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

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1. Introduction

Fiscal Councils, as technical bodies in charge of monitoring and assessing compliance with budgetary, fiscal and even macroeconomic indicators, and acting independently from political (and thus fiscal) authorities, have been established since the 1960s, albeit in a minority of countries. Although scholars and international and supranational organisations have always underlined the importance of such institutions for having sound public accounts and sustainable growth, it was only in the new century that the financial and the Euro crises gave the most significant input for the setting up of Fiscal Councils, in particular in the European Union (EU) Member States.

2. According to the set of ‘Principles for Independent Fiscal Institutions’ drafted within the OECD framework in 2012, Fiscal Councils are ‘publicly funded independent bodies under the statutory authority of the executive or the legislature which provide non-partisan oversight and analysis of, and/or advice on, fiscal policy and performance’.


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

To date, the literature has mainly focused on the impact of Fiscal Councils for maintaining tight fiscal discipline and on the effectiveness of their role as ‘watchdogs’, examining their independence from the fiscal authorities, namely, the parliament and the executive. However, this debate seems vitiated by the bias of treating these two branches of government as though they undertook the same role within the budgetary and fiscal decision-making process. Instead, a more careful look at the relevant national discipline reveals that, in parliamentary forms of governments, such as those of most EU Member States, the national parliaments are usually less influential on fiscal
decisions and less equipped with information on fiscal policy than the executives. This evidence is further strengthened by the fact that the European measures of the new economic governance, urging tighter fiscal discipline, in principle reduce the room that national parliaments have for manoeuvre and, instead, increase the degree of the inter-governmentalism of the decision-making process.

Moreover, the position of Fiscal Councils needs to be framed within the particular context of the EU and of its Member States, in which the national parliaments have normally been considered as the 'latecomers' or the 'losers' of the European integration process. However, since the Treaties of Maastricht and Amsterdam, and most evidently since the Treaty of Lisbon national parliaments have gradually experienced an upgrade of the their role in the EU. National parliaments have constantly transformed and adapted themselves, from their marginalisation, then Europeanisation, and finally to their rehabilitation and strengthening in the EU. The establishment of Fiscal Councils, independent of, but accountable to, the parliaments, can possibly enhance the role of parliamentary institutions in the European framework and in the economic governance. Fiscal Councils can provide parliaments with a further source of information, independent from the executive, whose legitimacy relies on the technical competence and the merit of its members. By monitoring the executive on the grounds of the financial effects of its policy options, by providing macroeconomic forecasts, and by making the results of their analyses publicly available, Fiscal Councils are not only able to improve the credibility and the transparency of fiscal decisions, but they can also re-inforce parliamentary ex ante scrutiny and oversight on budgetary matters, and, ultimately, the weight of the parliaments in European economic governance. In other words, depending on the constitutional system and on the political culture of the Member State concerned, an independent Fiscal Council can also affect the parliament-executive relationship, in terms of inter-institutional balance and in terms of the outcomes of the current euro-national fiscal procedures.

Thus, set within the present debate on the changing role of the national parliaments in the EU, the paper is intended to examine, by means of a comparative analysis, the setting up of Fiscal Councils under the perspective of national representative governance.
assemblies, and tries to answers the following re-
search question: To what extent and under what 
conditions can Fiscal Councils contribute to im-
prove the position of the national parliaments 
within the framework of the European econom-
ic governance, in particular in their relationship 
with the national executives?

In the end, the establishment of a re-inforced co-
operation between the parliament and the Fiscal 
Council can contribute to strengthen the inde-
dependence of the latter and to promote a more ef-
effective implementation of fiscal rules.

The paper is devised as follows. Section 2 consid-
ers the crucial feature of the independence of Fis-
cal Councils, to be assessed differently when look-
ing at the parliaments or at the executives; Section 
3 refers to the theoretical framework of the paper, 
the tension between the marginalisation and the 
enhancement of national parliaments in the EU, 
and how it is affected by the setting up of Fiscal 
Councils; Section 4 analyses how the European 
measures, either those in force or those whose 
adoption has been almost completed, can connect 
Fiscal Councils to the national parliaments; Sec-
tion 5 analyses the setting up of Fiscal Councils in 
five case-studies, Belgium, France, Germany, Italy 
and the UK, selected upon the basis of the institu-
tional architecture in the national systems, of the 
relationship between the Fiscal Council and the 
parliament, and of the moment of creation of in-
dependent fiscal agencies. Finally, Section 6 tries 
to draw the first conclusions about the effects of 
the establishment of Fiscal Councils on the posi-
tion and the powers of the national parliaments 
in the EU.
2. Fiscal Councils... Independent from the Government or from the Parliament?

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

The pre-requisite of the independence from political influence, in its turn, has been reflected in a variety of rules (the so-called ‘firewalls’), conferring: the autonomy from politics in the Council’s appointment of members and staffing (which can be evaluated by looking at the nature of the appointees, at who makes the appointment, at the relationship of the appointees from politics and at the staffing rules and procedures); the formal influence exercised by the agency in the budget and fiscal process (in this field, what should be taken into consideration is the nature of the agency’s mandate, its policy objectives and its area of activities, its influence on government activity, and its formal role in the budget process carried out by the parliament); the Council’s funding (which is supposed to grant the agency its own revenues and a degree of autonomy in the management of its accounts), and the accountability rules (confering, above all, the ‘collective’ accountability of the Council in the face of the government and of the parliament).

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


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

13. According to Lars Calmfors (Ibidem), ‘a council which is not held accountable in the short run may risk its independence in the long run’, as it may get into conflict with the government which may then want to restrict its independence or reformulate its tasks.
significant bias which, in their turn, may contribute to improve the transparency of fiscal decisions and to increase the public awareness of the budgetary performance.\textsuperscript{14} In other terms, the creation of a Fiscal Council is justified by the decision to delegate some aspects of fiscal policy to an unelected, but nonetheless accountable, body, thus creating an antidote to deficit bias;\textsuperscript{15} this does not imply a delegation of authority - with regard to the fiscal policy - to the fiscal agency, whose mandate is usually limited to the analysis and assessment of fiscal developments and policies.\textsuperscript{16}

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

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


\textsuperscript{17} Xavier Debrun & Manmohan S. Kumar (2007), \textit{Fiscal Rules, Fiscal Councils}, cit., p. 485 ff.


\textsuperscript{19} See Petr Hedbávný, Ondřej Schneider, Jan Zápal
For all these reasons, the present paper embraces a different approach to the relationship between Fiscal Councils and representative assemblies, based upon the idea that such interaction would not invalidate the fulfilment of the Fiscal Council’s mandate, but would, instead, enrich the overall functioning of the ex ante and ex post scrutiny circuit. This perspective implies that the pre-req-
quisite of the Fiscal Council’s independence should instead be described in terms of co-operation and mutual support between the agency and the parliament. In this regard, it can be argued that Fiscal Councils, particularly when they have strong ties with parliaments, can re-inforce the position of the latter – traditionally seen as weak actors – in national decision-making processes dealing with the EU and fiscal matters (Section 3).

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

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

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

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

20. In the present paper we use ‘oversight’ and ‘ex post scrutiny’ as synonyms, when describing the control set in place by Parliaments on the implementation of the executive’s policies.

21. Many Fiscal Councils exercise, at the same time, both a forecasting and a monitoring activity, which respectively occupy the ex ante and the ex post stage. As observed by John Kay (2010), A fiscal watchdog has no need of a crystal ball, in The Financial Times, 22 September, ‘governments cannot be relied on both to set targets and to monitor compliance with these targets; as a consequence, the job which Fiscal Councils have, or should have, ‘is therefore more akin to audit than to forecasting’.
fiscal reports within the representative assemblies; the dependence of the Council’s funding on a decision to be taken at parliamentary level; and the accountability rules which assure an evaluation of the elected assemblies with regard to the Fiscal Council’s activity.


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

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


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

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

25. See the ‘Factortame saga’ and its impact on the UK principle of parliamentary sovereignty: in particular the decision of the Court of Justice on The Queen v Sec-
that they fall within the remit of the EU. Moreover, when European legislative acts were enacted, the parliaments in the Member States 'could not have second thoughts or control their content at the national, implementing level', nor was a 'tight ex ante control by national Parliaments on the activities of ministers in Community fora' effective in place at that time. However, some parliaments were (and possibly are) less marginal than others: an exception was, for instance, the Danish parliament. Its model of binding mandate to the executive before the adoption of decisions in the Council of Ministers of the EC has inspired several other parliaments, although this mechanism was not replicated in precisely the same form in other Member States.

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

30. The Inter-parliamentary Union, the international organization of Parliaments established in 1889, is composed of 190 member Parliaments, of the United Nations Member States, plus 10 associate members, which are regional or supranational Parliaments. See http://www.ipu.org.
Thus, the ‘Europeanisation’ of the national parliaments, on the one hand, entails a form of emulation of the most active legislatures – for example, the Danish Folketing and the UK House of Commons and House of Lords; interestingly enough, in two traditionally Eurosceptic countries – for what concerns, for instance, the relationship between the parliament and the government in EU matters (the conferral of a mandate, the scrutiny of European documents for addressing the executive’s conduct in the EU, and the introduction of parliamentary scrutiny reserve). Although, in principle, leading to a sort of convergence with regard to the model of parliamentary participation in EU affairs, in practice, ‘Europeanisation’ can also determine differentiation amongst national systems. On the other hand, this phenomenon results in the attempt pursued by each parliament, strictly under the national perspective, to adapt its procedures and organisation to the EU decision-making process in the most suitable way to control and influence it. Throughout this adaptation process, the procedures and the organisation adopted could also differ a great deal from one parliament to another, taking the institutional, the political and the social features of the Member State concerned into account. This implies, for example, the choice of the shape and the composition of the parliamentary committee on European affairs or the preference for the schedule of parliamentary business that best accommodates the schedule of the European legislative process with the needs of the national context. Parliaments can be more or less successful in their ‘Europeanisation’, depending on national constraints: thus, different levels of parliamentary ‘Europeanisation’ do exist.

These two dimensions of the ‘Europeanisation’ of national parliaments, i.e., emulation and differentiation, both inherent to this process of adaptation, have been consolidated, while a gradual re-habilitation of the role of national parliaments in the EU has been fostered by the revisions of the Treaties, under the pressure of addressing the democratic problems of the European architecture. Two Declarations (n. 13 and 14) annexed to the Treaty of Maastricht (1993), firstly, and the protocols on the role of the national parliaments and on the application of the principle of subsidiarity and proportionality annexed to the Treaty of Amsterdam (1999), subsequently, provided for...
The first recognition – by European sources of law – of the involvement of the national parliaments in EU procedures, albeit indirectly, through their relationship with the national executives. A few years later, the national parliaments directly participated in the procedure for drafting European Treaties, although this procedure, ‘the convention method’, was not codified at that time: compared to the other components (the national governments, the EP, the Court of Justice, etc.) of the Conventions in charge of elaborating a first draft of the EU Charter of Fundamental Rights and Freedoms and of the Constitutional Treaty, MPs were the largest component, although possibly not the most prominent in terms of decision-making capacity, even considering the amendments pushed forward by the subsequent inter-governmental conferences.36


The failed Constitutional Treaty and finally the Treaty of Lisbon, in particular, seemed to support an effective revival of the role of the national parliaments in the EU compared to the past.37 Many provisions of the Treaties, as modified by the Treaty of Lisbon, are promising in terms of the national parliaments’ redemption from their previous marginalisation, starting from Article 12 TEU and from Protocols 1 and 2. For instance, the national parliaments now receive a direct flow of information, documents and draft legislative acts from the European Commission (Protocol 1, Articles 49 TEU and 352 TFEU), the control the compliance of legislative proposals with the principle of subsidiarity, they can challenge the validity of legislative acts before the Court of Justice through their governments (Protocol 2),38 participate in the re-


38. Maybe the participation of the national parliaments in the early warning mechanism has been the subject of most contributions on legislatures in the EU after the Treaty of Lisbon, since the procedure raises several issues (individual-collective participation of national Parliaments, their role vis-à-vis national Executives, the Commission and the European Parliament, the conditions and the suitability for triggering the thresholds of the so-called ‘yellow and orange cards’). However, the assessment given to the early warning mechanism in terms of national Parliaments’ empowerment in the EU varies a lot: Pieter De Wilde (2012), Why the Early Warning Mechanism does not Alleviate the Democratic Deficit, in OPAL Online Paper n. 6, p. 6, considers the mechanism as useless; by contrast, some others, such as Ian Cooper (2006), The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU, in Journal of Common Market Studies, vol. 44, n. 2, p. 281-304, presents it in very positive terms; finally, others (see Philipp Kiiver (2012), The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality, London, Routledge, p. 71 ff. and Federico Fab-
vision of the Treaties (Article 48 TEU), can veto the use of the ‘passerelle clause’ (Article 48.7 TEU) and the adoption of European measures in family matters which have transnational implications (Article 81.3 TFEU), are involved in the political monitoring of Europol and in the evaluation of Eurojust (Articles 12 TEU and 85 and 88 TFEU), and also take part in the inter-parliamentary cooperation with the EP (Article 12 TEU and Protocol 1).

Thus, Europeanisation and the strengthening of the national parliaments have progressed side by side, and the two main features of Europeanisation, differentiation and emulation, are still the two sides of the same coin. On the one hand, although European Treaty provisions set a common framework for the national parliaments of all the Member States, national implementation has achieved different results. For example, in Germany, under the auspices of the Federal Constitutional Court, the Bundestag and the Bundesrat have been significantly strengthened by the enactment (on the input of the constitutional jurisprudence) of a series of measures which enable them to delay or even to block the participation of the national government in EU decision-making procedures (even up to the point of threatening to block the entire decision-making process, and not just for Germany), whenever parliamentary assent is lacking.39 By the same token, in the UK, the approval of the European Union Act 2011 has led to the conferral of veto powers to the UK parliament (in addition to those already introduced by the Treaties), in particular to the House of Commons, as well as some clauses that provide for the combination of passing legislation or motions by the parliament and of the positive result of a referendum in order for the executive to take action at EU level.40

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

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

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

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

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

The hypothesis of the national parliaments’ regression towards marginalisation appears to be taken for granted, because of the constraints placed upon the budgetary authority of the national parliaments, which disallows them to step in directly at EU level during the Euro-national fiscal procedures. The only opportunity for the direct involvement of national legislatures, according to the new measures, is provided by the setting up of a ‘conference of representatives of the relevant committees of the European Parliament and representatives of the relevant committees of national Parliaments in order to discuss budgetary policies and other issues covered by’ the Treaty on Stability, Co-ordination and Governance in the economic and monetary Union (TSCG).

Although it has become increasingly important, the formula of the inter-parliamentary co-operation does not entail the conferral of decision-making powers to legislatures, nor does it guarantee their effective influence.

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

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


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


45. As underlined by Giacomo Delledonne (2012), Financial Constitutions in the EU: From the Political to the Legal Constitutions?, in STALS Research Paper, n. 5, p. 4, the (preferable) constitutionalisation of the balanced budget clause seems to cause a ‘shift from a (prevailing) political to a (would-be) legal notion of financial constitutions’, thus implying a diminished role for political institutions, in particular for Parliaments, in favour of judicial or more technical actors (according to the existing tension between political and legal constitutionalism: see Richard Bellamy (2007), Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy, Cambridge, Cambridge University Press, p. 1-12.
Growth Pact (SGP) in the 1990s. As shown by the soft implementation of the first SGP (Section 4), the role of the national fiscal authorities, including the parliaments, was limitedly affected, since they were not bound, as they are now, to negotiate the content of the budgetary and fiscal decisions with the EU institutions, and nor was the budget cycle shaped through a Euro-national process.

However, at present, the national executives room for manoeuvre has also been limited by the new European measures, in a much more severe way compared to the former SGP, particularly because of the semi-automatic implementation of the system of warnings and sanctions. The institutional balance between fiscal authorities, namely, the parliaments and the governments, is likely to change in the light of the new economic governance mechanisms, although the ‘losers’ and the ‘winners’ are not the same everywhere. Again, the features of the national constitutional systems are extremely significant, as the case of Germany and of its federal parliament shows. The disclosure and the transmission to the Bundestag of the information gained by the executive in this field, in particular in the EU, and the power of the parliament to bind the position of the executive concerning the most significant decisions on fiscal policy within European institutions and summits, have been made mandatory by the German Constitutional Court in order to preserve the link between democratic representation and the legitimacy of financial decisions. At the same time, even at European level, some prospective tools have been introduced in order to enhance the position of the national parliaments: perhaps the most important of them is the Fiscal Council. The effectiveness of the parliamentary action on these matters depends on the ability of each national parliament to ‘exploit’ the independent source of information of the Fiscal Council and to establish a mutually co-operative relationship.

As has been argued, if the financial and fiscal crisis in the European Union is, indeed, a crisis of democracy,46 assessing whether national parliaments are further limited as fiscal authorities or whether they can instead contribute to the new European economic governance mechanisms, the parliaments and the governments, is likely to change in the light of the new economic governance mechanisms, although the ‘losers’ and the


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

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


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

- empowering the Commission as the general guardian of compliance with fiscal rules and against macroeconomic imbalances and making the adoption of warnings and sanctions semi-automatic;

- strengthening the judicial control on fiscal rules. On the one hand, the Court of Justice of the European Union, which adopted a very cautious position when it dealt with the misapplication of the previous Stability and Growth Pact,50 has become entitled to judge on the correct introduction of the balanced-budget clause (and possibly also of its enforcement) in the national legal systems,51 according to Articles 3(2)

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


51. See Bruno de Witte (2012), European Stability Mecha-
and 8 TSCG. On the other hand, after the (preferable) constitutionalisation of the balanced-budget clause, the jurisdiction of Constitutional Courts has been extended, too; and by

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

Thus, although Fiscal Councils were already in function in 11 Member States in 2011,53 it was only at the apex of the financial and of the fiscal crises that the EU made the establishment of Fiscal Councils in national systems mandatory. All Member States are now bound to the duty to set up this independent institution.54

From the functional point of view, the ‘mandate’ of the Fiscal Councils on the part of the EU is quite broad, since only the drafting of macroeconomic forecasts and plans can ‘escape’ their ‘jurisdiction’, depending on the choice of each Member State, which can either split tasks amongst different institutions or concentrate them on the Fiscal Council. According to Directive 2011/85/UE, on the requirements for the budgetary frameworks of the Member States, this institution is to be in charge of the independent, effective and timely monitoring of country-specific fiscal rules and ‘to enhance the transparency of elements of the budget process (Article 2.2, lit. f)’. The TSCG, an international agreement signed by all Member States, except the UK and the Czech Republic, on 2 March 2012, and which entered into force on 1 January 2013, establishes a link between the functioning of the correction mechanism and the Fiscal Councils (Article 3.2). Indeed, Fiscal Councils are held responsible at national level for monitoring the compliance of the Member State concerned with the balanced-budget clause and with the convergence towards the country-specific medium-term objective. It is evident that the Fiscal Councils are not deemed to be decision-making authorities and that, in any event, they could not endanger or ‘compete with’ national parliaments. However, what remains unsolved in the TSCG with regard to Fiscal Councils is whether the Court of Justice is entitled, according to Article 8 TSCG, to review also issues related to these bodies. With regard to the wording of Article 8(1) TSCG, which simply mentions Article 3(2) TSCG, the jurisdiction of the Court of Justice, relying on Article 273 TFEU, in principle also seems to affect the correct establishment of Fiscal Councils and probably their functioning.

52. See Giacomo Delledonne (2012), Financial Constitutions in the EU: From the Political to the Legal Constitution?, cit., p. 5.

53. The Member States which Fiscal Councils operated before the reform of the economic governance are: Austria, Belgium, Denmark, Germany, Ireland, the Netherlands, Portugal, the Slovak Republic, Slovenia, Sweden, and the United Kingdom.

54. See Paul Craig (2012), The Stability, Coordination and Governance Treaty: Principles, Politics and Pragmatism, in European Law Review, n 37, p. 236. The UK, although it is not part of the TSCG and it is not subject to the provisions of Directive 2011/85EU regarding Fiscal Councils, also seems to be bound to guarantee the operation of such institution (which is already in function in the UK under the name of Office for Budget Responsibility). Indeed, according to the European Commission Communication COM (2012) 342, the existence of a Fiscal Council has to put in relation with the functioning of the correction mechanism in case of deviation from the medium-term objective, which concerns also the UK.
According to the TSCG, the Commission has provided a set of common principles for the Fiscal Councils, by defining their ‘core functions’ (Principle 7, Annex to the Communication of the Commission of June 2012 (COM (2012) 342). They have to oversee the appropriate functioning of the correction mechanism in each Member State, in case of deviation from the medium-term objective. In particular, at a national level, Fiscal Councils are responsible for controlling whether the circumstances which might warrant the activation of the correction mechanism occur; whether the correction mechanism, when activated, is correctly implemented in the Member State; and whether the escape clauses, under special conditions (for example, in order to face natural disasters), are properly used. Thus, the Fiscal Councils are entitled to carry out both the *ex ante* and the *ex post* control on budgetary matters. However, what is more important is the power which, according to the Communication, has to be acknowledged to the Fiscal Councils: their recommendations *bind* the Member States. Indeed, if the latter do not comply with the assessments of the relevant Fiscal Council, the Member States must ‘explain publicly why they are not following’ them. Although the Communication is not formally binding on the Member States, the fact that it contains the common principles on the correction mechanisms seems to recognise a specific legal value to Principle 7, which cannot be neglected.

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

Moreover, the basic structural requirement introduced by the EU for the Fiscal Councils is their ‘functional autonomy’ *vis-à-vis* the budgetary authorities of the Member States (Article 6, Directive 2011/85 CE). Looking at the wording of the new measures, it seems that the requirement of ‘functional autonomy’ is possibly less demanding than that posed by other European norms for supervisory authorities and for establishing the condition of the ‘complete independence’.55 However, it has to be taken into account that the Court of Justice has already sanctioned some Member States, and in particular Germany, on this issue, interpreting the independence of supervisory authorities in strict terms, aiming to protect them against any political pressure.56

In detail, the list of the conditions for guaranteeing the functional autonomy of Fiscal Councils are contained in the Communication on national fiscal correction mechanisms (COM (2012) 342) and are about to be codified in one of the draft regulations of the ‘two-pack’, the proposal on common provisions for monitoring and assessing...
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draft budgetary plans and ensuring the correction of the excessive deficit of the Member States in the euro area (COM (2011) 821).57

1. ‘A statutory regime grounded in law’. The Fiscal Councils can be regulated not only at constitutional, but also at statutory, level, given the broad meaning assigned to the word ‘law’ in the European Union.58 However, it can be argued that, aiming at protecting the independence and even the existence of the Fiscal Councils, the strongest guarantee would have consisted in having their basic discipline contained in the Constitution or in an organic law.59

2. ‘Freedom from interference’, which involves the autonomy of the Fiscal Councils from instructions imposed by other institutions and the possibility of disclosing information both promptly and whenever it is deemed necessary.

3. ‘Nomination procedures based on experience and competence’, which underlines the technical nature of the Fiscal Councils, whose members are selected upon the basis of their merit and expertise with the participation of the parliaments in the appointment procedure.

4. ‘Adequacy of resources and information’, according to which the size of the staff and the stock of financial resources is to be proportionate to the scope of the mandate attributed to Fiscal Councils.

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

With this regard, looking at the European frame-

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


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

The real arrangement of the relationship between the Fiscal Councils and the parliaments, however, is strongly influenced by the national legal system and by the duties imposed upon the Member States to implement the new provisions. Indeed, a possible differentiation in the relationship between the parliaments and the Fiscal Councils across the EU countries is likely to emerge not simply because of the different constitutional architecture and identity of the Member States, but also because a multi-speed Europe does exist when looking at the EU economic governance. Given the fact that some measures are addressed to all the Member States, others to all the Member States, with the exception of the Czech Republic and the UK, others to 23 countries, and finally others only to the countries of the Eurozone, different legal and economic constraints can produce a further differentiation in the reaction of the national parliaments, in the tasks assigned to the Fiscal Councils and in their reciprocal relationship. Moreover, as the seriousness of the fiscal crisis also varies across countries – i.e., there are debtors and creditors countries – a single and common model of the Fiscal Council in the EU cannot be easily found at present, although the EU measures encourage a sort of convergence towards independent fiscal institutions which are accountable to the parliaments.


61. Indeed, all the Member States have been committed to comply with the Europe Plus Pact agreed by the European Council on 25 March 2011, except Sweden, Hungary, the Czech Republic and the UK.
5. Assessing the Relationship between the Fiscal Councils and the Representative Assemblies at National Level

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

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

As briefly explained in Section 2, the five national Fiscal Councils considered in the present contribution have been established in very different economic, political and legal contexts. This external factor seems to have influenced the rules concerning the overall position of the independent body in the relationship with the other institutional bodies, and in particular with the executive and the legislative branches.

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

Germany and Belgium experienced the creation of fiscal agencies long before the current economic and financial crisis. In particular, the German Council of Economic Experts was set up by law in 1963 as an academic body which could serve public- and economically-relevant institutions in making informed judgements on questions of economic policy. The two Belgian fiscal institutions, the High Council on Finance and the National Auditing Office, were set up respectively in 1936 and in 1994, but their aptitude for acting as fiscal councils has gradually grown with the evolution of the Belgian constitutional system over the last few decades. In particular, two processes have impacted upon the role of the above-mentioned organisms: the regionalisation of the Belgian state, which began at the end of the 1980s and formally concluded with the constitutional reform of 1994, when the country became a federal state with three Regions and three Communities; and

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

63. The regionalisation of the Belgian State created the premises for the reform of the High Council of Fi-
the entry of Belgium into the European Monetary Union, which meant that it had to respect the Maastricht parameters.64

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

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


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

66. Their mandate lasts five years and they can be reappointed; in order to assure full independence to the advisory body, the Federal Government must hear the members of the Council of Experts before nominating a new member; the Chairperson is chosen by the Council among one of its members for three years. See Norbert Kämper (1989), Der Sachverständigenrat zur Begutachtung der Gesamtwirtschaftlichen Entwicklung, Berlin, Duncker & Humblot.

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

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

69. The mandate of the board’s members lasts four years and re-appointment is permitted. According to Article 115 of the law of 21 December 1994, moreover, a Counselling committee, composed of representatives
Finance is, instead, composed of the Plenary Council, of two sections and a Working group on ageing. Its membership reflects its close relationship with the government.

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

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

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

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

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

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70. As disciplined by the Arrêté royal of the 3 April 2006.
71. The Plenary Council is chaired by the Minister of Finance, it includes two vice-Presidents appointed by the Minister of Finance and by the Minister of Budget and is composed of 24 experts in economic and budgetary subjects, representing either the Federal Government or the regional Governments and appointed on five-years renewable terms by the King.
72. The Secretariat of the Council is ruled by officials of the Federal Ministry of Finance.
73. The Office’s independence in performing its mandate is in particular guaranteed by the fact that the agency is subject only to its statutory duties and to the guidance of the Charter for budget responsibility, presented by Government to Parliament pursuant to Section 1 of the Budget Responsibility and National Audit Act 2011 and related to the formulation and implementation of the fiscal policy and of the policy for the management of national debt. HM Treasury (2011), Charter for Budget Responsibility, April 2011, available at: http://budgetresponsibility.independent.gov.uk/wordpress/docs/charter_budget_responsibility040411.pdf.
74. A specific Memorandum of Understanding, published in April 2011, for instance, sets out the agreed working relationship between the Office, HM Revenue and Customs, the Department for Work and Pensions, and HM Treasury (Office for Budget Responsibility - HM Treasury (2011), Memorandum of Understanding between Office for Budget Responsibility, HM Treasury, Department for Works and Pensions and HM Revenues & Customs, April, available at: http://86.54.44.148/wordpress/docs/obr_memorandum040411.pdf). As part of the Office’s commitment to transparency, moreover, the institutional website of the agency publishes, among other information, also the list of contacts held by Office members with ministers, special advisers, private offices and opposition MP’s. Available at: http://budgetresponsibility.independent.gov.uk/transparency/disclosures.
mittee of the HoC, these three members constitute a committee, known as the Budget Responsibility Committee. The rest of the Office (not fewer than two members) are nominated by the Office and appointed by the Chancellor of Exchequer; these members constitute a committee which is known as a non-executive committee. This composition assures the Treasury Committee control of at least three of the Office’s members, of which one acts as Chair. It is important to emphasise that only the three members appointed with the consent of the Treasury committee are members of the executive committee of the Office – the Budget Responsibility Committee – to whom the exercise of most of the relevant assessment duties is reserved, as disciplined by Section 4 (3) and (4) of the Act; the Non-executive committee, in contrast, must review the way in which the Office’s duties are performed.

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

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

In particular, the Italian Parliamentary Budget Office represents a unique example (at least in Europe) of a Fiscal Council that is strongly parliamentary-centred. The new agency was formally introduced by Article 5, Section 1, (f) of the Constitutional Law no 1/2012 in April 2012 as an independent body to be created by the Chambers, with due respect of their constitutional autonomy; and entitled to analyse and assess the public-finance trends and to monitor the respect of budgetary rules. The Office’s internal composition

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

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

According to Paolo De Ioanna (2012), La nuova cornice costituzionale apre nuove dinamiche tra le forze politiche e nella cornice delle interpretazioni, econom-
and organisation have recently been disciplined by the re-inforced law no 243/2012 of 24 December 2012; Art. 16 of the law, in particular, provides that the Council is made up of three members appointed upon the basis of common agreements by the Chairs of the two Houses within a list of ten persons drawn up by competent parliamentary committees (upon the basis of agreements adopted by a two-thirds majority) from the experts in public finances. From the point of view of the Office’s staff and funding, the newly-established Italian Fiscal Council also reveals itself to be firmly rooted in the parliamentary administration.

France has also recently provided for the implementation of the Fiscal Compact through the Loi organique no. 2012-1403 of 17 December 2012 on the planning and governance of public finances, which (Art. 11), among other things, disciplines the establishment of the High Council of Public Finances, an independent body set of by the Cour des comptes, chaired by the President of the accounts authority and composed of ten members, of which four are judges of the Cour des comptes and four are members appointed by the relevant representatives of the two Houses. The peculiarity of the French model is, therefore, due to the strong interaction provided not only by the parliament but also with the Cour des comptes, thus widening the classic dichotomy between government-centred and parliament-centred institutions (which had already been affected, but not fully overcome, by the hybrid Office for Budget Responsibility).

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

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

5.2 The Relationship ‘Fiscal Councils – Parliaments’ and its Interaction with the Parliamentary Scrutiny and Oversight Function on the Budgetary and Fiscal Matters

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

To isolate this factor, it necessary to consider the main features of the most relevant models of parliamentary budget scrutiny. Given that the parliamentary oversight of budgets is mainly carried out at committee level, it is important to distinguish between two different types of committee expertise in the budget sector. The first type is that of specialised budget committees which operate during *ex ante* scrutiny, whose task is mainly that of analysing and of approving the governmental draft budget. The second type is that of *ex post* scrutiny committees, which finds its most relevant example in the Public Accounts Committees (PAC) of the Commonwealth system. The modern PACs represent specialised audit committees which interact closely with the supreme auditor and are entitled to scrutinise the governmental accounts.


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

83. As explained by Joachim Wehner (2005), *Legislative arrangements for financial scrutiny: Explaining cross-national variation*, in R. Pelizzo, R. Stapenhurst & D.
which characterises Commonwealth parliaments, represents a combination of low ex ante capacity (also due to the absence of the involvement of ex ante committees) and a highly-developed ex post capacity. The opposite occurs in parliaments outside the Commonwealth, such as the French parliament, where the oversight of the budget is carried out by standing committees responsible both for the approval of the budget and for the scrutiny of its execution. The oversight architecture adopted (either based upon a specialised committee or upon legislative committees also entitled to perform budgetary scrutiny) does not seem to influence either the intensity or the degree of the parliamentary scrutiny function: this is confirmed by the fact that not only in the UK, but also in France, the parliament has eventually developed a well-structured scrutiny architecture, which enables daily control of the governmental budgetary policy. In Belgium, Germany, and


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

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

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

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

88. The intervention of the parliament in the budgetary and fiscal policy-making has not fully evolved yet from its original focus on the governmental expenses' authorisation perspective (see Elisabetta De Giorgi & Luca Verzichelli (2008), Still a Difficult Budgetary Process? The Government, the Legislature and the Finance Bill, in South European Society & Politics, vol. 13, n. 1, p. 87 ff.), which found in the 'dualistic' scheme of the Financial law its main expression (see Andrea Manzella (2003), Il Parlamento, Bologna, Il Mulino, p. 344). This fact, in its turn, has inhibited the development of a 'real' model of budgetary and fiscal oversight, which is only one symptom of the general unsatisfactory development of the control function in the Italian parliamentary tradition (see Andrea Manzella (2001), La funzione di controllo, in Associazione italiana dei costituzionalisti, Annuario 2000. Il Parlamento, Atti del XV Convegno annuale, Firenze, 12-13-14 October 2000, Padova, Cedam, p. 213). The lack of a mature approach to budgetary and fiscal oversight by hybrid committees involved both in the ex ante and in the ex post scrutiny; however, these three parliamentary experiences have not yet developed specific budgetary-scrutiny tools and procedures. Probably as a result of this, the degree of the national parliament's involvement in the oversight of budget execution remains weak. 89

Once the different features of the parliamentary oversight models have been clarified, it is possible to consider the basic characteristics of the interaction between the national legislature and the fiscal agency, by focusing on the functional profiles of this relationship, analysed according to the criteria presented in Section 2.
5.2.1 The German and Belgian Experiences as Two Examples of Weak Interaction between the Fiscal Councils and the Parliaments

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

With regard to what concerns the German Council for Economic Experts, the main duty of this body consists of compiling and publishing an Annual Economic Report which is submitted to the Federal government by 15 of November every year. Apart from the Annual Report, the Council also prepares ad hoc special reports, depending on the mandate issued by the government, which usually refer to specific current problems.

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

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

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

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

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

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

93. In particular, according to Article 11 of the Appointment Act, the amount of the remuneration to be paid is determined jointly by the Federal Minister of Economics and Technology and the Federal Minister of the Interior. No intervention of the Federal parliament, in line with the ‘governmental’ nature of the body, is therefore provided by law in this relevant aspect of the Council’s institutional profile.
Finally, the fact that the Council of economic experts is strongly centred on the executive branch influences the accountability rules, which make the Council responsible only to the government. The Appointment Act, also considered in its application over the decades, clearly gives the idea that the role of political advisor prevails over that of scientific advisor; this consideration has raised some criticism in the literature, supporting the idea of the Council of economic experts being seen as a ‘parallel government’.

In conclusion, the German Council for Economic Experts can be considered as a typical example of a ‘governmental’ Fiscal Council, which reveals only weak and indirect ties with the parliament; the possibility of the Council playing a strategic informative and advisory role with regard to the parliament reveals itself to be quite weak, due to the constant intermediation of the government in the relationship between the Council and the legislative branch. The narrowness of the tasks attributed to the Council, which mainly exercises an advisory function on matters of economic and fiscal policies, is also attributed to the fact that the origin of this body dates back to a period in which the institutional space now recognised to the Fiscal Council was still lacking.

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

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


95. The process starts in May when medium and long-term projections are presented by the government, followed, in June and July respectively by the recommendations of the High Council of Finance and by the release of provisional short-term macroeconomic forecasting exercised by the National Audit Office (adjourned in September). The federal budget is submitted to the Parliament in October; after the presentation of the new budget, an updated version of the Stability Programme is made public. The process ends in February, with the reassessment of the economic budget, and then in March, with the control of budget execution. See Igor Lebrun (2007), Fiscal councils, independent forecasts and the budgetary process, cit., p. 342 and 354.

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

97. The Bureau, moreover, releases the medium-term economic outlook for the Belgian economy used by the government in order to elaborate the stability programme. The government does not seem to have a formal duty to take into account the Bureau’s forecasts in the drafting of the budget; however, up to this moment, this is usually happened: a striking dissociation from the NAI’s forecasts would in fact determine a loss of credibility for the government.
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The intervention of the High Council of Finance in the budgetary policy-making, in contrast, is bound to the publication of two annual reports (drafted by the Council’s ‘Public-sector borrowing requirement’ section); the first report refers to the ex post stage, the second to the ex ante stage.

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

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

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

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

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

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

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

In particular, with regard to the relationship with the legislative branch, the Office has shown a clear aptitude for serving as a source of information and analytical studies to parliamentary committees. The tasks attributed to the Office involve the agency in a general surveillance of public finances and budgetary policies; the nature of such activities implies that the government is constantly under the Councils’ oversight, which, in its turn, can serve the parliament with some relevant elements for political judgment. The Office has four main tasks: to produce forecasts for the economy and public finances; to judge the progress towards the government’s fiscal targets; to assess the long-term sustainability of the public finances; and to scrutinise the Treasury’s costing of budget measures. Each of these tasks is associated with specific publications which are made available to the parliament.

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

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

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

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

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

105. An individual accountability applicable to each Office member is moreover provided by Section 6 of the Schedule 1 of the Budget Responsibility and National Audit Act, which in particular disciplines the termination of appointment made by the Chancellor of the Exchequer in case of malpractice or misconduct of the appointee. Even if the law determines the cases justifying the anticipated termination of mandate, according to Section 6 (3) of Schedule 1 of the Act, the appointment of an Office member is not to be terminated without the consent of the Treasury Committee of the House of Commons.
tasks drafted in each financial year (Section 15 of the Schedule 1 of the Act); and the 'external' review exercised by the person or body appointed, at least once in every relevant five-year period, by the non-executive Committee in compliance with Section 16 of Schedule 1 of the Act and entrusted to review reports made in pursuance of the Office's duty.

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

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

If, up until the latest national reforms, the only European case of a parliament-centred fiscal agency was represented by the Hungarian Fiscal Council,106 the new independent bodies created in Italy and France seem to add some significant novelties to this comparative framework.

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

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

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106. The Hungarian Fiscal Council was created in 2009 under the Act LXXV of 2008 on Cost-efficient State Management and Fiscal Responsibility. A detailed analysis of the background which accompanied the institution of the Hungarian Fiscal Council, of its functions and basic modus operandi is offered by George Kopits (2011), Independent Fiscal Institutions: Developing Good Practices, Presentation prepared for the 3rd Annual Meeting of OECD Parliamentary Budget Officials, Stockholm - Sweden, 28-29 April, available at: http://www.oecd.org/governance/budgetingandpublicexpenditures/48089510.pdf. Especially after the approval of Act CXCIV of 2011 on the Economic Stability of Hungary, which assigned new tasks to the Council, the body has developed a strong and direct relationship with the General Assembly which emerges in particular in the parliamentary proceeding for the approval of the Act of the Central Budget: according to Art. 24 (3), in submitting the draft Act to the National Assembly, the government must follow the receipt of the comments of the Council; if the Council has communicated its disagreement by the deadline, the government shall again discuss the draft and submit the same to the National Assembly afterwards. For a concrete example of how the Council exercises this function, see the opinion of the Fiscal Council 'on the major characteristics of the budgetary and economic processes of Hungary in the period of January-September, 2012', adopted by the Resolution 11/2012.10.29. of the Fiscal Council of Hungary KVT-67/2012.
seems to enable the two Chambers to operate independently in the exercise of the oversight function, the presence of an internal office devoted to the analysis of the economic and financial data and trends will not be neutral for the strengthening of the overall involvement of the parliament in the budgetary and financial oversight.

This instrumental body will therefore serve as a research unit for the whole parliament, thus favouring the budgetary and fiscal specialisation of the latter in the exercise not only of the ex post scrutiny, but possibly also of the ex ante scrutiny. For these reasons, the well-functioning of such an organism will be crucial in order to ensure the effective respect of the new principle of the parliamentary responsibility on the financial and budgetary control, introduced by Article 5, Section 4 of Constitutional Law no. 1/2012. In the long-term, as correctly observed, budgetary control based exclusively upon the voluntary behaviour of parliamentary bodies and actors does not seem able to offer structural solutions, given the institutional call for empowered budgetary information to be available to the parliaments.

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

Finally, the recent French reform introduced with the loi organique relative à la programmation et à la gouvernance des finances publiques created the Haut Conseil des finances publiques as an advisory body endowed with strong independence from the fiscal authorities, but, at the same time, established its stable and prompt intervention at all the relevant stages of the budgetary and financial decision-making. In particular, the Council is required to formulate its advice on the governmental macroeconomic and financial forecasting upon which the annual law for the public finances planning (loi de programmation des finances publiques) and the annual financial law (loi des finances) are based. This advisory activity – formally disciplined as an autonomous function – will undoubtedly contribute to offer the parliament a strengthened technical informative basis and analytical capacity which will prove particularly useful for the re-inforcement of parliamentary ex ante scrutiny.

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

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

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


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

110. The Decision n. 2012-568 of 13 December 2012 of the Conseil constitutionnel determined that the provision of Article 20 does not violate the Constitution, but at
Upon the basis of such premises, the likelihood that the *Haut Conseil des Finances* will operate as a functional interface for the parliament can be considered as a continuation of the more general trend directed towards a re-inforcement of the parliamentary involvement in the budgetary decision-making process. This trend, launched by the approval of the *Loi organique relative aux loi de finances* in 2001, contributed to a significant renewal of the parliamentary scrutiny of the budget, characterised not only by the strengthening of parliamentary dedicated oversight tools, but also by the promotion of a new partnership with the court of auditors. In this sense, the development of a constructive interaction between the independent body and the two representative assemblies can be said to be favoured by the long-established co-operation which, in the French tradition, has marked the relationship between the *Cour des comptes* and the parliament.

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

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112. In particular, the 2009 French modification of the National Assembly Rules of procedure (adopted after the Constitutional reform of 2008) which created the *Comité d’évaluation et de contrôle*, as well as the *Petit loi* approved by the French Parliament on 13 July 2011 (which introduced the ‘*Lois cadre*’ on the balance of public finances), can be interpreted as an attempt to favour a more structural control of the parliament on the budgetary and financial assets, anticipating the budget bill. See Jean Arthuis Le Seuil (2010), *La dégradation des finances publiques: la loi en échec, le contrôle et l’évaluation en recours*, in *Pouvoirs*, n. 3, p. 83 ff. and Laurence Baghestani (2011), *A propos de la loi tendant à renforcer les moyens du Parlement en matière de contrôle de l’action du Gouvernement et d’évaluation des politiques publique*, in *Les Petites affiches, La Loi, Le Quotidien juridique*, n. 78, April, p. 3).


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

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

Directive 2011/85/EU, the TSCG, the Communication from the Commission defining the common principles on national fiscal correction mechanisms (COM 2012) 342) and the draft regulation on common provisions for monitoring and assessing draft budgetary plans (COM (2011) 821) represent the legal basis for national, albeit European-oriented, Fiscal Councils, which now have to be established in every Member State. The setting up of Fiscal Councils, however, not only poses challenges to national institutions, but also offers remarkable opportunities, particularly for national parliaments.

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

\textsuperscript{115. See Miguel Poiares Maduro (2012), A New Governance for the European Union and the Euro: Democracy and Justice, cit., p. 3 ff.}
Moreover, according to some scholars, a clear link could be established between Fiscal Councils and Constitutional Courts, for instance, in Germany, after the adoption of the new national fiscal rules. In addition, the relationship between the Fiscal Councils and the European Commission, both acting as ‘fiscal watchdogs’, albeit at different levels of government, or the role of the Court of Justice of the European Union in evaluating the correct establishment of Fiscal Councils at national level, continue to remain unclear.

Another challenge derives from the difficulty of adapting the existing national Fiscal Councils, such as those examined in Section 5.2.1, to the requirements established at European Union level. The notion of ‘functional autonomy’ or ‘independence’ is likely to be ‘filtered’ by the national constitutional tradition (again, the German case is particularly telling). In particular, the powers and the issue of the inter-institutional accountability of Fiscal Councils require some significant adaptations in the Member States. For instance, the Commission Communication assigns the Fiscal Councils with the power to issue policy recommendations towards the national fiscal authority, which, in principle, is bound by them and has to justify publicly any deviation from the path laid down by the Fiscal Council. However, this power is provided in a minority of the existing Fiscal Councils in the European Union and is likely to produce significant effects in terms of the inter-institutional balance, thereby aiming at limiting the discretion of the fiscal authority, especially of the executive.

By contrast, perhaps the institution that will benefit most from the establishment of a Fiscal Council will be the parliament. Since both the Communication and the draft regulation state that Fiscal Councils are accountable to parliaments, the national solutions, like that of Germany, in which the Fiscal Council does not enjoy direct contact with the parliament can be problematical and will probably require some reforms.

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

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

117. According to Daniele Franco (2011), Comments on ‘The Role of Fiscal Policy Councils in Theory’, cit., ‘the new German fiscal rule implicitly defines a clear mandate for a possible German independent Fiscal Council: to provide the economic analysis on which the constitutional court can deliver its judgments.’
governance framework are likely to produce – for example, the time-constraints imposed by the European semester and the European-driven balanced-budget clauses introduced at constitutional level – could be, at least partially, hindered by the setting up of Fiscal Councils which have strong ties with their legislatures. Providing independent information, Fiscal Councils can improve the effectiveness of parliamentary scrutiny and oversight as well as the quality of the parliamentary output. In other words, thanks to the ‘alliance’ with Fiscal Councils, the position of parliaments towards the executives will be enhanced in the control on budgetary and fiscal matters at national level within the European Semester and within the procedures for the surveillance of the compliance with the medium-term objectives. Therefore, the mandatory creation of Fiscal Councils could possibly induce a further Europeanisation of national parliaments, which would reproduce the traditional tension between the emulation of the most developed national experiences of Fiscal Councils (for example, the UK Office for Budget Responsibility) and differentiation. Indeed, differentiation reflects, on the one hand, the specificities of the institutional landscape of each Member State, its form of government, its political and economic culture, and the features of parliamentary oversight on budgetary matters; on the other, it is the result of the differentiated integration of Member States in the Economic and Monetary Union and of the diverse impact of the Euro crisis across the countries.

The development of a solid relationship between the parliaments and the Fiscal Councils does not seem to impair the respect of the independence of Fiscal Councils, as a basic prerequisite for their effective performance. Notwithstanding the existing differences in the classification of the Fiscal Councils and in the interpretation of their role with regard to fiscal and budgetary policy-making, the literature has usually shared the idea that the main threat affecting the role of Fiscal Councils is to be found in the difficult equilibrium ‘between Scylla and Charibdis’, i.e., between acting in full independence (and political irrelevance) and merely legitimising government plans. An ideal Fiscal Council is expected to steer a middle course.

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

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


120. On ‘the value that an independent budget capacity located in the legislature can have for expanding the legislature’s role in budgeting and for holding the executive accountable’, see Barry Anderson (2009), *The changing role of Parliament in the budget process*, in OECD Journal on Budgeting, vol.1, p. 3.
with the parliament would, therefore, offer the Fiscal Councils the opportunity to be impartial without staying outside the political arena: if fiscal institutions ‘must work at the core of the democratic process and be fully owned’, the relationship with the parliament reveals itself to be a strategic one. Such a perspective – consisting in the promotion of procedures of direct interaction in between Fiscal Councils and their respective representative assemblies – constitutes a challenge, above all, for those Fiscal Councils which are loosely tied to respective parliaments.

The development of this idea has required us to widen our original plan of analysis, involving - in the comparative survey - a confrontation based not only upon the identity and role of the Fiscal Councils, but also upon their relationship with the parliament, which is considered as a part of the budgetary and fiscal policy-making.

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

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

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

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

The above-mentioned consideration on the relationship between Fiscal Councils and national legislatures does not challenge the importance that the economic literature usually attributes to the creation of a fiscal institution as a useful measure capable of providing improved fiscal performance. In particular, it does not condition the possibility of Fiscal Councils promoting a more effective use of public resources, but it should, instead, be interpreted as a warning that demonstrates that the implementation of such an objective is also dependent on the relationship that the Fiscal Council develops with all the institutions which have an impact on budgetary policy-making. To date, the literature has deeply investigated the correlation between the effectiveness of fiscal institutions and the various elements of the fiscal framework, from the formal frameworks (such as the constitutional rules on excessive deficits) to the informal ones (for instance, the motivation of policy-makers). All these features undoubtedly influence the design of fiscal institutions and their capacity to discourage deviations from desirable policies; but, if we want to make Fiscal Councils work effectively, it seems that the internal architecture of the form of government, in its general functioning and in its specific manifestations within budgetary and fiscal policy-making, should also be taken into consideration. Only by considering the overall interaction of such agencies with both the government and the parliament – in their role as bodies in charge of the political decision-making in the budgetary and fiscal field – can we establish the premises for a fiscal architecture capable of increasing the contribution of all the institutions involved.

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

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

124. See, in particular, Xavier Debrun & Manmohan S. Kumar (2007), The Discipline-Enhancing Role of Fiscal Institutions, cit., p. 31 ff.

125. As observed by Andrea Manzella (2012), Il governo democratico della crisi, Presentation held at the 58th Conference on Administrative Studies - Varenna, 20-21 September, in fact, the entrustment of power on technical bodies does not bar the essence of politics, as the role of democratic institutions can in any case be safeguarded through the appointment procedures, the introduction of transparency duties for independent agencies and the development of cooperative patterns in between such agencies and political decision-makers.
### Figure 1 - Features of the Fiscal Councils in the UK, Belgium and Germany with regard to the nature of parliamentary oversight of budget

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

Medium development of budgetary oversight: The five members of the Council are selected among specialists in the field of economic theory and policy and appointed by the Federal President on the recommendation of the government.

The Council's main duty is to compile the Annual Economic Report, presented to the Federal Government by November 15th, which in its turn submits it to legislative bodies. Within eight weeks the Federal government presents its comments on the report to the legislative bodies.

The Council is endowed with financial autonomy and its remuneration and expenses are borne directly by the Federal government.

The government-centered nature of the body makes the Council responsible only in face of the government. The role of political advisor prevails over that of scientific advisor, thus supporting the idea of the Council of experts as a 'parallel government'.

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**Figure 2 - A comparison between the degree of the national Parliaments’ involvement in the budgetary oversight (ex post scrutiny) and their relationship with Fiscal councils**

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

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