new treaty in the near future should improve economic and budgetary surveillance and enforcement. However, the following key shortcomings in the EU fiscal framework remain.

First, the reinforced fiscal rules under the Fiscal Compact Treaty are more complex, which might reduce its transparency and, in turn, complicate accountability. As with the "golden rule," a prominent criticism against the debt brake is that it assumes a predictable business cycle and severely limits the scope for national governments to invest in the economy. In particular, the assessment of member states' progress towards their respective MTOs requires a more complex analysis of both the structural budget balance, and of the expenditure of net discretionary revenue measures. In this context, it might be difficult to verify all the necessary data in a timely manner (e.g. with respect to detailed expenditure categories or the effects of discretionary revenue measures) (European Central Bank, 2012: 82; o Broin, 2012: 9).

Second, the Fiscal Compact Treaty allows the participating

countries to deviate from these targets in cases of "exceptional circumstances," defined as "an unusual event outside the control" of a state "which has a major impact on the financial position of the general government" or in "periods of severe economic downturn." The exceptional circumstances clause could be invoked by almost all of the participating countries from the moment the new treaty enters into force, which would weaken the application of the rules and nullify the impact of the numerical benchmarks in the treaty (o Broin, 2012: 7).

Third, the Fiscal Compact Treaty confers new powers on EU institutions. However, its provisions are intentionally vague in order to avoid conflicts with the enhanced powers of the EU post-Lisbon. For example, the ECJ will verify whether the participating countries have delivered on their legal commitments at national level and under set criteria. Where this is not the case, a country could be taken to the court by one or more member states, but not the European Commission, though this will probably happen only in extraordinary circumstances. In this context, the procedures are substantially weakened by the fact that member states, and not the European Commission, must petition the ECJ (Georgiev, 2012).

Fourth, some critics point out that the new treaty has little to say about the absence of growth, and about how to address the social impact of austerity measures. An important question is whether the targets set for balanced budgets are too tight. An overly tight fiscal policy probably leaves insufficient room for investment and will have negative impacts on growth (Dullien, 2012). Others argue that the new treaty is primarily aimed at satisfying the financial markets and will lead to a "two speed Europe" ("Two-speed Europe," 2011). Additionally it is claimed the new treaty will increase inequality due to further austerity measures and will considerably weakened national sovereignty (Eurodiaconia, 2011: 5).

Finally, the strengthening of the national fiscal frameworks

will depend largely on political will in the countries' to implement sound fiscal rules. In fact, the core problem with the establishment of a closer fiscal union is not the lack of incentives on the part of member states towards its creation, but the institutional limitations of the EU. The main obstacle behind the idea of a fiscal union is that the EU is not a federal state, but only an association of sovereign states, in the process of economic and political unification (Paliouras, 2011: 36). The US experience suggests that the particular path through which rules are adopted and enforced is likely to be critical to their implementation and that introducing such rules for countries in the euro area should be accompanied by a federal system of fiscal powers and a common fund for rescuing and recapitalizing banks (Henning & Kessler, 2012: 18-20).

V. Conclusion: Future of the Euro Area and the European Fiscal Union

In terms of governance responses to the sovereign debt crisis in the euro area, the EU has adopted various policy adjustments, including new fiscal rules with the goal of improving macro-economic surveillance within the EU and the euro area, and new financial assistance schemes. The new fiscal rules under the Fiscal Compact Treaty are based on the EU rules, but go further both in terms of fiscal objectives and enforcement. Its major innovations are the strengthening of EU fiscal rules beyond existing rules.

Under the TFEU, monetary policy is conducted at the supranational EU level, while fiscal, financial and structural policies have largely remained in the hands of the member states. The TFEU and the SGP require that the countries in the euro area avoid excessive government deficits and "maintain sound and sustainable public finances." However, the SGP did not succeed in securing fiscal discipline. The sovereign debt crisis has triggered a substantive revision of EU economic governance, with new fiscal

rules within the EU more automatic and detached from political judgment. In addition, the new fiscal rules go beyond the existing EU rules, both with the strictness of the parameters and in the legal force. The so-called Six Pack reinforces both the preventive and the corrective arm of the SGP, i.e. the EDP, which applies to member states that have breached either the deficit or the debt criterion. The entry into force of the new framework in December 2011 improved economic and budgetary surveillance and enforcement.

As of 2013, it is possible to make two contrasting assessments of the crisis. On the one hand, the euro has survived. Europe's institutions and member states have been slow and hesitant to react, and their reluctance has often fueled speculation. But its institutions have managed gradually to develop solidarity mechanisms, such as the EFSF and then the ESM, and they were able to impose strong fiscal discipline on member states by strengthening the SGP, adjustment programs, and the Fiscal Compact Treaty. On the other hand, the euro area has been unable to regain a satisfactory level of growth, and the member states have been forced to implement austerity policies during a recession. Nevertheless, the EU and its member states have adopted a treaty-based toolbox of measures to assist in preserving the euro area's massive consumer market, preventing a global recession, and most importantly, protecting the world financial system.[17]

Some shortcomings in the EU fiscal framework remain. The Fiscal Compact Treaty presents a new significant tool within the EU. Its aim is to strengthen the fiscal discipline and coordination of economic policies of the EU member states and ensure the stability

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[17] Banks around the world have invested in the government debt of the countries in the euro area. These banks also hold large amounts of Euros. If the financial and economic crisis lead to a further deterioration, the government debt and currency that they hold will fall in value, which could undermine their own financial benefits. It could be like the 2007-2008 financial crisis all over again, with the global banking system under threat.

of the euro area as a whole. However, it does not seem to offer a definitive solution to the problem of finding the appropriate budgetary-monetary policy mix in the EMU. Although the Fiscal Compact Treaty addresses some of the remaining shortcomings of the existing fiscal governance framework, its effectiveness and credibility remains subject to a strict implementation of fiscal policy surveillance by the Commission and a limited use of political discretion by the Council. The implementation of the new treaty may, under certain circumstances, contribute to an increase in the uncertainties as regards the distribution of the competences between the Commission and the Council. At both the national and supranational levels, real change is dogged by the challenge of implementation. As regards the relation with EU law, the Fiscal Compact Treaty must be applied and interpreted in conformity with the EU treaties and with EU law, including procedural law for the adoption of secondary EU legislation. In addition, it is worth noting that the new treaty itself has the explicit aim of having its substance incorporated into the EU legal framework within, at most, five years following its entry into force.

While the Fiscal Compact Treaty reinforces the fiscal discipline, it will probably make countries in the euro area into regimes of economic austerity and involve deeper cuts in public expenditures, increases in indirect taxation, reductions in wages, sustained liberalization of markets, and the privatization of public property. The effectiveness of the reinforced fiscal framework is still heavily dependent on an application of other instruments in relation to economic governance, i.e. the Euro Plus Pact, which builds on the existing framework of economic priorities agreed upon at the EU level under the Europe 2020 strategy for “smart, sustainable and inclusive” growth. The strategy sets targets in the fields of employment, innovation, climate/energy, education and social inclusion.

The Fiscal Compact Treaty is but a step on the road to fiscal union, since the new treaty effectively adds an additional layer to

the existing rules of the SGP. The creation of a fiscal union depends on whether the member states would abandon ever more control over financial and economic affairs. Establishing a federal system of fiscal powers in the EU will be the cornerstone of a fiscal union.

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歐洲主權債務危機與經濟暨貨幣聯盟穩定、協調與治理條約：歐洲聯盟經濟治理之新工具

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摘　要

2011 年 12 月，歐盟國家或政府領袖 (英國除外) 同意通過一項財政條約，做為處理歐元區主權債務危機整體策略的一部分。由於英國反對以歐盟條約之形式簽署，故其他會員國改以簽署政府間條約代之。2012 年 1 月 30 日，25 個會員國正式通過「經濟暨貨幣聯盟穩定、協調與治理條約」(以下簡稱財政條約)，並於 2012 年 3 月簽署。財政條約於 2012 年 12 月 21 日獲得第十二國批准後，於 2013 年 1 月 1 日正式生效。然而，英國與捷克均非新條約之締約國。本文將檢視財政條約，以評估新條約如何強化歐盟財政治理與國家財政紀律。本文亦審視財政條約引起之若干問題，例如其法律地位、其與歐盟條約及歐盟法規之關係、歐盟機構之運用，以及財政條約是否足以構成財政聯盟之基石。

關鍵詞：歐元區、歐洲主權債務危機、財政條約、歐洲穩定機制、歐洲財政聯盟