The fiscal regime of the European Union and its autonomy from the Member States: a comparative federal analysis

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für meine Mama: danke für alles

in ricordo del mio papà

Table of contents

List of abbreviations[1]

BL	Basic Law
CAP	Common Agricultural Policy
CE(s)	Compulsory expenditure(s)
CFR	Central fiscal regime
CIC	Content-Impact-Compliance
CID	Content-Impact-Discretion
CFR	Central fiscal regime
CSP	Core state powers
CSR(s)	Country-specific recommendation(s)
Dir.	Directive
ECB	European Central Bank
EC	European Community
EEC	European Economic Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDP	Excessive deficit procedure
EFSF	European Financial Stability Facility
EFSI	European Fund for Strategic Investments
EFSM	European Financial Stabilisation Mechanism
EMI	European Monetary Institute
EMS	European Monetary System
EMU	Economic and Monetary Union
EP	European Parliament
ERM	Exchange Rate Mechanism
ESCB	European System of Central Banks
ESM	European Stability Mechanism
EP	European Parliament
EU	European Union
FCC	Federal Constitutional Court
GDP	Gross domestic product
GNP	Gross national product
IFC	Index of Fiscal Capacity
IFR	Index of Fiscal Regulation
IMF	International Monetary Fund
IO(s)	International organization(s)
IR	International relations
IUI	Index of Units' Involvement
LIG	Liberal intergovernmentalism
LT	Lisbon Treaty
MT	Maastricht Treaty
MoU	Memorandum of Understanding

[1] Abbreviations are made explicit (again) when it is considered necessary.

MS	Member States
MT	Maastricht Treaty
MTO	Medium-term objective
NCE	Non-compulsory expenditure
QE	Quantitative easing
QMV	Qualified majority voting
QTA	Qualitative text analysis
Reg.	Regulation
RQ	Research question
RQMV	Reverse qualified majority voting
SFC	Swiss Federal Constitution
SEA	Single European Act
SGP	Stability and Growth Pact
SME	Social market economy
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
US(A)	United States
VAT	Value-added tax

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Introduction

1. Key concepts

The present thesis deals with the integration of the fiscal regime in the European Union (EU) and in two different federal polities: Germany and Switzerland. These concepts need to be defined, albeit not in the order in which they are presented. Firstly, "integration" is used for political systems that have at least two levels of government: a centre and so-called constituent units[2]. The easiest example are federations[3] like the United States (US) and Germany. They have a center, called federation in the US and *Bund* in Germany, and some constituent units, called states in the US and *Länder* in Germany. There are many other examples. The distinctive features of a federation will be highlighted below. Here, the important aspect is the compresence of two political centers, located at different levels, that together form a polity. This is why such policies are also generically called systems of multilevel governance.

Besides classical federations like the ones mentioned above, the most innovative example of such systems is the EU[4]. Being the EU the starting point of this work, it is with regard to it that we take the definition of integration as a process in which "political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states" (Haas 1958: 16). The second part of the definition is key, since the thesis deals with institutions and policies of the "new centre". The focus is on political integration, defined as "the construction of new political institutions with a direct say in at least a part of their member states' affairs" (Diez and Wiener 2019: 3).

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[2] The terminology "centre" and "constituent units" is taken from Poirier, Saunders and Kincaid (2015). In this work, we use "constituent units" in the abbreviated form "units".

[3] In the case of federal polities or federations, the most commonly used terminology distinguishes between the federation (centre) and the federated states (units).

[4] Following most part of the literature, we use the term "EU" to refer to the entire integration process, i.e. also to when the European Economic Community (EEC) and the European Community (EC) existed. The expression "European Union" was introduced in 1992 with the Maastricht Treaty, officially called "Treaty on the European Union" (TEU).

Secondly, a federal polity[5], or simply a federation, is characterized by three properties: "a) public authority is divided between state governments and a central government, (b) each level of government has some issues on which it makes final decisions, and (c) a high federal court adjudicates disputes concerning federalism" (Kelemen 2003: 185). Thirdly and lastly, a fiscal regime is the sum of *legislation*[6] concerning fiscal policy that makes up a "mode or system of governance" (Hoene 2004: 53). The thesis adopts the term "fiscal regime" instead of "fiscal policy" because it focuses on understanding the legislative architecture of the EU in the fiscal domain.

In its simplest form, the central fiscal regime (CFR) of a federal polity encompasses legislation on the ability to collect resources (revenue side) and to decide how to spend them (expenditure side). To this competence of running a budget one needs to add the ability to adopt rules on that budget (regulatory side); in the case of the federal center, it involves rules on the central budget and on the conduct of fiscal policy by the units. When we think at the revenue side, taxes are often the immediate item that comes to our mind. The expenditure side may instead involve policies of redistribution[7], but also of stabilization in times of crisis.

In federal polities, the centre and the units each have some activities on which they *alone* take final decisions[8]. Among the activities of the centre, we find those that, due to their externalities, are considered to be managed more efficiently there. Foreign and security policy, monetary policy, and fiscal policy are examples at stake. EU scholars have defined them "core state powers" (Genschel and Jachtenfuchs 2014 and 2016) or "high politics" (Pagoulatos and Tsoukalis 2012: 277), in order to show their sensitiveness for state's sovereignty. Units

[5] In this work, we prefer the expression "federal polity" as being more neutral – compared to "federation" – towards "federal union" and "federal states", two terms that will be introduced later on.

[6] As we will see, this includes primary (constitutional) and secondary (ordinary or sub-constitutional) legislation, but also international agreements.

[7] Policies of redistribution (or redistributive policies) involve the transfer of resources from some citizens (individuals) or groups of citizens (individuals) to others through different instruments, e.g. taxation and fiscal incentives.

[8] Traditionally, political science and legal scholarship distinguishes between exclusive and concurrent competence of the centre on the one side; and exclusive or also residual competence of the units on the other side.

taking part in a federal polity reluctantly delegate core state powers to the centre because they want to be in charge of them. However, in all modern federations some delegation of that kind has happened over time.

This is true also for the EU. Clearly, to consider the EU a federal polity takes for granted two assumptions: firstly, that since its birth the EU has significantly changed, up to the point that today it constitutes a political system of its own, separated from the one of the Member States (MS); and secondly, that, within this political system, the EU has developed an own fiscal regime separated from the one of its MS. We will come back to the nature of the EU. For now, it is important to accept its being an autonomous political system (Wallace H., Wallace W., and Pollack 2005).

In the EU's fiscal regime, the delegation of powers to the centre has taken place in an unusual way. The EU has a strong ability to set rules for the fiscal policy of its MS, which retain competence over that policy but are subject to legal constraints coming from the centre. Its fiscal regime is strongly regulatory. At the same time, the EU has a limited revenue and expenditure capacity in two regards. Firstly, its budget is comparatively small. Secondly, it is largely provided by transfers from MS. The institution representing the units[9], the Council, is the key decision-maker on all three fiscal policy sides. The involvement of the institution representing the centre (or the citizens of the EU), the European Parliament (EP), is limited and never central. Last but not least, unlike other federal polities, the budget cannot be used for redistributive policies, let alone countercyclical[10] and stabilization policies.

Genschel and Jachtenfuchs (2014 and 2016) have analyzed the fiscal regime of the EU through two dichotomous instruments of integration through which the centre of a federal polity deals with core state powers. The first is regulation, i.e. rules that the centre adopts to regulate the political discretion (the policy-making) of the units. The second is capacity-building, i.e. the creation of own resources and institutions for exercising a certain policy competence at central level "in parallel to, in competition to, or even instead of corresponding national

[9] In this case, we use the term "units" to refer to the MS.
[10] Countercyclical policies foresee a reduction of public expenditure and a raise of taxes during a period of economic boom, and an increase of expenditure and a cut in taxes during a recession.

powers" (Genschel and Jachtenfuchs 2014: 11). According to the authors, fiscal regulation in the EU is strong, whereas fiscal capacity is weak. The fiscal regime assigns most decision-making powers to the Council, i.e. to the institutions representing the MS. Overall, it means that the influence of the units over the fiscal regime of the centre is strong.

Having explained the key concepts of the work enables to better present the research questions. This is what the next section does.

2. Research questions

This work aims to find an answer to the following two research questions:

1. What is the fiscal regime of the EU?
2. How to assess it from a comparative federal perspective?

The two research questions need to be further explained by some constitutive sub-questions.

1. What is the fiscal regime of the EU?

This research question aims at describing:

- The nature of the EU's fiscal regime: on the one hand, to which extent is the EU able to regulate the fiscal policy of the MS? On the other hand, to which extent is it able to have its own fiscal capacity, i.e. to autonomously collect resources and decide how to spend them? In short, how is the balance between fiscal regulation and fiscal capacity?
- The degree up to which MS influence – or even decide – the fiscal regime of the centre or, in other words, the autonomy of the EU's fiscal regime. Autonomy can be understood as "the independence of a polity vis-à-vis other polities" (Deudney 1995: 198), i.e. to which a certain level of government can act without the influence of another level. This points to the fact that it makes sense to speak of an autonomous fiscal regime (be it characterized by regulation or capacity) of the EU if the EU – and not its MS – is actually in charge of it. If the EU's fiscal regime is

predominantly shaped by the MS, the EU cannot run its own fiscal policy.

The question how much the EU genuinely controls its fiscal regime points to the horizontal distribution of fiscal power. Being "at the heart of political science" (Biesenbender 2011: 1), the concept of distribution of powers indicates the way in which competences over certain policies, i.e. the right to exercise them, are assigned to different actors. The horizontal distribution of powers is given by the powers allocated to each of the institutions at the centre of a federal polity or of a system of multilevel governance[11]. This work focuses on the *horizontal* distribution due to the fact that the instruments of integration are concept applied to the centre. Regulation and capacity-building are both "created" at central level. Besides the institutions that represent the MS (Council and European Council), at the centre there are institutions representing the EU citizens (the European Parliament or EP) or, more generally, the EU interests (the European Commission and the European Court of Justice or ECJ). The crucial argument of the thesis is that only if the institutions representing the EU are in charge of the fiscal regime can one speak of a truly autonomous CFR. Otherwise, if the institutions representing the MS have a predominant influence on that regime, the centre will not have an autonomous fiscal room of manoeuvre. This is why the first research question can be more technically expressed as follows: how is the horizontal distribution of fiscal powers in different federations related to the instruments of integration?

2. *How to assess the fiscal regime of the EU from a comparative federal perspective?*

The second research question starts from the assumption that the EU is not a *sui generis* political system. In spite of not being a federal state, it has some elements that make a comparison[12] to consolidated federal polities[13] possible. We

[11] Instead, the vertical distribution refers to the competences assigned to the centre and to the units respectively.
[12] Comparison is considered essential to understand the way federations work, particularly from a comparative fiscal federal perspective (Galligan 2009).
[13] For a worldwide overview, see Caliso and Flores (2018).

will identify them in chapter 1. Once this is accepted, the comparison involves the same sub-questions used to understand the nature of the EU's fiscal regime. The aim is to understand:

- The nature of other federal polities' fiscal regime: on the one hand, to which extent are other federal polities able to regulate the fiscal policy of their units? On the other hand, to which extent do they have an own capacity at central level, i.e. the ability to autonomously collect resources and decide how to spend them? In short, how is the balance between regulation and capacity?
- The influence of the units over the fiscal regime of the centre: how autonomous is the fiscal regime of the centre? To which extent is the centre able to take decisions over the fiscal regime without the influence of the units?

To sum up, the thesis wants to investigate how the instruments of integration are linked to the central institutions that perform them in the EU and in two other federal polities. This will enable to assess their fiscal regimes. Since these questions aim to analyze the relationship between regulation and capacity-building and the institutions that are involved in each instrument, it is of pivotal importance to find a way in which fiscal regulation and fiscal capacity are described qualitatively and measured quantitatively. The same is true for the involvement of the units in a certain instrument of integration. This points to the methodology employed in the thesis and outlined in the following section.

3. Research methodology

What do the two instruments of core state powers integration mean? How strong and how weak are they? To which extent do the units influence the fiscal regime of the centre? This thesis aims to operationalize regulation, capacity and units' involvement in the fiscal regime through a number of constitutive indicators, in order to assess them qualitatively and measure them quantitatively. Operationalization is the process of giving an empirical meaning to concepts observable in reality (Herweg and Zahariadis 2018). The research methodology

adopted in this thesis is first and foremost qualitative: it examines different non-numerical patterns of the fiscal regime. But it also has a quantitative part, because it does a "numerical measurement of specific aspect of phenomena" (King, Keohane and Verba 1994: 3). Thus, a combination of both research strategies characterizes it: first, the nature of the instruments of integration and the involvement of the units is assessed; then, their degree is measured.

The work departs from a variable that it wants to analyse: the fiscal regime. A variable is defined as something that has been – or can potentially be – measured. It is in contrast with a concept, which is a term that does not have (explicit) elements useful for its assessment or measurement (Kuckartz 2014). So far, fiscal regulation and fiscal capacity have usually been used as concepts and not as variables. The literature has presented them as *ad hoc* manifestations and not as multi-faceted phenomena that can change due to a number of conditions: the type of legislative document, the time of its adoption, the overall political system, etc. Here, they are adopted as analytical tools to explain the nature of the fiscal regime in different federal polities. We analyse legislation in order to see how the fiscal regime and its two concepts change. The thesis will come up with operational indicators to measure the abstract concepts of fiscal regulation and fiscal capacity. This is to say that we aim to make variables out of those concepts.

The goal is to carry out a "descriptive inference[14]" (King, Keohane and Verba 1994: 8) from the data, i.e. to scientifically extract information from them which – through theoretical standards and practical procedures – provide us with a deeper knowledge of the fiscal regime. We do not seek "causal inference" (*ibid.*), i.e. to understand why a certain fiscal regime is in place, but how that regime looks like in detail. Explaining the reasons why different federal polities have adopted different fiscal regimes is an object of investigation that to some extent has already been done or that yet others can do. We believe however that causal

[14] Inference is based on data but does not coincide with them. In our case, different legislation (texts) give certain information based on its content. But systematic analysis of the texts and comparison to others gives additional information that is not manifest through a simple reading of the data.

inference must be grounded in proper descriptive inference. Here is where the present work aims to provide its contribution.

The relationship between instruments of integration and horizontal distribution of powers will be analyzed on the basis of formal texts. Correspondingly, the evolution of that relationship is assessed on the basis of changes to formal texts. From this stems also that the thesis does not consider the differences between formal texts and political reality associated with them. Nor does it want to look at legal principles in the texts. Those are interesting inquiries that are left to others. The aim is instead to assess the provisions of the fiscal regime in order to see how they are channeled into the instruments of integration. Similarly, the institutions are studied to inquire how much the units affect the fiscal regime of the centre. To empirically assess and measure the content of fiscal legislation is fundamental in order to better understand the "fiscal reality" and to see how much it differs from formal provisions (Hanretty and Coop 2012).

The thesis does a diachronic analysis of the fiscal regime based on formal texts. Methodological rigour requires the timeframe and the type of data to be the same for the EU and the case studies. The analysis starts in 2009, when the financial crisis reached the EU. Being the EU the starting point, this is rather a natural choice. The crisis is therefore taken as a critical juncture[15], namely as a crucial moment in history that has the potential to change the preexisting political equilibrium (Mahoney and Villagas 2007)[16]. Changes to the fiscal regime occurring at that moment are considered to be particularly relevant due to their path dependency. The ending date is 2013 because in the timeframe 2009-2013 most changes to the EU's fiscal regime occurred. We use the term "financial crisis" instead of "Eurozone sovereign debt crisis" because one of our

[15] Path dependency refers to the fact that political choices taken at critical junctures are particularly important because they constrain future outcomes. Each new critical juncture implies a new path dependency. In the case of the institutionalization of the EU, the end of World War II, the end of the Cold War with the fall of the Berlin Wall and the euro crisis are examples of critical junctures. It could be argued that Brexit is the next one. The idea of historical institutionalism is that institutions change in critical junctures. The institutionalization of a certain political system is thus the sum of decisions that political actors took at critical junctures.

[16] Unlike most part of the literature, the thesis thus refers the concept of "critical juncture" to changes of legislation and not of policy outcomes.

case studies – Switzerland – is neither an EU nor a euro area member. The crisis is not taken as an explanatory factor – also because the work does not look for explanatory factors. It is taken on analytical grounds: a lot of legislation was approved during the crisis and the idea is that over such a period the instruments of fiscal integration in a federal polity are more likely to change[17].

The research is done through an "evaluative qualitative text analysis"[18] (QTA) (Kuckartz 2014: 88) which analyses different text sources, "assessing, classifying, and evaluating [their] content" on the basis of specific indicators. Text sources considered are formal documents of the fiscal regime. EU, German and Swiss texts dealing with the fiscal regime are examined. The methodology requires the units of analysis to be of the same type. For instance, they must all belong to primary law, or all to secondary law, or to still another type.

Here, we focus on the fiscal constitution of the three polities, understood as "country-specific fundamental rules and regulations which guide decision making in the area of fiscal policy" (Blöchliger and Kantorowicz 2016: 443; see also Valdesalici 2018). Although this is a broad definition, we restrict the analysis to the legally highest documents of each of the three federal polities, which are supposed to be constitutions (Colomer 2009; Rosenfeld, Sajò 2012; Vanberg 2015). It is due to the fact that we are interested in the structural properties of the fiscal regime, i.e. in those principles that fundamentally shape it and that – precisely for this reason – are supposed to be enshrined first and foremost into constitutions.

However, an important *caveat* needs to be raised. Given the different form of state in the three cases, legally the types of texts cannot be exactly the same. The EU does not have a single constitutional document; Germany and Switzerland do. As for the EU, in spite of their peculiarities, the treaties can be considered functionally equal to a constitution (Isiksel 2019). The founding treaties are so-called European primary law[19]. During the financial crisis, changes to the fiscal

[17] For an analysis of (changes to) constitutions in times of financial crisis, see Ginsburg, Rosen and Vanberg (2019).

[18] In legal scholarship, a similar methodology has been referred to as "systematic content analysis" (Hall and Wright 2008; Salehijam 2018).

[19] EU primary law includes also the protocols attached to the treaties, which have the same legal force of the treaty themselves (Arnull and Chalmers 2015).

regime did not occur only through treaty amendments. They took place also through change to secondary legislation, i.e. new regulations and directives[20]. For Germany, primary legislation is given by the Basic Law (BL). For Switzerland, by the Swiss Federal Constitution (SFC).

As far as the EU is concerned, data other than the treaties are justified for two reasons. Firstly, the work does not put the three federal polities on the same footing. The point of departure and the focus of the analysis is the EU. The other two cases are taken to better understand the EU. As a result, the comparative diachronic analysis of the fiscal regime is not undertaken with the same depth, because this would mean to assign equal importance to the three polities. Secondly, whereas radical changes to the fiscal regime usually take place through constitutional amendment, the EU did not always act through treaty amendment. On the contrary, in most cases it did not. Fundamental changes occurred via secondary legislation or even international agreement between the MS. In the light of that, a functional extension of the data beyond treaties is needed. Actually, selecting data on the basis of its content is a more effective tool than limiting itself to data of the same type. Moreover, of course it is proper not only to qualitative text analysis to choose the data on grounds of the research question (Rädiker and Kuckartz 2019). Clearly, in all three polities only changes affecting fiscal legislation are considered.

The following table summarizes the data considered.

Table 1. Legislative data examined

EU	**Germany**	**Switzerland**
Treaty on European Union (TEU)	*Grundgesetz für die Bundesrepublik Deutschland* (Basic Law for the Republic of Germanz, BL)	*Bundesverfassung der Schweizerischen Eidgenossenschaft*[21] (Federal Constitution of the Swiss Confederation, SFC)
Treaty on the Functioning of the European Union (TFEU)	Any amendment to the fiscal constitution of the BL that occurred in the timeframe 2009-2013	Any amendment to the fiscal constitution of the SFC that occurred in the timeframe 2009-2013

[20] For the difference between these two legislative acts, see Art. 288 of the TFEU.

[21] We consider the German version. The constitution has legal force also in the other national languages of Switzerland (French, Italian and Romansh).

Stability and Growth Pact (SGP): Reg. No[22]. 1466/1997 Reg. No. 1467/1997	The empty space here points to the fact that no other relevant constitutional amendment to the fiscal constitution took place over the timeframe considered.	
European Stability Mechanism (ESM)		
Euro Plus Pact		
"Six Pack": Reg. No. 1173/2011 Reg. No. 1174/2011 Reg. No. 1175/2011 Reg. No. 1176/2011 Reg. No. 1177/2011 Dir. No. 2011/85		
Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ("Fiscal Compact")		
"Two Pack": Reg. No. 472/2013 Reg. No. 473/2013		
Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management (2013/C 373/01)		

As always in (social) research, a problem of incompleteness of the data and discretion related to its choice arises (King, Keohane and Verba 1994). Attempts to solve the former is done precisely through the focus on texts of a constitutional nature. Notwithstanding the extension to secondary legislation in the case of the EU, the amount of texts is still manageable. Once the functional extension has

[22] The official abbreviations of the documents in question are used.

been justified, a good deal of data completeness can be reached. The issue might arise within the data: do the constitutions provide enough information? This is actually a point that depends more on the legislator than on the researcher. It is quite rare that a constitution does not include a fiscal constitution. If that is really the case, the impossibility to find information would already be a significant finding. This is true also for federal polities that did not frequently – or not at all – change their fiscal constitution.

Also discretion related to data choice benefits from a limitation to constitutional documents. These documents are rather limited in number, which reduces discretion, or at least makes it more manifest. Last but not least, we believe that working with texts strongly increases the reliability of data and the falsification of the research. Constitutions are public texts, so the analysis conducted on the data can be followed more easily; results can be tested in a simpler way. But how is the work with the data carried out in practice? The next section shows it.

4. Working with the data

Qualitative text analysis (QTA) is the evolution of a number of methods dealing with interpretation of content (texts, audios, videos, etc.). A certain terminology is common to them, and thus also to QTA. It is necessary to explain it in order to better show how the work with the data is done in practice.

The first of these methods was Grounded Theory, which started in the mid-1960s (Glaser and Strauss 1967; Strauss & Corbin 1998; Corbin & Strauss 2008). The aim was to better understand a certain theory through a method for analyzing the data on which that theory was based ("grounded"). The analysis should proceed through coding, i.e. by assigning to text passages (segments) conceptual labels ("categories" or "codes") that foster understanding of the data[23]. In Grounded Theory, coding, analysis and interpretation of the data coincide. Code is a technical synonym for "category"[24]. Both terms indicate

[23] It is supposed to be a dynamic process in which the researcher moves from analyzing the texts to working with the code, and vice versa.
[24] The word "code" is used in different research software.

complex concepts that have received a precise definition, so that different researchers can recognize them in different stages of a research.

The birth of another method – content analysis – is symbolically identified with Max Weber's argument, presented for the first time at the 1910 German Sociological Association Conference, that it was important to systematically analyse the content of newspapers, and of the media more generally (Kuckartz 2014). At the beginning, he referred above all to quantitative analysis of the frequency of certain topics. World War II with its focus on war reports gave a strong impetus to this method[25]. However, following the general shift of social science towards behaviorism (1950s and 1960s), content analysis became predominantly quantitative. It was deemed impossible to grasp the "manifest content of communication" (Berelson 1952: 18) through a qualitative methodology. The content, it was argued, would emerge through analysis of the numerical frequency of certain topics.

Kracauer (1952) was the first to propose to shift the analysis away from the manifest content towards the non-immediately visible, implicit content of a text: from content analysis to *qualitative* content analysis. The reason was that data with a manifest content are rare in social science. Content interpretation of social data is almost always necessary, and this was considered a weak point of quantitative methods. The expression "qualitative content analysis" surfaced again with Marying's book precisely entitled as such (1983). He stressed the fact that it is the tools of analysis (the categories/codes) that stand at the centre of the process of interpretation. The researcher and its previous knowledge play a role in the whole analytical process, which is well shown by the different way in which the categories/codes can be created.

This work thus evaluates fiscal legislation through a process of coding or category-building, with the help of the software MAXQDA (Rädiker and Kuckartz 2019)[26]. This 1989-born programme enables to analyze several kinds

[25] The publication of Lazarsfeld textbook (co-authored with Berelson) "The Analysis of Communication Content" (1948) is considered a landmark.

[26] Clearly, also other software could have been used. We have chosen MAXQDA because it was born as a programme for qualitative analysis, although also some tools of quantitative research can be applied. In order to carry out the research, we opened a subscription to MAXQDA.

of data (texts, audios, visuals) through different qualitative and quantitative methods. Categories[27] can be created before or while analyzing content. *Ex ante* categories are called deductive because they originate from previous knowledge of the researcher, from the research question or from existing literature. They exist before reading the text and independently of it. *In vivo* categories are created from the text itself, during the analysis: they are inductive. The two typologies can also be combined: one might begin with a number of deductive categories and then discover new ones (inductive) while working with the data.

In order to do such an analysis, knowing the context in which the texts were created is important. This is why the QTA is preceded by important information about the federal polity at stake. Moreover, it is important to bear in mind a key message from classical hermeneutic: "a text can only be interpreted as the sum of its parts and the individual parts can only be understood if you understand the whole text. You should approach the text with some preconceived notions and assumption […] (Rädiker and Kuckartz 2019: 19). Overall, three analytical phases can be identified.

The first step consists in choosing the categories (both deductive and inductive). This is done on the basis of prior knowledge[28], the research question, and the data itself. For instance, dealing with the fiscal regime clearly involves the issue of a budget. Information about the budget thus derive from the research question. On the basis of prior knowledge, one can recognize that this is not only an unavoidable topic when it comes to a fiscal regime, but also a criticality of the EU. Last but not least, the data at disposal – treaties and constitutions – provide us with insights about a number of issues related to the budget, such as for example approval and implementation. As a result of all this, we can define the category "approval of the central budget"[29].

The second step involves defining the categories. Definitions need to be precise and mutually exclusive: each category must be clearly separated from

[27] In the following, we use only the term "category", bearing in mind that it is a synonym for "code".
[28] For example, some categories on the fiscal regime are derived from prior knowledge about the way this policy has been integrated so far.
[29] The whole set of deductive categories used in this work is presented in chapter 1.

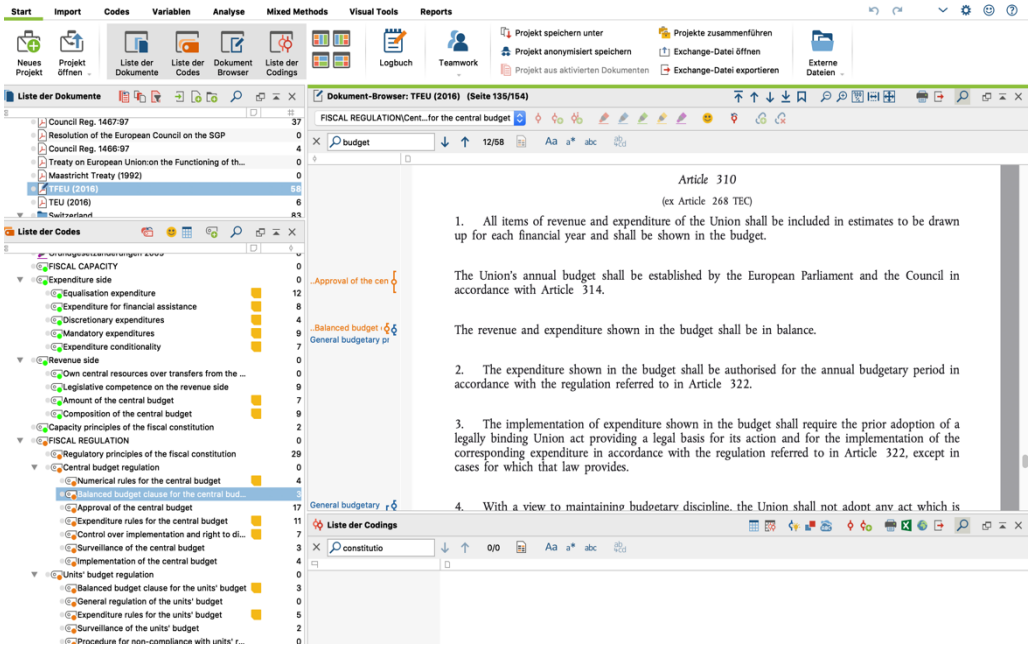
the others, so that they can be distinguished before and during the analysis. The definition is actually a requirement for a concept to become a proper category. Categories have a functional and operative meaning that must contain the necessary elements in order to ensure practical application. The categories are the "rule of inference" (King, Keohane and Verba 1994: 6) of the analysis.

The third step is assigning the categories to the text segments (coding them). Only the text segments that give exactly the information covered by the category are coded[30]. Importantly, the use of the codes mirrors the hierarchy between the three federal polities. The starting point is the EU. The system of deductive categories, possibly complemented through inductive ones derived out of the documents' specificity, is developed on the basis of EU legislation. Then, the categories are applied to the case studies. At the end, we will assess the generalizability of the categories, the convergence of categories towards the concepts (regulation, capacity and units' involvement) and the overall reliability of the tools employed to undertake the QTA. This methodological choice well fits the comparative approach of the thesis: to which extent is it possible to compare the fiscal regime of the EU to those of two other federal polities? The example below shows the QTA applied to the TFEU in MAXQDA. On the left, the whole set of categories is indicated. On the right, some categories are applied to text segments of the TFEU. The different color is a useful tool to separate the categories pertaining to the variable "fiscal regulation" from those of "fiscal capacity". The following passage:

The Union's annual budget shall be established by the European Parliament and the Council in accordance with Article 314.

can be marked both with the category "approval of the central budget" and "involvement of the units". In the first case, information about the regulation of the budget adoption is provided. In the second case, information about the role of the Council vis-a-vis the EP.

[30] This means that sometimes the coded text segments might be short, some other time very long. Two different codes might be applied to the same text segment.



Coding is conducive to qualitative assessment and quantitative measurement. In this work, the content of each category is examined. Moreover, a strength from 0 to 3 is assigned in order to measure its intensity. The choice of a 0 to 3 scale will be explained in chapter 1. For instance, we find how the category "balanced budget clause for the central budget" is regulated in practice: what do the provisions say? Then, we ask ourselves: in what a strong form of regulation do the provision result? To do so means that we evaluate categories: "examine appropriate text passages, rate the level, and assign the appropriate characteristic" (Kuckarzt 2014: 41).

The categories are then compared across different texts of the same federal polity and across different texts of different polities. For instance, "surveillance of the units' budget" in the TFEU and in the Fiscal Compact might be compared. Furthermore, the same can be done for this category in the TFEU and in the BL. In the comparative part, the categories of the EU are applied to the two case studies. This may result in those categories having different properties, in new categories or in the absence of those based on the EU. The rationale of the whole set of categories is to help explaining the two variables of the work, i.e. fiscal regulation and fiscal capacity.

To do so, the ultimate aim of the analysis is to create two main indices: an Index of Fiscal Regulation (IFR) and an Index of Fiscal Capacity (IFC). The indices are constituted by different qualitative indicators and will be measured quantitatively. In the case of the EU, this will lead to a dataset in which every year (from 2009 to 2013) corresponds to a certain value of the indices. The indices give the following information:

- IFR = Index of Fiscal Regulation: in what consists fiscal regulation and how strong is it?
- IFC = Index of Fiscal Capacity: in what consists fiscal capacity and how strong is it?

Analyzing the instruments of integration gives valuable information on the extent in which the two instruments constitute the fiscal regime of the EU. However, this becomes telling if one assesses which institutions shape them. Here, the work is interested in how much the units do so. In order to find an answer, it creates a third index, called Index of Units' Involvement (IUI).

- IUI = Index of Units' Involvement (IUI): in which way do the units affect the fiscal regime of the centre, and to which extent do they do so?

The IUI is applied to the IFR and to the IFC for each year. The combination of these three indices will enable a clear and systematic analysis of the nature of the EU's fiscal regime and its changes over time (first research question). The aim is to make formal legislative choices qualitatively and quantitatively measurable.

Following the analysis of the EU, the question arises whether its fiscal regime is somehow peculiar. Therefore, the first research question is put within the comparative federal literature and leads to the second one: how is the fiscal regime of other federations designed? Is it possible to identify some common elements with the EU or are the differences so significant that comparison is indeed not possible? To answer these questions, the same QTA is done for Germany and Switzerland. The aim is to create an IFR, an IFC and an IUI for the two case studies and compare these indices with those of the EU. By doing so, the work will be able to assess to which extent the fiscal regime of the three

federal polities is characterized by fiscal regulation and by fiscal capacity. It will also show how strongly the units shape the two instruments of integration.

Ultimately, as it has become clear, the thesis aims to shed light on the nature of the fiscal regime in different federations. To compare the EU with two established federations is interesting for two reasons. First, in order to see whether the EU's fiscal regime is something unique that cannot be found in other political systems. Second, in order to better understand the case studies considered.

5. Research objectives

The starting point of the thesis is the fiscal regime of the EU. The aim is to better understand its nature. By examining the fiscal regime through the dichotomy between regulation and capacity-building, the dissertation wants to shed light on the balance between these two instruments of core state powers integration. Through the creation of an Index of Regulation and an Index of Fiscal Capacity, it wants to create a qualitative assessment of the indicators that are part of each instruments. Moreover, it seeks to measure them quantitatively, in order to see which category results in a stronger regulation or capacity-building. The fiscal regime could also be described in another way. However, we believe that the two instruments employed are useful not only on grounds of the broad analytical spectrum they cover, but also because of their antithetical character. They might represent a simplification but still describe the essential features of a fiscal regime in a federal polity.

As the following chapter shows in detail, the work aims to fill two gaps in the literature. First, a conceptual gap, originating from the fact that regulation and capacity are often used but not properly defined. They are multidimensional concepts made up of different parts that bear a specific importance each. For example, if fiscal regulation is about rules, one needs to distinguish between rules establishing an upper limit for MS' public debt and rules that lead to the adoption of the EU budget. Similarly, if fiscal capacity is about structures of the centre, one aspect concerns the composition of the budget, another one the

decisions on how resources are spent. In short, we want to highlight the differentiation inherent in the fiscal regime and in its two instruments.

The other gap is an analytical one and is related to the second aim of the thesis: to investigate the autonomy of the EU's fiscal regime from the MS. Here, the gap to be filled derives from the fact that the degree up to which the fiscal regime of the centre is decided by the MS is largely under-investigated – at least from a formal point of view. What the EU can do in fiscal policy becomes equal to the question of what it can do autonomously from the MS. As we will see, this implies to detect which institutions play a crucial decision-making role: the supranational[31] ones, i.e. those representing the centre or the EU as a whole, or the intergovernmental ones, i.e. those representing the units or the MS.

In both research questions, no normative intention is implied. We are not suggesting that the predominance (if any) of one instrument of integration over the other is problematic *per se*. Similarly, a less autonomous and more unit dependent centre must not be negative. What we look at is how federal models work. We analyze them in depth. The next steps would involve investigating causes and implications of different models. But that goes beyond the scope of the present work. Still, those in search for normative arguments in favour of regulation or capacity will benefit from the analysis.

The comparative part of the thesis is supposed to give an added value to the study of both the nature and the autonomy of the fiscal regime of the EU. How is the EU's fiscal regime designed? The research aims to learn more about each of the two case studies in order to better understand the EU. Comparison should enable to assess the fiscal regime of the EU. Is the EU a *sui generis* case of fiscal integration? Does it perhaps constitute a specificity that cannot be compared to others at all? The idea is that one will be much more well-equipped to arrive to any conclusion after systematic comparison with other federal political systems that show at least some common elements with the EU.

[31] As we will see in chapter 1, the need for a common "federal terminology" arises. We opt for "institutions representing the centre", "central institutions" or "institutions of the centre" as synonym for "supranational", which is too EU-centred. The same is true for "intergovernmental" which we replace with "institutions representing the units". In both cases, with "representation" we mean "representation of the interests of" a certain level of government.

The findings of the analysis are used to understand the fiscal regime of the EU, i.e. to see if – and, if yes, how – it works in a different way compared to two federal polities that are sufficiently similar (because they both belong to the *genus* of federal political system) but also sufficiently different (because they belong to the two *species* of federal state and federal union[32]) as to be considered two distinct objects of comparison.

At the end, we assess whether it is possible to find a least common denominator of categories, i.e. some which have found application in all three federal polities[33]. These would be categories useful to analyse the formal evolution of the fiscal regime, based on the relationship between central institutions and instruments of integration, in different federal polities (federal states and federal unions). One would therefore end up with a model whose replicability can be tested at least for those federations that are either federal states or federal unions.

Related to that, the work eventually also aims to shed light on the relationship between *species* of federal polity and instruments of integration. Federal polities show different degrees of centralization: how is that connected to the nature and degree of the instruments of integration? In turn, how is the involvement of the units related to the *species* of federal polity and to the instruments of integration? In other words, these questions try to inquire whether the fiscal regime and the overall structure of the polity at stake do have elements in common.

6. Research structure

The work is structured as follows. The first chapter presents the theoretical models developed for the integration of core state powers in the EU. This cannot but looking at the most prominent theories developed from the birth of the EU onwards. However, to mention them is necessary to understand why they are not of central relevance here. These theories give us insights on why certain instruments have been chosen, but not on how those instruments are organized.

[32] The difference between federal unions and federal states will be explained in chapter 1.
[33] Again, this points to reliability of the categories.

They do focus on the drivers of regulation and capacity, not so much on their functioning.

The literature on core state powers does. Because of that, the work examines the tools used to this regard, i.e. the concepts of regulation and capacity-building, highlighting the rationale for each of them and focusing on the fiscal regime. After that, the EU as a federal polity is presented and the dichotomy between federal states and federal unions is pointed out. The two case studies, Germany and Switzerland, are put within that dichotomy in order to show why they are important for the comparison. Chapter 1 also explains how to fill the conceptual and the analytical gap. The former deals with the lack of deep analysis of the two instruments. This gap is approached with the IFR and the ICB, measured through the Content-Impact-Compliance (CIC) Model and the Content-Impact-Discretion (CID) Model respectively. The latter deals with the lack of a deep analysis of the EU's autonomy in fiscal policy. This gap is approached with the IUI, measured with the involvement in legislative amendment and policy intervention. Chapter 1 also defines the categories of the QTA and presents a number of working hypotheses separated per research question-

The analysis of the three federal polities starts with a common structure. The second chapter deals with the EU. Firstly, the main institutional features of the EU are presented. Secondly, the institutions of the centre are described. Then, the main elements of the fiscal regime from the Rome Treaties (1957) until the Lisbon Treaty (2009) are recalled. This is conducive to the QTA that is then conducted through the analysis of fiscal legislation adopted during the financial crisis (2009-2013).

Chapter 3 and 4 follow a similar structure with Germany and Switzerland respectively, without a historical evolution[34]. Chapter 5 is the heart of the analytical part of the thesis. The categories of fiscal regulation and capacity are examined and compared. Then, the three indices (Index of Fiscal Regulation, Index of Fiscal Capacity and Index of Units' Involvement) are created. The next two sections assess the working hypotheses and answer the research questions.

[34] Again, the reason is the unequal status of the three polities in this work, with the EU being the starting point and Germany and Switzerland the case studies.

The final one establishes a link between the findings of the work and the foundational theories of integration. Chapter 6 summarizes the main findings and contributions to the academic literature and the non-academic debate. It also inquires avenues for further research directly and indirectly linked to this work.

After explaining the research question, the methodology, the objective and structure of the work, it is of pivotal importance to place it in the literature. This is what chapter 1 does.

Chapter 1 - Beyond theories of EU integration: a new model to analyse the fiscal regime?

1. Introduction

This is the theoretical chapter of the thesis. It has two main objectives. Firstly, to recall the relevant state of the art, explain where the thesis is located within it and argue what contributions it gives to the existing literature. Secondly, to present the theoretical model that is applied to the qualitative text analysis (QTA).

The chapter is organized as follows. The first section presents the mainstream theories of EU integration, showing why they do not give main insights for the present analysis. It then introduces the concept of core state powers and the related instruments: regulation and capacity-building. Core state powers are highly salient policies. Thus, in principle also the way the EU integrated them is different compared to low-salience ones, most notably the single market. Not entirely: we will see that regulation is an instrument already in place for market integration. With core state powers it changes its nature and scope. This work wants to analyze how this occurs.

The chapter then shows the conceptual gap that it wants to fill and how to achieve that. The instruments of integration are operationalized and the Content-Impact-Compliance (CIC) Model is presented for fiscal regulation and the Content-Impact-Discretion (CID) Model for fiscal capacity. After that, the three federal polities are first considered as belonging to the *genus* of federal political system and then divided among the *species* federal union and federal state. The properties of both *species* are highlighted. Germany and Switzerland are presented as examples of a federal state and a federal union respectively. The EU can be considered a federal union as well. Federal comparison does not only serve to contrast the instruments of integration. It is also a breeding ground to face the analytical gap that the thesis wants to fill. What about the way in which the units influence the fiscal regime of the centre? Does the autonomy of the centre depend on the institutional properties derived from each of the two federal

models? The chapter also explains why involvement of the units is a more suitable analytical tool than bicameralism. What we develop is a sort of central authority index, similar but opposite to Hooghe, Marks and Schakel's (2008) index of regional authority[35]. We do measure central authority not directly but indirectly through units' involvement in the regime of the centre.

The chapter ends with a number of working hypotheses that put together the concepts that are key to this work: instruments of integration, units' involvement, degree of decentralization and *species* of federal polity.

2. Theories of EU integration: from realism to comparative federalism

This thesis compares the EU to other federations. In other words, it tries to better understand the EU through federal lenses. In what way and to which extent has the EU been integrated in comparison with established federations? Nowadays that seems a normal and perhaps even mainstream question, but this has not always been the case. For a long time, any comparison between the EU and nation states was excluded altogether. The EU was not seen as a political system of its own, but as a *sui generis* construct that was incomparable to nation states, either unitary (centralized) or federal (decentralized).

For the original theories of EU integration, the word "federalism" was under a sort of taboo. The reason was its perceived connection to a sovereign state, which the EU was (is) not. Because of that, one the one hand scholars thought federalism could not provide any useful insight to study the EU; on the other hand, they feared to be considered supporters of a European federalizing process (Kelemen 2019). A look at the main theories developed to explain the integration process shows this. To consider these theories is important not only because they are a *sine qua non* of EU studies, but also in order to see how useful they can be for the present analysis. Since they are associated with the period from the birth of the EU onwards, they are known as foundational theories of integration.

In the initial decades after its establishment, the EU was approached as "an international organization undergoing a process of integration" (Pagoulatos and

[35] On that, see the following part of the chapter.

Tsoukalis 2012: 261). It is therefore not surprising that the first theory trying to explain the integration process was realism[36]. The EU was born because European states had interests, albeit different ones[37], to create it. However, the quick emergence of an embryonal supranational dimension[38] was incompatible with realism, which neglects the possibility of interstate cooperation (Pollack 2012). It is the reason why two new theories of EU integration emerged which tried to identify the drivers of the process.

The first one was neo-functionalism. Born in the 1950s and early 1960s[39], neofunctionalism argues that the rationale for EU integration was to create a market, something generally considered to be beneficial. From this area of "low politics", that did not challenge national sovereignty[40], it expected a spillover effect to other more politically salient areas. In order to reach that, "neofunctionalists […] paid greater tribute to the necessity of central political institutions" (*ibid*., p. 9). As a matter of fact, spillover could occur both "from one policy area to another and from a lower to a higher level of supranational authority" (Niemann, Lefkofridi and Schmitter 2019: 45). These new supranational institutions, created by states but then not directly controlled by

[36] The core assumption of realism is that states are the central actors in the anarchic international arena. They are unitary actors that in order to "survive" in a hostile environment need to be unitary and act rationally (see, among others, Carr 1939; Morgenthau 1948). Later on, neo-realism maintained the primacy of states but stressed the influence of the structure of the international system as a factor constraining states' discretion of maneuver (see, among others, Waltz 1979; Mearsheimer 2001; Jervis 1978).

[37] Without pretending to be exhaustive: the losers of World War II (Germany and Italy) saw the European integration project as a way to recover economically and regain international legitimacy; France also had economic reasons, due not only to post-war recovery but also to Western containment. All founding members shared the desire to preserve peace and to avoid further wars on the continent.

[38] We mean the supranational dimension of the European Coal and Steel Community (ECSC) and the Euratom. Although created by states, the institutions of these organizations were distinct from the MS. As Pollack (2012: 67) observes, at the beginning the EU was an international organization, albeit an "unusually well institutionalized" one.

[39] Initially, the rapid establishment of institutions (ECSC, EEC and Euratom) and set-up of policies (customs union and Common Agricultural Policy) was in line with the functionalist idea that once a process of economic integration was set in motion, it would trigger a continuation and extension ("spillover") to other areas.

[40] The distinction between so-called "high" and "low" politics is open to debate. In this work, we follow the literature on core state powers, which is based on the degree up to which a certain policy at EU level waters down national sovereignty. The most extreme example is the full transfer of monetary policy to a supranational institution like the ECB.

them, would channel citizens' demands and, thus, advance integration regardless of states' consent.

After this relatively short neo-functional[41] challenge, starting from the 1960s states were considered again the driving force of integration (Hoffmann 1966). The nation state was seen as having a predominant influence over EU institutions (Pollack 2012). This classical intergovernmental theory was mitigated by the completion of the single market (1992). A new liberal intergovernmentalist approach (Moravcsik 1998) emerged, according to which states have different preference that are determined domestically. Liberal intergovernmentalism (LIG) takes a key property from international relations (IR): within an anarchical international system, states prefer to pursue their goals through negotiation and bargaining rather than through delegation of powers to a centralized authority. However, they are not only moved by security concerns. When negotiating, MS base their bargaining power[42] not only on military but also on economic and other capabilities. Most importantly, supra-state institutions are a construct accepted for policy coordination. Liberal intergovernmentalism thus considers the EU a legitimate product of intra-states relations, taking for granted that states firmly control the whole process[43] (Moravcsik and Schimmelfennig 2019).

The main decisions relating to the integration process are taken by the most powerful MS. From this stems that the whole process of integration advances, stands still and is reversed when states so decide. This is in sharp conflict with what neo-institutionalists postulate, namely unintended consequences stemming from the creation of institutions, which make their dismantling more unlikely. In addition to that, drawing on the centrality of MS, rational choice institutionalism explains delegation of a principal (the MS themselves) to supranational

[41] A new 'European interest' parallel to the national one would develop. In particular, once started, this process would be continuous and self-reinforcing, spilling from one policy are to the next and triggering integration where functional benefits could be seen. See, for instance, Haas 1958.

[42] Bargaining power is directly proportional to asymmetrical interdependence, meaning that "those who gained the most economically from integration, relative to unilateral and collective alternatives, compromised the most on the margin to realize gains, whereas those who gained the least (or for whom the costs of adaptation or alternatives were highest) tended to enjoy more clout to impose conditions" (Moravcsik and Schimmelfennig 2019: 68, in Moravcsik 1998: 3).

[43] With reference to the formal changes to the EU integration process, it means that MS are "masters of the treaty" (Alter 1998: 121).

institutions (an agent) arguing that the former can only partially control the latter (Garrett and Tsebelis 1996).

Neofunctionalism and liberal intergovernmentalism belong to what Diez and Wiener (2019: 1) have called "explanatory phase" in EU integration theory. The other two phases would be the analytical and the constructive one. The explanatory phase, from the beginning of the EU until the 1980s, left realism and tried to explain why nation states decided to build regimes and institutions outside of the state itself. Actually, both neofunctionalism and liberal intergovernmentalism are concerned with the process of integration, not with its outcome. They try to answer the question "why was the EU born and why did it develop?" rather than "towards which form of integration is the EU moving?". At least two key differences can be found between them. Firstly, unlike intergovernmentalism, neo-functionalism does not treat EU integration as a number of specific events (mostly, treaty negotiations and amendments). For neo-functionalists, integration is rather a process at the centre of which lie supranational institutions (Niemann, Lefkofridi and Schmitter 2019). Secondly, not only states and their governments but also private actors play a role in the process (Jensen 2019).

The deepening of integration with the Single European Act (1986) increased the institutional complexity of the EU[44]. Moreover, important judgements by the ECJ triggered the development of an autonomous legal order. The EU began to be approached more as a political system of its own rather than as an international organization. The deepening of integration regarded not only institutions but also policies. An analytical phase started which opened the possibility to compare the EU to other polities. The main reason was a specific type of new policies that entered European integration, different from the previous ones. To understand this point, one needs to stop a moment and look back at the origins of the integration process.

[44] Among the most important changes, one might recall the introduction of qualified majority voting (QMV), the increased influence of the EP after its direct election (1979) and following the Single European Act (1986), and the introduction of the co-decision with the Maastricht Treaty (Hix and Hoyland 2011).

From the Rome Treaties until the end of the 1980s, the EU coincides with the common market. Things radically changed in 1992. Faced with international events[45], the EU decided to go beyond market integration and integrate policies close to national sovereignty. The literature defines these policies "core state powers" (Genschel and Jachtenfuchs 2014 and 2016) or "high politics" (Pagoulatos and Tsoukalis 2012: 277): they include sensitive policies that states do not want to give up because they are considered to be closely linked to the very idea of state. In other words, the "essence" of states: without them, hardly can a political system call itself a state. Core state powers include coercive power in general, the power to coin money, to raise taxes and to issue debt, and the administrative implementing and enforcing capacity of laws and policies within a certain territory (Bartolini 2005). Other examples include "foreign and defense policy, public finance, public administration, and the maintenance of law and order" (Genschel and Jachtenfuchs 2014: 1), but also "the mobilization and direction of coercive force (police, military, border control), the raising and spending of public revenue (taxation and fiscal policy) […]" (*ibid.*, p. 2). Among all policies that are the quintessence of a state, fiscal policy is perhaps the most important one. It is at the heart of "the classic question of politics according to Harols Lasswell (1936): Who gets what, when, and how?" (Becker, Bauer, De Feo 2017: 16).

The 1992 Maastricht Treaty (MT) was a turning point in European history because it integrated the most prominent core state powers: foreign and security policy, justice and internal affairs, economic and monetary policy, just to mention the most sensitive of them. MS carefully accepted to integrate new policies (perceived to be) intrinsically linked to national sovereignty on the condition that they could strictly control them. This is to say that these policies had to be managed only by the institutions at EU level were national governments were represented, i.e. the intergovernmental ones. The Council of

[45] The end of the Cold War (1989) and the fall of the Berlin Wall (November 1989); the subsequent reunification of Germany (October 1990).

Ministers[46] first, and the European Council[47] then (especially once formally institutionalized in the Lisbon Treaty), was considered the most suitable institution to manage core state powers.

The decision-making process was intergovernmentalism, i.e. the voluntary coordination and pooling (rather than sharing) of sovereignty, without the adoption of legal acts[48]. National governments meet in the Council in order to reach political agreements – usually by unanimity and in specific cases by qualified majority voting (QMV). Because of this, supranational actors involved in the EU legislative process (the Commission as proponent of legislation, the EP as co-legislators with the Council, and the ECJ as adjudicator) are marginalized. The Commission plays a role only in the implementation of decisions taken by the intergovernmental institutions.

Before the MT, the EU was a market. On market policies, decisions are taken through the supranational (or Community) decision-making regime, which is a sharing (and not pooling) of sovereignty. There, the Commission proposes, the Council and the EP co-legislate[49] and the ECJ checks compliance with decisions. Integration occurs through legislative acts that belong to EU secondary law. In both the intergovernmental and the supranational decision-making regime, the Council plays a role. But while the former it alone has a say, in the latter it needs to take into account the EP (as well as the Commission) (Fabbrini 2015).

Thus, with the MT the EU went beyond the single market becoming a dual constitutional regime (Scicluna 2015). The pillar system introduced by that treaty well showed it. Single market policies – managed with the supranational decision-making regime – were the first pillar. The second (foreign and security policy) and the third (justice and home affairs) pillar were intergovernmental (Laursen 2012). The Economic and Monetary Union (EMU) was managed across the two regimes, thus acquiring a *sui generis* nature. While monetary

[46] It represents national governments in different configurations depending on the policy at stake. The Council will be discussed more in detail in chapter 1.
[47] It represents heads of state and/or government. The European Council will be discussed more in detail in chapter 1.
[48] In the intergovernmental decision-making regime, primary (EU treaties) and secondary legislation (regulation, directives and decisions) are excluded.
[49] Co-legislation is in force since the Maastricht Treaty, but for some policy fields only. Since the Lisbon Treaty, it is the ordinary legislative procedure (Burns 2019).

policy was centralized and delegated to a supranational institution (the European Central Bank or ECB), economic policy, and specifically fiscal policy, remained decentralized and carried out in an intergovernmental institution (the Council). Because centralization in monetary policy was not accompanied by the corresponding centralization of resources and fiscal decision-making capacity, EMU became an incomplete[50] construction (De Grauwe 2014).

All this well shows why starting from the MT the EU was increasingly compared to other polities, especially federal ones. If we take Riker's minimal definition of federalism as an organization of political power in which "the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions" (Riker 1975: 101), we understand why at the beginning the term was not associated with the EU. From 1957 to 1992, the activities on which the EU could make final decisions were essentially limited to the market realm. MS delegated internal market and competition policies to the EU. In federations, the activities of the centre are much more and they also involve core state powers. In the EU, that happened after the MT only.

Hence, after 1992 the comparative federal approach has been increasingly applied to the EU because of the latter's growing institutional complexity at the supranational level. Fossum and Jachtenfuchs (2017) identify three main areas of comparative federalism and the EU. The first compares the EU to Western established federations outside the EU itself, particularly the US (on this, see Tortola 2014). The second (so-called "within-EU" comparison, *ibid*., p. 467) compares the EU to its MS, with emphasis on federal ones (e.g. Germany, see, for instance, Scharpf 1988). The third could be called a partially federal comparison, because it analyses how some elements of consolidated federal polities would impact on the EU if introduced there. The picture that emerges from a broad overview of the literature is that "the federal dimension in EU studies is clearly underdeveloped in comparison to other fields and subfields" (Fossum and Jachtenfuchs 2017: 469).

[50] The creation of a complete EMU would have meant delegating to the EU not only monetary but also fiscal policy.

The foundational theories of integration reviewed so far all treat the EU as a historically unique case. Comparative federalism – and this work as well – does not do so. While neofunctionalism and LIG (as well as realism) conceived the development of a central EU dimension, independent of MS, as the key *explanandum*, comparative federalism takes the supranational centre as given. Taking for granted that the EU has a national *and* a supranational dimension makes it natural to compare it to federations of a different nature. Here is where this work steps in.

3. Federal polities: federal states and federal unions

3.1. The EU and the case studies as federal polities

Are the EU and the case studies federal polities? This is an important question to answer in order to have three cases which are similar to compare. The purpose is to test them on the basis of three definitions. The first is the well-known minimal definition by Riker (1964 and 1975). The EU and the case studies have two distinct levels of government, each of which has some exclusive competences. The EU treaties enumerate the competences of the EU and leave all the rest to the MS[51]. In Germany, the two levels of government are the Federation (*Bund*) and the states (*Länder*). The former has some exclusive competences; everything that does not fall therein is assigned to the latter (Kramer 2005)[52]. In Switzerland, the two levels of government are the Confederation (*Eidgenossenschaft*) and the cantons (*Kantone*). *Mutatis mutandis*, a similar division between exclusive and "residual" competences, albeit more in favour of the units, occurs as in Germany[53].

[51] The Treaty on the European Union (TEU) states that "competences not conferred upon the Union in the treaties remain with the Member States" (Art. 4). Correspondingly, in the areas of exclusive EU competence (listed in Art. 3 of the Treaty on the Functioning of the European Union or TFEU) only the EU can adopt legally binding acts. MS can do so only if authorized by the EU (TFEU, Art. 2).

[52] The Basic Law states that "the *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation" (Art. 70). It differentiates between exclusive legislative powers of the Federation (Art. 73) and concurrent legislative powers (Art. 74).

[53] The Swiss Constitution reads as follows: "the Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not

Galligan (2009: 6-7) proposes a number of institutions typical for federalism. They are: "first, a written constitution that is difficult to amend; second a bicameral legislature with a strong federal chamber to represent the constituent regions; third, a supreme or constitutional court to protect the constitution through the power of judicial review. Let us undertake the "federal test" also on these points.

The EU does not have a proper constitution. Since the beginning, it was based on treaties. Attempts to introduce a constitution – the so-called "Treaty establishing a Constitution for Europe" (2004) – failed due to lack of unanimous ratification (Devuyst 2012)[54]. After that, the amended founding treaties – the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – were adopted. Although the EU does not have a single document comparable to constitutions, the founding treaties are to be considered the constitution of the EU (Schütze 2018). At least, the EU for sure does have a written document that includes its core principles and regulates its functioning. The treaties are very difficult to amend because unanimity is required both in the European Council and in the ratification by MS according to their constitutional provisions (TEU, Art. 48). The process is comparatively easier in Germany. There, the Basic Law can be amended by a 2/3 majority of the members of the Bundestag and the Bundesrat (BL, Art. 79.2). Some parts are also excluded from amendments at all (Art. 79.3). The Swiss Constitution can be amended through a double majority of the People and the Cantons (SFC, Art. 142).

As Watts (1999: 10) notes, following a horizontal distribution of powers, "most […] federations have adopted bicameral federal legislatures": one institution representing the citizens (first chamber), the other representing the units (second chamber). In both the European Council and the Council, the EU gives one seat to each MS regardless of its demographic size. Switzerland follows a similar principle. In the upper chamber, the Council of States

vested in the Confederation" (Art. 3). As for the Confederation, it "fulfils only the duties that are assigned to it by Federal Constitution" (Art. 42).

[54] In 2005, France and The Netherlands did not ratify the treaty.

(*Ständerat*), almost[55] all cantons have two representatives each. Germany adopts a degressively proportional principle of representation. Smaller *Länder* are overrepresented (minimum two members). The larger *Länder* cannot have more than six members. Therefore, in all three cases the representation of the units at the centre is strong.

The EU has a court that protects the European legal order and, thus, the founding treaties. The ECJ does judicial review in that it "reviews the legality of the acts of the institutions […of the EU]; ensures that Member States comply with obligations under the Treaties; interprets European Union law[…][56]". In Germany, the Federal Constitutional Court (*Bundesverfassungsgericht*) interprets the Basic Law, checks the compatibility of legislation with the latter and rules on constitutional complaints by a number of actors including private persons (BL, Art. 93). In Switzerland, the Federal Supreme Court (*Bundesgericht*) rules, *inter alia*, on violations of federal law, international law, inter-cantonal law, and cantonal constitutional rights (SFC, Art. 189). In sum, notwithstanding their different constitutional prerogatives, the highest courts in the three cases have the competence to protect the federal properties of the constitution.

Based on the elements proposed, the EU and the two case studies are federal polities. However, not all federal polities are equal. This work focuses on two different *species* that differ in their historical origin, something that in turn has resulted in a different institutional configuration.

3.2. The EU, Germany, and Switzerland: federal states and federal unions

The literature has made an important distinction based on the historical origin of federal polities, which in turn influenced their horizontal and vertical distribution of powers. Some federal polities are the result of the disaggregation

[55] Following the 1999 constitutional reform, six out of twenty-six are considered "half-cantons" for historical reasons and have only one representative in the Council of States.
[56] See https://curia.europa.eu/jcms/jcms/Jo2_6999/en/ (last access: 21 October 2019). See also TFEU, Art. 251.

of a previously unitary state. Some others emerged as the aggregation of states that had previously been independent for a relatively long period of time.

Federal states derive from the disaggregation of a previously independent and unitary state (Fabbrini 2017). They have also been called "holding together federations" (Stepan 1999: 22). In the Western democratic world, Germany[57] and Canada are the two historical examples. They were both born after the Second World War to limit the control of central state power (Germany) and to accommodate local diversity (Canada[58])[59].

In Germany, the main rationale for creating the federal state was to decentralize power and to strengthen democracy. It is a case of territorial federalism (Hueglin and Fenna 2015). Federal states have a comparatively limited degree of asymmetry[60] and differentiation[61] between the centre and the units. The central political authority tries to limit asymmetry and differentiation between the constituent units. Although federal states need to decentralize political power, given that this process started from the centre, the latter retained significant competences. As Fabbrini (2017: 585) puts it, "since central political elites play[ed] a crucial role in negotiating the disaggregation of the unitary state with local political elites, they have been able to retain significant decision-making resources at the centre of the new federation".

This is due also to the fact that federal states are organized around a system of parliamentary fusion of powers at the centre (horizontal level) and a separation of power system between the units and the centre (vertical level). A relationship of confidence[62] connects the executive to the legislative (horizontal fusion of power system). But the relationship of confidence only bounds the

[57] In the case of the Federal Republic, the previously independent and unitary state was the Third Reich. Following the end of World War II, the allied forces established federalism in Germany in order to reinforce democracy (Krumm 2015). Moreover, the federal legacy had been part of the German history before the rise to power of Nazism.
[58] In cultural federal states (e.g. Canada), anti-centralization measures have been justified by the need to contain the ethnic cleavages that could ultimately lead to (claims for) secession.
[59] On both, see also Broschek 2011.
[60] In terms of population, size, and economic weight.
[61] In terms of language, culture, values, and attitudes.
[62] Meaning that the government needs the approval of the majority of the parliament in order to start its activity and remain in office.

executive to the popular chamber[63] representing the citizens. There are two devices to moderate centralization. Firstly, a chamber representing the constituent states in federal policy-making. In Germany, it is the *Bundesrat*; in Canada, the Senate. Crucially, however, the *Bundesrat* is not involved in the formation of the federal government, i.e. it is not entitled to pass a vote of confidence. Generally speaking, its consent is required on legislation that affects the units directly. For instance, the Bundesrat's consent is required to approve the part of the federal budget law that affects the *Länder*. Secondly, the *Länder* have nearly all administrative tasks and implement federal legislation. In sum, in federal states the parliamentary model fosters stronger centralization of the decision-making process compared to other federal political systems. The second chamber gives formal representation to the units at the centre. However, participation in the decision-making process is limited to areas that affect the units. It is not foreseen in the formation of the federal government.

Federal unions are defined in contraposition to federal states. They are the outcome of the aggregation of previously independent states (Fabbrini 2017). They are also called "coming together federations" (Stepan 1999: 22). The United States[64] and Switzerland are historical examples in the Western democratic world. The reason why they created a union was the need to protect themselves from external threats and prevent internal war. What is typical for federal unions is asymmetry in terms of population, size, and economic weight, and differentiation as far as values, attitudes and language is concerned. These political systems are decentralized because the units triggered the creation of the union and managed to keep as much competences as possible under their control.

[63] The Bundestag in Germany and the House of Commons in Canada.

[64] In the case of the United States, there is a Congress (not a Parliament) composed of the House of Representatives (HoR, representing the citizens) and the Senate (representing the states). While the former is elected in proportion to the population of each state, in the latter there sit two representatives regardless of demographic size. Thus, the constituent units are granted a strong representation at the centre. Smaller states are overrepresented. The US has a written constitution that specifies that 'no state, without its consent, shall be deprived of its equal suffrage in the Senate' (US Constitution, Article V). The commitment to an equal representation of the states in the Senate can be seen as a commitment to a federal order. The constitution is difficult to amend, since a 2/3 majority both in the HoR and in the Senate is required. Moreover, at least ¾ of states must ratify it. The Supreme Court has jurisdiction, *inter alia*, on controversies that might arise between states. See, among others, Katz 2006 and Kincaid 2012.

The institutional configuration of the federal level was the spitting image of the one at units' level. Hence, having been independent states for a long time results in a significant decision-making autonomy that rests at decentralized level. The centre has delimited and enumerated powers. The cultural cleavage of federal unions is not compatible with a centralized organization of authority.

How to make sure the federal centre was – and would – remain weak? Through separating the powers (legislative, executive, and judiciary) at federal level (horizontal separation). The legislative power is dual (as in any federal polity) and is separated from the executive, i.e. there is no relationship of confidence between them. The same separation occurs between the federal and the states' institutions (vertical separation). Vertical refers to the separation between the centre and the units: being federal unions quite decentralized, the former has only enumerated powers, while the latter retains the rest.

Not only is the centre in federal unions weak compared to federal states. To the extent that the centre has competences and resources, the units exercise a higher influence than in federal states. As a matter of fact, the second chamber is involved in all federal policies on an equal footing with the first one. The federal institutions representing the states (the Senate in the US and the Council of States in Switzerland) have a say in all policies. The units are equally represented regardless of their demographic size. However, as we will see in the following, members of the second chamber usually represent the units' population, not their governments. Also, the units internally display a separation of powers between the legislative and the executive.

What about the EU? It can be considered a federal union for the reasons above. As a matter of fact, the centre has only limited and enumerated competences. Even when the centre has competence, the influence of the institutions representing the units is strong. After World War II, independent states decided to aggregate with the aim to create a common market. Like for the US, the reason was to protect themselves against an external threat (the Soviet invasion) and to prevent a third intra-European war. Since the beginning, the EU has been highly asymmetric and differentiated. Starting from the 1990s, this has become even more true because of German reunification (asymmetry) and

Eastern enlargement (differentiation). In spite of the delegation of competences to the centre, the EU remains very decentralized, if one considers that "competences not conferred upon the Union in the treaties remain with the Member States" (TEU, Art. 4). In other words, the EU has only those powers that MS have granted to it.

The political system of the EU works according to the horizontal and vertical separation of powers. Horizontally, there is no proper relationship of confidence between the legislative institutions (EP and Council) and the executive ones (Commission and European Council). The system of the *Spitzenkandidat*[65] is an attempt to increase the need for the Commission's president to have a linkage to the EP. True, the President and each commissioner must obtain a vote of consent by the EP before being appointed by the European Council (TEU, Art. 17.7). The Commission must be "responsible" (*ibid*., Art. 17.8) to the EP, which entails the possibility for the EP to vote (with a 2/3 majority of the votes cast) a "motion of censure" that obliges the commission to resign. However, this did not result in a proper relationship of confidence for two reasons. Firstly, the decision of the European Council, not the EP's approval, is crucial for the formation of the Commission. Secondly, the Commission does not represent the political majority of the EP. It is made of one member per state[66] acting independently of that state. Vertically, the powers of the EU level are separated from those at MS' level. Also, the institutions representing the MS (Council and European Council) have a say in all policies[67].

The EU shows a twofold intergovernmentalism (Fabbrini 2017), meaning that the units are differently involved in the decision-making of the centre depending on the policies at stake. In the internal market policies, where the supranational decision-making regime applies, the institution representing the units (the

[65] When proposing a candidate for President of the Commission, the European Council needs to consider the outcome of the EP's election and select the candidate of the parties (party families) that got the highest number of votes. The EP has then to approve the choice of the European Council with regard both to the President and to the Commissioners (TEU, Art. 17.7).

[66] Although the TEU (Art. 17.4) assigns one to each MS, the commissioners represent the EU and not their country of origin. They need to be characterized by "general competence, European commitment and independence" (TEU, Art. 17.3).

[67] Also in policies decided through the supranational decision-making, the Council is involved on equal footing with the EP. The European Council defines the strategic guidelines of the Union.

Council) has co-decision powers with the EP. In core state powers, where the intergovernmental decision-making regime applies, the institutions representing the units (the Council and the European Council) are the sole decision-makers.

The thesis does not consider two cases per *species* (Germany and Canada as federal states and the US and Switzerland as federal unions). It compares the EU only to Germany and to Switzerland. The choice of these case studies is due to both similarities and differences between them. First of all, they are useful cases to compare because they represent two *species* of the *genus* of democratic federal political systems. Making a comparison within the same *genus* (federal polity) but across different *species* (federal states and federal unions) may enable to highlight the specificity of the EU – provided there is such specificity – in a better way. Secondly, both belong to the group of the "well-established Anglo and European federations" (Galligan 2009: 266)[68]. Thirdly, they score the highest (5) on Lijphart's index of federalism. Lijphart's index of federalism is based on the degree of federalism and decentralization[69]. In sum, Germany and Switzerland "are sufficiently similar and have high federal characteristics" (Calligan 2009: 6) but also retain significant differences as to be considered two distinct objects of comparison.

We are aware that the distinction between federal states and federal unions might depend on the historical moment chosen for each case[70]. This work makes the federalizing process start with the adoption of the constitution that is still in place today. The classification of the case studies into the two species is based on the properties and the institutional features of the federal polity at the time

[68] This group also includes Australia and Austria. Australia is not considered because of its geographical peculiarity, far away from the others. Austria is not considered because of its lower index of federalism (see Lijphart 2012).

[69] Lijphart's index of federalism is based on the degree of federalism and decentralization. The degree of federalism can be judged by a number of indicators: the bicameral legislature with a strong representation of constituent units in the federal chamber, a written and formally federal constitution that is difficult to amend, and a judicial review by the Supreme Court or by a specialized constitutional court that can protect the constitution. Decentralization can be measured by the "central government's share of total central and noncentral tax receipts" (Lijphart 2012: 182)

[70] For instance, one could argue that Germany came out of a process of disaggregation of a previously unitary and centralized state, i.e. the Third Reich (1933-1945). However, German unification, which led to the German Empire or Second Reich (1871-1918), was a process of aggregation of previously independent states. In the typology used in this work, the former would be a federal state and the latter a federal union.

when its constitution was adopted. Considering the basic properties of the two species allows a classification of nearly all federal polities worldwide. Those basic properties can be found as follows. In the case of federal states, we have: limited or controllable asymmetry and differentiation between the units; long and substantially relevant list of competencies attributed to the centre; fusion of powers system at the centre in which, however, the chamber representing the units does not vote the confidence to the federal government; no strict separation between administrative competencies of the centre and of the units. For federal unions, the reverse applies: large asymmetry and differentiation between the units; narrow, albeit substantially relevant list of competencies attributed to the centre; separation of powers system both horizontally and vertically.

Of course, federations can change over time. However, changes to the basic properties are quite rare because they would involve a complete rebuilding of the system of government. Because of this, we can argue that the EU, Germany and Switzerland have not altered their species of federal system compared to the time in which their constitution was adopted. Neither did they change – on that regard – during the financial crisis.

4. Instruments of core state powers integration: the fiscal regime

As soon as the EU is given responsibility not only for low-salience policies, but also for core state powers, federal comparison becomes almost unavoidable. The EMU well epitomizes core state powers integration. The foundational theories of EU integration have of course tried to explain how EMU came about. Neofunctionalism argues that it simply is the last stop of a spillover effect: from the exchange rate mechanism to the completion of the Single Market, whose natural complement was closer economic and monetary integration. This would have proven functional to the maximization of economic benefits among different MS. As neofunctionalists have always stated, supranational institutions, especially the Commission, are key to this development.

In contrast to this perspective, LIG stresses the EMU as the result of interstate bargaining following different but not mutually incompatible national interests. Specifically, France wanted to tame Germany's strong – after reunification even increased – economic power. Germany wanted to reassure the European partners about its commitment to integration. However, it also aimed to keep a central role in monetary policy design: this is why it managed to shape the statute of the newly created European Central Bank (ECB) on the model of its federal bank (*Bundesbank*). MS not joining the common currency had nevertheless an interest in the development of the single market that the EMU would have triggered (Verdun 2019).

What is new, however, is not the very fact that the EU (or its MS) decided to integrate core state powers. The peculiarity of the EU integration of core state powers is not only its difference compared to market integration, but also to other federal polities (for an overview of the different integration of the fiscal regime, see Shah 2007). It is the way they did it, i.e. the central role assigned to MS, with a subsequent downplay of supranational institutions. The opposite of what happens in market integration, where supranational institutions play a central role. Policies of the market have been entirely delegated to the EU level. Clearly MS remain the ultimate principals of this delegation, but at least since the MT they accepted the Commission and the EP to stand on an equal footing with them in the decision-making.

In sum, market integration and core state power differ. The important point is that "intergovernmentalism and neofunctionalism do not help much to understand this difference because they focus on variance in the institutional mechanism of integration (supranational vs. intergovernmental) but neglect variance in the integration field" (Genschel and Jachtenfuchs 2018: 179). They can explain why a certain instrument was adopted but less so how it works. Variance in the integration field refers to the instruments of core state power integration. Which were the main two employed by the EU?

But before that another question arises: how to define core state powers? And which policies are to be included in the definition? Genschel and Jachtenfuchs (2014 and 2016) define the integration of core state powers as "the increasing

involvement of EU institutions in core functions of sovereign government". As far as policy areas is concerned, one can think of foreign and security policy, defense policy, justice and internal affairs, migration, citizenship, internal security and, last but not least, economic and monetary policy. As part of economic policy, the fiscal regime is certainly a core state power. Who gets what, when, and how, a question which points directly at fiscal policy, is certainly among the decisions that every state wants to take by itself. Non-core state powers are instead those covered by market integration[71]. Another expression used to refer to core state power is "high politics" (Pagoulatos and Tsoukalis 2012: 277). The catalogue is narrower, including only foreign and economic policy. Other policies instead belong to the realm of "low politics" (*ibid*.). Given the larger definition and the more frequent use in the literature, we will use the expression "core state powers".

Why did European MS find it difficult to delegate core state powers and, eventually, accepted it only reluctantly? Because of the nature of the policies at stake. Actually, in a political system, not all policies have the same importance. Their salience, i.e. the "relative importance actors attribute to a specific political matter" (Beyers et al. 2018: 1726), is different. This is even more true in the case of the EU, where what is at stake is not only the content of national policies but also their delegation to the European level. Such delegation might ultimately result in a complete loss of control over a certain policy. Political salience is conducive to changes in the constitutionalization of the EU (Rittberger and Schimmelfennig 2008).

While policies with a high salience are core state powers, not all core state powers are policies with a high salience. Political salience is an empirical variable that may depend on many different circumstances. There is not a pre-defined catalogue of high and low salience politics. Similarly, there is no precise list of core state powers. In any case, they are associated with a high level of politicization. The latte refers to "[…] a process whereby the *controversiality* of

[71] If one accepts the catalogue provided by Genschel and Jachtenfuchs (2015: 2), they include: "Economic External Relations; Environmental and Consumer Protection; Occupational Health; Labour; R&D; Economic Freedoms; Competition & Industry; Energy & Transport; Agriculture; Social & Territorial Cohesion".

joint decision making goes up. This in turn is likely to lead to a *widening of the audience or clientele* interested and active in integration" (Schmitter 1969: 166, italics in the original version)[72].

As for other policies, there is a demand and a supply of core state powers integration. The former stems from the need to solve some collective problems. The latter shows the willingness of certain actors to deepen the level of integration. While demand will affect the instruments of integration (i.e. how integration is pursued), supply will shape the extent up to which public opinion is involved. As a matter of fact, integration can occur following intense public debate (by publicity). This would lead to an increase in domestic politicization. On the contrary, it can also proceed by stealth and, thus, be accompanied by a lower politicization. Managing policy externalities (positive and negative) and achieving economies of scale are the major forces behind an increase in demand of core state powers integration.

The general trend that has been observed is that integration in core state powers has proceeded steadily, like in non- core state powers. This is due to the fact that the higher the scope and the level of integration, the more functional demands for and incentives to supply additional integration will take place. The steadiness of core state powers integration is further reinforced by the fact that disintegration options are difficult to pursue due to hard formal constraints[73]. (Genschel and Jachtenfuchs 2014).

Regarding the EU's integration of core state powers, a distinction has been drawn between three instruments of integration: The first is the formal, treaty-based authority that the EU has on core state powers. By this we mean the "formal allocation of competencies and the institutional decision-making procedures as they evolved in the various treaty reforms" (Börzel 2005: 220). Formal authority can be measured in two ways. Firstly, by listing and counting the policies on a continuum between exclusive national competencies and

[72] As soon as integration started to involve core state powers, MS observed an increase in politicization (Genschel and Jachtenfuchs 2014). This was particularly the case when basic decisions were at stake, such as about enlarging membership, deepening integration in a policy regime, or joining a given level of integration (Hooghe and Marks 2012).
[73] For instance, the difficulty in amending the treaties or exiting the EU.

exclusive EU competencies. In the former, competencies are only in the hands of MS, without any supranational institution involved. In the latter, they are firmly in the hands of the EU, without any national or intergovernmental institution involved. Secondly, formal authority can be assessed through "the procedures according to which policy decisions are taken focusing on the involvement of supranational bodies and Council voting rules" (*ibid.*, p. 220)[74].

Where there is no coordination at EU level, neither supranational nor intergovernmental institutions are involved. Where there is supranational centralization, only the Commission, the ECB and the ECJ are involved – the (European) Council and even the EP are not. Among core state powers, only monetary policy has been assigned as exclusive competence to the EU, although the ECB has a limited statute[75] and is politically independent. The other two instruments – regulation and capacity – are the focus of this work and will thus be presented in depth. The two instruments are particularly relevant in federations because of the deeper autonomy that centre and constituent units enjoy compared to non-federal countries. In federations, it is crucial to understand what the centre can do with respect to the units, and how it can do that: by simply prescribing the units what to do, or by directly taking political decisions that affect the units.

4.1.Fiscal regulation

The first of the two is regulation. Regulation[76] can be defined as "rules issued for the purpose of controlling the manner in which private and public enterprises conduct their operations" (Majone 1989: 9). Thus, in its simplest definition, it refers to an actor controlling – through rules – the behaviour of another actor.

[74] Here, five levels can be distinguished, ranking supranational involvement in an increasing order: "0 = no coordination at EU level; 1 = intergovernmental coordination; 2 = intergovernmental cooperation; 3 = joint decision-making with limited EP involvement; 4 = joint decision-making with full EP involvement; 5 = supranational centralization" (Börzel 2005: 221).

[75] The primary objective of the ECB is to maintain price stability. Only if is met and not hampered, it can pursue also other objectives (see relevant provisions of the TFEU).

[76] In this work, "regulation" is used in a broad way, as explained in the following. Thus, it does not need to be confused with "regulation" as a type of EU secondary legislation. EU regulations are legal acts that are directly applicable in MS without the need to transpose them into national law (TFEU, Art. 288).

The latter faces a limitation of its discretion. The most important scholar that has applied regulation to the EU integration process has been Giandomenico Majone (1989, 1997 and 1999).

From its launch with the Treaty of Rome (1957) until the Maastricht Treaty (1992), the EU pursued market integration. MS delegated internal market and competition policies to the EU. Already back then, regulation was a prominent feature of EU integration. In order to explain the concept, Majone distinguishes it as a third way of public intervention in the economy besides redistribution and stabilization. It is a tool to correct market failures, i.e. conditions in which the market does not work in a way beneficial for most part of its actors. After World War II, economic reconstruction and the development of the welfare state required redistributive and stabilization policies. Being interventionist, back then the state has been defined "positive". In Europe, the model of public (i.e. state) ownership of enterprises became widespread to supply public utilities in a way to limit interference by strong private economic interests. However, control over publicly owned enterprises became so difficult to regulate that privatization started to be established as an alternative (Majone 1997).

In the first phase of the integration process, the supranational institutions of the European Economic Community (EEC) and of the European Atomic Energy Community (EAEC) acted in order to remove barriers to the creation of the market in Europe. Starting from the 1970s, this Keynesian model of state intervention in the economy declined because of inflation, recession and unemployment. In the second phase, a new form of regulation developed, with the aim to correct the market and promote harmonization of standards in different policy sectors (Börzel 2005). Within this process, two out of three traditional state functions – redistribution and stabilization – always remained under the control of MS and never fully went to the EU.

In order to compensate for that, the EU developed more and more (Schelkle 2009) regulation (the third function), constraining MS through rules in the policies related to the market, up to the point that already in the 1990s it could be considered "by far the most important type of policy making in the EU" (Majone 1999: 2). This has led some scholars to speak of the EU as a regulatory

state (most notably Majone 1999) and of regulation as a "fourth branch of government" (Schelkle 2014: 107). Particularly on fiscal policy, Majone (1997) has pointed to the differences between a state able to autonomously tax and spend ('positive state', *ibid*., p. 148) and a state able to do rule-making ('regulatory state', *ibid*.). As he points out, "since [the EU] lacks and independent power to tax and spend, it could increase its competencies only by developing as an almost pure type of regulatory state" (*ibid*., p. 150).

Hence, fiscal regulation means the ability of the EU level to adopt and enforce legal rules – hard or soft[77] – that regulate MS' political discretion in fiscal policy. By "EU level" we mean both supranational and intergovernmental institutions. The supranational institutions are the Commission, the EP, the ECB and the ECJ. They represent[78] EU interests; in the case of the EP, more specifically, the EU citizens. The intergovernmental ones are the Council and the European Council. They represent national interests, more specifically interests of MS' governments. In the last years, new institutions, especially intergovernmental ones, have been formalized or created *ex novo*[79]. Rules of fiscal regulation introduce some more or less tight constraints on political discretion at national level. More precisely, they result, *inter alia*, in "reference values and procedural requirements for national budgetary policy" (Genschel and Jachtenfuchs 2014: 11). Regulation formally leaves certain competences in the hands of MS but affects the way they use them. The EU "remains categorically distinct from the member states but gains regulatory control over their core state powers" (*ibid*., p. 11). It can be seen as a negative form of integration, because it does not consist in new competences transferred to or in institutions created at EU level. As

[77] The distinction between hard and soft rules points to their written and unwritten character respectively.

[78] When we speak of "representation of interests", we refer to the representation of certain levels of government (centre or units) and the reflection of their respective interests. We merge the term: "representation of interests" of the units means that a certain institution represents those units and reflects their interests. (F. Fabbrini 2019b).

[79] One example is the Eurogroup, encompassing the ministers of finance of euro area MS. Originally created to coordinate on euro area matters, it first met in 1988. Usually, the group meets before the Council of economy and finance ministers (Ecofin). It was formalized in the Lisbon Treaty (Protocol No. 14 on the Euro Group, articles 1-2). Another example is the Euro Summit, encompassing the heads of state or government of euro area MS. Originally established to coordinate on euro area matters at the highest institutional level, it was formalized in the Fiscal Compact (2012).

Genschel and Jachtenfuchs (2014: 262) point out, no "change of ownership rights" occurs.

Why to reduce MS' political discretion? The aim of regulation is to limit the negative externalities[80] that political decisions of one or more MS might cause to others. Actually, a common problem of federal polities, and of multilevel systems of government in general, is indebtedness of the constituent units (Rodden 2006b). This is critical both for the less indebted units, because of possible negative spill-over effects, and for the centre, because of pressures for financial assistance (bail-outs) (Oates 1999). Hence, usually the centre reacts by imposing some rules constraining the spending discretion of the units. As seen before, this is particularly the case of the EU. Ultimately, it limits MS' redistributive policies. As such, regulation implies the transfer to the EU of the competence to limit some policy competence of the MS.

Before the MT, regulation did not affect core state powers. It consisted in a number of rules to prevent MS from distorting competition. The MT marked the integration of core state powers in the EU. Thus, it also marked a shift from regulation of the market to regulation of governments (Genschel and Jachtenfuchs 2018). That represented a watershed from low politics' regulation to high politics' regulation. In this paper, regulation of governments has thus to be understood as regulation of MS' fiscal policy.

Fiscal regulation is a kind of governmental regulation. To decide which rules become part of fiscal regulation is a political process. However, once adopted, politics is in principle supposed to leave the room. Regulation is an apolitical instrument (Genschel and Jachtenfuchs 2014). Regulation aims to be a one-size-fits all instrument whose enforcement is done by institutions at MS level, with the EU institutions exercising a supervisory role. Conceived as such, regulation represents something that is 'produced' by the EU and affects its MS. Unlike capacity-building, fiscal regulation affects them uniformly precisely because it is not a decision taken by a political majority over a political minority. As a

[80] Defined as negative side effects that a MS can experience as a result of decisions taken by another MS.

matter of fact, regulation is – again, in principle – not connected to redistribution and allocation.

Regulation is also related to policy discretion. In a system of multilevel governance, regulation can be approached in two ways. Seen from the centre, the more the centre regulates, the more it is intrusive of the units' competences. Seen from the units, the more the centre regulates, the less discretion is left to them. Thus, by "fiscal regulation" we refer to rules coming from the EU level, either supranational or intergovernmental institutions, but not from national ones, that constrain the fiscal policy of MS. The concept of "regulation" has to be seen together with the one of "capacity-building".

4.2.Fiscal capacity-building

Capacity building is defined in opposition to regulation. It means the creation of own resources and institutions for exercising a certain policy competence "in parallel to, in competition to, or even instead of corresponding national powers" (Genschel and Jachtenfuchs 2014: 11). An example is the EU budget and the European Stability Mechanism (ESM[83]). One might argue which is ultimately the difference between the two instruments in terms of the means through which they take place. Also, in order to introduce (new) capacity, rules – meaning a legal basis – is needed. However, while in the case of regulation those rules prescribe a certain behaviour to MS, in the case of capacity they create something new and/or empower pre-existing institutions and actors with new competencies. Contrary to regulation, capacity is thus a positive form of integration: Within the fiscal regime, it refers, *inter alia*, to the establishment of a budget at EU level, with resources and institutions that are run and decided on a level different from the national one. Seen as such, capacity is conducive to the centre autonomously exercising a core state power. Capacity building is related to policy transfer from the units to the centre: a "visible reallocation of

[83] The ESM is a permanent fund to provide conditional financial assistance to MS facing financial difficulty. For details, see chapter 2.

ownership of core state powers" (*ibid*.) occurs. The distributive implications of these instrument are significant. Fiscal capacity enables taxing and spending.

In a system of multilevel governance, capacity building can be approached in two ways. Seen from the centre, the more capacity building the centre develops, the more it is able to take away competences from the units. Seen from the units, the more the centre creates capacity building, the more competences are transferred (voluntarily or not) to it. As a result, this "pushes the EU on a path towards state building. EU institutions themselves muster powers which historically made the state and which in federal polities tend to cluster at the highest level of government […]" (*ibid*., p. 11).

Crucially, as it has become clear, regulation is more compatible with (the preservation of) national sovereignty than capacity building. The former implies that a certain policy is still exercised by the MS, the latter presupposes that a certain part of sovereignty has moved to the EU level, or at least is no longer controlled by the national level alone. Regulation proves that the EU can have some competences whereas the MS have others, or that it has some that the MS have lost. As again Genschel and Jachtenfuchs (2014: 3) observe, "the EU has real power 'beyond the nation-state' only in the field of market integration. In all other areas, […] member states retain ultimate control in a purely intergovernmental setting". However, this does not mean that the EU is not involved in core state powers. It is to a large extent – through regulation.

The literature has distinguished two types of institutions as suppliers of regulation and capacity. Firstly, majoritarian institutions, i.e. – in the EU case – institutions that are either indirectly (national governments acting individually or collectively in the Council and in the European Council) or directly (the EP) elected. Secondly, non-majoritarian institutions (like the ECB), i.e. those governmental entities that (a) possess and exercise some grant of specialized public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials" (Thatcher and Stone Sweet 2002: 2).

The development of the two instruments of integration has followed different paths. Schelkle (2014) has shown that during the euro crisis externalities have

triggered not only through regulation, but also through capacity. During the financial crisis, the European Central Bank (ECB) was forced to engage in quasi-fiscal policy. With its many monetary assistance programmes, the crisis management of the ECB *de facto* created something similar to a fiscal union ("fiscal union through the back door", Schelkle 2012b). This happened precisely because the MS were unwilling to establish a more "traditional" fiscal capacity, i.e. to increase the size and scope of the EU budget. It was a case of "fiscal integration by default" (Schelkle 2014). Kelemen (2014) argues that fiscal regulation is stronger and fiscal capacity is weaker in the EU than in other federations. History provides us with the example of the US (Henning and Kessler 2012), where the crisis of 1786/87 at state level was key for the "fiscalization", i.e. "the emergence of a tax power on the part of central government" (Wozniakowski 2017: 3). The order in which integration happened – fiscal and then monetary policy like in the US or vice versa like (so far not) in the EU – seems not to play a role on the political identification with the federal polity (Schelkle 2017). Also in the recent global financial crisis, the US did not pursue regulation as much as the EU did (Hallerberg 2014). From this stems the question whether the way the EU reacted to the crisis is peculiar or in line with other cases of federal polities that faced the same (or a similar) crisis. As a matter of fact, "regulation undermines the stateness of the member states without the EU becoming a state itself" (Genschel and Jachtenfuchs 2014: 22). However, in spite of not being a federal state, the strong degree of regulation means a strong involvement in core state powers though.

In sum, the literature has argued that the EU is a regulatory polity. It is particularly so in the fiscal regime. Fiscal regulation has said to be strong, fiscal capacity weak (Hallerberg 2014). It has also been argued (Jabko 2014) that the euro crisis produced an increase in regulation and a small but overall substantially insignificant increase in capacity. In other words, the crisis increased regulation without correspondingly increasing capacity. Yet, it remains unclear what "strong" and "weak" actually mean. The literature does not define these adjectives. Nor does a specific literature on quantitative measurement of the two instruments of integration exist. But more importantly,

no constitutive definition of them is provided at all. The next section addresses this issue, which is key to answering the first research question – what the fiscal regime of the EU actually is.

5. The conceptual gap: operationalizing the instruments of core state powers integration

This section deals with a so-called conceptual gap in the literature on the EU's fiscal regime. It points to the fact that no constitutive definition of the two main concepts – fiscal regulation and fiscal capacity – is to be found. They are defined through possible ways in which they can occur. In the following, we review the main contributions that have tried to provide definitions on the basis of indices. As for regulation, Schaechter *et al*. (2012) constructed a dataset on national and supranational[82] fiscal rules[83] in 81 countries from 1985 to the end of March 2012. They give a restricted definition of fiscal rules as a "long-lasting constraint on fiscal policy through numerical limits on budgetary aggregates" (Schaechter *et al*. 2012: 5)[84]. Including in the analysis only formal rules that apply to the central government and are binding for at least three years, the authors identify four types: on balanced budget; on debt; on expenditure; and on revenue. They are assessed through numerical scores assigned to different characteristics: legal basis, coverage, enforcement, supporting procedures and institutions; and flexibility[85]. The aim is to create an "overall Fiscal Rules Index" made up with a

[82] Meaning "central" and not to be confused with the meaning of "supranational" in EU studies, i.e. as contraposition to "intergovernmental". Supranational rules are those introduced in currency union, i.e. also in the EU. Other examples included by the authors are the Easter Caribbean Currency Union, the West African Economic and Monetary Union and the Central African Economic and Monetary Union. The EU is the only currency union with both supranational and national fiscal rules.

[83] For an overview, see von Hagen (2009).

[84] Among the rationale of these rules, the authors point to the correction of distorted incentives to spend, limitations of pressures to overspend, in order to reach (and maintain) "fiscal responsibility and debt sustainability" (Schaechter et *al*. 2012: 5).

[85] Score "1" is assigned if a country shows the characteristic, score "0" if not (binary coding).

number of sub-indices[86] and ranging from 1 (lowest regulation) to 5 (highest regulation).

Fiscal rules have significantly increased: in 1990, they were present in 5, in 2012 in 76 countries. The global economic and financial crisis was a triggering factor. They have also become more encompassing. The rules continue to vary across countries but there is a trend towards incorporating them into constitutions[87]. Fiscal rules can also be those that specify the procedures to adopt the budget (Van Eden, Emery, and Khemani 2012). Another strand of literature has found a positive correlation between national fiscal rules and fiscal performance, particularly in the EU (Deroose, Moulin and Wierts 2006). Sutherland, Price and Joumard (2005) focus on sub-central fiscal rules, the most common being budget balance requirements. As Debrun et al. (2008) recall, many different indices on fiscal rules have been created over time[88].

A similar, albeit not as exhaustive, analysis has been carried out for fiscal capacity. In federal polities, a fiscal capacity is needed to support a pre-existing currency union (Fabbrini F. 2019a). Fiscal capacity has been defined as a "budgetary instrument, funded through new resources, that can be deployed by EU authorities to stabilize the economy in case of asymmetric shocks, e.g. by preserving given levels of public investments or covering rising costs of unemployment benefits" (*ibid.*, p. 6). It is considered a property of mature federations, whereas the lack of it points to the problem of incompleteness of monetary unions (Goodhart 1998; De Grauwe 2014). Also the concept of "fiscal autonomy" introduced by Hooghe, Marks and Schakel (2008) is useful. Although applied to authority of regional governments, the authors ground fiscal capacity in the ability to set the base and rate of taxes, especially of some important ones (e.g. personal income and value added tax). Another definition provides for "a budget at the federal level that has its own tax revenue and can

[86] In turn, each sub-index is the result of a number of indicators like, for example, legal basis, enforcement procedure, and the presence of independent fiscal bodies. Scores like in footnote 40 apply.

[87] Moreover, countries with stronger fiscal rules show at least two numerical rules.

[88] Indices measuring "borrowing constraints at state level; constraints on fiscal deficit […]; constraints on fiscal policy; deficit rules, expenditure rules, revenue rules at lower levels of government; expenditure rules" (Debrun *et al*. 2008: 306).

thus act as a kind of overdraft facility on present and future taxpayers (Schelkle 2014: 107). Fiscal capacity is thus synonymous of an independent budget. The institutions that decide how to spend its resources are also independent in collecting them, where independence mean that they are legally entitled to decide amount and composition of revenues. This is set as contrast to a dependent budget. In that case, the institutions that decide how to spend the resources are *not* independent in collecting them. The budget is made up of transfers from other actors. Usually, these actors are also those that decide how to spend resources. As Genschel and Jachtenfuchs (2014: 252) point out, "contribution- rather than tax-based, [the EU budget] resembles the budget of an international organization rather than that of a state".

Fuest and Peichl (2012) identify some possible functions of a fiscal capacity. They are listed in increasing order as for its "positive" character, i.e. the degree of empowerment of the centre. Firstly, fiscal capacity could provide for mechanisms to assist MS during economic crises. Secondly, it could result in government debt (bonds) guaranteed by all MS. Thirdly, it could establish a mechanism for transferring resources from the centre to the units and/or from some units to others.

The point of the thesis is that regulation and capacity are usually explained on an *ad hoc* basis but not analyzed as a complex and multi-faceted concept. As it has been shown, fiscal regulation is presented as rules reducing discretion in a vertical perspective: in a number of ways (e.g. with limits on debt, revenues and expenditures), supranational authorities in currency unions reduce states' autonomy. States do the same with sub-state authorities. However, regulation must be understood as including not only rules that the centre adopts for the units, but also rules on the central budget itself.

Hence, a constitutive and encompassing definition of the two instruments – regulation and capacity – is lacking. Here is where this work wants to place itself. It wants to operationalize fiscal regulation and fiscal capacity. Operationalization refers to the process of creating constitutive indicators to analyse a phenomenon that is difficult to measure. Here, the constitutive indicators have a twofold aim: to qualitatively assess the way fiscal regulation

and fiscal capacity can occur and to quantitatively measure their degree or intensity. The next section will show how this is done.

5.1.Index of Fiscal Regulation: the Content-Impact-Compliance Model

This section presents the constitutive indicators that will be used for the analysis. In social science, they are named categories and are the central theme that the researcher follows during the analysis. How to develop them? Some might be created before the beginning of the research, based on the research question(s), the literature, the previous knowledge of the researcher, etc. They are called deductive categories. Some others might be discovered and created during the research (Mayring 2000). They are called inductive (or *in vivo*) categories. This work deals with deductive categories because they are more appropriate for generalization. In fact, our aim is to operationalize the categories in a way to maximize their application to different cases.

Deductive categories are the product of the researcher. As such, they are based on his/her judgement. We have tried to face the limitation inherent to this by coming up with categories that we consider sufficiently clear, general and encompassing fiscal regulation and fiscal capacity.

It is important to clearly define the categories. This helps to keep them separated from other categories and avoid duplication. Fiscal regulation can be operationalized through the following deductive categories. They include negative rules, i.e. provisions that establish limits on discretion or bans.

Constitutive indicators (categories/codes) for qualitative assessment:

1) ***Centre-units' principles of regulation***[89]: this macro-category is assigned to rules directed both to the centre and to the units. In other words, general principles of the fiscal constitution. Examples are the no-bailout clause and the principle of budgetary autonomy of each level of government.

[89] **Bold** and *italics* are used for the sake of visual readability only.

2) ***Central budget regulation***: this macro-category is assigned to rules on the central budget; it is divided in a number of categories:
   a) *Balanced budget clause for the central budget*: this category is assigned to rules prescribing a balance between revenues and expenditures.
   b) *Numerical rules for the central budget*: this category is assigned to rules on numerical upper limits for macroeconomic indicators (e.g. debt and deficit).
   c) *Expenditure rules for the central budget*: this category is assigned to rules on how the centre can make expenditures, i.e. if there are some expenditure's constraints (numerical or non-numerical).
   d) *Approval of the central budget*: this category is assigned to rules on how the budget of the centre is approved.
   e) *Implementation of the central budget*: this category is assigned to rules on how the implementation of the budget of the centre is carried out.
   f) *Control over implementation and right of discharge*: this category is assigned to rules on how control over implementation and right of discharge take place.
   g) *Surveillance of the central budget*: this category is assigned to rules on how the budget of the centre is surveilled.
3) **Units' budget regulation**: this macro-category is assigned to rules on the budget of the units; it is divided in a number of categories:
   a) *Balanced budget clause for the units' budget*: this category is assigned to rules on a balance between revenues and expenditures.
   b) *Numerical rules for the units' budget*: this category is assigned to rules on numerical upper limits for macroeconomic indicators (e.g. debt and deficit).
   c) *Expenditure rules for the units' budget*: this category is assigned to rules on how the units can make expenditures, i.e. if there are some expenditure's constraints.
   d) *Approval of the units' budget*: this category is assigned to rules on how the budget of the units is approved.

e) *Implementation of the units' budget*: this category is assigned to rules on how the budget of the units is implemented.
f) *Control over implementation and right of discharge*: this category is assigned to rules on how control over implementation and right of discharge takes place.
g) *Surveillance of the units' budget*: this category is assigned to the rules on the surveillance of the budget of the units.
h) *Non-compliance with units' regulation*: this category is assigned to rules foreseen in case of non-compliance with regulation of the units' budget.

To each category, a numerical value is assigned to the level of regulation in order to measure its degree: absent, weak, medium, strong. We opted for those basic values because they are simple and at the same time exhaustive.

Constitutive indicators (categories/codes) for quantitative measurement:

The difference between the numerical values – i.e. the degree of fiscal regulation – is assessed through the *Content-Impact-Compliance* (CIC) Model. This Model is made up of three dimensions that we consider essential to the idea of regulation. The first one relates to the content of the regulatory provision. A certain rule might be formulated in a general or specific way, which is something that affects its regulatory strength[90]. The second one relates to the impact of the regulatory provision. It is about how much the rule demands from the actor(s) to which it is directed. The more specific the act or action required to the actor, the stronger the impact. The third one relates to checking whether the actor complies with the regulation. It moves from the case in which compliance cannot easily be verified to the case in which proper financial sanctions are in place.

The different features of the three dimensions (content, impact and compliance) make up the regulatory degree. The dimensions have the same

[90] For instance, to state that governments need to run a balanced budget and that they are not allowed to exceed a ratio of deficit to GDP equal to 3 % are two different types of regulatory content. The former is more general: we need to agree on what a balanced budget means. The latter is more precise and self-explanatory. Because of that, the latter brings along stronger regulation than the former.

weight. However, the stress is on compliance and the associated sanctions. Only if a regulation foresees sanctions will it reach the highest degree (3).

- **Absent** (score **0**): no content, impact or compliance is foreseen.
- **Weak** (score **1**):

  Content: the rule does not have a clearly defined (numerical or non-numerical), but a generally formulated target or object.

  Impact: the rule does not require the adoption of a specific act or action by the actor to which it is directed.

  Compliance: not easily and immediately verifiable; no sanctions.
- **Medium** (score **2**):

  Content: the rule has a clearly defined (numerical or non-numerical) target/object.

  Impact: the rule requires the adoption of a specific act or action by the actor to which it is directed.

  Compliance: can be verified, but no sanctions are foreseen.
- **Strong** (score **3**):

  Content: the rule has a clearly defined (numerical or non-numerical) target/object.

  Impact: the rule requires the adoption of a specific act or action by the actor to which it is directed.

  Compliance: can be verified, sanctions are foreseen.

Taken together, they give information about the regulatory strength of the centre in the fiscal regime and the discretion left to the units. The result is an Index of Fiscal Regulation (IFR), whose change can be analyzed over time through changes to its categories. As we will see in chapter 5, the IFR is made up of the average of the score of each category[91]. This gives all categories the same value. We believe it is justified by the fact that the overall regulatory strength of a fiscal regime must be assessed in a comprehensive manner. This is possible only by considering all of its properties on the same footing. Moreover, we cannot find good reasons for a differentiated treatment of the categories.

[91] Except for "centre-unit principles of regulation", the macro-categories do not have a score: they are only umbrella terms used to divide the categories.

5.2.Index of Fiscal Capacity: the Content-Impact-Discretion Model

As previously pointed out, fiscal capacity of the centre can be distinguished in a revenue and an expenditure side, operationalized through the indicators below. Unlike fiscal regulation, here the analysis does not distinguish between something directed at the centre and something else directed at the units. The focus is on what the centre (central budget) can do. These categories include positive rules, i.e. provisions that establish room for political discretion or possibilities for action by the centre.

Constitutive indicators (categories/codes) for qualitative assessment:

1) ***Capacity principles of the fiscal constitution***[92]: this macro-category is assigned to provisions about the fiscal capacity directed both to the centre and to the units. In other words, general principles of the fiscal constitution. The necessary means for each level of government to carry out its task is an example.
2) ***Revenue capacity***: this macro-category is assigned to rules on the ability of the centre to raise own revenues; it is divided in a number of categories:
    a) *Legislative competence on the revenue side*: this category is assigned to rules establishing a legislative competence of the centre to raise revenues. The higher the legislative competence, the more capacity will the centre have.
    b) *Amount of the central budget*: this category is assigned to rules on the amount of the budget of the centre. The higher the amount, the higher the capacity of the centre.
    c) *Composition of the central budget*: this category is assigned to rules on the composition of the budget of the centre. The more differentiated the composition, the higher the capacity of the centre.

[92] **Bold** and *italics* are used for the sake of visual readability only.

d) *Own resources over transfers from the units*: this category is assigned to rules determining to which extent the budget is made of genuinely own resources over contributions from the units. The more own resources, the more capacity of the centre.

3) ***Expenditure capacity***: this macro-category is assigned to rules on the ability of the centre to decide how to spend own resources; it is divided in a number of categories.
   a) *Mandatory expenditures*: this category is assigned to rules fixing mandatory expenditures of the central budget; although here there is no discretion involved, this type of expenditure still has to be included in the fiscal capacity of the centre.
   b) *Discretionary expenditures*: this category is assigned to rules about the discretionary expenditures – most notably transfers and grants – that the centre can do in favour of the units.
   c) *Equalization*[93] *expenditure*: this category is assigned to rules about spending to reduce inequalities between the units.
   d) *Expenditure for financial assistance*: this category is assigned to rules about the centre providing financial help to the units.
   e) *Expenditure conditionality*: this category is assigned to rules about the centre being constrained in its spending by certain conditions. The less conditionality is in place, the higher will be fiscal capacity.

Constitutive indicators (categories/codes) for quantitative measurement:

To each category, a numerical value is assigned to the level of capacity in order to measure its degree: absent, weak, medium, strong. A model similar to the Content-Impact-Compliance for regulation is applied: the *Content-Impact-Discretion* (CID) Model. As a matter of fact, like for regulation, also for capacity we can identify three dimensions useful for quantitative measurement. The first one relates to the content of the capacity provision. A certain provision might

[93] In spite of its name, the concept of "equalization" refers to mechanisms that make the fiscal capacity of units converge without being completely equal; see, for instance, Bundesministerium der Finanzen 2020.

have more or less clearly formulated targets or objectives (numerical and non-numerical). This impacts on the strength of the resulting capacity[94]. The second one relates to the impact of the capacity provision. It is about the extent up to which a certain provision affects those at which it is directed. The wider the impact, the stronger the capacity. The third dimension relates to the freedom an actor has on deciding the political priorities for which it exercises its fiscal capacity.

The different features of the three dimensions (content, impact and compliance) make up the capacity degree. The dimensions have the same weight. However, the stress is on compliance and the associated sanctions. Only if a regulation foresees sanctions will it reach the highest degree (3).

- **Absent** (score **0**): no content, impact or discretion is foreseen.
- **Weak** (score **1**)

  Content: not clearly defined (numerical or non-numerical) target/object.

  Impact: limited.

  Discretion: limited.
- **Medium** (score **2**):

  Content: clearly defined (numerical or non-numerical) target/object.

  Impact: large.

  Discretion: limited[95].
- **Strong** (score **3**):

  Content: clearly defined (numerical or non-numerical) target/object.

  Impact: large.

  Discretion: large.

[94] For instance, to state that governments need to run a balanced budget and that they are not allowed to exceed a ratio of deficit to GDP equal to 3 % are two different types of regulatory content. The former is more general: we need to agree on what a balanced budget means. The latter is more precise and self-explanatory. Because of that, the latter brings along stronger regulation than the former.

[95] The compresence of a high impact, given by a large amount of resources, and a limited discretion, is indeed possible. As some "regional governments that spend a large portion of public funds include several that have little choice about how they spend" (Hooghe, Marks, Schakel 2008: 128), one could also imagine a centre in a federal polity that has a comparatively large amount of resources but a limited discretion on how to spend them.

The result is an Index of Fiscal Capacity (IFC), whose change can be analyzed over time. As we will see in chapter 5, the IFC is made up of the average of the score of each category[96]. This gives all categories the same value. We believe it is justified by the fact that the overall regulatory strength of a fiscal regime must be assessed in a comprehensive manner. This is possible only by considering all of its properties on the same footing. Moreover, we cannot find good reasons for a differentiated treatment of the categories.

The IFR and the IFC give us information about the instruments – and, thus, ultimately on the nature – of the EU's fiscal regime. For the categories, a so-called layering applies: if a category has one score in a legislative text and another score in another text, the latter will be added to the former. The highest score prevails. For instance, if "numerical rules for the units' budget" scores 2 in one text and 3 in another text, that category within the overall fiscal regime will score 3 because the second text comes after the first and layers are produced. This is quite straightforward. Related to the example, if a certain text does not foresee sanctions[97] for non-compliance with rules and later on another one is introduced that does indeed foresee those sanctions, we can say that the whole fiscal regime can issue sanctions for non-compliance. What is not in one text is introduced by another one, and the overall result is made of all elements of each text. The same logic applies to capacity. If a certain text increases conditionality for financial assistance, then the overall conditionality of the fiscal regime will be determined by the text where that category scored the highest.

According to this work, the most significant limitation of the indices so conceived is that they do not tell us anything on the institutions that perform the instruments of integration. Is fiscal regulation mainly enforced by a supranational institution like the Commission? And is fiscal capacity firmly in the hands of a supranational institution like the Council? These questions point to the second gap in the literature, which the present work wants to fill.

[96] Except for "centre-unit principles of capacity", the macro-categories do not have a score: they are only umbrella terms to divide the categories.

[97] We have seen sanctions as being the decisive element of moving from regulatory score 2 to 3.

6. The analytical gap: operationalizing the involvement of the units

We have seen that the EU is involved in core state powers. In the fiscal regime, it does so through regulation and capacity. However, stating that the EU level has these instruments does not give us valuable information about who exactly decides on them. The debate about the fiscal regime of the EU must be linked to the question to the degree in which institutions representing the EU can shape it. As Genschel and Jachtenfuchs (2014: 253) clearly express, "to the extent that the EU has capacity at all, it lacks centralized control of it".

Therefore, when studying the instruments of fiscal integration, one has to analyse the "relative representation of the center and the parts" (Caporaso, Durrett and Wesley 2014: 7) in the fiscal regime. This aspect relates to the shared rule, i.e. to the horizontal distribution of power at the centre (Fabbrini 2017). The EU gives strong representation to the parts (the MS) in the decision-making process. Intergovernmentalism is precisely defined as "the role played by member state governments in the EU decision-making framework" (*ibid*., p. 582). As a matter of fact, not only are the MS the "masters of the treaties". Their government have a double representation in the Council (legislative institution) and in the European Council (executive institution).

Since the MT centralized core state powers on the condition of this being done through the intergovernmental method, one can argue that the MS play a predominant role in those policies. Indeed, "the Center in the EU is barely removed from an assembly of the constituent parts […]. With the exception of the E.P., the members of each of these institutions are closely tied to a single country" (Caporaso, Durrett and Wesley 2014: 10).

To be fair, the problem of the EU's fiscal dependency on the MS, resulting from the contribution-based resources, has been often discussed. But a comprehensive analysis of how the units shape each of the aspects of fiscal regulation and capacity is still lacking. In other words, the instruments of fiscal integration are an interesting object of analysis if linked to the institutions that exercise them. To see how much the EU has fiscal regulation and capacity becomes relevant if one investigates which institutions perform them and how

they do that. Moreover, it is also useful to see how this relationship evolved over time, for instance during a financial crisis.

In the case of the EU, the question becomes which institutions – supranational or intergovernmental – performed which role in fiscal regulation and in fiscal capacity. The aim is to shed light on the relationship between supranationalism and intergovernmentalism on the one side, and fiscal regulation and fiscal capacity on the other side. Since the work is comparative, two problems arise: again, a conceptual and an analytical one. Regarding the first, supranationalism and intergovernmentalism are categories proper to EU studies. It is difficult to apply them to other federal polities. As for the second, unlike federal polities, the EU does not have only one institution representing the centre and one representing the units. This is true for the legislative and executive institutions, not for the judicial ones, where only the ECJ performs functions of "polity-closure" like constitutional courts in federal polities (the Federal Constitutional Court in Germany and the Federal Supreme Court of Switzerland).

In federal polities, decisions of the center foresee the involvement of two kinds of representation of interests: one of the center or of the citizens of the federal polity as a whole, and the other of the units of the federations. The institutional device to do it is a bicameral legislature at central level: one institution (first or lower chamber) representing the population of the entire country, another (second or upper chamber) representing the units. If both have the same powers in the legislative process, we speak of symmetric federalism (Krumm 2015). In the US, Senate and House of Representatives have equal powers. The same is true for the National Assembly and the Council of States in Switzerland. Whereas the first chamber always proportionally represents the population and is directly elected, "there is enormous variation […] in the method of selection of members, the composition, and the powers of the second chamber, and consequently its role" (Watts 1999: 11; see also Thorlakson 2003).

The second chamber represents the interests of the units in a different way. In the so-called senate model, members of the second chamber are directly elected at units' level and, thus, represent their population. That is the case in the US and in Switzerland. In the council model, members of the second chamber are

indirectly (non-directly) elected at units' level. They are ministers of the units' governments, who become *ex officio* members of the second chamber. Germany and Austria[98] are relevant examples. They hold their function because and as long as they are part of the government in the units (Hueglin and Fenna 2015)[99]. Bicameralism has been measured through the strength of the second chamber. In line with the tendency of senate models to produce stronger units' representation, the US, Switzerland, but also Germany (in spite of its council model) scored the highest (4.0). Spain and Belgium score 3.0, Austria 2.0 (Krumm 2015). Lijphart (1984) distinguishes the strength of the second chamber on the basis of formal powers, modes of selection and composition, taking for granted that "lower chambers are as a rule formally stronger or at least no weaker than upper chambers" (Heller and Branduse 2014: 2)[100].

The EU adopts a bicameral legislature too. The EP can be considered the first or lower chamber, the Council the second or upper chamber[101]. The EU has a council model. The Council of ministers represents MS' governments. The European Council represents MS' heads of state or government. Hence, in both cases EU citizens do not directly elect the second chamber. The problem of the EU's intergovernmental method is that "power is pooled in the two institutions (the European Council and the Council) […] without distinction between legislative and executive functions. This system of government indeed consists in a confusion of powers […]" (Fabbrini 2015: 49).

The euro crisis has intensified that problem. Since 2010, the European Council took the agenda, as the unusually high number of its annual meetings

[98] In Austria, members of the Senate are elected by the parliaments (*Landtage*) of the *Länder* (Krumm 2015).

[99] Both models overrepresents the smaller units at the centre. However, the senate model does this in a stronger way, since it usually foresees an almost equal number of members (and, thus, votes per unit) regardless of the units' population. We speak of "compositional congruence" (Heller and Branduse 2014: 2). The council model assigns more members to the more populous units, although in a way that gives them a disproportionally low voice compared to the less populous ones. In the senate model, representatives are free from the instructions of unit's governments. In the council model, they are bound by such instructions (Krumm 2015). The EU is a peculiar case because it is a council model with equal number of members per MS.

[100] A predominant line of study (Heller 1997; Binder 1999; Testa 2010) has tried to determine the outcomes of bicameralism.

[101] For the sake of simplicity, in the following we use only the adjectives "first" and "second" chamber.

shows. Moreover, some anti-crisis measures were adopted through intergovernmental agreements between heads of state or government[102]. True, national ministers in the Council were involved in a number of important regulations and directives[103]. However, as it is typical for the way the EU deals with core state powers, no step could be taken without the European Council's agreement. Or, to put it differently, the most significant measures were those adopted by the heads of state or government. Being a case of core state powers integration, the fiscal regime is also affected by the confusion of powers.

In light of the confusion of powers, bicameralism is an unsatisfactory tool because it deals with legislative institutions only. In the EU, legislative functions have often been exercised also by non-legislative institutions. Hence, as far as the EU is concerned, bicameralism cannot exhaustively grasp the involvement of the units at central level. For this reason, it is more convenient to replace it with the concept of "representation of interests" which goes across the division of powers. The centre can be represented by both legislative and executive institutions. The units can influence the centre with both legislative and executive institutions.

The following section will show how the functional similarity between the central institutions of the EU and those of the two case studies is solved methodologically. Functions and representation of interests can be expressed as follows. As for the EU, the representation of interests is derived from the description that the treaties make of each institution. We are aware of the limitation implied in this. Although formally supposed to represent certain interests, some institutions might in the end tend to represent others. The fact that each Member State insists on having "its own" commissioner shows that they see them – at least indirectly – as their representatives in spite of the treaty foreseeing something different (Levrat 2015). However, the focus on formal provisions follows the same reasoning as in the case of bicameralism. There, as Heller and Branduse (2014: 3) point out,

[102] For instance, the Euro Plus Pact and the Fiscal Compact. They will both be analyzed in chapter 2.

[103] For instance, the "Six Pack" and the "Two Pack". They will also both be analyzed in chapter 2.

"the question of whether a chamber is strong or weak must be rooted in formal authority. If an upper chamber has little power, no amount of incongruence will give it more; but the members of a chamber where bicameral congruence is high can use their formal authority to advance their own interests in their party caucus".

We believe the same importance of formal authority can be considered in the case of representation of interests. In addition to that, there might be a difference between an institution representing the EU as a whole and an institution representing the citizens of the EU. The Commission is an example of the former: it is not directly elected. The EP is an example of the latter: it is directly elected. The reasoning is true also for other federal polities. The German federal government and the Swiss Federal Council represent the centre (*Bund* and Confederation respectively). The *Bundestag* and the National Council represent the citizens (Germans and Swiss respectively). We assume the representation of the centre as a single construct in which representation of the centre as such is equivalent to representation of the citizens of the federal polity. Eventually, we also assume that institutions that represent the units all do it the same way regardless of the model (senate or council).

We opted for a simplification because we wanted to highlight the involvement of the units. Thus, we contrasted institutions representing the units with those representing the centre (as a whole or the citizens of the federal polity). In the EU, the following institutions and representation of interests are in place.

Table 2. Institutions and representation of interests in the EU

Institution	**Function or power**	**Type**	**Representation of interests**
European Parliament	Legislative	Supranational	EU
Council (of Ministers)	Legislative	Intergovernmental	MS
European Commission	Executive	Supranational	EU
European Council	Executive	Intergovernmental	MS

European Court of Justice	Judicial	Supranational	EU

6.1. Index of Units' Involvement: legislative amendment and policy intervention

This work wants to inquire the influence of the MS on the fiscal regime of the EU. In order to do so, it cannot limit itself to considering the legislative institutions for two reasons. Firstly, the executive institutions play a crucial role in the fiscal regime. Secondly, unlike other federal polities, the EU's executive is dual and the institution representing the MS (the European Council) is more influential than the institution representing the EU (the Commission). Because of that, when looking for the representation of MS' interests in the fiscal regime, the work considers the influence of both the Council and the European Council.

To avoid referring to specific institutions, the focus is on the representation of interests of the centre and of the units. Thus, the aim is to create an Index of Units'[104] Involvement (IUI) that goes across the legislative-executive divide. Such an index gives the following information: how takes the representation of the units in the fiscal regime of the EU place and how strong is it?[105]
It will be measured as follows:

Constitutive indicators (categories/codes) for qualitative assessment and quantitative measurement:

- **Absent** (score **0**): no involvement at all.
- **Weak** (score **1**): involvement without crucial decision-making power.

[104] Clearly, here the term "Units" could be replaced with "MS". We use the more general term because the EU is compared to two case studies of federal polity where the units are not called MS but *Länder* (Germany) and Cantons (Switzerland).
[105] An important model that analyzed regional authority is the one created by Hooghe, Marks and Schakel (2008). While they look for the autonomy of regional or local governments, we look for the autonomy of the EU, specifically in the fiscal regime. Using a terminology similar to those of the two authors, we could say that we look for the powers of the central authority in the fiscal regime and the involvement of the units in that central regime.

- **Medium** (score **2**): involvement with crucial co-decision making power (on equal footing with the first chamber/the chamber representing the centre; co-decisive involvement).
- **Strong** (score **3**): involvement with only/sole decision-making power (decisive involvement).

Two types of units' involvement need to be distinguished: legislative amendment refers to the role played in changing a legislative text, for instance the constitution[106]; policy intervention refers to a specific role that legislative texts assign to an institution[107]. Sometimes the former needs to be considered, for instance when we deal with the general principles of regulation enshrined in the constitution. Here, the involvement will consist in asking which institutions are in charge of amending the constitution. Some other times, we will look who takes the ultimate decisions, for instance in an excessive deficit procedure.

The aim is to match the score of each category of the two instruments with the score of units' involvement. For instance, the category "implementation of the central budget" will have a regulatory degree (score from 0 to 3) and a degree of units' involvement (score from 0 to 3) that give the following information: in what consists regulation of the implementing process of the central budget, how strong is it and how much are the units involved in that implementation? This will lead to a dataset in which every category of regulation and capacity has its degree of units' involvement. Ultimately, we match the Index of Units' Involvement (IUI) with the Index of Fiscal Regulation (IFR) and the Index of Fiscal Capacity (IFC).

Combined together, the indices shed light on how much the instruments of integration (fiscal regulation and fiscal capacity) are linked to the institutions that perform them. More precisely, the key finding will be how much the two instruments are shaped by the representation of interests of the unit. As a result,

[106] We have seen that a property of consolidated federations is the possibility of the units to be involved in the process of amending the federal constitution.
[107] For instance, in the category "approval of the central budget", the institutions that play a role in that.

this shows how much the EU's fiscal regime is influenced by the units or – conversely – to which extent the EU has a genuinely autonomous fiscal regime. The aim of this work is to fill the conceptual and the analytical gap by answering the research questions. To do so, we present some starting hypotheses derived from what has been outlined so far here or in the literature. The analysis will test the hypotheses.

7. Working hypotheses

7.1. Hypothesis related to the first research question

As the introduction has explained, the first research question is on the nature of the fiscal regime of the EU. In order to answer, we formulate our hypotheses on the relationship between the three indices that we will create: IFR, IFC, and IUI.

The first hypothesis concerns the relationship between regulation and capacity. We have pointed out that fiscal regulation is about the EU establishing rules on how MS exercise fiscal policy. The EU has a strong ability to limit the fiscal policy of its MS (Levrat 2015). This emerges in several ways. First, EU law prevents MS from adopting fiscal policies that distort or may distort competition in the single market. MS' intervention in the economy is controlled by the Commission. Secondly, MS' spending capacity is limited: according to the European treaties, it cannot exceed the 3 % deficit to gross domestic product (GDP) ratio and the 60 % debt to GDP ratio. Thirdly, MS' national budget must be evaluated by the Commission and the European Council before being adopted. What emerges is that the MS retain spending capacity but are subject to constraints coming from EU regulation.

For the EU as a federal polity with a number of policies delegated to common institutions at the centre, such a fiscal capacity is peculiar. Other political systems made up of two levels of government – centre and constituent units – display the opposite feature of the EU: they retain strong spending power at the centre (Hueglin and Fenna 2015). Is the EU really characterized by such a strong

degree of regulation? And is there an "intergovernmental dominance" over the fiscal regime? Because of this, we formulate the following.

1) Since fiscal regulation in the EU is quite strong, we expect its index to be numerically higher than the one of regulation: IFR > IFC and IFC < IFR.

This hypothesis is coherent with what the literature on the EMU and on the anti-crisis measure has pointed out.

The second hypothesis deals with the above-mentioned relationship over time. One strand of literature has pointed out that, when facing an economic crisis, federal polities often reacts with stricter rules at the centre (Kössler and Trettel 2018). Another strand of literature has argued that this is what happened to the EU during the euro crisis (Barnes *et al*. 2016). Moreover, it has also been shown that the financial crisis in the EU did not produce more fiscal capacity at the centre (Hallerberg 2014). The size of the budget changed only slightly. Redistributive policies in the form of financial assistance took place under strict conditionality. Resources came from *ad hoc* funds[108] made of contribution from the MS (same mechanism as the budget).

We therefore formulate the following:

2) Since in the EU during the crisis regulation has increased, we expect its index at the end of the crisis to be higher than at the beginning. Since during the crisis capacity has slightly increased, we expect its index at the end to have also increased.

   IFR(2009) < IFR(2013) and IFC(2009) < IFC(2013).

The third hypothesis links the instruments of integration to the involvement of the units. Regulation limits MS' fiscal policy discretion but does not take competences away from them. On the contrary, capacity does so: it is considered more sensitive because it changes the ownership of competences. Being this a salient issue, it leads to a strong national politicization. We can thus argue that MS accept to assign fiscal competences to the EU level on the condition that they can closely control the process. As a result, we formulate the following:

[108] First the European Financial Stability Mechanism (EFSM), then the European Financial Stability Facility (EFSF) and ultimately the European Stability Mechanism (ESM).

3) Overall, because a transfer of policy competence and a corresponding high political salience are involved, in the fiscal regime we expect the Index of Units' Involvement (IUI) to be higher for the Index of Fiscal Capacity (IFC) than for the Index of Fiscal Regulation (IFR):
IUI(IFC) > IUI(IFR).

The fourth hypothesis is an implication of the third. If the Index of Fiscal Capacity increases over time, we expect the Index of Units' Involvement to increase correspondingly. Similarly, if the Index of Fiscal Regulation increases over time, we expect the Index of Units' Involvement to increase correspondingly. We thus formulate the following.

4) An increase in the Index of Fiscal Capacity is matched with a corresponding increase in the Index of Units' Involvement. An increase in the Index of Fiscal Regulation is matched with a corresponding increase in the Index of Units' Involvement:
If IFC(t+1) > IFC(t), then IUI(IFC)(t+1) > IUI(IFC)(t)[109].
If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t)

The table below summarizes the four hypotheses. The first and the third are synchronic, the second and the fourth are diachronic.

Table 3. Working hypotheses related to the first research question

First research question	**What is the fiscal regime of the EU?**
First hypothesis (relationship between instruments of integration)	IFR > IFC and IFC < IFR
Second hypothesis (relationship between instruments of integration over time)	IFR(2009) < IFR(2013) and IFC(2009) < IFC(2013)
Third hypothesis (relationship between instruments of integration and units' involvement)	IUI(IFC) > IUI(IFR)
Fourth hypothesis (relationship between instruments of integration and units' involvement over time)	If IFC(t+1) > IFC(t), then IUI(IFC)(t+1) > IUI(IFC)(t) If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t)

[109] Since the two indices measure different things, we do not expect the increase to be directly proportional. It is enough to state that an increase in one index leads to an increase in the other.

Assessing and measuring the instruments of integration and the units' involvement is key to understand the fiscal regime of the EU. However, only comparison can help to ultimately understand if the EU is a unique case of fiscal integration or not. When comparing, the work adopts the most similar strategy (Fabbrini and Molutsi 2011) for the *genus* of comparison (federal polity) and the most dissimilar strategy for the *species* that are compared (federal unions and federal states). The instruments of integration developed by the centre are common to all federal polities. What is striking about the EU is the balance between them: a lot of fiscal regulation, a few of fiscal capacity. Other federations may display a more balanced, if not opposite, relationship between the two instruments. What happens in other federal polities? This leads us to the working hypotheses related to the second research question.

7.2.Hypotheses related to the second research question

The structural properties of the two *species* of federal polity enable us to make two general hypotheses. Since federal states are more centralized than federal unions, we expect that in the former the fiscal regime is more centralized than in the latter. However, centralization *per se* is not a variable we are looking for. Moreover, it does not tell us anything about regulation, capacity or units' involvement. Dealing with instruments of fiscal integration, the work takes some form of fiscal centralization for granted and is not interested in measuring it. Instead, it wants to measure the nature and degree of regulation and capacity.

Being more decentralized, a federal union will generally have less competences at central level. Since the units will want to retain more competences, they will prefer – if at all – to assign to the central level some form of regulation rather than some capacity. Moreover, taking part to a currency union will call for the need of some rules regarding the fiscal discretion of the (powerful) units. We thus formulate the following:

1) In federal unions, due to a comparatively lower level of centralization, fiscal regulation will be stronger than fiscal capacity:
   IFR(federal unions) > IFC(federal unions).

We assume that, if a federal polity is comparatively more centralized, it will prefer to centralize more fiscal capacity. On the one hand, if the system generally fosters more centralization, it will do so also in the fiscal regime. On the other hand, this will make regulation less necessary. It is thus possible to formulate the following:

2) In federal states, due to a comparatively higher level of centralization, fiscal capacity will be stronger than fiscal regulation: IFC > IFR.

Controlling for the instrument of integration, we expect fiscal capacity to find more breeding ground in federal states because of their higher level of centralization. On the contrary, we expect fiscal regulation to find more breeding ground in a federal union because of the higher level of decentralization and, thus, a stronger need to compensate with increasing regulation. We can formulate the following:

3. Since federal states have already assigned more competences to the centre, they might find it less difficult to transfer (further) fiscal competences to it:

IFC(federal states) > IFC(federal unions).

4. Since federal unions try to keep as much competences at decentralized level and resist centralization in the form of transfer of competences, they nevertheless might see the necessity to adopt some rules to limit the externalities of the units:

IFR(federal unions) > IFR(federal states)

In a federal union, one could argue that the units are generally stronger than in a federal state both because they retain more competences at their level and they are more involved in all policies at central level. We thus formulate:

5. In a federal union, the units have stronger possibilities to influence the policy-making of the centre: IUI(federal union) > IUI(federal state)

As for the EU, for federal unions we assume that capacity triggers more units' involvement than regulation. We thus formulate the following:

6. Overall, because a transfer of policy competence and a corresponding high political salience are involved, in federal unions we expect the Index

of Units' Involvement (IUI) to be higher for the Index of Fiscal Capacity (IFC) than for the Index of Fiscal Regulation (IFR):

For federal unions: IUI(IFC) > IUI(IFR)

7. As a result, the stronger involvement affects both regulation and capacity:

   For fiscal regulation: IUI(federal union) > IUI(federal state)

   For fiscal capacity: IUI(federal union) > IUI(federal state)

Ultimately, the thesis aims to check for a supposed EU's peculiarity. This is the reason why it compares. It assumes fiscal regulation to be strong and fiscal capacity to be weak. Moreover, it wants to test whether the whole fiscal regime – i.e. both fiscal regulation and fiscal capacity – is shaped by the units in a strong way.

The following table summarizes all hypotheses.

Table 4. Summary of working hypotheses

First research question	**What is the fiscal regime of the EU?**
First hypothesis (relationship between instruments of integration)	IFR > IFC and IFC < IFR
Second hypothesis (relationship between instruments of integration over time)	IFR(2009) < IFR(2013) and IFC(2009) < IFC(2013)
Third hypothesis (relationship between instruments of integration and units' involvement)	IUI(IFC) > IUI(IFR)
Fourth hypothesis (relationship between instruments of integration and units' involvement over time)	If IFC(t+1) > IFC(t), then IUI(IFC)(t+1) > IUI(IFC)(t) If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t)
Second research question	**How to assess the fiscal regime from a comparative federal perspective?**
First hypothesis (relationship between instruments of integration in federal unions)	IFR(federal unions) > IFC(federal unions)
Second hypothesis (relationship between instruments of integration in federal states)	IFC(federal states) > IFR(federal states)
Third hypothesis (relationship between fiscal capacity in federal states and federal unions)	IFC(federal states) > IFC(federal unions)

Fourth hypothesis (relationship between fiscal regulation in federal unions and federal states)	IFR(federal unions) > IFR(federal states)
Fifth hypothesis (relationship between units' involvement in federal unions and federal states)	IUI(federal union) > IUI(federal state)
Sixth hypothesis (relationship between units' involvement and instruments of integration in federal unions)	IUI(IFC)(federal unions) > IUI(IFR)(federal unions)
Seventh hypothesis (relationship between units' involvement and instruments of integration in federal unions and federal states)	For fiscal regulation: IUI(federal union) > IUI(federal state) For fiscal capacity: IUI(federal union) > IUI(federal state)

8. Conclusion

This chapter has presented the theories upon which the work is based and the model it uses. The thesis could not have been written before 1992. From 1957 to 1992, the EU was a case of (very institutionalized) market integration. Many theories try to explain why the process of integration occurred. The most prominent ones – liberal intergovernmentalism and neo-functionalism – point to the preferences of states and to the common benefits identified in the market and then spilled over to other policies. As soon as the EU became institutionally, politically and numerically more complex, it was approached as a proper political system. This paved the way for moving from a *sui generis* to a "normalized" approach, i.e. the acknowledgement that the EU could be compared to other polities. Its decentralization and the two levels of government triggered in particular federal comparison.

This was even more true with the integration of core state powers that happened with the Maastricht Treaty. We have seen two crucial instruments through which that integration usually occurs: regulation and capacity-building. That marked the departure from the foundational theories of integration: while they try to explain why integration happens, they cannot exactly give account of how that takes place. On core state powers, the literature has pointed to something that – again – depicts the EU as a peculiar political system: regulation is considered to be comparatively strong, capacity-building comparatively weak.

Here is where this work steps in. We want to fill a conceptual gap: what do the two instruments mean? What is "strong" and "weak"? The chapter has explained how we want to present the multi-faceted and multi-dimensional nature of the two concepts. We do an operationalization of fiscal regulation and fiscal capacity through a number of codes/categories and apply them to relevant legislation (qualitative text analysis). The aim is to assess the instruments of integration qualitatively and to measure them quantitatively. The quantitative measurement is done with two analytical models (Content-Impact-Compliance for regulation and Content-Impact-Discretion for capacity).

Afterwards, the chapter has outlined the analytical gap in the two instruments of integration, namely their autonomy from the units. The EU has an autonomous fiscal regime if it is not dependent on the MS. Because of that, we developed an Index of Units' Involvement to grasp the degree up to which the MS influence fiscal regulation and fiscal capacity of the centre. The main point is that, when analyzing the fiscal regime, regulation, capacity and units' involvement need to be considered together. It does not make much sense to speak of a fiscal regime of the EU if the EU itself is not in charge of it.

The search for units' involvement has found a breeding ground in federal comparison. While the EU can be considered a federal union, Germany is an example of federal state. Switzerland is a federal union as well. Since federal unions are more decentralized than federal states, we have been able to present a number of working hypotheses on the relationship between instruments of integration, involvement of the units and species of federal polity. Hypotheses are pre-analytical attempts to answer the research questions. We expect regulation to be stronger than capacity in the EU's fiscal regime. We also expect regulation to be stronger than in the other two cases considered. To conclude with, we expect the fiscal regime of the EU to be comparatively weak as for its degree of autonomy.

This theoretical chapter has outlined where – in the literature – the thesis places itself. It has outlined the model to answer the research question. We are now ready to start the analysis of the fiscal regime of the EU.

Chapter 2 – The fiscal regime of the European Union

1. Introduction

This chapter analyses the fiscal regime of the EU. It starts by presenting the main properties of the EU. It then distinguishes the institutions of the centre: those representing the centre itself and those representing the units. This is important for the creation of the Index of Units' Involvement (IUI). Afterwards, the main steps of the evolution of the EU's fiscal regime from the beginning to the Lisbon Treaty are recalled. Until Maastricht, that will be a reconstruction of fiscal capacity provisions. The reason is that fiscal regulation appeared only in the Maastricht Treaty. The period before was characterized by an increase in size of the EU's budget and a progressive empowerment of the EP. However, we will see that old criticalities like the budgetary dependency from MS' transfers and the overall rigidity of the budget have been recognized for many years but never solved.

The chapter then examines how the fiscal regime looked like in 2009, when the financial crisis started in Europe. After that, it deals with the main measures adopted to face that crisis. The anti-crisis measured represented important changes to the EU's fiscal constitution and, thus, also to its fiscal regime in terms of regulation and capacity. Some anti-crisis measures were adopted outside European law (through an intergovernmental agreement) but made use of European institutions to compel enforcement (e.g. Commission) and to ensure compliance (European Court of Justice). EU institutions were thus involved in a confusion of legal order that will have repercussions on their role and on the effects of these measures.

The aim of the chapter is to see how the constitutive elements of the instruments of integration changed during the financial crisis. This in turn enables us to see how the Index of Fiscal Regulation (IFR) and the Index of Fiscal Capacity (IFC) changed. Similarly, we want to assess whether, if at all, the influence of the MS over these instruments varied. Increase or decrease of that influence will be represented by changes to the Index of Units' Involvement

(IUI). At the end of the chapter, we will thus have a clear and systematic picture of the fiscal regime of the EU.

2. General features of the EU polity

For good reasons, the European Union (EU) can be considered one of the boldest political experiments in history. It started as an economic cooperation between six European countries (Belgium, France, Germany, Italy, Luxembourg and The Netherlands) that wanted to recover economically and make sure that a third intra-European war would not take place. Today it is a polity of 28[110] formally sovereign states, characterized by strong geographical, demographical and economic asymmetry as well as by differentiation affecting, for instance, languages, currencies and legal traditions (Levrat 2015).

On 25 March 1957, the six founding members established the European Economic Community (EEC) and the European Atomic Energy Community (EAEC). Both were supranational communities, created by the MS but supposed to be progressively endowed with autonomous policy competences, like trade, agriculture and transport. The aim was to establish a common market without trade restrictions internally and a common tariff externally (customs union).

To create and enforce competition rules necessary to the functioning of the market, a set of institutions were created. The Council represented national governments, the Assembly represented European citizens (although back then its members were not yet directly elected but appointed by national parliaments), the Commission represented the "supranational interest" and was made up of technicians with a high expertise in their field. The European Court of Justice (ECJ) was invested with the task to ensure compliance with the rules of the supranational communities.

The Common Agricultural Policy (CAP) was set up in the 1960s and the customs union was fully in place in 1968 (Phinnemore 2019). In the meantime, the ECJ issued a number of rulings that dismantled barriers to trade and

[110] At the time of writing, there are still 28 members. Brexit has not been settled yet. If the UK ended up leaving the EU, members would become 27.

established primacy and direct effect of EU law over national one[111]. Following the first enlargement in membership[112], the path of the EU towards becoming an autonomous polity and a political system of its own continued.

This is even more true if one recalls the first plan – emerged with the so-called "Werner Report" (1970) – for complementing the common market with an economic and monetary union. In the Single European Act (1986), MS delegated new policies to the EU[113] and committed themselves to complete the single market by 1992. The most significant institutional provision was the extension of qualified majority voting (QMV) in the Council to further policy fields. The Maastricht Treaty, signed a few years later in 1992 and officially called "Treaty on European Union", marked a turning point in the process of European integration[114]. The European Community changed its name to European Union. As a matter of fact, the use of the term "union" mirrored a decisive step towards closer and deeper integration. The EU deepened integration from the market to new policies. It Europeanized[115] core state powers and divided policies across pillars (Hix and Hoyland 2011). The first pillar were the policies of the single market; the second one common foreign and security policy and the third one justice and home affairs. The first pillar continued to be decided according to the supranational or Community method. Here, integration occurs through the adoption of EU law. The second and the third pillar were organized with the intergovernmental method. There, integration occurs through policy coordination.

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[111] See, for instance, Case 26/62 *Van Gend en Loos* on direct effect of EU law into national law and Case 6/64 *Costa v ENEL* on primacy of EU law over national law.

[112] In 1973, Denmark, Ireland and the United Kingdom joined the EU.

[113] Among them we find environment, research and development, and economic and social cohesion.

[114] It was triggered by two crucial international events. Firstly, the end of the Cold War, with the dissolution of the Soviet Union, put the issue of European security under the spotlight. MS realized that the end of the bipolar balance of power in Europe forced them to closer cooperate to guarantee their mutual security. They could not only rely on the involvement of the US. This is why MS decided to include foreign and security policy in the EU integration. Secondly, the end of the Cold War made possible the German reunification. Although recognized as an inevitable process, Europe looked at it with mistrust and concern. Forty-five years after the end of World War II, the threat of a predominant Germany in the core of Europe seemed to regain momentum (Germond 2012).

[115] The term "Europeanization" has to be understood as partial delegation of some powers to the EU. "Full Europeanization" means a complete transfer.

The three pillars were maintained in the subsequent treaties until their abolishment with the Lisbon Treaty (2009). While abolishing the pillars, that treaty preserved the dual constitution and its related decision-making regimes (Fabbrini 2015). Co-decision between the European Parliament and the Council became the ordinary legislative procedure and "was extended to some 50 new areas" (Church and Phinnemore 2009: 40; see also Devuyst 2012). The EU coming out of the Lisbon Treaty was very differentiated as far as policies that had been integrated. On some (exclusive competences), only the EU can adopt legally binding acts. On others (shared competences), MS can adopt legal acts to the extent that the EU has not done so. Eventually, on some policies the EU can act without replacing MS's competences (so-called supporting, coordinating or supplementary competences). Last but not least, a simple voluntary policy coordination occurs on economic policy, employment policy and some social policy. Here, legislative acts are excluded: the intergovernmental decision-making regime applies (Best 2019).

Policy differentiation has moved within institutional differentiation. Since the beginning, the EU had some supranational and some intergovernmental institutions. As already pointed out, in this work we replace these EU-typical terms with institutions representing the centre and institutions representing the units respectively. With that neutral terms in mind, we are better equipped for federal comparison. The following section outlines the main features of the EU institutions.

3. The institutions of the centre: representation of the EU and of the Member States

Like in all federal polities, power in the EU is distributed horizontally between the institutions of the centre and vertically between the centre and the units. It is precisely such a distribution of power, and the significant development of competences assigned to the center, that has encouraged comparison of the EU with established federations.

Unlike other federal polities like Germany, in the EU power is not only horizontally *distributed* but also *separated*, not implying a parliamentary-type relationship of confidence of the legislative (the EP) vis-à-vis the executive (the Commission) (Fabbrini 2017). We have seen that the EU has a dual legislative: the EP and the Commission. This is the norm in federal polities. The peculiarity in the European case is the dual executive: both the Commission (representing European interests) and the European Council (representing national interests) have executive powers. Actually, the Lisbon Treaty formalized a quadrilateral decision-making system that is made up of a dual legislative and a dual executive. Four institutions that range across two decision-making regimes (supranational and intergovernmental) and embody two different representation of interests: the EU and the MS or, more generally in federal terms, the centre and the units. It is therefore useful to examine which institutions at central level represent which interests. Importantly, all of them are institutions of the centre, but only some do actually provide representation of that level of government. The distinction is crucial for determining the Index of Units' Involvement (IUI) in our analysis.

The development of the EU integration process has been characterized not only by the inclusion of new policies and the accession of new states, but also by the creation of new institutions at central level. We start with the institutions representing national interests. The Council of ministers represents MS' governments meeting in different configurations depending on the policy field at stake (economy and finance, foreign policy, agriculture, etc.). In policies where the EU has exclusive competence (and where the Community method applies), the Council shares legislative power with the EP (co-decision or ordinary legislative procedure[116]). Where it politically coordinates on a voluntary

[116] The ordinary legislative procedure is regulated by Art. 294 of the TFEU. The Commission has the monopoly of legislative initiative. In the so-called "first reading", the EP adopts its position and informs the Council. If the Council endorses it, the legislative act is approved. If it does not endorse it, it informs the EP. The "second reading" starts. If the EP approves the Council's position or does not act, legislation is deemed to be adopted. In case of EP's rejection, the act is not approved. If the EP makes amendment to the Council's position at first reading, both the Council and the Commission publish an opinion. The act is adopted if the Council agrees on the EP's amendments. A Conciliation Committee is set up if there is no agreement between the EP's amendments and the Council's position. The task of the Conciliation Committee (made of an equal number of Council and EP members) is to arrive to the approval – by both institutions –

basis, like, *inter alia*, on fiscal policy, it decides by unanimity. Notwithstanding the ordinary legislative procedure, "the Council remains at the core of the EU's legislative process" (Lewis 2019: 158). From a comparative federal perspective, it is the states' or upper chamber. Being a co-legislator in supranational decision-making and the sole legislator in the intergovernmental one has led some scholars (e.g. Wallace H., W. Wallace and Pollack 2005) to call the Council an "institutional chameleon" which is difficult to clearly place on either of the two sides. Since this work does a qualitative text analysis, it considers the Council as representing the interests of the units also when it takes joint decisions.

Although created back in the 1970s and informally recognized in 1974, the European Council became formally part of the institutional "quadrilateral" with the Lisbon Treaty only. Its composition – heads of state or government – makes it the politically most authoritative EU institution. As a matter of fact, one can argue that it represents national interests at the highest level. Its task is to provide the EU with political guidelines and priorities, without exercising legislative functions[117] (TEU, Art. 15). During the financial crisis, the Fiscal Compact formalized the Euro Group, including the heads of state or government of euro area MS. Two other institutions represent the interests of the units on a functional and regional basis respectively: the Economic and Social Committee[118] and the Committee of the Regions[119].

Let us turn to the central institutions representing the EU and/or its citizens. Back in the Rome Treaties, the EP was made up with delegates of national parliaments and it was not substantially involved in the decision-making process. Between its first direct election (1979) and its first relevant participation in the legislative process (Maastricht Treaty, 1992) much time passed. After the Lisbon Treaty, and today, the EU has found its place as co-legislator with the Council

of a joint text. Eventually, in the "third reading" both the Council (by qualified majority) and the EP (by majority of the votes cast) have to approve the joint text. If they succeed, the act is adopted. If they fail, it is not.

[117] Since the Lisbon Treaty, the heads of state or government elect a president of the European Council, to serve in office for two and a half years.

[118] It represents civil society organizations, employers and employees' associations as well as trade unions and non-governmental organizations in the MS (see articles 300-304 of the TFEU).

[119] It represents local and regional governments of the Member States (see articles 300 and 305-307 of the TFEU).

in policies decided through the supranational method. Its involvement is limited if not excluded in intergovernmental policy coordination, where it is only consulted or kept informed. From a comparative federal perspective, the EP is the people's or lower chamber.

The European Commission was conceived since the beginning as defender of the general interest of the EU. It performs its function as "guardian of the treaty" as a collegial body composed of politically independent members, one per MS. The Commission is an executive body: its President is nominated by the European Council and must have the approval of the EP. The fundamental task of the Commission is the monopoly of legislative initiative and the related power of agenda-setting (Levrat 2015). Of course, this is true only for policies where EU legislation is foreseen. In policies decided through the intergovernmental method, the Commission cooperates with the Council and the European Council and implements their decisions. Moreover, it guarantees the respect of treaties and secondary legislation, including the possibility to address to the ECJ cases of non-compliance. In sum, it has powers similar to a central government in federal polities: legislative initiative and implementation.

Eventually, there are two other more typically federal institutions which however are not that central for our analysis. The first is the European Court of Justice (ECJ), which has the task to assure compliance with EU law. In a number of landmark judgements, it has paved the way for the development from an internal to a truly common market, thus contributing to the establishment of the EU as a political system of its own, independent of the MS. The second is the European Central Bank (ECB), which in the case of euro area MS has exclusive competence for monetary policy. In light of their powers and nature, both are clearly institutions representing the EU.

The interests that these different institutions represent do not change according to the decision-making regimes (supranational or intergovernmental) in which they are involved and the role played within them. This is why they are a valid analytical feature both when we approach the involvement of the units. Representation of interests is a category that goes beyond the decision-making regimes. As a matter of fact, while in the intergovernmental method only

national interests are pooled together, in the supranational one national and European interests are shared. How to link that with comparative federalism? As Hueglin and Fenna (2015: 226) observe,

> "from a federalist perspective, the roles of Council and Parliament appear reversed. While the Council performed the role of a first chamber, setting the legislative agenda on the basis of European Commission initiatives, the European Parliament (EP) clearly was designed as a weaker chamber – and has remained so even though every treaty change since the mid-1980s has upgraded its powers".

The increased use of qualified majority voting in the Council reinforces that picture. The implication is that in the EU the interests of the MS are strongly represented in the legislative process. We have seen that it is proper to all federal polities to enable the constituent units to participate in the decision-making of the centre. However, does that happen in a particularly strong way in the EU? This thesis aims to inquire it with regard to the fiscal regime. Before doing so with a qualitative text analysis starting from 2009, it is necessarily to recall the main steps of the fiscal regime in the previous period (1957-2009).

4. The fiscal regime of the EU from the Rome Treaties (1957) to the Lisbon Treaty (2009)

Since the beginning, the EU had an embryonic fiscal capacity, i.e. a budget. What it did not have before the Maastricht Treaty was the ability to regulate the fiscal policy of the MS. Regulation was there but affected market policies only. Hence, in the period from 1957 to 1992 changes relevant to the present analysis were only those occurring to the budget of the EU. The section will thus analyse capacity as far as the fiscal regime is concerned.

The Treaty establishing the European Coal and Steel Community (ECSC Treaty[120]) included a number of measures that back in that time were innovative

[120] Signed on 18 April 1951 in Paris by Belgium, Germany, France, Italy, Luxembourg and the Netherlands. The ECSC had four institutions: 1) the High Authority, composed of one member per State, chosen by the MS governments on the basis of his/her technical competence and supposed to act for the Community interest, independent of MS; 2) the Assembly, composed of

if referred to a supranational institution. The Community could impose levies on coal and steel production, borrow, receive grants and issue loans (ECSC Treaty, Art. 49). There was some redistributive policy with Community resources. However, that was politically acceptable for the MS because resources moved to (and remained within) the coal and steel sector. A Committee made up of four presidents[121] was in charge of authorizing administrative expenditures of the four institutions.

In the Treaty Establishing the European Economic Community (EEC Treaty), revenues and expenditures of the Community must be balanced (EEC Treaty, Art. 199). Revenues included financial contributions from MS directly proportional to their GDP. The Council could unanimously change the criteria. Interestingly enough, already back at that time there was the awareness that the budget had to include resources other than national contributions. The plan was to include own resources from the common customs union once this was established. Related to this, after consulting the Assembly, the Council should unanimously decide which measures to recommend to the MS (EEC Treaty, Art. 201).

National ministers were in charge of approving the Community budget. The Commission submits a provisional budgetary forecast to the Council. The latter decides on the forecast and sends it to the Assembly. If within one month the Assembly has approved, the forecast is deemed to be adopted. However, the Assembly can also propose amendments. If this happens, the budget goes back to the Council. After consulting the Commission and other institutions involved, the Council adopts the budget by qualified majority (EEC Treaty, Art. 203)[122].

The Commission implements the budget (EEC Treaty, Art. 205). A controlling commission, made up of politically independent members, examines

delegates chosen by the national parliaments and members of the latter; 3) the Council, composed of representatives of one representative per MS government; and 4) the Court, composed of judges that the MS' governments had to choose by agreement.

[121] The presidents of the four institutions: Court of Justice, High Authority, Council, and Parliament.

[122] Should the budget not have been adopted, it is possible to spend per month one twelfth of the credits opened in the previous year. The Council can authorize expenditure over one twelfth and the MS transfer resources following the above-mentioned criteria (Art. 204).

the revenues and the expenditures. The Council unanimously fixes the number of members and appoints them as well as the president of the controlling commission. The aim is to verify that revenues and expenditures are legitimate and carried out following a sound financial management (EEC Treaty, Art. 206).

At the end of each financial year, the Commission presents to the Council and to the Assembly the budget of the year. On a qualified majority, the Council confirms that the Commission has executed the budget, exercising the right to discharge. The last article of Title II (Art. 209) well summarize the central role played by the Council in EU budgetary policy. On a proposal by the Commission, the Council unanimously decides the way in which MS transfer resources to the budget, in which the budget is formed and implemented and in which the finances are checked.

In sum, the EEC Treaty shows two distinctive features. First, the budget resources entirely consist of MS' contributions. Secondly, the Council is the undisputable *dominus* of the budgetary process. As a matter of fact, it can decide how much each state has to contribute. It enjoys preeminence over the Assembly in the adoption of the annual budget. The Assembly can approve the draft received from the Council or propose amendments but it is the Council that has the last word on these amendments. There is no parliamentary veto power. Furthermore, the Council decides the composition of the controlling commission and controls the implementation of the budget.

A first attempt to introduce in the budget resources other than MS contributions was made in 1965, when the Common Agricultural Policy (CAP) was launched. In this process, agricultural levies were introduced. All states except France agreed on involving the EP in the approval of the EU budget. Also, they agreed that parliamentary involvement should increase together with the increase of own resources. Driven by the aim to maintain the CAP, France eventually accepted the own resources but managed to convince its partners to introduce the distinction between compulsory (CE) and non-compulsory expenditures (NCE) (De Feo 2017). The former was defined as "necessarily resulting from the Treaty or from acts adopted in accordance therewith". Only the Council could decide on them. On the contrary, decisions on the latter – i.e.

on expenditures not directly originating from the Treaty – involved the Assembly only.

In the Luxembourg Treaty[123] (1970) and the Brussels Treaty (1975), MS agreed on a progressive increase of own resources, namely agricultural levies, customs duties and a share of value added tax (VAT) receipts (European Parliament 2015)[124]. The EP obtained the right to amend the annual budget that involved NCE: hence, amendments on important policies like the CAP[125], which was a CE, excluded EP's participation. A maximum rate of increase for NCE was fixed, which could be increased only when both the Council and the EP agreed to do so. Also, the EP was entitled to reject the budget. Subsequently, it tried to classify more and more expenditures as NCE and to obtain a higher involvement in budgetary policy. However, no institutions, not even the ECJ, provided a shared definition of CE and NCE (De Feo 2017). Most importantly, nothing changed compared to the EC Treaty: it continued to be the Council alone to decide over the composition and amount of revenues.

As new policies entered EU integration, resources of the budget were channeled into them: expenditures became more differentiated[126]. The 1980s were characterized by interinstitutional conflicts mainly due to the attempt – both by the Council and the EP – to apply a definition of CE and NCE in favour of them. Eventually, both institutions agreed on a list of CEs and NCEs and on inter-institutional agreements (soft law) to solve their conflicts (European Parliament 2015).

Crucially, as De Feo (2017: 56) argued, the main implication of these changes was not to increase the budget but to strengthen its dependency on MS. As a matter of fact,

"the idea of autonomy of resources, which was one of the specificities of the European model, started to fade into a new system based on direct contributions by Member States. Through this

[123] The Treaty was signed on 22 April 1970 and entered into force on 1 January 1971.
[124] When the Treaty was adopted, approximately 97 % of expenditures were CE (De Feo 2017).
[125] CAP's expenditures soon increased and became the most significant item on the EU budget, reaching up to 84.7 % in 1968 (De Feo 2017). Time after time the percentage decreased because expenditures had become unsustainable and resources were needed to finance other policies.
[126] Examples are the European Social Fund (1958), the European Regional Development Fund (1975), the New Community Instrument for Borrowing and Lending (1978).

system, the Member States regained full control of the power of the purse. Ratification by the national Parliaments was a supplementary protection against unwanted increases in the costs of European integration".

Generally speaking, budgetary discipline, already foreseen by the EEC Treaty, re-gained importance due to a ceiling on own resources. The EU enlargement triggered the development of a more structured cohesion policy, with more resources. The then President of the European Commission, Jacques Delors, introduced the so-called "multiannual financial framework" (MFF), which consists in fixing "the maximum amount (ceiling) for each broad category of expenditure in advance" (European Parliament 2015: 51) for a number of years. The legal instrument through which this should be achieved was the inter-institutional agreements (IIA). Within the MFF, MSs remain in charge of the process but the consent of the EP and the Commission is necessary at the end.

The IIA of 1988 stated that both the EP and the Council should agree on the revision of ceilings (for both CE and NCE). The distinction between CE and NCE became less relevant. This reduced the EP's involvement, since the NCE had always been its prerogative.

The Maastricht Treaty[127] (MT) amended the existing[128] treaties and included monetary and economic policy into European integration. Central to this analysis, it set up a roadmap towards the Economic and Monetary Union (EMU)[129] with a common currency. As we have pointed out, the treaty marked the beginning of regulation of governments in fiscal policy. We will thus consider the EMU-related provisions of the MT that introduced regulation of MS' governments and which enabled capacity-building at EU level.

If regulation is about constraints upon a national competence, the first example is actually the willingness to achieve integration in economic and

[127] Officially named "Treaty on European Union", it was signed by 12 countries: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom.

[128] The Treaty Establishing the European Economic Community (EEC), the Treaty Establishing the European Coal and Steel Community (ECSC Treaty) and the Treaty Establishing the European Atomic Energy Community (EAEC Treaty). The EEC changed its name to "European Community".

[129] It was part of the aim to achieve an "ever closer Union among the peoples of Europe" (Maastricht Treaty, Art. A).

monetary policy. The MS and the EU shall closely coordinate their economic policies following a set of principles: price stability, "sound public finances and monetary conditions and a sustainable balance of payments" (MT, Art. 3a). Related to that, there was the fixing of exchange rates (with the view to introduce a single currency), a single monetary and exchange-rate policy[130].

Unlike fiscal policy, capacity building in monetary policy was very strong as a result of a complete delegation to the European level. A European System of Central Banks (ESCB) and a European Central Bank (ECB) were established (MT, Art. 4a)[131]. As far as tax policy is concerned, the MT (Art. 94) specifies that the Council should unanimously "adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market". Similarly, it should "issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market" (MT, Art. 100).

Fiscal regulation is enshrined in Title VI of the MT. MS shall adapt their economic policy in order to achieve the objectives[132] of the Union and in accordance to broad guidelines formulated by the Council. More specifically, economic policy, coordinated in the Council, has to be dealt with as "a matter of common concern" (MT, Art. 103). The treaty goes on specifying how the coordination should work.

By a qualified majority voting (QMV) on a recommendation from the Commission, the Council decides the general economic policy orientation of the MS and of the EU. The European Council adopts a conclusion on this orientation. Having analyzed the conclusion, the Council – again by QMV – issues a recommendation on the general economic policy guidelines. The

[130] Both policies shall aim at price stability and, if this is met, as a second-order objective, at supporting the general economic policies in the Community (MT, Art. 3a).
[131] Similarly, capacity building can be found also in the establishment of a European Investment Bank (Art. 4b).
[132] Those spelled out in Art. 2.

Commission is involved in the drafting of the initial recommendation. The EP is only informed at the end of the process (MT, Art. 103).

The Council has the task of assessing – both in the EU and in the MS – "the consistency of economic policies with the broad guidelines" it had developed. Related to that, MS have to inform the Commission about crucial economic policy measures taken (MT, Art. 103.3). If a national economic policy is not consistent with the guidelines adopted by the (European) Council, the Council "may, acting by a qualified majority on a recommendation from the Commission, make the necessary recommendations to the Member State concerned" (MT, Art. 103.4). Again, the EP is only informed about the result of the economic surveillance.

Established to prevent moral hazard, the no-bailout clause is one of the strongest regulatory provisions in a federal polity. In the EU it is directed at intergovernmental, supranational and national institutions. The ECB and the central banks of the MS shall not grant credit facilities to EU or national institutions[133] nor buy debt instruments directly from them. In other words, to monetarize (i.e. to finance through printing of money) public debt of MSs at any level - central, regional, or local – is not allowed (MT, Art. 104)[134]. The EU shall not be liable for the commitments of national institutions. Similarly, a Member State shall not be liable for the commitments of another Member State (MT, Art. 104b). Each Member State bears ultimate responsibility for its deficit and debt; national debt cannot be guaranteed by other MS or EU institutions (debt mutualization).

A detailed regulatory framework for dealing with excessive deficits in the MS is set up. First of all, "Member States shall avoid excessive government deficits" (MT, Art. 104c.1). A deficit is considered excessive if it exceeds two reference values[135] included in the "Protocol on the excessive deficit procedure", annexed

[133] More specifically, "central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States" (MT, Art. 104).
[134] Similarly, EU or MS' institutions shall not have privileged access to financial institutions (MT, Art. 104a, par. 1).
[135] In the language of the treaty, compliance with those two values means compliance with "budgetary discipline".

to the Treaty[136]: the ratio of the planned or actual deficit to gross domestic product (GDP) at market prices cannot exceed 3 %[137]; and the ratio of debt to GDP at market prices cannot exceed 60 %[138].

The Commission monitors compliance with these rules. If it deems that a Member States does not meet *one or both* criteria, it can report its opinion to the Council. In the following, "the Council shall, acting by a qualified majority […], and having considered any observations which the Member State concerned may wish to make, decide […] whether an excessive deficit exists." (MT, Art. 104c.6). In that case, an excessive deficit procedure (EDP) starts. If the Council decides that the deficit exists, it recommends the MS correcting it within a certain period (MT, Art. 104c.7). If the Member State does not act, the Council can require it to take any measure it considers necessary to terminate the excessive deficit (MT, Art. 104c.9)[139].

If the MS still does not implement the measures to reduce the deficit, the Council can decide[140] to apply one or more of the following sanctions (MT, Art. 104c.11): 1) to require the MS to provide specific information "before issuing bonds and securities" (*ibid.*); 2) to "invite the European Investment Bank to reconsider its lending capacity towards the Member State concerned" (*ibid.*); and 3) to impose "a non-interest bearing deposit […] of an appropriate size until the excessive deficit has, in the view of the Council, been corrected" and to "impose fines of an appropriate size" (*ibid.*). The "appropriateness" of the size is left to

[136] According to TEU Art. 51, protocols attached to the European treaties have the same legal force as the treaties, i.e. they are primary law.

[137] Ratio above 3 % may be accepted "unless *either* the ratio has declined substantially and continuously and reached a level that comes close to the reference value *or*, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value" (MT, Art. 104c.2).

[138] "Unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace" (*ibid.*). Following the wording of the MT, hereafter I call these criteria of deficit and debt "deficit and debt criteria" in order to distinguish them from the convergence criteria. The deficit criterion belongs both to the deficit and debt criteria and to the convergence criteria.

[139] At this point, the MS can be requested to submit periodic reports on its budgetary situation.

[140] By a 2/3 majority without considering the vote of the representative of the Member State in question (MT, Art. 104c.8).

the Council to decide. The EP does not play an active role, since it is only informed of the Council's decision[141].

Let us turn to the provisions about fiscal capacity, particularly those of the budget. As in the past, the EU budget, revenues and expenditures of the EU budget must be balanced. The budget should entirely be financed through so-called "own resources" (MT, Art. 201), the amount and composition of which has to be proposed by the Commission and unanimously – after consultation of the EP – approved by the Council. Then, "decisions are recommended to the MS for adoption in accordance with their respective constitutional requirements" (MT, Art. 201). In order to assure budgetary discipline, the Commission shall propose or implement only those acts that can be financed through own resources (MT, Art. 201). Expenditures are authorized for one financial year[142] (MT, Art. 202). The appropriations[143] of the budget are classified under different categories.

The procedure leading to the adoption of the annual budget is set in Art. 203[144]. The Commission submits a "preliminary draft budget"[145] (Art. 203) to the Council, which establishes the draft budget by QMV and sends it to the EP[146]. The EP can amend it through majority of its members and propose to the Council modifications to "expenditures necessarily resulting from (...) the Treaty or from acts adopted in accordance therewith"[147] (Art. 203). If the EP approves the draft, the budget is adopted. If it has not amended the draft nor proposed modifications, the budget is deemed to be adopted.

In case the EP has amended the draft or proposed modifications, the new version goes back to the Council. The latter can modify the EP's amendments through QMV. If this does not happen within 15 days, the budget is also deemed to be adopted. On the contrary, if the Council has modified the EP's amendments

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[141] When the Council considers that the excessive deficit is no longer in place, it abrogates any decision taken during the EDP.

[142] The financial year goes from 1 January to 31 December.

[143] Appropriations are defined as "amounts committed but not paid" (http://ec.europa.eu/budget/explained/budg_system/fin_fwk0713/fin_fwk0713_en.cfm (last access 2 July 2019).

[144] This is an amendment to the original version, i.e. Art. 203 of the EEC Treaty.

[145] The preliminary draft budget includes expenditures estimated by all EU institutions.

[146] The EP must receive the budget no later than 5 October (of the year before the budget is implemented).

[147] This is the definition of the so-called "compulsory expenditures" (De Feo 2017). As for the

or rejected its proposed modifications, the draft is again sent to the EP. The EP may amend or reject the modifications introduced by the Council (through majority of its members and three fifths of the votes cast). Should the EP not act, the budget is deemed to be adopted[148]. This procedure differentiates itself from what the Lisbon Treaty will introduce in that there is no conciliation committee in which the two institutions can on equal terms find an agreement and vote again on a joint text. The EP is not on the same footing with the Council.

There is also a yearly maximum rate of increase in so-called "non-compulsory expenditures", to be determined by the Commission and be followed by all EU institutions when forecasting their expenditures. Moreover, "if (...) the actual rate of increase in the draft budget, established by the Council, is over half the maximum rate, the EP may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half of the maximum rate". The last paragraph of Art. 203 specifies that each institution has to act in compliance with the amount of the EU's own resources and the balance between revenue and expenditure.

If, at the beginning of the financial year, the budget has not been adopted yet, it is possible to spend up to one twelfth of the budget appropriations for the previous year. Through QMV the Council can decide that more is spent, provided that certain conditions apply. In both cases, the MS have to pay the necessary amounts (MT, Art. 204). If the expenditure in excess relates to non-compulsory expenditures, the EP must be involved[149]. As it has become clear, the procedure is very detailed, not providing much room for flexibility.

While implementing the budget, the Commission has to consider the "principles of sound financial management" (MT, Art. 205). This part of the article was not present in the EEC Treaty. On a QMV recommendation from the Council, the EP shall examine and approve the Commission's implementation

[148] A kind of "emergency brake" is foreseen for the EP: "If there are important reasons" (Art. 203, par. 8), it can reject the draft and ask for a new one. To achieve this outcome, the EP needs to act through a majority of its members cast and two thirds of the votes cast.

[149] The EP can (by a majority of its members and three-fifths of the votes cast) decide differently on the expenditures in excess of one twelfth. If its position is equal to that of the Council, the decision to spend more is deemed to be adopted.

of the budget (right to discharge)[150]. The Commission shall give account of its activity[151]. Article 209 gives the Council the right to regulate the procedure for "establishing and implementing the budget and for presenting and auditing accounts". Moreover, it can establish the "methods and procedure" through which the revenues that are part of the system of own resources are made available to the Commission. In these cases, the Council acts "unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors" (*ibid*.).

The MT includes a number of attached protocols which have the same legal force of the treaty. The "Protocol on the excessive deficit procedure" is relevant here. It integrates the provisions of the treaty. Importantly, protocols can be amended through unanimity in the European Council. This is still a high threshold but less difficult than treaty amendments, which requires ratification by national parliaments, sometimes accompanied by popular referenda. The reference values that, if breached, may lead to the opening of an excessive deficit procedure (EDP) are specified. First, "the ratio of the *planned* or *actual* government deficit to gross domestic product at market prices" (Art. 1) shall not exceed 3 %. Secondly, "the ratio of government debt to gross domestic product at market prices" (*ibid*.) shall not exceed 60 %. The values thus represent a fiscal policy constraint on both current and future fiscal policy.

The provision is meant to include all levels of government (central, regional and local as well as social security funds). Deficit is supposed to be equivalent to net borrowing, while for debt the reference is the nominal value at the end of the year (Art. 2). The responsibility for the deficit lies with the MS. They need to establish national procedures in order to be able to comply with the Protocol. Moreover, information on the current and planned deficit and debt shall be "promptly and regularly" sent to the Commission (Protocol on the Excessive Deficit Procedure, Art. 3)[152].

[150] The right to discharge also includes to hear members of the Commission in front of the EP and to ask for any other information.
[151] In the past, there was an Audit Board, made up of members unanimously appointed by the Council, to examine the revenues and expenditures of the EU.
[152] The last article (Art. 4) of the Protocol specifies that the Commission provides the statistical data to ensure its application.

Germany wanted to be sure that MS would comply with the convergence criteria also once the common currency was in place. In 1997, at the Amsterdam European Council, MS agreed on a "Stability and Growth Pact" (SGP)[153]. On France's request, the Council maintained the last say on fines within the EDP. The SGP includes two Council resolutions and a European Council resolution (Artis 1999). On average over the business cycle, MS shall maintain a budget on approximated balance or on a small surplus; the 3 % ratio of deficit/GDP is confirmed. Through the submission of annual stability programmes, they shall inform the Commission about how they plan to achieve a sound fiscal budget in the medium term (so-called medium-term objectives, MTO). Building upon an assessment by the Commission, the Council can address early warnings to MS in order to prevent an excessive deficit. It can also issue recommendations to correct the deficit within a given timeframe (Thygesen 1999). This procedure, included in the regulation "on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies", is known as the "preventive arm" of the SGP (Fabbrini 2015).

The SGP quantified the sanctions the Council can issue to MS persisting with an excessive deficit[154]: they can include a deposit up to 0.2 % of GDP. The first stage of the EDP shall last up to one year, possibly less. The issuing of sanctions depends on the budgetary conditions of MS. If the deficit is above 3 % but GDP has decreased more than 2 %, there shall be no sanctions. If the decline is between 0.75 % and 2 %, the Council has full discretion. In all other cases in which deficit is above 3 %, MS commit themselves to impose sanctions leaving aside political discretion they formally have (Thygesen 1999). This procedure, included in the second regulation "on speeding up and clarifying the implementation of the excessive deficit procedure", is known as the "dissuasive arm" of the SGP (Fabbrini 2015).

[153] The SGP included two Council resolutions (Reg. No. 1466/1997 and Reg. No. 1467/1997) and a European Council resolution (97/C 236/01) (Artis 1999).

[154] The MT had not given content to the sanctions, simply providing for the authority of the Council to "require the MSS concerned to make a non-interest-bearing deposit of an appropriate size" or to "impose fines of an appropriate size" (MT, Art. 104c.11).

The issue becomes how dissuasive this arm really is. The voluntary coordination in economic policy has the problem of how to implement decisions. If the Commission recommends sanctions, the latter are not issued automatically. Formally, the Council has discretion over sanctions despite the commitment not to make use of it. In addition to that, if MS do not pay the deposit/fee/fine and do not remove the deficit, a problem of compliance arises. The SGP heavily lost credibility when the EDP was not applied to Germany and France in 2003. It was reformed in 2005. The Council has now more than a year time to issue non-binding recommendations for correcting deficits before it has to decide on monetary deposits and fines. Since the procedure takes longer, the likelihood to impose sanctions decreases. Clearly, the revised SGP did not solve the enforcement dilemma of the EU regulatory regime (Fabbrini 2015). Not only has the Council's political discretion not been limited. One could argue that it has somehow even been increased by making it less likely to arrive at a vote on sanctions (Mabbett and Schelke 2015). The deficit and debt criteria remain binding. Legal rules continue to constrain MS' economic policy discretion, but a political institution – specifically one representing the interests of the units – has the power to decide whether to apply these rules or not.

Besides the reform of the SGP in 2005, the fiscal regime of the EU did not witness substantial changes from 2002 to 2007. The reason is that the whole evolution of the process of integration came to a standstill after referenda in France and the Netherlands rejected the Constitutional Treaty (2005). To exit the stalemate, in 2007 the Lisbon Treaty was signed, which separated the *acquis communitaire* over two treaties: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). It is from there that we start our qualitative text analysis to shed light on the instruments of fiscal integration and the involvement of the units.

5. The fiscal regime of the EU during the financial crisis (2009-2013)

This section applies the qualitative text analysis to the EU' fiscal regime. It is divided per years (2009-2013); for each year, the distinction between the two

instruments of integration is maintained. The status quo of the EU's fiscal constitution in 2009 was given by the two founding treaties (Treaty on the European Union or TEU and Treaty on the Functioning of the European Union or TFEU), the protocols attached as well as by secondary legislation (Stability and Growth Pact).

Centre-units' principles of regulation

The treaties contain a number of general provisions about fiscal regulation. MS have to coordinate their economic policies (TFEU, Art. 2.3). They shall make their economic policy compatible with the objectives[155] of the Union and a number of broad guidelines formulated each year by the Council. Both the Union and the MS shall take "sound public finances" (TFEU, Art. 119) as a guiding principle for their action. On the basis of a recommendation from the Commission, the Council prepares a draft of the general orientation of economic policy of the MS and of the EU. After the European Council has discussed and endorsed them, the Council issues a recommendation including those guidelines. The EP is only informed. The Council monitors and assesses the consistency of MS' economic policy with the guidelines. This "multilateral surveillance" foresees the duty of MS to provide information about the economic policy measures they adopt.

The no-bailout clause is formulated in a clear and detailed way in the treaties. It is forbidden for MS, the EU or national institutions to pay for the debt of other MS (TFEU, Art. 125). Also monetary financing in the form of ECB's grant facilities in favour of MS is not allowed (Art. 123). A Member State shall not be liable for the commitments of another Member State (Art. 125). The outlined provisions are general but clear, and compliance can actually be verified. There are no sanctions. Hence, the category represents a medium degree of regulation (score 2).

How to evaluate the role of the units? An ordinary legislative procedure is foreseen for clarifying the detailed rules of the multilateral surveillance. In

[155] The objectives spelled out in Art. 2.

principle, this gives the EP and the Council the same power. However, the provision involves only detailed regulation, whereas the core principles are those in the treaty. Thus, in order to answer, one needs to examine how the fiscal constitution (the treaties) can be changed. This can happen through unanimity of the MS only. Two procedures are foreseen (Art. 48 TEU): one is for "ordinary revision procedures for matters affecting Union competences", the other is for "simplified revision procedure for internal union policies and actions (not increasing Union powers)" (*ibid.*). In both, amendment proposals can come from MS' governments, the EP or the Commission. In the first, a Convention made of representatives from MS' parliaments, governments, the EP and the Commission adopts by consensus a recommendation to an intergovernmental conference (IGC) which in turn has to determine the amendments by consensus. In the second, the European Council decides by consensus (Hueglin and Fenna 2015). The marginalization (in the first procedure) and the absence (in the second procedure) of the EP is even increased by the fact that any amendment needs to be ratified by national parliaments. Overall, the EU fiscal constitution can be changed by the MS only. The IUI scores the highest value, i.e. strong (score 3). The units are involved with only decision-making power only. The category "centre-unit principles of regulation" scores 2; 3[156].

The EU budget shall be balanced (revenues shown in the budget equal expenditures), following a principle that in the treaties is referred to as "budgetary discipline". Budgetary discipline shall be followed by all institutions involved (TFEU, Art. 173a). Hence, the EU cannot finance itself through borrowings that would result in debts. The content is clearly formulated and compliance can be verified: score 2 (medium regulation) is assigned. Overall, the category "balanced budget clause for the central budget" scores 2; 3.

EU expenditures must be entirely financed by the so-called "own resources" of the budget (TFEU, Art. 311). In the section on fiscal capacity, we will see that this expression is misleading because it does not point to resources autonomously controlled by the EU. The EU's budget must be organized within

[156] This way of writing means that the first number refers to the degree of regulation (or capacity) and the second to the degree of units' involvement.

a multiannual financial framework (MFF)[157], so that expenditure "develops in an orderly manner and within the limits of its own resources" (TFEU, Art. 312.1). The MFF serves as a benchmark for the annual budget, which should be in line with it. It foresees annual ceilings on the commitment[158] appropriations and for the payment[159] appropriations for each category of expenditure. Crucially, "the categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity" (TFEU, Art. 312.3). Besides the specific headings, which may vary depending on the multiannual financial framework[160], the important point is that "the budget is not allowed to exceed the ceiling of own resources". Moreover, the MFF can contain other provisions to regulate the annual budget. The expenditures rules for the central budget are quite clear and detailed; they make the budget rigid. Thus, it is a medium degree of regulation (score 2), amendable only through treaty revision. Since for that unanimity among national governments is required, institutions representing the units are the only decision-maker ("strong units involvement, score 3"). Overall, the category "expenditure rules for the central budget" scores 2; 3.

How does the approval of the EU's budget work in detail? How much is it regulated? How is the horizontal distribution of powers? The treaties state that "the Council shall, jointly with the European Parliament, exercise legislative and budgetary functions" (TEU, Art. 16). Although the involvement of both institutions is required, the analysis will show that this does not occur on the same footing: the Council enjoys pre-eminence. The procedure to approve the budget varies between the MFF and the annual budget.

For the MFF, the treaty foresees a special legislative procedure (TFEU, Art. 312.2). MFF starts with a proposal by the Commission. Following political

[157] The MFF shall have a duration of at least five years (TFEU, Art. 312.1).
[158] Commitment appropriations are "the maximum amount of legal obligations – such as contracts, grants or decisions – that the EU can enter in a given year" (https://www.consilium.europa.eu/en/policies/eu-budgetary-system/multiannual-financial-framework/) (accessed 30 October 2019).
[159] Payment appropriations are "the actual amounts spent in a given year. They arise from legal commitments that the EU has entered into previously" (*ibid.*).
[160] For explanatory purposes, at the time of writing, the current MFF has the following categories, each of which entails some headings: Smart and inclusive growth; Sustainable growth: Natural resources; Security and citizenship; Global Europe; Administration; Compensations (https://www.consilium.europa.eu/en/policies/eu-budgetary-system/multiannual-financial-framework/mff-2014-2020/) (accessed 27 November 2019).

guidelines by the European Council, the Council discusses and adopts the MFF by unanimity. Then, the EP may approve or reject the Council's MFF. Crucially, the EP has not the right to amend it[161]. Hence, in the MFF the Council is the main decision-maker because it determines the content. Moreover, it does so by unanimity, which makes its position even stronger. The EP has a veto power on the approval, but not on the content, since it can only block and not amend the Council's position. Therefore, on the MFF the units are the sole decision-makers ("strong involvement", score 3).

Also the procedure to adopt the annual budget starts with a proposal by the Commission. The Council adopts its position. Then, the EP can approve the Council's position, not take any decision[162] or adopt amendments to that position. If the two institutions cannot reach an agreement, a conciliation committee can be established to find a compromise. If a compromise is found, the Council and the EP have 14 days to approve it. Should this not happen, the whole procedure shall start again with a Commission's proposal until both institutions approve the budget. Here, the EP has a veto power not only on the approval, but also on the content, since it can only block *and* amend the Council's position. The procedure sets clear and detailed rules. The level of detail is quite high because there is a different procedure of approval for the MFF and the annual budget. This level of detail makes compliance easily verifiable. The level of regulation is medium (score 2) because the regulation is detailed but sanctions are not foreseen. When assessing the units' involvement, one has to acknowledge that for the annual budget the EP got almost a proper right of co-decision. Only the fact that the budget is deemed to be approved if the EP does not take action seems to be a provision in favour of the Council. However, in spite of the EP's co-decision making power, the annual budget is constrained by the MFF, also considering the latter's level of detail. Because on the MFF the Council enjoys the ultimate decision-making power, the same must be recognized for the category "approval of the central budget" as a whole. The units' involvement is strong (score 3). In sum, it is the units (the MS) that approve the budget of the

[161] This is the crucial element that differentiates the special legislative procedure from the ordinary one, in which the Council and the EP are on an equal footing (Best 2019).
[162] In that case, the budget is "deemed to have been adopted" (TFEU, Art. 314.4).

centre (the EU). This is a manifest proof of the center's inability to autonomously decide which resources to spend. Overall, the category "approval of the central budget" scores 2; 3.

Implementation of the central budget

Implementing the budget requires a legal act providing its basis (TFEU, Art. 310.3). Implementation of the EU's budget shall be done following the principle of sound financial management (TFEU, Art. 310.5). The Commission shall implement and execute the budget (TEU, Art. 17 and TFEU, Art. 317) together with the MS. Within the limits set by the Council, it can transfer appropriations between chapters of the budget. MS should cooperate on that. The Commission shall inform the EP and the Council on how the process of implementation takes place (TFEU, Art. 318). The Council and the EP decide via an ordinary legislative procedure[163] on how to establish and implement the budget (TFEU, Art. 322). Both institutions also control implementation (TFEU, Art. 287). Overall, this is a medium level of regulation because general but clear rules are established, the units are left low discretion and compliance can be verified (score 2). The EP and the Commission are involved together with the Council. The institutions representing the units thus participate with co-decision making powers (medium involvement, score 2). Overall, the category "implementation of the central budget" scores 2; 2.

Control over implementation and right of discharge

Both the Council and the EP examine the Commission's report and also the annual report by the Court of Auditors. The EP has the right to discharge the budget (TFEU, Art. 19) following a recommendation from the Council. Within this framework, it can hear the Commission and ask for information, for instance regarding "the execution of expenditure or the operation of financial control

[163] After consulting the EP (TFEU, Art. 318). Moreover, according to the same article, the Council decides how the revenues of the budget are put at the disposal of the Commission. It takes that decision following a recommendation of the Commission and after consulting the EP and the Court of Auditors.

system" (TFEU, Art. 319.2)[164]. This is a generally formulated level of regulation, which leaves much discretion to the EP and is not easily and immediately verifiable (weak degree of regulation, score 1). Only the EP can exercise the right to discharge, not the Council. It is one of the very few cases in which the institutions representing the units are involved without decision-making power. Score 1 is therefore assigned. Overall, the category "control over implementation and right of discharge" scores 1; 1.

Surveillance of the central budget

The budget is surveilled by the Court of Auditors, whose members are selected by the Council (TFEU, Art. 286). The Court has to examine the revenues and expenditures of the Union and inform the EP and the Council accordingly. Art. 287 of the TFEU describes the tasks of the Court and the way it has to operate[165]. The Court prepares an annual report on the financial year. It also helps the EP and the Council in exercising their powers over budgetary implementation. On the basis of length, level of details, discretion left and the possibility to verify compliance, it is possible to classify this regulation as medium (score 2). The surveillance is performed by a supranational institution. There is a low involvement of the units, which only appoint the members of the Court of Auditors. The involvement is therefore low, without crucial decision-making powers (score 1). Overall, the category "surveillance of the central budget" scores 2; 1.

Balanced budget clause for units' budget

[164] The Commission has the duty to "react" to observations that the EP or the Council may raise on the implementation of the budget (TFEU, Art. 319.3), also "on the measures taken […] and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors" (*ibidem*).

[165] The Court has to check that all revenues have properly been transferred to the right institutions and allocated to the right policies. It also examines whether financial management has been sound. (TFEU, Art. 287.2). All EU institutions have to provide information if the Court so requires (*ibid*., p. 2).

In 2009, neither the treaties nor the SGP foresee a proper balanced budget clause for the units. Score 0 is therefore assigned both for the Index of Units' Regulation (IUR) and for the Index of Units' Involvement (IUI).

Numerical rules for the units' budget

The treaties state that MS shall avoid so-called excessive deficits (TFEU, Art. 126). The Protocol on the excessive deficit specifies that this means to have a ratio between deficit and gross domestic product (GDP) of no more than 3% and a ratio between debt and GDP of no more than 60 %. Exceeding these values is possible under certain conditions[166]. The Protocol also states that MS should regulate their national budgetary procedures in a way to make them compatible with the reference values. They should inform the Commission about the level of deficit and debt (Protocol on the excessive deficit procedure, Art. 3).

In 2009, also the amended Stability and Growth Pact (SGP) was part of the EU's fiscal constitution. Council regulation 1055/2005 introduced a differentiated "medium-term objective" for each MS, with some numerical benchmarks. The category is a strong regulation (score 3), because numerical targets are indicated, there is the need for the MS to adopt legislation and compliance can be verified. Crucially, the excessive deficit procedure also includes sanctions. The Council has the final say on these sanctions. The units are thus involved with unique decision-making powers (score 3). Overall, the category "numerical rules for the units' budget" scores 3; 3.

Expenditure rules for the units' budget

MS have to coordinate their economic policies (TFEU, Art. 2.3). They shall make their economic policy compatible with the objectives[167] of the Union and a number of broad guidelines formulated each year by the Council. Both the Union

[166] The reference values are included in the "Protocol on the excessive deficit procedure", annexed to and with the same legal value of the treaties. Ratio above 3 % may be accepted "unless *either* the ratio has declined substantially and continuously and reached a level that comes close to the reference value *or*, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value". The ratio of debt to GDP at market prices cannot exceed 60 %, "unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace".

[167] The objectives spelled out in Art. 2.

and the MS shall take "sound public finances" (Art. 119) as a guiding principle for their action. On the basis of a recommendation from the Commission, the Council prepares a draft of the general orientation of economic policy of the MS and of the EU. After the European Council has discussed and endorsed them, the Council issues a recommendation including those guidelines. The EP is only informed. The Council monitors and assesses the consistency of MS' economic policy with the guidelines. This "multilateral surveillance" foresees the duty of MS to provide information about the economic policy measures they adopt.

Overall, the category is a medium regulation (score 2), because specific targets are indicated, MS need to adopt legislation that complies with those targets but compliance does not foresee sanctions. It is the Council that makes the assessment of MS' economic policy. The units are thus involved with unique decision-making powers (score 3). Overall, the category "expenditure rules for the units' budget" scores 2; 3.

Surveillance of the units' budget

The Commission has the task of monitoring that MS comply with the numerical rules for the budget (deficit and debt). If it believes that a MS has or risks not meeting one or both criteria, the Commission can address an opinion to the Council, which decides whether an excessive deficit exists. The Commission and the Council also monitor the so-called stability programmes[168] (Reg. 1466/1997, Art. 3) and MS' adherence to their medium-term budgetary objectives (Reg. 1155/2005, Art. 3.2.c).

Overall, the category is a medium regulation (score 2), because numerical targets are indicated, there is a need for the MS to adopt legislation and compliance can be verified but not sanctioned. It is the Council that makes the assessment of MS' economic policy. The units are thus involved with sole decision-making powers (score 3). Overall, the category "surveillance of the units' budget" scores 2; 3.

[168] For non-euro area MS, they are called convergence programmes. A similar procedure is foreseen.

Procedure for non-compliance with units' regulation

If the Council assesses the existence of an excessive deficit procedure, it recommends the MS bringing the deficit within the reference values in a given period (Art. 126.7). Should the MS repeatedly not implement the recommendations, the Council can decide to apply sanctions, including to impose "a non-interest bearing deposit […] of an appropriate size until the excessive deficit has, in the view of the Council, been corrected" and to "impose fines of an appropriate size" (*ibid*.).

Moreover, if the Council believes that the stability programmes referred to in the SGP must be strengthened, it can ask the MS to do so. If it finds a divergence between the budgetary situation of a MS and its medium-term objective, the Council can recommend action to be taken (Reg. 1466/1997, Art. 6)[169]. Sanctions are in place for MSs persisting with an excessive deficit. They encompass a deposit up to 0.2 % of GDP.

Overall, the category is a strong regulation (score 3), because numerical targets are indicated and there are sanctions in place. It is Council that has the last say on the procedure leading to the adoption of those sanctions[170]. The units are thus involved with unique decision-making powers (score 3). The category "procedure for non-compliance with units' regulation" scores 3; 3.

[169] A similar procedure is foreseen for the convergence programmes in the case of non-euro area MS.

[170] The Commission is not within the decision-making process any more. The EP is only informed of the decisions taken (Art. 126.11).

Fiscal capacity in 2009

Amount of the central budget

The EU shall "provide itself with the means necessary to attain its objectives and carry through its policies" (TFEU, Art. 311). As for the revenue side, the first rule is that the EU budget shall be constituted by so-called "own resources". This expression is misleading as it does not refer to resources autonomously collected by the EU.

As for the amount of the budget, there are ceilings for payments and for commitments. Each of them is equal to approximately 1.20 % of the sum of all the MS' gross national income (GNI). This value is fixed and cannot (easily) be exceeded. Federal and non-federal comparison suggests us that the resources that the EU can spend are small in relation to its economic weight and compared to the central budget of consolidated federations (Hallerberg 2014). Also, the budget has a total ceiling and ceiling for each item. The sources of revenue are fixed and cannot easily be changed.

Following a Commission's proposal and a consultation of the EP, the Council can unanimously decide the amount of the own resources, including changes to them (introduction of new resources and elimination of preexistent ones). MS must approve the decision following their constitutional requirements (TFEU, Art. 173).

Overall, the category is a weak capacity (score 1), because precise numerical targets are indicated, the impact that such a small budget can have on expenditure is limited and the result is that EU has a constrained policy discretion. It is the Council that decides the amount of resources. The units are thus involved with unique decision-making powers (score 3). Overall, the combination of the indices scores 1; 3.

Composition of the central budget

The "own resources" made up the largest part[171] of the budget. They include: 1) traditional own resources (customs duties and sugar levies); 2) own resources based on a uniform rate applied to the value added tax base of each MS; and 3) own resources based on a uniform rate applied to the gross national income (GNI) of MS. Although nr. 3) is called an "additional" resource, it is actually the largest part of the budget (around 70% of the total[172]): it consists in financial contributions from the MS, which they transfer to the EU budget[173]. The sources of revenue are fixed and cannot easily be changed. Almost 2/3 of the budget are resources of the MS. This makes the centre dependent on the "willingness to pay" of the units. The procedure to change the composition of resources is the same as the one for changing the amount. Following a Commission's proposal and a consultation of the EP, the Council can unanimously decide the composition of the own resources, including changes to them (introduction of new resources and elimination of preexistent ones). MS must approve the decision following their constitutional requirements (TFEU, Art. 173).

Overall, the category is a weak capacity (score 1), because a precise procedure is foreseen, the impact that such a small budget can have on expenditure is limited and the EU faces a constrained discretion. It is the Council that decides the composition of resources. The units are thus involved with unique decision-making powers (score 3). Overall, the category "composition of the central budget" scores 1; 3.

Mandatory and discretionary expenditures

The EU can and shall spend only for the policies on which it has competence. In absolute terms, the total number of EU competences (exclusive, shared, supporting, coordinating or supplementary, and those of policy coordination) is

[171] In 2018, the own resources represented 97 % of the budget. Other revenues are the surplus of previous years, fines and taxes on salaries (https://www.consilium.europa.eu/en/policies/eu-budgetary-system/eu-revenue-own-resources/) (accessed 27 August 2019),

[172] See https://ec.europa.eu/info/about-european-commission/eu-budget/revenue/own-resources/national-contributions_en (accessed 27 August 2019).

[173] It is calculated on the basis of a rate applied to the GNI of each Member State. It can therefore slight vary every year.

broad[174]. However, being a federal union, the catalogue of exclusive competences, i.e. those in which "only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts" (TFEU, Art. 2), is rather limited, involving customs union, common commercial policy, competition (internal market), monetary policy (for the euro area), protection of marine biological resources and international agreements that enable the exercise of internal competences (TFEU, Art. 3). If the EU expanded its competences, it could also expand its possible items of expenditure. In the past, the first target of the budget was the Common Agricultural Policy (CAP). Today, the EU budget also finances competitiveness for growth and jobs; economic, social and territorial cohesion; regional development; sustainable growth; health; education and culture; consumer protection; space, trans-European networks, research and innovation; migration and border protection; justice cooperation and foreign policy. A part of the budget is spent on the EU's administration[175]. In spite of its comparatively limited competences, the list of possible items of expenditure is quite long. However, hardly can the low amount of resources at disposal in the budget be sufficient to cover these expenditures in a satisfactory manner. Last but not least, the budget can only be spent for specific items. General policies of redistribution and stabilization are not possible.

As a result of this, overall the categories "mandatory expenditure" and "discretionary expenditures" both mirror a weak capacity (score 1), because the items of expenditure are linked to a narrow catalogue of competences and a low amount of resources. Thus, the impact that such expenditures can have on the whole EU is limited. The expenditures must be financed by the revenues, which the analysis has shown to be rigid as for both amount and composition. Since the possible expenditures – related to the catalogue of (exclusive) competences and to the financial provisions – are enshrined in the treaties, changes are possible through treaty amendment only. The units are thus involved with unique decision-making powers (score 3). Overall, both categories score 1; 3.

[174] For the whole list, see Best (2019: 237).
[175] Salaries and pensions of the staff, schools for children of staff members, etc.

Equalization expenditure

The TFEU states that the EU shall reduce disparities between different types of regions[176], also through its structural funds[177] (TFEU, Art. 174). MS should conduct and coordinate their economic policy bearing this in mind (TFEU, Art. 175). If extraordinary measures beyond the economic, social and territorial cohesion policies[178], supported by the structural fund, are required, the EP and the Council shall decide according to an ordinary legislative procedure (TFEU, Art. 175). The same procedure applies for overall decisions about the structural funds (TFEU, Art. 177). Implementation of the funding programs is done by the Commission and the countries involved. The scope of the structural funds is quite broad. Compared to the EU budget as a whole, the amount addressed to them is quite relevant (ca. 30 % in the 2014-2020 MFF[179]). However, given the size of the EU and the comparatively low amount the budget, the funds at disposal are rather limited compared to proper equalization mechanisms of consolidated federations. Moreover, the system does not foresee redistribution of (large amount of) resources between the centre and the units and between the units. In other words, it is not a structurally institutionalized equalization mechanism like, for instance, the one in Germany.

The content of equalization expenditure shows that resources are numerically limited. Because of this, the impact that such a spending can have for favoring convergence of economic development among MS is comparatively limited. Lack of redistributive policies also means lack of political discretion. Fiscal capacity scores 1 ("weak"). Decisions about the structural funds are taken by the Council and the EP. However, to make a real equalization mechanism out of the cohesion policies that are currently in place, one would need a treaty change[180].

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[176] Specifically, the treaty mentions "rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps, such as the northernmost regions with very low population density and island, cross-border and mountain regions" (TEU, Art. 174).

[177] These funds are the European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; and European Regional Development Fund (TFEU, Art. 175).

[178] It is a shared competence of the EU.

[179] See https://ec.europa.eu/info/strategy/eu-budget/spending/topic/eu-funding-programmes-2014-2020_en (accessed 27 November 2019).

[180] Increasing the resources for cohesion policies can be done in the MFF, which however is decided only by the Council. Also in this case, the units' involvement would be "strong" (score 3).

This entails involvement of the units only: the score is 3 ("strong"). Overall, category "equalization expenditures" scores 1; 3.

Expenditure for financial assistance and expenditure conditionality

The MFF foresees a number of flexible instruments for unforeseen events[181]. These instruments are used for aid to non-EU countries, humanitarian operations, emergency situations in MS due to unforeseeable natural events, "clearly identifiable expenses which could not be covered by one or more budget headings without exceeding their expenditure ceilings[182], and to "help workers reintegrate into the labour market" (*ibid.*). The instruments are quite developed as for their scope but rather limited in their amount. They are enshrined in the MFF, which is decided by the Council.

In extraordinary circumstances[183], financial assistance through EU resources is also possible only if the Commission makes a proposal and the Council unanimously endorses it. A qualified majority is sufficient in case of natural disasters. In both cases, conditionality applies to the assistance. Again, the Council has the last say. Overall, the institutions representing the units are very much involved in expenditure for assistance instruments (strong involvement, score 3). As we have seen, most EU expenditures for financial assistance are linked to some form of conditionality. Given that assistance must occur through EU resources, the amount is quite limited. This questions the strength of its impact. Strong conditionality also means low discretion. This results in a weak fiscal capacity (score 1). Usually, the Council sets the conditions (strong involvement of the units, score 3). Overall, both categories "expenditures for financial assistance" and "expenditure conditionality" score 1; 3.

[181] Among them, we have the Emergency Aid Reserve, the EU Solidarity Fund, the Flexibility Instrument and the European Globalisation Adjustment Fund.
[182] See http://ec.europa.eu/budget/explained/budg_system/flex/flex_en.cfm#urgence (accessed 27 November 2019).
[183] The treaty speaks about a MS "in difficulties or (...) seriously threatened with severe difficulties caused by exceptional occurrences beyond its control" (Art. 103a).

Changes to the EU's fiscal constitution (2009-2013)

This section examines changes to fiscal regulation and to fiscal capacity from 2009 to 2013. The focus is on the structurally most significant changes. For reasons of space, in the following sections, in some cases the indicators of each main category are analyzed together.

Fiscal regulation and fiscal capacity in 2010

Following the outbreak of the financial crisis and drawing upon the legal basis of the TFEU[184], MS reacted with two provisional funds for financial assistance (May 2010). Thanks to the first one, called "European Financial Stability Mechanism" (EFSM), the Commission could borrow money (using the EU budget as a guarantee) and lend it to MS in difficulty. The conditionality is that a MS must facing or being threatened by severe financial disturbances due to events beyond their control.

After the Commission negotiates a macroeconomic adjustment programme with the Member State(s) at stake, the Council decides whether to grant the financial assistance. In the same period, the European Financial Stability Facility (EFSF), a private company regulated by Luxembourg law, was established. The aim was the same as the EFSM: to preserve the stability of the euro area through financial support to MS facing financial difficulties beyond their control. The conditionality was more articulated: MS must sign a memorandum of understanding (MoU) with the Commission (the latter acts on behalf of the other euro area MS) and assure "budgetary discipline and economic policy guidelines and their compliance with the terms of [… the] MoU" (EFSF Framework

[184] Art. 122.2 of the TFEU states that "when a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken".

Agreement 2010: 2). The Euro Group Working Group[185] must approve and the Commission must sign the MoU.

In our analysis, this measure affects the category "expenditure for financial assistance". The funds decide *ex ante* the amount of resources at disposal for assistance. These resources are therefore quite rigid. Their impact on the MS concerned, and on the stability of the euro area as a whole, is limited. The conditionality also foresees a low degree of discretion. Fiscal capacity therefore scores 1 ("weak"). Not only were the two mechanisms adopted by the MS. The institutions representing the EU (Council) and the euro area (Euro Group) respectively decide on the granting of financial assistance. The units therefore are involved with unique decision-making. The score is 3 ("strong"). Overall, the category "expenditure for financial assistance" remains unchanged (1;3).
Apart from the EFSM and the EFSF, in 2010 the EU did not adopt any other act that changed its fiscal constitution.

Fiscal regulation in 2011

In 2011, no measure affecting the regulation of the budget of the centre was introduced. Therefore, we turn to the regulation of the budget of the units.

Regulation of the budget of the units

Adopted in March 2011, the Euro Plus Pact is an international agreement that, among other things, strengthens fiscal discipline. It is relevant to the analysis because of a provision – later on formulated in a more explicit way in the Fiscal Compact (2012) – committing MS to introduce the fiscal rules of the SGP into national legislation. Crucially, it should happen in way "that it has a sufficiently strong binding and durable nature (e.g. constitution or framework law)" (Euro Plus Pact, p. 19). In addition to that, MS also committed to consult among each other prior to any major economic reforms having the potential for economic externalities (*ibid*., p. 14). Although the Euro Plus Pact advocates for a stronger

[185] The Euro Group Working Group has the task to provide financial assistance to the Euro Group and to its President. It encompasses representatives of the euro area MS, the Economic and Financial Committee, the Commission and the ECB.

role of the Commission in the EDP, the crucial decision-making continues to be with the Council.

These provisions affect two of our categories. "Numerical rules for the units' budget" continues to score "medium" (2) but gets very close to "strong" (3). Notwithstanding strong scores as for content (the Pact points to the specific numerical targets of the SGP) and for the impact (need to adopt legislation of durable nature), it does not fully meet the condition that compliance can be verified and sanctioned. "Expenditure rules for the budget of the units" is also affected because the MS agree on consultation before important domestic reforms. However, the overall score remains medium (2). The involvement of the units also remains unchanged (3). Overall, the two categories both score 2;3 each.

In 2011, five regulations and one directive (so-called "Six Pack") were adopted. Again, we do not focus on the detailed content but identify the information that introduce changes to our indicators. Each of the six texts is analyzed. If the indicators change from text to text, that will be pointed out. If not, we consider the index of the fiscal regime as it comes out from the "Six Pack" as a whole. Let us take the six legislative texts in increasing number – starting with the five regulations. It is interesting to note that four of them (from number 1173 to 1176) have been adopted through the ordinary legislative procedure, i.e. following approval by the Council and the EP. The fifth (number 1177), being the result of a special legislative procedure, has been adopted by the Council only.

Reg. No. 1173/2011 is about the "effective enforcement of budgetary surveillance in the euro area". The aim is to reinforce the preventive and the corrective arm of the SGP through sanctions (Reg. 1173/2011, Art. 1). In the preventive arm[186], the Commission can recommend the Council[187] to ask MSs to pay "an interest-bearing deposit amounting to 0.2 % of its GDP. A reverse qualified majority voting (RQMV) applies: within 10 days, the Council must actively reject that recommendation, otherwise it is deemed to be adopted (Reg.

[186] The preventive arm refers to "surveillance of the budget of the units".
[187] Since the regulation deals with the euro area, only members of the Council representing euro area MS vote (Art. 12).

1173/2011, Art. 4). In the corrective arm, if the Council decides that the MS that payed an interest-bearing deposit faces an excessive deficit[188], the Commission issues a deemed-to-be-adopted recommendation to the Council to ask for a non-interest-bearing deposit up to 0.2 % of its GDP in the previous year (Art. 5.1).

In case a MS has not adopted measures to reduce its deficit, the Commission issues a deemed-to-be-adopted recommendation to the Council to ask for a fine up to 0.2 % of its GDP in the previous year (Art. 6.1). There is another case in which there could be fines, namely when MS "intentionally or by serious negligence misrepresent deficit and debt data" (Art. 8.2) relevant for the EDP. The Commission can do investigation related to that point, asking MS for specific information (Art. 7.3). Both on the amount of the fines and the investigations the Commission can adopt so-called delegated acts, which enter into force if the EP and the Council do not oppose. The ECJ can review the Council's decision to impose fines (Art. 8.5).

In sum, Reg. No. 1173/2011 is relevant because it affects two of our indicators. First, "procedure for non-compliance with units' regulation". That indicator remains a strong regulation (score 3) because the content sets specific targets (MS must correct the deficit as the Council recommends), the impact results in the need to adopt legislation and a differentiated system of financial sanctions is foreseen. Secondly, "surveillance of the units' budget" turns out to become a strong regulation because the Content-Impact-Compliance model has a similar outcome.

The second regulation (Reg. No. 1174/2011) deals with "enforcement measures to correct excessive macroeconomic imbalances in the euro area" and establishes a system of sanctions (Reg. No. 1174/2011, Art. 1). Acting on a Commissions' recommendation, the Council can impose an interest-bearing deposit if it deems that a Member State has not complied with Reg. No. 1176/2011 and has not adopted the corrective measures it should have done. A move from deposit to fine[189] is possible when a Member State has twice sent a

[188] Or if the Commission has found a severe non-compliance with the rules of the SGP (Reg. 1173/2011, Art. 4).
[189] Both equal to "0.1 % of the GDP in the preceding year of the Member State concerned" (Reg. 1174/2011, Art. 3.5).

corrective plan considered to be not sufficient and the Council has, thus, declared non-compliance (Reg. No. 1174/2011, Art. 3). RQMV applies. The EP can start an economic dialogue with the other institutions.

The third regulation (Reg. No. 1175/2011) is "on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies". It amends Council Regulation (EC) No. 1466/97. The main novelty is a more strictly regulated process of economic policy coordination, called European Semester[190]. The Semester starts with the broad economic policy guidelines formulated by the Council. MS must submit stability (in the case of euro area) and convergence (in the case of non-euro area) programmes. Importantly, the Council "is expected to, as a rule, follow the recommendations and proposals of the Commission or to explain its position publicly" (Reg. No. 1175/2011, Art. 2-ab.2). Each MS has a "differentiated medium-term objective" (Reg. No. 1175/2011, Art. 2a) which nevertheless must be between a balanced budget and the 3 % threshold. It must be revised every three years and be part of the national budgetary framework leading to the adoption of national budgets (*ibid*.).

Euro area MS must send (by end of April) to the Council and the Commission "stability programmes" that better enable multilateral surveillance (Reg. No. 1175/2011, Art. 3). The Council examines their MTO and the "adjustment path" (Reg. No. 1175/2011, Art. 5) towards them. Specifically, annual growth of expenditure must be in line with the "medium-term rate of potential GDP growth, unless [it] is matched by discretionary revenue measures" (Reg. No. 1175/2011, Art. 5(a))[191].

The Council can ask the MS to modify their stability programmes with reference to the adjustment path towards the MTO. It also monitors

[190] The European Semester foresees that in March the Council decides the guidelines for the fiscal policies of the EU and the Commission issues a report on the economic situation of the MS. Each Member State informs the Commission on the fiscal policies it wants to adopt and how it complies with the deficit and debt criteria. The Commission assesses MS' plans and formulates country-specific recommendations (CSRs), discussed by the Council in June. After the latter has approved them, MS include the CSRs in the budget plan for the following year.

[191] However, "the excess expenditure growth over the medium-term reference shall not be counted as a breach of the benchmark to the extent that it is fully offset by revenue increases mandated by law" (Reg. No. 1175/2011, Art. 5).

implementation of the programmes. When monitoring, the Commission can notify failures of the MS to meet their adjustment paths and twice ask the Council to establish that insufficient actions has been taken. After the second time, "the decision shall deem to be adopted by the Council unless it decides, by simple majority, to reject the recommendation within 10 days of its adoption by the Commission" (Reg. No. 1175/2011, Art. 6.2). A similar requirement and procedure are foreseen for non-euro area MS with the programmes being called "convergence programme". The EP plays a consultative role within the "economic dialogues".

This regulation includes provisions regarding two categories. "Numerical rules for the units' budget" is affected by the provisions on the MTOs. The content includes precise numerical targets. The impact requires MS to adopt a specific act, namely the stability (or convergence) programmes. Compliance can be verified, but proper sanctions are not foreseen. Overall, the regulation is thus medium (score 2). Notwithstanding the RQMV, the Council has the last say. The involvement is decisive (score 3). Overall, Reg. No. 1175/2011 scores 2; 3. As far as "surveillance of the units' budget" is concerned, if the stability programmes are evaluated negatively, MS must correct them. Since this does not foresee the adoption of a second specific act beyond a revised stability programme, the level of regulation is low (score 1). Again, the Council has the last say (score 3). Overall, the category scores 1;3. Also "expenditure rules" has to be found in the regulation. The growth of government expenditure cannot increase over a certain level. Also, there is no need to adopt a specific act. The category scores 1;3. The "procedure for non-compliance with units' regulation" in case of non-action by a MS involves a final decision of the Council. Sanctions are not foreseen. The level of regulation is low (score 1). Overall, it scores 1; 3.

The fourth regulation (Reg. No. 1176/2011) deals with the "prevention and correction of macroeconomic imbalances". It is the task of the Commission to prepare an annual report with a set of macroeconomic indicators in order to assess possible (excessive) imbalances in the MS. If this is so, it informs the EP, the Council and the Eurogroup. The Council can adopt a recommendation to require the MS affected to take corrective action. Here, no specific act by MS

nor sanctions are in place. The Council decides on the opening or not of the procedure. Overall, the category "surveillance of the units' budget" scores 1; 3. A MS in which an excessive imbalance has been declared must submit a "corrective action plan" (Reg. No. 1176/2011, Art. 8) with the policies it has implemented or plans to implement. If the Council considers that the Member State has not adopted and implemented the right corrective plan, it shall declare non-compliance, setting a new deadline for a new corrective plan. Here, the content of regulation is defined by the recommendations of the Council. The Member State must adopt a specific act. However, sanctions are not foreseen. This results in a medium level of regulation (score 2). The Council decides about non-compliance (score 3, decisive involvement). Overall, the category "procedure for non-compliance with units' regulation" scores 2; 3.

Reg. 1177/2011 is about "speeding up and clarifying the implementation of the excessive deficit procedure". It specifies the meaning of a government debt which is "sufficiently diminishing and approaching the reference value at a satisfactory pace" (TFEU, Art. 126), namely that "the differential with respect to the reference value [60 %] has decreased over the previous three years at an average rate of one twentieth per year as a benchmark" (Reg. 1177/2011, Art. 2.1a). That is the condition for budgetary discipline. The EDP can now be opened also for the debt level. An economic dialogue with the EP can take place. Again, "the Council is, as a rule, expected to follow the recommendations and proposals of the Commission or explain its position publicly" (Reg. 1177/2011, Art. 2a). Another novelty is that the Member State shall act within six months from a Council recommendation under the TFEU and shall correct their excessive deficits within a year from its identification (Reg. 1177/2011, Art. 4). It shall inform both the Council and the Commission on discretionary measures taken or planned (Reg. 1177/2011, Art. 4a). Similarly, the Council should have up to two months to ask the Member State for measures to reduce the deficit after it has decided that no effective action has been taken under Art. 126(8) TFEU. Crucially, in an EDP "the [final] decision of the Council […] to impose sanctions shall be taken as a rule within 16 months" (Reg. 1177/2011, Art. 7) if the Member State does not act according to the recommendations of the Council.

Also the timeline to increase sanctions is now pre-defined (no later than two months afterwards). When those sanctions are taken, also a fine shall, as a rule, be given, with a fixed component of 0.2 % of GDP and a variable component (Reg. 1177/2011, Art. 11). The Council can also increase sanctions if the Member State in question has not brought its deficit back to the reference value.

This regulation covers the category "procedure for non-compliance with units' regulation". It is not immediately clear which strength of regulation to assign. The ease of applying sanctions would suggest even a strong level of regulation (score 3). As for the content, the MS shall take "effective action" and follow the recommendations of the Council, hence a specific action is identified. The third (strong) regulatory degree is assigned. The Council decides on sanctions: the units' involvement is strong (score 3). Overall, the regulation scores 3;3.

The last legislative text of the Six Pack is a Council directive (No. 2011/85/EU) "on requirements for budgetary frameworks of the Member States". It requires MS to set up systems of public accounting that give comprehensive information of governmental activity and are audit by independent actors (Council directive No. 2011/85/EU, Art. 3). MS shall have numerical fiscal rules that help complying with the rules of the treaties and are the basis for the budget law approved each year. National finances should be planned following a multiannual perspective (at least three years). In that regard, the MS shall establish "credible, effective medium-term budgetary frameworks" (Council directive No. 2011/85/EU, Art. 9) and "specifically, revenue and expenditure projections and priorities resulting from the medium-term budgetary framework […] shall constitute the basis for the preparation of the annual budget. Any departure from the provisions shall be duly explained" (Council directive No. 2011/85/EU, Art. 10). Missing the constitutional impact and the sanctions, the regulation is medium (score 2). It does not point to a specific policy involvement. Thus, we need to consider the amending involvement. Being the regulation a Council directive, that involvement is strong (score 3). Overall, the regulation scores 2;3 on the category "expenditure rules for the units' budget".

Fiscal capacity in 2012

After two temporary funds[192], in 2012 a stable fund was created to support euro area MS in financial difficulty based on "strict conditionality"[193] (TFEU, Art. 136): the European Stability Mechanism (ESM). The fund had an initial lending capacity of euro 500.000 million, provided by MS' transfers with a logic similar to the contributions to the EU budget.

The main decision-making body of the ESM is the Board of Governors, made up of the ministers of finance of the euro area MS, the European commissioner for economic and monetary affairs and the president of the ECB. Only the ministers of finance have a voting right. By mutual agreement[194], the Board decides on the granting, the terms and the conditions of financial assistance as well as on the lending capacity of the ESM. Within the Board, votes are weighted according to the subscription that each MS has done to the capital of the ESM.

If, upon a request of the Board of Governors, the Commission and the International Monetary Fund consider that there is need for financial assistance, they negotiate a macroeconomic adjustment programme with the MS in question. After the Council and the Board approve the programme, the Commission signs a MoU on behalf of the euro area MS. The Board of Directors, which comprises one representative per Member State, approves the financial assistance agreement. The Commission, the IMF and the ECB monitor compliance with the conditionality of the programme. While the Board of Governors decides whether to grant financial assistance, "the policy conditionality established under an enhanced surveillance or a macroeconomic adjustment programme should be consistent with the EU surveillance framework" (ESM Treaty), i.e. with the EDP and the regulatory framework of the treaties.

Overall, the resources of the ESM are modest. They entirely consist of national contributions, making the fund dependent on the MS and, particularly,

[192] The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF).
[193] Consisting in a "macro-economic adjustment programme" (*ibid.*) and a "rigorous analysis of public debt sustainability" (*ibid.*).
[194] It means "by unanimity of the Member States participating to the vote, i.e. abstentions do not prevent the decision from being adopted" (EUCO 2011: 21).

on those that contribute more. Also the procedure to obtain assistance is quite complex and entirely under the control of the institutions representing the units. The score of fiscal capacity is thus 2 ("medium") and the involvement of the units is strong (score 3, "full decision-making power").
This was the only significant measures that increased the fiscal capacity of the EU in the period from 2009 to 2012. The other measures are related to fiscal regulation.

Fiscal regulation in 2012

2012 marked the peak in regulatory strictness of the fiscal regime. The "Treaty on Stability, Coordination and Governance in the Economic and Monetary Union", commonly called "Fiscal Compact", epitomizes it[195]. The aims of the treaty are "to foster budgetary discipline[…], to strengthen the coordination of […] economic policies and to improve the governance of the euro area" (Fiscal Compact, Art. 1).

Firstly, the treaty specifies that MS shall have a balanced or surplus budget, meaning that "the annual structural balance of the general government is at its country-specific medium-term objective […], with a lower limit of a structural deficit of 0.5[196] %" of GDP" (Fiscal Compact, Art. 3.b). Moreover, the Commission decides the timeframe of convergence towards the MTO of each Member State. Such convergence must in any case be "rapid" (*ibid.*). A deviation from the MTO can be only temporary in the face of "exceptional circumstances". In case of significant deviation, an automatic corrective mechanism, proposed by the Commission, that forces MS to adopt countermeasures, shall be activated (Fiscal Compact, Art. 3.d).

Secondly, the Fiscal Compact is mostly well-known for its constitutional impact. The balanced budget, the exceptional deviation from the MTO and the automatic corrective measures

[195] It was signed in March 2012 and entered into force in January 2013. It applies to euro area MS (Fiscal Compact, Art. 1).
[196] 1 % in the case of MS whose debt is significantly below 60 % (Fiscal Compact, Art. 3.b).

"shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary process (Fiscal Compact, Art. 3.2).

Thirdly, MS with a debt over 60 % should reduce it an average of one twentieth per year as a benchmark[197]. The excessive deficit procedure can be opened also on ground of non-compliance with the debt criterion and not only with the deficit one (Fiscal Compact, Art. 4). MS are subject to detailed reporting obligations. They must not only submit programs of structural reforms, but also "report *ex ante* on their public debt issuance plans to the European Commission and to the Council" (Fiscal Compact, Art. 6). Thirdly, the treaty commits the parties to support the proposals and/or recommendations of the Commission in each stage of the EDP. However, this obligation is not in force if a qualified majority of the euro area MS is against the decision proposed or recommended (Fiscal Compact, Art. 7).

When the Commission assesses that a party has not incorporated the provisions into national law and has not set up an automatic correction mechanism (Fiscal Compact, Art. 3.2), one or more MS can bring the matter before the European Court of Justice (ECJ). This possibility is there also if another Member State considers that a party has not complied with Art. 3.2. In both cases, "the judgement of the Court of Justice shall be binding" (Fiscal Compact, Art. 8). Following a peer review mechanism, if a Member State believes that another Member State has not complied with the judgement of the ECJ, it may ask for financial sanctions. Should the ECJ assess non-compliance, it can impose on the Member State in question "a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0.1 % of its gross domestic product" (Fiscal Compact, Art. 8.2).

[197] MS in an EDP must submit programs of structural reforms to the Commission and to the Council. The latter shall both monitor implementation of the programmes "within the context of the existing surveillance procedures of the Stability and Growth Pact" (Fiscal Compact, Art. 5). Additionally, MS "shall report *ex ante* on their public debt issuance plans to the European Commission and to the Council" (Fiscal Compact, Art. 6).

Another novelty of the Fiscal Compact is the establishment of the Euro Summit as an informal institution. It includes the heads of State or government of the euro area contracting parties, the president of the Commission and the president of the ECB (the latter as observer). The aim is to discuss any issue related to the governance of the euro area. The president of the Euro Summit, elected "by simple majority at the same time the European Council elects its President and for the same term of office" (Fiscal Compact, Art. 12), shall report to the EP about the results of each meeting, to which the president of the EP may be invited.

The Fiscal Compact represents the strongest form of fiscal regulation adopted from 2009 to 2012. Its strength derives from its constitutional impact. It is the only legislative text that requires MS to change their constitutions. As a result, it also represented the most significant change to the fiscal constitution of the EU over that period. The category "balanced budget clause for the units' budget" scores 3. It impacts on MS' constitutions and compliance can be easily verified; sanctions are in place. Score 3 is therefore assigned. The involvement of the units is strong (score 3). The category "numerical rules for the units' budget" establishes detailed rules, requires the MS to adopt specific acts (not constitutional) and foresee sanctions. The level of regulation is strong (score 3). The Council has the final say (units' involvement scores 3). Overall, the category scores 3; 3.

Also the category "expenditure rules for the units' budget" is affected by the Fiscal Compact. MS must inform the Council and the Commission about plans to issue debt and about "major economic reforms" (Fiscal Compact, Art. 11) that they want to adopt, possibly also coordinating them with the other MS. No specific target is foreseen, no specific legislative act is required and compliance cannot be easily verified. The level of regulation is low (score 1). The units are fully involved (score 3). Overall, the category "expenditure rules for the units' budget" scores 1;3. As for "surveillance of the units', this category scores 2 (medium regulation). The Commission and the MS examine the constitutional incorporation and can put the issue in front of the ECJ. When one or more Member States does so, they can decide on their own. No sanction is foreseen.

Thus, the involvement of the units is strong (score 3). Overall, the category scores 2; 3. Last but not least, the "procedure for non-compliance with units' regulation" foresees a binding judgement by the ECJ and the possibility of financial sanctions. MS must "take the necessary means to comply with the judgement within a period decided by the court" (Fiscal Compact, Art. 8.1). The regulation has a clear content (the measures that the ECJ decides) and involves the adoption of a specific act by the MS. Sanctions are possible. As a result, the overall regulation scores 3; 3. The institutions representing the units are the sole decision-maker (strong involvement, score 3). Overall, the category "procedure for non-compliance with units' regulation" scores 3; 3.

Fiscal regulation in 2013

In May 2013, two regulations (so-called "Two Pack") were adopted through the ordinary legislative procedure, i.e. following co-decision of the Council and the EP. They apply to euro area MS only.

The first is Reg. No. 473/2013 introducing "common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area". It sets up a timeline for monitoring budgetary policies. By October 15 of each year, MS shall present to the Commission and to the Eurogroup a draft budgetary plan for the forthcoming year. The Commission assesses the plan by 30 November at the latest. The EP or the national parliaments can ask the Commission to present its opinion before them. MS must adopt their budgets plans for the following year by December 31. Moreover, they shall report *ex ante* to the Commission and to the Eurogroup the plan to issue debt.

If the Council assesses an excessive deficit, MS shall present to the Commission policy measures and structural reforms (so-called "economic partnership programme") through which they plan to overcome the deficit. Monitoring implementation of the programme is assigned to both the Commission and the Council. Moreover, if the Council decides that there is an excessive deficit, the Commission can request that the MS concerned are subject to reporting requirements. In that case, MS shall "report regularly to the

Commission […] the budgetary impact of discretionary measures taken on both the expenditure and the revenue side" (Reg. No. 473/2013, Art. 10.3). To involve the EP, an economic dialogue is established.

This regulation sets a detailed content. It also requires MS to adopt specific acts and submit specific documents. It does not establish sanctions. In our analysis, the following categories are affected: "expenditure rules for the units' budget", "surveillance of the units' budget" and "procedure for non-compliance with units' regulation". They all score medium regulatory degree (score 2). Since the Council is the decisive actor, the involvement of the units is strong (score 3) in all categories. Overall, each of them scores 2; 3.

The second regulation (Reg. No. 472/2013) is about "strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability". It sets up a stricter surveillance mechanism for euro area MS in financial difficulty. If a Member State faces a threat to its financial stability that could spill over in the rest of the euro area, the Commission can put it under enhanced surveillance (Reg. No. 472/2013, Art. 2). If the Member State concerned gets financial assistance from other MS, third countries, the EFSM, the ESM, the European Financial Stability Facility (EFSF) or from relevant financial institutions like the International Monetary Fund (IMF), the enhanced surveillance enters in force automatically.

According to Art. 3, "a Member State subject to enhanced surveillance shall […] adopt measures aimed at addressing the sources or potential sources of difficulties."[198] The EP and the national parliament of the MSs concerned are informed. The MS in question shall cooperate with the Commission by providing information about its financial system and by carrying out stress tests to see how the system reacts to macroeconomic and financial shocks. The Commission shall "conduct review missions in the Member State subject to enhanced surveillance to verify the progress made by that Member State" (Reg. No. 472/2013, Art. 3.5).

[198] This shall happen "after consulting, and in cooperation with, the Commission, acting in liaison with the ECB […] and, where appropriate, the IMF" (Reg. No. 472/2013, Art. 3).

Should the Commission consider that the financial difficulty continues, the Council, by QMV on a proposal from the Commission, may recommend precautionary corrective measures or the preparation of a draft macroeconomic adjustment programme. The national parliaments can exchange views with the Commission. The Council informs the EP of the content of its recommendation. When a Member State asks for financial assistance, the Commission examines whether its government debt is sustainable. The Member State shall, in cooperation with the Commission, develop a draft macroeconomic adjustment programme with annual budgetary targets. The aim is to have again normal access to financial markets. This programme is adopted by the Council, acting on QMV on a proposal from the Commission. The Commission monitors implementation of the programme, while the Member State in question cooperates by providing all relevant information. There is also the possibility for the Council to establish that the Member State does not comply with the adjustment programme. In this case, there shall be technical assistance by the Commission. As Art. 7.12 states, "the Council, acting on a recommendation from the Commission, shall […] approve the main policy requirements which the ESM or the EFSF plans to include in the conditionality for its financial support" and the Commission shall sign a Memorandum of Understanding (MoU) on behalf of the ESM or the EFSF which is consistent with the Council decision.

The regulation also deals with the period after enhanced surveillance. Surveillance of the Member State continues until 75 % of the assistance has been repaid. If the risk of financial instability or of fiscal sustainability persists, the Council, on a proposal by the Commission, may extend such post-programme surveillance, and recommend corrective measures to the Member State. In both cases, the Commission's recommendation shall "be deemed to be adopted" (Reg. No. 472/2013, Art. 14) unless the Council applies RQMV[199]. Eventually, Art. 18 states that "the European Parliament may invite representatives of the Council and of the Commission to enter into a dialogue on the application of this Regulation."

[199] Only euro area MS vote (Reg. No. 472/2013, Art. 15).

This regulation affects two categories: "surveillance of the units' budget" and "expenditure rules for the units' budget". Overall, each of them scores 2; 3 for the same reasons outlined above in the case of Reg. No. 473/2013.

6. Conclusion

This chapter has examined the evolution of the fiscal regime of the EU from the Rome Treaties to the financial crisis. The aim has been to trace the evolution of our two instruments of integration (fiscal regulation and fiscal capacity) and the degree in which the MS influence them. Until the Maastricht Treaty, the EU had some form of fiscal capacity but lacked fiscal regulation. More precisely, regulation of the market was in place, regulation of government (specifically, fiscal regulation) was not. The EU budget has increased over time as new policies entered the integration process. However, two of its properties have remained unchanged over the years. Firstly, financial contributions of the MS have always been part of the budget and have become increasingly important over time. Secondly, the key decision-making role of the Council over the amount and composition of the budget as well as over its approval has not changed. On the contrary, it has even increased when the MFF (1988) was introduced. The MFF makes the budget more rigid because it plans expenditures over a timeframe of five years on average. The Council alone approves it.

The dependency of the budget on national contributions have hindered the EP's attempt to become more influential over the EU budget. Although recognized as co-legislator since the Maastricht Treaty, it was only with the Lisbon Treaty that the EP has been put on the same footing with the Council. That treaty also recognized an equal status of the two institutions on budgetary approval. For our analysis, the Maastricht Treaty has been a turning point in European integration because fiscal regulation entered into force. In fact, the treaty includes a detailed regulatory framework that limits MS' discretion within numerical macroeconomic criteria, establishes procedures for non-compliance and enshrines other principles in order to avoid moral hazard and bail-outs.

Already before the crisis, our categories show us that the level of regulation was quite differentiated and strong. Differentiation emerges from the fact that all categories except for "balanced budget clause for the units' budget" were assigned to provisions of the fiscal constitution. Strength is visible from the fact that the assigned categories never score below 2 and two of them even score 3. That means that a system of sanctions was already in place. The anti-crisis measures adopted from 2009 to 2013 were almost all regulatory measures. As a matter of fact, out of 12 changes to the fiscal regime, 9 affected regulation and only 3 capacity. More specifically, where new regulation was introduced, all categories of our instrument were affected. "Balanced budget clause for the units' budget" experienced the most substantial change, moving from 0 to 3. "Surveillance of the units' budget" changed from 2 to 3. In sum, at the end of the analysis (2013), almost all categories scored the highest on fiscal regulation.

This sharply contrasts with fiscal capacity, which was weak before the crisis and remained as such at the end of the period that we considered. The low score of the categories related to the amount/composition of the budget and the possible expenditures is particularly impressive. During the financial crisis, only three measures have affected fiscal capacity. They have not increased the budget but simply introduced funds for financial assistance. These funds, as well as all categories related to the budget, are entirely in the hands of the MS. The striking fact is that units' involvement always scores the highest (3). Clearly, institutions representing the EU play a role both in regulation and in capacity. But if one looks at who has the ultimate decision-making power on the various elements (categories) of these instruments, we need to recognize the centrality of the Council (or the European Council). The picture is the same for the measures that have introduced more regulation.

The analysis points to a certain peculiarity of the EU. The centre is very much influenced by the units. In most cases, it is actually the units' that – through their institutions at central level – take decisions for the whole EU polity. All this suggests that the fiscal regime of the EU has a low degree of autonomy. However, we will be able to better argue for a dependency of the (regulatory)

fiscal regime of the EU if we compare it to other two federal polities. This is what chapter 3 and chapter 4 do.

Chapter 3 – The fiscal regime of the Federal Republic of Germany

1. Introduction

This chapter focuses on Germany. This country is particularly interesting for our analysis because it is the most dissimilar one. Indeed, while the starting point of the work – the EU – is a federal union and the other case study – Switzerland – as well, Germany is a federal state. Therefore, not only do we expect to find significant differences compared to the EU. Precisely due to these differences we expect to get relevant insights on the EU itself. Specifically, our hypotheses argue that in Germany capacity should be stronger than regulation. The units' involvement should be stronger for the latter than for the former.

The chapter is structured like the previous one with a difference. First, we point out the general features of the German Federation, especially the division of legislative competences. Secondly, we distinguish the institutions representing the interests of the centre (or of the federal polity as a whole) from those representing the interests of the units. Explaining the legislative process will be particularly useful because it affects the involvement of the units in the instruments of integration. In Germany, the chamber representing the interests of the centre or the citizens of the polity (the *Bundestag*) adopts most laws without the consent of the institution representing the interests of the units (the *Bundesrat*). Only when the constitution explicitly foresees it, laws need the consent of the *Bundesrat*. If this certainly affects the involvements of the units, it has to be seen whether it does so more on regulation or on capacity. As we will see, the units are an important veto player when it comes to constitutional amendments.

We then look at the articles of the German Basic Law about the fiscal regime, with the aim to identify those relevant for our two instruments of integration. Qualitative text analysis starts in 2009: besides the *status quo* of the fiscal constitution at that point, an amendment to the Basic Law is considered. The difference is that, unlike for the EU, the period before 2009 is not considered.

The reason is that Germany (and Switzerland) are case studies not on the same footing with the EU. The diachronic analysis only includes the period from 2009 to 2013, which is the same for all. The last section concludes.

2. General features of the German federation

The Federal Republic of Germany (*Bundesrepublik Deutschland*) is the EU's most populous and second most extended state. It belongs to the group of "well-established Anglo and European federations" (Galligan 2009: 266). From an analytical point of view, it can be considered "significantly federal" as it scores the highest both on Arendt Lijphart's index of federalism[200] and on the index of bicameralism (Krumm 2015)[201]. It is divided into 16 constituent units, called *Länder*, of different size, population and per capita income. The existence of autonomous Länder (states) and their participation into federal legislation cannot be part of a constitutional amendment[202]. The constitution therefore makes a firm legal commitment to the federal order (see Lijphart 1999). Amendments to the Basic Law require a 2/3 majority in the Bundestag and in the Bundesrat (BL, Art. 79.2).

Being classified as a federal state means a comparatively high degree of centralization which however needs the support of the *Länder* for implementing federal decisions. As a matter of fact, Germany represents an integrated or executive federalism (Lhotta and von Blumenthal 2015): the Basic Law establishes an "administrative division of powers" (Hueglin and Fenna 2015: 54), according to which the Federation (*Bund*) has extensive legislative competences[203], especially on framework legislation, while the *Länder* is assigned

[200] Also Australia, Canada, Switzerland and the United States score the highest on that index.
[201] For the sake of comparison, Switzerland scores the same on that index.
[202] See Art. 79, paragraph 3, of the Basic Law: "amendments to this Basic Law affecting the division of the Federation into *Länder*, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible". This article includes the so-called "perpetuity clause" (*Ewigkeitsklausel*). Another important federal principle is subsidiarity, outlined by Art. 30: "except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*". But the following article (31) adds that "federal law shall take precedence over Land law".
[203] The list of exclusive and concurrent competences of the Federation is to be found in Art. 71 and Art. 72 of the Basic Law respectively.

mostly implementing and administrative legislation. The Federation relies on the implementation of federal laws because it does not have a proper federal administration.

The *Länder* can legislate unless the Basic Law entitles the Federation to do so (BL, Art. 70). Where the Federation has exclusive competence, the *Länder* can legislate only if a federal law authorizes them. (BL, Art. 71). Within the concurrent legislative power, the *Länder* can legislate if the Federation has not done it. One of the reasons that justifies federal legislation in that case is the "establishment of equal living conditions throughout the federal territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest" (Art. 72.2).

3. The institutions of the centre: representation of the *Bund* and of the *Länder*

The assignment of a significant number of competences to the Federation is compensated by a strong participation of the *Länder* in federal decision-making. This happens mainly through the involvement of the second chamber, the Bundesrat, in the adoption of laws. Before we see how that happens, the distinctive features of the different institutions of the centre needs to be pointed out. As for the EU, we distinguish those that represent the *Bund* from those representing the *Länder*. The immediate difference is that there is only one executive institution, the Federal Government, representing the *Bund*, and not – like in the EU – a second one representing the units (European Council). We start with the federal legislative bodies.

The legislative institution representing the Federation (or its citizens) is the *Bundestag*. Being directly elected by German citizens every four years, it is currently made of 709 members and usually takes decisions by majority of the votes cast. The legislative institution representing the *Länder* is the *Bundesrat*. It is made of the members of the *Länder* governments who are appointed by these governments. The *Bundesrat* participates in federal legislation and administration, as well as in matters concerning the EU. Representation is

weighted: the *Länder* have a different number of members depending on their population[204]. The distinctive feature is that "the votes of each *Land* may be cast only as a unit […]" (BL, Art. 51.3). This means that there is no way for members of a given Land to vote differently in the *Bundesrat*.

Both the *Bundestag* and the *Bundesrat* can initiate legislation[205]. Although many laws need the approval of the *Bundesrat* (especially those that affect the *Länder*), federalism is asymmetric to the extent that it is the *Bundestag* that adopts most laws. These are called objection bills (*Einspruchsgesetze*) and are the ordinary type of federal law. Here, the influence of the *Bundesrat* is weaker than on laws where its consent is required. On objection bills the *Bundesrat* may call for a conciliation committee, composed of members of both chambers, that needs to come up with a new bill. The *Bundesrat* can object to that bill, i.e. put a veto on it. The Bundesrat can override the veto with the same majority through which it has been put[206]. If that happens, the law is approved (BL, Art. 77 and 78)[207].

The second legislative procedure is those of the consent bills (*Zustimmungsgesetze*). There, the Bundesrat has a proper veto because in case of disagreement with a proposed bill, that bill cannot be adopted. Consent bills are clearly indicated in the Basic Law. If a law does not specify its being a consent bill, it has to be considered an objection bill. It is possible to distinguish three types of laws that need the consent of the Bundesrat: amendments to the Basic Law, laws that affect the finances of the *Länder* and laws whose implementation impacts upon their administrative competences[208]. For us, the difference in the two procedures is important in order to determine the different strength of units' representation. In this case, the strength of units' representation

[204] The possible number of members of each Land sitting in the Bundesrat goes from a minimum of three to a maximum of six members. Hence, the Bundesrat does not follow the US "Senate model" which foresees the same number of representatives per state regardless of the demographic size of the state. It partially takes into account the population (Krumm 2015).
[205] The Bundesrat has the right to initiate legislation and can comment on a legislative proposal made by the federal government; it cannot do so if the proposal comes from the Bundestag.
[206] If the Bundesrat has adopted the veto with absolute majority, the Bundestag also needs absolute majority to override it. If the veto is accompanied with a 2/3 majority, the counter-veto also does.
[207] See also https://www.bundesrat.de/DE/aufgaben/gesetzgebung/zust-einspr/zust-einspr-node.html (accessed 28 November 2019).
[208] See previous footnote.

coincides with the strength of bicameralism. As Heller and Branduse (2014: 3) point out, "absent process [that defines how a bill becomes a law], bicameralism would indeed be meaningless; as part of process, even ostensibly weak bicameralism can have profound, if subtle, effects".

The federal government (*Bundesregierung*) is the executive institution of the centre. Germany is a parliamentary democracy with a system of fusion of powers: the executive needs the confidence of the majority of the legislative[209]. However, the confidence bounds the federal government only to the *Bundestag*. The Bundesrat has no role in the formation of the government. The federal government consists of the federal chancellor and the federal ministers. The chancellor is elected by the majority of the *Bundestag* upon proposal of the President of the Republic. He or she proposes the ministers to the President, who appoints them and can also dismiss them upon proposal of the same chancellor. He or she is also responsible for the general policy guidelines of the government[210]. The last central institution relevant for the analysis is the Federal Court of Audit (*Bundesrechnungshof*) which examines the budget and the accounts of the Federation. Being politically independent, it sends the results of its examination to *Bundestag*, *Bundesrat* and federal government.

The table below summarizes the institutions of the centre, their powers and the interests they represent.

[209] The government cannot operate without the majority of the *Bundestag*. However, it can be dismissed only if the *Bundestag* finds the majority for a new government (constructive vote of no confidence).

[210] The Federal President (*Bundespräsident*) is elected by a Federal Convention (members of the Bundestag and "an equal number of members elected by the parliaments of the *Länder* on the basis of proportional representation" (BL, Art. 54.3). He or she represents Germany on the international stage and signs international treaties (BL, Art. 59.1). The Federal Constitutional Court (*Bundesverfassungsgericht*) rules on the constitutionality of laws with respect to the division of competences between the Federation and the *Länder* and can also be appealed by individuals. More specifically, the Court shall rule on compatibility of federal law or Land law with the BL, compatibility of Land law with other federal law, on application of the Federal Government, of a Land government, or of one third of the members of the Bundestag; "in the event of disagreements respecting the rights and duties of the Federation and the *Länder*, especially in the execution of federal law by the *Länder* and in the exercise of federal oversight (Art. 93, paragraph 1, c. 3; and "on other disputes involving public law between the Federation and the *Länder*, between different *Länder*, or within a Land, unless there is recourse to another court" (Art. 93, paragraph 1, c. 4).

Table 4. Institutions of the centre in Germany

Institution	**Power**	**General representation of interests**	**Specific representation of interest**
Bundestag	Legislative	Centre	Federation (*Bund*)
Bundesrat	Legislative	Units	States (*Länder*)
Federal government	Executive	Centre	Federation (*Bund*)
Federal Constitutional Court	Judicial	Centre	Federation (*Bund*)
Federal Court of Audit	Supervisory	Centre	Federation (*Bund*)

Having seen the most important institutions of the centre has been conducive to the following sections which will analyse Germany's fiscal regime and the representation of interests within it.

4. The fiscal regime of Germany

Regulatory principles of the fiscal constitution

The fiscal constitution of Germany (*Bundesfinanzverfassung*) contains provisions affecting the federation (*Bund*) and the states (*Länder*). Each level of government shall finance the expenditures related to its responsibilities (BL, Art. 104a) and shall manage its budget autonomously and independently (BL, Art. 109.1). The rule is that the level of government that decides on expenditure has also to finance it. This is why when expenditure by the *Länder* simply follows instructions by the Federation, the latter (and not the former) have to provide the financial means. The Bundesrat has to give its consent to federal laws that foresee *Länder* expenditures.

In addition, Art. 109.4 states that "a federal law requiring the consent of the Bundesrat may establish principles applicable to both the Federation and the Länder governing budgetary law, the responsiveness of budgetary management to economic trends, and long-term financial planning". These provisions are a

weak regulation (score 1) because the content establishes broadly defined rules, the impact does not result in the need to adopt specific acts and compliance does not foresee sanctions. The provisions are part of the Basic Law, which only the two chambers jointly can amend. The above-mentioned Art. 109.4 refers to a consent bill, where the agreement of the Bundesrat is required. Because of this, the involvement of the units is co-decisive (score 2). Overall, the category "centre-units' principles of regulation" scores 1; 2.

Fiscal regulation in 2009

In its 2009 version, the Basic Law states that the federal budget "should be balanced with respect to revenues and expenditures" (Art. 110). The rule does not include further details. Since it is generally formulated, it does not need the adoption of specific act and it does not foresee sanctions, the regulatory degree is medium (score 1). In this case, to establish the involvement of the units, one needs to look at how to amend the Basic Law. The units are involved with co-decision making powers (score 2). Hence, overall the category "balanced budget clause for the central budget" scores 1; 2. There are no numerical rules, hence the category scores 0; 0.

As for expenditure rules, any expenditure must be included in the federal budget. Following the balanced budget clause, expenditures must be in line with revenues. They must each be linked to a specific period. Specific forms of expenditure are also possible if the budget for the following year has not been adopted yet[211]. In the face of lack of revenues, the federal government may borrow resources up to a quarter of the budget of the previous year in order to cover current operations. This regulation sets detailed rules in order to constrain federal expenditures, but does not mention an institution that plays a role in these constraints. Compliance can be verified but no sanctions are in force. The level of regulation is medium (score 2). Since these rules are part of the Basic Law,

[211] These expenditures can be made in order to: "a) to maintain institutions established by a law and to carry out measures authorized by a law; b) to meet the legal obligations of the Federation; c) to continue construction projects, procurements, and the provision of other benefits or services, or to continue to make grants for these purposes, to the extent that amounts have already been appropriated in the budget of a previous year" (BL, Art. 111.1).

the involvement of the units is co-decisive (score 2). Overall, the category "expenditure rules for the central budget" scores 2; 2.

We now look at the very important category about the "approval of the central budget". The annual budget must be part of a multi-year financial plan, divided per year and amount to be allocated (BL, Art. 110.2). Each budget law shall contain only provisions whose expenditures are covered – within the specific period indicated – by the revenues. The budget needs to be adopted every year, it must include all revenues and expenditures, all expenditures must be covered by the revenues, which means that revenues must equal expenditures[212]. This is a regulation with detailed rules, that requires a specific act but does not foresee sanctions. It can thus be considered as a medium form of regulation (score 2).

In principle, the *Bundestag* has the power of the purse (BL, Art. 110), which means that the federal budget needs the approval of the *Bundestag*. The procedure is as follows. The finance ministry takes note of what the ministries plan to spend. The federal government prepares a draft of the budget, which is sent simultaneously to the *Bundestag* and to the *Bundesrat* (BL, Art. 110.3). The *Bundesrat* must express its opinion on the draft within six weeks. The federal government adds a counter-opinion and sends the budget to the *Bundestag*. Here, the committee on the budget works on a slightly revised version on which the *Bundestag* then votes. The approved budget is sent to the *Bundesrat*. If the latter immediately approves, the budget is adopted. If not, it can call a mediation committee[213]. If the latter proposes amendments, the *Bundestag* has to vote again. Should the *Bundestag* not accept the amendments, the *Bundesrat* can veto the budget. However, the *Bundestag* can override the veto. The budget law is then adopted. The procedure shows that both the 1st and the 2nd chamber are involved in the adoption of the budget. However, the 2nd chamber (*Bundesrat*) has only a temporary and non-decisive veto because the budget law is an objection law. The 1st chamber (*Bundestag*) has the final say on budgetary approval. Hence, the institution representing the units is involved without decision-making power

[212] See also https://www.bundestag.de/parlament/aufgaben/haushalt_neu (accessed 28 November 2019).

[213] The mediation committee is composed of members from the Bundestag and from the Bundesrat.

(weak involvement, not on an equal footing, score 1). Overall, the category "approval of the central budget" scores 2; 1.

The federal government and the *Länder* implement the budget (units are involved on an equal footing, score 2). A federal law (consent law) sets rules for the budgetary policy of the Federation and the *Länder*. This law sets detailed obligations on a number of issues. Both levels of government need to adopt specific acts and compliance can be verified. Score 2 (medium regulation) is assigned. The involvement of the *Länder* in the implementation is on equal footing with the federal government. The level of involvement is thus medium (score 2). Overall, "implementation of the central budget" scores 2; 2.

The *Bundestag* controls implementation through its budgetary committee. Related to this, the federal government shall submit information about all revenues and expenditures of the previous year to the *Bundestag* and to the *Bundesrat* (Art. 114.2). The right of discharge, which is part of the control over implementation, is done by the *Bundestag*. The representation of the *Länder* is weak (score 1). The regulatory degree is medium because the provision establishes a specific object and requires the adoption of an act, but does not foresee sanctions. Overall, "control over implementation and right of discharge" scores 2; 1.

The Federal Court of Audit has the task to check the proper administration of public finances. It is a federal institution, whose powers are regulated by an objection bill which does not require the consent of the Bundesrat. Hence, the institution representing the units are involved without decision-making power (score 1). The degree of regulation is medium (score 2), again due to the lack of sanctions. Overall, the category "surveillance of the central budget" scores 2; 1.

Fiscal capacity in 2009

The Basic Law contains two general centre-units' principles of fiscal capacity. The first is that each level of government shall be able to finance its expenditures (BL, Art. 104a.1). The second is that the Federation and the *Länder* shall have an equal claim for revenues to cover their expenditures (BL, Art. 106.3.1). More specifically, "the financial requirements of the Federation and of

the *Länder* shall be coordinated in such a way as to establish a fair balance, avoid excessive burdens on taxpayers, and ensure uniformity of living standards throughout the federal territory" (BL, Art. 106.3.2). This is a medium form of capacity (score 2). It is part of the fiscal constitution (medium involvement of the units, score 2). Overall, the category "centre-units' principles of capacity" scores 2; 2.

The Federation has the exclusive competence to legislate on customs duties and on fiscal monopolies. Here, the *Länder* do not have a say. The Federation has a concurrent legislative competence on tax revenues that accrue to it partially. It is important to point out that, on concurrent legislation, the Federation has a preemption: the *Länder* can legislate only if the Federation has not done so (BL, Art. 72.1). The capacity to adopt tax legislation on two federally important items such as customs duties and fiscal monopolies points to a medium level of capacity (score 2). Changes to the legislative competence of the Federation require an amendment to the Basic Law. This in turn foresees a co-decisive involvement of the units (score 2). The degree of capacity is medium (score 2) because the exclusive legislative competence of the centre does not include many items. Thus, both its impact and discretion are limited. Overall, the category "legislative competence on the revenue side" scores 2; 2.

A long list of resources is assigned exclusively to the Federation[214]. The most significant are customs duties. Moreover, the Federation receives half of the share of the income and the corporation tax and can legislate on them (concurrent competence). Only on the turnover tax does the federal law need the consent of the *Bundesrat*. The Federation is also entitled to a part of the revenues from tax on trade (Art. 106.6). Overall, it has a significant amount of resources (two of the most important taxes, like income and corporation) that is clearly specified in the Basic Law. The category "amount and composition of resources" gets 3 ("strongly developed") because the content is clearly specified, the impact is potentially high and there is also a good deal of political discretion in the use of the resources. The units could affect only the turnover tax. All the other taxes are shaped by an objection bill adopted by the *Bundestag* only. To change the

[214] See BL, Art. 106.1. The article also lists tax revenues that go entirely to the *Länder*.

provisions to which these categories refer needs constitutional amendment, which in turn requires approval by the *Bundestag* and the *Bundesrat*. The units are thus represented on an equal footing with the centre (score 2). Overall, the categories "amount of the central budget" and "composition of the central budget" both score 3; 2.

Two properties of the central fiscal capacity of the Federation become clear. Firstly, unlike the EU, there is no numerical upper ceiling of resources that the budget can have. The amount of the budget is not quantitatively limited, even not in percentage as it is the case of the confederal budget in Switzerland. Secondly, the budget is made of constitutionally assigned revenues from taxes and not from transfers by the *Länder*. The Basic Law guarantees the Federation the right to collect its own taxes. Because of this, the category "own resources over transfers from the units" scores 3 (strong capacity). As for the involvement of the units, we need to consider constitutional amendment. The involvement is thus medium (score 2). Overall, the category "own resources over transfers from the units" scores 3; 2.

Having seen the centre-units principle of fiscal capacity and the revenue side, we move to the expenditure side. There are some "mandatory expenditures" of the Federation. As a general principle, the Federation shall finance expenditures related to acts that it has committed to the *Länder* (BL, Art. 104a.2). It shall also finance its own administrative expenditures (BL, Art. 104.5). Moreover, as far as the violations of international or European law is concerned, the Federation shall bear the costs together with the *Länder* (at a ratio of 15 to 85) (BL, Art. 104a.6). If the Federation requires specific facilities to be established in the *Länder*, it shall pay the costs (BL, Art. 106.8). The Federation also needs to cover money grants to be administered by the *Länder* (BL, Art. 104a.3), administrative expenditures for its realm of competences, and 85 % of the sanctions by the EU as a result of violation of EU or international law. This gives the centre a medium fiscal capacity (score 2) because the content of expenditures is clearly established, the impact it can have is medium and the amount of discretion is medium. The units have low involvement because the *Bundestag*

approves these expenditures in the budget law. Overall, the category "mandatory expenditures" scores 2; 1.

Moving to the discretionary spending power, in principle the Federation can spend in areas on which it has exclusive or concurrent legislative power. Since the catalogue of exclusive and concurrent legislative powers is quite long and detailed, the discretionary spending of the federation is in principle large. The content is not pre-determined, the impact it can have given the amount and composition of resources is significant and potentially wide and there is a considerable degree of discretion involved. The level of fiscal capacity is thus strong (score 3). Crucially, since on matters under exclusive competence and most matters under concurrent competence federal laws do not require the consent of the *Bundestag*, the involvement of the units can generally be considered low (score 1). Moreover, most discretionary expenditures are included in the budget law, adopted by the *Bundestag*. Because of that, the involvement of the units is weak (score 1) and the category "discretionary expenditures" overall scores 3; 1.

In Germany, a federal financial equalization system made of several steps is in place. Firstly, tax revenues are distributed between the federal and the *Länder* levels of government. Secondly, a horizontal distribution occurs, as a result of which each *Land* gets its share of revenues. Thirdly, richer *Länder* transfer an amount of resources to poorer *Länder*. Lastly, for what matters here, the Federation may "provide[s] for grants to be made […] to financially weak *Länder* […] to assist them in meeting their general financial needs (supplementary grants)" (BL, Art. 107.2)[215]. Financially weak *Länder* means those with a per capita income and a capacity to generate revenue which lies below the average of the other *Länder* combined. Here, a consent bill is required specifying the reasons and the conditions for the assistance. The units are involved with co-decision making powers (score 2). Moreover, to change the whole equalization system is possible only through constitutional amendment, which again involves the units with co-decision making powers (score 2). The

[215] The conditions are that the grant does not exceed "one quarter of a Land share" and are directed to "*Länder* whose per capita income from Land.

content of the equalization expenditures has an upper limit of resources; its impact is visible but some form of discretion constraints the overall level capacity. This is why the category "equalization expenditures" gets 2; 2.

In areas where it has exclusive competence, the Federation may financially assist the *Länder* for investments necessary to very general purposes, such as "overt a disturbance of the overall equilibrium, equalize differing economic capacities within the federal territory and promote economic growth" (BL, Art. 104b.1). The conditions are the limited duration of the assistance, the regular review of their use and the decreasing contributions. Details are to be regulated by a consent bill or "an executive agreement based on the federal budget law" (BL, Art. 104b.2). The *Bundestag*, the federal government and the *Bundesrat* shall be kept informed. The general purposes result in a broad content. There are some limits as for the timespan and the principles of contribution. Because of this, the impact can be considered limited. The level of fiscal capacity is thus medium (score 2). These expenditures are part of the budget law, in which the units are not involved with crucial decision-making power (score 1). Overall, the category "expenditure for financial assistance" scores 2; 1.

As we know from the anti-crisis measures adopted by the EU, conditionality is related to expenditures for financial assistance. In the category just analyzed above, the Federation may provide such assistance "to the extent that [the] Basic Law confers on it the power to legislate" (BL, Art. 104b). This generally formulated condition limits the discretion of the Federation and thus reduces its impact. As specified above, the involvement of the units is 1. Overall, the category "expenditure conditionality" scores 1; 1.

In 2009, the Bundestag and the Bundesrat amended the Basic Law introducing a debt brake (*Schuldenbremse*). The task of the following section is to examine which changes that brought to our system of categories.

Changes to the fiscal constitution (2009-2013)

The German fiscal constitution changed in 2009. Both the Federation and the *Länder* shall now comply with the requirements of budgetary discipline of the EU treaties (BL, Art. 109.2), considering the overall economic equilibrium. As

for the spending for financial assistance, the Federation can now assist the *Länder* also "outside its field of legislative powers in cases of natural disasters or exceptional emergency situations beyond governmental control and substantially harmful to the state's financial capacity" (BL, Art. 104b.1). The capacity for expenditure increases, hence the score moves from 1 (low) to 2 (medium). The units' involvement (score 1) is unchanged. Overall, the category "expenditure conditionality" now scores 2; 1.

That was the only change to fiscal capacity in 2009. On the contrary, important changes occurred to the regulation of the central budget. It must now be balanced "without revenues from credits" (Art. 109). As the Basic Law specifies, this means that it is not possible to borrow funds for more than 0.35 % in relation to the nominal GDP. Moreover, a borrowing of more than 1.50 % in relation to GDP needs to be reduced following the economic cycle (BL, Art. 115.2). In addition to that, "deviations of actual borrowing from the credit limits [balanced budget, 0.35 %] are to be recorded on a control account. The details on the adjustment of revenue and expenditures and the annual limit of borrowing need a federal law (objection law). Here, the *Bundesrat* is not involved. However, changing these balanced budget provision would mean to amend the Basic Law, and there the involvement of the units is medium (co-decision making power, score 2). The regulation has a detailed target and it requires the Federation to adopt specific acts to comply. However, a system of sanctions is not foreseen. The overall score is thus 2; 2. The same can be stated for "numerical rules on for the budget of the centre", which also scores 2; 2.

The "expenditure rules for the budget of the centre" did not change. The overall score 2; 2 remains the same. The procedure to approve the budget of the centre did also not change significantly: its score is still 2; 1. The only novelty is that a control account needs to be established to record the deviations of borrowing from the credit limits (BL, Art. 115.2). Also the categories "implementation of the budget of the centre" and "control over implementation and right of discharge" remained unchanged and equal to 2; 2. "Surveillance of the budget of the centre" instead slightly changed on the involvement of the units. The reason is an important institutional innovation of the 2009

constitutional amendment: the Stability Council (*Stabilitätsrat*), a joint body of the Federation and the *Länder*. Established through a consent bill, it is composed by the federal minister of finance, the finance ministers of the *Länder* and the federal minister for economic affairs and energy. The task of the Stability Council is to regularly monitor the budgets of the federation and the *Länder*. Within this framework, it also verifies Germany's compliance with the EU law on budgetary discipline (BL, Art. 109a).

Decisions affecting the *Länder* are taken with the vote of the Federation and 2/3 of the *Länder*. Here, the centre has a decisive role. Decisions affecting the Federation are taken with a majority of 2/3 of the members having the right to vote. Overall, both the institution representing the centre and those representing the units are involved (medium involvement, with co-decision making power, score 2). The novelty is thus that the budget of the centre is not controlled only by the Court of Audit, but also by the Stability Council. This is why involvement of the units moves from 1 in the Court of Audit (no decision-making power of the units) to 2 in the Stability Council (co-decision making power of the units). The level of regulation is medium because it does not foresee sanctions. Score 2 is assigned. Overall, "surveillance of the budget of the centre" scores 2; 2.

Let us analyze the regulation of the budget of the units. Like the budget of the centre, it shall "in principle be balanced without revenues from credits" (BL, Art. 109.3). The details are to be regulated by the *Länder* "within the framework of their constitutional powers, the proviso being that [the balanced budget] shall only be deemed to be satisfied if no revenue from credits is admitted" (BL, Art. 109.3). Hence, contrary to the budget of the Federation, the budget of the *Länder* does not admit any form of borrowing. These numerical rules imply a detailed content of regulation and impact directly on the "constitutional powers" of the *Länder*. However, in spite of the strong provision, the Stability Council cannot issue proper sanctions. Unlike the provision for the Federation, the balanced budget clause for the *Länder* does not immediately enter in force. The level of regulation is medium (score 2). Given that the Stability Council is involved, the involvement of the units results in co-decision making power (score 2). Overall,

like for the central budget, the category "balanced budget clause for the units' budget" and "numerical rules for the units' budget" both score 2; 2.

There is also some flexibility of the credit limits, which the Federation and the *Länder* can exceed in front of "natural catastrophes or unusual emergency situations beyond governmental control and substantially harmful to the states' financial capacity": a decision of the Bundestag is needed. Conditionality related to compliance with numerical fiscal rules foresees that the debts must be repaid in an appropriate amount of time (Art. 115.2). Together with the Federation, the *Länder* need to perform the obligations of Germany resulting from violations of international or European level, particularly in the framework of an excessive deficit procedure. Moreover, they may "introduce rules to take into account, symmetrically in times of upswing and downswing, the effects of market developments that deviate from normal conditions, as well as exceptions for natural disasters or unusual emergency situations beyond governmental control and substantially harmful to the state's financial capacity". The rules of the debt brake impact on the category "expenditure rules for the units' budget", which moves from 0; 0 to 2; 2. The reason for the score is the same as for the other two previous categories. Similarly, the Stability Council supervises also the budgets of the *Länder*. Like for the Federation, the categories "surveillance of the units' budget" and "procedure for non-compliance with units' regulation" now scores 2; 2.

5. Conclusion

This chapter has analyzed the fiscal regime of Germany. We have selected this country on ground of its being a federal state. In light of the working hypotheses, we have assumed the country to have a stronger degree of fiscal capacity than fiscal regulation. Moreover, we also considered it to have more capacity than the two federal unions (the EU and Switzerland). As for units' involvement, we did not have a hypothesis referred to the instruments of integration. However, if we accept that capacity always entails higher politicization, then the same assumption as for the EU should be true, i.e. that units' involvement is higher for capacity than for regulation.

In Germany, the centre has more competences than in the two federal unions. The list of exclusive competences is long; on concurrent ones, the centre has pre-eminence. However, the Federation depends on the *Länder* on implementation. Within the political system, the *Bundestag* plays a stronger role than the *Bundesrat*. Only the *Bundestag* votes the confidence to the federal governments. It adopts most laws; where laws need the consent of the *Bundesrat*, this must be expressly foreseen. Before the 2009 amendment, regulation was overall quite low: in the case of the units', it was not in place at all. On the contrary, capacity has traditionally been strong both on the revenue and on the expenditure side. The 2009 constitutional amendment clearly increased regulation. Capacity did instead not substantially change over the timeframe that we have considered.

Our assumptions have been correct. Germany has more fiscal capacity than fiscal regulation. It also has more capacity than the EU. Before assessing the relationship between its capacity and the one of the two federal unions, we need to approach Switzerland. It is already possible to note a difference compared to the EU. While in the EU units' involvement is stronger for capacity than for regulation, in Germany it is stronger for regulation than for capacity. The units almost always play a role in the regulation of the centre and of the units themselves. On the contrary, it is the *Bundestag* that has a stronger voice over the budget, particularly on its adoption and on the types of expenditures. The next section broadens the analysis focusing on Switzerland.

Chapter 4 – The fiscal regime of the Swiss Confederation

1. Introduction

This chapter focuses on Switzerland. We have chosen this country because it is one of the three cases that the literature has classified as federal unions, the other two being the EU and the United States. Our general expectation is that Switzerland's fiscal regime will be similar to the one of the EU. Specifically, regulation should be stronger than capacity. The units' involvement should be stronger for the latter than for the former.

The chapter is structured like the previous two. First, we will point out the general features of the Swiss Confederation, especially the division of legislative competences. Secondly, this will bring us to introduce a *sui generis* institution representing the interests of the centre (or of the federal polity as a whole): the People. This is linked to Switzerland's deep-rooted centrality of direct democracy, which is always on par with representative democracy. Next to federal bicameralism, at central level we thus have a second institution representing the citizens of the Confederation together with the National Assembly (first chamber). As we will see, the People are an important veto player when it comes to constitutional amendments.

We then look at the articles of the Swiss Federal Constitution about the fiscal regime, with the aim to identify those relevant for our two instruments of integration. The chapter does the same qualitative assessment and quantitative measurement as with the other two federal polities. The results are particularly interesting because they can start telling us something about a supposed peculiarity of the EU in the fiscal regime. In fact, comparing the EU to Germany could not do that because a federal union was put next to a federal state. Here, two federal unions are compared. In spite of the similarities between the EU and Switzerland, we are also aware of the differences: size of the federal polity, number and size of the units, to some extent less asymmetry in Switzerland than in the EU, to mention only some of them. However, given that the analysis looks at the structural properties of the polities and of their fiscal regime, classifying

both as federal union is already sufficient to undertake such a "most similar" comparison.

2. General features of the Swiss Confederation

Switzerland is a relatively small federal polity in the heart of Europe. Being organized in twenty-six Cantons (*Kantone*) as well as over 2,300 municipalities, it is characterized by a huge deal of diversity as far as language, religion and topography is concerned, up to the point that the expression "cultural federalism" (Hueglin and Fenna 2015) has been used to describe it. Developed as a league of states (a proper confederation), the basis for today's Switzerland is to be found in the constitution of 1848. Not much differently, *mutatis mutandis*, from the US experience, that constitution was the result of a dual compromise: a geographical, between catholic and conservatives on the one hand and protestant and laic Cantons on the other hand; and a political, between confederal and federal attitudes (Pfisterer 2015). The culture of negotiation and cooperation[216] still nowadays deeply rooted in the system – and most notably epitomized by the centrality of direct democracy – had its origins back then.

Although Switzerland is a federal polity, its official name – Swiss Confederation (*Schweizerische Eidgenossenschaft* in German) – is analytically misleading but points to the strongly decentralized organization of power. As a matter of fact, "the cantons are sovereign insofar as their sovereignty is not constrained by the Constitution" (Schmitt: 2005 355). This strong federal commitment is textually reinforced by the fact that the Confederation has only the tasks expressly assigned to it in the Constitution (Art. 42), specifically those "that the Cantons are unable to perform or which require uniform regulation by the Confederation" (Art. 43).

Unlike the EU treaties and the German Basic Law, there is no single list of exclusive or shared competences. The distinction exists, but it is spread over the constitution[217]. On concurrent competences, the Cantons can legislate as long as

[216] Some have used the expression "cooperative federalism" to describe the Swiss model (Schmitt 2005; Fleiner 2006).

[217] For instance, policies on customs, money and currency are an exclusive competence of the Confederation; maternity insurance is a concurrent competence (see SFC).

the Confederation has not done so. Limited competences are those in which the Confederation only sets out general principles. Parallel competence means that both levels of government can legislate (Schmitt 2005). The Cantons implement confederal[218] legislation. Given their far-reaching competences, they can also adopt legislation on a number of issues. Unlike Germany, Switzerland follows a legislative division of powers in which "each level of government is responsible for policy-making in its entirety – from policy initiation and formulation to legislation and to implementation and administration" (Hueglin and Fenna 2015: 53).

Confederal decision-making works with the interplay of different institutions of the centre. Again, we draw a distinction between those representing the centre (Confederation) and those representing the units (Cantons). Unlike the EU, where the dual executive also is a dual representation of interests, in Switzerland that duality applies to the legislative. As we will see, not only the Federal Assembly, but also the "People" can be considered a legislative institution representing the centre.

3. The institutions of the centre: representation of the Confederation and of the Cantons

The degree of decentralization supports the classification of Switzerland as a federal union like the EU. As in Switzerland "the Cantons […] exercise all rights that are not vested in the Confederation" (SFC, Art. 3), in the EU "competences not conferred upon the Treaties remain within the Member States" (TEU, Art. 5). There are other commonalities. Like the EU, Switzerland is a system of separation of powers, albeit a *sui generis* one, up to the point that the horizontal[219] separation has been called "hybrid" (Pfisterer 2015: 382) due to the compresence of parliamentary and presidential features. The parliamentary ones become

[218] We continue using the term "confederal" instead of "federal" to better mark the distinction with Germany.

[219] As far as the vertical separation is concerned, we have seen that powers are separated between the two levels of government in a way that benefits the Cantons. Internally, the Cantons are also organized through a separation of powers, albeit not always a very strict one (Schmitt 2005).

visible in that the federal executive is elected by the federal legislature. The presidential one, instead, emerges from the fact that after election there is no accountability mechanism that links the executive to the legislative. The relationship of confidence does no longer apply: as a result, the "Federal Council [the federal executive] cannot be dissolved by the Federal Assembly [the federal legislative]. In turn, the Federal Council does not have the power to dissolve the Assembly"[220] (Schmitt 2005: 358-59).

The legislative institution of the centre is the Federal Assembly. It is comprised by two chambers: the National Council (*Nationalrat*) and the Council of States (*Ständerat*). The National Council is directly elected through a proportional electoral system and has two hundred members. It thus represents the centre. The smallest cantons have only one representative. The Council of States is also directly elected and has two members per canton regardless of demography and size (although so-called "half Cantons" have only one), hence overall 46 members. Switzerland is a case of perfect or symmetric bicameralism because the two chambers have the same powers. As the constitution states, "decisions of the Federal Assembly require the agreement of both Chambers" (SFC, Art. 156.2). Since the Council of States adopts the senate model, it does not give representation to the units' governments like the German *Bundesrat* does. However, it can nevertheless be considered an institution representing the units even more if one considers that the "existence of a special relationship between the cantons and the Council of States has aided the cantons to maintain a degree of "committed" federalism in which the cantons have a voice and power" (Schmitt 2005: 360).

The centrality of direct democracy results in the wide use of *referenda* and in the recognition of "the People" as a federal decision-making actor. In our analysis, it can be thus considered an institution representing the centre and becomes relevant as far as constitutional amendment is concerned. Direct democracy is in competition and operates together with representative

[220] Moreover, the Federal Assembly elects each member of the Federal Council (councillor) individually, and not the body as a whole. The councillors are not members of the Federal Assembly.

democracy. In specific cases, mandatory *referenda* are foreseen. Some require the vote of the People and the Cantons and are approved with a majority of those who vote and a majority of the Cantons[221]: the most important are amendments to the constitution, but also "accession to organizations for collective security or to supranational communities; emergency federal acts that are not based on a provision of the Constitution and whose term of validity exceeds one year; such federal acts must be put to the vote within one year of being passed by the Federal Assembly" (SFC, Art. 140). The People may also submit proposals for a partial or total revision of the Constitution (Art. 138 and 139). Federal legislation (acts or decrees) may be subject to an optional *referendum* if a number of citizens or Cantons so requests. Hence, the People has to be considered an institution representing the centre and exercising legislative powers at confederal level.

The executive institution of the centre is the Federal Council. It exercises jointly the function of head of state and head of federal administration. It is comprised of seven members, all on equal footing and elected individually by the Federal Assembly. The Federal Council has to act as a collegiate body and provide a balanced representation of the geographical and linguistic variety of the Confederation. Like the US President, the Federal Council has not only executive but also important legislative functions. It can initiate laws and "submit […] drafts of Federal Assembly legislation to the Federal Assembly" (Art. 181). Furthermore, the Council may itself enact legislative provisions (ordinances) if the Constitution grants him the authority to do so. As in any federal government, it has a crucial role in implementing legislation of the Confederation.

The last institution of the centre is the Federal Supreme Court, whose members are elected by the Federal Assembly. It enforces confederal law and ensures its uniform application and watches over the confederal and cantonal constitutions. However, the Court is prevented from reviewing the constitutionality of federal laws or international treaties due to the centrality of direct democracy in both cases (SFC, Art. 189).

[221] The popular majority in a Canton determines its vote.

The table below summarizes the institutions of the centre, their power and the interests they represent.

Table 5. Central institutions in Switzerland

Institution	**Power**	**General representation of interests**	**Specific representation of interest**
National Council	Legislative	Centre	Confederation (*Eidgenossenschaft*)
Council of States	Legislative	Units	Cantons (*Kantone*)
Federal Council	Executive	Centre	Confederation (*Eidgenossenschaft*)
Federal Supreme Court	Judicial	Centre	Confederation (*Eidgenossenschaft*)
Federal Court of Audit	Supervision	Centre	Federation (*Bund*)

Having seen the most important institutions of the centre has been conducive to the following sections which will analyse Switzerland's fiscal regime and the representation of interests within it.

4. The fiscal regime of Switzerland

This section examines the evolution of the Swiss fiscal constitution from 2009 to 2013.

Fiscal regulation

"Balanced economic development" (SFC, Art. 100) is one of the objectives that the Confederation shall pursue. When dealing with their revenue and expenditure policies, it shall "take account of the economic situation" (SFC, Art. 100). If we apply our Content-Impact-Compliance (CIC) model, we see that the provision is formulated in general terms. The impact on the centre does not result in the adoption of a specific act and sanctions are not foreseen. This is why we assign a weak regulatory degree (score 1). These provisions can be changed by amending the constitution. In order to do so, both the People and the Cantons

need to give their approval. Thus, the involvement of the units is medium (score 2). Overall, the category "centre-units' principles of regulation" scores 1; 2.

A balanced budget clause without numerical rules is in force (SFC, Art. 126). Here, the same reasoning as for the "centre-units' principles of regulation" applies. Because of that, the category "balanced budget clause for the central budget" scores 1; 2. The category "numerical rules for the central budget" instead scores 0; 0. The expenditure rule foresees an upper ceiling based on the expected revenues. The ceiling can be increase in the face of "exceptional financial requirements". In that case, in the following years a compensation in the form of reduced expenditures will have to apply. This is a quite general regulation, which does not entail the adoption of a specific act and does not foresee sanctions (weak regulatory degree, score 1). A decision of the Federal Assembly – i.e. by both the National Assembly and the Council of States – is required. Hence, the units enjoy co-decision making power (score 2). Overall, the category "expenditure rules for the central budget" scores 1; 2.

The Federal Council prepares the budgetary plan (SFC, Art. 183). The central budget and amendments to it need approval by both chambers. Moreover, appropriate law provisions must make sure that budget and amendments are approved also if the two chambers disagree (SFC, Art. 156). The Federal Assembly (i.e. again both chambers) "determines the expenditures of the Confederation, adopts the budget and approves the federal accounts" (SFC, Art. 167). The Swiss budget is a "transfer budget", meaning that

> "hardly one third of the total expenditures of the [Con]federation is used for the tasks of the [Con]federation. More than two-thirds consist of transfers to sub-national government (cantons and municipalities), the social security funds (old age and war victim pensions, disability insurance) and other semi-autonomous public institutions" (Kraan and Ruffner 2005: 48).

The budget is thus implemented by both the Confederation (Federal Council[222]) and by the Cantons. The degree of regulation is medium (score 2) because both levels of government need to put in place either specific acts or a

[222] The Federal Council has also to ensure "orderly financial management" (SFC, Art. 183).

specific action but no sanctions are in place. The units are involved on the same footing with the Confederation (co-decisive involvement, score 2). Overall, the category "implementation of the central budget" scores 2; 2.

Control over implementation is done by the Finance Committees (one for each of the two chambers) which have the following functions: "oversight of the budget process (including the long-term fiscal situation), examination of the budget and supplementing spending, and reviews of the financial accounts of the State" (Kraan and Ruffner 2005: 62). A Financial Delegation, made up of members of the National Council and the Council of States (half of the Finance Committee of each chamber), examines the whole financial administration of the Federation: the budget, the execution and the accounting of federal funds. The degree of regulation is medium (score 2) because specific acts and/or actions are required but there are no sanctions in place. Since committees of both chambers are involved and also the Financial Delegation has a membership that goes across the National Assembly and the Council of States, the units are involved on the same footing with the centre (co-decisive involvement, score 2). Overall, the category "control over implementation and right of discharge" scores 2; 2.

The Swiss Federal Audit Office (part of the Federal Department of Finances but independent of the Federal Council) surveilles the budget. Since this office "is bound only by the federal constitution and the law", overall the surveillance of the federal budget foresees the involvement of the Confederation only (weak involvement of the units, score 1). Again, the degree of regulation is medium (score 2). Overall, the category "surveillance of the central budget" scores 2; 1.

The Swiss constitution does not foresee detailed provisions on the units' budget regulation. The only relevant part is that "the Cantons shall consider the economic situation in their revenue and expenditure policies" (SFC, Art. 100). Hence, the whole category "units' budget regulation" can be classified as "absent" (score 0). The cantons adopt most fiscal regulation in their own constitutions.

Fiscal capacity

The constitution does not have a provision guaranteeing the Confederation the necessary means to exercise its competences. As we will see below, the Confederation does have financial means, but a general provision that they have to be guaranteed is missing. We can thus derive only this implicit centre-units' principle of capacity. Score 1 (weak capacity degree) is assigned. Any provision with such principles would need constitutional amendment. There, the units have a medium involvement (score 2). Overall, the category "centre-units' principles of capacity" scores 1; 2[223].

The Confederation can legislate on "customs duties and other duties on the cross-border movement of goods" (SFC, Art. 133). It has the task of harmonizing direct taxes imposed by the three[224] levels of government (SFC, Art. 129). Again, this law would require the consent of both chambers. The items on which it can legislate are limited in number (score 1 – "weak" – for capacity) and fewer than in Germany. The involvement of the units is medium (score 2). Overall, the category "legislative competence on the revenue side" scores 1; 2.

Art. 128 of the SFC enumerates the items on which the Confederation has the right to levy taxes. Among them, we find the income and the value added tax. The interesting point is that upper percentage are established: for example, the Confederation cannot levy more than 11.5 % of income tax on private individuals. More specifically, the constitution assigns to the Confederation the right to levy direct taxes on: the income on private individuals up to a maximum of 11.5 %; the net profit of legal entities up to a maximum of 8.5 %value added tax "on the supply of goods, on services, including goods and services for personal use, and on imports, at a standard rate of a maximum of 6.5 % and at a reduced rate of at least 2.0 per cent" (SFC, Art. 130.1) Moreover, the Confederation can levy special consumption taxes on a number of items. Thus, the indicators "amount of the central budget" and "composition of the central budget" both score 2 (medium) because they have a specific content, the impact

[223] A law is required to approve "the main structural features of any tax" (SFC, Art. 127). In the case of central taxes, it would be a federal law. There, the units are represented with co-decision-making powers (score 2).

[224] Besides the Confederation and the Cantons, the third level is the one of the municipalities.

of that capacity is medium but discretion is limited by the upper limit of resources. Changes to these categories would entail amendments to the constitution, which gives the units a medium involvement (score 2). Overall, the two categories score 2; 2. "Own resources over transfers from the units" instead scores the highest (3) because the budget is not dependent from cantonal transfers. Again, the units' involvement scores 2. Thus, the category gets 3; 2.

The Confederation can spend only on policies over which it has competence, hence on a restricted catalogue. Fiscal capacity scores 1, units' involvement scores 2. As far as structural policy is concerned, the Confederation may financially support regions that are facing an economic threat (SFC, Art. 103). There is an equalization system with the aim for better horizontal (intercantonal) and vertical distribution of resources (SFC, Art. 135.1). The objectives of the equalization system are specified in detail in the constitution. It should reduce economic disparities of the cantons, guarantee them a minimum level of financial resources, support those cantons that have particularly strong burdens due to their geographical or demographical situation, encourage intercantonal cooperation and maintain their tax competitiveness (SFC, Art. 135.2). Both the Confederation and the Cantons shall provide the necessary funds (SFC, Art. 135.3). The Confederation shall contribute more. A regulation of the Confederation is required. The units are represented with co-decision making power (score 2). The fiscal capacity for equalization expenditures and for expenditures for financial assistance is medium (score 2), because the content is described in detail, there is a good deal of discretion allowed by the constitutional text but the impact that the equalization system can have is limited by the fact that, being the budget not very large, the amount of resources at disposal cannot be that significant. Since this system is enshrined in the constitution, the involvement of the units is medium (score 2). Overall, the categories "equalization expenditure" and "expenditures for financial assistance" both score 2; 2. Expenditure conditionality scores 1; 2.

Unlike the EU and Germany, Switzerland did not change its fiscal constitution in the period from 2009 to 2013. The categories examined in the constitution remained unchanged. Hence, a diachronic analysis is not possible.

The results are nevertheless incorporated and compared to the others. This is what the next chapter does.

5. Conclusion

This chapter has analyzed the fiscal regime of Switzerland. We have selected this country on grounds of its being a federal union. In light of the working hypotheses, we have assumed the country to have a stronger degree of fiscal regulation than fiscal capacity. Moreover, we have also considered it to have less capacity than our federal state (Germany). As for units' involvement, we did not have a hypothesis referred to the instruments of integration. However, if we accept that capacity always entails higher politicization, then the same assumption as for the EU should be true, i.e. that units' involvement is higher for capacity than for regulation.

In Switzerland, the centre has few expressly attributed competences; "all the rest" lies within the Cantons. However, unlike the EU, there is no single clear list of exclusive and concurrent competences: they have to be found within the constitutional text. On the former, unlike in Germany and the EU, there is no clear provision establishing that on some competences – the exclusive ones – only the centre can legislate. On the latter, like in Germany, the units can legislate insofar as the centre has not done so.

The Swiss polity is characterized by a dual legislative (the Federal Assembly and the People). The People are a crucial veto player on constitutional amendments. Unlike the EU and Germany, Swiss bicameralism is symmetric. This is most visible in the joint approval of the budget. As far as the instruments of integration is concerned, there is an overall low level of regulation. No units' regulation is in place at all because most units already have their fiscal rules at cantonal level.

Our assumption is not confirmed: capacity is stronger than regulation, and not vice versa. However, it is weaker than in Germany, which confirms our second assumption. The peculiarity of the Swiss case is the fact that units' involvement always scores 2 (medium). That is the result of the symmetric bicameralism. The

chapter has been shorter than the previous ones. This is due not only to the lower amount of relevant provisions in the fiscal constitution, but also to the fact that the constitution did not experience any change in the period from 2009 to 2013.

Chapter 5 – The fiscal regime of the EU and its autonomy from the Member States: a comparative federal analysis

1. Introduction

The three previous chapters have been analytical. This chapter instead aims to draw conclusions from the analysis, i.e. to assess the working hypotheses and to answer the two research questions. It will also establish a link to the foundational theories of integration. As a result, it therefore substantially concludes the work, although the last chapter (nr. 6) will go beyond summarizing the thesis and suggesting paths for future research.

This chapter is organized as follows. Firstly, it compares the instruments of integration with the involvement of the units. Section 2.1 compares fiscal regulation and units' involvement in the EU, in Germany and in Switzerland. Section 2.2 does the same for fiscal capacity. Secondly, the chapter moves from the comparison between the assessment and the measurement of the categories in the three federal polities to the construction of the indices. As explained in chapter 1, each index (Index of Fiscal Regulation, Index of Fiscal Capacity and Index of Units' Involvement) is the result of an arithmetical average of the sum of the categories. For each year and on the basis of the different legislative texts considered, the IFR and the IFC will be associated with their IUI. Further details of the measurement will be explained in the relevant parts of the chapter.

Section 4.1 of the chapter takes all the working hypotheses – those related to the first research question and those related to the second one – and assess them. By comparing the values of the indices, we will see which hypotheses are confirmed and which are not. This will be important for the next section (nr. 4.2), which will provide an answer to the two research questions: 1) which is the fiscal regime of the EU? and 2) How to assess the fiscal regime of the EU from a comparative federal perspective? Then, section 4.3 analyses the results in light of LIG and neofunctionalism. The very last section concludes.

2. Fiscal regulation, fiscal capacity and units' involvement

2.1. Fiscal regulation and units' involvement: the EU, Germany and Switzerland compared

Fiscal regulation and units' involvement in the EU

This section analyses the evolution of the categories for each of the three federal polities and according to the legislative acts considered. The analysis can be done from several perspectives. The first is the degree of regulation. None of the categories pertaining to the regulation of the centre foresees sanctions. The indicator "compliance" is not at its highest intensity. Regulation of the budget of the centre foresees precise numerical and non-numerical targets (indicator "content") and requires the adoption of specific acts (indicator "impact"), but explicit consequences for non-compliance are not in place. This is why the regulatory degree 3 ("strong") is never assigned. Whereas many anti-crisis measures have increased the regulation of MS, none has done so for the EU. The only measure that actually can be considered is the interinstitutional agreement of 2013, which however did only reinforce some principles related to budgetary discipline that were already in place in the TFEU. Beyond the rules on upper limits on expenditure, the EU budget does not have other numerical rules. This is why that category scores 0; 0. The right of discharge is the only category that scores 1 (regulatory degree 1) because no specific act and no specific sanctions are foreseen.

Let us turn to the regulation of the budget of the MS. There, the picture is radically different. Already before the financial crisis, a strong degree of regulation was in force: the excessive deficit procedure included in the TFEU, the Protocol attached to the treaty and the SGP. Numerical rules (3 % deficit and 60 % debt) required MS to constrain their economic policy. If they had breached the rules, they could have faced sanctions. The procedure foreseen in case of non-compliance with the numerical rules could end up with a non-interest-bearing deposit and/or with fines. All the other categories already started with a medium regulatory degree (score 2): they encompassed specific targets and

required MS to adopt a specific act or carry out a specific action. Interestingly enough, before the crisis there was no explicit provision on a balanced budget for the units: this is why the category scores "0". To be sure, the SGP – already in its original version (1997) – spoke of a "medium-term objective for the budgetary position of close to balance or in surplus" (Council Reg. 1466/97, Art. 2). But the MTO does not exist on an annual basis. Thus, there was no rules prescribing a constant and structural balanced budget.

The "balanced budget clause" category experienced a dramatic increase in degree with the Fiscal Compact. Actually, that treaty represented the strongest regulatory degree of the EU's fiscal regime. Its strength derives not only from the content, but from the combination of constitutional impact and compliance with sanctions. MS are required to permanently enshrine the balanced budget into their constitution and if they do not do so they can be financially sanctioned. For a federal polity, this is a striking power of the centre over the units. As a result, not only the balanced budget clause but also the procedure for non-compliance is extremely intrusive for the MS. It does not come as a surprise that both score 3 (strong regulation). The path dependency that is the result of such an upward layering is not to be underestimated: once in force, such a strong fiscal regulation will be difficult to change, if not to make it even stronger.

Let us turn to the involvement of the units. The impressive finding is that almost all categories are characterized by a predominance of the institutions representing the MS. This is true both for central and units' budget regulation. It is the MS through the Council that are the crucial decision-makers when it comes to approve the multiannual financial framework and the annual budget. It is the MS through the European Council that put a balanced budget clause in the treaties. The involvement of the MS is lower on implementation of the budget, on the right of discharge and on surveillance. On the first, also the Commission is involved. The second is assigned to the EP. Here, discharging is assigned to the directly-elected legislative institution following a traditional mechanism used also in other polities (federal and non-federal). Surveillance of the EU budget is entrusted to a supranational institution: the Court of Auditors. As it

becomes clear, on these categories the involvement of the units has a harder game to play.

The most impressive result coming out of the analysis is that the strongest regulatory categories (those that score "3") for the budget of the units also score the highest ("3") on units' involvement. This means that the strongest instruments of regulation for the MS are decided by the MS themselves. Those whose fiscal hands are tied are the very same that tie them. Here, supranational institutions like the Commission or the EP are never involved with final decision-making powers. This is true notwithstanding a number of mechanisms introduced in the anti-crisis measures aimed at reducing the political discretion of the Council in the procedure for non-compliance with the regulation of the units. Two of them are particularly relevant. The first is the reverse qualified majority voting (RQMV), according to which when the Commission recommends a specific action to the Council, this is deemed to be adopted unless the Council rejects it within a specific period of time. The mechanism applies also to the issuing of sanctions. The second one mandates the Council in an EDP to adopt sanction as a rule within 16 months if the MS does not react to its recommendation(s). Regulation of the units in 2013 differs from 2009 in its degree, but not in the units' involvement, which remained unchanged.

The table below shows the scores of the categories over the timeframe of analysis.

Table 6. EU: score of fiscal regulation and units' involvement from 2009 to 2013

Categories	**2009**	**2010**	**2011**	**2012**	**2013**	**Final**
	TEU TFEU	**No act**	**Six Pack Euro Plus Pact**	**Fiscal Compact**	**Two Pack Interinstitutional agreement**	
Centre-units' principles of regulation	2; 3[225]	2; 3	2; 3	2; 3	2; 3	2; 3
Balanced budget clause for the central budget	2; 3	2; 3	2; 3	2; 3	2; 3	2; 3
Numerical rules for the central budget	0; 0	0; 0	0; 0	0; 0	0; 0	0; 0
Expenditure rules for the central budget	2; 3	2; 3	2; 3	2; 3	2; 3	2; 3
Approval of the central budget	2; 3	2; 3	2; 3	2; 3	2; 3	2; 3
Implementation of the central budget	2; 2	2; 2	2; 2	2; 2	2; 2	2; 2
Control over implementation and right of discharge	1; 1	1; 1	1; 1	1; 1	1; 1	1; 1

[225] The first number refers to the score of regulation; the second refers to the score of units' involvement. "Balanced budget clause for the central budget" scores 2; 3, i.e. 2 for regulatory degree and 3 for units' involvement. The same way of writing applies to the following tables – also to those on fiscal capacity.

Surveillance of the central budget	2; 1	2; 1	2; 1	2; 1	2; 1	2; 1
Balanced budget clause for the units' budget	0; 0	0; 0	0; 0	3; 3	3; 3	3; 3
Numerical rules for the units' budget	3; 3	3; 3	3; 3 (TFEU; 2; 3 (Euro Plus Pact[226]) 3; 3 (Reg. 1173/11) 2; 3 (Reg. 1175/11) 3; 3 (Reg. 1177/11) Layering[227]: 3; 3	3; 3	3; 3	3; 3
Expenditure rules for the units' budget	2; 3	2; 3	1; 3 (Reg. 1175/11) 2; 3 (Reg. 1177/11) 2; 3 (Council dir. 2011/85) Layering: 2; 3	1; 3 Layering: 2; 3	2; 3 (Reg. 473/13) 2; 3 (Reg. 472/13) Layering: 2; 3	2; 3

[226] The score of the act in brackets is always the one before: 2; 3 (Euro Plus Pact).
[227] On layering of instruments of integration, see chapter 1.

Surveillance of the units' budget	2; 3	2; 3	3; 3 (Reg. 1173/11) 1; 3 (Reg. 1175/11) 1; 3 (1176) Layering: 3; 3	2; 3 Layering: 3; 3	2; 3 (Reg. No. 473/13) 2; 3 (Reg. No. 472/13) Layering 3; 3	3; 3
Procedure for non-compliance with units' regulation	3; 3	3; 3	3; 3 (Reg. 1173/11; Reg. 1174/11) 2; 3 (Reg. 1176/11) 3; 3 (Reg. 1177/11) Layering: 3; 3	3; 3	2; 3 (Reg. No. 473/13) Layering: 3; 3	3; 3

The following section presents the diachronic results of fiscal regulation and units' involvement for Germany.

Germany: score of fiscal regulation and units' involvement from 2009 to 2013

Germany shows some similar and some different results compared to the EU. Among the former, we find that like the EU treaties also the Basic Law in 2009 did not have specific numerical rules for the central budget. There was only a quite generic balanced budget clause establishing that expenditures must be covered by revenues. Also, like the EU, the rules on expenditures, on approval, implementation, discharge and surveillance of the budget resulted in a medium

regulatory degree (score "2") because compliance with the rules was not accompanied by explicit forms of sanctions.

The lack of sanctions is the reason why none of the categories scores the highest (3). The Stability Council is a controlling institution that performs functions similar to those of the Commission and the Council in the excessive deficit procedure. However, a crucial difference is that if the Stability Council assesses macroeconomic disequilibria in the Federation and/or in the *Länder*, it cannot issue proper sanctions. Pressure on the level of government at stake to comply with its recommendation works only according to a peer-review mechanism, i.e. through political pressure. No legal means of enforcement are at disposal.

The 2009 constitutional amendment, which introduced the debt brake, had strong implications mostly for the budget of the *Länder*. Whereas before that amendment the Basic Law did not foresee any explicit regulation of the *Länder*'s budgets, afterwards a strict balanced budget clause was inserted. Although its entry into force was postponed to 2020 to give the *Länder* enough time to organize compliance, the rule prevents any form of indebtedness. Similarly, albeit in a less strict form, a balanced budget for the federal budget was established, according to which "revenues and expenditures must be balanced without revenues from credits. This principle shall be satisfied when revenues obtained by the borrowing of funds does not exceed 0.35 percent in relation to the nominal gross domestic product" (BL, Art. 115.2). As a result of the constitutional amendment, all categories making up the regulation of the budget of the *Länder* got a medium regulatory degree (score "2").

Let us examine the involvement of the units. The first result to emerge is the absence of the score "3". This means that on no category do the institutions representing the interests of the *Länder* have alone crucial decision-making power. Amending involvement scores "2" because the Basic Law can be amended through approval of the *Bundesrat and* the *Bundestag*. Generally, institutions of both levels of government affect the regulation of the budget of the centre and of the units. The crucial exception is the approval of the federal budget. There a central role is played by the *Bundestag*, the institution

representing the centre. This is not at all to say that the *Bundesrat* is not involved. It is very much involved. However, since we are looking at the actor that ultimately decides on a certain category, we need to recognize that, although the *Bundesrat* is a veto player, the *Bundestag* can override its veto. If that happens, the law on the federal budget is adopted. This is why the category "approval of the central budget" gets a low involvement of the units (degree "1"). The *Bundesrat* is involved, but not on an equal footing with the *Bundestag*. Like for the EU, "surveillance of the central budget" is assigned to an institution of the centre, the Federal Court of Audit. That is the other category that scores "1".
The table below shows the score of the categories over the timeframe of analysis.

Table 7. Germany: score of fiscal regulation and units' involvement from 2009 to 2013

Categories	**2009**	**2009**	**2013**
	Basic Law	**Amendment to the Basic Law**	**Final**
Centre-units' principles of regulation	1; 2	1; 2	1; 2
Balanced budget clause for the central budget	1; 2	2; 2	2; 2
Numerical rules for the central budget	0; 0	2; 2	2; 2
Expenditure rules for the central budget	2; 2	2; 2	2; 2
Approval of the central budget	2; 1	2; 1	2; 1
Implementation of the central budget	2; 2	2; 2	2; 2
Control over implementation and right of discharge	2; 1	2; 1	2; 1
Surveillance of the central budget	2; 1	2; 2	2; 2
Balanced budget clause for the units' budget	0; 0	2; 2	2; 2

Numerical rules for the units' budget	0; 0	2; 2	2; 2
Expenditure rules for the units' budget	0; 0	2; 2	2; 2
Surveillance of the units' budget	0; 0	2; 2	2; 2
Procedure for non-compliance with units' regulation	0; 0	2; 2	2; 2

The following section presents the results of fiscal regulation and units' involvement for Switzerland. Since over the timeframe considered the Constitution was not amended, the analysis is not diachronic or, in other words, it shows the same results at the beginning (2009) and at the end of the period considered (2013).

Switzerland: score of fiscal regulation and units' involvement from 2009 to 2013

Switzerland shows some features similar to Germany. The general principles that affect both the Confederation and the Cantons show a weak degree of regulation. Also the balanced budget clause for the centre is formulated in a general way like Germany: "the Confederation shall maintain its income and expenditure in balance over time" (SFC, Art. 126). The other categories related to the budget of the centre (approval, implementation, right of discharge and surveillance) all score "2": they represent a medium regulatory degree, which foresees clear targets ("content") and the adoption of specific acts ("impact"), but with no sanctions ("compliance").

Like Germany, before the financial crisis Switzerland did not have in place any form of regulation of the budget of the units. However, the difference here is that the crisis did not trigger constitutional amendments on the point. The reasons for this might be vary: the fact that the Cantons themselves already regulate their budgets, also through debt brakes, the absence of macroeconomic imbalances comparable to the EU, with some highly indebted cantons and others

showing a surplus. Also the procedure to amend the constitution, with a double majority of the citizens and the Cantons, might have played a role. However, this is not what the present work wants to inquire.

Where involved, the units always participate with co-decision making powers. This is why the involvement degree "2" is always assigned. The most important category for which this is the case is the approval of the confederal budget. The Constitution provides that the Federal Assembly "determines the expenditures of the Confederation, adopts the budget and approves the federal accounts" (Art. 167). The Federal Assembly means both the National Council and the Council of States. Unlike the EU and Germany, the institution representing the units is involved with co-decision making powers in the adoption of the budget. The same co-decision-making powers are in force also when it comes to amend the constitution.

Table 8. Switzerland: score of fiscal regulation and units' involvement from 2009 to 2013

Categories	**2009**	**2013**
Centre-units principles of regulation	1; 2	1; 2
Balanced budget clause for the central budget	1; 2	1; 2
Numerical rules for the central budget	0; 0	0; 0
Expenditure rules for the central budget	1; 2	1; 2
Approval of the central budget	2; 2	2; 2
Implementation of the central budget	2; 2	2; 2
Control over implementation and right of discharge	2; 2	2; 2
Surveillance of the central budget	2; 1	2; 1
Balanced budget clause for the units' budget	0; 0	0; 0
Numerical rules for the units' budget	0; 0	0; 0
Expenditure rules for the units' budget	0; 0	0; 0

Surveillance of the units' budget	0; 0	0; 0
Procedure for non-compliance with units' regulation	0; 0	0; 0

Having seen how the categories in the three federal polities scored on fiscal regulation, we now examine results for fiscal capacity. We start again with the EU. Then we look at Germany and eventually at Switzerland.

2.2.Fiscal capacity and units' involvement: the EU, Germany and Switzerland compared

EU: score of fiscal capacity and units' involvement from 2009 to 2013

This section outlines the results of fiscal capacity and units' involvement for the EU. The analysis is diachronic, although changes to the fiscal regime were not as frequent as in the case of fiscal regulation.

In 2009, the fiscal capacity of the EU was modest. The "general principles of capacity" score "2", because the treaties state that the EU shall have the means necessary to reach its objectives. To this general provision, however, do not follow other strong categories related to fiscal capacity.

The amount of the budget is limited if compared to the GDP of the EU and to the budget of other federal polities. It is also numerically limited and "pre-committed" (Schelkle 2014: 107), because it cannot go beyond an upper threshold. But the greatest limit on the EU's capacity is the type of resources that can be included within it. The catalogue of possible resources is limited and close. The greatest part of those resources consists in financial transfers from the MS. The capacity of the central budget is predominantly the result of the capacity of its MS. Because of this, the amount of proper "own resources", i.e. autonomously collected and not consisting in national transfers, is comparatively low. It does not come as a surprise, then, that all these categories score "1". What makes up their "content" is a small amount; the impact they can have is therefore limited as much as the level of discretion over its use.

The expenditure side of the EU produces a limited fiscal capacity. The policies and items on which the EU can spend resources are comparatively few. Due to a strict bail-out clause, there is no proper equalization system in place like in Germany. Also expenditure for financial assistance is limited, given that it can occur only under certain conditions and with high majorities for approval. Overall, the level of expenditure conditionality is quite high, which in turn decreases expenditure discretion and, thus, fiscal capacity. Except for the "general principles of fiscal capacity", all categories score "1", i.e. have a weak capacity degree. The only exception is expenditure for financial assistance, which increased during the financial crisis because of mechanism to temporarily (and conditionally) provide support to MS in difficulty. Although still limited, the amount of resources at disposal increased ("content"), opening up the possibility of a higher "impact" of the instrument, even in the face of a low amount of "discretion".

To a weak fiscal capacity corresponds a strong involvement of the units. The involvement always scores "3". This means that the MS are the ultimate decision-makers on all aspects of the EU's fiscal capacity. Actually, it is most visible on the budget. It is MS that unanimously decide the system of own resources, i.e. the amount and composition of the budget. Changes need unanimity as well. Such a provision makes the budget not only nationally dependent but also very rigid. Furthermore, the Council approves the Multiannual Financial Framework and has the final say on the budget. The catalogue of discretionary expenditures of the EU could be enlarged by increasing its policy competences. But that would require unanimity among the MS. That is the reason for the strong involvement of the units (degree "3").

The table below shows the score of the categories over the timeframe of analysis.

Table 9. EU: score of fiscal capacity and units' involvement from 2009 to 2013

Categories	**2009 TEU TFEU**	**2010 EFSM EFSF**	**2011**	**2012 ESM**	**2013**
Capacity principles of the fiscal constitution	2; 3	2; 3	2; 3	2; 3	2; 3
Revenue side					
Legislative competence on the revenue side	1; 3	1; 3	1; 3	1; 3	1; 3
Amount of the central budget	1; 3	1; 3	1; 3	1; 3	1; 3
Composition of the central budget	1; 3	1; 3	1; 3	1; 3	1; 3
Own resources over transfers from the units	1; 3	1; 3	1; 3	1; 3	1; 3
Expenditure side					
Mandatory expenditures	1; 3	1; 3	1; 3	1; 3	1; 3
Discretionary expenditures	1; 3	1; 3	1; 3	1; 3	1; 3
Equalization expenditures	1; 3	1; 3	1; 3	1; 3	1; 3
Expenditure for financial assistance	1; 3	2; 3	2; 3	2; 3	2; 3
Expenditure conditionality	1; 3	1; 3	1; 3	1; 3	1; 3

The following section presents the results of fiscal regulation and units' involvement for Germany.

Germany: score of fiscal capacity and units' involvement from 2009 to 2013

Like the EU, also in the case of Germany the Basic Law contains some principles recognizing the need of the Federation to have the means necessary to perform its tasks. Germany is the only case in which categories related to fiscal capacity score "3". This points to an overall comparatively quite developed fiscal capacity of the centre.

The Federation has legislative competence to legislate on two fundamental taxes (customs duties and fiscal monopolies) and concurrent competence "with respect to all other taxes the revenue from which accrues to it wholly or in part […]" (BL). As for the amount of resources, besides the yield of fiscal monopolies, the revenue of a broad catalogue of taxes accrues to the Federation[228]. True, some taxes (for instance, income, corporation and turnover tax) are jointly assigned to the Federation and the *Länder*. Overall, this results in a significant amount of resources, through which the Federation can adopt policies that impact on the polity as a whole. Also, a large amount of resources also increases policy discretion. Because of this, a strong capacity degree (score "3") is assigned. The same is true for the category "own resources over transfers from the units". As it becomes clear, the federal budget has (significant) proper "own resources" and is not dependent on the transfers from the *Länder*.

The strong degree of fiscal capacity positively affects also the "discretionary expenditures" of the Federation, which score "3" as well. Moreover, the equalization system in Germany has not only a horizontal (between the *Länder*) but also a vertical (between the Federation and the *Länder*) dimension, with some grants that go from the centre to the units, albeit with some form of discretion. The only category that changed during the financial crisis is the one about "expenditure conditionality". The Federation can now "grant financial assistance even outside its field of legislative powers in case of natural disasters or exceptional emergency situations beyond governmental control and substantially harmful to the state's financial capacity" (BL, Art. 104b.1). This represents an increase in policy discretion, which translates in an increase of fiscal capacity.

Establishing the influence of the units over the categories of fiscal capacity is not always easy. Where the Federation has exclusive competence, usually it means that the *Bundestag* adopts legislation (objection law). Also, changes to the amount and the composition of the budget would require a constitutional amendment and, thus, a co-decision making involvement of the units (score "2"). However, since the Bundestag is the ultimate decision-maker on the budget, it

[228] The list is in Art. 106 of the Basic Law.

can be considered as such also on expenditures. By determining the budget, the Bundestag is also crucial on determining the expenditures of the Federation. Because of this, the categories of the expenditure side score 1 (weak) as for units' involvement.

The table below shows the score of the categories over the timeframe of analysis.

Table 10. Germany: score of fiscal capacity and units' involvement from 2009 to 2013

	2009	**2009**	**Final**
Categories	**Basic Law**	**Amendment to the Basic Law**	
Capacity principles of the fiscal constitution	2; 2	2; 2	2; 2
Revenue side			
Legislative competence on the revenue side	2; 2	2; 2	2; 2
Amount of the central budget	3; 2	3; 2	3; 2
Composition of the central budget	3; 2	3; 2	3; 2
Own resources over transfers from the units	3; 2	3; 2	3; 2
Expenditure side			
Mandatory expenditures	2; 1	2; 1	2; 1
Discretionary expenditures	3; 1	3; 1	3; 1
Equalization expenditures	2; 2	2; 2	2; 2
Expenditure for financial assistance	2; 1	2; 1	2; 1
Expenditure conditionality	1; 1	2; 1	2; 1

The following section presents the results of fiscal capacity and units' involvement for Switzerland.

Switzerland: score of fiscal capacity and units' involvement from 2009 to 2013

Like Germany, Switzerland assigns to the Confederation the means to carry out its task. The Confederation can legislate only on "customs duties and other duties on the cross-border movement of goods" (SFC, Art. 133). It has the task of harmonizing direct taxes imposed by the three[229] levels of government (SFC, Art. 129). Since the items on which it can legislate are limited, the capacity scores "1" (weak capacity degree). The amount and the composition of revenues score "2" (medium capacity degree). Actually, the Confederation is entitled to a number of yields but only with a limited upper percentage. This reduces the resources at its disposal. The largest part of the budget is own resources: there is no "transfer dependency" from the cantons. Thus, the category scores 3.

The expenditures follow the policies on which the Confederation has exclusive or concurrent competence. They score 1. The system of equalization and financial assistance is quite developed. There is no limit of resources assigned to it. A part comes from the Cantons and another part from the Confederation. With the same logic applied in the case of the other two federal polities, since it is the Federal Assembly that decides on the expenditures, the units are involved with co-decision making power (medium degree of involvement, score 2).

Table 11. Switzerland: score of fiscal capacity and units' involvement from 2009 to 2013

Categories	**2009 and 2013**
	Swiss Federal Constitution
Capacity principles of the fiscal constitution	1; 2
Revenue side	
Legislative competence on the revenue side	1; 2
Amount of the central budget	2; 2
Composition of the central budget	2; 2
Own resources over transfers from the units	3; 2
Expenditure side	
Mandatory expenditures	1; 2

[229] Besides the Confederation and the Cantons, the third level is the one of the communes.

Discretionary expenditures	1; 2
Equalization expenditures	2; 2
Expenditure for financial assistance	2; 2
Expenditure conditionality	1; 2

3. The Index of Fiscal Regulation, the Index of Fiscal Capacity and the Index of Units' Involvement

Having analyzed the categories, it is now possible to sum up the results in order to construct the Index of Fiscal Regulation (IFR), the Index of Fiscal Capacity (IFC) and the Index of Units' Involvement (IUI). For each case study, the overall index is obtained from the sum of the scores (from 0 to 3) of each category divided for the total number of categories. In other words, the index is the arithmetic average of the strength of the categories[230]. Thus, it will be expressed in a value between 0 and 3. When comparing the indices, this value should be considered in relative terms (one is bigger/smaller than the other). It should not be matched with the meaning the value had on each category. For instance, an IFR of 2 does not mean a "medium" strong regulation. It will simply be interesting to see how much the IFR for one country is different from those of other countries.

For the sake of simplicity, we consider the value of the index at the beginning (2009) and at the end (2013) of the analysis.

Table 12. Index of Fiscal Regulation (IFR) matched with Index of Units' Involvement (IUI)

	IFR 2009	**IUI 2009**	**IFR 2013**	**IUI 2013**
EU	1.76	2.15	2.07	2.38
Germany	0.92	0.84	1.92	1.84
Switzerland	0.84	1.00	0.84	1.00

[230] For example, if one takes the table about the Swiss fiscal capacity, the sum of the quantitative indicators of the categories (1+1+2+2+3+1+1+2+2+1) is equal to 16. The categories are 10. Hence, the Index of Fiscal Capacity is equal to 16 : 10 = 1.6. The same procedure is followed for the IFR and for the IUI.

Table 13. Index of Fiscal Capacity (IFC) matched with Index of Units' Involvement (IUI)

	IFC 2009	**IUI 2009**	**IFC 2013**	**IUI 2013**
EU	1.10	3.00	1.20	3.00
Germany	2.30	1.60	2.40	1.60
Switzerland	1.60	2.00	1.60	2.00

One can immediately identify that in the EU fiscal regulation is:

- stronger than fiscal capacity (IFR > IFC both in 2009 and in 2013);
- stronger than in the other two case studies (both in 2009 and in 2013); and
- stronger moving from 2009 to 2013.

Also, the EU's fiscal regime is strongly influenced by the institutions representing the units (the MS):

- IUI is always stronger than in Germany and in Switzerland;
- IUI has increased together with IFR and remained unchanged for IFC;
- in fiscal capacity, the IUI is particularly strong; this points to the well-known fact that the EU derives its fiscal capacity mainly from national financial transfers. MS control this policy at EU level. The involvement of the EP is limited.

However, we need to analyse the indices more in detail. Do the results confirm our working hypotheses? What can be answered to the research questions? The next two section address these issues.

4. Assessing the working hypotheses and answering the research questions

4.1. Assessing the working hypotheses

This section examines each working hypothesis put forward in chapter 1. We start with those referring to the first research question ("what is the fiscal regime of the EU?") and then continue with the one originated from the second research

question ("how to assess the EU's fiscal regime from a comparative federal perspective"). The table below formally summarizes the first group.

Table 14. Working hypotheses related to the first research question

First research question	**What is the fiscal regime of the EU?**
First hypothesis (relationship between instruments of integration)	IFR > IFC and IFC < IFR
Second hypothesis (relationship between instruments of integration over time)	IFR(2009) < IFR(2015) and IFC (2009) > IFC(2015)
Third hypothesis (relationship between instruments of integration and units' involvement)	IUI(IFC) > IUI(IFR)
Fourth hypothesis (relationship between instruments of integration and units' involvement over time)	If IFC(t+1) > IFC(t), then IUI(t+1) > IUI(t) If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t) in which IUI(IFC)(t+1) > IUI(IFR)(t)

The first hypothesis states that the two instruments of integration are unequally represented in the fiscal regime: the EU is more characterized by regulation than by capacity. Formally, this should be proved by a higher Index of Fiscal Regulation (IFR) compared to the Index of Fiscal Capacity (IFC). The hypothesis is confirmed for the starting (2009) and the final (2013) year of the analytical timeframe:

2009: IFR (= 1.76) > IFC (= 1.10) and 2013: IFR (= 2.07) > IFC (= 1.20)

The increase in IFR from 2009 to 2013 is not very significant. Less so the IFC. This points to our second hypothesis, which states that fiscal regulation at the beginning of the financial crisis was lower than at the end or, in other words, that regulation increased during the crisis. The same assumption holds true for fiscal capacity. Formally, this should be proved by a higher IFR in 2013 compared to 2009 and by a higher IFC in 2013 compared to 2009. The hypothesis is confirmed for regulation, less substantially so for capacity.

IFR: 1.76 (2009) < 2.07 (2013)
IFC: 1.10 (2009) < 1.20 (2013)

To be sure, also the increase in fiscal regulation during the financial crisis seems not to have been so high. One possible reason for this is that the index was already quite high before the crisis, so due to the principle of layering of legislation there was no need for further regulatory strictness. It also needs to be considered that the most relevant novelties were those included in one intergovernmental treaty, the Fiscal Compact. The other texts were often complementing existing rules whose categories already showed medium or strong degrees of regulation. The light increase in capacity is not surprising given that it regards only expenditure for financial assistance. No systemic change of the EU budget took place during the years of the financial crisis.

The third hypothesis introduces our third index, the Index of Units' Involvements (IUI). Due to a higher politicization linked to the policy transfer involved in fiscal capacity, it assumed that MS want to be more closely involved in all aspects of capacity compared to regulation. Formally, this should be proved by a higher IUI associated with IFC compared to the one associated with the IFR. The hypothesis is clearly confirmed both for 2009 and 2013.

2009: 3.00 > 2.15 and for 2013: 3.00 > 2.38

The results show that MS are closely involved in all aspects of fiscal capacity: the index is the highest high (3.00 out of 3,00). However, it is quite high, also in comparative terms, for regulation (in 2009, Germany and Switzerland had an IUI of 0.84 and 1.00 respectively; in 2013, 1.84 and 1.00 respectively).

The fourth hypothesis wants to check for a correlation between an increase in the index of the instruments of integration and a supposedly corresponding increase in the Index of Units' Involvement (IUI). Formally, for fiscal capacity we have: If IFC(t+1) > IFC(t), then IUI(IFC)(t+1) > IUI(IFC)(t). The results display that:

1.20 > 1.10 and 3.00 > 3.00

The hypothesis is not confirmed. Not only did fiscal capacity not increase significantly. There was no increase (and no decrease) of units' involvement. The result is plausible: the only increase in fiscal capacity was the result of new *ad hoc*, conditionally-linked instruments of financial assistance (the ESM) that were entirely controlled by the MS.

Formally, for regulation we have: If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t). The results display that:

2.07 > 1,76 and 2.38 > 2.15

The hypothesis is confirmed. The increase of regulation during the financial crisis occurred under an even stricter control by the MS.

In sum, two hypotheses are confirmed. As for the other two, they are half confirmed and half not.

Table 15. Overview of confirmed hypotheses for the first research question

First research question	**What is the fiscal regime of the EU?**	**Hypothesis confirmed**
First hypothesis (relationship between instruments of integration)	IFR > IFC and IFC < IFR	Yes
Second hypothesis (relationship between instruments of integration over time)	IFR (2009) < IFR (2015) and IFC (2009) > IFC (2015)	Yes for regulation, not significantly for capacity
Third hypothesis (relationship between instruments of integration and units' involvement)	IUI(IFC) > IUI(IFR)	Yes
Fourth hypothesis (relationship between instruments of integration	If IFC(t+1) > IFC(t), then IUI(IFC)(t+1) > IUI(IFC)(t)	No for capacity, yes for regulation

and units' involvement over time)	If IFR(t+1) > IFR(t), then IUI(IFR)(t+1) > IUI(IFR)(t)	

We now turn to the hypotheses related to the second research question. The table below formally summarizes them.

Table 16. Working hypotheses related to the second research question

Second research question	**How to assess the fiscal regime of the EU from a comparative federal perspective?**
First hypothesis (relationship between instruments of integration in federal unions)	IFR(federal unions) > IFC(federal unions)
Second hypothesis (relationship between instruments of integration in federal states)	IFC(federal states) > IFR(federal states)
Third hypothesis (relationship between fiscal capacity in federal states and federal unions)	IFC(federal states) > IFC(federal unions)
Fourth hypothesis (relationship between fiscal regulation in federal unions and federal states)	IFR(federal unions) > IFR(federal states)
Fifth hypothesis (relationship between units' involvement in federal unions and federal states)	IUI(federal unions) > IUI(federal states)
Sixth hypothesis (relationship between units' involvement and instruments of integration in federal unions)	IUI(IFC)(federal unions) > IUI(IFR)(federal unions)
Seventh hypothesis (relationship between units' involvement and instruments of integration in federal unions and federal states)	For fiscal regulation: IUI(federal unions) > IUI(federal states) For fiscal capacity: IUI(federal unions) > IUI(federal states)

The first hypothesis states that, in federal unions, fiscal regulation is stronger than fiscal capacity. Formally, this means that the Index of Fiscal Regulation is stronger than the Index of Fiscal Capacity, and specifically that in the EU and in Switzerland the IFR is higher than the IFC. The results show that:

For the EU: IFR(2009) = 1.76 and IFR(2013) = 2.07 and IFC(2009) = 1.10 and IFC(2013) = 1.20
For Switzerland: IFR(2009) = 0.84 and IFR (2013) = 0.84 and IFC (2009) = 1.60 and IFC (2013) = 1.60

The hypothesis is confirmed for the EU but not for Switzerland, so overall it is not confirmed.

The second hypothesis states that, in federal states, fiscal capacity is stronger than fiscal regulation. Formally, this means that the Index of Fiscal Capacity is stronger than the Index of Fiscal Regulation, and specifically that in Germany the IFC is higher than the IFR. The results show that:

For 2009: IFC (=2.30) > IFR (= 0.92) and for 2013: IFC (= 2.40) > IFR (= 1.92)

The hypothesis is confirmed. In spite of the harsh increase of fiscal regulation in Germany during the financial crisis, the degree of capacity also increased and managed to remain higher than the degree of regulation.

The third hypothesis states that fiscal capacity is stronger in federal states than in federal unions. Formally, this means that the Index of Fiscal Capacity in Germany is higher than in the EU and in Switzerland. The results show that:

For 2009: 2.30 (Germany) > 1.60 (Switzerland) > 1.10 (EU)
For 2013: 2.40 (Germany) > 1.60 (Switzerland) > 1.20 (EU)

The hypothesis is confirmed. In 2009, the Federation (*Bund*) had a stronger fiscal capacity than the Confederation (*Eidgenossenschaft*) which in turn had a stronger capacity than the EU.

The fourth hypothesis states that fiscal regulation is stronger in federal unions than in federal states. Formally, this means that the Index of Fiscal Regulation in the EU and in Switzerland is higher than in Germany. The results show that:

For 2009: 1.76 (EU) and 0.84 (Switzerland) > 0.92 (Germany)
For 2013: 2.07 (EU) and 0.84 (Switzerland) > 1.92 (Germany)

The hypothesis is confirmed for the EU but not for Switzerland: Germany's degree of regulation is lower than the one in the EU but stronger than the one in Switzerland.

The fifth hypothesis states that the units' involvement is stronger in federal unions than in federal states. Formally, this means that the Index of Units Involvement is higher in the EU and in Switzerland than in Germany.

EU:
For regulation: IUI in 2009 = 2.15 and IUI in 2013 = 2.38
For capacity: IUI in 2009 = 3.00 and IUI in 2013 = 3.00

Germany:
For regulation: IUI in 2009 = 0.84 and IUI in 2013 = 1.84
For capacity: IUI in 2009 = 1.60 and IUI in 2013 = 1.60

Switzerland:
For regulation: IUI in 2009 = 1.00 and IUI in 2013 = 1.00
For capacity: IUI in 2009 = 2.00 and IUI in 2013 = 2.00

If comparison is done across federal polities and instruments of integration within the same year, the hypothesis is confirmed. Both in 2009 and in 2013, the MS and the Cantons were more involved in the fiscal regime than the *Länder*.

The sixth hypothesis states that, in federal unions, the units are stronger involved in fiscal capacity than in fiscal regulation. Formally, this means that the IUI in the EU and in Switzerland is stronger for fiscal capacity than for fiscal regulation. The results show that:

EU:
For regulation: IUI in 2009 = 2.15 and IUI in 2013 = 2.38

For capacity: IUI in 2009 = 3.00 and IUI in 2013 = 3.00

Switzerland:
For regulation: IUI in 2009 = 0.84 and IUI in 2013 = 0.84
For capacity: IUI in 2009 = 2.00 and IUI in 2013 = 2.00

The hypothesis is confirmed. Both in the EU and in Switzerland, the IUI is higher for regulation than for capacity. The units shape the fiscal regime comparatively more when the resources and the decision-making process at the centre is concerned rather than the rules.

The seventh (and last) hypothesis states that, for both fiscal regulation and fiscal capacity, the involvement of the units is stronger in federal unions than in federal states. Formally, this means that the IUI matched with fiscal regulation in the EU and in Switzerland is higher than in Germany. Moreover, the same occurs with the IUI matched with fiscal capacity in the EU, Switzerland and Germany.

Fiscal regulation:
In 2009: IUI(IFR)EU = 2.15 and IUI(IFR)Switzerland = 1.00 > IUI(IFR)Germany = 0.84

In 2013: IUI(IFR)EU = 2.38 and IUI(IFR)Switzerland = 1.00 > IUI(IFR)Germany = 1.84

Fiscal capacity:
In 2009: IUI(IFC)EU = 3.00 and IUI(IFC)Switzerland = 2.00 > IUI(IFC)Germany = 1.50

In 2013: IUI(IFC)EU = 3.00 and IUI(IFC)Switzerland = 2.00 > IUI(IFC)Germany = 1.60

The hypothesis is confirmed. In sum, five out of seven hypotheses are confirmed. The table below summarizes the results.

Table 17. Overview of confirmed hypotheses for the second research question

Second research question	**How to assess the fiscal regime of the EU from a comparative federal perspective?**	**Hypothesis confirmed**
First hypothesis (relationship between instruments of integration in federal unions)	IFR(federal unions) > IFC(federal unions)	No
Second hypothesis (relationship between instruments of integration in federal states)	IFC(federal states) > IFR(federal states)	Yes
Third hypothesis (relationship between fiscal capacity in federal states and federal unions)	IFC (federal states) > IFC (federal unions)	Yes
Fourth hypothesis (relationship between fiscal regulation in federal unions and federal states)	IFR(federal unions) > IFR(federal states)	No
Fifth hypothesis (relationship between units' involvement in federal unions and federal states)	IUI(federal union) > IUI (federal state)	Yes
Sixth hypothesis (relationship between units' involvement and instruments of integration in federal unions)	IUI(IFC)(federal unions) > IUI(IFR)(federal unions)	Yes
Seventh hypothesis (relationship between units' involvement and instruments of integration in federal unions and federal states)	For fiscal regulation: IUI(federal union) > IUI(federal state) For fiscal capacity: IUI(fiscal union) > IUI(federal state)	Yes

What can we learn from confirmation or rejection of these hypotheses? Firstly, what becomes clear is that there is a certain pattern between regulation and capacity depending on the type of federal polity considered. Secondly, the EU scores highest on both instruments of integration. Thirdly, in spite of being a federal union, the EU does not perfectly fit in the hypotheses put forward for the very same fiscal unions. The next section collects and examines the results that the research has produced and uses them to provide an in-depth empirical answer of the two research questions. The empirical data is of course the texts considered. By so doing, we will shed light on the fiscal regime of the EU and draw our comparatively federal oriented conclusions.

4.2 Answering the research questions

This section answers the two research questions of the work. In order to do so, we consider them separately and do a comprehensive analysis that involves the three main analytical tools employed: the categories, the indices and the hypotheses. The work has been centered on the EU and thus we start with the research question related do that.

1. What is the fiscal regime of the EU?

The instruments of integration – regulation and capacity – have proved to be a useful tool to analyse the fiscal regime. They are the two main dimensions of it and are conducive to a comprehensive examination. The advantage is that they are broad and mutually exclusive concepts within which the whole range of fiscal provisions can be categorized.

The operationalization of the instruments of integration from concepts to variables has been reached through a number of categories. In the case of the EU, the categories well fitted the analysis because they could all be assigned at least to one legislative provision. The Content-Impact-Compliance Model has proved able to grasp regulatory differences between the texts; the same can be said for the Content-Impact-Discretion Model in the case of fiscal capacity. Overall, the indices have been useful to provide an answer to the research

question. It was possible to assign an IFR, an IFC and an IUI to each year based on the categories assigned to the legislation adopted in that year. In turn, within each year and text almost[231] all our categories and dimensions[232] found application. This points to a very good degree of generalizability of the indicators (meaning both categories and dimensions): categories and dimensions were created deductively and they were "appropriate" for the data considered. In other words, if one searched for the information the categories were supposed to grasp, it could actually reach findings within the texts. As a result, the categories well converged towards the three concepts that were at the centre of the analysis, i.e. regulation, capacity and units' involvement. When searching for those concepts as defined by the categories we provided, the concepts could be detected within the texts. Overall, the tools used to undertake the QTA did thus display a good degree of reliability. The three indices covered the data in a way that enabled a comprehensive answer to the research question (on the second research question, see the next section). The categories and the dimensions covered the data in a way that enabled to create the indices.

There is no doubt that the fiscal regime of the EU is one predominantly characterized by regulation both in absolute and in relative terms (compared to fiscal capacity and compared to the two case studies). In absolute terms, its strength derives from the multiple dimension of the concept. It encompasses a number of rules that affect the EU (regulation of the centre) and the MS (regulation of the units). Within each level of government, rules are very differentiated as they regulate all constitutive elements of the revenue and the expenditure side. They are detailed as for the content, including specific, clearly identifiable and often numerical targets. As for the impact, they are not only negative in the sense that they prevent an action; they are also prescriptive in a positive sense, requiring the actor to whom they are directed to adopt a specific legislative act or put in place a specific action. Last but not least, mechanisms to

[231] The EU does not display numerical rules for the central budget. Hence, in this case the related category did not find application and 0;0 was assigned. However, the lack of this category in legislation as shown by the absence of positive numbers was itself a strong finding. Apart from that, the other categories co-varied in quite a systematic and not random way.

[232] As outlined in chapter 1, with "dimensions" we mean content, impact and compliance for regulation, and content, impact and discretion for capacity.

assure compliance with the rules are in place and often foresee concrete sanctions. We are aware of the difference between formal sanctions and the actual issuing of them. However, what is relevant for this analysis is the fact that the texts foresee these sanctions for different categories: for the balanced budget clause, for the numerical rules and for the expenditure rules. The financial crisis has even increased fiscal regulation. Two factors epitomize it. The first is the constitutional impact of regulation. MS were required to change their constitutions to incorporate new rules on balanced budget. In a federal polity, the constitutional impact on the units of rules coming from the centre is definitely uncommon. As far as constitutional relations between orders of government is concerned, the units have a say in the constitution of the federal polity but their autonomy is protected through their own constitutions. This is why constitutional impact represents the most intrusive form of regulation in a federal polity. The reasons are both symbolic and substantial. As for the former, the constitution is the formal manifestation and the material expression of national sovereignty. It is the fundamental rules that states give themselves. As for the latter, requiring a state to change its constitution heavily constraints it due to the fact that, at least in the EU, many constitutions are rigid, i.e. difficult to change.

In sum, the fiscal regime of the EU is strongly regulatory. Regulation is strong as for the content, the impact on MS and the mechanism to assure compliance. During the financial crisis, changes to the fiscal regime have been changes in regulation, meaning towards stronger regulation. However, given that already with the 2009 Lisbon Treaty the degree of regulation was quite strong, the increase has been comparatively weaker than for Germany.

The fiscal regime of the EU does not show a balance between the two instruments of integration. For regulation, the highest value of the index is 2.07, for capacity 1.20. The EU can do little both on the revenue and on the expenditure side of its budget. On the revenue side, the main problem is its comparatively small amount of resources. It is small with regard both to the overall weight of its economy and to the policies for which it has competence. Another criticality is the composition of resources, which is fixed and very

difficult to change. Moreover, the budget is strongly dependent on the contribution of the MS. Following our Content-Impact-Discretion Model, we had to assign almost always the lowest score. There are no provisions granting the EU substantial prerogatives in the fiscal regime. The most significant shortcut is the inability to legislate on the resources other than national contributions in a way independent from the MS. As a result, the impact the fiscal capacity can have on the EU as whole in terms of policies is limited. This is so because the political discretion inherent in the use of resources is constrained as much as possible by the treaties. Ordinary redistributive policy is not possible. During the financial crisis, the increase of capacity was overall modest and triggered only by the emergency context. We have observed from the text – and the indices confirm it – that the increase in regulation during the crisis has not been matched by a corresponding increase in capacity. In the EU, the two instruments have proved to be mutually exclusive: both before and after the crisis, high values of regulation co-existed with low values of capacity.

The key argument of this work is that the instruments of integration need to be proved against their influence from MS. We wanted to inquire how autonomous the fiscal regime is from its MS, believing that this was necessary for the very debate about the "empowerment" of the EU. A large budget can be adopted for policies with a truly EU-wide impact if its deprived of strong national influence. This is why the work introduced the Index of Units' Involvement. Once the multidimensionality of regulation and capacity had been outlined, it wanted to assess MS' involvement in each of those dimensions.

Units involvement has been conceived in strict terms, i.e. with a focus of the institutions that bear ultimate responsibility for an action or the adoption of a certain act. The picture was clear: both fiscal regulation and fiscal capacity are almost entirely controlled by the MS. It was most evident on treaty amendment. In spite of many scholars claiming for a co-decision-making role of Council and EP in the adoption of the budget, we argued that at the very end the ultimate decision-maker is the Council, i.e. the institution representing the units. Also, for regulation of the units the analysis showed that various mechanisms introduced by the anti-crisis measures have not reduced the centrality of national

governments. The reversed qualified majority voting, the automaticity of sanctions, the commitment to follow the Commission's recommendation reduced but ultimately did not alter the fact that it is the Council that decides on all main dimensions of the regulatory framework.

As far as fiscal capacity is concerned, we found a similar picture. The Council alone decides the amount and the composition of the budget. Adopting (with unanimity) the multiannual financial framework, it also decides the long-term expenditure priorities of the EU. This is not to say that the Commission and the EP do not play a role. They do, but if one looks for the ultimate decision-maker on the categories that we examined, we cannot but find it in the Council. During the financial crisis, it was again MS that set the conditionality for financial assistance.

In sum, in all indicators and dimensions analyzed, the fiscal regime is characterized by a strong fiscal regulation, a weak fiscal capacity and a predominant influence of institutions that represent the interests of the MS on both instruments of integration. Because of this, the fiscal regime is overall highly dependent on the MS and lacks an autonomous dimension.

2. How to assess the fiscal regime of the EU from a comparative federal perspective?

Federal comparison was aimed not only at better understanding the EU, but also at seeing if its fiscal regime is peculiar. To do so, the main hypothesis was that, being a federal union, the EU is more similar to Switzerland (federal union as well) than to Germany (federal state). The comparison has first controlled for the *species* of federal polity and then for the instrument of integration. Since the EU is involved, particularly useful is to compare the case where other federal unions or the two instruments of integration are involved. We thus leave aside the comparisons based on federal states only.

Like for the first research question, the instruments of integration – regulation and capacity – have proved to be a useful tool to analyse the fiscal regime of the two case studies. For both Germany and Switzerland, the categories well fitted

the analysis because they could all be assigned at least to one legislative provision. The Content-Impact-Compliance Model has proved able to grasp regulatory differences between the texts; the same can be said for the Content-Impact-Discretion Model in the case of fiscal capacity. Overall, the indices have been useful to provide an answer to the research question. It was possible to assign an IFR, an IFC and an IUI to each year[233] based on the categories assigned to the legislation adopted in that year. In turn, within each year and text most[234] of our categories and dimensions[235] found application. In a very few cases in which that did not happen and 0;0 had to be assigned, this constituted anyway an interesting finding: it was still significant to find out those elements that did *not* contribute to the overall IFR and IFC of the polity. This points to a good degree of generalizability of the indicators (meaning both categories and dimensions): categories and dimensions were created deductively and they were "appropriate" for the data considered. In other words, if one searched for the information the categories were supposed to grasp, it could actually reach findings within the texts. As a result, the categories well converged towards the three concepts that were at the centre of the analysis, i.e. regulation, capacity and units' involvement. When searching for those concepts as defined by the categories we provided, the concepts could be detected within the texts. Overall, the tools used to undertake the QTA did thus display a good degree of reliability. The three indices covered the data in a way that enabled a comprehensive answer to the research question (on the first research question, see the previous section). The categories and the dimensions covered the data in a way that enabled to create the indices.

Clearly, in a future research agenda reliability needs to be further increased at least in two ways: through agreement across experts and through convergence in (many) more case studies. Only in that way will it be possible to come up with

[233] Switzerland did not experience a constitutional change over the period considered. However, as outlined, this was nevertheless a strong finding.

[234] Exceptions were: in Germany, there was no regulation of the units prior to the 2009 constitutional amendment; in Switzerland, there was never a regulation of that kind in the constitution.

[235] As outlined in chapter 1, with "dimensions" we mean content, impact and compliance for regulation, and content, impact and discretion for capacity.

a reproducible model of analysis of legislation useful for nearly all federal and non-federal systems. However, good convergence among three different cases (a federal state, a federal union and a federal union with some peculiarity, i.e. the EU) seems promising in view of further case-extension (large N).

To start with, while in the EU there is more regulation than capacity, in Switzerland it is the opposite. However, this does not say much about a supposed EU's peculiarity. Actually, the fact that federal unions are less centralized does not imply that the (small) degree of centralization results in favour of one or the other instrument of integration. Similarly, the fact that federal states display more capacity than federal unions also does not tell us something really new. Germany has more capacity than Switzerland and the EU.

The subsequent hypothesis assumes that federal unions display more regulation than federal states. The EU has indeed more regulation than Germany but Germany has more than Switzerland. Also by looking at the involvement of the units the hypotheses are confirmed. The units have larger influence over both instruments of integration in federal unions than in federal states. The EU and Switzerland have indeed higher values than Germany. Moreover, among federal unions, that involvement is stronger for capacity than for regulation due to higher politicization and sensitivity of the instrument. Again, the EU and Switzerland meet the hypothesis.

In sum, the peculiarity of the EU does not emerge from the comparison between the *species* of federal polity and the instruments of integration. The expectations that we had on the EU as a federal union compared to federal states were met. From where, then, does it emerge, if at all? From the degree of intensity of the instruments of integration. Crucially, this proves the fact that their quantitative measurement was necessary in order to grasp the EU's peculiarity.

The EU's fiscal regime is not only more regulatory than the German or the Swiss one: it is such in an impressive way. The scores of our categories confirm that. While fiscal regulation of the centre is still somehow similar between the EU and Germany, there is a huge difference in regulation of the units. While in 2009 Germany (and Switzerland) had almost no units' regulation in place at all,

the EU already had a medium degree and scored particularly well on "numerical rules" and on "procedure for non-compliance with units' regulation". After the financial crisis the EU had again increased its regulatory degree; Germany too, but without reaching the same results in the Content-Impact-Compliance model (scores never overcame 2). In the case of Switzerland, no change to the fiscal constitution occurred at all. The final indices of regulation are telling: 1.76 and 2.07 for the EU, 0.92 and 1.92 for Germany, 0.84 for Switzerland. Besides that, the main qualitative difference lies in the fact that the EU is the only regulatory regime involving sanctions. Germany does not have them, whereas Switzerland does not even regulate the fiscal policy of the cantons. The reason here is that many cantons had already put some form of regulation in their own constitutions.

On the opposite, fiscal capacity in the EU proved to be clearly lower than in the two case studies. All indicators scored low, meaning fiscal capacity resulted in a weak content, a limited impact and a restricted amount of discretion. To be fair, overall also Switzerland does not have a very large score of fiscal capacity. However, the budget has still more resources than the one of the EU, even if many are transferred to the Cantons, but being before collected at the level of the Confederation. A similarity with the EU is the restricted amount of resources: some taxes can be collected only up to a certain (limited) percentage even fixed in the constitution. Unlike the two federal unions, Germany displays a strong fiscal capacity both on the revenue and on the expenditure side. On the former, it has legislation over important taxes and can receive the yields of many of them. Having a large catalogue of exclusive (and concurrent) competences, its spending areas are wide. Neither Germany nor Switzerland are for most part dependent on transfers from the units, as it happens in the EU. Also, none of the three polities showed significant increases in fiscal capacity during the financial crisis. In sum, as far as the instruments of integration is concerned, the EU's peculiarity derives from a particularly strong fiscal regulation and a particularly weak fiscal capacity.

The involvement of the units is where the three federal polities differ most. Thus, it is where the peculiarity of the EU most clearly emerges. A first factor is the amendment of the treaties or the constitutions. In the EU, only the units and

the institutions that represent them are involved. In Germany and Switzerland, both institutions representing the centre and representing the units play a role. On regulation, the EU always scores the highest except for implementation and surveillance of the central budget. Fiscal capacity is the most striking case. The IUI scores 3, which means that only the units are involved with crucial decision-making in fiscal capacity.

Germany distinguishes itself in the fact that the approval of the central budget scores 1: it is approved with an objection bill. The *Bundesrat* is involved and can veto the budget, but the Bundestag can override the veto. Because of that, we consider the institution representing the centre the sole decision-maker on the budget law. The units are involved (score 1), but not on an equal footing with the centre (score 2, as it would have been in case of a consent bill) and not as sole decision-makers (score 3). On implementation, the units are involved because of the administrative nature of German federalism. The increase in regulation of the federal and *Länder* budget occurred during the crisis has witnessed a co-equal involvement of the two types of interest because changes had occurred through constitutional amendments. Whereas the amount and the composition is also determined in the Basic Law (score 2), the types of expenditures the Federation can do are linked to the *Bundestag*'s role in the approval of the budget. The units do not play a decisive role in the expenditures of the Federation (score 1).

Switzerland shows a perfectly balanced involvement of the center and the units in the fiscal regime. The budget must be approved by both the National Council and the Council of State. It is implemented by the Federal Council and by the Cantons. This is why also on the different types of expenditure the two interests are both represented co-equally (score 2). The legislative competence on the revenue side, the amount of the central budget and its composition are determined by the Federal Constitution. In order to change it, a majority of the centre's and units' interests is needed (score 2).

Like for the two instruments of integration, the difference in units' involvement is again a matter of degree. In fact, if one considers the hypotheses, the EU would not be a peculiar case. The units are more involved in federal

unions than in federal states. In federal unions, they are more involved in capacity than in regulation. The EU meets these conditions in comparison with Germany and Switzerland. However, the degree in which the units are involved in the EU's fiscal regime is particularly strong. There is a "units' governance" regime in place, meaning that the interests of the units affect the fiscal regime of the centre in a particularly strong way. In Germany, where the first chamber counts more in the central fiscal regime, there is a "centre's governance" regime. In Switzerland, where the representation of interests in the fiscal regime is more balanced, there is a "centre-units governance". Interestingly, in none of the three polities did the units' involvement change during the crisis.

Overall, from a comparative federal perspective, the fiscal regime is characterized by a particularly strong fiscal regulation, a particularly weak fiscal capacity and a particularly predominant influence of institutions that represent the interests of the MS on both instruments of integration. Because of this, the fiscal regime of the EU is overall particularly dependent on the MS and definitively lacks an autonomous dimension. The research questions have thus found an answer both in absolute and in comparative terms. The expression below summarizes the relationship between the instruments of integration and units' involvement in the EU, Germany and Switzerland.

$$IFR(EU) > IFR(Germany) > IFR(Switzerland)$$
$$IFC(EU) < IFC(Switzerland) < IFC(Germany)$$
$$IUI(EU) > IUI(Switzerland) > IUI(Germany)$$

4.3 The link to the foundational theories of integration

In chapter 1, we argued that the foundational theories of integration – liberal intergovernmentalism (LIG) and neo-functionalism – would not be central to this analysis. The reason is that they are mostly concerned with explaining the drivers of integration and its outcome rather than the way in which integration takes place. They reply to the question why integration occurred in a certain way. This work aimed to inquire how the fiscal regime of the EU is designed and how it functions. Because of this, it is grounded in the literature on core state powers (regulation and capacity-building). This literature is about the instruments of integration – *how* integration proceeds rather than *why* it occurs in a certain way.

However, although the thesis pursues descriptive (what the texts tell us) rather than causal (why the texts tell us something) inference, a link to the foundational theories needs to be established. This means to relate the findings on the instruments of integration to the drivers of that same integration. Specifically, it requires to provide an answer to the questions why EU legislation displays a strong regulation, a weak capacity and a strong involvement of the units in the fiscal regime. Given that the foundational theories were developed to explain the EU, this section does not consider the two case studies.

The findings of the thesis support LIG and contradict neo-functionalism for the following reasons. LIG argues that MS as unitary actors play a central role in the integration process. In our analysis, we also considered representation of interests as a unitary concept. LIG also posits that MS delegate less powers as possible to supranational EU institutions. They do so mainly when there is the associated benefit of reduction of transaction costs. A deeper delegation like in the case of a fiscal capacity only happens in a very limited way (Moravcsik and Schimmelfennig 2019). More specifically, it is never a substantial delegation, i.e. MS make sure to retain full control of the process. Also where EU institutions can take decisions, given the comparatively small EU administration, MS are still necessary for implementing most of them.

In an intergovernmental decision-making system, in principle each Member State has a veto power when unanimity is required (Garrett and Tsebelis 1996).

However, even in a system where all MS are formally equal, those with more power[236] have stronger bargaining influence and can thus better impose their preferences. Already at the start of the Economic and Monetary Union (EMU), Germany pressured for a no-bailout clause, for numerical limits on MS' expenditure and surveillance of national budgets. It feared moral hazard on the part of the other MS.

In the subsequent years, the EMU became characterized by strong imbalances (De Grauwe 2014). The euro crisis transformed the EU in a creditor vs. debtor, rich versus poor arena (Schelkle 2012). Among the former, Germany was the strongest of the "fiscally healthier countries" (Moravcsik and Schimmelfennig 2019: 72; see also Bulmer and Paterson 2018). The preference of the creditor[237] countries was for stricter regulation, risk-prevention and self-responsibility (Schwazer 2018). On the contrary, debtor[238] countries favoured more capacity at EU level, risk-sharing and solidarity (Jones 2018). The creditor countries were against stronger spending at EU level because they feared more redistribution could lead to profligate national fiscal policies.

The creditor countries pushed for more regulation and less (or at least not more) capacity; the debtor countries for less (or at least not more) regulation and more capacity. Since pre-crisis EU was already marked by strong fiscal regulation and low fiscal capacity, "divergent preferences and unequal bargaining power render[ed] any alternative to the status quo unlikely" (Moravcsik and Schimmelfennig 2019: 73). In our indicators, this is shown by the lack of radical qualitative and/or quantitative change. But there was more: in a context in which the intergovernmental institutions took the lead (Fabbrini 2015), to increase regulation and to not increase capacity was thus the only viable solution.

Since the work looks at the texts, our indices clearly found that this outcome became enshrined in legislation. Pre-crisis EU already displayed a strong IFR and a weak IFC. During the crisis, the two indices increased in a strong and

[236] For instance, because of size, population, and economic weight.
[237] Mostly Germany and Northern European MS.
[238] Mostly Southern European MS.

insignificant way respectively. This was possible because creditor countries, with more bargaining power, managed to impose their preferences. In both pre- and post-financial crisis, the high IFR and the low IFC for the EU is thus in line with LIG applied to the text analysis. What (the stronger) MS wanted they managed to put into legislation. They were not only the "masters of the treaties" but rather the master of fiscal legislation altogether. MS' attitude during the crisis has often been tested against LIG. The fact that LIG finds confirmation also "on paper" constitute a strong finding.

Whereas MS disagreed over regulation and capacity, they agreed to keep a strict control over both. Germany wanted to make sure that existing fiscal rules were strengthened and enforced. It was also in favour of enshrining new and stricter rules into national legislation. True, creditor countries were also in favour of more powers to the Commission to enforce rules. But this has not to be seen as a renouncing of their own influence; rather, as a delegation to a supranational institution for the exercise of powers in a way that exactly matches their preferences. Granting automatic powers to the Commission is itself a strong national position. LIG still holds. Similarly, also the modest increase in fiscal capacity in the form of instruments for financial assistance was possible only under the control of the MS. The disbursement of resources is decided according to an intergovernmental logic. LIG holds true also in this case. In our analysis, the strong influence of MS becomes visible through a high IUI. The fact that the latter is high for both instruments of integration is in line with LIG. This is particularly true in the case of the high IUI for fiscal capacity because of its close link to national sovereignty and its strong degree of politicitization. In sum, the lack of an autonomous fiscal regime confirms LIG's argument that generally MS want to prevent the establishment of "truly autonomous institutions" (Moravcsik and Schimmelfennig 2019: 68).

The centrality of MS in the two instruments of integration contradicts neofunctionalism which argues for the inclusion of non-state actors too. Non-state actors might enter the process but governments remain the ultimate decision makers. This is what the IUI captures. The financial crisis proved that MS – through their governments – dominated the decision-making process.

Moreover, neo-functionalism also states that the EU can develop an autonomous supranational dimension. However, the IUI of the text analysis does not confirm this. The qualitative text analysis (QTA) showed that the fiscal regime has not been able to develop in a way autonomous from its MS.

Neofunctionalism's focus on politicization provides important insights in order to understand the low score we found on fiscal capacity and the high score of units' involvement. Fiscal capacity is connected to high political salience and because of this the MS want to keep that instruments possibly underdeveloped and be strongly involved in its management. However, one could also say that on fiscal capacity MS want to pursue only the least possible integration, meaning the extent to which there is a proper *functional* need to do so. The most straightforward example are the instruments of financial assistance set up during the crisis. Read as that, the low IFC can be compatible with the neofunctionalism.

The concept of spillover did not properly work for the fiscal regime because, in spite of the need, more integration did not happen automatically. The reason is the nature of the policy at stake: the fiscal regime is a core state power. Here, the spillover effect is slowed down or blocked because of too much politicization involved. True, in the case of fiscal regulation, one could argue that legislation faced a spillover-like effect: existing provisions provided the basis for new and stricter ones. But in that case the supposed spillover becomes dominated by intergovernmentalism. On the contrary, neofunctionalism posits that a new centre and new central organs could be established at EU level. In the case of the fiscal regime, this new centre is not a truly autonomous one, separated from MS. Our analysis showed that supranational institutions were not properly able to challenge intergovernmental ones. The assumption that automatic spillovers – as theorized by neofunctionalism – would lead to more supranational political integration in the EU is actually contradicted by our findings: there is no autonomous fiscal regime of the centre. The values of our indices show that neofunctionalists underestimated "sovereignty consciousness" (Niemann, Lefkofridi and Schmitter 2019: 50) as a factor lowering integration. In sum, the evolution of the EU's fiscal regime was mainly the product of intergovernmental

decisions in which MS assured their centrality, preferred fiscal regulation over fiscal capacity, and did not want to increase the autonomy of the EU's fiscal regime.

The decisions that regional institutions take are incremental (*ibid.*). This in line with what we called "layering", i.e. the fact that when legislation is added to previous one, the overall indices are the result of the sum of this very same legislation. Moreover, the increase in one instrument (in this case, regulation) limited the increase in the other one (in this case, capacity). This is in line with many scholars arguing that the EU pursued fiscal regulation as an alternative to the impossibility to reach fiscal capacity and that the absence or presence of one instrument determines the absence or presence of the other one. Because there is so much regulation, capacity could hardly develop. Because there is so few capacity, regulation could strongly develop. As Schelkle and Mabbett (2009: 700) wrote, "the agenda of 'less government' has paradoxically led to much more government of a regulatory kind". The most influential MS had a preference for not pursuing redistribution at EU level and limiting political discretion at national level. Once this became the EU's agenda, more regulation remained the only option. Our findings also confirm that "if challenged in its regulatory endeavor, the EU tends to respond with more regulation" (*ibid.*). Actually, the financial crisis, with the push of some MS for more capacity, has ended up with a qualitative and quantitative increase of regulation. The IFR shows it.

Schelkle (2012 and 2014) argued that fiscal capacity during the financial crisis did actually increase. That happened through the decisions adopted by the ECB. It was a case of "fiscal integration by default" (Schelkle 2014), i.e. done because conventional instruments of fiscal policy were lacking and MS were reluctant to establish them. ECB's decisions were highly controversial because charged of exceeding its statutory mandate of monetary policy towards fiscal policy. To analyze the extent and the impact of this quasi-fiscal capacity by the ECB is definitely relevant. However, it is clear that by their same nature the measures adopted cannot be equivalent to traditional fiscal capacity. Since this work looked for "genuine" fiscal capacity by majoritarian institutions, we did

not consider the ECB. Our main argument also supports this: we were examining the influence of the units over the fiscal regime of the centre. Given the ECB's political independence from MS, any IUI as we conceived it and derived from the text analysis would have been difficult or barely impossible to obtain.

Besides the foundational theories of integration, it is worth linking our result also with Deudney's (1995) analysis of pre- and post-civil war US. A comparison to pre- and post-crisis EU can be drawn. Before the war, the US were a highly decentralized union. Afterwards, they became a federation with more powers granted to the centre (although the development of the latter was a slow and progressive process). Specifically, the executive increased its influence over the legislative, which is typical of a system like the US characterized by periods of pre-eminence of one governmental branch over the other. Crucially, "the relationship between the parts and the whole was redefined" (*ibid*., p. 220) after the war. Our analysis instead points to different results for the EU. During the crisis, the parts (the MS) became more and more influential in policy-making of the centre. In the fiscal regime, no redefinition between the parts and the whole took place at all. On the contrary, the autonomy of the fiscal regime of the centre was further limited.

We already pointed to the reasons that hindered the development of an autonomous fiscal regime of the centre. A further one can be drawn from Deutsch's (1957) analysis of the sense of community which is supposed to lie at the grounds of deeper political integration. The persistent lack of the latter is said to block further policy delegation and empowerment of supranational institutions. This allows intergovernmental institutions to take the lead. As Fisher (1969: 254) recalled, "Deutsch does not measure the decision-making capability of EU supranational institutions". We did so. The results point exactly to the lack of autonomy of the centre and the resulting dependence on the units. Our analysis did it for the fiscal regime. Being this a core state power, the lack of a sense of community made deeper political integration even more impossible. Ultimately, this explains not only the high IUI but also the low IFC as the epitomize of low political integration.

5. Conclusion

This chapter has undertaken a comprehensive assessment of the categories originating from the qualitative text analysis of the previous three chapters. The aim has been first to highlight the different scores between the categories of the two instruments of integration and the involvement of the units. As for regulation, the EU has shown high scores on almost all categories, especially on those related to regulation of the units' budget. Those were the only categories of our analysis to reach the highest regulatory degree (3). Germany did not produce those high scores but experienced a sharp increase in regulation of units' budget during the crisis. Regulation in Switzerland affects only the central budget. As for capacity, the picture was different: the EU scored low (1) on almost all categories, while Germany had the highest scores.

The scores of the categories already gave us insights on what would then have been the outcome of the indices. What is surprising is not the higher or lower scores of the EU on the instruments of integration compared to Germany (federal state). We expected federal unions to have more regulation and less capacity than federal states. Nor is it the fact that in the EU regulation is stronger than capacity. What is surprising is actually that the EU has by far – also compared to is most similar case, i.e. Switzerland – the highest IFR, the lowest IFC and the highest IUI. The qualitative text analysis and the focus on the multi-faceted nature of the instruments of integration has well showed that. The key difference accounting for the EU's peculiarity on fiscal regulation is the constitutional impact and the sanctions. The other two polities do not have that. On fiscal capacity, the key difference is the low amount of resources, the lack of autonomous resources and the consequent dependence on transfers from the units. Eventually, units' involvement is the indicator that mostly epitomizes the peculiarity of the EU's fiscal regime. The units are the only decision makers when it comes to treaty amendment. On almost all categories related to regulation and capacity, they score the highest. As a result, the IFR, the IFC and the UIU tend to approach the highest value (3). IUI for IFC is the extreme case because it scores 3: this means that the fiscal capacity of the EU is entirely shaped by the MS.

In sum, the research questions have found an answer. Related to the first, in the EU fiscal regulation is strong, fiscal capacity is weak, and units' involvement is strong. The interesting thing is that this picture emerges because the qualitative text analysis has shown that each category of the two instruments has scored high or low values respectively. The overall strength of the instruments of integration and of units' involvement has been determined through detailed analysis of the strength of its constitutive indicators. Related to the second research question, from a comparative federal perspective the fiscal regime is particularly regulatory; it has a particularly weak fiscal capacity and a particularly predominant involvement of the units. The nature of the EU's fiscal regime has thus been assessed in absolute and relative terms. The result is a fiscal regime which is very much influenced by its MS and lacks an autonomous dimension. A good degree of generalizability and convergence among indicators has been reached for both research questions. Ultimately, the chapter has shown why our findings support LIG and contradict neofunctionalism.

Chapter 6 – General conclusions

1. Summary of what has been done

This section briefly summarizes how the analysis in the thesis has proceeded. We have approached the fiscal regime, i.e. the sum of relevant legislation that makes up a political system, through the lenses of two instruments of core state powers integration: fiscal regulation and fiscal capacity. These instruments have been useful because the *way* core state powers have been integrated could not be well explained by the foundational theories of EU integration (liberal intergovernmentalism and neofunctionalism), which are concerned with the drivers of the integration process. Nor could the intergovernmental-supranational divide give account of the variance of integration according to the policies at stake. Our aim was to inquire the nature of the fiscal regime of the EU in terms of regulation and capacity and to compare it to two other polities: one supposed to be structurally similar to the EU (Switzerland as federal union), the other not (Germany as federal state).

In spite of the large literature on the determinants, the patterns and the implications of the instruments of integration, we have stated that a comprehensive and operational definition of them was still lacking. The reason is that regulation and capacity are multidimensional and multifaceted instruments whose many constitutive elements need to be mapped. The thesis has argued for the need to operationalize both instruments. We have done so through an evaluative qualitative text analysis of relevant legislation. "Evaluative" refers to the fact that the categories (or codes) are assigned numerical scores (from 1 to 3) in order to judge their strength. Based on the research question, prior knowledge and the working hypotheses, before the analysis we have created some deductive categories. Through the software MAXQDA, the categories have been assigned to relevant text passages of the legislation concerned. The Content-Impact-Compliance Model for regulation and the Content-Impact-Discretion for capacity have been employed to measure

the strength of the categories. It is important to note that we have applied the same categories to the three federal polities.

The categories are constitutive parts of three indices: the IFR, the IFC and the IUI. Their average has resulted in the value of each index. Particularly, our aim has been to match the IFR and the IFC with the IUI in order to determine to which extent the units influence the fiscal regime of the centre. Representation of interests has been a more suitable device than bicameralism to grasp the influence of the units. Being the starting point of our work, the EU has "forced" us to follow that approach. Unlike consolidated federal polities, for what is relevant to the fiscal regime, in the EU there are two different institutions that represent the interests of the centre (the EP and the Commission) and two different ones representing the interests of the units (the Council and the European Council). They range across the legislative-executive divide. Since during the financial crisis there has been a confusion of powers (the European Council exercising legislative powers), bicameralism would have been an insufficient analytical tool because it deals with the legislative institutions only. The analytical categories of the instruments of integration also involves indicators for functions that are typically performed by non-legislative institutions (e.g. implementation of federal budget, which usually the federal government or the units do). Because of this, we have considered the involvement of the interests of the units to me a more valid tool. We have used it to examine the degree in which the fiscal regime of the EU is autonomous from the influence of the MS.

2. Summary of what has been found

This section briefly summarizes the results of the thesis. From a methodological point of view, in the EU and in the two case studies the categories well fitted the analysis because they could all be assigned at least to one legislative provision. The Content-Impact-Compliance Model and the Content-Impact-Discretion Model have been useful to quantitatively measure the categories which operationalized fiscal regulation and fiscal capacity respectively. Since almost all categories found application over the three federal polities, their degree of generalizability was very good. In other words, if one searched for the information the categories were supposed to grasp, it could actually reach findings within the texts. As a result, the categories well converged towards the three concepts that were at the centre of the analysis, i.e. regulation, capacity and units' involvement. When searching for those concepts as defined by the categories we created, the concepts could be detected within the texts. Hence, the categories covered the data in a way that enabled to create the indices. In turn, the three indices covered the data in a way that enabled a comprehensive answer to the research questions. Ultimately, the tools used to undertake the QTA did thus overall display a good degree of reliability.

We have found the EU's fiscal regime to be strongly characterized by regulation. Regulation is very detailed and prescriptive: it often requires the EU and/or the MS to adopt specific acts. Following our analytical model, regulation is strong on all three dimensions: content, impact and compliance. The main feature is that different categories – "balanced budget clause", "numerical rules" and "expenditure rules" – foresee sanctions. This is what ultimately determines the strength of the EU's fiscal regime.

During the financial crisis, changes to the fiscal regime have consisted in an increase of regulation without a corresponding increase of capacity. Both before and after the crisis, our indices show us that the two instruments are mutually exclusive. There is no balance between regulation and capacity. The crisis has dramatically increased the constitutional impact of regulation. This is quite

uncommon for federal polities because it mirrors a harsh intrusiveness of the centre towards the units.

Fiscal capacity in the EU is weak. Our index clearly shows it. Weakness results from two facts: a small amount of resources at disposal to the budget and its being largely made up of financial contributions from the MS. This makes the centre dependent on the "willingness to pay" of the MS. Both regulation and capacity are almost entirely decided by the MS or, more precisely, by institutions representing the interests of the MS. Contrary to some authors, we argue that Council and EP are not on equal footing as for the approval of the budget. The anti-crisis measures tried to depoliticize the EDP by reducing the political discretion of the Council. RQMV, the automaticity of sanctions and the commitment – enshrined in the "Six Pack" and in the "Two Pack" – to follow the recommendations of the Commission within the EDP, were not relevant to our analysis. Since the IUI looks for the ultimate decision-making institution for each category of the instruments of integration, it had to acknowledge that it is the Council that has the last say on the many aspects of the EU's regulatory framework. In fiscal capacity, it is the Council that decides on the system of own resources, on the MFF and on the annual budget. During the crisis, it set conditionality for financial assistance. In sum, in the EU's fiscal regime a strong regulation and a weak capacity coexisted with a strong involvement of the units on both.

Although not at the centre of the analysis, we have nevertheless established a link to LIG and neofunctionalism. Our results support LIG because of the centrality of MS in the fiscal regime of the EU. As the theory predicts, MS were reluctant to delegate core state powers to the EU. Most importantly, they wanted to maintain control over the process, preventing the creation of an autonomous fiscal regime at the centre. The high IFR, the low IFC and the high IUI that comes out of the QTA confirms that MS, particularly the strongest ones, managed to put "on paper" their preferences as LIG suggested. This has been true also during the financial crisis. On the contrary, confirmation could not be found for the neofunctionalist claim that also non-state actors are part of the process. They are but not as ultimate decision-makers – what our IUI captured.

Moreover, spillover effects are blocked in front of core state powers because of the salience and politicization associated with them. In the fiscal regime, spillover effects of integration could not determine neither more capacity nor an autonomous dimension of the fiscal regime. Regulation was strong but also there the functional logic could not challenge intergovernmentalism.

In order to weigh up the peculiarity of the EU's fiscal regime, the work had to introduce federal comparison. We found that peculiarity. However, it did not emerge from the comparison between the *species* of federal polity and the instruments of integration. To be more precise, in comparative terms the EU does not behave in a way different from what one could expect with reference to federal polities supposed to be dissimilar to it. Being a federal union, we expected the EU to have more regulation and less capacity than Germany. However, the EU's scores are impressive not only compared to Germany but also to the polity to which it should have been more similar, i.e. Switzerland. In sum, the peculiarity emerges from the scores of the IFR and IFC as expressed by their multifaceted categories.

The EU is the only federal polity that has sanctions within the regulatory regime. Germany does not, while Switzerland does not have any regulation of the units in its constitution. Whereas capacity is lower in the EU than in Germany and Switzerland, a commonality between them is the fact that the crisis did not bring any significant increase on that instrument of integration. Where the EU's peculiarity is most visible is on the involvement of the units: they entirely "control" both instruments of integration. The IUI is structurally different in the three cases: Germany gives more room to the institutions representing the centre (centre's governance), Switzerland assures a perfectly balanced representation of the interests of the centre and of the units (centre-units' governance). The EU does not fit either of the two: it clearly gives more influence to the institutions representing the interests of the units (units' governance). Interestingly, only in Germany did the involvement of the units change over time. In conclusion, from a federal perspective the EU is characterized by a particularly strong fiscal regulation, a particularly weak capacity and a particularly predominant influence

of institutions that represent the interests of the MS in both instruments of integration.

3. Contribution to the academic literature

Immediately after writing, it is not easy to express what the contribution of a new work to the academic literature will be. We believe the contribution of this work has to be found in the methodological choices through which it had addressed two important research questions. Through the qualitative text analysis (QTA) of relevant legislation, the thesis has shed light on the multiple dimensions of two important concepts of the literature: regulation and capacity. The attempt has been to show that these concepts cannot be only described on an *ad hoc* basis, but they are complex dimensions that include a number of constitutive elements. These elements help to describe the nature of a country's fiscal regime.

In the light of that, the IFR, the IFC and the IUI on the one side and the Content-Impact-Compliance and the Content-Impact-Discretion Model on the other side, have been useful tools to assess the multidimensional concepts of the fiscal regime. They are simple models that bear the advantage of clarity and, thus, of replicability to other cases. This has actually taken place, up to the point that it is precisely the combination of these different tools used to inquire the nature of the fiscal regime through a QTA that constitutes the main contribution to the literature. The Index of Fiscal Regulation and the Index of Fiscal Capacity are a flexible measure that can in principle be applied to federal and non-federal cases, to different years and to different legislative texts. Also, the source and the methodological approach can be different: we have adopted it for a qualitative text analysis of fiscal legislation, but the indices can also be used with a more historical-institutionalist approach as well as within a process tracing framework. It is also possible to include more cases for comparison, even with a large-N and, thus, a more quantitatively oriented methodology. The limited number of categories that make up regulation and capacity as well as the limited indicators of the Content-Impact-Compliance and the Content-Impact-

Discretion Model should make it easy to work with a small number of cases and analyze them in depth, but also quickly process a large variety of cases.

Overall, the indices have the potential to contribute to the literature on core state powers integration in the EU. The can fill a conceptual gap in that they provide a tool to analyse how a certain instrument of core state powers integration is part of a political system and to which degree. Furthermore, it might be particularly useful to look at some specific categories that make up the instrument at stake.

Through the focus on the involvement of the units, the work can also contribute to a better understanding of the autonomous political dimension of the centre in federal (and multilevel governance) polities. It is a valid complement to the many studies on the autonomous dimension of units (states, regions, etc.) in multilevel systems. Again, the Index of Units' Involvement is a simple tool that focuses on the key aspect, namely the ultimate decision-making power over a certain instrument of integration. By doing so, it looks at which actor is really crucial in the system. Like the other two indices, it can be extended to a number of cases and legislative texts across time and political systems. By focusing on two different representations of interests, the model adopts a "neutral" terminology that fits different institutional models at central level: federal states, regional states, even unitary states, which might nevertheless grant some participation of territorial interests in the policy-making of the centre.

In sum, the three indices represent a useful complement for the theory of core state powers integration and a device that may open new paths in comparative (fiscal) federalism when it comes to assess how those very same core state powers have been integrated in different polities. We have developed an original model which is not part of the literature so far because it highlights the fact that, within a federal polity, the powers of any centre in any policy must be checked against the influence of the units. If this is not done, the whole debate on the EU competences loses a crucial element. We are not arguing that units should not influence the policy of the centre. In any federal polity, this is the norm and the very same requirement for its being federal. However, federal polities work according to self-rule and shared rule. Self-rule is used to refer to the units but

should also be used for the centre. If the centre does not have the means to exercise some self-rule, it does not make sense to assign it exclusive competences. In our analysis, if the EU had some resources at disposal, it should also be able to decide at least on equal footing with the MS how to use them. How can you disentangle the European interest from the national ones? If we recognize that both interests are legitimate but must co-exist in a functionally separated way without the national (units') interests incorporating the EU's (centre's) one, we need to provide the EU level of government with some autonomy in exercising its competencies. The influence of interests of the units over policies of the centre is beneficial in order to produce legitimate decisions within a federal polity, but if the former interests become predominant over the latter the system risks political gridlock and loss of democratic accountability. The indices ease comparison of the EU with other political systems, especially those that are particularly integrated, like federal polities. Also from a diachronic point of view, the indices can well represent the evolution of a certain fiscal regime over time. As for the EU, the focus on representation of interests can complement the traditional dichotomy between supranationalism and intergovernmentalism. The peculiar contribution of the three indices and their categories is that they have pointed out the peculiarity of the EU in a systematic and encompassing way: the fiscal regime of the EU is peculiar because its constitutive elements are.

Qualitative text analysis is an empirical method. As such, it is typical of social science. Less typical is perhaps its application to legislative texts, especially if belonging to different legal systems. As a matter of fact, qualitative text analysis is often employed for surveys and interviews. The application of this method to legislative texts might be of interest also for legal scholars. Thanks to its focus on texts, they could use it as a valid complement to traditional legal approaches[239]. For political science scholars, QTA might represent a useful starting point to know the legislative *status quo* of a political system in a certain policy field. The reason is that it gives a systematic account of the provisions in force in that field without incorporating legal principles or norms that are less relevant for a

[239] On this, see Salehijam (2018).

political science analysis and more useful for legal scholars. Political science scholars might build upon QTA to see how much the reality differs from what is on paper.

4. Contribution to the non-academic debate

If it is difficult to estimate a significant contribution to the academic debate, even more is it for the non-academic one. We believe that a doctoral dissertation should have also non-academic relevance. Or, more precisely, the impact on the academic community should trigger also a non-academic relevance. The debate on completing the EMU is a very topical subject. The financial crisis has increased calls for completing and deepening the "incomplete" monetary union.

The development of a fiscal policy of the EU is a key point in this discussion. As for the period after our analytical timeframe, the establishment of an EU budget with autonomous resources has been discussed in the Five President Report (2015) and in the High-level group on own resources (Monti Report, 2016). Recently, the French President of the Republic, Emmanuel Macron, has proposed the creation of a finance minister, an autonomous budget and even a separate parliament for the Eurozone. Germany's reaction, most notably the one by the former Minister of Finance, Wolfgang Schäuble, has been skeptical.

The debate on the relationship between the instruments of integration is highly political. However, rather than focusing on the type of federal polity (federal state or federal union) that the EU wants to be, it should address the point of how much "federal" it really wants to become. As Hinarejos (2013) has put it, the choice seems to be between a surveillance model and the classic fiscal federalism model. In the terminology employed so far, the former means a centre that does predominantly regulation. The latter points to some form of capacity at central level and the rest being left to the units. The choice is between the *status quo* and a reconfiguration of the instruments of integration.

What is important, we believe, is to face this debate in realistic and analytical terms. As the literature has emphasized, the crisis has shown the shortcuts of the surveillance model, which is still the *status quo*. However, if too strong regulation without corresponding capacity makes it impossible to adopt EU-wide policies with positive externalities, especially in times of crisis, too much capacity is politically unfeasible and democratically inadequate. The EU is and will remain a federal union on grounds of its asymmetry and differentiation. It

thus cannot become a centralized federal state that exercises only one of the two instruments of integration. Federal unions escape centralization. A balance between regulation and capacity needs to be found on functional grounds. The thesis can contribute reflecting on this as well as addressing the challenge of how to free the EU from the dependency on the MS in both instruments of integration.

5. What to do next?

This research has come to an end but many new questions remain open. We believe that it is thus definitely worth to continue following from the analysis conducted so far.

Firstly, it can be useful to compare textual arrangements with political reality. More specifically, one could use the same indices and look how – if at all – they change. A very strong degree of regulation "on paper" might get a different score when it comes to analyse application of the rule. Also, what would be the implications of a (sharp) difference between texts and reality? This points to the question of how provisions of the fiscal regime are actually implemented.

Secondly, a useful complement to this work would be to move from descriptive to causal inference. Once the nature and the autonomy of the fiscal regime of the EU have been described, also in comparative terms, one could inquire the reasons of the overall picture. Why is fiscal regulation so strong and fiscal capacity so weak in the EU? Is it perhaps because strong regulation makes up for weak capacity and even tries to make it superfluous? Why is the whole regime so much under the influence of the Member States? We believe that descriptive inference is the basis of causal inference. Causal inference is certainly its valid – if not necessary – complement.

Thirdly, the categories and the Content-Impact-Compliance as well as the Content-Impact-Discretion Model could be tested on a large number of different data. They have passed the test for a federal union and a federal state, but what about other federal polities belonging to those two *species* or to still others? Also, it might be interesting to see whether beyond the deductive categories employed so far there are also some useful inductive ones. On other words, the whole

analytical model developed here must be tested against more cases in order to increase convergence among indicators and overall reliability of the tools used.

Lastly, the relationship between the representation of units' interests in the fiscal regime and in other policy regimes might be compared. That would be a useful insight to assess the influence of the units over the whole system, hence their overall participation in the policy-making process at federal level. While the categories of the Index of Units' Involvement could remain unchanged, new indices for specific policy field would need to be created. However, the methodology employed in this thesis could still be valid and easily extended to other policies, for examples to non-core state powers. Is the units' involvement on non-core state powers perhaps less? Also, the same diachronic analysis could be undergone for many cases, i.e. treating them all on the same footing and not – as this work has done for the EU – with the focus on one starting point.

We have assumed the senate and the council model to give the same representation to the units. To put it differently, we have not differentiated representation. It might be interesting to inquire which model – if any – is more associated with regulation and capacity. These two instruments are derived from the literature. We have considered them to be in principle a good analytical tool for the fiscal regime, the condition being – as we have done – that they are properly defined. This does not preclude different or additional tools from being found. They would then still need to be defined with a qualitative assessment and a quantitative measurement. Also, when distinguishing between involvement of the centre and of the units, one might further differentiate between legislative and executive institutions.

It is not possible to outline here all possible paths for further research that might have this thesis as starting point. We humbly believe this is a good sign. More generally, if a work – next to providing some methodologically sound answers – opens new questions, we deem this to be positive. We already know we will build on this work to further develop our analytical model. It would be a great enrichment if others joined us in this. At the very end, the contribution of any work finds a good measure in the interest it is able to generate.

References

Bibliography[240]

Allen, D. (2012). 'The Common Foreign and Security Policy', in: Jones, E., A. Menon and S. Weatherhill (*eds*.), *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 2502-2798, e-book.

Alter, K.J. (1998). 'Who Are the "Masters of the Treaty"? European Governments and the European Court of Justice', *International Organization* 52:1, 121-147.

Arnull, A and D. Chamlers (2015, eds.). *The Oxford Handbook of European Union Law*, Oxford: Oxford University Press.

Artis, M.J. and B. Winkler (1999). 'The Stability Pact: trading off flexibility for credibility?', in: Hallet H.H., M.M. Hutchison and S.E. Hougaard Jensen (*eds*.), *Fiscal aspects of European monetary integration*, Cambridge: Cambridge University Press, pp. 157-188.

Barnes S., J. Botev, L. Rawdanowicz and J. Stràsky (2016). 'Europe's new fiscal rules', *Review of Economics and Instititution* 7:1, Article 2.

Bartolini, S. (2005). *Restructuring Europe: Centre Formation, System Building, and Political Structuring between the Nation State and the European Union*, Oxford: Oxford University Press.

Beyers J., A. Dür and A. Wonka (2018). 'The political salience of EU policies', *Journal of European Public Policy*, 25:11, 1726-1737.

Becker S., M.W. Bauer and A. De Feo (*eds*.), *The New Politics of the European Union Budget*, Studies on the European Union, Baden Baden: Nomos.

Beramendi, P. (2009). 'Federalism', in: Boix, C. and S.C. Stokes (*eds*.), *The Oxford Handbook of Comparative Politics*, Oxford: Oxford University Press, pp. 752-781, e-book.

Berelson, B. (1952). *Content Analysis in Communication Research*, Glencoe: Free Press.

[240] Books in the form of e-books are indicated accordingly. The page number refers to the e-book version.

Berelson, B. and P.F. Lazarsfeld (1948). *The Analysis of Communication Content*, Chicago: University of Chicago.

Best, E. (2019). 'Policy-Making in the European Union', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019), *European Union Politics*, Oxford: Oxford University Press, pp. 233-252.

Bickerton C.J., D. Hodson and U. Puetter (2015). *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*, Oxford: Oxford University Press.

Biesenbender, J. (2011). 'The Dynamics of Treaty Change: Measuring the Distribution of Power in the European Union?', *European Integration online Papers (EIoP)*, 15:5.

Binder, S.A. (1999). 'The Dynamics of Legislative Gridlock, 1947-1996', *American Political Science Review* 93:3, 519-533.

Blöchliger, H. and J. Kantorowicz (2016). 'The Coherence of the EU's Fiscal Constitution: An Empirical Assessment', *Politica economica*, Bologna: il Mulino, pp. 441-461.

Bobbio N., N. Matteucci and G. Pasquino (*eds*.). *Il Dizionario di Politica*. Torino: UTET.

Börzel T.A. (2005). 'Mind the gap! European integration between level and scope', *Journal of European Public Policy* 12:2, 217-236.

Broschek, J. (2011). 'Historical Institutionalism and the Varieties of Federalism in Germany and Canada', *Publius: The Journal of Federalism* 42:4, 662-687.

Buchanan, J. (1995). 'Federalism as an ideal political order and an objective for constitutional reform', *Publius: The Journal of Federalism*, 25 (2): 19-27.

Bulmer, S. (1998). 'New institutionalism and the governance of the Single European Market', *Journal of European Public Policy* 5:3, 365-386.

Bulmer, S. and W.E. Paterson (2010). 'Germany and the European Union: from 'tamed power' to normalized power?', *International Affairs* 86:5, 1051-1073.

(2013). 'Germany as the EU's reluctant hegemon? Of economic strength and political constraints', *Journal of European Public Policy* 20:10, 1387-1405.

(2018). 'Germany and the European Union: Europe's Reluctant Hegemon?', *The European Union Series*, Palgrave Macmillan.

Burns, C. (2019). 'The European Parliament', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019), *European Union Politics*, Oxford: Oxford University Press, pp. 176-188.

Cabral, N.D.C. (2016). 'Which Budgetary Union for the E(M)U?', *Journal of Common Market Studies* 54:6, 1280-1295.

Calligan, B. (2009). 'Comparative Federalism', in: R.A.W. Rhodes, S.A. Binder and B.A. Rockman (*eds*.). *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, pp. 261-280, e-book.

Caliso, R.A.C.S. and S.R.E. Flores (2018). 'Federal Governments Around the World: A Comparative Perspective', *Asian Institute of Management*, RSN-PCC Working Paper 18-002.

Caporaso J., W.N. Durrett and R.B. Wesley (2014). 'Comparative Politics, Fiscal Federalism, and the Financial Crisis', Paper prepared for presentation at a workshop organized by the German Finance Ministry and the Hertie School of Governance, June 16-17, 2014, Berlin, Germany.

Carr, E.H. (1939). *The Twenty Years' Crisis: 1919-1939: An Introduction to the Study of International Relations*, London: Macmillan.

Castronovo, V. (2014). *La sindrome tedesca. Europa 1989-2014*. Bari: Laterza

Church, C. and D. Phinnemore (2019). 'From the Constitutional Treaty to the Treaty of Lisbon and Beyond', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019), *European Union Politics*, Oxford: Oxford University Press, pp. 31-52.

Cini, M. and N. Pérez-Solòrzano Borragàn (2019). 'Introduction', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019), *European Union Politics*, Oxford: Oxford University Press, pp. 1-8.

Colomer, J.M. (2009). 'Comparative Constitutions', in: Binder S.A., R.A.W. Rhodes and B.A. Rockman (*eds*.). *The Oxford Handbook of Political Institutions*, e-book.

Corbin, J. and A.L. Strauss (2008). *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*, Thousand Oaks, CA: Sage Publications.

Debrun, X., L. Moulin, A. Turrini, J. Ayuso-i-Casals, M.S. Kumar, A. Drazen and C. Fuest (2008). 'Tied to the Mast? National Fiscal Rules in the European Union', *Economic Policy* 23:54, 297-362.

Deroose S., L. Moulin and P. Wierts (2006). 'National Expenditure Rules and Expenditure Outcomes: Empirical Evidence for EU Member States', *Wirtschaftspolitische Blätter* 1/2006, 27-42.

De Grauwe, P. (2014). *Economics of Monetary Union*. Oxford: Oxford University Press.

Deudney, D. (1995). 'The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, Circa 1787-1861, *International Organization* 49:2, 191-228.

Deutsch, K. (1957). *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*, Princeton: Princeton University Press.

Devuyst, Y. (2012). 'The Constitutional and Lisbon Treaties', in: Jones, E., A. Menon and S. Weatherhill (*eds.*), *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 624-675, e-book.

Diez, T. and A. Wiener (2019). 'Introducing the Mosaic of Integration Theory', in: Wiener A., T.A. Börzel and T. Risse (*eds.*) *European Integration Theory*, Oxford: Oxford University Press, pp. 1-26.

Dyson, K. (2012). 'Economic and Monetary Union', in: Jones E., A. Menon and S. Weatherhill (*eds.*), *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 2502-2590, e-book.

Elazar, D. (1987). *Exploring Federalism*. Tuscaloosa: University of Alabama Press.

European Parliament (2015). 'The European Parliament as a driving force of constitutionalization?', available at http://cadmus.eui.eu/handle/1814/43425 (accessed 27 November 2019).

Fabbrini, F. (2016). *Economic Governance in Europe. Comparative Paradoxes and Constitutional Challenges*, Oxford: Oxford University Press.

(2019a). 'Policy Department for Citizens' Rights and Constitutional Affairs, 'A Fiscal Capacity for the Eurozone: Constitutional Perspectives', available at http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL_IDA%282019%29608862 (accessed 12 March 2019).

(2019b). 'The Institutional Origins of Europe's Constitutional Crises. Grexit, Brexit, and the EU Form of Government', in: Ginsburg T., M.D. Rosen and G. Vanberg (*eds*.). *Constitutions in Times of Financial Crisis*, Cambridge: Cambridge University Press, pp. 204-226, e-book.

Fabbrini, S. (2007). *Compound Democracies. Why the United States and Europe Are Becoming Similar,* Oxford: Oxford University Press.

(2008). *America and its Critics. Virtues and Vices of the Democratic Hyperpower*, Cambridge: Polity Press.

(2015). *Which European Union? Europe After the Euro Crisis,* Cambridge: Cambridge University Press.

(2017). 'Intergovernmentalism in the European Union. A comparative federalism perspective', *Journal of European Public Policy* 24:4, 580-597.

(2019a) *Europe's Future: Decoupling and Reforming*, Cambridge: Cambridge University Press.

(2019b) 'Alternative governance models: „hard core" in a differentiated Europe', *Comparative European Politics* 17, 278-293.

Fabbrini, S. and P.D. Molutsi (2011) 'Comparative Politics', in: Badie B., D. Berg-Schlosser and L. Morlino (*eds*.). *International Encyclopedia of Political Science*, Thousand Oaks: SAGE Publications, Inc., pp. 343-359.

Fisher, W.E. (1969). 'An Analysis of the Deutsch Sociocausal Paradigm of Political Integration', *International Organization* 23:2, 254-290.

Fleiner, T. (2006). 'Swiss Confederation', in: Majeed A., R.L. Watts and D.M. Brown (*eds*.). Distribution of Powers and Responsibilities in Federal Countries, Montreal & Kingston: McGill-Queen's University Press, pp. 265-294.

Fossum, E.J, and M. Jachtenfuchs (2017). 'Federal challenges and challenges to federalism. Insights from the EU and federal states', *Journal of European Public Policy* 24:4, 467-485.

Fuest, C. and A. Peichl (2012). "European fiscal union: what is it? Does it work? And are there really 'no alternatives'?", CESifo Forum, 13(1), pp. 3-9.

Galligan, B. (2009). 'Comparative Federalism', in: Binder S.A., R.A.W. Rhodes and B.A. Rockman (eds.). *The Oxford Handbook of Political Institutions*, e-book.

Garrett, G. and G. Tsebelis (1996). 'An Institutional Critique of Intergovernmentalism', *International Organization* 50:2, 269-299.

Genschel, P. and M. Jachtenfuchs (*eds.*) (2014). *Beyond the Regulatory Policy? The European Integration of Core State Powers*, Oxford: Oxford University Press, e-book.

(2015). 'Research agenda: the European integration of core state powers', Paper for EUSA 2015, Boston, 4-6 March 2015.

(2016). 'More integration, less federation: the European integration of core state powers', *Journal of European Public Policy* 23:17.

(2018). 'From Market Integration to Core State Powers: The Eurozone Crisis, the Refugee Crisis and Integration Theory', *Journal of Common Market Studies* 56:1, 178-196.

Germond, C. (2012). 'Dynamic Franco-German Duos: Giscard-Schmidt and Mitterand-Kohl', in: Jones E., A. Menon and S. Weatherill (*eds.*), *The Oxford Handbook of the European Union*, Oxford: Oxford University Press, pp. 531-563, e-book.

Gilbert, M. (2012). 'The Treaties of Rome', in: Jones E., A. Menon and S. Weatherill (*eds.*), *The Oxford Handbook of the European Union*, Oxford: Oxford University Press, pp. 478-532, e-book.

Ginsburg T., M.D. Rosen and G. Vanberg (*eds.*) (2019). *Constitutions in Times of Financial Crisis*, Cambridge: Cambridge University Press, e-book.

Glaser, B.G. and A.L. Strauss (1967). *The Discovery of Grounded Theory*. Chicago: Aldine.

Goodhart, C.A.E. (1998). 'The Two Concepts of Money: Implications for the Analysis of Optimal Currency Areas', European Journal of Political Economy 14:3, 407-432.

Goodin, R.E. (*ed.*) (2011). *The Oxford Handbook of Political Science*, Oxford: Oxford University Press, e-book.

Haas, E.B. (1958). *The Uniting of Europe: Political, Social, and Economic Forces 1950-57*, Stanford: Stanford University Press.

Hall, M.A. and R.F. Wright (2008). 'Systematic Content Analysis of Judicial Opinions', *California Law Review*.

Hall, P.A. and R.C.R. Taylor (1996). 'Political Science and the Three Institutionalisms', *Political Studies* XLIV, 936-957.

Hallerberg, M. (2014). 'Why Is There Fiscal Capacity but Little Regulation in the US, but Regulation and Little Fiscal Capacity in Europe? The Global Financial Crisis as a Test Case, in: Genschel, P. and M. Jachtenfuchs (*eds.*). *Beyond the Regulatory Policy? The European Integration of Core State Powers*, Oxford: Oxford University Press, pp. 87-104, e-book.

Hanretty, C. and C. Koop (2012). 'Measuring the formal independence of regulatory agencies', *Journal of European Public Policy* 19:2, 198-216.

Heller, W.B. (1997). 'Bicameralism and Budget Deficits: The Effect of Parliamentary Structure on Government Spending, *Legislative Studies Quarterly* 22:4, 485-516.

Heller, W.B. and D.M. Branduse (2014). 'The Politics of Bicameralism', in: Martin S., T. Saalfeld and K.V. Stroem (*eds.*). *The Oxford Handbook of Legislative Studies*, Oxford: Oxford University Press, e-book.

Henning, C.R. and M. Kessler (2012). 'Fiscal Federalism: US History for Architects of Europe's Fiscal Union', *Bruegel Essay and Lecture Series*.

Herweg, N. and N. Zahariadis (2018). 'The multiple streams framework', in: *The Routledge Handbook of European Public Policy*, London and New York: Routledge, pp. 32-41.

Hinarejos, A. (2013). 'Fiscal Federalism in the European Union. Evolution and Future Choices for EMU', *Common Market Law Review* 50, 1621-1642.

Hix, S. and B. Hoyland (2011). *The Political System of the European Union*. New York: Palgrave.

Hoene, C. (2004). 'Fiscal Structure and the Post-Proposition 13 Fiscal Regime in California's Cities', *Public Budgeting and Finance*, 51-72.

Hoffmann, S. (1966). 'Ostinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', *Daedalus* 95:3, 862-915.

Hooghe, L., G. Marks and A.H. Schakel (2008). 'Operationalizing Regional Authority: A Coding Scheme for 42 Countries, 1950-2006', *Regional and Federal Studies* 18:2-3, 123-132.

(2012). 'Politicization', in: Jones E., A. Menon and S. Weatherill (*eds*.). *The Oxford Handbook of the European Union*, Oxford: Oxford University Press, pp. 3530-3587, e-book.

Hueglin, T.O. and A. Fenna (2015). *Comparative Federalism. A Systematic Inquiry*, Toronto: University of Toronto Press, e-book.

Isiksel, T. (2019). 'Constitutionalism as Limitation and License', in: Ginsburg T., M.D. Rosen and G. Vanberg (*eds*.). *Constitutions in Times of Financial Crisis*, Cambridge: Cambridge University Press, pp. 187-203, e-book.

Jachtenfuchs, M. and B. Kohler-Koch (1996). 'Einleitung: Regieren im dynamischen Mehrebenensystem', in: Jachtenfuchs, M. and B. Kohler-Koch, (*eds*.). *Europäische Integration*. Opladen: Leske and Budrich, pp. 15-444.

Jensen, C.S. (2019) 'Neo-functionalism', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019). *European Union Politics*, Oxford: Oxford University Press, pp. 55-68.

Jervis, R. (1978). 'Cooperation Under the Security Dilemma', *World Politics* 30:2, 167-214.

Jones, E. (2018). "Italy and the Completion of the Euro Area", in: J. Erikkson (*ed*.), *The Future of the Economic and Monetary Union. Reform Perspectives in France, Germany, Italy and the Netherlands, Swedish Institute for European Policy Studies*, Report Nr. 1, pp. 26-38.

Katz, E. (2006). 'United States of America', in: Majeed A., R.L. Watts and D.M. Brown (*eds*.). Distribution of Powers and Responsibilities in Federal

Countries, Montreal & Kingston: McGill-Queen's University Press, pp. 295-321.

Kelemen, D. (2003). 'The Structure and Dynamics of EU Federalism', *Comparative Political Studies*, 36:1-2, 184-208.

(2004). *The Rules of Federalism*: *Institutions and Regulatory Politics in the EU and Beyond*, Cambridge, MA; London: Harward University Press.

(2015). 'Law, Fiscal Federalism, and Austerity', *Indian Journal of Global Legal Studies* 22:2, 379-400.

(2019). 'Federalism and European Integration', in: Wiener A., T.A. Börzel and T. Risse (*eds*.). *European Integration Theory*, Oxford: Oxford University Press, pp. 27-42.

Kincaid, J. (2012). 'The Constitutional Framework of State and Local Government Finance', in: Ebel R.D. and J.E. Petersen (*eds*.). *The Oxford Handbook of State and Local Government Finance*, Oxford: Oxford University Press, e-book.

King G., R.O. Keohane and S. Verba (1994). *Designing Social Inquiry. Scientific Inference in Qualitative Research*, New Yersey: Princeton University Press.

Kössler, K. and M. Trettel (2018). 'Fiscal Federalism in Times of Crisis: An Iron Law of Centralisation?', in: Valdesalici A. and F. Palermo (*eds*.). *Comparing Fiscal Federalism*, Brill: Leiden, pp. 347-375, e-book.

Kostoris, F. and T. Padoa Schioppa (2006). 'The 2005 Reform of the Stability and Growth Pact: Too Little, Too Late?', Beer paper n° 6.

Kraan, D.-J. and M. Ruffner (2005). 'Budgeting in Switzerland', *OECD Journal on Budgeting* 5:1, 37-78.

Kracauer, S. (1952). 'The Challenge of Qualitative Content Analysis', *Public Opinion Quarterly* 16, 631-642.

Kramer, J. (2005). 'Federal Republic of Germany', in: Kincaid, J. and G.A. Tarr (*eds*.). *Constitutional Origins, Structure, and Change in Federal Countries*, Montreal & Kingston: McGill-Queen's University Press, pp. 143-179.

Krumm, T. (2015). *Föderale Staaten im Vergleich. Eine Einführung*, Wiesbaden: Springer Verlag, e-book.

Kuckartz, U. (2014). *Qualitative Text Analysis. A Guide to Methods, Practice & Using Software*, London: Sage

(2019). 'Qualitative Text Analysis: A Systematic Approach', in: Kaiser, G. and N. Presmeg (*eds*.) *Compendium for Early Career Researchers in Mathematics* Education, Cham: Springer, pp. 181-197.

Laursen, F. (2012). 'The Treaty of Maastricht', in: Jones E., A. Menon and S. Weatherhill (*eds*.). *The Oxford Handbook of the European Union*. Oxford: Oxford University Press, pp. 752-829, e-book.

Levrat, N. (2015). 'The European Union: From International Relations to Intergovernmental Relations', in Poirier J., C. Saunders and J. Kincaid (*eds*.). *Intergovernmental Relations in Federal Systems. Comparative Structures and Dynamics*, Oxford: Oxford University Press, pp. 174-205.

Lewis, J. (2019). 'The European Council and the Council of the European Union', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019). *European Union Politics*, Oxford: Oxford University Press, pp. 157-175.

Lhotta, R. and J. von Blumenthal (2015). 'Intergovernmental Relations in the Federal Republic of Germany: Complex Co-operation and Party Politics', in: in Poirier J., C. Saunders and J. Kincaid (*eds*.). *Intergovernmental relations in federal systems. Comparative Structures and Dynamics*, Oxford: Oxford University Press, pp. 206-238.

Lijphart, A. (1984). *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, New Haven: Yale University Press.

(2012). *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, Yale: Yale University Press.

Linz, J.J. (1997). 'Democracy, multinationalism and federalism', *Working Paper 103*. Madrid: Juan March Institute.

Mabbett, D. and W. Schelkle (2009). 'The Politics of Conflict Management in EU Regulation', *West European Politics* 32:4, 699-718.

(2015). 'Searching under the lamp-post: the evolution of fiscal surveillance', in Rhodes, M. and J. Caporaso (*eds*.) *The Crisis in the Eurozone:*

A New Step Forward in the European Integration Process?, Oxford: Oxford University Press.

Mahoney, J. and C.M. Villegas (2007). 'Historical Enquiry and Comparative Politics', in: Boix, C. and S.C. Stokes (*eds*.). *The Oxford Handbook of Comparative Politics*, Oxford: Oxford University Press, pp. 73-89.

Majone, G. (1989). *Regulating Europe*, London: Routledge.

(1997). 'From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance', *Journal of Public Policy* 17:2, 139-167.

(1999). 'The regulatory state and its legitimacy problems', *West European Politics* 22:1, 1-24.

Marks G., L. Hooghe and K. Blank (1996). 'European Integration from the 1980s: State-Centric v. Multi-level Governance', *Journal of Common Market Studies* 34:3, 341-78.

Mayring, P. (2010). *Qualitative Inhaltsanalyse. Grundlagen und Techniken*, Weinheim: Beltz.

McWhinney, E. (1962). *Comparative Federalism*, Toronto: University of Toronto Press.

Mearsheimer, J.J. (2001). *The Tragedy of Great Power Politics*, New York: W. W. Norton & Company.

Moravcsik, A. (1998). *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press.

Moravcsik, A. and F. Schimmelfennig (2019). 'Liberal Intergovernmentalism', in: Wiener A., T.A. Börzel and T. Risse (*eds*.). *European Integration Theory*, Oxford: Oxford University Press, pp. 64-84.

Morgenthau, H. (1948). *Politics Among Nations. The Struggle for Power and Peace*, New York: McGraw Hill – Higher Education.

Niemann A., Z. Lefkofridi and P.C. Schmitter (2019). 'Neofunctionalism', in: Wiener A., T.A. Börzel and T. Risse (*eds*.) *European Integration Theory*, Oxford: Oxford University Press, pp. 43-63.

Oates, W.E. (1999). 'An Essay on Fiscal Federalism', *Journal of Economic Literature*, 37:3, 1120-1149.

Pagoulatos, G. and L. Tsoukalis (2012). 'Multilevel Governance', in: Jones E., A. Menon and S. Weatherhill (*eds*.). *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 257-302, e-book.

Pfisterer, T. (2015). 'Intergovernmental Relations in Switzerland: An Unfamiliar Term for a Necessary Concept', in: Poirier J., C. Saunders and J. Kincaid (*eds*.). *Intergovernmental relations in federal systems. Comparative Structures and Dynamics*, Oxford: Oxford University Press, pp. 379-410.

Phinnemore, D. (2019). 'The European Union: Establishment and Development', in: Cini, M. and N. Pérez-Solòrzano Borragàn (*eds*.). *European Union Politics*, Oxford: Oxford University Press, pp. 11-30.

Poirier, J. and C. Saunders (2015). 'Comparing Intergovernmental Relations in Federal Systems: An Introduction', in: Poirier J., C. Saunders and J. Kincaid (*eds*.). *Intergovernmental relations in federal systems. Comparative Structures and Dynamics*, Oxford: Oxford University Press, pp. 1-13.

Pollack, M.A. (2012). 'Realist, intergovernmentalist, and institutionalist approaches', in Jones E., A. Menon and S. Weatherhill (*eds*.). *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 79-145.

Rädiker, S. and U. Kuckarzt (2019). *Analyse qualitativer Daten mit MAXQDA. Text, Audio und Video*, Wiesbaden: Springer, e-book.

Riker, W.H. (1964). *Federalism*, Boston: Little Brown and Company.

(1975). 'Federalism', in: Greenstein, F.I. and N.W. Polsby (*eds*.). *Handbook of Political Science,* vol. 5: *Governmental Institutions and Processes*, Reading, Mass.: Addison-Welsey.

Rittberger, B. and F. Schimmelfennig (2008). 'The Constitutionalization of the European Union', paper presented for presentation at the workshop 'Global constitutionalism: Process and Substance', 17-19 January 2008, Kandersteg, Switzerland.

Rodden, J. (2006a). *The political economy of federalism*, in: Weingast, B. and D. Wittmann (*eds*.). *The Oxford Handbook of Political Economy*, e-book.

(2006b). *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism*, Cambridge: Cambridge University Press.

Rosenfeld, M. and A. Sajò (2012). *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, e-book.

Salehijam, M. (2018). 'The Value of Systematic Content Analysis in Legal Research', *Tilburg Law Review* 23:1, 34-42.

Sbragia, A.M. (2006). 'American Federalism and Intergovernmental Relations', in: Rhodes R.A.W., S.A. Binder and B.A. Rockman (*eds*.). *The Oxford Handbook of Political Institutions*, Oxford: Oxford University Press, pp. 239-260, e-book.

Schaechter A., T. Kinda, N. Budina and A. Weber (2012). 'Fiscal Rules in Response to the Crisis – Toward the "Next Generation" Rules. A New Dataset', *IMW Working Paper* 12:187.

Scharpf, F.W. (1988). 'The joint-decision trap: lessons from German federalism and European integration', *Public Administration* 66(3): 239-278.

Schmidt, V. (2005). *Democracy in Europe: The EU and National Polities*, Oxford: Oxford University Press.

Schelkle, W. (2009). 'The Contentious Creation of the Regulatory State in Fiscal Surveillance', *West European Politics* 32:4, 829-846.

(2012a). 'Rich versus poor', in: Jones, E., A. Menon and S. Weatherhill (*eds*.), *The Oxford Handbook of the European Union,* Oxford: Oxford University Press, pp. 992-1033, e-book.

(2012b). 'European Fiscal Union: From Monetary Back Door to Parliamentary Main Entrance', *CESifo Forum, ifo Institut - Leibniz-Institut für Wirtschaftsforschung,* 13:1, pp. 28-34.

(2014). 'Fiscal Integration by Default', in: Genschel, P. and M. Jachtenfuchs (*eds*.). *Beyond the Regulatory Policy? The European Integration of Core State Powers*, Oxford: Oxford University Press, pp. 105-125, e-book.

(2017). 'Hamilton's Paradox Revisited. Alternative lessons from US history', *CEPS Working Document* No 2017/10.

Scicluna, N. (2015). *European Union Constitutionalism in Crisis*, New York: Abingdon/Routledge.

Schmitt, N. (2005). 'Swiss Confederation', in: Kincaid, J. and G.A. Tarr (*eds*.). *Constitutional Origins, Structure, and Change in Federal Countries*, Montreal & Kingston: McGill-Queen's University Press, pp. 347-380

Schmitter, P.C. (1969). 'Three Neo-Functional Hypotheses about International Integration', *International Organization*, 23:1, 161-166.

Schütze, R. (2015). *EU Constitutional Law*, Cambridge: Cambridge University Press.

Schwazer, D. (2018). "Germany's approach to euro area reform", in: J. Erikkson (*ed*.). *The Future of the Economic and Monetary Union. Reform Perspectives in France, Germany, Italy and the Netherlands, Swedish Institute for European Policy Studies,* Report Nr. 1, pp. 49-59.

Shah, A. (2007). *The Practice of Fiscal Federalism: Comparative Perspectives,* Montreal/London: McGill-Queen's University Press.

Stepan, A. (1999). 'Federalism and Democracy: Beyond the U.S. Model', *Journal of Democracy* 10:4, 19-34.

Strauss, A.L. and J.M. Corbin (1998). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, Thousand Oaks, CA: Sage Publications.

Taagepera, R. (2003). 'Arend Lijpart's Dimensions of Democracy: Logical Connections and Institutional Design', *Political Studies* 51: 1-19.

Testa, C. (2010). 'Bicameralism and Corruption', *European Economic Review* 54:2, 181-198.

Thatcher, M. and A.S. Sweet (2002). 'Theory and Practice of Delegation to Non-Majoritarian Institutions', *West European Politics* 25:1, 1-22.

Thygesen, N. (1999). 'Fiscal institutions in EMU and the Stability Pact', in: Hallet, H.H., M.M. Hutchison and and S.E. Hougaard Jensen (*eds*.). *Fiscal aspects of European monetary integration*, Cambridge: Cambridge University Press, pp. 15-36.

Thorlakson, L. (2003). 'Comparing federal institutions: Power and representation in six federations', *West European Politics* 26:2, 1-22.

Tortola, P.D. (2014). 'The Limits of Normalization: Taking Stock of the EU-US Comparative Literature', *Journal of Common Market Studies* 52:6, 1342-1357.

Valdesalici, V. (2018). *Federalismo fiscale e responsabilizzazione politico-finanziaria. Comparazione giuridica ed esercizi di misurazione del diritto*. Napoli: Edizioni Scientifiche Italiane.

Van Eden H., D. Emery and P. Khemani (2013). 'Developing Legal Frameworks to Promote Fiscal Responsibility – Design Matters', *Public financial management and its emerging architecture*, Washington/D.C.: International Monetary Fund, pp. 79-105.

Vanberg, V.J. (2015). 'Constitutional Political Economy', *Freiburg Discussionpapers on Constitutional Economics* 15/06.

Verdun, A. (2019). 'Economic and Monetary union', in: Cini, M. and N. Pérez-Solòrzano Borragàn (2019). *European Union Politics*, Oxford: Oxford University Press, pp. 343-357.

Von Hagen, J. (2009). 'Political Economy of Fiscal Institutions', in: Wittman, D.A. and B.R. Weingast (*eds*.). *The Oxford Handbook of Political Economy*, e-book.

Wallace, E.O. (1999). 'An Essay on Fiscal Federalism', *Journal of Economic Literature* 37:3, 1120-1149.

Wallace H., W. Wallace and M.A. Pollack (2005). *Policy-Making in the European Union*, Oxford: Oxford University Press.

Waltz, K. (1979). *Theory of International Politics*. Philippines: Addison-Wesley.

Watts, R.L. (1999). *Comparing Federal Systems*, Institute of Intergovernmental Relations, Kingston, Ontario: Queen's University.

Wheare, K.C. (1946). *Federal Government*, New York: Oxford University Press.

Wozniakowski, T. (2017). 'Why the sovereign debt crisis could lead to a federal fiscal union: the paradoxical origins of fiscalization in the United States and insights for the European Union', *Journal of European Public Policy* 25:4, 630-649.

Legislation

Basic Law for the Federal Republic of Germany (2019), available at http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf (accessed 14 November 2019).

Council – Commission of the European Communities, Report to the Council and the Commission on the realisation by stages of Economic and Monetary Union in the Community (1970) [Werner Report], Supplement to Bulletin 11 – 1970 of the European Communities.

EFSF Framework Agreement, available at http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf (accessed 27 November 2019).

European Commission (2019). The Treaty of Rome, available at https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf (accessed 30 March 2019).

European Council EUCO 10/1/11 REV 1, 'Euro Plus Pact', available at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf (accessed 27 November 2019).

European Council (2019). Treaty Establishing the European Stability Mechanism [ESM Treaty], available at http://www.esm.europa.eu/about/legal-documents/ESM%20Treaty.htm (accessed 7 July 2019).

Federal Constitution of the Swiss Confederation (2019), available at https://www.admin.ch/opc/en/classified-compilation/19995395/201809230000/101.pdf (accessed 14 November 2019)

Fiscal Compact [Treaty on Stability, Coordination and Governance in the Economic and Monetary Union] (2012), available at http://europa.eu/rapid/press-release_DOC-12-2_en.htm (accessed 14 November 2019).

Official Journal of the European Union (2012a). 'Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management', available at https://eur-

lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013Q1220(01)&from=EN (accessed 25 November 2019).

(2012b). 'Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank', available at https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en_protocol_4.pdf (accessed 14 November 2019).

(1997a). *Council Regulation (EC) No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l25019 (accessed 14 November 2019).

(1997b). *Council Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure*, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l25019 (accessed 29 November 2019).

(2011a). *Regulation (EU) No. 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1173 (accessed 14 November 2019).

(2011b). *Regulation (EU) No. 1174/2011 of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011R1174 (accessed 14 November 2019).

(2011c). *Regulation (EU) No. 1175/2011 of the European Parliament and of the Council amending Council Regulation (EC) No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1175&from=EN (accessed 14 November 2019).

(2011d). *Regulation (EU) No 1176/2011 of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances*, available at http://eur-lex.europa.eu/legal-

content/EN/TXT/PDF/?uri=CELEX:32011R1176&from=EN (accessed 14 November 2019).

(2011e). *Council Regulation (EU) No. 1177/2011 amending Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1177&from=EN (accessed 14 November 2019).

(2011f). *Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States*, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0041:0047:EN:PDF (accessed 14 November 2019).

(2013a). *Regulation (EU) No. 472/2013 of the European Parliament and of the Council on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0472&from=EN (accessed 14 November 2019).

(2013b). *Regulation (EU) No. 473/2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area*, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0473&from=EN (accessed 14 November 2019).

Protocol on the convergence criteria, available at https://www.ecb.europa.eu/ecb/legal/pdf/en_protocol_13_from_c_11520080509en02010328-4.pdf (accessed 14 November 2019).

Protocol on the excessive deficit procedure, available at http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008M/PRO/12&from=EN (accessed 14 November 2019).

Treaty on European Union' [Maastricht Treaty] (1992), Office for Official Publications of the European Communities, Luxembourg, available at http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf (accessed 14 November 2019).

Treaty on European Union [TEU] and Treaty on the Functioning of the European Union [TFEU]' (2016), available at http://europa.eu/pol/pdf/consolidated-treaties_en.pdf (accessed 14 November 2019).

Treaty establishing the European Coal and Steel Community (1951) [ECSC Treaty], available at https://www.cvce.eu/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html (accessed 20 May 2019).

Treaty establishing the European Economic Community (1957) [EEC Treaty], available at https://www.cvce.eu/en/obj/treaty_establishing_the_european_economic_community_rome_25_march_1957-en-cca6ba28-0bf3-4ce6-8a76-6b0b3252696e.html (accessed 29 November 2019).

Treaty of Luxembourg (1970), available (in Italian) at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:11970F/TXT (accessed 29 November 2019).

List of tables