TESE DE DOUTORAMENTO EM ESTUDOS DE DESENVOLVIMENTO

SOVEREIGN DEBT CRISIS AND THE USE OF THE COMMUNITY METHOD IN THE MAKING OF EU RESPONSES (2010-2011): THE SIX-PACK CASE ON ECONOMIC GOVERNANCE REFORM

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Abstract

In early 2010, the weak design of the Economic and Monetary Union and the tools for economic governance provided by the Treaty of Lisbon proved to be inadequate for preventing or resolving the European sovereign debt crisis. Up to December 2011, the EU response comprised legislative files aiming to reform economic governance and the establishment of financial supervision and stabilization mechanisms. Drawing on new institutionalism theories, namely rational choice and historical institutionalism, this research's main objective is to investigate the use of the Community method in the responses to the EU crisis.

Some of the responses, found within the EU framework, such as the 'Six-Pack' adopted in 2011 to strengthen the Union´s economic governance, saw the Commission´s role as formal agenda setter- the key feature of the Community method-being challenged by the set up of a Task Force presided by the President of the European Council Van Rompuy. Other responses, found through intergovernmental agreements, are perceived to ascribe a much more central role to supranational institutions like the European Commission and the European Court of Justice, strengthening this way the Community method.

The focus on a qualitative case study of economic governance reform highlights the role of the European Parliament in the 'Six-Pack' legislative process and builds on a novel conceptualization of the Principal-Agent model. The analysis covers not only the 'Six-Pack' agenda-setting phase, but also the formal and informal policy-making stage, where most of the decisions were found in the so-called 'trialogues'.

Key Words: Community method, Six-Pack, Principal-Agent theory, European Commission, agenda setting, Rapporteurs, early agreements, trialogues.

Resumo

No início de 2010, tanto a fragilidade do desenho da União Económica e Monetária como os instrumentos de governação económica previstos no Tratado de Lisboa, mostraram não ser aptos em prevenir ou resolver a crise Europeia da dívida soberana.

Até Dezembro 2011, a resposta Europeia compreendeu um conjunto de dossiers legislativos com vista a reformar a governação económica e o estabelecimento de mecanismos de supervisão financeira e de estabilização. Tendo por base as teorias do novo institucionalismo, nomeadamente o institucionalismo da escolha racional e o institucionalismo histórico, o principal objectivo desta investigação é analisar o uso do método Comunitário nas respostas à crise da União Europeia.

Em algumas dessas respostas, dentro do enquadramento legal Europeu, tal como o 'Six-Pack' adotado em 2011 para fortalecer a governação económica, a Comissão Europeia viu o seu poder formal de iniciar legislação -a principal característica do método Comunitário- ser confrontado com a constituição de um grupo de trabalho presidido pelo Presidente do Conselho Europeu Van Rompuy. Outras respostas, no âmbito de acordos intergovernamentais, terão atribuído um papel central às instituições Europeias como a Comissão e o Tribunal Europeu de Justiça, o que se traduziu num fortalecimento do método Comunitário.

A escolha de um caso de estudo qualitativo sobre a reforma da governação económica, pretende sublinhar o papel desempenhado pelo Parlamento Europeu no processo legislativo do 'Six-Pack'. Para o efeito, foi desenvolvida uma nova conceptualização teórica do modelo do Principal-Agente.

A análise cobre não somente a fase da iniciação legislativa do 'Six-Pack', mas também os processos formais e informais de tomada de decisão, nos chamados 'trílogos'.

Palavras Chave: Método Comunitário, Six-Pack, teoria do Principal-Agente, Comissão Europeia, Relatores, trílogos.

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List of Abbreviations

ALDE	Alliance of Liberals and Democrats for Europe
COREPER	Permanent Representatives Committee
DG Ecfin	Directorate General for Economic and Financial Affairs
Ecofin	Economic and Financial Affairs Council
Econ	Economic and Monetary Affairs Committee
ECR	European Conservatives and Reformists
EDP	Excessive Debt Procedure
EFD	Europe of Freedom and Democracy
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EIP	Excess Imbalances Procedure
EPP	European People´s Party
ESM	European Stability Mechanism
EU	European Union
GDP	Gross Domestic Product
Greens-EFA	Greens-European Free Alliance
GUE-NGL	European United Left-Nordic Green Left
MEPs	Members of the European Parliament
S & D	Progressive Alliance of Socialists and Democrats
SMP	Securities Markets Program
TFEU	Treaty of the Function of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

INTRODUCTION

There is a broad scholarly agreement in the view that achieving longstanding peace was the principal goal of the founders of the European Communities in the 1950s. However, Rosato (2011) following a realist theory of regional integration, sees the origins of the European Communities through a balance of power lens, arguing that more than the threat of a new war, the establishment of the European Community is best understood as an attempt by France and Germany to simultaneously balance against each other and against the Soviet Union. Also Milward (1992) considers that European integration more than a federal project, was a way for nation-states to economically reassert themselves in the framework of the Cold War.

On 9 May 1950 the French foreign minister Robert Schuman invited Germany and other European countries to join France in creating an independent authority charged with regulating the coal and steel markets- the High Authority for Coal and Steel Community-which would later become the European Commission. A new type of institutional framework, known as the 'Community method' was then created.

The Community method describes a decision-making procedure, in areas coming under the EU Treaty that assigns particular roles to the European institutions and involves a particular kind of interaction between them. As regards the Community method legislative bias, the 'European Commission alone makes legislative and policy proposals; legislative and budgetary acts are adopted by the Council of Ministers and the European Parliament; and the European Court of Justice guarantees respect for

the rule of law' (European Commission, 2001). As regards inter-institutional processes, Corbett (2011) refers to the essence of the Community method as the interplay of an institution- the European Commission- charged with identifying the Union's common interest, and another institution composed of representatives of national governments- the European Council and the Council.

The Community method has been the main method of decision-making in the European Union for the past six decades evolving along many Treaty revisions and successive enlargements in the number of Member States[1]. However, the sovereign debt crisis that erupted in the European Union (EU) in early 2010 highlighted the weak design in the institutional setting of the Economic and Monetary Union and brought about repeated allegations of the method' s obsolescence.

Although the Delors report on Economic and Monetary Union adopted in 1989 stressed the need for a balance to be struck between the monetary and economic fields, noting that ´economic union and monetary union form two integral parts of a single whole and would therefore have to be implemented in parallel' (Delors, 1989:14), the Maastricht Treaty (1992) embodied a political choice not to create a

[1] Alongside its legislative character, the classical Community method has also been associated with generating binding legislative and executive acts at the EU level, leading to the harmonization of national laws to be imposed on Member States- a conception of EU governance dominated by hierarchy. However, decisions adopted through the Community method do not necessarily lead to binding outputs.
As multi-level forms of governance that are open to a participation by a range of differentiated actors evolved, legislative processes were applied to produce non-binding norms and framework directives- that may result in more flexibility in their implementation by Member States. Also these new modes of governance saw the inclusion of civil actors being involved in the decision-making process in the form of consultation. As such new characteristics were added to the classical Community method, which was able to accommodate to new governance modes.

fully-fledged economic union to go along the monetary union, thus creating a fundamental asymmetry in the institutional framework structure: a centralized monetary pillar governed by the European Central Bank and decentralized economic policies which remained a competence of individual governments. Member States would share a common currency but not a common economic policy.

Alongside neofunctionalist theories of European integration which understand the Economic and Monetary Union as an economic spillover effect after the completion of the European Single Market programme in the 1980s, political scientists like Baun (1996) see the Maastricht Treaty primarily as a political response to the German reunification and the end of the cold war. The resentment of German monetary dominance within the European Monetary System, namely by France in the late 1980s and concerns about the hegemony of a united Germany, compelled European leaders to embark in one of the greatest achievements of European integration.

A German key demand for the abandonment of the Deutsche mark was the guarantee that the Economic and Monetary Union would converge at German standards of low levels of inflation and fiscal discipline[2]. As such, some elements to provide against fiscal profligacy were enshrined in the Maastricht Treaty: a requirement to avoid excessive government budget deficits and government debt (with reference values of

[2] The Delors Report of 1989 proposed that the Economic and Monetary Union should be achieved in three discrete but evolutionary steps. As part of the third step and in order to join the single currency, Member States must fulfill certain economic and legal conditions known as the ´Maastricht criteria'. The five criteria points were agreed by EU Member States in 1991 as part of the preparations for the introduction of the single currency (Article 109j1 TEU, Protocol on the Convergence Criteria, and Protocol on the Excessive Debt Procedure).

three per cent and 60 per cent of Gross Domestic Product respectively), the prohibition of monetizing government debts via central banks, and the 'no-bailout principle' (Article 125 TFEU), which precludes the sharing of liability for government debt.

During the mid-1990s, fearing that fiscal discipline could be relaxed by Member States after the entry into the euro area, and the excessive debt procedure[3] would not suffice to ensure that discipline, German finance minister Theo Waigel proposed the establishment of a 'Stability Pact for Europe'. According to this Pact, Member States pledged to comply with rules governing fiscal discipline, going further than the existing thresholds for budget deficits enshrined in the Maastricht Treaty. As Hagen (2003:4) notes, the Stability and Growth Pact adopted in the 1997 by the Treaty of Amsterdam 'refines and concretises the procedures of the excessive debt procedure'.

While the Economic and Monetary Union has been built on a supranational Monetary pillar, the Economic pillar had relied on a fiscal surveillance procedure- which proved to be too weak- and on the coordination of economic policies- which proved to be ineffective- and did not prevent, in the first decade after the introduction of the euro, the building of macroeconomic imbalances that resulted in fundamental disequilibrium within the EU, mainly in the euro area.

Although the weaknesses of the Economic and Monetary Union were already identified by the Commission since the early 2000s, only the trigger of a potential Greek's default on its sovereign debt in early 2010 led to a consensus among Member

[3] The Excessive debt procedure is laid out in Article 104.c of the Maastricht Treaty.

States on the need to reform EU´s economic governance and reaffirm states´ commitments to the Stability and Growth Pact. Hence the EU responses to the sovereign debt crisis were driven by two main goals: the strengthening of the EU´s ability to prevent future crisis and the creation of a crisis management tool.

As such, and up to December 2011, they comprised legislative files aiming to reform economic governance and the establishment of financial supervision and stabilization mechanisms.

However, most of the measures taken to remedy the crisis were agreed through intergovernmental decision-making rather than through standard EU procedures. Hence, the transfer of powers

to the EU level, rather than following the Community method, increasingly has taken the form of intense intergovernmentalism along with the centralisation of implementing and supervisory competences in supranational bodies, raising problems of political accountability and democratic control[4].

This thesis main objective and research question is to evaluate to what extent was there (or not) a departure from the Community method in the EU responses to the sovereign debt crisis in the 2010-2011 period, not only from a decision-making perspective, but also from a inter-institutional one, focusing in the new/reinforced

[4] The Intergovernmental method refers to a decision-making that lies outside the statutory approach provided for in the Treaty. It is being used as a more assertive political approach, namely by the European Council and the Council. A process, that alike the Community method refers to decisions taken by unanimity and where the European Parliament has a weaker role. Drawing on Allerkamp (2009:14) the intergovernmental method is characterised by: '(i) (...) the active involvement of the European Council in setting the overall direction of policy; (ii) the predominance of the Council of Ministers in consolidating cooperation; (iii) the exclusion of the European Parliament and the European Court of Justice from the circle of involvement; (...) (iv) the opaqueness of the process to national parliaments and citizens'.

powers granted to the European Commission even where the EU responses were found in the intergovernmental realm.

Although there is a perception that the EU responses have reinforced intergovernmentalism powered by Franco-German initiatives, most studies have been focusing so far in particular dimensions of the EU governance, leading to different perspectives being presented. Many agree that there was no alternative to the European Council, in terms of status and authority, taking the lead of the initial responses, as the policy instruments to tackle the crisis needed the coordination at national level and the endorsement of EU decisions by national Parliaments (Corbett, 2012; Dinan, 2011; Fabbrini, 2012; Puetter, 2012). Others see the EU more 'Community-based' than ever and the importance of the Community method having not been waned, a method that still proves to be adaptable and flexible (Dehousse, 2011; De Schoutheete, 2012; Vitorino, 2012).

In fact, in contrast to European Council meetings of Heads of State and Governments, bipartite meetings between France and Germany, or Council meetings within the Eurogroup or the ECOFIN, the Commission was not very visible in the early management of the crisis. The perceived decline of the Commission´s role cannot be directly linked to the erosion of the Community method, insofar in the realm of intergovernmental policy-coordination, which characterizes the functioning of the Economic and Monetary Union the Commission is constrained of using its classic prerogatives.

Comprising a total of five regulations and one directive, the 'Six-Pack' adopted in 2011

to strengthen the Union´s economic governance, was the most visible use of the Community method as a response to the euro crisis. More than the heightening of rules-based governance, its most distinctive feature was the institutionalisation of the processes of economic policy coordination and the increased surveillance powers attributed to the Commission.

The relevance of the Six-Pack analysis as a qualitative case study arises from two main factors: not only the legislative package adopted in 2011 was considered to be 'the most comprehensive reinforcement of economic governance in the EU and the euro area since the launch of the Economic and Monetary Union'[5], but it was also the first time - the European Parliament had the opportunity to legislate in the definition of economic governance - as the Lisbon Treaty proclaimed codecision as the Ordinary Legislative Procedure extending its application to a wider range of policies, namely to economic policy coordination[6].

The European Commission's monopoly power to initiate legislation- the key feature of the Community method- is the departing point for three different propositions within

[5] European Commission Press Release IP/10/1199, 29 September 2010.

[6] The codecision procedure adopted by the Maastricht Treaty in 1992 implies that legislation has to be proposed by the Commission (i.e. Commission's formal agenda-setting powers) and the adoption of legislative acts is possible solely with the joint agreement of the European Parliament and the Council. As the procedure can be extended to three formal readings, which may translate into a lengthy process, cooperation between the Commission, the European Parliament and the Council often takes the form of tripartite meetings 'trialogues', aiming to reach compromises at first reading stage (i.e. early agreements). The Amsterdam Treaty (1999) made it possible to conclude EU codecision as early as the first reading if the European Parliament, namely through the Parliament's Rapporteurs, did not propose any amendments to the Commission's proposal or if the Council agreed with the Parliament's first reading amendments (Article 251 TEC).

the Six-Pack case study. Considering that agenda setting powers do not only confine to the Commission's role as policy initiator, but also to the European Parliament's capacity to influence agreements and policy outputs in legislative processes, the following propositions are to be tested:

Proposition1- How much were the Commission's formal agenda setting powers constrained in the Six-Pack legislative process?

Proposition 2- In what ways were Parliamentary Rapporteurs (and shadow Rapporteurs) able to influence the Six-Pack policy outcomes?

Proposition 3- Was the Commission already counting on the European Parliament to amend the Six-Pack's proposals as to meet the Commission´s preferences?

The Six-Pack legislative file provides an opportunity to make a comprehensive research not only of formal and informal decision-making processes but also to their outcomes, namely through the amendments' qualitative study. Unlike many quantitative studies that only draw on European Parliament´s amendment success rates, the analyses of near 2000 amendments tabled by members of the European Parliament to the Commission´s original proposal, allowed the assessment of their relative importance.

Having become an important mode of decision-making under codecision, informal negotiations often take place behind closed doors, the so-called 'trialogues', where efficiency gains are achieved at the cost of transparency of EU decision-making. Hence, the analysis of intra-institutional interactions of *relais* actors (i.e. Rapporteurs and shadow Rapporteurs) in early agreements, contributes to shed light on the often-

neglected and scarce literature focusing on strategic parliamentary actors at the first reading stage of codecision. Also the description of inter-institutional interactions that took place in the Six-Pack trialogue meetings, adds value to the case study by revealing how informal processes facilitate consensus building.

Another distinctive characteristic of the Six-Pack is that although two of the legislative files were not codecision procedures, but consultation ones, the Parliament was able to treat all six pieces of legislation, as one. This fact also implied that during inter-institutional Parliament negotiations, the six Parliamentary Rapporteurs' preferences could be overridden by fourteen shadow Rapporteurs.

The research question and the three propositions presented above are to be discussed along the four sections of this thesis, which is organized as follows:

Section I presents the theoretical framework and the state of the art, which sustains the research being followed, namely a comprehensive description of the Principal-Agent model, which guides the empirical work.

In section II a retrospective analyses of new modes of governance under the Economic and Monetary Union, shows the evolving nature of the Community method. Also the European Union responses to the crisis are presented through both an institutional and an intergovernmental approach, complemented with a qualitative analyses to determine which elements of the intergovernmental responses to the crisis such as the European Stability Mechanism, the Euro-Plus Pact, and the Fiscal Treaty may be considered as elements of the Community method.

Section III focus on the European Commission's formal role as agenda setter, and questions if the Commission's right of initiative, one of the main components of the Community method was weakened, particularly in the Six-Pack agenda-setting phase.
Drawing on the Principal-Agent model, section IV analysis intra and inter-institutional negotiations leading to the Six-Pack approval and tests the hypothesis whether the Rapporteurs were the institutional actors that most influenced the Six-Pack policy outcomes, surpassing the Commission's preferences.

Being part of the 'Development Studies' doctoral programme, which favours multidisciplinary research, this study disciplinary matrix is Political Science. However, in order to grasp the dynamics of European integration and governance, incursions into the fields of Economics, History and Sociology had to be made, namely insights in European Law were of particular importance in the analysis of the case study.

A common approach in this research is the recourse to the new institutionalism premises that institutions matter. As such, this thesis draws mainly on new institutionalism theories, namely rational choice and historical institutionalism, as a way to grasp institutional change and inter-institutional arrangements.
The theoretical model applied in the Six-Pack case study, the Principal-Agent approach, is grounded mainly in rational choice institutionalism but also enriched with insights from historical and sociological institutionalism. Introduced by Ross (1973) it was explicitly developed to account for delegation from Member States to supranational

institutions and agency autonomy.

In this theoretical framework the principal and the agent enter a contractual agreement, in which the agent is delegated certain powers in the expectation that he will act in ways desired by the principal. If that is not the case, as when agents pursue their own interests, the Principal-Agent model refers to 'shirking'.

One of the main contributions of this research is a novel conceptualization of the Principal-Agent model applied in the Six-Pack case study. Departing from empirical grounds rather than an *a priori* choice, the Six-Pack analysis of legislative formal and informal processes is based in the European Party Groups (namely within the Economic and Monetary Affairs committee) acting as principals and the Rapporteurs (and shadow Rapporteurs) acting as agents.

The methodology followed is based on a qualitative research work drawing on a case study. While for Yin (1994) the main goal of a case study is to explore, describe and explain, researchers differ in its definition. However, as Johansson (2003) notes a common denominator is that a case study should be a complex unit, be investigated with a multitude of methods, and be contemporary. The Six-Pack case study fits in all these three characteristics: (i) besides covering different scientific areas such as economics and European law, it analysis the interaction of different actors, as well as the dynamics of a process; (ii) legislative informal procedures imply that other research methods rather than documentation be applied (such as the interviews); and (iii) is contemporary.

Data research was mainly based on official documentation and interviews.

In order to assess political influence, while addressing the complexity of bargaining processes in trialogues, the 'Ear Instrument' (Ego/Alter perceptions, Researcher´s analysis) developed by Arts and Verschuren (1999) is applied. This method allows the assessment of the complex institutional negotiations, through in-depth interviews with primary actors and relevant policy documents.

Information on Ego and Alter perceptions, are typically gathered through interviews, which allow the measurement by key agents of their own (Ego) or other's (Alter) influence in decision-making. The researcher´s qualitative analysis is a validity check of those perceptions, based on the actor´s goal-achievement, which translates in the amendments tabled to the Commission´s proposals.

Ten semi-structured interviews were conducted with European officials between 22 January and 16 July 2014: two Finance Ministers, three Commission officials, one former Commissioner, two members of the National Parliament and two members of the European Parliament. These interviews were taped and typically lasted between 60 and 90 minutes. Five of those interviewed were selected for their knowledge and direct participation in the Six-Pack dossier[7].

Data for the Six-Pack analysis was collected from documents released by the following EU databases on inter-institutional procedures: Legislative Observatory (European Parliament), Prelex (European Commission), and Eur-lex (EU legal data base). Amendment analysis stemmed from a thorough comparison of all amendments to the

[7] In order to preserve anonymity the interviewees are to be referred as (expert 1...10). As some of the topics in the interviews encompassed past events as well as detailed technical issues (i.e. almost a two years time lag) they were previously sent by email to the interviewees.

Commission proposal tabled by the Parliament through the decision-making process in the following timeline: Commission's proposals (September 2010); Amendments tabled in the Econ committee (February 2011); committee report tabled for plenary, first reading (April 2011); text adopted by Parliament, partial vote, first reading (June 2011); and text adopted by Parliament, first reading (September 2011). Hence, a qualitative assessment in how far the amendments were incorporated into the final text was possible to achieve, although only the most controversial issues are presented and discussed.

I. EU INTEGRATION THEORIES TO GOVERNANCE APPROACHES: THE PRINCIPAL-AGENT MODEL

Several theories have sought to explain the integration of Europe so as to better understand the process of the European Union formal institutions' creation, its policy-making process and the actors involved.

However, past integration theories, focusing in international institutions cooperation to secure world peace, are determinant not only because they help to understand under which context the idea of European integration emerged but also because they hold great relevance for evaluating contemporary approaches.

Since the mid-1950s the focus of integration was no more to formulate ideal designs for worldwide international integration. In the late 1960s scholars turned to a new 'experience' in Europe: the European Economic Communities. European integration theories aimed to explain why integration happened in Europe and who were the main actors of the process. Two theories, part of the discipline of International Relations, stood out: Neofunctionalism and intergovernmentalism. The dependent variable of these theories was integration itself and the debate was about 'more or less integration' with the dichotomy between the supranational and the national level.

In the late 1980s, after a period in which European integration seemed to have come to a halt in the 1970s, governance theories developed. The focus was no longer the process of integration but the way the European Community functioned as a system of governance. The core argument laid down by new institutionalism is that EU institutions are the main actor shaping European integration.

This turn from polity development to governance analysis led to the appearance of the new institutionalism theories, which broadened the contribution of other fields of political science to governance literature, such as comparative politics and policy analysis.

A brief review of literature and these theories' main premises follows.

1.1 PRE-THEORIES OF INTEGRATION

Developed after World War I, the so-called pre-theories of Integration, namely federalism, functionalism, and transactionalism aimed to conceive devices, which would guarantee peace through international cooperation (Eilstrup-Sangiovanni, 2006).

While these pre-theories of integration shared a common believe in international institutions to secure peace and avoid the dangers of nationalism and economic protectionism, they would differ not only, in the way how to reach these objectives, but also as reference to the proper end goal of integration.

While federalists sought to transfer the sovereignty of individual states to a central authority, functionalists rejected the idea of concentrating power in a new political authority arguing that peace would be better achieved through a gradual expansion of economic cooperation among states. Transactionalism, by contrast, offered a sociological vision of integration different from the political or economic dimension view of integration offered by federalists and functionalists.

Political leaders such as Altiero Spinelli set out his federalist vision of Europe in the Ventotene Manifesto, making federalism more a political movement than a theoretical approach.

Federalists envisaged political integration in different ways. Jean Monnet, one of the founding fathers of the European construction, proposed an 'incremental' or 'functional' form of federalism. Political integration, as conceived by Monnet, was not a result of radical constitutional change but a gradual process of reciprocal adaptation of national institutions.

Functionalism, developed by David Mitrany in the 1930s, embraced a view of integration in that the welfare benefits of supranationalism would impel reform.

Rather than the federalist view of transfer of political authority, he proposed the transfer of certain specific technical tasks away from the control of governments to international functional agencies. Performing on continental basis (as for the case of railways) or on an intercontinental basis (as for the case of shipping) these agencies would promote benefits for all the individual governments and gain its own legitimacy. As Mitrany noted 'the problem of our generation, put very broadly, is how to weld together the common interests of all without interfering unduly with the particular ways of each' (Mitrany, 1943:56). This system would put an end to the world competing political units, which Mitrany believed to be responsible for the international conflicts.

Since the mid-1950s the focus of integration was no more to formulate ideal designs for worldwide international integration but instead scholarly debates centred on a specific political novelty: the European Communities.

1.2 THEORIES OF INTEGRATION: NEOFUNCTIONALISM AND INTERGOVERNMENTALISM

The two competing and dominant approaches to understanding the early phase of European integration came from International Relations, namely Neofunctionalism (Haas, 1968; Lindberg, 1963) and Intergovernmentalism (Hoffmann, 1966). The long debate centered on whether the impetus for regional integration comes from national governments or from supranational actors and whether supranational institutions such as the European Commission are autonomous institutions from national governments.

1.2.1 NEOFUNCTIONALISM

Developed in the late 1950s and 1960s, neofunctionalism provides the first comprehensive theory to understand European and regional integration. Starting with the analysis of the European Coal and Steel Community, neofunctionalism tries to explain how and why states voluntarily give up parts of their sovereignty in order to participate in international cooperation with other states while minimizing the possibilities of conflicts between them.

Building on the work of Mitrany and Monnet, neofunctionalism mainly concern is the process of integration and its central focus is the relationship between economic and political integration, based on the logic of the ‘spillover effect’.

The concept was used by Haas to show that integration in one sector of the economy - as for the case of coal and steel- would inevitably lead to the integration of other economic and political activities. In a general formulation, Lindberg (1963:123) defines the 'spillover effect' as 'a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action and so forth'.

Besides the 'functional spillover' developed by Haas relating the contagion effects between different economic sectors, the concept of 'political spillover' was also introduced by neofunctionalism to explain the building of political pressure in favour of more integration.

A third concept of 'cultivated spillover' was later introduced focusing on the role of supranational institutions in promoting integration. In fact, the theory assigns a key role to supranational institutions in providing the dynamic for further integration. Haas (1968:16) envisages European political integration as a process, whereby 'political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over the pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones'.

Among these institutions, the European Commission was viewed as the most important non-state international actor, instrumental to the progression of integration, even when governments might seem reluctant. Diverging preferences

among Member States 'would allow supranational arbiters to step in and seek to upgrade the common interest' (Eilstrup-Sangiovanni, 2006:95).

When neofunctionalism was formulated, the European Coal and Steel Community had already 'spilled over' into the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). Whilst neofunctionalism provided an adequate explanation for the development of the European communities up to the 1960s, critics argued it was empirically weak and it fall out in favour in the coming years. Empirical developments like the French veto to the British Membership en 1963 and the 'Empty Chair Crisis' in 1965 raised criticisms by intergovernmentalist scholars. According to Eilstrup-Sangiovanni (2006:97) these events 'dealt blow to neofunctionalist expectations of an automatic progression from a common market to economic union and finally to political union'. In fact, in the 1970s the integration process in Europe seemed to have come to a halt suggesting that the neofunctionalist prediction of a gradual intensification of political integration had failed[8].

1.2.2 INTERGOVERNMENTALISM

As a counter-argument to the neofunctionalist analysis, Hoffmann considered states to be the ultimate arbiters of key decisions. The main argument was that states possessed legal sovereignty; but also, there was the question of political legitimacy. Member States were the only democratically elected actors in the integration process.

[8] Despite the small theoretical development in the 1970s, two key events are worth highlighting: the European Council was established as an informal body in 1975 and the first European Parliament elections took place in 1979.

Hoffmann argued that neofunctionalists had been too optimistic about the potential spillover effects from economic to political integration. Neofunctionalism was flawed as it assumed that integration in low politics (such as economic policies) would lead to integration in areas of high politics, which was not a possibility as sensible issues of high politics (such as foreign affairs and security) were integral to the national interest and would never be delegated to supranational institutions. As such, cooperation might be possible on uncontroversial economic and technical issues but integration would only be possible when national interests coincided. The Commission's authority was unlikely to be extended to domains of key importance to national interests.

From the intergovernmentalist perspective, the European Community (EC) was essentially a forum for interstate bargaining, where Member States remained the only important actors at the European level (Pierson, 1996). However, it might be in the states' interests to pool their sovereignty and delegate certain powers to the European institutions, like the European Court of Justice and the European Commission so as to enable these institutions to work more effectively and give them greater credibility.

Hoffmann (1966) opposed to the idea of the supranational institutions as engines and facilitators of European integration, arguing that the Commission was limited in scope, and conditional on Member State approval.

The period after the completion of the European Single Act (1987) and the Maastricht Treaty (1992) saw a revival of both the two main competing theories of EU integration. While Neofunctionalism saw a refinement of its premises, 'Liberal Intergovernmentalism' supplanted Intergovernmentalism.

1.2.3 NEW NEOFUNCTIONALISM- SUPRANATIONAL GOVERNANCE

The Single European Act marked a revival in economic and political co-operation in European studies, which seemed to once again follow the spillover effect predicted by neofunctionalists, it seemed to fit the path from the Single European market to the project of monetary integration.

European institutions are seen as vital actors in the construction of what Sweet and Sandholtz (1997) called 'Supranational Governance', a refinement of neofunctionalism. Supranational governance, as opposed to neofunctionalism, does not neglect Member State´s dominant role in intergovernmental conferences, conducing to European integration through Treaty reforms. However, they emphasize the periods between them, in which institutions may shape and influence Member States' behaviour in subsequent intergovernmental conferences.

As Sandholtz and Zysman (1989) note, the Commission showed effective political leadership in the run-up of the Single European Act, mobilizing transnational business and persuading national governments in favour of the project. This argumentation reflects a 'new-transaction-based theory approach to neofunctionalism which draws attention to the increasing levels of transactions (such as commerce, travel, communications) across EU borders which, in turn, increases demands for European-level regulation' (Sweet and Sandholtz, 1998:11).

Some scholars referred to this version of neofunctionalism as 'transactionalism' as international transactions are seen as a fundamental motor of the dynamic process.

Sandholtz and Sweet (2012) present an updated version of neofunctionalism by incorporating to the Haas' version, concepts like 'institutionalization' and 'path

dependency'. The authors rearrange Haas's shift of national loyalties, expectations and political activities to a new centre, arguing that an expansion of supranational governance is possible, and indeed has become deeper and broader over time without that ultimate shift in identification.

Literature in the new neofunctionalist view of the Commission as political entrepreneur draws mostly on case studies relating to specific sectors of economic activity such as transports, communications, environment and the common market (Cini, 1996; Sandholtz and Zysman, 1989; Sandholtz, 1992).

1.2.4 NEW INTERGOVERNMENTALISM: LIBERAL INTERGOVERNMENTALISM

Sparked by the new dynamics in the European Community and building on Hoffmann's work, Moravcsik (1991) developed a subsequent version of the intergovernmental explanation of the integration process, which the author called 'intergovernmental institutionalism'. Like Hoffmann, Moravcsik starts from a critique of neofunctionalism, stating that European integration was tightly constrained by Member States and was a result of state bargaining: 'the primary source of integration lies in the interests of the states themselves and the relative power each brings to Brussels' (Moravcsik, 1991:56).

Later, he abandoned this strong intergovernmentalist strand where supranational institutions main role was to cement interstate bargains and act as a 'perfectly reactive agents' (Moravcsik 1995:616), to a more soften view as to accommodate 'unintended consequences'.

Moravcsik conceptualized a liberal theory of national governance preference formation, with an institutionalist theory of intergovernmental bargaining in order to explain EU regional integration. In Moravcsik (1993:480) the author proposes a new framework, which he termed liberal intergovernmentalism, and notes, that 'at the core of liberal intergovernmentalism are three essential elements: the assumption of rational state behaviour, a liberal theory of national preference formation, and an intergovernmentalist analysis of interstate negotiation'. As such, liberal intergovernmentalism accepts that states may delegate decision-making powers to supranational institutions, like the European Court of Justice and the European Commission, in order to improve the efficiency of interstate bargaining and maximize the credibility of their commitment to cooperate.

Criticisms point to the fact that liberal intergovernmentalism was unable to address the problems that delegation may generate, namely in situations where supranational institutions' preferences diverge from those of Member States (Kassim and Menon, 2003).

As regards the European integration process, and on the basis of key episodes in the European integration process, Moravcsik (1998) seeks to explain the 'grand treaty-making bargains', such as the Treaty of Rome, the Single European Act, and the Maastricht Treaty, coming to the conclusion that the major choices in favour of Europe were a reflection of the economic (rather than geopolitical) preferences of national governments, and not of the preferences of supranational organizations.

In contrast to the neofunctionalist view of the Commission´s autonomy and political leadership, Moravcsik (1993) finds no scope for the Commission's independent

initiative. Even its most powerful tool, the right of legislative initiative is constrained, as the Commission prefers to adapt its proposals to the preferences of the most powerful governments (Garrett, 1992).

1.3 ANALYSING EUROPEAN GOVERNANCE

From the 1980s onwards, the study of EU politics focus on governance theories in alternative to classical integration theory, in such a way as to complement them by analysing how the EU and its institutions work – the so-called 'institutionalist turn'- (Aspinwall and Schneider, 2000; Hix, 1998; Jachentfuchs, 2001; Scharpf, 1988).

In order to analyse and explain the functioning of the EU, theories of international relations had to be combined with other sub-disciplines of political science, like comparative politics and public policy analysis. Scholars increasingly conceived the EU as a polity or system of governance.

Although Jupille and Caporaso (1999) argue that both international relations and comparative politics scholars are both focusing in institutional analysis, Hix (1994) considers that comparative politics is more suitable to this area of governance studies, than the approaches based in international relations.

The most significant theoretical approaches to governance studies are: new institutionalism, multi-level governance, and policy networks.

Since the early 1990s, namely due to the increasing intermingling of European and domestic affairs, there has been a proliferation of studies aligning with the classical categorization of polity, politics and policy.

Some of the criticisms made to the Governance literature are (i) that it focuses in more or less autonomous issues (such as inter-institutional bargaining, legislative politics, literature on political processes, constitutional reforms and democracy) leading to a lack of theoretical focus; (ii) in this literature neither a common understanding of European institutions, nor a 'consensus' definition of institutions flourished (Aspinwall and Schneider, 2000); (iii) another criticism highlights the fact that while the governance approach assumes that the EU has developed into a new type of political system different from traditional nation-states, it 'has a strong bias towards effective and efficient problem-solving and almost completely ignores questions of political power and rule' (Jachentfuchs, 2001:258). However, as March and Olsen (1984) argue, even though governance literature is far from coherent or consistent, it cannot be 'entirely ignored'.

1.3.1 NEW INSTITUTIONALISM

New Institutionalism analyses comprise three different strands: 'rational-choice', 'historical', and 'sociological' institutionalism.

The basic premise of the three new institutionalist approaches is that they all seek to explain the institution's role in the determination of social and political policy outcomes. They share an understanding according to which institutions matter, but they all have a distinct understanding of what institutions are and how they matter (Hall and Taylor, 1996; Pollack, 2003).

The main feature of these approaches is that they treat EU institutions not only as outcome variables deriving from a certain political choice, but as both independent or

dependent variables that affect actor´s goals in the integration process. As such, and in accordance to Jupille and Caporaso (1999), institutionalism studies may be classified according to their primary explanatory elements: the theoretical treatment of institutions and actors' preferences.

As regards institutions, they may be taken as exogenous when theorists try to explain the non-institutional political dynamics and outcomes. Institutions are treated outside the model as defining roles and behaviours, modelling norms and framing policy-making (e.g. sociological institutionalism). In another perspective, institutions are taken as endogenous variables when theorists try to explain institutional dynamics, namely institutional choice and design, and influence on policy outcomes (e.g. rational choice institutionalism and historical institutionalism).

As regards actors' preferences, in the sense of fundamental goals and strategies to reach them, they are taken as exogenous when actors' preferences are given and remain unaltered, which means institutions to not affect actors´ preferences. However, institutions may act in an autonomous way so as to influence policy outcomes (e.g. rational choice institutionalism). Other studies consider preferences as endogenous to institutions, meaning that the latter may influence actors' goals (e.g. sociological institutionalism).

1.3.1.1 RATIONAL-CHOICE INSTITUTIONALISM

Rational Choice Institutionalism, termed by Hall and Taylor (1996), developed at the same time as historical institutionalism and emerged from the efforts by American political scientists to understand the role of US congressional institutions. The paradox

was how to secure stable majorities for legislation in the US congress, facing the multiple preferences of legislators and the different nature of issues. The answer was to be found examining the 'agenda-setting' powers of the Congressional Committees and the way they could influence outcomes. They reached the conclusion that delegating authority for implementing and adjudicating policy to institutional 'agents' might solve many of the collective action problems faced by legislatures.

Rational Choice Institutionalism shares much in common with liberal intergovernmentalism insofar as it views states as rational actors. Indeed, as Hall and Taylor (1996:945) note, 'an actor's behaviour is likely to be driven, not by impersonal historical forces, but by a strategic calculus'.

Also like liberal intergovernmentalism, rational choice institutionalism takes a functionalist approach to institutional choice. States, seen as 'principals' create institutions and delegate powers to these bodies insofar they benefit from the functions performed by these 'agents', namely reducing transactions costs, solving incomplete contracts, monitoring and enforcement. These benefits, as Hall and Taylor (1996) argue, are most of the times conceptualized in terms of gains from cooperation.

Although rational choice theorists regard actor's preference formation as an exogenous variable to institutions, which means they adopt simplifying assumptions about actors' preferences, they treat other variables like actor behaviour or policy outcomes as dependent variables. As such, rational choice scholars have theorized EU institutions as both dependent (endogenous) variables or 'equilibrium institutions' designed by governments to secure mutual gains, as well as independent variables

(exogenous) that have shaped subsequent policy-making and policy outcomes (Pollack 2006).

Rational choice institutionalism approaches have been applied in EU studies, namely in the areas of legislative, executive and judicial politics. According to Pollack (2006), legislative politics stands out as the 'best-developed strand of rational choice theory'.

Legislative studies drawing on quantitative and qualitative empirical analyses, have covered distinct areas of studies such as: (i) the inter-institutional relations among the Commission (as agenda setter), the Council, and the Parliament under different legislative procedures (Crombez *et al*, 2000; Crombez and Hix, 2011; Garrett and Tsebelis, 1996, 2001; Thomson and Hosli, 2006); (ii) the European Parliament's legislative power under different decision rules (Kreppel 1999, 2002; Tsebelis, 1994); (iii) the legislative organization of the European Parliament and the balance of power between committees, Party Groups and Rapporteurs (Costello and Thomson, 2010; Hix 2002a; Kreppel 2002) and (iv) the voting behaviour of European Parliament's members (Hix et al, 1999, 2012).

Also, and according to Tallberg (2006) executive politics studies, in the form of principal-agent analysis, have been dominated by rational choice scholars focusing on issues such as delegation and agency, although literature focusing in the Commission as a political entrepreneur was interpreted as neofunctionalist (Kassim and Menon, 2003; Tallberg, 2002).

1.3.1.2 HISTORICAL INSTITUTIONALISM

While rational choice theorists tend to concentrate in the short-run, historical and sociological institutionalism enhance the long-term institutional effects and focus in the way institutions may create unintended or undesired actions to their creators, as 'the current functioning of institutions cannot be derived from the aspirations of the original designers' (Pierson, 1996:126-7).

As described by Pierson (1996:125) 'this scholarship is historical because it recognizes that political development must be understood as a process that unfolds over time. It is institutionalist because it stresses that many of the contemporary implications of these temporal processes are embedded in institutions-whether these be formal rule, policy structures, or norms' (Pierson, 1996:125).

A distinguishing feature of historical institutionalism is that it accepts basic intergovernmentalism assumptions about the primacy of national governments in the creation and reform of institutions (Eilstrup-Sangiovanni, 2006). As Pierson (1996:125) notes 'although neo-functionalist arguments about the independent action of the Commission and Court of Justice have some merit, there is little doubt that the Member States, acting together in the Council, remain the most powerful decision makers'.

However, historical institutionalism is critical of the intergovernmentalist approach to integration. As Pierson argues, even though Member States design European institutions in their own interests, these will thereafter not always meet their expectations as 'gaps' may emerge between the initial intentions of institutional designers, and the long-term unexpected consequences of institutional outcomes.

Pierson describes these gaps as divergences evolving between the institutional and policy preferences of Member States and the actual functioning and practices of the European institutions.

In fact, 'gaps in control' may occur due to (i) the autonomous actions of institutional actors, namely the Commission´s agenda setting power; (ii) the restricted time horizons of political decision-makers, which tend to privilege short-term decisions for electoral reasons; (iii) asymmetrical access to information that favours agents like the Commission and (iv) shifts in governments' preferences.

This stickiness of institutional design and the reassessment of control over the institutions by Member States are according to Pierson, difficult to reverse due to institutional barriers to reform (i.e. a Treaty revision) and sunk costs that may emerge from 'the micro-level responses of societal actors'[9].

In fact, the rules governing institutional and policy reforms are what Scharpf (1988) calls a 'joint-decision trap' (or 'lock-in') in which a given institution or policy, once instituted, tends to remain in place due to unanimity decision rules, and a 'status quo default option', even in the face of a changing policy environment, or an exogenous shock[10]. In this seminal study, Scharpf tried to explain the facts behind the resistance of ineffective policies such as the Common Agricultural Policy.

According to historical institutionalism, a path-dependent process also characterizes political institutions and public policies. Early decisions not only shape current

[9] Societal actors engage in costs such as learning and investment expenditures based on the expectation that existing institutions and policies will not change. As such, an exit from existing arrangements increases costs (Eilstrup-Sangiovanni, 2006).

[10] Pollack (2005) notes that these concepts of 'joint decision trap' and 'lock-in' have to be carefully analysed, once many European decisions have a specific expiration date and may be amended by qualified majority voting.

institutional and policy choices but also constrain and limit institutional change, even when the resulting outcomes are inefficient.

One of the criticisms made to these 'first-generation' historical institutionalist studies, was that, while focusing on the stickiness of institutions and policy choices, they fail to explain the rapid pace of institutional and policy change in the EU over the past decades.

In recent years, a 'second-generation' of both historical and rational choice scholars have claimed that existing institutions and policies may generate positive feedbacks that sustain existing equilibrium and promote a reinforcement of institutionalized cooperation, but also that they may generate negative feedbacks, which induce incremental institutional change that, over time, can lead to its dismissal (Mahoney and Thelen, 2010).

As to be discussed in sub-section 1.4.2 Farrell and Héritier (2003) refer to positive feedbacks in analysing the negotiation of informal agreements that are subsequently codified over time. More recently, incremental institutional change has also been applied in the analysis of the financial and sovereign debt crisis effects on institutional design (Salines et al, 2011, 2012).

1.3.1.3 SOCIOLOGICAL INSTITUTIONALISM

Sociological institutionalism has been developed within the field of sociology and organization theory, placing its attention on the norms and culture of social agents.

Sociological institutionalism departs from rational choice institutionalism in two ways. While rational choice studies focus on the formal rules of institutions, sociological institutionalism defines institutions much more broadly to include informal norms and conventions as well as formal rules, emphasizing their capacity to socialize actors and thereby influence interests and identities (Rosamond 2000:204).

Also, in contrast with rational choice approaches, in which actors are regarded as rational unitary actors whose preferences are taken as exogenous variables, scholars of sociological institutionalism take actor´s preferences as endogenous variables, assuming that actors behave according to a logic of appropriateness. According to this logic, institutions identify themselves with specific institutional forms and rules because they are 'widely valuable within a broader cultural environment' (Hall and Taylor, 1996:946). This way, actors are not driven by logics of maximizing utility, but rather behave within a certain institutional context where norms, rules, and expectations define actor´s behaviour (Pollack 2009:127; March and Olsen, 1984).

Sociological institutionalism scholars have examined the process by which the EU and other institutional norms are diffused and shape the preferences and behaviour of actors in domestic as well as international politics (Pollack 2009:127).

These concepts are applied by sociological scholars in the study of the Commission, where the process of preference aggregation is problematized leading to the introduction of culture and ideology as fundamental variables.

Also sociological institutionalism questions the functional view of delegation and the need to reduce transaction costs. Instead they claim that principals delegate power to agents for reasons of institutional design that are widely accepted as legitimate or

appropriate by the principals or by their constituents, and not for reasons of efficiency (Tallberg, 2006; Pollack 2007).

1.3.2 MULTILEVEL GOVERNANCE

The concept of multilevel governance was first developed by Gary Marks through its analysis of partnerships between local, national, and supranational actors to manage structural funds (Eilstrup-Sangiovanni, 2006).

Multilevel governance theorists are concerned with studying the complexity of EU governance. They understand governance as a multilevel system in which decision-making and implementation authority is shared across diverse 'tiers': sub-national, national, transnational, and supranational. This political organization is to be more efficient as it translates different levels of preferences.

Like neofunctionalists, multi-level governance scholars consider that supranational institutions, like the Commission, play a decisive role in shaping regional decision-making. Furthermore, actors like the Commission may form policy coalitions with subnational public actors, so as to bypass Member States (Eilstrup-Sangiovanni, 2006).

Regional integration is conceived as the articulation of authority across jurisdictions at diverse scales (Hooghe and Marks, 2009; Jachentfuchs, 2001; Marks et al, 1996).

Hooghe and Marks (2009:5) consider that the course of European integration has been constrained by 'domestic patterns of conflict across the EU'. The authors argue that he politization of the EU changed both the content and the process of decision-making. In fact, the first three decades of integration were 'years of permissive consensus, of

deals cut by insulated elites. The period since 1991 might be described, by contrast, as one of constraining dissensus'.

1.3.3 POLICY NETWORKS

Policy Networks is particularly suited to have a clear understanding of the multi-level governance framework in the European Union, through the analysis of both formal institutional arrangements and the complex nongovernmental, informal relationships in the policy process.

Policy networks focus on the EU working at the micro-level with multiple channels of access, and a constellation of interdependent actors that are simultaneously linked but with no hierarchical subordination (Bähr and Treib, 2006), departing this way from the intergovernmentalist view of hierarchies and privileged channels of access (Jachentfuchs, 2001).

As Kenis and Schneider (1991:27) note 'policies are formulated to an increasing degree in informal political infrastructures outside conventional channels such as legislative, executive and administrative organizations. Contemporary policy processes emerge from complex actor constellations and resource interdependencies, and decisions are often made in a highly decentralized and informal manner'.

1.4 PRINCIPAL-AGENT FRAMEWORK

Following important contributions of scholars like Mark Pollack and Giandomenico Majone in the late 1990s, Tallberg characterized Principal-Agent theory as:

> 'offering a neutral theoretical language that did not *a priori* discriminate against

> the propositions of either neofunctionalism or intergovernmentalism, but permitted EU scholars to generate conditional generalizations about supranational influence, based on empirical patterns of variation across institutions, issue areas, and time' (Tallberg, 2006:8)

Principal-Agent´s main focus of research - delegation and agency autonomy - has been increasingly applied to the realm of political science in the study of the European Union, namely in advancing understanding of European integration and governance (Elgie, 2002; Franchino, 2012; Garrett, 1992; Kassim and Menon, 2002; Moravcsik, 1993; Pierson, 1996; Schuknecht, 2004; Sweet and Thatcher, 2002).

In fact, one of the distinguish features of the EU, from an international comparative perspective, is the extensive degree of delegation from Member States to supranational, non-majoritarian institutions like the European Commission and the European Court of Justice.

Member States share the responsibility for creating and revising the Treaties in intergovernmental conferences. As the powers and specific responsibilities of the European institutions are laid down in the Treaties, scholars have identified Member States as 'principals', setting the constitutional bounds in which 'agents' like the Commission and the European Court of justice have to operate.

Ross (1973:1) introduced, for the first time, the concept of Principal-Agent relationship as arising 'between two (or more) parties when one, designated as the agent, acts for, on behalf of, or as a representative for the other, designated the principal, in a particular domain of decision problems'.

In the Principal-Agent framework the principal and the agent enter a contractual

agreement, in which the agent is delegated certain powers in the expectation that he will act in ways desired by the principal. If that is not the case, as when agents pursue their own interests, Principal-Agent theory refers to 'shirking' which, in turn, may be partly offset if principals apply control mechanisms.

Principal-Agent models departs from the principle that contracts -viewed as any institutional agreement- are invariably incomplete, in that they do not spell in total accuracy the precise obligations of all the parties, in all conceivable circumstances, for all the time life of the contract (Williamson, 1985).

In most Principal-Agent analysis Member States are treated as a unitary group, a 'collective principal'. This concept, which was taken from Lyne et al (2006:44), applies when 'voters delegate to politicians, legislators delegate to party leaders, and nation-states delegate to international organizations'. However, as Sweet and Thatcher (2002) note, the Principal-Agent relationship is complicated when the principal is made up of multiple actors with divergent preferences.

While intergovernmentalist and neofunctionalist theories focus their attention in some particular institution, Principal-Agent analysis transcends this debate and does not assign any privileged role to any particular institution or actor (Kassim and Menon, 2003). Furthermore, as Hodson (2009) notes, Principal-Agent framework can be applied, not only to supranational decision-making, but also to new modes of

governance in which authority may be delegated to other actors rather than supranational institutions[11].

Although Principal-Agent analysis is grounded mainly in rational choice institutionalism, it is also enriched with insights from historical and sociological institutionalism, namely on the sources of delegation to supranational agents and the influence of executive actors.

While the standard application of Principal-Agent theory devises Member States as principals and supranational institutions as agents, there are alternative conceptualizations. Whereas the focus of analysis refers to implementation policy, Member States (as national governments) can be viewed as agents and the Commission or the European Court of Justice as principals (Hodson, 2009). However, if the focus of analysis refers to the study of Economic and Monetary Union's budgetary rules, both Schelkle (2005) and Schuknecht (2004) treat national governments as agents of Ecofin (acting as principal). In the study of parliamentary democracy in Europe, Strøm et al (2003), conceptualize citizens as principals and members of Parliament as agents, while Scully (2001) treats National Parties as principals and members of Parliament as agents.

Section IV of this thesis offers an alternative conceptualization of principals and agents as far as the legislative process of the so-called 'Six-Pack' is analysed.

[11] One of the criticisms made to principal-agent analysis is that it does not take in consideration 'third parties'. As Pollack (2007:8) notes 'Principal-Agent analysis is a mid-level theory about the dyadic relationship between a principal (or principals) and its agent (or agents), abstracting almost entirely away from third parties. Furthermore, Principal-Agent models typically black-box the internal workings of both state principals and IO agents (e.g. bureaucracies and courts), adopting simplifying assumptions about both actors in order to model the relationship between them'.

In the following sub-sections the main premises of the Principal-Agent model are discussed. Firstly the reasons behind delegation, the existence of agency losses and control mechanisms, are briefly reviewed. Secondly two different conceptualizations of the Principal-Agent model are envisioned.

1.4.1 THE DECISION TO DELEGATE

Rational choice theorists offer the most valuable contribution to the Principal-Agent model in its research of the form and the conditions under which 'supranational institutions will be delegated authority and will enjoy autonomy from and exert influence on the member governments of the Community' (Pollack, 1997:100-1).

In general, delegation by principals to agents is explained in terms of the anticipated effects, expected by the delegating party, and takes place when the benefits of such delegation outweigh its costs. However, different perspectives are advanced in which respects the reasons to delegate.

From an intergovernmentalist perspective, the reason why principals delegate executive and judicial powers to their agents, namely the Commission and the European Court of Justice, is to solve collective action problems, reduce transaction costs and establish credible commitments (Hix, 2002). As Moravcsik (1998:73) argues, Member States have delegated powers in the various EU treaties primarily to establish the credibility of their mutual commitments by monitoring compliance and completing the details of the treaties that form the central, but incomplete, contracts of the Union.

From a neo-functionalist perspective, as Pollack (1997:102) suggests, delegation is a question of institutional design and 'the question of institutional choice is functionalist. That is to say, rational choice theory explains institutional choices in terms of the functions a given institution is expected to perform and the effects on policy outcomes it is expected to produce, subject to the uncertainty inherent in any institutional design'.

Among the functions emphasized in the rational choice literature for which principals might choose to delegate authority, Sweet and Thatcher (2002) highlight the need to resolve incomplete contracting and commitment problems and enhance the efficiency of rule making.

This functional perspective explaining delegation coupled with information asymmetries in technical areas of governance in favour of the agents, may lead to situations where agents are endowed with a high degree of discretion, enabling them to shape policy outcomes (Hix 2002; Sweet and Thatcher, 2002). This reasoning applies to the powers delegated to an independent body, unaffected by political pressures, such as the European Central Bank in its conduction of monetary policy. The European Central Bank acting as a ´trustee' may implement policies to which their principal could not credibly commit (Majone, 2001). As Pollack (2006) argues, principals may find it difficult to maintain credible commitments over time to specific policy choices, such as the long-term goal to maintain price stability against a short-term temptation to decrease interest rates and stimulate the economy, namely in pre-electoral periods.

The same reasoning applies to the delegation of powers to regulatory agencies, governing economic and other market activities. As Pollack (2003:23) notes, 'principals

themselves would have difficulty in credibly promising to apply regulations consistently'.

1.4.2 AGENCY LOSSES

In Principal-Agent analysis, agents are assumed to have independent preferences and some discretion in order to influence policy outcomes. In contrast to neofunctionalist theories, one of the merits of the Principal-Agent approach is that it enables researchers to test hypotheses about the sources of such agents' preferences (Pollack, 2007).

Indeed, benefits from delegation can only be obtained through the delegation of some kind of authority to the agents. These benefits tend to decline the more the principal tries to restrict agent discretion.

'Agency losses' can occur when agents, like the Commission or the European Court of Justice, generate outcomes different from those expected and preferred by the principals. The asymmetry of information on behalf of the agents, adverse selection problems and moral hazard, can allow agents to 'shirk' or 'drift' (Kassim and Menon, 2003).

Shirking occurs when agents behave opportunistically, pursuing their own interests, rather than those of the principals. According to Pollack (1997:108) the likelihood of shirking is increased by 'slippage', when the act of delegation 'provides incentives for the agent to behave in ways inimical to the preferences of the principal', which means that the agent may behave in ways systematically different from those preferred by the principals.

Evidence from incomplete information about policy preferences between principals and agents leading to agency drift**,** is applied by Hix (2002) in the 'reinterpretation' of the Treaties, leading to a self-reinforced legislative power to the European Parliament in the replacement of codecision I (Maastricht Treaty) by codecision II (Amsterdam Treaty).

Challenging treaty-based formal institutional rules, the European Parliament attempted to impose its interpretation of the formal Treaty rules unblocking the institutional status quo. A successful case of 'agency drift' could then be observed in which relates the European Parliament's role in the 'Conciliation Committee' procedure (see *infra* section 3.1.1). While in codecision I the final decision rested with the Council, in codecision II each institution has the same prerogatives and powers. The European Parliament was on equal footing with the Council for the first time.

While Pollack (1999) considers the ideological commitment to reduce the democratic deficit, as the main reason behind the Amsterdam changes to the European Parliament's powers, Moravcsik and Nicolaïdis (1999) point out to a national left winning coalition in France and Britain more supportive of an empowered European Parliament.

However, Hix (2002) claims that these are still incomplete explanations to the willing of Member States to delegate more powers to the European Parliament at Amsterdam, considering that the European Parliament acted as a constitutional agenda setter in the way it was able to reinterpret the Treaty of Maastricht rules. Considering the Treaties as 'incomplete contracts' and departing from Member States' incomplete information about the impact of the delegation of powers to the EU

institutions, the European Parliament was able to exercise discretion (and reinterpret the rules) through its own 'Rules of Procedure'[12] - which became *de facto* rules in the Treaty of Amsterdam- as well as using strategic behaviour to force governments to accept them. As Hix (2002:23) notes 'the EU governments undertook the Treaty of Amsterdam reforms because they were in fact only institutionalizing existing practices'.

As Héritier (2012) notes, existing institutionalized rules (such as codecision) may change either because of transaction cost problems or because actors in institutional disadvantage may induce that shift, empowering their initial position.

Another perspective is given by Rittberger (2012:28) noting that unlike governments, which seek policy gains in the short-run, members of the European Parliament commit themselves more 'on the long-term inter-institutional power game, threatening the Council to block legislation unless it grants the European Parliament more say in inter-institutional bargains by accepting to informally alter the decision-making rules to the European Parliament's advantage'.

Rittberger notes that the argumentation 'no integration without representation' (i.e. the European Parliament should be given extended legislative empowerment as qualified majority voting in the Council was extended to more policy areas) has, since Maastricht, been recognized by Member States and 'displayed relatively little contestation' (Rittberger 2012:32). In contrast to the 1980s and early 1990s, representative legitimacy has been hardly contested even in controversial areas such as economic policy coordination where codecision applies under the Ordinary

[12] European Parliament, Rules of Procedure (rule78).

Legislative Procedure.

1.4.3 CONTROL MECHANISMS

Member States design control mechanisms in order to avoid agency losses from the agents with policy preferences distinct from their principals.

Literature on Principal-Agent theory has distinguished *ex-ante* administrative procedures and *ex-post* oversight procedures (Elgie, 2002; McCubbins and Schwartz, 1984; Kassim and Menon, 2003; Pollack, 1997).

Principals may define *ex-ante* the scope of the agency discretion, which may be altered in response to shirking or slippage. Administrative procedures such as defining the scope of the agent´s activity, the kind of procedures the agent has to follow and legal restrictions, may be established.

As regards oversight procedures that allow for ex-post oversight and sanctioning, McCubbins and Schwartz (1984:166) distinguish two strategies: 'police patrols' and 'fire alarms'.

While police patrols oversight is a centralized and direct monitoring approach, through which the principal follows an on-going assessment of the agent's behaviour, fire alarms are more decentralized. In respect to fire alarms, third parties, such as citizens or organized interest groups, carry the process of indirect monitoring, holding the agents accountable for their actions.

Sanctions, for their part, can take the form of cuts in the agent's budget; reversing appointments and institutional mandates; and overrule decisions through new legislation.

Elgie (2002) also refers to another form of control mechanism of agency losses through the delegation of power to multiple agents in order to achieve 'competitive interaction'. In the face of conflicting sets of incentives or goals, principals may control agents through the use of institutional checks.

Pollack´s application of the Principal-Agent approach to the study of the European Commission and the European Court of Justice's power, led him to conclude that the 'autonomy of a given supranational institution depends crucially on the efficacy and credibility of control mechanisms established by Member State principals, and that these vary from institution to institution – as well as from issue-area to issue-area and over time – leading to varying patterns of supranational autonomy' (Pollack, 1997:101).

Sociological institutionalists take a different view of delegation of powers to agents and propose alternative control mechanisms such as persuasion through good arguments, moral authority and joint-problem solving (Tallberg, 2006).

More recently, Hodson (2009) application of Principal-Agent analysis to EU economic governance finds that 'the lack of fiscal discipline shown by some Member States in the first half of the decade and the slow pace of structural reform can be attributed to shirking by agents, problems of asymmetric information and incomplete contracting, tensions within the principal and the failure of ex-post sanctions to bite'.

1.4.4 THE COMMISSION AS AN AGENT (OR A PRINCIPAL)

The Commission's role in the European decision-making process has been subject to long academic debate. While intergovernmentalists see the Commission as a subservient actor to the Member States with no autonomous role in the European integration process, an agent which main purpose is to reduce transaction costs, or an 'apolitical provider of information' (Garrett, 1992), neofunctionalists see the Commission as an independent principal with its own preferences and agendas, able to influence policy outcomes and undertaking its pro-integration policy goals.

According to Pollack (1997), Member States have delegated to the Commission the powers theorized by the Principal-Agent model, as is the case for setting the legislative agenda; monitoring and enforcement of Member States compliance with European law; and implementation and regulation of EU policies in certain areas, such as competition policy. The reasons for such delegation are according to Majone (2001) the need to reduce decision-making costs by taking advantage of the Commission´s policy-relevant expertise and information and to enhance the credibility of policy commitments.

In order to avert shirking by the Commission, different control mechanisms have been established by Member States, such as (i) a system of police-patrol oversight through the comitology committees that monitor and control the Commission's executive function; (ii) a system of fire-alarm oversight involving the EU legal system (e.g. institutional checks, the European Parliament's power of dismissal, and judicial review), and (iii) ex-post sanctions, which include powers of appointment and censure, the possibility of cutting the Commission's budget, the right to overrule Commission

decisions through new legislation, and the 'nuclear option' of revising the Commission's institutional mandate through treaties 'review (Pollack, 1997:118-19; Tallberg, 2006).

Although it is almost consensual that the sole right to initiate legislation is seen as its most powerful instrument, opinions diverge as to the reasons for such delegation as well as the Commission´s ability to set the agenda (as discussed in Section III).

The reason why the Commission was delegated legislative powers has different interpretations. While Majone (2001) enhances the credibility factor in order to increase Member States common commitment to the European project; Vitorino refers to the need of assuring that the Community's interests are represented by all Member States and not only those of a few (Barnier and Vitorino, 2002); others have emphasized the Commission's informational and expertise role in producing legislative proposals or merely a role as neutral arbiter in providing 'an authoritative means of reducing the number of proposals to be considered' (Moravcsik, 1993:511).

The Commission´s ability to set the agenda and its influence on policy outcomes has decreased with the introduction of the codecision procedure, being its influence more dependent on informal channels where the Commission can act as a deal-broker in virtue of its expertise and asymmetries of information (Tsebelis and Garrett, 2000). As Kreppel (2002) notes, codecision has put the Commission in a situation of institutional disadvantage with the other legislative actors- the Council and the European Parliament- as compared to previous decision-making procedures where it had a larger room of manoeuvre. Furthermore agenda setting powers are particularly affected if

agreements are reached at first reading (Crombez and Hix, 2011; Farrell and Héritier, 2003). The increased use of informal meetings between the Commission, the Council, and the European Parliament to reach early agreements (trialogues) has not been beneficial to the Commission, who used to have a privileged position when direct contact between the European Parliament and the Council were scarce (Rasmussen, 2003).

According to VoteWatch (2012), the Commission under codecision may have lost power rather than *de facto* influence, as the strengthened European Parliament is viewed as an ally of the Commission. The Commission's influence may be assessed when it 'succeeds in persuading the Council and the Parliament to take its viewpoints into account and adopt amendments and compromise texts different from what they would otherwise have done' (Rasmussen 2003:4).

The Commission's ability to defend its legislative proposals not only depends on its endogenous resources like bureaucratic expertise and the legislative procedure but also on exogenous ones such as the willingness of Member States to move from the status quo and further integrate into the EU. As noted by Pollack (1997) and Moravcsik (1999) the circumstances in which the Commission operates have to be considered, namely the 'general attitude' of Member States as a determinant condition for the success of the agent (Bailer, 2013).

Although it has been argued that the Commission´s monopoly of agenda setting has been eroded in recent years, Majone (2005) considers that this delegated power makes the Commission more than a mere agent as, under the Community method, it is

up to the Commission to propose the timing, the legal form, and the contents of legislative processes and implementing procedures.

In contrast to the liberal intergovernmentalist view that underestimates the Commission´s ability to act as a policy entrepreneur, different empirical studies focusing mainly at the agenda setting stage, have demonstrated that the Commission has been able to show political leadership and act as a policy entrepreneur. In this literature the Commission is portrayed has having an important margin of autonomy to influence policy outcomes. By making use of its leadership policy instruments (e.g. political, legal and managerial resources) or its political resources (e.g. communications, recommendations or press releases), the Commission has been able to reassert political leadership in different policy areas, such as telecommunications and air transport (by forcing the introduction of policy at the European level), or constructing coalitions among Member States, with preferences similar to the Commission in the environment sector (Kassim and Menon, 2003).

Paul (2012) considers that the Commission was able to reassert its policy preferences and act as a political leader in the formulation of an anti-crisis cohesion policy. As she notes, the Commission was able to turn 'from an agent to a principal through modelling and prioritizing new cohesion policy goals and promoting alternative and innovative uses of policy instruments, which expand the Commission's scope of intervention and influence, and promote its policy preferences' (Paul 2012:173).

1.4.5 THE EUROPEAN PARLIAMENT AS AN AGENT

Member States have delegated an expanding set of supervisory, budgetary and

legislative powers to the European Parliament over the past decades of European integration. However, Principal-Agent literature is very scarce concerning the delegation of powers to the European Parliament. Neither intergovernmentalists nor neo-functionalists have explained the increased delegation of powers to the European Parliament (Hix, 2002; Pollack, 1997).

Taking into account this thesis framework, only the European Parliament's involvement in the legislative process will be analysed.

1.4.5.1 EUROPEAN PARLIAMENT'S LEGISLATIVE POWERS

Since the early eighty´s the European Parliament has called for more legislative powers. The Introduction of the cooperation procedure by the Single European Act in 1987 represented a major step in that direction. As such, much of the work on the European Parliament's influence in the legislative process has increased since the Single European Act and the introduction of the codecision procedure by the Maastricht Treaty in 1992 (Burns, 2004; Crombez et al, 2000; Farrell and Héritier, 2003; Fasone, 2012; Tsebelis and Garrett, 2000).

In fact, the European Parliament has evolved from an advisory body in the consultation procedure, to an actor with a conditional agenda-setting power in the cooperation procedure, and finally to a co-legislator in the codecision procedure.

It is argued that the main rationale for Member States to delegate increased legislative powers to the European Parliament is a question of democratic representation**,** namely in the areas where qualified majority voting applies in the Council and Member States can be outvoted. As long as unanimity is the decision rule, Member States are

accountable to their national Parliaments. However, the introduction of codecision, the extended use of qualified majority voting and the possibility of a government to be overruled, undermine this principle of representative democracy (Häge and Kaeding, 2007; Rittberger, 2012).

Also the increased use of early agreements in codecision and the consequent informal meetings may have implications in which relates the democratic deficit. As mentioned earlier, cooperation between the Commission, the European Parliament and the Council in the context of codecision often takes the form of tripartite meetings 'trialogues', which aim to reach compromises at first and second reading stages, as well at the preparation for the Conciliation Committee.

Each institution designates its negotiating team and its mandate for negotiations. However, these compromises are reached under an informal framework, behind 'closed doors' with only a few actors from the institutions involved in the legislative process taking part of the so-called trialogues. Although these early agreements are publicly debated and voted in committees, they are negotiated before Parliament adopts its position at first reading.

Empirical studies have demonstrated that the European Parliament's influence is greater in early agreements' negotiations than when agreements are reached through the formal mechanisms of second readings and conciliation (Häge and Kaeding, 2007; Farrell and Héritier, 2003)[13]. Early agreements may in fact endanger input legitimacy as

[13] As Rasmussen (2007) argues, key negotiators have more room for manoeuvre in early agreements, as they are subject to less institutional constraints. While at first reading the European Parliament has no limitations to the amendments it may introduce to the Commission's proposal, in the second reading, for instance, only amendments that seek to restore the Parliament's position at first reading are allowed by the Parliament rules of procedure.

far as legislative efficiency, arising from diminished legislative workload, is enhanced at the expense of accountability.

1.4.5.2 PROBLEMS WITH EUROPEAN PARLIAMENT'S AGENCY

Pollack (2003,2008) considers that the European Parliament as a whole may be considered an agent of Member States insofar it was delegated supranational powers. However, except for the power to supervise the Commission, the other delegated functions to the European Parliament are, according to Pollack, a 'poor fit with the predictions of principal-agent models' as, unlike the Commission and the European Court of Justice, they do not include monitoring compliance, resolve incomplete contracting and commitment problems or setting the legislative agenda.

As Pollack (2008:1) argues, Principal-Agent models find it difficult to explain the 'delegation of powers to the European Parliament, for which Member State principals are held to be motivated by normative or ideological concerns rather than by a concern to lower the transaction cost of cooperation'.

Also, Member States control mechanisms to limit the European Parliament as an agent from pursuing its own preferences are poor. Although Member States could 're-contract' the Parliament through increased or decreased powers, that would imply Treaty revisions, for which unanimity among Member States is required. Also, being directly elected by EU citizens, Member State principals do not have the power to remove the elected members of the European Parliament (MEPs).

One way to overcome these problems within the European Parliament is not to consider Member States acting as principals but rather National Parties or Party Groups within the European Parliament.

1.4.5.3 A DUAL PRINCIPAL: NATIONAL PARTIES AND PARTY GROUPS

According to Hix (2002) MEPs, as agents, respond only to two principals: National Parties (national principals) and Party Groups (parliamentary principals).

National Parties ability to select candidates in European Parliament's elections, endows them with a control mechanism, which ultimately may determine MEPs behaviour. In fact, in recent years, a more powerful European Parliament and its increased legislative role, namely under the codecision procedure, has lead National Parties having more incentives to control more closely their European representatives (Raunio, 2000; Scully, 2001; Whitaker, 2005).

Scully (2001) considers that National Parties acting as principals can be seen as a unitary actor benefiting from power delegated to their agents (MEPs) in two different ways. Firstly, National Parties may benefit from information about EU policy processes and legislative files, gathered by MEPs through their work in legislative committees and working groups. Secondly, MEPs can contribute to achieve a party's policy goals through their ability to influence policy choices made by Parliament.

Enjoying more freedom than their national counterparts, agency drift in the form of voting behaviour, may occur whenever MEPs follow preferences different from their National Parties' principals.

With regard to legislative work, the gap between National Parties and MEPs widens. As Raunio (2000:221) notes 'National Parties pay attention to the European Parliament mainly when nationally important matters enter the legislative agenda. Even on such issues it is still better to speak of consultation rather than control'.

Hix (2002) notes that although Party Groups control MEPs leadership positions and committee assignments, they have no control mechanisms to punish shirking. However, if a narrowed specific Principal-Agent relationship, where highly influential MEPs- Party Groups coordinators- act as principals and Rapporteurs (within Parliament committees) as agents, control mechanisms to punish shirking may apply. This relationship is particularly important in the case of early agreements, where Rapporteurs are the key parliamentary negotiators with essential legislative powers (Benedetto, 2005; Farrell and Héritier, 2004; Kaeding, 2004).

The adoption (or not) of the Rapporteur's report in committees, following their assignment by Party Group coordinators to lead trialogue negotiations and to draft parliamentary reports on proposed legislation, may be viewed as an effective control mechanism.

Most of the parliamentary work is carried out in the European Parliament's committee structure. Party Groups delegate decision-making power to committee members as a way to promote policy specialization. However, in order to achieve decision-making coherence across different policy areas and avoid agency losses, Party Groups have to carefully select committee members to be representative of their political party's preferences (Whitaker, 2005). That task is carried out by Party Group coordinators

acting as one of the most influential actors in collective decision-making inside the Parliament, insofar they formulate the Party Group´s policy, assign Rapporteurship, and act as 'whips' guaranteeing voting cohesion in committees and plenary meetings[14].

Hix et al (1999) point to the fact that MEPs may pursue actions more close to their policy preferences than those of their National Parties. The authors classify MEPs behaviour in accordance with three divided 'loyalties': re-election, policy, and office goals. Accordingly, shirking may vary with these MEP´s goals.

Their findings point to a situation where, in case of a conflict, 'Re-election-seeking MEPs' are hypothesized to line with their National Party against their Party Group position (measured either as a the voting instruction indicated by the group whip, or as the stand of the majority of the group). 'Policy-seeking MEPs' are expected to deviate from National Party and Party Group positions on issues of personal ideological importance. Finally, 'Office-seeking MEPs' are most likely to vote with Party Group position or committee position (Hix et al, 1999:23).

Most of the research studies focusing on voting behaviour are based on roll-call votes in plenary sessions. They find that control mechanisms to avoid agency drift, may be

[14] European Parliament Rules of Procedure 192.2: 'The committee coordinators shall if necessary be convened by their committee Chair to prepare decisions to be taken by the committee, in particular decisions on procedure and the appointment of Rapporteurs. The committee may delegate the power to take certain decisions to the coordinators, with the exception of decisions concerning the adoption of reports, opinions or amendments.

worsened by the fact that the European Parliament has been dominated by transnational political groups, which tend to form coalitions (Hix et al*,* 1999; Raunio, 2000). Finke et al (2012) also extend their analysis to proposal-stage coalitions in the Parliament's committees.

Other studies refer to coalitions varying with the type of legislative procedure and also with the policy area being discussed. Hix et al (1999) note that a 'left-right' dimension, more than a 'pro-anti' Europe, dominates Party Group coalitions. As regards the policy area being discussed, Hix and Høyland (2013) show that in the sixth and seventh parliamentary term, voting on economic and monetary affairs issues, a center-right coalition between European People's Party (EPP) and the Alliance of Liberals and Democrats for Europe (ALDE) occurred more often than a center-left coalition.

The main conclusion to be extracted from roll-call vote's empirical studies is that MEPs are ideologically motivated and that political groups tend to surpass the ideological positions of its constituent national parties (Hix 2002a; McElroy and Benoit 2010). This voting behaviour suggests that each MEP 'carefully calculates whether voting against his group is likely to pay off in the future' Hix and Høyland, 2013:181).

The increased in voting cohesion in the past legislatures, may have its explanation in the fact that MEPs acknowledge that, following voting instructions from their Party Group, enables them to have a stronger influence in the legislative outcome rather than acting alone. As Hix and Høyland (2013:181) note, 'MEPs are usually willing to face the costs of sometimes following group instructions against their own policy preferences in the knowledge that other MEPs and national parties in their group will do the same'.

1.4.5.4 MEPs CONTROL MECHANISMS

Re-election is the most effective enforcement mechanism to control MEP´s shirking. However, as Hix and Høyland (2013) note, there is a weak electoral connection between National Parties and the European Parliament. More than the way MEPs behave in the European Parliament, their election or re-election depends on the success of their National Parties (Hix et al, 1999). Campaigning for European Parliament elections is seen more as a mid-term poll for national governments and national parties rather than a scrutiny of MEPs performance and their Party Groups.

Although the links between National Parties and MEPs have increased, control mechanisms like fire alarms (in the form of close contacts between MEPs and national ministers, or administrative procedures) imply costs, which have to be balanced with the benefits coming from a closer surveillance of MEP´s behaviour.

Control mechanism can take the form of issuing voting instructions to MEPs. However this may be seen as a weak control mechanism as it only applies to specific sensitive issues, which implies that MEPs behaviour is based on consultation rather than on voting instructions. In fact, according to Raunio (2000), voting instructions are more frequent only when highly sensitive matters are being discussed- as it was the case with the Santer Commission resignation in 1999, under pressure from the European Parliament-; votes with serious national implications; and issues related to International Government Conferences (IGC), Economic and Monetary Union (EMU), and EU enlargement. Apart from these delicate matters, one of the reasons for this

lack of control through voting instructions maybe attributed to the National Parties' lack of interest for the European Parliament.

As the legislative process is concerned, the increased number of early agreements in the codecision procedure with only one reading in the Parliament committee and one debate in plenary, makes it more difficult for the Parliament and National Parties to monitor MEPs work (Hix and Høyland, 2013).

Also depending on the complexity of the dossier being discussed and the potential alternatives with coalitions from other parties, voting instructions may not be the best alternative to a desirable political outcome. As noted by Scully (2001:15), 'tying the hands of one's agents to a particular position will often be an unwise strategy'.

II THE NEW ECONOMIC GOVERNANCE FOR EMU- THE RESILIENCE OF THE COMMUNITY METHOD

2.1 THE TRADITIONAL COMMUNITY METHOD

The origins of the Community method are to be found in the Robert Schuman Declaration and the Treaties establishing the three Communities: the 'European Coal and Steel Community' (ECSC), the 'European Economic Community' (EEC) and the 'European Atomic Energy Community' (EURATOM). According to Devuyst (2006:1) the Community method's main features were developed 'as a reaction against international diplomacy'. The author argues that both the organization for 'European Economic Cooperation' (1948) created as a response to the Marshall Plan, and the Council of Europe (1949), which aimed to promote European unity, suffered from an intergovernmental 'paralysis' due to the unanimity vote and the unwilling of Member States to transfer sovereignty to international organizations.

On 9 May 1950 the French foreign minister Robert Schuman invited Germany and other European countries to join France in creating an independent authority charged with regulating the coal and steel markets- the High Authority for Coal and Steel. A new type of institutional framework, known as the 'Community method' was then created.

The basic elements of the model as proposed by Jean Monnet, were already included in the first European Treaty -the Treaty of Paris- and envisaged the transfer of legislative powers to the European level; the creation of a 'supranational' executive- the High Authority of the Coal and Steel Community - (which would later become the

European Commission); the possibility of majority voting in order to adopt binding legislation; and the European Court of Justice as the guarantor for the rule of law. This basic model was a combination of limited delegation to supranational bodies and procedures encouraging States to cooperate (Dehousse, 2011).

This form of integration, which went well beyond the traditional set up of international organizations, was according to Milward (1984:497) not guided by idealistic motives but as a response to Member States' political and economic problems, which 'once resolved, there would be no further momentum from the national interest towards any further stage of economic or political integration'.

Up to the present, evolving along many Treaty revisions and successive enlargements in the number of Member States, the Community method has demonstrated a strong resilience despite repeated allegations of its obsolescence.

The 'Community method' describes a decision-making procedure, in areas coming under the EU Treaty that assign specific roles to the European institutions and involves a particular kind of interaction between them.

Some misunderstandings remain regarding the main characteristics of this method. 'This is due mainly to the absence of a precise definition of the Community method and the fact that the Treaties provide for several different ways for the EU to operate, depending on the area in question' (Barnier and Vitorino, 2012:2).

Drawing on Monar (2011) designation of the Community method, a comprehensive description that goes beyond its legislative character, includes six primary elements: (i) the definition of 'common' objectives in the Treaties, as a way to deepen cooperation

or even 'common policies'; (ii) the transfer of legislative powers to the EU as primary instruments to achieve these common objectives; (iii) Qualified Majority Voting in the Council; (iv) the binding effect of such legislation once adopted through the Treaty-defined procedures; (v) the conferral of 'supranational' powers on the Commission -namely the exclusive right of initiative, the 'guardian of the treaties' function and delegated implementation powers-; and (vi) the European Court of Justice empowered with binding enforcement procedures.

As the President of the European Commission Durão Barroso (2012:2) notes 'the very term (Community method) evokes the spirit of the European integration process'. In fact, these six elements enhance more the integration character of the Community method rather than simple cooperation among Member States.

Authors like Monar (2011) also highlight the biased character of the Community method in favour of legislative action and the Commission's sole right to initiate legislations as constituting its most powerful instrument.

Already in the negotiations of the Treaty of Rome, fearing that they might be systematically in minority due to the weight of the 'big countries' in the Council, the smaller Member States insisted that all the legislative procedures should start with a proposal from the Commission (Dehousse, 2011)[15]. As Devuyst (2000:33) notes 'the decision-making rules of the original Treaty of Rome were characterized by an attempt to avoid dominance or hegemony by one or a few Member States'.

[15] The less populated countries would be protected in two ways: giving the Commission the right of initiative proposals that represented the general interest and also the smaller Member States were given a proportionally higher number of votes in the Council than the bigger Member States.

However, this institutional framework may arise some democratic concerns. Majone considers that the monopoly of legislative and policy initiative granted to a non-elected body like the European Commission represents a violation of fundamental democratic principles. An event that is 'unique in modern constitutional history'. Majone notes that 'in the absence of popular support for the political integration of the continent, the founding fathers of communitarian Europe, and all integrationist leaders after them, were faced with a fundamental trade-off between democracy and integration-which they consistently resolved in favour of integration' (Majone 2011:23)[16].

A compromise was agreed in terms of a combination of limited powers delegation to supranational institutions and rules encouraging states to cooperate. In fact, the Communities' powers were rather circumscribed to the creation of a common market.

The monopoly of legislative initiative meant that the Commission was the only institution with the right to propose legislative acts, their legal form and the implementing procedures to be followed. But a separate institution, the Council would take decisions on the basis of these proposals.

The use of qualified majority voting in the Council introduced by the Single European Act[17] was a way to speed up the process of the implementation of the Single Market by 1992, as several Commissions' proposals had been previously blocked by the

[16] Robert Schumann found that the competence of supranational institutions should be limited to technical problems, without extending to functions involving the sovereignty of the Member States (Sträth, 2011).

[17] For most of the Community's history, legislation was adopted via the consultation procedure, subject to the Luxembourg Compromise of 1966, which committed Member States to search for a unanimous consensus where vital national interests were at stake (Pollack, 1997).

Council due to the unanimity vote[18]. The use of qualified majority voting represented the strengthening of the Community method (De Schoutheete, 2012) and 'the most transparent blow to state sovereignty' (Marks et al, 1996).

The possibility that a decision be taken against the wishes of a Member State as well as the need of unanimity to amend a Commission proposal, was also a way to prevent the majority from putting their particular interests above those of the minority (Dehousse, 2011). As for the Member States perspective, the use of qualified majority voting, meant an increase in bargaining's efficiency, reaping the potential gains from cooperation and diminishing the level of political risk for individual governments[19] (Moravcsik, 1993).

2.2 THE EVOLVING NATURE OF THE COMMUNITY METHOD – THE ROLE OF THE COMMISSION IN THE EUROPEAN INTEGRATION PROCESS

The power of the Commission to influence and shape the European integration process varies largely among scholars. Being both a legislator and a bureaucracy charged with the implementation of legislation makes the Commission's power in the integration process more difficult to understand (Tsebelis and Garret, 1999).

Neofunctionalists traditionally claim that the supranational institutions, namely the European Commission, enjoy substantial autonomy from national governments in the

[18] During the 1970s, due to the Luxembourg Compromise, hundreds of Commission proposals were blocked (Marks et al, 1996). Qualified majority voting, one of the elements of the Community method, led to the adoption in just a few years of 260 directives relating the completion of the Single Market (De Schoutheete, 2012). Through different Treaty reforms, Member States preserve unanimity for the most sensitive or contested policy areas.

[19] Moravcsik (1993) as argued that qualified majority voting actually enhances state executive control because state executives will only agree to participate insofar as policy-coordination increases their control over domestic policy outcomes, permitting them to achieve goals that would not otherwise be possible.

exercise of their powers, acting as 'engines of integration' (Sandholtz and Zysman, 1989; Sweet 1998, Sweet and Sandholtz, 1997) whereas Intergovernmentalists contend that institutions function as 'obedient servants' to Member States, which are the initiators and promoters of deepening and broadening European integration.

These two opponent views have to be understood in light of the integration process.

2.2.1 THE 1992 PROJECT

After the economic growth of the 1960s, the world economy entered a period of stagflation after the oil shocks in 1973 and 1979. National economic development models failed and the economic deterioration and rising unemployment led to a new debate about the proper role of government in the economy. As Sandholtz and Zysman (1989:109) argue 'it was not simply that the price of commodities rose, but that the dynamics of growth and trade changed'.

Federal projects in the 1970s, namely the Werner Plan for an economic and monetary union was curtailed by the international economic downturn and the collapse of the Bretton Woods arrangement. As Haas contends 'by 1970 neofunctionalists were amending neofunctionalism in significant ways: the spillover became neither automatic nor irreversible, governments were concede to retain the preponderance of power over supranational actors. Most importantly, outcomes other than a federal state were envisaged' (Haas 2001:23).

After a period of 'Euro-pessimism' during the 1970s the Single European Act in 1986 setting a timetable for the completion of the European internal market and 're-

introducing'[20] qualified majority voting in European legislation, reflected an obvious strengthening of the Community method and the Commission's power. In fact the re-launch of the European project under the Delors Commission in the mid-1980s reasserted the Commission´s influence, triggering renewed academic interest in the integration process.

According to Sandholtz and Zysman, in the 1980s the European Community institutions were not a focus of debate. The leadership exercised by the European Commission in the completion of the Single Market related to technical issues dominated the Commission´s proposals 'grabbed more the attention of business and government elites' (Sandholtz and Zysman, 1989:107).

The move to the Economic and Monetary Union enshrined in the Maastricht Treaty gave rise to an upsurge of both the neofunctionalist school, and the intergovernmentalist thinking. For much of the Delors decade the dominant view was that sovereign power was shifting from Member States to supranational institutions. As Kassim and Menon (2004:3) argue 'even intergovernmentalists were compelled to concede that Member State control over supranational institutions might in fact be less than absolute'.

Neofunctionalists explain the emergence of the '1992 initiative' as a result of the effective policy leadership of the European Community institutions, especially the Commission, which played the role of policy '*entrepreneur*'. Although changes in the

[20] The Treaty of Rome already stipulated that from 1966 onwards, qualified majority voting would be used instead of the unanimity vote in specific policy fields such as agriculture (Devuyst, 2000). The Single European Act introduced qualified majority voting for the adoption of Internal Market directives.

international context and in national strategies triggered the process, 'the renewed drive for market unification can be explained only if theory takes into account the policy leadership of the Commission' (Sandholtz and Zysman, 1989:109)[21].

Two strands of intergovernmentalism offer a different view of the integration process in the 1990s. While 'realist intergovernmentalism' sees integration in this period as a function of geopolitical concerns, such as the German reunification and the end of the 'Cold War' (Baun 1996), liberal intergovernmentalism explains integration, not as a function of geopolitical concerns, but as a result of growing economic interdependences Eilstrup-Sangiovanni (2006)[22].

Starting in the 1990s Member States began to show some worries about the increasing transfer of sovereignty to EU institutions, and therefore to the Commission. From the Maastricht Treaty and through the following Treaty reforms, Member States were able to reaffirm their control over supranational institutions, namely through the reassertion of the European Council role,[23] formalizing this way two different logics of decision-making: an intergovernmental and a supranational one (Fabbrini, 2013). As such, the Community method 'ceased to be the default method of decision-making' (Kassim and Menon, 2010:12).

[21] According to Sandholtz and Zysman (1989) changes in the international structure triggered the 1992 process. Member States were receptive to the 1992 initiatives because of the domestic political context- the failure of existing national economic strategies, the decline of the left (the shift of the socialist governments in France and Spain toward market-oriented economic policies, including privatization and deregulation), and the presence of market-oriented governments on the right.

[22] The argument that the move to the Economic Monetary Union was a German concession designed to secure Member States 'approval for German unification, is debated by Walsh (2000) who notes that the French, German and Italian governments were interested in a monetary union in early 1988, well before the unification.

[23] The legal 'attestation' of the European Council came first in the Single European Act.

The 'pillar structure' defined in the Maastricht Treaty was, according to Monar (2011:123), the first expression of this discontent, being conceived as 'a protective device against the integration bias of the Community method', intended to rein in Commission ambitions (Kassim and Menon, 2010).

While the first pillar, considered as 'low politics' envisaged uncontroversial economic and technical issues like the single market program, and EU social and environmental regulation, sensitive areas such as foreign policy, security and justice 'high politics' would remain in the more traditional intergovernmental framework, which meant allowing cooperation to develop outside the control of supranational institutions (2^{nd} and 3^{rd} pillars). Member States agreed to take common actions in these areas but only at the cost of a reduction of the role of supranational institutions.

The Pillar structure implied a departure from the Community method[24]. The Commission lost its traditional monopoly over policy initiation in the second and third pillars and Member States were given the right to make formal proposals to the Commission for the first time.

However, as Monar (2011) argues, the third pillar (Justice and Home Affairs) has been associated with slow decision-making and major implementation deficits relating former agreed objectives. In order to overcome the structural weaknesses of inter-governmental cooperation, some elements of the Community method were later introduced. In fact, the Treaty of Amsterdam reforms in 1999 and the Council Decision of 22 December 2004 allowed the introduction of certain elements pertaining to the Community method as the codecision procedure and qualified majority voting to all

[24] Although the Lisbon Treaty abolished the pillar's structure, it maintained the intergovernmental and supranational logics of decision-making (Fabbrini, 2013).

communitarised Justice and Home Affairs areas (the fields of asylum, migration and civil law cooperation)[25]. These post-Amsterdam communitarised areas represent a hybrid form which Monar (2011) calls 'deviations' of the Community method, as they integrate both elements of the Community method and of Intergovernmental cooperation (like the absence of Treaty infringement procedures and the shared power of legislative initiation between the Commission and Member States).

According to Kassim and Menon (2010) the success of the 'Golden Age' (late 1980s and early 1990s) marked a unique period in the history of European integration, which may be seen as a convergence of preferences among the Member States, and the effective leadership of the Delors Commission.

However, contrary to the perception of New Institutionalists, instead of the decline of Member States power, the Commission has been, since the 1990s, increasingly sidelined, its role downgraded- although its formal powers have been kept - its autonomy challenged, and its decision-making power has been limited (Kassim and Menon 2010; Majone 2002). As Sträth (2011:3) argues there were a 'power migration from the Commission to the Council and a development from hard law towards soft law as governing principles'. The European Commission was no longer seen as the main initiator of European integration.

[25] The fields of legal immigration and family law are exceptions as the unanimity vote is still required.

2.3 NEW MODES OF GOVERNANCE- A DEPARTURE FROM THE COMMUNITY METHOD?

In the 1990s there was a 'Governance Turn' (Kohler-Koch and Rittberger, 2006) as the Community method has been complemented by the increasing use of the so-called 'New Modes of Governance' such as benchmarking, peer review, best practice exchange, and the Open Method of Coordination.

These new modes of governance were also accompanied by the profusion of institution innovation, which Sabel and Zeitlin (2008:278) called 'a Cambrian explosion of life forms'[26].

New modes of governance can be viewed as forms of soft law decision-making that allow Member States to (informally) coordinate their policies without creating a new common European policy[27]. They do not produce legislative acts, but rather recommendations, advice on best practice and guidelines, being applied when Member States want to ensure a policy remains entirely under their control, avoiding transfers of sovereignty to the EU level (Warleigh-Lack and Drachenberg, 2009)[28].

Since the 2000 Lisbon Summit, the open method of coordination, has been subject of further attention, as this coordination mechanism was codified as a new and broadly

[26] This new governance architecture comprehended mostly the domains of regulation of privatized network infrastructure (with the creation of independent national regulatory authorities), public health and safety (with the creation of new administrative agencies) and social solidarity.

[27] Borrás and Jacobsson (2004) divide the use of the open method of cooperation in three different categories: the first group relates to the **area of social policy** such as public pensions or social inclusion, considered to be national sensitive and where the transfer of competences or harmonization was complex. The second group includes employment policy and policy concerning the information society. The third group relates to Economic Monetary Union policies, where functional interdependency is very strong. Economic governance architecture, envisaged in Maastricht, comprehended monetary policy has being implemented and conducted by the European Central Bank in a supranational mode, while macroeconomic policies were kept at national levels.

[28] However, when defining common political goals to be achieved within a certain policy, there is an inherent political commitment involved, which may be envisaged as a 'partial delegation of power' from the Member States (Borrás and Jacobsson, 2004:197).

applicable instrument of EU governance in 'complex, domestically sensitive areas where the Treaty base for Community action is weak, where inaction is politically unacceptable, and where diversity among Member States precludes harmonisation' (Zeitlin, 2011:136)[29].

Departing from the rigid regulatory mode of the Community method's binding legislation, new modes of governance rely on a non-hierarchical coordination of policies pertaining to the former first pillar[30].

These policy-making instruments deviate from the Community method, as they give no particular role to the European Parliament and the European Court of Justice, while trying to involve a range of civil social-actors[31]. According to Warleigh-Lack and Drachenberg (2009) the EU, and the Commission in particular, has been able to use new modes of governance as a partial response to some of its legitimacy problems.

In fact, trying to close the legitimacy gap, the European Commission in its 'White Paper on Governance' proposed '(…) opening up the policy-making process to get more

[29] According to Bórras and Jacobsson (2004), the fact that the European Court of Justice considers soft law, as a source of Community law, was a decisive step to include the open method of coordination within the *acquis communautaire*. However, the European Court of Justice has no role to play in this mechanism of coordination.

[30] Scholars agree that the origins of these new modes of governance, namely the open method of coordination, was already envisaged in the procedures aiming at strengthening the coordination of macroeconomic, employment and supply-side policies in the late 1990s - the so-called Cardiff, Cologne and Luxembourg processes (Hodson and Maher 2001).
In the 1994 European Council, Heads of State and Government agreed on a number of objectives to fight unemployment. Trying to avoid the Commission interference in domestic policy-making, none of the objectives was legally binding or enforceable. Member States were urged, 'to transpose these recommendations in their individual policies into a multi-annual program having regard to the specific features of their economic and social situation' (European Council conclusions 1994). In this new framework, the European Commission, the Labour and Social Affairs, as well as the Economic Financial Affairs Council (ECOFIN) were asked to monitor national developments and report annually to the European Council about their progress. Hence, the core elements of the open method of coordination – common objectives, national implementation and surveillance by the Commission and Member States – were in place already in 1994.

[31] The Lisbon Summit outlined the roles of the European Council (e.g. a guiding and coordination role) and the Commission (e.g. presents proposals on supranational guidelines and supports monitoring), but made no specific comment to the roles of the European Parliament and the European Court of Justice.

people and organisations involved in shaping and delivering EU policy (…) the goal is to open up policy-making to make it more inclusive and accountable' (European Commission, 2001:3)[32].

Schäfer (2004) argues that governments support the open method of coordination because of its low degree of legalization and its limited potential for unintended consequences. As Member States are only responsible for their own compliance with the measures they have agreed upon, meaning they do not impose legally binding action or detailed obligations on the Member States or national social partners, new modes of governance efficiency in the absence of clear coercive instruments, is sometimes questioned. In fact, the open method of coordination was a fundamental part of the Lisbon Strategy, which proved lacking on its ambitious objectives.

Although policy initiation pertains mostly to the European Council, reducing this way the Commission´s monopoly of policy initiation, for the latter, this new governance method represents a way to expand EU activities into further policy areas. Warleigh-Lack and Drachenberg (2009) refer to the case of the open method of coordination in education. Although it has not led to any transfer of formal competences to the EU, the Commission has gained significant influence in this field. Drachenberg (2009) finds that the use of this method must be seen not as a second-best option to hard legislation, but as the best alternative to certain areas of social policy where the

[32] According to different scholars, the main advantages of the new modes of governance, namely the open method of coordination, is the participation of different actors in the policy-making process; the respect for subsidiarity; the degree of flexibility to adapt policy strategies in a quick way and finally knowledge creation (Warleigh-Lack and Drachenberg, 2009; Zeitlin, 2001).

Community method is inappropriate due to great diversity between national welfare systems.

Whether the new modes of governance represent or not a departure from the Community can be misleading. The Community method must be understood having both a legislative and an institutional dimension, the latter often associated with hierarchy[33].

Considering legislation an instrument of governance, it may be argued that the Community method has been transformed rather than disappeared, insofar the Treaty of Lisbon designated the codecision procedure as the 'Ordinary Legislative Procedure'. Not only the legislative output in the EU did not decrease in quantitative terms, but also its nature changed as it increasingly incorporates new governance instruments.

The Lisbon Treaty enshrines the use of Ordinary Legislative Procedure for a wider range of areas (e.g. social policy and environmental policy), which implies that the Community method can cover a potentially wider set of outcomes, rather than the binding rules associated with the Single Market.

As Börzel (2007:2) notes, 'the EU features a combination of different forms of governance that cover the entire range between market and hierarchy' all existing 'in the shadow of hierarchy'.

[33] The concept of hierarchy is used in the sense of 'an institutionalized relationship of domination and subordination, which significantly constrains the autonomy of subordinate actors' as is the case for Monetary Policy and the Single Market (Borzel, 2007:4).

The coordination method, which characterizes the Economic and Monetary Union, should be understood as a method of collective decision-making that operates alongside the Community method.

2.4 ECONOMIC MONETARY UNION GOVERNANCE – BEYOND THE COMMUNITY METHOD

In 2002, the European Commission described Economic Monetary Union policy coordination as:

> '(…) an umbrella term. It encompasses an entire spectrum of interactions among policy actors, including monetary and fiscal actors and the European Commission as representative of the common interest. The range of methods used includes information exchange, discussion of best practices, policy dialogue, peer review, as well as, when appropriate, commonly agreed policy rules and objectives and jointly determined actions' (European Commission, 2002:3)

However, most of the problems behind the financial and sovereign debt crisis that erupted in 2008 can be found in the inadequate prevention and enforcement mechanisms. In the first decade after the introduction of the euro, the building of macroeconomic imbalances resulted in fundamental disequilibrium within the EU, mainly in the euro area. According to Begg (2011:15) 'many of the coordination processes at EU level, which should contribute to prevention, had been bedevilled by inadequate implementation and weak commitment'.

In fact, economic monetary integration rested on the idea that the adoption of quantitative rules on deficit and debt levels, coupled with surveillance, could be

enough to prevent future problems. This approach was criticized since the inception of the euro in 1999, exactly as regards the shortcomings of the rules, and the lack of institutional provisions consistent with the need to address systemic risks and contagious crises. Other criticisms pointed to the fact that both monetary and fiscal policies were too focused on price stability and not enough on economic growth. As Begg (2003) noted, that resulted in part from the dominance of a single monetary policy model applied to economies with divergent national fiscal policies and substantial disparities.

From the start the Economic and Monetary Union combined a single monetary policy with decentralized, rules-based fiscal policies and macroeconomic coordination.
Although fiscal policy remains a competence of Member States, it is subject to constraints embodied in the Stability and Growth Pact, a package of provisions of varying legal status and the definition of the responsibilities of different actors in implementing Treaty provisions on economic policy[34]. While the main decision-making procedures remain in the Council (in its Ecofin configuration), the Commission's role is mainly a technical one, as monitoring the economic performance of Member States.

The rules that trigger the enforcement mechanism are laid down in the Treaty on the Functioning of the EU (TFEU) and the Stability and Growth Pact. They require that Member States avoid excessive government deficits on the basis of a three per cent

[34] The Stability and Growth Pact is based on two Council Regulations (CR1466/97 and CR 1467/97) and the Resolution of the Amsterdam Council (17 June 1997).

threshold for the deficit-to-GDP ratio and a 60 per cent threshold for the debt-to-GDP ratio. The Pact comprehends a preventive and a corrective arm. Before the crisis, the preventive arm functioned primarily through soft law processes (peer and political pressures) and although the corrective arm envisaged sanctions to be imposed in the Member States that had breached the Pact's terms that was never the case[35].

Some criticisms pointed to the fact that the Stability and Growth Pact was a 'one-size-fits-all-rule', which did not capture country´s specificities. As such, in the 2005 Pact´s revision, although greater attention was given to the cyclically adjusted budget balance and to 'debt sustainability', it also defined more exceptions for the three per cent rule, and extended the adjustment period for corrective action by Member States. This additional flexibility raised claims of the 'death of the Pact' (Buiter, 2006).

Although formally the Stability and Growth Pact is grounded in hard law Treaty provisions- as regulations and an Excess Deficit Procedure (EDP) that may lead to sanctions being imposed- most of the Pact operates under soft law[36]. As Hodson and Maher (2004:801) note 'the formalization of economic co-ordination is limited because obligations are largely unenforceable, difficult to measure, and there is little or no delegation of interpretation and implementation from Ecofin to either the European

[35] Article 126 TFEU enforces budgetary discipline through peer pressure and also the threat of financial penalties. Although articles 126(6) and 126(7) TFEU recognize the right to the European Commission to initiate a procedure against a Member State, the Commission recommendation has only the status of a proposal. It is up to the Council to decide on the application of sanctions for countries in excessive deficit procedure. Furthermore, according to article 126(10) TFEU the European Court of Justice is excluded form all infringement proceedings relating the excessive debt procedure.

[36] Hard law is defined as measures that are legally binding and delegate authority for interpretation and implementation (Abbott et al, 2000:402). Soft law has no legally binding effect and it is not subject to any judicial review. As to the Stability and Growth Pact, it is up to Ecofin to decide by qualified majority voting, on the basis of a Commission recommendation, if a country is in Excess Deficit Procedure (EDP). Ecofin also applies peer pressure in the form of non-binding recommendations, to countries that do not correct the excessive deficit. As for euro area countries fines and penalties may be applied, but that was never the case up till now.

Court or the Commission'.

Before 2010, the Treaty's principal instruments of economic policy coordination were the Broad Economic Policy Guidelines (BEPGs), which took the form of non-binding guidelines from the Council of Economic and Financial Affairs to Member States on macroeconomic policies and structural reforms[37]. While Ecofin was the central common decision-making body, the Commission's role in this framework was to evaluate and monitor policy's implementation by Member States on behalf of the former[38].

Since Maastricht the cooperation method, characterized by decentralized political responsibilities, has become the core method of economic governance.

For some scholars there was a need of protecting the political independence of the European Central Bank. According to Puetter (2012) the introduction of the Economic and Monetary Union represented a strong departure from the previous method of exchange rate coordination, being the conduction of monetary policy by the European Central Bank a crucial symbol of EU integration.

Others like Buti (2003) emphasize sovereignty concerns. In contrast to the monetary sphere, there were no additional transfers of competences to the EU in terms of economic policy under the Economic and Monetary Union, which according to Hodson

[37] Although Member States are under no legal obligation to implement the BEPGs, Article 121(4) TFEU stipulates that ECOFIN can issue a non-binding recommendation to non-compliant states.

[38] In the event of non-compliance the Commission would report it to the Ecofin which would decide on legally non-binding recommendations such as peer pressure for corrective actions to be taken by Member States.

(2009:459) 'underlines the importance of retaining a degree of flexibility in national economic policies to offset the impact of asymmetric shocks'. Also divergent wage-bargaining institutions and social policies were a detriment to a one-size-fits-all structural reform.

Hodson and Maher (2004) argue that new modes of governance may be suitable for the Economic and Monetary Union in 'domestically sensitive areas where the Treaty base for Community action is weak, where inaction is politically unacceptable, and where diversity among Member States precludes harmonisation' (Zeitlin, 2011:136), or when policy goals lack precision, soft law may be preferable to hard law (Hodson and Maher, 2001).

Notwithstanding, the fact was that the Economic and Monetary Union governance proved weak in the face of a crisis that challenged to turn obsolete the all project.

2.5 COMMUNITY ACTION IN RESPONSE TO THE SOVEREIGN DEBT CRISIS

The European sovereign debt crisis followed the US financial crisis starting in 2008. While its first signs were visible in November and December of 2009, it culminated on 28 April 2010 when the intra-day interest rate for two-year Greek government bonds peaked at 38 per cent (Corsetti et al, 2011).

Concerns regarding the solvency of countries like Greece, Ireland, Portugal, and to a lesser extent Spain, was at the center of the discussions in 2010.

Also, the large and volatile interest spreads emerging in the euro area were considered particularly dangerous not only because they sharply raised borrowing costs in many

countries but also because a substantial share of the troublesome debt was held by commercial banks in core European countries, which thus found themselves potentially exposed to large losses.

The global financial crisis of 2008 and the ensuing economic collapse in 2009 were translated to a dramatic deterioration in public finances in most European countries[39]. This combination of a quickly deteriorating debt position and structural weaknesses created doubts about the sustainability of government debt mainly in the so-called peripheral countries, exposing the threat of insolvency.

According to Corsetti et al (2011) one of the main drivers of the European sovereign debt crisis was the inefficient and insufficient banking regulation provided by the Basel system, whose rules were actually responsible for many types of distortions, but in particular created strong incentives for banks to lend to the government sector[40].

The euro area's political response in the wake of the crisis focused on two main objectives. The first was to ensure the provision of liquidity to chronically indebted states and prevent contagion to other vulnerable economies. The second was to 'implement a comprehensive package of measures which should allow (us) to turn the corner of the financial crisis and continue (our) path towards sustainable growth'[41].

[39] The cyclically-related public spending increase and tax revenue shortfalls together with the economic stimulus packages implemented in 2009 led to an increase of the consolidated budget deficit balance of the EU to 6.8 per cent of GDP (6.4 per cent in 2010) and a public debt of nearly 74.3 per cent of GDP in 2009 and 80 per cent in 2010 (Eurostat, 2011).

[40] In the Basel System banks must meet minimum capital requirements according to the so-called Tier-1 ratio, which is defined relative to the sum of risk-weighted assets in the banks' balance sheets. For government bonds, the risk weights were zero.

[41] European Council Conclusions (2011:1) 24-25 March 2011.

2.5.1 FINANCIAL FIREWALLS AND RESCUE MECHANISMS

The first response to the Euro area crisis came from the European Central Bank. In order to maintain the stability of the financial system, the European Central Bank followed a very accommodative monetary policy and kept on providing unlimited liquidity to the banking sector throughout 2010[42]. However, these policies seemed not to restore confidence in the financial markets.

As the European Union lacked the tools to deal with the Greek debt crisis and radical plans to create a European Monetary Fund would require a Treaty change, a rescue fund for Greece was established on 25 March 2010, in the face of rapidly rising interest spreads on government bonds: 'As part of a package involving substantial International Monetary Fund financing and a majority of European financing, Euro area Member States, are ready to contribute to coordinated bilateral loans. This mechanism, complementing International Monetary Fund financing, has to be considered *ultima ratio*, meaning in particular that market financing is insufficient'[43].

As this loan package -the largest ever- financial rescue package[44] failed to calm markets, European officials, concerned about contagion to other countries within the euro area, cobbled the European Financial Stabilisation Mechanism (EFSM)[45] and the European Financial Stability Facility (EFSF).

[42] Also in late December 2011 and early February 2012, the European Central Bank extended a one trillion euros programme in three-year loans dubbed 'Long Term Refinancing Operations' (LTROs). In September a new bond-buying programme, called 'Outright Monetary Transactions' (OMT) was launched.

[43] 'Statement by the Heads of State and Government of the Euro Area', 25 March 2010.

[44] Greece´s package, approved on 9 May 2010 provided for €30 billion from the IMF and €80 billion in bilateral loans from the 15 euro area countries.

[45] The European Financial Stabilisation Mechanism (EFSM) is based on Article 122(2) TFEU, which foresees financial support for Member States in difficulties caused by exceptional circumstances.

The European Financial Stability Facility, an emergency credit facility, set up in May 2010 to ensure liquidity for euro area countries in 2010-13 with the support of the International Monetary Fund (IMF) financing, was based on an intergovernmental agreement of euro area Member States and was intended to restore confidence in government bonds markets and convince them that euro area leaders would stand behind the common currency[46].

At the same time the European Central Bank took additional measures. Referring to Article 123 TFEU, the European Central Bank adopted a program to purchase government bond in the secondary market, the so-called 'Securities Markets Program' (SMP). Its main objective was 'to address the malfunctioning of securities markets and restore an appropriate monetary policy transmission mechanism' (European Central Bank, 2010)[47].

[46] The European Financial Stability Facility (EFSF) was established as a special purpose mechanism with a lending capacity of €440 billion that is part of a wider safety net. The EFSF´s borrowing is guaranteed by the euro area Member States, roughly in proposition to their borrowing capacity, meaning that Member States do not have to disburse any capital unless the bailed country defaulted on its EFSF funding. In 2011 the EFSF has undergone two key reforms: on July the possibility of secondary bond market purchases was included as a new instrument as well as loans to Member States for the recapitalization of their national banks; in October the EFSF was leveraged to a lending capacity of € 1 trillion. According to Neuger (2011) bond purchases were the original declared purposes of the European Financial Stability Facility. However 'Germany scuttled that approach, retooling the EFSF to offer loans so it would have more leverage to force countries receiving aid to cut budget deficits and overhaul their economic management'.

[47] Corsetti et al (2011:41) consider that although *de jure* compatible with the statutes of the European Central Bank (ECB), the Securities Market Program (SMP) is not in line with the spirit of the Maastricht Treaty, as it facilitates the financing of budget deficits of countries in the euro area, 'not only does this jeopardize the independence of the ECB in the future, the timing of its introduction has already led to discussions about its independence today'.
The European Central Bank responded to the several criticisms addressed to these actions, underlying that the additional liquidity supplied was completely neutralized by a simultaneous collection of fixed-term deposits with a weak maturity.

After the Irish and Portuguese bailout by the European Financial Stability Facility and the International Monetary Fund, a new rescue mechanism was devised.

Already in 1978, the agreements that produced the European Monetary System as a comprehensive fixed exchange rate regime also provided for the establishment of a European Monetary Fund within two years. Such an instrument would play an analogous role to that of the International Monetary Fund in the international fixed exchange rate regime that had been created at Bretton Woods. In particular, it would allow countries that were hit by a sudden or unanticipated crisis to draw on its resources, and, like the International Monetary Fund, would have allowed formal policy conditions to be imposed on countries. The European Monetary Fund was never materialised but its roots are present in the new European Stability Mechanism.

The European Stability Mechanism (ESM), an intergovernmental treaty arrangement among the euro-area Member States signed on 11 July 2011, was both intended to ease the burden of the European Central Bank[48] and, like the European Financial Stability Facility, to provide financial assistance, in the form of long term loans on the basis of strict conditionality[49]. It would, in addition, create a means of crisis resolution that was lacking previously.

[48] European Central Bank, Monthly Bulletin, July 2011. Available at http://www.ecb.europa.eu/pub/pdf/mobu/mb201107en.pdf

[49] The original version was later modified on 21 July and 9 December 2011 as to improve the effectiveness of the mechanism. Some of the updates include a link with the Fiscal Compact, a new emergency decision-making procedure and the possibility to purchase bonds both on the primary and secondary market. The European Council endorsed the ESM on 30 January 2012.

It was established as an international organization under public international law to enter into force by June 2013 (and later anticipated to 2012). As a permanent mechanism, the European Stability Mechanism would take over the tasks performed by the European Financial Stability Facility and the European Financial Stabilisation Mechanism.

Under Chancellor Merkel insistence and in order to circumvent potential domestic legal challenges to a *de facto* bailout mechanism, the European Stability Mechanism involved an amendment to the Lisbon Treaty in the form of a new sub-paragraph to Article 136 TFEU[50]. However, it may seem conflicting that the European Stability Mechanism Treaty involves a EU procedure-the simplified revision procedure- to create a mechanism not within the EU framework but through an international agreement[51].

When in early 2011 Germany, Finland, the Netherlands and other North Europeans assented to the creation of the European Stability Mechanism, in return, euro zone Members should submit to a basket of new rules and procedures - a strengthened Stability and Growth Pact, a Pact for the Euro, a European Semester, Europe 2020 and

[50] Before entering into force, the European Stability Mechanism Treaty was subject to the (later) favourable opinion of the German Constitutional Court regarding its constitutional congruence with the German basic law. It was launched on 8 October 2012.

[51] The European Council adopted Decision 2011/199/EU to amend Article 136 TFEU stating that 'Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro as a whole'. The Treaty amendment, with no previous need for an Intergovernmental Government Conference or Convention, was made possible by the Treaty of Lisbon with the introduction of Article 48(6) TFEU- a simplified revision procedure-which vests power in the European Council to adopt a decision by unanimity to amend 'all or part of the provisions of part three of the TFEU'.

Integrated Guidelines - designed to ensure structural reforms and consolidate public finances.

The following paragraph gives, in a chronological order, a brief description of the new established mechanisms.

2.5.2 THE NEW GOVERNANCE FRAMEWORK

The European Commission's view in early 2010 was that EU policy coordination was successful in limiting the negative impacts of the financial crisis on the real economy. However, an enhanced coordination of economic policies would be necessary to tackle the negative effects of macroeconomic imbalances and differences in competitiveness. Hence, in March 2010, the Commission presented its communication 'Europe 2020: a Strategy for Smart, Sustainable and Inclusive Growth'[52], which replaced the Lisbon Agenda for Growth and Jobs. The new strategy aims to reorient policies away from crisis management towards economic growth and job creation. It also set up a yearly cycle of economic policy coordination called the European Semester[53]. This new approach towards economic surveillance establishes a policy-making timetable, which aims to ensure that all policies are analysed and assessed together (and before governments draw up their draft budgets and submit them to national parliamentary

[52] COM(2010)2020 was formally adopted in June 2010. The strategy sets five objectives on employment, innovation, education, social inclusion and climate/energy to be reached by 2020. As the March 2010 European Council Conclusions refer in point 6.a 'building on the monitoring by the Commission and the work done in the Council, the European Council will, once a year, make an overall assessment of progress achieved both at EU level and at national level in implementing the strategy'.

[53] The European Commission proposed the 'European Semester' on 12 May 2010.
COM(2010)250 'Reinforcing Economic Policy Coordination' proposes '(...) the establishment of a European Semester for economic policy coordination, so that Member States would benefit from early coordination at European level'. It was approved by the Council on September 2010 and given legal expression in the amended Regulation 1466/97.

debate in the second half of the year) and that policy areas which previously were not systematically covered by economic surveillance – such as macroeconomic imbalance and financial sector issues – are included [54]. This way, the European Semester aims to coordinate ex ante the Member States budgetary and economic policies, in line with the Stability and Growth Pact (dovetailing with the Six-Pack)[55], the Euro-Plus Pact and Europe 2020 Strategy (Annex I).

A package of secondary legislation adopted by the EU in October 2011 and operative by December 2011 (referred to as the Six-Pack) envisaged improving economic governance and strengthening the Stability and Growth Pact (see *infra* section IV for a comprehensive description of the Six-Pack) [56].

With the worsening of the sovereign debt crisis, it seemed that the stringent rules under the Six-Pack were not sufficient to peace the markets. Structural reforms, seen as a necessary step towards building a new economic growth path, led to a German-

[54] After the publication of the Commission´s Annual Growth Survey, Member States have to submit Stability or Convergence Programmes on their fiscal plans and National Reforms Programmes on structural reforms. Later the Commission assesses these reports and proposes concrete policy recommendations for each country- the 'Country Specific Recommendation'. The June European Council discusses the recommendations and the Council adopts them.

[55] The Six-Pack dovetails with the Country-Specific Recommendations (adopted on the basis of articles 121 and 148 TFEU) and more broadly with the European Semester, when it comes to the preventive arm of the Stability and Growth Pact (i.e. taking preventive actions). Also, and according to the Commission, the macroeconomic imbalances envisaged in the Six-Pack will increase the incentives for Member States to implement the country-specific recommendations. The recommendations also cover the commitments made by Member States that have signed up the Euro-Plus Pact.

[56] Press Release IP/10/1199, 29 September 2010. The Six-Pack main features are (i) strengthening the surveillance of budgetary and coordination of economic policies; (ii) the speeding up of the Excessive Debt Procedure (EDP); (iii) the enforcement of budgetary surveillance in the euro area; (iv) the prevention and correction of macroeconomic imbalances; (v) measures for correcting excessive macroeconomic imbalances in the euro area; and (vi) the definition of a budgetary framework of the Member States.

French initiative dubbed the 'Euro-Plus Pact' adopted on 25 March 2011[57]. According to the European Council March 2011 conclusions: the Pact 'focus primarily on areas that fall under national competence and are key for increasing competitiveness and avoiding harmful imbalances (….) common objectives will be agreed upon at the Heads of State or Government level'.

The European Council introduced an additional tool to improve cross-country coordination of growth policies inviting Member States to include in their upcoming reform plans, a reference to Euro-Plus Pact commitments. It should be noted that the Integration of the Euro-Plus Pact into the European Semester associates the Pact more closely with Community decision-making.

After the Six-Pack approval on 16 November 2011, Germany, France and Italy hold a 'mini-summit' in Strasbourg, after which Chancellor Markel spoke of creating a fiscal union to drive economic integration by reinforcing the Stability and Growth Pact via automatic sanctions, noting that 'we must take steps towards a fiscal union'[58]. As such, during the European Council's summit on 8-9 December 2011, a Franco-German proposal to amend the Lisbon Treaty and integrate the fiscal policies of the Member States was advanced. The proposal included the application of automatic sanctions whenever more stringent criteria of deficit-GNP ratio (0.5 per cent a year) and debt-GNP ratio (60 per cent, with the downsizing of 1/20 of the over stock every year) were

[57] 23 Member States are part of the Euro-Plus-pact, including six outside the euro area (Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania). The Euro-Plus Pact is integrated into the European Semester and the Commission monitors the implementation of the Member States commitments.
[58] Financial Times (25.11.12) 'Merkel Fixed on Long-Term Goal of Fiscal Union'.

reached. It also included the request that each Member State would introduce the 'Debt Brake' of a mandatory balanced budget domestically at the constitutional or equivalent level[59]. After the United Kingdom´s opposition to pursuing fiscal integration within the Lisbon Treaty, the Member States opted for an international agreement[60]. On 2 March 2012 the EU Heads of Government with the exception of the Czech Republic and the United Kingdom signed the 'Treaty on Stability, Coordination and Governance' (dubbed Fiscal Compact).

According to the official rhetoric in Germany, excessive public spending in a few euro zone countries was the primarily cause of the crisis. If ratified, the Fiscal Compact would enforce the needed budgetary austerity and reinforce the unfulfilled compromises under the Stability and Growth Pact.

Once the great majority of the Fiscal Compact's provisions are already included in the Six-Pack, Zurek (2012:174) notes that the Fiscal Compact 'seems primarily to be of political or even symbolic significance'. Nevertheless, once the Fiscal Compact highlights all the German demands on fiscal discipline, it reflects the unambiguous German power in the EU (Soares, 2012).

[59] According to Begg (2011), before the crisis, the medium-term objective of 'close to balance or in surplus' was habitually ignored.

[60] Before the European Council in December 2011, the call for more discipline in the euro area centered in the following possible Treaty amendments: Article 126 TFEU, Article 136 TFEU or to amend Protocol 12 on the Excessive Debt Procedure. If the Fiscal compact had been adopted through enhanced cooperation, as suggested by the President of the European Council Van Rompuy, it would have allowed a proper use of European institutions and its enforcement mechanisms.

The EU responses to the sovereign debt crisis encompass different interpretations as they are viewed from intergovernmental or institutional lens.

2.6 THE INTERGOVERNMENTAL APPROACH TO THE CRISIS

There is a perception that the responses to the EU crisis have reinforced the intergovernmental method (Fabbrini, 2013). In fact, since the beginning of the sovereign debt crisis in 2010 the main claim among observers was that the crisis undermined greatly the institutional balance inside the EU, bringing a 'new era of intergovernmentalism' powered by the multiplication of French and German bilateral initiatives. As Crespy and Schmidt (2012:352) note 'Franco-German initiatives appear to have remained the basic dynamic of integration'.

Since the early days of European monetary integration, France and Germany always played a decisive part in defining the institutional framework of the EU, although showing divergent assessments and approaches. Similar divergences can be found not only in the interpretation of the sovereign debt crisis, which in German's view was more a consequence of fiscal profligacy than the underlying problems of competitiveness and macro-economic imbalances pointed out by the French[61], but also in the way to address EU responses to the crisis. While Germany supported a rules-based approach, France preferred a policy discretion approach by prescribing neo-keynesian stimulus, with the European Council and Euro summits acting as the economic government of the euro area; while the German discourse to justify bailouts

[61] Le Monde (4 May 2010) Interview with the French minister of finance, Christine Lagarde: 'Il faut modifier le fonctionnement du pacte de stabilité'.

to Greece centred on 'stability', French would mention 'solidarity'. As Dinan (2012:88) notes, 'with Germany contributing most to the bail-out funds, German politicians, including Merkel, were not shy about advancing German interests'.

However, at different junctures, German preferences had to 'adapt' to French demands, so that both countries could set the agenda. Despite Germany key role, it ended up following some French demands and policy solutions (Crespy and Schmidt, 2012; Deubner 2011)[62].

A timeframe reading shows that joint letters of Chancellor Merkel and President Sarkozy, clearly stating the German (and French) preferences have preceded most of the EU responses to the crisis.

Already on 6 May 2010 a 'Joint Letter to the Presidents of the European Council and the European Commission'[63] paved the way to the reinforcement of the Stability and Growth Pact and the establishment of a 'robust framework for crisis resolution' (although a Task Force was already established to carry out those functions, being its first meeting scheduled to the 21th May)[64].

[62] Some of the policy solutions were in fact French demands, with a reluctant Germany ultimately following. Such was the case of the European Financial Stability Facility (EFSF), the European Stability Mechanism (ESM) and the 'economic government'. At a press conference on September 2010, Chancellor Markel opposed the extension of the EFSF to a permanent fund. By December 2010 she already endorsed it. Previously a critic of concepts like 'economic government' and 'ins' and 'outs' of the euro area, Chancellor Merkel ended up endorsing them: in a bilateral compromise with President Sarkozy in June 2011, it was agreed to give the European Council a central role and on 26 October 2011 Euro summits were institutionalized.

[63] 'Joint letter of Chancellor Angela Merkel and President Nicolas Sarkozy to the Presidents of the European Council and the European Commission'. Presse- und Informationsamt der Bundesregierung. Available at http://www.bundesregierung.de/ContentArchiv/DE/Archiv17/Pressemitteilungen/BPA/2010/05/2010-05-06-brief-englisch.html

[64] As discussed in section 4.2.1.

On 4 February 2011, another joint letter proposes a 'Competitiveness Pact'[65] a 'French concept with a German content'[66]. This pact was renamed 'Euro-Plus Pact' and approved one month later on 25 March.

On 17 August 2011 in a joint letter to the European Council President Van Rompuy, France and Germany demand closer economic policy coordination in the euro area as the prerequisite for further EU-wide financial support measures as well as the introduction, at the constitutional level, of binding upper limits for the level that the structural deficit may reach annually ('debt brake'). On 15 November 2011 the Commission presents the Two-Pack proposals (two months after the Six-Pack was approved), on 9 December 2011 the European Council decides to draft a new intergovernmental Treaty-The Fiscal Compact- and on 2 February 2012 a new version of the European Stability Mechanism is signed linking financial support to the ratification by Member States of the Fiscal Compact[67].

Schild (2013) refers to the Franco-German bilateralism as a form of 'compromises by proxy', in the sense that the urgency of the crisis led to the acceptance of these compromises by the other EU Member States, although they did not reflect converging preferences.

Many agree that there was no alternative to the European Council, in terms of status and authority, taking the lead of the initial responses, as the policy instruments to

[65] EuropeanVoice (04.02.11) 'The Full Text from Angela Merkel and Nicolas Sarkozy Outlining their Plans for Closer Governance'.
[66] Financial Times (09.02.11) 'Paris and Berlin Display Lack of Tact'.
[67] It should be noted that a first Treaty establishing the European Stability Mechanism (ESM) was signed on 11 July 2011, and it did not contain a clause stipulating that access to funds by a euro zone state was conditional on that state ratifying the fiscal compact. However, the second ESM Treaty, signed on 2 February 2012 already includes that clause in recital 5.

tackle the crisis needed the coordination at national level and the endorsement of EU decisions by national parliaments (Corbett, 2012; Dinan, 2011; Liddle et al, 2012; Puetter, 2012). Maduro also considers that the active European Council's role in the crisis management is a consequence of the very nature of the crisis, which required political leadership rather than a technocratic approach, the 'crisis required a leadership that only the European Council was in a position to exercise' (Maduro, 2012.1:1). Vitorino goes further in his analysis of the European Council, arguing that 'at this juncture, the European Council is an institution which is part of the Community method, a method that is sufficiently adaptable and flexible to acknowledge its role, primarily in terms of political input. There is absolutely no need to invent a new 'method' for that' (Vitorino 2012:49).

Finally, Barroso (2012:4) notes that 'when the European debate becomes a national debate and when the national debate becomes a European debate, it is only natural that the Heads of State and Government should play a leading role, namely drawing the strategic orientations for the EU through this institution, the European Council'. In fact, developments at the EU level had profound impacts on national governments: overthrow of governments, popular unrest, and the raise of Euro scepticism.

European citizens have been increasingly identifying the Heads of State and Government as their legitimised representatives as media cover brought an increased focus on European Council meetings, giving them a collective responsibility to decide

upon the best instruments to tackle the crisis (Bertoncini and Kreilinger, 2012; De Schoutheete, 2012)[68].

The European Council's 'activism' is not new. In fact, and according to De Schoutheete (2012) the functions carried by the European Council in the past 20 years, have gone well beyond its remit, which and according to the Lisbon Treaty 'shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof'[69]. However, as the President of the European Council noted 'in times of crisis, we reach the limits of institutions built on attributed competences. When we enter uncharted territory and new rules have to be set, the European Council (…) is well placed to play its part'[70].

The European Council's agenda is no longer restricted to high politics, but it has been playing *de facto* an important role in the decision-making process of the Union, taking over some of the political initiative that pertains to the Commission and characterizes the Community method.

The Liberal Intergovernmentalist view of the EU as 'a successful intergovernmental regime designated to manage economic interdependence through policy-coordination' (Moravcsik, 1993:474) still characterizes the workings of the Economic and Monetary

[68] De Schoutheete (2012) highlights the significance of the new wording. European Council meetings refer to the 'Heads of State and Government' instead of the usual 'Member State' designation.
[69] Article 15 TFEU.
[70] 'The Discovery of Co-Responsibility: Europe in the Debt Crisis', Speech by Herman Van Rompuy, President of the European Council, at the Humboldt University, Berlin February 2012.

Union and its response to the crisis, where final decisions ended in the European Council.

The European Council became the prime decision-setter and major decision-making body, which also testifies the liberal intergovernmentalist premise of the 'secondary' role of the Commission, which seemed to act as an agent receiving delegated tasks and new powers from the intergovernmental bodies, the European Council (and the Council) through a 'new informal coordination procedure and working method' in the form of the European Council's conclusions (Puetter, 2012:169). Puetter calls this working method 'deliberative intergovernmentalism', a method of coordination in which final decisions end in the European Council, after being dominated by Ecofin formal meetings and the Eurogroup informal meetings. Deliberative intergovernmentalism assumes that 'governments are not ready to agree to a further substantial transfer of ultimate decision-making power to the EU-level, but share a growing desire to increase their ability to act collectively' in the field of the Economic and Monetary Union' (Puetter 2011:13).

The intergovernmentalist propositions that Member States remain the most powerful decision-makers are likely to hold, namely through the relevance of Germany and France who set the pace and the tone for the search of joint solutions. As Kreilinger (2012) notes in the case of the Fiscal Treaty, its key provisions always fulfilled the demands of Germany. The fact that Germany is the biggest net contributor to the new created firewalls is a plausible explanation for its dominance in the all process (experts 1,2,6 and 7), however, as Moravcsik refers, national German interests overlapped the

EU's aim of financial stabilization: 'EU support for deficit countries has so far offered the most cost-effective and politically expedient way for Berlin to ensure that German banks and bondholders get paid back for their imprudent international loans' (Moravcsik, 2012:61).

Already in the setup of the Economic and Monetary Union the terms were set primarily by Germany. According to Moravcsik (2012:55) 'Germany's main motivation for a single currency, contrary to popular belief, was neither to aid its reunification nor to realize an idealistic federalist scheme for European political union. It was rather to promote its own economic welfare through open markets, a competitive exchange rate, and anti-inflationary monetary policy'.

2.7 THE INSTITUTIONAL APPROACH TO THE CRISIS

From an historical institutionalist perspective, the path-dependence and the functional spillover that characterizes the institutional design of the Economic and Monetary Union, constrained and limited institutional change in face of the crisis. EU's decision-making was therefore influenced by factors such as the Economic and Monetary Union's original institutional setup and policy tools, the lack of crisis resolution mechanisms and diverging national preferences.

Apart from the new mechanisms to provide financial assistance to distressed Member States, the decisions adopted in the period 2010-2011 seem to have strengthened and reinforced the previous norms governing fiscal policy coordination and structural reforms.

The incrementalism that characterized the EU's responses to the crisis resembles the process described by neofunctionalists of a gradual transfer of competences from Member States to the EU, with the incomplete design of the Economic and Monetary Union gradually exposing the need to expand to other functionally linked policy areas. In fact, demands for a fiscal union and a banking union were routinized in the 2010-2011 period.

The Community method has been several times questioned since the outbreak of the sovereign debt crisis. The sidelined and perceived weak role of the Commission in 2010 and 2011 has been equated with its decline.

In fact, the Commission's monopoly of legislative initiative, one of the central elements of the Community method, was constrained both by the intergovernmental character of the Economic and Monetary Union governance but also by the political nature of the decision-making process.

One example of such political nature is found in the two Commission´s proposals for the financial rescue mechanisms to assist euro area countries in financial distress in early 2010s. The first one, involving the 27 Member States, provided for a facility of €60bn, which (in fact) was adopted as the European Financial Stabilisation Mechanism. The second proposal envisaged a certain amount of money to be provided in accordance to Article 352 TFEU[71]. According to Ludlow (2010) this proposal was not

[71] Article 352(1) TFEU states that 'If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from

approved as Jean-Claude Piris, the Council's legal adviser considered that Article 352 TFEU could not be used in reference to a sub-group of Member States. However, another reason had a more political nature as Chancellor Merkel 'was more inclined towards an ad hoc intergovernmental initiative, firstly because the Karlsruhe Court's 2009 ruling on the Lisbon Treaty required the German government to obtain the approval of the *Bundestag* before approving any significant new EU initiative and secondly because she did not want the Commission to have a central role in the management of the additional money' (Ludlow, 2010:36).

Notwithstanding, in the early phase of the sovereign debt crisis, the Commission´s political initiative seemed rather absent. In the debates surrounding the International Monetary Fund Involvement in the rescue mechanisms and program's design, the Commission

> 'was paralyzed (…) the German argument was that the International Monetary Fund had the experience in the management of monetary and financial crisis. Europe has no experience, the Commission has no experience, and so the International Monetary Fund has to come on board (…) the Commission recognizes it cannot alone handle the situation and leaves room for the International Monetary Fund (…) it took time for the Commission to understand it was being surpassed by others (…) however, we must understand that we are talking about sums of money that go well beyond the European budget. As such,

the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures'.

> even if the Commission had been proactive, even it had the crisis management expertise, which it had not, the truth is that the financial instruments necessary to handle a crisis do not exist in the Community budget' (expert 7).

The urgency and the novelty that surrounded the crisis also implied that an initial institutional response to the crisis, through the Community method, could have meant a too prolonged response for an urgent immediate action. De Schoutheete points two limits of the method: its normative character, as it was conceived mainly to create European legislation and the fact that it was not designed to deal with crisis situations, 'it is based on balanced procedures, institutional workings and successive readings. It takes time to be implemented. However, the very nature of a crisis means that time is of the essence' (De Schoutheete, 2012:8).

It may be argued that, despite the Commission's primary role as agenda setter or policy entrepreneurship has been weakened (Hodson, 2013; Maduro, 2012; Puetter 2012), the Commission continues to play a powerful role in EU economic governance and that 'a majority of decisions in economic governance are dependent on the Commission to make them work' (Bauer and Becker, 2013). As the authors note, criticisms about the weak visibility of the Commission in advancing responses to the crisis, namely its role as agenda setter, has to be counterbalanced by the Commission´ powers in monitoring, supervision and evaluation of economic policies, which have *de facto* increased.

The new instruments of economic governance allow the Commission to cover a wider scope of policies and be equipped with stronger powers, namely through the Six-Pack, which has confirmed and strengthened the European Commission's role in budgetary and economic policy coordination. As the European Commissioner Maros Sefcovic notes 'the Commission in its history never had more power than it has now'[72].

The European Parliament, contrary to the enhanced Commission's operational role, and besides a right to being informed through the 'Economic Dialogue'[73], saw no effective political participation in the reform of economic governance, despite the Parliament's continuous criticisms to have a say in the development of agreements outside the EU framework. Although Chancellor Merkel has noted that, in the case of the Fiscal Compact, it would **'**give a greater role to the Commission and the European Court of Justice, and European Parliament observers [would] be invited to sit in on the drafting of the treaty'[74], the European Parliament criticisms go further and show a 'concern that the European Parliament has been constantly marginalised in the main economic decisions resulting from the crisis, and considers that it must be involved in order to increase the legitimacy of decisions, which affect all citizens'[75].

[72] EUobserver (30.05.13) 'France says Brussels 'cannot dictate' economic policy'. Available at http://euobserver.com/economic/120311
[73] Economic Dialogue is to be discussed in Section IV.
[74] *Bundeskanzlerin* News 'Europe will Emerge Stronger from the Crisis', 14 December 2011. Poptcheva (2012) highlights the role played by the European Parliament in the drafting of the Fiscal Compact, namely the 'repatriation' clause foreseeing the incorporation in five years of the Treaty's provisions into the EU legal framework
[75] European Parliament Report (2012:11) 'The European Semester for Economic Policy Coordination: Implementation of 2012 priorities'.

However, as co-legislator in the Six-Pack legislative procedure, the European Parliament was able to enhance the Commission´s powers in some key steps, and run counter some of the Council's preferences.

Does the new institutionalism premise that institutions matter still stands?
As De Schoutheete (2012:32) argues, the EU is 'more Community-based than ever', even if the new responsibilities and powers, as is the case for the 'Community' control of Member States budget and economic policies, came from an intergovernmental arrangement and not through the Community method.

The institutional approach to the crisis must also be viewed in terms of legislative outputs. While some of the measures agreed to tackle the crisis, like the new financial supervision bodies, a financial stabilisation mechanism (EFSM), and economic governance reform (Six-Pack and Two-Pack), fall within the Union's field of competence and were legally adopted under the Community method, others fell outside the Union's sphere and had to be devised as intergovernmental arrangements (European Financial Stability Facility, European Stability Mechanism Treaty, Europe-Plus Pact and the Fiscal Compact) (Annex I).

However, as can be observed in Annex II, the intergovernmental arrangements relating to the economic governance reform and financial assistance, embody some of the main elements of the Community method as described earlier in this section. A further

analysis of these 'Community' elements and of the necessity to incorporate them in arrangements outside the EU legal framework follows.

2.8 INTERNATIONAL ARRANGEMENTS AND INTERGOVERNMENTAL DILEMMAS

Economic governance was (supposedly) reinforced by the Fiscal Compact. Although it is an intergovernmental Treaty, some of its key points lay upon the Community method and the Commission is actually reinforced by this agreement (Annex II). Moreover, within five years it will be incorporated into the legal framework of the EU. As Kreilinger (2012) notes, it was mainly because of the European Parliament's pressure, that most of the amendments aimed at pushing the new Treaty back into the EU's mainstream Community method of governance.

According to President Barroso, Member States agreed that without the use of the EU institutions, namely the Commission, to enforce the new rules, international treaties would have limited credibility: 'Member States have understood in practical terms when it comes to concrete matters of surveillance and enforcement that they could not do without an independent institution that was the Commission' (Barroso 2012.1) or, as Maduro (2012:4) puts it 'when discipline is necessary, states go back to the "good old" Community method...'.

Nevertheless, many authors see the Fiscal Compact as a departure from the Community method and alternative instruments in EU law towards a recurring method of intergovernmentalism agreements 'using' EU Institutions[76].

[76] Like the Schengen Agreement and the Agreement on Social Policy annexed to the Social Protocol of the Maastricht Treaty (agreed by 11 of the then 12 Member States, with the opt-out of the UK).

The main criticisms of the Fiscal Compact concern not only its contents but also the flexibility that it leaves, whether it is lawful to attribute new competences to EU institutions[77], the poor enforcement mechanisms[78] and the fact that while restating most of the provisions included in the Six-Pack, it adds almost nothing new to economic governance.

The novelty is that Article 3(2) of the Fiscal Treaty demands that the 'balanced budget' rule, requiring national budgets to be 'balanced or in surplus'[79] be enshrined in national law 'through provisions of binding force and permanent character, preferably constitutional'. Armstrong argues that this rule undermines, in some extend, the credibility of the Community method, as it views 'ordinary legislative responses as somehow not enough' (Armstrong, 2012.1).

Kreilinger (2012) agrees that this imposition (and the Fiscal Compact as a whole) has to be seen as a German claim, fulfilling a political legitimating function with respect to German public opinion, the *Bundestag* and the German Constitutional Court of Law. Maduro shares the same view arguing that the Fiscal Compact has a political function as it 'allows Mrs Merkel to sell in Germany certain things that she knows need to be

[77] As Maduro (2012:4) argues 'the agreement is carefully drafted not to seem that they give EU institutions new competences'. However, De Witte (2012) refers to the special case of the European Court of Justice. Article 273 TFEU allows Member States to submit to the European Court of Justice 'under a special agreement between parties'. In fact, a 'special agreement' is referred to in Article 8(3) of the Fiscal Compact. As to the other institutions (like the Commission and European Parliament) De Witte notes that although the Treaties specify that the EU institutions shall act within the limits of powers given to them under the Treaties (Article 13(2) TEU), it does not preclude that 'extra' tasks may be given to the institutions within their competences (however they are not legally obliged to perform those tasks).

[78] Being an international treaty, the Fiscal Compact neither enjoys the primacy of EU law (although it has to respect it) nor has direct effect in the national legal orders.

[79] This rule is to be deemed satisfied if a country´s budget position is at its 'Medium-Term Objective' (MTO) with a structural deficit of 0.5 per cent GDP (with a concession to allow a 1.0 per cent structural deficit if debt is less than 60 per cent GDP). The amended Stability and Growth Pact already envisaged the MTO and the processes for surveillance of convergence towards the MTO. Also the Euro-Plus Pact had a demand, although a softer one, to translate EU fiscal rules into national ones.

done but that she is not able to sell to her own political public opinion otherwise' (Maduro, 2012:3). Dehousse (2102:1) for his part sees the new Treaty as a 'desire to break with the past' characterized by a rejection of strict discipline, as infringement proceedings before the European Court of Justice were excluded in the Excessive Debt Procedure framework[80].

The lack of enforcement mechanisms to guarantee the respect for rules arranged within voluntary intergovernmental agreements is one of the three dilemmas faced by intergovernmentalism as a mechanism for voluntary policy coordination (Fabbrini, 2012).

To circumvent situations such as Germany and France breaching the Stability and Growth Pact's rules in 2003 and the manipulation of Greek's statistics to join the euro area, the Fiscal Compact tries to deal with the non-compliance problem endorsing the European Court of Justice (Article 8.1) with the power to intervene in case of non-compliance with the agreed rules, although it may raise political disputes[81]. As for the European Stability Mechanism Treaty, Article 37(3) states that in case of a dispute between an ESM Member and the European Stability Mechanism, 'the dispute shall be submitted to the Court of Justice of the European Union'. The use of a European

[80] Article 126(10) TFEU.

[81] The legal basis to justify the intervention of the European Court, while taking into account the Maastricht *acquis*, was found in Article 273 TFEU. As Dehousse (2012) notes, once the balanced budget clause is a new rule, it does not fall under the exclusion clause of Article 126 (10) TFEU. Fabbrini (2012) points to the fact that although Article 273 TFEU specifies that 'the Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties', the fact is that both the UK and the Czech Republic did not sign the Fiscal Treaty that uses institutions operating in the EU legal structure defined also by those two countries.

institution such as the Court of Justice by other intergovernmental bodies has been subject of much debate.

The non-compliance problem is also questioned by Verhofstadt (2011) referring to the Euro-Plus Pact as an example of an intergovernmental model of peer pressure, which has already proven, more than once, to be ineffective as it lacks enforcement mechanisms and impartial judgments, as Member States are instinctively reluctant to sanction each other.

Despite the role attributed to the Commission by the Euro-Plus Pact it does not follow the Community method as the cooperation envisaged in the Pact will mainly take place outside the EU institutional framework, and not within it, which means it will not benefit from the capacity of the Commission and the Court of Justice to control the implementation of the measures taken and to adopt possible sanctions. However, the integration of the Euro-Plus Pact into the European Semester associates the former with the Union´s decision-making. As noted in Annex II, some of the indicators to be achieved by the Euro-Plus Pact are part of the macroeconomic imbalances institutionalised by the Six-Pack. Also, as the commitments assumed by Member States are part of the reform and sustainability programs, they may be viewed as binding upon those states.

A second dilemma relates the lack of legitimacy of the decision-making process and its outcomes. The existence of a deteriorating economic environment and financial

market pressures put Member States on a dilemma between quick resolutions (as the two month negotiation of the Fiscal Compact) and more or less lengthy negotiations solutions through codecision. Notwithstanding the main decisions were taken in the Council without a previous discussion in the European Parliament, the institution representing the European citizens, who have strongly shown their discontent in very different occasions[82].

As Martin Schulz, President of the European Parliament noted 'the Heads of State and Government are arrogating more and more decisions to themselves, debating and taking decisions behind closed doors and in disregard of the Community method', which instead, promotes decisions at the EU level and an empowerment of the European Parliament as a co-legislator with the Council, bringing this way legitimacy to the process[83].

In fact, the lack of accountability is present in the European Stability Mechanism (ESM). Pursuant to Article 32(3) of the ESM Treaty, it 'shall enjoy immunity from every form of judicial process except to the extent that the ESM expressly waives its immunity'. Furthermore, this lack of accountability is more pressing as the conditionality attached to the programs of financial assistance directly impact upon the economic and social rights of the European citizens.

[82] The European Parliament is not mentioned in the European Stability Mechanism Treaty and sidelined in the Fiscal Compact Treaty. According to Article 12(5) of the Fiscal Treaty 'the President of the European Parliament may be invited to be heard. The President of the Euro Summit shall present a report to the European Parliament after each of the meetings of the Euro Summits'.

[83] Speech by President Martin Schulz to the Members of the European Commission on 25 April 2012.

The third dilemma is an institutional one, as 17 of the 27 Member States of the EU 'share a common currency but not a common economic policy' (Verhofstadt, 2011).

The unanimity vote needed to reach an intergovernmental agreement in the European Council led, through the entire crisis, to the need of finding new solutions wherever a Member State veto was envisaged, which led to a differentiated form of integration (Annex I), which may give rise to problems of legitimacy and legality (Beukers, 2012; Tomkin, 2012).

Several criticisms were also raised of too late decisions to prominent problems. That was the case with the Fiscal Treaty where, in order to avoid jeopardizing the entire project, Article 14(2) states that the Fiscal Compact Treaty shall enter to force '(…) provided that twelve Contracting Parties whose currency is the euro have deposited their instruments of ratification'. As Fabbrini (2012:120) notes 'It is the first time (in the European integration experience) that unanimity has been eliminated as a barrier for activating an intergovernmental treaty'.

Another situation involving veto problems relates to the creation of the European Stability Mechanism and its following founding Treaty. While the former was adopted in three days[84] following the Treaty procedures, the latter found a number of legal challenges[85].

[84] Under Article 122(2) TFEU, the Council may adopt a Commission's proposal with the European Parliament only having to be informed.

[85] A number of legal challenges to the European Stability Mechanism were filed with the German Federal Constitutional Court and the Irish Court (the Pringle case). In this case the Irish Court sought to ascertain whether the promulgation and ratification of the European Stability Mechanism was compatible with numerous provisions of European law, including the 'no bailout' clause contained in Article 125 TFEU (according to Beukers (2012) Article 125 TFEU does not prohibits Member States from granting each other loans, with conditionality).

In sum, the rational choice institutionalist view of the reasons why Member States delegate powers to the European institutions, such as monitoring and enforcement of Member States compliance with European law, holds in the present crisis as supranational institutions were attributed a central role even when the responses where found within intergovernmental arrangements.

Pringle, an independent Member of Parliament, argued, among other things, that it was an 'anathema that an entity entrusted with stabilizing the euro currency could be established outside the Union legal order and would be able to dictate conditions that will be imposed on Member States in matters so fundamental and integral to the Union as its economic policy and its currency' (Tomkin, 2012:71).

III- THE COMMISSION AS AGENDA-SETTER

The Treaty of Lisbon envisages the application of the Ordinary Legislative Procedure for almost all areas coming under EU competence. Over time, and over successive treaties, there has been a shift in favour of more supranational procedures[86]. These reforms led to a reshuffle of power, either through the transfer of more competences to the EU level or through altered decision-making processes at the EU level. Also, the codecision procedure has had a direct effect on the power of legislative initiative by the Commission and on how the Commission exercises that power.

This section revisits some of the legislative procedures in the EU and investigates the alleged limitations of the Commission's role as agenda setter in the pre-legislative stage of the Six-Pack, namely at the time of the setting up of the 'Van Rompuy Task Force'.

3.1 THE COMMISSION AS AGENDA SETTER UNDER CODECISION

The quasi-exclusive right of initiative conferred on the Commission by the Treaty drafters, lied on the fact that its legislative proposals would be based on the general interest of the Community[87].

> 'The Commission represents the general interest and is equipped with the monopoly of initiative and powers to oversee implementation; Member States

[86] Garrett (1995) considers the EU´s legal system as the 'clearest manifestation of burgeoning supranationalism', as European law has 'direct effect' in national jurisdictions.

[87] This right conferred by the Treaty of Rome already provided some limited exceptions, regarding: customs duties, air and sea transports and statistics. These domains could be regulated at the initiative of a single Member State. The Maastricht Treaty and the Lisbon Treaty provided new exceptions, namely those regarding the former second and third pillars. In these areas, both the European Commission and each Member State could submit proposals to the Council of Ministers.

> voice particular interests through their role as legislators in the Council and implementers of EU policy (…) one consequence is that decision making should protect smaller Member States against the dominance of one or several large Member States by giving the Commission the monopoly of initiative and by over representing smaller states in decision making' (Haas 1968:526).

Drawing on the Principal-Agent model, Pollack makes a clear distinction between formal and informal agenda setting powers:

> 'Formal agenda setting consists of an agent's right to set the procedural agenda for its legislative principals by placing before them proposals that can be more easily adopted than amended, thus structuring and limiting the choices available to legislators and the range of possible legislative outcomes. By contrast, informal agenda setting is the ability of a ´policy entrepreneur' to set the substantive agenda for a group of legislators, not through her formal powers but through her ability to define issues and present proposals that can rally consensus among the final decision-makers' Pollack (2003:47).

Along with the Commission´s power of initiative, it also enjoys the formal powers to amend and withdraw legislative proposals[88]. The power to amend is enshrined in the Treaties: 'as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act' (Article 293(2) TFEU).

[88] The Treaty sets out the limits for a proposal´s withdraw. The Commission´s last 'political withdrawal' happened in 1994 (Ponzano et al 2012).

The Commission´s monopoly power of initiative does not mean that *per se*, the Commission always acts as agenda setter, as effective agenda setting may be held by different actors under different legislative procedures (Garrett, 1995).

In fact, there is a broad consensus in the literature that the Commission´s formal and informal influence has declined by the introduction of the codecision procedure- renamed Ordinary Legislative Procedure- by the Treaty of Lisbon (Bauer and Becker, 2013; Burns 2004, Crombez and Hix, 2011; Tsebelis and Garrett, 2001).

To understand this fact it is important to revisit briefly the Commission´s evolving legislative role.

3.1.1 LEGISLATIVE PROCEDURES AND TREATY CHANGE

The Treaty of Rome envisaged just one legislative procedure, the consultation procedure, according to which the European Parliament was only asked for a non-binding opinion and the Council was not obliged to take account of the European Parliament's amendments[89]. According to this procedure, the decision-making process lies with the Commission, as initiator of the legislative process, and the Council, as the legislator of the Community system. Commission proposals required unanimous voting in the Council to be approved as well as to be amended, which limited Commission's formal agenda setting power and ability to move from the status quo[90].

[89] The European Parliament's opinions were often ignored or not even read (Burns 2004, Costa et al 2011).

[90] Under the Luxembourg Compromise, unanimity was the rule between 1966 and 1986. Formally, according to Crombez and Hix (2011) some policy areas did not need unanimity voting, even before the Single European Act.

The cooperation procedure established by the Single European Act of 1986 (it applied to all Single European Market legislation and was later repealed by the Treaty of Lisbon) called for an initial legislative dialogue between the European Parliament and the Council and was the first step towards a modification of the inter-institutional dialogue. Under this procedure the Commission could see its proposals adopted by a qualified majority in the Council in order to secure its preferred outcomes, increasing this way the Commission's agenda setting power.

As Crombez and Hix (2011:299) note 'for a policy issue now covered by qualified majority voting, the Commission could focus on the Member State that was pivotal for a qualified majority, because any proposal that won its support could be adopted in the Council' [91].

The cooperation procedure also strengthened the European Parliament's legislative influence, giving it a second reading of legislation and a 'conditional agenda setting power' (Tsebelis, 1994)[92].

In this procedure the Parliament had the power to propose amendments to the common position adopted by the Council. These amendments, if accepted by the Commission- then becoming part of the Commission´s amended proposal- could be adopted by the Council by qualified majority voting, but rejected only by unanimity.

[91] The Consent Procedure (formally known as Assent Procedure) was also introduced by the Single European Act in two areas: association agreements and agreements governing accession to the EU. The Maastricht Treaty extended the assent procedure to certain specific areas, as citizenship, specific tasks of the European Central Bank, and the structural funds and the cohesion funds. The Parliament may not amend proposals, only accept or reject them.

[92] 'Agenda-setting players have power when it is impossible, difficult, or costly for decision-makers to modify their proposals (...) if the EP is able to make a proposal, and if the Commission adopts it, then the EP has agenda-setting powers. If these conditions are not met, the EP loses its agenda-setting power. This is why I characterize the EP' agenda power as conditional under the cooperation procedure' (Tsebelis, 1994:131).

Contrary to consultation, this procedure enabled the Members of the European Parliament (MEPs) to demonstrate their ability to play a constructive role in the decisional process (Costa et al 2011, Pollack 1999).

The codecision procedure introduced by the Maastricht Treaty in 1992 (codecision I) and subsequently modified by the Amsterdam Treaty in 1997 (codecision II) gave the European Parliament a third reading of legislation, an unconditional veto and the right to negotiate with the Council over the final wording in a Conciliation Committee[93].

The positive experience of the cooperation procedure convinced the Member States' representatives to include in the Treaty of Maastricht (1992) the codecision procedure which implies that the adoption of legislative acts is possible solely with the agreement of both the European Parliament and the Council (Costa et al 2011).

However, as the authors note two objections were raised. At the same time that Members of Parliament demanded equal footing with the Council, the Member States´ representatives were reluctant to accept the idea of directly negotiating with the parliamentarians.

After a period of intense negotiations and inter-institutional agreements, the codecision procedure was amended in the Treaty of Amsterdam (1997), which further extended it to cover additional policy areas[94].

[93] In 2010 codecision was applied on 90 per cent of all legislation (86 per cent in 2011) (VoteWatch, 2012).

[94] The initial version of codecision set out in the Treaty of Maastricht was a highly complicated procedure compared to previous legislative procedures. It could include as much as four readings in the European Parliament and two rounds of conciliation between the European Parliament and the Council (Rasmussen 2003).

In codecision the legislative process formally begins when the Commission drafts a legislative proposal (Annex VII). Already at this stage, some informal procedures may develop. It has been common practice that the Commission, before formulating the legislative proposals, consults the Council´s groups of experts and the European parliamentary committee.

After the proposal is adopted by the College of Commissioners, it is simultaneously sent to the Council and to the European Parliament where it is reviewed by a working group and a parliamentary committee respectively. Subsequently, the Parliament and the Council negotiate in order to reach an agreement on which amendments should be added to this proposal. For the proposal to become law, the Parliament and the Council must accept each other's amendments. A 'trialogue' with the European Commission can be set if both the Council and the European Parliament want to accelerate the decision-making process and reach an early agreement.

Indeed, Commission representatives monitor negotiations between the two institutions in order to ensure that the compromise does not deviate too much from the initial proposal. The Commission is often understood as a 'mediator and a supplier of expert knowledge' in these negotiations (Fuglsang and Olsen, 2009:2).

If an agreement is not found at the first or second reading, the Conciliation procedure is convened, being the Council and the European Parliament responsible for reaching an agreement on a joint text [95]. The Commission takes part in the Committee´s

[95]The Conciliation Committee, composed of 27 Members of the Council or their representatives and an equal number of Members representing the European Parliament, has the task of reaching agreement on a joint text, by a qualified majority of the members of the Council and by a majority of the members representing the European Parliament within six weeks of its being convened (on the basis of the positions of the European Parliament and the Council at second reading) Article 294(10) TFEU.

proceedings and may take initiatives to promote a consensus, however it has no power to amend or withdraw a proposal, which diminishes the Commission´s power as agenda-setter.

3.1.2 TRIALOGUES AND EARLY AGREEMENTS

As already noticed, the introduction of codecision by the Maastricht Treaty, led to institutional disagreements between the Council and the European Parliament, regarding the way the procedure should be implemented, as 'ambiguities in the Treaty text led Parliament and Council to adopt differing interpretations' (Farrell and Héritier, 2007:288). According to the authors, these disagreements were 'nuanced' by the introduction of an institutional innovation, the informal trilogues. However, in the first years after the adoption of codecision, bilateral contacts were occasional and occurred mainly to prepare meetings before the Conciliation Committees. It was only in 1995, under the Spanish Presidency, that these informal meetings became a standard feature under conciliation (Shackleton, 2000) [96].

The Amsterdam Treaty (1999) made it possible to conclude EU codecision as early as the first reading if the Parliament did not propose any amendments to the Commission's proposal or if the Council agreed with the Parliament's first reading amendments (Article 251 TEC). As Farrell and Héritier (2004) explain, early agreements

[96] In trialogues, the Parliament is represented by the Rapporteur and the chair of the responsible Committee; the Council is represented by the Deputy Permanent Representative from COREPER I, and the Commission by the Director-General or Director responsible for the draft legislation. In the late 1990s it was agreed that the Deputy Permanent Representative of the country holding the next Presidency should attend this meetings as an observer (Shackleton, 2000).

were only envisaged to technical, non-controversial files. However, early agreements soon developed to non-technical, politically areas, where the Commission was often presented as the main loser (Ponzano et al 2012).

The decision to achieve an agreement early in the legislative process 'shall be a case-by-case decision, taking account of the distinctive characteristics of each individual file. It shall be politically justified in terms of political priorities; the uncontroversial or 'technical' nature of the proposal; an urgent situation and/or the attitude of a given Presidency to a specific file' (Code of Conduct for Negotiating Codecision Files, 2012: 2nd paragraph)[97].

The increased use of early agreements and the lack of transparency surrounding trialogues to achieve them, raised the concern that open political debate, namely the exclusion of some actors from the legislative process, may be sacrificed for the sake of greater efficiency of the full scope of the codecision procedure. While these trialogues may enhance legitimacy output in terms of efficiency, they may also endanger its original goal: the legitimacy input.

While Häge and Kaeding (2007) note that the Parliament does not extract its legitimacy only for the fact of being an elected body but also from the openness of its proceedings, Toshkov and Rasmussen (2012:3) argue that 'such deals are reached so fast that it becomes difficult for the legislative bodies as a whole to allocate sufficient

[97] Available at www.europarl.europa.eu/.../CCPE_MAN(2009)796687(2009-11-01)_E

time for deliberation and control of the leading negotiators to ensure that these deals are representative of the views of the entire legislature'.

In sum, according to Pollack´s analysis of the Commission's agenda setting power, which states that its agenda setting power is greater when the voting rule is some form of majority, and the amendment rule is restrictive-in other words, where it is easier for the Council to agree to adopt the Commission´s proposal than to amend it, under the consultation procedure-where both the amendment and the voting rule in the Council were unanimity, the Commission´s agenda setting power was 'minimal or non-existent' (Pollack, 1997:122). The introduction of qualified majority voting and the cooperation procedure in 1987 strengthened the Commission´s influence (Burns 2004). This view is shared by Moravcsik who considers that qualified majority voting makes the formal decision-making of any single government more dependent on agenda setting by the Commission (Moravcsik 1993).

Finally, under the codecision procedure as the Commission has no formal right to affect the outcome of legislation in the final stage of codecision, namely during the conciliation procedure, its agenda power, policy influence and desired outcome is reduced, making the proposals 'irrelevant' (Crombez and Hix 2011).

3.2 THE COMMISSION AS AGENDA SETTER UNDER THE SIX-PACK PROCEDURE

Larsson and Trondal (2005) present three perspectives of agenda setting. According to a Rational Choice model, the formal structuring of agenda setting develops in three

distinct stages: the agenda-setting phase, the formal policy-making phase, and the policy´s implementation phase.

Rational Choice models consider the agenda-setting phase the most 'open-ended' part of the decision-making process as it involves several different actors, highlighting the active role of the Commission expert groups and how expertise may become dominant over politics[98]. In the formal policy-making phase, the leading actors are the Council and the European Parliament as co-legislators (under codecision), and in the implementation stage the Commission takes again the 'front seat'.

A path-dependency approach views the same three different stages as interlinked in a circular process, where the implementation phase will lead to the appearance of new problems – as external and uncontrollable shocks- that cause new policies to be envisaged. Finally, a garbage can model views the agenda setting as a flow of problems and solutions taken in an anarchical way, where external shocks pave the way to new ad hoc solutions or sudden windows of opportunities open the leeway for policy entrepreneurship (Pollack, 1997).

Notwithstanding the different perspectives of the agenda-setting theories, agenda-setting is a highly political process as it not only determines which issues for decision-making are to be considered on the agenda (and in what terms) but also those that are

[98] Larsson and Trondal (2005) refer to the EU agenda setting being characterized by the summing-up of 27 national agendas, the bargaining processes among the Member States within the Council, the inter-institutional 'turf-battles' and also interest organizations. According to a Commission report, some 3000 interest groups and lobbies, or about 10000 people, were based in Brussels in 1992. Most groups target their lobbying activity at the European Commission and the European Parliament (Marks et al 1996).

kept off the agenda (Princen, 2007)[99]. Considering the agenda as 'the list of issues that receive serious attention in a polity' (Princen and Rhinard 2006:1120), they can emerge into the agenda in two different ways: either they are placed by the European Council, the so-called 'high politics' route or they come into the agenda through Commission Expert Groups or Council Working Parties-the 'low politics' route. According to Meyerhöfer (2009) the high politics route is primarily a political one, as the issue coming into the agenda reflects the occurrence of a shared political problem, while the low politics route is primarily a technocratic one.

In fact, since the 1990s the high politics route has taken the primacy. Although the Commission still enjoys the exclusive right to initiate legislation, which is for Allerkamp (2011) the most obvious way for the Commission to set the EU´s political agenda, 'it is no longer the main political initiator of the integration process as this role in practice has been largely taken over by the European Council' (Emmanouilidis and Janning 2011:18) or just a few key governments, having the Commission to focus 'on its subordinate although important technical role' (Grant, 2013).

In fact, as noted before, the European Council started including in its European Council conclusions policy 'requests' for the Commission, a practice that was never formalized in the Treaty and led to a broad consensus that the European Council is taking the role of an informal pre-initiator of legislation 'sidelining the role of the Council (and its

[99] The terms 'on' and 'off' the agenda are still used to denote the distinction between those issues that receive 'considerable' or 'serious' attention and those that receive only little attention.

presidency) and downgrading the European Commission to the role of work horse' (Emmanouilidis and Janning 2011:18)[100].

3.2.1 THE SIX-PACK- THE AGENDA-SETTING PHASE

Although the Six-Pack proposals on economic reform were decided upon under the Community method, the Commission´s formal role as agenda setter was shared with a Task Force presided by the President of the European Council Van Rompuy who 'seems to have superseded the Commission to some extent as a key norm entrepreneur' (Kunstein and Wessels 2013:9).

In March 2010 the European Council conclusions stated that:

> '(…) Coordination at the level of the Eurozone will be strengthened in order to address the challenges the euro area is facing. The Commission will present by June 2010 proposals in that respect (…) the European Council asks the President of the European Council to establish, in cooperation with the Commission, a Task Force with representatives of the Member States, the rotating Presidency and the European Central Bank, to present to the Council, before the end of this year,

[100] The power of initiative has increasingly become a shared competence. As Princen (2007) points out, even though the Commission has to make the eventual formal proposal, the impetus for this proposal may lie outside of the Commission as both the Council of Ministers (Article 241 TFEU) and the European Parliament (Article 225 TFEU) may use its right to 'invite' de Commission to present a proposal. In fact, the Council and, since the Maastricht Treaty, the European Parliament, can both request the Commission to produce proposals, although they cannot draft proposals themselves. The Commission is not obliged to act, but if the Commission does not submit a proposal, it has to inform the European Parliament and the Council of the reasons. However, the Parliament in collusion with the Council, may pressure the Commission to initiate legislation by linking the approval of a specific dossier to the introduction of certain proposals (Dinan, 2005).

the measures needed to reach the objective of an improved crisis resolution framework and better budgetary discipline'[101].

A differentiation in the summit conclusions referred to the legal leeway available to both actors. Whether the Task Force was asked to '(…) explore all options to reinforce the legal framework', the Commission was asked 'to present by June 2010 proposals (…) making use of the new instruments for economic coordination offered by Article 136 of the Treaty'[102].

While the Council was free to explore 'all options', the Commission was restricted to follow the Treaty´s framework.

Conversely to previous Treaty reforms, the Lisbon Treaty did not bring substantial changes to European economic governance. Nevertheless, some of the changes did impact the legal framework of the Six-Pack: (i) The Eurogroup was institutionalized, being mentioned for the first time in the Treaty of Lisbon- Protocol 14; (ii) Article 136 allows the Council, relating Eurozone countries, to '(…) strengthen the coordination and surveillance of their budgetary discipline (…) to set out economic policy guidelines for them'; and (iii) Article 121(4) broadens the Commission´s power in economic policy coordination, allowing the Commission to directly address an early warning to a member state, instead of a recommendation as established in the previous Article 99.

[101] European Council Conclusions (2010) 24/25 March, paragraphs 6d and 7. According to Ludlow (2010:18) the draft of the statement to be presented as the European Council's Conclusions was a German-French text under the responsibility of Owe Corsepius (Angela Merkel's chief European adviser) and Jean-David Levitte (Sarkozy's diplomatic adviser) among others. In the first version of the European Council's Conclusions, the Commission was not envisaged to be part of the task force.
[102] European Council Conclusions, 25/26 March 2010, p: 5-6.

At the same time the Van Rompuy Task Force was set up and held six meetings between 21 May and 27 September 2010, the Commission presented two communications on 12 May[103] and 30 June 2010[104], addressing the same need to reinforce economic policy coordination (Annex VI).

In the end, in an attempt to regain its position as agenda setter, the Commission presented the Six-Pack proposals in September 2010, a month before the Task Force's report was released.

Although the latter was broader in scope as it included a proposal for the creation of a permanent stability mechanism, both proposals were very similar regarding fiscal policy and macroeconomic surveillance. As noted by one of the interviewed 'if we look into the Task Force recommendations, they all correspond to what the Commission later established (...) that are some details I find rather curious: reputational sanctions, fines and interest-bearing deposits were never mentioned before and then, they appear with a great impact in the Commission´s proposals' (expert 10) [105].

The similarities between the Commission´s proposals and the Task Force report gave ground to some misconceptions, as was the case with Belgian Prime Minister Yves

[103] European Commission IP/10/561, 'Reinforcing Economic Policy Coordination', 12 May 2010.

[104] European Commission (IP/10/859) 'Enhancing Economic Policy Coordination for Stability, Growth and Jobs-Tools for stronger EU Economic Governance', 30 June 2010.

[105] The proposals of the Van Rompuy Task Force and the European Commission contained many of the same elements such as: the concept of strengthening the Stability and Growth Pact by operationalizing the debt criterion and giving the sanctioning process more automaticity appeared in both, as did measures relating to macroeconomic surveillance, incorporating European fiscal rules into national legislation, and the creation of a European semester. The analysis of the Commission's proposals is to be developed in Section IV.

Leterme referring to the 'Six-Pack of the Van Rompuy Task Force'[106], or even Van Rompuy noting that 'implementing the conclusions of the Task Force I chaired in 2010, the so called 6-pack on economic governance is a significant step forward in that sense'[107].

Both the Commission and Van Rompuy (at least officially) wanted to emphasize the mutual cooperation. Not only the Commission mentioned a '(…) a constructive relationship developed between the Commission and the Task Force. The Commission contributed to the work of the Task Force through the Communications (May and June) and through ad hoc contributions'[108], but also the Van Rompuy Task Force referred to 'an in-depth exchange of views on the main elements of the legislative proposals the Commission intends to adopt on 29 September, which build on the work of the Task Force and are closely related with its discussions'[109].

However, until the release of the Commission's proposals and the Task Force report, no credit was given to the former. The European Council conclusions (17 June and 16 September, 2011) only 'validated' the VRTF proposals and did not mention the Commission´s proposals. Also Ecofin meetings in this period credited the Task Force for the economic governance reforms, even when the proposals had originated with the Commission´s proposals in May and June.

[106] Leterme, Y. 'The Eurocrises: More Europe is Needed- on the increasing importance of the EU for the economic policy of its Member States', speech given at CEPS, Brussels, 21 September 2011.
[107] 'Restoring European Competitiveness and Growth', speech by Herman Van Rompuy at the Lisbon Council, 15 November 2011.
[108] COM (2010) 524, 29 September 2010.
[109] PCE 195/10 'Remarks by Herman Van Rompuy, following the fifth meeting of the Task Force on Economic Governance', 27 September 2010.

Finally, the European Council summit on 29 October 2010 endorsed the Task Force report and called for '(...) a "fast track" approach to be followed on the adoption of secondary legislation'[110], a decision to be agreed upon only by the legislative institutions involved and not supposedly by the European Council[111].

According to Chang (2013.1:256) 'the Commission's authority as agenda setter was stretched almost beyond recognition as its proposals seemingly served as a rough draft for the Van Rompuy Task Force's proposals'.

Also the joint letter of Chancellor Merkel and President Sarkozy sent on 6 May 2010 to the Presidents of the European Council and the European Commission, clearly stating their preferences for the euro area economic reform and clarifying the Task Force authority over the Commission, meant in Chang's words a 're-intergovernmentalization of policy' and 'confirmed the weakness of the Community method'.

The pre-legislative phase of the Six-Pack, from a Principal-Agent perspective, and according to Chang's view, can be viewed as a contract where multiple principals - Member States acting in the European Council- delegate functions to their agents - the Commission and the Task Force- to propose economic and budgetary reforms. The set up of the Task Force, besides removing the information asymmetry (in favour of the

[110] European Council Summit conclusions 28-29 October 2010, pp. 1.

[111] According to Annex XX of the 'Joint Declaration of the European Parliament, the Council and the Commission' (13 June 2007) on practical arrangements for the codecision procedure (Article 251 of the EC Treaty) '11. The institutions shall cooperate in good faith with a view to reconciling their positions as far as possible so that, wherever possible, acts can be adopted at first reading'.

Commission) should be understood as a 'police patrol' ensuring that the other agent does not shirk, which means that it does not deviate from the principal's preferences.

At first glance, this perspective seems to hold. Although the Six-Pack policy output seems to have not been significantly altered by the set up of the Task Force, as most of the measures overlapped, the policy process was singular in that it represented the first important platform for the new elected President of the European Council. Presiding the Task Force, Van Rompuy had 'an opportunity in the new landscape created by the crisis to demonstrate what European Council-centred government really means' (Ludlow 2010.1:58).

Task Forces are not a novelty in the EU policy-making. At the Hannover Council in 1988, Jacques Delors was asked to organize and chair a Task Force made up of central bank governors in preparation for the setting of the Monetary Union. More recently, in November 2008, the President of the European Commission Barroso mandated a high-level group chaired by Jacques de Larosière on how to strengthen European supervisory arrangements[112]. This time, however, the Task Force was a 'self-referential group of individuals who first deliberate in one format and then change hats to give those same deliberations a political *imprimatur*' (Leipold, 2010:2).

In processes of agenda setting it may be difficult to assert which actor influenced the original Commission´s proposal. As Princen (2007) argues, it is generally impossible to

[112] The Larosière report was a blueprint for the legislative package proposed by the Commission in September 2009.

identify one ultimate source of a proposal, as the Commission cannot ignore Member States 'preferences. In fact, some of the key elements envisaged, both in the Task Force report and in the Commission´s proposals, were longstanding calls of the latter and perceived as necessary by Member States.

The need to reinforce economic policy coordination was already highlighted in the conclusions of the 2002 Barcelona European Council summit, where the Commission was invited to present proposals accordingly. In its communication of November 2002, the Commission reinforced the need for fiscal policy coordination, once, and after an 'impressive budgetary consolidation' in the years preceding the launch of the euro and the completion of the Maastricht convergence criteria, 'the process of budgetary consolidation has ground to a halt since 1999, and in some cases has reversed'[113].

The proposals then presented by the Commission (within the existing framework of the Treaty provisions and the Stability and Growth Pact Regulations) already pointed to, among others, the operationalization of the debt criterion and the issuance of early warnings by the Commission directly to Member States without recourse to a Council vote[114].

The Commission's communication also signalled that 'Member States have not played their role in exerting peer pressure on countries that miss budgetary targets by a wide

[113] European Commission 'Strengthening the Coordination of Budgetary Policies'. COM(2002)668, 27 November 2002.

[114] The operationalization of the debt criterion is one of the key points of the Six-Pack proposals. The issuance of early warning by the Commission directly to Member States is part of Article 121(4), amended by the Lisbon Treaty.

margin via the enforcement mechanisms of the Stability and Growth Pact'. As such, Member States were invited to reaffirm their political commitment to the Pact.

The Council broadly welcomed the Commission communication as a valuable contribution to the debate on strengthening of budgetary policy co-ordination, but the key policy architecture on fiscal coordination remained unchanged[115].

Later, in 2004, a new proposal by the Commission referred to the need of a 'European Semester' and reaffirmed, among others, the need to place more focus on debt developments[116].

One possible explanation for the lack of willingness to change the Economic and Monetary Union framework, namely the Stability and Growth Pact, rests in the fact that '(…) in 2003 it was no longer seen as possible for the Commission to strengthen the Stability and Growth Pact since it had just been watered down by the will of the larger Member State, the two largest Member States' (expert 3). Also, for the discussion of prominent issues, such as the macroeconomic imbalances:

> 'The background is the analysis done in the DG Ecfin about '10 years of EMU'. So, at that time the idea, I mean...only then we had a kind of a sufficient analytical basis, a time series, to do a serious assessment (...) I believe that if there were proposals in the sense of this Six-Pack before the crisis, they would never passed

[115] Ecofin meeting, February 2003.

[116] European Commission 'Strengthening Economic Governance and Clarifying the Implementation of the Stability and Growth Pact'. COM(2004)581, 3 September 2004.In this Communication, the Commission considered several elements for strengthening the SGP: (i) placing more focus on debt and sustainability in the surveillance of budgetary positions; (ii) allowing for more country-specific circumstances in defining the medium-term objectives of "close to balance or in surplus"; (iii) considering economic circumstances and developments in the implementation of the Excessive Deficit Procedure; (iv) ensuring earlier actions to correct inadequate budgetary developments.

in the Council, because this pack of legislation gives much more power to Brussels' (expert 3) [117].

Prior to the burst of the sovereign and debt crisis, the willingness of Member States not to move from the status quo, maybe accountable to Germany that 'was an insurmountable wall to any change of the Economic and Monetary Union' (expert 7).

In fact, although the weaknesses of the Economic and Monetary Union were already identified by the Commission since the early 2000s, only the trigger of a potential Greek's default on its sovereign debt in early 2010 led to a consensus among Member States on the need to reform EU´s economic governance and reaffirm state´s commitments to the Stability and Growth Pact, namely Germany, that 'turned from the status quo to be the pivot of change' (expert 7).

Both the Six-Pack proposals and the Task Force report expressed the elements of change. However, the similarity of their contents has different interpretations. While some of the interviewed note that 'the Commission participated actively and constructively in the Von Rompuy Task Force. Most of the work of the Task Force was based on written contributions from the Commission (...) the technical work was carried out by the Sherpas (...) from time to time there were top level meetings just to give the political agreement' (expert 2), '(...) it was nothing more than a political, symbolic message' (expert 9), another interviewed has a different perception of the facts: 'all this scheme was built by the Council, the European Commission just executed the plan and acted as a mere secretariat' (expert 10).

[117] DG Economic and Financial Affairs (2008) 'EMU@10-Successes and Challenges After Ten Years of Economic and Monetary Union'. European Economy 2.

Either being a competitive or a cooperative work, these Task Force meetings were a clear way to identify (although diverging) Member State's preferences.

Two institutional perspectives also diverge in this issue. As explained by one of the interviewed, the work developed by the Commission in cooperation with the Task Force was: 'a very excellent forum to see among the various ideas that were around, which ones had the possibility of going forward and which ones would never go forward (...) there is an interest in the Commission side for this work in team, that the Council tests in a informal manner, with the Member States saying what the red lines are, which proposals can go forward' (expert 3).

Another reading of the facts is much more critical of the Commission:

> 'that was completely subordinated to the Council (...) first the Commission asks theoretically to the Council, asks to Mr Schäuble and Canceller Merkel if they agree with a specific issue, then the Commission takes some soundings to more or less disguise the obvious: if they agree, the Commission makes a proposal (...) the Commission´s proposals are a Task Force´s assignment work, it is completely unacceptable' (expert 10).

In sum, the set up of the Task Force might have been a political initiative where the guidelines of the economic governance reform aimed to gather a broad consensus among European finance ministers and the President of the European Central Bank, to be translated, afterwards, into legislative proposals by the Commission (experts 2,3,7 and 8) and 'to make Member States more mindful of their responsibilities' (Ludlow, 2010.1:14).

However, the European Council did not limit itself to point out economic governance reform general guidelines; rather, it was able to offer detailed guidance lines through the set up of the Task Force. Furthermore, the constant intervention of member states' representatives, namely from Germany and France, does not exactly help to conform the image of an impartial Commission.

Kreppel and Oztas (2013:6) make a differentiation between the Commission's as a technical and a political agenda setter. While in the former situation the Commission acts as an agent of other political actors like the European Council, the Council or the European Parliament; acting as a political agenda setter already implies that 'the Commission can effectively shape the policy debate in Europe and push its own priorities and preferences'.

Drawing on Kreppel and Oztas concepts, it may be concluded that the Commission acted as a technical agenda setter, since the Commission´s formal agenda setting was shared with the European Council and constrained by the setting-up of the Van Rompuy Task Force. However, in the end, the Commission was able to successfully pursue its general policy priorities already claimed in 2002 and 2004.

In the next section, the formal policy-making phase of the Six-Pack, under the codecision procedure, is analysed. The leading role does not pertain to the Commission, but to the Council and the European Parliament, which had the opportunity to legislate for the first time in the coordination of budgetary and

economic policies. According to Larsson and Trondal (2005:11) the role of the Commission in this formal decision-making phase 'is assumed to be less active and primarily aimed at defending its original proposal', which, following the close work with the Task Fore, already included Member States preferences (and perhaps not the Commission´s preferences).

As Pierson (1996) points out 'the Commission´s power is far from unlimited; the Commission cannot expect to pass proposals that ignore the preferences of Member States'.

Notwithstanding this dual policy process, the Commission proposals (and not the Task Force report) formed the basis of the Six-Pack formal legislative procedures and the trialogue meetings between the Council and the European Parliament to be discussed in the following section.

IV CASE STUDY: THE SIX-PACK

Although the set up of the Van Rompuy Task Force may have limited the Commission's ambitions in its proposals of the Six-Pack legislation, the Task Force influenced more the Six-Pack policy process than its outcomes as the European Parliament was able to go further than the proposals tabled by the European Commission in respect to greater discipline and transparency, leading to the strengthening of the Community method.

MEP's involvement in the economic governance reform dated back to the draft European Parliament own initiative report on 'Improving the economic governance and stability framework of the Union, in particular in the euro area', also known as the 'Feio Report'. In October 2010 the European Parliament adopted, by a large majority, the resolution with recommendations to the Commission on improving the economic governance '(...) to the extent that those recommendations are not yet addressed by the Commission's legislative proposals of 29 September 2010 on economic governance (...)'[118]. This resolution already set out the European Parliament's path and priorities the Parliament wished to take in respect to economic governance reform, which 'in some cases, goes further than the Commission proposals presented last week'[119].

Drawing on the Principal-Agent model and the 'Ear Instrument', this section analysis intra and inter-institutional negotiations that led to the Six-Pack approval and tests the

[118] Named after its Rapporteur, Diogo Feio (EPP, Portugal). T7-0377/2010. There were 254 amendments to this resolution, made by the Rapporteurs and shadow Rapporteurs of the Six-Pack. It was voted in the Econ committee on 5 October and the vote in Parliament took place on 20 October. Available on: http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2010/2099(INL)
[119] Diogo Feio, Econ Press Release (05.10.10) 'MEPs Take Stance on Economic Governance'.

propositions whether the Rapporteurs were the actors that most influenced the Six-Pack policy outcomes and whether the Commission was already counting on the European Parliament to amend its original draft in such a way as to meet Commission´s preferences.

Building on Arts and Verschuren (1999:413) distinction between power 'as the general ability to influence', and influence 'as the realisation of a single effect', the concept of 'influence' is viewed as the modification of one actor´s behaviour, which seeks to obtain a specific policy outcome by that of another actor.

Following the premises developed by the Principal-Agent model, this framework offers no specific criteria for determining one Principal-Agent relationship (Pollack, 2007). In the specific case of early agreements where different actors may influence policy outcomes, different alternative relationships may be conceived. To circumvent this caveat, and departing from empirical grounds rather than an *a priori* choice, the Six-Pack legislative process analysis focus in the European Party Groups (namely within the Economic and Monetary Affairs committee-Econ) acting as principals and the Parliamentary Rapporteurs (and shadow Rapporteurs) acting as agents.

A functional pattern of delegation to the Rapporteurs based on policy specialization and efficient division of labour provides support for the transaction-cost Principal-Agent hypothesis. However, when Party Groups delegate negotiation authority to the Rapporteurs, their informational advantage vis-à-vis other actors, may be used to pursue their own political preferences, allowing them to shirk.

To avoid agency losses ex-ante control mechanisms may be viewed as the ability of

Party Groups (namely Party Group Coordinators acting within the Committees) to choose the team to negotiate the Six-Pack (Rapporteurs and Shadow Rapporteurs), while ex-post controls may be translated in the Committee's ability to add amendments and vote the Rapporteurs report or, in a later stage, its rejection in plenary by MEPs.

Considering the fact that the Six-Pack was approved at first reading following hard-fought negotiations along six month trialogues, control mechanisms by the principals in the form of monitoring the agent´s legislative work, could have been a costly and hard process considering the agent´s information advantages of both the dossier and the other relais actors´ preferences. One way to circumvent this information asymmetry is to consider shadow Rapporteurs, representing political parties different from those of the Rapporteurs, as a police-patrol mechanism.

Being approved at first reading under the codecision procedure, most of the Six-Pack informal negotiations were held in 'trialogues', shifting the bargaining power from the Council and the European Parliament, to the '*relais*' actors, the Council Presidency and the Rapporteur. As such, a dual Principal-Agent model could have been envisioned, including a relationship between the Council acting as a principal and the Council Presidency acting as an agent, where the two principals (the Council and the Parliament) most effective control mechanism would have been the ability to reject the agreement reached by the agents. However, the Presidency Chair acting as a broker is an informal position, which is not regulated through procedures of ex-ante or ex-post control (Tallberg, 2004).

Furthermore, and although it may be difficult to measure abstract variables such as actor´s preferences, the Council Presidency's motivation for shirking was different from that of the Rapporteurs, as Member States' preferences through the participation of the 27 finance ministers in the Van Rompuy Task Force, had already been clarified. Also Member States' preferences were often expressed through a 'communicative' discourse, in speeches or interviews to the press, which 'simultaneously signal(ed) their positions to fellow policymakers' (Crespy and Schmidt, 2012:357).

By contrast, the near two thousand amendments included in the Rapporteurs' files, clearly showed the Parliament´s political willingness to influence policy outcomes and strengthen the original Commission's proposals presented in September 2010.

4.1 PARTY GROUPS AS PRINCIPALS AND RAPPORTEURS AS AGENTS

Although the Council, formally representing Member State interests, still remains the dominant legislative institution as it benefits from being closer to the status quo (Costello and Thomson, 2013; Farrell and Héritier, 2004, 2007), a dense flow of technical and political inter-institutional information, has equipped the European Parliament with stronger bargaining power (Brandsma, 2013; Burns 2013). According to the authors, the European Parliament has the most privileged position in terms of gathering information from the Council and the Commission's preferences.

In fact the European Parliament has been able to reinforce its institutional position through the adoption of 'Rules of Procedure' and 'Framework Agreements'. Although they are informal agreements, not having, as such, a binding effect, they define inter-

institutional political responsibilities and lay down rules for the flow of information between them, which prove to be most favourable to the European Parliament.

Covering all the stages of the legislative process, most inter-institutional arrangements concern political rather than technical information, this enables the Parliament to know in advance the preferences of other actors and influence policy outcomes[120].

Early agreements have led to a shift of actor's power within the European Parliament and the Council, concerning the way in which amendments to the Commission's proposals are presented/discussed, and compromises are reached between the Parliament and the Council. In particular, Rapporteurs reinforced their position as key negotiators within the Parliament.

The informal negotiations with the Council enabled the Rapporteurs to act as agenda setters in negotiations, being this power reinforced if they are part of large political groups within the Parliament (Farrell and Héritier, 2004:1200).

Also the rotating Council Presidency, another key actor in defining, discussing and deciding on amendments, has seen its role reinforced vis-à-vis other Member States. Early agreements offer a larger room of manoeuvre for the Presidency to set the

[120] Already at the first stages of the legislative process during the Parliament committee's deliberations, the committee asks the 'Commission and the Council to keep it informed of the progress of that proposal in the Council and its working parties and in particular to inform it of any emerging compromises which will substantially amend the original proposal' (Rule of Procedure 39.2), as well as their views on all proposed amendments before the committee votes on a legislative report and forwards it to plenary (Rule of Procedure 54). Receiving political information from both the Commission and the Council enables the European Parliament to adjust in advance its own proposed amendments, getting this way a substantial bargaining power.

legislative agenda for the six months in office, as dossiers can be concluded in a shorter period of time.

However, being aware of the opportunity costs faced by the Council if the Six-Pack legislative process would extend until the Conciliation Committee negotiations, and being aware of the pressure made by Member States to conclude the Six-Pack negotiations at first reading, Rapporteurs were equipped with a stronger bargaining advantage in trialogues, being able to extract more concessions from the Council (expert 6).

A comprehensive analysis of the Six-Pack Procedure follows, focussing on the informal and formal negotiations and highlighting the most contentious amendments.

4.2 THE SIX-PACK FORMAL DECISION-MAKING

On 16 November 2011, the European Parliament and the Council adopted a legislative package made up of six pieces of legislation; almost fourteen months after the Commission submitted its proposals simultaneously to the two institutions.

Four of the legislative measures deal with fiscal issues including a wide-ranging reform of the Stability and Growth Pact. They are aimed at enhancing the surveillance of fiscal policies, introducing provisions on national fiscal frameworks, and applying enforcement measures for non-compliant Member States more consistently and at an earlier stage. The remaining two proposals target macroeconomic imbalances within

the EU. They are aimed to broaden the surveillance of economic policies, introducing the possibility of fines on Member States found to be in 'excess imbalance position'[121].

Except for Council Regulation 1177/2011 (Implementation of the Excessive Debt Procedure), which is based upon Article 126(14) and was adopted through a special legislative procedure, all other regulations, which constitute the Six-Pack package, were approved under codecision at first reading.

This fact gave the European Parliament an opportunity to take part, for the first time, in the definition of economic governance and play an active role. Although the above-mentioned Council Regulation 1177/2011 (as well as Directive 2011/85) was adopted under the consultation procedure, the European Parliament insisted from the start that the package would be negotiated as just one piece of legislation.

The urgency of the EU response to the evolving sovereign debt crisis, translated mainly in the recourse to secondary legislation following the Community method, although, and according to Hodson (2012), a narrow interpretation of Article 121 TFEU would limit codecision to only those areas covered by the article.

Apart from the introduction of Article 136(3) TFEU, the Treaties have not been amended.

As Palmstorfer (2013:2) notes 'from an efficiency perspective, it seemed reasonable to adopt these six acts and leave the Treaty unaltered'.

[121] Regulation (EU) 1175/2011- Surveillance of budgetary positions and coordination of economic policies; Council Regulation (EU) 1177/2011- Implementation of excessive debt procedure; Regulation (EU) 1176/2011- Prevention and correction of macroeconomic imbalances; Regulation (EU) 1174/2011- Enforcement measures to correct excessive macroeconomic imbalances in the euro-area; Regulation (EU) 1173/2011- Effective enforcement of budgetary surveillance in euro area and Directive 2011/85/EU- Requirements for budgetary frameworks of the Member States.

The legislative process started with the responsible Parliamentary committee (Economic and Monetary Affairs committee) being named along with other committees, which are asked for an opinion[122]. Within the Parliamentary committee, Party Group's coordinators entrusted the drafting of the reports to six Rapporteurs (chosen by a weighting system representative of the political groupings within the committee). Other political groups appointed fourteen 'shadow Rapporteurs', whose work reflects the position of the political group and also monitors the Rapporteur's work (Annex V). Rapporteurs manage the negotiations inside the European Parliament and between the Parliament and the Council. They are also responsible for the draft of the Parliament's report at every stage of the procedure.

On 19 April 2011, the Six-Pack reports were adopted by the Economic and Monetary Affairs committee and placed on the agenda of the plenary session, which took place on 22/23 June 2011, on the eve of the European Council summit.

In the plenary session the European Parliament reached its position, adopting only part of the compromise texts agreed with the Hungarian Presidency and postponing the final vote on the legislative resolutions. Although the Hungarian Presidency was given a mandate by the European Council to reach political agreement with Parliament by the end of June (as the adoption of the governance package was seen as fundamental to the comprehensive response to the crisis) the final vote was postponed to

[122] In all five Regulations and the Directive, the committee responsible was the Economic and Monetary Affairs committee. The Budgets committee and the Employment and Social Affairs committee were asked for opinion (European Parliament, Rules of Procedure, 43). However, during the legislative process, the Budgets committee decided not to give an opinion.

September, as the European Parliament hoped to achieve a compromise with the Council by July 2011[123].

In fact, the text approved on 23 June did not include Ecofin Council´s proposals made on 20 June 2011 'deemed insufficient by the Rapporteurs' and presented too late in plenary[124].

After lengthy negotiations with Member States' representatives, the European Parliament approved the new Six-Pack legislation on 28 September 2011, while the Council endorsed it on 8 October. One week later the Six-Pack was signed by the European Parliament and the Council.

4.3 THE SIX-PACK INFORMAL DECISION-MAKING

In the course of the plenary debate (23 June 2011), ahead of the voting, Commissioner Olli Rehn explained the Commission´s position on the amendments tabled, and Minister Enikő Győri, on behalf of the Hungarian Presidency of the Council, summarized the work done so far:

> '(...) after the adoption of a general approach by the Council in March, we got down to business immediately, engaging in intense trialogue negotiations with Parliament and the Commission. The three institutions have done immense work. The initial position of Parliament carried approximately 2000 amendments. By now, we have managed to reduce the outstanding issues to one single major issue and some technicalities. I am convinced that the text we have on the table

[123] European Parliament, Press Release 23 June 2011, 'Economic Governance: Parliament seeks its position ahead of European Council'.
[124] *Ibid*

now is stronger and more suited to preventing future crises'[125].

Point 7 of the 'Joint Declaration on Practical Arrangements for the Codecision Procedure' spells out the central role of trialogues: 'Cooperation between the three institutions in the context of codecision often takes the form of tripartite meetings. This trialogue system has demonstrated its vitality and flexibility increasing significantly the possibilities for agreement at the first or second reading stages, as well as contributing to the preparation of the Conciliation Committee' [126].

Based on the Commission´s proposals, the European Parliament and the Council enter into informal negotiations or 'trialogues' over a legislative outcome. If a compromise is reached, the Parliament includes the Council´s positions in its own amendments. These amendments are voted at first reading requiring a simple majority of votes of Members of Parliament (MEPs) attending plenary. Afterwards, the Council, using qualified majority voting, accepts the Commission's proposal as amended by the Parliament, ending the legislative process.

As mentioned earlier, the purpose of these ad-hoc tripartite meetings is to reach an early agreement on a package of amendments acceptable to the Council and the European Parliament, leading to deals, which have been referred to as 'fast track legislation' and an informalisation of the legislative procedure (Bunyan, 2007)[127].

[125] Debate in Parliament 22 June 2011. Available at: http://www.europarl.europa.eu/sides/getDoc.do?secondRef=TOC&language=EN&reference=20110622&type=CRE

[126] Council, Parliament and Commission (2007) 'Joint Declaration for Codecision Procedure (Article 251 of the EC Treaty)', Official Journal 2007/C 145/02.

[127] According to Héritier (2012) early agreements represented 72 per cent of all acts passed in the 2004-09 Parliamentary term.

Trialogue agreements, reached behind closed doors, are informal and '*ad referendum*', which means that they will have to be approved by the formal codecision procedures. They take place before the Parliament has issued its formal opinion and before the Council has adopted its common position on the Commission's proposal[128].

However, as Toshkov and Rasmussen (2012:4) note: 'deals reached are subsequently presented to the full legislative bodies of the Council and the European Parliament but in such a way that it is practically impossible to amend them, which puts the average members of the legislative bodies under a severe pressure to accept what is on the table unless they prefer no legislation at all'.

In fact, as Obholzer and Reh (2012:3) note: 'plenary acts as a mere rubberstamp' as it is 'impossible' for MEPs in plenary to be informed of all dossiers, 'MEPs who followed more closely the dossiers, inform the others' (expert 9)[129].

Actors within and outside European Parliament have already expressed some concerns about early agreements lack of transparency and open debate, as expressed by Martin Shultz in his inaugural speech in 2012 as President of the EU: 'If our Parliament is to become more visible, if greater attention is to be paid to its views, a rethink on the issue of first-reading agreements is also essential'[130].

[128] According to the 'Code of Conduct for Negotiating Codecision Files' point 2: 'the possibility of entering into negotiations with the Council shall be presented by the Rapporteur to the full committee and the decision to pursue such a course of action shall be taken either by broad consensus or, if necessary, by a vote'.

[129] According to VoteWatch (2012) in the 2009-14 Parliamentary term, 77 per cent of codecision files had been agreed before the text was tabled in plenary.

[130] Available at http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/speeches/sp-2012/sp-2012-january/

In fact, as the debate in Parliament over the Six-Pack regulations started in plenary (22 June 2011), there were complaints from two political groups arguing that Ecofin had made amendments to the compromises that had been negotiated only two days before and '(…) as MEPs we have not had sufficient time to have a proper look at these. The necessary translations were not available, either. We see this as unacceptable pressure being exerted by the Council (…)'[131].

From a functionalist perspective, the increase of early agreements may be largely explained by lower transaction costs of information collection and bargaining, which are beneficial to both the Council and the European Parliament (Héritier, 2012). However Häge and Kaeding (2007:14) note that the 'Council's opportunity costs regarding conciliation negotiations are generally higher than those of the European Parliament'. As compared to the European Parliament, the Council has only limited resources, in terms of time and specialized staff, to deal with the intense workload coming from extensive legislative procedures (Farrell and Héritier, 2003; Häge and Kaeding, 2007)[132].

Indeed, early agreements allow the legislative processes under codecision to be concluded at first reading, bypassing the lengthy negotiations of second reading and

[131] Debates in Parliament (2011) Jürgen Klute, on behalf of the GUE/NGL Group.

[132] COREPER I is responsible for most of the policies areas under codecision and represents the Council in most of the negotiations, which means that most of the time COREPER has to deal with different codecision files while its corresponding actor in the European Parliament, the relevant committee, can concentrate in just one specific area (Farrell and Héritier, 2003).

conciliation, which results in time savings and efficiency gains as legislation is adopted faster (Bunyan, 2007; Toshkov and Rasmussen, 2012).

According to Rasmussen, one of the main reasons to reach early agreements is the nature of the relationship between the co-legislators, how close it is and if they belong to the same political group. The author notes that when there is 'political coherence' between the two key negotiators, the Rapporteur and the Council Presidency, it is easier to reach a conclusion at first reading, where 'the parliamentary Rapporteur can take advantage of having a relatively broad scope to enter into compromises on behalf of the European Parliament that fit his/her preferences' (Rasmussen, 2007:2) [133].

The involvement of EU ministers in the Council negotiations towards the adoption of a legal act is not, most of the times, a direct one. Rather they 'rubber-stamp' the agreement reached by working parties and committees composed of officials representing their national governments (Häge, 2011:4, expert 2). However, the involvement of the European Parliament is likely to generate more public and political attention, increasing the incentives for bureaucrats to refer decisions on legislative dossiers to ministers, leading to the politicization of Council decision-making[134].

Farrell and Héritier (2004) name those who conduct the negotiations in the trialogues

[133] Political coherence between the European Parliament Rapporteur and the Council Presidency is measured by whether the main governing party of the country holding the Presidency at the first reading stage belongs to the same Parliament Party Group as the Parliament Rapporteur (Rasmussen, 2007:9).

[134] Empirical studies conducted by Häge and Naurin (2013) on the effects of the codecision procedure on decision-making in the Council, have shown that the politicization of Council decision-making, has not increased in the codecision procedure, as compared to consultation procedure. The authors find that trialogue negotiations in early agreements are responsible for this 'vertical power shift from ministers to bureaucrats'. Widening the practice on these informal practices may, in fact, weaken the positive effect of the European Parliament empowerment on Council politicization, as stated by Häge (2011).

as '*relais* actors'. Part of the *relais actors* representing the Council are the deputy permanent representative (COREPER) and the working group chairman of the rotating Presidency. Representing the European Parliament is the Rapporteur, the chairman of the relevant committee and shadow Rapporteurs from other political groups; and a Director or director-general represents the Commission.

Relais actors benefit from an informational advantage vis-à-vis other actors, from their institution, that do not take part in these negotiations. As such, and according to the authors, these *relais* actors may use this informational advantage to pursue their own particular policy interests.

The degree of the relais actors influence on legislative policy outcomes in early agreements is not consensual. While Farrell and Héritier (2004) speak of a 'disproportionate' influence, empirical studies developed by Burns (2013) and Häge and Naurin (2013) find that both Rapporteur's and Council Presidency's influence is weak. These key negotiators do not act as 'runaway agents', but as representatives of their principal constituencies, the European Parliament and the Council (Burns et al (2013:5).

While intergovernmental bargaining literature does not attribute a strong influence of the Presidency chair to policy outcomes (Garrett, 1992; Moravcsik, 1998), Tallberg (2004) argues that the Council Presidency enables the Government in office to influence policy outcomes due to its informational and procedural resources. Also, by acting as a broker who seeks to achieve convergence among governments with different preferences, the Council Presidency may play an active role by unlocking

conflicting negotiations.

This role of facilitating collective agreements is due to two main delegation functions assigned to the Council Presidency. Firstly, it has privileged access to information that is unavailable to the negotiating parties. Through bilateral negotiations in which the General Secretariat of the Council assists the Presidency, it gains access to Member States 'preferences and resistance points' (Tallberg, 2004:1001). Secondly, as agenda manager it has a deep knowledge of the dossiers involved in the negotiations, which enables the Presidency to structure the negotiating process, although its discretion may be limited by formal rules and informal norms (Tallberg, 2004).

4.4 THE SIX-PACK PROPOSALS

The six main reforms to the economic governance and major innovations set out to:

A. Strengthening the Stability and Growth Pact

- Reinforcing of the preventive arm of the Stability and Growth Pact (Regulation 1175/2011, amending Council Regulation 1466/1997)

The fiscal discipline and the preventive rules enshrined in Council Regulation 1466/1997, namely the goal to achieve a budget position 'close to balance or in surplus' (before the 2005 Pact's revision) or the Medium-Term Objective (MTO) set for each country, proved to be insufficient to deter government deficits[135].

[135] The aim of the Medium Term-Objective is threefold: (i) to preserve a safety margin with respect to the three per cent of GDP reference value for the government deficit; (ii) to ensure rapid progress towards sustainable public finances and prudent debt levels; and (iii) to allow room for budgetary manoeuvre, in particular so as to accommodate public investment needs.

The obligation to achieve a Medium-Term Objective for each country and the definition of the adjustment speed to reach that objective is maintained[136]. However, in accordance to Regulation 1175/2011, progress towards the Medium-Term Objective will be assessed in a broader framework (overall assessment) in which, although the change in the structural balance remains the reference point, expenditure growth will also be taken into account. Expenditure growth should be linked to the mid-term GDP growth rate, so that any extra expenditure is financed by either expenditure cuts or an increase in revenue[137].

Any significant deviation from the adjustment path towards the attainment of the medium-term objective specific to each country triggers a warning by the Commission to the Member State[138] and, if appropriate, subsequent sanctions may apply to euro area Member States[139].

Moreover, defining quantitatively what a 'significant deviation' from the Medium-Term Objective ensures a stricter application of the fiscal rules or the adjustment path towards it means[140].

This regulation also introduces the European Semester and the ensuing Economic dialogue.

[136] The benchmark is an annual improvement in the structural balance amounting to 0.5 per cent of GDP, or more than 0.5 per cent of GDP for countries whose public debt exceeds 60 per cent of GDP or which present greater risks to their debt sustainability (CR (EC) 1055/2005 Article (2 a).
[137] Regulation (EU) 1175/2011, Article 5(1).
[138] Regulation (EU) 1175/2011, Article 6(2).
[139] Regulation (EU) 1173/2011, Article 4(1). The enforcement mechanism is based on Article 136 TFEU.
[140] Regulation (EU) 1175/2011 Article 6(3.a,b) the deviation when assessing the structural balance is significant if it is at least 0.5 per cent of GDP over a given year, or at least 0.25 per cent of GDP on average over two consecutive years. When assessing expenditure developments the deviation is significant if it has an impact on the government balance of at least 0.5 per cent of GDP in a single year or cumulatively in two consecutive years.

- Reinforcing of the corrective arm of the Stability and Growth Pact (Council Regulation 1177/2011, amending Council Regulation 1467/1997)

The purpose of the corrective arm of the Stability and Growth Pact is to rectify policies, which put fiscal sustainability at risk. Non-compliance with the Maastricht criteria (i.e. deficits larger than three per cent of GDP and/or a debt level exceeding 60 per cent of GDP) can trigger an Excessive Deficit Procedure (EDP). Member States then have to take effective action within a certain time period regarding recommendations prepared by the Commission and decided by the Council.

Under Council Regulation 1467/1997, sanctions and fines were only applicable with regard to the budget deficit criterion (below three per cent of GDP). Now the general government debt criterion (below 60 per cent of GDP) is operationalized, supplementing the deficit criteria[141]. In fact, the high debt ratios reached in many Member States before the crisis, proved that the existing Excess Deficit Procedure was not effective in curbing debt developments.

Also the pace of convergence to achieve the debt ratio reference value is now considered. Member States whose overall public debt exceeds 60 per cent of GDP are required to take steps to reduce this debt at a predefined pace of one-twentieth

[141] The debt criterion was already envisaged in the Treaty of the EU (Article 126). If government debt exceeds 60 per cent of GDP, the debt ratio must decline sufficiently and approach the reference value at a satisfactory pace. However, there was no clarification of the decline being considered 'sufficient' as well as the 'satisfactory pace', which and according to De Prest et al (2012) explains why the debt criterion remained unworkable.

annually over a period of three years, even if their deficit is below three per cent of GDP[142].

New sanctions and fines for euro area countries (Regulation 1173/2011) were also introduced at an earlier stage and using a graduated approach. Already when the Council has launched an Excessive Deficit Procedure (EDP) against a Member State, a non-interest bearing deposit of 0.2 per cent of GDP may be imposed on that country. If the Council's recommendation for correcting the deficit is not followed, a fine will be imposed. Further noncompliance would result in the sanction being stepped up.

B. Establishing National Fiscal Frameworks

A new directive on requirements for the budgetary framework of the Member States complements the reform of the Stability and Growth Pact.

Since fiscal policy-making is a Member State's competence, it is essential that the objectives of the Pact be reflected in the national budgetary frameworks (i.e. the set of elements that form the basis of national fiscal governance like national fiscal rules and budgetary procedures).

The directive sets out minimum requirements for their quality and for consistency with the common framework of the EU.

[142] Council Regulation 1177/2011, Article (2b).

C. Preventing and Correcting Macroeconomic Imbalances

A New Regulation on the prevention and correction of macroeconomic imbalances (Regulation 1176/2011).

In order to prevent, detect and correct harmful macroeconomic imbalances and competitiveness gaps in the EU that occurred over the past decade, the economic surveillance and policy coordination, which had focused manly on fiscal policy discipline, had to be extended to encompass a new formal surveillance framework.

The new mechanism for the prevention and correction of excessive macroeconomic imbalances, is made up of two regulations[143] which create an 'Excessive Imbalance Procedure', based on Article 121(6) of the Treaty, and introduce the possibility of fines being imposed on Member States found to be in excessive imbalance position and repeatedly failing to comply with recommendations.

Imbalances will be dealt with in phases: first, an alert mechanism for the early detection of imbalances will be assessed using a 'scoreboard' consisting of a set of indicators covering the major sources of macroeconomic imbalances. The aim of the scoreboard is to trigger country-specific in-depth studies. In a subsequent phase, If the imbalance is considered to be excessive, the Member State concerned could be subject to an 'Excessive Imbalance Procedure' (EIP), and would be called on to adopt a corrective action plan within a specific timeframe.

[143] Regulation (EU) 1176/2011 on the prevention and correction of macroeconomic imbalances applies to all 27 EU countries while Regulation (EU) 1174/2011 on the enforcement measures to correct excessive macroeconomic imbalances in the euro area, only applies to euro area countries.

If the Council decides that the Member State concerned has taken appropriate action, the procedure will be held in abeyance, and can be closed if the Council concludes that the imbalance is no longer considered to be excessive.

Also a new enforcement mechanism is established in a two-step approach. An interest bearing deposit can be imposed after one failure to comply with the recommended corrective action. After a second compliance failure, the interest bearing deposit will lead to an annual fine (up to one per cent of GDP)[144]. These decisions will be adopted through the 'reverse majority' rule (see *infra* section 4.5.5.1).

The prevention and correction of macroeconomic imbalances addresses one of the most 'serious and bitter lessons' brought about by the crisis, namely that 'fiscal discipline, coupled with low and stable inflation, is not sufficient to guarantee overall macro-financial stability' (Buti and Larch, 2010).

D. Strengthening Enforcement

- A New Regulation to strengthen enforcement of budgetary surveillance in the euro area (Regulation 1173/2011)

Changes in both the preventive and corrective arm of the Stability and Growth Pact are backed up by a set of gradual financial sanctions for euro-area Member States. As to the preventive arm, an interest bearing deposit amounting to 0.2 per cent of GDP should be the consequence of significant deviations from prudent fiscal policy making. In the corrective arm, a non-interest bearing deposit would apply upon a decision to

[144] Regulation (EU) 1174/2011, Article 3.

place a country in excessive deficit. This would be converted into a fine in the event of non-compliance with the recommendation to correct the excessive deficit.

- A New Regulation on enforcement measures to correct excessive macroeconomic imbalances (Regulation 1174/2011)

If a euro-area Member State fails to act on Council recommendations to address excessive imbalances, an interesting-bearing deposit can be imposed. This deposit can be turned into a fine after continued non-compliance

4.5 SIX-PACK NEGOTIATIONS

One of the empirical measures of European Parliament´s power in the legislative processes is amendment analysis made by the European Parliament to the Commission´s proposals (Häge and Kaeding, 2007; Kreppel, 1999). However, as Hix and Høyland (2013:6) note 'a legislative amendment may come from the Parliament, but that does not mean that the Parliament was the source of the amendment'. Nevertheless, European Parliament's influence in the legislative process may be determined through the success rate of the Parliament's amendments to the Commission's proposals, adopted by the Commission and the Council, and incorporated into EU law (Kreppel, 1999, 2002).

Many studies drawing on European Parliament´s amendment success rates are quantitative studies published by the Commission and the European Parliament, however, detailed qualitative information about these amendments is scarce, not allowing an assessment of their relative importance. In fact, Parliament´s amendment

success may be significantly different whether the adopted measures relate to non-controversial technical subjects, or they reflect politically controversial issues. Hence, a high level of amendment acceptance does not directly imply a greater Parliament´s legislative power. Although the negotiation skills of the actors involved in the trialogues may be substantial to resolve disputes, the kind of policy and amendment under consideration, whether it amends an existing act or is a completely new one, plays a definite part. As Shackleton (2000:337) notes 'outcomes are issue-specific'.

The draft reports, the amendments tabled by Parliament committees, or by the Rapporteurs and MEPs from Party Groups other than that of the Rapporteur, as well as the amendment´s debate and the voting process, all of these procedures are carried out in public session and available on the Parliament's website. However, as already discussed, all the political debate and informal negotiations between the Council and the European Parliament in trilogues is not public.

In the following chapters a qualitative analysis of the six-pack amendments is presented.

4.5.1 NEGOTIATIONS MARCH-MAY 2011- ECON COMMITTEE AMENDMENTS

From March to May 2011, the Economic and Monetary Affairs committee was able to hold its first public debate, to table and vote, although with a slim margin, the nearly two thousand amendments made to the Commission's proposals.

With the expansion of codecision to a larger range of policy areas, after the entry into force of the Amsterdam and Nice Treaties, there is an emerging trend for more than

one committee to be involved in the intra-institutional negotiations of a legislative proposal.

As already mentioned, in all five regulations, which are part of the Six-Pack legislative proposals, Economic and Monetary Affairs (Econ) was the committee responsible and 'Budgets' and 'Employment and Social Affairs', the committees for opinion[145].

After lengthy negotiations on a compromise package, Rapporteurs saw their reports being approved by the Econ committee on 19 April 2011 (Annex VI).

Significant support among MEPs emerged in the incorporation of the European Semester into law, which gives the procedure much more weight. Also the incorporation of some elements of the Euro-Plus Pact in the European semester had already been welcomed by the Eurogroup President Juncker: 'the Euro Pact will be a failure if we just leave it in the hands of heads of state. We need to have the Commission, European Parliament, National Parliaments, and different Council bodies at its heart'[146].

The most contentious issues related to the nature and automaticity of sanctions and the pace of debt reduction per year[147]. There was a clear divide between the Conservative/Liberal MEPs and the Socialists/Greens. The latter were concerned that

[145] Committees are designed to aid the European Parliament in initiating legislation, namely they draw up, amend and adopt legislative proposals. There are twenty parliamentary committees, each one consisting of between 24 and 76 MEPs, including a chair, a bureau and a secretariat. Within Parliament, the lead parliamentary committee shall be the main responsible body during negotiations both at first and second reading (Rules of Procedure, 2013, Annex XXI).

[146] Econ Press Release 'Parliament central to economic governance success' 15 March 2011.

[147] The texts expand the recourse to 'reversed qualified majority voting, namely on multilateral surveillance (the preventive arm of the Pact). On debt reduction, while the Commission´s proposal envisioned for countries with debt above 60 per cent of GDP, a reduction of a fixed five per cent per year over a three-year period, the texts now propose the debt to be reduced by an average of five per cent per year, over the same period.

fiscal austerity could jeopardize spending on growth promoting and job creating investments.

The main amendments made to the legislative text, aimed a 'stronger policing role for the Commission, more transparent decision-making transparency, new sanctions, and restricting EU Member States' political wiggle room without choking off economically-beneficial spending are the key issues which MEPs will put on the Hungarian Presidency table'[148].

The Commission was given stronger powers than those envisioned in its original drafts. In fact, the Commission's role was reinforced in all phases of the Six-Pack legislative procedures, being at a policing par with the Council in different surveillance steps, which were foreseen to be performed only by the Council in the Commission's proposals (i.e. Regulation 1175/2011, Articles 1, 5 and 6).

More transparent decision-making was achieved through the 'Economic Dialogue' in which governments; the President of the Eurogroup, and the Commission would explain their policies to MEPs.

4.5.2 NEGOTIATIONS APRIL-MAY 2011- ECOFIN MEETINGS AND TRIALOGUES

The Hungarian Presidency main priority was to focus on strengthening EU economic governance and act as an honest broker between the institutional triangle in order to reach an agreement through formal and informal meetings by June 2011.

Before the start of official negotiations, on 20 April 2011, with the European Parliament and the Commission, Ecofin approved (at it's meeting on 15 March 2011) a

[148] Econ Press Release, 20 April 2011.

general approach to the six-pack, the so-called preliminary position (Annex VI).

Later, on 17 May, after taking note of a report from the Presidency on the progress in the negotiations with the Parliament, Ecofin authorised the Presidency to make a compromise proposal[149].

According to the Hungarian Presidency, Ecofin meetings received from the start 'a constantly high-level political support', which eased the way to find compromises between Member States relating to unresolved Six-Pack issues and left the Presidency with the task to discuss the technical parts[150].

András Kármán, chief Presidency negotiator, also referred to a time advantage in favour of the Council, which received a mandate from Member States to start official negotiations with the European Parliament and the Commission on 15 March, while the Parliament's Rapporteurs only received the authorisation after the Econ committee report has been adopted, almost three weeks later[151].

During the almost daily trialogue meetings, Kármán identified some clashing points, pointing out the use of reverse majority voting in the preventive arm of the Stability and Growth Pact as well as the role the European Parliament would like to have in determining the scoreboard indicators, covering the major sources of macroeconomic imbalances [152].

[149] The *ad hoc* working party and COREPER prepared the Presidency report.
[150] EU Hungarian Presidency of the Council (04.04.11), 'Package of Six Legislative Proposals: Parliament also feels its responsibility'.
[151] Rules of Procedure 70(2) states that inter institutional negotiations 'shall not be entered into prior to the adoption by the committee responsible'.
[152] EU Hungarian Presidency of the Council (17.05.11), 'Package of Six Legislative Proposals: Council supports Presidency'.

Actually, as regards the scoreboard, the Parliament was seeking to have, at least, a consultative role as the Commission's proposals wouldn´t envisage any Parliament involvement.

4.5.3 NEGOTIATIONS MAY-JUNE 2011- EUROPEAN PARLIAMENT DEBATE AND VOTE IN PLENARY (22/23 JUNE)

The texts presented to debate on 22 June and adopted on 23 June 2011, reflected some adjustments from those approved by the Econ committee in April/May 2011, which were the result of the compromises reached in the formal and informal negotiations between the European Parliament and the Council.

During the joint debate on economic governance reform in the Parliament's plenary session on 22 June 2011, Commissioner Olli Rehn welcomed the texts presented, stating that the Commission approved all the amendments made to the original texts and also welcomed the *relais* actors' role during negotiations noting that 'in the course of the trilogues, Parliament's negotiators have improved the Commission's proposals in many important respects. And you (MEPs) have gained a good many important improvements from the Council[153].

The Commission and the European Council, as well as the Council Presidency hoped after the vote in plenary, that a compromise with the Council could be reached till the end of July 2011.

[153] Olli Rehn (2011), 'Going the last centimetre for reinforced economic governance', Speech/11/468.

The Commission had urged a swift adoption of the proposals in order to send a positive sign to financial markets of the EU's commitment to toughening budget rules and addressing the underlying weaknesses that contributed to the on going crisis. In fact, the 'threatening' words of Commissioner Olli Rehn, tried hard to press the European Parliament and the Council to reach a first reading agreement latest in July 2011: 'Moreover, neither institution should even for one moment imagine that – whether for tactical or substantive reasons – they might get a better deal in a second reading. The Presidency has skilfully extracted compromises from the Council that would most likely not appear on the table again, if a first reading agreement isn't reached'[154].

Among the more than fifty major Parliament's improvements to the Commission's original proposal, Commissioner Olli Rehn highlighted two concessions 'won' by the European Parliament during trialogues, namely the fines for governments that falsify financial statistics and a commitment for the Commission to do a study on Eurosecurities within six months of the entry into force of the legislation[155].

The text partially adopted in plenary on 23 June, was subject to further amendments namely those concerning the Economic Dialogue. Whereas the draft report tabled by the Econ committee in April stated that in order to enhance the dialogue between the Union institutions and Member States, and to ensure greater transparency and accountability 'the competent committee of the European Parliament may conduct

[154] *Ibid.*

[155] Regulation (EU) 1173/2011, Article 13(4). These amended articles were not part of either the Commission proposal or the texts approved by the ECON committee.

hearings and organise public debates on macro-economic and budgetary surveillance undertaken by the Council and the Commission'[156], amendments tabled by the Parliament in June already mentioned an 'invitation' by the Committee to the President of the Council, the Commission and, where appropriate, the President of the European Council or the President of the Eurogroup to discuss specific issues[157].

Further amendments introduced in June relate to a new sanction concerning the manipulation of statistics by Member States. According to Regulation 1173 (Article 8) a fine, not exceeding 0.2 per cent of GDP of the Member State concerned, shall be imposed.

4.5.4 NEGOTIATIONS MAY-JUNE 2011- ECOFIN MEETINGS AND TRIALOGUES

On 23 June 2011, after intense rounds of trialogues, and the debate in plenary on the previous day, MEPs adopted only part of the compromise texts agreed with the Hungarian Presidency.

During the debate on plenary, the Presidency chief Rapporteur, Minister Kármán regretted that 'the proposal put forward to the plenary, is different from the compromise we have arrived at after a series of negotiation rounds, and does not take into account the final compromise that was offered by the Council'[158].

[156] Procedure File 2010/0280 COD (A7-0178/2011), Article 2(ab), 29 April 2011.
[157] Procedure File 2010/0280 COD (T7-0291/2011), Article 2 (ab), 23 June 2011.
[158] EU Hungarian Presidency of the Council of the EU (23 June 2011), 'Six-Pack: Presidency hopes for a first-reading agreement'.

In fact, after the trialogue meetings on 15 and 16 June, the Ecofin meeting on 20 June made further concessions to the Parliament but there were still some divergent points of view[159].

Although the Council agreed with almost of the European Parliament's amendments 'it did so with a couple of exceptions'[160]. Therefore, the letter[161] sent to the European Parliament on 21 June with the Council´s position was considered 'insufficient' by MEPs, who argued that 'ministers have not done enough to prevent EU countries' budgets from derailing and were backtracking on commitments to also look at high-export countries as sources of imbalances'[162].

Disagreements envisaged not only the surveillance of macroeconomic imbalances but also the introduction of reverse majority voting in the preventive arm of the Stability and Growth Pact (Regulation 1175/2011). Wortmann Kool (EPP/Netherlands), the Rapporteur responsible for the regulation, criticized the latest Council proposal, which suggested a look at 'decision-making processes in three years' time'[163]. In fact, Minister Kármán during the Parliament's debate mentioned this critical point just as 'a review for the expansion of reverse majority voting is foreseen'.

[159] *Ibid*.
[160] Olli Rehn (2011), 'Going the last centimetre for reinforced economic governance', Speech/11/468.
[161] According to the 'Joint Declaration on Practical Arrangements for the Codecision Procedure' (Article 251 of the EC Treaty), point 14: ' Where an agreement is reached through informal negotiations in trilogues, the chair of COREPER shall forward, in a letter to the chair of the relevant parliamentary committee, details of the substance of the agreement, in the form of amendments to the Commission proposal. That letter shall indicate the Council's willingness to accept that outcome, subject to legal-linguistic verification, should it be confirmed by the vote in plenary. A copy of that letter shall be forwarded to the Commission'
[162] ECON Press Release (21.06.11), 'Finance Ministers have not moved enough for good economic governance'.
[163] *Ibid*

4.5.5 NEGOTIATIONS 23 JUNE- 28 SEPTEMBER 2011: THE CONTENTIOUS ISSUES

Although the institutional set-up after Lisbon has limited the roles of the rotating Presidency, it still performs salient tasks in the daily management of the EU policy-making process. The Polish Presidency, which took over in July 2011, was faced with a climate of great tension between the Council and the Parliament as the pressure to finalize the six-pack negotiations was intense and there were still some important diverging issues to be resolved. However, the Polish Presidency was able to act as a broker between the legislative institutions and forge an agreement on some of the most sensitive issues.

The fact that Jerzy Buzek (EPP, Poland) was the President of the European Parliament was an asset for the Polish Presidency so 'highly dependent on its co-legislator to achieve results' (Pomorska and Vanhoonacker, 2012)[164].

Indeed, on 23 June 2011, after the adoption by MEPs in plenary, of the proposed texts, which did not yet included the Council´s proposals, there were still three pending issues to be negotiated between the *relais* actors.

The first and most contentious one related to the scope of reverse majority voting, namely the semi-automaticity of early warnings by the Commission to the Member States in the preventive arm of the Stability and Growth Pact.

As the Presidency noted: 'The Council will continue to disagree with the expansion of reverse majority voting on the preventive part of the Stability and Growth Pact, which

[164] A formal agreement was reached to share the Presidency under the 2009-14 term between the two major Party Groups of the European Parliament. Under the agreement, Jerry Buzek, an EPP Member was the President in the first half of the term and an S&D Member would be elected in the second half term.

the Parliament would like to see; on that issue, the position of the Council has not changed since March'[165].

The second issue related to the scope of the surveillance of the macroeconomic imbalances, which meant the need to look at surplus current account countries as well as those with deficits in their current account, when evaluating the causes of imbalances.

Finally, the third issue related Economic Dialogue hearings in the European Parliament.

In order to understand their political weight, the three outstanding points are to be discussed in more detail in the following sections.

4.5.5.1 SANCTIONS AND REVERSE MAJORITY VOTING

It is consensual that one of the most underlined weaknesses of the Stability and Growth Pact related to problems of enforceability, the 'Pact's Achilles heel' (Schuknecht, 2005). Criticisms pointed to the fact that financial sanctions could only be imposed at the discretion of the Ecofin Council through a qualified majority, which implied a situation where judgers judge themselves.

One of the main goals of the new governance framework was to make the procedures more automatic, improving this way the effectiveness of the Pact. In order to achieve that objective, a new voting procedure, the reverse majority voting (RMV) was introduced for imposing sanctions in the euro area countries. It means that the Council

[165] EU Hungarian Presidency of the Council of the EU (21.06.11), 'Package of Six Proposals: Council offers compromise to Parliament'.

can only reject recommendations or decisions taken by the European Commission if the Council votes by a reverse majority, in a brief period of ten days.

More specifically, the automaticity of sanctions is based on a reverse qualified majority voting procedure in the Council, which implies that a qualified majority of Member States is necessary to block the Commission's recommendations. Furthermore, if governments do vote to reject a warning, they will need to explain themselves to the European Parliament in public[166].

As such, reverse majority voting makes the imposition of sanctions on underperforming or misbehaving states less subject to political interference[167].

Besides the new automaticity for imposing sanctions, the introduction of reverse majority voting to early warnings by the Commission (regulation amending the preventive arm of the Pact), representing the first step to reach a 'final warning' decision triggering in the sanctions procedure, was the main bone of contention along the all process of negotiation. Previously, Commission's recommendations had to be adopted by the Council by a qualified majority.

The novelty in the preventive arm of the Pact is that the 'power to decide' on early warnings concerning budgetary slippages now rests with the Commission. Although

[166] Regulation (EU) 1175/2011, Article 2(ab2).

[167] The Six-Pack envisages the use of reverse majority voting in different procedures: it applies twice in the preventive arm: Regulation (EU) 1175/2011, Article 6(2) concerning the Commission's early warning and Regulation (EU) 1173/2011, Article 4(2) an interest bearing deposit to be imposed for Euro area countries which fail to take action. Reverse majority voting applies twice **in the corrective arm**: Regulation (EU) 1173/2011, Article 5(1) and 6(1) regarding other sanctions to be imposed in euro area countries. As for macroeconomic imbalances, reverse majority voting applies twice: Regulation (EU) 1176/2011, Article 10(4) for the assessment of corrective action, and Regulation 1174, Article 3(1) regarding sanctions to be imposed in Euro area Member States.
Reverse majority voting applies as 'Reverse Qualified Majority Voting' in all the articles, except for the preventive arm where a 'Reverse Simple Majority Voting' applies.

the decision to put a country in excessive debt procedure (EDP) is still a Council´s decision, 'eurozone members will no longer be able simply to ignore Commission warnings to correct their budgetary policies'[168].

The introduction of reverse majority voting means that the Council will no longer be able to omit placing a Commission's proposal on its voting agenda as occurred in November 2003 after Ecofin failed to reach agreement on the Commission's recommendations to step up disciplinary measures against France and Germany. Both countries broke the rules on keeping budget deficits under three per cent of GDP, they did not respect their compromises under the Treaty, the Pact, and the Ecofin Council decisions, and went unpunished.

The original text proposed by the Commission[169] did not include reverse majority voting in the preventive arm of the Stability and Growth Pact and there was a danger from the start that this procedure might be watered down by the insistence of some Member States, which preferred the status quo. In fact France, Italy, Spain, Portugal, and Greece soon opposed the plan for automatic penalties as 'it was clearly going to be extremely difficult if not impossible for any government to cobble together a sufficiently large coalition to block the process' (Ludlow, 2010:9). Hence, during negotiations the Council insisted that no automatic procedures should apply to the issuing of the early warning by the Commission. MEPs feared that 'this would lead to

[168] European Parliament, Press Release 28 September 2011, 'Parliament gives green light to future economic governance plans'.
[169] COM(2010)526, Article 6(2). This Commission's proposal was the basis for the Regulation (EU) 1175/2011-Surveillance of budgetary positions and coordination of economic policies.

back room deals in which countries needing to reform their budgetary policies would be let off the hook'[170].

Only two weeks before the adoption of the final text on 28 September 2011, southern countries led by France, climbed down their insistence that a warning to a country would require approval by the Council. The preliminary compromise reached between MEPs and the Polish Presidency of the EU's Council of Ministers paved the way to ensure a final ratification by the European Parliament during its 26-29 September plenary session.

Under the deal, the Commission will first issue a warning to the country, which has to be adopted by a qualified majority of Eurozone Members. If after one month the warning has either been rejected by Member States or simply ignored, then the Commission can insist again on the warning. This time round, however, the warning is considered automatically adopted unless a simple majority of Eurozone states vote against, within ten days[171]. Moreover, if the Council does vote to reject a warning, it will need to explain its position publicly.

According to Regulation 1173/2011 on the effective enforcement of sanctions, early warnings by the Commission trigger the imposition of an interest bearing deposit of 0.2 per cent of GDP for euro area countries.

It should be noted that either the Commission original proposal as the text tabled for plenary by the Committee on 2 May 2011, envisioned sanctions applying later. Both

[170] European Parliament, Press Release 28 September 2011, 'Parliament gives green light to future economic governance plans'.
[171] Council Regulation (EU) 1175/2011, Article 6(2).

texts mentioned Article 6(3) of Council Regulation 1466/97, which corresponds to a situation where Member States divergence from Medium-Term Objective is persisting or worsening, and not when the Council already identifies a divergence of the budgetary position from the Medium-Term Objective, as in Article 6(2), which corresponds to the texts approved in June and September 2011. As the Economic and Monetary committee notes 'it was important to get the inescapability of a final warning by the Commission at the beginning of the process'[172].

As regards the corrective arm of the Stability and Growth Pact, the sanctions regime has also been adjusted. If the Council decides, acting under Article 126(6) TFEU, that an excessive deficit exists, sanctions ranging from a non-interest-bearing deposit to fines amounting to 0.2 per cent of the previous GDP, shall apply.

Some criticisms have been made to the effectiveness and legality of this new voting procedure.

As Van Aken and Artige (2013) note, a qualified majority voting in the Council [173], may offset the automaticity to the enforcement mechanism as reverse majority voting and qualified majority voting cancel each other. As compared to the original Commission

[172] European Parliament (28.09.11) 'Parliament gives green light to future economic governance plans'. Regulation (EU) 1173/2011, Article 4(1) states that 'If the Council adopts a decision establishing that a Member State failed to take action in response to the Council recommendation referred to in the second subparagraph of article 6(2) of regulation (EC) Nº 1466/97, the Commission shall, within 20 days of adoption of the Council's decision, recommend that the Council, by a further decision, require the Member State in question to lodge with the Commission an interest-bearing deposit amounting to 0.2% of its GDP in the preceding year'. The Council can only reject that recommendation by a reverse qualified majority voting (Regulation (EU) 1173/2011, Article 4(2)).

[173] Regulation 1173/2011 on the effective enforcement of budgetary surveillance in the euro area, notes in Article 4(3), 5(3) and 6(3) that 'the Council, acting by a qualified majority, may amend the Commission´s recommendation and adopt the text so amended as a Council decision'.

proposal[174] the enforcement mechanism was 'significantly watered down' as the original proposal envisaged a unanimous vote in the Council (Van Aken and Artige, 2013:149).

Palmstorfer (2013) questions the compatibility of the new voting procedure with the Treaty provisions, as its application is not enshrined in the Treaties, and De Prest et al (2012) note that this transfer of decision-making from the Council to the Commission may not be translated in a better application of the rules[175].

The need to alleviate the pressure from the international markets as well as the German insistence in budgetary discipline, may explain why the Council was permissive to accept the loss of institutional power brought about by the introduction of reverse majority voting, which, according to Begg (2011) represents a significant weakening of the Council, and a strengthening of the Commission's position.

It may be argued that the semi-automatic application of sanctions counters the 'Deauville deal' compromise[176], found between France and Germany in October 2010, which intended to maintain under control by Member States on Commission assessments of non-compliance with the Pact rules, which meant that the Council would progressively impose sanctions but only with a qualified majority.

[174] The Commission's proposal referred to '(…) the Council may amend the proposal in accordance with Article 293(1) of the Treaty', which means unanimity voting in the Council (COM(2010)524, Article 3(1), 4(1) and 5(1)).

[175] De Prest et al (2012) argue that Member States could have started an action for annulment of the procedure, which was not the case. According to Article 263(6) TFEU the annulment action should have been made within two months of the publication of the 'Six-Pack'.

[176] Franco-German Declaration (18 October 2010). Available at http://www.euo.dk/upload/application/pdf/1371f221/Francogerman_declaration.pdf%3Fdownload%3D1

By the end of 2010, Member States, and Germany in particular, were much aware that in the face of an escalating crisis and a Greek deteriorating situation, there was a great sense of urgency to fundamentally change EU stability regulations.

Although Chancellor Merkel supported the Commission proposals of more automatic sanctions, she gave in to the French President Sarkozy´s demands in exchange for his agreement with an amendment to the Treaty, which was required to establish the European Stability Mechanism (ESM), which 'she had repeatedly called for' since March 2010 (Ludlow 2010:2).

In fact, later in December 2011, Chancellor Merkel willingness for more stringent fiscal discipline, was found in the Fiscal Compact by introducing reverse qualified majority voting in all the key steps of the Excessive Deficit Procedure (EDP), and eliminating the possibility of the Council to change a Commission recommendation for euro area Member States [177], 'resolving' this way the new Six-Pack voting procedure's weaknesses, as the Fiscal Compact extends reversed majority in the Council to steps in the Excessive Debt Procedure for which the Six-Pack had not foreseen this voting procedure[178].

4.5.5.2 MACROECONOMIC IMBALANCES

In the area of macro-economic surveillance, the scoreboard had always been at the

[177] TSCG Article 7 'While fully respecting the procedural requirements of the Treaties on which the European Union is founded, the Contracting Parties whose currency is the euro commit to supporting the proposals or recommendations submitted by the European Commission where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure (...)'.

[178] However as Van Aken and Artige (2013) note, the Six-Pack regulations have legal precedence over the Fiscal Compact, which may lead, in case of dispute, to the primacy of the weaker enforceability of the Excessive Deficit Procedure in the Six-Pack.

centre of political discussions in the Parliament. Furthermore, finding agreement on its adoption was one of most sticky points in trialogue negotiations.

The scoreboard comprises a small number of macroeconomic and macrofinancial indicators accompanied by thresholds which are meant to reveal imbalances, not only those that emerge in the short term but also those due to structural and long-term trends[179].

The main discussions regarding the scoreboard concerned: (i) the delegation of powers to the Commission to establish the scoreboard and (ii) the symmetry of the indicator's thresholds.

As regards the delegation of powers to the Commission, only the basic elements of the scoreboard were laid down in the legislative text approved in September, and the task of drawing up the alert mechanism was transferred to the Commission, which made it available two months later in a Commission Staff Working Paper entitled 'Scoreboard for the Surveillance of Macroeconomic Imbalances: Envisaged Initial Design'[180].

While the Commission proposed to establish the scoreboard outside the legislation, the Parliament and the Council wanted to have a say over its establishment. As such, the Parliament's preference drawn upon Article 290 TFEU, a delegated act for the adoption of the scoreboard, while the Council's preference rested on Article 291 TFEU, an implementing act. These opposing views reflected an institutional conflict of

[179] The scoreboard consists of a set of eleven indicators covering the major sources of macroeconomic imbalances, such as: current account, net international investment position, exports share, unit labour costs, real effective exchange rates, private sector debt, private sector credit flow, house prices, government debt, unemployment rate and financial sector liabilities.
[180] SEC (2011) 1361 Final (8 November 2011).

interests between the Commission, the Parliament and the Council, so far the Council normally favours implementing acts[181].

Although the adoption process could have been framed under Article 290 or 291 TFEU, the Commission was able to assert its view as the Parliament dropped the request for delegated act and accepted the use of an informal new type of procedure, which is neither a delegated nor an implementing act. This compromise, which is not legally binding and therefore not included into the legal text of Regulation 1176/2011 stipulates in the respective recital 12 that, the responsibility to establish the scoreboard rests with the Commission but the Parliament and the Council should be informally consulted on an equal basis.

Regarding the scoreboard indicators, amendments made by the European Parliament in June, added a differentiation between internal and external imbalances to the Commission's proposal and noted that 'the scoreboard of indicators, and in particular alert thresholds, shall be symmetric whenever appropriate'[182]. In the final text the wording was that 'the scoreboard of indicators shall have upper and lower alert thresholds unless inappropriate'[183] (Annex IV).

More than a technical issue, this amendment was a political one as the real question had to do with German current account surpluses and the lack of willingness of the country to be subject to corrective surveillance.

[181] Under delegated acts the legislators must clearly define the objective, scope and duration of the acts delegated to the Commission, as well as the mechanisms to control Commission's acts.
[182] T7-0287/2011, Article 3(2), June 2011.
[183] Regulation (EU) 1176/2011, Article (4.4).

In fact, some Member States had initially insisted that only countries with a current account deficit on the balance of payments should be subject to closer surveillance. Although in the final text covering the alert mechanism, both deficits and surpluses are subject to surveillance, '(…) the assessment of Member States showing large current account deficits may differ from that of Member States that accumulate large current account surpluses'[184].

Before the Commission presented the final design of the scoreboard, the Ecofin Council tried to ensure that the Commission would maintain its former declaration that unlike deficits, 'large and sustained current account surpluses do not raise concerns about the sustainability of external debt or financing capacity that affect the smooth functioning of the euro area', and that such surpluses would not give rise to sanctions[185].

Although it has been argued that the root cause of Europe's crisis were the neoliberal EU policies which enabled countries like Germany to consistent have trade account surpluses at the expense of trade deficit countries, media cover regularly mentioned the attempts made by Germany to persuade the Commission to back down in its insistence to consider trade surpluses as one macroeconomic imbalance as included in

[184] Regulation (EU) 1176/2011, Article 4(2).

[185] Ecofin Council, 8 November 2011. It should be noted that enforcement measures to correct excessive macroeconomic imbalances only apply to the euro area (Regulation 1174/2011). The Council decides on sanctions to be imposed on the basis of a Commission recommendation, acting by reverse qualified majority. When the Council considers that a Member State under excessive imbalances has not taken recommended corrective action, an interest bearing deposit or an annual fine amounting to 0.1 per cent of the GDP in the preceding year, shall be imposed (Regulation 1174, Article 3).
The Commission original proposal only envisaged yearly fines.

the initial Commission's legislative proposal, and pressing for an 'asymmetric' treatment of trade surpluses[186].

4.5.5.3 ECONOMIC DIALOGUE

When the European Semester was launched in January 2011, the European Parliament had very little institutionalised involvement in the Economic and Monetary Union framework. As such, one of the great concerns of the Six-Pack, as can be seen in all Regulation's recitals (with the same wording) is that 'the strengthening of economic governance should include a closer and a more timely involvement of the European Parliament and the National Parliaments'.

The Six-Pack addresses the lack of parliamentary participation by introducing the Economic Dialogue. However, the Parliament´s involvement is one of being kept 'informed' as for the Broad Economic Guidelines (Article 121.2 TFEU) or being the forum of debates within the Economic Dialogue, without being entitled to take any decision or to amend Council recommendations in the framework of European economic governance.

As Fasone (2012) argues this marginalisation of the European Parliament may be viewed as a logical consequence of the Treaties provisions on coordination of

[186] The surveillance in MIP (Macroeconomic Imbalance procedure) covers both current account deficits and surpluses. Although in the Six-Pack negotiations MEPs have suggested indicative thresholds of +3 per cent and -3 per cent (expert 10), the final indicative thresholds were agreed to be of +6 per cent and – 4 per cent. The Commission's 'Alert Mechanism Report 2014' found that Germany 'in the previous rounds of the MIP, Germany was not identified as experiencing imbalances. In the updated scoreboard a number of indicators exceed the respective indicative thresholds, namely the current account surplus (6.5). Available at http://ec.europa.eu/europe2020/pdf/2014/amr2014_en.pdf

economic policies, which fall outside the typical competences of the EU[187].

However, the political significance of the Economic Dialogue should not be underestimated as the Parliament becomes the place where Member State's compliance (or not) to EU regulations and Council's positions on proposals or recommendations by the Commission is publicly debated[188].

The Economic Dialogue was included in all Six-Pack regulations providing details about the European Parliament's right to call on national representatives for an exchange of views on national documents and procedures related to the European Semester or in instances where the Council is about to take action according the Commission's proposals or recommendations (i.e. decisions when sanctions apply).

In October 2012, the European Parliament had already exploited the instrument of the Economic Dialogue. In its 'Report on the European Semester for economic policy coordination' the Parliament called for a strengthened role in the European Semester, as to give the process greater democratic legitimacy[189].

[187] Article 5 and Articles 120-126 TFEU. The EU has special competences in certain fields, such as the coordination of economic and employment policies (Article 5 TFEU): the EU is responsible for ensuring the coordination of these policies. It is required to define the broad direction and guidelines to be followed by Member States.

[188] Convening temporary committees of inquiry, at the request of one-quarter of MEPs, is another supervisory practice already granted to the European Parliament under the Maastricht Treaty.

[189] In this report, the Parliament 'notes with concern that the European Parliament has been constantly marginalised in the main economic decisions resulting from the crisis, and considers that it must be involved in order to increase the legitimacy of decisions which affect all citizens' (point 27) and 'reiterates the need to involve Parliament – the only supranational European institution with electoral legitimacy – in economic policy coordination' (point 32). Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0312+0+DOC+PDF+V0//EN

There were two issues subject to a compromise between the Council and the European Parliament, resolved on 20 September, a week before the text was voted by the Parliament.

The first referred to a 'comply-or-explain' procedure. In both the preventive and corrective arms of the Pact, 'the Council is expected to, as a rule, follow the recommendations and proposals of the Commission or explain its position publicly'[190]. It should be noted that this wording was not part of the text tabled in June by the Parliament.

The second contentious issue related to hearings of finance ministers in the European Parliament, a situation that Member States long insisted that should not be the case.

In order to ensure greater accountability of individual governments as well as the peer pressure between governments, Economic Dialogue determines that the relevant Parliament committee may offer the opportunity to a Member State concerned by Council decisions under the Excessive Debt Procedure (EDP) to participate in an exchange of views[191]. As a way to conclude negotiations and appease Member States to reach an agreement (although the article suffers no main alterations between June and September 2011) recital 11 of the final text was amended with an additional sentence: 'Member State's participation in such exchange of views is voluntary'.

[190] Regulation (EU) 1175/2011, Article 2(ab2) and Council Regulation (EU) 1177/2011, Article 2(a).
[191] Regulation (EU) 1175/2011, Article 2(ab3).

4.6 SIX-PACK APPROVAL: THE RAPPORTEUR'S ROLE

Both the Commission and the Member States gathered in Euro area summits had urged for a rapid adoption of the Six-Pack proposals in order to send markets a clear sign of the EU commitment to strengthen budgetary discipline, enforce the Stability and Growth Pact rules, and address the weaknesses that had contributed to the crisis. However the extended debate highlighted the distinct preferences among Member States and MEPs contributing to criticisms about the slow pace of EU decision-making.

Although the secrecy of Council negotiations and individual preferences of its members as compared to the open Parliament debate, may have put the European Parliament in an institutional disadvantage, the urgency of a crisis response, namely in mid 2011s when inter-institutional negotiations were intensified because of the threat of the Eurozone's debt crisis spreading to Italy and Spain, led to an institutional consensus being built.

Both the Polish and Hungarian Council Presidency played an active role by unlocking conflicting negotiations through bilateral encounters between the Presidency and Member States (expert 2). Often described as torturous discussions, a final agreement was possible only after France gave ground in the most contentious issue, the introduction of reversed qualified majority voting in the preventive arm of the Stability and Growth Pact (i.e. applying for the decisions on the existence of an excessive deficit, when Member States have not taken effective action). 'The final views taken by

the Council were the result of negotiations among the Member States themselves. This is only natural' (expert 8).

Although it might have seemed instrumental to reform the Stability and Growth Pact and supplement it with the surveillance of macroeconomic imbalances, MEPs were divided in their assessment of some of the proposals.

The report of Wortmann-Kool (EPP, the Netherlands) on strengthening the preventive part of the Stability and Growth Pact proved the most controversial and was not supported by the groups of Socialists and Democrats (S&D) because of what they considered to be an excessive focus on fiscal control with little room for continuing vital investment needed for long-term growth and employment. Also the Greens and the European United Left denounced the Six-Pack as 'recipe for disaster' and 'an attack on democracy' that will remove key economic policy decision-making from democratically elected national governments[192]. Only the report of Elisa Ferreira (S&D, Portugal) dealing with the prevention and correction of macroeconomic imbalances was able to gather a large majority among MEPs as they felt that an adequate balance had been struck between social and financial imperatives.

More than voting instructions there was an effort to build a strong cohesion (expert 9), which matched the final votes, where an average of 89 per cent of MEPs voted along the European Party Group Lines (Annex III).

Although Rapporteurship is seen as the 'recognition of merit, quality and participation' (expert 1, 6, 9, 10) it also may imply political choices placing Rapporteurs at

[192] Public Service Europe (28.09.11) 'Economic Six-pack approved by Parliament'.

loggerheads with his/her Political Party. That is the instance when Rapporteur's personal preferences conflict with Party Group political line, leading to agency losses.

Shirking by agents was found in the voting of Carl Haglund Report (on the enforcement measures to correct excessive macroeconomic balances in the euro area). While the Socialists and Democrats Party Group line was abstention, Elisa Ferreira (S&D, Portugal- Rapporteur on the prevention and correction of macroeconomic imbalances) voted for the Haglund's report, which complements her owns. As noted by expert 10:

> 'as shadow Rapporteur in Carl Haglund's report, there were some adjustments being negotiated like the reduction of some penalties 'values and also the pace that limits the application of sanctions, so I had to vote for the report, it was part of the negotiations (...) however to my Party Group I clarified my view (...) I don´t think sanctions for macroeconomic imbalances make any sense in Haglund's report, if a country, despite having done all the efforts, has no means to meet the agreed targets, it should not be penalized'.

Benedetto (2005) describes Rapporteurs as a 'legislative entrepreneur'. In the Six-Pack process Rapporteurs played a *de facto* role of legislative entrepreneur as they were seeking to maximise consensus at all stages of negotiations: during the committee stages before presenting the six reports to plenary (i.e. negotiating with the leadership of different political groups, shadow Rapporteurs, key National Party delegations) and during inter-institutional bargaining with the Commission and the Council Presidency (expert 6, 9, 10). Without such consensus, the reports were less likely to pass to a

plenary vote where ideological divisions led to the approval of the Six-Pack with slim margins.

The appointment of Rapporteurs by principals, in the Six-Pack case, proved to be the most efficient way to avoid agency losses. Party Group Coordinators bid for reports in closed-doors meetings based on a weighting points system representative of the political groupings within the Committee. As can be observed in Annex V, the two regulations amending the Stability and Growth Pact (Regulation 1175 and Council Regulation 1177) were 'won' by the European People's Party (EPP), the largest Party Group in the European Parliament. As explained by one of the Rapporteurs 'if the largest group wants a report, he gets that report. It is clear that the EPP would never let the "two core central" regulations go to another Party Group (...) they wanted to control it' (expert 10). The other four dossiers were distributed following an agreement between the Party Group Coordinators: two regulations were won by the Liberals and Democrats (ALDE), one by the Socialists and Democrats (S&D) and the directive was attributed to the Conservatives and Reformists (ECR).

The appointment of Rapporteurs is many times contested as whether they may be biased towards institutional, partisan or national interests (Benedetto, 2005; Hix and Høyland, 2013) or just 'a self-selection process where MEPs seek reports that reflect their particular interests' (Kaeding and Obholzer, 2012:3). Rapporteurship is more directly linked to a political line than an ideological one. As explained by one of the interviewed:

> 'When we talk about a political group we have to think of different national party groups, coming from different countries (...) if I have dossiers to distribute among my Party Group, let's say about financial regulation, I have to think carefully before handling it out to a British fellow MEP, that´s because their logic is very much of financial deregulation (...) if the dossier is about the Stability and Growth Pack reform, allocate rapporteurship to Germans or Finnish means much more austerity (...) there is always a previous discussion to check if the MEP's personal line corresponds to the Party Group´s line (...) the Rapporteur reports to the Party Group all along the legislative process, also before the vote in plenary the Rapporteur explains our political line' (expert 10).

As regards the Six-Pack, principals were able to avoid agency losses through the Rapporteur and shadow Rapporteur's appointment, making sure that their personal preferences aligned with those of the principals. As noted by one of the interviewed 'to get some reports you have to be aligned with the Party Group and the National Party. The selection falls upon the most experimented MEPs, so that problems may not arise with very innovating theories' (expert 9).

After winning the report, the Party Group Coordinator 'sends an email to all his Party Group members asking who is interested in being the Rapporteur of that specific report and also who is interested in being the shadow Rapporteur of the reports won by the other political parties' (expert 10). Afterwards, the Coordinator selects the Rapporteur or, as in the case of the Six-Pack, a self-election took place in three, out of the six reports (Annex V). It was also agreed, between all the Party Group Coordinators

that, once there was a consistency and complementarity among the Six-Pack dossiers, crossing Rapporteurs and shadow Rapporteurs was to be essential.

However, potential ideological divisions among Party Groups carried an onus on the six Rapporteurs in that a broad majority in the Parliament would have to approve the draft reports and amendments to the Commission's proposals. To influence and maximise the legislative decision-making process, legislators had to form a majority coalition to pass legislation.

Informal bargaining pressure had been assured by voting the Six-Pack as a whole, given that two of the reports were not to be decided in codecision. As such, reaching a consensus between six Rapporteurs from four different Party Groups implied that 'we had to meet several times, also with the shadow Rapporteurs, and coordinate positions, having from the start distinct starting points' (expert 9).

4.6.1 Diverging Political Preferences among MEPs

Already during preliminary talks with the members of other political groups in October 2010, Socialists and Democrats MEPs have raised concerns over the Commission's proposals, underlining the need for a balanced approach that could promote growth and jobs.

After the allocation of reports to the four different Party Groups as well as the appointment of the Rapporteurs and shadow Rapporteurs, Principals guaranteed that agents would not deviate from the political party line in a first 'exchange of views'

within the Econ Committee. As reported by one of the Rapporteurs 'we have three or four minutes to present our views, the general guidelines, which we intend to follow in the draft report (...) already at this stage, all the shadows from the different Party Groups appointed to the dossier, share their opinion (...) also all the other Econ members may put their points forward'.

After this first exchange of views and following a strict timetable scheduled by the Parliament's secretariat, the legislative process starts.

Amendments to the Commission´s proposals by MEPs were tabled in three different periods (Annex VI): (i) in January 2011 the draft reports presented to the Econ committee included the six Rapporteurs´ own amendments; (ii) A month later, Rapporteurs, shadow Rapporteurs, Econ committee members and opinion committee members, tabled new amendments. 'Shadow Rapporteurs present their own amendments to the Commission´s proposal, already amended by the Rapporteur, that is to say, they run counter and complement the Rapporteur not being limited in any way' (expert 10).

Before the vote in the Econ committee on 19 April 2011, there was a period of intense bargaining and endless negotiations between the two agents (Rapporteurs and shadow Rapporteurs) trying to reach a consensus and form a majority to pass the vote in the committee.

Negotiations imply that all the articles, line by line are discussed and negotiated among MEPs. Annex IV highlights the different moments and some of the different

actors that tabled amendments (in bold) to the macroeconomic imbalances scoreboard, with reference just to Article 3, second paragraph. Before the vote in the Econ committee 'if consensus is reached, all other amendments fall' (expert 9).

(iii) The third and last moment when amendments may be tabled by MEPs in first reading agreements is the period between the vote in the Econ committee and the text presented in plenary. During this period, Party Groups or a group of 37 or more MEPs, may add more amendments, but 'most of times, the Econ's position is confirmed without great changes in plenary (...) there is already an equilibrium, which we do not want to compromise ' (expert, 10).

4.6.2 Rapporteurs and Shadow Rapporteurs Negotiations in Trialogues

During trialogue negotiations, agents (Rapporteurs) were seeking to obtain compromises from the Council Presidency, while shadow Rapporteurs (police-patrol actors) were seeking to guarantee the former would not deviate from previous agreements.

The decision to enter in trialogue negotiations takes place after the European Parliament adopts its position (i.e. after the vote in the Econ Committee, which forms the basis for the mandate of the Parliament negotiating team) and the Council adopts its common position (15 March 2011). However, the decision to open talks with the Hungarian Presidency on the economic governance package was not consensual. Socialists and Democrats (S&D) had requested that the mandate for the informal

negotiations with the Council should be decided by plenary. As this request was denied by 25 to 14 votes, S&D asked not to enter into informal trialogues at all (rejected by 26 to 14 votes). MEPs voting in favour of trialogues assumed that the Parliament´s position would not be significantly altered in plenary (expert 9, 10).

In the course of informal trialogues, *relais* actors bear the primary responsibility for overcoming inter-chamber differences. If an agreement is reached, the European Parliament includes the Council´s propositions in its own first reading amendments and the Council accepts the Commission proposal as amended by Parliament.

Rapporteurs and shadow Rapporteurs were present in most trialogue meetings, carrying the weight of their group behind them. As noticed by one of the Rapporteurs of the negotiating team: 'as a shadow Rapporteur I wanted to be sure that the EPP Rapporteur would not make compromises under the pressure of the Council and the Commission, contrary to what had been previously agreed upon (...)' (expert 10).

Although the six Rapporteurs stressed the need to make a significant break with the past model of economic policy coordination, they differed mainly as to how much emphasis to place on fiscal authority and sanctions. Indeed, the two main Party Groups: European People's Party (EPP) and the Alliance of Socialists and Democrats (S&D) representing sixty-one per cent of votes in the European Parliament, showed ideological divisions in all the regulations proposed (with the exception of the Ferreira report). As such, the Liberal Democrats -ALDE (the third largest group) showed to be pivotal because neither the centre-right nor centre-left groups could gather an outright majority. According to expert 10:

> 'only the Socialist and Democrats and the Greens and the European United Left considered the Stability and Growth Pact to have serious structural problems (...) the EPP favoured the idea that the Pact was basically perfect and the problems did arise due to the lack of sanctions, so the preventive character had to be reinforced'. As such 'EPP's views were much in line with the Commission´s approach, which also met the Council's positions (...)'.

Besides the fact that the two EPP Rapporteurs 'ensured coordinated positions' (expert 9), the two regulations 'won' by the EPP Party Group amending the preventive and corrective part of the Pact were able to build a slim majority with the Liberal Democrats (ALDE), which soon had elected fiscal discipline as the group first priority. For their part, Socialists and Democrats limited themselves to a process of 'damage control' (expert, 10).

The introduction of reverse majority voting underlying the automaticity of sanctions is the most illustrative case in terms of diverging preferences between Member States and MEPs. As already discussed, reverse majority voting applies not only for imposing financial sanctions, but also for the decisions on the existence of an excessive deficit in the preventive arm of the Pact (also leading to financial sanctions). This specific issue prolonged trialogues until September 2011 and highlighted clear divisions not only among Member States (France being the main opponent) but also within the European Parliament (with the EPP and ECR party groups not supportive of this voting procedure

in the preventive arm)[193]. It is not a mere coincidence that the European People´s Party support to the French demands (opposing the automatic voting in the preventive arm of the Pact) was in line with Joseph Daul' views (EPP´s chair), who belonged to the '*Union pour un Mouvement Populaire'*, the French centre-right party once leaded by Nicolas Sarkozy.

In sum, although the careful selection of agents (Rapporteurs and shadow Rapporteurs) ensured principals they would not deviate from the Party Group's line, the Elisa Ferreira's vote (although the Rapporteur was not in disagreement with the advocated Party position, the vote was contrary to the S&D Party Group's line)[194] and the introduction of reverse majority voting in the preventive arm of the Pact (also contrary to the EPP Party´s Group line) show that principals´ control mechanisms may be hampered due to intense negotiations among MEPs, where in the end, the final purpose is not only to maintain the party´s line, but also to form a political majority to see a legislative file being approved. On the other hand, the role of the shadow rapporteurs, whose work reflects the political group position, proved to be crucial not only monitoring the Rapporteur´s work, but also monitoring trialogue negotiations.

[193] Reverse majority voting, as proposed by the Commission, the Task Force and by Corien Wortmann-Kool (EPP Rapporteur) in her draft report, was to be introduced in the Six-Pack solely for the purpose of the formal stage relating to the imposition of a sanction. However to form a majority, ALDE's support was needed. As claimed by Alexander Graf Lambsdorff in the June debate '(...) we will not be able to support this package. Reverse qualified majority voting in the preventive phase of the Stability and Growth Pact is absolutely essential as far as we are concerned'.

[194] Party Group Leadership can exert its disciplinary powers in order to maintain Party-voting cohesion, denying for instance, Party Group members access to prominent positions. Although Rapporteur Elisa Ferreira received a 'signal' from her principals, she was (again) appointed as Party Coordinator in July 2014.

In the end, intense negotiations and almost twenty trialogue meetings allowed compromises among the *relais* actors to be found and see the Six-Pack approved in late September.

Building on the above qualitative amendments analysis and the agent´s ability to build alliances and bridge partisan divides within the Parliament and in inter-institutional negotiations, proves correct the hypothesis that the Rapporteurs were indeed influential in determining the Six-Pack policy outcomes and strengthening the Community method.

The hypothesis on whether the Commission was already counting on the European Parliament to amend its original draft in such a way as to meet Commission´s preferences was not clearly satisfied. However, as an Ecfin official notes:

> ' (...) the Commission tried to strike that balance to find something that is acceptable for the Council or the Ecfin in particular, or the European Council, but still would guarantee the European interest which is the Commission´s mandate, but then, I mean, in the next round when it is intergovernmentalism versus Community method, usually you have a strong alliance between the Commission and the Parliament against the Council, against Member States or against some Member States which in the last years have developed some preference for intergovernmentalism for various reasons but, there was this alliance, I´m not sure the Commission is factoring that into the proposals...I don´t think so' (expert 3).

The Parliament's involvement in strengthening the original Commission´s proposals was already called for in late 2010 by the President of the European Central Bank Jean Claude Trichet, who appealed to MEPs to 'play the card of ambition', giving more clout to the Commission's original proposals, which 'although going in the right direction lack some boldness and detail'[195]. Although the Commission tried hard to maximize its own power by actively seeking to influence key actors in Parliament from the earliest stages of the legislative process, acting as a 'facilitator in trialogue meetings' (expert 10), 'following very closely the Rapporteur's work in tabling the amendments, finding consensus and unblocking deadlock situations' (expert 9), 'counting on the European Parliament as a guarantor of the Community method' (expert 8), in the end, the European Parliament proved to be 'the most ambitious institution' (expert 9).

[195] Econ Press Release (30.11.10) 'Fix the Economic Governance Package, Trichet Tells MEPs'.

CONCLUSIONS

While the Union's aim is to '(...) promote economic, social and territorial cohesion, and solidarity among Member States (...)'[196], the Community method was intended to place common good above individual interests, to find policy solutions grounded on democratic institutions, to treat Member States as equal, being the right of legislative initiative given to the Commission one of its main premises.

The sovereign debt crisis and the way the EU found its responses cast doubts on the current functioning of the Community method, namely in which regards the effectiveness of the Commission as an agenda setter, and the increased use of trialogues in the codecision procedure, which may contribute to an 'elitization' of European decision-making and lack of democratic scrutiny. Also the economic cooperation among Member States, taking place outside the EU legal structures, evidence departures from the Community method.

Notwithstanding the search for solutions to the euro crisis within the EU legal framework and the recognition of the decisive role to be played by the EU institutions, some of the responses to the crisis had to be devised outside the EU legal structures. Both the Fiscal Compact and the European Stability Mechanism, two intergovernmental Treaties, raised questions of legitimacy regarding the use of supranational institutions, and of legality regarding national constitutions.

As such, a departure from the Community method was found in the Fiscal Compact insofar the German imposition of a debt brake enshrined in national constitutions (or

[196] TEU Article 3(3).

others), and the enforcement of the Excessive Debt Procedure by the European Court of justice was excluded (article 126(10) TFEU).

While the Fiscal Compact evidenced the limits of rules-based through the Community method, the European Stability Mechanism evidenced the limits of the EU's financial constrains. Notwithstanding, some of the components of these international treaties are features of the Community method, namely the enforced surveillance and implementation powers of the Commission granted by the Fiscal Compact.

Chancellor Merkel in her speech in Bruges, November 2010, had already highlighted the Community method's limits applying to Member States economic cooperation: '(…) a coordinated European position can be arrived at not just by applying the Community method; sometimes a coordinated European position can be arrived at by applying the intergovernmental method'. In fact, the on-going crisis catalysed the European Council to the centre of decision-making and the complex system of economic governance still rests on the basis of the intergovernmental logic, with the Commission allowed to play a technical role in monitoring Member States economic performance.

The EU responses to the crisis suggest that the Commission's primary role is changing from a policy entrepreneur to a policy manager. However, while economic governance led to its agenda setting power being decreased, its political discretion in supervising and steering policy implementation has been considerably strengthened, not only as a result of the responses found under the Community method, but also those under intergovernmental agreements.

A return to the Community method of EU decision-making was claimed with the adoption of the Six-Pack on economic governance reform. In fact, the Six-Pack typifies the interaction of a rules based and coordination-based governance, in the form of a hybrid process, which evidences the current institutional dynamics of EU rule-making in the economic realm, and the resilience of the Community method to adopt to new forms and instruments of EU governance. A clear manifestation of this fact is the institutionalization of the processes of policy coordination within the framework of the European semester.

From a decision-making perspective, three different propositions were presented as to test the resilience of the Community method. The first one questions whether the Commission agenda setting powers were constrained in the Six-Pack legislative process.

In the context of policy-making, setting the European agenda has long been for the Commission its main prerogative, and the core element of the Community method. In the Six-Pack legislative case, the European Council, through an informal way not envisioned by the Treaties (European Council Meeting Conclusions), has transformed the European Commission in a reactive initiator of legislation instead of an autonomous one.

In the formulation of the Six-Pack proposals, the Commission had to work in cooperation with a Task Force presided by the President of the European Council Von Rompuy, which set up Member States preferences on economic governance, and defined the red lines that should not be part of the Commission´s proposals.

It can be concluded that the set up of the Task Force clear constrained the ability of the Commission to set the agenda, whose role was more of a technical agenda setter. However, a distinction has to be made between the Commission´s formal agenda-setting power, and the effective agenda-setting influence, which relates to the ability of the Commission to see its priorities being transposed to legislative acts. In fact, in early 2000 the Commission had already identified the reform of European governance as one of its four strategic objectives (2002 and 2004 communications). Nevertheless and mainly due to German resistance, they did not correspond to the Member States´ preparedness to change the status quo. As such, neither the intergovernmentalist claim of the Commission as a body merely fulfilling the wishes of the Member States, nor the neofunctionalist view of the Commission as an autonomous body is fully applicable.

Either meeting in the European Council formation, Euro area summits, or bipartite meetings led by France and Germany, Member States setting the tone for the search of joint solutions, are likely to hold the premises of the intergovernmentalist view as the most powerful decision-makers. Divergent national preferences, which dominated interstate bargaining, should be framed within a common will to save the euro and the eurozone, an endogenous preference resulting from the integration path which followed Maastricht and the construction of the Economic and Monetary Union, outweighing, in the end, Member States individual national preferences.

From an historical institutionalist perspective, the path-dependence and the functional spillover that characterizes the institutional design of the Economic and Monetary

Union, constrained and limited institutional change in face of the crisis. EU's decision-making was therefore influenced by factors such as the Economic and Monetary Union's original institutional setup, the lack of crisis resolution mechanisms, the non-bailout clause (Article 125 TFEU), and diverging national preferences. All these factors, along with the predominance of the European Council acting as an economic government, reinforced the intergovernmental dimension of the Union's functioning, downplaying the Community institutions' role in the crisis management.

Regarding proposition 2, which questions the ways Parliamentary Rapporteurs (and shadow Rapporteurs) were able to influence the Six-Pack policy outcomes, the Rapporteur's influence can be understood as crucial under two separate occasions: negotiations within the Econ committee and negotiations in trialogues.

Negotiations among agents (Rapporteurs) within the Committee implied that all articles, all paragraphs, all recitals, all-single words of the Commission´s proposal were discussed and negotiated between Rapporteurs and shadow Rapporteurs, so that a political majority could be reached.

Rapporteurs along with other shadow Rapporteurs from different political groups, were able to negotiate nearly 2000 amendments among them, which could be translated in a great deal of cooperation work and the ability shown by shadow Rapporteurs to act as efficient 'police patrols'. Furthermore, the fact that the six Rapporteurs were simultaneously shadows of each other in more than one dossier, allowed them to surpass the informational advantage that is normally attributed to the agents. As from the start, clear political and ideological differences emerged between

the two largest Party Groups (EPP and S&D), ALDE representatives played a decisive role in forming majorities and ensuring the legislative texts were approved both in Committee and in plenary.

The major control mechanism used by the principals to avoid shirking by agents, was found through the selection of agents rather than monitoring or imposing sanctions. In fact, the Rapporteur's informational advantages and his knowledge of the other *relais* actors' preferences could make it costly for the principals to monitor the agents. Also informal trialogues require the agents to have enough flexibility and discretion to manage different actors' preferences and reach a successful negotiation.

As such, agent's selection implied they were politically aligned with their principals in order to avoid agency losses as well as reputational losses for the Parliament.

Assuring that no major 'innovative changes' to what was previously established by the Van Rompuy Task Force report, was achieved by allocating the two 'core dossiers'- the two regulations amending the preventive and corrective part of the Stability and Growth Pact- to EPP Rapporteurs.

Negotiations taking place in trialogues are pure political bargaining games in which each chamber makes concessions. In his essay on bargaining, Schelling (1960:22) refers to a paradox, whereby 'the power to constrain an adversary may depend on the power to bind oneself (...) weakness is often strength'.

This paradox could apply to the Six-Pack given that three of the Rapporteurs were also Party Coordinators having according to this logic, less room to find compromises with

the Council. However, their technical and political expertise, coupled with the fact they were simultaneously Rapporteurs and shadows Rapporteurs, gave them a clear picture of their available room of manoeuvre to make/gain concessions with the Council.

Estimating the European Parliament´s bargaining success by comparing the Six-Pack outcome against the expected one (if the Parliament was not involved in negotiations) it may be concluded that the European Parliament did not confine itself to be a 'sleeping partner' as expected by the other legislative institutions (expert 10). The Parliament was able not only to see its main claims fulfilled, but it was also able to extract more policy concessions from the Council, in return for coming to an early agreement.

In face of the strong divisions among Party Groups, it cannot be assumed that Parliament´s amendments reflected the Parliament´s policy preferences, but rather the outcome of intense intra and inter-institutional search for consensus. Nevertheless a greater involvement in economic governance was the Parliament´s key demand. Although the basic inter-institutional division of labour remains the same with the Council and the Commission responsible for economic surveillance and the Parliament's role is restricted to checking results of surveillance and correct application of legislation, the introduction of 'Economic Dialogue' was an important achievement as transparency and accountability in the economic realm were increased.

Not all the amendments added by the Parliament Rapporteurs were part of the final texts agreed with the Council and the Commission. Also the three most contentious

points seem not to have been fully satisfied: the semi-automatic voting in the preventive arm of the Pact was not fully achieved, a delegated act for the adoption of the scoreboard was not satisfied, and the differentiated treatment of trade surpluses was not opposed.

The empirical work developed tests as valid the hypothesis that the Rapporteurs were the actors that most influenced the Six-Pack policy outcomes.

Proposition 3 questioning whether the Commission was already counting on the European Parliament to amend the Six-Pack's proposals as to meet its Commission´s preferences, was partly satisfied as empirical evidence from interviewed was ambiguous. However, most of the Commission´s claims during the 2000s were accomplished, and back to September 2010, one has to consider not only what the Commission believed to be desirable, but also what was possible (Nugent, 2001).

The Six-Pack also highlighted a contemporary trend of reaching legislative agreements at first reading, under codecision. However, the greater efficiency of the legislative process is harmed by the secrecy of the informal meetings between the Council, the European Parliament, and the Commission, in the so-called trialogues. If the increased powers given to the European Parliament under codecision trough a more transparent, inclusive, and accountant process were intended to close a deficit, the fact is that legislative power rests in just a small group of actors, leading to seclusion within the Parliament, namely the smaller political groups, and also from the electorate.

Two legitimacy problems are observed. The first one refers to the fact that in the European Parliament the electoral connection between voters and their representatives is weak. Besides the Parliament's elections being considered second-order elections, MEPs are selected by National Parties and not by the European Party Groups, which constrains the ability of voters to hold their representative accountable for policy outputs. Secondly, although committees are representative of the European Parliament as a whole, the balance of powers within committees is uneven and rests within just a few actors, like the committee Chair, Vice-Chair, Political Party Coordinators and Rapporteurs, who held the key role on any given legislative proposal. If an agreement is reached in trialogues, as was the case of the Six-pack, the European Parliament plenary is presented with a '*fait accompli'* and is asked to approve it.

The increased use of trialogues contributes to the elitist bias of EU policy-making implying that the Community method should evolve in more transparent paths. Although the legislative efficiency found in trialogues may be difficult to surpass, report allocation and Rapporteur´s nomination could be voted openly in either committee or plenary. Formal votes could then give new political legitimacy to Rapporteurs.

Notwithstanding, and in the Six-Pack case, the European Parliament has become a stakeholder in the Community method, exerting an increased influence on how decision-making is formulated, mainly through the informal channels.

In the end, although the Community method was weakened during the management of the crisis, the concern of maintaining the 'Community' institutions at the center of the operationalization process has prevailed. As such, although an 'intergovernmental drift' was observed in the first two years of the crisis management, the Union´s stabilization rules are still anchored in the Community method.

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Annexes

Annex I - Economic Governance Reform

Comprehensive Economic Governance Reform

European Semester- EU27

May 2010

Ex ante coordination of EU economic, structural and financial policies

Legal Status

Intergovernmental arrangement in the form of code of conduct between the European Council, the Ecofin, the European Commission and Member States

Supranational legal effect by incorporation in the six-pack legislation

Six-Pack
EU27/EA17

September 2011

- Stability & Growth Pact
- Surveillance and Rectification of Macro imbalances

Legal Status: Supranational legal effect (Codecision)

Two-Pack
EA17

February 2012

- Monitoring draft budgetary plans
-Enhanced surveillance member states experiencing financial difficulties

Legal Status: Supranational legal effect (Codecision)

Europe 2020
EU27

June 2010

Designed to coordinate Member states' socio-economic policies and to promote socio economic convergence within the EU

Implemented and monitored in the context of the European Semester

Legal Status: Intergovernmental Agreement (Open Method Cooperation)

Euro Plus Pact
EU23

March 2011

The Pact commits member states to stronger economic coordination for competitiveness and convergence

Implemented and monitored in the context of the European Semester

Legal Status: Intergovernmental Agreement (Open Method Cooperation)

Fiscal Compact
EU25

March 2012

Strengthening fiscal discipline and introducing more automatic sanctions and stricter surveillance euro area

Runs in parallel with the Six-Pack

Legal Status: Intergovernmental Treaty

Financial Supervision
EU27

ESRB- European Systemic Risk Board

ESFS- European System of Financial Supervisors

EBA- European Banking Authority

ESMA- European Securities and Markets Authority

EIOPA- European Insurance and Occupational Pension Authority

Legal Status: Supranational legal effect (Assent procedure)

Financial Stabilization

EFSM (Eur. Financial Stability Mechanism EU27- May 2010

Legal Status: art 122 (2) TFEU (Consultatio Procedure)

EFSF (Eur. Financial Stability Facility) EA17 May 2010

Legal Status: Intergovernmental agreement

ESM (European Stability Mechanism EA17 October 2012

Legal Status: Intergovernmental Treaty

Source: Author´s Compilation

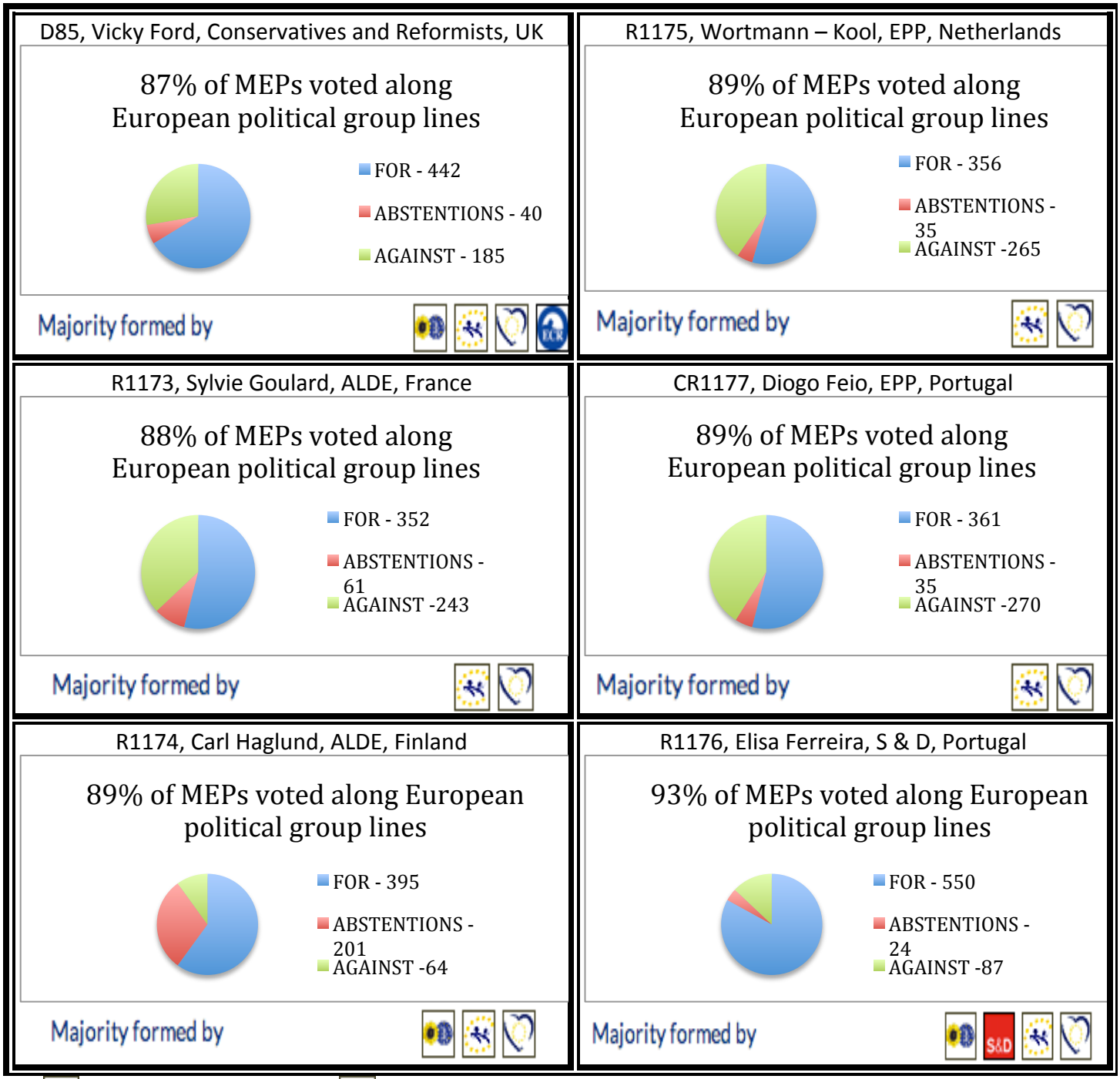
Annex II - Communitarised Elements of Intergovernmental Agreements

	Definition of Common Objectives in the Treaties	Codecision	Qualified Majority Voting in the Council	Binding effect of legislation	Conferral of executive powers to the Commission	European Court of Justice empowered with binding enforcement procedures
Euro-Plus Pact	Yes 'In the chosen policy areas common objectives will be agreed upon at the Heads of State or Government level'	No	No	Yes (indirectly) 'Progress towards the common objectives above will be politically monitored by the Heads of State or Government on the basis of a **series of indicators** covering competitiveness, employment, fiscal sustainability and financial stability'. • Macroeconomic imbalances are institutionalized in the six-pack and the Excessive Imbalance Procedure leading to sanctions.	Yes '(…) new commitments will thereafter be included in the National Reform and Stability Programmes and be subject to the regular surveillance framework, with a strong central role for the Commission in the monitoring of the implementation of the commitments'	No
Fiscal Compact	Yes 'By this Treaty, the Contracting Parties agree, as Member States of the European Union, to strengthen the economic pillar of the Economic and Monetary Union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of economic policies and to improve the governance of the euro area, thereby supporting the achievement of the European Union's objectives for sustainable growth, employment, competitiveness and social cohesion' (art 1)	No	RQMV '(…) Contracting Parties whose currency is the euro commit to support the proposals or recommendations submitted by the European Commission where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure. This obligation shall not apply where it is established among the Contracting Parties whose currency is the euro that a qualified majority of them, calculated by analogy with the relevant provisions of the European Union Treaties without taking into account the position of the Contracting Party concerned, is opposed to the decision proposed or recommended' (art 7)	Yes The signatories of the new treaty remain bound by the obligations of the European treaties. 'This Treaty shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law, including procedural law whenever the adoption of secondary legislation is required.' (art 2)	Yes The Commission proposes '(…) nature, the size and the time-frame of the corrective action to be undertaken, also in the case of exceptional circumstances, and the role and independence of the institutions responsible at national level for monitoring the observance of the rules' (art 2) 'The implementation of the programme, and the yearly budgetary plans consistent with it, will be monitored by the Commission and by the Council' (art 2(5)). 'The Contracting Parties shall report ex-ante on their public debt issuance plans to the European Commission and to the Council' (art 6) '(…) Contracting Parties whose currency is the euro commit to support the proposals or recommendations submitted by the European Commission where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure(…)' (art 7) Note: Reverse Qualified Majority Voting applies.	Yes The balanced budget rule must be implemented, within one year from the entry into force of the Treaty, in the domestic law 'through provisions of binding force and permanent character, preferably constitutional, or otherwise guar- anteed to be fully respected and adhered to throughout the national budgetary processes' (art 3(2)). '(…)Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union' (art 8)

ESM	No	No	No	No	Yes	Yes
			Although: Its Board of Directors 'shall take decisions by qualified majority, unless otherwise stated in this Treaty' (art. 6.5).	Although: '(…) the policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures. To this end, the Commission intends to propose a Regulation clarifying the necessary procedural steps under Article 136 of the Treaty in order to enshrine the policy conditionality in Council decisions and ensure consistency with the EU multilateral surveillance framework'	**Activation of financial assistance:** **-**The Board of Governors will ask the Commission to assess, in liaison with the ECB, the existence of a risk to the financial stability of the euro area as a whole and to undertake a rigorous analysis of the sustainability of the public debt of the Member State concerned, together with the IMF and in liaison with the ECB -The Commission with the IMF and in liaison with the ECB will: assess the actual financing needs of the member state and the nature of the required private sector involvement; negotiate a macroeconomic adjustment program; be responsible for monitoring compliance with the policy conditionality - The policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework and must guarantee the respect of EU procedures'. (included article 13 ESM Treaty) Commission and the ECB are not allowed to play an independent role in the decision-making process.	'If an ESM Member contests the decision referred to in paragraph 2, the dispute shall be submitted to the Court of Justice of the European Union. The judgment of the Court of Justice of the European Union shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by said Court. (art 37.3)

Source: Author's Compilation

Annex III – Six-Pack Voting and Political Party Cohesion



Liberals and Democrats
Greens/European Free Alliance
Conservatives & Reformist
European People's Party
Socialists & Democrats

Source: Vote Watch and Author's Compilation

Annex IV- Regulation 1176/2011 Prevention and Correction of Macroeconomic Imbalances - Amendments to Article 3, Paragraph 2

Commission Legislative Proposal 07.10.2010	Committee Draft Report Rapporteur Elisa Ferreira PE454.699 12.01.2011	Amendments tabled In committee PE458584 16.02.2011	Committee report tabled for plenary, 1st reading/single reading A7-0183/2011 06.05.211	Amendments proposed by the ECB OJ C150 20.05.2011	Text adopted by EP, partial vote at 1st reading T7-02877/2011 23.06.2011	Text adopted by EP, 1st Reading T7-0424/2011 28.09.2011
Article 3, paragraph 2 ...The Commission may set indicative lower or upper thresholds for these indicators to serve as alert levels...	*Article 3, paragraph 2* A14: ... The Commission **shall** set indicative **and symmetric** lower or upper thresholds for these indicators to serve as alert levels.	*Article 3, paragraph 2* A204 Jürgen Klute (GUE, Econ): **...The** Commission **shall** set indicative lower **and symmetric** upper thresholds for **the** indicators to serve as alert levels. A205 Liem Ngoc (S&D, Econ, Shadow): ...The Commission **shall** set indicative symmetric lower and upper thresholds for these indicators to serve as alert levels. A209 Elisa Ferreira (S&D, Econ, Rapporteur): ...The Commission **shall** set indicative **and symmetric** lower or upper thresholds for these indicators to serve as alert levels. A218 Sylvie Goulard (ALDE, Econ, Rapporteur): ...The Commission **shall** set indicative lower or upper thresholds for these indicators to serve as alert levels... Note: 15 Amendments were made	*Article 3, paragraph 2* The Commission ***shall*** set indicative lower ***and*** upper thresholds ***that shall be symmetric when appropriate,*** for these indicators to serve as alert levels.	*Article 3, paragraph 2* A18 ...The Commission may set indicative thresholds for these indicators to serve as alert levels....	*Article 3, paragraph 2b* **... The scoreboard of indicators, and in particular alert thresholds, shall be symmetric, whenever appropriate**	*Article 4, paragraph 4* ... The scoreboard of indicators shall have upper and lower alert thresholds unless inappropriate...

Notes: "A #" stands for Amendments. In the legislative text they appear in 'bold'
Source: European Parliament/Legislative Observatory

Annex V - Six-Pack: Rapporteurs and Shadow Rapporteurs appointed on 21 September 2011

Name	Political Party	Country	Rapporteur	Shadow Rapporteur	Parliamentary Activity
Corien Wortmann-Kool	EPP	Netherlands	☑R1177/2011	☑R1175/2011	Econ member
Diogo Feio	EPP	Portugal	☑CR1175/2011	☑R1177/2011 R1176/2011	Econ member
Krišjānis Karinš	EPP	Latvia		☑	Econ member (Substitute)
Inigo Mendez de Vigo	EPP	Spain		☑	Econ member
Danuta Hubner	EPP	Poland		☑R1174/2011	Econ member
Herbert Doorfman	EPP	Italy		☑	Econ member (Substitute)
Elisa Ferreira	S&D	Portugal	☑R1176/2011	☑R1174/2011 R1177/2011	Econ member **Party Group Coordinator**
Udo Bullmann	S&D	Germany		☑	Econ member
Liem Hoang Ngoc	S&D	France		☑	Econ member
Edward Scicluna	S&D	Malta		☑	Econ Vice Chair
Carl Haglund	ALDE	Finland	☑R1174/2011	☑	Econ member **Party Group Coordinator**
Sylvie Goulard	ALDE	France	☑R1173/2011	☑R1175/2011 R1177/2011	Econ member **Party Group Coordinator**
Philipe Lamberts	Greens	Belgium		☑	Econ member Greens Co-chair
Sven Giegold	Greens	Germany		☑	Econ member
Vicky Ford	ECR	UK	☑D2011/85		Econ member

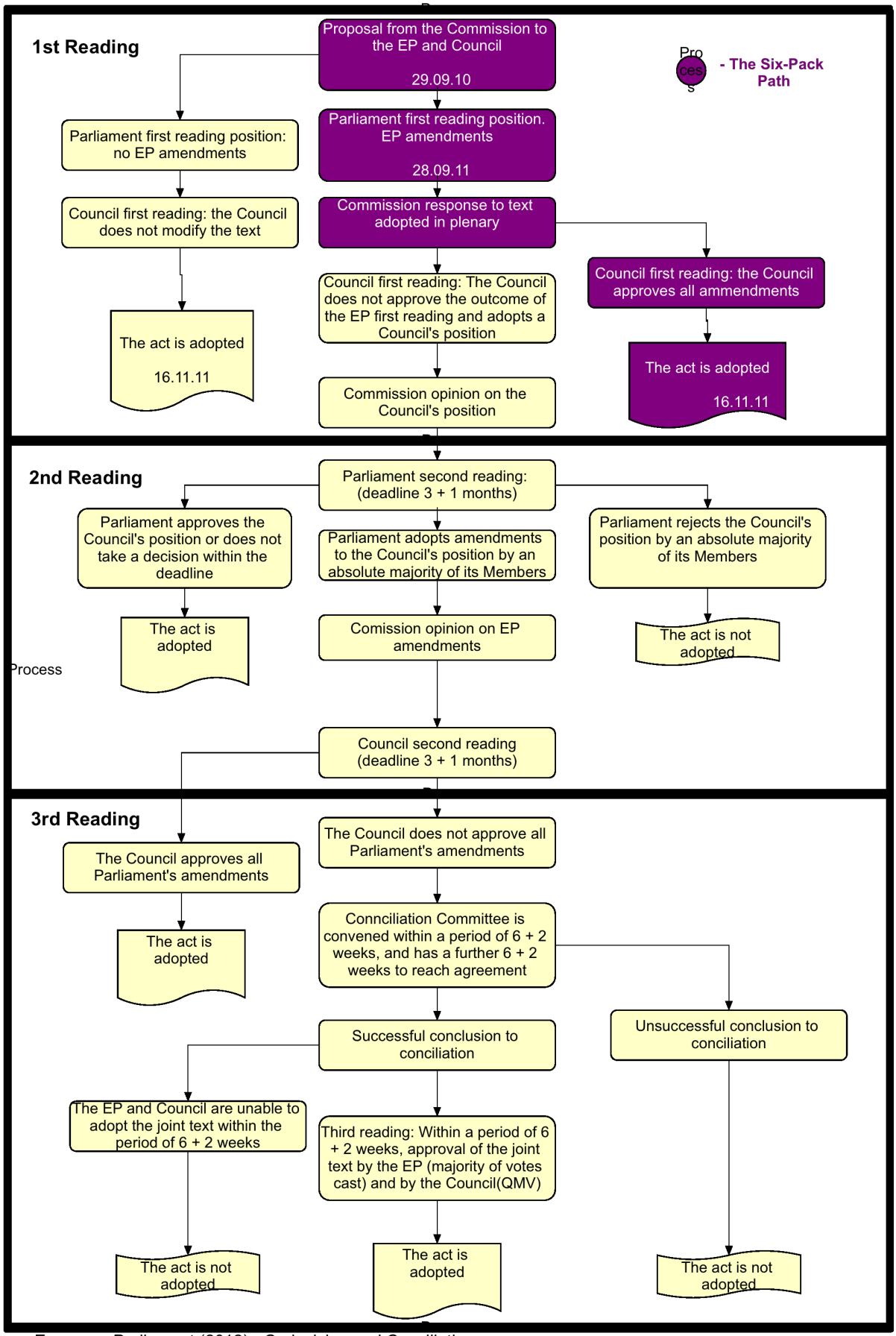
Source: Author's compilation from interviews; sites: 'Legislative Observatory' and 'European Parliament/MEPs'.

Annex VI - Six-Pack Chronology (2010/2011)

Date	Meeting
25 Mar 10	European Council Summit
6 May 10	Merkel and Sarkozy Joint Letter
12 May 10	Commission´s communication on ec. governance reform
21 May 10	1st Van Rompuy Task Force meeting
17 Jun 10	European Council Summit
30 Jun 10	2nt Van Rompuy Task Force meeting
30 Jun 10	Commission´s communication on economic governance reform
12 Jul 10	3rd Van Rompuy Task Force meeting
13 Jul 10	Ecofin meeting
6 Sept 10	4th Van Rompuy Task Force meeting
16 Sept 10	European Council Summit
21 Sept 10	Rapporteurs are appointed
27 Sept 10	5th Van Rompuy Task Force meeting
29 Sept 10	European Commission presents Six-Pack proposals
20 Oct 10	6th Van Rompuy Task Force meeting
20 Oct 10	European Parliament adopts the 'Feio Report'
21 Oct 10	Van Rompuy Task Force report is presented
28/29 Oct 10	European Council Summit
17 Dec 10/ 11 Jan 11	The six Rapporteurs presented their draft reports to the Econ Committee
18 Jan 11	Debate in Council
14 Feb 11	Debate in Council
15/16 Feb 11	Amendments tabled in the Econ Committee
15 Mar 11	The Council reached a preliminary position on the Six-Pack
23 Mar 11	First discussion of amendments in the Econ Committee
19 Apr 11	Six-Pack draft reports voted and adopted by Econ Committee.
20 Apr 11 – 19 Sept 11	Nearly 20 trialogues took place
17 May 11	Debate in Council
20 Jun 11	Debate in Council
22 Jun 11	Debate in the European Parliament
23 Jun 11	Partial vote in plenary
28 Sept 11	Decision by Parliament, 1st reading
8 Nov 11	Six-Pack adopted by Council after Parliament 1st reading
16 Nov 11	Six-pack signed by the European Parliament and the Council

Source: Author

Annex VII: Ordinary Legislative Procedure as Article 294 TFEU



Source: Eurpoean Parliament (2012) - Codecision and Conciliation

Annex VIII - Interviews

Expert	Institutional Position	Date of interview
1	MEP-National Parliament	22 January 2014
2	Ecofin- Finance Minister	4 February 2014
3	DG Ecfin- Commission's official	11 February 2014
4	Commission's official	11 February 2014
5	Ecofin- Finance Minister	17 February 2014
6	MEP-National Parliament	11 April 2014
7	Former European Commissioner	2 May 2014
8	Commission's official	8 May 2014
9	MEP-European Parliament	9 May 2014
10	MEP-European Parliament	16 July 2014

Source: Author