National Parliaments in the Eurozone Crisis. Challenges and Transformations[*]

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Abstract

The Eurozone crisis and the following reaction on the part of the European and national institutions are deemed to have severely undermined parliamentary prerogatives and even challenged one of the landmark principles of constitutionalism: 'No taxation without representation'. Such an outcome has occurred in a context where the inter-institutional balance within the EU Member States, in particular the relationship between the legislative and the executive branch, has been reshaped by the process of European integration in favour of the executives for a long time.

The aim of the paper is to assess whether the Eurozone crisis has really led to a marginalization of national parliaments; or, rather, according to the measures adopted at European and national level and to national case-law, it can be seen as an opportunity for legislatures to redefine their functions in the constitutional system.

The paper will be based on a comparative analysis of national parliaments in five Eurozone Member States: France, Germany, Italy, Portugal, and Spain. These countries have been selected on the grounds of their diverse economic conditions – e.g. Italy, Portugal and Spain have benefited from financial support – and of their different forms of government.

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1. Introduction

It is widely acknowledged that the position of national parliaments has been negatively affected by the reform of the economic governance in the EU.[1] After regaining some of the authority lost

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[1] See M. Maduro, 'A New Governance for the European Union and the Euro: Democracy and Justice', *RSCAS Policy Paper*, n°11, EUI, Florence, 2012, p. 6 ff., B. Crum, 'Saving the Euro at the Cost of Democracy?', *Journal of Common*

throughout the process of European integration thanks to the Treaty of Lisbon, just a few years after, due to the Eurozone crisis, at first look it appears that they have been marginalized again. Indeed, the EU law stemming from the reform of the economic governance, from the amendment of Article 136 TFEU to the six-pack and the two-pack, almost completely disregard national parliaments. Paradoxically it has been one of the most criticized instruments adopted in the aftermath of the crisis, the Fiscal Compact (FC),[2] an international agreement signed by all EU member states but the UK and the Czech Republic outside the EU legal framework, which explicitly recognizes a role for the national parliaments of the contracting parties – in practice also of the UK and the Czech Parliaments are involved – in controlling the implementation of the treaty together with the European Parliament (Art. 13 FC).[3]

Yet, the implementation of the reform of the European economic governance at national level is bringing some innovations on the long standing operation of national parliaments, in particular in terms of enhanced transparency and strengthening of oversight and scrutiny powers. The crisis appears to have forced Parliaments to evolve and re-adapt. Although one could argue that the main 'victims' or 'losers' of the EU integration, national parliaments,[4] have been further jeopardized by the withdrawal of a significant part of the budgetary powers, traditionally endowed in representative and elected assemblies, in favour of the EU intergovernmental or more technical institutions, i.e. the Commission and the European Central Bank (ECB), such a loss of autonomy has likewise affected national executives that are no anymore independent in setting the general and specific directions of the financial and economic policies.

Even though this does not certainly lead to state that after the Eurozone crisis parliaments are much stronger than before, something that does not seem true, perhaps the reform of the economic governance has provided national parliaments with an input to exercise in a more systematic way powers that they already had or to conceive and arrange them according to new formats, and to re-discover the significance of being a democratic representative institution towards citizens. Such a transformation does not occur equally, with the same intensity, and timing in all the Member States, and the process of adaptation is still underway. Also there are many asymmetries as for the position of the Member States and thus of their parliaments in the Eurozone crisis.[5] Consequently, the degree of parliamentary autonomy on fiscal and budgetary matters varies a lot depending on the

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Market Studies, vol. 51, n° 4, 2013, p. 614-630 and M. Everson & C. Joerges, 'Who is the guardian of constitutionalism in Europe after the financial crisis', in S. Kröger (ed.), *Political Representation in the European Union. Still Democratic in Time of Crisis?*, Routledge, London, 2014

[2] On the Treaty on stability, coordination, and governance in the European and Monetary Union, so-called 'Fiscal Compact', see P. Craig, 'The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism', *European Law Review*, vol. 37, 2012, p. 231 ff

[3] According to Art. 13 FC, 'As provided for in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by this Treaty.'

[4] See J. O'Brennan & T. Raunio, 'Deparliamentarization and European integration', in J. O'Brennan & T. Raunio (eds). *National parliaments within the enlarged European Union. From 'victims' of integration to competitive actors?*, Routledge, London and New York, 2007, p. 1-26.

[5] See K. Tuori & K. Tuori, *The Eurozone Crisis. A Constitutional Analysis*, Cambridge, Cambridge University Press, 2014

country. Parliaments having more European and international constraints are those of the 18 states which adopt the euro and within the Eurozone countries those that have benefited from financial assistance or support.[6] Concerns have been addressed to the potential creation of 'second class' parliaments, while some legislatures, like the German *Bundestag*, have regained significant influence up to the point to become able to condition substantially the development of some Euro-national procedures of the economic governance.[7] For some parliaments this enhancement has been the result of decisions of other institutions, like Constitutional Courts, rather than coming from within the legislatures.

The present paper analyses if and how the position of national parliaments of selected member states has changed in reaction to the Euro-crisis by looking at the legal norms which regulate their role and powers and at their first enforcement in the implementation of the reform of the economic governance. The paper also tries to explain from which direction and institution the changes in the parliamentary positions have been driven, whether on the part of the parliament itself or by other actors. Five national parliaments or chambers thereof have been chosen for the examination, namely the French National Assembly, the German *Bundestag*, the Italian Chamber of Deputies, the Portuguese Assembly, and the Spanish Congress of Deputies, in the light of the different inter-institutional relationship existing between the parliament and the executive and of their economic situation as Eurozone countries.[8] Indeed, Germany is simply showing signs of macroeconomic imbalances;[9] France is at risk of a macroeconomic imbalances procedure and since 2009 it has been subject to an excessive deficit procedure; Italy has been able to close the excessive deficit procedure in 2013, but is facing macroeconomic imbalances and received financial support from the ECB in 2011 through the Securities Markets Programme (the ECB purchased 100 billion euro of Italian bonds); Spain is subject to excessive deficit and macroeconomic imbalances procedures and has just exited from the financial assistance programme for the financial sector; finally, Portugal is under excessive deficit procedure and is subject to strict conditionality, given the bailout declared in 2011 and the assistance provided by means of the European Financial Stabilisation Mechanism (EFSM), established under EU law by Council Regulation EU n. 407/2010 of 11 May 2010, the European Financial Stability Facility (EFSF), a private fund to which the Eurozone member states were shareholders and based in Luxembourg (replaced by the permanent stability mechanism), and directly by the International Monetary Fund (IMF).

[6] There are, however, also non-Eurozone countries subject to strict conditionality, given the financial support they got, like Latvia (before it became a member of the Eurozone) and Romania.

[7] On the asymmetries arising between national Parliaments, see K. Auel & O. Höing, 'Scrutiny in Challenging Times – National Parliaments in the Eurozone Crisis', *European Policy Analysis*, n° 1, 2014, www.sieps.se and C. Pinelli, 'La giurisprudenza costituzionale tedesca e le nuove asimmetrie fra i poteri dei parlamenti nazionali dell'eurozona', www.costituzionalismo.it, 25 March 2014.

[8] The paper has benefited from the information collected in the national reports on France, Germany, Italy, Portugal and Spain, written in the framework of the 'Constitutional Change through the Euro-Crisis Law' project, run by the Law Department of the European University Institute and funded by the EUI Research Council (2013-2015). In particular, Robin Gadbled has drafted the report on France; Sabine Mair, the report on Germany; Leonardo Pierdominici, the report on Italy; Maria Luisa Ribeiro Lourenço & Benedita Queiroz, the report on Portugal; Mireia Estrada Canamares & Germán Gomez Ventura, the report on Spain.
In this paper the analysis is mainly focused on the lower chambers, since the second chambers – except in Italy - are excluded from the confidence relationship with the executive. Portugal, instead, has a unicameral legislature.

[9] See the Alert Mechanism Report of the Commission of 13 November 2013: http://europa.eu/rapid/press-release_MEMO-13-970_en.htm

The hypothesis behind the paper is that the existing domestic constitutional settlement and the economic conditions of the member states can influence the parliamentary 'response' to the Euro-crisis. The paper is devised as follows: section 2 looks at the constitutional provisions dealing with parliamentary powers on budgetary matters and on EU affairs, both being relevant to assess the role of national Parliaments in the new economic governance; section 3 focuses on the time constraints imposed upon parliamentary procedures, in particular with regard to international agreements and the European Treaties amendment dealing with the Eurozone crisis and the indifference initially shown by Parliaments; section 4 deals with the transparency problem and with the information asymmetry between Parliaments and Governments about the European side of the new economic governance; section 5 analyses the developments occurring about parliamentary scrutiny and oversight powers; section 6 tries to examine potential cases of co-decision and of veto exercised by Parliaments against the Executives; finally, section 7 draws some preliminary conclusions.

2. The constitutional protection of parliamentary prerogatives during the Eurozone crisis

Art. 3.2. of the Fiscal Compact states, in its last sentence, that the 'correction mechanism shall fully respect the prerogatives of national Parliaments'. However, whether Parliaments are actually guaranteed or not mainly depends on national law.

The first instrument for the protection of parliamentary prerogatives in the context of the present financial crisis is represented by the Constitution. The Constitutions of the five member states under examination show a different degree of 'commitment' in order to preserve the budgetary and fiscal powers of the Parliaments. While all of them empower the Parliament for the approval of the annual budget and the supervision over its implementation, only some Constitutions are suitable to directly allow the Parliament to play a role within the Euro-national budgetary process. Such a possibility also depends on the constitutional rules about national participation in the EU: indeed, even though only part of the reform of the European economic governance forms part of EU law, it is mostly by means of the interplay between national and EU institutions – the Commission, the Council, the European Council, the ECB, etc. – that Euro-crisis measures are conceived and implemented.

For example, the Spanish Constitution, even after the reform of Art. 135 Const., which constitutionalised the balanced budget rule in 2011, is devoid of provisions that protect or enhance the role of the *Cortes Generales*.[10] Moreover, also the participation of the Spanish Parliament in the EU decision-making process lacks a constitutional coverage. Prior to the ratification of the Fiscal Compact, of the TESM, and of the amendment to Art. 136 TFEU, the Houses of Parliament could have requested the Constitutional Court to declare the compliance of those treaties with the Constitution (Art. 95.2 Const.), should a doubt arise about the prospective violation of the parliamentary prerogatives. However, the Parliament did not use such a power.

Likewise in Italy the Parliament does not enjoy any constitutional protection as for its involvement in EU affairs. Yet, for the first time ever, constitutional law n. 1/2012, which has also introduced the

[10] See V. Ruiz Almendral, 'The Spanish Legal Framework for Curbing the Public Debt and the Deficit', *European Constitutional Law Review*, vol. 9, n. 2, 2013, p. 189-204.

balanced budget clause into the Italian Constitution, provided the Parliament with scrutiny – i.e. *ex ante* control – and the oversight – i.e. *ex post* control – powers on public finance, in particular on the balance between revenues and expenditures and on the quality and quantity of the public administrations' expenditures. (Art. 5.4 constitutional law n. 1/2012). By the same token, this constitutional law requires the creation of the fiscal council – the independent institution entitled to check the sustainability of the public accounts (Art. 3.2. of the Fiscal Compact) – within the Parliament, according to what specified by the parliamentary rules of procedure. Such provisions are able to strike the inter-institutional balance very much in favour of the Parliament, compared to the situation pre-Fiscal Compact.[11]

In France, the constitutional standing of the Parliament in the budget cycle has not changed following the Fiscal Compact, as no constitutional amendment has been enacted in this regard according to the decision of the Constitutional Council of 9 August 2012 (Decision n° 2012-653).[12] Although Art. 3.2. of the Fiscal Compact imposes the Eurozone Member States to entrench the balanced budget clause – the limit of 0.5% of the structural deficit on the GDP – 'preferably' at constitutional level, the Constitutional Court ruled that the use of an organic law satisfies the conditions of adopting 'provisions of binding force and permanent character' also provided by the Fiscal Compact.[13] However, in spite of the lack of specific constitutional norms on the Parliament in the new euro-national budgetary cycle, some constitutional provisions introduced in 2008, both for adapting the constitutional system to the Treaty of Lisbon and for re-defining the inter-institutional balance between the legislature, the executive branch and the Constitutional Council, the position of the Parliament has been recently enhanced. In particular, 'Parliament shall pass statutes. It shall monitor the action of the Government. It shall assess public policies' (Art. 24 Const.) and is allowed to actively participate and orient the action of the executive in shaping the EU legislative process (Arts. 88-4 to 88-7 Const.). Given that before 2008 the Parliament could not even oversee the Government and pass resolutions, the change is a major one in the French constitutional landscape and it might affect also the reaction of the Parliament to the new external constraints on the budgetary procedures.

[11] See C. Fasone & E. Griglio, 'Can Fiscal Councils Enhance the Role of National Parliaments in the European Union? A Comparative Analysis', in B. de Witte, H. Héritier, A.H. Trechsel (eds.) *The Euro Crisis and the State of European Democracy*, Fiesole, EUI, RSCAS and EUDO, 2013, p. 264-305.

[12] Art. 34 Fr. Const., provides: 'Social Security Financing Acts shall lay down the general conditions for the financial equilibrium thereof, and taking into account forecasted revenue, shall determine expenditure targets in the conditions and with the reservations provided for by an Institutional Act.' However, as pointed out by G. Carcassonne, *La Constitution*, 11 ed., Editions du Seuil, Paris, 2013, §232-233, this provision has always been interpreted simply as fixing a mere objective rather than an immediately enforceable rule. On 13 July 2012 the President of the French Republic, François Hollande, had requested the *Conseil constitutionnel* to decide on whether the authorization to the ratification of the Fiscal Compact had to be preceded by a constitutional reform (Art. 54 Fr. Const.). Before the presidential election of 2012, President Sarkozy and its party, UMP, initiated a constitutional bill which had been already adopted by the two chambers and was waiting for the approval by the Congress, i.e. the two Chambers meeting in joint session (Art. 89 Fr. Const.). The change of the majority and the decision of the Constitutional Council led to abandon the project of a constitutional reform, which would have strengthened the Parliament. Indeed, the constitutional bill offered constitutional protection to each chamber to debate on the recommendations of the Commission on the stability and the national reform programmes and the finance committees to adopt a resolution on the measures to be taken.

[13] Organic laws can be adopted with regard to specific subject matters provided by the Constitution (i.e. referendum, condition of approval and content of budget acts, etc.) and only by absolute majority in both Chambers. Prior to their entry into force, they are subject to the ex ante constitutional review by the Constitutional Council (art. 46 Fr. Const.).

Not even in Portugal has constitutional law been changed after the reform of the economic governance. Art. 105.4 Const. already contained a balanced budget clause, although it has been generally interpreted as having a programmatic rather than a strictly binding nature.[14] By looking at constitutional provisions, the position of the Portuguese Parliament – at least in principle – appears to be secured in the budgetary process and in relation to EU affairs. The budget is drawn up on the basis of the multi-annual planning options adopted by the Parliament, upon governmental proposal (Art. 105.2 Const.); the execution of the budget is scrutinized by the Assembly and the Court of Auditors (Art. 107); the parliamentary authorization is required for the Government in order to contract and grant loans and other lending operations, also 'setting the upper limit for guarantees to be given by the Government in any given year' (Art. 161.h Const.), which seems particularly relevant in the present context of the Portuguese bailout. Moreover, the Portuguese Parliament has been granted a constitutional protection as for its participation in EU decision-making process and the Government must inform the Parliament 'in good time' as for the developments of the EU integration process (Arts. 163.f and 197.i). It should be noted that the Portuguese *Assembliea da Republica* is by far the most active national Parliament in the EU as for the number of opinions transmitted to the European Commission of EU draft legislative acts, which account for more than 30% of all opinions addressed to the Commission and although they are usually issued in support of the European proposals.[15]

The German Basic Law, revised in 2009 about the adoption of stricter budgetary constraints and eventually acting as an input for the Fiscal Compact and the subsequent constitutional amendment in the Eurozone countries, does not protect parliamentary prerogatives in a much more extensive way compared to the other four Constitutions as for the wording of the constitutional text (see, for example, Artss. 110 and 115.1 GG). Only with regard to EU affairs, Art. 23.2 and 23.3 GG is the government bound by a duty to inform the Parliament on the participation in the EU 'comprehensively and at the earliest possible time' and to take into account the *Bundestag* position during the negotiations in Brussels. This is significant insofar as Art. 109 GG, as revised, on the budget management in the Federation, establishes that the obligations for the maintenance of budgetary discipline and for the overall economic equilibrium result from EU Treaties and legal acts.

However, compared to the other Parliaments and in the light of equivalent constitutional provisions, the position of the *Bundestag* has been strengthened by the constitutional interpretation of the German Constitutional Court. Relying on its consolidated case law inaugurated by the ruling of 30 June 2009 on the Treaty of Lisbon,[16] the involvement of the *Bundestag* in the Euro-national procedures of implementation of the new economic governance has been gradually reinforced. The

[14] 'The Budget shall provide for the income needed to cover expenditure (…)'.

[15] See European Commission, *Annual report 2012 on relations between the European Commission and national parliaments*, COM (2013) 565 final, Brussels, 30 July 2013, p. 4. The activism of the Portuguese Parliament does not necessarily results in a much more influential position of this legislature towards the Government compared to other Parliaments.

[16] The reasoning of the Court was initially and partially developed in the *Maastricht Urteil* of 12 October 1993 (BVerfGE 89, 155). The literature on the Lisbon decision is endless. For a comparative overview of the *Lissabon Urteil* with other decisions of Constitutional or Supreme Courts on the same Treaty, see M. Wendel, 'Lisbon Before the Courts: Comparative Perspectives', *European Constitutional Law Review*, vol. 7, n° 1, 2011, p. 96-136.

judicial protection of the *Bundestag* is build upon a peculiar interpretation of Art. 38.1 GG on the right to vote for the *Bundestag* as a 'right to democracy'– right that would be irremediably impaired if the powers and the autonomy of this chamber, where people are represented, are severely limited – in conjunction with Art. 20.2 GG that identifies the source of the state authority in the people and in the elections and Art. 79.3 GG, the eternity clause, which makes the democratic principle unamendable as part of the German constitutional identity. Furthermore the Court has recognized that the *Bundestag* enjoys an overall budget responsibility, that is directly linked to the democratic principle.

The position of the *Bundestag* in the European economic governance is stronger than those of other Parliaments (see below), because of the 'external' protection provided by the German Constitutional Court, which has requested incremental changes in the national law of implementation of the new economic governance, decision after decision. Even in the last decision on the 'saga', on 18 March 2014 (BVerfG, 2 BvR 1390/12), although the Court upheld the constitutionality of the Council decision of 2011 to amend Art. 136 TFEU, of the TESM, of the Fiscal Compact, and of their national acts of implementation, it did not forget to recall its warning against the marginalization of the *Bundestag* in the budgetary process:

> 'Art. 38 sec. 1 GG is violated in particular if the German *Bundestag* relinquishes its budgetary responsibility with the effect that it or a future *Bundestag* can no longer exercise the right to decide on the budget on its own (BVerfGE 129, 124 <177>; 132, 195 <239>, n. 106). Deciding on public revenue and public expenditure is a fundamental part of the ability of a constitutional state to democratically shape itself (cf. BVerfGE 123, 267 <359>; 132, 195 <239>, n. 106). The German *Bundestag* must therefore make decisions on revenue and expenditure with responsibility to the people (§161).'[17]

The asymmetric position of the German *Bundestag* vis-à-vis other national Parliaments is also proved by the fact that this Chamber was the only one visited by the President of the European Central Bank, Mario Draghi, on 24 October 2012, to be reassured about the effects of the ECB Governing Council's Decision of 6 September 2012 concerning Outright Monetary Transactions (OMT).[18] Nonetheless, Mr. Draghi's speech failed to convince part of the parliamentary audience and indeed the parliamentary group 'Die Linke' brought an *Organstreit* proceeding before the Constitutional Court against the OMT decision that is still pending (BVerfG, 2 BvR 2728/13).[19] In the order for its first preliminary reference to the Court of Justice of the EU, the German Constitutional Court referred extensively, as usual, to the need to protect parliamentary prerogatives (Artt. 38.1, 20.e 2, 79.3 GG).

For whatever reason the German Constitution Court has taken up this role of guarantor of the Parliament – self-interest in extending the standards the constitutional review of legislation or improving its legitimacy as guardian of the democratic institution – a similar approach is lacking in

[17] Immediately after the German Constitutional Court has also stated that 'The German *Bundestag* may not transfer its budgetary responsibility to other entities through imprecise budgetary authorisations (§ 163).'

[18] While national Parliaments have been visited by commissioners in the last few years, the President of the European Central Bank so far had been engaged only in the monetary dialogue with the European Parliament.

[19] See German Law Journal, *Special Issue. The OMT Decision of the German Federal Constitutional Court*, Vol. 15, n° 2, 2014, available at: http://www.germanlawjournal.com/

the Constitutional or Supreme Courts of the other four Member States. For example the French Constitutional Council in its decision on the compatibility of the organic law on the Programming and Governance of Public Finances,[20] for the implementation of the Fiscal Compact, has clearly stated that the new law does not encroach upon parliamentary prerogatives in budgetary matters (Decision n° 2012-658 DC of 13 December 2012, § 12), whereas, starting from decision n. 183/2013, the Portuguese Constitutional Court has not hesitated to struck down provisions of the annual Budget Act in the name of the equality principle, the principle of legitimate expectations, and the principle of proportionality.[21] The budgetary authority of the Portuguese Parliament, severely constrained by the Memorandum of Understanding and by the Economic Adjustment Programme, whose content has been substantially transposed into the Budget Acts, has been ultimately defeated by this line of case law.

The reform of the economic governance at European level so far has not brought significant changes in the rules of procedures (or standing orders) of the five Parliaments. Their rules have not been amended yet, in spite of the significant transformation of the budgetary process after the launch of the European Semester in 2011.[22] To some extent Parliaments are still testing the new procedures provided by EU and international law, by the new constitutional provisions, where adopted, and by organic or ordinary laws of implementation (see below), before they amend their rules. Thus the parliamentary involvement in the European Semester and in the management of the ESM and of bilateral assistance has been defined mainly by subconstitutional acts and by parliamentary practice, stretching the interpretation of the existing rules of procedure.

Only in Spain a resolution of the Bureaux of the two Chambers was adopted in 19 July 2011 as to complement the rules of procedure and to set up a parliamentary budget office – the *Oficina Presupuestaria de las Cortes Generales* – based within the Parliament, a sort of Fiscal Council which checks and assesses the execution of the budget and provides information to the legislature. However, this Office, provided by Law n. 37/2010, has started to operate only in 2013, when it was coupled with another independent though non-parliamentary budget authority, the *Autoridad Independiente de Responsabilidad Fiscal* (AIRF).

In Italy, where also a parliamentary budget office has to be established (constitutional law n. 1/2012 and organic law n. 243/2012) for the first time ever the Chamber of Deputies and the Senate are negotiating a joint protocol for its setting up, which will complement the rules of procedure, although it will not formally be part of them.[23] Indeed, the Italian bicameral system, in spite of its

[20] *Loi organique n° 2012-1403 du 17 décembre 2012 relative à la programmation et à la gouvernance des finances publiques.*

[21] See J. E. M. Machado, 'The Sovereign Debt Crisis and the Constitution's Negative Outlook: A Portuguese Preliminary Assessment', in X. Contiades (ed.), *Constitutions in the Global Financial Crisis. A Comparative Analysis*, Farnham, Ashgate, 2013, p. 235 and M. Nogueira De Brito, *Comentário ao Acórdão nº 353/2012 do Tribunal Constitucional*, in *Direito & política* 2012, p. 108 ff.Other decisions followed very much on the same line, like decisions n. 794/2013 and 862/2013. In 2012 decision n. 353 had already declared provisions of the Budget Act of 2012 unconstitutional; however, given the fact that the budget was already in execution the Constitutional Court decided to suspend the effect of the decision. Therefore, the budget act was declared invalid but it was not annulled.

[22] See COSAC, *Nineteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, Brussels, 17 May 2013, p. 22-23, available at www.cosac.eu.

[23] See the draft joint protocol: *Protocollo per l'attuazione del Capo VII della legge 24 dicembre 2012, n. 234, relativo all'istituzione dell'Ufficio parlamentare di bilancio*.

symmetrical nature, has always be featured by a strictly unicameral management of the parliamentary procedures – even those dealing with scrutiny and oversight – and is featured by a very weak cooperation between the parliamentary administrations of the Chamber and of the Senate.[24] The parliamentary budget office and the joint protocol are important signals in the opposite direction and both are direct outcome of the new European economic governance.

3. Time constraints and Parliaments' indifference

The action of contemporary institutions has been increasingly subject to time constraints. In particular after WWII the expansion of the legislation and of the areas covered by some form of public regulation has pushed towards a more timely and rational organization of institutional decision-making. Such a turn has been especially challenging for Parliaments as spaces open to public debate, where pluralism is guaranteed, and where the timing of law making often clashes with the plethoric composition of the institution, in particular in plenary session. Moreover Parliaments sometimes work according to century-old traditions that are not easily to accommodate with contemporary time constraints. Furthermore in parliamentary (Germany, Italy, and Spain) or semi-presidential (France and Portugal) forms of government – like those under examination – the legislative agenda and parliamentary order of business are mainly shaped by the executive branch. Since long Parliaments have lost the sovereignty of their time and the timing is usually dictated by the government and adjusted to its priority, except for the time reserved by the Constitution or by the rules of procedure to minority groups or to questions.

The financial crisis has put another external constraints upon parliamentary authority. While the timing of the European Semester – defined by the six-pack and the two pack – is now standardized, usually also by national law – 2014 is the third year in which the cycle of the European Semester is completed – and all political actors, at EU and national level, Parliaments included, know in advance when they have to submit reports, documents, plans, opinions and recommendations, major problems have been created by the authorization to ratify the international financial instruments of the economic governance or by the implementation of the rescue packages and the payment of the installments in favour of the 'debtor' countries. The threat of the financial crisis and of the bailouts have promoted a climate of permanent urgency.

In Spain even the constitutional reform was finalized in record time:[25] from the proposal of constitutional bill to its publication on the Official Journal (BOE) only thirty-two days have elapsed, from the end of August to the end of September 2011. The constitutional bill was examined by means of the urgency procedure and in *lectura única* – i.e. directly debated and adopted by the *plenum* without prior scrutiny by standing committees –, all the amendments tabled were rejected, except those aiming to correct the wording of the provisions, and the referendum was not requested (Art. 167 Sp. Const.). The overall majority of the two Chambers agreed on the reform, whereas only

[24] See L. Gianniti, 'Per un ragionevole bicameralismo amministrativo'. *In* A. Manzella & F. Bassanini (eds.), *Per far funzionare il Parlamento : quarantaquattro modeste proposte* Bologna, Il Mulino, 2007, p. 77-86, and N. Lupo, 'Il ruolo delle burocrazie parlamentari alla luce dei mutamenti dell'assetto istituzionale, nazionale e sopranazionale'. In *Rassegna Parlamentare*, n. 1, 2012, p. 51-89.

[25] See F. Balaguer Callejón, 'Presentación', *Revista de derecho constitucional europeo*, n. 16, 2011.

some nationalist parties or parties of the extreme left, like *Izquierda Unida*, shown their discontent. Even before the reform was adopted, on 8 September 2011, *Izquierda Unida* lodged an appeal before the Constitutional Court on a procedural ground and it asked for the annulment of the constitutional reform vitiated by the use of the urgency procedure. The appeal was declared inadmissible and basically this was the only parliamentary reaction to the reform.

Although the timing was slightly more relaxed, also for the Italian standard the constitutional reform went very fast. It took longer, from September 2011 to April 2012 for the final approval of constitutional law n. 1/2012, because the Italian procedure for constitutional amendments needs the adoption of the same text by each Chamber in two deliberations at intervals of no less than three months one from the other (Art. 138 It. Const.). The approval of the reform in the second deliberations showed such a level of consensus – beyond the two thirds majority required – that not even a constitutional referendum could be requested.[26] Facing the crisis political groups appear to abandon their traditional struggle between majority and opposition and to create a cross-party alliance, with very few exceptions also in Italy (like North League).

Fast track procedures or the merger in a single debate and instrument of implementation or ratification of several international financial measures has been the rule also in France, Portugal, and Germany, together with a very broad support on the part of political parties. In France, for example, the act approving the amendment of Art. 136 TFEU authorized at the same time the ratification of the TESM, following a joint debate of the two measures and the use of the accelerated procedure (Art. 45 Fr. Const.). By this procedure the legislative process is shortened and only one reading in each Chamber takes place before a joint committee between the National Assembly and the Senate is summoned, in the event of disagreement. Therefore the whole process was very short and the debate extremely limited, but this happened once again with the agreement of an overwhelming majority in Parliament.

Similarly in Portugal the Fiscal Compact and the TESM were debated jointly and by means of two different parliamentary resolutions their ratification was authorized on 13 April 2012. In spite of the support of the major political parties, criticism arose as for the lack of parliamentary involvement during the previous negotiations as well as the absence of debate in Parliament about two different though linked Euro-crisis instruments. The proposals to apply Art. 295 Pt. Const., which allows to held referenda 'on the approval of a treaty aimed at the construction and deepening of the European Union' were disregarded. Although the Fiscal Compact and the TESM are not part of EU law, they contribute to the construction and consolidation of the process of European integration.

Even in Germany the bills authorizing the ratification or approving the amendment to Art. 136 TFEU, the Fiscal Compact and the TESM were introduced on the same day, debated together as if they were one single tool, and adopted almost contextually, in June 2012. The only fierce opposition was that of Die Linke that basically challenged the validity of any of these measures by means of an *Organstreit* proceeding before the German Constitutional Court.

[26] According to Art. 138 It. Const. the condition for presenting a request for a constitutional (confirmatory) referendum by 500000 citizens, five regional Councils, or one fifth of the members of a House, is that the threshold of two thirds of the members in each Chamber in the second deliberation is not reached, but only the absolute majority of MPs and senators voted in favour.

Except for the concerns expressed by very few parliamentary opponents of the new economic governance and of the procedures used for the implementation with regard to the impairment of parliamentary and people's sovereignty, in the five member states a wide convergence of interests and positions has emerged. Parliamentary debates were extremely constrained and Parliaments appeared almost to abdicate to their role.[27] No parliamentary debate has taken place in the French National Assembly about the EFSF Framework Agreement, which was not even submitted to Parliament for the authorization of the ratification. However the guarantees for the participation in the fund and later on their increasing were authorized by means of annual budget Acts and amending Budget Acts and thus were debated in Parliament.

The same applied to Italy, Portugal, and Spain about the crucial measures of financial support and assistance. The inclusion of Italy in the Securities Market Programme of the ECB has been maintained almost secret in spite of the exchange of letters between the President and the incumbent President of the ECB and the Italian Government, which was disclosed in late 2011. Also, except for the case of the bilateral assistance to Greece in 2010, the guarantees provided by Italy in the framework of the EFSF and of the ESM as well as the payment of the installments at the benefit of the bailout countries has been completely neglected by the Italian Parliament.

The Portuguese and the Spanish Parliaments, once the bailout was declared, did not examine the content of their Memorandum of Understanding and Financial Assistance Facility Agreement. They were not involved during the negotiation and the respective Governments chose to consider these agreements as treaties not subject to parliamentary approval before the ratification (Art. 94.2 Sp. Const., Arts. 197.1.c and 200.1.d Pt. Const.).[28] Whether such an outcome was an inevitable choice of the governments depending on the seriousness of the financial crisis and on the need to adopt the rescue package as soon as possible or, by contrast, the Parliaments could have reacted and played a more active role at this stage remains unclear. Legislatures appeared to be very supportive of the governments, often well beyond the parliamentary majority identified after the election, but the lack of information as regards the negotiation and the adoption of the Euro-crisis emergency measures at European and international levels raises doubts on who is responsible for the very limited parliamentary debate.

4. The transparency problem and the information asymmetry

The lack of transparency about the negotiation of the rescue packages has effectively impaired the ability of the Parliaments,[29] in particular in Portugal and Spain, to control the government, either

[27] By contrast, while lacking in Parliament, the debate was fierce in the academia and literature: see M. Luciani, 'Costituzione, bilancio, diritti e doveri dei cittadini', *Astrid.eu*, September 2012 and F. Balaguer Callejón, 'Presentación', *Revista de derecho constitucional europeo*, n. 16, 2011

[28] What the Portuguese Assembly and the Spanish Congress of Deputies have been able to do is simply to debate and pass the laws implementing the measures agreed through the Memorandum of Understanding. In the case of Spain those measures have been adopted mainly by means of decree-laws issued by the executive and converted into law, without amendments, by the *Cortes Generales* (Art. 86 Sp. Const.).

[29] See C. Kilpatrick, 'On the Rule of Law and Economic Emergency: The Degradation of Basic Legal Values in Europe's bailouts', forthcoming, 2014.

because the approach of the legislatures was too deferential towards the executives or because legislatures were not in the condition to exercise any discretion. Due to the political crisis in 2011, the Portuguese Assembly was able to debate the Memorandum of Understanding and the Financial and Economic Assistance Programme only one year after their adoption when the measures agreed with the Troika (ECB, IMF, and European Commission) were included into the annual Budget Act. By the same token, only a few months ago former Spanish Prime Minister Zapatero disclosed to the public the letter received by the ECB in August 2011 – when also the Italian Government received the letter – rightly before the constitutional reform was adopted and whose existence he had always refused to admit.[30]

In spite of this scenario, there are, however, strong signals of an increasing attention towards the transparency problem for the Parliaments and several attempts to reduce the information asymmetry in favour of the Governments have been made.[31] While the transparency problem has concerned specifically the budgetary authority of Parliaments facing the bailout, it has been gradually overcome within the European Semester thanks to the role played by courts, namely the German Constitutional Court, as a source of inspiration also for the legislation in other member states, and by the Fiscal Councils.

In France, when the Council of State was asked by the Government if the EFSF framework agreement and its amendments could be legitimately ratified without parliamentary authorization although the framework agreement could fall within those treaties 'committing the finances of the state (Art. 53 Fr. Const.)', the Council stated that the approval of the Parliament was not necessary but the information right of the Parliament had to be protected. Thus, when implementing the framework agreement the consolidated version of the treaty as well as subsequent modifications had to be transmitted to the Parliament.[32] Moreover, the amending Budget Act adopted on 7 June 2010 (Law n° 2010-606 *de finances rectificative pour* 2010) – the first act to implement the EFSF in France – required that the standing Committees on finances in both Chambers will be duly informed of any loans and funding granted via EFSF.

The German Constitutional took the lead in promoting the right of the Parliament(s) to be informed. In its ruling of 28 February 2012 (2 BvE 8/11), on the *Bundestag*'s right of participation in the EFSF and particularly in authorizing the extension of the guarantees for the fund, the constitutionality of two legislative acts, the *StabMechG* (Act on the Assumption of Guarantees in Connection with a European Stabilisation Mechanism, Euro Stabilisation Mechanism Act) of 22 May 2010 and the Act Amending the Euro Stabilisation Mechanism Act of 14 October 2011, which extended the EFSF's maximum loan capacity, was challenged on the ground of the usual standards of review (see above, section 2): Art. 38.1 GG in conjunction with Art. 20.1. and 2 GG, and Art. 79.3 GG. If a revision of the guarantee facilities on the part of Germany is needed, the consent of the *Bundestag* is required. In situations of particular urgency and confidentiality, the consent is

[30] Significantly the letter was published as an annex to his biography: J. L. Rodríguez Zapatero, *El Dilema: 600 Días de Vértigo*, Barcelona, Planeta, 2013, p. 405-408.
[31] See D. Curtin, 'Challenging Executive Dominance in European Democracy', *Modern Law Review*, vol. 7, n° 1, 2014, p. 1-32.
[32] The opinion of the Council of State was adopted in its capacity as an advisory body of the Government: see Conseil d'Etat, *Rapport public 2012 - Volume 1 : activité juridictionnelle et consultative des juridictions administratives*, p. 145.

given by a new parliamentary body established by the *StabMechG* (Art.3.3), the *Sondergremium*, on behalf of the *Bundestag.* The *Sondergremium*, which is elected from among the members of the Budget Committee, in cases of particular confidentiality is informed about the government's operation on the EFSF in place of the *Bundestag* (Art. 5.7 *StabMechG*). Although the Constitutional Court affirmed that this provision – which transfers the right to be informed from the plenary to a minor parliamentary bodies – is not deemed to violate Art. 38.1 GG, the rights of the every MP to be informed can be restricted 'only to the extent that is absolutely necessary in the interest of Parliament's ability to function.' Therefore an interpretation of the provision in conformity with the Constitution is required: the right to be informed can be only temporarily suspended as long as the reasons for keeping the information confidential remain. Once the reasons for the confidentiality have ceased, the Government must inform the *Bundestag* 'without delay about the involvement of the *Sondergremium* and the reasons justifying such involvement.'

The reasoning used in this decision about the right to information was further developed in a subsequent judgment of the German Constitutional Court of 19 June 2012 (2 BvE 4/11). The Federal Government had violated the right of the *Bundestag* to be informed in connection with the European Stability Mechanism (ESM) and the Euro Plus Pact on the basis of *Organstreit* proceedings brought by MPs.[33] In particular, the Court acknowledge that Article 23.2 sentence 2 GG, which obliges the Federal Government to keep the *Bundestag* informed, comprehensively and at the earliest possible time, 'in matters concerning the European Union', also applies to international treaties and political agreements negotiated outside the EU Law framework though linked to the European integration. According to the Court, the Government failed to provide the relevant information to the Parliament even though it was the initiator of those pacts together with France. The *Bundesverfassungericht* set also specific standards of quality and quantity for the information to be transmitted to the *Bundestag.* The Parliament must be informed comprehensively and at the earliest possible time, so that the *Bundestag* can contribute effectively to shape the government's position (the Parliament must have a direct influence on it). The disclosure of information also 'serves the publicity of parliamentary work', a condition that the Court derives from the protection of the democratic principle embedded in Art. 20.2 GG. Moreover, the more complex a matter is and the more intrusive on Parliament's legislative power a measure is, the more intensive and detailed the information to be provided will be. The duty to inform does not regard only governmental acts or documents, but also official materials of the EU institutions, of international organizations, and of other Member States, and must be supplied in written form as a general rule. Furthermore, the information must be transmitted step by step and not 'in an overall package', once the decision-making process has been completed. In particular, information must reach the Parliament whenever the Government dominates the entire procedure, as it was for the negotiation of the Euro Plus Pact and the TESM. There are evidence, that the Court itself lists at length that the Government had information available well in advance to the cloture of the

[33] On the constitutional judgments on the ESM, see S. Bardutzky & E. Fahey, 'Judicial review of Eurozone law: the adjudication of postnational norms in the EU courts, plural—a case study of the European Stability Mechanism', *Michigan Journal of International Law*, vol. 34, 2013, p. 101-111.

negotiation: it should have submitted interim results of the negotiation and draft versions of the agreements.

As a consequence of these decisions, the *Act on Financial Participation in the European Stability Mechanism* (*ESMFinG*) and *Law to the Contract on March 2, 2012 on Stability, Coordination and Governance in the Economic and Monetary Union*, about the Fiscal Compact, both adopted on 29 June 2012, set higher thresholds as for the quantity and the quality of the information to be provided to the *Bundestag*. Lastly, in the decision of 12 September 2012 the Court has reached the final outcome of its reasoning by connecting expressly the right to information to the performance of the overall budgetary responsibility by the *Bundestag*. The latter is dependent upon the former (§ 215).

> 'The German *Bundestag* cannot exercise its overall budgetary responsibility without receiving sufficient information concerning the decisions with budgetary implications for which is accountable. The principle of democracy under Article 20 (1) and (2) of the Basic Law therefore requires that the German *Bundestag* is able to have access to the information which it needs to assess the fundamental bases and consequences of its decision (see only Article 43 (1), Article 44 of the Basic Law as well as BVerfGE 67, 100 <130>; 77, 1 <48>; 110, 199 <225>; 124, 78 <114>). The core of the right of parliament to be informed is therefore also entrenched in Article 79 (3) of the Basic Law. Sufficient information of parliament by the government is therefore a necessary precondition of an effective preparation of parliament's decisions and of the exercise of its monitoring function.'

While it aims to enforce the right to information of the *Bundestag* in front of the crisis, the German Constitutional Court sometimes has also spoken about the rights of national parliaments in the EU in general. This request from more transparency in the negotiation, adoption and implementation of the European economic governance at national level as the only condition to preserve the democratic principle and the principle of the parliamentary overall budgetary responsibility has had an echo also in the other four member states. Maybe inspired by the case-law of the German Constitutional Court, at the end of 2012/beginning 2013 organic or ordinary laws have been passed in France, Italy, Portugal, and Spain as to reinforce the right to information of the Parliament. The timing, rightly after the relevant decisions of the *Bundesverfassungericht*, on 19 June and 12 September 2012, might create expectations of a connection between the case law of the German Court and the legislative developments elsewhere in Europe. In other words, the German Constitutional might have set a standard of transparency to be taken into account also in other legal systems.

In France, organic law n° 2012-1403 of 17 Decembre 2012 (*relative à la programmation et à la gouvernance des finances publiques*) requests that a detailed report for the Parliament is attached to the programming act, which defines the multi-annual financial framework for the next years, for example in order to explain how the different provisions – policy by policy – of the act can impact on the medium term objective (Art. 5).[34] By the same token, given the coordination of the budgetary

[34] The category of the 'programming act' was introduced by the latest great constitutional reform, in 2008. Programming Acts have exactly the same force of law as the budget acts: see the decision of the French Constitutional Council n° 2012-658 of December 2012 and the case note by R. Bourrel, 'La validation par le Conseil constitutionnel de la «nouvelle Constitution financière» de la France', *AJDA*, 2013, p.2.

and the economic policies between the member states and the periodical exchange of documents between the national Government and the EU institutions, debates are organized on these subject-matters in the two chambers in due time as to make the transmission of information to the Parliament valuable (Art. 10).

The new law regulating the relationship between the Italian legal system and the EU – Law n. 234/2012, passed in December 2012 – contains also provisions specifically addressed to the right to information of the Parliament when dealing with the reform of the economic governance in the EU. The government regularly informs the two Chambers, according to constitutional law n. 1/2012, about the coordination of economic and budgetary policies and the functioning of the financial stability mechanisms and, in particular, on any relevant EU legislative acts or documents, on prospective enhanced cooperation, and on drafts and intergovernmental agreements between the Member States in this field. Although the Government can invoke the confidentiality of the information transmitted, in any event such a confidentiality could ultimately impair the right to information and participation of the Italian Parliament in EU affairs, based on protocol I to the Treaty of Lisbon (Art. 4, sections 4, 6, and 7 - law n. 234/2012). The words of the German Constitutional Court seems echoed in this provision. More specifically on the economic governance, Art. 5.1, law n. 234/2012, states that 'the Government promptly informs the Chambers about any initiative aiming to the conclusion of agreements with other EU member states on the creation and the strengthening of the rules of fiscal and monetary policy or able to produce significant effects on the public finance.' The objective here is to avoid that in the future the Parliament will be excluded from the negotiations of agreements, as it happened about the Fiscal Compact or the TESM.

In Portugal, law n. 37/2013 – substantially modifying the *Ley de Encuadramento Orçamental* and implementing Directive n° 2011/85EU – has reinforced the right to information of the Parliament in the budgetary process. The principle of transparency has been introduced has a new general rule that shapes the budgetary process and is linked to the principle of sincere cooperation between institutions which share responsibility in this field (Art. 10-C). The Govern must send to the Assembly in a timely manner, every month or every three months, depending on the document, a list of information relevant to oversee the execution of the budget (Art. 59.3 and 4), including the financial flow between Portugal and the EU, i.e. also EFSF, ESM. The list provided within law n. 37/2013 is not exhaustive and can be extended upon request of the Parliament, with the Government bound to comply with this additional request of information (Art. 59.6). Moreover the Government must transmit to the Assembly any other domestic document, though related to the participation in the new economic governance, from the annual debt ceiling (Art. 89) to the annual audit report about the implementation of the national reform programme and of the stability programme (given the bailout, also the Financial and Economic Assistance Programme is included), showing the results achieved (Art. 72-A). Of course, one of the problems that might occur, in Portugal as in Italy or in any Member State, is that there is no mechanism for ensuring the compliance of the Government with its duty to information, unless there are effective tool for challenging the constitutional validity of the Government's inaction or partial compliance and the duty of information is entrenched in the Constitution, like in Germany.

In Spain, for example, while it could be potentially allowed to challenge the unconstitutionality of the Government's inaction before the Constitutional Court, the constitutional protection of the right to information of the Parliament is lacking, unless it will be implicitly derived from Art. 23 Sp. Const., which recognizes the right of the citizens to participate in public affairs directly or through elected representatives; that is to say: if, drawing on the case law of the German Constitutional Court, due to the lack of information available MPs are unable to perform their representative function, then also the right of the citizen to participate in public life is jeopardized. However it is unlikely that such an interpretation will be followed by the Spanish Constitutional Court because there is no explicit right to information in EU matters established at the benefit of the *Cortes Generales* in the Constitution (like Art. 23.2 GG) nor organic law n. 2/2012 (*de Estabilidad Presupuestaria y Sostenibilidad Financiera*) acknowledges the right to information in favour of the Parliament. Only Law n. 22/2013, the annual Budget Act (*de Presupuestos Generales del Estado para el año 2014*), contains a few provisions about the information to the Parliament during the budgetary cycle: the Government must submit to the Chambers information about public investments and expenditures, either at State or at subnational level, every six months (Art. 14); about the evolution of the public debt every three months (Art. 51); about the public guarantees – i.e. EFSF and now ESM – every three months (Art. 56), and a few others about the management of national public funds.

The case of the Spanish Parliament, however, shows that the strengthening of the right to information about the decision-making and the implementation of the measures of the new economic governance can be a result of the setting up of the fiscal councils, independent institutions entitled to monitor public accounts and provide macroeconomic forecasts, to be consulted by the legislative and the executive branch.[35] Depending on their composition, on their mandate, and on their powers, fiscal councils can be more or less beneficial for the position of the Parliaments. The budget office of the *Cortes General – Oficina Presupuestaria de las Cortes Generales* – is regulated by law n. 37/2010 (besides the rules of procedure) and is based at the General-Secretariat of the Congress. It may be asked by the Chambers to provide any study and report about public accounts is needed and this it is at complete disposal of the *Cortes*. According to law n. 37/2010 and law n. 22/2013 it is primarily by means of this parliamentary budget office that governmental information reach the Chambers and are elaborated, in addition to the independent source of information the office has, given its access to any financial and economic database of the country. During the European Semester the Government must transmit regularly to the *Oficina Presupuestaria*, and indirectly to the two Chambers, several reports about public accounts and the parliamentary budget office will table an annual report before the *Cortes*.

Recently, in November 2013, organic law n. 6/2013 established another fiscal council, this time at the Minister of Economy, the *Autoridad Independiente de Responsabilidad Fiscal* (AIRF). This authority, however, does not have a preferential relationship with the Parliament like the *Oficina Presupuestaria*. Although it will be appointed with the consent of the Spanish Congress, the new fiscal council will provide studies, reports, and opinions on request of all public administrations or

[35] On fiscal councils in general, see Lars Calmfors, 'The Role of Independent Fiscal Policy Institutions', *CESifo Working Paper*, n° 3367, February 2011, available at: www.cesifo-group.org/ wp , p. 19-20.

ex officio. Moreover the new authority will provide macroeconomic forecasts and a first draft of the annual Budget Act, will check the stability programme and the execution of the budget, will assess the economic and fiscal programmes of the regions. If the recommendations issued by AIRF are disregarded by the administration to which they are addressed, the administration must give reasons for its conduct. The setting up of both fiscal councils and although AIRF is not an ancillary body of the Chambers is likely to increase the information available on the state of the public finance. Thus the Parliament will have more evidence to evaluate the economic and the fiscal policies of the Government on the basis of independent information, whereas so far all the assessment made on public accounts had relied only on the projections and the documents provided by the Minister of Economics.

The same can be said of the new French Fiscal Council, whose position is strongly linked to the one of the existing Court of Auditors. The *Haut Conseil des finances publiques* is indeed presided over by the first President of the Court of Auditors and four out of its ten members are magistrates of this Court (Art. 11, organic law n° 2012-1403). The other members are the director-general of the national Institute of statistics and economic studies, one member is appointed by the Economic, Social and Environmental Council, and four members are chosen by the President of the National Assembly, by the President of the Senate, and by the Presidents of the two Committees on finances, based on their competence to provide macroeconomic forecasts. Before the Programming Act for setting the multi-annual financial framework is transmitted to the Parliament (and to the Council of State), the Government submits it to the *Haut Conseil* for its assessment in the light of the macroeconomic forecasts and the projection of growth of the gross domestic product.[36] The same assessment is accomplished with regard to the annual Budget Act and the Social Security Financing Act and the opinion of the *Haut Conseil* is also transmitted to the Parliament and made public (Arts. 14 and 15). Interestingly, based on the assessment of the *Haut Conseil*, the Social Security Financing Act for 2014, law n° 2013-1203, has been challenged before the Constitutional Council by a minority of senators and of MPs who claimed the inconsistency of the content of this law with the opinion of the Fiscal Council (Art. 61 Fr. Const.). In particular, in its opinion the *Haut Conseil* had highlighted that the macroeconomic forecasts on which the Social Security Financing Act was based were not sufficiently reliable. The Constitutional Council, However, dismissed the constitutional challenge. It held that no evidence supported the hypothesis that the Act would have impaired the achievement of the national objective about the expenditure for the health care insurance and the Government during the legislative process tabled an amendment – which was adopted – aiming at reducing the negative impact on the public expenditures. By stating so, the Constitutional Council has provided a narrow reading of the *Haut Conseil*'s powers on the decisions of the Government and of the impact of fiscal council's opinions as a standard for the constitutional review of budget and financing acts. Nonetheless the relationship between the *Haut Conseil* and the two chambers is becoming increasingly significant, given the possibility for the standing committees to hear the member of the fiscal council on their request, when it is deemed necessary.

[36] The *Haut Conseil* also issues opinion on the national stability programme and on the possible deviation from the medium term-objective in the light of the Fiscal Compact.

In Italy the Fiscal Council, the parliamentary budget office, once in operation, will be even more connected to parliamentary activity. This is so on the basis of constitutional law n° 1/2012, which requires its setting up within the Chambers, and of Law n° 243/2012, a new source of law in the Italian legal system, a sort of organic law having a domain reserved by the Constitution and approved or amended by absolute majority. The three members of the parliamentary budget office are appointed upon agreement of the Speakers of the two Chambers drawn from a list of ten independent experts chosen by the standing committees on budget and finance by two thirds majority. As many other fiscal councils, the parliamentary budget office provides macroeconomic and financial forecasts, the assessment of the compliance with the Euro-national fiscal rules, of the trend in the public finance, of the macroeconomic impact of major bills, of possible deviation from the medium term-objective and of the activation and use of the correction mechanism. The fiscal council also drafts reports and is heard upon request of the parliamentary standing committees. However, no binding powers are granted. In case of 'significant divergence' between the parliamentary budget office assessment and those of the Government, one third of the member of the Committee on budget cans ask the Government to take a position on whether and why it is willing to confirm its assessment or it wants to adjust it to the fiscal council's evaluation.

In Portugal and Germany such a strong link between the Parliament and the Fiscal Council is lacking. In Portugal the Council of Public Finance has been established by Law n° 22/2011, and appointed one year later, by the Council of Ministers on a joint proposal by the Chair of *Tribunal de Contas* (Court of Auditors) and the Governor of the *Banco de Portugal* (Bank of Portugal). It appears that it is the Court of Auditors the body which entertains a much closer relationship with the Parliament on public finance than this new fiscal council (Art. 214 Pt. Const.; Art. 59, Law n°. 37/2013). Finally in Germany, the Council of Economic Experts, created in 1963, as for its composition and steady relationship with the federal Government, looks much more connected to the executive than the *Bundestag* and the same applied to the Stability Council, established in 2010, immediately after the constitutional reform on the balanced budget rule in 2009, which is particularly focused on the vertical dimension of the public finance, i.e. on the relationship between Federation and *Länder*.[37] Lacking an independent source of information for the *Bundestag*, the concerns expressed by the German Constitutional Court about the protection of the right to information of the Parliament are more easy to understand, at least compared to member states like Italy, Spain, and even France, where the independence of the fiscal council and its relationship with the legislature are stronger. Also in these cases, however, fiscal councils appears devoid of binding powers on the executive branch.

5. Developments in parliamentary scrutiny and oversight powers

The European, Semester and in particular the six-pack, the two-pack, and the Fiscal Compact, have identified two main strands of control on national public accounts. Indeed, the procedures design a

[37] See, again, C. Fasone & E. Griglio, 'Can Fiscal Councils Enhance the Role of National Parliaments in the European Union? A Comparative Analysis', in B. de Witte, H. Héritier, A.H. Trechsel (eds.) *The Euro Crisis and the State of European Democracy*, Fiesole, EUI, RSCAS and EUDO, 2013, p. 264-305.

preventive and a corrective arm. In the first, for example, the assessment of stability programmes and of budgetary plans can be placed; within the second are the control on the correction of excessive deficits and of macroeconomic imbalances. As a consequence, also Parliaments in general have strengthened the two dimensions of the *ex ante* scrutiny and of the *ex post* control.[38]

There are a number of tools Parliaments are using in order to influence and control the activity of the executive. In particular, it seems clear that legislatures are taking advantage from the already well established procedures and rules concerning scrutiny on EU affairs. In other words, national Parliaments are using 'ordinary' procedures for participating or controlling the EU decision making process for 'extraordinary' purposes, i.e. reacting to the risk of marginalization during the financial crisis, or to become accustomed to brand new and more complex budgetary procedures, where also several European actors can have a say. Thus members of the European Parliament (MEPs) are often invited to take part in committee meetings and Commissioners are heard before the relevant standing committees. Moreover, given the prominence of the European Council in setting the priorities and the directions of the economic governance, before and after the European Council's meetings the Heads of Government are often asked to explain the national position about prospective adjustments of the economic governance, about the re-negotiation of the agreements, and on possible concerns for national interests. Also the cooperation with other national Parliaments is used to gain information and improve the ability to control the national executive.

The reform of the economic governance has also changed the balance within each Chamber. Fast-track procedures, a very strict schedule of parliamentary activity, sensitive and often confidential information about the rescue funds and bailouts, have made the role of standing committees and even of subcommittee crucial, often at the expenses of the debate in the plenary sessions. In particular, although these issues are all European-related and thus potentially falling under the 'jurisdiction' of the committee on EU affairs, parliamentary Committees on budget and on finance have become more and more the linchpin of parliamentary procedures. There is no legislative or oversight procedure in which they are not involved.

In this regard the German Constitutional Court has not hesitated to sanction the most negative side of this trend, namely that fact that powers of the entire parliamentary institution or chamber are assigned to a small and semi-secret body able to take decision with huge financial implications for the citizens on behalf of the *Bundestag*. Therefore, the question to be answered was whether the overall budgetary responsibility of the *Bundestag* could be legitimately exercised by a subcommittee. Indeed, in principle the German Basic Law does not speak in contrast to a delegation of power from the Chamber to one of its bodies: Art. 45 GG allows the *Bundestag* to empower is Committee on the Affairs of the EU to exercise the rights granted to the Parliament 'under the contractual foundations of the European Union.'

Following the extension of the maximum loan capacity of the EFSF, Germany adopted an Act Amending the Euro Stabilisation Mechanism Act (*StabMechG*). Art. 3.3. *StabMechG* provides that the consent of the *Bundestag* on the decision of the German representative in the EFSF is given by a

[38] See E. Griglio & N. Lupo, 'Parliamentary Democracy and the Eurozone Crisis', *Law and Economics Early Review*, vol. 1, n°, 2, 2012, p. 314-374.

new parliamentary body, the *Sondergremium* (see above, section 4), composed on MPs elected from within the Committee on budget. The decision is delegated to the *Sondergremium*, as a general rule, emergency measures aimed at preventing risks of contagion, and according to the government's discretion and upon its request, whenever a situation of urgency or confidentiality does exists, given the fact that this subcommittee meets in camera. The Second Senate of the German Constitutional Court upheld the action for an *Organstreit* proceeding brought by a parliamentary group: Art. 38.1 GG, on the status of MPs and on the right to democratic representation, was violated to the extent that the budgetary responsibility of the *Bundestag* was delegated to a small panel of people deciding for the entire institution.[39] Indeed, the *Bundestag* performs its function through all its members and by means of a group thereof. In principle it is the *Plenum* who decides on budgetary matters. Moreover, Art. 38.1 and 2 GG grounds the equal status of MPs as representatives of the whole people and thus any differentiation must be justified on the basis of other constitutional principles and of the principle of proportionality.

The subcommittee should mirror the composition of the Chamber and the proportional representation of the parliamentary groups and the MPs excluded should be put in the condition of being informed about the *Sondergremium*'s activities. Although the *Bundestag* enjoys a great discretion in defining its internal organization, Art. 38.1 GG forbids to establish as a general rule the delegation of powers on all emergency measures aiming to avoid the risk of a contagion in the financial market. The need to preserve the *Bundestag*'s ability to function by guaranteeing a speedy process and the protection of classified information does not justify the discrimination of the rights of MPs. Instead of providing a short list of exceptions in which the *Sondergremium* is involved, its participation without, any prior or subsequent involvement of the plenary, is stated as a general rule. By means of this ruling the German Constitutional Court has intervened on the exercise of the oversight and decision making powers of the *Bundestag*, aiming to set the limits and the condition for an appropriate and legitimate control on the government's action.[40]

In a previous judgment, on 7 September 2011, about the Greek bailout and on the EFSF the German Constitutional Court had already clarified which standard had to be followed as to grant the *Bundestag* the power to control and orient the government during the Eurozone crisis (BVerfG, 2 BvR 987/10). As clarified above, the reasoning of the Court from this judgment onward has been based the argument of the overall budgetary responsibility of the *Bundestag.* The fact that the *StabMechG* simply requests the Government to 'try to involve' the *Bundestag*, through its Committee on budget, before issuing the guarantees for the EFSF leads to a violation of the *Bundestag*'s power to make decisions on revenue and expenditure with responsibility to the people. People are democratically represented by this institution which is deprived of the right to decide on the budget, as a central element of the democratic development. By making the involvement of the

[39] See the decision of the German Constitutional Court of 28 February 2012, 2 BvE 8/11.

[40] Very recently, in the judgment of 18 March 2014 (2 BvR 1390/12, 2 BvR 1421/12, 2 BvR 1438/12, 2 BvR 1439/12, 2 BvR 1440/12, BvR 1824/12, 2 BvE 6/12) on the constitutionality of the ESM and of the Fiscal Compact, the German Constitutional Court has affirmed that 'Parliament's internal, functional allocation of responsibilities between the plenary of the *Bundestag*, its committees, and other subsidiary bodies' cannot be challenged by means of a constitutional complaint.

Bundestag a mere attempt, the Government is trying to make the agreement of the *Bundestag* unnecessary in order to decide on the guarantees. According to the Court:

> 'The German Bundestag may not transfer its budgetary responsibility to other actors [in particular, supranational institutions] by means of imprecise budgetary authorisations. In particular it may not, even by statute, deliver itself up to any mechanisms with financial effect which – whether by reason of their overall conception or by reason of an overall evaluation of the individual measures – may result in incalculable burdens with budget relevance without prior mandatory consent.'

Every measure taken at European-international level, even though fulfilling the aim of financial assistance and solidarity among the member States must be specifically adopted by the *Bundestag*. Moreover it must be assured that there is sufficient parliamentary control on the way the funds are managed; a statement which is particularly significance as for the enhancement of the scrutiny and of oversight powers of the *Bundestag*. The German Constitutional Court also generalizes this assumption for all national Parliaments. It appears that the protection and enforcement of the budgetary responsibility of all national parliaments is needed in order for the EU system to be legitimate.

> 'The provisions of the European treaties do not conflict with the understanding of national budget autonomy as an essential competence, which cannot be relinquished, of the parliaments of the Member States, which enjoy direct democratic legitimation, but instead they presuppose it. Strict compliance with it guarantees that the acts of the bodies of the European Union in and for Germany have sufficient democratic legitimation.'

As a consequence of this case law the *StabMechG* has been amended starting a process of incremental strengthening of the decision making powers of the *Bundestag* in the financial procedure. The Government must obtain the consent of this Chamber before it acts.

Also the scrutiny and oversight powers of the other Parliaments have been strengthened as a reaction to the new economic governance, although comparatively less than those of the *Bundestag*. In France, Italy, Portugal and Spain the role of a Constitutional Court acting has the final guarantor of parliamentary prerogatives in budgetary matters is lacking.

Nonetheless since the first enforcement of the European Semester the French Parliament has been actively involved in the scrutiny of the government's action. The national reform programme and the stability programme are always sent to the Parliament and debated before they reach the European Commission (Art. 14, Law n° 2010-1465) and resolutions on these programmes are adopted as to orient the executive. It must be recalled that the adoption of resolutions for the French Parliament is something new, introduced by the constitutional reform of 2008 (Art. 34-1 Fr. Const.), but quite extensively used within the European Semester. For example, also *ex post*, when the recommendations of the European Commission are sent back at national level, these instructions are debated in Parliament and usually the Committee on finances adopts a resolution. Likewise, as mentioned above (section 2), the programming acts, which set the multi-annual financial framework, are always approved by the Parliament and this entails a form of scrutiny over government's determinations about fiscal and economic policies for the coming years. This

activism of the French Parliament can be explained also by the constitutional protection that the parliaments scrutiny and the oversight powers enjoy according to Art. 24 Const.

In Spain the parliamentary scrutiny and oversight powers on public finance have been reinforced, although such a strengthening in the case of the Spanish Congress possibly does not compensate the loss of discretion and of decision-making powers that it had before, just simply because what was before a game – i.e. the budgetary process – with two players, the Parliament and the Government, has now become a Euro-national game with multiple actors, international (the IMF), European (in particular the Commission and the ECB), and national. The Spanish Congress, however, even before the financial crisis has never been particularly powerful on budgetary issues, on which the decisions on the substance have always been taken by the executive. After organic law n° 2/2012, the Spanish Congress adopts the medium term objective as well as the stability and the national reform programmes (Art. 23) and defines the stability objectives that orient the Government in drafting the budget (Art. 15). Parliamentary questions have often been asked about the disbursement for the ESM.

The Italian Parliament has never been particularly active in the field of scrutiny and oversight on the executive. The main part of its time has been devoted to law making, also because of the peculiar power acknowledged to its standing committees to pass laws on their own (Art. 72, third section. It. Const.). Nevertheless the financial crisis has been an input for restructuring the balance between parliamentary functions: the loss of decision-making powers in the budgetary process and in the legislative process has been compensated by new procedures and tools for parliamentary scrutiny and oversight since 2009. Already the new framework law on the budgetary process, Law n° 196/2009, contained an *ad hoc* section on parliamentary scrutiny. Art. 4.2 promotes forms of bicameral cooperation on scrutiny on public finance and Art. 4.1. allows the Chambers to orient the Government in the preparation of the budgetary documents. Following the entry into force of the European Semester, Law n° 196/2009 has been amended as to comply with the new timeline (Law n° 39/2011), although an overall reform after the constitutional revision is still expected. The Italian side of the Euro-national budgetary process starts by the debate in Parliament of the Document of Economics and Finance (DEF), which sets the multi-annual financial framework and the projections of the macroeconomic variables in the next years. The resolution by which each Chamber adopts the DEF is the first act to orient the conduct of the executive towards the approval of the budget. The Minister of Economics is heard before the relevant committees of the Chamber immediately after the European Council provides the policy orientations and a debate takes place on the subsequent drafting of the stability and the national reform programmes. By practice these two programmes are examined by the Parliament before their transmission to the European Commission and although no clear procedure of examination has been formally introduced (Art. 9). Constitutional law n° 1/2012 has further changed the landscape of parliamentary oversight by recognizing constitutional protection to the oversight function on public finance, although the missing opportunity of the reform of parliamentary rules of procedure has not allowed to exploit completely this new perspective. After the experience of the Fiscal Compact and of the TESM, Law n° 234/2012, affirms that during the negotiation of the treaties that introduce or strengthen the rules on fiscal and monetary policy the Government is bound to follow the instructions received by the Chambers. If the compliance with the parliamentary instructions is not feasible, then the President

of the Council of Ministers must explain to the Chambers the reasons for the position taken in spite of the inputs of the Parliament. However, no legal sanctions on the Government – except to force it to resign – are attached to such a lack of compliance. Finally the setting up of the parliamentary budget office within the Chambers can be seen as a further opportunity to strengthen the control of the Parliament on the executive.

Finally, in the case of Portugal, in addition to recurrent procedures and tools used also by other legislatures – e.g. hearings of the Ministers, adoption of resolutions, etc. – the extraordinary situation of the bailout has led the Parliament to use measures that are usually not connected to the budgetary process. Since 2011 the Portuguese Parliament has established several committees of inquiry in order to investigate issues of common concerns and all related to the economic governance.[41] According to Art. 178 Pt. Const., committees of inquiry can be formed *ad hoc*, only for the duration of the inquiry – thus having a temporary nature –, and 'shall possess the investigative powers of the judicial authorities.' Moreover a special Committee to support the implementation of the measures of the Financial Assistance Programme for Portugal has been in operation since the parliamentary term started in 2011. This committee works in close coordination with the other standing committees of the Assembly and control the compliance of the national measures with the Memorandum of Understanding and the correct implementation of the Memorandum by the Government.

6. Co-decision and veto power?

It is commonly acknowledged that the reform of the economic governance has narrowed the decision-making powers of national Parliaments in the budgetary process – already narrow in parliamentary and semi-presidential forms of government – and the discretion of national political institutions in the fiscal and economic policies. Only by tracing the intense correspondence between the Commission, the Council and the ECB on the one hand, and the national Governments and Parliaments, on the other, it is possible to detect whether this is really true. Some exchanges of letters – and the cases of Italy and Spain are particularly telling – have remained or could have remained secret. In other occasions, it has to be seen which institution – national or European and parliamentary or governmental – is really the author of a certain measure, the authority from which the idea to adopt such a measure actually stems. The content of the country-specific recommendations, guidelines, and in-depth reviews by the European institutions do not originate *ex abrupto* in the corridors of the European Commission in Brussels, but usually find their *raison d'être* in a commitment previously made by the Government, alone or in agreement with the Parliament. Often the constraints upon the national budgetary authorities are self-imposed or co-decided.[42] The fact that in the new economic governance is anything but easy to understand who

[41] Comissão Parlamentar de Inquérito ao Processo de Nacionalização, Gestão e Alienação do Banco Português de Negócios S.A., Comissão Eventual para Acompanhamento das Medidas do Programa de Assistência Financeira a Portugal, Comissão Parlamentar de Inquérito à Contratualização, Renegociação e Gestão de todas as Parcerias Público-Privadas do Sector Rodoviário e Ferroviário, Comissão Parlamentar de Inquérito à Celebração de Contratos de Gestão de Risco Financeiro por Empresas do Sector Público.

[42] I am grateful to Nicola Lupo for the considerations on this point.

has taken a certain fiscal and economic decision in its form and substance creates concerns about the chain of responsibility of the current decision-making process. In this framework even more challenging is to understand if a national decision is take by the Government alone or if an influence of the Parliament does exist.

Under certain conditions, however, the decision can be clearly attributed to the Parliament, usually as a form of exercise of veto powers. After the ruling of the German Constitutional Court of 7 September 2011 and the amendments of the *StabMechG* (see section 5 above), this is the case of the *Bundestag* with regard to the EFSF and now the ESM. Since the consent of the *Bundestag* is required before the Government could take a position as regards the functioning of the ESM, the *Bundestag* enjoys veto power towards its Government and, as a consequence of the share of capitals own by Germany in the fund, also on the possibility to use the ESM and to extend its guarantees.

Also in the other four member States the parliamentary assent, usually in the form of a law, is required for the payment of the installments of the ESM, but they are not able to block the functioning of the mechanism and is unlikely that once accepted the ESM and committed to respect it the Parliament does not want to authorize the payment.

There is another subject areas in which the Parliaments of the five Member States have veto powers, the definition of the exceptional circumstances that allows the temporary deviation from the medium term budgetary objective (MTO). The exceptional circumstances and events at stake are already outlined by EU Regulation n° 1177/2011 of the six-pack, although these provisions can be complemented at national level. In particular the resort to these peculiar situations – i.e. natural disasters or any unusual event outside the control of a Member State – as to justify the lack of compliance with the MTO must be authorized by the Parliament by absolute majority (in the five legislatures). Reaching this *quorum* is not a problem for legislatures where the majority party or coalition is stable and can count on a number of MPs beyond the absolute majority; however, it might become a problem if a minority government is in office or the ruling coalition is not particularly cohesive (in Italy and Portugal, for example). However, given the consensual spirit which has inspired so far the Parliaments in the implementation of the reform of the economic governance in the five countries and the serious threat posed by one of the exceptional circumstances to be invoked, it is unlikely that a Parliament would reject the proposal of the Government to resort to this instrument.

Finally, as a last resort, Parliaments could also exercise veto powers on the Government as to force them to resign: a political sanction with legal implications against their economic policy. Being the Government dependent on the confidence relationship with the Parliament, the latter could either adopt a motion of no confidence or could defeat the Government's position on economic and fiscal measures that have a highly political significance or that are required for the fulfillment of the European Semester. This hypothesis has become reality in Portugal in 2011.

On March 2011 Prime Minister José Sócrates was forced to resign after the rejection of the governmental amendments to the Stability Pact 2011 that every Eurozone country must transmit to the European Commission by mid-April. However, on 6 April 2011 the resigning Prime Minister declared the bankruptcy of the public finance and the day after he notified to the European

Commission, to the Eurozone countries, and to the International Monetary Fund the request for financial assistance, which was granted in May. The general elections for the Parliament were held on 5 June 2011, led to the defeat of the then ruling majority and in particular of the socialists. The center-right Social Democratic Party – which conquered also the Presidency in January 2011 – becomes the first party of the country and its leader, Pedro Passos Coelho, was appointed as the Prime Minister on 16 June 2011. However, the change of the majority has not stabilized politics in Portugal. Since then the life of the government has been characterized by tensions with opposition parties, by the request for several votes of no-confidence, especially on the implementation of the new economic governance through the budgetary process. The harsh political struggle in Parliament, which is also a consequence of the unpopular decisions the Government has to take given the bailout, proves that a legislature always has the chance to defeat the Government in office, but this cannot become the routine.[43]

7. Preliminary conclusions. The transformative effects of the Eurozone crisis on Parliaments

It is commonly acknowledged that the Eurozone crisis and the reform of the economic governance in the EU have severely undermined the budgetary autonomy of national Parliaments. The powers of Parliaments had been already affected by many factors in the last decades, including the process of European integration, although their role has been partially rehabilitated by the Treaty of Lisbon (Art. 12 TEU). The Eurozone crisis, on the one hand, contributes to add further constraints on the discretion of Parliaments; on the other, provides an opportunity to develop their role and position in the national constitutional setting.

For example, as to react to the lack of transparency in the decision making process of the new economic governance and in the attribution of the responsibility for the actions taken, between European and national institution and between legislative and executive bodies, the duty of information of the executive in favour of Parliaments have been strengthened up to a point which had never be achieved so far. Fiscal councils have been set up with the aim to supply Parliaments with independent information for a more autonomous assessment of the Government's performance. Also the scrutiny and the oversight powers of Parliaments have been enhanced as to guarantee the control of the position of the Government before and after its engagement at European level. Parliaments can exercise a veto on some decisions, but this is unlikely to happen or it will be used in *extrema ratio*. Whether this shift in parliamentary powers is able to compensate the loss of legislative powers suffered depends on the constitutional system in each member State and on its economic situation.

[43] Also the resignation of Berlusconi's government in November 2011 has somewhat linked to the financial troubles experienced by Italy, although also issues of purely internal politics played a role. The rejection by the Parliament of the law adopting the annual audit report of the State, a financial document that does not introduce any new provision into the legal system, but which is highly symbolic as it shows how the budget of the government has been implemented, was at the origins of the process that led to the resignation. In between the first (10 October 2011) and the second (8 November 2011) attempt to let the audit report passed in Parliament, the Government had also negotiated with the European Commission and the ECB the adoption of very restrictive measures for the labour market as an exchange to the financial support provided to Italy through the Securities Market Programme by the ECB.

In general the more parliamentary prerogatives enjoy a constitutional protection, the more the Parliament is preserved in its position in the aftermath of the Eurozone crisis. Constitutions and organic laws have been amended in order to entrench parliamentary powers in sources of law with a reasonable expectations of endurance and defining a standard for constitutional review (taking into account also the so-called 'constitutional block'). The role of Constitutional Courts in protecting Parliaments during the crisis can make the difference. The case law of the German Constitutional Court, for example, has set the minimum threshold for the democratic credentials of the new economic governance. The argument raised about the overall budgetary responsibility of the *Bundestag* has forced the Government to comply with new obligations and to subject its action to the prior parliamentary consent. Therefore, the *Bundestag* as become a model for other legislatures, as for the legislation dealing with the implementation of the economic governance.

Finally, the reaction of Parliaments to the crisis is different according to the measures at stake, although some general trends can be pointed out. None of the five Parliaments analysed has amended its rules of procedure as to develop in the internal rules the tools and the powers fixed in the new constitutional provisions, organic laws, and ordinary legislation. Parliaments are still testing if new special procedures are needed to implement the reform of the economic governance properly in their rules and how they should be shaped. The lack of revision of the internal rules does not appear to derive from the failure to achieve consensus. Rather even the most controversial measures of the economic governance – like the Fiscal Compact and the TESM – have been authorised and approved by overwhelming majorities in Parliament. Possibly on some occasions, because of the urgency or of the lack of information available, Parliaments have remained inactive and no parliamentary debate has taken place. While the five legislatures have been able to easily accommodate their activity to the timeline and to the requirements of the European Semester, often applying the ordinary tools used for the 'ordinary' scrutiny on EU affairs, much more difficult has been and still is for them to cope with the 'most innovative' sources of law[44] – Memoranda of Understanding, bilateral loan agreements, TESM, Fiscal Compact, etc. – and to really oversee their effects and their implementation.

[44] Also defined, for example, as 'postnational norms': see S. Bardutzky & E. Fahey, 'Judicial review of Eurozone law: the adjudication of postnational norms in the EU courts, plural', cit., p. 101-111.