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Christos V. Gortsos / Manolis E. Perakis On the Reform of the EU Stability and Growth Pact

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On the Reform of the EU Stability and Growth Pact*

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A. Introduction

I. History

The formation of an Economic and Monetary Union ('EMU') in the European Union ('EU') was based on the Maastricht Treaty,[1] which led to the repeal of the founding Treaty of Rome of 1957 and its replacement by the Treaty on European Union (1992)[2] and the Treaty establishing the European Community

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1 OJ C 191, 29.7.1992, pp. 1-112.

2 OJ C 321, 29.12.2006, pp. 1-35 (consolidated version).

('TEC').[3] According to the TEC, the EMU was formed in three stages[4]. In particular:

The first stage began on 1 July 1990, the date of application of Directive 88/361/EEC on the liberalisation of capital movements[5]. The second stage lasted from 1 January 1994 to 31 December 1998, during which time all the necessary steps were taken to make EMU work effectively from 1 January 1999, when the third stage began. Finally, the third (and current) stage was dominated by the introduction of the euro as the single currency among the Member States that have achieved (in addition to legal convergence as provided for in Articles 108-109 TEC[6]) a high degree of convergence of some of their key macroeconomic indicators, both monetary and fiscal, for the monetary union to be sustainable, and thus they were allowed to participate in the single monetary area. Indeed, the Madrid European Summit on 15 and 16 December 1995 set as the starting date for stage 3 1 January 1999, fixing the final euro conversion rates of the participating monetary units, and the finishing date in 2002 with the introduction of the euro-denominated banknotes and coins[7].

The institutional and regulatory framework governing the EMU is currently found, in principle, in the provisions of the two EU Treaties, as in force following the amendments introduced by the Treaty of Lisbon,[8] and in particular the "Treaty on European Union" ('TEU')[9] and the "Treaty on the Functioning of the European Union" ('TFEU')[10] (jointly hereinafter 'the Treaties'), which entered into force on 1 December 2009.

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3 OJ C 321, 29.12.2006, pp. 37-186 (consolidated version).

4 Based on the "Report on economic and monetary union in the European Community" (also called the "Delors Report"), which was presented in 17.4.1989 by the "Committee for the Study of Economic and Monetary Union" with Jacques Delors as its chairman.

5 OJ L 178, 8.7.1988, pp. 5-18.

6 These articles concerned the independence of the central bank of the candidate Member State, ensuring that its legislation is in line with the EU monetary law.

7 In the current context, the reference to "stages of EMU" has only historical significance, since after 1 January 1999 the term "third stage of EMU" is now synonymous with the term "EMU", and more particularly with the term "monetary union". This is, moreover, the reason why the word "stages" has been abolished anymore under primary EU law. On monetary and fiscal policy in the euro area after the third stage of the EMU, see Eijffinger and de Haan (2000).

8 OJ C 306, 17.12.2007, pp. 1-271.

9 OJ C 202, 7.6.2016, pp. 13-45 (consolidated version).

10 OJ C 202, 7.6.2016, pp. 47-200 (consolidated version).

Moreover, important rules concerning the EMU are included in several annexed Protocols[11], namely Protocol (No 4) on the Statute of the European Central Bank ('ECB') and of the European System of Central Banks ('ESCB' or "Eurosystem")[12], Protocol (No 12) on the excessive deficit procedure, Protocol (No 13) on the convergence criteria, Protocol (No 14) on the Eurogroup, Protocols (no 16) and (17) on certain provisions relating to Denmark, which laid down its right to opt-out from participation in the third stage of EMU, and Protocol (No 18) on France, under which that Member State retains the privilege of issuing currency in its overseas territories in accordance with the provisions of its national legislation[13].

In terms of expressing political will, of particular importance is the Declaration No. 30 on Article 126 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon[14]. It should further be noted that, on the basis of the above provisions of the TFEU, the secondary law developed by the (where applicable) competent EU institutions is also extensive. Indeed, the provisions of Articles 121 and 126 TFEU on multilateral surveillance and fiscal discipline, respectively, were further specified in Council Regulations (EC) 1466/97 and 1467/97,[15] as they were in force (before the (2007-2009) global financial crisis, 'GFC') after their amendment by Regulations (EC) 1055/2005 and 1056/2005[16] (with a view to relaxing the content of some of its relatively strict provisions). Both those Regulations form the "SGP". In this respect it is noted that the multilateral surveillance system, as established by Regulation (EC) No 1466/97, is called the "preventive part" of the SGP and the excessive deficit procedure, as regulated by Article 126 TFEU and Regulation (EC) No 1467/97, is called its "corrective part".

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[11] According to Article 51 TEU, the Protocols annexed to the Treaties form an integral part of them and their provisions were therefore part of primary European law.

[12] According to Article 281(1) TFEU, the difference between the ESCB and the Eurosystem is that the ESCB is made up of the ECB and the national central banks of the EU Member States, while the Eurosystem consists of the ECB and the national central banks of the Member States that have adopted the euro as their national currency.

[13] Protocol (No 15) on certain provisions relating to the United Kingdom, which laid down its right to exclude itself from participation in the third stage of EMU and determined, in the event of its exercise, its special status among Member States by way of derogation, is apparently no longer in force following the United Kingdom's withdrawal from the EU.

[14] On Article 126 TFEU and the secondary legislation adopted on its basis, *see* by means of mere indication Hattenberger (2019), pp. 2010-2014 and Keppenne (2020b).

[15] OJ L 209, 2.8.1997, pp. 1-5, and 6-11, respectively. The first was legally based on Article 99(5) TEC (now Article 121(6) TFEU) and the second on Article 104(14) TEC (now Article 126(14) TFEU).

[16] OJ L 174, 7.7.2005, pp. 1-4.

It is also worth noting that the related secondary legislation was further (and substantially) enhanced during the euro area fiscal/debt/sovereign crisis, which erupted in 2010 and (*inter alia*) revealed the absence of an effective EU sovereign debt crisis mechanism.[17]

II. Challenges and the ongoing reform

The EMU legal and conceptual framework is undeniably characterised by an asymmetry of goals and the critical differences when it comes to the legal nature of the rules and their binding character. Indeed, even though Article 3, point (c) TEU includes monetary policy (which is the core of monetary integration[18]) among the exclusive competences of the EU, in the field of other economic policies of the Member States the EU's competence is, according to Article 5(1) TFEU, merely supporting and of a *sui generis* nature at that, given the fact that it is described in a distinguished provision and is not included among the rest of the coordinating / supporting competences of the EU as set out in Article 6 TFEU.

The above-mentioned asymmetry is also manifested in the wording of Articles 119(1)-(2) TFEU, which defines both the economic and the monetary union, respectively, and renders evident that, unlike in the case of the monetary union, the economic policies of the Member States (or, more precisely, the other dimensions of their economic policies apart from monetary and exchange rate policies) are not "unified". Indeed, the formation of a single economic policy, along the lines of the monetary one, if achieved, would mean that the Member States would no longer have, in effect, any degrees of freedom in the conduct of their fiscal policy and, as a result, of all their macroeconomic policies. Consequently, the decision for an economic integration of this kind would have been the most decisive step towards European political integration[19].

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17 On this crisis and the legal measures taken as a response to it (which will be further discussed but not in detail), see by means of mere indication De Grauwe (2013), Fabbrini (2016), Tuominen (2019), Drossos (2020), Hadjiemmanuil (2020a) and Piantelli (2021), pp. 1-84.

18 Related to monetary policy is also exchange rate policy, which, although not mentioned in Article 3, has also become an exclusive EU competence (TFEU, Article 119(2) (see just below) and Article 127(2), second indent in conjunction with Article 219). The definition and implementation of monetary policy and the conduct of foreign-exchange operations are two of the Eurosystem's "basic tasks" in accordance with Article 127(2); on the basic tasks, see Gortsos (2020), pp. 281-329.

19 For a detailed presentation of this asymmetry and the evolution of EMU law, see Drossos (2020), Chapter 1. On the separation of the economic policy of Member States whose currency is the euro from (single) monetary policy, see De Grauwe (2020), pp. 218-244.

The imbalance caused by the varying degree of integration between monetary and economic policy has always been a source of intense concern for lawyers and economists, but during the (2007-2009) GFC it was also one of the main reasons why the EU found itself unprepared to face the challenges. It is no coincidence that during this economic crisis the integration in the field of economic policy made leaps with the adoption of important legislative acts that modernised and adapted the “Stability and Growth Pact” (‘SGP’) to the new conditions and, also, to the new vision of a closer integration that is by now proven to be a necessity, not an option.

However, the above-mentioned imbalance is not the only important reason that causes the pathogenicity in the economic governance of the EU, and that became apparent during the GFC. On the one hand, the imposition on the ECB of an exclusive objective and limited means to achieve it deprives it of basic monetary policy tools and directions available to central banks of other states. On the other hand, the uniqueness and the originality that is the introduction of specific economic “reference values” in primary EU law, which project the same objective for all Member States regardless of their financial capabilities, and in order to amend them, the painstaking and lengthy process of amending the Treaties must be followed, it creates an unequal distribution of burdens and even rivalry to the member states among themselves and with the EU institutions. The consequence is that the EU legislator must constantly intervene and “bend” the rigor of the criteria whenever the need arises, which happens often enough to cause concern[20].

The present study aspires to present the current status of the legal framework for the coordination of Member States’ economic policies in the EU (Section 2) and attempt a critical analysis of the envisaged and recently agreed reform of the EU’s economic governance framework, which aims at dealing with the

[20] The most recent example is the activation of the “general escape clause” of the SGP due to the COVID-19 pandemic in March 2020; this clause is laid down in Articles 5(1), 6(3), 9(1) and 10(3) of Council Regulation (EC) No 1466/97 and Articles 3(5) and 5(2) of Council Regulation (EC) No 1467/97. In this context, it is also noted that, immediately after the outbreak of the pandemic, the EU developed a coherent strategy considering the spill-over effects and interlinkages between EU economies and the need to preserve confidence and stability. The measures adopted included, *inter alia*, government fiscal *stimuli* with extensive resort to the principle of solidarity under Article 122 TFEU (see Hadjiemmanuil (2020b)). Notable in this context was the “Next Generation EU” fiscal package, a key element of which was the Recovery and Resilience Facility (‘RRF’), *established by Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 (OJ L 57, 18.2.2021, pp. 17-75)*, which aims to boost aggregate demand, support the most hard-hit Member States, and strengthen EU economic growth.

above pathogenies of the system (Section 3). At the end of the study the authors list their conclusions regarding the legal questions arising from the reform described.

B. Current status of the EU's incomplete economic governance

I. Main axes and goals

The basic provisions on economic union are introduced in Articles 120-126 TFEU, which reproduce without major modifications the former Articles 98-104 TEC[21]. In particular, and in line with the above, with the start of the third stage of EMU no Member State, whether it has adopted the single currency or not, has lost autonomy in the conduct of its budgetary policy. The principle of fiscal autonomy has, however, been substantially limited by the institutional framework governing the functioning of the economic union, which was established to achieve the necessary coordination and implementation of the agreed economic guidelines and goals.

Indeed, according to Articles 119-121 TFEU, the autonomy of Member States in the conduct of their economic policies is confirmed, but in parallel a goal is established, namely their obligation to perceive economic policymaking as a matter of common interest and conduct it through coordination with a view to contribute to the achievement of the EU's objectives as set out in Article 3 TEU.

Furthermore, the action of the Member States and the EU in the field of economic policy is defined as being in accordance with the principle of an open market economy with free competition, which must also be conducive to

[21] The other main provisions are found in Article 219 on the conduct of exchange rate policy within the Eurosystem (Articles 111(1)-(3) and 111(5) TEC) and Articles 282-284 on the institutional provisions of the ECB (Articles 112-113 TEC – Article 282 TFEU is new). This latter choice was the result of the fact that the ECB is now part of EU institutions, which is perhaps the most important institutional development in EMU law brought about by the Lisbon Treaty. Provisions applicable to the ECB are also found in other articles of the TFEU.

the efficient allocation of resources. In addition, it must be directed towards securing price level stability[22], sound public finances, sound monetary relations and a stable balance of payments.

The EU economic governance is based on what is essentially an "agreement" between the Member States made by the Council of Ministers of Economy and Finance (ECOFIN, hereinafter the 'Council') and concerning the short-term and long-term economic directions, goals and the means to achieve them. The discussions and the negotiations which lead to this agreement take place within the institutional and regulatory framework of the EU, which demonstrates the role of the latter as the coordinative force according to its particular competence in the economic policy.

The above-mentioned "agreement" takes the form of economic "general guidelines". Indeed, the procedure for adopting them is triggered by a (European) Commission's recommendation to the Council, which, acting by qualified majority, draws up draft guidelines and sends a report with its findings to the European Council[23]. The latter, as a political body *par excellence* and because of the importance of the subject, is involved in the process with the power to "*discuss the conclusions on the general guidelines*" and to politically adopt them. It is noteworthy that the European Parliament is merely informed with regard to the above process, which reflects the poor role that has been assigned to it in that particular policy field by the EU constitutional legislator.

In effect, the Council has been given the task of making, on an annual basis, a Recommendation setting out the "*broad guidelines for the economic policies of the Member States and of the Union*". The scope of these guidelines is very broad and covers all aspects of economic policy (macroeconomic and microeconomic) except for monetary and exchange rate policies conducted at EU level in accordance with the provisions of the TFEU on monetary union.

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22 Ensuring price stability in the euro area is a primary objective in the operation of the monetary union (see, *inter alia*, Articles 119(2) and 127(1) TFEU). In a 1999 ECB Governing Council Decision, the Governing Council defined price stability as an annual increase in the Harmonised Index of Consumer Prices for the euro area of close to 2% (i.e., neither above 2%, in which case there is inflation, nor much below that threshold, in which case (as in the last decade) there is deflation). With the most recent review of its monetary policy strategy in July 2021 (at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.html) the ECB now defines price stability as the pursuit of a "symmetric" inflation target of 2% over the medium term. See in this respect Reichlin *et al.* (2021), Zilioli (2021) and Gortsos (2023), pp. 34-36.

23 TFEU, Article 121(2), first paragraph.

Although the legal form in which the general guidelines are framed does not confer binding force, they nevertheless have political and normative value for the governments of the Member States and the EU institutions, given the fact that their implementation is subject to control in the context of the multilateral surveillance procedure exercised in accordance with Article 121(3)-(5), and their content is a reference point for monitoring and assessing the compatibility of Member States' (and the EU's) economic policies with a minimum common denominator of action defined by the Council in response to the request for coordination of economic policies. In effect, one could reasonably characterize the general guidelines as "soft law".

In any case, the culmination of the exercise of the EU's competence by its institutions is the supervision of the implementation of the general guidelines by all Member States. Monitoring the *pacta sunt servanda* of those guidelines is necessary and complementary to creating the framework of their adoption and constitutes the most important aspect of the EU's economic governance. This supervision system, which is characterised by a strongly preventive nature and engulfs all Member States irrespective of whether they have adopted the Euro, is founded on the basis of two axes, which equally contribute to the efficient coordination of the Member States' economic policies within the respective regulatory framework, namely the multilateral surveillance and the fiscal discipline.

II. Multilateral surveillance

The multilateral surveillance constitutes the "preventive part" of the SGP and, in terms of competence allocation, it is based on the "dipole" of two EU institutions, namely the Commission and the Council.[24] In effect, the Commission is responsible for monitoring the national economic policies on the basis of the stability and convergence programmes submitted by Member States whose currency is the euro and those with a derogation, respectively. In order to ensure closer policy coordination and the continued convergence of Member States' economic performances, the Commission is invited to report to the Council covering both the economic policies of the Member States and the economic situation of the EU. On the basis of these reports, the Council has the power, *on the one hand*, to monitor economic developments

24 On the institutional architecture of the economic union, see De Gregorio Merino (2019) and Dermine (2022).

in each Member State and in the EU, as well as the consistency of economic policies with the general guidelines mentioned above, and *on the other hand*, to regularly carry out an overall evaluation[25].

Furthermore, in the context of multilateral surveillance the Council monitors the implementation of the stability programmes by the Member States as well. The aim of this process is to identify actual or expected significant divergences of the budgetary position from the medium-term objective or from the adjustment path towards it, as specified in the stability programme in terms of the government surplus/deficit.

Moreover, in accordance with the "early warning" procedure, if the Council identifies a significant divergence of the budgetary position from the medium-term budgetary objective or the adjustment path towards it, it shall address a Recommendation to the Member State drawing its attention to the need to take the necessary adjustment measures, in which case the procedure laid down in Article 121(4) TFEU is activated. If the divergence persists or worsens, the Council will address a Recommendation to the Member State concerned (which may be made public in the context of a "name and shame" sanction which can exercise significant political pressure), inviting it to take immediate corrective action[26].

It is worth noting that exclusively in the case of Member States that have adopted the euro, and in accordance with 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,[27] there is an additional sanction that can be imposed by a legally binding Decision. Namely, said Member State may be required to make an interest-bearing deposit with

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[25] TFEU, Article 121(3).

[26] Regulation (EC) 1466/97, Article 6. For a detailed approach to the economic policy coordination process, as in force before the adoption of the 2024 legislative package (discussed in Section 3), see Keppenne (2020a).

[27] *OJ L 306, 23.11.2011, pp.* 1-7. This Regulation was legally based on Articles 136 (as it concerns euro area Member States only) and 121(6) TFEU. On the use of Article 136 to adopt EU measures of surveillance and coordination, see Hinarejos (2020), pp. 1388-1390. It is also noted that during the fiscal crisis this was the only TFEU Article amended by the insertion of a new paragraph 3 by virtue of the European Council Decision 2011/199/EU of 25 March 2011 (OJ L 91, 6.4.2011, pp. 1-2), which paved the way for the establishment of a permanent stability mechanism for euro area Member States, the European Stability Mechanism ('ESM'). On this mechanism, see by means of mere indication Hadjiemmanuil (2020a), pp. 1290-1292.

the Commission amounting to 0,2% of its GDP in the preceding year[28]. This particular sanction directed to euro area Member States only was introduced during the fiscal crisis in the euro area.

III. Fiscal discipline – prohibitions

The fiscal discipline constitutes the "corrective part" of the SGP and is established on the basis of two foundations, namely the prohibition of irregular financing of the Member States' economy and the excessive deficit mechanism. In effect, Articles 123-125 TFEU establish a series of prohibitions which seek to abolish practices that (several) Member States had followed for decades to ensure the financing of the expenditure of its public finances under conditions incompatible with the principle of the open market economy (which limits the action of Member States under Articles 119-120 and 127). The common denominator of all these prohibitions is to ensure that the financing of Member States' public expenditure is carried out under conditions compatible with the principle of an open market economy.

In particular, Article 123(1) introduces the prohibition of monetary financing (i.e., central bank money financing) of the expenditure of EU institutions, governments and various other public sector bodies and organisations. The introduction of this prohibition was intended to remove the possibility for the public authorities to require central banks to finance public expenditure by increasing monetary circulation. The definitions for the application of its provisions were laid down in Article 1 of Regulation (EC) 3603/93.

Furthermore, Article 124 TFEU imposes as a rule the prohibition of any measure establishing privileged access of the institutions and entities referred to in Article 123 to financial institutions established in the EU. The relevant provisions sought to abolish the practice followed by Member States of requiring credit institutions (mainly) to invest a certain percentage of their deposits in government securities and are further specified in Council Regulation (EC) 3604/93 of 13 December 1993 "specifying the definitions necessary for the application of the prohibition of privileged access referred to in Article 104 A (1) of the Treaty"[29].

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28 Regulation (EU) 1173/2011, Article 4(1).

29 OJ L 332, 31.12.1993, *pp.* 4-6. *The* Regulation in question was adopted on the basis of the enabling provision in Article 102(2) TEC (which has been repealed, with the authorisation now being based on Article 125(2) TFEU which governs all Regulations relating to prohibitions).

Finally, Article 125 TFEU introduces the rule of excluding the liability or the possibility for the EU and of the Member States to assume the commitments[30] undertaken by (other) Member States or national bodies and agencies listed in Article 125(1) (also widely known as the "no bail-out clause"). Exceptionally, this rule is bent in the case of mutual financial guarantees for the joint execution of a specific project. The definitions for the application of this provision were laid down in the Regulation (EC) 3603/93[31].

IV. Fiscal discipline – excessive deficit mechanism

During the second stage of EMU (1994-1998), Member States were called upon to make efforts to avoid large budget deficits[32]; in this context, a specific procedure was established for the Commission to monitor the evolution of their budgetary situation and the level of their public debt with a view to identifying large deviations[33]. Currently, the so-called "excessive deficit procedure" ('EDP') is governed by Article 126(3)-(13) TFEU and the relevant provisions of the SGP (as in force after its amendment in April 2024[34]). At the beginning of the third stage of EMU, that procedure was intensified for the Member States whose currency is the euro, as on the one hand, they are under an obligation to avoid, not just try to avoid, excessive budget deficits[35], while on the other hand, the Council's powers (including now the power to impose sanctions) have been extended if a Member State has an excessive budget deficit after joining the euro area[36].

Further provisions for the implementation of this procedure are laid down in the (above-mentioned) Protocol (No 12) on the EDP[37]. It is worth noting that Regulation (EC) 479/2009[38] includes further secondary law rules for the implementation of this Protocol. In effect, the EDP aims at avoiding excessive

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30 The terms "being liable" or "assume the commitments" were strictly interpreted by the CJEU in the well-known *Pringle* judgment (Judgment of 27 November 2012 in Case C-370/12, *Thomas Pringle v Government of Ireland and Others*, EU:C:2012:756).

31 On Articles 123-125 TFEU, see Hattenberger (2019), pp. 1998-2010.

32 TEC, Article 116(4).

33 *Ibid.*, Article 104.

34 See Section C below.

35 TFEU, Article 126(1).

36 In accordance with Article 139(2), point (b) TFEU, the provisions of Article 126(9) and (11) do not apply to Member States with a derogation.

37 *Ibid.*, Article 126(14), first paragraph.

38 OJ L 145, 10.6.2009, pp. 1-9. That Regulation was adopted on the basis of the enabling provision in the third sub-paragraph of Article 104(14) TEC (now Article 126(14), third sub-paragraph TFEU).

government deficits and, when such deficits arise, at rapidly correcting them; compliance with budgetary discipline is examined on the basis of the criteria of government deficit and government debt[39].

The Commission is the EU institution responsible for monitoring the evolution of the budgetary situation and the level of public debt in Member States in order to identify major divergences or possible dangers as soon as possible. More specifically, the achievement by Member States of a budgetary position without an excessive deficit is judged according to whether or not the reference values set for two indicators set out in Article 1 of the Protocol (No 12) are met: first, the ratio of the budget deficit to GDP (in market prices) may not exceed 3%, and second, the ratio of public debt to GDP (at market prices) may not exceed 60%. However, exceeding these reference values does not automatically imply a breach of budgetary discipline. Indeed, especially after the experience gained during the economic crisis, important parameters are legally established as necessary to be taken into account in the Commission's examination.

More specifically, fiscal deficits are not considered excessive, even if the ratio exceeds the 3% threshold, if either the ratio of the fiscal deficit to GDP is declining substantially and continuously and has reached a level close to the reference value, or the excess over the reference value is only "exceptional and temporary" and the ratio remains close to the reference value. Moreover, the government debt-to-GDP ratio may exceed the above-mentioned reference value, provided that it is sufficiently diminishing and approaching the reference value at a satisfactory pace.[40]

Specific provisions on the above criteria for the assessment of such overruns were introduced by Article 2 of Regulation (EC) 1467/97, which was substantially amended in 2005, at least to a lesser extent.

With regard to the process of the activation and the sequence of the excessive deficit mechanism, it is worth noting that, in this context as well, the Commission and the Council form an exclusive dipole, each institution having its own role in a "delicate and balanced dance". More specifically, if the Commission considers that a Member State does not fulfil the conditions of the two criteria mentioned above or considers that there is a risk of an excessive government deficit occurring, on the basis of the fiscal data notified to it on 1 March and 1 September each year, it shall prepare a report triggering

39 Regulation (EC) 1056/2005, Article 1.

40 TFEU, Article 126(2).

the EDP[41]. When preparing the report, the Commission shall *on the one hand*, take into account various factors, such as whether the Member State's government deficit exceeds its public investment expenditure, and its medium-term economic and budgetary situation[42], and *on the other hand*, to carry out a "balanced overall assessment" as defined in Article 2(3) of Regulation (EC) 1467/97 (as amended in 2005).

Within two weeks of the Commission's report, the Economic and Financial Committee gives its opinion on the report and submits it to the Council[43]. Consequently, the Commission, having taken into account the report of the Economic and Financial Committee and if it considers that an excessive deficit exists or may occur, shall address its opinion to the State concerned and inform the Council. At this stage, the Council is now called upon, as the responsible institution, to decide whether or not an excessive deficit exists.

In this context, it is interesting to note that the Council's act, which includes a Member State in the excessive deficit "*cadre*", is a Decision, i.e. a traditional legal act producing legal effects contrary to the other "soft law" instruments used in the economic union field. This Decision is adopted by qualified majority, on the Recommendation of the Commission[44], and if the Council decides that an excessive deficit exists in the Member State, it shall address to the Member State, "*without undue delay*", Recommendations with a view to bringing the situation to an end within a given period[45]. These Recommendations, which are adopted following a Commission Recommendation and are not made public at this stage, set two deadlines for the Member State: a (maximum) six-month deadline for it to take effective action and a deadline for the correction of the excessive deficit, which should expire within the year following the year in which the excessive deficit was identified, unless there are special circumstances.

After the interested Member State has been informed of these Recommendations, the Council examines whether it has taken effective action. If it is established that this has not been the case, the Council may, on the one hand, make the recommendations public immediately after the expiry of the

41 *Ibid.*, Article 126(3), first and third paragraphs.
42 *Ibid.*, Article 126(3), second paragraph.
43 *Ibid.*, Article 126(4).
44 *Ibid.*, Article 126(5)-(6).
45 *Ibid.*, Article 126(7).

deadline it has set and, on the other hand, within two months of this Decision, give notice to the Member State concerned to take measures to reduce the deficit, setting a deadline for compliance[46].

Where a Member State fails to comply with the above Decision, the Council may decide to apply or reinforce one or more measures or direct sanctions. As a general rule, it may require it to make an appropriate amount in full to the EU until the excessive deficit has been corrected. Nevertheless, it may additionally require the Member State to publish supplemental information before issuing bonds and debt securities, invite the European Investment Bank to review its lending policy towards the Member State, and/or impose reasonable fines[47]. Once more, in the context of economic coordination the European Parliament is simply informed of the above measures taken by the President of the Council[48].

The procedure for applying these sanctions is further specified in Articles 11-16 of Regulation (EC) 1467/97. Furthermore, in accordance with Regulation (EU) 1173/2011 which, as already mentioned, only applies to euro area Member States, a new option for sanctions has been introduced. More specifically, under specific conditions (including that the Council has decided that an excessive deficit exists in a Member State which has lodged an interest-bearing deposit with the Commission in accordance with Article 4(1) of that Regulation), the Commission may recommend to the Council to require the Member State concerned to lodge with the Commission a non-interest-bearing deposit amounting to 0.2% of its GDP in the preceding year[49].

On the other hand, if the Council considers that in a Member State the excessive deficit has been corrected, it abrogates some or all of its Decisions or Recommendations in accordance with the above[50]. In fact, if it has pre-

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46 *Ibid.*, Article 126(8)-(9). It is noteworthy that the infringement action provided in Articles 258-259 TFEU cannot be activated by the Commission or a Member State against the Member State that ignores the warnings and the Recommendations issued by the Council within the framework of Article 126(1)-(9) TFEU, which is explained by the fact that these acts are not *stricto sensu* legally binding (*ibid.*, Article 126(10)).

47 Amounting up to 0.2% of the Member State's GDP in the preceding year in accordance with Article 6(1) of Regulation (EU) 1173/2011.

48 TFEU, Article 126(11).

49 Regulation (EU) 1173/2011, Article 5(1). This sanction differs from the one set out in Article 4(1) in relation to the preventive part of the SGP (see above, under B.II.) in that it is non-interest bearing; the amount is the same though.

50 *Ibid.*, Article 126(12), first paragraph, with reference to Decisions and Recommendations referred to in Articles 126(6)-(9) and 126(11).

viously made public Recommendations, once the Decision referred to in Article 126(8) has been abrogated, it shall make a public statement that an excessive deficit no longer exists in the Member State concerned[51].

C. The recent reform of the economic governance's legal framework

I. The birth after a pregnancy with complications

On 26 April 2023, the Commission put forward three legislative proposals SGP to reorganise the EU's economic governance framework after all the lessons learnt during the consecutive crises in the financial system and in public health, in order to ensure sound and sustainable public finances, while promoting sustainable and inclusive growth in all Member States through reforms and investment.[52] In particular, those proposals aimed at replacing and amending the current "preventive part", as well as amending the "corrective part" of the SGP, respectively, and at amending Directive 2011/85/EU[53] to strengthen the role of independent fiscal institutions ('IFIs').

Indeed, after long and occasionally very difficult negotiations, and ironically in the year when the general escape clause[54] is deactivated in order to enter a period of de-escalation of debt that has risen above the 60% of GDP threshold in most EU countries, the Member States in the Council (on 21 December 2023) and, subsequently, the Council and the European Parliament as co-legislators reached a consensus regarding the adoption of the Commission's proposals. Thus, on 29 April 2024, three legislative acts were adopted: *first*, the European Parliament and the Council adopted Regulation (EU) 2024/1263 on the effective coordination of economic policies and on multilateral budgetary surveillance, which repealed Regulation (EC) No 1466/97;[55] and *second*, the Council adopted Regulation (EU) 2024/1264 on speeding up and clarifying

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51 *Ibid.*, Article 126(12), second paragraph; Article 126(13) sets out the procedural requirements.

52 At: https://www.consilium.europa.eu/en/press/press-releases/2024/02/10/economic-governance-review-council-and-parliament-strike-deal-on-reform-of-fiscal-rules. See on this Feld *et al.* (2023). This legislative package was based on the Commission's Communication of 9 November 2022 (COM/2022/583 final).

53 Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ L 306, 23.11.2011).

54 See footnote 20 above.

55 OJ L, 2024/1263, 30.4.2024.

the EDP's implementation, which amends Regulation (EC) No 1467/97[56], and Directive (EU) 2024/1265 on requirements for budgetary frameworks of the Member States, which amends Directive 2011/85/EU[57].

The reform's overall objective as presented by the Council[58] is to reduce debt ratios and deficits in a gradual, realistic, sustained and growth-friendly manner, while protecting reforms and investments in strategic areas such as digital, green or defence. At the same time, attention has been paid to form a framework that will provide appropriate room for counter-cyclical policies and help address existing macroeconomic imbalances.

More specifically, the new legal framework for the macroeconomic management in the EU focuses on the need for Member State ownership over the national efforts towards fiscal consolidation. It also builds on a hard and unpleasant truth which has been suppressed for many years and that had serious consequences in the coordination of economic policies, namely that the fiscal position of each Member States differs. At the same time, it provides the Member States with incentives to invest in areas of common interest, such as climate change, digital and green transitions, and national defence. Finally, it attempts to simplify the design and the supervision system of fiscal consolidation measures with the aim to make them more credible and transparent.

II. The key amendments

The focus in the present Sub-section turns to the amendments introduced to the multilateral surveillance and fiscal discipline systems, which are not exhaustively economic in nature but cause significant legal and structural changes in the mechanisms involved. These reforms will be presented categorised in terms of monitoring compliance, criteria of monitoring progress and institutional amendments.

When it comes to the obligation of the Member States to continuously provide all the necessary information and data about their fiscal image and their convergence plans, the recently adopted legal framework establishes a new

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56 OJ L, 2024/1264, 30.4.2024.

57 OJ L, 2024/1265, 30.4.2024. *All three legislative acts apply as of the date of their publication in the Official Journal.*

58 Council of the EU, Press Release 350/29.4.2024, available at: https://www.consilium.europa.eu/en/press/press-releases/2024/04/29/economic-governance-review-council-adopts-reform-of-fiscal-rules/?utm_source=brevo&utm_campaign=AUTOMATED - Alert - Newsletter&utm_medium=email&utm_id=320.

document titled “medium-term fiscal-structural plans”[59]. These plans become the cornerstone of the Commission’s monitoring system and encompass country-specific fiscal trajectories, Member States’ structural reform and investment commitments.

Furthermore, one of the most important changes is surely the change of focus of the criteria of the economic policy coordination’s surveillance. In effect, the main concept with regard to which Member States’ compliance with the coordinated economic guidelines and the fiscal rules will be monitored is, after the amendments, that of “net expenditure”. This term is defined in both Regulations[60] as the government expenditure net of interest expenditure, discretionary revenue measures, expenditure on programs of the Union fully matched by revenue from Union funds, national expenditure on co-financing of programs funded by the Union, cyclical elements of unemployment benefit expenditure, and one-offs and other temporary measures. This is indeed a major shift in the national economic policy assessment doctrine. Even tough public debts and deficits remain important and are taken into account as indicators of the performance of a Member State in managing its finances in broad terms, and thus there are specific safeguards provided which are triggered depending on the levels of these variables, “net expenditure” will be from now on the main indicator to evaluate when supervising and assessing the performance of a Member State towards fiscal consolidation.

Subsequently, while still presenting the criteria of compliance monitoring, it is worth pointing out that the new amended framework has in its epicentre the “reference trajectory”, a term defined as the multiannual net expenditure trajectory transmitted by the Commission to frame the dialogue with Member States where government debt and / or deficit exceed the reference values when drawing up their national medium-term fiscal-structural plans[61]. The interesting parameter to take into account at this point is that the reference trajectory, and therefore the Commission’s suggested plan for fiscal consolidation, will be “risk based and differentiated” for each Member State[62]. In accordance with Regulation (EU) 2024/1263, the notion of risk-based planning is paramount when the Commission plays the central role assigned to it by conducting a debt-sustainability analysis before addressing a

59 Regulation (EU) 2024/1263, Article 11.

60 Article 2, point (2) of Regulation (EU) 2024/1263 and Article 1(3) of Regulation (EC) No 1467/97 as amended by Regulation (EU) 2024/1264.

61 Article 2, point (3) of Regulation (EU) 2024/1263 and Article 1(3) of Regulation (EC) No 1467/97 as amended by Regulation (EU) 2024/1264.

62 Regulation (EU) 2024/1263, Article 6.

Recommendation concerning the trajectory that Member States should follow in the evolution of their "net expenditure" when their debts and deficits exceed the reference values.

In this context, it is important to note that the above changes reflect the fact that national governments, having reserved the competence in the exercise of economic policy, must still have discretion when planning on how to achieve the reference trajectory. Moreover, as it was mentioned above, temporary or on-off measures (e.g. wind-fall taxes or asset sales) do not change net expenditure under the definition provided by Article 2 of Regulation (EU) 2024/1263, which leads to the conclusion that any adjustments to public spending must be structural. Last but certainly not least, the Member States' medium-term fiscal-structural plans to align with the reference trajectory cover a period of four or five years depending upon the term of each national legislative institution[63], while any Member State can ask the Commission for a revision of the plans when there has been a change of government after elections.

Another interesting provision is observed in the new, totally replaced "preventive part" of the SGP, which, as it is by now evident, contains overall the most innovative elements of the new legal framework. More specifically, a one-year duration limit is set in the activation of the general escape clause through a Council Recommendation, with its repeatable renewal for one year each time being an option[64]. Indeed, the activation of the general escape clause during the pandemic led to the realisation that there are no clear guidelines for its deactivation. The same solution to the same problem is given regarding the activation of the Member State – specific escape clauses[65]. It is noteworthy that the new set of rules shifts the burden onto any decision to extend the activation.

When it comes to the encouragement of the public investment in important sectors, this incentive is offered through the provision giving to the Member States the choice of extending the planning horizon to up to three years as long as if they commit to reforms or investments that will improve growth potential, support fiscal sustainability, address common EU priorities, incorporate relevant country-specific recommendations, and result in the overall same or higher (not lower) level of nationally financed public investment in comparison to the previous period[66]. In order not to turn the above possibility

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63 *Ibid.*, Articles 2(6) and 15.

64 *Ibid.*, Article 25.

65 *Ibid.*, Article 26.

66 *Ibid.*, Article 14.

to a way to circumvent the obligations of a Member State deriving from a "recovery and resilience plan", the Regulation explicitly provides that the set of reform and investment commitments underpinning the extension of the adjustment period shall be consistent with any commitments included in such an approved plan for the Member State concerned.

It is evident that an extension such as the one mentioned above lowers the average annual fiscal adjustment and thus aims to create incentives for governments, on one hand, to avoid excessive cutting of public investment as part of their consolidation efforts, and on the other hand, to spend more in common objectives. Moreover, Member States are allowed the calculate and include the impact of those investments into their annual progress report[67].

With regard to the fiscal policy prudence, even though any modification in the reference values is not possible without a Treaty amendment, no matter how strict, rigid and maladjusted they can prove to be given the circumstances, the new Regulation (EU) 2024/1264 provides that not any transgression of those reference values will immediately trigger the corrective part of the SGP and lead to an Excessive Deficit Procedure (EDP). More specifically, it is of particular interest that, while the deficit-based EDP remains unchanged, in the debt-based EDP the operation of the new multi-annual framework is seriously taken into account. In effect, this new and clear distinction between the two different causes that can lead to the EDP demonstrates the specific weight the EU legislator recognizes to the more peculiar parameters that result to excessive deficit and its more severe consequences. Indeed, Member States that breach the 60% debt ratio can avoid an EDP if they can secure their compliance with their net expenditure path and their commitment to the fiscal-structural plan. Furthermore, once a Member State is in an EDP and exceeds the 3% deficit ratio threshold, a "corrective net expenditure path" is implemented[68].

For the years when the deficit ratio exceeds the 3% threshold, the net expenditure path set by the national fiscal-structural plan would be adjusted by 0.5% of GDP. In effect, until effective action is taken, Member States in an EDP will face fines up to 0.05% of GDP to be paid every six months, up to cumulative fines of 0.5% of GDP[69]. As it can be observed, the upper limit of 0.5% of GDP is lowered in comparison to the older regime, and the imposed sanctions more granular.

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67 *Ibid.*, Article 21(2).

68 Articles 5 and 8 of Regulation (EC) No 1466/97 as amended by Regulation (EU) 2024/1264.

69 Article 12 of Regulation (EC) No 1466/97 as amended by Regulation (EU) 2024/1264.

Moreover, one cannot disregard the mechanisms and changes introduced by the new legal framework in order to enhance the transparency of the multilateral surveillance and fiscal discipline processes. More specifically, the new Regulations and Directive strengthen the independence and functionality of the independent "European Fiscal Board"[70], which advises on the exercise of the Commission's and Council's functions in the multilateral fiscal surveillance set out in Articles 121, 126 and 136 TFEU[71], as well as the provisions aimed at keeping the European Parliament better informed[72], mainly by means of the volume of documents being provided to it[73] and the existing economic dialogue and a new dedicated "medium-term fiscal-structural plan dialogue"[74].

Finally, it is worth noting that the three new legislative acts essentially become the central circle in a system of multiple concentric circles ensuring the sustainability of government finances, with another, complementary system as a wider circle being the "Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union" (2012), also known as the "fiscal compact". In that sense, as it was accurately observed[75], the new SGP framework is not just about fiscal policy but also about the direction of macroeconomic policy coordination more generally.

D. Concluding remarks

The presentation and brief analysis of the three legislative acts adopted in April 2024 on the reform of the SGP can lead to several conclusions, among which two are selected to develop here, due to their importance and extent.

The *first* conclusion is purely legal in nature and concerns the fact that the EU legislator, in the form of all three institutions involved in the rulemaking process, considered it, on the one hand, appropriate to make amendments to the "corrective part" of the SGP and, on the other hand, necessary to radically change its "preventive part" by replacing it with a new system based on a

70 This was established by Commission Decision (EU) 2015/1937 of 21 October 2015 (OJ L 282, 28.10.2015, *pp*. 37-40).

71 Regulation (EC) No 1466/97, Article 24.

72 *Ibid.*, Article 27.

73 Additional information is to be provided to the European Parliament: transmission of fiscal-structural plans, minutes and underlying documents of technical dialogues, including proposed reference trajectories (in such a way as to allow replicability), net expenditure paths, debt sustainability assessments and progress reports on reform and investment commitments.

74 Regulation (EC) No 1466/97, Article 28.

75 See Jones (2024), p. 8.

different approach and different priorities. Indeed, a stirring of the wheel is evident when the efficient fiscal consolidation is perceived as being structural in nature and not pro-cyclical, and as being built alongside public investment and not at the expense of it. Even though the new Regulations and Directive are to be tested in practice before safe conclusions can be reached, it becomes clear that the economic governance paradigm in the EU is steadily changing, albeit slowly.

The *second* conclusion is drawn from the political message emitted by the SGP amendments, which is one of solidarity and integration. *Solidarity* , because the Member States carrying out the heavy burden of debt have now more options, time and a hospitable environment to bring their fiscal and economic policy back on track. *Integration*, because, even though the strictly and exclusively coordinative character of the EU's competence in the economic policy compared to its Member States is not altered, the direction of secondary law and especially of the new, amended SGP is clearly towards the last stage before the "EU economic policy", namely the "Member States' economic policies" where pro-EU considerations reign. The new provisions encouraging fiscal consolidation by public investment which supports common European policies is a notable example of that.

Regardless of whether the soundness and the providence of the new, amended SGP will be verified in the years to come, one consideration is surely true and becomes evident from the fact that all three institutions, namely the Commission, the Council and the Parliament, each representing a totally different form of power and defending different interests, have agreed against all bets to such an important reform in such a sensitive policy area. And that consideration is that the EU has learnt the most important lesson after years of economic turmoil: in order to survive one must adapt.

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