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THE STRUGGLE OF THE EUROPEAN PARLIAMENT TO
PARTICIPATE IN THE NEW ECONOMIC GOVERNANCE

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*The Struggle of the European Parliament
to Participate in the New Economic Governance*

CRISTINA FASONE

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Abstract

This paper aims to analyse the European Parliament's position in the aftermath of the reform of the economic governance in the European Union, in particular after the adoption of the “six-pack” and the “Fiscal Compact”. References are made to the involvement of the European Parliament in the decision-making process that led to the adoption of the new measures as well as to the substantive role assigned to this institution in the new regulatory framework. The paper argues that the new provisions, which actually limit the European Parliament’s “task” to the participation in the economic dialogue and in the interparliamentary co-operation, can jeopardise the effectiveness of the landmark principle of ‘No taxation without parliamentary representation’.

Keywords

European Parliament, economic governance, parliamentary representation, economic dialogue, interparliamentary co-operation.

1. Introduction: After its Enhancement in the Treaty of Lisbon, the Weakening of the European Parliament in European Economic Governance*

In the aftermath of the entry into force of the Treaty of Lisbon, the European Parliament (EP) has witnessed the most significant strengthening of its powers ever, particularly in the legislative process (de Witte *et al.*, 2010: 26-41). The trend towards an “indefinite” institutional empowerment of the EP seemed to have become irreversible (Rittberger, 2012: 18-37). However, the shadow of the financial crisis has suddenly forced us to re-consider this assumption, at least for the crucial sector of European economic governance. This has had to be promptly adapted to the new situation that has also fostered a more comprehensive reform of the economic and fiscal policy in the medium- to long-term.

Between 2010 and 2012, the EU and its Member States or, rather, some of them, have taken measures that vary from the “renewed” Stability and Growth Pact, to economic policy co-ordination through the cycle of the European semester, the multi-lateral fiscal surveillance, the contrast to macro-economic imbalances, the establishment of the financial stability mechanism in the EU, to the European-driven and mandatory introduction of the “golden rule” in national legal systems.

To some extent, given that most of these matters fall within the category of the competences in which the EU simply complements or co-ordinates the action of the Member States (Art. 5 and Articles 120 to 126 TFEU), the marginalisation of the EP in these fields could appear as a logical consequence. But upon a more careful look at the EU competences and the relationship between the EP and the other European institutions, this conclusion might seem too precipitous. For instance, most new measures aim to preserve the stability of the euro, and thus both the monetary Union and financial policy, which is an exclusive competence of the European Union (Art. 3 TFEU): this interpretation, if it orients the choice of the legal basis for the new measures, would allow a stronger role for the EP. Moreover, the so-called “six-pack” (see, *infra*, Section 3.2.1) and the “fiscal compact” (see, *infra*, Section 3.2.2) grant a prominent role to the other European institutions, first of all, to the European Commission (much more than in the former Stability and Growth Pact), but also – as was to be expected – to the intergovernmental ones, such as the Council and the European Council (and even to the Court of Justice (CJEU)). Thus, if we take these premises into account, the question remains as to why it is only the European Parliament that is excluded from the adoption of decisions within the reformed economic governance system? Indeed, in principle, the new measures did not necessarily have to lead to the described outcome, which has somewhat weakened the EP.¹

In a field in which institutional decisions have such a deep impact on the standards of living and on the rights of European citizens, the legitimacy of the European decision-making has been severely undermined (Habermas, 2012). A new democratic deficit is likely to emerge (or, perhaps, it is already in place), since the fiscal sovereignty of national parliaments is put under severe constraints, whereas the EP, in the best hypothesis, is simply informed of the decisions taken by someone else at EU level, without its direct involvement (Hatzopoulos, 2007: 309-342; Armstrong *et al.*, 2008: 413-450; Abdallat, 2012: 14).

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¹ According to a distinction that has been recently recalled by scholars, given the prohibition to increase the competences of EU institution outside the framework of the ordinary revision procedures (Art. 48.2-5 TEU), it can be argued that the “fiscal compact” has provided the European institutions with new tasks that seem to fit with the existing competences (see de Witte, 2012: 7). However, the new tasks seem to be relatively more significant for the other institutions than for the EP in terms of decision-making authority.

The new institutional framework of EU economic governance is affected by the lack of both input and output legitimacy (Scharpf, 1999). Indeed, with regard to input legitimacy, those who have been elected to represent the citizens at national and EU level do not have any chance to bind or to concur directly in European decisions, for instance, on the macro-economic imbalances or on the excessive deficit procedure (EDP). Likewise, with regard to output legitimacy, because of the lack of transparency and democratic accountability for the decisions taken mainly by the Commission and the intergovernmental institutions, the EP and national parliaments being marginalized, the European citizens are not able to follow and to understand fully the reasons for the adoption of measures inspired by fiscal austerity (Hallerberg, Marzinotto and Wolff, 2011: 13). In this regard, the financial and the socio-economic crisis are likely to produce worrying spillover effects in terms of political crisis and trust in the EU institutions.

In this paper, it is argued that the participation of the EP in the “management” of EU economic governance is fundamental for the legitimacy and the effectiveness of the new regulatory framework, which appears to be highly fragmented in terms of the national positions expressed and are thus dangerous for the performance of the European integration process (Fabbrini S., 2011). In this regard, although the contribution of national parliaments is also very important for the good functioning of the EU (Art. 12 TEU), they are likely to defend national interests at EU level, especially on budgetary policy, thus increasing the already divisive scenario that characterises the EU at the moment. In contrast, only the EP can constitute the place where national cleavages are willing to be pieced together through an open debate and mitigated in their most extreme manifestations. In other words, by their nature and when diverging points of view arise, both the national governments, individually and summoned in the Council and the European Council, and the national parliaments are more prone to defend national self-interests to the detriment of the genuine spirit of integration and the achievement of the common European good. In order to make the new economic governance work, solidarity and mutual trust amongst Member States and national citizens are decisive, and the most appropriate place in which to pursue these objectives seems to be the EP (Amato, 2012). Consequently a suitable “recipe” for increasing the democratic legitimacy of the economic governance could be a further empowerment of the EP in this field, while, at the same time, the EP should also try to involve national parliaments by means of a co-ordinated enforcement of the new European provisions.

This paper focuses on the role of the EP in the procedure for the adoption of the regulations and directives which constitute the “six-pack” and on the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union (TSCG), informally re-named the “fiscal compact” (even though the real fiscal compact in the Treaty only refers to Articles 3 to 8) as well as on the position envisaged for the EP by these measures within the functioning of the economic governance framework. Indeed, the legislative and non-legislative acts² (only Directive 2011/85EU) form part of a package of provisions which aim at reforming the Stability and Growth Pact (Regulation (EU) No 1175/2011 and 1177/2011),³ at preventing and correcting macro-economic imbalances (Regulation No 1176/2011),⁴ at the enforcement of measures that correct *excessive* macro-economic imbalances *in the*

² The distinction between legislative and non-legislative acts depends on the procedure of adoption of the measure. According to Art. 289 TFEU, only those acts approved under the ordinary or the special legislative procedures are deemed to be “legislative acts”. However, recently it has been argued that the definition of the nature of a EU act, whether legislative or not, mainly relies on the competence fixed in the Treaties rather than on the procedure (Bast, 2012: 925).

³ Indeed, Council Regulation (EU) No 1175/2011 of 16 November 2011 amends Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, whereas Council Regulation (EU) No 1177/2011 of 8 November 2011 amends Regulation (EC) 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure).

⁴ See Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macro-economic imbalances.

euro area (Regulation No 1174/2011),⁵ at guaranteeing the effective budgetary surveillance *in the euro area* (Regulation No 1173/2011),⁶ and at setting the requirements of the budgetary framework for the Member States (Directive 2011/85EU).⁷ Except for Regulations No 1175/2011 and 1177/2011, the other provisions have been adopted for the first time and in the light of the new legal basis provided by the Treaty of Lisbon: for instance, in the EU, macro-economic imbalances have never been regulated before by secondary legislation. Moreover, two out of six acts are specifically addressed only to the 17 Member States of the Eurozone, thus pointing out that not all the Member States are equally concerned by these measures.

The same asymmetry also applies to the other legal instrument examined, the TSCG, a parallel *international* Treaty in addition to the European treaties, although, in theory, not referable to the EU legal framework (Azoulai and, less critically, Maduro, 2012: 3-5; Cantore and Martinico, 2012: 5-10; Editorial comments, 2012; 1-6; Fabbri F., 2012). This Treaty, which was signed on 2 March 2012 by all the Member States, except for the UK and the Czech Republic, is intended to strengthen fiscal and budgetary discipline. It has been drafted outside the revision procedures of the European Treaties of Article 48 TEU precisely because the common agreement required to amend the Treaty – to wit, unanimity – amongst the Member States was lacking, and the tool of the enhanced co-operation could not have been used, either (Tosato, 2012). Several concerns were expressed by the European Parliament regarding this Treaty, from the procedure followed for its adoption, to the initial doubts about the inconsistency of some of its provisions with the EU Treaties, to the fact that some articles apply in principle to all the Contracting Parties while others only apply to the EU Member States which adopted the euro.⁸

As a result, the regulatory framework is extremely fragmented and only partially coherent, leaving binding measures such as European and international Treaties,⁹ legislative and non legislative acts, and soft law measures such as the broad economic policy guidelines of the Council (Art. 121.2 TFEU) side by side, addressed to different targets (all the Member States, only those that signed and agreed with the Treaties, or only those of the Eurozone).

The paper is devised as follows: Section 2 contains a premise on the budgetary authority of the EP in the EU context; Section 3 concerns the EP's position during the procedure reforming the EU economic governance framework and the position finally achieved by the EP in the legal texts, respectively the "six-pack" and the TSCG. Finally, Section 4 tries to draw the first conclusions about the controversial marginalisation of the EP within this ongoing process of reform, and the need to involve it more.

⁵ See Regulation (EU) No 1174/2011 of the European Parliament and of the Council of 16 November 2011 on the enforcement measures to correct excessive macro-economic imbalances in the euro area.

⁶ Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area.

⁷ See Council Directive 2011/85EU of 8 November 2011 on requirements for budgetary frameworks of the Member States.

⁸ As for the problem of differentiation amongst the Member States brought by the TSCG, however, the "fiscal compact" does not seem to deviate too much from the path of enhanced cooperation, at least because of its Art. 10 that refers to Art. 136 TFEU, Art. 20 TEU, Art. 326 and Art. 334 TFEU (Cremona, 2012: 9).

⁹ The other Treaty, establishing the European Stability Mechanism, signed on 2 February 2012 by the 17 Member States of the Eurozone is not analysed in this paper, since the European Parliament was substantially excluded from the negotiation and its position was completely disregarded even when the amendment to Art. 136 TFEU, the legal basis of the Treaty, was adopted. Moreover, the European Parliament is not mentioned at all in the Treaty.

2. Stalemate in the Financial Crisis: The Small EU Budget, the European Parliament's Budgetary Powers and the Lack of Co-ordination Between National and EU Budgets

Without entering into details about the EU budget process (meaning the process of approval of the EU budget), it seems worth mentioning that, contrary to what happens for the European control of the euro stability, of the national budgets and on the macro-economic imbalances, the EP enjoys full status as budgetary authority of the EU together with the Council. Perhaps, after the Treaty of Lisbon, the EP has become even more powerful than the Council in this field (Hallerberg, 2010; Corbett, Jacobs and Shackleton, 2011: 272-291).

With this regard, there is one main argument, in addition to the already mentioned democratic argument (see, *supra*, Section 1), that can justify the acknowledgement of a crucial role to the EP also during the European Semester: if the finance and the budgets of the EU and the Member States have to become really co-ordinated, as they should be under the present circumstances, the lack of decision-making powers of the EP in the framework of the “six-pack” and the TSCG, disregarding the EP position as budgetary authority in the EU, is rather incomprehensible.

Indeed, evidence shows that the EP position in the EU-budget process has been re-inforced. The multi-annual financial framework now has Treaty status and its approval requires the consent of the EP. With regard to the European budget, the margin of manoeuvre of the EP has been increased by the abolition of the distinction between compulsory and non-compulsory expenditures (whereas, in the pre-Lisbon regime, the EP only had “jurisdiction” on the limited compulsory expenditures) and by the fact that the procedure followed resembles, with some differences in the timing, the ordinary legislative procedure (Art. 314 TFEU). Moreover, in the past, the EP had, in practice, more power in the budget process than was officially recognised, because it could challenge the position of the other institutions, particularly of the Council, before the European Court of Justice, refusing to give its assent to the budget or, more often, during the oversight process on the budget implementation, vetoing the discharge (Corbett, Jacobs and Shackleton, 2011: 279). The inter-institutional agreement of 17 May 2006 on budgetary discipline and sound financial management, as amended in 2011, seems to run in the same direction of strengthening the EP in the financial framework of the EU.

However, in spite of the favourable position of the EP towards the adoption of the EU budget, this financial document only has a very modest impact on the finance of the EU and of the Member States. Indeed, the EU budget counts for 1% of the whole GDP of the Union and more than 80% of its resources derives from national budgets: the EU lacks of a system of own resources and, in this respect, remains largely non-autonomous. Furthermore, “[d]espite four new treaties which have substantially increased the competences of the Union and three waves of enlargement which have doubled the number of ‘poor’ Member States, the Community budget remains stuck at 1% of GDP, 0,25% lower than the ceiling set in 1988”.¹⁰

Two main comments can be derived from the present picture. The first is that the financial crisis also undermines the stability of the EU budget and the financing of the EU policies, which depend almost entirely on national budgets, which are already in serious trouble. The second is that, while the problem has always been neglected to date,¹¹ effective co-ordination between national and EU budgets should be put in place, particularly under the current circumstances. In contrast, the reaction of the European institutions and Member States *vis-à-vis* the financial crisis has consisted in keeping the two questions separated: on the one hand, the size of the EU budget remains essentially unaltered; on the other, the EU control on the macro-economic and the fiscal policies of the Member States has been substantially re-defined.

¹⁰ See European Parliament, *Working document on financing the 2020 Agenda despite the budgetary crisis*, by Mr. Alain Lamassoure, VII parliamentary term (2009-2014), Brussels, 6 May 2010, p. 2.

¹¹ *Ivi*, 85-90.

If, and, if so, when the co-ordination between the two budgetary levels, which are so closely interdependent, is achieved, the exclusion of the EP from the adoption of these decisions will be difficult to accept, given that the EP is one of the budgetary authorities of the Union. With this regard, although the initial commitment of the heads of the states and government to make the EU budget a tool for growth and to reform the system of own resources have not made significant steps forward and “no progress was achieved at the June European Council meeting towards striking an agreement on the next Multiannual Financial Framework, i.e. for 2014-2020”,¹² however a new opportunity now is disclosed by the possible introduction of a sort of European financial transactions tax. Indeed, even though the draft Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC (COM (2011) 594 final) introduced by the Commission has been contested at national level,¹³ this tool might improve the size of the EU budget and increase the level of coordination amongst national fiscal regimes. At least this is the first attempt of associating the EU driven budgetary reforms at national level with a reconsideration of the problem of the European resources. Although the EP is just consulted on this proposal, according to Art. 113 TFEU, on 23 May 2012 it adopted several amendments to the draft Directive,¹⁴ for instance specifying the conditions for issuing a financial instrument to the purpose of the transaction tax, thus affecting the scope of application of the Directive.

3. The Ongoing Process of the Reform of the Economic Governance in the EU: The Position of the European Parliament

The role played by the EP during the process of the reform of the economic governance has to be assessed in two directions: on the one hand, the EP activism, for instance, in attempting to amend draft regulations and draft (international) Treaties, namely, the Treaty on the European Stability Mechanism (ESM) and the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union (TSCG); on the other hand and notwithstanding its commitment, the EP failure to achieve a prominent *status* – albeit the EP has gained a general oversight role on the whole procedures – and to obtain decision-making power in the daily management of the new European economic governance framework.

3.1 The European Parliament’s Role in the Procedures for the Approval of the New Measures

The new measures stem from a very complicated chain of legal provisions, political commitments and soft-law procedures. Ten years of “enforcement” of the Growth and Stability Pact (Regulations (EC) No 1466 and 1467/97, although modified in 2005) and the new Protocol No 12 to the Treaty of Lisbon on the excessive-deficit procedure have not proved to be as effective as they were expected to be, thanks to the derogations and the deference of the Member States, even when their public accounts were visibly inconsistent with the legal requirements. No automatic sanctions were provided.

In this framework, the European Parliament has been ahead of the times, acting before the real consequences of the financial crisis could have been fully understood. On 7 October 2009,¹⁵ the EP decided to set up a special Committee on the Financial, Economic and Social Crisis that carried out

¹² See the resolution of the European Parliament of 4 July 2012 on the Conclusions of the European Council meeting (28-29 June 2012) (2011/2923(RSP)), point 5.

¹³ See House of Lords, European Union Committee, *Towards a Financial Transactions Tax?*, Twenty-Ninth Report, 28 March 2012, Chapter 6, <http://www.publications.parliament.uk/pa/ld201012/ldselect/lducom/287/28702.htm>.

¹⁴ See the European Parliament legislative resolution of 23 May 2012 on the proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC (2011/0261(CNS)). At the moment, after the EP single reading, the Council has to adopt the final decision.

¹⁵ See the European Parliament decision of 7 October 2009 on the establishment of a special Committee on the Financial, Economic and Social Crisis (OJ, C230 E, 26 August 2010, p. 11)

investigations and hearings until its dissolution on 30 July 2011, following the approval of its final report.

In the meantime, the risk of the bankruptcy of Greece and of the general economic downturn had become more evident. In 2010, the European Semester was launched (its implementation beginning in 2011) as a six-month (approximately) cycle every year to co-ordinate the national structural reforms (embedded in the national reform programmes) and the national stability and convergence programmes with a set of priorities, followed by recommendations, issued by the Commission and adopted by the ECOFIN Council and then by the European Council. At that time, this happened outside the framework of the EU legislation, as an initiative of the European Commission, which was then endorsed by the Council, but which lacked a binding nature.

The second step, given the deterioration of the situation in Greece and in other Member States, was the decision to amend Art. 136 TFEU, making the financial bailout of a Member State expressly possible within the EU framework. The EP was formally consulted,¹⁶ according to the simplified revision procedure of Art. 48.6 TEU, but its proposed amendments were entirely disregarded and the text of Art. 136 TFEU was adopted by the European Council as it was in the draft version. Indeed, if accepted, the amendments of the EP would have forced the Commission and the European Council to change the revision procedure: the EP proposed to extend the competences of the EU institutions (something which cannot be accomplished by the simplified procedure), and particularly its competences, by submitting the use of the mechanism of financial assistance to the requirements of a new EU regulation to be adopted under the ordinary legislative procedure, the co-decision procedure (de Witte, 2011: 7).

The same European Council that agreed on the revision of Art. 136 TFEU, the European Council summoned on 24-25 March 2011, made the third step before the (binding) reform of the European economic governance and promoted a plan, called the “Europlus Pact”, containing the political commitments of the governments of the Eurozone Member States and of the others that wished to join to improve the fiscal strength and the competitiveness in their countries. Again, the plan was devoid of legal effects, but served as “route” to be followed for the subsequent binding-measures to be adopted. In this regard, the EP already warned that a democratic and legitimacy problem existed in the way in which the process of reform was supposed to be accomplished and for its “perspective” results (Editorial comments, 2012: 10). Indeed, the EP emphasised that the new economic governance should have been arranged in compliance with the “community method” (Ponzano, 2011) and led by the EU institutions. The European Parliament should have been fully involved in the process, playing “a major role as the main voice of the citizens, especially when it comes to providing a forum for public cross-border debates, taking into account the spillover effect of national decisions in fields such as economic and social governance”.¹⁷

Throughout the process of adoption of the several measures which form the so-called “six-pack”, the EP proved to be a crucial player partially re-habilitating its position compared to the initial proposals of the European Commission, in which the EP was not mentioned at all or only *en passant*. In other words, the EP tried to solve what could be solved in this situation (see further, Section 3.2.1.). The political directions for adopting these new provisions could be found in the Europlus Pact, but the legal basis is in the Treaties and nothing, in principle, prohibited the assignment of decision-making powers – such as those attained by the Commission, the Council and the European Council – to the EP

¹⁶ See European Parliament, Resolution of 23 March 2011 on Amendment of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro.

¹⁷ See European Parliament, Resolution of 6 July 2011 *on the financial, economic and social crisis: recommendations on the measures and the initiatives to be adopted*, Strasbourg, (2010/2242(INI)). The Europlus Pact made a brief reference to this aspect, too (point 6): in implementing the policies aiming at correcting harmful and persistent macroeconomic imbalances and improve competitiveness, “close cooperation will be maintained with the European Parliament and other EU institutions (...)”.

in the daily implementation of the regulations and directive, even though the result finally went to the detriment of the EP (see further, Section 3.2.1.).

Four of the five regulations (on the prevention and correction of macro-economic imbalances, on the strengthening of the surveillance of the budgetary positions and the co-ordination of economic policies, on the correction of excessive macro-economic imbalances in the euro area and on the budgetary surveillance on the euro area) had to be adopted under the ordinary legislative procedure, and thus with the EP as co-legislator. Indeed, Art. 121.6 TFEU (former Art. 99 TEC) was reformed by the Treaty of Lisbon, which introduced co-decision for the enactment of secondary law in this field, replacing of the old co-operation procedure. The same applies to Art. 136 TFEU, which was the legal basis, together with Art. 121.6 TFEU, of the two regulations specifically concerning the Eurozone, a brand new article inserted by the Treaty of Lisbon, which provides for the use of the co-decision as well.

Thus, the EP could count on the real possibility of amending the draft regulations, being the first institution to act on the Commission's proposals, according to the arrangement of the new co-decision (Art. 294 TFEU). Exercising this power, the EP was able to re-inforce its position, albeit modestly, from the lack of any role, according to the original proposal of the Commission, to a limited involvement: for instance, within the four regulations, all the provisions regarding the "Economic dialogue" (see, *infra*, Section 3.2.1.a.) have all been included thanks to the EP's amendments.¹⁸ Subsequently, because of the need to adopt the measures as soon as possible, first reading agreements between the EP and the Council were achieved and thus regulations were adopted as amended by the EP.¹⁹

For the other two acts, the draft Regulation on speeding up and clarifying the implementation of the excessive-deficit procedure, and the draft Directive of the requirements for budgetary frameworks of the Member States, the legal basis was different, not allowing to the EP to participate in the procedure as co-legislator. The draft Regulation, based upon Art. 126.14, second section, was adopted through a special legislative procedure which requires unanimity in the Council and the consultation of the EP and the ECB, thereby aiming to replace the provisions of the Protocol on the excessive-deficit procedure attached to the Treaty of Lisbon. Although the EP was only consulted, the position adopted on 28 September 2011 emphasised the need to insert specific changes in the text of the regulation, most of them concerning the position of the EP itself in the new procedure, and these were finally introduced in the legal text.

In contrast, on the draft Directive of the Council providing detailed rules for the application of Protocol No 12 and to be approved after the consultation of the EP (Art. 126.14, third section), the role of the EP was definitely marginal even during the adoption procedure.

However, on the whole, the EP was very proactive in approving the EU legislation for the new economic governance framework and contributed, on the one hand, to the implementation of the regulations, for instance, after Regulation No 1176/2011, in defining, together with the Commission, the scoreboard for the surveillance of macro-economic imbalances; and, on the other hand, even before the entry into force of the "six-pack", in proposing how to carry out and improve the European Semester and the economic policy co-ordination in the future,²⁰ departing from the negative experience of the first experimental use of this tool.²¹

¹⁸ See the positions adopted by the European Parliament on the four draft regulations during the plenary session, on 28 September 2011.

¹⁹ Indeed, nowadays (during the sixth and the seventh parliamentary terms) most ordinary legislative procedures have been concluded by mean of first reading agreements, which increasingly speed up the decision-making process (Farrel, Héritier, 2004: 1184-1212; Héritier, 2012: 38-54).

²⁰ See the Resolution of the European Parliament of 15 December 2011 *on the draft scoreboard for the surveillance of macroeconomic imbalances* as proposed by the Commission. In this resolution the EP listed clearly what had to be

With regard to the European Semester, which has just been transferred by the “six-pack” from the domain of the soft law to that of hard law, embedded within a EU Regulation (No 1175/2011), the EP advocates that (see the EP Resolution of 1 December 2011):

- the Annual Growth Survey, the document transmitted by the Commission at the beginning of the European Semester and setting the EU priorities in terms of economic and budgetary policies and reforms that favour growth and employment, will be transformed from being a technical document to policy guidelines able to take into account the relevant recommendations of the EP;
- at the next reform of the EU Treaties, the Annual Growth Survey, once transformed in Guidelines, will be subject to the co-decision procedure, thus becoming amendable by the EP;
- any change made by the Council to the country-specific recommendations issued by the Commission after the transmission of the national reform programmes and the stability and convergence programmes by the Member States, will be explained by the Commission and the Council appearing before the EP;²²
- prior to and after the Spring European Council, which is deemed to set the strategic priorities of the fiscal year, an inter-parliamentary meeting will take place and the President of the European Council will annually present the actions to be taken following the Spring European Council to the EP.
- the European Council will invite the President of the EP to its meetings on the European Semester;
- in the first few weeks of the new year, the Commission and the Council will report to the EP on the developments of the previous European Semester; and
- most of all, with regard to the Eurozone structure, “any new or upgraded organization and decision-making process within the Council and/or the Commission must go hand in hand with upgraded democratic legitimacy and appropriate accountability to the European Parliament”.

Although the EP has expressed its concern against the establishment of a purely inter-governmental co-ordination system of the economic and fiscal policy, its warning went unheard to a large extent. Two Treaties agreed amongst some of the Member States, but formally falling outside EU law were negotiated in the 2011 and in the first months of 2012. However, neither the option of the enhanced cooperation, nor that of a revision of the European Treaties, according to Art. 48 TEU, were feasible because of the subject-matter concerned – for instance, monetary policy, which is an exclusive competence of the EU, and thus enhanced co-operation in principle is forbidden – or because of the lack of unanimity for the revision. Thus, the Member States and the European Council (see, especially, the European Council of 8-9 December 2011) decided to engage in two parallel processes of the drafting of international treaties, which *de facto* regulate EU matters: the Treaty on the European Stability Mechanism (TESM), signed on 2 February 2012, and the TSCG, signed exactly one month later.

(Contd.) _____

changed in the draft of the Commission: for instance, the EP “(...) 7. Notes that the Commission has not taken into account all the elements specified for the economic reading of the scoreboard in Article 4 of Regulation (EU) No 1176/2011; asks the Commission to include all these elements in the economic reading of the scoreboard, notably in relation to employment, drivers of productivity and the role of energy; 8. Stresses that the threshold retained for the unemployment rate fails to capture flow developments, such as annual increases in that rate (...)”. On the crucial contribution of the EP, see European Commission, *Alert Mechanism Report. Report prepared in accordance with Articles 3 and 4 of the Regulation on the prevention and correction of macro-economic imbalances*, COM (2012) 68 final, Brussels, 14 February, 2012.

²¹ See the resolution of the European Parliament of 1 December 2011 *on the European Semester for Economic Policy Coordination* (2011/2071(INI)).

²² Indeed in 2011 the country-specific recommendations issued by the Commission have been substantially softened by the Council without stating the reasons of the changes (Hallerberg, Marzinotto and Wolff, 2011).

The two “international-European” Treaties, the former establishing a permanent system of financial assistance amongst Member States, the latter strengthening fiscal discipline within the EU, definitely differ for the position assigned to the EP both during the negotiations and in the text. Dealing with international agreements, there is no mandatory consultation with the EP. However, while the EP was kept apart from the procedure of adoption of the TSCM and is not even mentioned in the text,²³ it was allowed to appoint four representatives²⁴ (three plus a substitute) who were to participate in the negotiation process for the TSCG. They constantly reported their activity in the *ad hoc* working group to the EP Committees on Constitutional Affairs and on Economic and Monetary Affairs and to the plenary.

It does not seem excessive to state that the final version of the TSCG was largely the result of the amendments required by the EP which had one main objective: to bring the content of the new Treaty back to EU law, particularly the “six-pack” (the EP also expressed concern about the original version of Art. 8 of the Treaty and the empowerment of the CJEU with regard to the introduction of the “golden rule” in the Member States that sign the Treaty). Indeed, the best option for the EP would have not been to adopt such a Treaty – which has to be ratified at least by 12 Contracting Parties –, but to include its provisions in EU regulations. However, the EP succeeded in limiting the negative consequences of having incoherent provisions between the TSCG and the “six-pack”.²⁵

As pointed out in its resolution of 2 February 2012, the main results of the EP engagement in the negotiation of the TSCG are:²⁶

- “the undertaking that the Community method will fully apply;
- that stability, co-ordination and governance will be implemented via secondary legislation, fully involving Parliament;
- the greater, although incomplete, coherence between the ‘six-pack’ and the new Treaty;
- the recognition of the rights of contracting parties whose currency is not the euro to participate in those parts of the euro-summit meetings dealing with competitiveness, the global architecture of the euro area and the fundamental rules that will apply to it in future;²⁷
- the co-operation between the European Parliament and the national parliaments is foreseen on a mutually-agreed basis and in accordance with the Treaty;
- the addition of a reference to the objectives of sustainable growth, employment, competitiveness and social cohesion;²⁸ and
- the commitment to incorporate the content of the Agreement into the EU legal framework within five years.”

²³ Nonetheless the EP asked in vain for its involvement in the negotiations. See the Resolution of the European Parliament of 18 January 2012 *on the Conclusions of the European Council of 8-9 December 2011 on a draft international agreement for the fiscal stability in the European Union*.

²⁴ The EP representatives were Elmar Brok (EPP, DE), Roberto Gualtieri (S&D, IT), Guy Verhofstadt (ALDE, BE) and Daniel Cohn-Bendit (Greens/EFA, FR).

²⁵ The TSCG already recalls the legal basis of the “six-pack” (Articles 121, 126 and 136 TFEU) as well as some of the new EU Regulations.

²⁶ See the European Parliament resolution of 2 February 2012 *on the informal European Council meeting of 30 January 2012*.

²⁷ Indeed, only the provisions of Titles III and IV of the Treaty may be applied to Contracting Parties whose currency is not the euro.

²⁸ Political groups in the EP showed different positions on this point: left-wing MEPs were in favour of strengthening also the dimension related to employment and growth, whereas right-wing MEPs were committed to the objective of fiscal austerity. For the “six-pack” the activity of the Rapporteurs in bridging the gap between these two positions was essential.

In the end, with regard to the content of the TSCG, the EP acted as the real guarantor of the EU *aquis*, even though this role is formally assigned to the European Commission.

3.2 *The Limited Role of European Parliament According to the New Measures*

The commitment of the EP to promoting the reform of European economic governance and its successful attempt to amend draft regulations and even the TSCG do not imply *per se* that the EP has been able to re-inforce its position in the new framework. Certainly, the EP tried to improve it, but could not overturn the original content of draft legislative acts or of the draft agreement, in which the EP role was conceived as minimal.

Without doubt the EP is stronger now than it was at the time of the previous regime of the Stability and Growth Pact (1997 and reformed in 2005), when the name of this institution was not even mentioned in Regulations 1466/97 and 1467/97. However, at that time, the weak enforcement of the Stability and Growth Pact did not make the lack of involvement on the part of the EP particularly problematical. On the contrary, nowadays, in principle, the mechanism does not admit derogations, except for exceptional circumstances: compared to the past, warnings and sanctions have become semi-automatic because the system is based upon the reverse qualified-majority voting (warnings and sanctions proposed by the Commission are deemed to be adopted unless the qualified-majority in the Council rejects it).²⁹ Furthermore, the co-ordination of economic policy has also become binding by the embedding the European Semester within the EU legislation.

Compared to the strengthening of the Commission's position by the "six-pack" (and, to some extent, also by the TSCG, as if it was a European Treaty), the EP appears to be very weak: it has to be informed and consulted on specific occasions, it can organise hearings and co-operates with national parliaments, but it is not entitled to take any decision in the framework of European economic governance (the opposite to what happens within the EU budgetary process, as mentioned in Section 2).

Another problem that could undermine the position of the EP regards the fact that many MEPs are elected in Member States which are not affected or are only partially affected by the new measures. When the EP has to examine and decide on a case of enhanced co-operation, all MEPs, regardless of their Member States, participate in the parliamentary activity on equal footing. But in the circumstance of a warning or sanction imposed upon a Member State in the euro area, there could be diverging views in the EP, between MEPs within and outside the Eurozone, or from Member States that have signed the TSCG or not, on how to oversee those proceedings and on which measures have to be taken. In other words, issues dealing with economic governance are quite likely to increase national interests and sentiments in the EP³⁰ to the detriment of party discipline. Finally, the composition and the balance between national delegations within the Committee on Economic and Monetary Affairs of the EP, which will become the centre of the activity of the Parliament on the economic governance, is also likely to be affected by the new measures, for instance, *de facto* attempting to limit the membership exclusively to the MEPs of the Eurozone at least for part of its activity (even though this is not admissible, according to the present Rules of procedure of the EP).

²⁹ This mechanism aims to contrast the disputable solidarity existing amongst Member States in the Council, in concealing their respective violation of the Pact.

³⁰ The raise of MEPs' conducts oriented to national self-interest appeared quite evidently during the debates held on the occasion of the Inter-parliamentary Committee Meeting on European Semester for Economic Policy Coordination co-organised in Brussels by the Committee on Economic and Monetary Affairs of the EP and the relevant Committee of the Danish Parliament on 27-28 February 2012, <http://www.europarl.europa.eu/webnp/cms/lang/it/pid/1702>. Previously, during the plenary session of the EP in Strasbourg on 13 December 2011, a harsh debate took place between the British MEPs and the MEPs elected in other Member States because of the position taken by the Prime Minister David Cameron in the European Council of 8-9 December 2011.

Whatever the potential impact on the functioning of the EP will be, following the implementation of the new measures, one thing should be maintained at all costs: the integrity of the EP has to be preserved, as a collective body in which the national origins of the MEPs should be “merged” or at least “diluted” as much as possible in favour of the representation of the European citizenship as a whole. Indeed, the EP is the only European institution in which solidarity and mutual trust between Member States and between national citizens can be forged. Consequently, any temptation to use the EP as if it was an inter-governmental body and thus mirroring the differentiated participation of national governments – for instance, providing different compositions of the EP depending on the issue in question and excluding MEPs from the countries not adopting the euro – should be avoided within the new economic governance.

3.2.1 The European Parliament and the so-called “Six-Pack”: Two Main Paths

3.2.1.a. *The Ambiguous Concept of “Economic Dialogue”*

The first direction envisaged for the participation of the EP in the reformed economic governance framework of the EU is the “Economic Dialogue”, expressly provided in the five Regulations of the “six-pack”. In point of fact, the concept appears quite questionable from a legal point of view, and also ambiguous, since it is not clear what happens if the “Economic Dialogue” fails or if one of the institution does not fulfil its obligations. In many regards, its execution seems to be left to the voluntary commitment of the EP, the Commission, the Council, the President of the European Council and the governments of the Member States.

The “Economic Dialogue” is the “new edition” of a format already experimented within the EU. In 1999, the “Monetary Dialogue” was launched for the first time, regulated in the Treaty of Amsterdam (even though this name did not appear in the Treaty), by Art. 113.3 TEC and by Art. 15.3 ESCB Statute. It consists of the presentation of the annual report by the President of the European Central Bank (ECB) to the EP and “the President of the ECB and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent Committees of the European Parliament”. Then, it was agreed that the President of the ECB (in addition to the presentation of the annual report) would have appeared four times before the EP Committee on Economic and Monetary Affairs to be heard (Art. 113 of the EP Rules of procedure). Studies show that the experience of the “Monetary Dialogue” has been quite successful so far, since most recommendations adopted by the ECON Committee of the EP have been taken into account by the ECB (Eijffinger and Mujagic, 2004: 190-203).

In contrast, before the entry into force of Regulation No 1176/2011 on macro-economic imbalances, the EP was excluded by the “Macro-economic Dialogue”, firstly established by the Cologne European Council of 3-4 June 1999, in matter of growth, employment, competitiveness and sustainable development. In fact, the EP has recently requested to become a partner of the “Macro-economic Dialogue”, which has, to date, involved only representatives of the Council, the Commission, the European Central Bank and the social partners.³¹

The logic behind the newly-established “Economic Dialogue” is stated in “photocopy provisions” replicated in the five Regulations: to “enhance the dialogue between the institutions of the Union, in particular the European Parliament, the Commission and the Council” – although the President of European Council and the President of the Eurogroup may also be involved – “and to ensure greater transparency and accountability”. Within the European economic governance framework, the EP becomes the place where the compliance of the Member States with the Regulations is (or should be) publicly debated, and where the positions (recommendations, warnings, *etc...*) adopted by the

³¹ See the resolution of the European Parliament of 1 December 2011 *on the European Semester for Economic Policy Coordination* (2011/2071(INI), para 54.

Council, on proposal or recommendation of the Commission, is subject to a political review, on the grounds of the reasons that justified their adoption.

Three main requirements are common to all the Regulations with regard to the “Economic Dialogue”.

1) Under specific circumstances, the European Parliament has *the power to invite* the President of the Council, the Commission, and, *where appropriate*, the President of the European Council or the President of the Eurogroup, to appear before the committee – the ECON Committee – to discuss the actions taken by the Commission and the Council. These circumstances are:

- a) The adoption of a Council decision that an excessive deficit exists (Art. 126.6 TFEU); the adoption of a Council recommendation addressed to a Member State with an excessive deficit which aims to bring the situation to an end within a given period (Art. 126.7 TFEU); the adoption of a Council notice addressed to the Member State which has failed to comply with the Council recommendation and which requires a certain deficit reduction fixed by the Council itself within a specified time-limit (Art. 126.9 TFEU); the adoption of a sanction by the Council and addressed to the Member State concerned, which varies from the duty to publish additional information before issuing bonds, to the imposition of a fine (Art. 126.11 TFEU). Compared to the previous regime, the EP is now involved, according to its discretion, when the Council adopts such positions.
- b) The adoption of a Council decision establishing that a Member State has failed to comply with the medium-term budgetary objective decision and imposing that the Member State concerned lodge an interest-bearing deposit; the adoption of a Council decision imposing a non interest-bearing deposit on a Member State which was considered by the Commission as involved in particularly serious violations of the SGP; the adoption by the Council of a fine against a Member State that has not taken effective action to correct its excessive deficit (Regulation No 1173/2011).
- c) The information provided by the Council on the broad guidelines of economic policy (Art. 121.2 TFEU); the adoption by the Commission of general guidance, replacing the Annual Growth Survey,³² at the beginning of the annual cycle of surveillance; the adoption of European Council’s conclusions concerning orientation for economic policies within the European Semester and orienting the multi-lateral surveillance; the results of the multi-lateral surveillance on the budgetary positions, of the co-ordination of economic policies and on macro-economic imbalances; the adoption of a Council recommendation concerning the opening of the excessive imbalance procedure, the corrective action plan and, in the case of failure to comply with the action plan, a new deadline for taking corrective action; the adoption of a warning by the Commission, in the case of deviation from the adjustment path defined in the medium-term budgetary objective.
- d) The imposition of an interest-bearing deposit by the Council, following its previous decision which ascertained the existence of an excessive macro-economic imbalance recommending corrective actions (Regulation No 1176/2011), when these actions have not been taken by the Member State concerned within the time limit (Art. 3, Regulation No 1174/2011).

2) The second requirement aiming at assuring the effective “Economic Dialogue” with the EP is the fulfilling of the obligation, by the Council and the Commission, to *keep the EP “regularly informed”* on the application of these Regulations: the two institutions are accountable to the EP for the implementation of these measure. What regular information means is not easy to foresee: however, because all these Regulations have the European Semester as the main point of reference, it is likely that the report activity of the Council and the Commission will have to be accomplished at least every European Semester, at the beginning and at the end.

³² On 15 February 2012 the European Parliament adopted two resolutions on the Annual Growth Survey presented by the Commission, showing criticism on the level of transparency and disclosure of the information achieved, in particular regarding the conduct of the Council.

Interestingly, perhaps to counter-balance the previous lack of the “Macro-economic Dialogue”, Regulation No 1176/2011 on the prevention and correction of macro-economic imbalances fixes further informational obligations upon the Commission and the Council, compared to those provided in the other Regulations. The EP is considered on an equal footing with the other EU institutions: like the Council, it will receive from the Commission *in timely manner* the annual report identifying the Member States that may be affected by economic imbalances; the report on the results of the in-depth review undertaken by the Commission on the Member States which are at risk of economic imbalances; information about the recommendations addressed by the Council to a Member State that, after the in-depth review, is found to experience economic imbalances.

As for the first two requirements of the “Economic Dialogue”, it seems unlikely that either the other institutions will refuse the invitation of the EP to appear before its ECON Committee or the duty of the Council and the Commission to inform the EP will not be fulfilled. However, in the event of persistent failure of the institutions (in particular the Commission, the Council, and the European Council) to comply with their duties provided by the new regulations, in theory the ommissive conduct could be challenged before the CJEU under the proceedings for failure to act (Art. 265 TFEU), although meeting the conditions for the admissibility of such an action is anything but easy. Especially in case of repeated failure of the Council and the Commission to present their reports and the mandatory information to the EP, the generic formulation of the Regulation with regard to the schedule for tabling the report and on their form, whether the written form is required or not, is likely to make this provision even less justiciable.

3) The third requirement of the “Economic Dialogue” entails a new perspective for the EP, that of the direct dialogue with a Member State. To date, such a bilateral dialogue with a Member State has simply concerned the EP and the six-month presidency of the EU. The President of the Council often appears before the EP. In contrast, the new provisions on the “Economic Dialogue” introduce a one-to-one relationship between the EP and the Member State experiencing macro-economic imbalances, excessive deficits or failing to comply with the Council recommendations or decisions.

The provision seems to create the conditions for the Member State concerned to defend publicly its position and to explain why the situation has occurred: the EP “*may offer to opportunity to the Member State (...) to participate in an exchange of views*”. The meeting will take place at committee level (preferably within the ECON Committee or the Committee on Employment and Social Affairs, but the Rules of Procedure of the EP have not been amended yet), thus avoiding generalist debates in the plenary session. Moreover, the Member State will accept the invitation upon a voluntary basis (national governments are only accountable to their parliaments in the end): if the Member State declines the EP offer, it can neither be accused of infringement of the Regulations, nor of violation of the principle of sincere co-operation between the EU institutions (Art. 4 TEU).

However, one issue remains to be addressed in this respect. Does the Member State concerned have to be represented only by the government or can the national parliament also be entitled to represent the Member State in this exchange of views with the EP Committees? Indeed, the relationship between the European and national parliaments has been shaped since the end of the 1980s in the EU,³³ and the competent parliamentary committees of the EP and the national parliaments on the same subject-matter very frequently hold meetings together. However, if the common nature of the institutions, democratic bodies elected by the citizens, albeit at different levels within the EU constitutional architecture (Pernice, 2009: 351-407), both of which exercise (or are supposed to exercise) budget authority in their domain, would lead parliaments to prefer the option of inter-parliamentary meetings in order to enforce this provision, it is quite unlikely that the position of a Member State on its excessive deficit will be represented by the national legislature rather than by the executive branch.

³³ The meetings of the Speakers of the EU Parliaments date back to the Seventies, but the Conference of the parliamentary Committees on European Community Affairs (COSAC) was established in 1989.

Nonetheless, the hypothesis of inter-parliamentary meetings should not be completely disregarded, since what the provisions in the Regulations require is that an *exchange of views* with the EP occurs: there is no need for a sort of diplomatic delegation appearing before the EP acting on a precise mandate of the Member State.

3.2.1.b. Interparliamentary Co-operation... What is missing?

The second direction – though not clearly envisaged in the new EU legislation – to which the Regulation of the “six-pack” indicates EP participation in EU economic governance is that of co-operation with national parliaments. This path is only outlined by the Regulations, for instance, by the Regulation on the prevention and correction of macro-economic imbalances, in the *whereas* clause, by saying: “The Strengthening of economic governance should include *a closer and more timely involvement of the European Parliament and the national Parliaments*”, without developing this premise further in the text of the Regulation.

The only provision that could induce the reader to think of inter-parliamentary co-operation is the above-mentioned one about the exchange of views between the competent EP Committee and the Member States which infringe the “six-pack” or Art. 121 TFEU. Notwithstanding these very limited references, the need to establish a sort of permanent channel of communication between the EP and the national parliaments in matters of economic governance is testified by the commitment of the EP to organise inter-parliamentary committee meetings between the committees of the EP and of national parliaments responsible for the European Semester before the Spring European Council and after in order to discuss the proposed country-specific recommendations of the Commission. Significantly, this intention of the EP was stated in between the approval of the “six-pack” and its entry into force, in the EP Resolution of 1 December 2011.³⁴

The lack of detailed provisions on inter-parliamentary co-operation in the “six-pack” is probably derived from the absence of agreement between the EP and national parliaments on how to arrange their relationship. Indeed, on the one hand, the EP is willing to use the legal basis offered by Art. 9 of the Protocol No 1 to the Treaty of Lisbon, on the role of national parliaments, since it reserves to the EP a certain discretion in defining, *together with national parliaments* (probably a EU Regulation is not the best legal measure to enforce the determination of national parliaments), the organisation and promotion of their effective and regular co-operation. On the other hand, there is the “solution” provided by Art. 10 of that Protocol to base inter-parliamentary co-operation in the EU on a series of thematic conferences of the EP and the national Parliament committees upon the COSAC model. But this option is clearly thwarted by the EP, which does not accept to be treated as any other parliament of the Union, in terms of representation and decision-making power.³⁵

Without doubt, the disagreement between the EP and the national parliaments on how to shape their relationship from an organisational point of view does not help the “cause” of the enhancement of their positions in the EU decision-making process.

³⁴ See the resolution of the European Parliament of 1 December 2011 *on the European Semester for Economic Policy Coordination* (2011/2071(INI), points 46 and 47. Moreover the commitment of the EP in strengthening its cooperation with national parliaments has been confirmed by the recent resolution of the European Parliament of 4 July 2012 on the Conclusions of the European Council meetings (28-29 June 2012) (2011/2923(RSP)), point 9.

³⁵ The aversion of the EP towards the COSAC model is testified by the EP refusal to follow Art. 10 of the abovementioned Protocol for setting up the Interparliamentary Conference on the Common Foreign and Security Policy and on the Common Security and Defence Policy. Finally, on the occasion of the Conference of the EU Speakers of 20-21 April 2012 the EP and the national parliaments agreed that the EP would have been represented by 16 delegates in this Conference, whereas national parliaments can send 6 delegates each. Therefore the EP achieved its objective. See the Presidency Conclusions of the Conference of Speakers of the European Union Parliaments, Warsaw, 21 April 2012, http://www.parl2011.pl/prezydencja.nsf/attachments/DKUS-8SYGLC/%24File/conclusions_PL_EN_FR.pdf

From an overall assessment of the “six-pack” provisions on the EP role, it emerges that the European legislator has not been particularly courageous in the institutional design of the new economic governance framework, which essentially replicates the relationship already in force at the time of the previous Stability and Growth Pact (but whose enforcement has now become semi-automatic). The only exceptions are the enhancement of the Commission position, through the reverse qualified-majority voting in the Council, and the mechanism of the “Economic Dialogue”. The latter mechanism in particular guarantees the involvement of the EP in this field for the first time. However, much more could have been done: for instance, the Annual Growth Survey could have been defined by the Commission together with the EP, or at least consulted it before its adoption; instead of being only informed, the EP could have participated in the assessment of the corrective action plans against macro-economic imbalances, or the President of the EP could have been associated to the meeting of the Eurogroup or to the meeting of the European Council dealing with the European Semester.

Unexpectedly for an international agreement negotiated beyond EU law, some of the concerns expressed about the role of the EP and its possible strengthening, including the issue of the co-operation between the EP and the national parliaments on economic governance, have been addressed by the TSCG, rather than by the EU regulations.

3.2.2 The False Problem of the so-called “Fiscal Compact” for the European Parliament

In spite of the disputable procedure followed for its adoption (see, *infra*, Section 3.1.) – and without assessing the nature of the TSCG, which is certainly a worrying precedent for the process of European integration – the entry into force of the TSCG (following the ratification of the contracting parties) will not upset the position of the EP within the new economic governance framework, which was already weak under the “six-pack”. Rather, the TSCG complements certain aspects of the “six-pack” as for the EP role: strictly in this regard, the opinion of those who say that the “Fiscal Compact” “does not add much to the regulations adopted after the six-pack” (Craig, 2012) can be shared. Moreover, the Treaty uses categories and regulates the activity of the EU institutions as if it were part of the EU law (and apparently it will become EU law in five years after its entry into force).³⁶

In the light of Art. 12.5 of the TSCG, the President of the EP *may be invited to be heard* – just as the President of the ECB may – to the meeting of the heads of state and governments of the Contracting Parties whose currency is the euro, provided in the framework of the Treaty and called “Euro Summit”. This provision, which does not reflect the proposed amendment of the EP representatives, constitutes the main regret of the institution about the outcome of the negotiations. Indeed, the EP expected to participate fully in the informal Euro Summit meetings through its President, while, in the final version of the TSCG, the invitation of the EP President depends on an autonomous decision of the heads of state and governments and on the need to hear him or her.³⁷ Thus, this represents only half a victory for the EP.

By recalling the protocol on the role of national parliaments, attached to the Treaty of Lisbon, Art. 13 of the TSCG also settles the issue of interparliamentary co-operation on fiscal policy, following the achievement of a difficult compromise between the EP and the national parliaments (see, *infra*, Section 3.2.1. b). First of all, the hypothesis initially fostered by the French delegation to set up an inter-parliamentary forum aimed at excluding the EP (because only national parliaments and budgetary policies are put under constraints) has been overcome and the final version provides for the

³⁶ This is what Art. 16 TSCG promises: “Within five years, at most, of the date of entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union.

³⁷ See the European Parliament Resolution of 2 February 2012 on the Conclusions of the European Council informal meeting of 30 January 2012, point 8.

establishment of a conference of parliamentary committees (Manzella, 2012), although the choice for one of the two models of interparliamentary co-operation envisaged in Art. 9 or Art. 10 of protocol No 1 remains unsettled at the moment. Indeed, on the one hand, the reference to a conference of parliamentary committees does not imply the mimesis of the COSAC model, where all parliaments, European and national, are equally represented; on the other hand, when the EP and the parliaments of the contracting parties will determine together the organisation and the promotion of this conference, while they will be able to depart from the COSAC format, nonetheless they have to guarantee that parliaments will meet at committee level.³⁸

The mandate of the new interparliamentary conference is formulated in very broad terms with regard to the discussion of the matters covered by the TSCG. However, one crucial point stemming from the Art. 13 concerns who is entitled to take part in these interparliamentary conferences: indeed, for the first time, and in contrast with the logic followed within the EP, this institution will have as counterparts only the parliaments of the Member States that sign the treaty. But how the dialogue, the mutual trust amongst Member States, and the public debate in the EU, can be fostered on budgetary policies if at least two parliaments – the Czech and the UK Parliaments – are excluded, remains a mystery. The inter-governmental logic should not affect the functioning of the inter-parliamentary co-operation that follows an inclusive, rather than an exclusive, purpose.

A last critical aspect of the TSCG regards the position (or, rather, the absence of a recognised position) of the EP in the procedures provided in the international agreement – but not (to date) in the “six-pack” – and dealing with the introduction of the clause on the balanced budget (the “golden rule”) in national legal systems and the case of failure to comply with this obligation, when an action can be brought before the CJEU. Perhaps, the “Economic Dialogue” could be extended to these cases, too: the Commission could inform the EP about the amendments to the national law and the “golden rule”, as well as its infringement; the EP should have the opportunity to invite the Member State concerned for an “exchange of views” on this crucial issue, as in the present formula of the “six-pack”.

4. First Conclusions: “No Taxation Without (Parliamentary) Representation”. A Disappearing Principle in the EU?

The process of reform of the European economic governance framework has, in many regards, only just begun and is still ongoing. The TSCG (and the TESM) has to be ratified by at least twelve contracting parties to enter into force; 2012 will be the first year in which the cycle of the European Semester will be completed and the regulations and directive of the “six-pack” will be implemented; two new draft regulations presented by the Commission and already re-named as the “six-pack plus” or “two-pack” are before the EP at the first reading of the ordinary legislative procedure.³⁹

The two proposals aim at further strengthening, in the light of the TSCG, the European control over fiscal policy and the multi-lateral surveillance:⁴⁰ once again, the method chosen for the involvement of

³⁸ The constraint to meet at committee level has been seen as a requirement that violates parliamentary autonomy (of both the EP and the national Parliaments): see, for instance, the speech of Giuliano Amato on the occasion of the Jean Monnet seminar on “Gli equilibri istituzionali dell’Unione europea”, held at LUISS Guido Carli, in Rome, on 19 April 2012.

³⁹ Actually on 13 June 2012 the EP plenary adopted several amendments to the two proposals, but then decided to send the draft Regulations (COM (2011) 819 and 821 def.) back to the ECON Committee (the committee responsible) for further consideration, thus postponing the opening of the trialogue and the conclusion of the Parliament’s first reading. Indeed, as already happened for the “six-pack”, political groups showed different positions and the two reports were voted by a slim majority by the ECON Committee. MEPs from the socialist group decided to abstain, claiming for further amendments that would have made the proposals more socially-oriented.

⁴⁰ See Draft Regulation on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (COM(2011)821) and Draft Regulation on the strengthening of economic and budgetary surveillance of Member States experiencing or threatened with serious difficulties with respect to their financial stability in the euro area (COM(2011)819).

the EP is inspired by the “Economic Dialogue” introduced by the “six-pack”, but extended by the amendments adopted by the EP plenary in June 2012 to a broader variety of hypotheses than in the past. As it happened during the legislative procedure for the adoption of the “six-pack”, also with regard to the “two-pack” and especially for the draft Regulation on common provisions for monitoring and assessing draft budgetary plans, the EP has worked to increase the degree of “democratic commitment” of the proposal and of course to enhance its position compared to the original text of the Commission (although during the first reading the amendments approved by the EP might still be reversed).

For instance, so far one of the amendments to this draft Regulation enables the Commission to adopt delegated acts when monitoring the draft budgetary plans of the Member States.⁴¹ If confirmed at the subsequent stages of the legislative procedure, this power of the Commission, which was not provided in the initial version of the proposal and which is put under severe constraints, is likely to reinforce the EP. Indeed, the EP, as well as the Council, enjoys a veto power against the delegated acts of the Commission and the power to revoke the delegation at any time. Therefore the EP could have a say in the oversight of draft budgetary plans, at least by blocking the action of the Commission.

However, because of these latest developments, it might seem too early to accomplish an exhaustive examination of the role of the EP within the new economic governance and this paper has made no claim to present an overall picture of this framework. However, some critical points can be highlighted.

First of all, the position of the EP has to be regarded in relation to the new powers acquired by the EU institutions and to the powers “lost” by national parliaments. Indeed, compared to the framework designed by the previous Stability and Growth Pact, the position of the EP has certainly improved: now the EP has the right to be informed and to be consulted on certain occasions, can invite the Commission, the Council, and, *where appropriate*, the President of the European Council and of the Eurogroup; can foster an exchange of views within its competent committees with the Member States – although it is not clear whether it can refer to the national government or the parliament – affected by a Council decision, recommendation and sanction or by a warning from the Commission. The EP “dialogues”, but does not decide. Is this enough in terms of democratic legitimacy and accountability in a system in which the Commission has been significantly strengthened by the mechanism of the reversed qualified-majority voting in the Council, and where, according to one of the two new draft regulations, the Commission can request to amend the draft budgetary plans (the budgets) of the Member States?

The EP is involved too late; it neither receives the national reform programmes, the stability and convergence programmes and the draft budgetary plans directly, nor can it concur in fixing the strategic priorities of the fiscal year and the European Semester or review the country-specific recommendations once adopted by the Council. In contrast, the strategic priorities are defined by the European Council, an institution which is not democratically accountable to the EP and only accountable in a limited way to the national parliaments.

Not only is the authority over budgetary policy and the decision on the adoption of (or, rather, the authorisation to adopt) structural reforms now demanded at EU level, which undermines the role of national parliaments in these fields, but this power is assigned in Brussels to other institutions than that directly elected by citizens. This situation, which is further complicated by the divergence amongst Member States that participate with different degrees of commitment and of binding effects in EU economic governance (as within the TSCG) (Fabbrini S., 2011), is susceptible to create a new democratic deficit.

⁴¹ On delegated acts in the EU, see Schütze, 2011: 661-693 and Peers and Costa, 2012: 427-460. In particular, Héritier, 2012: 38-54 argues that comitology and delegated acts have gradually made the EP more influential in the EU institutional landscape.

This is why it has been argued that the role of the EP should be strengthened, because of its composition and legitimation and because of its way of working, substantially inclusive of all its different components (political groups, national delegations, intergroups, pro and cons European integration factions), and although such common consensus amongst political groups has proved to be quite difficult to build up on the proposals of the six and the two-packs. With this regard, the internal divisions of the EP and particularly the perplexity of the socialist group have certainly undermined its capacity to struggle for more incisive powers in the framework of the EU economic governance.

However, the EP seems to be the only institution capable of also involving national parliaments through the inter-parliamentary co-operation, to stress the points of convergence and the shared interests amongst the parliamentarians and citizens of different Member States, instead of aiming at achieving exclusively national interests. From this perspective, the EP should become the *pivot* for forging solidarity and mutual trust amongst European citizens (Manzella, 2012), by insuring that every decision on European governance is carefully and publicly debated before it is adopted, also taking into account the positions of national parliaments. Moreover, the *status* of the EP could be further enhanced if and when the perspective envisaged by many prominent figures in the EU Member States of establishing a political and federal Union will be fulfilled (Mény, 2012: 159-161).⁴²

Nonetheless, the EP cannot act in solitude. Instead, the EP should push the national parliaments,⁴³ first of all, in order to overcome the traditional distrust in their relationship, to “filter” what happens at domestic level through the lens of the European common interest, for instance, in having financial stability and growth.⁴⁴ This joint commitment on the part of the EP and the national parliaments, but under the co-ordination of the EP, is also required for the democratic scrutiny and oversight of economic governance. Indeed, the procedures of the European Semester are so complicated, between the national and the European levels and between different institutions at the same level, that at least two disturbing consequences can be envisaged if parliamentary actors are not properly involved: the first is that parliamentary scrutiny is ineffective if it is not carried out as multi-level parliamentary scrutiny (Crum, Fossum, 2009: 249-271), based upon strong co-ordination between the EP and

⁴² See also the letter for the European federalism as the only exit solution for facing the crisis undersigned by many European legal scholars, politicians economists and diplomats and published on 9 May 2012 (significantly, the Europe Day) in *El Pais, Le Monde, La Repubblica* and *Tageszeitung*. According to this letter MEPs should have a leading role in transforming the EU in a federal Union and in reinforcing the parliamentary side of Europe, by involving national parliaments in this process.

⁴³ As the Treaty of Lisbon and also the case-law of national constitutional Courts show, the role of national parliaments in the construction of the EU architecture and in the use of the tools provided by the reform of the economic governance cannot be disregarded: see, for instance, German Federal Constitutional Court, 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08, 2 BvR 182/09 (Judgment of 30 June 2009 on the Treaty of Lisbon) para 208-210, 256, 273, 293 et seqq.; the decisions on the *European Financial Stability Facility* and related measures, 2 BvR 987/10, 2 BvR 1485/10, 2 BvR 1099/10 (Judgment of 7 September 2011) and 2 BvE 8/11 (Judgment of 28 February 2012 and the previous temporary injunction of 27 October 2011); and the decision on the European Stability Mechanism Treaty, 2 BvE 4/11 (Judgment of 19 June 2012); see also Polish Constitutional Court, Ref. No. K 32/09 (Judgment of 24 November 2010) para 2.3. On the importance of involving national parliaments on EU policies for the legitimacy of the whole EU integration process, see Lindseth, 2010: 198-249.

⁴⁴ The aim of the EP to pursue growth and occupation together with financial stability in the EU is shown by the content of the amendments to the Draft Regulation on common provisions for monitoring and assessing draft budgetary plans (COM (2011)821) adopted on 13 June 2012 and by the EP Resolution on the Conclusions of the European Council meeting (28-29 June 2012) (2011/2923(RSP)) adopted on 4 July 2012, where the initiative of the heads of states and government for the Compact for Growth and Jobs was welcome (point 4) as well as the report entitled *Towards a Genuine Economic and Monetary Union*, presented by Presidents Van Rompuy, Juncker, Barroso and Draghi. In the light of the legislative package that will be proposed by the Commission on the basis of this report, the EP stressed the need to consider, when drafting the new proposals, the importance of “ensuring the necessary democratic legitimacy and accountability of decision-making within the EMU, based on the joint exercise of sovereignty for common policies and solidarity”. (point 8, lit. d).

national parliaments.⁴⁵ The second consequence is that, in the new EU economic governance, there is confusion about who decides what on behalf of whom: the “chain of responsibility” is quite clearly depicted within the Member States, becomes less precise in the EU institutional framework, and almost non-understandable in the relations settled between national and EU institutions on budgetary and economic policy.

Since the American Revolution, it has been widely acknowledged that political responsibility, parliamentary representation and fiscal policy are inherently interrelated: “no taxation without representation” the motto recites. This is one of the basic assumptions of the modern theory of representation and of the legitimacy of parliaments. However, the risk within EU economic governance is that fiscal austerity (at present we cannot properly talk about EU taxation) is put in place and pursued, or, at least, is perceived as being pursued by an authority which is lacking in representative credentials according to democratic standards, and by marginalising the institutions which directly represent the citizens affected by these policies, to wit the EP and the national parliaments.

⁴⁵ See the intervention of the President of the European Parliament, Martin Schulz, to the European Council of 30 January 2012.

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