

HOW THE COMMISSION FILLS IN THE BLANKS OF THE EUROPEAN SEMESTER

Incomplete contracts and supranational discretion in the EU's post-crisis economic governance

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How the Commission fills in the blanks of the European Semester: incomplete contracts and supranational discretion in the EU's post-crisis economic governance

Since the onset of the crisis the EU has introduced new instruments of economic governance, at the heart of which is the European Semester. Scholars largely disagree on which institutional actor has come out as the winner from these reforms. This article attempts to contribute to this debate by examining how the European Semester has been enforced by the Commission since 2011. The main argument is that although the decision-making process during the crisis has been broadly dominated by member states, the Commission enjoys considerable discretion over the enforcement of the European Semester. This is explained by the incomplete nature of the contracts of delegation between member states and the Commission. As a case study, the article focusses on the Commission's discretion in enforcing the Macroeconomic Imbalance Procedure and the reinforced Stability and Growth Pact, as well as in shaping the procedures of the Semester itself. At the same time, it is shown that the Commission uses its discretion very carefully, alternating between flexibility and rigidity.

Comment la Commission comble les trous du Semestre européen : contrats incomplets et pouvoir discrétionnaire du supranational dans la gouvernance économique post-crise de l'UE

Depuis le début de la crise, l'UE a développé des nouveaux instruments de gouvernance économique, au cœur desquels s'inscrit le semestre européen. Les avis académiques divergent quant à savoir quel acteur institutionnel est sorti renforcé de ces réformes. Cet article vise à contribuer à ce débat en examinant comment le semestre européen a été mis en application par la Commission depuis 2011. Il avance comme argument principal que malgré la domination des États membres sur le processus décisionnel durant la crise, la Commission jouit d'un pouvoir discrétionnaire considérable sur la mise en application du semestre. Ceci s'explique par la nature incomplète des contrats de délégation passés entre les États membres et la Commission. L'article illustre ceci en explorant le pouvoir discrétionnaire de la Commission dans la mise en application de la Procédure de déséquilibres macroéconomiques et du pacte de stabilité et de croissance, ainsi que dans l'élaboration des procédures du semestre européen. En même temps, l'article montre que la Commission utilise ce pouvoir discrétionnaire de manière subtile, alternant entre flexibilité et rigidité.

How the Commission fills in the blanks of the European Semester

Incomplete contracts and supranational discretion in the EU's post-crisis economic governance

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The financial, economic and sovereign debt crisis that hit the European Union (EU) in 2008 has led to a broad revamping of its architecture of economic governance. Among the major flaws of the Economic and Monetary Union (EMU) brought to light by the crisis were a lack of national compliance with the Stability and Growth Pact (SGP) rules, as well as a coordination failure regarding macroeconomic developments within member states (MS). To remedy these problems, EU leaders sought new instruments to strengthen fiscal discipline and curb macroeconomic imbalances within the EMU. A new coordination procedure, called the European Semester (ES), has been set in place to integrate the various existing coordination processes into a single annual policy cycle. Under this new procedure, the European Commission (hereafter 'Commission') has been delegated several important tasks. In a nutshell, the Commission is now responsible, in close cooperation with the Council, for delineating the broad economic priorities for the year to come in November, for reviewing member states' National Reform Programmes (on economic policies) and Stability Programmes (on budgetary policies) presented in April, and for proposing country-specific recommendations (CSRs) to the Council in June.

One important disagreement in the scholarly literature revolves around the question of who is winning and who is losing from these new arrangements (Carstensen and Schmidt, 2015). On one hand are those who see the European responses to the crisis, including the ES, as being dominated by an intergovernmental logic (Puetter, 2012, 2014; Bickerton *et al.*, 2015; Chang, 2013; Fabbrini, 2014; de Conceição-Heldt, 2015). One reason they give for this is the constant reluctance on the part of MS, especially since the Treaty of Maastricht, to delegate further some of their authority to traditional

supranational institutions. In the field of economic governance, this results in MS favouring a system of policy co-ordination in which they remain in the driver's seat (Puetter, 2012). For their part, traditional supranational institutions have internalized this adverse context and are therefore wary of pushing for more supranational delegation, preferring instead to refocus their efforts towards less contentious projects (Bickerton *et al.*, 2015, 712). On the other hand, some scholars advance the claim that the recipes of the good old Community Method have not been entirely swept away in the aftermath of the crisis (Bauer and Becker, 2014; Niemann and Ioannou, 2015; Dehousse, 2015; Dawson, 2015). They justify this viewpoint by the important oversight authority granted to the Commission as part of the Six-Pack and the Two-Pack¹, as well as the latter's ability to address detailed recommendations to the Council that are broadly insulated from national veto through the newly introduced "reverse qualified majority voting" procedure (Dawson, 2015, 4).

This paper attempts to contribute to this debate by examining how the Commission has enforced the ES since the first cycle of the process in 2011. Despite some notable exceptions (Bekker, 2016; Savage, 2016), little research has been done so far on how the Commission has exerted its mandate to monitor budgetary and macroeconomic developments in the EU after the crisis. In answering this question, this contribution argues that the analysis must go beyond what is stated in the legal provisions underpinning economic governance, and explore the degree of discretion the Commission is left with during the enforcement stage of the ES. Drawing on the theory of "incomplete contracting", it is claimed that the Commission uses the uncertainties left in the legal texts to shape the overall process of coordination, both in its substantive and procedural dimensions. However, this study also shows that the Commission does so in a careful fashion, in order not to antagonize member states whose shadow is still looming large over the process.

The remainder of the paper is organized into four parts. It first looks at the functions exercised by the Commission in the EU institutional architecture and in economic governance. Second, the theory of "incomplete contracting" is developed and applied to the ES. Then, the third section explains how

1 The "Six Pack" refers to a legislative package made up of 5 regulations and 1 directive (Reg. (EU) 1173/2011; Reg. (EU) 1174/2011; Reg. (EU) 1175/2011; Reg. (EU) 1176/2011; Reg. (EU) 1177/2011; Dir. 2011/85/EU). The "Two-Pack" comprises two regulations (Reg. (EU) 473/2013; Reg. (EU) 472/2013). Both legislative packages aim at strengthening the monitoring and the sanctioning procedures regarding budgetary and macroeconomic rules.

the Commission has made use of the uncertainties left in the SGP, the MIP, and the procedure of the ES. The final section recalls the main findings and discusses their wider implications.

The Commission as a multi-purpose bureaucracy

The most straightforward way to account for the Commission's task portfolio is to draw on what the treaties stipulate. Article 17 of the Treaty on European Union enshrines its power of initiative by providing that it "shall promote the general interest of the Union and take appropriate initiatives to that end" (TEU). This provision underlies most analyses that present the Commission as a "policy entrepreneur" acting with the purpose of gradually expanding the scope of Union competence as well as its own margin of manoeuvre (Cram, 1994, 199). According to Kingdon (1984), policy entrepreneurs are those actors who are constantly looking for windows of opportunity to promote their solutions to policy makers. An extensive body of research has already established the entrepreneurial role of the Commission in furthering integration in various domains such as the internal market (Cowles, 1995; Majone, 1996), regional policy (Hooghe *et al.*, 1996), or even social policy (Cram, 1993, 1994; Wendon, 1998). Thanks to its central position in the policy process, the Commission would be able to influence the setting of the European agenda and to play the role of the "think-tank" of the EU (Laffan, 1997, 423).

That being said, although its formal powers to influence the EU agenda have remained unchanged since the Maastricht Treaty, some authors argue that the Commission's ability to give an impetus to the European integration process has been undermined since the end of Delors' era (Peterson, 2002, 72). In the post-Maastricht context, there are indeed good reasons to describe the Commission as a "citadel under siege" (Kassim *et al.*, 2013, 130). As suggested by Bickerton *et al.* (2015), the post-Maastricht period is characterized by a process of integration without supranational delegation. Two important shifts can explain this new pattern. The first relates to the end of the "permissive consensus", which tends to politicize European integration, thereby placing new constraints on national governments. The second element refers to the ideational convergence in member states' preferences around the "Maastricht orthodoxy" (Andor, 2013, cited in Bickerton *et al.*, 2015, 708) and intergovernmental co-ordination. Because of these two elements,

the Commission would no longer be the “engine of integration” it used to be in the past. The European council would now act as “the prime agenda-setter” (Puetter, 2012, 162), with the Commission being relegated as “an obedient agent” (Bocquillon and Dobbels, 2014, 32). In the same vein, some authors argue that the Commission has revised its supranational ambitions downwards. They hold that it is no longer “hard-wired to seek ever closer union”, but rather following a pragmatist agenda whose contours are dictated by intergovernmental constraints (Hodson, 2013).

However, the fact that the Commission has allegedly lost the lead in setting the agenda for the EU does not necessarily mean that it has lost all significance in EU policy-making. Apart from its initiating role, the Commission is indeed also responsible for overseeing the application of EU law and for other “coordinating, executive and management functions” (Article 17 TEU). In the field of economic governance, the involvement of the Commission in the surveillance of national budgetary deficits and in the coordination of member states’ economic policies is nothing new. Already before the crisis, Commission officials were in charge of proposing EU-level policy objectives, sometimes accompanied by benchmarks, to feed the “Open Method of Coordination” (de la Porte and Pochet, 2012). What is more, especially after the revision of the Lisbon Strategy in 2005, the emphasis was very much put on the bilateral dialogue between the MS and the Commission (Tholoniati, 2010, 109). It was not uncommon to see these bilateral meetings taking the form of a negotiation about the modification or withdrawal of an embarrassing recommendation (Zeitlin, 2009, 236). In other words, the analytical and managerial functions of the Commission in the field of economic and fiscal policy coordination in the context of the Lisbon Strategy appeared already important before the crisis.

On several accounts, the initiatives taken in the aftermath of the crisis to strengthen the economic governance have further expanded the significance of the Commission with regard to budgetary and economic policy coordination. To begin with the budgetary surveillance, the “Six-Pack” now provides that sanctions proposed by the Commission to the Council for a country that does not abide by the rules shall be adopted by “reverse qualified majority voting” (RQMV). Interestingly, the RQMV is now also used in the preparatory committees of the Council formations involved in the ES, and is required for the amendment of any CSR, regardless of its legal basis (Vanhercke, 2013, 106). The “Two-Pack” which entered into force in 2014 has strengthened the monitoring power of the Commission by granting it the right to give opinions

on national budgetary plans before their vote by national parliaments. Finally, the Treaty on Stability, Coordination and Governance (TSCG) has expanded the Commission's prerogatives in fiscal surveillance, notably in extending the use of the RQMV to all stages of the Excessive Deficit Procedure (EDP) (Article 7 TSCG), thus adding more weight to its recommendations. With regard to socio-economic surveillance, another innovation brought about by the "Six-Pack" was the Macroeconomic Imbalance Procedure (MIP). As part of this procedure, the Commission monitors a wide range of macroeconomic trends within the MS and can adopt recommendations for preventive or even corrective measures in case of excessive imbalances.

All in all, looking at the *de jure* responsibilities of the Commission in EU's economic governance, after the crisis, suggests that the EU executive still has a significant role of policy manager to play therein (Bauer and Becker, 2014; Dehousse, 2015). However, what is less well known is how the Commission has *de facto* carried out its responsibilities of manager in the ES. In addressing this question, next section argues that the Commission's managing role in the post-crisis economic governance can only be assessed by looking at the zone of discretion that it is left with when implementing the new legislative framework.

The European Semester as an incomplete double contract

In order to explain adequately the Commission's role and position in the ES, one should focus not only on what legal provisions state, but also on what they do *not* specifically stipulate. Drawing on the transaction cost economics and the principal-agent framework, some authors have stressed the importance of taking into account both the substance of a given contract of delegation to an agent (the transfer of "property rights"), as well as its form, and particularly the extent to which it "leaves terms to be specified because of procedural and strategic uncertainty" (Cooley and Spruyt, 2009, 19). When deciding to coordinate and to delegate part of their power to the supranational level, boundedly rational governments are very often unable to foresee the different contingencies that might arise in the future (Cooley and Spruyt, 2009, 26). Hence the necessity for them to develop an "incomplete contract". Such a contract of delegation between a principal and an agent is characterized by its vague formulation, which paves the way for subsequent change (Héritier, 2014, 234). For Kassim and Menon, this kind

of agreement is typical of situations “where the interaction envisaged by an agreement is long term [and] the bargaining complex” (2003, 123), so that the principal (here, the Council or the European Council) may opt for stating general goals to be pursued while letting the agent (here, the Commission) handle the details of their achievement.

Taking a closer look at the EU’s post-crisis economic governance, one can hardly see a single contract of delegation between national governments and the Commission. The ES actually seems to aggregate a patchwork of at least two different – albeit strongly interconnected (Bekker, 2015) – contracts between MS and the Commission. The first concerns fiscal policy and rests on of several legal texts (SGP, Six-Pack, Two-Pack and TSCG). The second has to do with macroeconomic imbalances and finds its roots in the regulations of the Six-Pack. In these two contracts, the Commission is granted the authority to formulate proposals of recommendations to the Council, which ultimately decides whether to amend or accept the Commission’s proposal. The analysis of the Council’s autonomy to reject a Commission’s proposal is beyond the scope of this study². What is of interest here is more particularly the degree to which the Commission can exert its discretion during the formulating phase of the ES. This entails outlining the ambiguities left in these two contracts with regard to this particular phase of the process.

As regards the fiscal surveillance contract, the Six-Pack now provides a numerical benchmark for debt reduction and defines what a “significant deviation” from the country-specific medium-term objectives means (de la Porte and Heins, 2014: 164). As for the Two-Pack, it lays down a clear time schedule for national budgetary procedures and makes precise requirements as regards the content of national “stability programmes”. But however precise these new tools and techniques may be, some ambiguities still prevail surrounding the methodology used to assess the compliance of member states’ medium-term objectives with the SGP rules in its preventive arm, as well as the existence of an excessive deficit or debt in the corrective arm.

Concerning the macroeconomic surveillance contract, it is also characterized, and probably to an even greater extent than the first contract, by a vagueness regarding the methodology used to account for macroeconomic imbalances. In fact, the very definition of what is an excessive macroeconomic imbalance is open to interpretation. While regulation 1176/2011 defines a macroeco-

2 See Schure and Verdun (2008) for a similar analysis in the pre-crisis context.

conomic imbalance as “any trend giving rise to macroeconomic developments which are adversely affecting, or have the potential to adversely affect, the proper functioning of the economy of a member state or of the Economic and Monetary Union, or of the Union as a whole”, excessive imbalances are referred to as “*severe* [my italics] imbalances that jeopardise or risk jeopardising the proper functioning of the Economic and Monetary Union”. It is therefore up to the Commission to interpret these provisions.

Finally, it must be noted that these two contracts between the Commission and the MS also leave in the dark important procedural aspects of the ES, in particular its timeline and the processes of dialogue between the Brussels administration and national governments. The initial timeline of this co-ordination cycle was first roughly outlined in the conclusions of the ECOFIN Council of the 7th of September 2010. Since then, it has been somewhat specified in the Six-Pack and the Two-Pack legislative packages. However, apart from specifying the key moments of the cycle, these legislations leave the day-to-day functioning of the ES to the discretion of the Commission. The same holds true for the policy analysis work of the Commission, whose practical form is not specified in the legal texts. This means that the Commission may well decide, for instance, how to organize concretely the gathering of information, or which actors to involve in this analytical work.

In sum, the European Semester seems to rest on a double contract between the Commission and national governments, which leaves a substantial amount of uncertainties with respect to some of its substantive and procedural aspects. In such a context, one may hypothesize that the Commission will hold an important discretionary power in the ES, especially during the pre-decision phase of the cycle. The following section will try to evaluate this hypothesis by tracing the process of evolution of the ES since 2011. The demonstration is based on a qualitative analysis of key official documents completed by a few interviews with EU and Belgian officials³ involved in the ES.

3 This paper forms part of a larger PhD project comparing the influence of the European Semester in several member states. At the time of writing, the research focusses on Belgium, which explains the presence of a majority of Belgian interviewees. These interviews do not pretend to any representativeness and only serve to illustrate further the documentary analysis.

Making use of the uncertainties of the Semester

As explained in the previous sections, one may expect that the incomplete nature of the double contract of delegation underpinning the ES leaves the Commission with some policy discretion in formulating its recommendations as well as in shaping the procedures of the cycle. Hence, this section opens with an assessment of how the Commission has exerted its discretion in enforcing the fiscal surveillance contract. It then explains how it has contributed to shape the nature of the macroeconomic surveillance contract. Finally, it ends with a study of how it has influenced some procedural aspects of the ES.

Towards a more flexible fiscal framework

The new policy instruments adopted to strengthen fiscal discipline in the EU have clarified to some extent the former version of the SGP, in formulating its recommendations as well as in particular by reducing the Council's room of discretion when taking the final decision. Nonetheless, a number of grey areas remain as regards the methodology used to evaluate the compliance of member states with the EU's budgetary rules. Since tracing all the substantial changes of the ES since its inception in 2010-2011 is beyond the scope of this article, the next paragraphs particularly focus on the introduction of more flexibility in the fiscal surveillance contract as of 2015. However, as it is important to understand how the first cycles of the ES have prepared the ground for this shift towards flexibility, the following refers briefly to the approach taken by the Commission in the first cycles of the ES with regard to budgetary consolidation.

The first cycle of the ES in 2011 had all the features of a “paper-based” exercise (Interview 1). The first ES indeed was more akin to a preliminary test of the new coordination procedure to identify areas of improvements for the future cycles. Hence, the Commission did not exert much discretion during this year. As regards the fiscal surveillance, the 2011 exercise was marked by a sense of urgency to address the “fast-burning” elements of the crisis (Tsingou, 2014). The overarching objective of most policy-makers at the time was to ensure compliance with the existing fiscal rules in order to ease the tensions on the financial markets (Coman and Ponjaert, 2016). However, as the sovereign debt crisis gradually turned into a broader economic crisis, the priorities of the ES were broadened to include concerns other than solely fiscal consolidation. From 2012 to 2014, while “growth-friendly fiscal consolidation” still ranked first in the Annual Growth Survey, it was

accompanied by a broader set of objectives related to lending, competitiveness, unemployment and public administration (Crespy and Vanheuverzwijn, 2016, 70). This move to give more consideration to growth must undoubtedly be understood in relation to the European Central Bank's activism in July 2012 to stop market attacks (Schmidt, 2015, 44), which made the problem of fiscal consolidation less pressing, and to the coming into office of the French Socialist President Hollande, which also created a more favourable context for the Commission to take a step away from harsh austerity.

Although the Commission's approach had already evolved between 2011 and 2014, the most notable change with respect to fiscal surveillance came following the appointment of the new Commission in 2014. During his electoral campaign, Juncker made investment a central theme of its economic programme. This emphasis reflected in the creation of the European Fund for Strategic Investments (Investment Plan) as well as in changing the hierarchy between the economic priorities delineated in the Annual Growth Survey, with investment now emerging as the top priority, followed by structural reforms and fiscal responsibility coming in the third place. Most importantly, it soon became clear that Juncker wanted to relax the rules of the SGP against the will of some countries, not the least of which was Germany. Thanks presumably to the support of other important countries such as France and Italy, Juncker managed to push its plan through in January 2015 with the publication of a communication entitled "Making the best use of the flexibility within the existing rules of the stability and growth pact"⁴.

This communication aimed to remind MS that the achievement of the fiscal rules was antyhting but an automatic process. Quite the contrary, it should be the result of a transversal country-specific economic analysis that can take many dimensions into account. In particular, the SGP foresees a set of flexibility clauses, which allow member states to deviate temporarily from their budgetary objectives. Three elements are particularly significant in this regard: investment, structural reforms and cyclical conditions. Under the preventive arm, MS are allowed to deviate temporarily from their budgetary objectives for three reasons: if they make eligible investments that could boost a weak economic growth; if they are implementing major structural reforms with long-term positive budgetary effects; or, if the cyclical situation

4 European Commission, *Making the best use of the flexibility within the existing rules of the stability and growth pact*, 13.01.2015, COM(2015)12 final provisional.

of the country is not favourable. The reasoning is similar under the corrective arm of the Pact. Regarding investment, an EDP will not be launched if non-compliance is due to the member state's contribution to the European Fund for Strategic Investments. The Commission also takes into account the implementation of structural reforms when examining whether an excessive deficit exists within a given member state, when setting the deadline for its correction or when evaluating the closure of an EDP. Finally, effective action under the corrective arm of the Pact is also assessed regardless of budgetary developments that are outside the control of governments.

Among these three dimensions, the “structural reform clause” appears the most subject to interpretation from the Commission because, unlike the two others, it does not rely on clear-cut numbers. For a given reform to qualify for this clause, the first criterion is that it produces “major” effects. While macroeconomic models exist to measure the impact of a given reform at national level⁵, their validity can always be questioned (Interview 2). Moreover, the Commission will ultimately have to interpret qualitatively the major character of this impact as well as its actual implementation. In this regard, the criterion of “full implementation” is deemed to be fulfilled *ex ante* when the government presents a “comprehensive and detailed” reform plan that “includes *well-specified* measures and *credible* timelines for their adoption and delivery [my italics]”. Nevertheless, what these terms in italics refer to is left to the Commission's discretion. Interestingly, this structural reform clause seems in some cases to be used by the Commission as a lever to “harden” its soft policy recommendations, something that was already envisaged by some scholars (Bauer and Becker, 2014, 223). By deliberately linking structural reforms either to an extension of the deadline to correct the excessive deficit procedure or to the activation of an EDP, one may argue that the Commission increases its ability to exert pressure on MS.

This can be illustrated by two examples. The first concerns France and the way in which was granted a two-year extension of its deadline to correct its excessive deficit in 2015. France entered the corrective arm of the SGP in 2009, like many other countries at the time. Since then, it has benefited from three extensions of the deadline to meet its budgetary commitments. In 2009, the country was allowed extra time because of “unexpected adverse

5 Varga, J. and Jan in 't Veld, “The potential growth of impact of structural reforms in the EU. A benchmarking exercise”, *Economic Papers, European Commission, Directorate-General for Economic and Financial Affairs*, N° 541, December 2014.

economic events”⁶. The 2013 extension also invoked this argument while adding the need for French authorities to back the fiscal consolidation process by other structural reforms, in particular those related to the MIP. Finally, in 2015, France was granted an additional period of two years to comply with its budgetary objectives. Following the communication on flexibility (see above), the message of the Commission left no more doubt as to how the EU executive considers the sanctions of the SGP as a stick to move the country forward on the path of structural reform:

“The Commission will closely monitor the implementation of the reforms. In the case of failure to implement, the Commission will consider it an aggravating factor when assessing effective action in response to the excessive deficit procedure recommendation and when setting a new deadline for the correction of the excessive deficit. Lack of effective action will lead to a stepping up of the procedure and the possible suspension of European Structural and Investment Funds.”

The same strategy of linking the hardest aspects of the ES with softer instruments can be observed in the example of Belgium. Although the country has now exited the corrective arm of the SGP, it is no exaggeration to say that Belgium has not been a good performer in terms of respecting the SGP rules. A few months after the Council decided to abrogate its EDP, the Belgian budgetary situation soon came back in the spotlight. At the end of November 2014, the Belgian draft budgetary plan was judged by the Commission “at risk of non-compliance with the provisions of the Stability and Growth Pact”⁷. The Commission nevertheless decided to delay its final decision until March 2015 “in light of the finalisation of the budget law and of the expected specification of the structural reform programme announced by the authorities”. In its report published in late February to clarify its decision, the Commission took note of the ambitious structural reform plan presented by the Belgian government in its letters of 30 January 2015 and 5 February 2015 and set out its position in these terms:

6 Council of the European Union, *Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in France*, 30.11.2009 15762/09, p. 4; Council of the European Union, *Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in France*, 18.06.2013 10569/13, p. 4.

7 European Commission, *Commission opinion of 28.11.2014 on the Draft Budgetary Plan of Belgium*, 28.11.2014, C(2014) 8800 final.

“Overall, the analysis presented in this report including the assessment of all the relevant factors and notably (i) the currently unfavourable economic conditions [...]; (ii) the expectation that compliance with the required adjustment towards the MTO is broadly ensured; and (iii) the expected implementation of ambitious growth-enhancing structural reforms [...] suggests that, the debt criterion [...] should be considered as currently complied with.”⁸

What does this example of the fiscal surveillance contract tell us about the role of the Commission in the EU’s post-crisis economic governance? It tends to support the claim that the Commission has an influential role in (re-)shaping the functioning of the macro-economic coordination at the EU level. Given its centrality in the analytical process that precedes decision – taking in the Council, the Commission is able to change the substance of the fiscal surveillance contract that exists between the EU and the national levels. While the contract was initially aimed to ensure strict fiscal probity, the Commission has managed to loosen the budgetary straightjacket while at the same time connecting the fiscal contract with structural reforms. Clearly, to what extent this reinterpretation benefitted from a particular political and economic context remains to be seen. Moreover, it is not clear yet whether one can speak of an autonomous action on the part of the Commission, insofar as it may have been supported in its plans by a coalition of various actors.

In search of the Macroeconomic Imbalances Procedure

Under the macroeconomic surveillance contract, the Council has delegated the Commission the responsibility to help preventing macroeconomic imbalances in the EU as well as to propose corrective actions to the Council. In practice, the Commission must publish a report at the outset of the ES that is aimed at identifying those MS whose macroeconomic imbalances warrant further analysis. Based on this early identification, the Commission must then undertake an “In-Depth Review” (IDR) for each MS experiencing macroeconomic imbalances. Two ambiguities in this macroeconomic surveillance contract have required the Commission to interpret further the substance of the contract: the severity, and the direction of imbalances.

8 European Commission, *Report from the Commission. Belgium. Report prepared in accordance with Article 126(3) of the Treaty*, 27.2.2015, COM(2015)112 final.

Ticking the right box

The first problem confronting the Commission when fulfilling its oversight tasks under the MIP was to interpret the severity of a macroeconomic imbalance. Regulation 1176/2011 only provides that the Commission should give an evaluation of “whether the member state in question is affected by imbalances, and of whether these imbalances constitute excessive imbalance”. Yet, applying this simplistic classification would have resulted in putting the same label on very different macroeconomic situations. Furthermore, such a dichotomy between “excessive” and “not excessive” imbalances hides a whole range of in-between situations. These shortcomings had the potential to affect negatively the credibility of the Commission’s assessments (Interview 2). With the aim of delivering a sharper analysis, the Commission therefore began supplementing these unsophisticated categories with new ones.

In its first in-depth review published in May 2012, the Commission developed a typology of four types of imbalances, each of which was associated with a certain level of required policy action: “Imbalances, which are not excessive but need to be addressed”; “serious imbalances, which are not excessive but need to be addressed”; “very serious imbalances, which are not excessive but need to be urgently addressed”; and “excessive imbalances” which, if detected, should have triggered the corrective arm of the MIP. In 2012, no excessive imbalance was identified by the Commission. However, two countries (Spain and Cyprus) were considered as experiencing “very serious imbalances, which are not excessive but need to be urgently addressed”. This is all the more striking that, the following year, in its communication on the results of the IDR, the Commission stated: “despite significant progress in 2012, Spain *still* has *excessive* macroeconomic imbalances [my italics]”⁹. This contradiction undoubtedly shows that the Commission used its room of interpretation in order not to condemn Spain and Cyprus out of hand.

Confronted with ambiguities such as these, the Commission continued during the second edition of the ES to develop further its classification. Among the 13 MS concerned by the preventive arm of the MIP in 2013, the Commission distinguished between countries with (non-excessive) macroeconomic imbalances and countries with excessive imbalances which, in the Spanish

9 European Commission, *Communication from the Commission to the European Parliament and the Council and to the Eurogroup. Results of in-depth reviews under Regulation (EU), No 1176/2011 on the prevention and correction of macroeconomic imbalances*. 10.4.2013, COM(2013)199 final.

case, “require continuous strong policy action” and, for Slovenia, “need urgent policy action” to halt their rapid build-up. Although, this time, the Commission recognized the excessive nature of macroeconomic imbalances in Spain and Slovenia, it did not follow the provisions of the Six-Pack to the letter. While a strict application of Regulation 1176/2011 would have called for a corrective action, thus requiring notably from the countries concerned to submit a “corrective action plan” setting out a timetable of all the specific policy actions envisaged to remedy the excessive imbalances, the Commission has let both countries in the preventive arm of the MIP. In so doing, the Commission had to invent a new category in the MIP for countries who, despite experiencing excessive imbalances, do not activate the Excessive Imbalance Procedure (EIP). However, the Commission’s leniency was counterbalanced by the introduction of specific monitoring and the possibility to propose the activation of the corrective arm “at any time [...] without having to carry out and in-depth review again”¹⁰. The spectre of an EIP was therefore hanging over Spain and Slovenia like a sword of Damocles.

During the cycles 2014 and 2015, the MIP classification was again somewhat modified for better clarity and legibility. At the time of writing, it is comprised of six categories, which still allow for the possibility of excessive imbalances without the activation of the EIP, although it was not foreseen in the initial contracts of delegation. The extent to which the MIP is (and should be) binding is a subject of debate in the EU sphere. To date, no EIP has been triggered. At first sight, this seems to give reason to scholars arguing that MS are able to keep the Commission under control in the EU’s economic governance. Compared with the SGP, it is indeed obvious that the Commission is in a more vulnerable position to enforce strictly the rules on macroeconomic imbalances. This is because the rules themselves are less clear in the MIP than in the SGP, and because the methodology used to account for the existence of a (excessive) macroeconomic imbalance remains controversial. In the absence of strict criteria, the Commission must adopt a more cautious approach vis-à-vis member states (Interview 1). However, while it is certainly true that the Commission must abstain from directly confronting MS in a policy field where its involvement is still in its infancy, it might nevertheless use the threat of an EIP as a form of leverage on MS (Interview 3), as the Spanish case shows.

10 European Commission, Economic and Financial Affairs, “The MIP framework”, <http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/mip_framework/index_en.htm> (last update 07/09/2015, last consulted 02/11/2015).

A fair referee

In addition to classifying the imbalances according to their degree of severity, the Commission had also to address the sensitive issue of the direction of these imbalances. One important indicator used in the MIP to evaluate external imbalances is the “current account balance”. At first glance, the scoreboard envisages this indicator as symmetric in that it provides a threshold for both the deficits and the surpluses in the current account balance. Such a symmetry is significant in view of the frequently exposed gap between so-called “deficit countries” (Portugal, Ireland, Italy, Greece and Spain) and “surplus countries” (in particular Germany) within the Eurozone. However, the European Commission has sometimes been criticized for its propensity to favour internal devaluation in the former while turning a blind eye on the latter (De Grauwe, 2012). This criticism builds on two main arguments. First, the thresholds in the scoreboard used to signal potentially harmful imbalances are themselves asymmetric triggers (Moschella, 2014) insofar as they refer to +6 per cent of GDP for surpluses and -4 percent of GDP for deficits. Second, the Commission itself explicitly admits the riskier situation of deficit countries by pleading an “intelligent symmetry” approach that “recognizes that the urgency for policy intervention is clearly greater in the case of current account deficits”¹¹.

Yet, a closer analysis reveals findings that are more equivocal. As early as in December 2012, the Commission released a report on the specific issue of current account surpluses in the EU. While keeping its basic stance as to the more pressing need to address deficits rather than surpluses, the Commission nevertheless underlines that “large and persistent current account surpluses can also be caused by market failures or policy settings that constrain domestic demand and investment opportunities”.¹² In the first round of the MIP in 2012, two countries (Sweden and Luxembourg) were identified as having current account surpluses above the threshold set out in the scoreboard (Germany was just below the threshold). However, none of these countries was deemed to deserve an in-depth review. This was justified by the fact that their surpluses precisely did not mask policies that would hold back domestic demand. The analysis remained essentially the

11 European Commission, *Scoreboard for the Surveillance of Macroeconomic Imbalances*, European Economy, Occasional Papers 92, February 2012.

12 European Commission, *Current account surpluses in the EU*, European Economy, December 2012.

same during the following year, due notably to the short period between the two first exercises. Yet, the third round of the ES saw an important policy reversal on the part of the Commission. Based on alleged “statistical revisions”, the Commission announced that Germany had actually exceeded the threshold for current account balance each year since 2007¹³. Insofar as the German surplus reflected higher savings than investment, and considering the other potential imbalances experienced by this country, the Commission then concluded that there was a need to conduct an in-depth review on the German case. Subsequent to its analysis in the IDR, Germany was finally said to experience “macroeconomic imbalances, which require monitoring and policy action”. In particular, the current account surplus was pointed out as the main imbalance facing Germany. The 2015 exercise of the MIP reiterated this analysis and went even further by shifting Germany from the second to the third category of severity of imbalances.

One might probably assume that this move from the European Commission was a means to secure the general acceptance and credibility of the MIP across the Euro area. That being said, this courageous initiative must also be understood in the light of the gradual recognition of a “German problem” in the Euro area. Germany was indeed blamed in several reports, namely from the US Treasury Department¹⁴ and the IMF¹⁵, for hampering the eurozone recovery. It was also pinpointed by French President Hollande, helped by the ECB’s and Bundesbank Chief Economists, for its weak internal demand. Although this would need to be further explored, this context is likely to have helped the Commission in its initiative. It is therefore apparent from what precedes that the Commission could take advantage of the incompleteness of the macroeconomic contract to shape the substance of the MIP procedure. The Brussels executive has once again used its power of interpretation to give substance to initially empty terms such as macroeconomic imbalances. This example also tends to confirm that this discretion is exercised carefully in order not to alienate MS in an unfavourable context.

13 European Commission, *Alert Mechanism Report 2014*, 13.11.2013, COM(2013)790 final.

14 US Department of the Treasury Office of International Affairs, *Report to Congress on International Economic and Exchange Rate Policies*, October 30, 2013.

15 IMF, *Country Report*, No. 14/216, July 2014.

From a paper-based to a streamlined European Semester

A third aspect of the EU's new economic governance that has witnessed important changes under the influence of the Commission over time is the procedures of the ES (calendar and actors involved). Assuming that the Commission has a stake in the success of the ES, the low implementation record of the CSRs at national level is a major problem that it endeavours to tackle. Two solutions are generally envisaged in this regard. The first is to make the process more binding, as noted in the Five Presidents' Report¹⁶. However, this solution is most often presented as premature. The second solution that is currently favoured by the EU institutions is to enhance MS's feeling of "ownership" over the CSRs. This issue of ownership was already a source of concern for the Commission in the context of the Lisbon Strategy. It was highlighted that the Strategy was doomed to failure if key national players were not involved in the process and did not feel concerned about it¹⁷. This problem of national ownership still hampers the effectiveness of the ES today. However, more than to simply involve national actors, the Commission finds itself in need to convince them that its analyses and recommendations are well founded and appropriate. In this regard, although it has strengthened its organizational and analytical capacity since the Euro crisis (Savage and Verdun, 2016), the Commission remains somewhat disadvantaged in terms of information against member states' administrations, in particular in new areas of intervention¹⁸. The paucity of its human and technical resources compared to most national administrations, requires the Commission to exercise its advisory role with caution (Interview 1). This is why the Commission has spent much effort to present itself as a benevolent collaborator to MS.

At least three innovations that have been brought to the ES by the Commission may be interpreted as a sign that it attaches prime importance to this collaboration with MS. First, from the ES 2012-2013, the Commission has initiated a system of several bilateral meetings per year. During these

16 J.-Cl. Juncker, D. Tusk, J. Dijsselbloem, M. Draghi, and M. Schulz, *Completing Europe's Economic and Monetary Union*, 22nd of June 2015, p. 9.

17 European Commission, *Communication to the Spring European Council. Working together for growth and jobs. A new start for the Lisbon Strategy*, 2.2.2005, COM(2005)24 final.

18 This observation especially applies to Belgium, which is characterized by a powerful federal administration.

meetings, national authorities, most often from ministerial cabinets¹⁹, discuss both the implementation of the last CSRs and the drafting of the future ones. Depending on the country, these formal meetings are sometimes accompanied by two or more other “technical” meetings between the Commission’s services and national civil servants from the ministry in question. According to their participants, the atmosphere prevailing in these meetings is almost invariably one of cooperation (Interview 4). Drawing on Lewis’ studies on the Council (2000, 2005, 2010), one may possibly argue that this is partly due to their institutional environment: they are insulated from public audience; they generally cover a wide scope of issues; and they are characterized by a high interaction intensity (Lewis, 2010, 658). This is also likely to be explained by the participants’ strong incentives to cooperate. On the one hand, Commission staff are willing to hear MS’ claims in order to sharpen their analysis and enhance the national ownership of their recommendations. On the other hand, MS are keen to take this opportunity to influence the drafting process of the CSRs.

Second, this dialogue was further strengthened by the creation, in 2013, of new positions at the Commission under the initiative of the former Secretary General. In each Representation of the Commission across the EU, one or more “European Semester Officers” are now supposed to act as a transmission belt between the Commission and the broad range of political stakeholders in each MS, on all aspects related to the ES. The objective being pursued is similar to that of the bilateral meetings already in place. These officials are responsible for maintaining a continuous two-way dialogue between the MS and the Commission in order, on the one hand, to ensure that the European recommendations and their rationale are well understood by all the actors concerned and, on the other hand, to collect the already existing expertise at national level to consolidate the Commission’s analysis (Interview 1). Another objective was also to give a “face” to the Commission and enhance the internal co-ordination of the institution.

Finally, the timetable of the ES has been modified in order to enable MS to give a more important input into the process. Until 2014, MS received a report in April assessing their progress in addressing the issues identified in the last CSRs as well as an IDR if they had been identified as experiencing a macroeconomic imbalance at the beginning of the ES. However, little time was left between these publications and the moment MS had to send their

19 The concrete organization of these meetings differs between MS.

National Reform Programmes and Stability Programmes to the Commission. As a result, these analyses most often remained dead letter and did not feed into the national agenda for reform and fiscal consolidation. In an effort to “streamline” the ES, the Commission decided to bring forward the date of submission of these reports in February as well as to group them into a single document called the “Country Report”. In the same vein, it now issues its proposals for CSRs two weeks earlier than before. The key goal is again to increase the national ownership over the recommendations by allowing political stakeholders at national level to engage further in the process.

To sum up, these three examples seem to suggest that the Commission was also able to shape the very procedures of the ES in a way that enhanced its position in the process. Through giving substance to an initially vague coordination process, it has positioned itself as a key interlocutor for MS and has tried to increase ownership over the recommendations at national level in order to facilitate their implementation. In so doing, it was also able to start securing its legitimacy to supervise national macroeconomic and budgetary policies. Nevertheless, it would be an overstatement to assert that the changes depicted above are only attributable to the Commission. Again, it might well be that the Commission responded to national concerns and benefitted from the gradual recognition that the ES should move from a purely “paper-based” exercise to a genuine two-way dialogue between the national and the European administrations.

Conclusion

This article aimed to afford insights into the concrete functioning of the EU’s economic governance. From a political science point of view, a crucial point at stake is that of power relations between the EU institutions, and between the EU institutions and national governments within the framework of the ES. In this regard, an important takeaway from this study is that the analysis of power relations within the ES cannot be limited to the formal distribution of competences as laid down in the legal texts. While this is not a truly original conclusion, this fact has sometimes been underestimated in the debates on the euro area governance. If one wants to capture the Commission’s role in the post-crisis architecture, one has to scrutinize how it is actually able to play with, and reshape, incomplete rules. In the two contracts considered here to be part of the ES, as well as for some procedural

aspects of the coordination process, the Commission still seems to hold an important discretionary role. Among other reasons, this is because it keeps a firm hand on the management of the ES and especially on the policy analysis work, which is ultimately the core business of the ES process. In particular, we have seen that the Commission was able to give substance to initially empty terms such as “excessive deficit” or “excessive macroeconomic imbalance”. In addition, it was also able to change some procedural aspects of the ES, and engage in more bilateral dialogue with MS in order to increase its impact at domestic level and further the convergence process. In short, this study tends to demonstrate that the Commission still acts as a subtle policy entrepreneur under the guise of a neutral manager. By reinterpreting the rules of fiscal and macroeconomic coordination, there are reasons to believe that it has sought to push its policy solutions on the agenda.

Nevertheless, in this article, we have chosen to focus the analysis solely on the Commission’s work, thereby perpetuating the myth of an artificial opposition between the Commission and MS (or the Council). Yet, it is very likely that the Brussels executive was not the only player in town. Although this would need further investigation, we found evidence that the Commission, when exerting its discretion, must be supported either by a series of political actors at different levels, or by a certain normative and ideational environment. In any case, it seems that the Commission refrains from adopting too bold an attitude vis-à-vis MS and from bringing ambitious integrationist plans forward. As the enforcement of the fiscal and macroeconomic contracts show, the Commission is careful to present itself as a sympathetic ear for national authorities instead of a repressive and rigid institution. On the other hand, as the example on the surplus countries’ controversy illustrates, too much leniency can potentially harm its credibility as the key monitor of national economic and fiscal policies. The Commission’s success in maintaining its central position in the ES might therefore depend on its ability to find a proper mix between a flexible and a systematic interpretation of the rules.

Finally, while the Commission’s reinterpretation of the rules mostly occurred “by stealth” in the first years, the Juncker Commission started to assume this discretion a bit more openly afterwards (Schmidt, 2016). However, this does not suffice to compensate for the legitimacy issues that such discretionary action by the Commission may raise. As some authors have put forward (Chalmers, 2012; Dawson, 2015), there is no legal mechanism to prevent abuse of discretion by the Commission when enforcing fiscal and macroeconomic rules. The fiscal and macroeconomic contracts are indeed

largely insulated from judicial review, be it at national or European levels. This may create tensions between MS and ultimately jeopardise the chances of success of the ES. Similarly, neither national parliaments nor the European Parliament appear to have a great say on the ES (Kreiling, 2016), which means that they cannot provide the necessary channels of political accountability in the EU's post-crisis economic governance. New mechanisms of accountability seem therefore needed to make the whole process more acceptable to governments and citizens alike.

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List of abbreviations

CSR	Country-Specific Recommendations
EDP	Excessive Deficit Procedure
ES	European Semester
EU	European Union
EMU	Economic and Monetary Union
IDR	In-depth Review
MIP	Macroeconomic Imbalances Procedure
MS	Member State(s)
MTO	Medium-Term Objective
RQMV	Reverse Qualified Majority Voting
SGP	Stability and Growth Pact
TEU	Treaty on the European Union
TSCG	Treaty on Stability, Convergence, and Governance

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