

Differentiated Fiscal Surveillance and the Democratic Promise of Independent Fiscal Institutions in the Economic and Monetary Union

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Abstract: *The post-crisis reforms of the Economic and Monetary Union (EMU) have met with skepticism toward their democratic credentials. This certainly applies to the requirement to set up Independent Fiscal Institutions (IFIs). Drawing on Pettit's model of republican legitimacy, this paper argues however that IFIs can indirectly increase the democratic character of national fiscal policy while preserving Member States' autonomy. Such a democratic contribution is further facilitated by nationally differentiated implementation of the EU rules regarding the heterogeneous design and powers of IFIs. Based on a comparative analysis of selected Member States' "elaboration discretion" in defining the organisation and the mandate of IFIs, the article highlights that these features reflect the variety of constitutional settings at domestic level. It is concluded that this heterogeneity amounts to a form of differentiated integration which allows for a better navigation of the trade-off between the persistence of fiscal policy externalities and the reduction in national autonomy.*

Zusammenfassung: *Die Reformen der Wirtschafts- und Währungsunion (WWU) sind auf Skepsis hinsichtlich ihrer demokratischen Legitimation gestoßen. Dies gilt sicherlich für die Forderung nach der Schaffung von Fiskalräten (IFIs). In Anlehnung an Pettits Modell einer republikanischen Legitimität argumentieren wir, dass IFIs den demokratischen Charakter der nationalen Finanzpolitik stärken können und gleichzeitig die Autonomie der Mitgliedstaaten gewahrt bleibt. Ein solcher demokratischer Beitrag wird durch eine national differenzierte Umsetzung der EU-Regeln hinsichtlich der heterogenen Ausgestaltung und Befugnisse von IFIs weiter erleichtert. Auf der Grundlage einer vergleichenden Analyse des Ermessensspielraums ausgewählter Mitgliedstaaten bei der Festlegung der Organisation und des Mandats von IFIs zeigt der Artikel, dass diese Merkmale die Vielfalt der verfassungsrechtlichen Rahmenbedingungen auf nationaler Ebene widerspiegeln. Wir schlussfolgern, dass diese Vielfalt auf eine Form der differenzierten Integration hinausläuft, die es ermöglicht, den Zielkonflikt zwischen dem Fortbestehen fiskalpolitischer Externalitäten und der Verringerung der nationalen Autonomie besser zu bewältigen.*

Résumé: *Les réformes post-crise de l'Union Economique et Monétaire ont été critiquées pour leurs références démocratiques. Cela s'applique certainement à l'obligation de créer des institutions fiscales indépendantes (IFI). S'inspirant du modèle de légitimité républicaine de Pettit, cet article soutient cependant que les IFI peuvent renforcer indirectement le caractère démocratique de la politique budgétaire nationale tout en préservant l'autonomie des États. Une telle contribution démocratique est encore facilitée par une mise en œuvre différenciée au niveau national des règles de l'UE concernant l'hétérogénéité de la conception et des pouvoirs des IFI. Sur la base d'une analyse comparative du "pouvoir d'élaboration" des États sélectionnés pour définir l'organisation*

et le mandat des IFI, l'article souligne que ces caractéristiques reflètent la diversité des systèmes constitutionnels nationaux. Nous en concluons que cette hétérogénéité équivaut à une forme de différenciation qui permet un meilleur compromis entre la persistance des externalités de la politique budgétaire et la réduction de l'autonomie nationale.

KEYWORDS: Differentiated Integration, EMU, Fiscal Councils, Fiscal Surveillance, Non-domination

Introduction

Differentiated integration (DI), in the different forms through which it materialises (see, amongst many, De Witte 2017: 9-27), has become an inherent feature of the EU integration process (Bellamy and Kröger 2017; Schmidt 2019). The governance of the Economic and Monetary Union (hereinafter EMU) provides a significant example of a combination of different forms of DI (Curtin 2020: 11-17). While monetary policy is centralised, the “economic” leg of the EMU remains firmly in the hands of the different national governments. Even if this configuration results in these same governments seeing each other’s macroeconomic policies as sources of risk and instability, they are wary of ceding any “core state powers” upwards where democratic control seems to be substituted by technocratic management. Therefore, striking the right balance between the restriction of national autonomy and the reduction in risk-shifting appears to be the central and extremely delicate challenge of the EMU.

This article suggests that republican political theory offers a useful normative vocabulary to conceptualise and analyse this problem, since macroeconomic externalities as much as supranational technocratic institutions threaten a value that is central to republican thinkers, namely: national sovereignty. Indeed, the capacity of citizens to control, through democratic procedures, how the state will interfere with their lives guarantees that their freedom as non-domination is maximised in their relationships with both other fellow citizens and with the state. This is aptly summarised by Pettit’s slogan: “the state ought to be internationally undominated, domestically undominating defender of its citizens’ freedom as non-domination” (Pettit 2012: 19). From this normative standpoint, the objective is thus to devise the EMU’s institutions in a way that minimises both forms of domination: the internal one is minimised by increasing the control each *demos* exercises over its own governments, while the external one is reduced when macroeconomic externalities between *demos* do not impair each *demos*’ capacity to self-government.

This contribution argues that a so far underexplored – yet continuously practiced – form of DI can facilitate the achievement of this republican desideratum. This form of institutional DI arises from the broad discretion left to Member States (MS) to accommodate the body of EU legislation to their own specific constitutional, political and societal settings. Such “elaboration discretion” is a form of DI which allows for “the further fleshing out of EU legislation in national law” (Van der Brink 2018: 258) and is particularly useful in the presence of EU open-textured norms that require translation into concrete domestic provisions. The article analyses MS’ implementation of EU requirements to set up a technical, non-majoritarian body to oversee the country’s fiscal sustainability – namely: a fiscal council or independent fiscal institutions

(IFIs) – as a form of DI. In particular, as a case of differentiated implementation of EU law.

By reinterpreting the economic problem of deficit bias from a democratic perspective, this contribution argues that IFIs can play an important role in fostering the kind of contestatory citizenry that is essential for making the use of public powers (in this case fiscal policy) non-arbitrary. Moreover, the transnational collaboration of these expert bodies has the potential to reduce the inter-democratic externalities that national executives impose on one another through their macroeconomic policies.

At the same time, this contribution highlights how differently MS have embedded these new non-majoritarian bodies in the national democratic structures. This institutional heterogeneity is justified if it better enables each national *demos* to reduce the internal dimension of domination associated with deficit bias, but also the external one, by making the process of collective will-formation more porous to the macroeconomic decisions of other *demoi*. Institutionally, this principle suggests that the DI of national fiscal councils should not result in these expert bodies approximating either the “agent”, or the “trustee” model, but rather the “orchestrator” one (Tesche 2019). The article thus contributes to the literature on DI by developing an under-theorized and often overlooked strand of research in this field focusing on the desirability of DI within the EMU through institutional heterogeneity.

The contribution proceeds as follows. It first considers the democratic challenges stemming from the governance of an asymmetric EMU between the Union and the national levels. Second, it offers a comparative analysis of the design and operation of some fiscal councils in the EMU highlighting their institutional heterogeneity as a form of “elaboration discretion” and an illustration of their attempts at cooperation. Third, it elaborates on the prospective (indirect) contribution of national fiscal councils to making governments’ macroeconomic policies non-dominating, both internally and externally. In doing so, it explores whether the achievement of this goal is compatible with the IFIs’ institutional heterogeneity.

The Democratic Challenges of EMU’s Asymmetric Integration

From its inception in the Treaty of Maastricht, the EMU can be characterised as the product of a large-scale bargaining exercise between the executive branches of different MS in a kind of contractual environment (Crum and Merlo 2020). While monetary policy enjoyed the highest level of vertical integration (Schimmelfennig et al. 2015), economic and financial matters have instead been organised around a process of policy coordination aimed at balancing two objectives that have been seen as conflicting, namely: the respect of a MS’s fiscal sovereignty and the need to limit the externalities that autonomously contracting parties can impose on one another. Allowing more fiscal discretion has been seen as potentially incentivising fiscally profligate MS to boost their spending and make other countries pay for either the cost of a bailout, once debts become unsustainable, or for the increased level of inflation that could ensue if the European Central Bank was forced to monetise those high stocks of public debt (Issing 2008). Alternatively, that same discretion implies that countries can spend or invest too little and widen problematic current account imbalances in the currency area. Either way, economic, financial and monetary integration opened the possibility that in choosing their macroeconomic policies, EMU MS influence each other in problematic ways. A republican reading of these relationships highlights, first, that the macroeconomic objectives a MS tries to achieve are

a function of what other – often wealthier or more capital-intensive– neighbours prefer to do; second, that lacking the institutions for fiscal policy coordination, these preferences would not track the concerns and interests of its citizens; third, that exiting this relationship, meaning leaving the common currency, is considered prohibitively costly, both politically and economically. These three features (see Lovett 2010: 83) are sufficient to qualify the practice of sharing a currency between heterogenous and separate polities as potentially dominating. This is not simply a matter of economic efficiency but a democratic issue, since the capacity to autonomously choose the level and kind of economic activity by changing, for instance, the level of taxes and spending gives substance to the ideal of self-determination which, in turn, underpins the legitimate exercise of public powers. When a government finds it harder, or even impossible, to control the country's economic fate, because other MS can successfully interfere with its choices, the citizens in whose name and interests it acts are thus denied their status of equal controllers and editors of the rules and policies that constrain them. In short, macroeconomic externalities put 'the operation of the state beyond their effective influence' (Pettit 2010: 77).

Yet, EMU membership does not only change the external institutional environment in which States operate, but also affects their internal democratic life, since it places executives at the center of the process of macroeconomic coordination –a process that is removed from the usual parliamentary control. Indeed, while deficit bias and excess savings may result in externalities being imposed on other *demoi*, they are also associated with the exercise of uncontrolled political power by national executives over their own citizens. To the extent that the tendency of elected majorities to finance their spending programmes through higher debt is not the expression of the underlying democratic public or cannot meaningfully be contested by them, then citizens are being ruled arbitrarily. This seems to be a real possibility in the EMU. Surely, from a purely descriptive perspective, MS' governments have preferred to finance their yearly expenditure through additional borrowing (Buti and Van den Noord 2004). Moreover, the now extensive deficit bias literature has identified various mechanisms explaining this tendency (see Eslava 2011) which suggests public powers are not appropriately scrutinised and constrained. For instance, the 'political business cycle' explanation of deficit bias describes incumbent governments as being incentivised to overborrow before an election in order to convince under-informed, and therefore manipulable, voters to support them (Nordhaus 1975). In turn, if these informational asymmetries cannot be redressed through other institutional checks, like parliamentary contestation, then public powers cannot be said to be sufficiently under the control of those subject to them (Pettit 2012: Ch. 4).

These two forms of domination – the internal one through a lack of informed control of executives' choices and the external one through transnational externalities – are ultimately the product of the low level of vertical integration in the economic leg of the EMU, since what has been integrated is not so much the whole political decision-making process on economic policies writ-large, but rather a rule-based surveillance system administered at the supranational level.

In this system, the European Commission is given the task of monitoring the respect of quantitative rules on the amount of public debt and yearly deficit each country is allowed to have, thus acting as an external constraint on governments' fiscal discretion. This understanding of EMU as a form of technocratic break on MS' fiscal exuberance was

further strengthened as a result of the sovereign debt crisis (Laffan 2014). The surveillance powers of the Commission were stepped up, so that its proposal to initiate an excessive deficit procedure is accepted unless the Council votes against it by qualified majority. At the national level the fiscal policy-making process has been enclosed in the European Semester, which aggregates different surveillance exercises around a coordinated calendar that is meant to alert governments against any macroeconomic trends that could make the euro area “unstable” (Dawson 2015).

The problem lies not so much in the fiscal rules *per se*, which provide the backbone of fiscal surveillance, but rather in the fact that they are enforced and applied within a governance framework that is far removed from the reach of national democratic systems. Fiscal surveillance is thus perceived (and generally portrayed by national executives) as an alien influence from outside, rather than as a tool to effectively control one of the most impactful macroeconomic decisions in the hands of governments. Moreover, as the negotiations with “Brussels” over the budgetary plans of the MS take the centre stage at the end of the European Semester’s policy cycle, the room for parliaments to act as constraints on executive power becomes narrower. Indeed, national assemblies more and more often appear to be at the losing end of a considerably “reinforced two-level game” (Crum 2018 drawing on Putnam 1988), leaving it to governments to cast themselves as the true trustees of the national interest and ultimately avoiding imposing their veto on the stability and reform programmes.¹

While republicans rightly argued that “the subjection to supranational rules and institutions is necessary to secure the joint and reciprocal non-domination of states” (Laborde and Ronzoni 2016: 281), it is also increasingly clear that in the EMU this organisational principle has given rise to another democratic tension. Decision-making power has increasingly been shifted to the EU-level, hollowing out the capacity of domestic publics and their parliaments to control and question the governments’ macroeconomic policies.

This trend seem to be further vindicated by the decision to create fiscal councils, especially if these are seen as agents of austerity inherently inimical to citizens’ demands. Unlike the detailed debt and deficit rules, the EU norms on national IFIs left the definition of the specific functions and institutional positioning of these new non-majoritarian bodies quite broad. The variety of EU law sources that regulate the design and operation of fiscal councils ultimately leaves to MS considerable discretion on how to structure them (see section 2).

In principle there are at least three different models of IFIs (Tesche 2019) that can be compatible with EU law, each of them being informed by a different understanding of the role they have to play in the fiscal domain. First, the “trustee model”, inspired by national central banks, sees these institutions as decision-makers. In order to overcome the logic of deficit-bias, governments hand over to a politically insulated fiscal council the task of, not simply monitoring fiscal rules, but also setting the fiscal target. Secondly, the “agent model” foresees the fiscal council as being institutionally close to the executive and its

¹ Within the European Semester, Stability Programs are planning documents sent by the governments of the Eurozone countries to the European Commission by 15 April every year and outlining the main measures of fiscal policies to be adopted with a view to comply with the medium-term budgetary objectives. Together with National Reform Programmes, for what concerns structural reforms proposed, they formed the object of country-specific recommendations.

tasks limited to the production of macroeconomic statistics and the monitoring of compliance with the fiscal rules. This form of IFI would enjoy less independence from the executive, which would more tightly control its budget and the appointment of its members (Raudla and Douglas 2020). Finally, the “orchestrator model” postulates that fiscal councils should mobilise and raise awareness within the Parliaments, among the citizens, by the media towards the fiscal targets, but without possessing the instruments to make fiscal choices (Beetsma and Debrun 2017). In this case one would expect the Parliament to have a say or even decision-making powers over the appointment of members of the council and to be its main interlocutor, since fiscal stability is achieved by increasing the possibility of contesting the executive’s decisions.

While this taxonomy shows that technocratic influence over the democratic process can take quite different forms, it may not dispel the suspicion that, whatever their form and shape, these new bodies will still reduce the control citizens can exercise over the policy-making process. Yet, these different models display normatively meaningful differences in the way in which IFIs influence the domestic decision-making process. If the worry in the case of “trustee-types” fiscal councils is that their capacity to control fiscal policy instruments is clearly at odds with the value of democratic representation, the problem for IFIs that follow the “agent model” is rather that they risk becoming another branch of the Treasury and potentially worsen the marginalisation of Parliaments that recent EMU reforms have set in motion already. Yet it may be too quick to draw similar conclusions for “orchestrator-types” of IFIs, which instead rely on their capacity to enlist different social actors to influence the executive’s fiscal choices and cannot control any policy instrument.

Questions surrounding the democratic credentials of IFIs are not just domestic matters though. Their institutional positioning and mandate is likely to influence the kind of transnational network they form with similar institutions in other EMU countries and, consequently, whether (and how) they can contribute to alleviating the problem of externalities between *demoi*. If EMU Member States opt for trustee-like forms of fiscal councils, the supranational network they will establish would likely take the form of a close epistemic community similar to the Eurosystem or the European System of Central Banks, with specific procedures in place to coordinate and decide on the fiscal instruments each national institution controls. Conversely, IFIs that are in closer proximity to their national governments and with limited mandates – as in the ‘agent’ model – would be more likely to act as representatives of the national will in a network that could challenge the role of “interpreter of last resort” of the Stability and Growth Pact so far held by the Commission. Finally, if EMU IFIs work as “orchestrators” of fiscal discipline one would expect their interactions with similar institutions to be aimed at learning from one another how to effectively enlist social actors and defend their functional independence from both the government and parliamentary majorities.

In any case, the lack of stringent EU rules on how to integrate these new bodies in the domestic democratic structure of each country opens the possibility that significant differences between countries will emerge. It is thus important to understand, first, the domestic and supranational configuration of IFIs, their mandate and effective powers; second, whether this institutional positioning and heterogeneity helps the EMU to navigate the two democratic tensions that this section has highlighted, namely: the imposition of fiscal policy externalities by national executives and the lack of robust channels for democratic contestation in the macroeconomic surveillance process.

The Heterogeneous Institutional Embedding of National Fiscal Councils in the EMU

Minimum Requirements and the Use of “Elaboration Discretion”

EU law sources (Directive 2011/85 EU, but specifically EU Regulation 473/2013) leave ample space to tailor the design and operation of IFIs to the existing institutional setting and administrative structure of each MS. In particular, Article 2 of the Regulation lists the basic and very general features fiscal councils shall have in order for their independence to be ensured:

- “(i) a statutory regime grounded in national laws, regulations or binding administrative provisions;
- (ii) not taking instructions from the budgetary authorities of the Member State concerned or from any other public or private body;
- (iii) the capacity to communicate publicly in a timely manner;
- (iv) procedures for nominating members on the basis of their experience and competence;
- (v) adequate resources and appropriate access to information to carry out their mandate;”

Additionally, Article 5 of the Regulation defines the functions IFIs are expected to assume. They shall ensure the compliance with numerical fiscal rules incorporating in the national budgetary processes the MS’s medium-term budgetary objective and with the deficit and debt rules set out at EU level. “Where appropriate”, they also provide public assessments with respect to national fiscal rules, evaluating the occurrence of the conditions to activate the correction mechanism; in this case, whether the correction proceeds in accordance with national rules and plans; and if any of the circumstances allowing the temporary deviation from the medium-term objective has occurred or has ceased.

In relation to the Fiscal Compact, which also contains a telegraphic reference to independent monitoring bodies in EMU (Article 3.2), the European Commission (2017: 4) asserted that:

“(...) margin was given to customise national provisions to the specific institutional budgetary setting of each Contracting Party. (...) That feature is seen in, for example, (...) varying ambitions, beyond the minimum requirements, in the setting and mandate of national independent monitoring institutions.”

Indeed, the vagueness of the normative provisions and the emphasis on the importance to accommodate the institutional embedding to the specific national constitutional and administrative context have led to a significant level of DI in the design and role of the IFIs across the MS. A high degree of “elaboration discretion” (Van der Brink 2018) could be used in the national choices defining the position and tasks of the fiscal watchdogs.

According to the typology of fiscal councils outlined above, all IFIs in the EMU appear to fall within the orchestrator model, despite the significant variations registered.² Indeed, some fiscal councils have got very close to the agent and the trustee models. For example, the European Commission (2017) considered the proximity to the Government of the

² The following analysis is based on the information and data collected in the OECD Independent Fiscal Institutions Database (<http://www.oecd.org/governance/budgeting/oecdnetworkofparliamentarybudgetofficialspbo.htm>) and on the website of the EU Independent Fiscal Institutions’ Network (<https://www.euifis.eu/>) in addition to secondary sources and information directly extrapolated from the materials (reports, opinions, notes) available on the websites of the national fiscal councils in the Eurozone and of the European Fiscal Board.

Belgian and the German IFIs as problematic from the perspective of their independence. Similarly, the clash between the Spanish IFI and the Government, accused to filter the information transmitted by the competent administrations to the fiscal council (Fasone and Fromage 2017), shows the attempt of the Executive to curb the IFI's activity following the "agent model".

By contrast, the Dutch Bureau for Economic Policy Analysis approaches the "trustee model", since it is asked to not only draft the forecasts for the Government, but also to provide a public fiscal assessment of the parties' electoral manifestos and political programmes (Vierke and Masselink 2017).

Variation Between "Orchestrator" Fiscal Councils

In order to illustrate the diversity of the institutional solutions devised to embed some "orchestrator" fiscal councils it is instructive to zoom in on the French, the Irish and the Italian IFIs. The French High Council on Public Finance (HCPF), the Irish Fiscal Advisory Council (IFAC) and the new Parliamentary Budget Office (IrPBO) and the Italian Parliamentary Budget Office (ItPBO) are collegial bodies whose members are appointed based on their expertise and reputation. Requirements to ensure the independence of the body, both for the appointment and the dismissal of the members, are set out in legislation.

The length of the mandate of the fiscal councils' members varies significantly. In Italy, it is of 6 years and hence exceeds the length of the parliamentary term; in France, except for the Director General of the National Institute of Statistics and Economic Research, who is member *ex officio*, the mandate lasts 5 years, like that of the National Assembly, and in Ireland the fiscal council's members stay in office for 4 years – like the MPs – but their mandate can be renewed once.

The institutional positioning and the appointment procedure of the three IFIs are also quite different from one another. The Italian PBO is placed within the Parliament, on which it is to some extent institutionally dependent (e.g. as for the offices, the equipment) and is composed of three members, one of them acting as the President. Already in the appointment procedure the close link of the IFI with both houses of Parliament is patent. The members are appointed by agreement between the Presidents of the Senate and of the Chamber of Deputies and are chosen from a list of ten candidates prepared by the standing committees competent on public finance, each one deciding by two-thirds majority. The French HCPF, instead, is attached to the Court of Auditors – and is presided over by its first President – but four of its ten members are chosen by the President of the National Assembly, by the President of the Senate, and by the Presidents of the two parliamentary committees on finances.

By contrast, no relationship between the appointment of the five fiscal council's members and the Parliament is envisaged for the IFAC, which was set up as a permanent stand-alone independent authority in 2012, in the framework of the wider national reform effort linked to the financial assistance requested. Its members are appointed by the Minister of Finance according to the public appointments service process, thus as civil servants, although some of its members have been based outside Ireland. The appointment process of the FAC, with the strong ties to the executive, allows to consider this fiscal council, amongst the three examined here, as the one that gets closer to the 'agent' model. The reform of the Irish IFIs has been repeatedly suggested with a view to set it up in the framework of the legislature, thereby enhancing its role as "information provider"

(Downes and Nicol 2016), as indeed happened eventually in 2018 (Closa et al. 2020). The IrPBO, however, is internal to the parliamentary administration as a specialist unit meant to provide support to the legislature and to the Committee on budgetary oversight in particular and is not listed by the European Commission amongst the IFIs.³ Although the relationship between the fiscal councils and the Parliament is not equally strong in France, in Ireland and in Italy, the IFIs of the three countries present reports to the Parliament, at least once a year, their members are invited to participate in parliamentary hearings, and they can be asked to transmit opinions or relevant information to the Parliament, upon request (see table 1 in the appendix).

Notably, also the mandate of these IFIs varies considerably (see table 2 in the appendix). The Irish FAC assesses the compliance with national numerical fiscal rules and the overall fiscal stance and objectives and endorses the macroeconomic forecasts provided by the Government, while the IrPBO limits itself to policy costing and to the support of the Parliament in the budget analysis. The Italian PBO's mandate is broader: it reviews and endorses the macroeconomic and financial forecasts; assesses the macroeconomic impact of the most significant financial bills; ascertains the ongoing trends in public finance, also by sub-sector, and the compliance with the budgetary rules; evaluates the sustainability of public finance in the long term, the activation and the use of the correction mechanism and the deviation from the medium term objective under exceptional circumstances.

This is not the case for the French HCFP, which enjoys a very narrow mandate, since its powers are strictly limited to what EU law prescribes, without adding any further competence. Moreover, in case the Executive deviates from the high council's opinions, no formal "comply or explain" procedure is envisaged although in 2016 the Government committed to respecting the opinions issued by the HCFP (European Commission 2017: Annex 8). Despite its limited mandate, the IFI's opinions do not tend to be deferential to the Government, whose selected figures and forecasts have been recurrently considered as "too optimistic" or "not completely reliable", confirming the level of independence this institution has from the executive (see, e.g., High Council of Public Finance 2020). Furthermore, almost every critical opinion of the HCFP has been used by parliamentary minorities to challenge the validity of the annual Budget Act, of the Financial Act and of the Act to finance the social security system in front of the French Constitutional Council, claiming that a violation of the principle of budgetary sincerity had occurred. Although the IFI's opinions have never formed the standard for the annulment of any of the contested provisions, they trigger a lively parliamentary and public debate and are expressly mentioned in the French constitutional case law (Fasone and Fromage 2017).

The "comply or explain" procedure, instead, is clearly regulated and (from time to time) used in Ireland and Italy. The Irish FCA has repeatedly challenged the reliability of the figures and the forecasts provided by the Government (European Fiscal Board 2017: 35). Although the Executive has not always responded to the IFI's criticism nor has it always adjusted its proposals to it, in 2016 its negative opinions on the governmental projections for deficit and debt, defined as unrealistic (in the Fiscal Assessment Reports: see Irish Fiscal Advisory Council 2015 and 2016), triggered an *ad hoc* debate with the Government in the Parliament and the subsequent re-adaptation of the projections for the Budget of 2017.

Similarly, the divergent projections in terms of deficit and debt between the Italian Government and the IFI have triggered a debate in Parliament, in particular in the

³ Nor by the IMF and by the EUNIFIs, but just in the OECD database (2019).

committees. In that context the Government was asked to explain the reasons for such a divergence. To date on two occasions the PBO has explicitly objected to the governmental fiscal policy. In 2016 it validated, with a series of observations, the macroeconomic and the budgetary forecasts for 2017. In the framework of a parliamentary hearing, the PBO President explained the reasons for such a position and, following these concerns, the Ministry of Finance subsequently revised the forecasts. In 2018, the PBO's rejection of the macroeconomic forecasts was followed by the negative opinion of the European Commission on the draft budgetary plan. However, given the specific circumstances and the cumbersome approval of the budget act, the PBO's position did not entail an ad hoc follow-up in Parliament (Gianniti and Guastaferro 2019).

Finally, all the reports, notes and opinions of the three IFIs are published online on their respective websites, which provides an advantage to Parliaments and citizens in terms of free and available public information. Based on the information collected on the Parliaments' and the IFIs' websites, the IFIs' opinions and reports are regularly debated in the legislature, although mainly at committee level. Moreover, the visibility and media coverage of the three IFIs is on the rise, although is still limited compared to the UK and the Spanish fiscal councils (Claeys 2019). The average number of mentions of the three IFIs' activity in the most influential national media per year (2012-2019) is 849 for the Italian PBO (with a peak of 2000 in 2018), 432 for the French HCFP and 183 for the Irish FAC.

The Coordination amongst Independent Fiscal Institutions

The IFIs cooperate in two main settings. First, they do so within the EU Network of Independent Fiscal Institutions, which today comprises the fiscal councils of all EU Member States, but Poland that does not have one yet (in breach of EU rules). This network was established by the European Commission in 2013 to discuss issues of common concerns on the content and the methodology for the assessment of the EU fiscal rules.

Secondly, national fiscal councils have also created their own network. The Network of EU Independent Fiscal Institutions (EUIFIs) is a bottom-up, informal, initiative, established in September 2015. At present, EUIFIs involves IFIs from 20 EU MS. The Network regularly organizes meetings, publishes positions and systematically highlights the need to preserve and ensure the independence of fiscal councils as a precondition for the effectiveness of the EU fiscal framework (EUIFIs 2016).

Furthermore, the European Fiscal Board (EFB), the independent advisory (fiscal) body of the Commission, set up in 2015, was conceived to coordinate and complement national fiscal councils. However, the EFB was eventually given just the task of cooperating with national IFIs: "exchanging best practices and facilitating common understanding on matters related to the Union fiscal framework."⁴

Expertise and Democracy in the Fiscal Domain

Deficit Bias as Democratic Deficit

Clearly, the set-up of fiscal councils, as mandated by EU law, involves an important intervention in the budgetary process at the national level and modifies how democracies

⁴ Article 2, para 2, lit. c, Commission Decision (EU) 2015/1937.

formulate their macroeconomic and fiscal plans, prompting the emergence of a form of DI. Will such reorganization and the operation of differentiated “orchestrator” fiscal councils increase or reduce the capacity of democratic publics to control their public life and give substance to the ideal of self-determination?

A republican understanding of this ideal would surely translate into a commitment to the elimination of arbitrary uses of power in the fiscal domain, since this policy area is characterised by a high degree of discretion on the part of the executive coupled with a considerable potential to influence the short-term and long-term development of a country. In turn, if the government can “form and act on a will or preference as to how precisely you should be restricted” (Pettit 2012: 165), then this same will must respond to and be steered by public control for it to be non-dominating. This means that citizens’ involvement in the democratic process cannot be confined within the walls of the voting booth every four or five years, but needs to be seen as a continuous exercise that, through different channels, keeps the government on its toes. Avoiding the arbitrariness of the tyranny of the majority requires a contestatory kind of democracy that is ready to scrutinise and question public decisions and that, by being known to be capable of doing both these things, pre-empts politicians in power from following self-serving policies. In this sense Pettit describes the influence exercised by citizens on the policy-making process as not being necessarily “active”, as is the case when new elections give a new mandate to a certain party, but also as being of a “virtual” kind (Pettit 2012: Ch. 4), when politicians anticipate that some of their choices will be contested, were they to materialise. This mode of citizens’ control over the policy-making process relies on the capacity of the democratic public to both monitor the actions of politicians and to form dispositions about them. Parliaments fulfil a pivotal function in this picture. Not only do they have the capacity to question the executive and present competing interpretations of the best course of action, but they are also capable of activating and alerting citizens against any arbitrary changes in the direction of governments.

By looking at fiscal policies from this normative vantage point, it is possible to appreciate how deficit bias is not only a macroeconomic problem but also a democratic one. Indeed, deficit bias models share a general feature: they describe how citizens’ influence and direction over the government’s budget can fail to materialise and to steer the actions of the government. The overarching problem that informs these models is the information asymmetry between rulers and ruled. For instance, in the models of Rogoff and Sibert (1988) and Rogoff (1990) voters infer how competent an incumbent political party is by looking at its past fiscal choices: governments that were more generous in terms of government programs are seen as more competent and worthy of a vote. Since politicians know that citizens are unable to monitor the complete costs of spending measures, they will be incentivised to overborrow (Alt and Lassen 2006). This set of political incentives and mechanisms that explain the emergence of deficit bias imply that the contestatory democracy that is meant to keep governments in check becomes virtually suspended. By possessing and producing the relevant information on the country’s fiscal stance not only can the executive escape the parliamentary and public scrutiny of the impact of its spending choices, but it can also lower the probability that the public and other representatives will be able to form, adopt and express a disposition over the best fiscal policy strategy.

Under these circumstances, the external and internal dimension of domination are aligned: executives’ fiscal policies evade the control of domestic democratic publics and result in dominating externalities for other *demoi* of the EMU.

Yet this argument does not justify the conclusion that the capacity to decide should be taken away from the hands of representatives and handed over to committees of experts as the 'trustee' form of fiscal councils prescribes. In "Depoliticising Democracy" Pettit (2004) concludes that whenever politicians stand to gain electorally from a specific policy, their capacity to control it must be curtailed and handed over to independent bodies. However, this would simply replace one dominator with another, less accountable, one. The issue is rather one of finding an institutional framework within which expertise is used as a tool to contest public powers and increase the capacity of citizens and parliaments to monitor and steer the executive's actions. In the next section, we suggest that such framework ought to have "orchestrators" fiscal councils in it and that their DI does not necessarily pose a democratic challenge to the EMU.

The Democratic Promise of Differentiated Independent Fiscal Institutions

IFIs can fulfil two democratic functions (Moore 2014: 57) that are essential for making fiscal policy decisions a form of controlled interference in citizens' lives. Firstly, by evaluating the long-run sustainability of the budget and by assessing ex-post and ex-ante whether it meets the government's objectives, the expertise of a fiscal council can inform political deliberation and deliver more substantive accountability (Dawson and Maricut-Akbik 2020). Without a public debate on the objectives of fiscal policy, electoral mandates and majority voting in Parliaments alone cannot guarantee that decisions on the state's finances are appropriately legitimated. Yet this open discussion, in which the costs and benefits of a specific fiscal path are evaluated by representatives of different allegiances, requires some baseline level of agreement on the future state of the public finances. Secondly, by informing political deliberation fiscal councils increase the transparency of the budgetary process (i.e. procedural accountability, *ibid.*), thus empowering the kind of democratic collective action that underlies Pettit's notion of public control. Publishing reports on budget's spending composition, on the compliance with the fiscal rules and, more generally, on the reliability of the public sector's accounts, increases the capacity of the democratic public to monitor the executive, force it to justify its choices and to question that same justification.

Yet, the value of the fiscal council's expertise does not merely rely on the promise of a better epistemic understanding of government's actions and of the economy thought, but also on the fact that the analysis and methodologies of these institutions should be public and open for consultation (see above). The public accessibility of the institution's functioning and reasoning promotes another democratic value that reinforces both its independence and its capacity to inform public deliberation, namely: publicity. Indeed, the value of a fiscal council's expertise lies in the fact that the reasons it will adduce to justify its analysis are in principle accessible to all. In turn, this will increase the reputational cost of poor performance and reduce the possibility of the fiscal council being under the influence of the executive. While it is true that in the face of complex and technical problems the best that can be done is to rely on an epistemic community that rewards professional qualities rather than political or ideological allegiances, one should not overlook the opposite risk, i.e. that the policy-making process becomes dependent on a closed epistemic community. This is why the supranational network of IFIs should have a double function: to guard the independence of its members from political influence and to provide a public mechanism whereby IFIs can review each other's work.

The capacity of IFIs to hold up this democratic promise is influenced by the way in which they are embedded in the domestic institutional structures (Horvath 2018), which, as has been already highlighted, is highly differentiated across countries. To which extent does this DI pose a challenge to the goal of minimising both the internal and the external dimensions of domination? First, it is important to highlight that what can prevent these non-majoritarian bodies from being seen simply as a technocratic constraint is the fact that their influence on the policy-making process is mediated by intermediaries like opposition parties, civil society organisations, parliamentary committees and media outlets. These public voices can choose to use and interpret the analysis on the government's fiscal path and offer their critique or endorsement of decisions that have crucial long-term effects. In other terms, fiscal councils should enable those social actors that form the republican contestatory citizenry which is essential to legitimise government's action. This way, fiscal surveillance comes to be carried out as part of the exercise of citizens' public control over the executive, rather than as a supranational technocratic competence. For such mobilisation to take place, the fiscal council must be, and be seen as, independent both from the executive and from the European Commission.

From this perspective, the fact that the IFIs surveyed above all fall in the "orchestrator" category should be evaluated positively. Indeed, "orchestrator" types of fiscal councils backed by strong independence regimes, well-connected with the Parliament and highly visible in the public sphere hold the best prospect of countering the undemocratic asymmetry of information between rulers and ruled that is at the heart of deficit bias and internal domination.

This does not imply that MS should embed "orchestrator" IFIs all in the same way. The democratic promise of these new expert bodies lies in the successful instantiation of democratic contestation by different intermediaries through the national public sphere and this constellation of social actors is likely to take different shapes in each country. Moreover, these intermediaries act within institutions for political participation and constitutional arrangements that are themselves highly differentiated (Horvath 2018). In short, the notion of public control, which makes the exercise of governmental power non-arbitrary and that "orchestrator" IFIs should buttress, can be operationalised through different institutional forms.

At the same time, the DI of these new bodies and the resulting institutional heterogeneity would fail to reduce both the internal and the external problem of domination to the extent that national IFIs approximate, in terms of institutional positioning and functioning, the "agent" model of fiscal watchdogs. Closer institutional proximity to the executive increases the possibility that the influence in the democratic process will not promote new avenues for the democratic contestation of the government's fiscal choices by either the Parliament or social actors. The marginalization of the Hungarian fiscal council (Kopits and Romhányi 2013) confirms that elected majorities have a strong incentive to consolidate their powers by silencing those institutions that publicly question their economic narratives and that force them to justify their decisions. From this perspective, the Irish fiscal council with its institutional proximity to the government can be considered as an extreme case of DI that may fail to make the internal democratic contribution advocated in this section and that explains the setting up of the IrPBO.

Even if heterogenous "orchestrator" IFIs succeed in reducing the informational asymmetry between executives and the democratic public, this can only do so much to limit the external domination that can materialise through the macroeconomic behaviour

of other members of the currency area. Yet, fiscal councils' scope of analysis needs not be limited to the national economy. Indeed, a so far underexploited potential of the network these expert bodies create at the supranational level is the capacity to make the process of national collective will-formation more porous to the macroeconomic developments in other EMU countries, which is a key element for the minimization of domination in the EMU. This could mean both alerting national Parliaments about the long-term external consequences of the government's macroeconomic policies, but also about the lack of coordination on the part of other MS. This additional democratic function of IFIs entails the opening up of each national public sphere, in order to allow different *demos* to form dispositions and attitudes towards the macroeconomic choices of other countries and counterbalance the current segmentation of public debates - similarly to what is happening in some national legislatures whose MPs take into consideration the interests of other EU MS' citizens when advancing their claims (Kinski and Crum 2020).⁵ Indeed, to the extent that the main institutions for transnational coordination are gatherings of executives who report to their own national Parliaments the results of their meetings, the macroeconomic strategies of other *demos* will continue to be seen as alien wills that externalize risks on other *demos*.

These horizontal relations between fiscal institutions could be best cultivated in a supranational network that is organized in a non-hierarchical fashion and composed of "orchestrator-type" institutions. Their institutional proximity to the national Parliaments and the need to enlist other social actors gives the latter an advantage in terms of feeding back information to the national public sphere, compared to "agent-type" IFIs that in any event would not be excluded from such a cooperation as long as the basic requirements of independence and functional autonomy from the executive are observed. In this respect the current voluntary network of IFIs, similarly to other networks of independent authorities like the European Competition Network (Monti 2014), seems to be a first positive step in this direction, although the limited time it has been in operation has prevented it from fulfilling this role.

Conclusion

The DI of national IFIs holds the promise of allowing the EMU polity to better navigate the trade-off between the persistence of fiscal policy externalities and the reduction in national autonomy. This hinges on their capacity to, first, reduce the internal form of domination which underlies deficit bias and that corresponds to the capacity of executives to exploit the informational advantage they enjoy with respect to parliaments and citizens. Moreover, by forming a deliberative transnational network capable of making each national *demos* more porous towards the macroeconomic developments in other countries, IFIs can facilitate the domestic internalisation of the external interests and preferences of other polities. This last function would reduce the external dimension of domination, since EMU polities would be better able to see other countries' choices as under their control.

In practice, this means that fiscal councils should not resemble either the "agent" or the "trustee" model and that, therefore, the institutional heterogeneity which results from the "elaboration discretion" left to MS needs not to be a matter of democratic concern. This

⁵ With time this process could also help different *demos* develop the political capital to implement a common fiscal stance although this would require, in our view, a process of supranational collective will-formation that is beyond the individual IFIs.

is due to the fact that, as our analysis has shown, most fiscal councils fall within the orchestrator model, albeit with significant variations, and entertain a range of different relationships with the Parliaments.

At the same time, it must be recognised that assessing the limits of this form of DI from a republican perspective would benefit from more fine-grained institutional analysis. Indeed, the capacity of these institutions to empower democratic collective action and to instantiate the democratic ideal of public control is not only a function of the mandate received and of their institutional positioning, but also of their actual capacity to establish themselves as authoritative, independent voices in the public sphere. This represents a fruitful avenue for future research both in the field of DI and in republican political theory.

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Data Availability Statement

The data that support the findings of this study were derived from the following resources available in the public domain:

- the OECD Independent Fiscal Institutions Database at www.oecd.org, last update 16 September 2019;
- the website of the Network of EU Independent Fiscal Institutions at <https://www.euifis.eu/>, last update 16 December 2020;
- the section devoted to the European Fiscal Board, within the European Commission’s website, available at https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/european-fiscal-board-efb_en, last update 8 March 2021;
- the website of the French High Council of Public Finance at <https://www.hcfp.fr/en>, last update 23 November 2020
- the website of the Irish Fiscal Advisory Council at <https://www.fiscalcouncil.ie/#>, last update 18 March 2021;
- the website of the Italian Parliamentary Budget Office at <https://en.upbilancio.it/>, last update 8 February 2021.

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Appendix

Table 1: Institutional position of IFIs and relationship with the Parliament

Country	Institution name	Institutional position			Yearly budget in million EUR	Staff	Appoint.- inv. of Parliam.	Parl. Hearings	Reports to Parl.	Comply or explain
		within the Parliament office	within the Executive	Stand-alone/ Audit office						
AT	FAC	○	●	○	not disclosed	6	○	●	●	●
	PBO	●	○	○	0.9 (2017)	8	●	○	○	○
BE	HRF/CSF	○	○	○	not disclosed	14	○	○	○	○
EE	FC	○	○	●	0.07 (2017)	1,5	○	○	○	○
FI	NAO	○	○	●	0.7 (2015)	4	●	○	○	○
	EPC	○	○	○	0.31 (2018)	2	○	○	○	○
FR	HCFP	○	○	○	0.8 (2017)	2,5	●	○	○	○
DE	IDB to SC	○	○	○	0.1 (2017)	1	○	○	○	○
EL	PBO	●	○	○	0.5 (2017)	11	○	○	○	○
	FC	○	○	○	1.1 (2018)	13	○	○	○	○
IE	FAC	○	○	○	0.8 (2017)	6	○	○	○	○
	PBO	○	○	○	0.85 (2018)	12	○	○	○	○
IT	PBO	○	○	○	6 EUR (2017)	24	○	○	○	○
LV	FDC	○	○	○	0.19 EUR (2017)	4	○	○	○	○
LT	NAO	○	○	○	0.218 (2018)	7	○	○	○	○
LU	CNFP	○	○	○	0.1 (2017)	2	○	○	○	○
NL	CPB	○	○	○	17.1 (2018)	124, 7	○	○	○	○
	AD of CoS	○	○	○	not disclosed	n/a	○	○	○	○
PT	CFP	○	○	○	2.7 (2018)	18	○	○	○	○
SK	CBR	○	○	○	1.37 (2018)	14,5	○	○	○	○
SI	FC	○	○	○	0.5 (2017)	4	○	○	○	○
ES	AIReF	○	○	○	5.07 (2017)	35	○	○	○	○

Legend: ●whenever the condition is fulfilled; ○when the condition is partially fulfilled (i.e. the Parliament is involved in the dismissal of the IFI's member, but not in the appointment or when the "comply or explain" procedure is not provided but it is used nevertheless or there is a commitment to use it by practice; ○when the condition is not fulfilled. Source: Own elaboration from the OECD Database 2019 and on data collected from national legislation and from the European Commission's Report on the Fiscal Compact, Annexes. Explanation on Table 1:

- 1) Only Eurozone countries. Cyprus and Malta are not included in the table as no sufficient figures and data could be collected.
- 2) Acronyms of IFIs': Advisory Division of the Council of State (AD of CoS), Bureau for Economic Policy Analysis (CPB), Council for Budget Responsibility (CBR), Economic Policy Council (EPC), Fiscal Advisory Council (FAC), Fiscal Council (FC), Fiscal Discipline Council (FDC), High Council of Finance (HRF/CSF), High Council of Public Finance (HCPF), Independent Advisory Board to the Stability Council (IDB to SC), Independent Authority of Fiscal Responsibility (AIReF), National Audit Office (NAO), National Council of Public Finance (NCPF), Parliamentary Budget Office (PBO), Public Finance Council (CFP).
- 3) Only full-time staff beyond the IFIs' member(s) is comprised. The figure for some IFIs shows decimals because not all the personnel has a permanent contract (people hired with a fixed-term contract or as intern are included).
- 4) Most countries where the "comply or explain" procedure is provided involve the Parliament in the process (AT, EL, IE, IT, LT, PT, SI).

Table 2: Mandate of the three fiscal councils

Task/IFI	French HCFP	IFAC	Italian PBO
Endorsement of macroeconomic forecasts	X	X	X
Production of macroeconomic forecasts			X
Assessment of budgetary forecasts	X	X	X
Production of budgetary forecasts			X
Endorsement of budgetary forecasts			
Ex ante assessment of national fiscal rules	X	X	X
Ex post assessment of national fiscal rules	X	X	X
Involvement in the correction mechanism⁶	X		X
Assessment of stability programmes	X	X	X
Assessment of draft budgetary plans⁷	X	X	X
Recommendations on fiscal policy		X	
Continuous monitoring		X	X
Monitoring of sub-national budgets		X	
Analysis of long-term sustainability of public finances		X	X
Qualitative costing	X		X
Quantitative costing			
Promotion of fiscal transparency		X	X
Public finance research		X	X
Macro research		X	X
Assessment of political programmes			

Source: Own elaboration from Jankovics and Sherwood (2017); Closa et al. (2020).

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⁶ A correction mechanism is automatically triggered at national level whenever the Member States deviates from the compliance with the medium-term budgetary objectives.

⁷ Draft Budgetary Plans outline the main measures to be included in the annual budget and are sent by the governments of Eurozone Member States to the Commission by 15 October every year for its assessment and opinion.