

12. CAN FISCAL COUNCILS ENHANCE THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION? A COMPARATIVE ANALYSIS¹

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1. Although this is the result of a joint work of the two authors, Cristina Fasone drafted Sections 1, 3 and 4, while Elena Griglio drafted Sections 2, 5 and the figures. The conclusions have been jointly drafted by the two authors. We would like to thank Giacomo Delledonne, Prof. Sergio Fabbrini, Prof. Nicola Lupo, Dr. Aleksandra Maatsch, Prof. Andrea Manzella, Prof. Yves Mény, and Dr. Riccardo Pelizzo for their comments. The usual disclaimers apply.

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1. Introduction

Fiscal Councils, as technical bodies in charge of monitoring and assessing compliance with budgetary, fiscal and even macroeconomic indicators, and acting independently from political (and thus fiscal) authorities,² have been established since the 1960s, albeit in a minority of countries.³ Although

2. According to the set of 'Principles for Independent Fiscal Institutions' drafted within the OECD framework in 2012, Fiscal Councils are 'publicly funded independent bodies under the statutory authority of the executive or the legislature which provide non-partisan oversight and analysis of, and/or advice on, fiscal policy and performance'.
3. The most notable example being perhaps the U.S. Congressional Budget Office, in operation since 1975: see Nooree Lee (2008), *Congressional Budget and Impoundment Control Act of 1974, Reconsidered*, in *Briefing Paper no 34*, Harvard Law School, University of Harvard, p. 1 ff. and Philip G. Joyce (2011), *The Congressional Budget Office: Honest Numbers, Powers, and Policy Making*, Washington D.C., Georgetown University Press, p. 207 ff. In Europe, most Fiscal Councils have been established since 2009, thus in connection with the financial crisis. See OECD, *Parliamentary Budget Officials and Independent Fiscal Institutions*, 4th annual meeting, Background document no 3 for the Session on Discussion on Draft Principles for Independent Fiscal Institutions, Paris, 23-24 February

scholars and international and supranational organisations have always underlined the importance of such institutions for having sound public accounts and sustainable growth, it was only in the new century that the financial and the Euro crises gave the most significant input for the setting up of Fiscal Councils, in particular in the European Union (EU) Member States.⁴

2012, p. 2.

4. See Lars Calmfors (2011), *What should Fiscal Councils do?*, CESifo Working Paper No. 3382, March 2011, available at: www.cesifo.org/wp and Sergio Fabbrini (2012), *I quattro doveri della politica verso i cittadini*, in *Il Sole24Ore*, 19 September, p. 1. As for the position of the International Monetary Fund, see Anthony Annett *et al.* (2005), *Reforming the Stability and Growth Pact*, in *IMF Policy Discussion Paper*, 05/2, available at: <http://www.imf.org/external/pubs/ft/pdp/2005/pdp02.pdf>, and Manmohan S. Kumar and Teresa Ter-Minassian, eds. (2007), *Promoting Fiscal Discipline*, Washington D.C., International Monetary Fund; the OECD recommended the establishment of Fiscal Councils in several *Economic Surveys by Country*, available at: <http://www.oecd.org/eco/surveys>; in the EU the European Central Bank and the European Commission have always supported the setting up of such institutions: see, for example, European Central Bank (2010), *Reinforcing Economic Governance in the*

In the last few years both national governments and EU institutions have made the establishment of Fiscal Councils in the Member States compulsory. Indeed, Fiscal Councils have been identified as one of the tools for limiting the growth of public deficits and debts, favouring the adoption of more responsible and technically-meditated political decisions.

To date, the literature has mainly focused on the impact of Fiscal Councils for maintaining tight fiscal discipline and on the effectiveness of their role as 'watchdogs', examining their independence from the fiscal authorities, namely, the parliament and the executive. However, this debate seems vitiated by the bias of treating these two branches of government as though they undertook the same role within the budgetary and fiscal decision-making process. Instead, a more careful look at the relevant national discipline reveals that, in parliamentary forms of governments, such as those of most EU Member States, the national parliaments are usually less influential on fiscal

Euro Area, 10 June, p. 7 ff., and European Commission (2010), *Enhancing Economic Policy Coordination for Stability, Growth and Jobs – Tools for Stronger EU Economic Governance*, COM(2010) 367/2, Brussels.

decisions and less equipped with information on fiscal policy than the executives.⁵ This evidence is further strengthened by the fact that the European measures of the new economic governance, urging tighter fiscal discipline, in principle reduce the room that national parliaments have for manoeuvre and, instead, increase the degree of the inter-governmentalism of the decision-making process.⁶

Moreover, the position of Fiscal Councils needs to be framed within the particular context of the EU and of its Member States, in which the national parliaments have normally been considered as the ‘latecomers’ or the ‘losers’ of the European integra-

tion process.⁷ However, since the Treaties of Maastricht and Amsterdam, and most evidently since the Treaty of Lisbon national parliaments have gradually experienced an upgrade of their role in the EU. National parliaments have constantly transformed and adapted themselves, from their marginalisation,⁸ then Europeanisation,⁹ and finally to their rehabilitation and strengthening in the EU.¹⁰ The establishment of Fiscal Councils, independent of, but accountable to, the parliaments, can possibly enhance the role of parliamentary institutions in the European framework and in the

economic governance. Fiscal Councils can provide parliaments with a further source of information, independent from the executive, whose legitimacy relies on the technical competence and the merit of its members. By monitoring the executive on the grounds of the financial effects of its policy options, by providing macroeconomic forecasts, and by making the results of their analyses publicly available, Fiscal Councils are not only able to improve the credibility and the transparency of fiscal decisions, but they can also re-inforce parliamentary *ex ante* scrutiny and oversight on budgetary matters, and, ultimately, the weight of the parliaments in European economic governance. In other words, depending on the constitutional system and on the political culture of the Member State concerned, an independent Fiscal Council can also affect the parliament-executive relationship, in terms of inter-institutional balance and in terms of the outcomes of the current euro-national fiscal procedures.

Thus, set within the present debate on the changing role of the national parliaments in the EU, the paper is intended to examine, by means of a comparative analysis, the setting up of Fiscal Councils under the perspective of national representative

5. See, for example, Riccardo Pelizzo *et al* (2005), *The Role of Parliaments in the Budget Process*, Washington DC, World Bank Institute.

6. On the ‘new wave’ of inter-governmentalism brought by the new economic governance, see Paolo Ponzano (2011), *Méthode intergouvernementale ou méthode communautaire: une querelle sans intérêt?*, in *Les Brefs the Notre Europe*, n. 23, p. 2-3, Uwe Puetter (2012), *Europe’s deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance*, in *Journal of European Public Policy*, vol. 19, n. 2, p. 161-178, and Sergio Fabbrini (2013), *Intergovernmentalism and Its Outcomes: The Implications of the Euro Crisis on the European Union*, in *LUISS School of Government Working Paper Series*, n. 1, forthcoming.

7. The expressions ‘losers’ and ‘latecomers’ referred to national parliament in the EU are taken from Andreas Maurer & Wolfgang Wessels, eds. (2001), *National Parliaments on their Ways to Europe. Losers or Latecomers?*, Baden-Baden, Nomos Verlag.

8. See Philipp Kiiver (2006), *The National Parliaments in the European Union: a Critical View on EU Constitution Building*, The Hague, Kluwer Law International, p. 15 ff.

9. See, for example, Katrin Auel (2005), *Introduction: The Europeanization of Parliamentary Democracy*, in *Journal of Legislative Studies*, vol. 11, n. 3-4, p. 303-318.

10. On the rehabilitation, in prospects, of national Parliaments in the EU, see John O’ Brennan & Tapio Raunio, eds. (2007), *National Parliaments within the enlarged European Union: from Victims of Integration to Competitive Actors?*, London-New York, Routledge.

assemblies, and tries to answer the following research question: To what extent and under what conditions can Fiscal Councils contribute to improve the position of the national parliaments within the framework of the European economic governance, in particular in their relationship with the national executives?

In the end, the establishment of a re-inforced cooperation between the parliament and the Fiscal Council can contribute to strengthen the independence of the latter and to promote a more effective implementation of fiscal rules.

The paper is devised as follows. Section 2 considers the crucial feature of the independence of Fiscal Councils, to be assessed differently when looking at the parliaments or at the executives; Section 3 refers to the theoretical framework of the paper, the tension between the marginalisation and the enhancement of national parliaments in the EU, and how it is affected by the setting up of Fiscal Councils; Section 4 analyses how the European measures, either those in force or those whose adoption has been almost completed, can connect Fiscal Councils to the national parliaments; Section 5 analyses the setting up of Fiscal Councils in

five case-studies, Belgium, France, Germany, Italy and the UK, selected upon the basis of the institutional architecture in the national systems, of the relationship between the Fiscal Council and the parliament, and of the moment of creation of independent fiscal agencies. Finally, Section 6 tries to draw the first conclusions about the effects of the establishment of Fiscal Councils on the position and the powers of the national parliaments in the EU.

2. Fiscal Councils... Independent from the Government or from the Parliament?

In describing the institutional features that the specific Fiscal Councils, of the Member States, have in common, the literature has usually cast its attention on those fundamental rules which tend to grant such institutions a consistent degree of autonomy from the political bodies and non-partisanship. In particular, what has been clearly pointed out is that the mandate of the Councils must satisfy several criteria,¹¹ concerning the nature of the agency's mandate (which should be 'unambiguous and achievable, and the delegated responsibility should have an economic rationale'), the way in which the Council fulfils its tasks (it must be granted complete autonomy in carrying out its mission), and, above all, its relationship with the political sphere (which should make the Council fully independent of the governing institutions).

11. See Robert Hagemann (2010), *Improving Fiscal Performance through Fiscal Councils*, in *OECD - Economic Department Working Paper* n. 829, 9 December, available at: <http://www.oecd.org/eco/economicsdepartmentworkingpapers.htm>, p. 14; Lars Calmfors (2011), *What should Fiscal Councils do?*, cit., p. 16 ff.

The pre-requisite of the independence from political influence, in its turn, has been reflected in a variety of rules (the so-called 'firewalls'), conferring: the autonomy from politics in the Council's appointment of members and staffing (which can be evaluated by looking at the nature of the appointees, at who makes the appointment, at the relationship of the appointees from politics and at the staffing rules and procedures);¹² the formal influence exercised by the agency in the budget and fiscal process (in this field, what should be taken into consideration is the nature of the agency's mandate, its policy objectives and its area of ac-

12. Lars Calmfors (2011), *The Role of Independent Fiscal Policy Institutions*, in *CESifo Working Paper* n. 3367, February 2011, available at: www.cesifo-group.org/wp, p. 19-20; Lars Calmfors (2011), *What Should Fiscal Councils Do?*, cit., p. 16 has insisted on the possibility of achieving the independence of a Fiscal Council through: appointment procedures that seek to guarantee professionalism and the ground for appointment; long and non-renewable periods of office for the institution's decision-making body; restrictions on the government's freedom to fire the members of the institution's decision-making body.

tivities, its influence on government activity, and its formal role in the budget process carried out by the parliament); the Council's funding (which is supposed to grant the agency its own revenues and a degree of autonomy in the management of its accounts), and the accountability rules (confering, above all, the 'collective' accountability of the Council in the face of the government and of the parliament).¹³

Most investigations of the functional and structural features which should characterise all Fiscal Councils are based upon a basic assumption: that a Fiscal Council can potentially contribute to improved fiscal performance only if it is granted effective independence from both the government executive and the parliament. The main reason behind the creation of such an agency is, in fact, to be found in the opportunity to limit political influence in the technical aspects of fiscal-policy formulation or monitoring, and to provide for macroeconomic forecasts which are free of any

13. According to Lars Calmfors (*Ibidem*), 'a council which is not held accountable in the short run may risk its independence in the long run', as it may get into conflict with the government which may then want to restrict its independence or reformulate its tasks.

significant bias which, in their turn, may contribute to improve the transparency of fiscal decisions and to increase the public awareness of the budgetary performance.¹⁴ In other terms, the creation of a Fiscal Council is justified by the decision to delegate some aspects of fiscal policy to an unelected, but nonetheless accountable, body, thus creating an antidote to deficit bias;¹⁵ this does not imply a delegation of authority - with regard to the fiscal policy - to the fiscal agency, whose mandate

is usually limited to the analysis and assessment of fiscal developments and policies.¹⁶

For these reasons, the so-called 'independence' factor is considered to be the necessary premise for enabling the agency to affect fiscal-policy choices, and, according to part of the literature, to contribute to improved fiscal performance.¹⁷ There are two ways to endow a Fiscal Council with effective independence:¹⁸ by building up a solid reputation for impartial and competent analysis; and by setting up formal rules which protect the Fiscal Council from external interference. Given that the first solution, based upon the technical reputation of the agency, is likely to take time, the second option is the one most often adopted when first establishing a Fiscal Council.

The above-described approach, which clearly interprets the interaction of Fiscal Councils-elected bodies as a possible *vulnus* in the guarantee of the

agency's independence and seems to find widespread favour in the literature, would need more cautious reflection. There is no doubt that any agency in charge of evaluating fiscal-policy formulation and implementation requires full autonomy from the subject in charge of the policy-making process in parliamentary forms of government, *i.e.*, the government: an adequate level of separation between the two institutions would turn the monitoring mechanism into a self-control activity devoid of real utility. This observation, however, cannot be completely applied to the relationship between Fiscal Councils and parliaments. From the functional point of view, the fiscal policy-making does not fall completely within the domain of the legislative body, which, in this field, is usually empowered with more control than decision-making power. At the same time, from a structural point of view, it is unequivocal that the parliament does not embody a single political position, as is the case of the government, but, that through the confrontation between the majority and the opposition, it is able to offer those democratic checks and balances which represent, in themselves, a guarantee of independence.¹⁹

19. See Petr Hedbávný, Ondřej Schneider, Jan Zápál

14. Among other, see Robert Hagemann (2010), *Improving Fiscal Performance through Fiscal Councils*, cit., p. 10-11; Xavier Debrun & Manmohan S. Kumar (2007), *The Discipline-Enhancing Role of Fiscal Institutions: Theory and Empirical Evidence*, in J. Ayuso-i-Casals, S. Deroose, E. Flores and L. Moulin eds., *European Economy - Economic Papers*, n. 275, April 2007, p. 32, and Tatiana Kirsanova, Campbell Leith and Simon Wren-Lewis (2007), *Optimal Debt Policy, and an Institutional Proposal to Help its Implementation*, ivi, p. 288 ff. Among the Italian literature, see Daniele Cabras (2012), *Un Fiscal Council in Parlamento*, in <http://www.federalismi.it/>, 17 October.

15. Xavier Debrun & Manmohan S. Kumar (2007), *Fiscal Rules, Fiscal Councils and All that: Commitment Devices, Signaling Tools or Smokescreens?*, in *IMF Working Papers Series*, 29 March, p. 479 ff., available at: www.ssrn.com.

16. Xavier Debrun, David Hauner & Manmohan S. Kumar (2007), *The Role for Fiscal Agencies*, in M.S. Kumar, T.T. Minassian (eds.), cit., p. 107.

17. Xavier Debrun & Manmohan S. Kumar (2007), *Fiscal Rules, Fiscal Councils*, cit., p. 485 ff.

18. Lars Calmfors (2011), *What should Fiscal Councils do?*, cit., p. 13.

For all these reasons, the present paper embraces a different approach to the relationship between Fiscal Councils and representative assemblies, based upon the idea that such interaction would not invalidate the fulfilment of the Fiscal Council's mandate, but would, instead, enrich the overall functioning of the *ex ante* and *ex post* scrutiny²⁰ circuit.²¹ This perspective implies that the pre-req-

(2005), *A Fiscal Rule that Has Teeth: a Suggestion for a 'Fiscal Sustainability Council' Underpinned by the Financial Markets*, in *CESifo Working Paper* n. 1499, July, p. 17 ff., available at: www.ssrn.com. The authors, in fact, propose the creation, at the European Union level, of a Fiscal Sustainability Council (FSC) in order to contribute to solve the bias of national governments excessive deficits. To work properly, the FSC 'must be independent from regular political-cycle considerations, *i.e.*, it must be shielded from member countries' national governments'. This remark does not prevent the authors from considering as recommended a close relationship between the FSC and the national Parliaments of the EU, which for instance should select and appoint FSC members.

20. In the present paper we use 'oversight' and '*ex post* scrutiny' as synonyms, when describing the control set in place by Parliaments on the implementation of the executive's policies.
21. Many Fiscal Councils exercise, at the same time, both a forecasting and a monitoring activity, which respectively occupy the *ex ante* and the *ex post* stage. As observed by John Kay (2010), *A fiscal watchdog has no need*

uisite of the Fiscal Council's independence should instead be described in terms of co-operation and mutual support between the agency and the parliament. In this regard, it can be argued that Fiscal Councils, particularly when they have strong ties with parliaments, can re-inforce the position of the latter – traditionally seen as weak actors – in national decision-making processes dealing with the EU and fiscal matters (Section 3).

The soundness of such a thesis is assessed by considering two different levels of analysis as relevant. First of all, attention is brought to the European norms concerning the establishment of fiscal agencies, evaluating whether the functional and structural requirements concerning the creation of such bodies take (and in what ways) the relationship with the parliament into consideration (Section 4).

Secondly, some national experiences are deepened, with the purpose of empirically assessing

of a crystal ball, in *The Financial Times*, 22 September, 'governments cannot be relied on both to set targets and to monitor compliance with these targets'; as a consequence, the job which Fiscal Councils have, or should have, 'is therefore more akin to audit than to forecasting'.

what the (formal and informal) interaction between the existing (and the forthcoming) Fiscal Councils and respective legislatures actually is (Section 5). In order to isolate the different factors which influence such a relationship, five national cases have been selected, representing, respectively: two Fiscal Councils established long before the present the economic and financial crisis, and characterised by a solid relationship with the executive (Germany and Belgium); the United Kingdom's Office for Budget Responsibility, a fiscal agency created during the Eurozone crisis (but formally not as an adaptation to EU law) which is closely-related both to the parliament and to the government; and two newly-established fiscal institutions (Italy and France), created in order to comply with the EU requirements.

With the purpose of evaluating the relationship linking such fiscal institutions with the legislative branch, four elements are taken into account in considering national experiences: the role exercised by the parliament in the appointment procedures; the capacity of the Fiscal Council to interact with the legislative process carried out at parliamentary level, and the procedures accompanying the submission and discussion of the agency's

fiscal reports within the representative assemblies; the dependence of the Council's funding on a decision to be taken at parliamentary level; and the accountability rules which assure an evaluation of the elected assemblies with regard to the Fiscal Council's activity.

3. National Parliaments in the European Union: Marginalisation, Europeanisation, Revival?

Since the inception of the European Communities (EC), national parliaments have not fulfilled a primary role in the integration process. They have not been placed in a position in which they have real weight and actually count: when they were directly represented in the Parliamentary Assembly of the EC, this inter-parliamentary institution was simply a consultative body; after the first election of the European Parliament (EP) and, at least, until the 1990s, national parliaments were kept apart from the new decision-making powers assigned to the 'Assembly for Europe'.²² National legislatures could prove to be effectively influential only

at the moment of voting the authorisation to ratify European treaties and their revisions.²³

However, in the early 1990s, it was argued that the position of the national parliaments in the EU was extremely weak.²⁴ Because of the principles of supremacy and of direct effect, the laws at first approved by the national parliaments can be superseded by European norms,²⁵ provided

22. The expression here is drawn from David Marquand (1979), *Parliament for Europe*, London, Jonathan Cape, p. 64-66, who advocated for the EP's direct elections and empowerment. Yves Mény (2011), *Can Europe be Democratic? Is it Feasible? Is it Necessary? Is the Present Situation Sustainable?*, in *Fordham International Law Journal*, vol. 34, n. 5, p. 1297, affirms that the EP 'plays a role that many national Parliaments could envy'.

23. This was the case of the veto opposed by the French *Assemblée Nationale* to the Treaty on the European Defence Community in 1954. Such veto led to the failure of the project of a European Defence Community in the years to come.

24. For instance, before the Treaty of Maastricht was drafted, at the end of 1991, Joseph H.H. Weiler (1991), *The Transformation of Europe*, in *The Yale Law Journal*, vol. 100, n. 8, Symposium: International Law, p. 2430, affirmed that 'the executive branches of the Member States often act together as a binding legislator outside the decisive control of any parliamentary chamber'.

25. See the 'Factortame saga' and its impact on the UK principle of parliamentary sovereignty: in particular the decision of the Court of Justice on *The Queen v Sec-*

that they fall within the remit of the EU. Moreover, when European legislative acts were enacted, the parliaments in the Member States ‘could not have second thoughts or control their content at the national, implementing level’, nor was a ‘tight ex ante control by national Parliaments on the activities of ministers in Community fora’²⁶ effectively in place at that time. However, some parliaments were (and possibly are) less marginal than others: an exception was, for instance, the Danish parliament.²⁷ Its model of binding mandate to the executive before the adoption of decisions in the

Council of Ministers of the EC has inspired several other parliaments, although this mechanism was not replicated in precisely the same form in other Member States.

It is widely-acknowledged that parliaments are probably the most adaptable institutions to the changes in constitutional arrangements.²⁸ In spite of the century-old thesis of their institutional decline,²⁹ not only do parliaments exist in any democratic system, within or beyond the national level of government,³⁰ but they have also been able to undertake a variety of functions that has never been matched by any other institutions,³¹

thus re-inventing themselves at any time. With regard to the participation of the national parliaments in the EU, again, a never-ending process of institutional adaptation has taken place, particularly when, after 1979, the parliaments lost their physical linkage to European institutions through the European Parliament.³² This process, which has been described as ‘Europeanisation’, can be understood as a reaction to the national parliaments’ self-perception of ‘marginalisation’ in the European decision-making process.³³

retary of State for Transport, *ex parte: Factortame Ltd and others*, Case C-213/89 of 19 June 1990, ECR I-2433; the subsequent decision of the House of Lords of 11 October 1990, 2 LLR 365 and the following decision of the Court of Justice, Case C-221/89 of 25 July 1991, ECR I-3905.

26. See Joseph H.H. Weiler, *The Transformation of Europe*, cit., p. 2430.
27. Françoise Mendel (1980), *The Role of Parliament in Foreign Affairs in Denmark*, in A. Cassese (ed.) *Parliamentary Control over Foreign Policy*, Verlag-New York, Springer, p. 53-57 and, more recently, Finn Laursen (2001), *The Danish Folketing and Its European Affairs Committee: Strong Players in the National Policy Cycle*, in: A. Maurer & W. Wessels (eds.), *National Parliaments on their Ways to Europe. Losers or Latecomers?*, cit., p. 99-116.

28. On the factors that favour and limit the institutional change, see Douglass C. North (1990), *Institutions, Institutional Change and Economic Performance*, Cambridge, Cambridge University Press, p. 27 ff.
29. See James Bryce (1921), *Modern democracies*, vol. II, New York, Macmillan, p. 367.
30. The Inter-parliamentary Union, the international organization of Parliaments established in 1889, is composed of 190 member Parliaments, of the United Nations Member States, plus 10 associate members, which are regional or supranational Parliaments. See <http://www.ipu.org>.
31. See Charles H. McIlwain (1947), *Constitutionalism Ancient and Modern*, Ithaca NY, Cornell University Press, rev. ed., p. 93 ff. and Phillip Norton (2010), *La nature*

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- du contrôle parlementaire*, in *Pouvoirs*, n. 134, p. 5. Parliaments have acted as courts, as comptrollers and as legislators and, under exceptional circumstances, such as revolutions, also as executive authorities. Recently, even an ‘international networking function’ has been recognised to national Parliaments: see Tapio Raunio (2012), *From the Margins of European Integration to the Guardians of the Treaties? The Role of National Parliaments in the EU*, in: S. Kröger & D. Friedrich, *The Challenge of Democratic Representation in the European Union*, London, Palgrave MacMillan, p. 180.
32. See Phillip Norton (1996), *Introduction: Adapting to European Integration*, in P. Norton (ed.), *National Parliaments and the European Union*, London, Routledge, p. 1-11.
33. See Katrin Auel (2005), *Introduction: The Europeanization of Parliamentary Democracy*, cit.; Robert Ladrech (2010), *The Europeanisation of National Politics*, London, Palgrave Macmillan; Tapio Raunio & Matti

Thus, the ‘Europeanisation’ of the national parliaments, on the one hand, entails a form of emulation of the most active legislatures – for example, the Danish *Folketing* and the UK House of Commons and House of Lords; interestingly enough, in two traditionally Eurosceptic countries – for what concerns, for instance, the relationship between the parliament and the government in EU matters (the conferral of a mandate, the scrutiny of European documents for addressing the executive’s conduct in the EU, and the introduction of parliamentary scrutiny reserve). Although, in principle, leading to a sort of convergence with regard to the model of parliamentary participation in EU affairs, in practice, ‘Europeanisation’ can also determine differentiation amongst national systems. On the other hand, this phenomenon re-

Wiberg (2010), *How to Measure the Europeanisation of National Legislature?*, in *Scandinavian Political Studies*, vol. 33, n. 1, p. 74-92; Astrid Spreitzer (2011), *Measuring the Europeanisation of national parliaments*, paper presented at the International Workshop ‘Changing Modes of Parliamentary Representation’, organized by IPSA RCLS and RECON WP3, 14-15 October, Prague; and Ulrich Sedelmeier (2012), *Europeanisation*, in: E. Jones, A. Menon & S. Weatherill, (eds.) *The Oxford Handbook of the European Union*, Oxford, Oxford University Press, p. 825-839.

sults in the attempt pursued by each parliament, strictly under the national perspective, to adapt its procedures and organisation to the EU decision-making process in the most suitable way to control and influence it. Throughout this adaptation process, the procedures and the organisation adopted could also differ a great deal from one parliament to another, taking the institutional, the political and the social features of the Member State concerned into account. This implies, for example, the choice of the shape and the composition of the parliamentary committee on European affairs or the preference for the schedule of parliamentary business that best accommodates the schedule of the European legislative process with the needs of the national context.³⁴ Parliaments can be more or

34. There is one further dimension of ‘Europeanisation’, concerning the impact of European Union on national policies, that is not analysed here, since the present paper, although focused on fiscal and budgetary policies, is intended to examine the setting up of Fiscal Councils in terms of institutional balance and of possible strengthening of national Parliaments rather than dealing with the effects of national Fiscal Councils on the actual implementation of those policies. On the ‘Europeanisation’ of national policies, see Adrienne Héritier, Dieter Kerwer, Christoph Knill, Dirk Lehmkuhl, Michael Teutsch & Cécile Douillet (2010), *Differential Europe: The European Union Impact on National*

less successful in their ‘Europeanisation’, depending on national constraints: thus, different levels of parliamentary ‘Europeanisation’ do exist.

These two dimensions of the ‘Europeanisation’ of national parliaments, *i.e.*, emulation and differentiation, both inherent to this process of adaptation, have been consolidated, while a gradual re-habilitation of the role of national parliaments in the EU has been fostered by the revisions of the Treaties, under the pressure of addressing the democratic problems of the European architecture.³⁵ Two Declarations (n. 13 and 14) annexed to the Treaty of Maastricht (1993), firstly, and the protocols on the role of the national parliaments and on the application of the principle of subsidiarity and proportionality annexed to the Treaty of Amsterdam (1999), subsequently, provided for

Policy-making, Lanham, MD, Rowman & Littlefield, and Sylvain Brouard *et al.*, eds. (2012), *The Europeanization of Domestic Legislatures: The Empirical Implications of the Delors’ Myth in Nine Countries*, New York, Springer.

35. See, for example, the decision of the German Constitutional Court on the Treaty of Maastricht of 12 October 1993, Cases 2 BvR 2134/92, 2 BvR 2159/92, when it was stressed that ‘the German Federal Parliament must retain functions and powers of substantial importance’.

the first recognition – by European sources of law – of the involvement of the national parliaments in EU procedures, albeit indirectly, through their relationship with the national executives. A few years later, the national parliaments directly participated in the procedure for drafting European Treaties, although this procedure, ‘the convention method’, was not codified at that time: compared to the other components (the national governments, the EP, the Court of Justice, *etc.*) of the Conventions in charge of elaborating a first draft of the EU Charter of Fundamental Rights and Freedoms and of the Constitutional Treaty, MPs were the largest component, although possibly not the most prominent in terms of decision-making capacity, even considering the amendments pushed forward by the subsequent inter-governmental conferences.³⁶

36. See Bruno de Witte (2005), *European Treaty Revision: a Case of Multilevel Constitutionalism*, in: I. Pernice & J. Zemanek (eds.), *A Constitution for Europe: The IGC, the Ratification Process and Beyond*, Baden Baden, Nomos, Verlag, p. 59-76 and Florence Deloche-Gaudez (2007), *La convention européenne sur l’avenir de l’Europe: ruptures et continuités*, in: G. Amato, H. Bribosia and B. de Witte (eds.) *Genèse et destinée de la Constitution européenne: commentaire du traité établissant une constitution pour l’Europe à la lumière*

The failed Constitutional Treaty and finally the Treaty of Lisbon, in particular, seemed to support an effective revival of the role of the national parliaments in the EU compared to the past.³⁷ Many provisions of the Treaties, as modified by the Treaty of Lisbon, are promising in terms of the national parliaments’ redemption from their previous marginalisation, starting from Article 12 TEU and from Protocols 1 and 2. For instance, the national

des travaux préparatoires et perspectives d’avenir, Bruxelles, Bruylant, p. 47-86.

37. See Paolo Ridola (2006), *The parliamentarisation of the institutional structure of the European Union between representative democracy and participatory democracy*, in H.-J. Blanke & S. Mangiameli (eds.), *Governing Europe Under a Constitution*, Heidelberg-New York, Springer, p. 415 ff.; Marta Cartabia (2007), *Prospects for national parliaments in EU affairs - What should and could be saved in the case of non-ratification?*, in G. Amato, H. Bribosia and B. de Witte (eds.), *Genèse et destinée de la Constitution européenne*, cit., p. 1081-1104; Gavin Barrett (2008) ‘*The King is dead, long live the King? The Recasting by the Treaty of Lisbon of the Provisions of the Constitutional Treaty concerning National Parliaments*, *European Law Review*, vol. 33, n. 1, p. 66-84; and Andrea Manzella (2009) *The Role of Parliaments in the Democratic Life of the Union*, in: S. Micossi and G. L. Tosato (eds.), *The European Union in the 21st century. Perspectives from the Lisbon Treaty* (Brussels: CEPS), p. 257-270.

parliaments now receive a direct flow of information, documents and draft legislative acts from the European Commission (Protocol 1, Articles 49 TEU and 352 TFEU), the control the compliance of legislative proposals with the principle of subsidiarity, they can challenge the validity of legislative acts before the Court of Justice through their governments (Protocol 2),³⁸ participate in the re-

38. Maybe the participation of the national parliaments in the early warning mechanism has been the subject of most contributions on legislatures in the EU after the Treaty of Lisbon, since the procedure raises several issues (individual-collective participation of national Parliaments, their role *vis-à-vis* national Executives, the Commission and the European Parliament, the conditions and the suitability for triggering the thresholds of the so-called ‘yellow and orange cards’). However, the assessment given to the early warning mechanism in terms of national Parliaments’ empowerment in the EU varies a lot: Pieter De Wilde (2012), *Why the Early Warning Mechanism does not Alleviate the Democratic Deficit*, in *OPAL Online Paper* n. 6, p. 6, considers the mechanism as useless; by contrast, some others, such as Ian Cooper (2006), *The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU*, in *Journal of Common Market Studies*, vol. 44, n. 2, p. 281-304, presents it in very positive terms; finally, others (see Philipp Kiiver (2012), *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality*, London, Routledge, p. 71 ff. and Federico Fab-

vision of the Treaties (Article 48 TEU), can veto the use of the ‘*passerelle* clause’ (Article 48.7 TEU) and the adoption of European measures in family matters which have transnational implications (Article 81.3 TFEU), are involved in the political monitoring of Europol and in the evaluation of Eurojust (Articles 12 TEU and 85 and 88 TFEU), and also take part in the inter-parliamentary cooperation with the EP (Article 12 TEU and Protocol 1).

Thus, Europeanisation and the strengthening of the national parliaments have progressed side by

brini and Katarzyna Granat (2013), ‘*Yellow Card, but Not Foul: The Role of the National Parliaments Under the Subsidiarity Protocol and the Commission Proposal for an EU Regulation on the Right to Strike*, in *Common Market Law Review*, vol. 50, p. 115-144, forthcoming), although recognising the revolutionary significance of the mechanism, argue that enabling political bodies, such as Parliaments, to carry out a legal control on the compliance with the principle of subsidiarity could be problematical in practice. However, as for the institutional influence of national parliaments in the EU, it should be mentioned that the first yellow card raised by national legislatures ever, on the draft regulation on the right to take collective action in the field of the freedom of establishment and of the freedom to provide services, led to the withdrawal of the proposal on the part of the Commission in September 2012.

side, and the two main features of Europeanisation, differentiation and emulation, are still the two sides of the same coin. On the one hand, although European Treaty provisions set a common framework for the national parliaments of all the Member States, national implementation has achieved different results. For example, in Germany, under the auspices of the Federal Constitutional Court, the *Bundestag* and the *Bundesrat* have been significantly strengthened by the enactment (on the input of the constitutional jurisprudence) of a series of measures which enable them to delay or even to block the participation of the national government in EU decision-making procedures (even up to the point of threatening to block the entire decision-making process, and not just for Germany), whenever parliamentary assent is lacking.³⁹ By the

39. This has been the position taken by the German Constitutional Court, in particular, in its judgment of 30 June 2009 on the Treaty of Lisbon (2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08 and 2 BvR 182/09). See the Special Issue of the *German Law Journal* on *The Lisbon Judgment of the Federal Constitutional Court*, vol. 10, n. 8, 2009; Arndt Wonka (2010), *Accountability without Politics? The Contribution of Parliaments to Democratic Control of EU Politics in the German Constitutional Court’s Lisbon Ruling*, and Ulrike Liebert (2010), *More Democracy in the European*

same token, in the UK, the approval of the European Union Act 2011 has led to the conferral of veto powers to the UK parliament (in addition to those already introduced by the Treaties), in particular to the House of Commons, as well as some clauses that provide for the combination of passing legislation or motions by the parliament and of the positive result of a referendum in order for the executive to take action at EU level.⁴⁰

On the other hand, on the part of other national parliaments, the will to emulate the position of the ‘most protected’ legislatures, with regard to the prerogatives acknowledged at national level

Union?! Mixed Messages from the German Lisbon Ruling, in: A. Fischer-Lescano, Ch. Joerges and A. Wonka (eds.), *The German Constitutional Court’s Lisbon Ruling: Legal and Political-Science Perspectives*, ZERP Discussion Paper 1/2010, Zentrum Für Europäische Rechtspolitik, Universität Bremen, respectively, p. 55 ff. and p. 71 ff; Matthias Wendel (2011), *Lisbon Before the Courts: Comparative Perspectives*, in *European Constitutional Law Review*, vol. 7, n. 1, p. 96-137; and Christian Calliess (2012), *The Future of the Eurozone and the Role of the German Constitutional Court*, in *Yearbook of European Law*, vol. 31, n. 1, p. 402-415.

40. See Paul Craig (2011), *The European Union Act 2011: Locks, Limits and Legality*, in *Common Market Law Review*, vol. 48, n. 6, p. 1915-1944.

for the participation in the EU decision-making process, induced the adoption of provisions which resemble – as much as possible – those in place in the ‘leading Parliaments.’⁴¹ Indeed, a clear trend can be identified among the national parliaments: the process of European integration and particularly the revisions obtained by means of the Treaty of Lisbon have promoted the re-inforcement of the parliamentary function which deals with the *ex ante* scrutiny and with the oversight, at the expense of other functions, *in primis* the legislative one, which has been increasingly absorbed by the EU legislators.⁴²

Is the picture of the progressive emancipation of the national parliaments in the EU overturned by the present reform of the economic governance?

41. This was the case of Spain and of the approval of Law no 24/2009 and the case of Italy, which has recently enacted Law no 234/2012.

42. See Olivier Costa, Eric Kerrouche and Paul Magnette (2004), *Le temps du parlementarisme désenchanté*, in: O. Costa, E. Kerrouche and P. Magnette (eds.), *Vers un renouveau du parlementarisme en Europe?*, Brussels, ULB, p. 17, and Cristina Fasone (2011) *Gli effetti del Trattato di Lisbona sulla funzione di controllo parlamentare*, in *Rivista italiana di diritto pubblico comunitario*, n. 2, p. 353-391

The hypothesis of the national parliaments’ regression towards marginalisation appears to be taken for granted, because of the constraints placed upon the budgetary authority of the national parliaments, which disallows them to step in directly at EU level during the Euro-national fiscal procedures. The only opportunity for the direct involvement of national legislatures, according to the new measures, is provided by the setting up of a ‘conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by’ the Treaty on Stability, Co-ordination and Governance in the economic and monetary Union (TSCG).⁴³ Although it has become increasingly important,⁴⁴ the formula of the inter-parliamentary co-operation does not

43. See Article 13 TSCG, which refers to Protocol 1 on the role of national Parliament in the European Union annexed to the Treaty of Lisbon.

44. See Andrea Manzella (2012), *Is the EP Legitimate as a Parliamentary Body in EU Multi-tier Governance?*, in *Challenges of Multi-tier Governance in the EU*, Workshop organised by the Policy Department of the EP on Citizens’ Rights and Constitutional Affairs, Brussels, 4 October.

entail the conferral of decision-making powers to legislatures, nor does it guarantee their effective influence.

Once more, the ability of national parliaments to institutional adaptation is challenged: they have to follow the deadlines of the European Semester, the substantial standards fixed at EU level on the budget and on macroeconomic indicators, and the European-driven balanced-budget clause when passing legislation.⁴⁵ The impairment of the position of the national parliaments is potentially much more serious than that triggered by the establishment of the Economic and Monetary Union and by the first version of the Stability and

45. As underlined by Giacomo Delle Donne (2012), *Financial Constitutions in the EU: From the Political to the Legal Constitutions?*, in *STALS Research Paper*, n. 5, p. 4, the (preferable) constitutionalisation of the balanced budget clause seems to cause a ‘shift from a (prevailing) *political* to a (would-be) *legal* notion of financial constitutions’, thus implying a diminished role for political institutions, in particular for Parliaments, in favour of judicial or more technical actors (according to the existing tension between political and legal constitutionalism: see Richard Bellamy (2007), *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*, Cambridge, Cambridge University Press, p. 1-12.

Growth Pact (SGP) in the 1990s. As shown by the soft implementation of the first SGP (Section 4), the role of the national fiscal authorities, including the parliaments, was limitedly affected, since they were not bound, as they are now, to negotiate the content of the budgetary and fiscal decisions with the EU institutions, and nor was the budget cycle shaped through a Euro-national process.

However, at present, the national executives room for manoeuvre has also been limited by the new European measures, in a much more severe way compared to the former SGP, particularly because of the semi-automatic implementation of the system of warnings and sanctions.⁴⁶ The institutional balance between fiscal authorities, namely, the parliaments and the governments, is likely to change in the light of the new economic governance mechanisms, although the ‘losers’ and the

46. See Nicola Lupo (2012), *La revisione costituzionale della disciplina di bilancio e il sistema delle fonti*, in V. Lipolis (ed.), *Costituzione e pareggio di bilancio, Il Filangieri – Quaderno 2011*, Naples, Jovene, p. 89-144 and Elena Griglio (2012), *Parliamentary oversight of national budgets: recent trends in EU Member States*, paper presented on the occasion of the Tenth Workshop of Parliamentary Scholars and Parliamentarians, 28-29 July, Wroxton College, UK.

‘winners’ are not the same everywhere. Again, the features of the national constitutional systems are extremely significant, as the case of Germany and of its federal parliament shows. The disclosure and the transmission to the *Bundestag* of the information gained by the executive in this field, in particular in the EU, and the power of the parliament to bind the position of the executive concerning the most significant decisions on fiscal policy within European institutions and summits, have been made mandatory by the German Constitutional Court in order to preserve the link between democratic representation and the legitimacy of financial decisions.⁴⁷ At the same time, even at

47. See, for example, the latest judgment of the federal Constitutional Court of Germany issued on 12 September 2012 (2 BvR 1390/12, 2 BvR 1421/12, 2 BvR 1438/12, 2 BvR 1439/12, 2 BvR 1440/12, 2 BvE 6/12, anticipated by other judgments of 7 September 2011, of 27 February 2012 and of 19 July 2012), on the constitutionality of the ESM and the TSCG. See also Antje von Ungern-Sternberg (2012), *Parliaments - Fig Leaf or Heartbeat of Democracy? German Federal Constitutional Court (Judgment of 7 September 2011 - European Rescue Package)*, in *European Constitutional Law Review*, vol. 8, n. 2, p. 304-322; Daniel Thym (2012), *The German Constitutional Court - or: the Emperor's New Clothes*, and Peter L. Lindseth (2012), *Karlsruhe Capitulates? Hardly - Understanding the ESM Ruling*

European level, some prospective tools have been introduced in order to enhance the position of the national parliaments: perhaps the most important of them is the Fiscal Council. The effectiveness of the parliamentary action on these matters depends on the ability of each national parliament to ‘exploit’ the independent source of information of the Fiscal Council and to establish a mutually co-operative relationship.

As has been argued, if the financial and fiscal crisis in the European Union is, indeed, a crisis of democracy,⁴⁸ assessing whether national parliaments are further limited as fiscal authorities or whether they can instead contribute to the new European economic governance mechanisms,

of September 12, both published in *EutopiaLaw*, on 17 September 2012, available at: www.eutopialaw.com.

48. See Miguel Poiars Maduro (2012), *A New Governance for the European Union and the Euro: Democracy and Justice*, RSCAS Policy Paper 2012/11, p. 3 ff., and Christian Joerges (2012), *A European Union of, by and for the citizens. How can Europe provide better possibilities for the participation of its citizens?*, Contribution to the European Parliament – Committee on Constitutional Affairs – Hearing on citizen participation, 18 September 2012.

thus finding a new impetus in the mutual co-operation with the Fiscal Councils, appears crucial.⁴⁹

4. Fiscal Councils and the National Parliaments in the Economic Governance: The European Union Framework

The need to face the financial crisis and the failure of the system built up on the 1997 SGP (EU Regulations n 1466 and 1467/1997), has created the urgent need of the introduction of stricter rules for controlling compliance with the new economic regulatory framework, limiting the ‘connivance’ amongst Member States in the event of a violation of fiscal standards. Such a result has been pursued by:

- empowering the Commission as the general guardian of compliance with fiscal rules and against macroeconomic imbalances and making the adoption of warnings and sanctions semi-automatic;
- strengthening the judicial control on fiscal rules. On the one hand, the Court of Justice of the European Union, which adopted a very cautious position when it dealt with the misapplication of the previous Stability and Growth

Pact,⁵⁰ has become entitled to judge on the correct introduction of the balanced-budget clause (and possibly also of its enforcement) in the national legal systems,⁵¹ according to Articles 3(2)

49. Miguel Poiars Maduro, Bruno de Witte and Matias Kumm (2012), *The Euro Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis*, in M. Poiars Maduro, B. de Witte and M. Kumm (eds.) *The Democratic Governance of the Euro*, RSCAS Policy Paper 2012/08, p. 3 stresses the fact that the fundamental problem deals with ‘the democratic quality of the euro governance’.

50. See the judgment of the Court of Justice in the Case C-27/04 of 13 July 2004, *Commission v Council*, ECR I-06649, and the comments by the *Common Market Law Review* editorial board (2004), *Whither the Stability and Growth Pact?*, in *Common Market Law Review*, vol. 41, n. 5, p. 1193; Dimitrios Doukas (2005), *The Frailty of the Stability and Growth Pact and the ECJ: Much ado about Nothing?*, in *Legal Issues of Economic Integration*, vol. 32, p. 293; Barbara Dutzler and Angelika Hable (2005), *The European Court of Justice and the Stability and Growth Pact – Just the Beginning?*, in *European Integration online Papers*, vol. 9, n. 5, <http://eiop.or.at/eiop/texte/2005-005a.htm>; Guido Rivosecchi (2007), *L’indirizzo politico finanziario tra Costituzione italiana e vincoli europei*, Padua, Cedam, 2007, p. 410 ff. The reform of the Stability and Growth Pact by Regulations n. 1055 and 1056/2005 has not substantially changed the picture: see Jean Victor Louis (2006), *The Review of the Stability and Growth Pact*, in *Common Market Law Review*, vol. 43, n. 1, p. 85.

51. See Bruno de Witte (2012), *European Stability Mecha-*

and 8 TSCG. On the other hand, after the (preferable) constitutionalisation of the balanced-budget clause, the jurisdiction of Constitutional Courts has been extended, too; and by

- introducing, by means of Fiscal Councils, a more technical control on the compliance with the new provisions on the part of national executives.⁵²

Thus, although Fiscal Councils were already in function in 11 Member States in 2011,⁵³ it was only at the apex of the financial and of the fiscal crises that the EU made the establishment of Fiscal Councils in national systems mandatory. All

nism and Treaty on Stability, Coordination and Governance: Role of the EU Institutions and Consistency with EU Legal Order, in *Challenges of Multi-tier Governance in the EU*, Workshop organised by the Policy Department of the EP on Citizens' Rights and Constitutional Affairs, Brussels, 4 October.

- 52. See Giacomo DelleDonne (2012), *Financial Constitutions in the EU: From the Political to the Legal Constitution?*, cit., p. 5.
- 53. The Member States which Fiscal Councils operated before the reform of the economic governance are: Austria, Belgium, Denmark, Germany, Ireland, the Netherlands, Portugal, the Slovak Republic, Slovenia, Sweden, and the United Kingdom.

Member States are now bound to the duty to set up this independent institution.⁵⁴

From the functional point of view, the 'mandate' of the Fiscal Councils on the part of the EU is quite broad, since only the drafting of macroeconomic forecasts and plans can 'escape' their 'jurisdiction', depending on the choice of each Member State, which can either split tasks amongst different institutions or concentrate them on the Fiscal Council. According to Directive 2011/85/UE, on the requirements for the budgetary frameworks of the Member States, this institution is to be in charge of the independent, effective and timely monitoring of country-specific fiscal rules and 'to enhance

54. See Paul Craig (2012), *The Stability, Coordination and Governance Treaty: Principles, Politics and Pragmatism*, in *European Law Review*, n 37, p. 236. The UK, although it is not part of the TSCG and it is not subject to the provisions of Directive 2011/85EU regarding Fiscal Councils, also seems to be bound to guarantee the operation of such institution (which is already in function in the UK under the name of Office for Budget Responsibility). Indeed, according to the European Commission Communication COM (2012) 342, the existence of a Fiscal Council has to put in relation with the functioning of the correction mechanism in case of deviation from the medium-term objective, which concerns also the UK.

the transparency of elements of the budget process (Article 2.2, lit. f)'. The TSCG, an international agreement signed by all Member States, except the UK and the Czech Republic, on 2 March 2012, and which entered into force on 1 January 2013, establishes a link between the functioning of the correction mechanism and the Fiscal Councils (Article 3.2). Indeed, Fiscal Councils are held responsible at national level for monitoring the compliance of the Member State concerned with the balanced-budget clause and with the convergence towards the country-specific medium-term objective. It is evident that the Fiscal Councils are not deemed to be decision-making authorities and that, in any event, they could not endanger or 'compete with' national parliaments. However, what remains unsolved in the TSCG with regard to Fiscal Councils is whether the Court of Justice is entitled, according to Article 8 TSCG, to review also issues related to these bodies. With regard to the wording of Article 8(1) TSCG, which simply mentions Article 3(2) TSCG, the jurisdiction of the Court of Justice, relying on Article 273 TFEU, in principle also seems to affect the correct establishment of Fiscal Councils and probably their functioning.

According to the TSCG, the Commission has provided a set of common principles for the Fiscal Councils, by defining their ‘core functions’ (Principle 7, Annex to the Communication of the Commission of June 2012 (COM (2012) 342). They have to oversee the appropriate functioning of the correction mechanism in each Member State, in case of deviation from the medium-term objective. In particular, at a national level, Fiscal Councils are responsible for controlling whether the circumstances which might warrant the activation of the correction mechanism occur; whether the correction mechanism, when activated, is correctly implemented in the Member State; and whether the escape clauses, under special conditions (for example, in order to face natural disasters), are properly used. Thus, the Fiscal Councils are entitled to carry out both the *ex ante* and the *ex post* control on budgetary matters. However, what is more important is the power which, according to the Communication, has to be acknowledged to the Fiscal Councils: their recommendations *bind* the Member States. Indeed, if the latter do not comply with the assessments of the relevant Fiscal Council, the Member States must ‘explain publicly why they are not following’ them. Although the

Communication is not formally binding on the Member States, the fact that it contains the common principles on the correction mechanisms seems to recognise a specific legal value to Principle 7, which cannot be neglected.

With regard to the structural features of the Fiscal Councils, their setting up has to fit within ‘the already existing institutional setting and the country-specific administrative structure (Article 3.2 TSCG)’. In terms of the prospective impact of the Fiscal Councils on the national parliaments, the reference to the existing institutional setting appears extremely important. Not only must effective Fiscal Councils be set up in ways which are consistent with the institutional arrangements, the legal culture and the tradition of the state concerned, regardless of benchmarks provided by other countries, but the establishment of the Fiscal Councils must not jeopardise the position of the national parliaments. Thus they can maintain or even strengthen the role of the parliaments.

Moreover, the basic structural requirement introduced by the EU for the Fiscal Councils is their ‘functional autonomy’ *vis-à-vis* the budgetary authorities of the Member States (Article 6, Directive

2011/85 CE). Looking at the wording of the new measures, it seems that the requirement of ‘functional autonomy’ is possibly less demanding than that posed by other European norms for supervisory authorities and for establishing the condition of the ‘complete independence’.⁵⁵ However, it has to be taken into account that the Court of Justice has already sanctioned some Member States, and in particular Germany, on this issue, interpreting the independence of supervisory authorities in strict terms, aiming to protect them against any political pressure.⁵⁶

In detail, the list of the conditions for guaranteeing the functional autonomy of Fiscal Councils are contained in the Communication on national fiscal correction mechanisms (COM (2012) 342) and are about to be codified in one of the draft regulations of the ‘two-pack’, the proposal on common provisions for monitoring and assessing

55. See, for example, Article 28 of the Directive 95/46 EC of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

56. See the decisions of the Court of Justice in *Commission v Germany*, Case C-424/07 of 3 December 2009, ECR I-11431, and *Commission v. Germany*, Case C-518/07 of 9 March 2010, ECR I-1885.

draft budgetary plans and ensuring the correction of the excessive deficit of the Member States in the euro area (COM (2011) 821).⁵⁷

1. 'A statutory regime grounded in law'. The Fiscal Councils can be regulated not only at constitutional, but also at statutory, level, given the broad meaning assigned to the word 'law' in the European Union.⁵⁸ However, it can be argued that, aiming at protecting the independence and even the existence of the Fiscal Councils, the strongest guarantee would have consisted in having their basic discipline

57. For the time being, after long negotiations, the Council and the European Parliament have just reached a compromise at the first reading on this draft Regulation, originally presented on 23 November 2011. If the amendments of the EP of 13 June 2012 had been accepted by the Council, the ties between national Parliaments and Fiscal Councils would have been much stronger in terms of accountability than in the current final text.

58. See Alexander H. Türk (2006), *Concept of Legislation in European Community Law: A Comparative Perspective*, Alphen aan den Rijn, Kluwer Law International, p. 11 ff. and Mark Dawson (2011), *New Governance and the Transformation of European Law: Coordinating EU Social Law and Policy*, Cambridge, Cambridge University Press, p. 92 ff.

contained in the Constitution or in an organic law.⁵⁹

2. 'Freedom from interference', which involves the autonomy of the Fiscal Councils from instructions imposed by other institutions and the possibility of disclosing information both promptly and whenever it is deemed necessary.
3. 'Nomination procedures based on experience and competence', which underlines the technical nature of the Fiscal Councils, whose members are selected upon the basis of their merit and expertise with the participation of the parliaments in the appointment procedure.
4. 'Adequacy of resources and information', according to which the size of the staff and the stock of financial resources is to be proportion-

59. On the importance of having Fiscal Councils regulated preferably at constitutional level, see Daniele Franco (2011), *Comments on 'The Role of Fiscal Policy Councils in Theory' by Xavier Debrun*, Presentation held at the Conference on 'Fiscal Policy Councils: Why do we need them and what makes them effective', Vienna, 31 January 2011, available at: <http://www.staatsschuldenausschuss.at/en/staatsschuldenausschuss.jsp>

ate to the scope of the mandate attributed to Fiscal Councils.

Although the legal acts examined do not explicitly bind Member States to set up Fiscal Councils within the executive or within the parliament, given that it is taken for granted that Fiscal Councils are independent institutions, they do, however, intend to emphasise that these bodies enjoy a special relationship with parliaments. On the one hand, national legislation is requested to introduce the most suitable tools for making the Fiscal Councils accountable to the parliaments; on the other, national measures have to prevent any 'unwarranted interference' on the part of the Fiscal Councils' mandate with that of the fiscal authorities (or *vice versa*), which might limit the prerogative of the national parliaments. The new European measures design Fiscal Councils which are able to provide the national parliaments with independent information, to make the budgetary process and the approval of fiscal decisions more transparent and understandable, and to enhance the parliamentary scrutiny and oversight of the complex Euro-national decision-making process. With this regard, looking at the European frame-

work, the Fiscal Councils can be deemed to support the national parliaments in facing the risk of a ‘new marginalisation’ within the economic governance.

The real arrangement of the relationship between the Fiscal Councils and the parliaments, however, is strongly influenced by the national legal system and by the duties imposed upon the Member States to implement the new provisions. Indeed, a possible differentiation in the relationship between the parliaments and the Fiscal Councils across the EU countries is likely to emerge not simply because of the different constitutional architecture and identity of the Member States, but also because a multi-speed Europe does exist when looking at the EU economic governance.⁶⁰ Given the fact that some measures are addressed to all the Member States,

others to all the Member States, with the exception of the Czech Republic and the UK, others to 23 countries,⁶¹ and finally others only to the countries of the Eurozone, different legal and economic constraints can produce a further differentiation in the reaction of the national parliaments, in the tasks assigned to the Fiscal Councils and in their reciprocal relationship. Moreover, as the seriousness of the fiscal crisis also varies across countries – *i.e.*, there are debtors and creditors countries – a single and common model of the Fiscal Council in the EU cannot be easily found at present, although the EU measures encourage a sort of convergence towards independent fiscal institutions which are accountable to the parliaments.

60. See Nicolas de Sadeleer (2012), *The New Architecture Of The European Economic Governance: A Leviathan Or A Flat-Footed Colossus?*, in *Maastricht Journal of European and Comparative Law*, vol. 19, n. 3, p. 380-381; J-C. Piris (2012), *The Future of Europe: Towards a Two-Speed EU?*, Cambridge, Cambridge University Press, p. 106 ff.; Dirk Leuffen, Berthold Rittberger and Franck Schimmelfenning (2013), *Differentiated Integration. Explaining Variation in the European Union*, London, Palgrave MacMillan, p. 142-183.

61. Indeed, all the Member States have been committed to comply with the Europe Plus Pact agreed by the European Council on 25 March 2011, except Sweden, Hungary, the Czech Republic and the UK.

5. Assessing the Relationship between the Fiscal Councils and the Representative Assemblies at National Level

The comparison of the selected case studies is based upon the assumption that the relationship between the Fiscal Councils and their respective parliaments is influenced by two main factors: the economic, political and legal context in which the fiscal institutions have been established; and the capacity of the legislature to develop budgetary and financial scrutiny autonomously of the performance of the executive. These two factors will be considered separately in the following subsections.

5.1 The Influence of the Economic, Political and Legal Context on the Role and the Position of Fiscal Councils

As briefly explained in Section 2, the five national Fiscal Councils considered in the present contribution have been established in very different eco-

nomic, political and legal contexts. This external factor seems to have influenced the rules concerning the overall position of the independent body in the relationship with the other institutional bodies, and in particular with the executive and the legislative branches.

5.1.1 The Long-established Fiscal Councils: the German and Belgian Cases

Germany and Belgium experienced the creation of fiscal agencies long before the current economic and financial crisis. In particular, the German Council of Economic Experts was set up by law in 1963 as an academic body which could serve public- and economically-relevant institutions in making informed judgements on questions of economic policy. The two Belgian fiscal institutions, the High Council on Finance and the National Auditing Office, were set up respectively in

1936 and in 1994, but their aptitude for acting as fiscal councils has gradually grown with the evolution of the Belgian constitutional system over the last few decades.⁶² In particular, two processes have impacted upon the role of the above-mentioned organisms: the regionalisation of the Belgian state, which began at the end of the 1980s and formally concluded with the constitutional reform of 1994, when the country became a federal state with three Regions and three Communities;⁶³ and

62. The Council was created with the Royal Decree of 31 January 1936 whose purpose was to unify within a single advisory body the different consultative committees created within the Minister of Finance. The Council, which after the Second World War had ceased to function, was rediscovered at the end of the 1960s, thanks to the Royal Decree n. 17 dated 23 May 1967, and was then periodically reformed in order to adjust it to the emerging institutional needs and reduce the risk of political interference. With the reform of 1981, in particular, the area of intervention of the Council, originally referred to the fiscal, economic and financial policy-making, was extended also the budgetary decision-making. See Henry C. Wallich (1968), *The American Council of Economic Advisers and the German Sachverstaendigenrat. A Study in the Economics of Advice*, in *The Quarterly Journal of Economics*, vol. 82, n. 3, p. 349 ff.

63. The regionalisation of the Belgian State created the premises for the reform of the High Council of Fi-

the entry of Belgium into the European Monetary Union, which meant that it had to respect the Maastricht parameters.⁶⁴

Both in Germany and in Belgium, the above-mentioned fiscal agencies are clear examples of government-centred institutions; this feature emerges from the rules concerning the internal structure

nance, occurred in 1989 with the aim of entrusting the Council with the task to monitor the fiscal policy of regional governments and to formulate medium-term financial objectives for the federated entities. See Aloïs Van de Voorde & Georges Stienlet (1995), *Le Budget de l'État dans la Belgique fédérale*, 5th ed., Brussels, CEPESS, *passim*.

64. The establishment of the European Monetary Union urged the creation, in 1994, of the National Accounts Institute (law of 21 December), as an independent body which could exercise a general oversight of budget and test the reliability of the economic statistics and macroeconomic forecasts upon which the budget was based. See Henri Bogaert, Ludovic Dobbelaere, Bart Hertveld & Igor Lebrun (2006), *Fiscal Councils, Independent Forecasts and the Budgetary Process: Lessons From the Belgian Case*, Federal Planning Bureau, Working paper n. 4-06, p. 1-2, available at: www.plan.be (also published by Igor Lebrun (2007), *Fiscal councils, independent forecasts and the budgetary process: lessons from the Belgian case*, in: J. Ayuso-i-Casals, S. Deroose, E. Flores & L. Moulin, *European Economy - Economic Papers*, n. 275, April, p. 337 ff.)

of the body, and, in particular, from those concerning the appointment procedures.

The German Council of Economic Experts is endowed with complete independence in the performance of its work (it is only bound by the mandate set forth in the Act on the Appointment of a Council of Experts on Economic Development, dated 14 August 1963), but the agency's main institutional point of reference is to be found in the government. According to Article 7 of the Appointment Act, the five members of the Council of Economic Experts are selected from among specialists in the field of economic theory and economic policy,⁶⁵ and are appointed by the Federal President on recommendation of the Federal government.⁶⁶

65. The independence of the agency from other institutional bodies is guaranteed also by the rules banning the appointment of members exercising institutional duties or in a position of conflict of interest disciplined by Article 1.3 of the Act on the Appointment of a Council of Experts on Economic Development.

66. Their mandate lasts five years and they can be reappointed; in order to assure full independence to the advisory body, the Federal Government must hear the members of the Council of Experts before nominating a new member; the Chairperson is chosen by the Council among one of its members for three years. See

The Belgian National Accounts Institute (NAI) is a compound institution, whose duties are delegated to three associated institutions⁶⁷ and whose multifaceted composition⁶⁸ is simultaneously meant to represent the associated institutions and the Belgian linguistic groups.⁶⁹ The High Council of

Norbert Kämper (1989), *Der Sachverständigenrat zur Begutachtung der Gesamtwirtschaftlichen Entwicklung*, Berlin, Duncker & Humblot.

67. The Statistics Belgium (collecting the data to be used for the production of statistics), the National Bank of Belgium (responsible of the production of statistics for the national and regional accounts, the foreign trade statistics, the financial accounts) and the Federal Planning Bureau (in charge of the short-term macroeconomic forecasts); these last two institutions are jointly responsible for the general governmental account.

68. The most significant decisions, in fact, are adopted by the board of directors, composed of seven members, four appointed in compliance with the law and the other three members (the General Secretary of the Ministry for economic affairs, who represents the Minister and is in charge of the Chair of the Board; the Governor of the National Bank of Belgium, the Administrator and the Director of the National Institute of statistics) appointed by the King (Article 113 of the law of 21 December 1994).

69. The mandate of the board's members lasts four years and re-appointment is permitted. According to Article 115 of the law of 21 December 1994, moreover, a Counselling committee, composed of representatives

Finance⁷⁰ is, instead, composed of the Plenary Council,⁷¹ of two sections and a Working group on ageing. Its membership reflects its close relationship with the government.⁷²

Both the NAI and the High Council of Finance, therefore, tend to find their institutional referent not only in the Federal government, but also in the governments of the other federated entities. The result is thus a plurality of institutional interlocutors, which makes political intervention quite difficult, as the credibility of all the institutions involved is at stake.

of the Federal Government, of the National economic or fiscal agencies and of the regional Governments, appointed by the King (for the Federal level), is in charge of addressing every year some recommendations to the Board of Directors in order to ameliorate the fulfilment of the Council's duties.

70. As disciplined by the *Arrêté royal* of the 3 April 2006.
71. The Plenary Council is chaired by the Minister of Finance, it includes two vice-Presidents appointed by the Minister of Finance and by the Minister of Budget and is composed of 24 experts in economic and budgetary subjects, representing either the Federal Government or the regional Governments and appointed on five-years renewable terms by the King.
72. The Secretariat of the Council is ruled by officials of the Federal Ministry of Finance.

5.1.2 The British Office for Budget Responsibility: A Recent Fiscal Council Created on a Voluntary Basis

If the German and Belgian fiscal independent bodies can be inscribed within the government-oriented agencies, a different model is provided by the British Office for Budget Responsibility, created in 2010 and disciplined by the Budget Responsibility and National Audit Act 2011, as an independent agency entitled to provide authoritative analysis of the UK's public finance.

Endowed with a high degree of autonomy from other institutions,⁷³ the Office's independence op-

73. The Office's independence in performing its mandate is in particular guaranteed by the fact that the agency is subject only to its statutory duties and to the guidance of the Charter for budget responsibility, presented by Government to Parliament pursuant to Section 1 of the Budget Responsibility and National Audit Act 2011 and related to the formulation and implementation of the fiscal policy and of the policy for the management of national debt. HM Treasury (2011), Charter for Budget Responsibility, April 2011, available at: http://budgetresponsibility.independent.gov.uk/wordpress/docs/charter_budget_responsibility040411.pdf

erates in contact with the government,⁷⁴ which nonetheless does not prevent it from maintaining strong ties with the parliament. The first tie comes from the internal composition of the body: the Chair of the Office (according to Schedule 1 of the Budget Responsibility and National Audit Act 2011), in fact, is appointed by the Chancellor of Exchequer, but with the consent of the Treasury Committee of the House of Commons (HoC); a further two members are appointed by the Chancellor of Exchequer, but after consultation with the Chair and with the consent of the Treasury Com-

74. A specific Memorandum of Understanding, published in April 2011, for instance, sets out the agreed working relationship between the Office, HM Revenue and Customs, the Department for Work and Pensions, and HM Treasury (Office for Budget Responsibility - HM Treasury (2011), *Memorandum of Understanding between Office for Budget Responsibility, HM Treasury, Department for Works and Pensions and HM Revenues & Customs*, April, available at: http://86.54.44.148/wordpress/docs/obr_memorandum040411.pdf). As part of the Office's commitment to transparency, moreover, the institutional website of the agency publishes, among other information, also the list of contacts held by Office members with ministers, special advisers, private offices and opposition MP's. Available at: <http://budgetresponsibility.independent.gov.uk/transparency/disclosures>.

mittee of the HoC;⁷⁵ these three members constitute a committee, known as the Budget Responsibility Committee. The rest of the Office (not fewer than two members) are nominated by the Office and appointed by the Chancellor of Exchequer; these members constitute a committee which is known as a non-executive committee. This composition assures the Treasury Committee control of at least three of the Office's members, of which one acts as Chair. It is important to emphasise that only the three members appointed with the consent of the Treasury committee are members of the executive committee of the Office – the Budget Responsibility Committee – to whom the exercise of most of the relevant assessment duties is reserved, as disciplined by Section 4 (3) and (4) of the Act; the Non-executive committee, in contrast, must review the way in which the Office's duties are performed.

75. The consent of the HoC Treasury Committee is not required for the appointment in some cases, disciplined by par. 3 (1) of Section 1 of the Budget Responsibility and National Audit Act 2011.

5.1.3 The 'Latest' Fiscal Councils, Established in Italy and in France in order to comply with EU Obligations

If the Office for Budget Responsibility can be considered an example of a Fiscal Council centred both on the parliament and on the government, the last two fiscal institutions created by EU Member States – the Italian Parliamentary Budget Office and the French High Council of Public Finances – reveal an even stronger relationship with the legislative branch.

In particular, the Italian Parliamentary Budget Office represents a unique example (at least in Europe) of a Fiscal Council that is strongly parliamentary-centred. The new agency was formally introduced by Article 5, Section 1, (f) of the Constitutional Law no 1/2012 in April 2012⁷⁶ as an

76. The reform introduced in the Italian Constitution the balanced budget rule; for further details, see Antonio Brancasi (2012), *L'introduzione del principio del cd. pareggio di bilancio: un esempio di revisione affrettata della Costituzione*, in *Quaderni costituzionali*, n. 1, p. 108 ff. and Daniele Cabras (2012), *Il pareggio di bilancio in Costituzione: una regola importante per la stabilizzazione della finanza pubblica*, ivi, p. 111 ff.; Renzo

independent body to be created *by the Chambers*, with due respect of their constitutional autonomy; and entitled to analyse and assess the public-finance trends and to monitor the respect of budgetary rules.⁷⁷ The Office's internal composition

Dickmann (2012), *Legislazione di spesa ed equilibrio di bilancio tra legittimità costituzionale e legittimità europea*, 16 May, in <http://www.federalismi.it/>; Paola Bilancia (2012), *Note critiche sul cd. 'pareggio di bilancio'*, in *Rivista AIC*, 17 April, available at: www.as-sociazioneedicostituzionalisti.it/; Nicola Lupo (2012), *La revisione costituzionale della disciplina di bilancio e il sistema delle fonti*, cit., p. 89 ff. and Tania Groppi, Irene Spigno & Nicola Vizioli (2012), *The Constitutional Consequences of the Financial Crisis in Italy*, available at: www.astrid.eu. The Italian Fiscal Institution could be therefore classified within the fiscal agencies with a solid, constitutional basis and a defined area of intervention, due to the fact that, at the same time, it enjoys a constitutional status and it operates with a fiscal rule established on a constitutional basis. See Daniele Franco (2011), *Comments on 'The Role of Fiscal Policy Councils in Theory'*, cit., 31 January. On the importance that fiscal rules have in order to make the model based on the advisory role of Fiscal Councils really work, see also Chiara Goretti (2012), *Pareggio di bilancio e credibilità della politica fiscale: il ruolo del fiscal council nella riforma costituzionale italiana*, 20 January, available at: www.astrid-online.it.

77. According to Paolo De Ioanna (2012), *La nuova cornice costituzionale apre nuove dinamiche tra le forze politiche e nella cornice delle interpretazioni, econom-*

and organisation have recently been disciplined by the re-enforced law no 243/2012 of 24 December 2012; Art. 16 of the law, in particular, provides that the Council is made up of three members appointed upon the basis of common agreements by the Chairs of the two Houses within a list of ten persons drawn up by competent parliamentary committees (upon the basis of agreements adopted by a two-thirds majority) from the experts in public finances. From the point of view of the Office's staff and funding,⁷⁸ the newly-established Italian Fiscal Council also reveals itself to be firmly rooted in the parliamentary administration.

iche e giuridiche, dei fenomeni di finanza pubblica, Presentation held at the Conference 'La nuova governance fiscale europea. Fiscal Compact, cornice europea e modifiche costituzionali in Italia' - Rome, Luiss Guido Carli, 9 November) the reasons behind the creation of the Independent Fiscal Body are to be found not only in the drives coming from the European Union, but also in the increasing dissatisfaction of politicians for the low level of transparency of the budgetary and fiscal policy-making and in their ambition to participate in a less critical way to such decisional process. See also Daniele Cabras (2012), Un Fiscal Council in Parlamento, in <http://www.federalismi.it/>, 17 October.

78. See, in particular, Articles 17 and 19 of the Law n. 243/2012.

France has also recently provided for the implementation of the Fiscal Compact through the *Loi organique* no. 2012-1403 of 17 December 2012 on the planning and governance of public finances,⁷⁹ which (Art. 11), among other things, disciplines the establishment of the High Council of Public Finances, an independent body set up by the *Cour des comptes*, chaired by the President of the accounts authority and composed of ten members, of which four are judges of the *Cour des comptes* and four are members appointed by the relevant representatives of the two Houses.⁸⁰ The peculiar-

79. Following the Decision of the *Conseil constitutionnel* n. 2012-653 DC of the 9 August 2012 (on which see Rino Casella (2012), *Il Consiglio costituzionale francese e il trattato sul Fiscal compact*, 26 October, available at: www.forumcostituzionale.it), the French strategy can be defined as an example of a 'minimal' adaptation to the TSCG (on this point, see Henri Sterdyniak (2012), *Gouvernance des finances publiques: du Pacte budgétaire à la loi organique*, 15 October, available at: <http://www.ofce.sciences-po.fr/blog/?p=2637>), based on the recourse not to a constitutional law, but rather on a re-enforced law, as the *loi organique*.

80. Before being formally approved, the French *loi organique* was submitted – in compliance with the procedure of Articles 46 (5) and 61 (1) of the French Constitution – to the *Conseil constitutionnel* for an assessment of its conformity to the Constitution. With the Decision n. 2012-568 of the 13 December 2012,

ity of the French model is, therefore, due to the strong interaction provided not only by the parliament but also with the *Cour des comptes*, thus widening the classic dichotomy between government-centred and parliament-centred institutions (which had already been affected, but not fully overcome, by the hybrid Office for Budget Responsibility).⁸¹

the *Conseil*, among others, judged as being unconstitutional the provisions (Articles 11. 1 and 11.3) binding the appointment of the four judges selected by the *Cour des comptes* and of the single member nominated by the President of the *Conseil économique, social et environnemental* to an 'audition publique par les commissions des finances et les commissions des affaires sociales de l'Assemblée nationale et du Sénat' (par. 39). The decision was motivated on the basis of the principle of the separation of powers. The same procedural obligation was instead 'saved' by the *Conseil* in the part referred to the appointment of the four members in representation of the two Chambers, but the provision was judged as not having the legal status of 'organique' rule (par. 40).

81. On the atypical nature of the French *Haut Conseil aux finances publiques*, which can be assimilated neither to the model of parliamentary Fiscal Councils (as the Congressional Budget Office in the USA), nor to the fiscal agencies derived from the government, see Samuel-Frédéric Servière (2012), *Haut Conseil des finances publiques: les propositions de la Fondation iFRAP*, 13 September, available at: www.ifrap.org.

This comparative overview reveals how, in the European context, it is only the 'last generation' Fiscal Councils that are envisaged from the structural point of view as having a solid and direct relationship with the parliament. A partial justification of this general trend can be found in the newly-emerged need to conform to EU requirements, which clearly force the setting up of a more direct contact in between the national legislatures and the fiscal agencies.

Notwithstanding these formal institutional aspects, one could expect the crisis to have encouraged the research of a democratic legitimation for the mandate of Fiscal Councils based upon the development of a direct channel of interaction with national parliaments.

5.2 The Relationship 'Fiscal Councils - Parliaments' and its Interaction with the Parliamentary Scrutiny and Oversight Function on the Budgetary and Fiscal Matters

A second potential factor which influences the interaction established by the national parliaments with Fiscal Councils can be found in the capacity of the legislature itself to structure and autonomously develop the budgetary and financial scrutiny of the activities of their government.

To isolate this factor, it necessary to consider the main features of the most relevant models of parliamentary budget scrutiny. Given that the parliamentary oversight of budgets is mainly carried out at committee level,⁸² it is important to distin-

82. In the budgetary oversight, the availability of a proactive and powerful committee becomes strategic for assuring a constant parliamentary watch over governmental expenses. Committee involvement in the budget, in fact, tends to favour the prevalence of technical engagement over political posturing, while the opposite happens when the subject involved is the House, which

guish between two different types of committee expertise in the budget sector. The first type is that of specialised budget committees which operate during *ex ante* scrutiny, whose task is mainly that of analysing and of approving the governmental draft budget. The second type is that of *ex post* scrutiny committees, which finds its most relevant example in the Public Accounts Committees (PAC) of the Commonwealth system. The modern PACs represent specialised audit committees which interact closely with the supreme auditor and are entitled to scrutinise the governmental accounts.

These two types of committee expertise do not always go hand in hand: as is evidenced by comparative studies,⁸³ the so called 'Westminster system'

rather tends to linger on broad criticism. On this point, see Warren Krafchik & Joachim Wehner (2004), *Legislatures and Budget Oversight: Best Practices*, Paper presented at the Open Forum held in Almaty on 8 April, <http://www.pmg.org.za/docs/2005/050404oversight.pdf>, p. 7 and Joachim Wehner (2006), *Legislative institutions and fiscal policy*, in *PSPE working papers*, n. 08, Department of Government, London School of Economics and Political Science, London, UK, p. 17 ff.

83. As explained by Joachim Wehner (2005), *Legislative arrangements for financial scrutiny: Explaining cross-national variation*, in R. Pelizzo, R. Stapenhurst & D.

which characterises Commonwealth parliaments, represents a combination of low *ex ante* capacity (also due to the absence of the involvement of *ex ante* committees) and a highly-developed *ex post* capacity.⁸⁴ The opposite occurs in parliaments outside the Commonwealth, such as the French parliament, where the oversight of the budget is carried out by standing committees responsible both for the approval of the budget and for the scrutiny of its execution.⁸⁵ The oversight archi-

Olson (eds.), *The Role of Parliaments in the Budget Process*, Washington DC, World Bank Institute, p. 13, the differences in the legislatures' approach to budget cycle and budget issues are explained by a number of variables, including not only the parliamentary or presidential nature of the system of government, but also the internal design of parliamentary powers to amend the budget, the party political dynamics, the legislative budget research capacity, the access to relevant information, and so forth.

84. Edward Davey (2000), *Making MPs work for our money: reforming Parliament's role in budget scrutiny*, in Centre for Reform Paper n. 19, London, Centre for Reform.
85. Such committees are endowed with dedicated procedures and parliamentary tools, including the assignment of a specific oversight mission to a *rapporteur special*, the assignment of cross-sectional controls to the whole of the *rapporteurs speciaux*, the development of cross-sectional oversight mission, coordinated by

itecture adopted (either based upon a specialised committee or upon legislative committees also entitled to perform budgetary scrutiny) does not

the Chair of the committee and/or by the *rapporteur general*. The Finance committee of the National Assembly, in particular, exercises the oversight function mainly through the *Mission d'évaluation et de contrôle* (MEC), whose main task is to interrogate political and administrative officials on the management of their resources and to inquiry on sectorial public policies, using the variety of parliamentary tools disciplined by Articles 57, 59 and 60 of the LOLF, including the dispatch of questionnaires to government officials, *in loco* controls and hearings. Apart from the scrutiny activity carried out in standing committees, the French model (as the Italian one) is characterised also by the intervention of the assembly in the budgetary oversight, which, through the approval of the *loi de règlement*, is given an important chance of judging governmental budgetary performances. These two profiles of the oversight function occur at different institutional stages: in particular, the committee oversight occupies the stage of the budget execution; the assembly control, instead, is limited to the final stage of the budget execution. For further details, see Paul Amselek (1998), *Le budget de l'État et le parlement sous la V République*, in *Revue du Droit Public*, n. 5-6, p. 1449; Irène Bouhadana (2007), *Les commissions des finances des assemblées parlementaires en France: origines, évolutions et enjeux*, Paris, LDGJ, p. 273 ff.; Aurélien Baudu (2010), *Contribution à l'étude des pouvoirs budgétaires du Parlement en France: éclairage historique et perspectives d'évolution*, Paris, Dalloz.

seem to influence either the intensity or the degree of the parliamentary scrutiny function: this is confirmed by the fact that not only in the UK, but also in France, the parliament has eventually developed a well-structured scrutiny architecture, which enables daily control of the governmental budgetary policy. In Belgium,⁸⁶ Germany,⁸⁷ and

86. The Budget and Finance Committee of the Chamber of representatives mostly depends on the budgetary information and data provided by the government for assessing its performances; also in the approval of the *lois des comptes*, which definitely consolidates the budget of the previous year, the role of the assembly is often limited to a mere ratification of what proposed by the government. During the budget execution, this latter has in fact many possibilities to modify its original proposals, adjusting budgetary provisions to incoming institutional needs; these variations must be submitted to Parliament, which can take the initiative to interrogate the government on the budget execution.

87. In Germany the scrutiny of budget execution and budgetary management is carried out by the *Bundestag* mainly basing on the activity of a specific sub-committee created within the Budget committee and known as Auditing committee. The Auditing committee is closely linked to three independent specialised bodies provided by the Federal law (the 'Financing Body'; the 'Confidential Committee'; the 'Financial Market Body') and is directly supported by the Federal Court of Audit. The co-operation with these independent agencies contributes to fill in some of the

Italy,⁸⁸ too, parliamentary oversight is carried out by hybrid committees involved both in the *ex ante*

most striking gaps of the *ex post* scrutiny activity of the budget committee: also due to the absence of dedicated budgetary oversight tools, the committee, in fact, does not get involved in the review of the economic assumptions used by the government in the budget drafting and does not extend its intervention to the scrutiny of specific government programs. See M. Schattenmann (2009), *The Secretariat of the Budget Committee of the German Bundestag*, Prepared for the Meeting of OECD Parliamentary Budget Officials – Rome, 26-27 February, available at: <http://www.oecd.org/dataoecd/52/28/42466837.pdf>.

88. The intervention of the parliament in the budgetary and fiscal policy-making has not fully evolved yet from its original focus on the governmental expenses' authorisation perspective (see Elisabetta De Giorgi & Luca Verzichelli (2008), *Still a Difficult Budgetary Process? The Government, the Legislature and the Finance Bill*, in *South European Society & Politics*, vol. 13, n. 1, p. 87 ff.), which found in the 'dualistic' scheme of the Financial law its main expression (see Andrea Manzella (2003), *Il Parlamento*, Bologna, Il Mulino, p. 344). This fact, in its turn, has inhibited the development of a 'real' model of budgetary and fiscal oversight, which is only one symptom of the general unsatisfactory development of the control function in the Italian parliamentary tradition (see Andrea Manzella (2001), *La funzione di controllo*, in Associazione italiana dei costituzionalisti, *Annuario 2000. Il Parlamento*, Atti del XV Convegno annuale, Firenze, 12-13-14 October 2000, Padova, Cedam, p. 213). The lack of a mature approach to budgetary and fiscal oversight

is confirmed by the absence of dedicated budgetary scrutiny tools, at least for what concerns the budget execution stage: the control carried out at this stage, in fact, is developed by parliamentary bodies and parliamentarians through the ordinary and generic control tools and procedures disciplined by the two Rules of procedure. The only 'typical' budgetary oversight tool is represented by the assembly's approval (in line with the French experience) of the *rendiconto*, which nevertheless in the Italian experience has never given the legislature the opportunity of an effective control of budgetary trends; in any case, such a control tool invests the final stage of budget execution (Carlo Chiappinelli (2009), *La evoluzione del sistema dei controlli e la relazione sul rendiconto generale dello Stato*, in *Rivista della Corte dei conti*, n. 2, p. 256 ff.). On the most recent attempts to invert the relationship between the *ex ante* and the *ex post* budgetary scrutiny function by limiting the content of the financial law as to reduce the parliamentary bargaining on the governmental proposals, see Guido Rivosecchi (2007), *I poteri ispettivi e il controllo parlamentare dal question time alle Commissioni di inchiesta*, in E. Gianfrancesco & N. Lupo (eds.), *Le regole del diritto parlamentare nella dialettica tra maggioranza e opposizione*, Roma, LUP, p. 181; Nicola Lupo (2009), *Le sessioni di bilancio, ieri e oggi*, in G.. Carboni (ed.), *La funzione finanziaria del Parlamento. Un confronto tra Italia e Gran Bretagna*, Torino, Giappichelli, p. 36 ff.; Daniele Cabras (2010), *I poteri di informazione e controllo del Parlamento in materia di contabilità e finanza pubblica alla luce della legge 31 dicembre 2009*, n. 196, 30 April, available at: www.forumcostituzionale.it; Chiara Goretti & Luca

stage and in the *ex post* scrutiny; however, these three parliamentary experiences have not yet developed specific budgetary-scrutiny tools and procedures. Probably as a result of this, the degree of the national parliament's involvement in the oversight of budget execution remains weak.⁸⁹

Once the different features of the parliamentary oversight models have been clarified, it is possible to consider the basic characteristics of the interaction between the national legislature and the fiscal agency, by focusing on the functional profiles of this relationship, analysed according to the criteria presented in Section 2.

Rizzuto (2011), *Il ruolo del Parlamento italiano nella decisione di bilancio: evoluzione recente e confronto con gli altri paesi*, in *Rivista di politica economica*, n. 1-3, p. 51-52.

89. For a detailed comparison among the main models of parliamentary budgetary oversight and on their impact in terms of the intensity of the parliamentary scrutiny function, see Elena Griglio (2012), *Parliamentary oversight of national budgets. Recent trends in EU Member States*, Paper presented at the Tenth Workshop of Parliamentary Scholars and Parliamentarians, cit.

5.2.1 The German and Belgian Experiences as Two Examples of Weak Interaction between the Fiscal Councils and the Parliaments

In Germany and Belgium, the co-operation between the existing Fiscal Councils – classified, in Section 5.1., within the more general category of government-oriented agencies – and the legislative branch reveals itself to be extremely weak.

With regard to what concerns the German Council for Economic Experts, the main duty of this body consists of compiling and publishing an Annual Economic Report which is submitted to the Federal government by 15 of November every year.⁹⁰ Apart from the Annual Report, the Council

90. According to Article 2 of the Appointment Act, in fact, in the Annual Report the Council of Experts draws the fundamental features of the current economic situation, pointing out its foreseeable developments and the possibility of avoiding or suppressing such developments, without, however, recommending any specific measures of economic and social policy. Each member of the Council is assured full autonomy in the preparation of the Report: according to Article 3 of the Appointment Act, in fact, if a minority differs on specific

questions, it has the right to express its disagreement in the Report.

also prepares *ad hoc* special reports, depending on the mandate issued by the government, which usually refer to specific current problems.

The strictly advisory nature of the Council's duties, together with the narrowness of the formal powers attributed to it, are in line with the fundamental feature which characterises the Council's interaction with other institutional bodies, *i.e.*, its dependence on the government. The Council does not seem to develop direct contacts with the *Bundestag*, as most of this interaction is mediated by the intervention of the government.⁹¹ This implies that the relationship between the Council of economic experts and the parliament is not a direct one, but is, instead, one which is constantly arbitrated (both from the procedural and from the substantial point of view) by the government.

91. Article 6 of the Appointment Act provides that the Annual Report is promptly submitted by the Federal Government to the legislative bodies and is published by the Council at the same time. Within eight weeks the Federal Government presents its comments on the report to the legislative bodies. In this statement, the Federal Government presents the conclusions to which it has come with regard to economy policy.

The filtering role of the Federal government in the interaction between the Council of economic experts and the Federal parliament is to be found first of all in the presentation of the Annual Economic Report, drafted by the Federal government itself⁹² to the *Bundestag* and the *Bundesrat*, every January.

From the point of view of the funding, the Council is endowed with financial autonomy, and its remuneration and expenses are borne directly by the Federal government.⁹³

92. The governmental Report, which among other things describes the government's economic and financial goals for the year as well as the fundamentals of its economic and financial policy, in its Part I includes detailed comments on the Annual Report of the German Council of Economic Experts. The reference to the Council's Report is formally provided by Article 2 of the West German Law to Promote Economic Stability and Growth, dated 8 June 1967.

93. In particular, according to Article 11 of the Appointment Act, the amount of the remuneration to be paid is determined jointly by the Federal Minister of Economics and Technology and the Federal Minister of the Interior. No intervention of the Federal parliament, in line with the 'governmental' nature of the body, is therefore provided by law in this relevant aspect of the Council's institutional profile.

Finally, the fact that the Council of economic experts is strongly centred on the executive branch influences the accountability rules, which make the Council responsible only to the government. The Appointment Act, also considered in its application over the decades, clearly gives the idea that the role of *political* advisor prevails over that of *scientific* advisor; this consideration has raised some criticism in the literature, supporting the idea of the Council of economic experts being seen as a ‘parallel government’.⁹⁴

In conclusion, the German Council for Economic Experts can be considered as a typical example of a ‘governmental’ Fiscal Council, which reveals only weak and indirect ties with the parliament; the possibility of the Council playing a strategic informative and advisory role with regard to the

parliament reveals itself to be quite weak, due to the constant intermediation of the government in the relationship between the Council and the legislative branch. The narrowness of the tasks attributed to the Council, which mainly exercises an advisory function on matters of economic and fiscal policies, is also attributed to the fact that the origin of this body dates back to a period in which the institutional space now recognised to the Fiscal Council was still lacking.

In Belgium, too, the government-centred nature of the NAI and of the High Council of Finance also reflects itself in the rules concerning the overall functioning of these two fiscal bodies.

Both Councils intervene in the fiscal and budgetary policy-making,⁹⁵ but the National Audit Of-

fice intervenes mainly in the *ex ante* stage, while the contribution of the High Council of Finance is focused both on the *ex ante* and on the *ex post* stage. In particular, the intervention of the NAI in the budgetary process is mainly due to the activity of the Federal Bureau for Planning,⁹⁶ whose most relevant task relates to the production of the macroeconomic forecasts upon which the budget drafted by the Federal government is based;⁹⁷ however, the legislative chambers may also apply to the Bureau in order to assess policy measures

94. Uwe Andersen & Wichard Woyke (eds.) (2003), *Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung*, in *Handwörterbuch des politischen Systems der Bundesrepublik Deutschland*. 5., aktual. Aufl. Opladen: Leske+Budrich 2003. Lizenzausgabe Bonn: Bundeszentrale für politische Bildung, available at: <http://www.bpb.de/nachschlagen/lexika/handwoerterbuch-politisches-system/40367/sachverstaendigenrat-zur-begutachtung-der-gesamtwirtschaftlichen-entwicklung?p=all>.

95. The process starts in May when medium and long-term projections are presented by the government, followed, in June and July respectively by the recommendations of the High Council of Finance and by the release of provisional short-term macroeconomic forecasting exercised by the National Audit Office (adjourned in September). The federal budget is submitted to the Parliament in October; after the presentation of the new budget, an updated version of the Stability Programme is made public. The process ends in February, with the reassessment of the economic budget, and then in

March, with the control of budget execution. See Igor Lebrun (2007), *Fiscal councils, independent forecasts and the budgetary process*, cit., p. 342 and 354.

96. For further details, see Aude Rousselot (2006), *Présentation du Centraal Planbureau néerlandais et du Bureau fédéral du Plan belge, Actualités du WRR néerlandais et de la Strategy Unit britannique*, in *Horizons stratégiques*, n. 2 p. 122 ff.

97. The Bureau, moreover, releases the medium-term economic outlook for the Belgian economy used by the government in order to elaborate the stability programme. The government does not seem to have a formal duty to take into account the Bureau’s forecasts in the drafting of the budget; however, up to this moment, this is usually happened: a striking dissociation from the NAI’s forecasts would in fact determine a loss of credibility for the government.

(which, however, can never end in policy recommendations).

The intervention of the High Council of Finance in the budgetary policy-making, in contrast, is bound to the publication of two annual reports (drafted by the Council's 'Public-sector borrowing requirement' section);⁹⁸ the first report refers to the *ex post* stage, the second to the *ex ante* stage.⁹⁹

98. For further details, see Paul Bernd Spahn (2007), *Intergovernmental Fiscal Relations, and Structural Problems of Federalism in Belgium*, Washington DC, International Monetary Fund, par. 56 ff., available at: www.wiwi.uni-frankfurt.de.

99. The first report, released around March, presents a general assessment of past and present budgetary policies, in particular those implementing the budget and the stability programme; such report can be at times quite critical. The second report, presented in June/July, analyses the borrowing requirements of each government and makes recommendations concerning the respect both of short, medium and long-term fiscal targets and of budget balances (for general government, its sub-sectors and federated entities). The distinction between the two reports (and therefore between the intervention in the *ex ante* and in the *ex post* stage) reveals itself a bit blurred, also due to the fact that some changes in the timing of the stability programme have recently occurred.

The funding of the two bodies confirms their exclusive dependence on a decision of the government. In compliance with Article 118 of the Law of 21 December 1994, the NAI is financed by an annual grant from the Federation, to be included within the budget section of the Ministry for Economic Affairs.¹⁰⁰ With regard to the High Council of Finance, according to Article 13 of the *Arrêté royal* of the 3 April 2006, the agency's internal financial regulation (which can provide for the allocation of allowances and other forms of remuneration to the members of the Council, to staff members and to external advisors) is approved by the Ministry of Finances.

On the accountability side, the government-centred nature of the two institutions does not prevent them from enjoying full independence: both agencies, as public institutions, have ministers overseeing their activities and budgets, but, at the same time, mainly due to the specific nature of their tasks, they can also act on their own initiative.

100. The secretariat of the Institute is covered by the official of the Ministry for economic affairs, in co-operation with the services of the National Bank of Belgium.

In conclusion, the twofold Belgian model of Fiscal Councils is characterised by its proximity to the executive branches at both national and regional level, which, however, has not prevented the two bodies from consolidating their independence. The impact of the two Councils on fiscal and budgetary policies is not, in fact, very formalised or transparent, and it seems to have waned after adoption of the euro, becoming more and more independent from government plans, also thanks to the growing interaction with the Federated Entities and to the increased budget co-ordination between the Federal government and the Regional governments.¹⁰¹

101. See Paul Van Rompuy (2008), *La coordination des politiques budgétaires en Belgique: 15 ans d'expérience du Conseil supérieur des Finances*, in M. Mignolet (ed.), *Le fédéralisme fiscal. Leçons de la théorie économique et expérience de 4 États fédéraux*, Brussels, De Boeck Université, n. 4, p. 33 ff. and Luc Coene & Geert Langenus (2011), Promoting fiscal discipline in a federal country: the mixed track record of Belgium's High Council of Finance, Presentation held at the Conference on 'Fiscal Policy Councils: Why do we need them and what makes them effective', Vienna, 31 January 2011, available at: http://www.staatsschuldenausschuss.at/de/img/s23_langenus_tcm163-221976.pdf.

5.2.2 The Office for Budget Responsibility: a Fiscal Councils which Interacts both with the Government and with the Parliament

The structural ties developed by the Office for Budget Responsibility with both the government and the parliament are confirmed by the functional links established by the Office with both branches.

In particular, with regard to the relationship with the legislative branch, the Office has shown a clear aptitude for serving as a source of information and analytical studies to parliamentary committees.¹⁰²

The tasks attributed to the Office involve the agency in a general surveillance of public finances and budgetary policies; the nature of such activities implies that the government is constantly under the Councils' oversight, which, in its turn, can serve the parliament with some relevant elements

102. According to Section 8 (2) b) of the Act and to Section 16 (6) of Schedule 1 of the Act, in fact, every report prepared by the Office in pursuance of its duties must be laid before Parliament.

for political judgment. The Office has four main tasks: to produce forecasts for the economy and public finances; to judge the progress towards the government's fiscal targets; to assess the long-term sustainability of the public finances; and to scrutinise the Treasury's costing of budget measures. Each of these tasks is associated with specific publications which are made available to the parliament.¹⁰³

103. For instance, the *Economic and Fiscal Outlook* publication is produced twice a year by the Office and it incorporates both the five-year forecasts for the economy and public finances and the assessment of the government's progresses towards medium-term fiscal targets; the spring *Economic and Fiscal Outlook* publication incorporates the impact of tax and spending policy measures announced in the Budget Bill. Moreover, the *Fiscal sustainability report*, produced once a year, is meant to evaluate, for each category of spending and revenue, the long-term sustainability of the public finances. Finally, in the *Treasury's costing documents*, the Office scrutinises Treasury's costing of budget measures in order to test whether costing proposed by the government in the Treasury documents corresponds to reasonable estimates. See Office for Budget Responsibility, *Fiscal Sustainability Report*, published on 13 July 2011 and available at: <http://budgetresponsibility.independent.gov.uk/fiscal-sustainability-report-july-2011>.

Moreover, the agency is actively involved in parliamentary works as it has to answer parliamentary questions (especially those concerning its forecasts) and has to give evidence to parliamentary committees (mainly with the Treasury Select Committee and linked to the reports produced by the Office in the exercise of its scrutiny function) through committee hearings. From the point of view of the funding, the agency interacts both with the Treasury and with the parliament.¹⁰⁴

Finally, the Office's collective accountability¹⁰⁵ is assessed through two different types of control: the 'institutional' control made by both the Treasury and the parliament upon the basis of the Annual Report of the performance of the Office's

104. See Sections 17 and 18 of Schedule 1 of the Act.

105. An individual accountability applicable to each Office member is moreover provided by Section 6 of the Schedule 1 of the Budget Responsibility and National Audit Act, which in particular disciplines the termination of appointment made by the Chancellor of the Exchequer in case of malpractice or misconduct of the appointee. Even if the law determines the cases justifying the anticipated termination of mandate, according to Section 6 (3) of Schedule 1 of the Act, the appointment of an Office member is not to be terminated without the consent of the Treasury Committee of the House of Commons.

tasks drafted in each financial year (Section 15 of the Schedule 1 of the Act); and the ‘external’ review exercised by the person or body appointed, at least once in every relevant five-year period, by the non-executive Committee in compliance with Section 16 of Schedule 1 of the Act and entrusted to review reports made in pursuance of the Office’s duty.

In conclusion, the main features of the Office for Budget Responsibility can be found in the mixed nature of the agency (governmental and parliamentary) which, associated with a consolidated tradition of parliamentary oversight of budgetary and fiscal policies, enables the establishment of close interaction and co-operation between the parliament and the fiscal institution.

5.2.3 Towards the Development of New Models of Interaction between Fiscal Councils and Parliaments: The Recent Italian and French Reforms

If, up until the latest national reforms, the only European case of a parliament-centred fiscal

agency was represented by the Hungarian Fiscal Council,¹⁰⁶ the new independent bodies created

106. The Hungarian Fiscal Council was created in 2009 under the Act LXXV of 2008 on Cost-efficient State Management and Fiscal Responsibility. A detailed analysis of the background which accompanied the institution of the Hungarian Fiscal Council, of its functions and basic *modus operandi* is offered by George Kopits (2011), *Independent Fiscal Institutions: Developing Good Practices*, Presentation prepared for the 3rd Annual Meeting of OECD Parliamentary Budget Officials, Stockholm - Sweden, 28-29 April, available at: <http://www.oecd.org/governance/budgetingandpublicexpenditures/48089510.pdf>. Especially after the approval of Act CXCV of 2011 on the Economic Stability of Hungary, which assigned new tasks to the Council, the body has developed a strong and direct relationship with the General Assembly which emerges in particular in the parliamentary proceeding for the approval of the Act of the Central Budget: according to Art. 24 (3), in submitting the draft Act to the National Assembly, the government must follow the receipt of the comments of the Council; if the Council has communicated its disagreement by the deadline, the government shall again discuss the draft and submit the same to the National Assembly afterwards. For a concrete example of how the Council exercises this function, see the opinion of the Fiscal Council ‘*on the major characteristics of the budgetary and economic processes of Hungary in the period of January-September, 2012*’, adopted by the Resolution 11/2012.10.29. of the Fiscal Council of Hungary KVT-67/2012.

in Italy and France seem to add some significant novelties to this comparative framework.

The recent approval of such reforms does not enable us to deepen the functional profiles of the relationship with the legislative branch (also due to the fact that the two bodies have not yet been installed). However, upon the basis of regulatory norms, it is possible to develop some reflections on their future interaction with legislative assemblies.

With regard to the Italian experience, it is important to underline that the parliamentary nature of the upcoming fiscal institution (created, as already mentioned in Section 5.1.3, ‘by’ the two Chambers) implicitly seems to encourage the parliament to develop strong bicameral synergies in the development of parliamentary budgetary oversight. Article 5, Section 4 of the Constitutional Law n. 1/2012, clearly states that the two Chambers, in compliance with their own rules of procedure, must exercise the oversight function on the public finance, with specific regard to the balance between expenditure and revenue, and to the quality and effectiveness of the spending of the public administration. If this provision apparently

seems to enable the two Chambers to operate independently in the exercise of the oversight function, the presence of an internal office devoted to the analysis of the economic and financial data and trends will not be neutral for the strengthening of the overall involvement of the parliament in the budgetary and financial oversight.

This instrumental body will therefore serve as a research unit for the whole parliament, thus favouring the budgetary and fiscal specialisation of the latter in the exercise not only of the *ex post* scrutiny, but possibly also of the *ex ante* scrutiny. For these reasons, the well-functioning of such an organism will be crucial in order to ensure the effective respect of the new principle of the parliamentary responsibility on the financial and budgetary control, introduced by Article 5, Section 4 of Constitutional Law no. 1/2012.¹⁰⁷ In the long-term, as correctly observed,¹⁰⁸ budgetary control

107. On the prospective implementation of Article 5 of Constitutional Law no. 1/2012, see Giustino Lo Conte (2012), *L'organismo indipendente di monitoraggio della finanza pubblica*, in *Giornale di diritto amministrativo*, n. 10, p. 939 ff.

108. Raffaele Perna (2008), *Le procedure di bilancio, fra Governo e Parlamento, in una democrazia maggioritaria*, in *Il Filangieri, Quaderno 2007*, Il Parlamento del bi-

based exclusively upon the voluntary behaviour of parliamentary bodies and actors does not seem able to offer structural solutions, given the institutional call for empowered budgetary information to be available to the parliaments.

It is not easy to predict whether such an organism will have a decisive role in the improvement of the fiscal and budgetary governance, and, in particular, if it will contribute to shift the influence of the parliament from the budgetary decision-making stage to the *ex ante* and *ex post* stages. The lack of a solid tradition of co-operation between the parliament and the government both before the budget is approved and during its execution could, in fact, either compromise the success of the upcoming fiscal institution or make it strategic for assuring better governance for the whole sector.

Finally, the recent French reform introduced with the *loi organique relative à la programmation et à la gouvernance des finances publiques* created the *Haut Conseil des finances publiques* as an advisory body endowed with strong independence from the fiscal authorities, but, at the same time,

cameralismo. Un decennio di riforme dei regolamenti delle Camere, 2008, p. 175.

established its stable and prompt intervention at all the relevant stages of the budgetary and financial decision-making. In particular, the Council is required to formulate its advice on the governmental macroeconomic and financial forecasting upon which the annual law for the public finances planning (*loi de programmation des finances publiques*) and the annual financial law (*loi des finances*)¹⁰⁹ are based. This advisory activity – formally disciplined as an autonomous function – will undoubtedly contribute to offer the parliament a strengthened technical informative basis and analytical capacity which will prove particularly useful for the re-enforcement of parliamentary *ex ante* scrutiny.

The possibility for parliamentary bodies to establish direct interaction with the Council is, moreover, explicitly recognised by Article 20 of the *loi organique* n. 2012-1403, which provides that the Chair of the *Haut Conseil* must be heard at any time upon the request of the committees of the National Assembly and of the Senate.¹¹⁰

109. See Articles 12-17 of the *loi organique* n. 2012-1403.

110. The Decision n. 2012-568 of 13 December 2012 of the *Conseil constitutionnel* determined that the provision of Article 20 does not violate the Constitution, but at

Upon the basis of such premises, the likelihood that the *Haut Conseil des Finances* will operate as a functional interface for the parliament can be considered as a continuation of the more general trend directed towards a re-inforcement of the parliamentary involvement in the budgetary decision-making process.¹¹¹ This trend, launched by the approval of the *Loi organique relative aux lois de finances* in 2001, contributed to a significant renewal of the parliamentary scrutiny of the budget, characterised not only by the strengthening of parliamentary dedicated oversight tools,¹¹² but

the same time does not share the legal status of 'organique' rule (par. 59)

111. For an overview of this trend, see Aurélien Baudu (2010), *L'incertaine renaissance parlementaire en matière budgétaire et financière*, in *Revue du droit public et de la science politique en France et à l'étranger*, n. 5, p. 1423 ff.; Pauline Türk (2011), *Le contrôle parlementaire en France*, Paris, LGDJ, p. 176 ff.
112. In particular, the 2009 French modification of the National Assembly Rules of procedure (adopted after the Constitutional reform of 2008) which created the *Comité d'évaluation et de contrôle*, as well as the *Petit loi* approved by the French Parliament on 13 July 2011 (which introduced the 'Lois cadre' on the balance of public finances), can be interpreted as an attempt to favour a more structural control of the parliament on the budgetary and financial assets, anticipating the

also by the promotion of a new partnership with the court of auditors.¹¹³ In this sense, the development of a constructive interaction between the independent body and the two representative assemblies can be said to be favoured by the long-established co-operation which, in the French tradition, has marked the relationship between the *Cour des comptes* and the parliament.¹¹⁴

budget bill. See Jean Arthuis Le Seuil (2010), *La dégradation des finances publiques: la loi en échec, le contrôle et l'évaluation en recours*, in *Pouvoirs*, n. 3, p. 83 ff. and Laurence Baghestani (2011), *A propos de la loi tendant à renforcer les moyens du Parlement en matière de contrôle de l'action du Gouvernement et d'évaluation des politiques publiques*, in *Les Petites affiches, La Loi, Le Quotidien juridique*, n. 78, April, p. 3).

113. On this point, see Alain Lambert (2010), *Vers un modèle français de contrôle budgétaire*, in *Pouvoirs*, n. 134, p. 47-48.
114. On the origins of this inter-institutional co-operation, see Guy Carcassonne (1997), *Les relations de la Cour et du Parlement: ambiguïtés et difficultés*, in *Revue française de finances publiques*, n. 59, p. 131 ff. On the effects of the most recent reforms on the interaction between the parliament and the *Cour des Comptes*, see Michel-Pierre Prat and Cyril Janvier (2010), *La Cour des comptes, auxiliaire de la démocratie*, in *Pouvoirs*, n. 134, p. 97 ff., which defines the French Supreme Audit Authority an 'auxiliaire de la démocratie'.

The comparative overview presented in this section has revealed that the variety of parliamentary models of budgetary scrutiny is likewise accompanied by a variety of patterns of interaction between the fiscal institution and the representative assemblies. The combination of these two factors does not always offer conclusive data on the existence of a direct relationship between the intensity of the parliamentary involvement in the budgetary scrutiny and the establishment of close co-operation with the fiscal agency. However, the British case confirms that, where parliament has matured a consolidated praxis in the scrutiny of the budget, interaction with the fiscal agency tends to evolve spontaneously. In other words, well-established parliamentary scrutiny will undoubtedly encourage such inter-institutional co-operation. But the existence of unstable parliamentary oversight of the budget does not preclude the fulfilment of this purpose; in this perspective, the Italian case will be strategic in proving the opposite thesis, confirming how a weak parliament (in the *ex post* scrutiny stage) can take advantage of the creation of a fiscal agency in the development of its oversight function.

6. Conclusions: The Setting-up of Fiscal Councils and its Implications on the Parliamentary Scrutiny in the new European Economic Governance

The current crisis, which the European Union Member States are also facing, has been regarded as both a financial and a democratic crisis at the same time.¹¹⁵ It is primarily a crisis of the credibility and of the accountability of political institutions, and, in particular, of fiscal authorities for not having been able to comply with the basic standards of sound public accounts in a responsible way. Fiscal Councils are one of the tools provided by the European Union to counteract the present degeneration and to maintain fiscal responsibility in the long term.

Directive 2011/85/EU, the TSCG, the Communication from the Commission defining the common principles on national fiscal correction mechanisms (COM 2012) 342) and the draft reg-

ulation on common provisions for monitoring and assessing draft budgetary plans (COM (2011) 821) represent the legal basis for national, albeit European-oriented, Fiscal Councils, which now have to be established in every Member State. The setting up of Fiscal Councils, however, not only poses challenges to national institutions, but also offers remarkable opportunities, particularly for national parliaments.

Amongst the challenges to address, there is, for instance, the relationship between the Fiscal Councils and the existing institutions, both at national and at European level. For example, especially in the light of the Commission Communication which entitles the Fiscal Councils to perform even the *ex post* assessment, the powers of Fiscal Councils could clash with the existing preroga-

115. See Miguel Poiars Maduro (2012), *A New Governance for the European Union and the Euro: Democracy and Justice*, cit., p. 3 ff.

tives of Courts of Auditors, where established.¹¹⁶ Moreover, according to some scholars, a clear link could be established between Fiscal Councils and Constitutional Courts, for instance, in Germany, after the adoption of the new national fiscal rules.¹¹⁷ In addition, the relationship between the Fiscal Councils and the European Commission, both acting as ‘fiscal watchdogs’, albeit at different levels of government, or the role of the Court of Justice of the European Union in evaluating the correct establishment of Fiscal Councils at national level, continue to remain unclear.

Another challenge derives from the difficulty of adapting the existing national Fiscal Councils, such as those examined in Section 5.2.1, to the re-

116. On the need to accommodate the activity of the new Fiscal Councils with existing institutions, especially the Court of Auditors, see Daria Perrotta (2012), *Il rafforzamento della vigilanza sui conti pubblici e l'evoluzione della fisionomia delle istituzioni fiscali indipendenti*, in *Le autonomie in cammino. Scritti dedicati a G.C. De Martin*, Padova, Cedam, p. 539-540.

117. According to Daniele Franco (2011), *Comments on ‘The Role of Fiscal Policy Councils in Theory’*, cit., ‘the new German fiscal rule implicitly defines a clear mandate for a possible German independent Fiscal Council: to provide the economic analysis on which the constitutional court can deliver its judgments.’

quirements established at European Union level. The notion of ‘functional autonomy’ or ‘independence’ is likely to be ‘filtered’ by the national constitutional tradition (again, the German case is particularly telling). In particular, the powers and the issue of the inter-institutional accountability of Fiscal Councils require some significant adaptations in the Member States. For instance, the Commission Communication assigns the Fiscal Councils with the power to issue policy recommendations towards the national fiscal authority, which, in principle, is bound by them and has to justify publicly any deviation from the path laid down by the Fiscal Council. However, this power is provided in a minority of the existing Fiscal Councils in the European Union and is likely to produce significant effects in terms of the inter-institutional balance, thereby aiming at limiting the discretion of the fiscal authority, especially of the executive.

By contrast, perhaps the institution that will benefit most from the establishment of a Fiscal Council will be the parliament. Since both the Communication and the draft regulation state that Fiscal Councils are accountable to parliaments, the na-

tional solutions, like that of Germany, in which the Fiscal Council does not enjoy direct contact with the parliament can be problematical and will probably require some reforms.

The enhancement of the relationship between the parliaments and the Fiscal Councils would seem to be particularly coherent with the approach taken by the German Constitutional Court in preserving the role of the parliament when dealing with European Union affairs and budgetary matters, as well as with the general framework provided by the Treaty of Lisbon. Indeed, the special relationship enjoyed by the parliaments and the Fiscal Councils, according to the Communication and the draft regulation, seems also to reconcile the problematical disconnection between the Treaty of Lisbon, which places national parliaments at the centre of representative democracy in Europe and lets them participate directly in the European decision-making process, and the new European economic governance that only marginally or indirectly considers the national parliaments. The suspect ‘new marginalisation’ of the national parliaments, which the European measures adopted in the aftermath of the reform of the economic

governance framework are likely to produce – for example, the time-constraints imposed by the European semester and the European-driven balanced-budget clauses introduced at constitutional level – could be, at least partially, hindered by the setting up of Fiscal Councils which have strong ties with their legislatures.¹¹⁸ Providing independent information, Fiscal Councils can improve the effectiveness of parliamentary scrutiny and oversight as well as the quality of the parliamentary output. In other words, thanks to the ‘alliance’ with Fiscal Councils, the position of parliaments towards the executives will be enhanced in the control on budgetary and fiscal matters at national level within the European Semester and within the procedures for the surveillance of the compliance with the medium-term objectives. Therefore, the mandatory creation of Fiscal Councils could possibly induce a further Europeanisation of national parliaments, which would reproduce the traditional tension between the emulation of the most

118. If, as pointed out by Philip Norton (2010), *La nature du contrôle parlementaire*, cit., p. 6, the perception of a possible ‘decline’ of parliaments conceals the multi-functional nature of legislative assemblies, such multi-tasking parliamentary identity can take great advantage from the co-operation with the Fiscal Councils.

developed national experiences of Fiscal Councils (for example, the UK Office for Budget Responsibility) and differentiation. Indeed, differentiation reflects, on the one hand, the specificities of the institutional landscape of each Member State, its form of government, its political and economic culture, and the features of parliamentary oversight on budgetary matters; on the other, it is the result of the differentiated integration of Member States in the Economic and Monetary Union and of the diverse impact of the Euro crisis across the countries.

The development of a solid relationship between the parliaments and the Fiscal Councils does not seem to impair the respect of the independence of Fiscal Councils, as a basic pre-requisite for their effective performance. Notwithstanding the existing differences in the classification of the Fiscal Councils and in the interpretation of their role with regard to fiscal and budgetary policy-making, the literature has usually shared the idea that the main threat affecting the role of Fiscal Councils is to be found in the difficult equilibrium ‘between Scylla and Charibdis’,¹¹⁹ *i.e.*, between acting

119. Luc Coene & Geert Langenus (2011), *Promoting fiscal*

in full independence (and political irrelevance) and merely legitimising government plans. An ideal Fiscal Council is expected to steer a middle course.

These remarks explain why this paper adopts, as a starting-point, the idea that Fiscal Councils should be granted full independence from their governments, but not necessarily from their parliaments. The creation of co-operative patterns with the legislative branch represents a valuable target both from the point of view of the Fiscal Council (which is thus strengthened in its institutional role and can consolidate its capacity to interact with all political parties without becoming partisan), and from the point of view of the parliament itself (which can thus gain new sources of information and analytical data which will enable effective control of the activity of the government).¹²⁰ Strengthening the relationship

discipline in a federal country, cit., p. 20.

120. On ‘the value that an independent budget capacity located in the legislature can have for expanding the legislature’s role in budgeting and for holding the executive accountable’, see Barry Anderson (2009), *The changing role of Parliament in the budget process*, in *OECD Journal on Budgeting*, vol.1, p. 3.

with the parliament would, therefore, offer the Fiscal Councils the opportunity to be impartial without staying outside the political arena: if fiscal institutions ‘must work at the core of the democratic process and be fully owned’,¹²¹ the relationship with the parliament reveals itself to be a strategic one. Such a perspective – consisting in the promotion of procedures of direct interaction in between Fiscal Councils and their respective representative assemblies – constitutes a challenge, above all, for those Fiscal Councils which are loosely tied to respective parliaments.

The development of this idea has required us to widen our original plan of analysis, involving - in the comparative survey - a confrontation based not only upon the identity and role of the Fiscal Councils, but also upon their relationship with

the parliament, which is considered as a part of the budgetary and fiscal policy-making.

Interfacing these perspectives of analysis has enabled the traditional distinction between ‘government’ and ‘parliament’-centred Fiscal Councils to be enriched. The comparative survey has revealed that the relationship between these two bodies is sometimes entirely mediated by the government (as the case of Germany clearly reveals); in other contexts (the experience of Belgium is emblematic at this regard), the parliament is not considered as a due interlocutor for the fiscal authorities, whose main institutional reference is instead represented by the executive branches, at national or at regional level; the British Office for Budget Responsibility offers a good example of a Fiscal Council which, although closely-linked to the government, has developed close co-operation with the parliament; the forthcoming Italian Parliamentary Budget Office will add to the comparative framework a rather unique example of a Fiscal Council which is strongly centred in the parliament, both from the structural and from the functional point of view; finally, the creation of the French *Haut Conseil de finances* will offer a new model of a

fiscal agency which, mainly due to its structural ties with the *Cour de comptes*, is endowed with a strong external legitimation, but, at the same time, is supposed to act as a functional interface of the parliament.

Upon the basis of this multi-faceted framework, it is possible to affirm that the relationship between the Fiscal Councils and the parliaments tends to be shaped by two factors. The first factor is related to the influence exercised by the economic, political and legal context over the role and position of Fiscal Councils: in the European context; in fact, only the ‘last generation’ of Fiscal Councils are imagined, from the structural point of view, as having a solid and direct relationship with the parliament. If this trend is strongly conditioned by the newly-emerged need to meet EU requirements, the crisis itself seems to have encouraged the search for a stronger democratic legitimation for the mandate of the Fiscal Councils based upon the development of a privileged form of interaction with the national parliaments as the authentic exponents of popular legitimacy.

The second factor influencing the relationship between the parliament and the fiscal institution

121. Daniele Franco (2011), Comments on ‘The Role of Fiscal Policy Councils in Theory’, cit.; Xavier Debrun (2011), The Theory of Independent Fiscal Agencies: What Do We Have? What Do We Need? And Where Does This Leave Us, Presentation held at the Conference on ‘Fiscal Policy Councils: Why do we need them and what makes them effective’, Vienna, 31 January 2011, available at: http://www.staatsschuldenausschuss.at/en/img/s16_debrun_tcm164-221973.pdf.

is instead to be found in its connection with the development of an autonomous capacity of the parliament to scrutinise the budget. The empirical data available reveal that the interaction between these two elements is a complex one: when the parliament is strong in the exercise of the budgetary scrutiny, close co-operation with the fiscal institution spontaneously tends to take place (see the British case);¹²² but when this condition is not satisfied, the same result can, however, be obtained through formal legal provisions which encourage the creation of a direct connection between the Fiscal Councils and the representative assemblies (as in the recent Italian constitutional reform). In this latter hypothesis, the setting up of a fiscal authority can, therefore, affirm itself as an independent variable which can contribute to reinvigorate the parliamentary scrutiny function on budgetary and fiscal matters.

The above-mentioned consideration on the relationship between Fiscal Councils and national

122. The legislature tends to be more interested in the informative and analytical support of the Fiscal Council when its daily activities involve the scrutiny of governmental choices and performances in the budgetary and fiscal policy field.

legislatures does not challenge the importance that the economic literature usually attributes to the creation of a fiscal institution as a useful measure capable of providing improved fiscal performance. In particular, it does not condition the possibility of Fiscal Councils promoting a more effective use of public resources,¹²³ but it should, instead, be interpreted as a warning that demonstrates that the implementation of such an objective is also dependent on the relationship that the Fiscal Council develops with all the institutions which have an impact on budgetary policy-making. To date, the literature has deeply investigated the correlation between the effectiveness of fiscal institutions and the various elements of the fiscal framework, from the formal frameworks (such as the constitutional rules on excessive deficits) to the informal ones (for instance, the motivation of policy-makers).¹²⁴ All these features undoubt-

123. On the conditions influencing this result, see Lars Jonung & Martin Larch (2006), *Improving fiscal policy in the EU. The case for independent forecasts*, in *Economic Policy*, n. 47, July, p. 491 ff., who in particular underline how ‘the establishment of an independent forecaster as such may not necessarily guarantee more caution in drawing up the budget’ (p. 524).

124. See, in particular, Xavier Debrun & Manmohan S.

edly influence the design of fiscal institutions and their capacity to discourage deviations from desirable policies; but, if we want to make Fiscal Councils work effectively, it seems that the internal architecture of the form of government, in its general functioning and in its specific manifestations within budgetary and fiscal policy-making, should also be taken into consideration. Only by considering the overall interaction of such agencies with both the government and the parliament – in their role as bodies in charge of the political decision-making in the budgetary and fiscal field – can we establish the premises for a fiscal architecture capable of increasing the contribution of all the institutions involved.¹²⁵

Kumar (2007), *The Discipline-Enhancing Role of Fiscal Institutions*, cit., p. 31 ff.

125. As observed by Andrea Manzella (2012), *Il governo democratico della crisi*, Presentation held at the 58th Conference on Administrative Studies - Varenna, 20-21 September, in fact, the entrustment of power on technical bodies does not bar the essence of politics, as the role of democratic institutions can in any case be safeguarded through the appointment procedures, the introduction of transparency duties for independent agencies and the development of cooperative patterns in between such agencies and political decision-makers.

Figure 1 - Features of the Fiscal Councils in the UK, Belgium and Germany with regard to the nature of parliamentary oversight of budget

	Nature of the parliamentary oversight of budget		Criteria for assessing the Council's independence (firewalls)			
	Type of parliamentary oversight of budget	Extension of parliamentary oversight of budget	Council's members appointment and staffing	Formal influence of the Council in the budget and fiscal process	Council's funding	Accountability rules (in face of the Government - of the Parliament)
UK - Office for Budget Responsibility	Parliamentary oversight of budget carried out by the Public Account Committee together with National Audit Office	Intense and consolidated parliamentary scrutiny	HoC's Treasury Committee must give its consent on the appointment (and termination of mandate) of three members of the Office	The government is constantly under the Councils' trial Aptitude of the Office for serving as a source of information and analytical studies to parliamentary committees	The Office depends from both the Treasury and the Parliament for its revenues as well as for the certification of its accounts (subject also to the validation of the Controller and Auditor General)	Collective accountability assessed: a) by institutional bodies (the Treasury; the parliament) every year, b) by an external reviewer (person or body appointed by the non-executive committee at least once in every relevant 5-year period
Belgium – National Accounts Institute and High Council on Finance	The parliamentary oversight of budget involves both the Budget and Finance committee and the Assembly of the Chamber of representatives	Low-Medium development of budgetary oversight	NAI and HIC as 'government-oriented' agencies: relationship with both the Federal and the Regional governments) (plurality of institutional interlocutors)	- NAO intervenes mainly in the ex ante stage; HCF's contribution is focused both on the ex ante and on the ex post stage.	NAI is financed by an annual grant from the Federation, inscribed within the budget section of the Ministry for economic affairs (art. 118 of the law 21st December 1994) According to art. 13 of the Arrêté royal of the 3rd April 2006, HIC adopts its own internal financial regulation, which is approved by the Ministry of finances.	Both agencies, as public institutions, have ministers overseeing their activity and budget; this does not prevent them from enjoying full independence (they respond to government requests, but at the same time can also act on their own initiative).

Germany - Council for Economic Experts	Parliamentary scrutiny of budget mainly carried out by the Budget committee of the Bundestag (and in particular by Auditing subcommittee) -	<u>Medium development of budgetary oversight</u>	The five members of the Council are selected among specialists in the field of economic theory and policy and appointed by the Federal President on the recommendation of the government.	The Council's main duty is to compile the Annual Economic Report, presented to the Federal Government by November 15th, which in its turn submits it to legislative bodies. Within eight weeks the Federal government presents its comments on the report to the legislative bodies.	The Council is endowed with financial autonomy and its remuneration and expenses are borne directly by the Federal government	The government-centered nature of the body makes the Council responsible only in face of the government. The role of political advisor prevails over that of scientific advisor, thus supporting the idea of the Council of experts as a 'parallel government'.
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Figure 2 - A comparison between the degree of the national Parliaments' involvement in the budgetary oversight (ex post scrutiny) and their relationship with Fiscal councils

Country	Parliamentary involvement in the budgetary oversight (ex post scrutiny)	Reference institution of the Fiscal Council	Interaction Fiscal council -Parliament**
UK (Office for budget responsibility)	High involvement	parliament government	Intense
Germany (Council of economic experts)	Medium involvement	Federal government	Absent (mediated by the government)
Belgium (High Council of Finance – National Accounts Institute)	Weak involvement	Federal and regional governments	Extremely weak
Italy (Parliamentary Budget Office)*	Weak involvement	parliament	Extremely intense (the Fiscal Council is created by the two Houses)
France (Haut Conseil des Finances)*	High involvement	Court of Auditors parliament	Intense

** The interaction Fiscal Council-parliament has been analysed considering as relevant the following elements: the role exercised by the parliament in the appointing procedures; the capacity of the Fiscal Council to interact with the legislative process carried out at parliamentary level and the procedures accompanying the submission and discussion of the agency's fiscal reports within the representative assemblies; the dependence of the Council's funding on a decision to be taken at parliamentary level; the accountability rules assuring an evaluation of elected assemblies over the Council's activity